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CAPE COD
COMMISSION

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STAFF REPORT

PROJECT: MINOR MODIFICATION #2 REVIEW
PAESANO PLACE/ PAESANO REALTY TRUST
123 WATERHOUSE ROAD, BOURNE
DRI/HDEX08022

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DATE: FEBRUARY 4, 2016

PROJECT DESCRIPTION

The applicant has applied for a modification to the DRI/ Hardship Exemption decision for the Project in order to use and occupy the second floor of the existing office building on the Project Site, and to construct a new, additional office building with associated site improvements. The applicant has requested further hardship relief as part of the modification, claiming a financial hardship in providing mitigation otherwise required by various RPP minimum performance standards applicable to the Project. The Project site was significantly disturbed prior to the applicant developing the existing building and site, and prior to the Commission's review of the Project.

BACKGROUND

The Commission granted DRI/ Hardship Exemption approval to the Project in 2009. At the time the Commission undertook review, construction of the existing building and associated improvements were substantially complete. As the existing building and site were developed, the town and applicant misunderstood the threshold for DRI review; the building is two floors, and the town and applicant incorrectly believed that if the second floor was not immediately proposed to be occupied and made habitable upon construction, then the second floor would not

count as Gross Floor Area (“GFA”) (as that term is defined in the DRI Enabling Regulations). The first and second floors of the building are 9,400 sq ft each; together they total 18,800 sq ft GFA, which exceeds the 10,000 sq ft GFA mandatory DRI building threshold. Upon discovering that the building exceeded a mandatory DRI threshold, the Commission voted to assert jurisdiction over the Project, and subsequently reviewed the Project and issued the decision.

The applicant was granted hardship exemption relief from certain minimum performance standards of the RPP when DRI approval was granted. (The 2002 RPP applies to the Project, and to this modification request to the CPR). In the approval, the Commission found that requiring full compliance with the RPP prior to and as a condition of occupying the first floor of the constructed building would be a financial hardship to the applicant, particularly the required open space contribution, the expense of transportation studies and mitigation, the community character requirements, and the expense of water resource mitigation. The Commission allowed the applicant to use and occupy the first floor with a deferral of mitigation for the entire Project in the RPP issue areas of community character, open space, water resources and transportation, unless and until proposed use and occupancy of the 2nd floor.

As a condition of the DRI/ hardship exemption approval, the applicant is required to seek a modification to the decision from the Regulatory Committee (now the Committee on Planning and Regulation) prior to and in order to use and occupy the second floor of the existing building. The modification is to be reviewed and potential project impacts therein mitigated under the RPP issue areas of Community Character, Open Space, Water Resources and Transportation, as more specifically set out in the decision. The decision provides that the CPR may grant additional hardship relief under these issue areas in the modification decision.

Further Hardship Exemption Relief Request

As part of this modification, the applicant seeks further hardship exemption relief from providing required mitigation associated with RPP Open Space, Water Resources and Transportation minimum performance standards, claiming a financial hardship.

Section 9 of DRI Enabling Regulations and Section 23 of Commission Act set out the standards for granting hardship exemption relief. In order to grant such relief, the Commission, or CPR in this case, must find that:

- (i) a literal enforcement of the provisions of the Act (or RPP) would involve substantial hardship, financial or otherwise;*
- (ii) such relief granted shall be related directly to the nature of the identified hardship and shall be the minimum relief necessary to address the hardship;*
- (iii) any relief granted shall not nullify or substantially derogate from the intent and purposes of the Act, or result in a substantial detriment to the public good, [viewed in light of]...the extent a project's compliance with the Act, RPP, municipal development bylaws, Local Comprehensive Plan, and, if applicable, compliance with the purposes of a District of Critical Planning Concern (DCPC) as contained in DCPC nomination and/or designation documents.*

In this case, the CPR must find that compliance with the RPP for the projects proposed in the modification would create not only a hardship on the applicant, but a substantial hardship. It follows that self-created hardship may not be a hardship or substantial in nature. The hardship claimed here is different than the one recognized in the original decision. Under the original decision, the applicant was able to make some use of the constructed building without full

compliance with the RPP. Here, the applicant has or should have full knowledge of Commission jurisdiction and permitting requirements associated with proposed use and occupancy of the existing building's second floor, and has had the corresponding opportunity to plan and budget for the same.

The CPR should also consider that this modification includes a proposed additional building and associated improvements not contemplated in the 2009 decision, with close attention given to the applicant's voluntary allocation of resources to fund associated construction and operational costs of the building, rather than DRI mitigation. As staff understands it, no revenue generation is anticipated with the second building, as the applicant intends to use it for his business office. The new building also creates additional impacts from which the applicant seeks further relief, which suggests that the claimed hardship is, at least in part, self-created.

The applicant has claimed a financial hardship from meeting open space, transportation and water resources requirements. If the CPR determines that compliance with these requirements indeed creates a substantial financial hardship for the applicant, it should consider what the minimum level of financial relief is necessary to address the hardship. Evidence to support the same has not yet been provided in the modification application materials. Phasing the payment of mitigation requirements may be sufficient, in the discretion of the CPR, to address the claimed financial hardship.

The CPR should consider detrimental impacts on resources and interests protected in the RPP associated with granting hardship relief (open space, transportation and water resources), especially in terms of the reduction or full waiver of financial mitigation requirements otherwise required in the RPP, and how greatly the hardship exemption request deviates from the requirements of the RPP. Mitigation funds collected from DRI projects are disbursed to the town in which the project is located to use in the public interest to mitigate impacts on, and further interests, of the RPP. A reduction in or waiver of these funds shifts the cost burden to the town or to other property owners to address such impacts. The lack of municipal financial capital to address impacts may result in weakened resource protection.

COMMISSION STAFF ANALYSIS

Commission staff reviewed the DRI modification application pursuant to the applicable Regional Policy Plan (RPP) and provides the following analysis.

ECONOMIC DEVELOPMENT

The document provided by the applicant from N. Middlesex Bank in Ayer, MA is not a personal or business pro-forma but more of a conservative risk analysis by the bank assumedly for the purposes of mortgage loan financing. The potential rents of \$12 per sq ft are at the very low end for Cape Cod according to research provided by Carey Commercial, Inc. for office/building sizes of less than 5,000 square feet. (Alternately, it could be interpreted from this document that the projects proposed in the modification are not viable, and there is no market demand for the additional commercial space proposed. In this case, reduction or waiver of mitigation could be viewed as a subsidy to an otherwise non-viable project). A typical office size would be closer to 8,000 SF according to Carey Commercial and would rent at as much as \$28 per SF. Existing rents for the Paesano Place building are significantly higher than \$12 per SF. The document shows an expected loss in 2014 due almost entirely to lower gross rents in 2014 than in 2013, which are actuals, but doesn't explain the reduction and assumes it going forward.

Over time, the project value of 8% and the expected annual profits after management fees and all other costs are paid, along with the potential for higher rents and reduction in capital costs, do not suggest a substantial hardship. If the CPR is receptive to the applicant's hardship claim, staff suggests that the applicant should submit a true pro-forma to better support its claim of hardship.

WATER RESOURCES

The application seeks modification of the 2009 DRI decision and additional hardship relief from water resources standards. The applicant claims a financial hardship from meeting water resources RPP requirements. The applicant presently seeks occupancy of second-floor space in an existing building previously approved by the Commission as a DRI with hardship relief. In the 2009 DRI decision, the Commission found that the applicant "*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.*" The building was constructed and all associated infrastructure was in place prior DRI review and issuance of the 2009 DRI decision; the town and applicant had misunderstood the mandatory thresholds for DRI review. In this modification, the applicant also seeks approval for the construction of an additional building for office use along with associated additional parking and landscaping, not previously proposed or approved in the 2009 DRI decision.

Based on previous findings of hardship and grant of hardship relief, the Commission allowed 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.*" Minimum Performance Standard 2.1.1.1 requires projects to result in a site-wide nitrogen concentration in groundwater of no more than 5 milligrams of nitrogen per liter (5 ppm-N). Minimum Performance Standard 2.1.1.2.C requires that nitrogen loads that exceed critical nitrogen loads established for nitrogen-sensitive coastal waters be offset. The project is located in the Back River watershed, a nitrogen-overloaded estuary. In order for the Project to comply with MPS 2.1.1.1 and MPS 2.1.1.2C and the second floor of the building to be used and occupied, the 2009 DRI decision found that a monetary offset of the project's nitrogen load per MPS in the amount of \$64,400 and treatment of project wastewater to a nitrogen concentration of 17 ppm-N using a denitrifying septic system would be required.

The Commission calculates nitrogen loads pursuant to the Nitrogen Loading Technical Bulletin (TB-91-001) in order to apply a standard approach to all projects. Parameters of the project used by the applicant to calculate the project nitrogen load for the 2.78-acre site include a total net wastewater design flow of 1,862 gallons per day (gpd), 1-1/3 acres of paved area, and 1/4 acre of roof area (including the proposed new building). The applicant has committed to maintaining no managed turf, an otherwise potential source of nitrogen to the watershed.

The project modification is consistent with stormwater management Goal 2.1.3 because best management practices such as bioretention are applied to treat the first inch of runoff from new impervious surface and are sized to manage the 100-year 24-hour storm.

The applicant proposes to replace an existing standard Title 5 system with an Amphidrome wastewater treatment system to treat increased project wastewater flows of 1,862 gpd. The Amphidrome system is a denitrifying septic system that is approved by DEP under the agency's Innovative/Alternative Technologies program. For non-residential uses with wastewater design flows of less than 2,000 gpd, the Amphidrome system is permitted by the DEP at a treatment

level of 25 ppm-N nitrogen. (The system does not require a groundwater discharge permit from DEP)

Nitrogen calculations provided by the applicant in December 2015 apply a wastewater effluent nitrogen concentration of 10 ppm-N. Information published by Barnstable County Department of Health and the Environment (BCHE) indicates that Amphidrome systems perform on Cape Cod with a median effluent-nitrogen concentration of up to 22.4 ppm-N. Upper quartile concentrations range from 22.9 to 50.8 ppm-N, i.e. 75% of effluent samples collected from the most efficient of the three Amphidrome systems the BCHE tracks had nitrogen concentrations below 22.9 ppm-N. (<https://septic.barnstablecountyhealth.org/charts/boxwhisker>).

Staff suggests that any nitrogen credit sought by the applicant for system treatment efficiencies lower than 25 ppm-N should be demonstrated through compliance monitoring under an Operation, Maintenance and Compliance (OMC) agreement with the Commission and the Town of Bourne as a condition of project approval. Calculations submitted by the applicant on October 20, 2015 indicate that the site-wide 5 ppm-N loading limit (MPS 2.1.1.1) can be met by treating project wastewater to 19 ppm-N nitrogen. Despite the proposed increase in the project's wastewater design flows, the treatment level required to meet 2.1.1.1 increased only slightly from 17 to 19 ppm-N primarily due to the applicant's commitment to maintain no managed turf and thereby reduce the project's fertilizer load.

The project approved in 2009 with a standard Title 5 septic system increased the nitrogen load to the Back River watershed by approximately 79 kilogram-N per year (kg-N/yr). As noted above, mitigation of this load was deferred until the applicant sought to occupy or use the second floor of the existing building. Commission approval of use of the second floor of the existing building and construction and use of the proposed office building will reduce the load to approximately 58 kg-N/yr if the proposed denitrifying septic system achieves compliance with MPS 2.1.1.1 by treating project wastewater to 19 ppm-N nitrogen.

The Regional Policy Plan, through MPS 2.1.1.2C, seeks to reduce watershed nitrogen loads to critical loads established by the Massachusetts Estuaries Project (MEP) and Total Maximum Daily Loads (TMDL) for nitrogen-impaired coastal waters. The fair share nitrogen load calculated for this project by Staff is 5 kg-N/yr.

The RPP provides for this increased nitrogen load to the watershed to be offset through a monetary offset, which funds may then be used by the town to address nitrogen loading concerns in the watershed. The monetary offset equivalent necessary to reduce a project load of 58 kg-N/yr to 5 kg-N/yr is \$82,000. At a wastewater treatment level of 25 ppm-N, the monetary offset is equivalent to \$106,000.

The nitrogen-loading analyses are illustrated in the following matrix:

Wastewater Flows (gpd)	Wastewater treatment level (ppm-N)	MPS 2.1.1.1. compliance 5 ppm-N limit	MPS 2.1.1.2.C. compliance monetary offset
1,862	19.0	required to meet MPS 2.1.1.1	yes 5.0 ppm-N yes, with monetary contribution, w/ performance monitoring \$82,000
	25.0	DEP-permit level	no 6.3 ppm-N yes, with monetary contribution, no performance monitoring \$106,000

Conclusion

In order to comply with MPS 2.1.1.1. and MPS 2.1.1.2.C, Water Resources staff recommends that the Committee condition approval of the DRI modification on satisfaction of the following requirements:

- The applicant, under an Operation, Maintenance and Compliance (OMC) agreement with the Commission and the Town of Bourne, would monitor performance of the project's wastewater treatment system to ensure compliance with MPS 2.1.1.1.
- In compliance with MPS 2.1.1.2.C, the applicant would disburse to the Commission a monetary nitrogen offset of up to \$106,000. Of this amount, up to \$82,000 would be immediately available to the Town of Bourne to expend on the development and implementation of nitrogen management strategies in the Back River watershed. The remaining funds would be held in escrow until such time as the project demonstrates to the satisfaction of the Commission and through an OCM agreement that the project achieves wastewater treatment to 19 ppm-N nitrogen and thereby complying with MPS 2.1.1.1. Upon compliance with MPS 2.1.1.1, the remaining funds would revert back to the applicant.
- The project would be limited to uses generating a total wastewater design flow of no more than 1, 862 gpd. The proposed schedule of uses is listed on the Site & Septic Plan revised on December 1, 2015. Any change in use that will increase the wastewater design flow above 1,862 gpd would require the applicant to file an application to the Commission for a DRI modification.
- The project would be developed in accordance with the Site & Septic System Design Plan and the Drainage Detail Sheet, each revised on December 1, 2015.

In determining whether additional hardship has been demonstrated and whether it should grant additional hardship relief from meeting the recommended requirements, above, Staff suggests that the Committee on Planning and Regulation consider the following:

- What is the minimum financial relief necessary from the recommended water resources requirements to address the applicant's claimed financial hardship, including whether a phased, but full mitigation payment option would address the hardship?
- Nitrogen offset mitigation funds are intended for the town to use for nitrogen abatement and TMDL compliance in the affected watershed. If the CPR sees fit to grant any hardship relief as to the reduction in payment of such funds, it might consider requesting evidence that the town is willing to forgo these funds. The town would then be largely responsible for handling financial costs to protect water resources associated with the site development.

- The CPR may feel that the applicant's inability to fully occupy a constructed building constitutes financial hardship. However, financial hardship should also be evaluated in terms of the proposed second building that hasn't been constructed yet. Any inability to mitigate impacts, including those associated with the additional proposed building, suggests perhaps that the additional building shouldn't be proposed or approved unless and until the applicant is on a stronger financial footing, and that the hardship is at least in part self-created.

OPEN SPACE/ NATURAL RESOURCES

The applicant was not required to mitigate for open space concerns at the time the DRI Hardship exemption decision was issued. The decision requires that the applicant was to provide open space mitigation for the project if and when it sought to use and occupy the second floor of the building allowed by the decision. The decision provides that the CPR has jurisdiction to review the applicant's modification request to use and occupy the second floor. The applicant has now applied to use and occupy the second floor by way of a modification to the decision, as well as to expand use of the site beyond the current development footprint and use authorized under the decision with a new additional building and parking. The site is not located in Significant Natural Resource Area, is fragmented from existing viable habitat in the vicinity, and was significantly disturbed prior to and at the time the decision was issued.

As authorized in the decision, the applicant seeks, in the discretion of the CPR, further hardship relief from the RPP's open space requirements for this project as part of this modification. Commission staff suggests that the applicant has not shown a sufficient hardship with regard to the project meeting the open space requirements. The applicant's hardship, and Commission's granting of relief, in the original decision was that the full, two story building was constructed under the applicant and town's mistaken belief that the project did not trigger mandatory DRI review, and that full compliance with the RPP prior to occupying the first floor of the constructed building was a substantial financial hardship to the applicant. The applicant has the option not to seek to use and occupy the second floor. Further, the applicant now seeks to construct a second building and related parking not contemplated in the original decision.

Staff suggests that open space mitigation should be provided pursuant to any modification granted pursuant to the applicable OS minimum performance standards of the Regional Policy Plan (i.e. 2002 RPP). At this site, the open space MPSs require protection of open space in an amount equivalent to the total development footprint of new disturbance on the site (which is the method more akin to the current 2009 RPP). According to the modification application, the proposed total development footprint on-site is 84,000 sq ft, and the area of new disturbance (i.e. new areas disturbed in addition to pre-existing disturbance prior to the applicant's acquisition and development of the site) is 39,000 sq ft (of this new cleared area, the proposed new building and parking will use ~18,000 sq ft).

With regard to the current hardship exemption request in the modification application and the open space requirements, the Commission may wish to consider several factors of the present application. The initial hardship exemption granted relief from the open space requirements, but noted that the open space requirement should be met for any additional development on the site. Additional development in this case could include the proposed occupation of the second floor, and/or the development of additional buildings and parking on the site. At the same time, this site was disturbed prior to the current development, and is not mapped for significant natural resource features such as rare species habitat, wetlands, or water supply protection. The applicant has also presented evidence regarding the poor quality of the pre-existing site

conditions which, had this evidence been presented in the initial hardship exemption, the project might have been scoped out of DRI review for open space. The Subcommittee should consider all of these factors as it weighs whether to grant relief from the open space requirements.

Conclusion

- The applicant does not appear to have a substantial hardship as relates to the modification request. Relief was granted previously from the open space requirements under the existing development footprint to allow use and occupancy of the first floor of the building.
- Expansion of development on the site beyond the development that previously received relief should be mitigated under the requirements of the RPP. The applicant could provide 39,000 sq ft, or likely, cash equivalent, to meet the RPP's OS requirements. The applicant received a hardship exemption as part of the DRI decision to allow the original development to proceed; any additional use or development on the site does not constitute a hardship allowing for relief from the minimum performance standards
- The applicant should provide cash toward the acquisition of open space within the Town of Bourne, rather than open space dedication on-site, given the nature of the site, and nature of the site in relation to adjoining properties.

If the Committee is inclined to grant hardship relief or flexibility from the RPP's OS MPSs, it may wish to consider the following scenarios:

- The site is not mapped for significant natural resources.
- The site is surrounded by developed properties or improved road layouts.
- Due to poor quality of pre-existing site conditions, the project might have been scoped out of DRI review for Open Space when it first was proposed.
- The applicant could provide 18,000 sq ft, or likely, cash equivalent, to mitigate only the additional footprint of disturbance on the site associated with the new building and parking (but not the proposed occupation of the second floor, which could be seen as not posing an additional impact on natural resources).
- The applicant could provide no open space mitigation, given the poor condition of the land at this location now and prior to the current development.
- The applicant could provide some form of open space mitigation deemed equitable by the Committee less than that required as an acknowledgment that the proposed development has impacts to the community and region that should be mitigated.

TRANSPORTATION

The January 8, 2009 decision (HDEX #08022) included four (4) transportation conditions. The Applicant has provided evidence to demonstrate compliance with TC1, TC2, and TC4 and has requested relief for payments required under TC3.

Condition TC1. Consistent with this condition, Commission Transportation staff suggests that the Applicant has provided sufficient information to allow for the analysis of potential transportation impacts of the development consistent with the RPP traffic study requirements.

Condition TC2. As required by this condition, the Applicant has consulted with MassDOT relative to the signing the access road and installed a sign reading “Paesano Way” on MacArthur Boulevard.

Condition TC3. This condition established a congestion mitigation amount (\$153,704) for the development based on the number of weekday daily trips that were estimated to be generated by an 18,800 square foot (sf) office building.

Given that the Applicant is proposing to construct a new 1,500 sf office building in addition to the existing 18,800 sf office building, the revised congestion mitigation responsibility, including trip reduction and interconnect credits, would be \$152,591 as shown in Table 1.

Table 1. Revised Congestion Mitigation Calculation

Development	Trips ¹	Interconnect Credit (5%) ²	Trip Reduction Credit (25%) ³	Remaining Trips to be Mitigated for Congestion	Congestion Mitigation Amount ⁴
18,800 sf	368		92	276	\$153,704
18,800 sf + 1,500 sf	385	19	92	274	\$152,591

¹ Weekday daily trips based on the 1/8/2009 decision and trip generation data in the *Institute of Transportation Engineers Trip Generation Manual* for Land Use Code 710 (General Office Use)

² Based on the Applicant’s “offer to connect the adjoining property to the north to the Way;” the applicant would have to commit to keeping access to this interconnect open.

³ Requirement to be met through implementation of a Travel Demand Management (TDM) Plan as required by the 1/8/2009 decision

⁴ Based on the rate from the 1/8/2009 decision

In reference to what is now known as Paesano Way, the condition also stated that “*the Commission may consider a transportation credit of \$105,000 towards this mitigation, which was the cost to construct the on-Site access road.*” Maintenance costs associated with Paesano Way were not discussed as a potential credit in the decision. The Applicant has requested “*relief from having to make a congestion mitigation payment*” citing the \$105,000 expended to construct Paesano Way and maintenance cost averaging \$467 per month. The Applicant submitted materials to support this request including:

- Letter from MassDOT indicating that terms of the Access Permit were met
- A traffic count showing that 93% of weekday traffic on Paesano Way is cut-through traffic
- An offer of easement from Paesano Realty Trust to the Town of Bourne for “*the perpetual rights and easements to utilize the paved roadway described as Paesano Way*”
- An “*offer to connect the adjoining property to the north to the Way,*” which is also depicted on plan submissions
- Letters from neighboring businesses noting improved access to their properties by use of Paesano Way
- Letter from the Chairman Bourne Planning Board indicating the consensus of the Board was that Paesano Way, “*provided the condition of the way is satisfactorily maintained, is beneficial to the traveling public*”

In determining whether to allow the costs of construction and potentially maintenance of Paesano Way as a credit towards congestion mitigation, the Commission should consider whether Paesano Way was built to the applicable design standards, whether Paesano Way offers a benefit to the public, and whether Paesano Way will continue to be maintained and made accessible to the public. It may also want to consider whether road construction costs and anticipated road maintenance costs is the appropriate way to monetize the value of the transportation credit, and thus the reduction in or waiver of congestion mitigation.

Regarding design standards, the scope of the MassDOT Access Permit was limited to the design of the access points onto state roads. The MassDOT letter does not opine on the appropriateness of the design of what is now known as “Paesano Way” for use by the public. There appear to be elements of design, for example, the size and height of stop signs, that do not meet current design standards that would be applied to a public way.

Regarding a benefit to the public, Commission Transportation staff suggests that, from an engineering perspective, Paesano Way does not offer a benefit to the public. Access between Route 28 and Waterhouse Road is afforded by an intersection at the south end of the site. The construction of Paesano Way resulted in the addition of a curb cut on both Route 28 and Waterhouse Road and thus additional conflict points on the both roadways. This is inconsistent with access management principles contained in the Regional Policy Plan and Technical Bulletin 96-003.

The preferred access to the site would have been from the lower function class roadway (Waterhouse Road) and would have avoided any new access onto Route 28. Commission Transportation staff notes however that this project is unique in that Paesano Way was constructed before Commission review of the project commenced. As such, the Applicant was never presented the opportunity, with benefit of Commission Transportation staff guidance, to consider alternative access configurations for the site.

Regarding long term maintenance and accessibility, Paesano Realty Trust is amenable to granting the Town of Bourne “*the perpetual rights and easements to utilize the paved roadway described as Paesano Way.*” As staff understands it, the Town did not agree to accept the easement as it was hesitant to take on any maintenance obligations or liability that might be associated with such a grant. Even if the Town had accepted the easement, staff suggests that it does not ensure continued maintenance of Paesano Way. Commission Transportation staff suggests that there is no great assurance that Paesano Way will continue to be maintained and made accessible to the public, though staff notes that the applicant has represented it would keep the road open to the travelling public in general, and would continue to maintain the drive as a through-road.

While Commission Transportation staff suggests that the construction costs for Paesano Way would not typically be considered as congestion mitigation, given the unique circumstance of the review and the demonstrated support of the community, the Commission could consider this request for relief through flexibility.

Commission Transportation staff suggest that the Commission could (a) require a congestion mitigation payment of \$152,591, (b) through flexibility, deduct the construction cost of Paesano Way and require a congestion mitigation payment of \$47,591, or (c) through flexibility, deduct the construction and maintenance costs of Paesano Way and grant relief from all congestion mitigation payment requirements.

Condition TC4. As required by this condition, the Applicant has submitted a Travel Demand Management (TDM) Plan dated 12/4/15. Commission Transportation staff suggests that this TDM plan is appropriate for this development and consistent with the intent of the decision. Staff further notes that a 25% credit for the implementation of such a TDM plan on this site is higher than would typically be given, but was allowed in the decision though hardship relief. To ensure compliance with the condition, staff will need to verify that this plan has been implemented on site.

DESIGN/ COMMUNITY CHARACTER

The January 8, 2009 Decision states in part the following:

*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.*** [Emphasis added]

*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.*** [Emphasis added]

The original project was reviewed under the 2002 RPP. Therefore, staff comments on the proposed modification are based on requirements in the 2002 RPP Community Character section.

MPS 6.2.7 requires that parking be located to the side or rear of a commercial development unless such location is infeasible. New, proposed parking is located to the side of the existing building and proposed new building, and therefore is in compliance with this standard.

MPS 6.2.9 requires in part that all development implement a landscape plan that addresses the functional aspects of landscaping and provide a maintenance agreement or irrigation system, as appropriate. The applicant has submitted a landscape plan dated 12/14/15 that addresses the parking area and stormwater management areas for the newly proposed building. No new information was submitted to address landscape screening for the existing building as required by Condition #CCC1 in the 2009 decision and therefore the landscape plan as proposed does not

comply with this MPS. The applicant should provide a landscape plan consistent with the RPP for the entirety of the site.

Conclusion

The applicant has proposed landscaping for a portion of the stormwater drainage system including rain garden plantings as well as trees and shrubs along Waterhouse Road to address MPS 2.1.3.3. Staff recommends that the density of proposed shrubs along Waterhouse Road be increased, and that alternate species be used to increase the effectiveness of the buffer in this location. In addition, while rain garden plantings generally are appropriate, staff recommends the plantings be extended to cover the remainder of the bio-retention area to soften the effect of the proposed drainage area. Staff also questions whether the intensity of site development that necessitates gabion walls as proposed are appropriate as these structures are typically used to prevent scour in areas of high water flow and will be very costly to construct and unsightly in this location. Based on a review of the record, it appears that the site contained a partially constructed drainage basin that the applicant is attempting to utilize for the additional parking area. Staff suggests that the additional building and parking are constraining the ability to manage stormwater on-site and that additional intensification of use on the site may be inappropriate.

That said, the modest massing, small scale and design of the new proposed building is consistent with RPP design standards, and the Design Technical Bulletin. Proposed project plans do not show lighting associated with the new building and associated parking; assumedly no new lighting is proposed. If lighting is indeed proposed, approval shall be requested for the same, and the applicant shall provide lighting plans and specifications to the Commission for review and a determination of their consistency with the RPP and Lighting Technical Bulletin.

Finally, the plans appear to indicate the limit of work includes a large area along MacArthur Boulevard that extends to the southern corner of the site. The applicant should clarify the amount of disturbance and propose revegetation of these areas on the landscape plan. The applicant should also provide a landscape maintenance agreement for all proposed landscaping for a minimum of three growing seasons.

CONCLUSION

Commission staff has identified herein how the projects proposed in the modification should comply with the applicable standards of the RPP. Commission staff has also requested, above, the submission of further information that is required or desired to support the modification, including a landscape plan consistent with the RPP for the entire site.

Pursuant to the foregoing, staff suggests that the CPR's first order of business at its meeting to review the modification request should be to consider whether it is receptive to granting the applicant further hardship exemption relief:

- The CPR should determine whether the applicant has evidenced a substantial hardship.
- If the CPR determines that literal compliance with the RPP creates a substantial hardship for the applicant, in whole or part, it should determine the extent of impacts on protected resources and deviation from RPP standards, including the town's ability to address impacts with fewer mitigation funds, should desired relief be granted.
- If the CPR determines that the applicant has evidenced a substantial hardship, and desired relief will not deviate too greatly from the RPP, and will not substantially detract

from the public good and resource protection, it should, in this case, determine what the minimum amount of financial relief is necessary to address the hardship in terms of a potential reduction in or full waiver of required mitigation, which may require further evidence and financial information from the applicant.

- The CPR should discuss the second building in terms of requested hardship relief and the additional impacts it would impose.