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December 19, 2024
0118277-00001

Via E-mail

Tom Wilson, Chair
Committee on Planning & Regulation
Attn: Jordan Velozo, Esq., Chief Regulatory Officer
Cape Cod Commission
3225 Main Street
Barnstable, MA 02663

Re: Canal Street Crossing (the "Approved Project")
DRI No. 19007
Request for Minor Modification, Type 2

Dear Chair Wilson and Members of the Committee on Planning & Regulation

This correspondence is submitted on behalf of 21 Hunters Brook Road, Inc. (the "Applicant") to provide supplemental information following the Committee on Planning and Regulation's (the "Committee") October 31, 2024 meeting on the Applicant's request for a Minor Modification, Type 2, of the above-referenced Approved Project. As detailed in the Applicant's Minor Modification submittal, and succinctly summarized in the chart contained in the October 25th Staff Report, the proposed changes either do not change or reduce the Approved Project's regional impacts, and accordingly, qualify as a Minor Modification, Type 2, pursuant to Section 11(b)(ii) of the Commission's Enabling Regulations.

As discussed at the October 31st meeting, and by way of background, a proposed modification may be categorized as a Minor Modification, Type 2, where, as is the case here, the modification "*involves a minor Change of Use, a minor change to the site plan, or small change to the findings or a condition of the original approval which does not affect the intent or outcome of the finding or condition.*"¹ The Enabling Regulations also give some guidance as to what is a "minor" or "small" change within the meaning of that language in the second sentence of Section 11(b)(ii) of the Enabling Regulations which provides that "*a proposed change shall not result in different or increased impacts to the resources protected by the Act and/or the RPP.*"

¹ See Section 11(b)(ii) of the Commission's Enabling Regulations.



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At the initial meeting, several Commissioners questioned whether replacing the 90-bed, 4-story, approximately 90,000 square foot, approved assisted living facility with 17 townhomes was more than a “minor Change of Use.” To be clear, the proposed modifications do not result in a “Change of Use” within the meaning of the Commission’s regulations. First, the proposed modifications do not change the use of the project as a mixed-use development consisting of both medical office and Residential Dwelling Units. Importantly, the Enabling Regulations’ definition of a “Residential Dwelling Unit” includes both townhouses and bedrooms in an assisted living facility. Thus, there is no Change of Use as the project remains a mixed-use development; the proposed modification will simply reduce the size and scale of the project with a smaller medical office building and fewer Residential Dwelling Units (reduction from 120 bedrooms to 52 bedrooms).

There was also some confusion at the October meeting as to whether the proposed access from the site onto Canal Street was proposed to be modified and/or whether the proposed modifications differently impact the onsite wetland resource area. Again, to clarify, the proposed modifications do not affect construction of the curb-cut onto Canal Street; they also do not change the Approved Project’s limit of work to the wetland buffer or the approved wetland mitigation measures; and the proposed modifications also do not affect or change construction of the approved bridge. Consistent with the Commission’s objectives, the proposed modifications will, however, beneficially decrease the amount of on-site impervious coverage by approximately 0.24 acres.

Finally, in response to the Committee’s request, we are enclosing supplemental transportation memorandum prepared by the Applicant’s transportation engineer, Bowman, dated December 4, 2024. This document supplements the March 2024 Bowman transportation assessment that was submitted as part of the modification request. As detailed in the enclosed memorandum, the proposed modification reduces weekday daily trips, weekday AM peak hour trips and weekday PM peak hour trips. Accordingly, the proposed modifications decrease transportation impacts on the regional roadway system at all critical times. The proposed modification also includes a one-way internal connection between the townhouses and the medical office that would allow vehicles leaving the residential portion of the site to exit directly onto Canal Street. As compared to the Approved Project, the Bowman report estimates that the even with the internal connection allowing the townhouses to exit directly via the Canal Street driveway, the total number of trips exiting the site via the Canal Street driveway would be less than what has already been approved.

Lastly, as the Committee considers this modification request, it is important that it do so through the lens of the Commission’s regulatory purpose, which is to review and consider a



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project's regional impacts. The Commission's role is not to duplicate a municipality's site plan review, but rather to evaluate impacts that are regional in nature. Considerations such as internal site circulation are squarely within the purview of the municipality. Indeed, the Town of Bourne's Zoning Bylaw contains detailed Site Plan Review Criteria, including "Traffic and Internal Circulation" which specifically encourages "joint access driveways between adjoining properties" such as is proposed here. As noted at the October 31st hearing, the proposed changes will require modification of the Approved Project's Site Plan Review approval and we look forward to engaging with the Town's Planning Board as it considers the proposed site plan modifications as part of its Site Plan Review process. However, from the standpoint of the Commission's regional review, consistent with Section 11(b)(ii) of the Enabling Regulations, the proposed modifications reduce regional impacts and do not result in different impacts to any regional resources, and therefore may be approved as a Minor Modification, Type 2.

We look forward to continued discussion of this request at the next available meeting of the Committee. Thank you very much for your consideration.

Very truly yours,


Eliza Cox

EZC:

Enclosure: Bowman Supplemental Transportation Memorandum dated December 4, 2024

CC: 21 Hunters Brook Road, Inc.

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