



CAPE COD COMMISSION

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Date: March 20, 2008

To: Eliza Cox, Esq.
Nutter, McClennen & Fish, LLP
P.O. Box 1630
Hyannis, MA 02630

From: Cape Cod Commission

Re: DRI Hardship Exemption
Section 23 of the Cape Cod Commission Act

Project Applicant: Shallow Pond Nominee Trust and Sixty North Street Realty Trust

Property Owner: Shallow Pond Nominee Trust and Sixty North Street Realty Trust

Project: Rose Motel Redevelopment/Lakeside Commons
1555 Iyannough Road and 1575 Iyannough Road (Route 132), Hyannis, MA

Project #: HDEX#07018

Book/Page #: 22146/76
Map/Parcel: 253/16
Lot/Plan: n/a

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of Shallow Pond Nominee Trust and Sixty North Street Realty Trust for a Development of Regional Impact (DRI) Hardship Exemption pursuant to Section 23 of the Cape Cod Commission Act, and Section 8 of Enabling Regulations governing review of Developments of Regional Impact ("DRI Enabling Regulations"), Barnstable County Ordinance 90-12, for the redevelopment of the Rose Motel as Lakeside Commons, located at 1555 Iyannough Road (Route 132) and 1575 Iyannough Road (Route 132).

DRI Hardship Exemption
Rose Motel/Lakeside Commons Redevelopment - #HDEX07018
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PROJECT DESCRIPTION

The project site is a 2.2 acre parcel that encompasses both 1555 Iyannough Road (Route 132) and 1575 Iyannough Road (Route 132), Hyannis, MA. This site is bounded on the south by Shallow Pond, on the north by Route 132, on the east by an office building at 1545 Iyannough Road (Route 132), and open space to the west owned by the Town of Barnstable. While the development is proposed on the parcel identified as 1555 Iyannough Road (Route 132), the adjacent property (1575 Iyannough Road) is considered part of the developed site because a portion of the parking for the project is located there.

The project site is located in a Growth Activity Center as designated in the Barnstable Local Comprehensive Plan. The parcel is split between two local zoning districts - highway business and residential zones.

The project proposes to demolish the existing Rose motel, an approximately 17,580 SF, 27-unit, 38-room motel. The site will be redeveloped with an 18,260 SF, two-story professional office building and drive-thru bank with associated parking, landscaping and stormwater and wastewater infrastructure. The Rose Lodge building (1575 Iyannough Road) will remain on the site.

Currently the site has vehicle access through two driveways on Iyannough Road. The proposed redevelopment will close one of those access points to create a single, right in, right out access to Iyannough Road. The proposed redevelopment will also provide an interconnect to the adjacent development located at 1545 Iyannough Road, and subsequent continual access through the neighboring mixed-use developments on to Old Strawberry Hill Road. Local zoning requires 58 parking spaces, however only 55 are being proposed.

In addition to site access improvements, Commission staff worked with the Applicant throughout the Hardship Exemption application process to ensure that the project would incorporate a standard employee trip reduction program, as well as congestion mitigation funds in the amount of \$84,000.00 for the Town of Barnstable's general use for transportation improvements.

PROCEDURAL HISTORY

The Commission received a Limited DRI Determination for Change of Use application from Shallow Pond Nominee Trust and Sixty North Street Realty Trust on September 25, 2007. The application was deemed complete November 29, 2007. 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 January 7, 2008 at the Assembly of Delegates' chamber in Barnstable, MA. The public hearing and record were closed on January 8, 2008, after which the Regulatory Committee voted unanimously that the project undergo DRI review in the Regional Policy Plan (RPP) issue area of Transportation.

The application for hardship exemption was received by the Commission January 14, 2008, and deemed complete January 25, 2008. A public hearing was then held on February 25, 2008, by a

subcommittee, whereupon the subcommittee unanimously recommended to the full Commission that the hardship exemption be approved with conditions. A final public hearing was held on March 20, 2008 where the Commission approved the hardship exemption subject to conditions.

MATERIALS SUBMITTED FOR THE RECORD

<i>Materials From the Applicant</i>	<i>Date Submitted</i>
Trip Generation/mitigation calculation Memo from Tetra Tech Rizzo via L. Cox	1/29/08
Application for DRI Hardship Exemption from L. Cox	1/14/08
Site Drainage Calculations	1/7/08
Nitrogen Loading Calculations	1/7/08
Revised Landscape Plan	1/7/08
Revised Lighting Photometric Plan from Brown Lindquist Fenuccio & Raber Architects	12/13/07
Roof Plan via Memo from L. Cox	11/27/07
Lighting & Bollard Product Info from Brown Lindquist Fenuccio & Raber Architects	11/20/07
Signed Mass Historical Commission Project Notification Form via letter from L. Cox	11/16/07
Supplemental application materials via letter from L. Cox	11/13/07
Limited DRI Application for a Change of Use and corresponding application materials	9/25/07
Cover Memo from L. Cox	9/25/07
Notice of Mass Historical Commission Project Notification Form filing via letter from L. Cox	9/25/07
<i>Materials from Commission Staff</i>	<i>Date Submitted</i>
Memo to L. Cox from R. Christenberry	10/3/07
E-mail to L. Cox from R. Christenberry	12/12/07
Staff Report (Change of Use)	1/2/08
Letter to L. Cox from R. Christenberry	11/29/07
Staff Report (Hardship Exemption)	2/19/08

TESTIMONY

Subcommittee Hearing February 25, 2008 (DRAFT Minutes, need approval)

The hearing came to order at 6:30 p.m. Ms. Brookshire read the hearing notice. Attorney Pat Butler made a presentation for the Applicant regarding the transportation related aspects of the project and the reason the Applicant is seeking the Hardship Exemption; the cost of performing a traffic study and the current MassHighway Route 132 corridor improvement project. Ms. Kadar asked how far the raised median along Route 132 would stretch. Mr. Butler said he believed that it would run from the East side of Route 6 to the Phinney's Lane intersection. Glenn Cannon confirmed this.

Ms. Ryan Christenberry gave the staff presentation, wherein she provided an overview of the existing conditions, proposed development, and the transportation analysis and offsets proposed by the Applicant.

Following an analysis of the presentations provided, Ms. Kadar made a motion to recommend to the full Commission approval of the Hardship Exemption as presented by staff. Mr. Harris seconded the motion, which was approved unanimously. Ms. Kadar made a motion for the Chair to review and approve the draft decision. Mr. Harris seconded the motion, which was approved unanimously. Mr. Richardson made a motion to continue the public hearing to the full Commission meeting on March 20, 2008 and to leave the record open. Ms. Kadar seconded the motion, which was approved unanimously.

The hearing adjourned at 6:50 p.m.

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.

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 has considered the application for a Hardship Exemption from Shallow Pond Nominee Trust and Sixty North Street Realty Trust for the project at 1555 Iyannough Road (Route 132) and 1575 Iyannough Road (Route 132), Hyannis, MA. Based on consideration of such application and upon the information presented at the public hearing(s) and submitted for the record, makes the following findings pursuant to Section 23 of the Cape Cod Commission Act and Section 8 of the DRI Enabling Regulations:

General Findings:

- F-G1.** The two parcels, located at 1555 Iyannough Road and 1575 Iyannough Road are owned jointly by Shallow Pond Nominee Trust and Sixty North Street Realty Trust.
- F-G2.** The project site is located in a Growth Activity Center as designated in the Barnstable Local Comprehensive Plan. The parcel is split between two local zoning districts - highway business and residential zones.

F-G3. The Applicant proposes to convert the existing Rose Motel to professional office space and drive-through bank. The existing Rose Motel consists of three buildings for a total of 17,580 square feet (SF). The Applicant proposes to replace the existing buildings with one 18,260 SF building. The proposed new building would consist of a 15,760 SF professional office space and a 2,500 SF drive-through bank.

F-G4. MPS 4.1.3.4. requires “*Level of Service analysis...on all regional road links, at all intersections of regional roads, and at local road intersections with regional roads that are used by the project for access to the regional road network*”. Furthermore, MPS 4.1.3.4 states that, “*In lieu of mitigation of traffic impacts concurrent with project development, The Commission, at its discretion, may allow a fair-share payment of funds to Barnstable County to meet the requirements of this MPS*”. The Applicant has shown that fully complying with the requirements of the RPP would create a financial hardship, particularly the expense and time to prepare the required traffic studies. The MassHighway Route 132 corridor improvement project is currently underway. For this reason, the Applicant is seeking relief from the traffic study requirement of MPS 4.1.3.4. Therefore, the Commission finds that:

- (i) The Applicant has met its burden showing a hardship exists,
- (ii) Literal enforcement of the Minimum Performance Standards would be a hardship for the Applicant,
- (iii) Partially relieving the requirements of MPS 4.1.3.4 to not require a level of service analysis is the minimum relief required to alleviate the hardship.
- (iv) The relief does not nullify or substantially derogate from the intent and purposes of the Act nor will it result in a substantial detriment to the public good.

In coming to this conclusion, the Commission has considered the extent of the projects compliance with the Act, the Regional Policy Plan, municipal development bylaws, and the Local Comprehensive Plan.

F-G5. In light of the projected trip generation for the proposed use, the Applicant is proposing a fair-share mitigation contribution for use by the Town of Barnstable in the amount of \$84,000.00. These funds will be held at Barnstable County/Cape Cod Commission.

F-G6. The project does not lie within a District of Critical Planning Concern (DCPC), and is consistent with the Barnstable Local Comprehensive Plan and municipal development bylaws.

Transportation Findings:

F-T1. MPS 4.1.3.4. requires “*Level of Service analysis...on all regional road links, at all intersections of regional roads, and at local road intersections with regional roads that are used by the project for access to the regional road network*”. Furthermore, MPS 4.1.3.4 states that, “*In lieu of mitigation of traffic impacts concurrent with*

project development, The Commission, at its discretion, may allow a fair-share payment of funds to Barnstable County to meet the requirements of this MPS". The Applicant has shown that fully complying with the requirements of the RPP would create a financial hardship, particularly the expense and time to prepare the required traffic studies. The Commission finds that because the MassHighway Route 132 corridor improvement project is currently underway, it would be duplicative to require this Applicant to perform the level of service analysis. For these reasons, the Applicant is seeking relief from the traffic study requirement of MPS 4.1.3.4. Therefore, the Commission finds that:

- (v) The Applicant has met its burden showing a hardship exists,
- (vi) Literal enforcement of the Minimum Performance Standards would be a hardship for the Applicant,
- (vii) Partially relieving the requirements of MPS 4.1.3.4 to not require a level of service analysis is the minimum relief required to alleviate the hardship.
- (viii) The relief does not nullify or substantially derogate from the intent and purposes of the Act nor will it result in a substantial detriment to the public good.

F-T2. The Rose Motel currently has two full access driveways on Iyanough Road (Route 132) in Hyannis. Iyanough Road (Route 132) is a regional road as defined in the Regional Policy Plan (RPP).

F-T3. The Applicant's transportation engineer calculated the expected trip generation of this project based on information contained in the Institute of Transportation Engineers Trip Generation manual 7th Edition. As shown in Table 1, the net increase in vehicle trips from the existing use is significant during the afternoon peak hour.

Table 1 – Trip Generation Estimates (Increase From Current Use)

Time Period	Vehicle Trips
Average Daily Traffic	170
Morning Peak Hour	14
Afternoon Peak Hour	57

Based on ITE Trip generation manual, 7th Edition.

F-T4. The RPP standard of review for transportation safety impacts is 25 or more new peak hour trips through a high crash location. Based on the estimated trip generation and trip distribution, the Route 132/Phinney's Lane intersection (a known high crash location) would be impacted by more than 25 new peak hour trips. The Route 132/Phinney's Lane intersection is currently being reconstructed by MassHighway as part of the Route 132 corridor improvement. Therefore, the Applicant is not required to investigate any known high crash locations.

F-T5. The Applicant has proposed a right-turn-in/right-turn-out only driveway onto Route 132 and interconnections between both adjacent parcels. MassHighway is currently installing a raised median within Route 132 to enforce the proposed right-turn-

in/right-turn-out Route 132 driveway restriction. The Applicant has proposed a right-turn-in/right-turn out traffic island at the driveway to assist drivers' understanding of the turn restriction.

F-T6. The Applicant has agreed to an easement allowing public access to Shallow Pond and will post two (2) parking spaces with "reserved for Shallow Pond access" at the rear of the property. Commission transportation staff agrees with the Applicant that the majority of Shallow Pond use will occur during the weekend when ample parking is available.

F-T7. The Applicant has agreed to provide an employee/patron trip reduction program that includes the following in-kind strategies:

- Assemble information regarding carpooling and its benefits to be distributed to tenants and their employees.
- Designate an area where carpool information will be posted for all employees of the project.
- Implement a guaranteed ride home program (taxi service) for use in the case of an emergency for program participants.
- Designate preferential parking spaces for employees that carpool (2 spaces).
- Provide secure bicycle storage areas to accommodate bicycles for both employees and patrons.
- Work with tenants to provide on-site services to decrease employee midday trip making. The on-site services shall include a lunchroom, microwave, refrigerator, and prepared foods.
- Provide an on-site transportation coordinator. The transportation coordinator shall be responsible for insuring that the complete rideshare program, including car/vanpools; accommodating work shifts; promotions; incentives; preferential parking; and guaranteed ride home program, is consistently promoted and provided.
- Provide flexible work hours for employees that car/vanpool.
- Work with tenants to develop employee work hours to match transit schedules for transit riders.
- Distribute to all employees a new employee information packet that will include information about the various TDM programs that are available and the ways in which employees can participate.
- Provide a quarterly bulletin or newsletter reminding employees about the TDM programs and making the employees aware of any new or modified services.
- Provide bicycle maps indicating the location of bicycle facilities in the area will be posted in central locations within the development to encourage bicycle commuting.
- Provide a reference in all promotional materials or link, in the case of a website, to the Cape Cod Commission transportation information center Travel Demand Management services at www.gocapecod.org/tdm. In addition, website based materials and advertising developed for the project will include listing and links to available public transportation services serving the project site.

- Provide incentives each day for each employee who commutes to work using alternative methods that reduce automotive trips such as bicycling, walking, carpooling or transit. These incentives shall include free meals through coupons/discount cards for use toward the purchase of goods and services within the development or at adjacent retailers and entries into weekly raffles for prizes such as movie tickets, free meals and/or goods and services.

F-T8. The transportation section of the RPP requires Developments of Regional Impact (DRI) to mitigate all traffic-related impacts associated with the proposed project. Appropriate mitigation can be achieved through in-kind strategies (roadway widening, signalization, etc.), non-structural means (transit, preservation of developable land) or a combination of these measures. The Applicant's transportation engineer has submitted "fair share" calculations demonstrating compliance with the congestion requirements for the RPP. Based on the "fair-share" congestion mitigation calculations for the proposed use, the Applicant has agreed to contribute \$84,000 into a congestion mitigation fund for the Town of Barnstable.

CONDITIONS

General Conditions:

- C-G1.** All work shall be constructed in a manner consistent with the following plans:
- *Site Permitting Plans*, Lakeside Commons Redevelopment Project Proposed Office Building and Drive-Thru Bank, prepared by BSC Group dated April 11, 2007 (as revised 12/18/07) and dated as received by the Commission on 9/25/07, sheets C-1 – C-11.
 - *Site Drainage Plans*, Lakeside Commons Redevelopment Project Proposed Office Building and Drive-Thru Bank, prepared by BSC Group June 26, 2007 and dated as received by the Commission 9/25/07.
 - *Floor plans, roof plan and exterior elevations* for the Proposed Lakeside Commons Office Building and Bank, prepared by Brown Lindquist Fenuccio & Raber Architects, Inc., dated 4/24/07 and dated as received by the Commission on 11/13/07, sheets A1.1, A1.2, A1.3, A2.1 and A2.2.

Any deviation during construction from the approved plans, including but not limited to changes to the building design, building location, lighting, landscaping or other site work, shall require approval by the Cape Cod Commission through a modification process, pursuant to Section 12 of the Commissions' Enabling Regulations. The Applicant shall submit to the Commission any additional information deemed necessary to evaluate any modifications to the approved plans.

- C-G2.** This DRI Hardship Exemption is valid for seven (7) years and local development permits may be issued pursuant hereto for a period of seven (7) years from the date of the written decision.

- C-G3.** Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this decision.
- C-G4.** The Applicant shall obtain all necessary state and local permits for the proposed project.
- C-G5.** No development work, as the term "development" is defined in the Act, shall be undertaken until all appeal periods have elapsed or, if such an appeal has been filed, until all judicial proceedings have been completed.
- C-G6.** Prior to issuance of a building permit for any proposed construction, the Applicant shall submit final plans as approved by local boards for review by Commission staff to determine their consistency with this decision and/or information submitted as part of the Hardship Exemption review. If the final plans approved by local boards are inconsistent with this decision and/or supporting information, then they shall be reviewed subject to Section 12 of the Cape Cod Commission Enabling Regulations, as amended, and which are in effect at the time of review.
- C-G7.** Prior to the issuance of a Certificate of Occupancy for the project, the Applicant shall obtain a Final Certificate of Compliance from the Cape Cod Commission. The Applicant shall provide a minimum of thirty (30) days notice prior to seeking issuance of all certificates associated with this decision from the Commission. Commission staff shall complete an inspection under this condition within seven (7) business days of such notification and inform the Applicant in writing of any deficiencies and corrections needed. The Applicants understand that the Commission has no obligation to issue a Certificate of Compliance unless all conditions are complied with or secured consistent with this decision. The Applicants agree to allow Cape Cod Commission staff to enter onto the property, which is the subject of this decision for the purpose of determining whether the conditions contained in this decision are met.
- C-G8.** The Applicant shall demonstrate to the Commission that a copy of this decision has been provided to the general contractor prior to the start of construction.
- C-G9.** The findings and conditions of this decision shall be binding on and applicable to all legal successors. All conditions pertaining to this decision shall remain in effect regardless of any subsequent changes in ownership of the property.

Transportation Conditions:

- C-T1.** Prior to the issuance of the Final Certificate of Compliance, the Applicant shall consolidate the two (2) existing full access driveways on Iyanough Road (Route 132) in Hyannis into one (1) right-turn-in/right-turn-out only driveway. In addition, the Applicant shall construct a traffic island at the driveway to assist drivers' understanding of the turn restriction.

- C-T2.** The Applicant shall provide a vehicle and pedestrian interconnection with the adjacent parcel to the east addressed 1545 Iyannough Road (Route 132) as shown on the site plan dated April 11, 2007 (as revised 12/18/07) prepared by Brown Lindquist Fenuccio & Raber Architect, Inc..
- C-T3.** The Applicant shall designate two (2) parking spaces with "Reserved for Shallow Pond Access" signs at the rear of the property.
- C-T4.** Prior to issuance of a Final Certificate of Compliance, the Applicant shall grant an easement to the Town of Barnstable across a designated portion of the subject property allowing pedestrian public recreational access, during daylight hours only, to Shallow Pond. The easement shall include a right to park on the subject property in connection with the pedestrian recreational access. The Applicant may limit use of the parking area to the two (2) designated parking spaces described in finding F-T6 and condition C-T3 during working hours on Mondays through Fridays. Prior to executing and recording the easement, the Applicant shall provide Commission staff with a draft of the easement for Commission staff approval.
- C-T5.** Prior to receiving a Final Certificate of Compliance, the Applicant shall implement and maintain the trip reduction plan as outlined in transportation finding F-T7.
- C-T6.** Prior to receiving a Final Certificate of Compliance, the Applicant shall contribute \$84,000 to a transportation mitigation fund to be held at Barnstable County/Cape Cod Commission. These funds shall be applied to any transportation project within the Town of Barnstable.

CONCLUSION

The Cape Cod Commission hereby approves with conditions the application of Shallow Pond Nominee Trust and Sixty North Street Realty Trust as a Development of Regional Impact Hardship Exemption pursuant to Section 23 of the Act, c. 716 of the Acts of 1989, as amended for the proposed redevelopment of the Rose Motel as Lakeside Commons in Barnstable, MA. This decision is rendered pursuant to a vote of the Cape Cod Commission Subcommittee on February 25, 2008.

Elizabeth Taylor
Ms. Elizabeth Taylor
Vice Chairman of the Cape Cod Commission

March 20, 2008
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

3/20, 2008

Before me, the undersigned notary public, personally appeared Ms. Elizabeth Taylor, in her capacity as Vice Chairman of the Cape Cod Commission, whose name is signed on the preceding document, and such person acknowledged to me that she 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.

Dorr Steven Fox
My Commission Expires:



