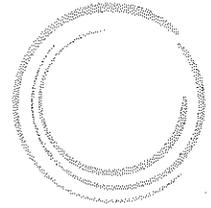


3225 MAIN STREET • P.O. BOX 226  
BARNSTABLE, MASSACHUSETTS 02630



CAPE COD  
COMMISSION

(508) 362-3828 • Fax (508) 362-3136 • www.capecodcommission.org

DATE: November 1, 2010

TO: Michael D. Ford, Esq.  
P.O. Box 485  
West Harwich, MA 02671

FROM: Cape Cod Commission

RE: Modification of a Development of Regional Impact

APPLICANT: Atlantis Development  
C/o Michael D. Ford, Esq.

PROJECT #: JR20035

PROJECT: Atlantis Development/Stop & Shop  
Iyannough Road  
Hyannis, MA

REGISTRY: ATLANTIS IYANOUGH REALTY LLC Map 274 Parcel 008-B00 Book 21067, Page 206  
LAND COURT: ATLANTIS IYANOUGH REALTY LLC

Map 274 Parcel 004-B00 Cert. of Title No. 180241 180241 Lot 5 LCP 30063D  
Map 274 Parcel 004-H00 Cert. of Title No. 180241 180241 Lot 5 LCP 30063D  
Map 274 Parcel 008-H00 Cert. of Title No. 180240 Lot 11 LCP 24921D; Lot 12 LCP  
24924E Lot 14 & 15 LCP 24921F  
Map 274 Parcel 026-B00 Cert. of Title No. 180240 Lot 11 LCP 24921D; Lot 12 LCP  
24924E Lot 14 & 15 LCP 24921F  
Map 274 Parcel 026-H00 Cert. of Title No. 180240 Lot 11 LCP 24921D; Lot 12 LCP  
24924E Lot 14 & 15 LCP 24921F  
Map 274 Parcel 027 Cert. of Title No. 180240 Lot 11 LCP 24921D; Lot 12 LCP  
24924E Lot 14 & 15 LCP 24921F  
Map 274 Parcel 040-005 Cert. of Title No. 180240 Lot 11 LCP 24921D; Lot 12 LCP  
24924E Lot 14 & 15 LCP 24921F  
Map 274 Parcel 040-006 Cert. of Title No. 180240 Lot 11 LCP 24921D; Lot 12 LCP  
24924E Lot 14 & 15 LCP 24921F  
Map 274 Parcel 040-007 Cert. of Title No. 180240 Lot 11 LCP 24921D; Lot 12 LCP  
24924E Lot 14 & 15 LCP 24921F  
Map 274 Parcel 009-B00 Cert. of Title No. 184941 Lot 21 LCP 24921 I  
Map 274 Parcel 009-H00 Cert. of Title No. 184941 Lot 21 LCP 24921 I

VICTORY CHAPEL CHRISTIAN FELLOWSHIP CHURCH OF CAPE COD, INC.  
Map 274 Parcel 028 Cert. of Title No. 141766 Lots 6 & 7 L.C.P. 30063-E



Keeping a Special Place Special

## SUMMARY

The Cape Cod Commission (Commission) Regulatory Committee hereby approves the application of Atlantis Development (Applicant) for a Minor Modification Type #2 pursuant to Section 13 of the Commission's *Enabling Regulations* (as amended). This decision is rendered pursuant to a vote of the Commission's Regulatory Committee at a special meeting on November 1, 2010.

### Introduction

In a letter received by the Commission on September 28, 2010, Attorney Michael D. Ford, representing Atlantis Development/Stop & Shop, requested a modification to the Commission approved June 12, 2008 DRI decision, which approved, with conditions, the construction and operation of a 69,770 square foot supermarket on a 12-acre site located on the north side of Route 132, near the intersection of Bearse's Way, Hyannis.

Attorney Ford's letter requests the DRI decision be modified, to allow the Applicant the option of relocating of the entrance drive on Attucks Lane Extension/Hadaway Road side of the site. The relocation, if utilized, would result in aligning the supermarket's entrance with the entrance drive for the existing BJs Wholesale store.

### Other Modification Decisions

The Commission has not granted the Applicant any prior modifications to the 2008 DRI decision.

### Jurisdiction

Section 13(a)(i) of the Commission's *Enabling Regulations* (revised May 2010, corrected June 2010) provides that an applicant "*who has obtained a favorable decision from the Commission, or a successor in interest to a favorable and transferable Commission decision, may apply for a decision modification.*"

Section 13(c)(ii) of the *Enabling Regulations* describes a Minor Modification 2 as "*a substantially similar proposal to the original project but involves a minor Change of Use, a minor change to the site plan, or a small change to the findings or a condition of the original approval, which does not affect the intent or outcome of the finding or condition. A proposed change shall not result in different increased impacts to the resources protected by the Act and/or RPP.*"

### Regulatory Committee's Determination

On October 12, 2010, the Commission's Regulatory Committee considered the proposed changes to the Atlantis Stop & Shop DRI decision, and voted to approve the requested changes as a Minor Modification Type #2. On November 1, 2010, the Regulatory Committee voted to approve the draft written Modification decision.

### Modification to the 2008 DRI Decision

The following changes shall be made to the findings and conditions of the original DRI decision, as amended, to reflect the requested changes to the project. Added text is shown in **bold**. Deleted text is shown in ~~strikeout~~.

## FINDINGS

### Transportation Findings

TF12. As outlined in Finding TF8, the proposed layout of the connector road **may** requires the relocation of the existing western Attucks Lane curb cuts (known as Stub Road "A" and Stub Road "B"). Stub Road "A" currently provides access to the existing BJ's Wholesale Club. The proponent would have to relocate Stub Road "A" (the existing BJ's Wholesale Club driveway) to provide proper alignment for future signalization at this location. The Applicant must secure an agreement with the owner of the BJ's parcel and all necessary Town of Barnstable permits including road layout plan approval and any Town of Barnstable approvals necessary to ensure the relocation of these driveways.

### Natural Resources/Open Space Findings

NR2. Consistent with MPS 2.4.1.6, the Applicant has provided a "*Landscape Plan, C-6 of 10*" prepared by VHB, Inc. dated 11/30/06, revised 4/6/08, which provides details for Invasive Species Removal. **Attorney Ford, as part of his September 28, 2010 Modification request, provided a revised landscape plan, drawn by Vanasse Hangen Brustlin, dated August 24, 2010 to be used in connection with the site driveway alignment that aligns with the existing BJs Wholesale Club driveway. This updated plan is also consistent with MPS 2.4.1.6.**

### Heritage Preservation/Community Character Findings

HPCC2. The proposed supermarket building has a footprint of approximately 55,000 s.f., with additional square footage for storage located in a basement area. Because the building footprint exceeds 50,000 square feet, MPS 6.2.5 requires full screening of the project, either through traditionally scaled frontage buildings or through a vegetated buffer. The Applicant has proposed adequate landscaping to screen the building from both Route 132 and Attucks Lane as shown on the landscape plan entitled "*Landscape Plan, C-6 of 10*" prepared by VHB, Inc. and dated 4/6/08 and **with the Landscape Plan prepared by VHB, Inc, dated June 29, 2010, sheet 6-5 of 11, and with the a revised landscape plan, drawn by Vanasse Hangen Brustlin, dated August 24, 2010 provided by Attorney Ford as part of his September 28, 2010 Modification request which may be used in connection with the driveway alignment that matches the site drive of the existing BJs Wholesale Club store.**

### General Conditions

G6. The proposed Atlantis Development/Stop & Shop shall be constructed in accordance with **either of the following final plan sets:**

#### OPTION A

- Proposed Retail Development Site Plans C2-C10, by Vanasse Hangen Brustlin, issued 11/30/06 revised as follows:
  - Layout & Materials Plan C-3, dated 4/6/08, as amended by Condition TC10.
  - Grading and Drainage Plan C-4 and Utilities Plan C-5, dated 3/18/08

- Landscape Plan C-6, dated 4/6/08
- Site Lighting Plan SL-1 and Photometric Plan SL-1A, dated 12/27/07
- Access and Parking Easement Plan by Vanasse Hangen Brustlin dated 6/12/08.

#### OPTION B

- **Proposed Retail Development Site Plans C2-C10, by Vanasse Hangen Brustlin, issued 11/30/06 revised as follows:**
  - **Layout & Materials Plan C-3, dated 4/6/08, as amended by Condition TC10.**
  - **Grading and Drainage Plan C-4 and Utilities Plan C-5, dated 3/18/08**
  - **Landscape Plan C-6, dated 4/6/08**
  - **Site Lighting Plan SL-1 and Photometric Plan SL-1A, dated 12/27/07**
  - **Access and Parking Easement Plan by Vanasse Hangen Brustlin dated 6/12/08**
  - **And as amended by Site Plan set “Proposed Retail Development,” Atlantis Development LLC, drawn by Vanasse Hangen Brustlin, date issued June 29, 2010**
  - **And as amended by a revised landscape plan, drawn by Vanasse Hangen Brustlin, dated August 24, 2010 provided by Attorney Ford as part of his September 28, 2010 Modification request to be used in connection with the site drive configuration that aligns with the existing BJs entrance**

**G12. The Applicant may have the option of constructing the site drive on the Attucks Lane/Hadaway Road side of the site in the driveway configuration approved as part of the June 28, 2008 DRI decision (Option A) or in a configuration of this site drive which aligns it with the entrance drive of the existing BJs Wholesale Club store (Option B).**

#### Transportation Conditions

TC4. Prior to issuance of a Preliminary Certificate of Compliance, the Applicant shall provide to the Commission staff for review and approval (including 25%, 75% and 100% submissions) all necessary plans and permits (including all MassHighway and town of Barnstable permits) to implement the upgrade of the Route 132/Bearse’s Way traffic signal, the construction of a new connector road (between Route 132 and Attucks Lane) and installation of a new traffic signal at the Attucks Lane/Connector Road intersection, as shown in the FEIR, *Figure 2.1 titled “Conceptual Site Access Plan” Vanasse Hangen Brustlin, Inc or with the amended by Site Plan set “Proposed Retail Development,” Atlantis Development LLC, drawn by Vanasse Hangen Brustlin, date issued June 29, 2010* in accordance with Transportation Finding TF8. Both traffic signals shall be equipped with the Opticom (or equivalent) emergency access equipment, traffic monitoring devices with remote internet based access connecting to the Town of Barnstable and the Cape Cod Commission office. The connector road shall connect at Attucks Lane at a four-way intersection with Stub Road A. The connector road shall ~~shall~~ **may** require relocating the existing access onto Attucks

Lane. No new access point shall be allowed or created on Attucks Lane for this connector road. All traffic signals equipment at both the Route 132/Bearse's Way and the connector road/Attucks Lane intersections be painted black in conformance with Mass Highway standards.

- TC5. Prior to the issuance of a Final Certificate of Compliance, the Applicant shall implement the required transportation mitigation outlined in Transportation Condition TC6 (i.e. the upgrade of the Route 132/Bearse's Way traffic signal, the construction of a new connector road between Route 132 and Attucks Lane, and installation of a new traffic signal at the Attucks Lane/Connector Road intersection, as shown in the FEIR, Figure 2.1 titled "Conceptual Site Access Plan" by Vanasse Hangen Brustlin, Inc. or with **or with the amended by Site Plan set "Proposed Retail Development," Atlantis Development LLC, drawn by Vanasse Hangen Brustlin, date issued June 29, 2010.** Implementation of these projects is the sole responsibility of the Applicant. If any other parties (public or private), prior to the Applicant's constructing mitigation at these locations, construct traffic improvements at any of these locations that make the Applicant's proposed mitigation unnecessary or impractical, the Applicant shall come before the Regulatory Committee for a hearing to determine the amount equivalent to the proposed mitigation cost at such locations and make a payment to the County of Barnstable/Cape Cod Commission in lieu of implementing the projects. Such payments in lieu of in-kind traffic mitigation are necessary to comply with MPS 4.1.3.4 and shall be used to support transportation improvements in the town of Barnstable.

#### Natural Resources/Open Space Conditions

- NR2. The Applicant shall remove and manage invasive species on the project site consistent with the plan, "Landscape Plan, C-6 of 10" prepared by VHB, Inc. dated 11/30/06 **(Option A) or with the Landscape Plan prepared by VHB, Inc, dated June 29, 2010, sheet 6-5 of 11, and as needed with the a revised landscape plan, drawn by Vanasse Hangen Brustlin, dated August 24, 2010 provided by Attorney Ford as part of his September 28, 2010 Modification request (Option B).**

#### Heritage Preservation/Community Character Conditions

- HPCC1. The Applicant shall landscape the project in accordance with the site and Landscape Plan entitled Proposed Retail Development, Landscape Plan C-6, dated 4/6/08 by Vanasse Hangen Brustlin, Inc **(Option A) and with the Landscape Plan prepared by VHB, Inc, dated June 29, 2010, sheet 6-5 of 11, and as needed with the a revised landscape plan, drawn by Vanasse Hangen Brustlin, dated August 24, 2010 provided by Attorney Ford as part of his September 28, 2010 Modification request (Option B).**

**SEE NEXT PAGE FOR SIGNATURE**

Royden Richardson  
Royden Richardson, Regulatory Committee Chair

11.01.2010  
Date

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss

Nov. 1, 2010

Before me, the undersigned notary public, personally appeared

Royden Richardson, in his/her capacity as Chairman of the Cape Cod Commission Regulatory Committee, 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.

Page R Gyejira  
Notary Public

My Commission Expires: 5/13/16