

# CAPE COD COMMISSION

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DATE: March 3, 2009

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 *Enabling Regulations*, the Development of Regional Impact decision dated January 29, 1998 and modified on September 22, 1998, February 1, 1999, March 12, 2001 and November 12, 2008 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 #1

#### **Modified 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 14 total fixtures, in two different styles. One type of light will be mounted under the drive-up canopy and one will illuminate the corner main entrance and building sidewalls.
- 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.** According to a revised lighting plan received from Bohler Engineering on 11/26/08 (*Lighting Plan*, sheet 10 of 12, latest revision 11/10/08) there will be 11 on-building lights at the building's corners and along the walls. They consist of an opaque cylindrical fixture from LIGHTOLIER (C&E170VM-CLW). The fixture is consistent with Technical Bulletin 95-001 (as revised). They are metal halide, 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 revised foot-candle (Fc) plan

provided by the project architects (*Lighting Plan*, Sheet 10 of 12, Bohler Engineering, latest revision dated 01/30/09) shows levels of between 8 and 9.4 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. The 01/30/09 revised lighting plan complies with this.

The following Finding has been renumbered; it was erroneously numbered EXLF4 in the 11/12/08 modification decision.

**EXLF5.** 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.

**Modified 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 as revised 1/20/09;
- Revised Exterior Lighting Plan, from Bohler Engineering, *Lighting Plan*, received 11/26/08, sheet 10 of 12, latest revision dated 01/30/09; and

In the event Mayflower Cape Cod, LLC c/o Simon Property Group L.P. retains a small portion of land on the western site boundary, then Site Development Plans for TD Bank, Sheet 3 and Sheet 8, prepared by Bohler Engineering dated 7/23/08, shall be superceded by the following plans:

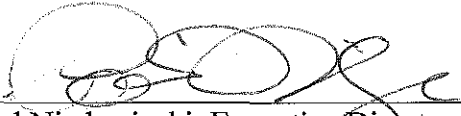
- Alternative Site Plan for TD Bank, Sheet 3A, prepared by Bohler Engineering dated 7/28/08, as revised 02/04/09;
- Alternate Landscape Plan, Sheet 8A, prepared by Bohler Engineering dated 7/28/08, as revised 02/23/09; and

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.

*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 and revised December 3, 2008 and February 10, 2009, except as the same may be modified by the preferred option determined under condition TC1.



Paul Niedzwiecki, Executive Director, Cape Cod Commission

3/3/09

Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

March 3, 2009

Before me, the undersigned notary public, personally appeared Paul Niedzwiecki, in his capacity as Executive Director of the Cape Cod Commission, 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.

Gail P. Hanley  
Notary Public  
My Commission Expires:

10/13/11