

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 10, 2011
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

BOOK/PAGE: *ATLANTIS IYANOUGH REALTY LLC*

Map 274 Parcel 004-B00 Cert. of Title No. 180241 Lot 5 LCP 30063D

Map 274 Parcel 004-H00 Cert. of Title No. 180241 Lot 5 LCP 30063D

Map 274 Parcel 008-B00 Book 21067, Page 206

Map 274 Parcel 008-H00 Cert. of Title No. 180240 Lot 11 LCP 24921D; Lot 12 LCP 24921E
Lot 14 & 15 LCP 24921F

Map 274 Parcel 026-B00 Cert. of Title No. 180240 Lot 11 LCP 24921D; Lot 12 LCP 24921E
Lot 14 & 15 LCP 24921F

Map 274 Parcel 026-H00 Cert. of Title No. 180240 Lot 11 LCP 24921D; Lot 12 LCP 24921E
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 24921E
Lot 14 & 15 LCP 24921F

Map 274 Parcel 040-006 Cert. of Title No. 180240 Lot 11 LCP 24921D; Lot 12 LCP 24921E
Lot 14 & 15 LCP 24921F

Map 274 Parcel 040-007 Cert. of Title No. 180240 Lot 11 LCP 24921D; Lot 12 LCP 24921E
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

DECISION OF THE CAPE COD COMMISSION

Background

On June 12, 2008 DRI decision, the Cape Cod Commission (Commission) issued a Development of Regional Impact (DRI) decision, with conditions, for 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 Bearer's Way, Hyannis. This DRI decision has been modified once, in a decision dated November 1, 2010. The 2010 modification related to the position of the site driveway.

Modification Requests

Finding TF8 of the DRI decision (as amended) makes note that the traffic signal equipment at the Route 132/Bearer's Way and the connector road/Attucks Lane intersections was to be painted black. Condition T4 of the DRI decision (as amended) as written requires the traffic signal equipment at these locations to be painted black. On 10/28/11, Attorney Jeffrey Ford submitted a letter to the Commission by Email requesting that Condition T4 of the 2008 DRI decision (as amended) be modified to allow the referenced traffic signal equipment to be galvanized steel.

Condition NR1 of the decision requires the deed restriction to be provided and recorded prior to issuance of the Preliminary Certificate of Compliance. On 11/1/11, Attorney Michael Ford submitted a letter by Email to the Commission requesting that Condition NR1 2008 DRI decision (as amended) be modified to allow the required Restrictive Covenant/deed restriction to be provided and recorded prior to issuance of the Final Certificate of Compliance.

Commission Jurisdiction and Modification Types

Section 13(c) of the Commission's *Enabling Regulations*, as amended May 2011, sets out the types of DRI modifications. A Minor Modification Type #1 is defined as "*revisions that are the result of more restrictive conditions imposed by a local board or technical corrections or changes that the Executive Director or his/her designee determine are de minimus changes to the project.*" The *Enabling Regulations* also state that Minor Modifications Type #1 "*shall be approved by that the Executive Director or his/her designee and reported to the Regulatory Committee and do not require further review by the Commission.*"

Determination on Modification Requests

After consideration of a request by the Applicant's representatives to modify Conditions TR4 and NR1 of the 2008 DRI decision, as amended, the Commission's Executive Director has determined the requested changes constitute a *de minimus* changes, and are approved as Minor Modifications Type #1.

The following changes are thereby made to the 2008 Atlantis Development/Stop & Shop decision, as amended, as shown. **Bold** indicates new text and text to be deleted is shown by strike-out.

Transportation Findings

TF8. MPS 4.1.3.4 requires DRIs 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 has proposed the following infrastructure improvements to offset the congestion impacts of this project:

- Upgrading the existing signalized Route 132/Bearse's Way intersection, including a new right turn lane on Route 132 northbound approach to the intersection.
- Constructing a new connector road between Route 132 and Attucks Lane. The connector road will have a four lane cross section and provide access to the supermarket. It will terminate at a four way intersection with Attucks Lane, which the Applicant will signalize. The connector road/Attucks Lane intersection may require the re-alignment of the existing access on Attucks Lane (known as Stub Road "A" and Stub Road "B"), which would require an agreement with the existing BJ's Wholesale Club to re-align their driveway (known as Stub Road "A"). These roadway improvements are shown in the FEIR in Figure 2.1, Conceptual Site Plan.

~~Town of Barnstable officials have requested that all traffic signal equipment at both the Route 132/Bearse's Way and the connector road/Attucks Lane intersections be painted black in conformance with MassHighway standards.~~

As outlined in TF3, the Mitigation Parcels have a remaining traffic credit of 60 trips, as allowed under MPS 4.1.2.7(a) and MPS 4.1.2.8. These traffic credits have been applied to offset the traffic impacts of this project.

In addition to the infrastructure improvements, and the donation of developable land (the Mitigation Parcels), the Applicant has proposed \$292,000 in congestion mitigation as calculated using the Fair Share Overview and Methodology outlined in the Cape Cod Commission Guidelines for Transportation Impact Assessment Technical Bulletin 96-003, Revised January 9, 2003.

As such, the Applicant has demonstrated compliance with MPS 4.1.3.4 (congestion requirements).

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 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 signal equipment at both the Route 132/Bearse's Way and the connector road/Attucks Lane intersections shall be ~~painted black~~ **galvanized steel in conformance with Mass Highway standards.**

Natural Resources Condition

NR1. **Within 60 days of issuance of the Preliminary Certificate of Compliance, or in any event prior to the issuance of a Final Certificate of Compliance,** ~~Prior to issuance of a Preliminary Certificate of Compliance~~ the Applicant shall provide the Cape Cod Commission with a deed restriction approved by Commission counsel and recorded at the Registry of Deeds or Land Court showing that the open space areas shown on the "Open Space Deed Restriction Exhibit" prepared by VHB, Inc. and dated 4/2/08 shall remain as permanent open space.

SIGNATURES


Paul Niedzwiecki, Executive Director

11/10/11
Date

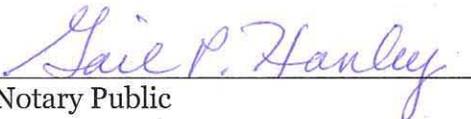
COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

Nov 10, 2011

Before me, the undersigned notary public, personally appeared

Paul Niedzwiecki, in his/her capacity as the Cape Cod Commission's Executive Director, 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.


Notary Public

My Commission Expires: 9-28-18

