



CAPE COD COMMISSION

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Date: April 2, 2007

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

From: Cape Cod Commission

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

Project Applicant: Shallow Pond Professional, LLC
683 C Main Street
Osterville, MA 02655

Property Owner: S.P. Properties, LLC
1330 Phinney's Lane
Hyannis, MA 02601

Project: Office Building Redevelopment Project
Shallow Pond Center
1471 Route 132
Hyannis, Massachusetts

Project #: CU06018

Book/Page #: 20379/11
Map/Parcel: 253/14-X01 & 14-X02
Lot/Plan: 539/24

DECISION OF THE CAPE COD COMMISSION

Limited DRI Determination for a Change of Use
Shallow Pond Center Redevelopment - #CU06018
April 2, 2007
Page 1 of 15



SUMMARY

The Cape Cod Commission (Commission), through its Regulatory Committee, hereby determines that the redevelopment of the property located at 1471 Iyannough Road (Route 132), Hyannis, MA, from the existing Rainbow Inn motel to a 17,338 square foot office building qualifies as a change of use pursuant to the Section 3(f)(i) thresholds under the criteria established under 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 January 8, 2007.

PROJECT DESCRIPTION

The project site is a 1.8 acre parcel, located at 1471 Iyannough Road (Route 132), Hyannis, MA, bounded on the south side by Shallow Pond, on the north by an abutting parcel whose frontage is on Route 132, on the east by Old Strawberry Hill Road and an existing condominium complex, and on the west by a mixed-use (commercial/office) building. The project site is located in a Regional Commercial Activity Center as designated in the 1998 Barnstable Local Comprehensive Plan. The parcel is split between three local zoning districts—business, highway business and residential zones.

The project proposes to demolish the existing Rainbow Inn motel, an approximately 16,065 Square foot (SF), 46-room motel with manager's office space. An existing pool will also be removed. The site will be redeveloped with a 17,338 SF, two-story professional office building with associated parking, deck area, landscaping and stormwater and wastewater infrastructure. One of two existing docks on Shallow Pond will be removed. A 4-foot wide soft path will be constructed to provide controlled foot access to the remaining dock. The proposed redevelopment will result in 5,809 SF of development area within the 100-foot wetland buffer to Shallow Pond. Roof and paved surfaces (including pervious pavers) are proposed to increase by 1,485 SF relative to existing conditions. Subsurface and surface impervious runoff and wastewater disposal systems will be located within the 300-foot buffer to Shallow Pond. No specific tenants have been proposed at this time.

Currently the site has vehicle access through one driveway on Iyannough Road (via the abutting parcel) and one on Old Strawberry Hill Road. The proposed office development will not have direct access to Route 132, but will access only through a new curb cut on Old Strawberry Hill Road. The existing access easement across the project site that provides a connection between commercial properties fronting on Route 132 and Old Strawberry Hill Road will be maintained. Local zoning requires 58 parking spaces and 64 will be provided, seven will be constructed of concrete pervious pavers and six satisfy a parking easement benefiting the adjoining property.

PROCEDURAL HISTORY

The Commission received a Limited DRI Determination for Change of Use application from Shallow Pond Professional, LLC on July 10, 2006. 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 November 13, 2006, at the Cape Cod Commission office in Barnstable, MA. The public hearing was continued to December 11, 2006, and then to January 8, 2007. The public hearing and record were closed on 1/8/07, after which the Regulatory Committee voted unanimously (with two members abstaining) that the project not be subject to mandatory DRI review in any Regional Policy Plan (RPP) issue area, and therefore be returned to local review.

In addition to the list of materials submitted for the record (see Table 1 below) 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.

TABLE 1: Materials Submitted for the Record	
<i>Materials From the Applicant</i>	<i>Date Submitted</i>
Application for a Limited DRI Determination	7/10/06
Letter from L. Cox to S. Justus forwarding Traffic Analysis by Rizzo Associates (dated 7/20/06)	7/24/07
Letter from L. Cox to S. Justus forwarding MHC letter	7/26/06
Certificate of Inspection from Town of Barnstable	8/2/06
Disturbance area calculations and summary	8/2/06
Plans and drainage/stormwater information from Baxter Nye Engineering	10/3/06
Revised site plans from Baxter Nye Engineering	10/5/06
Architectural plans forwarded by L. Cox	10/26/06
Supplemental application materials via letter from L. Cox	10/12/06
Cover memo from L. Cox	11/1/06
Email from M. Eddy to S. Justus re: landscape plan revisions	11/2/06
Handouts to Regulatory Committee members by P. Butler	11/13/06
Revised Landscape Plan (color version)	11/13/06
Email from M. Ball to H. McElroy re: NHESP	11/21/06
Revised Site Plans	11/27/06
Memo from L. Cox to S. Justus re: responses to NHESP	11/27/06
Revised site plans and buffer area calculations from Baxter Nye Engineering	11/28/06
Handouts from P. Butler to Regulatory Committee members	12/11/06
Revised Stormwater Management Report	12/27/06
Memo from L. Cox to S. Justus re: revised plans	12/27/06
Handout from P. Butler to Regulatory Committee members	1/8/07

<i>Materials from Commission Staff</i>	<i>Date Submitted</i>
Memo to L. Cox from S. Justus	8/2/06
E-mail to L. Cox from S. Justus	10/12/07
Staff Report	11/6/06
Memo to Regulatory Committee members from S. Justus	12/5/06
Memo to Regulatory Committee members from S. Justus	1/3/07
Memo to Regulatory Committee members from S. Korjeff	1/7/07
<i>Materials from Town of Barnstable</i>	<i>Date Received</i>
Comment letter to Regulatory Committee from R. Weil, Barnstable Growth Management Department	1/8/07
<i>Materials from Others</i>	<i>Date Received</i>
Letter from Division of Fisheries & Wildlife to Shallow Pond Professional, LLC	11/15/06
Comment letter from Thomas Rugo to Commission staff	12/8/06

TESTIMONY

The Public Hearing was opened on November 13, 2006 and was then continued to December 11, 2007 and then to January 8, 2007. On January 8, 2007 the public hearing and the record were closed. Minutes of these meeting have been reviewed and approved by the Regulatory Committee and are hereby incorporated as testimony of this Decision. The following is a summary of that testimony:

November 13, 2006

Commission staff summarized the Staff Report dated November 6, 2006, discussed the change of use review standards, and identified six issue areas of concern that the staff focused its review of impacts on, including water resources, wetland and plant habitat, transportation, economic development, hazardous materials, and community character. The applicants commented with respect to the Natural Heritage and Endangered Species Program (NHESP) filing, transportation impacts and the economic impacts of the project.

Representing the town of Barnstable, Ms. Patty Daley said the primary concern of Barnstable's Growth Management Department was project traffic and questioned whether consideration was given to using an innovative alternative wastewater system. She noted the project was an economic positive for Barnstable. She also commented that wetland buffer disturbance should be minimized.

Hyannis Deputy Fire Chief Melanson noted the departments concerns with the existing motel and that it was a public safety hazard. Ms. Marie Gaziano, an abutter, said she thought the landscaping was an improvement, and was in support of the project.

Discussion followed about the amount of impervious surface and the need for a final written determination from the NHESP. Commission staff asked to discuss potential alternative site configurations to reduce wetland buffer intrusions. Mr. Butler said that certain site plan changes could put parking and the septic system to the rear of the building, thereby exacerbating the wetland buffer situation. Mr. Platt indicated that a more modest redevelopment proposal better fit the site. Committee members discussed how far the project could reasonably deviate from the Regional Policy Plan. Discussion followed about the Change of Use regulation.

December 11, 2006

Ms. Justus discussed the regulations relating to the Limited DRI Determination scoping process and indicated that the regulation gives the Committee the discretion to decide what issue areas need to be reviewed. Ms. Wielgus discussed the review standard and stated that it was within the Committee's discretion to determine the issue areas for further Commission review. Commission technical staff described the focus of concern for water resources, which was management of stormwater. They also relayed that the NHESP had submitted comments on the project, which indicated they were not concerned about impacts to rare species, and discussed that staff's concerns were related to impacts to the 100-foot wetland buffer.

Mr. Butler noted the Barnstable Conservation Commission does make a distinction between the 50-and 100-foot wetland buffers. He expressed his interpretation of the change of use standard and described how he believed the proposed project met the regulatory test and should be given no review.

Ms. Daley said the Barnstable Growth Management Department was generally in support of the proposed project from the perspective of improvements to the septic system, and as compared to the existing dilapidated motel.

Mr. Hogan said he was inclined to recommend a limited DRI review for the water resources and natural resources issues. Ms. Kadar said it was important to encourage redevelopment but noted the deviations from the RPP and its Minimum Performance Standards. Mr. Richardson said he saw the project as improving a problem area in Hyannis, and as a positive step. He said he also recognized the important environmental issues. Mr. Platt said he felt the proposed project represented a lost opportunity and that the proposed building was too big for the site. Mr. Richardson said the economic viability of the project should also be a consideration. Ms. Taylor asked if the applicant could move the building, reduce it, or reconfigure it such that it would be outside of the 50-foot wetland buffer. Ms. Taylor said she was inclined to favor referring the project for additional natural resources and water resources review by the Commission.

The Regulatory Committee members agreed to ask the applicant to provide a revised design that handled 100% of the stormwater on site, so that none of it would reach the pond, and move the building out of the 50-foot wetland buffer.

January 8, 2007

The applicant had complied with the Committees' request for them to move the building out of the 50-foot wetland buffer, and to address stormwater runoff. Ms. Justus noted that to

accomplish this the revised elevations of the building went backwards with respect to the project's community character impacts, particularly in regards to the mass of the building. Mr. Butler and Mr. Raber explained why, from the applicants perspective, this was not necessarily the case and concluded that overall the proposed project was substantially better than the existing motel building.

Mr. Richardson noted the neighbors saw the proposed project as an improvement and suggested the matter of the roofline and massing was not significant enough to warrant further Commission review. Ms. Kadar said she understood the staff's position and while this was not the best possible development, it was an improvement. Mr. Platt said the Change of Use language in the Commission's regulations was weak and that the project was too large for the site. Mr. Hogan agreed with Mr. Platt's comments and said the standard with respect to Change of Use was such that nearly anything would be better than the old motel. He said the Committee should discuss the standard for Change of Use at another time. The Committee voted to approve the Rainbow Motel/Shallow Pond Center as a Change of Use that did not require further Cape Cod Commission review.

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

The Commission, through the Regulatory Committee, has considered the application of Shallow Pond Professional, LLC for the proposed change of use project at 1471 Iyannough Road (Route 132), Hyannis, MA, and based on consideration of such application and upon the information presented at the public hearings and submitted for the record, makes the following findings pursuant to Sections 3 and 4 of the DRI Enabling Regulations:

General Findings:

F-G1. The project that is the subject of this Decision is as follows:

The project site is a 1.8 acre parcel, located at 1471 Iyannough Road (Route 132), Hyannis, MA, bounded on the south side by Shallow Pond, on the north by an abutting parcel whose frontage is on Route 132, on the east by Old Strawberry Hill Road and an existing condominium complex, and on the west by a mixed-use (commercial/office) building. The project site is located in a Regional Commercial

Activity Center as designated in the 1998 Barnstable Local Comprehensive Plan. The parcel is split between three local zoning districts—business, highway business and residential zones.

The project proposes to demolish the existing Rainbow Inn motel, an approximately 16,065 Square foot (SF), 46-room motel with manager's office space. An existing pool will also be removed. The site will be redeveloped with a 17,338 SF, two-story professional office building with associated parking, deck area, landscaping and stormwater and wastewater infrastructure. One of two existing docks on Shallow Pond will be removed. A 4-foot wide soft path will be constructed to provide controlled foot access to the remaining dock. The proposed redevelopment will result in 5,809 SF of development area within the 100-foot wetland buffer to Shallow Pond. Roof and paved surfaces (including pervious pavers) are proposed to increase by 1,485 SF relative to existing conditions. Subsurface and surface impervious runoff and wastewater disposal systems will be located within the 300-foot buffer to Shallow Pond. No specific tenants have been proposed at this time.

Currently the site has vehicle access through one driveway on Iyannough Road (via the abutting parcel) and one on Old Strawberry Hill Road. The proposed office development will not have direct access to Route 132, but will access only through a new curb cut on Old Strawberry Hill Road. The existing access easement across the project site that provides a connection between commercial properties fronting on Route 132 and Old Strawberry Hill Road will be maintained. Local zoning requires 58 parking spaces and 64 will be provided, seven will be constructed of concrete pervious pavers and six satisfy a parking easement benefiting the adjoining property.

F-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 RPP issue areas where the impacts are more detrimental (quantitatively and/or qualitatively) than the immediate prior use. The Regulatory Committee did consider whether the project's impacts involve deviation from the minimum performance standards (MPS) of the RPP in determining the scope of DRI review. 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.

F-G3. The proposed project is to be constructed according to the following plans:

- *Site Construction Plans*, Shallow Pond Center Redevelopment Project Proposed Office Building, prepared by Baxter Nye Engineering & Surveying as revised 12/20/06 and dated as received by the Commission on 12/27/06, sheets C-1 – C-15.
- *Floor plans, roof plan and exterior elevations* for the Proposed Shallow Pond Center, prepared by Brown Lindquist Fenuccio & Raber Architects, Inc., dated

12/18/06 and dated as received by the Commission on 12/27/06, sheets A1.1, A1.2, A1.3, A2.1 and A2.2.

- F-G4.** Findings F-WR4, F-NR2, F-T4, F-T6, and F- HM3 below indicate that the Commission is relying on the Town of Barnstable's local review process through both Site Plan Review conditions and the Conservation Commission's Order of Conditions to ensure that certain components of this proposed project are executed according to the application reviewed for this Decision.

Water Resources Findings:

- F-WR1.** The project is located in a water quality impaired area, a wellhead protection area that supplies drinking water to Barnstable Village, a marine water recharge area that discharges to Barnstable Harbor, and a freshwater recharge area that drains to Shallow Pond. Each of these areas is defined in the water resource section of the RPP. Impaired areas that are also in sensitive water resource areas are further classified as water quality improvement areas in accordance with MPS 2.1.1.2.E. Water quality improvement is a major goal in water quality improvement areas.
- F-WR2.** Certain project characteristics enable the project to result in less detrimental impacts to water resource than impacts of the prior use (including a significant reduction in nitrogen loading to groundwater) including:
- The proposed reduction in Title-5 wastewater flows from 5,060 gallons per day (gpd) to 1,300 gpd;
 - The proposed elimination of septic system components within the 100-foot wetland buffer adjacent to Shallow Pond; and
 - The proposed improvement in the management of stormwater, including use of biofiltration and stormwater infiltration that eliminates overland flow of stormwater runoff to Shallow Pond from roof and paved surfaces for storms not exceeding the 25-year event.
- F-WR3.** The Commission further finds, as required by Section 4(b)(vi) of the Commission's Enabling Regulations, that the project deviates from MPS 2.1.1.2.B.1, which states *no subsurface disposal systems shall be permitted within 300 feet of maximum high water of freshwater ponds*. The proposed standard Title-5 septic disposal system is located within 200 feet from Shallow Pond and a proposed stormwater infiltration basin is located within 100 feet of Shallow Pond. This deviation from the minimum performance standards does not preclude the projects ability to result in less detrimental impacts to water resources as noted in Finding F-WR2 than the immediate prior use.
- F-WR4.** A November 27, 2006 memorandum from the applicant and a hand-out submitted to the Regulatory Committee on December 11, 2006 commits the applicant to a program that precludes the use of pesticides and fertilizers within the 100-foot wetland buffer. This prohibition on pesticide and fertilizer use within the 100-foot wetland

buffer is incorporated as a special condition of the Barnstable Conservation Commission's Order of Conditions.

Natural Resources Findings:

- F- NR1.** The Natural Heritage and Endangered Species Program has provided written comments that the project will not have adverse impacts on rare species or their habitats based on proposed site changes that will include a single footpath access to the pond shore and to a single existing dock. Proposed revegetation of the pond shore buffer area may also reduce impacts to rare species habitat by limiting pond shore access. Consequently, the Commission finds that impacts from the proposed development are not more detrimental with regard to rare species habitat than the immediate prior use.

- F- NR2.** The applicant has proposed to monitor and manage invasive species within the pond shore buffer area for the next five years, which is an improvement over existing conditions where invasive species may threaten rare species. This proposal is required through a special condition of the Barnstable Conservation Commission's Order of Conditions.

- F- NR3.** Through revisions to building and parking location, the applicant has demonstrated that the proposed development will have no greater impacts to the 100-foot wetland buffer area than exist presently on the site. In addition, the proposed building will be located outside of the 50-foot wetland buffer area, an improvement over existing conditions where a portion of the building is presently located within the 50-foot wetland buffer. Maintaining a 50-foot undisturbed wetland buffer is consistent with the Town of Barnstable's wetland regulations.

Transportation Findings:

- F-T1.** A letter from the applicant's consultant dated July 20, 2006 addressing the project's trip generation has been received and reviewed by the Commission staff. The applicant's transportation engineer states the following change in trip generation for the change of use:

Use	Daily Trips	AM Peak Hour of Street Traffic	PM Peak Hour of Street Traffic
Motel	259	21	22
Office	191	27	26
NET	-68	6	4

The analysis is based on the Institute of Transportation Engineer's (ITE) *Trip Generation* manual. Commission staff reviewed the ITE manual information and the applicant's analysis agrees with the average trip generation information in the manual. However, the manual also provides formulas for calculating trip generation

and additional peak hour of trip generator information. The DRI transportation technical bulletin requires use of these formulas where appropriate. Based on these established Commission procedures, Commission staff calculated the following trip generation changes for the development:

Use	Daily Trips	AM Peak Hour of Trip Generator	PM Peak Hour of Trip Generator
Motel	279	26	35
Office	346	27	26
NET	67	1	-9

Consequently, the change of use will likely have very little, if any, effect on peak hour traffic.

F-T2. Currently, the motel has access on Old Strawberry Hill Road and on Route 132 through an existing business in front of the site. While the business on Route 132 will remain, the new office building will not have direct access to Route 132. Instead, it will have a single driveway on Old Strawberry Hill Road. Consequently, a decrease in traffic at the Route 132 driveway can be expected and is found to be a benefit of the redevelopment. It should also be noted that Route 132 is scheduled to be widened to four lanes with a median that will partially restrict access at the Route 132 driveway. Access from Old Strawberry Hill Road will provide full access to the development even with the Route 132 expansion completed. Also, due to the access reconfiguration, the project complies with the RPP standard requiring use of secondary road access wherever available and appropriate.

The new driveway for the development will be located as far as possible from the Old Strawberry Hill Road and Route 132 intersection. However, the existing driveway on Old Strawberry Hill Road, which is closer to the intersection, will remain due to an access easement owned by the property owners of the business in front of the redevelopment site. Other properties to the west of the development property can also be accessed through this easement and the easement will be usable after the redevelopment.

Only limited information is available to estimate a level of service for the proposed office driveway. However, based on estimated trip generation from the office and from counts at the Route 132 and Old Strawberry Hill Road intersection, the driveway should operate at Level of Service C or better, which is considered acceptable, and which is not more detrimental than the immediate prior use.

F-T3. No crash history for the current development driveways could be found in a brief review of the state crash database. The intersection of Route 132 and Old Strawberry Hill Road experiences about two crashes per year on average. This is below the level that requires further review under the RPP.

In compliance with RPP standards, the site utilities will be placed underground.

- F-T4.** The RPP requires stopping sight distances to development driveways be sufficient to meet the requirements of the American Association of State Highway Transportation Officials (AASTHO). Commission staff conducted a preliminary review of the sight distances to the proposed driveway.

From the north, it is about 180 feet from Route 132 to the approximate driveway location. Drivers turning onto Old Strawberry Hill Road have clear vision to the driveway location. This sight line is sufficient to 25 mph. Traffic turning onto Old Strawberry Hill Road will likely be traveling 25 mph or slower, and thus the sight line from Route 132 should be sufficient. The actual sight distance may be decreased in the future when Route 132 is widened to four lanes.

From the south, about 330 feet of sight distance to the driveway exists. A downward slope, curve, and heavy vegetation prevent a longer sight distance. The sight distance is sufficient to 40 mph, which is higher than most vehicles appear to travel on Old Strawberry Hill Road. Thus, this sight line should be sufficient.

The applicant should be required to have the sight lines to the driveway certified in a letter signed and sealed by a registered Massachusetts Professional Engineer once the driveway is substantially completed but before the building is occupied. The applicant has agreed to meet this provision as a condition of Barnstable's Site Plan Review to ensure compliance with this finding.

- F-T5.** The RPP limits parking to the amount required by town zoning or a higher number if justified in an objective study. The site layout shows 64 spaces. The town requirement is 58 spaces. A review of data in the ITE *Parking Generation* manual shows 70 spaces would likely be occupied at the parking peak. Consequently, the 64 spaces can be justified.

- F-T6.** The project is slated for professional office use only, the Cape Cod Commission is cautious of the trip generation that may result from conversion to retail, medical or dental offices.

The applicant has agreed to prohibit drive-through facilities, retail, medical or dental offices. To ensure this prohibition, the Town of Barnstable has prohibited these uses through a condition of Barnstable's Site Plan Review process.

Economic Development Findings:

- F-ED1.** MPS 3.3.1 requires applicants to provide economic data from which the Commission may determine the economic impacts of the proposed project. Given that this is a change of use proposal, the applicant has generally complied with this standard and the information supplied is outlined in the following economic development findings.

- F-ED2.** The proposed project is located within a certified Growth Center (the 1998 Barnstable LCP designates this project area as within the Route 132 Regional Commercial Center). MPS 3.2.1 specifies the incentives to be provided to this project since it is located in a certified growth center and no further justification for its location is required under MPS 3.2.2.
- F-ED3.** This project will add 17,338 square feet of professional office space to the market. The applicant characterizes this new space as “high end” and to be a commodity in limited supply in the region. The applicant did not provide written information in support of this statement and a brief review of the current commercial real estate available was inconclusive. Without further information, the Commission considers the impact to the regions’ real estate market neutral.
- F-ED4.** Generally, the types of employment planned as a result of this redevelopment will require higher skill levels and therefore provide higher salaries than those associated with the immediate prior use as a motel. According to the applicant, this project will provide office space to an existing employer in the Town of Barnstable. Thus, this project will not directly increase regional employment. The project may slightly alter the employment mix by creating more office space while reducing motel space, but without information on the current use and on the re-use of the space to be vacated by the expected tenant, this is speculative only. The Commission therefore considers the long-term impact on employment diversity (RPP Goal 3.3) to be neutral.
- F-ED5.** As shown by the applicant, this project will increase the assessed value of the property, thus resulting in higher property tax revenues for the town (see chart below). This project will result in the loss of future room tax revenue to the town and region, as the property will be shifted from a motel use to office (see chart below).

Revenue Sources	Current use	Proposed Use (Est.)	Estimated Net Change
Property tax (2005)	\$1,008,700	2,908,103	1,899,403
Rooms Tax (2004)	Not provided	\$0	

The Commission is unable to calculate the net fiscal impact (revenues generated minus public services required) for the proposed use versus the current use with the information provided. Without further documentation, the Commission finds that the net fiscal impact of the project is unknown.

- F-ED6.** The Commission finds that changing the use of this site from motel to office has the potential to create the types of jobs encouraged in the RPP, although the project proposed will involve some shifting of existing jobs (as explained above in F-ED4). The Commission also finds that while the site is located in a certified growth center, the change acts overall to perpetuate auto dependent sprawl and detracts from rather than revitalizes town centers, which in this case is the Hyannis Growth Incentive

Zone. This finding reflects the concern expressed in the Barnstable LCP that “Originally developed piecemeal, this area [the Route 132 Regional Commercial Center] has initiated disinvestment in Main Street, Hyannis” (pg. 1-54, 1998 Barnstable LCP).

Hazardous Materials/Waste Findings:

F-HM1. The project site is located in an existing Wellhead Protection Area as mapped for the 2002 Regional Policy Plan. Information from the applicant’s attorney (July 2006) on hazardous materials, particularly from the swimming pool, indicates that approximately 100 gallons of liquid chlorine pool shock, 40 gallons of muriatic acid and 6 quarts of algacide are attributable to the project site. In terms of hazardous materials or wastes brought to the site as a result of the proposed project, the new septic system will be a standard Title 5, and will not require chemicals to function.

F- HM2. In order to protect the groundwater and adjacent pond, the applicant has agreed to place the following language into any lease used for the site in order to control hazardous materials and waste on site:

“To protect the public drinking water supply from potentially hazardous materials associated with specific land uses, the following uses are prohibited on the site: landfills, open dumps; junkyards; automobile graveyards; underground fuel storage tanks; storage for resale of heating fuels (e.g., gas, oil, coal and kerosene); metal plating, finishing or polishing; boat, motor vehicle and aircraft cleaning, servicing or repair; dry-cleaning processing establishments; storage, use, treatment, generation or disposal of hazardous materials or hazardous wastes except in a household quantity, or for emergency power or heating of a structure. Also prohibited on the site is any use that involves as a principal activity the use, generation, storage, treatment, transportation or disposal of one or more hazardous materials or hazardous waste.”

In addition to the incorporation of such language, the applicant will need to take steps during construction to protect the groundwater and adjacent pond from releases resulting from construction equipment fueling or maintenance.

F-HM3. Based on the RPP definition of a hazardous material, the application shows that the proposed office building would have less hazardous material than the existing motel. Therefore, the proposed project is not likely to pose impacts that are more detrimental than the immediate prior use in the area of hazardous materials and waste management. This finding, however, is made without knowing what the building’s final tenants will be.

Community Character Findings:

- F-CC1.** MPS 6.2.7 requires parking to be located to the side or rear of a building in order to promote traditional village design in commercial areas, unless such location would have an adverse or detrimental impact on environmental or visual features on the site, or is infeasible. The project site is located in the B Business and HB Highway Business Districts. The zoning for these districts requires a minimum 100-foot front building setback. The existing motel is located approximately 40 feet from Route 132, with parking located to the side of the building. Parking for the proposed office building is located in front with the building set back over 210 feet from the zoning district boundary. This location is inconsistent with MPS 6.2.7. An alternative site design would result in parking spaces and/or wastewater and stormwater disposal systems in closer proximity to Shallow Pond, resulting in an adverse or detrimental impact on environmental features on the site.
- F-CC2.** MPS 6.2.8 requires that *redevelopment of existing strip development provide adequate buffers between parking areas and the street, and significant improvement to interior parking-lot landscaping, as well as façade improvements and frontage buildings, as necessary, to improve the visual character of the site.* The proposed project will improve the existing site design with the provision of a landscape island within the parking area and vegetated buffers along the side and front property lines. A 4-foot high earthen berm is also proposed along a portion of the front buffer area to Route 132. The applicant has incorporated bio-retention into several of the perimeter buffer areas and within the center landscaped island. Plant materials are generally adaptable to the site and conditions found within these bio-retention areas.
- F-CC3.** The proposed office building is a two-story structure that incorporates traditional Cape materials and roof forms that are generally consistent with the architectural standards of the RPP and the Commission design guidelines. The building footprint is under 10,000 square feet, and the proposed arrangement of the cross gables and the use of different siding materials provides variation in the façade.
- F-CC4.** The massing of the proposed structure, while larger than the existing buildings on site, will be partially screened from view by an existing small frontage building on an adjacent parcel and by the proposed on-site landscaping.
- F-CC5.** Proposed exterior lighting consists of 8 pole-mount “shoebox” style parking lot lights, 8 “lantern” style wall-mount fixtures, and 7 recessed fixtures. These proposed lights meet standards 2.1 to 2.4 of the Cape Cod Commission’s exterior lighting Technical Bulletin 95-001 (as revised). However, the new pole-mounted lights will be on 30-foot poles with a 2-foot base, for a finished height of 32 feet, which is in excess of the 20-foot height set by Technical Bulletin standard 2.5. It is not possible to determine if all the lights selected will conform to the Technical Bulletin’s 8.0 foot-candle maximum. Based on this, it is not possible to definitively determine if the project’s

exterior lighting will have an overall positive or negative impact on community character.

F-CC6. The applicant has not yet proposed freestanding or building signage, however has stated that when designed it shall comply with MPS 6.2.11, which prohibits internally lit or flashing signs.

CONCLUSION

Based on the findings above, the Commission hereby determines that the proposed change of use at 1471 Iyannough Road (Route 132), Hyannis, MA is not subject to mandatory review as a Development of Regional Impact (DRI) in any Regional Policy Plan issue area in accordance with Sections 3 & 4 of the DRI Enabling Regulations because the impacts of the proposed project are not more detrimental than those of the immediate prior use.

Prior to the issuance of a Certificate of Occupancy from the Town of Barnstable, the Applicant must receive a Certificate of Compliance from the Cape Cod Commission. This provision is necessary to ensure that the project for which the Applicant received a Limited DRI Determination Decision (of no mandatory review required) was constructed according to the proposed plans referenced herein in Finding F-G3 and is consistent with all Findings of this Decision. The Applicant shall provide a minimum of fifteen (15) business days notice of the intent to seek a Certificate of Compliance from the Commission.

The Commission hereby approves the application of Shallow Pond Professional, LLC for the proposed change of use redevelopment project to proceed without mandatory DRI review. This decision is rendered pursuant to a vote of the Cape Cod Commission Regulatory Committee on January 8, 2007.



Mr. Jay Zavala
Vice Chairman of the Regulatory Committee



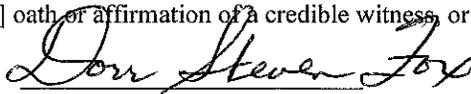
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

4/5, 2007

Before me, the undersigned notary public, personally appeared Mr. Jay Zavala, in his capacity as Vice Chairman of the Regulatory Committee, whose name is signed on the preceding document, and such person acknowledged to me that he signed such document voluntarily for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, oath or affirmation of a credible witness, or personal knowledge of the undersigned.



My Commission Expires:

