



CAPE COD COMMISSION

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DATE: April 4, 2002

TO: Ament & Ament
39 Town Hall Square / P.O. Box 319
Falmouth, MA 02541

FROM: Cape Cod Commission

RE: Jurisdictional Determination
Cape Cod Commission Act Section 12(j)

Project: Silver Square Expansion
#JD 20087
County Road / Route 28A
North Falmouth, MA

Book/Page: 13027 / 307

DECISION OF THE CAPE COD COMMISSION

SUMMARY

Pursuant to Section 12(j) of the Cape Cod Commission Act, the Cape Cod Commission (Commission) hereby determines that the expansion of Building B in the Silver Square retail development owned by Peter Dobyms, Trustee of Wild Silver Trust, located in Falmouth, is subject to review as a Development of Regional Impact (DRI) under Section 3 of the Development of Regional Impact Enabling Regulations, Chapter A Barnstable County Ordinance 90-12, as amended ("Enabling Regulations"). The project is not exempt from review under Section 22 of the Cape Cod Commission Act, c.716 of the Acts of 1989, as amended. This decision is rendered pursuant to the vote of an authorized subcommittee of the Commission on March 21, 2002.

PROJECT DESCRIPTION

The project consists of the original and additional building space in the retail development called "Silver Square", in Falmouth. The applicant completed a renovation of the second floor of Building B in November 2001, which added 4,444 square feet of

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leasable office space to the existing retail space of 9,775 square feet, creating a total area of 14,219 square feet. The project is on a parcel of 2.37 acres located at the northwesterly corner of Route 28A and County Road in North Falmouth.

The Silver Square development was constructed in 2000 as two buildings with two stories each. At the time it was built, only the first floor was occupied with retail businesses. Building A has an area of 4,255 square feet; Building B is 5,520 square feet. In 2001 the owner, Peter Dobyms, decided to renovate the second floor of Building B in order to lease it as office space. A building permit was issued in May of 2001; work began in September 2001 and was finished in November 2001. An occupancy permit has not been issued for this additional space.

PROCEDURAL HISTORY

The project was initially referred as a DRI to the Commission by the Falmouth Planning Board on December 27, 2001. A hearing was opened by a hearing officer on February 21, 2002. The applicant requested the project be withdrawn from Commission review on March 5, 2002; the withdrawal was accepted by the full Commission on March 7, 2002.

The Cape Cod Commission received an application for a Jurisdictional Determination, DRI Exemption, and Hardship Exemption from the law firm of Ament & Ament on February 7, 2002. Reduced-size site plans were received March 7, 2002. The applications were deemed complete on March 14, 2002.

A duly noticed public hearing pursuant to Section 5 of the Act to consider the Jurisdictional Determination request was held by an authorized subcommittee of the Commission on March 21, 2002, at the Gus Canty Recreation Center in Falmouth. The public hearing and record were closed on March 21, 2002. After the close of the public hearing, the subcommittee deliberated and voted unanimously that the project was subject to mandatory review as a Development of Regional Impact (DRI).

Materials Submitted for the Record

From the Applicant:

- Letter and project information from Bob Ament, dated December 17, 2001
- Letter from Bob Ament on traffic issues at Silver Square, dated December 24, 2001
- Applications and supporting material for Jurisdictional Determination, DRI Exemption, and Hardship Exemption, received February 7, 2002
- Letter from Laura Moynihan notifying of project withdrawal from Falmouth Planning Board, received March 5, 2002
- Reduced size site plans and elevations, received March 7, 2002
- Letter from Laura Moynihan enclosed with statement from Millennium Design Associates, Inc., received March 19, 2002

- Letter from Laura Moynihan enclosed with affidavit by Mark Hutker, architect, received March 21, 2002

From the Town:

- DRI referral form, received December 27, 2002

From the Commission:

- DRI notification letter to Ament & Ament, dated December 28, 2002
- Staff Report on Jurisdictional Determination, March 13, 2002
- Letter deeming all applications complete, dated March 14, 2002

From other parties:

- E-mail from Patricia Johnson, received January 28, 2002
- E-mail and fax from Patricia Johnson, received March 6, 2002
- Letter from Patricia Johnson, received by fax March 7, 2002
- Determination from Massachusetts Historical Commission that project is unlikely to affect historic resources, received March 12, 2002

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 heard testimony at the March 21, 2002 public hearing in Falmouth.

Laura Moynihan, an attorney with Ament & Ament, argued for the applicant that the renovations made to Building B should not be considered as falling within Commission jurisdiction because there was no intent to create the additional space at the time the original buildings were constructed. She noted that this situation should be considered an addition, one in which the Commission does not have jurisdiction because the addition is less than 10,000 square feet.

Van Morrill presented the staff view, which is that the project does fall under Commission jurisdiction because it is a commercial development which has exceeded 10,000 square feet in gross floor area, regardless of the original intent of the developer.

Patricia Johnson, a resident of North Falmouth, stated that she brought this situation to the Planning Board's attention. She pointed out that the second floor of Building B was built with a full shed dormer, although the design elevation drawings do not show this feature, which suggests that finishing the second floor was part of the initial plan.

Doug Azerian of Century 21 Real Estate noted that he is the proposed tenant of the finished office space. He stated that he let the lease expire on their previous office in order to move to the Silver Square building, but cannot move in until this issue is resolved.

Art Calfee, a Falmouth resident and member of the Design Review Committee, noted that the committee had asked for revised site plans which showed the second floor dormer, but had not asked during review about what plans were in place, if any, for the second floor.

FINDINGS:

The Commission has considered the application of Peter Dobyms, Trustee for Wild Silver Trust, for the Jurisdictional Determination on the Silver Square expansion project, and based on consideration of such application and upon the information presented at the public hearing and submitted for the record, makes the following findings.

1. The project consists of the original and additional building space in the retail development called "Silver Square", in Falmouth, as shown on plans dated January 19, 2001, prepared by Millennium Design Group, Inc. The applicant completed a renovation of the second floor of Building B in November 2001, which added 4,444 square feet of leasable office space to the existing retail space of 9,775 square feet, creating a total area of 14,219 square feet. The project is on a parcel of 2.37 acres located at the northwesterly corner of Route 28A and County Road in North Falmouth.
2. The project is not exempt under Section 22 of the Act because none of the provisions of Section 22 apply to this project.
3. The completed expansion of Building B of the Silver Square retail development qualifies as a DRI under Section 3(e) of the DRI Enabling Regulations because the additional space of 4,444 square feet results in a project with a gross floor area greater than 10,000 square feet, and Section 3(l) which requires the entirety of a proposed project, including likely future expansions, to be considered in determining review threshold status.

CONCLUSION:

Based on the findings above, the Commission hereby determines that the expansion of Building B in the Silver Square retail development owned by Peter Dobyns, Trustee of Wild Silver Trust, located at northwest intersection of Rt. 28A and County Road, is subject to mandatory review as a Development of Regional Impact under Section 3(e) of the DRI Enabling Regulations. The Commission also finds that the project is not exempt under Section 22 of the Act. This decision is rendered pursuant to a vote of an authorized subcommittee of the Commission on March 21, 2002.

Elizabeth Taylor
Elizabeth Taylor, Subcommittee Chair

April 4, 2002
Date

Commonwealth of Massachusetts

Barnstable, ss.

On this 4th day of APRIL, 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.

Dorr Steven Fox

Notary Public

My Commission expires:

