CAPE COD COMMISSION

3225 MAIN STREET
P.O. BOX 226
BARNSTABLE, MASSACHUSETTS 02630
(508) 362-3828
FAX (508) 362-3136
E-mail: frontdesk@capecodcommission.org

Date: January 8, 2009

To: Eliza Cox, Esq.
Nutter McClennen & Fish, LLP
P.O. Box 1630
Hyannis, MA 02601

From: Cape Cod Commission

RE: Development of Regional Impact Hardship Exemption
Cape Cod Commission Act, Section 23

Applicant/
Owner: Franco Raponi, Trustee of Paesano Realty Trust
P.O. Box 3139
Pocasset, MA 02559

Project: Paesano Company Office Building
123 Waterhouse Road
Bourne, MA

Project #: HDEX #08022

Book/Page: Lot 5, Plan Book 581, Pages 28 & 29
Book 22975 Page 95

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (the "Commission") hereby approves with conditions the Hardship Exemption application of Mr. Franco Raponi, Trustee of Paesano Realty Trust (the "Applicant") for the Paesano Company Office Building at 123 Waterhouse Road in Bourne, MA pursuant to Section 23 of the Cape Cod Commission Act (the "Act"), c. 716 of the Acts of 1989, as amended. The decision is rendered pursuant to a vote of the Commission on January 8, 2009.

PROJECT DESCRIPTION

The subject property situated at 123 Waterhouse Road in Bourne, MA and identified by Bourne Assessor's records as Map 27 Parcel 87 consists of approximately 2.62 acres (the "Site"). The Site is owned by Mr. Franco Raponi, Trustee of Paesano Realty Trust. In June 2007, following receipt of a building permit from Bourne's Planning Board, the Applicant began construction of an approximately 9,400-square foot (s.f.) office building on the Site. In August 2008, the Applicant received permission from the Bourne Planning Board to pour a 9,400-s.f. concrete, second floor in the existing building. Five units comprise the first floor; the Community Health Center of Cape Cod currently occupies one unit and the remaining units are vacant. The second floor remains unoccupied. The Site is served by 71 paved parking spaces and is accessed by a curb-cut on Waterhouse Road. A one-way only roadway is situated on the northern portion of the Site and connects Waterhouse Road and MacArthur Boulevard; the Applicant constructed this interconnect/access road as part of the development of the Site. The building is serviced by the municipal water system and a private septic system.

PROCEDURAL HISTORY

On October 2, 2008, the Commission voted to review the development located at 123 Waterhouse Road in Bourne under Section 12(h) of the Act. The Applicant submitted a Development of Regional Impact (DRI) Hardship Exemption application on October 17, 2008. A public hearing was noticed for November 24, 2008 and was continued to December 8, 2008 at the request of the Applicant's counsel. A hearing officer opened the public hearing period on November 24, 2008 and on December 8, 2008 a duly noticed public hearing was conducted by an authorized subcommittee of the Commission pursuant to Section 5 of the Act. Immediately following the public hearing on December 8, 2008, and again on December 22, 2008, the subcommittee held public meetings to deliberate on the project. On December 22, 2008 the subcommittee voted unanimously to recommend to the full Commission that the Hardship Exemption be approved with conditions. A final public hearing was held before the full Commission on January 8, 2009, where the Commission voted twelve (12) in favor and one (1) opposed to approve the Hardship Exemption, subject to conditions.

MATERIALS SUBMITTED FOR THE RECORD

In addition to the list of materials submitted for the record (see Table 1 below), the application and notices of public hearings relative thereto, correspondence, the minutes of public meetings and hearings, and all other writings contained in the DRI file are hereby incorporated into the record by reference.

TABLE 1: Materials Submitted for the Record

Materials From the Applicant	***Date Submitted***
Hardship Exemption Application materials submitted by E. Cox, P. Butler to K. Senatori	10/17/08
Email from E. Cox to K. Senatori re: meeting	10/20/08

Email from E. Cox to K. Senatori re: meeting time	10/23/08
Email from E. Cox to K. Senatori re: meeting	10/24/08
Memorandum from E. Cox, P. Butler to J. Wielgus, K. Senatori w/attached financial information and appraisal	11/3/08
Email from E. Cox to K. Senatori re: meeting time	11/5/08
Email from E. Cox to K. Senatori re: packets for mailing	11/6/08
Memorandum and enclosed packets for subcommittee from E. Cox to K. Senatori	11/11/08
Emails from E. Cox to K. Senatori re: site visit	11/12/08
Email and attached exterior lighting cuts from E. Cox to K. Senatori	11/14/08
Email from E. Cox to K. Senatori re: rescheduled hearing date	11/21/08
Email from E. Cox to K. Senatori re: site visit	11/21/08
Email from E. Cox to K. Senatori re: letter request	11/24/08
Faxed letter from E. Cox, P. Butler to K. Senatori re: continue hearing request	11/24/08
Letter from E. Cox, P. Butler to K. Senatori re: continue hearing request	11/25/08
Email from A. Brigham to A. Adams re: site visit	11/26/08
Drainage plans from E. Cox to K. Senatori	12/2/08
Memorandum with abutters letters from E. Cox to K. Senatori	12/5/08
Email from E.Cox to K. Senatori re: subcommittee meeting	12/11/08
Email from P. Butler to K. Senatori re: receipt of decision	12/16/08
Email from E. Cox to K. Senatori re: suggested edits	12/19/08
Memorandum from S. Turano-Flores to K. Senatori	12/30/08
Email from E. Cox to K. Senatori re: copies for mailing	12/29/08
Email from E. Cox to K. Senatori re: draft decision changes	12/31/08
Email from E. Cox to K. Senatori re: meeting with Dan Ojala	12/31/08
Emails from E. Cox to K. Senatori re: meeting change	1/5/09
Appendix I The Rational Method of Drainage Design submitted by Dan Ojala for the Applicant	1/7/09
Email from E. Cox to K. Senatori, S. Michaud w/attached drainage information	1/8/09
Email from S. Turano-Flores to K. Senatori re: comments to WRF6, WRC2	1/8/09
Materials from Commission Staff	***Date Submitted***
Email w/attached letter from J. Wielgus to C. Moore	9/18/08
Letter from J. Wielgus to C. Moore re: referral	9/18/08
Memorandum from A. Adams to C. Moore w/agenda packet	9/26/08
Email from A. Adams to M. Handler	9/29/08
Certified letter to E. Cox from A. Adams re: 12(h)	10/2/08
Email from K. Senatori to E. Cox re: application received	10/20/08
Email from K. Senatori to E. Cox re: fee waiver	10/20/08
Certified letter from A. Adams to E. Cox re: 12(h)	10/21/08

Email from K. Senatori to E. Cox re: meeting	11/5/08
Email from K. Senatori to E. Cox re: hearing date	11/6/08
Staff Report	11/17/08
Email from K. Senatori to C. Moore w/attached staff report	11/17/08
Email from K. Senatori to E. Cox, P. Butler w/attached staff report	11/17/08
Email from K. Senatori to E. Cox re: dates for rescheduled hearing	11/20/08
Email from K. Senatori to C. Moore re: postponed hearing	11/20/08
Email from K. Senatori to C. Moore re: rescheduled hearing date	11/21/08
Email from K. Senatori to E. Cox re: hearing / site visit date	11/21/08
Email from K. Senatori to E. Cox re: letter request	11/24/08
Fax from K. Senatori to E. Cox w/letter from Community Health Ctr	11/25/08
Email to A. Brigham from A. Adams re: site visit	11/26/08
Email from A. Adams to E. Cox re: lighting	12/1/08
Email from K. Senatori to E. Cox re: drainage	12/4/08
Email from K. Senatori to C. Moore with attached comment ltrs	12/5/08
Email from K. Senatori to E. Cox re: subcommittee meeting	12/11/08
Email from K. Senatori to C. Moore re: subcommittee meeting	12/11/08
Email from K. Senatori to C. Moore with attached draft decision	12/16/08
Email from K. Senatori to C. Moore re: LCP, zoning	12/16/08
Email from K. Senatori to E. Cox, P. Butler with attached draft decision	12/16/08
Email from K. Senatori to E. Cox, S. Turano-Flores with attached draft decision	12/23/08
Email from K. Senatori to E. Cox re: copies for mailing	12/29/08
Email from K. Senatori to E. Cox re: additional language for water resources	12/30/08
Email from K. Senatori to E. Cox re: meeting	12/31/08
Email from K. Senatori to E. Cox, S. Turano-Flores w/draft decision	1/2/09
Email from K. Senatori to C. Moore w/draft decision	1/2/09
Emails from K. Senatori to E. Cox re: meeting	1/5/09
Email from K. Senatori to E. Cox re: revisions to WRF6 and WRC2	1/8/09
Materials from Town of Bourne	***Date Received***
Email letter from C. Moore to A. Adams	9/17/08
Email from C. Moore to K. Senatori	11/20/08
Materials from Others	***Date Received***
Email from M. Handler to A. Adams	9/29/08
Comment letter from K. Gardner, Community Health Center of Cape Cod to CCC	11/24/08

TESTIMONY

A hearing officer opened the public hearing period on November 24, 2008 at 6:00 pm at the Jonathan Bourne Public Library at 19 Sandwich Road in Bourne, MA. A public hearing was held on December 8, 2008 at the Jonathan Bourne Public Library at 19 Sandwich Road in Bourne, MA. Mr. Michael Blanton, the Commission representative from Bourne, opened the continued hearing at 6:00 pm.

Attorney Eliza Cox of Nutter, McClennen & Fish, LLP presented on behalf of the Applicant. Ms. Cox described the Site noting that the first floor was built to accommodate five units. She stated that unit one is occupied by the Community Care Center of Cape Cod, and units two through five are vacant because the Town is precluded from issuing permits during the pendency of the DRI review. She stated that the second floor has no access other than a ladder. She noted that there are seventy-one parking spaces with frontage on two sides of the building. She noted that the new connection road between Waterhouse Road and MacArthur Boulevard was constructed in accordance with a Massachusetts Highway Department permit. Attorney Cox then discussed the project chronology and discussed the standards for Hardship Exemptions. Attorney Cox stated that she believed that this standard was met, and described the requested relief, which was to allow for the full use and occupancy of the first floor. Attorney Cox requested that the subcommittee exempt the project from having to prepare a traffic study, provide fair share traffic payments, provide open space mitigation, and comply with the exterior lighting requirements. She further requested relief to allow for the deferral of the implementation of the TDM program, nitrogen mitigation, and additional landscaping, as necessary, prior to use or occupancy of the second floor. Attorney Cox stated that the Applicant would agree to the condition that prior to the use and occupancy of the second floor, the he would implement the trip reduction program, install a denitrification septic system, make a payment for nitrogen mitigation, enter into a monitoring and compliance agreement with the Commission for nitrogen removal, and add additional landscaping as is necessary at that time to help screen the building. Attorney Cox stated that the Applicant was currently seeking relief from traffic study, fair share traffic payments, open space, and exterior lighting requirements. Attorney Cox described the Applicant's financial hardship and concluded by stating that currently, the Applicant does not have the financial ability to conduct additional studies or make any significant changes to the building, and the Applicant cannot continue to bear the financial losses caused by the project.

Ms. Kristy Senatori, Chief Regulatory Officer for the Commission, presented the Staff Report, briefly describing the project history, the Commission's jurisdiction over the project, the purpose of the hearing, the Commission staff analysis in the specific resource issue areas, and the conclusions regarding the hardship exemption application.

Mr. Chris Farrell, chairman of the Town of Bourne's Planning Board said that in no way did Mr. Raponi ever do anything without the knowledge of the Town of Bourne's Planning Department. Mr. Farrell stated his opinion that the land in terms of vegetation is better now than it was over the last thirty years. According to Mr. Farrell, the Bourne Planning Board told Mr. Raponi that

he could pour a second floor but that if he were to occupy one square inch of the second floor, that the Planning Board would refer the project to the Commission, to which Mr. Raponi agreed. According to Mr. Farrell, Mr. Raponi said the only thing on the second floor would be mechanicals and a stairway up there, and that there would be no occupancy of the second floor. Mr. Farrell stressed again that Mr. Raponi did nothing without local knowledge.

Mr. Farrell stated that regarding the color scheme, mentioned in staff report, that Bourne did not have a local plan to dealing with architecture. Mr. Farrell stated that the Board asked Mr. Raponi to provide landscape screening along McArthur Boulevard, which he has done to the satisfaction of the Board. Mr. Farrell stated that the parking configuration was not excessive and that the Town of Bourne was satisfied with the exterior lighting. Mr. Farrell stated that all development contributes to increased transportation, and that even if all development was halted, there would still be increased traffic. He added that trip generation analysis in the staff report is based on 18,800 s.f. and not on 9,400 s.f. Mr. Farrell discussed nitrogen loading, stating that the loading calculation was based on 18,800 s.f. and not on 9,400 s.f. and that nitrogen loading was a local issue which could be addressed by the local Board of Health. Mr. Farrell concluded by stating that he felt that there was a hardship because Mr. Raponi did everything that was asked of him by the Bourne Planning Board.

Linda Zuern, an abutter, had no problems with the building itself, but noted that she had been an abutter since 1996 and disagreed with Mr. Farrell's statements. In particular, she stated there were trees in the lot, that the lot was stripped only a few years ago, and that Mr. Raponi had encroached on state property. Ms. Zuern said that when the building was being constructed, she heard that it was going to be a one-story building. She brought her concerns to the building inspector's attention and the building inspector told her that the second floor was for storage only. Her other concern was whether the storage upstairs would be rented out, or was for office use.

The subcommittee members had questions regarding the Commission's jurisdiction and the ability to defer mitigation. Attorney Jessica Wielgus, Commission Counsel, responded that the project was under Commission review and that the Applicant needs a decision from the Commission regarding the hardship exemption application but that in the course of its review, the subcommittee could consider the deferment of mitigation. The subcommittee members had other questions regarding parking layout, nitrogen loading, uses of the building, transportation mitigation, the access road, and the size of the building.

Mr. Peter Meier of the Bourne Planning Board stated that the footprint of the building is 9,400 s.f. and it has a provision for occupancy on two floors. When the subcommittee members had questions regarding how to monitor whether the second floor is being used, Mr. Meier stated that enforcement is not a problem.

Ms. Coreen Moore, the Bourne Town Planner, stated that prior to construction of the building, she met with Mr. Raponi and that he was aware of the 10,000 sq. ft. threshold and inquired about the second floor. She stated that Mr. Raponi did not install a second floor after being informed that this would trigger Commission review. Ms. Moore noted that the definition of Gross Floor

Area differs in the Building Code and in the Commission's regulations. She said that the resulting situation was because of a miscommunication. She added that she supported deferred mitigation and that the Town deserved some mitigation when Mr. Raponi occupies the second floor.

Mr. Blanton adjourned the hearing at 7:33 pm at which point a subcommittee meeting was conducted.

Mr. Blanton opened the subcommittee meeting at 7:34 pm.

The subcommittee deliberated in the issue areas of natural resources, open space, exterior lighting, parking, landscaping, transportation, and wastewater.

The subcommittee found that the Applicant fulfilled its burden to show that a hardship exists in complying with the requirements of the RPP.

The subcommittee approved unanimously motions to waive the requirements of a natural resources inventory, and to defer the requirements of open space, exterior lighting, parking, landscaping and wastewater prior to any access to, occupancy of, or use of the second floor, including but not limited to requesting any building permits for the second floor. The subcommittee found that a literal enforcement of the provisions of the Act with respect to open space, exterior lighting, parking, landscaping and wastewater requirements as they relate to the use of the first floor, would involve substantial financial hardship and relief from the requirements as they relate to the first floor, 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 subcommittee noted at that time, the Commission could consider a credit of $105,000, which was the cost to construct the on-Site access road, to offset transportation mitigation impacts of this project.

The subcommittee directed staff to draft a decision and the meeting was adjourned at 9:15 pm.

JURISDICTION

On October 2, 2008, the Commission voted to review the development located at 123 Waterhouse Road in Bourne under Section 12(h) of the Act. The project qualifies as a DRI under Section 3(e)(i) of the DRI Enabling Regulations as new construction of a building with a Gross Floor Area greater than 10,000 square feet.

FINDINGS

The Commission has considered the application of Mr. Franco Raponi, Trustee of Paesano Realty Trust for the Paesano Company Office Building, 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 the 2002 Regional Policy Plan (RPP) and Section 23 of the Act:

General Findings:

GF1. As the first substantive hearing was held on December 8, 2008, the RPP in effect for this project is the 2002 RPP.

GF2. On October 2, 2008, the Commission voted to review the development located at 123 Waterhouse Road in Bourne under Section 12(h) of the Act. The project qualifies as a DRI under Section 3(e)(i) of the DRI Enabling Regulations as new constrnction of a building with a Gross Floor Area greater than 10,000 square feet.

GF3. The Site consists of 2.62 acres of land at 123 Waterhouse Road in Bonrne that is improved with a two-story, 18,800-s.f. office bnilding known as the Paesano Company Office Building. The building consists of a 9,400-s.f. first floor and a 9,400-s.f. second floor. Presently, there is no access to or use of the second floor. Five tenant spaces comprise the first floor. The Site building is serviced by the municipal water system and a private septic system. Seventy-one (71) paved parking spaces are located on-Site.

GF4. Prior to the Commission asserting its jurisdiction over the development, the Applicant received a Certificate of Occupancy for one unit on the first floor, which is currently occupied by the Community Health Center of Cape Cod.

GF5. The Commission finds that the Applicant has a significant financial hardship as it relates to the use of the first floor. The Applicant is losing approximately $6,483.43 per month as the Applicant is unable to obtain revenue on the vacant first floor units. Accordmg to financial information provided by the Applicant, the monthly rental income based on one unit rented is $2,486.66 and the monthly mortgage payment of $7,985.00, the monthly real estate taxes of $500.00, the monthly insurance payment of $100.00, the monthly utility bills of $250.00, and monthly miscellaneous expenses of $135.00, leave the Applicant with a monthly loss of $6,483.43. The Applicant further estimates as of October 28, 2008, the land, site, development and construction costs associated with the property and the building amounted to over $2,361,342.04. This includes approximately $105,000 for construction of the roadway interconnect between Waterhouse Road and MacArthur Boulevard.

GF6. The Applicant has met his burden to show that fully complying with the requirements of the RPP prior to obtaining use of the first floor commercial space would create a financial hardship, particularly the required open space contribution, the expense of transportation studies and mitigation, the community character requirements, and the expense of water resource mitigation.

GF7. The development does not lie within a District of Planning Concern, and is consistent with the Bourne Local Comprehensive Plan and municipal development bylaws.

GF8. The probable benefits of the development outweigh the probable detriments.

GF9. Due to financial hardships, the Commission finds that a Hardship Exemption is appropriate and that the Applicant has fulfilled its burden to show that a hardship exists in conforming with the requirements of the RPP at this time. A literal enforcement of the provisions of the Act would involve an open space contribution, community character requirements, transportation studies and mitigation, and water resources studies and mitigation, that would represent a substantial financial hardship to the Applicant. Relief from these requirements, as it relates to use of the first floor only, 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 relief granted relates directly to the nature of the identified hardship and is the minimum relief necessary to address the hardship.

Community Character Findings:

CCF1. The Site is triangular shaped and is bounded by both Waterhouse Road and MacArthur Boulevard which presents difficulty in meeting Minimum Performance Standard (MPS) 6.2.7 which requires that parking to be located to the rear or side of a building.

CCF2. MPS 6.2.7 requires that parking to be located to the rear or side of a building unless such location will have an adverse or detrimental impact or is infeasible. The Commission finds that relocating the parking relative to the use/occupancy of the first floor is infeasible. The Commission finds that it is appropriate to grant the hardship waiving the requirement of MPS 6.2.7 as it relates to the use of the first floor, because the Applicant demonstrated a substantial hardship and because relief can 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 allows the Applicant to defer further compliance with MPS 6.2.7 until such time as prior to access to, occupancy of, or any use of the second floor including but not limited to, requesting any building permits for the second floor, at which time, the Applicant shall, unless a further waiver is granted by the Committee, be required to seek a modification of the Commission's decision.

CCF3. MPS 6.2.9 requires that development implement a landscape plan and Goal 6.2 of the RPP calls for development to be consistent with the Commission's Design Guidelines. The Commission finds that it is appropriate to grant the hardship waiving the screening requirement as it relates to the use of the first floor, because the Applicant demonstrated a substantial hardship and because relief can 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 finds that landscaping may be needed prior to access to, occupancy of, or any use of the second floor, including, but not limited to, requesting any building permits for the second floor.

Exterior Lighting

EXLF1. MPS 6.2.10 requires that *"development and redevelopment conform with the Cape Cod Commission's exterior lighting design standards and submission requirements, Technical Bulletin 95-001."* According to the *As-Built Site Plan* (9/24/08), exterior lighting for the project consists of two single-headed and two double-headed parking area pole mounted lights and nine (9) on-building mounted fixtures. The *As-Built Plan* indicates the pole lights use 15-foot poles. Eight of the on-building lights are mounted at 20 feet; one is mounted at 8 feet. The fixture light source types, light styles, mounting heights, shielding, cutoffs, and pole and total fixture heights are consistent with Technical Bulletin standards.

EXLF2. No information was provided on foot-candle levels. Technical Bulletin standard 2.6 stipulates a maximum foot-candle level of 8.0 as measured directly below the light at grade. A nighttime visit to the Site by Commission staff on 11/28/08 indicates the foot-candles measured for the single and double-headed pole mounted lights (16.8 and 28.7 foot-candles respectively) significantly exceeds the levels stipulated by standard 2.6. Foot-candle levels for all other fixtures on the Site at the time of the staff visit conformed to the Technical Bulletin.

EXLF3. To bring the pole-mounted lights into conformance with the Technical Bulletin foot-candle standard 8.0 the Applicant would have to replace the fixture heads with ones that use a lower wattage lamp. Because this process could cost the Applicant several hundred dollars per fixture head, and would likely involve several weeks for removal of the existing heads, and receipt and installation of the new, lower wattage ones, the Commission finds that a literal enforcement of the provisions of the Act with respect to the foot-candle requirements articulated in the RPP and Exterior Lighting Technical Bulletin would involve substantial financial hardship and relief from the foot-candle requirements may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.

Natural Resources / Open Space Findings:

Natural Resources

NRF1. The project is not located in a Significant Natural Resource Area as mapped by the RPP. The Site does not have wetlands present, and due to the complete disturbance of the property associated with the existing building, there does not appear to be a need to evaluate the Site for habitat values. In light of these facts, the Commission waives the requirement for a natural resource inventory per MPS 2.4.1.1.

Open Space

OSF1. Based on the open space requirement of MPS 2.5.1.3, the Commission finds that a literal enforcement of the provisions of the Act with respect to the open space requirement as it related to the use of the first floor only would involve substantial hardship and relief from this requirement as it relates to use of the first floor only, may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. Based on

the findings of hardship, the Commission allows the Applicant to defer the provision of open space until such time as prior to access to, occupancy of, or any use of the second floor including but not limited to requesting any building permits for the second floor.

Transportation Findings:

TF1. Commission staff conducted a site visit and reviewed material submitted by the Applicant. Based on the information submitted, the Commission concludes that this project will have significant impacts on adjacent roadways.

TF2. Commission staff calculated trip generation estimates for a 9,400-s.f. office building and an 18,800-s.f. office building. These trip generation calculations are based on the Institute of Transportation Engineer (ITE) *Trip Generation, 7th Edition* for General Office Use (ITE LUC 710). The trip generation estimates are outlined below in Table 1.

Table 1 – Trip Generation Comparisons

Use	Daily Trips	AM Peak Hour	PM Peak Hour
9,400 s.f. office building	216	28	38
18,800 s.f. Office Building	368	49	64

Based on the trip generation analysis submitted by the Applicant, the proposed 18,800 s.f. office building will have a significant transportation impact on the regional roadway network.

TF3. In part, MPS 4.1.3.4 requires all DRIs to provide an adequate traffic study to identify the impacts of the project. The Applicant has not submitted a traffic study in conformance with the RPP. The Commission finds that a literal enforcement of the provisions of the Act with respect to the traffic study requirements as it relates to use of the first floor only, would involve substantial financial hardship and relief from this requirement as it relates to the first floor only, may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. Based on the findings of hardship, the Commission allows the Applicant to defer the traffic study requirement until such time as prior to access to, occupancy of, or any use of the second floor including but not limited to requesting any building permits for the second floor.

TF4. MPS 4.1.1.7 requires all DRIs access/egress locations with public ways to meet Massachusetts Highway Departments and American Association of State Highway Transportation Officials standards for safe stopping sight distance. The Site has full access onto Waterhouse Road and a second driveway onto the on-Site interconnect/access road (constructed by the Applicant) with no direct access onto

MacArthur Boulevard. The Waterhouse Road driveway and the access road driveway both have adequate sight distance. Commission staff has stated and the Commission finds that both site driveways for this project comply with MPS 4.1.1.7.

TF5. The Applicant constructed a one-way access road on the property connecting MacArthur Boulevard to Waterhouse Road. This access road is not signed for regional traffic. Commission staff estimates that about forty (40) percent of MacArthur Boulevard southbound traffic destined for Waterhouse Road currently utilizes this access road. Commission staff has stated that mainly local traffic is utilizing the roadway due to the lack of signage. The access road is approximately 360 feet long and cost $105,000 to construct. The cost to construct this road is $292 per linear foot ($105,000/360 ft), which is a reasonable expense to build a new roadway.

The Applicant agreed to consult with the Massachusetts Highway Department (MassHighway) relative to signing this access road for motorists traveling southbound on MacArthur Boulevard (Route 28).

TF6. MPS 4.1.3.4 requires DRIs to mitigate all traffic-related impacts associated with the proposed project. Appropriate mitigation can be achieved through in-kind strategies (roadway widening, signalization, etc.), non-structural means (transit, preservation of developable land) or a combination of these measures. In determining the cost to offset the impacts of an 18,800-s.f. office building, Commission staff estimates the cost to maintain the transportation infrastructure based on a vehicle miles traveled formula, which is a formula that multiplies the impact of the project by the cost to maintain the roadway infrastructure by the number of estimated miles traveled by the traffic accessing the project divided by the capacity of the roadway. This calculation produces a cost per vehicle miles traveled estimate of the transportation infrastructure required of a development project. Based on current infrastructure expenses, the cost to maintain the transportation infrastructure required for this development is estimated to be $153,704.

The Commission finds that a literal enforcement of the provisions of the Act with respect to the fair share transportation mitigation requirement as it relates to use of the first floor only, would involve substantial financial hardship and relief from this requirement as it relates to the first floor only, may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. Based on the findings of hardship, the Commission allows the Applicant to defer the fair share transportation mitigation requirement until such time as prior to access to, occupancy of, or any use of the second floor including but not limited to requesting any building permits for the second floor. At such time, the Commission may consider a transportation credit of $105,000, the cost to construct the on-Site access road, to offset the mitigation impacts of this project.

TF7. Waterhouse Road currently has a sidewalk in front of the Site. The Commission encourages the planning, design and construction of sidewalks to connect existing commercial and residential properties to allow for safe convenient access for all modes of transportation and to maintain sustainable/walk-able communities.

TF8. The standard of review for transportation safety impacts is 25 or more new peak hour trips through a high crash location. A high crash location is defined as a location where three (3) or more crashes have occurred for three (3) consecutive years. Based on a trip generation estimate for a 9,400-s.f. office building and trip distribution of fifty (50) percent from the north, thirty (30) percent from the south and twenty (20) percent from Waterhouse Road, the project would not impact any know high crash location by twenty-five (25) peak hour trips.

TF9. MPS 4.1.2.1 requires all DRIs to reduce new vehicle trips in and out of the site by 25 percent over what is typically expected for the land use. Based on the increase in average daily traffic of 368 trips per day, the trip reduction requirement for this project is 92 [368 x .25] daily vehicle trips. The Commission finds that a literal enforcement of the provisions of the Act with respect to the trip reduction requirement as it relates to use of the first floor only, would involve substantial financial hardship, and relief from this requirement as it relates to the first floor only, may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. Based on the findings of hardship, the Commission allows the Applicant to defer the trip reduction requirement until such time as prior to access to, occupancy of, or any use of the second floor including but not limited to requesting any building permits for the second floor.

Water Resource Findings:

WRF1. The project is not located in a wellhead protection area.

WRF2. The project, as constructed, does not meet MPS 2.1.1.1 which limits the project's nitrogen-loading concentration to 5 parts per million (ppm-N).

WRF3. The project, as constructed, does not meet MPS 2.1.1.2.C, which limits the project's nitrogen load to the Back River watershed. The watershed drains to the Back River, a nitrogen-sensitive coastal resource in an Area of Critical Environmental Concern. The nitrogen offset required by MPS 2.1.1.2.C depends on the level of wastewater treatment and nitrogen removal. The project, as constructed, uses a standard Title-5 septic system with a design capacity of 1,332 gallon per day (gpd). Standard Title-5 systems are not designed to remove nitrogen to the levels required by MPS 2.1.1.1.

WRF4. To meet MPS 2.1.1.1 and 2.1.1.2.C for project wastewater, the Applicant needs to:

(i) install Massachusetts Department of Environmental Protection (DEP)-approved innovative/alternative septic components and denitrify project wastewater to an effluent nitrogen strength of 17 ppm-N; and

(ii) provide $64,400 nitrogen offset for use by the Town of Bourne to develop nitrogen management strategies in the Back River watershed.

Because the permits issued by the DEP for de-nitrification septic systems allow for a nitrogen effluent in excess of the 17 ppm required to meet the Cape Cod Commission standards per MPS 2.1.1.1, the Applicant would need to enter into a nitrogen monitoring agreement with the Commission and provide an additional nitrogen offset in order to meet MPS 2.1.1.2.C.

WRF5. The Commission finds that a literal enforcement of the provisions of the Act with respect to water resource mitigation MPS 2.1.1.1 and MPS 2.1.1.2C as it relates to the use of the first floor only, would involve substantial hardship, financial or otherwise and that desirable relief from these requirements as they relate to the first floor only, may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. Based on the findings of hardship, the Commission allows the Applicant to defer the water resources mitigation requirements of MPS 2.1.1.1 and MPS 2.1.1.2C until such time as prior to access to, occupancy of, or any use of the second floor including but not limited to requesting any building permits for the second floor.

WRF6. The goal under RPP section 2.1.3 is to protect "*the overall water quality of the aquifer and its resources by providing adequate stormwater management and treatment.*" This goal is achieved in part through MPS 2.1.3.2, which requires drainage designs adequate to handle the 25-year 24-hour storm and consistency with Massachusetts Stormwater Guidelines, and MPS 2.1.3.3, which requires use of best management practices. An operation and maintenance plan for the stormwater collection and infiltration system is required by MPS 2.1.3.6 to ensure the system's proper function.

The project Site is fully developed except for the southern portion of the Site. A landscape/stormwater plan has not been provided for this area where soil in and around an unfinished stormwater retention basin is presently devoid of vegetation. On January 8, 2009, the Applicant submitted a certified statement from a professional engineer indicating that the stormwater system is sized to accommodate the runoff from the project site for the 25 year 24 hour storm event in accordance with MPS 2.1.3.2. The referenced statement further indicates that, as constructed, the stormwater system infiltrates runoff directly beneath the parking areas without the bio-filtration required by MPS 2.1.3.3. The Applicant has constructed a stone swale on the MacArthur Boulevard side of the building that partially infiltrates storm-water runoff off of MacArthur Boulevard and transports it to an off site retention area South of locus. No storm-water from MacArthur Boulevard impacts the onsite retention basin shown on the as-built plan as "drainage area" on the South of the parking lot.

CONCLUSION

Based on the findings above, the Commission hereby concludes:

1) That the probable benefits of the development outweigh the probable detriments.
2) Due to financial hardships, the Commission finds that a Hardship Exemption is appropriate and that the Applicant has fulfilled its burden to show that a hardship exists in conforming with the requirements of the RPP at this time. A literal enforcement of the provisions of the Act would involve an open space contribution, community character requirements, transportation studies and mitigation, and water resources studies and mitigation, that would represent a substantial financial hardship to the Applicant. Relief from these requirements, as it relates to use of the first floor only, 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 relief granted relates directly to the nature of the identified hardship and is the minimum relief necessary to address the hardship.
3) The project does not fall within a District of Critical Planning Concern, and complies with the local development bylaws and the Bourne Local Comprehensive Plan.

The Cape Cod Commission hereby approves with conditions the Hardship Exemption application of Franco Raponi, Trustee for Paesano Realty Trust, for the Paesano Company Office Building, provided the following conditions are met:

CONDITIONS

General Conditions:

GC1. The building was constructed in a manner consistent with the following plans:

- As-Built Site Plan, dated September 24, 2008, prepared by Warwick & Associates, Inc.
- Sewage Disposal System Design, dated January 21, 2008, prepared by Warwick & Associates, Inc.
- Site Plan with Revised Septic Layout, dated January 21, 2008, prepared by Warwick & Associates, Inc.
- Window Location Plan A-1, dated January 25, 2008, prepared by RESCOM Architectural, Inc.
- Parking Plan C1.0, dated August 1, 2008, prepared by MEDCOM Architectural Group LLC
- Elevations A-2, dated January 25, 2008, prepared by RESCOM Architectural, Inc.

Any deviation from the above plans, including but not limited to changes to the building design, building location, lighting, landscaping or other site work, construction of, access to, occupancy of, or any use of the second floor, including but not limited to requesting any building permits for the second floor, storage of any materials, or the leasing of any space on the second floor, shall require approval by the Cape Cod Commission through a modification of this decision, pursuant to Section 12 of the Commission's Enabling Regulations. The Applicant shall submit to

the Commission any additional information deemed necessary to evaluate any modifications to the approved plans.

GC2. This DRI 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.

GC3. 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.

GC4. 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.

GC5. The Applicant agrees to allow Cape Cod Commission staff to enter onto the property, which is the subject of this decision at reasonable times and after reasonable notice for the purpose of determining whether the conditions contained in the decision are met.

GC6. No additional development (as that term is defined by the Act) or construction of the second floor, including but not limited to any access to, occupancy of, or any use of the second floor including but not limited to the request of any building permits, storage of any materials, or leasing of any space on the second floor, shall be undertaken at the Site without approval by the Cape Cod Commission through a modification of this decision, pursuant to Section 12 of the Commission's Enabling Regulations. Prior to the time that any development, prior to building permits are sought for the second floor, and prior to any access to, occupancy of, or use of the second floor is proposed including but not limited to the storage of materials or leasing of the second floor, the Applicant shall return for DRI review of the entire development and associated impacts in the areas of community character, open space, transportation, and water resources, and shall either comply with the 2002 RPP or seek and obtain a waiver therefrom. Nothing in this decision shall be interpreted to preclude the Applicant from seeking and the Commission from granting further hardship exemption relief, or any other type of relief available at that time, as it relates to access to, occupancy of, or use of the second floor including but not limited to the request of any building permits, storage of any materials, or leasing of any space on the second floor.

Community Character:

CCC1. Prior to seeking building permits for the second floor, and prior to any access to, occupancy of, or use of the second floor including but not limited to the request of any building permits, storage of any materials, or leasing of any space on the second floor, the project shall be reviewed by the Commission's Regulatory Committee (the "Committee") as a modification and unless a further waiver is granted by the Committee the Applicant shall be required to provide landscape screening consistent

with the Commission's Design Guidelines and RPP Goal 6.2 and MPS 6.2.9 and unless a further waiver is granted by the Committee, shall be required to seek a modification to the Commission's decision with respect to parking design in accordance with MPS 6.2.7.

Natural Resources / Open Space Conditions:

OSC1. Prior to seeking building permits for the second floor, and prior to any access to, occupancy of, or use of the second floor is proposed including but not limited to the request of any building permits, storage of any materials, or leasing of any space on the second floor, the Applicant shall be required to seek a modification of this decision in order to comply with the open space requirements in effect at the time of the original DRI approval unless a further waiver is granted by the Committee.

Transportation Conditions:

TC1. Prior to seeking building permits for the second floor, and prior to any access to, occupancy of, or use of the second floor is proposed including but not limited to the request of any building permits, storage of any materials, or leasing of any space on the second floor, the Applicant shall seek a modification of this decision in order to address the traffic study requirements of the RPP as outlined in TF4.

TC2. Prior to seeking building permits for the second floor, and prior to any access to, occupancy of, or use of the second floor is proposed including but not limited to the request of any building permits, storage of any materials, or leasing of any space on the second floor, the Applicant shall consult with the MassHighway relative to signing the access road (as shown on the "As-Built Site Plan" dated September 24, 2008 by Warwick & Associates, Inc.) for motorists traveling southbound on MacArthur Boulevard (Route 28) as outlined in TF6.

TC3. Prior to seeking building permits for the second floor, and prior to any access to, occupancy of, or use of the second floor is proposed including but not limited to the request of any building permits, storage of any materials, or leasing of any space on the second floor, the Applicant shall make a monetary payment of $153,704 as outlined in TF6 to comply with MPS 4.1.3.4 unless a further waiver is granted by the Committee. As outlined in TF6, the Commission may consider a transportation credit of $105,000 toward this mitigation, which was the cost to construct the on-Site access road. These funds shall be held by the County of Barnstable and will be expended upon the recommendation of the Cape Cod Commission Executive Director to support the planning, design of, and/or implementation of transportation improvements in the Town of Bourne.

TC4. Prior to seeking building permits for the second floor, and prior to any access to, occupancy of, or use of the second floor is proposed including but not limited to the request of any building permits, storage of any materials, or leasing of any space on

the second floor, the Applicant shall implement an trip reduction plan as identified in TF10.

Water Resource Conditions:

WRC1. Prior to seeking building permits for the second floor, and prior to any access to, occupancy of, or use of the second floor is proposed including but not limited to the request of any building permits, storage of any materials, or leasing of any space on the second floor, the Applicant should seek a modification of this decision and the project be reviewed by the Regulatory Committee of the Commission to ensure compliance with MPS 2.1.1.1 and MPS 2.1.1.2.C. Project modifications necessary to meet these standards that increase the existing septic system's present capacity of 1,332 gpd shall be required to be reviewed by the Commission as a modification to this decision.

WRC2. Prior to seeking building permits for the second floor, and prior to any access to, occupancy of, or use of the second floor is proposed including but not limited to the request of any building permits, storage of any materials, or leasing of any space on the second floor, the Applicant shall seek a modification of this decision and the project should be reviewed by the Regulatory Committee of the Commission. The Applicant shall submit a landscape / re-vegetation plan for the southern portion of the site for Commission staff approval in accordance with MPS 2.1.3.3 unless a further waiver is granted by the Committee. In accordance with MPS 2.1.3.6, the plan, if required, shall detail protocol, schedules and the party responsible for the stormwater system's operation and maintenance to ensure the system's proper function.

The landscape / re-vegetation plan, if required, shall be implemented prior to any occupancy permit for the second floor of the building to ensure that plantings have adequate time to become established.

The Cape Cod Commission hereby approves with conditions the application of Franco Raponi, Trustee of Paesano Realty Trust as a Development of Regional Impact Hardship Exemption pursuant to Section 23 of the Act, c. 716 of the Acts of 1989, as amended for the Paesano Company Office Building in Bourne, MA.

John D. Harris, Chair

8-Jan 2009
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

Jan 8, 2009

Before me, the undersigned notary public, personally appeared John D. Harris, 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:
10/13/11