



CAPE COD COMMISSION

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DATE: March 21, 2001 MOD-TR95012 (Modification - Type 2)

TO: Brislane Limited Venture Realty Trust
C/o Nutter, McClennen & Fish, LLP
Route 131 – 1513 Iyannough Road
P.O. Box 1630
Hyannis, MA 02601-1630

RE: Modification of an Approved DRI Decision
Section 9(n) of *Enabling Regulations*

APPLICANT: Brislane Limited Venture Realty Trust

PROJECT: Brislane - Office/Retail Development
1489-1513 Iyannough Road, Hyannis, MA

BOOK/PAGE: Book: 8779 Page: 61

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission), through its Regulatory Committee, hereby approves the application of Brislane Limited Venture Realty Trust, care of Attorney Patrick M. Butler, Attorney of Nutter, McClennen & Fish, LLP, for modifications to an Approved Development of Regional Impact Decision under Section 9(n) of the DRI *Enabling Regulations* for the sole purpose of a change to the condition #7 of the original decision.

The change is hereby approved as a Minor Modifications #2 under Section 7 of the *Administrative Regulations* (as revised). This decision is rendered pursuant to a vote of the Commission's Regulatory Committee on February 26, 2001.

ORIGINAL PROJECT DESCRIPTION and MATTERS AT ISSUE

In a DRI decision dated October 5, 1995, the Commission approved, with conditions, a 28,838 square foot office/retail development located on Route 132 in Hyannis. The project was called Brislane Limited Venture Realty Trust. Condition #7 of the original decision read:

"The two proposed specialty retail stores in the development shall be limited to the following land uses:

quality apparel (clothing store), hard goods (computer store), dance studio, real estate office, furniture store, hardware/paint store, health club, racquet club. Uses other than those listed above will require review as a DRI and may involve additional mitigation."



A letter received from Attorney Butler on February 15, 2001 requests changes to the uses listed in condition #7. The correspondence proposes the condition be revised to the following:

"1. Quality apparel (clothing store); 2. Hard goods (i.e. computer store); 3. Professional office or real estate office; 4. Furniture store; 5. Florist; 6. Bakery; 7. Sporting goods; 8. Specialty home furnishings (linens, decorative tile, oriental carpets, kitchenware, tableware, curtains, furniture and decorative arts); 9. Antiques; 10. Book store; 11. Specialty foods (coffees, teas, wine and cheese, spices but exclusive of fishmonger, butcher or green grocer), 12. Milliner; 13. Shoes and leather goods; 14. Fine arts; 15. Jewelry (not made on site); 16. Musical instruments and supplies, 17. Equestrian supplies; 18. Art supplies; 19. Toys; 20. Exercise equipment; 21. Notions; 22. Cosmetics and perfumes; 23. Small electronics; 24. Personal telecommunications; and, 25. Gifts.

Uses other than those listed above will require review as a DRI and may involve additional mitigation."

Under Section 7.0 of the *Administrative Regulations*, any proposal which would include "a substantially similar proposal to the original project but [which] involves a minor change of use, a minor change to the site plan, or a technical correction or small change to the findings or a condition of the original approval which does not affect the intent or outcome of the finding or condition" are subject to Commission review as modifications, specifically Minor Modifications Type #2. The *Regulations* go on to stipulate that proposed changes which can be deemed a Minor Modification Type #2 "shall not result in different or increased impacts to the resources protected by the Cape Cod Commission Act and/or RPP."

PROCEDURAL HISTORY

A letter was received from Attorney Butler on February 15, 2001 requests changes to the uses listed in condition #7. Staff developed a Memorandum analyzing the modification request for the Regulatory Committee. Attorney Butler was informed that the matter had been placed on the Regulatory Committee's regular meeting Agenda for consideration on February 26, 2001.

COMMENTS/DISCUSSION AT THE REGULATORY COMMITTEE MEETING

No comments from the public were received at the February 26, 2001 Regulatory Committee meeting on this project.

Staff described the modification request. Robert Mumford, Director of the Commission's Transportation Office, noted the proposed new uses were within the category of "specialty retail". He noted staff believed the list of uses proposed by Attorney Butler was acceptable so long as it is clear that retail food establishments, such as a coffee shop, doughnut shop, fast food or other type of restaurant were not allowed without additional DRI review.

In this vein, Mr. Mumford suggested that there should be a distinction made between a "bakery" and a "doughnut shop" because a bakery often sells doughnuts and a doughnut shop, like the other food establishments he noted, would have higher peak period traffic generation than typical "specialty retail."

Attorney Butler suggested the language be modified to clarify that bakeries did not include nationally-franchised doughnut shops.

The Committee discussed the matter and suggested that bakery be eliminated as a

category from the list of proposed new uses. Attorney Butler suggested this compromise was acceptable.

Staff also reported to the Regulatory Committee that in terms of other issue areas covered by the DRI decision, the Commission was still waiting for proof that the required open space had been placed under a Conservation Restriction. Arleen Wilson of A.M. Wilson & Associates provided the Committee with a copy of a recorded Conservation Restriction for the project.

In terms of water resources, Ms. Adams noted the Commission had received a fax from the Town of Barnstable indicating that a FAST denitrifying system had been installed on site. Edward Eichner of the Water Resources Office indicated that a FAST system would reduce nitrogen loading to 5 PPM in conformance with the original decision.

Based on this, staff suggested that outstanding compliance issues had been addressed and as modified by the Committee, the revised language of condition #7 was acceptable.

Based on this, the Commission's Regulatory Committee considered the modification of condition #7 of the October 5, 1995 DRI decision. At this meeting, the Regulatory Committee voted unanimously to consider the change a Minor Modification #2 under Section 7 of the *Administrative Regulations* (as revised) provided that the category of "bakery" was removed from the list of proposed uses.

MATERIALS SUBMITTED FOR THE RECORD

A. Materials submitted by the Applicant:

Letter, describing changes 2/15/01

B. Materials submitted by Cape Cod Commission:

Memorandum, to Regulatory Committee 2/21/00

C. Materials submitted by Town Officials

Fax, from Town of Barnstable, concerning FAST system 2/26/01

Note: Other than those noted above, no written materials or verbal comments were submitted on this modification request by the State, Town officials or the Public.

The information and notice of the public hearings relative thereto, the Commission's staff reports, exhibits, minutes of all hearings and meetings and all submissions received in the course of the proceedings, including materials submitted on file TR-95012 and MOD-95012 are incorporated into the record by reference.

JURISDICTION

The proposed changes to condition #7 of the 1995 Brislane DRI decision qualify as a modification to an approved DRI Decision under Section 9(n) of the DRI *Enabling Regulations*.

FINDINGS

The Commission's Regulatory Committee considered the proposed change to condition #7 of the 1995 Brislane DRI decision and voted unanimously to consider the proposed change a Minor Modification #2 under Section 7 of the *Administrative Regulations* (as revised) provided that the category of "bakery" is removed from the new list of proposed uses.

MODIFICATION TO THE DRI DECISION

In accordance with the vote of the Regulatory Committee, the following modifications are made to the October 5, 1995 DRI decision:

The existing condition #7, relating to transportation resources, is hereby removed and the following language is substituted in its place:

"The two proposed specialty retail stores in the development shall be limited to the following land-uses:

- 1. Quality apparel (clothing store); 2. Hard goods (i.e. computer store); 3. Professional office or real estate office; 4. Furniture store; 5. Florist; 6. Sporting goods; 7. Specialty home furnishings (linens, decorative tile, oriental carpets, kitchenware, tableware, curtains, furniture and decorative arts); 8. Antiques; 9. Book store; 10. Specialty foods (coffees, teas, wine and cheese, spices but exclusive of fishmonger, butcher or green grocer), 11. Milliner; 12. Shoes and leather goods; 13. Fine arts; 14. Jewelry (not made on site); 15. Musical instruments and supplies, 16. Equestrian supplies; 17. Art supplies; 18. Toys; 19. Exercise equipment; 20. Notions; 21. Cosmetics and perfumes; 22. Small electronics; 23. Personal telecommunications; and, 24. Gifts.**

Uses other than those listed above will require review as a DRI and may involve additional mitigation."

David J. Ansel
 David J. Ansel
 Chair, Regulatory Committee

3/26/01
 Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

Subscribed and sworn to before me this 26th day of March, 2001.

Katharine L. Peters
 Signature of Notary

My Commission expires:

