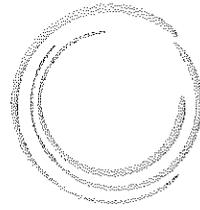


3225 MAIN STREET • P.O. BOX 226  
BARNSTABLE, MASSACHUSETTS 02630



---

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

**CAPE COD  
COMMISSION**

**Modification to Victory Fish/Borders Books  
TR-960010**

Date: November 2, 2011

To: Attorney Eliza Cox  
Nutter, McClennen & Fish, LLP  
1471 Iyannough Road  
P.O. Box 1630  
Hyannis, MA 02601-1630

From: Cape Cod Commission

Re: Modification to Development of Regional Impact Decision

Applicant: OCW Retail Hyannis, LLC

Property Owner: OCW Retail Hyannis, LLC

Project: Victory Fish/Borders Books

Project #: TR-960010

Project Location: Victory Fish Property: 990 Iyanough Road, Hyannis, MA

Recording Information:  
Book 22007 Page 277  
Plan Book 617 Page 35

---

**DECISION OF THE CAPE COD COMMISSION**

**Background**

On December 5, 1996, the Cape Cod Commission (Commission) issued a Development of Regional Impact (DRI) decision, with conditions (1996 DRI decision), for the replacement of an existing, vacant 17,200 square foot retail shop (formerly occupied by Victory Fish, Dansk and a basket shop) and the construction of a new, 25,000 square foot retail building, which was subsequently occupied by Borders Books. The 3.98 acre site as described in the 1996 DRI decision is located at 990 Iyanough Road, Hyannis, MA, referred to as the DRI Parcel.

**Modification Request**

Attorney Eliza Cox of Nutter McClennen & Fish, LLP, representing OCW Retail Hyannis, LLC, submitted a letter to the Commission dated September 29, 2011 requesting modifications to the approved 1996 DRI Decision in connection with OCW Retail Hyannis, LLC's proposal to construct a detached 8,050 square foot commercial building with attendant parking, access, and

related infrastructure (the Project) to the east of the 25,000 square foot building approved in the 1996 DRI decision. At the time of the 1996 DRI Decision, the DRI Parcel was a separately defined and separately owned property from the larger Southwind Plaza property. In 2007, the DRI Parcel was combined into a single lot with the Southwind Plaza property, which is now owned by OCW Retail Hyannis, LLC. With the exception of certain vehicular, pedestrian and loading interconnections shown on the plan submitted with the modification request, the Project is proposed on an area of the Southwind Plaza property which is outside of the former DRI Parcel.

The interconnections proposed with the Project require the paving and/or alteration of 2,298 square feet of open space area on the former DRI Parcel. OCW Retail Hyannis, LLC is requesting to modify the 1996 DRI Decision by substituting 2,315 square feet of open space area elsewhere on Southwind Plaza parcel for the 2,298 square feet of existing open space that will be altered by the Project. To date, there have been no other modifications of the 1996 DRI decision.

### **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 Request**

After consideration of a request by the Applicant's representatives to modify the 1996 DRI decision, the Commission's Executive Director has determined the requested changes constitute *de minimus* changes, and are approved as Minor Modifications Type #1.

The following changes are thereby made to the 1996 DRI decision as shown. **Bold** indicates new text and text to be deleted is shown by strike-out.

### Changes to Findings

Finding 6. The site is located within a heavily-developed area. The project site has been previously developed and cleared of vegetation. Consequently, the site's value as plant and wildlife habitat is extremely limited and the project proposes to provide the 40% Open Space as required by the Regional Policy Plan as landscaped areas as designated on the Landscape Plan, dated November 25, 1996 attached to and conditioned through this decision. **In 2011, OCW Retail Hyannis, LLC provided evidence to the Commission that 2,315 square feet of Open Space could be substituted for 2,298 square feet of existing Open Space, so as to allow for interconnections to adjacent development.**

Finding 11. **At the time of the 1996 DRI review, [t]he Victory Fish site and Southwind Plaza are- were located on adjacent lots that were subsequently combined into a single lot in 2007 by an 81-X plan.** While **in 1996** the Victory Fish site **is was** owned by Gibbs Management Corp. and Southwind Plaza **is was** owned by Flatley Company, **in 1996** there **is was** a direct relationship between their ownership and the **1996** applicant raised issues pertaining to Southwind Plaza in the course of the Victory Fish review.

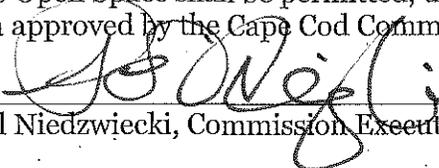
Changes to Conditions

Condition 2. The project shall be constructed in accordance with all approved plans which shall be attached to this decision. The plans are the following:

(Note that these plans all show a site with a proposed traffic signal, which was not approved for this project. Revised plans must be submitted to the Commission and the Town of Barnstable showing a right turn in/right turn out.)

- Revised Lighting Plan - September 16, 1996
  - Revised Layout and Utilities Plan - October 15, 1996
  - Revised Grading and Drainage Plan - October 15, 1996
  - Revised Building Elevation - November 25, 1996
  - Revised Landscape Plan - November 25, 1996 **(as amended)\***
- \*(as amended to reflect 2011 open space proposal)**

Condition 3. The provision of 40% Open Space is provided through the landscaped areas on the Landscape Plan, dated November 25, 1996 **as amended by a plan entitled *Development Envelope Plan*, by Baxter Nye Engineering & Surveying, Sheet EXH.2.0, dated 9/12/11. The plan drawn by Baxter Nye Engineering & Surveying indicates a substitution of 2,315 square feet of Open Space area for 2,298 square feet of existing Open Space Area. This** ~~The total Open Space~~ area (63,480 square feet) shall remain as permanent Open Space. This plan shall be attached to and recorded with this **modification** decision. No future addition to the **23,500 square foot** building or changes in parking location, impervious surface, or landscaped areas **on the Victory Fish site** shall be implemented without prior Cape Cod Commission review and approval. No reduction in this 40% Open Space shall be permitted, unless an equivalent amount is substituted on-site in an area approved by the Cape Cod Commission.

  
Paul Niedzwiecki, Commission Executive Director

**COMMONWEALTH OF MASSACHUSETTS**

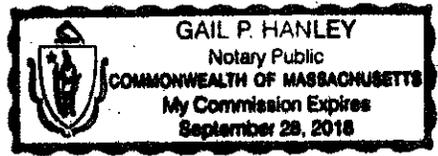
Barnstable, ss

11/2, 2011

Before me, the undersigned notary public personally appeared

Paul Niedzwiecki in his/her 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/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: 9-28-18