

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



CAPE COD
COMMISSION

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

Modification of DRI Decision

Date: March 28, 2013

Project Applicant: Cape Cotuit Center, LLC
C/o Stuart Hunziker
Eastern Real Estate, LLC
120 Presidential Way, Suite 300
Woburn, MA 01801

Property Owner/s: Cape Cotuit Center, LLC
EDT Cotuit, LLC

Project: Cotuit Landing Redevelopment and Expansion

Location: Route 28/Falmouth Road
Marston's Mills, Massachusetts

Project Number: JR-99013

Book/Page: Parcel 2, 3, and 4: Cape Cotuit Center, LLC
Book 10805, Page 177

Parcel 6: Cape Cotuit Center, LLC
Lot 12-B on Plan Book 475, Page 4
Book 10805, Page 177

Certificate #: Parcels 1, 5, and 7: Cape Cotuit Center, LLC
L.C. 22824-J, Lots 112, 114 and 115
Certificate of Title 144821

Parcel 8: EDT Cotuit, LLC
Book 13230, Page 58 and
Book 12107, Page 258 and
Book 10805, Page 177

DECISION OF THE CAPE COD COMMISSION

Background

In a Development of Regional Impact (DRI) Decision dated June 21, 2001, the Cape Cod Commission (Commission) approved, with conditions, the redevelopment and expansion of the existing Cotuit Landing Shopping Plaza (Plaza) on Route 28/Falmouth Road in Marston's Mills Massachusetts.

The original June 21, 2001 decision has been modified by decisions dated 2/19/02, 3/18/02, 6/10/02, 10/7/05, 5/11/06, 2/13/12, 8/9/12 and 1/2/13. The project was granted a Preliminary Certificate of Compliance dated November 19, 2001, a Partial (Final) Certificate of Compliance for Phase 1 on July 10, 2002, and a Partial (Final) Certificate of Compliance for Phase 2 on July 10, 2002.

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 #1 is defined as "*revisions that are a 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 #1 "*shall be approved by the Executive Director or his/her designee and reported to the Regulatory Committee and do not require further review by the Commission.*" A Minor Modification Type #1 is governed by the Regional Policy Plan in effect at the time of the original Commission approval.

Project Description

The proponent proposes to reconfigure portions of the 5.43 acre, on-site, landscaped area, which was required to be established and deed-restricted as open space pursuant to Condition OS3 in the Decision. The Covenant to secure this deed-restricted open space is recorded with the Barnstable Registry of Deeds in Book 27225, Page 164.

Specifically, the requested modification would authorize conversion of 2,260 square feet of this deed-restricted, landscaped area to impervious cover for the purpose of constructing drive-thru facilities for the rearmost liner building fronting on Rte. 28. The Cooperative Bank of Cape Cod proposes to open a new branch office at this location, and has already received local site plan approval for the drive-thru. It does not appear that any special zoning approval is required for the bank or drive-thru uses. In order to maintain the minimum 5.43 acre deed-restricted, landscaped area set out in condition OS3, the proponent proposes to convert a total of 2,330 square feet of paved surface, located to the side and rear of the Stop & Shop building, from pavement to pervious area, resulting in a 70 square feet net decrease in site impervious area.

The reconfiguration is as shown on the three plans proposed to be included in revised condition G7 as set out below. Copies of these three plans are to be appended to and made a part of this Decision.

Modification to DRI Decision

The Executive Director of the Cape Cod Commission hereby determines that the proponent's proposal, discussed above, constitutes a *de minimus* change to the Decision, and is approved as a Type 1 Minor Modification according to Section 13 of the Commission's *Enabling Regulations* (as amended March 2011).

Based on the Executive Director's determination, Condition G7 of the June 21, 2001 DRI decision, as modified, and Condition OS3 of the June 21, 2001 DRI decision are hereby revised as follows (new or revised text is shown in **bold**). All conditions attached to the June 21, 2001 decision, as previously modified, continue to apply except as modified herein:

G7. The proposed Cotuit Landing Redevelopment and Expansion project shall be constructed in accordance with the following final plans:

	Dated	Revised Date	Mod Approved
<ul style="list-style-type: none"> • <i>Layout and Materials Plan, C5</i> 	<i>11/30/00</i>	<i>02/20/01</i>	
<ul style="list-style-type: none"> Revised by an easement dated 9/28/00 and plan showing the easement dated 6/22/00 as granted to John T. Peck 			<i>08/09/12</i>
<ul style="list-style-type: none"> As modified by the "Revised Easement" shown on a sketch plan of land entitled "Plan Showing Revised Easement at 3840 Falmouth Road, Barnstable (Marstons Mills) Mass," dated April 26, 2012 and prepared by CapeSurv, 7 Parker Road, Osterville, MA 02655 			<i>01/03/13</i>
<ul style="list-style-type: none"> As modified by the "Site Plan prepared for Cooperative Bank of Cape Cod in Marstons Mills (Barnstable), MA", 3 Sheets, Scale 1"=80', dated December 6, 2012 and prepared by Holmes and McGrath, Inc., 205 Worcester Court, Unit A4, Falmouth, MA 02540 			<i>03/28/13</i>
<ul style="list-style-type: none"> • <i>Grading and Drainage Plan, C6</i> • <i>Utilities Plan, C7</i> • <i>Site Electrical Plan, SE-1</i> • <i>Landscape Plan, C8</i> • <i>Median Planting Plan, L-1</i> • <i>Open Space Plan</i> 	<i>11/30/00</i>	<i>05/09/01</i>	
	<i>11/30/00</i>	<i>05/09/01</i>	
	<i>11/30/00</i>	<i>05/09/01</i>	
	<i>11/30/00</i>	<i>05/15/01</i>	
	<i>01/26/01</i>	<i>02/22/01</i>	
	<i>05/15/01</i>		<i>03/28/13</i>
<ul style="list-style-type: none"> As modified by the SK-01 plan entitled "Revise Drive-Thru Grading", Scale 1"=20', dated December 10, 2012, and the SK-02 plan entitled "Green Space Replacement Area for Proposed Drive-Thru Bank Development - Option 2", Scale 1"=40', dated December 21, 2012 and revised January 30, 2013, both prepared by Holmes and McGrath, Inc., 205 Worcester Court, Unit A4, Falmouth, MA 02540 			
<ul style="list-style-type: none"> • <i>Elevations and Plans:</i> <li style="padding-left: 20px;"><i>Stop & Shop/Retail A, EL1</i> 	<i>03/22/01</i>		

Retail B, C, D, E, EL2	04/13/01		
Stop & Shop, EL3	11/23/00		
Retail, EL4	11/23/00		
Stop & Shop, F1	05/15/01		
Wastewater Treatment Shed, 1	03/27/01		
• Cotuit Liquors – Proposed Cooler	11/29/01		2/19/02
• Garden Center Plan	undated		2/19/02
• Elevations and Plans:			
Retail Bldg. A – Plans, Elevations & Details, A.A-1	3/01/01	9/19/01	2/12/02
Retail Bldg. A – Sections & Details, A.A-2	5/21/01	9/19/01	2/12/02
Retail Bldg. A – Refl. Clg. Plan & Details, A.A-3	3/01/01	9/19/01	2/12/02
Retail Bldg. B – Elevations, B.A-1	7/01/01		2/12/02
Retail Bldg. H – Plan, Elevations & Details, H.A-1	3/01/01	9/19/01	2/12/02
Retail Bldg. H – Sections & Details, H.A-2	5/21/01	9/19/01	2/12/02
Retail Bldg. H – Refl. Clg. Plan & Details, H.A-3	3/01/01	9/19/01	2/12/02
Retail Bldg. H – Roof Plan & Details, H.A-4	3/01/01	9/19/01	2/12/02
Retail Bldg. D – Elevations & Roof Plan, D.A-1	3/29/02		
Retail Bldg. E – Floor Plan, Elevations, Schedule & Details E.A-1	4/04/02		6/10/02

And as revised to allow a physician's/medical office to occupy one of the 2,500 square foot linear buildings without changes to the exterior of the building and without changes to the site.

The one exception to the prohibition on changes to the exterior of the building is that the physician's/medical office noted above may have signage on the exterior of the building so long as the signage is consistent with the requirements of the DRI decision, as amended.

OS3. The proponent shall provide the Commission with a deed restriction to be approved by the Commission Counsel which provides that on-site open space consisting of 5.43-acres of landscaped area shown on the on the plan entitled "Cotuit Landing Redevelopment and Expansion, Open Space Plan" dated 5/15/01, **as modified by the SK-01 plan entitled "Revise Drive-Thru Grading", Scale 1"=20', dated December 10, 2012, and the SK-02 plan entitled "Green Space Replacement Area for Proposed Drive-Thru Bank Development - Option 2", Scale 1"=40', dated December 21, 2012 and revised January 30, 2013, both prepared by Holmes and McGrath, Inc., 205 Worcester Court, Unit A4, Falmouth, MA 02540**, shall remain as permanent open space. The approved restriction shall be recorded at the Barnstable Registry of Deeds, and re-recorded by the holder of the deed at thirty years and every twenty years thereafter. The deed restriction shall be executed prior to the issuance of the preliminary Certificate of Compliance. The deed restriction shall be recorded and proof of recording shall be submitted to the Cape Cod

Commission prior to the issuance of the final Certificate of Compliance. **The proponent shall record this Modification of DRI Decision (appended with the three additional plans referenced in revised condition G7) at the Barnstable Registry of Deeds. The recorded Modification of DRI Decision shall carry a marginal reference to the Restrictive Covenant, dated October 3, 2001, recorded in Book 27225, Page 164. Proof of recording of the Modification of DRI Decision shall be submitted to the Cape Cod Commission.**

(Signature/s on Next Page)

ISSUANCE OF MODIFICATION DECISION

Executed this 28 day of March 2013.

Kristy Senatori
Signature

Kristy Senatori, Deputy Director
Print Name and Title

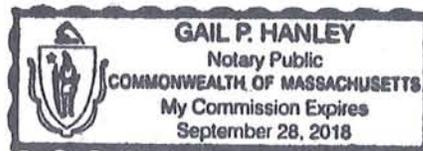
COMMONWEALTH OF MASSACHUSETTS

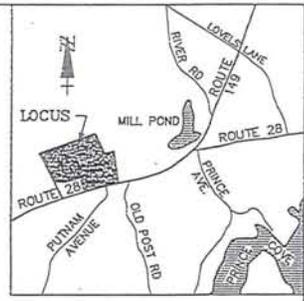
Barnstable, ss

March 28, 2013

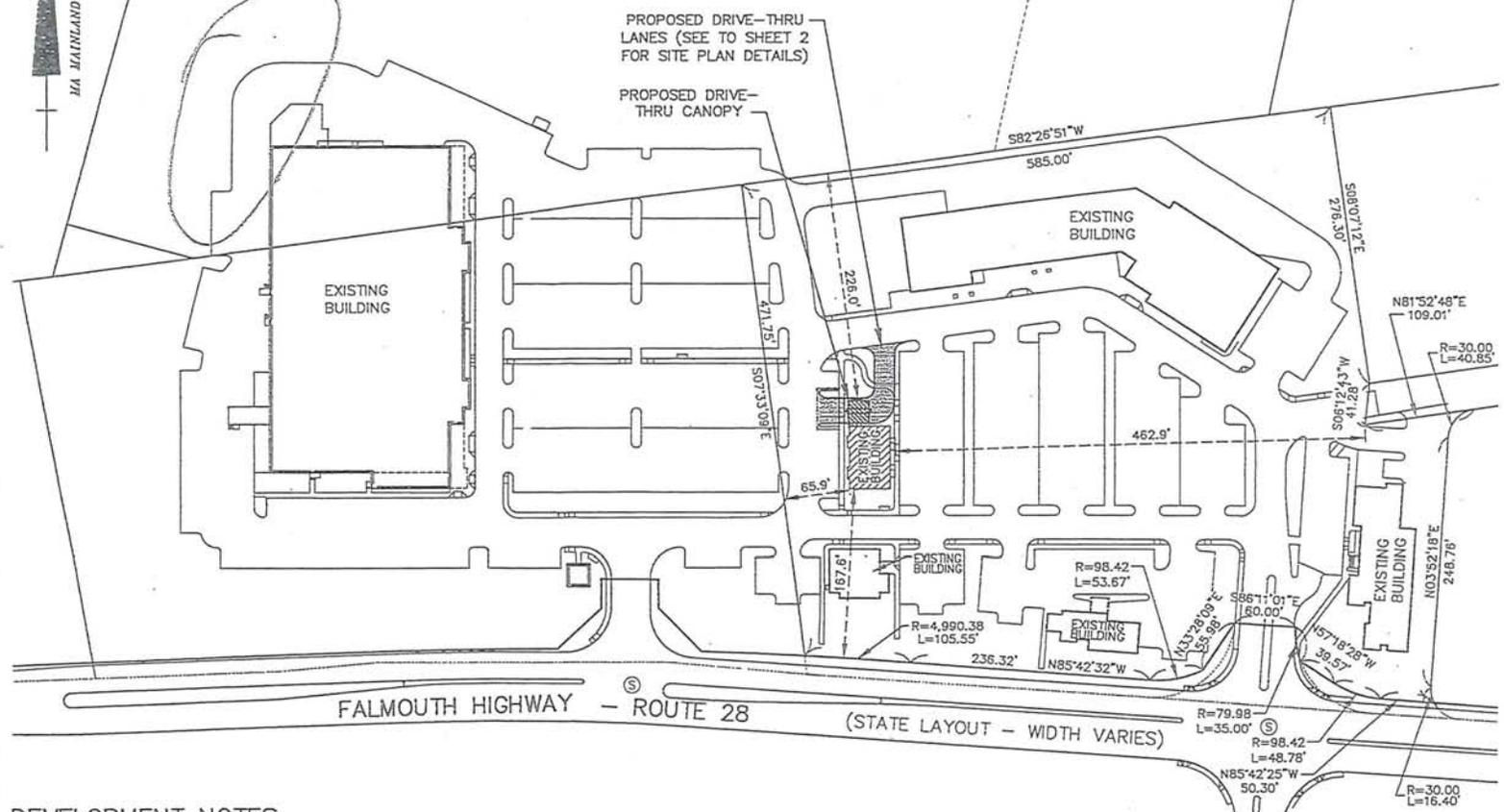
Before me, the undersigned notary public, personally appeared Kristy Senatori, in his/her capacity as Deputy Director of the Cape Cod Commission, whose name is signed on the preceding document, and such person acknowledged to me that he/she signed such document voluntarily for its stated purpose. The 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





LOCUS MAP
NOT TO SCALE



APPLICANT:
COOPERATIVE BANK OF CAPE COD
695 ATTUCKS LANE
HYANNIS, MA 02601

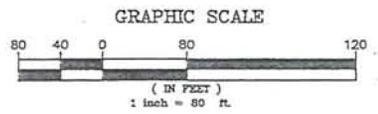
OWNER:
CAPE COTUIT CENTER, LLC
STOP & SHOP SUPERMARKET CO
1385 HANCOCK ST RE TAX DEPT
QUINCY, MA. 02169

DEVELOPMENT NOTES

- REFER TO SHEET 2 FOR SITE PLAN DETAILS
1. PROPOSED IMPERVIOUS AREAS = 2,641± SQ.FT.
 2. PROPOSED LANDSCAPE AREAS = 173± SQ.FT.
 3. NET AREA (IMPERVIOUS) = 2,468± SQ.FT.
= EQUIVALENT TO 10 PARKING SPACES
 4. LOST PARKING SPACE COUNT = 4 SPACES
 5. GAINED PARKING SPACE COUNT = 1 SPACE

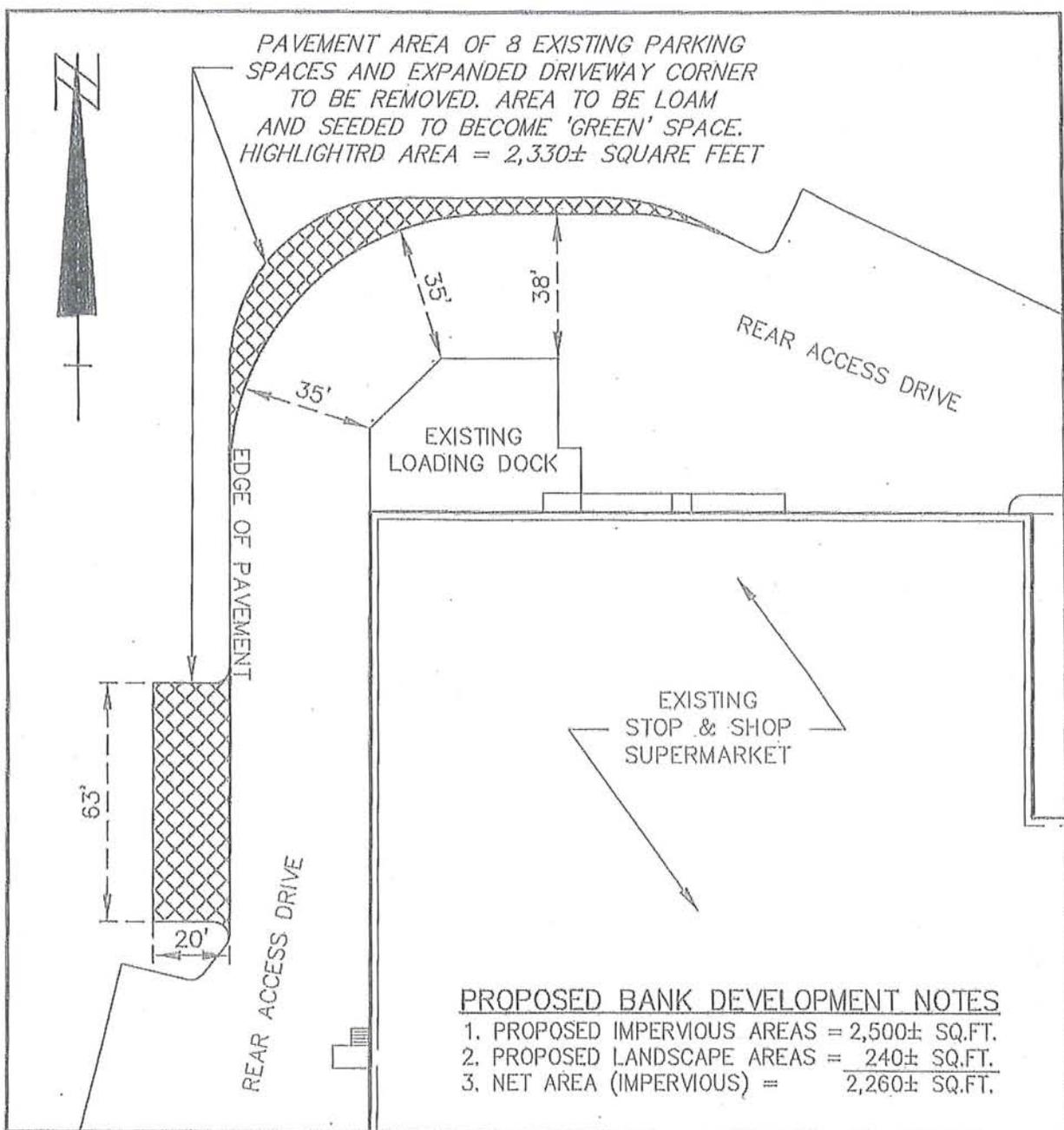
NOTES

1. HOUSE NUMBER: 3840 FALMOUTH ROAD - ROUTE 28
2. ASSESSOR'S NUMBER: MAP 058 PARCEL 039- 002
3. ZONING DISTRICT: SERVICE & DISTRIBUTION (S&D)
4. FLOOD HAZARD ZONES: C
5. BENCHMARK: AS SHOWN
6. TOPOGRAPHIC INFORMATION COMPILED FROM AN ON THE GROUND INSTRUMENT SURVEY.
7. ELEVATIONS SHOWN ARE BASED ON THE NATIONAL GEODETIC VERTICAL DATUM.
8. REFERENCE: PLAN BOOK 287 PAGE 80

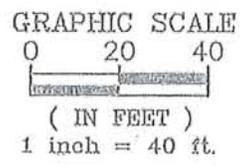


NOTICE
Unless and until such time as the original (red) stamp of the responsible Professional Engineer, or Professional Land Surveyor appears on this plan:
(A) no person or persons, including any municipal or other public officials, may rely upon the information contained herein; and
(B) this plan remains the property of Holmes & McGrath, Inc.

DATE	DESCRIPTION	Drawn	Checked
REVISIONS			
OVERALL SITE - PROPOSED DRIVE-THRU			
SITE PLAN			
PREPARED FOR			
COOPERATIVE BANK OF CAPE COD			
IN			
MARSTONS MILLS BARNSTABLE MA			
SCALE: 1" = 80'		DATE: DEC. 5, 2012	
holmes and mcgrath, inc. civil engineers and land surveyors 200 main street (508) 548-3564 (PHONE) falmouth, ma. 02540 (508) 548-9672 (FAX)			
DRAWN: RLR		CHECKED: <i>[Signature]</i>	
JOB NO: 212031	DWG. NO.: 80-4-130	SHEET 1 OF 3	



- PROPOSED BANK DEVELOPMENT NOTES**
1. PROPOSED IMPERVIOUS AREAS = 2,500± SQ.FT.
 2. PROPOSED LANDSCAPE AREAS = 240± SQ.FT.
 3. NET AREA (IMPERVIOUS) = 2,260± SQ.FT.



**SK-02: GREEN SPACE REPLACEMENT
AREA FOR PROPOSED DRIVE-THRU
BANK DEVELOPMENT - OPTION 2**

PREPARED FOR
COOPERATIVE BANK OF CAPE COD
MARSTONS MILLS MARKET PLACE
MARSTONS MILLS, BARNSTABLE, MA