

# CAPE COD COMMISSION

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DATE: November 30, 2006

TO: Mr. Stuart Bornstein  
c/o Holly Management  
297 North Street  
Hyannis, MA 02601

FROM: Cape Cod Commission

RE: Development of Regional Impact  
Cape Cod Commission Act, Sections 12 and 13

APPLICANTS: Gladstone LP and Baypoint LLC (owner, Stuart Bornstein)  
297 North Street  
Hyannis, MA 02601

PROJECT #: HDEX #06023

PROJECT: Supply New England and Kitchen and Bath Gallery  
28 and 40 Aaron's Way  
Yarmouth, MA 02664

CERTIFICATE OF TITLE #: 153578 and 179239

LOT/PLAN #: 18/37201D and 19/37201D

MAP/PARCEL: 73.9.2.4 and 73.9.2.5

## DECISION OF THE CAPE COD COMMISSION

### SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the Hardship Exemption application of Supply New England pursuant to Section 23 of the Cape Cod Commission Act (Act), c.716 of the Acts of 1989, as amended. The decision is rendered pursuant to a vote of the Commission on November 30, 2006.

Supply New England /HDEX06023

DRI Decision

November 30, 2006

Page 1



### PROJECT DESCRIPTION

The project consists of two single-story buildings (9,768 square foot contractor's warehouse and the 9,725 square foot kitchen and bath showroom) totaling 19,493 square feet located on two adjacent lots that total 1.9 acres. The buildings are being constructed on Aaron's Way on two lots in a subdivision located near Willow Street in Yarmouth. The site which is zoned B-3 (business) and is in a Zone II Wellhead Protection Area.

### PROCEDURAL HISTORY

The Town of Yarmouth reviewed and permitted the development as two separate projects without referring them to the Commission for Development of Regional Impact (DRI) review. During June and July 2006, staff received correspondence informing the Commission of concerns that the development, which had undergone local review and was partially complete, may trigger mandatory DRI review by the Commission.

At a public meeting on August 24, 2006, the Commission found that the two buildings constitute one 19,500 square foot project and qualify as a DRI under Section 3(e) of the Commission's Enabling Regulations as new construction of any building or buildings with a gross floor area greater than 10,000 square feet. The Commission asserted jurisdiction by vote at the August 24, 2006 Cape Cod Commission meeting pursuant to Section 12(h) of the Act. The applicant submitted a DRI Hardship Exemption application and a DRI application which were deemed complete on September 12, 2006. A duly noticed public hearing was conducted by the Commission pursuant to Section 5 of the Act by an authorized subcommittee of the Commission on October 25, 2006. The public hearing was continued to the November 30, 2006 Cape Cod Commission meeting at the Assembly of Delegates chambers in the 1<sup>st</sup> District Courthouse in Barnstable Village, MA, where the hearing and the record were closed. The subcommittee held a public meeting to deliberate on this project on October 25, 2006. At the October 25, 2006 public meeting, the subcommittee voted four in favor and one opposed to recommend to the full Commission that the hardship exemption be approved with conditions. At the final public hearing before the full Commission on November 30, 2006 the Commission voted six to four to approve the hardship exemption, subject to conditions.

**TABLE 1: Materials Submitted for the Record**

<i><b>Materials From the Applicant</b></i>	<i><b>Date Submitted</b></i>
Plan of Land, Down Cape Engineering	November 26, 2003
Site Plan/landscaping, Down Cape Engineering	June 8, 2005
Site Development Plans, Down Cape Engineering	January 1, 2006
Site Plan, Down Cape Engineering	February 16, 2006
Memorandum from Nutter, McClennan and Fish	May 15, 2006
Memorandum from Nutter, McClennan and Fish	June 6, 2006
Drainage calculations, Down Cape Engineering	July 11, 2006
Building permit from Town of Yarmouth	July 24, 2006
Memorandum from Nutter, McClennan and Fish	July 26, 2006

Memorandum from Nutter, McClennan and Fish	August 3, 2006
Copy of checks for cost of CCC review	August 28, 2006
Hardship Exemption application for 40 Aaron's Way	August 29, 2006
Hardship Exemption application for 28 Aaron's Way	August 29, 2006
Hardship Exemption narrative for 28 and 40 Aaron's Way	August 29, 2006
Expenditures sheet	August 30, 2006
Certified abutters sheet	August 31, 2006
Letter from Clancy Appraisal, Co	September 5, 2006
Email to staff from Deirdre Kyle, Holly Management	September 13, 2006
Email to staff from Jason Reardon, Reardon Realty	September 19, 2006
Lease for 40 Aaron's Way	October 13, 2006
Listing of hazardous materials from Jason Reardon	October 16, 2006
Revised site plans, Down Cape Engineering	October 17, 2006
Letter with attachments from Down Cape Engineering	October 18, 2006
Stormwater O and M plan from Down Cape Engineering	October 18, 2006
Specification sheets, wall pack fixtures	No date
Business model narrative	No date
Packet on hazardous materials, including MSDS	No date
<b><i>Materials from the staff</i></b>	<b><i>Date Submitted</i></b>
Letter to Karen Greene	May 24, 2006
Letter to David Corcoran, Supply New England	July 31, 2006
Letter to James Brandolini, Town of Yarmouth	August 11, 2006
Staff report for jurisdictional determination	August 24, 2006
Meeting notes	August 30, 2006
Email from Scott Michaud, water resource issues	August 31, 2006
Email from Scott Michaud, water resource issues	September 1, 2006
Memorandum from Andrea Adams, hazardous materials issues	September 5, 2006
Routing sheet to staff, application materials	September 8, 2006
Letter to Stuart Bornstein, Holly Management	September 19, 2006
Green cards returned to file	September 21, 2006
Letter to Deirdre Kyle, Holly Management	September 29, 2006
Letter to Deirdre Kyle, Holly Management	September 29, 2006
GIS map	October 19, 2006
Hearing notice	October 19, 2006
Hearing notice	October 25, 2006
Sign-in sheet for public hearing	October 25, 2006
Draft minutes	October 25, 2006
Staff report for Hardship Exemption	October 25, 2006
<b><i>Materials from public officials</i></b>	<b><i>Date Submitted</i></b>
Letter from Karen Greene, Town of Yarmouth	June 20, 2006
Printout from Secretary of State's website for Supply New England	July 25, 2006
Letter from James Brandolini, Town of Yarmouth	August 29, 2006
Letter from George Alliare, Town of Yarmouth	September 5, 2006
Letter from James Brandolini, Town of Yarmouth	September 26, 2006

Letter from Robert Lawton with attachments, Town of Yarmouth	October 20, 2006
Fax from Karen Greene, with attachments, Town of Yarmouth	October 23, 2006

The application and notices of public hearings relative thereto, the Commission staff notes, exhibits and correspondence, the transcript and minutes of meetings and hearings and all written submissions received in the course of our proceedings are incorporated into the record by reference.

#### TESTIMONY

A public hearing was held at the Mattacheese Middle School in Yarmouth, MA on October 25, 2006. Attorney Michael Princi, representing the applicant, described the project and its procedural history. He focused his comments on the hardship exemption request, explaining that compliance with DRI requirements would result in substantial hardship to the applicant given that the project was reviewed and approved by the Town of Yarmouth in July 2006 and construction is ongoing and partially complete.

Greg Smith presented a summary of the staff report and staff comments in the areas of transportation, water resources, hazardous materials, natural resources/open space, and community character. Mr. Smith said the staff recommended granting a hardship exemption with conditions regarding community character, open space, water resources, hazardous materials and transportation.

The subcommittee focused its discussion on open space after evaluating the project's impacts on other issue areas in the Regional Policy Plan.

#### JURISDICTION

Supply New England qualifies as a DRI under Section 3(e)(i) of the DRI Enabling Regulations as "proposed commercial development which exceeds the following criteria:

- (i) new construction of any building or buildings (including accessory and auxiliary structures) with a gross floor area greater than 10,000 square feet."

#### STANDARD OF REVIEW

The Commission may grant a hardship exemption, in whole or in part, where it specifically finds that a literal enforcement of the provisions of the Act would involve substantial hardship, financial or otherwise, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or derogating from the intent and purpose of the Act.

#### FINDINGS

The Commission has considered the application of Supply New England for a DRI Hardship Exemption and based on consideration of such application and upon the information presented at the October 25, 2006 public hearing and submitted for the record, makes the following findings pursuant to Section 23 of the Act:

## GENERAL

- G1** In June and July 2006, the Town of Yarmouth issued a building permit for the construction of two buildings (lots 18 and 19) on Aaron's Way. Lot 18 consists of a 9,768 square foot contractor distribution warehouse on a 40,371 square foot site. Lot 19 consists of a 9,725 square foot kitchen and bath design showroom on a 40,011 square foot site. The town did not recognize that the project triggered Commission DRI review and did not refer it to the Commission for DRI review.
- G2** The Cape Cod Commission voted to assert jurisdiction over the project at a public meeting on August 24, 2006. Land clearing and foundation work had begun for the two buildings at that time.
- G3** As the first substantive hearing was conducted on August 24, 2006, the project is being reviewed under the 2002 Regional Policy Plan (RPP).
- G4** The project was not initially referred to the Commission for mandatory DRI review. As such, the applicant received land clearing and foundation permits in June and July of 2006 from the Yarmouth Building Commissioner to begin construction on the two buildings. As the Yarmouth Building Commissioner did not refer the project to the Commission as a mandatory DRI, the applicant did not calculate costs associated with DRI review as part of the project budget. The Yarmouth Building Commissioner also provided an extensive narrative explaining his rationale for not referring the project to the Commission as a mandatory DRI. The applicant relied upon the Yarmouth Building Commissioner's determination as he proceeded to develop a business plan, obtain project financing, hire site consultants to design the site plans and building elevations, and hire contractors to complete the land clearing and building construction. As such, the applicant has met his burden of proof that he would suffer substantial hardship if required to revise the project to meet the minimum performance standards of the 2002 RPP, given that construction was substantially underway when the Commission asserted jurisdiction.

Compliance with the RPP would require additional project expenses that were outside the initial business plan including revised site design, provision of additional site improvements, transportation and open space mitigation, and amended contract bids for land clearing and building construction. Also, any additional work would further delay full occupancy of the project, could result in hardship to the leasees of the buildings. Such hardships include the possible loss of the lease, loss of employment for those currently employed by Supply New England, and the possible loss to the region of the commercial operation.

To support the applicant's claim of financial hardship, a financial statement dated August 30, 2006 documenting the project's costs and lease payments was offered. The applicant also provided a time-line of the project's review and permitting history in the Town of Yarmouth to demonstrate that it completed the local permitting process without the project's being referred to the Commission as a DRI.

**G5** The Town of Yarmouth does not have a certified Local Comprehensive Plan.

**G6** The project does not lie within a District of Critical Planning Concern.

**G7** The project complies with local zoning.

#### **TRANSPORTATION**

**T1** Trip generation for the project was based on the classification of the building spaces as follows:

<b>Building</b>	<b>Use</b>	<b>ITE Classification*</b>	<b>Size (Square Feet)</b>
Kitchen and Bath Showroom	Showroom and Office	Furniture Store	7,680
	Storage	Warehousing	2,045
Plumbing and Heating Supply Warehouse	Office /wholesale/retail	Building Materials and Lumber	1,120
	Warehouse	Warehousing	8,648
<b>TOTAL</b>			<b>19,493</b>

\* ITE – Institute of Transportation Engineers

The portion of the project dedicated to the kitchen and bath showroom and office is a showroom only for ordering merchandise for direct delivery to the customer. It will not have any retail or wholesale function. It has been classified as Furniture Store, a similar use both in terms of customer visits and value of goods purchased. Furthermore, the portion of the project dedicated to office/wholesale/retail plumbing and heating supplies has been classified as building materials and lumber due to the frequency of customer visits including retail and contractor direct purchase. As such, the project is estimated to generate the following new trips:

	<b>Daily New Trips</b>	<b>Morning Peak Hour New Trips</b>	<b>Afternoon Peak Hour New Trips</b>
Plumbing and Heating Supply House	93	10	12
Kitchen and Bath Showroom	49	4	5
<b>TOTAL</b>	<b>142</b>	<b>14</b>	<b>17</b>

**T2** MPS 4.1.1.1 requires projects to not degrade safety for all transportation users. The project is located in an existing industrial cul-de-sac subdivision, has a relatively low estimated trip generation rate, will be conditioned to have adequate sight distances, and has no identifiable significant safety issues. Therefore, the project complies with MPS 4.1.1.1.

**T3** MPS 4.1.1.3 requires projects to meet access management guidelines and use lower volume road access where available and appropriate. The project is located on a commercial cul-de-sac non-regional road and thus the driveway spacing will likely not

affect regional roadway operations. Furthermore, while the project site is bordered by Willow Street (a regional roadway), the project will not have any direct accesses to Willow Street. Such access to Willow Street has been restricted by a town access restriction easement. Consequently, the project complies with MPS 4.1.1.3.

- T4** MPS 4.1.1.5 requires projects to locate human made objects to minimize visual obstruction, safety conflicts, and distractions. It also requires all utilities to be located underground. The project is at the back of a cul-de-sac subdivision and all signage will be placed on the subdivision roadway. Signage will not be placed along Willow Street. The applicant will meet the Commission outdoor lighting requirements and consequently no glare is expected to reach Willow Street. All utilities will be located underground. Therefore the project complies with MPS 4.1.1.5.
- T5** MPS 4.1.1.6 requires projects to minimize impacts on adjacent roadway systems through site design, accommodate all transportation users in access plans, and provide pedestrian and bicycle connections on site as appropriate. The cul-de-sac location of the project and general layout of the site will likely not impact traffic operations on regional roadways. Given the nature of the development and lack of sidewalks for the entire subdivision in which the project is located, pedestrian and bicycle connections are not appropriate. The applicant has previously granted town easements for future sidewalks along Higgins Crowell Road and Willow Street. Therefore the project complies with MPS 4.1.1.6.
- T6** MPS 4.1.1.7 requires adequate sight distances at all project access/egress locations. Based on preliminary Commission staff review, the sight distances to the development driveways on Aaron's Way should be sufficient. The sight distances to Aaron's Way along Higgins Crowell Road were blocked by a road construction project at the time of review. The applicant will be required to have these sight distances certified before the project is occupied. Therefore the project will comply with MPS 4.1.1.7 upon completion of sight distances certification.
- T7** MPS 4.1.1.9 requires project driveways not exceed state standards. The main kitchen and bath showroom driveway will be 20 feet wide, lower than the 24-foot standard. The showroom loading entrance will be 14 feet wide, lower than the 15 foot standard. The contractors warehouse driveway was shown at 25.5 feet on the submitted site plan. This exceeds the 24 foot standard. The applicant will be required to reduce the contractors warehouse driveway width, submit plans for staff review showing the reduction, and build to the reduced width. Therefore the project will comply with MPS 4.1.1.9 upon submission of a revised plan and construction of the warehouse driveway width reduction to 24 feet.
- T8** MPS 4.1.2.1 requires all projects reduce expected new trip generation by 25 percent. For this project, the requirement is 36 daily and 4 peak hour trips. The applicant has requested full relief from this requirement based on the cost of compliance to the nearly completed project. The Commission finds, based on the cost to the applicant of such trip reduction and based on the relatively low trip generation of the project:

- The Applicant has met its burden of showing that a hardship exists as outlined in finding G4,
  - Literal enforcement of the Minimum Performance Standards would be a hardship for the Applicant,
  - Relieving the requirements of MPS 4.1.2.1 to not require trip reduction is the minimum relief required to alleviate the hardship, and,
  - The relief does not nullify or substantially derogate from the intent of the Act nor will it result in a detrimental impact to the public good.
- T9** MPS 4.1.2.5 requires accommodation of all transportation users in site design, maintenance of historic footpaths, and provision of non-automotive connections for regional pathways and/or connections to adjoining properties, where appropriate. Given the project's location and type of use, the Commission finds that such paths are not appropriate and therefore the project complies with MPS 4.1.2.5.
- T10** MPS 4.1.2.6 requires parking spaces to be limited to the requirement of town zoning. The project site plan calls for 20 parking spaces at the contractors warehouse building, which is the minimum zoning requirement. The site plan calls for 14 parking spaces at the kitchen and bath showroom building, with an additional 4 spaces held in landscape reserve. The town minimum requirement is 18 spaces. Consequently the project complies with MPS 4.1.2.6.
- T11** MPS 4.1.3.1 requires consideration of regional roadways as determined by the Cape Cod Metropolitan Planning Organization. Regional roadways in the vicinity of the project which were considered include Route 6A, Willow Street, Route 6, Higgins Crowell Road, Camp Street, Yarmouth Road, Buck Island Road, and Route 28. Therefore, the project complies with MPS 4.1.3.1.
- T12** MPS 4.1.3.2 requires operational level of service analysis at all access/egress points onto regional roadways. The applicant has requested full relief from this requirement based on the cost of compliance to the nearly completed project. The Commission finds, based on the cost to the applicant of such analysis, the relatively low trip generation of the project, and the location of the project on an existing commercial cul-de-sac:
- The Applicant has met its burden of showing that a hardship exists as outlined in finding G4,
  - Literal enforcement of the Minimum Performance Standards would be a hardship for the Applicant,
  - Relieving the requirements of MPS 4.1.3.2 to not require access/egress operations analysis is the minimum relief required to alleviate the hardship, and,
  - The relief does not nullify or substantially derogate from the intent of the Act nor will it result in substantial detriment to the public good.
- T13** MPS 4.1.3.4 requires analysis and mitigation of all project peak hour impacts on regional roadways. The applicant has requested full relief from this requirement based on the cost



of compliance to the nearly completed project. The Commission finds, based on the cost to the applicant of such analysis, the cost of mitigation to the applicant, the relatively low trip generation of the project, and the ongoing capacity and safety improvements of the nearby regional roadways (roadway widening and signalization at Willow Street, Higgins Crowell Road, Route 6 Exit 7 interchange):

- The Applicant has met its burden of showing that a hardship exists as outlined in finding G4,
- Literal enforcement of the Minimum Performance Standards would be a hardship for the Applicant,
- Relieving the requirements of MPS 4.1.3.4 to not require off-site operations analysis and mitigation is the minimum relief required to alleviate the hardship, and,
- The relief does not nullify or substantially derogate from the intent of the Act nor will it result in substantial detriment to the public good.

**T14** MPS 4.1.3.9 requires projects to provide rights-of-way along property frontages for pedestrian, bicycle, and utility needs. The applicant has provided the Town of Yarmouth with rights-of-way along both Willow Street and Higgins Crowell Road for such purposes. Therefore the project complies with MPS 4.1.3.9.

#### **WATER RESOURCES**

**WR1** The project is located on a parcel that is identified by RPP Water Resources Classification Map I as a Potential Public Water Supply Area (PPWSA). DRIs in PPWSA's are restricted by MPS 2.1.1.2.A.1 to a 1-ppm maximum nitrogen-loading concentration in groundwater across the site unless supporting information demonstrates that the area is not considered as a potential water supply area pursuant to MPS 2.1.1.2.F. George Allaire, Director of the Town of Yarmouth's Department of Public Works whose office oversees the Yarmouth Water Division, provided a letter on September 19, 2006 indicating that the site is not being considered by the Town for future water supply. Pursuant to MPS 2.1.1.2.F, this effectively releases the site from having to meet the 1-ppm nitrogen-loading limit.

**WR2** The site is located in a Zone II Wellhead Protection Area protected under Section 2.1.1.2.A of the RPP and the site is located approximately 1,500 feet from an existing municipal water supply well that provides drinking water to Yarmouth residents and businesses. DRIs in Wellhead Protection Areas are restricted by MPS 2.1.1.2.A.1 to a 5-ppm maximum nitrogen-loading concentration in groundwater across the site.

**WR3** The project is located in the Lewis Bay watershed, a regional resource that straddles the Hyannis and Yarmouth town line and a Marine Water Recharge Area (MWRA) identified by the RPP on Water Resource Classification Map II and regulated under MPS 2.1.1.2.C. A critical nitrogen load has not been established for the Lewis Bay watershed. Water-quality information collected under the Massachusetts Estuaries Project (MEP) suggests that water quality in the Mill Creek portion of the Lewis Bay system may be impaired, however the final MEP technical report has not yet been issued and a Total Maximum

Daily Load for nitrogen has not been established for the Lewis Bay system. Marsh that perimeters Mill Pond may have the potential to remove nitrogen from groundwater discharging to the estuary. Based on the foregoing, it remains unclear whether the nitrogen load to the Lewis Bay watershed will need to be offset to meet critical nitrogen loading levels.

**WR4** Title-5 wastewater flows totaling up to 379 gallons per day are estimated from comparable development and will be managed by two standard Title-5 septic systems located on the two respective lots.

**WR5** The project results in impervious areas including 23,235 square feet of paved access and parking and 19,493 square feet of roof area. The applicant submitted a Revised Grading, Drainage & Utilities Plan and Planting Plan (each dated October 17, 2006), an updated Stormwater Operations & Maintenance (O&M) Plan that was revised on October 18, 2006 to incorporate revised drainage changes, and a Low Impact Landscape Management Plan dated October 18, 2006. These plans enable the project to meet:

1. MPS 2.1.1.2.A.1, the 5-ppm nitrogen loading limit;
2. MPS 2.1.1.2.A.5 which requires a turf management and landscape plan that incorporates water conservation measures and minimizes the amount of pesticides and chemical fertilizers through best management practices;
3. MPS 2.1.3.3 which requires bio-filtration of stormwater runoff;
4. MPS 2.1.3.6 which requires a maintenance and operation plan which identifies the responsible party and prescribes inspection, monitoring and maintenance schedules for stormwater infrastructure; and
5. MPS 2.1.3.7 which requires installation of shut-off valves in areas where activity presents high risk to drinking water supplies.

#### **HAZARDOUS MATERIALS**

**HM1** According to maps produced for the 2002 (revised) RPP, the project site is within an existing Wellhead Protection Area. MPS 4.3.1.3 states that “[d]evelopment and redevelopment that involves the use, treatment, generation, storage, or disposal of hazardous wastes or hazardous materials, with the exception of household quantities, shall not be allowed within Wellhead Protection Areas.”

**HM2** The Supply New England business model has changed since 2005. This change includes a stronger focus on customers interested in kitchen/bath design consultation services, and a desire to separate the design services from the plumbing supply business. Other business changes include a more sophisticated inventory/supply control and tracking system. The company also fills orders through and off-site warehouse in Uxbridge, Massachusetts. Orders and purchases made at company stores (including Cape stores) can be sent directly to the customer’s job site, reducing the need for on-site storage.

**HM3** On October 16, 2006, the applicant submitted a revised proposed product inventory for the Yarmouth store. The new inventory will be linked to “a branch stocking

*program...when it moves from Hyannis to Yarmouth. As part of the move, Supply New England will also "discontinue stocking and selling numerous [hazardous materials] as part of this plan." The Yarmouth store's system "will be configured in [the company's] distribution software to have minimums and [a maximum quantity] locked in. This will allow [Supply New England] to track and accurately limit the amount of [hazardous material]..." as the Yarmouth store moves forward. (Source: E-mail, Jason Reardon, with attached spreadsheet, 10/16/06).*

- HM4** The Commission finds, based on this commitment, the fact that the Yarmouth store's proposed chemical product limits can be imbedded in the company's inventory system, and because Supply New England can direct orders to a customer's job site or another of its stores nearby, that this system is consistent with MPS 4.3.1.3.
- HM5** There are three other hazardous material and waste management Minimum Performance Standards that apply to this project. MPS 4.3.1.1 requires DRIs to make *"reasonable efforts to minimize their hazardous material use and/or waste generation through source reduction, reuse, material substitution, employee education, and recycling."* One of the ways to address this requirement would be for the company to institute a system of seeking least-toxic products from its vendors and suppliers.
- HM6** MPS 4.3.1.2 requires *"development and redevelopment shall be in compliance with Massachusetts Hazardous Waste Regulations, 310 CMR 30.000. Applicants shall submit a plan to demonstrate how their project will achieve conformance with this standard."* Given the type of proposed development, the only hazardous wastes likely to be generated will be those attributable to construction, and afterwards, fluorescent bulbs and unsaleable plumbing chemicals. The applicant should submit a plan to manage any hazardous wastes from construction, and to manage and dispose of used fluorescent bulbs and unsaleable chemicals to address this standard.
- HM7** MPS 4.3.1.4 requires *"development and redevelopment shall prepare an emergency response plan that identifies potential threats to employee safety and health and threats of environmental releases and describes ways to reduce those threats."* The applicant should develop a short protocol that addresses this standard for the construction phase

#### **NATURAL RESOURCES/OPEN SPACE**

- NR1** The 1.85 acre site is mapped as Significant Natural Resources Area (SNRA) under the 2002 RPP due to its location within a public wellhead protection area and unfragmented forest. The RPP mapping pre-dates Higgins Crowell Road's relocation adjacent to the site and the subsequent development and fragmentation of forested area. The site is not located within mapped rare species habitat.
- NR2** In accordance with MPS 2.5.1.3, Supply New England is required to provide permanently protected open space at a 2:1 open space to development area ratio, due to its location within SNRA. Since the entire site is being developed, the development area is 1.85 acres, and the total open space requirement is 3.70 acres (2 x a 1.85 acres). In addition to

providing on-site open space to meet the requirement, the RPP also allows for a contribution of off-site open space or a cash contribution of equivalent value to a land trust or town for open space acquisition, where appropriate.

Compliance with MPS 2.5.1.3 would entail substantial hardship due to the Applicant's inability to provide open space on the site, which is substantially cleared and developed, and the financial hardship that purchasing off-site open space would entail. Following a recommendation from the Yarmouth Board of Selectmen (as noted in an October 19, 2006 letter from the Yarmouth Town Administrator), the Applicant agreed to address the open space requirement by providing \$25,000.00 for open space acquisition within the town but requested relief from full compliance with the requirement given the hardship. The applicant has met its burden of demonstrating a hardship exists. As such, the Commission grants partial relief from full compliance with MPS 2.5.1.3, as granting such relief does not result in substantial detriment to the public good or nullify or substantially derogate from the intent or purpose of the Act.

#### **COMMUNITY CHARACTER**

- CC1** The proposed project consists of two buildings located on two adjacent properties on Aaron's Way in Yarmouth, which has been developed as an industrial subdivision. Both sites abut Willow Street, which is a Regional Roadway. The 9,768-square-foot Plumbing Supply building is oriented to face the cul-de-sac of Aaron's Way and presents its rear façade to Willow Street. The 9,725-square-foot Kitchen and Bath Showroom is also oriented to face the cul-de-sac of Aaron's Way but the side of the building faces Willow Street. The RPP states that in industrial parks or areas not visible from regional roadways, that the use of non-traditional materials and forms may be appropriate (MPS 6.2.6). In these areas, adequate buffers are required to ensure that the development is not visible from the regional roadway. The RPP also requires that the parking lots be laid out such that they are to the sides and rear of the building unless this is infeasible (MPS 6.2.7). Due to the size of the buildings (both less than 10,000 square feet), the provision of the RPP requiring variation in the height and façade of the buildings is not applicable (MPS 6.2.5).
- CC2** The Kitchen and Bath Showroom will be clad with natural materials (all cedar shingle) on the most visible front and side elevations, with metal cladding on the rear elevation and roof (roof painted forest green and rear painted beige). The parking is located to either side of the proposed building, with permanent parking on the side furthest away from Willow Street and four "future parking" spaces located between the building and Willow Street. The use of predominantly traditional materials on the most visible elevations and the location of the parking on the site is consistent with MPS 6.2.6 and 6.2.7. The metal cladding used on the rear elevation and roof is unlikely to be highly visible from the regional roadway and the use of muted colors in combination with the landscape buffer will further screen views of these areas. Therefore, the use of non-traditional materials on these parts of the building is appropriate for a building of this type in an industrial subdivision and consistent with MPS 6.2.6.

- CC3** The Plumbing Supply building will be clad with natural materials (mix of cedar shingle and clapboard) on both the rear and front facades. The remaining sides of the building and the roof are proposed to be clad with metal, with the roof painted a forest green and the sides painted muted beige. Parking is provided near the access off Aaron's Way in front of the building, with several spaces along the side property line. The use of traditional materials on both ends of the building, one of which directly abuts Willow Street is consistent with MPS 6.2.6. The metal cladding used on both side elevations and the roof may be visible from the regional roadway, however, the use of muted tones together with the proposed landscape buffer will screen views of these areas from Willow Street and not have a negative impact on the community character of the roadway. Therefore, the use of non-traditional materials on these parts of the building is appropriate for a building of this type in an industrial subdivision and consistent with MPS 6.2.6. Furthermore, although part of the parking is located in front of the building, the proposed site layout is more desirable from a community character point of view as placing the parking in the rear would be more detrimental to the views from the regional roadway (Willow Street). Therefore, the proposed parking location is appropriate and consistent with MPS 6.2.7.
- CC4** For all new development, MPS 6.2.5 requires a 200-foot fully screened buffer for development over 15,000 square feet. MPS 6.2.6 states that buffers shall ensure that the proposed development is not visible from scenic or regional roadways. The intent of these standards is to provide full and effective screening of large projects from regional views, particularly warehouse and industrial style buildings. As the two buildings are located adjacent to a regional roadway and consist of new development, the RPP requires full screening of the project.
- CC5** Grading and clearing of the site and installation of the building foundations occurred prior to initiation of Cape Cod Commission review, thereby eliminating the possibility of site redesign to increase the depth of the buffer. The building closest to Willow Street is approximately 50-feet from the roadway edge with a small buffer of existing deciduous trees that is insufficient to fully screen the development.
- CC6** Staff worked with the applicant's landscape architect (Gardens by Rebecca) to identify the areas of the project that would be visible from Willow Street, and emphasized the need to provide as much screening as possible.
- CC7** The applicant submitted a revised landscape plan dated September 13, 2006, as well as a revised planting plan dated October 17, 2006 that proposes to preserve the existing deciduous trees and understory vegetation in the remaining buffer to Willow Street. In addition, the landscape plan calls for the installation of supplemental plant material to enhance the buffer as much as possible. The plan calls for evergreens (inkberry, white pine, American Holly and lecothoe) to be added to the Willow Street buffer, and includes groupings of oak and holly between the two project buildings to provide additional screening of the kitchen and bath showroom building.

The Planting Plan submitted by Down Cape Engineering Inc. dated October 17, 2006 includes a notation regarding "undisturbed woodland" adjacent to Willow Street, which should be amended as follows: "within the 20-foot buffer and 10-foot sides and rear buffer existing vegetation shall be retained. If trees of at least 4-inch caliper do not exist, 3-inch caliper trees shall be planted at intervals of at most 20 feet in all buffers. Planted trees which die shall be replaced".

The plant list contains native and/or low maintenance plant material that is suited to the site and the Cape's climate. Proposed species are attractive, non-invasive and will require reduced amounts of pesticides, fertilizers, water and maintenance after an initial establishment period. The proposed sizes of the trees, shrubs and perennials are satisfactory and include shade trees of at least 3" caliper in the buffer, along Aarons Way and between the buildings. The evergreen trees (American Holly and white pine) are of sufficient height to provide an effective screen within several years.

- CC8** The project does not meet the requirements of MPS 6.2.5 and MPS 6.2.6 for full screening. Given the inability of the applicant to actually provide wider buffers due to site constraints, the Commission finds that the proposed landscape design is the best that can be achieved and that i) the applicant has met its burden of showing a physical, site-specific hardship exists, and ii) literal enforcement of the minimum performance standards would be a hardship for the applicant, and iii) relieving the requirements of MPS 6.2.5 and MPS 6.2.6 for full screening 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.
- CC9** MPS 6.2.9 requires all development to maintain existing and new vegetation. The applicant did not submit a draft maintenance contract, although the applicant proposes to install an irrigation system and agrees to provide a landscape maintenance contract for three consecutive growing seasons to ensure that the plantings survive and become well established. At a minimum, the comprehensive landscape management plan should include irrigation practices, guying and staking, mulching, and methods to minimize fertilizer and pesticide through the use of integrated pest management.

#### **EXTERIOR LIGHTING**

- EL1** MPS 6.2.10 of the 2002 RPP states that development and redevelopment [shall] conform to the Cape Cod Commission's exterior lighting design standards and submission requirements, Technical Bulletin 95-001. Based on application materials submitted to date, project will use wall-mounted exterior lights supplied by RUUD Lighting (RUUD, GWCO-12, full cutoff). The project will not include any pole-mounted lights, but might use bollard lights in the parking areas. The RUUD wall-mount light is consistent with the shielding, light type and cutoff requirements in Technical Bulletin 95-001.
- EL2** Technical Bulletin standard 2.6 stipulates that the exterior lighting may not exceed 8.0 foot-candles. It was not possible based on the application materials submitted to definitively determine whether the RUUD light selected was consistent with this

standard. Based on this, the foot-candle levels of the exterior lighting should be verified by field measurements. And, any bollard or other exterior fixtures are used as part of the project should be required to be in conformance with MPS 6.2.10 and Technical Bulletin 95-001.

### CONCLUSION

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

The applicant demonstrated that literal compliance with the Act and the RPP would involve substantial hardship, as noted in Findings G4, T8, T12, T13, NR2 and C8. Desirable relief may be granted to the applicant without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act, and the Commission grants the minimum relief necessary to address the hardship.

The Cape Cod Commission hereby approves with conditions the Hardship Exemption application of Supply New England to Section 23 of the Cape Cod Commission Act, c. 716 of the Acts of 1989, as amended, for both the contractors warehouse and kitchen and supply showroom building project located 28 and 40 Aaron's Way in Yarmouth, MA, provided the following conditions are met:

### CONDITIONS

#### **GENERAL**

- G1** This DRI hardship exemption decision is valid for 7 years, meaning that local development permits may be issued pursuant hereto for a period of 7 years from the date of the written decision.
- 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.
- G3** The applicant shall obtain all state and local permits for the project.
- G4** The applicant shall forward to the Commission, forthwith, copies of any and all permits and approvals issued in relation to this project subsequent to this decision.
- G5** Prior to receiving a final Certificate of Occupancy from the Town of Yarmouth for Supply New England, the applicant shall obtain a Certificate of Compliance from the Commission.
- G6** Supply New England shall not be open for business to the public until a Certificate of Compliance is received from the Cape Cod Commission.
- G7** The applicant shall notify Commission staff of the intent to seek a Certificate of Compliance at least thirty (30) days to the anticipated date of receipt of such Certificate.

Supply New England /HDEX06023

DRI Decision

November 30, 2006

Page 15

Such notification shall include a list of key contact(s) for questions that may arise during the Commission's compliance review. Commission staff shall complete an inspection under this condition within seven (7) business days of such notification and inform the applicant in writing of any deficiencies and corrections needed. The applicant understands that 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 agrees to allow Cape Cod Commission staff to enter onto the property which is the subject of this decision for the purpose of determining whether the conditions contained in the decision are met.

- G8** The proposed Supply New England project shall be constructed in accordance with the following plans:

<u>Title</u>	<u>Date</u>
• Revised Grading, Drainage and Utilities Plan	October 17, 2006
• Planting Plan	October 17, 2006
• Site development plans for 28 Aaron's Way (Sheets 4 of 4)	June 26, 2006
• Exterior building elevations for 28 Aaron's Way by Peter F. Dimeo Assoc. (Sheets T, A1, A2, A3 and HVAC plans)	June 2, 2006
• Site development plans for 40 Aaron's Way (Sheets 4 of 4)	July 27, 2006
• Exterior building elevations for 40 Aaron's Way by Peter F. Dimeo Associates (Sheets A1, A2 and A3)	June 2, 2006
• Foundation Plan (Sheet S1)	August 17, 2006
• Foundation, Foundation Sections and Pier Details (Sheets S2, S2.1 and S.2)	June 19, 2006

- G9** The applicant shall provide proof of recording of the decision prior to issuance of a certificate of compliance.

#### **TRANSPORTATION**

- T1** The project shall not have direct vehicular access to Willow Street or Higgins Crowell Road.
- T2** Any proposed signage to be located on the sides of the two buildings located at 28 and 40 Aaron's Way shall not be in excess of 2 feet by 12 feet and shall meet the tenants of the lighting Technical Bulletin 95-001. Any proposed exterior building signage shall not be internally illuminated and shall be submitted to staff for approval.
- T3** Prior to the issuance of the certificate of compliance, the applicant shall submit a signed and sealed letter from a Massachusetts registered Professional Engineer detailing and certifying the sight distances to Aaron's Way from Higgins Crowell Road meet the most recent safe stopping sight distance guidelines from the American Association of State Highway Transportation Officials.



- T4** Prior to the issuance of the certificate of compliance, the applicant shall submit a site plan showing the contractors warehouse driveway reduced to 24 feet or less and the driveway shall be built to this specification.
- T5** The applicant shall provide a total of 20 parking spaces or less at the contractors warehouse building and a total of 18 spaces or less at the kitchen and bath showroom building to conform to both local zoning and RPP requirements.

#### **WATER RESOURCES**

- WR1** Title-5 wastewater design flows for development at the site shall not exceed 379 gallons per day.
- WR2** Prior to issuance of the certificate of compliance:
1. The project shall be constructed in accordance with plans cited in Finding WR5 except the berm/curbing shown along the south side of the access drive for lot #18 on the Revised Grading, Drainage & Utilities Plan and Planting Plan shall be eliminated to maximize drainage to the rain garden on the south side of said access drive;
  2. As-built plans showing grading and drainage designs shall be submitted for Commission Staff review and approval and the site shall be inspected to the satisfaction of Commission staff for consistency with plans referenced in Finding WR5; and
  3. Seed certification for turf used at the site shall be submitted for Commission staff review to ensure consistency with the Planting Plan identified in Condition G8 and Finding WR5.

#### **HAZARDOUS MATERIALS**

- HM1** The project shall not use, treat, generate, handle, or store more than 25 gallons or its dry weight equivalent in total of *hazardous materials* or *hazardous wastes* on site. There shall be no on-site disposal of *hazardous materials* or *hazardous wastes*. Compressed gas or natural gas shall be used for heating and emergency power generation.
- HM2** The applicant shall institute a branch stocking program for the Yarmouth facility, including a configuration in the company's distribution software to have a maximum quantity of *hazardous materials* and *hazardous waste* locked in so as to implement the limit articulated in condition 1, above.
- HM3** The applicant shall make reasonable efforts to minimize their hazardous material use and/or waste generation by implementing a system of seeking least-toxic products from its vendors and suppliers.
- HM4** One year from the anniversary date of the certificate of compliance, the applicant shall submit in writing to the Commission a report describing compliance with condition 2 and 3 of this decision.

**HM5** Prior to issuance of the certificate of compliance, the applicant shall submit for Commission staff review a plan to manage any *hazardous wastes* from construction, and to manage and dispose of used fluorescent bulbs and unsaleable chemicals. Unless the applicant submits such a plan, and until Commission staff issues a written approval of such plan, the certificate of compliance may not be issued.

**HM6** Prior to issuance of the certificate of compliance, the applicant shall submit to the Commission an emergency response plan for the project's construction phase.

**NATURAL RESOURCES/OPEN SPACE**

**NR1** In accordance with Finding NR1, the Applicant shall pay \$25,000 to the Barnstable County Treasury for the Town of Yarmouth fund for open space acquisition prior to the issuance of a certificate of compliance.

**COMMUNITY CHARACTER**

**CC1** The applicant shall construct the project in accordance with the Planting Plan submitted by Down Cape Engineering Inc. dated October 17, 2006. No plant substitutions may be made without the prior written approval of Cape Cod Commission staff.

**CC2** The applicant shall amend the "undisturbed woodland" narrative adjacent to Willow Street on the Planting Plan submitted by Down Cape Engineering, Inc. dated October 17, 2006 as follows: "within the 20-foot buffer and 10-foot sides and rear buffer existing vegetation shall be retained. If trees of at least 4-inch caliper do not exist, 3-inch caliper trees shall be planted at intervals of at most 20 feet in all buffers. Planted trees which die shall be replaced", and shall provide such revised plan to the Cape Cod Commission prior to issuance of a preliminary Certificate of Compliance.

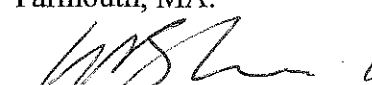
**CC3** The applicant shall obtain staff approval of a draft landscape maintenance agreement for three consecutive growing seasons prior to obtaining a certificate of compliance. A growing season is defined as from March 15 to October 31. The applicant shall provide a copy of an executed landscape maintenance agreement consistent with the approved draft prior to obtaining a certificate of compliance.

**CC4** The applicant shall complete all site work and landscaping prior to obtaining the final Certificate of Compliance. If all required site work and/or other landscape improvements are not complete prior to issuance of a final Certificate of Compliance, any work that is incomplete shall be subject to an escrow agreement of form and content satisfactory to Commission counsel. The amount of the escrow agreement shall equal 150 percent of that portion of the incomplete work, including labor and materials, with the amount approved by Commission staff. The escrow funds shall be payable to Barnstable County with the work approved by Commission staff prior to release of the escrow funds.

## EXTERIOR LIGHTING

- EL1** All exterior lighting fixtures shall be consistent with the requirements and standards of MPS 6.2.10 and Technical Bulletin 95-001 (as amended).
- EL2** Prior to issuance of a certificate of compliance, the applicant shall submit an "as to be installed" exterior lighting plan. This plan shall be used in connection with these conditions, and shall conform to the standards of Technical Bulletin 95-001.
- EL3** Should unexpected conditions arise during construction that require redesign or adjustments to the project's exterior lighting fixtures, including substitutions of fixture heads, the applicant shall obtain approval from Cape Cod Commission staff prior to the installation of such fixtures consistent with Section 12 of the *Enabling Regulations*. Modifications made during construction that are in accordance with Technical Bulletin 95-001 may be considered as Minor Modifications #1.
- EL4** Prior to issuance of a certificate of compliance, in-the-field verification of the exterior lighting design and light levels shall be conducted by Commission staff to verify conformance with the requirements of the this decision, Technical Bulletin 95-001 and MPS 6.2.7.

The Cape Cod Commission hereby approves with conditions the hardship exemption application of Supply New England pursuant to Section 23 of the Cape Cod Commission Act, c. 716 of the Acts of 1989, as amended, for the Supply New England project located on Aaroin's Way in Yarmouth, MA.

  
W. Bradford Crowell, Chair

12/04/06  
Date

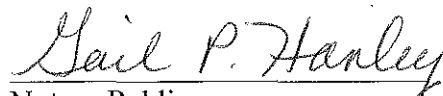
## COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

12/4, 2006

W. Bradford Crowell

Before me, the undersigned notary public, personally appeared \_\_\_\_\_, in his/her capacity as Chair of the Cape Cod Commission, whose name is signed on the preceding document, and such person acknowledged to me that he signed such document voluntarily for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was ☐ photographic identification with signature issued by a federal or state governmental agency, ☐ oath or affirmation of a credible witness, or ☒ personal knowledge of the undersigned.

  
Notary Public

My Commission Expires:

10/13/11