



CAPE COD COMMISSION

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DATE: November 12, 2008

TO: Michael D. Ford, Esq.
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FROM: Cape Cod Commission

RE: Modification of Development of Regional Impact Decision dated January 29, 1998 and modified on September 22, 1998, February 1, 1999 and March 12, 2001
Cape Cod Commission Act, Sections 12 and 13

APPLICANT: TD Banknorth

OWNER: Mayflower Cape Cod, LLC
c/o Simon Property Group L.P.
115 West Washington Street
Indianapolis, IN 46204

PROJECT: Cape Cod Mall Renovation and Expansion

PROJECT #: TR96025

BOOK/PAGE: Book 1357/Page 1143
Book 1357/Page 1152
Book 7942/Page 272

LOT/PLAN: Lot 10/Plan 18367-D Cert. #73925 Lot --/Plan 35455-A Cert. #44428
Lot 18/Plan 29992-E Cert. #73925 Lot 12/Plan 13216-I Cert. #124185
Lot 20/Plan 29992-E Cert. #73925 Lot 13/Plan 13216-I Cert. #124185
Lot 21/Plan 29992-E Cert. #73925 Lot 14/Plan 13216-I Cert. #124185
Lot 22/Plan 29992-E Cert. #73925 Lot 11/Plan 13216-I Cert. #124185
Lot 26/Plan 29992-E Cert. #73925 Lot 10/Plan 13216-I Cert. #124185
Lot 13/Plan 18367-D Cert. #73503 Lot 12/Plan 29719-B Cert. #78644



Lot 16/Plan 29992-D Cert. #41206 Lot 11/Plan 29719-B Cert. #78644
Lot 17/Plan 29992-D Cert. #41206 Lot 19/Plan 29992-E Cert. #108683
Lot 23/Plan 29992-E Cert. #73503 Lot 25/Plan 29992-E Cert. #104912
Lot 24/Plan 29992-E Cert. #39492/41206 Lot 27/Plan 29992-E
Cert. #104912
Lot 2/Plan 34491-B Cert. #44869 Lot A-1/Plan 21173-B Cert. #129187
Lot 1/Plan 34491-B Cert. #137708 Lot A-2/Plan 21173-B Cert. #129187
Lot 14/Plan 29992-D Cert. #119830 Lot 94/Plan 17786-K Cert. #76834
Lot 15/Plan 29992-D Cert. #119830 Lot 49/Plan 17786-D

MODIFICATION TO DEVELOPMENT OF REGIONAL IMPACT DECISION

Pursuant to Section 12 of the Cape Cod Commission Act, the Development of Regional Impact decision dated January 29, 1998 and modified on September 22, 1998, February 1, 1999, and March 12, 2001 for the Cape Cod Mall renovation and expansion is hereby amended to accommodate the demolition of the existing liquor store at 226 Falmouth Road (Route 28) and the construction of a TD Banknorth branch building. All findings and conditions attached to the original decision and modifications continue to apply except as modified herein.

Minor Modification #2

Additional Findings:

Exterior Lighting

- EXLF1.** MPS 6.2.10 of the 2002 (amended) RPP requires that *“development and redevelopment conform with the Cape Cod Commission's exterior lighting design standards and submission requirements, Technical Bulletin 95-001.”* Exterior lighting for the proposed bank consists of 6 double-headed and one single-head pole-mounts on 25-foot poles. On-building lights include 15 total fixtures, in three different styles. One type of light will be mounted under the drive-up canopy; one will illuminate the corner main entrance, and one will be on the other three corners of the building.
- EXLF2.** The Cape Cod Mall DRI decision allowed parking lot pole lights to be up to 30 feet in height, noting the taller poles would reduce the overall number of lights. TD Bank North proposes to use lights on 25-foot poles. This is consistent with the existing development, the intent of MPS 6.2.10 and the Technical Bulletin.
- EXLF3.** The nine on-building mounted lights to be placed at the building corners, including the entrance, faceted cylinders with a flat back. They can use incandescent or fluorescent lamps, come in lengths of between 18-47 inches, and are intended to be mounted vertically on the building, with light emitted along one face of the cylinder. This fixture is not consistent with Technical Bulletin standards 2.2 or 2.3. JoAnne Miller Buntich of Barnstable's Growth Management Department also stated at the Regulatory Committee's October 27, 2008 meeting these lights needed to be changed to ones which are fully shielded and full cutoff.

EXLF4. Technical Bulletin standard 2.6 stipulates a maximum foot-candle level of 8.0 as measured directly below the light at grade. A foot-candle (Fc) plan provided by the project architects (*Lighting Plan*, Sheet 10 of 12, Bohler Engineering, dated 7/23/08) shows levels of between 8 and 23 Fcs below the bank drive-up canopy. The project architects agreed as part of the Commission's review to reduce the light levels of these fixtures to approximately 10 Fcs.

EXLF4. Based on these findings, and the exterior lighting conditions included in this modification decision, the Commission's Regulatory Committee finds that the proposed exterior lighting design for the TD Banknorth project does not result in different or increased impacts to the resources protected by the Act and/or the RPP.

Transportation

TF1. Based on information provided by the Applicant, the Commission's Regulatory Committee finds that the proposed TD Banknorth project does not result in different or increased impacts to the resources protected by the Act and/or the RPP in the issue area of transportation.

Community Character

CCF1. Based on information provided by the Applicant, the Commission's Regulatory Committee finds that the proposed TD Banknorth project does not result in different or increased impacts to the resources protected by the Act and/or the RPP in the issue area of community character.

Additional Conditions:

General

GC1. The proposed TD Banknorth branch building shall be constructed in accordance with the following plans:

- Site Development Plans for TD Bank, Sheets 1-12, prepared by Bohler Engineering dated 7/23/08;
- Partial Boundary and Topographic Survey, TD Banknorth, Drawing 1, prepared by ControlPoint Associates, Inc. dated 7/21/08;
- Proposed Floor Plan, TD Banknorth, Sheet A1.0, prepared by DRL Associates, Inc., dated 7/21/08;
- Proposed Elevations Plan, TD Banknorth, Sheets A2.0 and A2.1, prepared by DRL Associates, Inc., dated 9/22/08; and

Except as provided in condition TC1 And LC1, 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 Commission's Enabling Regulations. The applicant shall

submit to the Commission any additional information deemed necessary to evaluate any modifications to the approved plans.

GC2. Prior to issuance of a Preliminary Certificate of Compliance, the Applicant shall submit final construction drawings for Commission staff review and approval to ensure their consistency with the architectural renderings provided on the plans identified in condition GC1.

GC3. Prior to issuance of a Final Certificate of Compliance for the proposed bank branch building, Commission staff shall conduct a field inspection verifying that the landscaping and exterior lighting comply with plans identified in condition GC1 and LC1.

Exterior Lighting

EXLC1. All exterior lighting for the project shall conform to the requirements of MPS 6.2.10 and Technical Bulletin 95-001 except for the bank drive-up canopy lights that may have a resultant maximum foot-candle level of approximately 10.0 foot-candles.

EXLC2. Prior to issuance of a Building Permit, and prior to issuance by the Commission of a Preliminary Certificate of Compliance, the Applicant shall submit for Commission staff review and approval information on the exterior wall mounted lights described in Finding EXLF3. This information shall be used to determine if the lights are consistent with Technical Bulletin standards 2.2 and 2.3 and shall include lighting technical cut sheets and/or manufacturers' information.

EXLC3. Should unexpected conditions arise during project construction that require adjustments to site exterior lighting fixtures, including substitutions of fixture heads, the Applicant shall obtain approval from Commission staff prior to their installation and/or use consistent with Section 12 of the Commission's *Enabling Regulations* (as amended March 2005). Modifications to the project's exterior lighting design made during renovation that are in accordance with the Commission-approved lighting information and/or Technical Bulletin 95-001 (as amended) shall be considered as Minor Modifications #1 and may be approved by Commission staff.

EXLC4. Prior to issuance of a Final Certificate of Compliance by the Commission, and prior to issuance of a Certificate of Use/Occupancy, Commission staff shall conduct a site visit to verify conformance of the exterior lighting design with MPS 6.2.10, Technical Bulletin 95-001 (as amended) and exterior lighting conditions of this decision.

Transportation

TC1. The Applicant shall construct one of the following: 1) a sidewalk on the site along Route 28 for pedestrian access to the property; or 2) an authorized RTA bus stop on the site with appropriate landscaping; or 3) landscaping along Route 28 if a bus

stop can be provided at an alternative location on the site. The applicant shall submit to Commission staff the final plan as determined by Barnstable Site Plan Review and Special Permit process.

Landscaping

LC1.

Prior to issuance of a building permit from the Town of Barnstable, the Applicant shall submit for Commission staff review and approval, revised landscape plans incorporating recommendations from Mary LeBlanc Landscape Design, dated October 17, 2008 except as the same may be modified by the preferred option determined under condition TC1.

Royden Richardson
Royden Richardson, Regulatory Committee Chair

November 12, 2008
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

11.12, 2008
Royden Richardson

Before me, the undersigned notary public, personally appeared _____, in his/her capacity as Chairman of the Regulatory Committee of the Cape Cod Commission, whose name is signed on the preceding document, and such person acknowledged to me that he/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.

Gail P. Hanley
Notary Public

My Commission Expires:

10/13/11