



CAPE COD COMMISSION

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DATE: May 16, 2002

TO: Robert H. Ament
Ament & Ament
39 Town Hall Square / P.O. Box 919
Falmouth, MA 02540-0919

FROM: Cape Cod Commission

APPLICANT: Peter Dobyns, Trustee of Wild Silver Trust

PROJECT #: EX 20087

PROJECT: Silver Square Expansion

RE: DRI Exemption
Cape Cod Commission Act, Section 12(k)

BOOK/PAGE: 13027 / 307

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby denies the application of Peter Dobyns, Trustee of Wild Silver Trust, for a Development of Regional Impact (DRI) Exemption on the Silver Square Expansion, pursuant to Section 12(k) of the Act, c. 716 of the Acts of 1989, as amended. The decision is rendered pursuant to a vote of the Commission on May 16, 2002.

PROJECT DESCRIPTION

The project was initially constructed and occupied in 2000 as two buildings for retail business use identified as Building A and Building B, of 4,255 square feet and 5,520 square feet, respectively. The project is located in North Falmouth on a parcel of 2.37 acres, at the northwest corner of Route 28A and Rt. 151/County Road, in a commercially zoned district adjacent to other commercial uses. The site is less than one mile from the town boundary with Bourne.



In May 2001, the applicant secured a building permit to renovate the second floor of Building B that created 4,444 sq.ft. of space for office use. The renovation work was completed in late autumn of 2001. A real estate company has already signed a lease to use 2,500 square feet, while the remaining 1,920 square feet will be leased in the future as general office space. A hardship exemption, with conditions, has been granted by the Commission on May 16, 2002.

PROCEDURAL HISTORY

The applicant submitted a DRI exemption application to the Commission on February 7, 2002. Additional necessary information was provided March 7, 2002. The application was deemed to be complete on March 14, 2002. Duly noticed public hearings were conducted by the Commission pursuant to Section 5 of the Act by an authorized subcommittee of the Commission on April 10, and April 29, 2002 at the Commission office. At a subcommittee meeting on May 13, 2002, the subcommittee voted unanimously to recommend denial of the DRI exemption. The full Commission voted unanimously to deny the DRI exemption on May 16, 2002.

Materials submitted for the record

From the applicant:

- Application and supporting materials for DRI exemption, received February 7, 2002
- Letter notifying of DRI application withdrawal from Commission and from town review, received March 5, 2002
- Reduced size (11"x17") copies of site plans and building elevations, received March 7, 2002
- Copy of affidavits from architect Mark Hutker and from Millennium Design Group, Inc. on the applicants design plan for the project, received March 21, 2002
- List of expenditures made for the second floor expansion by applicant and real estate tenant, received April 10, 2002
- Copy of letter from Falmouth Design Review Committee to Ament & Ament, received by fax, April 17, 2002
- Water consumption data and nitrogen loading calculations prepared by Holmes & McGrath, Inc., received by fax April 18, 2002
- Letter in response to draft findings and conditions, received by fax April 29, 2002
- Additional nitrogen-loading calculations prepared by Holmes & McGrath, Inc., received by fax April 29, 2002

From Commission staff:

1. Letter to applicant notifying that the project has been referred as a DRI, December 28, 2002
2. Letter to the applicant stating that application deemed complete, March 14, 2002
3. Staff Report, April 4, 2002
4. Nitrogen loading analysis and spreadsheet, E-mailed to Michael McGrath and Laura Moynihan, April 25, 2002

From Town or State officials:

- DRI referral from Falmouth Planning Board, received December 27, 2002
- Copy of letter from Town Planner to Town Clerk, notifying of withdrawal, received March 5, 2002
- Determination from Massachusetts Historical Commission, received March 12, 2002

From the general public:

- E-mail message from Patricia Johnson, received January 28, 2002
- E-mail message from Patricia Johnson, received March 5, 2002
- Letter from Patricia Johnson, received by fax March 7, 2002
- Letter from Patricia Johnson, received by fax April 5, 2002

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

TESTIMONY

A public hearing was held April 10, 2002, at the Commission office for the hardship exemption and DRI exemption application. Presentations were made by the applicant's attorneys, Bob Ament and Laura Moynihan, and by staff. Mr. Ament noted that there were major hardships both to the applicant and the pending tenant of the office space. The staff presentation explained that the project had regional impacts for transportation and water resources. There was no general public in attendance.

A second hearing was held April 29, 2002 at the Commission office. Staff described the conditions that could be required of the project in the issue areas of Water Resources and Transportation. The applicant's attorney described which options were feasible and affordable for nitrogen-loading reduction. There was no general public present.

JURISDICTION

The Silver Square commercial development qualifies as a Development of Regional Impact (DRI) under Section 3(i) of the Enabling Regulations governing Developments of Regional Impact which requires review of "...any of the following proposed commercial, service, retail, or wholesale business, office or industrial development, as well as any private health, recreational or educational development: new construction with a gross floor area greater than 10,000 sq.ft."

A jurisdictional determination was made by a duly authorized subcommittee of the Commission on April 4, 2002, finding that the project required DRI review as a segmented project over 10,000 sq.ft. of floor area, under Section 3(l) of the DRI Enabling Regulations.

FINDINGS

General

G1. The project was initially constructed and occupied in 2000 as 2 buildings for retail business use, identified as Building A and Building B, of 4,255 square feet and 5,520 square feet, respectively. In May 2001, the applicant secured a building permit to renovate the second floor of Building B to add 4,444 sq.ft. of space for office use. A real estate company has leased 2,500 square feet, while the remaining 1,920 square feet will be leased in the future as general office space.

G2. A building permit was issued for renovation of Building B into office space because the Falmouth Building Inspector was not aware that the renovation for additional space would put the project over the Commission's threshold for review of commercial projects. The expansion work was completed by late autumn of 2001. A Certificate of Occupancy has not been issued yet.

Transportation

T1. The project is located in North Falmouth, on the northwest corner of Route 28A and Rt. 151/County Road. Both Route 28A and Route 151 are Regional Roadways as defined by MPS 4.1.1.2. Additional regional roadways in the study area include: Route 28, County Road, Chester Street, Quaker Road, Garnet Avenue, Wild Harbor Road, Pine Street, Scraggy Neck Road (Bourne), and County Road (Bourne).

T2. Preliminary staff review based on the above traffic generation and accounting for a 25% pass-by trip reduction for retail, shows peak hour impacts of 25 or more trips on the following regional roadway links:

Intersections:

Route 28A, Route 151, and County Road – 130 trips
Route 151 and Route 28 Southbound Ramps – 65 trips
Route 151 and Route 28 Northbound Ramps – 42 trips
County Road and Pine Street (west of 28A) – 28 trips
Route 28A / County Road (Bourne) – 56 trips

Segments:

Route 151 between Route 28A and Route 28 southbound Ramps – 65 trips
Route 151 between Route 28 southbound ramps and 28 northbound Ramps – 42 trips
Route 28A south of Route 151 / County Road – 37 trips
Route 28A between Route 151 and Development – 130 trips
Route 28A north of development, south of County Road (Bourne) – 56 trips
Route 28A north of County Road (Bourne) – 28 trips
County Road north of Route 28A (Bourne) – 28 trips

The development therefore affects 12 parts of the Regional Roadway system at a significant level.

T3. The traffic studies submitted by the applicant show weekday trip generation of 1,734 average daily trips for the full development (including office space). However, the nature of the retail facility and the office space (a real estate office generates more traffic than an ordinary office) is more appropriately analyzed as a single shopping center of 14,424 total sq. ft. (including both existing retail spaces, the second floor real estate office, and an ATM included in the parking lot design). This land use designation also allows for more flexibility / changes in tenants in the future without additional review by the CCC. Thus, using the shopping center land use designation, staff estimates the development will generate 1,963 average daily trips.

T4. The traffic studies submitted show weekday afternoon peak hour trip generation of 114 trips for the full development (including office space). However, the required analysis peak hour for retail development is the Saturday peak hour. Staff estimates, using the shopping center land use designation, result in approximately 247 average Saturday peak hour trips, which is well above the 25 peak-hour trips threshold required for mitigation.

T5. One of the key locations is the intersection of Route 28A and Route 151, expected to be impacted by 130 new peak hour trips. Although the intersection is currently signalized, there are no extra turning lanes provided. The applicant's traffic study claims a level-of-service (LOS) C under build conditions for this location. However, staff calculations for the required 2007 analysis year show LOS F under build conditions, which requires concurrent (to construction) mitigation.

T6. The traffic analysis shows that both Route 28A south of the Route 28A and County Road intersection and the intersection of Route 28A and County Road in Bourne will carry 44 peak hour trips from the development; and Route 28A and County Road north of the intersection in Bourne will carry 28 peak hour trips each, resulting in significant regional impacts outside of Falmouth.

Water Resources

WR1. The Silver Square parcel is located within the watershed to Rands Harbor, which is a portion of Megansett Harbor. Megansett Harbor is a regional embayment shared by both Bourne and Falmouth. Nitrogen loading within Megansett Harbor and its subwatersheds is a portion of a current nitrogen loading project being completed by the Commission using funds from the state Department of Environmental Protection (DEP). Final analyses for Rands Harbor have not been completed for the grant, so the regional nitrogen loading minimum performance standard (5 ppm, MPS 2.1.1.1.) applies to the parcel. This standard was approved in the RPP to provide a minimum level of protection for all water resources on Cape Cod (*i.e.*, embayments, drinking water, and ponds).

WR2. Based on water use records from the site, current water use during the off-season billing period (October to April) is 290 gallons per day (gpd). This average flow is reduced by 11 gpd for the tight tank that is used by the hair salon in the plaza. With 279

gpd of wastewater, 40,580 ft² of parking, 9,775 ft² of roof, and 27,793 ft² of lawn area, the existing nitrogen loading on the 2.37 acre lot is 3.8 ppm.

WR3. The applicant has built 4,444 ft² of additional office space on the site. Title 5 wastewater flow associated with this area of office space is 333 gpd. Addition of this flow to the existing nitrogen loading raises the proposed project nitrogen loading to 5.5 ppm.

CONCLUSION

The Cape Cod Commission hereby concludes that the Silver Square Expansion retail and office development, consistent with the above findings, does have significant impact on the values and purposes protected by the Cape Cod Commission Act, as amended, outside of the Town of Falmouth.

The Cape Cod Commission hereby denies the DRI Exemption application of Peter Dobyms, Trustee of Wild Silver Trust, for the Silver Square Expansion.

Elizabeth Taylor
Elizabeth Taylor, Chair

5-16-2002
Date

Commonwealth of Massachusetts

Barnstable, ss.

On this 16th day of May, 2002, before me personally appeared Elizabeth Taylor, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

Katharine L. Peters
Notary Public
Commonwealth of Massachusetts

My Commission expires

