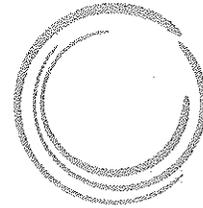


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CAPE COD
COMMISSION

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

Date: January 3, 2012

To: Attorney David V. Lawler, PC
540 Main Street, Suite 8
Hyannis, MA 02601

From: Cape Cod Commission

Re: Modification to a Change of Use/Limited DRI decision

Project Applicant: MDM Realty Trust and Star Nominee Trust

Property Owners: MDM Hyannis Property LLC

Project: Circuit City Redevelopment Project

Location: 624 and 640 Iyannough Road, Route 132
Hyannis, Massachusetts 02601

Project Number: TR07020

Book/Page: 5490/97 (*Star Nominee Trust*)

Map/Parcel: 311/12 and 311/13

Lot/Plan: *MDM Realty Trust*
Lot 10 Land Court Plan 25266D
Certificate of Title Number 185653
Amendment to Document # 1,089,563

DECISION OF THE CAPE COD COMMISSION

Background

The Cape Cod Commission (Commission) approved the construction of a 22,475 square foot building as Limited Development of Regional Impact (DRI) with conditions in a decision rendered on February 7, 2008. The building was to be occupied by the electronics retailer, Circuit City. The redevelopment project consisted of the demolition of two existing buildings with a combined square footage of 10,610 square feet located on a 2.53 acre parcel at 624 and 640 Iyannough Road in Hyannis. The site had been occupied by an existing 4,000-square-foot office building most recently occupied by Rogers & Gray Insurance and a 6,160-square-foot Star City Grill. The two buildings were demolished and replaced with the building to have been used

by Circuit City. Site changes included elimination of one curb cut along Route 132, enhanced landscaping, enhanced storm water management and drainage, and an increased landscape buffer along Route 132. The site is zoned HB Highway Business, and is located in a Groundwater Protection District per Barnstable regulations and a Wellhead Protection District/Zone II per the Commission Regional Policy Plan maps.

The original February 2008 decision was modified in 4/28/08, which allowed the properties at 0 and 545 Iyannough Road, which was part of the required Transportation mitigation, to be used on a limited basis for seven (7) parking spaces.

The project was granted a Preliminary Certificate of Compliance dated 5/20/08, and was constructed. Circuit City never occupied the building and a Final Certificate of Compliance was neither sought nor received by the Applicant.

The Preliminary Certificate of Compliance notes the developer at the time of the 2008 Limited DRI decision, Berkshire, complied with conditions CC1, CC4, CC5, WR3 and T1 of the 2/7/08 Limited DRI decision, as amended. The then developer also paid mitigation as required by condition ED1 although it is required as part of the Final Certificate of Compliance.

Modification Request

On 12/2/11, the Commission received a request by Attorney David V. Lawler, representing the property owners, to modify the Circuit City decision, to allow additional onsite uses including Specialty Retail, Health Club, General Light Industrial, Business Park, General Office and Educational/Vocational Training Center.

Jurisdiction and Modification Types

Section 13(a)(i) of the Commission's *Enabling Regulations* (revised March 2011) 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) of the *Enabling Regulations* sets out the types of DRI modifications. A Minor Modification Type #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.*" The *Enabling Regulations* also state Minor Modification Type #2 "*shall not result in different or increased impacts to the resources protected by the Act and/or the RPP.*"

A Minor Modification Type #2 is governed by the Regional Policy Plan in effect at the time of the original Commission approval.

Determination on Modification Request

The Commission's Regulatory Committee heard the Applicant's request to modify the Circuit City decision at a meeting on 12/12/11. At that meeting, the Committee voted unanimously to find that the Applicant's request to modify the Circuit City decision to allow additional onsite uses including Specialty Retail, Health Club, General Light Industrial, Business Park, General Office and Educational/Vocational Training Center was a Minor Modification Type 2 according to the Commission's *Enabling Regulations*.

Changes to DRI Decision

Based on the Regulatory Committee's 12/12/11 vote, the following changes are made to the 2/7/08 Limited DRI decision, as amended. Text deletions are shown in strikeout. New text is shown in **bold**.

CONDITIONS

General Conditions

G7. Prior to issuance of a building permit, the applicant shall obtain a preliminary Certificate of Compliance from the Commission that states all conditions in this decision pertaining to issuance of a building permit have been met. Prior to receiving a permanent or temporary Certificate of Occupancy for the proposed project, the applicant **and/or each tenant** shall obtain a final Certificate of Compliance from the Commission. Unless otherwise stated in this decision, the project shall be constructed in accordance with final plans listed in this decision in Condition G5 and all conditions of this decision shall be met prior to issuance of a Final Certificate of Compliance of the proposed project. The project **and/or any tenants** shall not be open for business until a Final Certificate of Compliance is received from the Cape Cod Commission.

GC11. Prior to issuance by the Commission of a Final Certificate of Compliance, and prior to the issuance of a Certificate of Use/Occupancy from the Town of Barnstable, the Applicant and/or any tenants shall submit for Commission staff review and approval information that describes the proposed building tenant or tenants so that conformance with the February 2008 Limited DRI decision, as amended, can be determined and ensured.

Economic Development Conditions

ED3. Prior to the issuance of a Final Certificate of Compliance, **and again one (1) year from the date of issuance of the Final Certificate of Compliance, and for a period of five (5) years from the date of issuance of the Final Certificate of Compliance,** the Applicant **and/or any tenants** shall provide a report to the Commission detailing the number of new jobs created, the position titles, wages, and benefits paid by ~~Circuit City~~ for each position, the number of **local vendors used, for what the vendors were used, and the total annual value of the transactions with each of the local vendors.** ~~these positions filled by Cape Cod residents, and the number of minorities, disabled, elderly, unemployed or underemployed persons expected to fill the new positions.~~

~~ED4. Beginning one year from the date of occupancy for a period of five (5) years, Circuit City will provide to Commission staff and the Town of Barnstable annual reports addressing the following:~~

~~The number of employees receiving job training through the Cape Cod Community College or other local training entities, and including the types of training, number of part-time and full-time employees, number of Cape Cod residents, and the annual dollar value paid by Circuit City to the College and tuition reimbursements to employees.~~

Local vendor purchasing, including the number and types of vendors being used and the approximate annual financial benefits to the community, to the extent such information is not subject to proprietary restrictions or confidentiality agreements.

ISSUANCE OF MODIFICATION DECISION

Royden Richardson
Royden Richardson, Regulatory Committee Chair

2-05-2012
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

Jan 5, 2012

Before me, the undersigned notary public, personally appeared

Royden Richardson, in his/her capacity as Chair of the Cape Cod Commission's 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.

Gail P. Hanley
Notary Public

My Commission Expires:

9.28.18

