



# CAPE COD COMMISSION

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Date: February 14, 2001

Applicant: Town of Brewster  
Development Plan Review Committee  
2198 Main Street  
Brewster, MA 02631

Project #: JD20046

Project: S.M. Realty Trust

RE: Development of Regional Impact  
Jurisdictional Determination  
Cape Cod Commission Act, Section 3

Book/Page: Book 516, Page 81

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## DECISION OF THE CAPE COD COMMISSION

### Summary

The Cape Cod Commission (Commission) hereby finds that the proposed change of use of the existing building owned by S.M. Realty Trust and located at Lot 4-1 Yankee Drive, Brewster, from residential and office to leased office space only with additional square footage is subject to mandatory review as a Development of Regional Impact (DRI) under Section 3 of the Development of Regional Impact Enabling Regulations, Barnstable County Ordinance 90-12, as amended. The project is not exempt under Section 22 (b) of the Act. The decision is rendered pursuant to the vote of an authorized subcommittee of the Commission on February 12, 2001.

### Project Description

The project site is located at Lot 4-1 Yankee Drive, Brewster, MA. The parcel lies west of the intersection of Route 137 and Underpass Road, east of the intersection of Route



137 and Tubman Road. It is adjacent to the Cape Cod Rail Trail, the Stony Brook elementary school, and a 48-unit residential development. The entrance to the site is on Yankee Drive, a private road owned by the Clipper Village Community Association, Inc. The project site contains an existing building with a gross square footage of 9,185 square feet (s.f.). The previous past uses of this building have included residential and small-scale office uses.

The proposed project consists of the re-use of the existing 9,185 s.f. building from both residential and office space to leased office space only. There is also a proposed addition totaling approximately 1,410 s.f. Therefore, the gross floor area of the proposed project equals approximately 10,595 s.f.

### **Procedural History**

The Commission received a request for a Jurisdictional Determination (JD) from David Thyng, Brewster Building Commissioner and Chair of the Development Plan Review Committee, on December 27, 2000. The Commission staff determined this application to be incomplete and requested additional information from the town on January 4, 2001. The Town of Brewster filed two supplemental applications dated January 17, 2001 and January 23, 2001. The JD application was deemed complete on January 25, 2001.

A duly noticed public hearing pursuant to Section 5 of the Act to consider the request was held by an authorized subcommittee of the Commission on February 12, 2001 at the Cape Cod Commission office, Barnstable, MA. The public hearing and record were closed on February 12, 2001. At the close of the public hearing the subcommittee held a public meeting after which the subcommittee voted unanimously, with one abstention, that the project was subject to mandatory review as a Development of Regional Impact (DRI).

### **Materials Submitted for the Record**

#### ***From the Applicant:***

- Jurisdictional Determination application and supporting materials received 12/27/01.
- Letter from David Thyng, Brewster Building Commissioner, to Stacey Justus, Project Planner, dated 1/9/01.
- Jurisdictional Determination application dated 1/17/01.
- Amended JD application, page one only, received 1/23/01.

#### ***From the Cape Cod Commission:***

1. Letters from Stacey Justus, Project Planner, to David Thyng, Brewster Building Commissioner, dated 1/4/01 and 1/25/01.
2. Staff Report from Cape Cod Commission dated 2/7/01.

#### ***From other parties:***

- Letter dated 1/19/01 to Dorr Fox from Kevin M. Kirrane, attorney for the property owner, S.M. Realty Trust.

- Letters dated 1/16/01 and 2/2/01 to Dorr Fox from David S. Reid, attorney for neighborhood homeowners.

The application and notices of public hearings relative thereto, the Commission's staff notes, exhibits and correspondence, the transcript and minutes of the hearing and all written submissions received in the course of our proceedings are incorporated into the record by reference.

## **Testimony**

The Commission received the following testimony at the February 12, 2001 public hearing:

Jillian Douglass, Assistant Town Administrator, presented the town's position and reasons for submitting this JD application. It is their belief that the proposed project in its entirety constitutes a change of use. Because the new proposed use (as a regional "one-stop" job training/transitional assistance center) is so different than the small-scale commercial uses that may have operated there it would be inappropriate to consider only that which was residential as undergoing a change of use. It is uncertain that any commercial or office uses operated there at all and, if they did, they were at best transitory, low-impact office uses. It is their position that this project does trip the 10,000 square foot change of use threshold and therefore triggers mandatory DRI review.

Stacey Justus, the Commission's Project Planner, described the project as proposed and presented two scenarios that the subcommittee could consider when making its determination. In short, the question is whether the 2,658 s.f. that was residential or the gross floor area of the entire building as proposed should be counted toward square footage undergoing a use change. Staff reiterated that what was at issue was the change of use from residential and office to office use only and whether the gross floor area of the proposed project is greater than the 10,000 s.f. threshold.

Attorney David Reid, representing several residents of the adjacent Clipper Way development presented the neighbor's concerns. It is their position that the new, proposed use is completely different from what has existed there in the past and therefore, the square footage of the entire existing building, including the proposed addition, should be considered by the subcommittee when making its decision. Of major concern is the traffic generation from the re-use of the property as leased office space to a proposed single tenant, the state of Massachusetts.

Marion Hobbs, attorney for the Clipper Village Community Association, Inc., represented the Associations' concern about the use of the private way and the generation of traffic from the proposed use.

John S. (name unknown), a resident of Clipper Way, presented his concern with the traffic generation expected from the proposed use and the traffic generation in connection to the projects' proximity to the bike path and underpass.

The subcommittee members held a discussion of the issue and asked several questions of the Commission staff, town representative, and others present. After which the subcommittee concluded that it is appropriate to consider the gross floor area of the entire existing building and the proposed addition as square footage undergoing a change of use. The subcommittee then voted unanimously (with one abstention) that the proposed change of use of the existing building from residential and office to leased office space only with additional square footage is subject to mandatory review as a Development of Regional Impact (DRI) under Section 3 of the DRI Enabling Regulations.

## Findings

1. Past uses of the existing building included small-scale office uses on the first floor and residential use on the second floor. The JD application includes information submitted by the property owner indicating that the last residential rental units were leased through 1999. Past office uses were indicated through 2001.
2. According to plans prepared by Steven C. Hayes, Architect, submitted to the Brewster Development Plan Review Committee entitled "McShane Construction Company, Yankee Drive Office Building, First & Second Floor Plans, dated 5/24/00, as revised on 7/10/00" and "McShane Construction Company, Yankee Drive Office Building, Foundation & Third Floor Plans, dated 5/24/00, as revised on 6/21/00" the gross floor area (as defined by the Code of Cape Cod Commission Regulations of General Application, Chapter A, Section 1) of the existing building is 9,185 square feet. According to the JD Application, as submitted, the gross floor area of the proposed addition is 1,410 square feet. Therefore, the gross floor area of the total proposed project is 10,595 square feet.
3. The gross floor area included in the calculation of the square footage undergoing a change of use includes the total square footage of the pre-existing building plus the newly proposed addition. The previous office uses were small-scale and low impact. Therefore, the subcommittee finds that the proposed use of this building as office space leased entirely to a single lessee for the purpose of one large-scale facility constitutes a change in the nature, purpose, and intensity of the use. The subcommittee finds that the proposed project may generate substantially more traffic than previous uses that operated on the site.
4. The S.M. Realty Trust proposed project qualifies as a DRI under section 3(e) of the DRI Enabling Regulations as a use change that has a gross floor area greater than 10,000 square feet.

