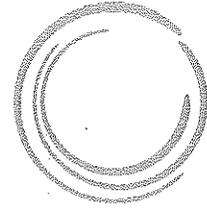


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**CAPE COD  
COMMISSION**

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**Date:** November 1, 2010

**To:** Mashpee Commons, Limited Partnership  
P.O. Box 1530  
Mashpee, MA 02649

**From:** Cape Cod Commission

**Re:** Development of Regional Impact – Minor Modification #2  
Section 23 of the Cape Cod Commission Act

**Project Applicant:** Mashpee Commons, Limited Partnership

**Property Owner:** Mashpee Commons, Limited Partnership

**Project:** Jobs-Whiting Neighborhood Master Plan  
Off Route 28 and Jobs Fishing Road

**Project #:** TR98049

**CERTIFICATE #:** 121818 (Land Court Plan No. 34844B, Lots 5 and 6) and  
135965 (Land Court Plan No. 34844A, Lot 1)

**BOOK/PAGE:** Book 7408 Page 46 (Lot 16 on Plan Book 417 Page 54)  
Book 5798 Page 94 (Lot 19 Plan Book 432 Page 64)  
Book 5410 Page 119 and Book 5798 Page 94 (Lot 20 Plan Book  
432 Page 64)

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### **SUMMARY**

On October 12, 2010, the Cape Cod Commission (Commission) Regulatory Committee unanimously approved the request of Mashpee Commons, Limited Partnership for a Development of Regional Impact (DRI) Minor Modification #2 pursuant to Section 13 of Enabling Regulations governing review of Developments of Regional Impact (“DRI Enabling Regulations”), Barnstable County Ordinance 90-12. On November 1, 2010, the Commission’s Regulatory Committee voted unanimously to approve the written Minor Modification decision.

On December 14, 2006, the Cape Cod Commission issued Mashpee Commons, Limited Partnership (hereinafter the "Applicant") a Development of Regional Impact (DRI) decision approving with conditions the Jobs-Whiting Neighborhood Master Plan. The project included the construction of 40,900 square feet (s.f.) of new commercial space distributed between 33 mixed-use buildings with small tenant spaces ranging in size from 1,000 s.f. to 4,700 s.f. The proposal was part of a larger mixed-use development that was submitted to the Town of Mashpee's Zoning Board of Appeals as a Comprehensive Permit (under Mass. General Laws Chapter 40B) that included 382 residential units.

Specifically, the project approved by the Commission in 2006 consisted of the development of 6.38 acres of commercially zoned property in the Mashpee Certified Growth Center and included:

- Twenty-nine live/work buildings, each with 1,000 s.f. of commercial space
- One live/work building with 2,800 s.f. of commercial space (Lot 74)
- One live/work building with 3,200 s.f. of commercial space (Lot 81)
- Two commercial / loft buildings, with 1,200 s.f. and 4,700 s.f. of commercial space respectively (Lots 121 and 127)

### **MODIFICATION REQUEST**

The Applicant is currently seeking to modify the 2006 decision to allow for the addition of a one-acre parcel, Lot A, which will be developed with a 2,500 s.f. commercial building, and the elimination of 2,500 s.f. of commercial development from the original plans as follows: Lot 66B (1,000 s.f.), Lot 121 (1,200 s.f.) and the reduction of 300 s.f. of commercial development from Lot 127 (see Exhibit A attached this decision and incorporated by reference).

### **JURISDICTION**

*A Minor Modification #2 is described in the Commission's Enabling Regulations as "a substantially similar proposal to the original project but involves a minor Change of Use, a minor change to the site plan, or small change to the findings or a condition of the original approval which does not affect the intent or outcome of the findings or condition. A proposed change shall not result in different or increased impacts to the resources protected by the Act and/or the RPP."*

On October 12, 2010, the Commission's Regulatory Committee voted to approve the request as a Minor Modification #2.

### **MINOR MODIFICATION DECISION**

The Commission has considered the request of Mashpee Commons, Limited Partnership for a DRI Minor Modification #2 for the addition of a one-acre parcel, Lot A, which will be developed with a 2,500 s.f. commercial building, and the elimination of 2,500 s.f. of commercial development from the original plans as follows: Lot 66B (1,000 s.f.), Lot 121 (1,200 s.f.) and the reduction of 300 s.f. of commercial development from Lot 127, within the Jobs-Whiting Neighborhood, in Mashpee, MA. Based on consideration of such application and upon the information presented to the Regulatory Committee at its meeting on October 12, 2010 and submitted for the record, the Regulatory Committee makes amendments to the findings and conditions of the 2006 decision as identified below (added text is shown as underlined, deleted

text is stricken). All other findings and conditions of the 2006 decision continue to remain in effect.

**General Findings:**

G1. The proposed commercial project involves the construction of 40,900 square feet of new commercial space ("Project") on commercially zoned property within an area designated under the Mashpee Comprehensive Plan as a Certified Growth Center. The project is part of a mixed-use development (described in Findings G3 and G4) that incorporates the principles of Traditional Neighborhood Development (TND) and seeks to create a well-defined center that incorporates sustainable development and minimizes sprawl. The area occupied by the proposed commercial space is approximately ~~6.386.87~~ acres. The plan provides ~~164.167~~ parking spaces distributed between on-street parking (~~140.130~~) and dedicated on-site parking (2437). The application includes building elevations, Architectural and Landscape Codes and prototypical building types that are aimed at guiding the form and style of development as the area is built out.

G2. The project's commercial floor area is proposed to be distributed among small commercial spaces ranging in size from 1,000 square feet to 4,700 square feet. Specifically, the proposed project includes (lots identified on Subdivision Context Plan dated July 26, 2006 September 30, 2010 and attached to this decision as Exhibit A):

- ~~Twenty-nine-eight~~ live/work buildings, each with 1,000 sf of commercial space
- One live/work building with 2,800 sf of commercial space (lot 74)
- One live/work building with 3,200 sf of commercial space (lot 81)
- ~~Two~~ One commercial /loft buildings, with ~~1,200 sf and 4,700~~ 4,400 sf of commercial square footage respectively (lots ~~121 and 127~~).
- One commercial building with 2,500 s.f. of commercial space (Lot A)

The proposed live/work units are structures that have commercial space on the lower level and residential space above that are connected in a way that would allow an individual to live and work within the same building. The buildings are designed with separate exterior entrances for access to the residential and commercial spaces, but are internally connected to allow internal egress between the residential and commercial areas.

**Natural Resource Findings:**

NR2. As the project is not located in SNRA, but is within an area designated as a Certified Growth Center under Mashpee's Local Comprehensive Plan, the open space requirement for the project is based on a 3:2 development to open space ratio. The project area of ~~6.386.87~~ acres therefore requires ~~4.254.43~~ acres of open space, per MPS 2.5.1.3. The Applicant has proposed providing open space adjacent to the Quashnet River, on a parcel that is located within SNRA, within the Mashpee National Wildlife Refuge boundary, and that is located adjacent to town-owned conservation land. Conservation of the parcel will allow for public access. The open space requirement in the RPP (MPS 2.5.1.10) allows a further reduction by 10% where "high quality, naturally vegetated open space is provided in a Significant Natural Resource Area contiguous to existing permanently protected open space and is made accessible to the public." This credit reduces the open space requirement to ~~3.833.99~~ acres, which the Jobs/Whiting Trust has proposed to protect through a conservation restriction.

## CONDITIONS

### **General Conditions:**

G1. This decision pertains to the commercial portions and related infrastructure of the proposed Jobs-Whiting Neighborhood only and all work shall be constructed in a manner consistent with the following plans and documents:

- Jobs and Whittings Neighborhoods, Commercial Space Permit Set dated July 2006, including the following drawings:
  - Context Plan (L0.1 dated ~~July 2006~~ September 30, 2010)
  - Site Plan (L1.1 dated ~~July 2006~~ September 30, 2010)
  - Offsite Open Space Plan (L1.2 dated ~~August 21, 2006~~ September 30, 2010)
  - Grading Plan (L2.1 dated July 2006)
  - Water and Wastewater Distribution Plan (L2.2 dated July 2006)
  - Thoroughfare Designations (L3.1, L3.2 and L3.3 dated August 21, 2006)
  - Elevation Designation Plan (A1.1 dated July 2006)
  - Site Elevations (A1.2, A1.3 and A1.4 dated July 2006)
  - Schematic Plans (A2.1 and A2.3 dated July 2006)
  - Typical Storefront (A2.2 and A2.4 dated July 2006)
- Jobs/Whiting Residential Neighborhoods: Subdivision Plan dated November 1, 2006
- Stormwater Management Plan, including Drainage System and Stormwater Treatment Swale, dated November 6, 2006
- Jobs Neighborhood Permeability Plan dated November 1, 2006
- Jobs and Whittings Neighborhood Architectural Code (October 2006, v.8)
- Jobs and Whittings Neighborhood Design Review Process (December 2006, v.4)
- Jobs and Whittings Neighborhood Landscape Code (Version 2)
- Site Plan for First Citizens Federal Credit Union, prepared by Falmouth Engineering, dated August 23, 2010
- Building Elevations for First Citizens Credit Union, Drawings A-3A and A-3B, prepared by Main Street Architects, dated August 17, 2010
- Landscape Plan, L1.0, prepared by Kimberly Mercurio Landscape Architecture, dated August 23, 2010
- Septic System and Standard Details for First Citizens Federal Credit Union, prepared by Falmouth Engineering, dated August 16, 2010

Any deviation or revision from the approved plans or documents, including but not limited to changes to the Architectural Code (October 2006, v.8) or Landscape Code (Version 2), building location, landscaping or other site work, shall require approval by the Cape Cod Commission through a modification process, pursuant to the Commission's Enabling Regulations in effect at the time of the review. The Commission modification process allows for an administrative review of minor or "de minimus" changes that may be applicable to small revisions to the documents listed above, however, more significant revisions may require action by the Regulatory Committee or full Commission. The Applicant shall submit to the Commission any additional information deemed necessary to evaluate any modifications to the approved plans.

G13. Prior to the issuance of a building permit for the construction of commercial area on Lot A (631 Falmouth Road), the Applicant shall obtain a Preliminary Certificate of Compliance from the Commission, indicating all requisite conditions have been satisfied.

G14. Prior to the issuance of an occupancy permit for any commercial area on Lot A (631 Falmouth Road), the Applicant shall obtain a Partial Final Certificate of Compliance from the Commission, indicating all requisite conditions have been satisfied.

#### **LAND USE**

LU1. In order to be consistent with local zoning bylaws, the developer or owner of Lot A shall seek and obtain a variance from the Zoning Board of Appeals for relief from setback requirements. Until such variance is approved, the Commission shall not issue a Preliminary Certificate of Compliance for any development on Lot A.

#### **NATURAL RESOURCES**

NR1. Prior to the issuance of the Preliminary-Final Certificate of Compliance for any building on Lot A, Mashpee Commons, LP shall provide the Cape Cod Commission with a conservation restriction of a form and substance satisfactory to the Commission or its designee and consistent with Massachusetts General Laws Chapter 184, § 31 – 33 and accompanying plan which provides that 3.833.99 acres (Area A) located on the plan titled "Offsite Open Space Plan" of the Jobs and Whittings Neighborhoods Commercial Space Permit Set, drawing L1.2, and dated August 21, 2006September 30, 2010 shall be preserved as permanent open space. Prior to the issuance of the Preliminary-Final Certificate of Compliance for any building on Lot A, the restriction and site plan shall be approved by Commission counsel, and proof of submittal of the conservation restriction to the Massachusetts Division of Conservation Services and to the Mashpee Boards from whom approval is required shall be provided. The conservation restriction shall provide for the preservation of the 200 ft buffers to the Quashnet River in their undisturbed condition for habitat protection purposes, and may provide for the establishment of community gardens in other, suitable portions of the conservation restricted area. The conservation restriction shall provide for public access and may provide for the establishment of walking trails.

**CONCLUSION**

The Cape Cod Commission Regulatory Committee hereby approves the request of Mashpee Commons, LP for a Development of Regional Impact Minor Modification #2. This decision is rendered pursuant to a vote of the Cape Cod Commission Regulatory Committee on November 1, 2010.

Royden Richardson 11-01-2010  
Royden Richardson Date  
Chair, Cape Cod Commission Regulatory Committee

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss

Nov 1, 2010

Before me, the undersigned notary public, personally appeared Mr. Royden Richardson, in his 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 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.

Paige R. Cizega  
My Commission Expires: 5/13/16

# EXHIBIT A

