



CAPE COD COMMISSION

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E-mail: frontdesk@capecodcommission.org

Date: October 5, 2006
To: Michael D. Ford, Esq.
P.O. Box 665
Harwich, MA 02671
From: Cape Cod Commission
Re: Development of Regional Impact Hardship Exemption
Cape Cod Commission Act, Section 23
Applicant: Couto Management Group, LLC
169 Main Street
Stoneham, MA 02180
Owners Name: JJ Realty Trust -June 1, 1992
Project #: HDEX #06013
Project: Dunkin Donuts/Retail Development, Dennis
927 Route 28, Main Street
West Dennis, MA
Map/Parcel Book/Page
Map 84 Parcel 51-0-R L.C. Cert.#127221

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of Couto Management Group LLC for a Hardship Exemption pursuant to Section 23 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the proposed Dunkin Donuts/Retail Development project. The decision is rendered pursuant to a vote of the Commission on October 5, 2006.

PROJECT DESCRIPTION

Couto Management Group, LLC proposes to replace an existing bookstore and real estate office (2,700 square foot) located at the southwest corner of Route 28 and Route 134 in Dennis with a 2,050 square foot Dunkin Donuts restaurant and a 1,500 square foot retail business.

PROCEDURAL HISTORY

On May 11, 2006, the Dennis Board of Selectmen forwarded a discretionary referral request for a proposed Dunkin Donuts to the Cape Cod Commission, with the request that the project review be limited to transportation. Finding that the proposed project may have one or more of the regional impacts described in Section 12(b) of the Cape Cod Commission Act (ie. the impact of the proposed project on transportation and the amount of vehicular traffic that the proposed project would produce), the Commission accepted the project for DRI review on May 18, 2006.

A public hearing was held on September 25, 2006, at the Dennis Town Hall in Dennis to consider the Hardship Exemption request and the DRI for the project. The subcommittee voted to recommend approval of the Hardship Exemption, with appropriate conditions, to the full Commission, and directed staff to prepare a draft decision. The hearing was continued to the full Commission meeting of October 5, 2006. The draft decision was approved by the Subcommittee Chairman on September 28, 2006. At the Commission meeting of October 5, 2006, the hearing was closed and the full Commission voted to approve the project (15 in support and 1 opposed).

MATERIALS SUBMITTED FOR THE RECORD

<u>From the Proponent:</u>	<u>Dated</u>	<u>Revised</u>	<u>Rec'd</u>
1. Draft Conceptual Improvement Plan	undated		7/13/06
2. DRI/Hardship Exemption Application	8/25/06		8/25/06
3. Site Plans	2/7/06	9/14/06	9/18/06
4. Landscape Planting Plan	4/1/06	9/15/06	9/18/06
5. Route 28/Route 134 Concept Improvement Plan	6/14/06	9/18/06	9/20/06
6. E-mail correspondence from J. Ideman to T. Watt	10/03/06		

From state/local officials:

1. DRI Referral form and documentation	5/10/06		5/11/06
2. E-mails from D. Fortier, Dennis Town Planner to G. Cannon, CCC			5/24/06
3. Letter from D. Fortier, Dennis Town Planner to T. Watt, CCC			9/25/06

From the public:

1. Letter from Doloris O'Keefe to CCC, in opposition to the project	9/23/06		9/26/06
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The application and notices of public hearings relative thereto, the Commission staff's notes, exhibits and correspondence, the transcript and minutes of meetings and hearings and all written submissions received in the course of the proceedings are incorporated into the record by reference.

TESTIMONY

Note: see minutes in file for complete public hearing and subcommittee meeting proceedings.

At the September 25, 2006, Public Hearing, the Subcommittee heard oral testimony from the following individuals:

1. Mr. Robert Canavazzi, Town Administrator, said the Board of Selectmen believed there would be substantial impacts at the intersection and wanted to improve it. He said the Town, the Commission and the applicant had met over the summer to discuss traffic mitigation for the

project. He said the Town supports the mitigation recommended by Commission staff and asked the Commission to approve the project.

2. Mr. Don Trepte, Chairman of the Board of Selectmen, said that it is unusual for the Board of Selectmen to review an application to the Planning Board, but became aware of the problem and sought to find a solution. He said the Board of Selectmen support the project and hopes that the Commission moves it forward.
3. Ms. Anne Petty asked a number of questions, which were answered by Mr. Ideman. Is the building located in the middle of the site. Yes. Is it a drive through? No. She expressed a concern about traffic.
4. Mr. Mel Petty asked about “trips” and said that there would be an increase in traffic at the site, especially with the closing of a nearby Dunkin Donuts. Michael Garvin, the applicant’s traffic engineer, explained what a “trip” was and said that only 1/2 of the trips would be new trips – the other half would be pass-by. Mr. Garvin said they don’t have daily trip numbers. Mr. Petty said that the Route 28 entrance is right turn in only, and that people coming from Harwich will have to turn left on Swan River Road.
5. Mr. Frank Fallon noted that there had been a recent contract for work on Swan River Road and asked if this had been taken into consideration. Mr. Canavazzi said the Swan River roadwork did not involve the intersection. Mr. Fallon said that at peak hour times the traffic at the intersection is a nightmare for the Town, and said there were other “sweet” shops in the vicinity anyway. Mr. Fallon asked if the traffic study considered Saturday traffic. Mr. Cannon replied that the Commission’s January 2006 traffic study for the intersection considered AM and PM peak hours. He said traffic designers do not design for the highest peak hour of the year.

On October 5, 2006, the Cape Cod Commission held a public hearing and voted to approve the project with conditions as contained in the draft decision.

JURISDICTION

The proposed Dunkin Donuts project qualifies as a Development of Regional Impact (DRI) under the Cape Cod Commission Enabling Regulations Governing Review of Developments of Regional Impact, Barnstable County Ordinance 90-12, Chapter A, Section 2 (b), as amended, as a discretionary referral from the Town of Dennis for a project that otherwise does not meet or exceed any of the standards and criteria set forth in Section 3 of the Regulations and is not otherwise exempt by the provisions of Section 22 of the Act. The Commission accepted the referral, determining that the development may have regional impacts due to one or more of the concerns listed in Section 12 (b) of the Act (ie. the impact of the proposed project on transportation and the amount of vehicular traffic that the proposed project would produce).

FINDINGS

The Commission has considered the application of Couto Management Group, LLC for the proposed Dunkin Donuts/Retail Development Dennis project, and based on consideration of such application and upon the information presented at the public hearings and submitted for the record, makes the following findings pursuant to Sections 12, 13 and 23 of the Act:

General Findings:

Finding G1. The project proposes to replace an existing bookstore and real estate office (2,700 square foot) located at the southwest corner of Route 28 and Route 134 in Dennis with a 2,050 square foot Dunkin Donuts restaurant and a 1,500 square foot retail business.

Finding G2. Based on a memo received from the Dennis Town Planner on September 25, 2006, the project does not lie within a District of Critical Planning Concern or Area of Critical Environmental Concern, and was approved by the Dennis Planning Board as complying with the Dennis Zoning By-law.

Finding G3. As the first substantive public hearing was conducted on September 25, 2006, the project is being reviewed under the 2002 Regional Policy Plan.

Transportation Findings:

Finding T1. The existing book store and real estate office has one full access curb cut on Route 28 and two secondary curb cuts on Swan River Road. Route 28 is a regional road as defined in the Regional Policy Plan (RPP). The proposed site plan shows a right turn in only driveway on Route 28 and one full access driveway on Swan River Road (eliminating one driveway). Commission staff supports the overall reduction in curb cuts and the turn restriction on the Route 28 curb cut.

Finding T2. Based on the Rizzo Associates letter dated March 31, 2006, the proposed Dunkin Donuts and retail office is expected to generate 186 morning peak hour trips and 38 afternoon peak hour trips. Based on the expected net increase in traffic, this redevelopment project will have a significant impact on the regional roadway system.

Finding T3. The standard of review for transportation safety impacts is 25 or more peak hour trips through a high crash location. Based on information outlined in the Cape Cod Commission's draft Route 28 Safety and Traffic Flow Study, dated January 13, 2006, the Route 28/Route 134/Swan River Road intersection is a high crash location and the project is expected to generate more than 25 peak hour trips through this intersection. Therefore, this project is expected to create a safety concern at the regional intersection of Route 28/Route 134 and Swan River Road.

The Cape Cod Commission's draft Route 28 Safety and Traffic Flow Study, dated January 13, 2006 documented that angle crashes were prevalent at this location and recommended a potential solution at this intersection of having left turn lanes. Several meetings were held with the applicant, Town of Dennis Officials and Cape Cod Commission staff to discuss the problems at this intersection and potential solutions. All parties agreed that exclusive left turn lanes on Route 28 and upgraded traffic signal equipment would help reduce these types of crashes.

The applicant's transportation engineer determined that the cost to construct the left turn lanes and new traffic signal equipment would be approximately \$460,000. The applicant has stated that the cost of this improvement is beyond the scope of this project. Based on previous DRI projects, Cape Cod Commission transportation staff agrees with the applicant's assessment. The applicant has offered to redesign the intersection and the applicant's transportation engineer has determine that the cost to redesign this intersection with left turn lanes and upgraded traffic signal equipment would be approximately \$100,000. Cape Cod Commission transportation staff agrees with this cost assessment. The Subcommittee concludes that the per square foot cost ($\$100,000/3,550 \text{ SF} = \$28.17/\text{SF}$) of this mitigation is comparable with other Developments of Regional Impact reviewed and approved by the Cape Cod Commission.

The Subcommittee recommends the applicant design the Route 28/Route 134/Swan River Road intersection such that the Town of Dennis can advance the project through the Cape Cod Transportation Improvement Program (TIP).

Finding T4. The applicant is requesting relief from Minimum Performance Standard 4.1.3.4 (conducting a full traffic study for this project). The purpose of the traffic study is three fold, identify the impacts of the project, identify the impacted roadways and intersections and identify possible

transportation improvements to be implemented by the project. The Subcommittee is recommending relief from conducting the full traffic study. The Cape Cod Commission's draft Route 28 Safety and Traffic Flow Study, dated January 13, 2006 documented the traffic problem and potential solutions at this intersection. All parties have agreed with the conclusion and recommendation outlined in the CCC study and the applicant has agreed to design the needed solution. Therefore, the Commission finds that i) the applicant has met its burden of showing a hardship exists, and ii) literal enforcement of the minimum performance standards would be a hardship for the applicant, and iii) relieving the requirement of MPS 4.1.3.4 to allow for the waiver of the requirement for a full traffic study is the minimum relief required to alleviate the hardship, and iv) the relief does not nullify or substantially derogate from the intent of the Act nor will it result in detriment to the public good.

Finding T5. The applicant is requesting relief from Minimum Performance Standard 4.1.2.1 (the trip reduction requirements of the RPP). The trip reduction requirements of the RPP are in place to address traffic congestion by implementing non-structural transportation solutions. The applicant has stated that non-structural trip reduction solutions are not financially viable and that the cost of the Route 28/Route 134/Swan River Road intersection design plans are equal to 100% of the fair-share mitigation costs for this project. Cape Cod Commission transportation staff agrees with this assessment. In addition the applicant has agreed to limit the retail portion of the development such that high traffic generators (restaurants or convenience stores) would not be permitted. Therefore, the Commission finds that i) the applicant has met its burden of showing a hardship exists, and ii) literal enforcement of the minimum performance standards would be a hardship for the applicant, and iii) relieving the requirement of MPS 4.1.2.1 to allow for the waiver of the requirement for trip reduction measures is the minimum relief required to alleviate the hardship, and iv) the relief does not nullify or substantially derogate from the intent of the Act nor will it result in detriment to the public good.

CONCLUSION

Based on the findings above, the Cape Cod Commission hereby concludes:

1. The probable benefits of the proposed project outweigh the probable detriments resulting from development, in that the project as proposed will provide the town of Dennis with all necessary design plans for an existing hazardous intersection (Route 28/Route 134/Swan River Road). With the redesigned intersection and traffic signal plans, the town of Dennis will have the ability to place this project on the Cape Cod Transportation Improvement Program for implementation.
2. The project, as noted in the findings, complies with the RPP's Minimum Performance Standards, with the exception of MPS 4.1.2.1 and MPS 4.1.3.4, which are the subject of the Hardship Exemption request (Findings T4 and T5).
3. According to the Dennis Town Planner, the project does not fall within a District of Critical Planning Concern, and complies with local development bylaws and the Dennis Local Comprehensive Plan (Finding G2).
4. Based on Findings T3 and T5, the Commission finds that a literal enforcement of the provisions of the Act would involve substantial hardship to the applicant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.

The Commission hereby approves with conditions the application of Couto Management Group, LLC for the proposed Dunkin Donuts/Retail Development Dennis project as a DRI Hardship Exemption, provided the following conditions are met:

CONDITIONS

General Conditions:

Condition G1. This Hardship Exemption decision is valid for 7 years and local development permits may be issued pursuant hereto for a period of 7 years from the date of the written decision.

Condition G2. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this decision.

Condition G3. The applicant shall obtain all necessary state and local permits for the proposed project.

Condition G4. The applicant shall be responsible for providing proof of recording of the decision prior to issuance to the preliminary Certificate of Compliance.

Condition G5. No development work, as the term "development" is defined in the Act, shall be undertaken until all appeal periods have elapsed or, if such an appeal has been filed, until all judicial proceedings have been completed.

Condition G6. Any project changes subsequent to Commission approval shall require a modification from the Cape Cod Commission in accordance with the Cape Cod Commission Administrative Regulations, Modifications to Approved DRI's, in effect on the date the modification is sought. The applicant shall forward to the Commission, forthwith, copies of any and all permits and approvals issued in relation to this project and issued subsequent to this decision. A copy of final plans approved by the town of Dennis Planning Board shall be submitted to the Commission upon receipt of local approvals for review by Commission staff to determine their consistency with Section 7 of the Cape Cod Commission Administrative Regulations. Modifications made during the Town permitting process that are consistent with this approved decision may be considered as Minor Modifications #1 and approved by Commission staff.

Condition G7. The proposed Dunkin Donuts project shall be constructed in accordance with the following plan by Rizzo Associates:

	<u>Dated</u>	<u>Last Revised</u>	<u>Date Received</u>
Route 28/Route 134 Concept Improvement Plan	6/14/06	9/18/06	9/20/06

Condition G8. The applicant shall obtain a preliminary Certificate of Compliance from the Commission prior to seeking issuance of a building permit from the Town, and shall obtain a final Certificate of Compliance from the Commission prior to seeking issuance of an occupancy permit from the Town, certifying that all of the conditions in this decision have been met. The project shall be constructed in accordance with final plans listed in Condition G7. All conditions must be met before the Commission may issue a final Certificate of Compliance.

Condition G9. The applicant shall notify Commission staff in writing of its intent to seek both a preliminary and a final Certificate of Compliance at least thirty (30) days prior to the anticipated date of issuance of said building permit and occupancy permit. Such notification shall include a list of key contact(s) and their telephone numbers for questions that may arise during the Commission's compliance review. Commission staff shall complete an inspection under this condition within twenty (20) days of receipt of such notification. Staff shall inform the applicant in writing of any deficiencies and corrections needed. The Commission has no obligation to issue a Certificate of Compliance unless all conditions are complied with or secured consistent with this decision. The applicant shall allow Cape Cod Commission staff to enter onto the property that is the subject of this decision for the purpose of

determining whether the conditions contained in the decision are met, and at any time in the future to determine continuing compliance with the conditions of this and/or subsequent modification decisions.

Transportation Conditions:

Condition T1. Prior to issuance of a preliminary Certificate of Compliance (allowing for issuance of a building permit) for the proposed 3,550 square foot development, the applicant shall provide to the Commission staff for review and approval the Functional Design Report and 25% design plans for the Route 28/Route 134/Swan River Road intersection redesign, as outlined in the Route 28/Route 134 Concept Improvement Plan by Rizzo Associates dated June 14, 2006 (revised September 18, 2006), in accordance with Transportation Finding T3. Such plans must be approved by Cape Cod Commission staff prior to the issuance of the preliminary Certificate of Compliance.

Condition T2. Prior to issuance of a final Certificate of Compliance (allowing for issuance of a certificate of occupancy) for the proposed 3,550 square foot development, the Applicant shall provide to the Commission staff for review and approval (including 25%, 75% and 100% submissions) all necessary plans and permits (including all MassHighway and town of Dennis permits) for the Route 28/Route 134/Swan River Road intersection redesign, as outlined in the Route 28/Route 134 Concept Improvement Plan by Rizzo Associates dated June 14, 2006 (revised September 18, 2006), in accordance with Transportation Finding T3. Such plans shall be approved by Cape Cod Commission staff prior to the issuance of the Certificate of Compliance.

Condition T3. Restaurants, convenience stores and other businesses which may meet or exceed 500 daily trips, as defined by the most current *Trip Generation* Manual, Institute of Transportation Engineers, Washington DC, shall not be permitted in the 1,500 square foot retail portion of the project.

The Cape Cod Commission hereby approves with conditions the application of Couto Management Group, LLC pursuant to Sections 12, 13 and 23 of the Act, c.716 of the Acts of 1989, as amended for the proposed Dunkin Donuts/Retail Development Dennis project located in Dennis, MA.

W. Bradford Crowell, Chairman

Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

_____, 2006

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

Notary Public
My Commission Expires: