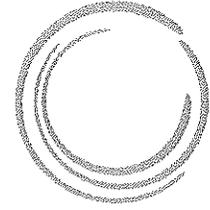


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BARNSTABLE, MASSACHUSETTS 02630



CAPE COD
COMMISSION

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

Date: May 21, 2012

To: Stuart Bornstein
Gladstone, LLC
297 North Street
Hyannis, MA 02601

From: Cape Cod Commission

Re: Development of Regional Impact Hardship Exemption
Cape Cod Commission Act, Sections 12, 13, 13(a), and 23
Cape Cod Commission *Enabling Regulations*, Sections 3, 5, 7 & 9

Applicant: Gladstone, LLC

Property Owner: Gladstone, LLC

Project: 31 Aaron's Way/Gladstone LLC

Project Location: 31 Aaron's Way, West Yarmouth

Project #: TR/HDEX/LR 11002

Map and Parcel: 73/9.2.3

Barnstable Registry of Deeds: Lot 20A Book 18952 Page 298
Plan Book 593 Page 8

Barnstable Land Court: Lot 20 Certificate of Title # 153578
Land Court Plan # 37201-D

DECISION OF THE CAPE COD COMMISSION

Background

In a decision dated July 7, 2011, the Cape Cod Commission (Commission) approved, with conditions, the application of Gladstone LLC (Applicant) as represented by Stuart Bornstein, as a Development of Regional Impact (DRI) Hardship Exemption (HDEX) a proposed 17,150 square foot warehouse to be located at 31 Aaron's Way, West Yarmouth, MA. To date, this decision has not been modified.

Modification Request

In a cover Memo and attachments received on 5/2/12, Daniel Ojala of DownCape Engineering, Inc., requests a modification to the decision based on the findings of the local site plan review and Conservation Commission comments.

Commission staff analysis of the information provided by Mr. Ojala on 5/2/12 indicates the landscape plans submitted to the Town for review are the same as those referenced in the DRI decision, with the exception of an updated revision date of February 29, 2012. Commission staff therefore determined that a modification to the decision as outlined in conditions WETC1, WETC2 and WETC3 was not necessary.

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 the 2011 DRI decision, the Commission's Executive Director has determined the requested changes are only updates to plan references and constitute *de minimus* changes, and are approved as Minor Modifications Type #1.

The following changes are thereby made to the 2011 decision, as amended, as shown. **Bold** indicates new text and text to be deleted is shown by strike-out.

FINDINGS

GF12. The Commission finds that based on the revised *Layout & Landscape Plan of Land* dated 6/25/10 as revised at the June 9, 2011 public hearing **and as received from Dan Ojala on 5/2/12 as revised 2/29/12** and based on the revised *Landscape & Layout Plan of Land* received by ~~Email on 6/17/11~~ **hand from Dan Ojala, DownCape Engineering, on 5/2/12** (latest revision ~~6/17/11~~ **2/29/12**) that the proposed project complies to the maximum extent feasible with MPS OS1.3 and that any relief granted from MPS OS1.3 relates directly to the nature of the identified hardship and is the minimum relief necessary to address the hardship.

GF14. The Commission also finds that based on the revised *Layout and Landscape Plan of Land* dated 6/25/10 as revised at the June 9, 2011 public hearing **and as received from Dan Ojala on 5/2/12 as revised 2/29/12** and based on the revised *Landscape & Layout Plan of Land* received by ~~Email on 6/17/11~~ **hand from Dan Ojala, DownCape Engineering, on 5/2/12** (latest revision ~~6/17/11~~ **2/29/12**) that the proposed project complies to the maximum extent feasible with MPS WET 1.2 and MPS WET 1.4, and that the extent of disturbance/intrusion into the wetland buffer has been reduced. The Commission also finds that the Applicant is committed to seeking a further reduction in site development through mechanisms in Yarmouth's Zoning Bylaw, Section 300, but that the further reduction of development in the wetland buffer per Yarmouth's Zoning Bylaw is not possible at this time due to the local review being suspended until Cape Cod Commission review is completed. The

Commission also finds that the relief granted from MPS WET1.2 and MPS WET 1.4 relates directly to the nature of the identified hardship and is the minimum relief necessary to address the hardship.

WETF3. Project-related development, including parking or driveway areas, and stormwater management structures, are located within 100 feet of the offsite wetland, in conflict with the requirements of MPS WET1.2 and WET1.4. Based on a revised *Layout & Landscape Plan of Land* submitted at the 6/9/11 continued hearing and based on the revised *Landscape & Layout Plan of Land* received by ~~Email on 6/17/11~~ **hand from Dan Ojala, DownCape Engineering, on 5/2/12** (latest revision ~~6/17/11~~ **2/29/12**), the extent of the intrusion into the buffer is approximately 14 feet at the greatest width. This intrusion reflects the reconfiguration of the site in anticipation of the Town granting relief from the parking/impervious coverage requirements at the local level.

WETF5. The Commission also finds that based on the revised *Layout and Landscape Plan of Land* dated 6/25/10 as revised at the 6/9/11 public hearing **and as received from Dan Ojala on 5/2/12 as revised 2/29/12** and based on the revised *Landscape & Layout Plan of Land* received by ~~Email on 6/17/11~~ **hand from Dan Ojala, DownCape Engineering, on 5/2/12** (latest revision ~~6/17/11~~ **2/29/12**) that the proposed project complies to the maximum extent feasible with MPS WET 1.2 and MPS WET 1.4, and that the extent of disturbance/intrusion into the wetland buffer has been reduced. The Commission also finds that the Applicant is committed to seeking a further reduction in site development through mechanisms in Yarmouth's Zoning Bylaw, Section 300, but that the further reduction of development in the wetland buffer per Yarmouth's Zoning Bylaw is not possible at this time due to the local review being suspended by Cape Cod Commission review. The Commission also finds that the relief granted on MPS WET1.2 and MPS WET 1.4 relates directly to the nature of the identified hardship. Because of the potential to further reduce development on the site and the intrusion into the wetland buffer through the local review, the Commission finds is the relief granted is the minimum relief necessary to address the hardship.

WETF6. Because of the potential to further reduce development on the site through the local review, the Commission finds it appropriate to require the Applicant to provide the Commission with written confirmation that an application under Section 300 of Yarmouth's Zoning Bylaw was made, and a written confirmation of Town's determination subject to that application with respect to further reductions in development on the site, including but not limited to areas to be disturbed, the building envelope, and paved/parking areas. The Commission also finds that it is appropriate to require the Applicant to seek a modification of this decision based on the Town's determination on the application to seek reductions in development on the site, including but not limited to areas to be disturbed, the building envelope, and paved/parking areas. **Commission staff has determined that based on the revised *Landscape & Layout Plan of Land* received by hand from Dan Ojala, DownCape Engineering, on 5/2/12 (latest revision 2/29/12) that the *Landscape & Layout Plan of Land* as reviewed by the Town is identical to the one reviewed during the Commission hearing process with the exception of a later revision date of February 29, 2012.**

CONDITIONS

GC6. All development and redevelopment shall be constructed in a manner consistent with the following plans and other information attached hereto **to the original July 7, 2012 Commission decision** as Exhibit A:

- The Commission’s March 17, 2011 Limited DRI Scoping decision for the project and site
- The December 27, 2010 Email from Grant Elgin stating that the project will use an Energy Star compliant white roof
- *Building Elevation Plans*, prepared by Dan Ojala of DownCape Engineering dated 6/17/11 and revised 6/20/11, received by the Commission on June 22, 2011 by Email, which show a 15 KW rooftop PV array and a minimum of 75 square feet of south facing, Low-E windows and doors with awnings

GC7. All development and redevelopment shall be constructed in a manner consistent with the following plans and other information attached hereto as Exhibit A:

- The revised *Layout & Landscape Plan of Land* dated 6/25/10 as revised at the June 9, 2011 public hearing and as received from Dan Ojala on 5/2/12 as revised 2/29/12 and based on the revised *Landscape & Layout Plan of Land* received by hand from Dan Ojala, DownCape Engineering, on 5/2/12 (latest revision 2/29/12), and with the incorporation of Commission approved grass seeding.


Paul Niedzwiecki, Commission Executive Director

5/21/12
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

5/21, 2012

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.

Kristy Senatori
Notary Public

My Commission Expires:

31 Aaron’s Way/Gladstone LLC DRI/HDEX
Modification for Updated Plan References
May 16, 2012
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