



CAPE COD COMMISSION

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Date: November 14, 2005

To: Mr. Patrick M. Butler, Esq.
Nutter, McClennen & Fish, LLP
PO Box 1630
Hyannis, MA 02601

From: Cape Cod Commission

RE: Limited DRI Determination for Change of Use
DRI Enabling Regulations, Sections 3 and 4

Applicant: Hegarty Realty Extended Family Trust
1 Water Street
Sandwich, MA 02563

Project: Bourne CVS Redevelopment
6 Head of the Bay Road
Buzzards Bay, MA

Project #: CU #05023

Map Parcel: Map 20.3/ 60 & 62
Lot and Plan: PB 89 & 342, page 99 and 23
Book/Page: Book 17337, page 88

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission), through its Regulatory Committee, hereby determines that the redevelopment of the property located at 6 Head of the Bay Road, Buzzards May, MA, from the existing Pilot House Restaurant to a CVS Pharmacy, qualifies as a Change of Use pursuant to Section 3(f)(i) and Section 4(b) of Chapter A, Enabling Regulations Governing Review of Developments of Regional Impact, Barnstable County Ordinance 90-12, as amended (DRI Enabling Regulations), and may proceed without Development of Regional Impact (DRI) review. This decision is rendered pursuant to a vote of the Regulatory Committee on November 14, 2005.

Limited DRI Determination Decision CU# 05023
CVS Bourne Redevelopment
November 14, 2005



PROJECT DESCRIPTION

The Project is located on the north side of the Belmont Circle rotary, north of the Bourne Bridge, and is adjacent to the Mass Highway exit ramp from Route 25 southbound as it enters the rotary. Belmont Circle in Bourne is a Regional Roadway as defined in the RPP. The property is approximately 1.59 acres and is presently developed with the 13,500 square foot (sf) Pilot House Restaurant, which has been in operation since 1938. The property is adjacent to an Exxon/Mobil gas station to the west. The property extends behind the gas station to the west and meets Head of the Bay Road. The site contains approximately 64,200 sf of impervious area including paved parking lot and roof area, and approximately 14,800 sf of pervious landscape area. There is a wetland in the northeast corner of the site.

An authentic tugboat sits on the eastern side of the site, and has become a local landmark. However, the tug is in dilapidated condition and will be removed as part of the Project.

The applicant proposes to demolish the restaurant and remove the tugboat, and redevelop the site with an 11,800 sf CVS pharmacy and store, which also includes a drive-through window for dropping off and picking up prescriptions. The development plans propose a number of site improvements, including:

- a 10,400 sf reduction in impervious area,
- a 10,400 sf increase in landscaped area,
- an improved stormwater management design,
- a secondary access to Head of the Bay Road, and
- a pedestrian connection to the adjacent senior housing complex.

PROCEDURAL HISTORY

The Commission received a Limited DRI Determination for Change of Use application on August 30, 2005. The application was deemed complete on October 25, 2005. A duly noticed public hearing pursuant to Section 5 of the Act to consider the application was held by the Regulatory Committee of the Commission on October 31, 2005, at the Cape Cod Commission office in Barnstable, MA. The public hearing was continued to November 14, 2005. The public hearing and record were closed on this date, after which the Regulatory Committee voted unanimously that the project not be subject to mandatory DRI review in any Regional Policy Plan issue areas, and therefore be returned to local review.

MATERIALS SUBMITTED FOR THE RECORD

By the Applicant:

- Letter from M. Varrell, VHB Inc., to M. Twombly dated November 9, 2005
- Specifications on gooseneck lighting via fax from E. Cox dated November 9, 2005
- Letter from P. Butler to M. Twombly dated November 8, 2005

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- Letter from P. Butler to M. Twombly dated November 7, 2005
- Letter from M. Varrell to Heidi Marsella, Bourne Conservation Agent, dated November 3, 2005
- Letter from Frank Stewart, VHB Inc., to M. Twombly dated November 2, 2005
- Chart of project improvements submitted at October 31, 2005 hearing
- Color renderings of project elevations by BKA Architects, Inc. dated October 17, 2005 and submitted at the October 31, 2005 public hearing
- Email from E. Cox dated October 24, 2005
- Email from J. Stephenson to Andrea Adams dated October 20, 2005
- Stormwater Management Report revised October 18, 2005
- Email from B. Pettingill to M. Twombly dated October 18, 2005
- Elevation plans from BKA Architects dated October 17, 2005
- Email from Brian Pettingill, Ransom Environmental Consultants, to M. Twombly dated October 14, 2005
- Email from J. Stephenson to M. Twombly dated October 12, 2005
- Landscape plan from VHB Inc. dated October 12, 2005
- Email from Jon Stevenson, VHB Inc., to M. Twombly dated October 11, 2005
- Letter from P. Butler to Dorr Fox dated October 7, 2005
- Stormwater Management Report by VHB Inc. dated October 6, 2005
- Letter re: landscape management from Frank Stewart, VHB Inc., dated October 6, 2005
- Letter from Pat Butler, Nutter McClennen & Fish, to M. Twombly dated October 3, 2005
- Letter from Eliza Cox, Nutter McClennen & Fish, to Martha Twombly dated September 30, 2005
- Change of Use application and site plans received August 30, 2005

By the Town:

- Email from Heidi Marsella to M. Twombly dated November 9, 2005
- Email from C. Moore dated November 4, 2005
- Email from Coreen Moore to M. Twombly dated October 25, 2005

By the Commission staff:

- Memo to the Regulatory Committee from M. Twombly dated November 9, 2005
- Regulatory Committee meeting minutes October 31, 2005
- Staff report dated October 25, 2005
- Email from M. Twombly to E. Cox dated September 7, 2005
- Email from Martha Twombly to Eliza Cox dated August 30, 2005

By Interested Parties:

- Letter from Tom Moccia, President of the Buzzards Bay Village Association, via fax on October 28, 2005

In addition to the list of materials submitted for the record the application and notices of public hearings relative thereto, Commission staff's notes and correspondence, the minutes of public meetings and hearings, and all other written submissions received in the course of the proceedings are hereby incorporated into the record by reference.

TESTIMONY

Public Hearing #1 – October 31, 2005

Eliza Cox distributed a chart that compared impacts from the current facility with the proposed CVS project. She summarized that there is a net reduction in building and impervious area, elimination of night time entertainment, reduction in automobile trips, reduced driveway width, addition of a second road access to Head of the Bay Road, reduction in water use and sewer flows, reduction of paved area, increase in landscaping and pervious area, improvement in traffic safety, improved pedestrian amenities and safety, improved building design, higher salaried jobs, increased taxes to the Town of Bourne, and improved stormwater management. Kevin Patton reviewed the improved building design, based on discussions with Commission staff.

Patrick Butler noted that the project was a benefit to the residents of the adjacent senior housing complex for its pedestrian connection, and for the removal of the restaurant/bar/nightclub use with regard to noise and traffic.

Jon Stevenson reviewed the landscaping plan, noting that they specified non-invasive species, and increased the number of evergreens for better screening.

Martha Twombly noted that Commission staff generally concurred with the improvements in the redevelopment proposal compared to the existing use. She noted that there were questions raised concerning stormwater, hazardous materials, and lighting, and requested more information.

Scott Michaud discussed stormwater discharge to wetlands. He noted that some stormwater is currently discharged to Belmont Circle and that the proposal will divert and infiltrate stormwater on site, resulting in a net reduction in stormwater discharge to off-site areas consistent with MPS 2.1.3.2. The balance of diverted stormwater will be discharged to a delineated wetland in the Mass Highway layout at the northeast corner of the property following treatment in a vegetated swale. Mr. Michaud stated that it may be appropriate to credit the reduction in discharge to the Belmont Circle area to the northeast wetland if the Belmont Circle area can be shown to be protected under the Wetlands Protection Act. The project could then be deemed consistent with MPS 2.1.3.1 with a net reduction in discharge to protected wetlands. Mr. Stevenson said he would consult the Bourne Conservation Commission.

There was a discussion of enforcement for a Change of Use approval. Ms. Twombly said the staff believed the Applicant could address the questions raised, and recommended a Certificate of Compliance in the decision to ensure that the project was built as designed and according to the decision.

Andrea Adams discussed the importance of a hazardous materials and sharps management plan. Mr. Butler said the CVS would use the "Rhode Island protocol" for managing hazardous materials and sharps and would provide staff with a written copy. He noted that CVS did not sell mercury thermometers.

Public Testimony

Ms. Coreen Moore, Bourne Town Planner, said that the Selectmen had concerns about the project signage, and the Planning Board had concerns about the entrance to the site causing potential conflicts and confusion at the site driveway, but would work those out during local site plan review.

Hearing #2 – November 14, 2005

Martha Twombly said she spoke with Heidi Marsella, Bourne Conservation Agent, who clarified the local bylaw, which considers any land receiving runoff a "wetland." With that information, Ms. Twombly noted that staff is comfortable considering that the Belmont Circle wetland and the wetland on site are indeed wetlands for the purposes of this review. She also noted that water resource staff comments indicated that the Project proposal represented improvements to stormwater management from the existing conditions. She distributed copies of sign plans submitted by the Applicant, indicating that the signs would be made of carved wood, and lighted by gooseneck fixtures to meet the RPP lighting standards. She also noted that the Bourne town planner was interested in investigating the possibility of a shared driveway with the gas station to improve safety, and reduce confusion. She said that staff recommended an approval of the Change of Use with findings to acknowledge the latter proposal.

Ms. Garfield asked if the town wanted the shared driveway. Ms. Twombly said that the town planner believed so. Ms. Twombly asked about Mass Highway review. Mr. Butler and Mr. Boesch concurred that Mass Highway would have to agree on the final design.

Mr. Fox clarified that the Change of Use decision would contain findings that would address all of the above concerns.

JURISDICTION

The proposed project qualifies as a DRI under Section 3(f)(i) of the DRI Enabling Regulations as a change of use with a gross floor area greater than 10,000 square feet. Pursuant to Section 4(a) of the DRI Enabling Regulations, the Chief Regulatory Officer determined that the project constitutes a Change of Use. Further, as provided in Section

4(a)(iii), the applicant then applied for a Limited DRI Determination in accordance with Section 4(b), which requires the Regulatory Committee to determine the scope of the DRI review required.

FINDINGS

General Findings:

- G1.** The proposed Project consists of the redevelopment of a 1.59-acre parcel located at 6 Head of the Bay Road in Buzzards Bay, MA. The project consists of the demolition of the existing Pilot House Restaurant building, parking area, and the tugboat, and the construction of a 11,900 sf CVS pharmacy with a drive-through window.
- G2.** In accordance with Section 4(b)(vi) of the DRI Enabling Regulations, the Regulatory Committee reviewed the proposed change of use to determine the scope of the project review, which may be limited to those Regional Policy Plan (RPP) issue areas where the impacts are more detrimental (quantitatively and/or qualitatively) than the immediate prior use. The Regulatory Committee considered whether the project's impacts involve deviation from the minimum performance standards (MPS) of the RPP. The Regulatory Committee finds that the Project does not involve deviation from the minimum performance standards of the RPP. The Committee, in making its determination, considered the resources protected by the Act and the RPP. The Regulatory Committee finds that the Project does not present nor will it result in impacts that are more detrimental than the immediately prior use in any RPP issue areas.
- G3.** The project is proposed to be constructed according to the following plans:
- Landscape plans by Vanasse Hangen Brustlin, Inc. dated July 27, 2005 and revised October 12, 2005
 - Exterior elevation plans by BKA Architects, Inc. dated October 17, 2005, numbers A-4.1, and A-4.11
 - Site Plans prepared by Vanasse Hangen Brustlin, Inc.: C-1 Legend and General Notes dated October 6, 2005; C-2, Layout and Materials Plan dated October 6, 2005; C-3, Grading, Drainage and Utility Plan dated October 6, 2005; C-4, Site Details dated October 6, 2005

Water Resource Findings:

- WR1.** The project is not located in a Wellhead Protection Area.
- WR2.** Groundwater beneath the site discharges to the Cape Cod Canal. The canal is not a nitrogen-sensitive resource.
- WR3.** The site is currently connected to sewer. Project wastewater will be treated at the

Wareham wastewater treatment facility.

- WR4.** The project meets the regional 5-ppm nitrogen-loading standard. Although an increase in managed turf will result in an increase in the nitrogen load at the site, redirection of stormwater discharge from nearby wetlands and its infiltration on site will dilute the increased load and reduce the nitrogen-loading concentration in groundwater beneath the site.
- WR5.** The project will result in a net reduction in stormwater runoff to off-site wetlands within the Massachusetts Highway layout. The Regulatory Committee finds that it is appropriate to use reduced project stormwater discharge to the Belmont Circle as a credit to be applied toward this net reduction based on comments received from Heidi Marsella, Bourne Conservation Agent, as well as a letter from Matthew Varnell, wetlands specialist from VHB, Inc. that Belmont Circle contains a wetland that is protected under the Massachusetts Wetlands Protection Act. Stormwater will be redirected to infiltration galleries on site with bio-filtration of overflow discharged to wetlands elsewhere in the Massachusetts Highway layout.
- WR6.** The project includes a proposal for the use of slow-release synthetic and organic fertilizers applied at no more than 2.5 lbs of nitrogen per acre per year and "*hardy plant species adapted to local conditions.*" If implemented, the proposal will result in a further reduction in the nitrogen-loading concentration in groundwater.

Natural Resource Findings:

- NR1.** The project site is entirely developed in conjunction with the existing restaurant use. Because there is no open, undisturbed area on the site, no open space is required. The northeast corner of the site contains a wetland, the buffers to which are largely impacted by development.
- NR2.** The performance standard for redevelopment within a wetland buffer allows for alteration of the 100 ft buffer area where it has previously been disturbed, so long as the alteration will not increase adverse impacts to the buffer or associated wetland, and that there is no feasible alternative. The applicant has provided calculations showing that the redevelopment of the site will result in a reduction of impervious coverage within the 100 ft buffer to the wetland, consistent with MPS 2.3.1.2, and that the constraints of the site offer no alternative design to reduce impacts to wetland buffer further.

Transportation Findings:

- T1.** The property is located on the Belmont Circle in Bourne. Belmont Circle in Buzzards Bay is a Regional Roadway as defined in the Regional Policy Plan.

T2. Listed in the table below is the applicant's estimate of net new traffic from the change of use project based on information contained in the Institute of Transportation Engineers (ITE) *Trip Generation* manual 7th Edition. The ITE *Trip Generation* manual contains data from different types of restaurants. The applicant has calculated the trip generation based on two different types of restaurants, a quality restaurant (ITE land use code 931) and a high turnover (sit down) restaurant (ITE land use code 932). Given that the Pilot House Restaurant was a self-serve cafeteria-style restaurant, the existing restaurant falls into the category of high turnover (sit down) restaurant. Trip generation from the proposed CVS shows a reduction compared with the existing restaurant use.

Trip Generation – Vehicle Trip			
<u>Time Period</u>	<u>Proposed CVS pharmacy¹</u>	<u>Quality Restaurant²</u>	<u>High Turnover (sit down) Restaurant³</u>
Week day	1180	1215	1715
PM Peak Hour	115	100	145
Sat Midday Pk Hr	150	145	270

¹ ITE Land Use Code 881, "Pharmacy/Drugstore with Drive-Through Window", 11,900 sf.

² ITE Land Use Code 931, "Quality Restaurant", 13,500 square feet.

³ ITE Land Use Code 932, "High Turnover Restaurant", 13,500 square feet

T3. Compared to the previous use, the conversion to a CVS pharmacy will result in a net decrease in traffic. Based on a net decrease in new vehicle trips during all peak hours, the proposed change of use will not have a significant impact on traffic operations at any regional intersection or regional roadway.

T4. Based on information submitted by the applicant's representative, Belmont Circle is a high crash location with a crash rate higher than the state average. Belmont Circle has experienced sixty-three crashes over the last three years that data was available (2001, 2002, and 2003). Given the net decrease in trip generation, no degradation in safety will result from the Project.

T5. The existing Pilot House Restaurant has two curb cuts, the main driveway on the Belmont Circle and secondary access on Head of the Bay Road. The existing restaurant also has an interconnecting driveway with the adjacent gasoline station. Additionally, the existing gasoline station has two curb cuts, one on Belmont Circle and one on Head of the Bay Road. The Town of Bourne may seek to combine the two curb cuts on Belmont Circle to create one shared driveway for both the gasoline station and the proposed CVS as part of the local permitting process. The Cape Cod Commission supports curb cut consolidation on all regional roadways.

Economic Development Findings:

ED1. This Project will add 11,900 square feet of retail space to the market. With a significant amount of commercial retail space already in the region, this project will not serve to diversify the current regional mix of commercial space. Nevertheless, given the current use of the site as a restaurant, this project is unlikely to have an overall negative impact on regional real estate or economic diversity.

ED2. This project will result in more full-time positions and a higher total annual payroll compared to the operations of the current restaurant. The following chart compares employment data between the current and proposed uses, showing a significant increase in full-time jobs and payroll, while there is a decrease in the total number of jobs.

Tenant	Sq Feet	Employees			Total Payroll
		Total	Full-time	Part-time	
Current Use: Restaurant	13,500	50	7	43	\$225,000
Proposed Use: Pharmacy	11,900	30	18	12	\$750,000
Net Difference	(1,400)	(20)	11	(31)	\$525,000

According to the applicant the current use pays wages between \$5,000 and \$25,000 per year with no benefits excluding income from tips. The proposed use reportedly would provide benefits to full-time workers and pay would range from \$11/hour (\$22,880 assuming full-time forty hours per week) to \$45/hour (\$93,600 assuming full-time forty hours per week).

ED3. A letter from Patrick Butler dated November 8, 2005 indicates that local tax revenue will increase slightly with the proposed Project.

Community Character Findings:

CC1. *Building Design*

The plans (Sheet A-4.1 dated 10/17/05) incorporate variety into both the building façade and building height that results in a design that is generally consistent with the architectural standards of the RPP and the Commission design guidelines. The overall design reduces the apparent mass of the building by the use of dormers, gables and covered walkway projections. The plans show the varied use of a wood-composite clapboard and cedar shingles on the façade and asphalt architectural roof shingles, which also reduce the apparent mass of the building and are consistent with traditional Cape Cod styles. These features of the proposed design demonstrate that the building design does not have more detrimental impacts on community character than the prior existing use.

CC2. *Site Design/Parking location*

The existing parking is located to the front and side of the existing restaurant, with further parking accessed off Head of the Bay Road. The proposed project would continue to locate the parking to the front and rear of the building, however, new two-way access and landscaping will remove the parking accessed off Head of the Bay Road. The proposed project will slightly improve the existing site design with the provision of landscape islands and improved circulation, and therefore the proposed parking location is not more detrimental than the prior existing use.

CC3. *Pedestrian environment/circulation*

The current site contains few pedestrian amenities, while the proposed plan incorporates pedestrian pathways and crossings between the store and the adjacent properties. As such, the pedestrian circulation is not more detrimental than the existing use.

CC4. *Landscaping*

As noted above, the existing site contains little landscaping or screening from the roadway. The proposed landscape plan incorporates additional screening along the roadways and adjacent to neighboring uses, which is not more detrimental on community character than the prior existing use.

CC5. *Signage*

Existing signage on the site is limited to a carved wooden sign at the driveway adjacent to the rotary. Proposed signage includes a wood-carved unlit monument sign and wood-carved building-mounted signs with gooseneck lighting from above. All signage is proposed to conform to the town of Bourne sign regulations, which discourage internally illuminated signage. Therefore, as designed, the proposed signage is not more detrimental than the prior existing use.

CC6. *Exterior Lighting*

Current site lighting for the restaurant and old tugboat shell is uncoordinated, aged and inconsistent with the Commission's exterior lighting standards. This, together with the nearby gas station's illuminated canopy, and other existing development, create a cluttered nighttime lighting environment.

CC7. Information submitted for the proposed exterior lighting indicates the design, shielding and configuration of pole-mount and signage lights will be consistent with the Commission's exterior lighting standards.

CC8. Noise

An October 3, 2005 Memorandum states a belief that the proposed store will generate less noise than the existing restaurant, based on the restaurant's hours of operation to 1:00 am and its offering of live entertainment. The proposed CVS mechanical equipment will be placed behind roof elements which will provide acoustical shielding.

CC9. A sound/noise study was not submitted as part of the application. Without a study to measure the amount of existing sound/noise at and around the site, it was not possible to determine if the proposed new development would change ambient sound levels. However, based on the property location next to a major regional roadway, and adjacent to numerous commercial and retail businesses, noise will not be more detrimental than the previous use.

Hazardous Materials/Waste Findings:

HM1. According to maps associated with the Regional Policy Plan, the site is not located in either an existing Wellhead Protection Area or a Potential Public Water Supply Area. The restaurant and tugboat shell were surveyed for the presence of asbestos, lead paint and PCB or mercury-containing items. It is unlikely that the proposed CVS will be built using asbestos, lead paint or PCB-containing light ballasts.

HM2. In a November 8, 2005 Memorandum, CVS representatives agreed that the proposed pharmacy and store would not sell mercury-containing devices, including mercury thermometers and blood pressure cuffs. They also agreed that the CVS would post information about Barnstable County's waste management programs, and accept used sharps at the pharmacy.

CONCLUSION

Based on the findings above, the Commission, through its Regulatory Committee, hereby determines that the proposed change of use at 6 Head of the Bay Road, Buzzards Bay, MA is not subject to mandatory review as a Development of Regional Impact in any Regional Policy Plan issue area in accordance with Sections 3 and 4 of the DRI Enabling Regulations, because the impacts of the proposed Project are not more detrimental than those of the immediate prior use.

The Commission hereby approves the application of the Hegarty Extended Family Realty Trust for the proposed change of use redevelopment project to proceed without DRI review.

Prior to requesting a Certificate of Compliance from the Commission, the Applicant shall submit all plans as approved by local boards to Commission staff for review, and to ensure that they are consistent with this decision.

Prior to receiving a local certificate of occupancy permit, the Applicant shall receive a Certificate of Compliance from the Commission to ensure the project is built as proposed, and in conformance with this decision.

This decision is rendered pursuant to a vote of the Cape Cod Commission Regulatory Committee on November 14, 2005.



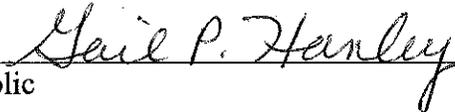
Frank H. Hogan, Chair, Regulatory Committee

12/15/05
Date

Commonwealth of Massachusetts

Barnstable, ss

On this 15th day of December, 2005, before me, the undersigned notary public, personally appeared Frank H. Hogan, proved to me through satisfactory evidence of identification, which were personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.



Notary Public

12/15/05
Date

My Commission Expires: 10/13/11