CAPE COD COMMISSION

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Date: January 6, 2005

Applicant: Shepley Wood Products

Re: Development of Regional Impact Exemption Request
Section 12(k) of the Cape Cod Commission Act

Project: Marvin Showroom Building

Project #: EX-04020

Book/Page: Book 13196 Page 296

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby grants the Development of Regional Impact (DRI) Exemption request of Shepley Wood Products (Applicant) for the existing Marvin Showroom Building, including the proposed upper level renovations, pursuant to Section 12(k) of the Cape Cod Commission Act (Act), c.716 of the Acts of 1989, as amended. This decision is rendered pursuant to a vote of the Commission on January 6, 2005.

PROJECT DESCRIPTION

The project involves an existing three-level building, located on 2.61 acres of land in the Industrial (IND) zoning district of the Town of Barnstable. The parcel is partially located in both the Aquifer Protection and Wellhead Protection Overlay Districts, as mapped by the Town of Barnstable, and lies within a Growth Activity Center, according to Barnstable's certified Local Comprehensive Plan.

The Marvin Showroom Building, with a proposed gross floor area of 14,916 square feet, was constructed in 2001-2002, and received a Certificate of Use and Occupancy in 2003. The building has a footprint of 4,972 square feet with a lower level, main level and upper level. At the time the building received its building permit and Certificate of Use and Occupancy, only the lower and main levels of the structure, comprising 9,994

square feet, were built out. The Applicant now proposes to complete the vacant, unfinished upper level of the existing Showroom building to provide office space for existing employees in the accounting and financial departments of the Shepley Wood Products Company. The proposed renovation would “finish off” 2,935 square feet of the existing vacant upper level for use as office space; the balance (2,037 square feet) would continue to house the building’s mechanical systems. The Applicant proposes no changes to the building footprint or exterior, and only minor changes to the roof.

The lower level of the Marvin Windows Showroom building consists of an employee lunch room, classroom/training area, workshop area, janitorial closet, elevator mechanicals room, and restrooms. The main level consists of a product showroom area, restrooms and lobby area. The showroom is the “public” area of the building, and contains displays of sample window treatments, mockups of related products, and samples of drawer, door and window hardware.

Finishing the upper level of the Showroom building will provide improved office space for 19 existing employees, who currently are housed in office trailers on another site within the Shepley campus. The office trailers would be removed from the Shepley campus (on which the Marvin Windows Showroom building also is located) once the renovations are completed.

The building site has a 36-space parking lot, landscaping, and site lighting. It is connected to the municipal sewer, and is heated by natural gas. The building also has a gas-fired emergency generator.

PROCEDURAL HISTORY

On September 17, 2004, the Applicant's attorney, Patrick Butler of Nutter, McClennen & Fish, filed a DRI Exemption application with the Commission. Additional application materials were filed with the Commission on October 13, October 18, October 29, November 15, November 19, and November 22, 2004. The DRI Exemption application was deemed complete on November 23, 2004.

A duly noticed Public Hearing pursuant to Section 5 of the Act was held on the DRI Exemption request by an authorized Subcommittee of the Commission on Tuesday, December 14, 2004 at 7:00 PM at the Assembly of Delegates Chamber, First District Courthouse, Barnstable, MA. At this hearing, the Subcommittee voted unanimously to recommend to the full Commission that a DRI Exemption be granted for the proposed project, and to continue the public hearing on the Exemption to the Commission’s January 6, 2005 meeting for consideration of the project by the full Cape Cod Commission. The Subcommittee also voted on December 14, 2004 to authorize the Subcommittee Chair to review the draft DRI Exemption decision.

On January 6, 2005, the full Commission voted to grant a DRI Exemption to Shepley Wood Products for the Marvin Showroom building, including the upper level renovation.

Materials Submitted for the Record

Applicant

DRI Exemption application, supporting documents & plans	9/17/04
-As-built plan by David C. Thulin, PE (1/13/03, revised 2/4/03)	
-Upper level existing layout plan by AE Ferragamo (undated)	
-Upper level design layout plan by AE Ferragamo (latest revision, 4/14/04)	

Applicant

E-mail, Attorney Cox, Nutter	9/23/04
Memo, Attorney Butler, Nutter, transportation issues	10/13/04
Fax, Attorney Butler, Nutter, scheduling	10/18/04
Memo, Attorney Butler, Nutter, various issues & plans	10/29/04
Plans by David C. Thulin, PE (all dated 12/10/01 and 1/4/02)	
-Locus map, existing conditions (9/19/01), grading/drainage/utilities, sewer/drainage/paving details, landscaping/lighting/signage/pavement marking	
E-mail, Attorney Cox, Nutter, scheduling	11/2/04
Memo, Attorney Butler, Nutter, economic development information	11/15/04
Memo, Attorney Butler, Nutter, various issues and large plans	11/18/04
Memo, Attorney Cox, Nutter, fee payment	11/22/04
Memo, Attorney Cox, Nutter, copies for Subcommittee	12/6/04
Memo & matrix, Attorney Butler, Nutter, yellow/purple paper	12/14/04
Memo, Attorney Butler, Nutter, copies for Commission	12/29/04
Photo collage of interior and exterior pictures of building	Undated

Cape Cod Commission

DRI Review Timeline Form	Undated
DRI Staff Routing Form with comments on econ. devel.	Undated
Letter, to Attorney Butler, Nutter, DRI notification	9/24/04
DRI Staff Routing Form	9/27/04
E-mail, to Attorney Cox, Nutter, meeting to discuss project	9/27/04
E-mail, to Attorney Cox, Nutter, scheduling	9/29/04
E-mail, to Attorney Cox, Nutter, scheduling	9/29/04
E-mail, to Commission staff, scheduling	9/30/04
E-mail, from Scott Michaud, comments on water resources	9/30/04
E-mail, to Attorney Cox, Nutter, scheduling	10/4/04
E-mail, to Attorney Cox, Nutter, information needed	11/2/04
E-mail, to Susan Kadar, response concerning project	11/8/04
Memo, Leslie Richardson, economic development info.	11/9/04
Letter, to Attorney Butler, Nutter, letter about application & hearing	11/23/04
Fax cover sheet, to Attorney Butler, Nutter, letter	11/23/04
Memo, Glenn Cannon, transportation issues	12/1/04
Memo, to Subcommittee, sending out Staff Report & info.	12/7/04
Fax cover sheets, Staff Report to Nutter, Town	12/7/04
Staff Report	12/7/04
Hearing Notice	12/14/04
Hearing sign-in sheet	12/14/04
Hearing Minutes	12/14/04
Cover sheets to Subcommittee and Commission members	12/29/04
Fax cover sheets, draft DRI Exemption decision, Nutter, Town	12/31/04

E-mail, to Tom Broadrick, Town of Barnstable, draft decision	12/31/04
Draft DRI Exemption decision	1/6/05

Town of Barnstable and Other Public Entities

Town of Barnstable Planning Division, comment letter	12/14/04
E-mail, Tom Broadrick, Planning Division, about draft decision	1/3/05

General Public

No written testimony or other documents were submitted for the record.

The application and notices of public hearings relative thereto, the Commission's staff reports, exhibits and correspondence, the transcript and minutes of hearings, and all written submissions received in the course of the Commission's proceedings including materials submitted with file EX-04020, are incorporated into the record by reference.

JURISDICTION

The project qualifies as a DRI under Section 3(e) of the Code of Cape Cod Commission ***Regulations of General Application,*** Chapter A, as amended, as ***"[a]ny of the following proposed commercial, service, retail or wholesale business, office or industrial development, as well as any private health, recreational or educational development: *new construction with a gross floor area greater than 10,000 [square feet]."***

TESTIMONY

A Subcommittee of the Cape Cod Commission held a public hearing at 7:00 PM on Tuesday, December 14, 2004 at the Assembly of Delegates Chamber, First District Courthouse, Barnstable, MA. The following is a summary of the testimony given.

Attorney Butler (Nutter, McClennen & Fish, representing the Applicant) described the proposed project. He noted that the existing Marvin Windows Showroom building has a footprint of 4,972 square feet, and three floors, for a total gross floor area of 14,916 square feet, but that, until recently, only two of the three floors had been built out and occupied by Shepley employees. The building was constructed and first occupied approximately 18 months ago. Shepley Wood Products now seeks to "finish off" the third floor as office space, and is requesting the Commission's approval to complete the project. Attorney Butler noted that the Applicant is requesting a DRI Exemption, which he believes should be granted because the project presents no impacts outside of the Town of Barnstable. Attorney Butler said that if the use of the building changed, or there was more hazardous materials or wastes impacts, that the project would return to the Commission, via the standing Regulatory Committee, for further review as a ***Change of Use.*** Ms. Adams, a Planner on the Commission staff, said that Commission staff also believes that a DRI Exemption may be warranted. She noted that the Showroom was reviewed by the Town of Barnstable in 2001-2002 and received a Certificate of Use and Occupancy in 2003, but at that time, the third floor was unfinished, so it was not considered in determining whether the building met a DRI threshold. Ms. Adams said

that, with the third floor built out, the building has a total of 14,916 square feet and therefore qualifies as a DRI.

Ms. Adams noted that, to ensure maximum protection for the Wellhead Protection Area in which the project is located, Commission staff recommends that the Applicant submit information to show that the company has a landscape management plan for the site which, at a minimum, minimizes use of pesticides. She said that Commission staff would also like the opportunity to review the site's stormwater management plan to ensure that it includes, at a minimum, a schedule for inspection and maintenance.

With respect to hazardous materials and wastes, because the building will primarily be used as showroom and office space, Ms. Adams said that Commission staff believed that the project will generate minimal hazardous materials and wastes. Ms. Adams expressed concern that the use of the building may change, and may present hazardous materials issues in the future.

Ms. Adams said that if the Subcommittee was inclined to grant the project a DRI Exemption, Commission staff recommended that the decision include Findings to ensure that any change of use at the building would be subject to further Commission review.

Mr. Al Baker of Barnstable said he was in support of the project.

Ms. Kadar moved to recommend to the full Commission approval of a Development of Regional Impact Exemption for the Marvin Windows Showroom, including the third floor renovation, and to place this project on the Commission's agenda for consideration at its January 6, 2005 meeting. Mr. Hogan seconded the motion. The Subcommittee voted unanimously in favor of the motion.

Ms. Kadar moved to authorize the Chair of the Subcommittee to review and approve a draft DRI Exemption decision. Mr. Platt seconded the motion. The Subcommittee voted unanimously in favor of the motion.

Ms. Kadar moved to continue the hearing and the record to the regular Cape Cod Commission meeting at the Assembly of Delegates Chamber, First District Courthouse, Barnstable on January 6, 2005 at 3:00 PM. Mr. Hogan seconded the motion. The Subcommittee voted unanimously in favor of the motion.

FINDINGS

The Commission has considered the application of Shepley Wood Products for a DRI Exemption regarding the Marvin Windows Showroom building, including the upper level renovation. Based upon its consideration of such application and information presented at the public hearing and submitted for the record, the Commission makes the following Findings pursuant to Section 12(k) of the Act:

General

G1. The proposed project involves an existing building (used primarily as a product showroom) on 2.61 acres of land in Barnstable with a footprint of 4,972 square feet. The building is comprised of a lower level, main level and upper level, with a total gross floor area of 14,916 square feet. The Applicant proposes to "finish off" the vacant, unfinished upper level to provide replacement office space for existing company staff.

G2. Dilapidated office trailers, which currently are used to provide office space for Shepley Wood Products' accounting and financial departments on a nearby site, will be removed once the upper level of the building is finished. No other changes to the Marvin Windows Showroom building or the Shepley Wood Products campus are intended or planned as a result of the proposed project.

G3. The proposed project qualifies as a DRI under Section 3(e) of the Code of Cape Cod Commission Regulations of General Application, Chapter A, as a ***"proposed commercial, service, retail or wholesale business, office or industrial development…. *new construction with a gross floor area greater than 10,000 [square feet]."***

G4. Based on the information submitted for Commission review, the Commission finds that the Marvin Windows Showroom building, including the upper level renovation, as described in the DRI Exemption application, will not have significant regional impacts outside of the Town of Barnstable and, therefore, does not require DRI review.

G5. Based on the information submitted for Commission review, the Commission finds that a ***Change of Use*** (as defined by the Commission's regulations) of the Marvin Windows Showroom building would constitute a change requiring further Commission review according to Section 7 of the Commission's ***Administrative Regulations*** (as amended) in effect at the time this decision was rendered.

G6. Based on the information submitted for Commission review, the Commission finds that any change in the impacts of the Marvin Windows Showroom building as articulated in this decision, and/or a change to the Findings of this decision may require further Commission review according to Section 7 of the Commission's ***Administrative Regulations*** (as amended) in effect at the time this decision was rendered.

Economic Development

ED1. The proposed project, which consists of a Marvin Windows Showroom and employee office space, is located in a Growth Activity Center and is thus consistent with the 2002 (revised) Regional Policy Plan (RPP) Economic Development Goal 3.2.

ED2. Renovation of the upper level of the project will add value to an existing property for property tax purposes. The Applicant estimates the total new investment to be $210,000. The resulting increase in Assessed Value estimated by the Applicant equals $91,900, which will translate into an annual increase of $668 in tax payments to the

Town of Barnstable. The information presented by the Applicant indicates that the project will not generate a need for additional public services.

Community Character – Exterior Lighting, Noise

CCEXL-1. The building's exterior lighting is such that it will not significantly impact its immediate surroundings or the region, overall. This finding is based on the type and characteristics of the exterior lighting, the location of the fixtures on and around the building, the project's location in an already densely developed commercial area, and the design's general consistency with Technical Bulletin 95-001 and Minimum Performance Standard (MPS) 6.2.10 of the RPP.

CCNoise-1. Based on the information presented to the Commission for review, the location of the project in a densely developed commercial area, its potential noise sources, and its use as an office building and product showroom will prevent it from having a significant noise impact on its immediate surroundings or on areas outside of the Town of Barnstable.

Water Resources

WR1. The project site is connected to the municipal sewer and its wastewater will be conveyed to Barnstable's Water Pollution Control Facility. Wastewater generated by the project will not impact groundwater at the site, and will be managed through the Barnstable Wastewater Facilities Plan.

WR2. According to information submitted by the Applicant, the project meets the regional 5-ppm nitrogen-loading standard for impact to groundwater set forth in MPS 2.1.1.1 of the RPP. Existing and proposed development at the site will result in a site-wide groundwater nitrogen-loading concentration of 2 ppm.

WR3. The project site is partially located in a Wellhead Protection Area (WHPA), as defined in MPS 2.1.1.2.A of the RPP. Existing site development includes 27,800 square feet of impervious pavement and 26,200 square feet of lawn/landscaped area on 2.61 acres. Some existing lawn/landscaping, subsurface stormwater discharge basins and most natural areas are located within the WHPA.

WR4. The project is located in a Marine Water Recharge Area, a watershed that discharges to the Barnstable Harbor's main basin. Existing and projected nitrogen loads to the Barnstable Harbor system from its watershed areas are below the system's critical nitrogen load (***Cape Cod Surface Water Nutrient Management Study; Cape Cod Commission, 2002***). Therefore, the zero-net nitrogen limit (MPS 2.1.1.2.C.1) does not apply to existing and proposed development at the site. The harbor's critical load is 61 kilograms per year per acre of watershed. The development at the site results in a nitrogen load of 5.1 kg/yr/acre, less than 61 kg kg/yr/acre. Therefore, the project meets MPS 2.1.1.2.C.

WR5. Based on information submitted by the Applicant, the Commission finds that proposed and existing development at the site will not have any significant regional water-resource impacts.

Hazardous Materials/Wastes

HAZ-1. According to maps created for the 2002 (revised) RPP, the project site and building are partly located in an existing Wellhead Protection Area. As such, MPS 4.3.1.3 was considered during the review of this project.

HAZ-2. MPS 4.3.1.2 requires that development and redevelopment be in compliance with the Massachusetts Hazardous Waste Regulations. Hazardous materials and/or wastes attributable to the project at the time of this decision were natural gas (used to heat the building and to supply an outside emergency generator) and used fluorescent bulbs. The Shepley company is registered with the Massachusetts Department of Environmental Protection as a generator of hazardous waste (used fluorescent bulbs, waste oil and hazardous wastes) from other buildings and operations within the company "campus." However, due to its office and product showroom uses, the Marvin Windows Showroom project is expected to generate minimal hazardous materials or wastes.

HAZ-3. Based on the information submitted to the Commission, the Commission finds that the project will not have significant regional hazardous materials/waste impacts.

Transportation

T1. The project is located at 75 Ben Franklin Way in Barnstable. Neither Ben Franklin Way, nor the adjacent Thornton Drive, is a Regional Roadway, as defined in the RPP.

T2. The Applicant has stated that the number of individuals employed within the Shepley Wood Products campus will not change as a result of the project. The Applicant's traffic engineer has stated that, because the project will not affect the number of employees at the Shepley Wood Products campus, no increase in site-generated traffic is anticipated. Therefore, the project will not have a significant impact on traffic operations at any regional intersection or regional roadway.

T3. According to MPS 4.1.1.2, analysis of crashes and the potential safety impacts of development and redevelopment shall be required on all regional road links, at all intersections of regional roads, and at local road intersections with regional roads that are used by a project for access to the regional road network, where the project is expected to increase traffic by 25 or more trips during the project's average peak hour. Based on the trip generation estimates provided by the Applicant, no regional intersection or regional roadway would be impacted by 25 or more new vehicle trips during the project's average peak hour. Therefore, further crash evaluation is not automatically required by the RPP.

T4. MPS 4.1.1.5 requires that all DRIs whose access/egress locations intersect with public ways must meet Massachusetts Highway Department (MHD) and American

Association of State Highway Transportation Officials (AASHTO) standards for safe stopping sight distance. Based on field observations submitted by the Applicant, the stopping sight distances for locations around the project comply with AASHTO and MHD standards.

CONCLUSION

Based upon the above Findings, the Cape Cod Commission hereby concludes that as proposed, the location, character, and environmental effects of the Shepley Wood Products Marvin Windows Showroom building, including the upper level renovation project, as described in this decision, will prevent its having any significant impacts on the values and purposes protected by the Act outside of the municipality in which the development is located.

Based upon the above Findings, the Cape Cod Commission hereby grants Shepley Wood Products a DRI Exemption from the terms and provisions of the Act, pursuant to Section 12(k) of the Act for the Marvin Windows Showroom building, including the proposed upper level renovation, located in Barnstable, MA.

This Exemption decision shall be strictly construed, and is valid for three years from the date of issuance.

_____ _____

David Ansel, Chair, Cape Cod Commission Date

Commonwealth of Massachusetts Barnstable, ss.

Before me, the undersigned notary public, personally appeared _____, in his capacity as Chairman 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.

_____

Notary Public

My Commission Expires: