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BARNSTABLE, MASSACHUSETTS 02630



CAPE COD
COMMISSION

(508) 362-3828 • Fax (508) 362-3136 • www.capecodcommission.org

Modification of DRI Decision

Date: January 2, 2013

Project Applicant: Cape Cotuit Center, LLC
C/o Stuart Hunziker
Eastern Real Estate, LLC
120 Presidential Way, Suite 300
Woburn, MA 01801

Property Owner/s: Cape Cotuit Center, LLC
EDT Cotuit, LLC

Project: Cotuit Landing Redevelopment and Expansion

Location: Route 28/Falmouth Road
Marston's Mills, Massachusetts

Project Number: JR-99013

Book/Page: Parcel 2, 3, and 4: Cape Cotuit Center, LLC
Book 10805, Page 177

Parcel 6: Cape Cotuit Center, LLC
Lot 12-B on Plan Book 475, Page 4
Book 10805, Page 177

Certificate #: Parcels 1, 5, and 7: Cape Cotuit Center, LLC
L.C. 22824-J, Lots 112, 114 and 115
Certificate of Title 144821

Parcel 8: EDT Cotuit, LLC
Book 13230, Page 58 and
Book 12107, Page 258 and
Book 10805, Page 177

DECISION OF THE CAPE COD COMMISSION

Background

In a Development of Regional Impact (DRI) decision dated June 21, 2001, the Cape Cod Commission (Commission) approved with conditions the redevelopment and expansion of the

existing Cotuit Landing Shopping Plaza (Plaza) on Route 28/Falmouth Road in Marston's Mills Massachusetts.¹

The original June 21, 2001 decision was modified by decisions dated 2/19/02, 3/18/02, 6/10/02, 10/7/05, 5/11/06 and 2/13/12. These modification decisions made a number of changes to the original decision, including updating the approved project plans of record, modifying the Transportation conditions relating to Route 28 roadwork, changing the schedule for required field inspection of the exterior lighting, adjusting the schedule for provision of required open space, and acknowledging that some retail shops could locate in the Plaza consistent with Condition WM1, which imposed certain limits on Hazardous Materials. The 2/13/12 modification decision specifically updated the approved project plans of record to acknowledge the location of an access easement, which easement was previously granted by the Applicant to John T. Peck for the benefit of his property abutting the Plaza, registered with the Barnstable Registry District of the Land Court on 8/21/01 as Document No. 841,541. Peck's Boatyard is operated on this abutting property.

Jurisdiction and Modification Types

Section 13(a)(i) of the Commission's *Enabling Regulations* (revised March 2011) provides that an Applicant "*who has obtained a favorable decision from the Commission, or a successor in interest to a favorable and transferable Commission decision, may apply for a decision modification.*"

Section 13(c) of the *Enabling Regulations* sets out the types of DRI modifications. A Minor Modification Type #1 is defined as "*revisions that are a result of more restrictive conditions imposed by a local board or technical corrections or changes that the Executive Director or his/her designee determine are de minimus changes to the project.*"

The *Enabling Regulations* also state that Minor Modifications #1 "*shall be approved by the Executive Director or his/her designee and reported to the Regulatory Committee and do not require further review by the Commission.*" A Minor Modification Type #1 is governed by the Regional Policy Plan in effect at the time of the original Commission approval.

Request and Determination

The Applicant has requested a further decision modification to reflect a revision to the location of the access easement that was the subject of the previous 2/13/12 decision modification, said revised easement location shown as "Revised Easement" on a sketch plan of land attached hereto and entitled "Plan Showing Revised Easement at 3840 Falmouth Road, Barnstable (Marstons Mills) Mass," dated April 26, 2012 and prepared by CapeSurv, 7 Parker Road, Osterville, MA 02655.

The Executive Director of the Cape Cod Commission has determined that the Applicant's requested modification, discussed above, constitutes a *de minimus* change to the decision, and is approved as a Type 1 Minor Modifications according to Section 13 of the Commission's *Enabling Regulations* (as amended March 2011).

¹ The project was granted a Preliminary Certificate of Compliance dated November 19, 2001, a Partial (Final) Certificate of Compliance for Phase 1 on July 10, 2002, and a Partial (Final) Certificate of Compliance for Phase 2 on July 10, 2002.

Based on the Executive Director's determination, Condition G7 of the June 21, 2001 DRI decision, as modified, is hereby revised as follows (new or revised text is shown in **bold**). All conditions attached to the June 21, 2001 decision, as previously modified, continue to apply except as modified herein:

Condition G7

G7. The proposed Cotuit Landing Redevelopment and Expansion project shall be constructed in accordance with the following final plans:

	Dated	Revised Date	Mod Approved
• <i>Layout and Materials Plan, C5</i>	<i>11/30/00</i>	<i>02/20/01</i>	<i>01/03/2013</i>
<i>As modified by the "Revised Easement" shown on a sketch plan of land entitled "Plan Showing Revised Easement at 3840 Falmouth Road, Barnstable (Marstons Mills) Mass," dated April 26, 2012 and prepared by CapeSurv, 7 Parker Road, Osterville, MA 02655</i>			
• <i>Grading and Drainage Plan, C6</i>	<i>11/30/00</i>	<i>05/09/01</i>	
• <i>Utilities Plan, C7</i>	<i>11/30/00</i>	<i>05/09/01</i>	
• <i>Site Electrical Plan, SE-1</i>	<i>11/30/00</i>	<i>05/09/01</i>	
• <i>Landscape Plan, C8</i>	<i>11/30/00</i>	<i>05/15/01</i>	
• <i>Median Planting Plan, L-1</i>	<i>01/26/01</i>	<i>02/22/01</i>	
• <i>Open Space Plan</i>	<i>05/15/01</i>		
• <i>Elevations and Plans:</i>			
<i>Stop & Shop/Retail A, EL1</i>	<i>03/22/01</i>		
<i>Retail B, C, D, E, EL2</i>	<i>04/13/01</i>		
<i>Stop & Shop, EL3</i>	<i>11/23/00</i>		
<i>Retail, EL4</i>	<i>11/23/00</i>		
<i>Stop & Shop, F1</i>	<i>05/15/01</i>		
<i>Wastewater Treatment Shed, 1</i>	<i>03/27/01</i>		
• <i>Cotuit Liquors – Proposed Cooler</i>	<i>11/29/01</i>		<i>2/19/02</i>
• <i>Garden Center Plan</i>	<i>undated</i>		<i>2/19/02</i>
• <i>Elevations and Plans:</i>			
<i>Retail Bldg. A – Plans, Elevations & Details, A.A-1</i>	<i>3/01/01</i>	<i>9/19/01</i>	<i>2/12/02</i>
<i>Retail Bldg. A – Sections & Details, A.A-2</i>	<i>5/21/01</i>	<i>9/19/01</i>	<i>2/12/02</i>
<i>Retail Bldg. A – Refl. Clg. Plan & Details, A.A-3</i>	<i>3/01/01</i>	<i>9/19/01</i>	<i>2/12/02</i>
<i>Retail Bldg. B – Elevations, B.A-1</i>	<i>7/01/01</i>		<i>2/12/02</i>
<i>Retail Bldg. H – Plan, Elevations & Details, H.A-1</i>	<i>3/01/01</i>	<i>9/19/01</i>	<i>2/12/02</i>
<i>Retail Bldg. H – Sections &</i>			

Condition G7, Continued

G7. The proposed Cotuit Landing Redevelopment and Expansion project shall be constructed in accordance with the following final plans:

	Dated	Revised Date	Mod Approved
Details, H.A-2	5/21/01	9/19/01	2/12/02
Retail Bldg. H - Refl. Clg. Plan & Details, H.A-3	3/01/01	9/19/01	2/12/02
Retail Bldg. H - Roof Plan & Details, H.A-4	3/01/01	9/19/01	2/12/02
Retail Bldg. D - Elevations & Roof Plan, D.A-1	3/29/02		
Retail Bldg. E - Floor Plan, Elevations, Schedule & Details E.A-1	4/04/02		6/10/02

ISSUANCE OF MODIFICATION DECISION


Paul Niedzwiecki, Executive Director

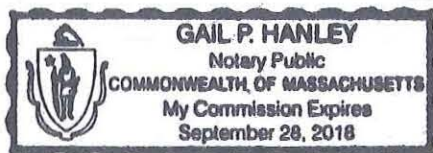
1/3/13
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

Jan 3, 2013

Before me, the undersigned notary public, personally appeared Paul Niedzwiecki, in his capacity as the Cape Cod Commission's Executive Director, 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.



Gail P. Hanley
Notary Public

My Commission Expires: 9-28-18