

CAPE COD COMMISSION

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Date: September 5, 2006

To: Mr. Andrew Singer, Esq.
Singer and Singer, LLC
26 Upper County Road
Dennisport, MA 02639

From: Cape Cod Commission

Re: Limited DRI Determination for Change of Use
DRI Enabling Regulations, Sections 3 and 4

Project Applicant: Gershman Brown Associates, Inc.
185 Broadway
Providence, RI 02903

Property Owner: Bruce Murphy and Ronald Murphy Jr. Trustee
1111 Route 28
South Yarmouth, MA 02664

Project: CVS Pharmacy Redevelopment
451-467 Station Avenue
South Yarmouth, MA 02664

Project #: #CU06015

Book/Page: B 12497/P33
Map/Parcel: 87/41

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission), through its Regulatory Committee, hereby determines that the redevelopment of the property located at 451-467 Station Avenue, South Yarmouth, MA, from the existing 12,500 square foot five-unit retail building to a 14,219 square foot CVS drive-through Pharmacy requires no further DRI review under the criteria established in Section 4(b) of Chapter A, Enabling Regulations Governing Review of Developments of Regional Impact, Barnstable County Ordinance 90-12, as amended (DRI Enabling Regulations), and may proceed without Development of

Limited DRI Determination Decision CU#06
CVS Pharmacy, South Yarmouth, MA
September 5, 2006

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Regional Impact (DRI) review. This decision is rendered pursuant to a vote of the Regulatory Committee on September 5, 2006.

PROJECT DESCRIPTION

The proposed CVS project consists of the demolition of an existing 12,500 square foot, five-unit commercial building at 451-467 Station Avenue in South Yarmouth that will be replaced with a new, one-unit commercial building with a footprint of 11,894 square feet (with a mezzanine of 2,325 square feet). The sole tenant of the 14,219 square foot building will be CVS Pharmacy, which is relocating from its existing store across Station Avenue in the Grand Union Supermarket Plaza. The proposed drive-through CVS Pharmacy will be located on a 3.7-acre parcel located within an Aquifer Protection District that had undergone significant physical upgrades in 2003. These upgrades include the installation of a new Title-V denitrifying septic system and a stormwater management system. Additional site improvements associated with the proposed CVS Pharmacy project include new landscaping and better site traffic flow.

PROCEDURAL HISTORY

The Commission received a Limited DRI Determination for Change of Use application from Attorney Andrew Singer on June 29, 2006. The Chief Regulatory Officer made a determination on July 28, 2006 that the proposed project constituted a change of use. A duly noticed public hearing pursuant to Section 5 of the Cape Cod Commission Act (Act) to consider the application was held by the Regulatory Committee of the Commission on September 5, 2006, at the Cape Cod Commission office in Barnstable, MA. The public hearing and record were closed on this date. The Regulatory Committee voted four in favor, one against and one abstention that the project not be subject to mandatory DRI review in any Regional Policy Plan (RPP) issue area, and therefore be returned to local review.

In addition to the list of materials submitted for the record (see Table 1 below) the application and notices of public hearings relative thereto, Commission staff's notes and correspondence, the minutes of public meetings and hearings, and all other written submissions received in the course of the proceedings are hereby incorporated into the record by reference.

TABLE 1: Materials Submitted for the Record	
<i>Materials From the Applicant</i>	<i>Date Submitted</i>
Letter from R and B Realty regarding clarification of tenancy at project site	9/13/05
Application for Limited DRI Determination for Change of Use	6/29/06
Letter from Singer and Singer, LLC regarding Change of Use application	6/30/06
Building elevations renderings from BKA Architects	7/07/06
Letter from Singer and Singer, LLC regarding MA Historical	7/11/06

Commission	
Exterior Elevations plan by BKA Architects (Sheet A-4.1, A-1.1 and A-2.1)	7/21/06
Memorandum from Singer and Singer, LLC regarding hazardous materials	7/30/06
Letter from office of Singer and Singer, LLC regarding community character	7/30/06
Letter from office of Singer and Singer, LLC regarding RPP compliance	8/03/06
Letter from Attorney Anthony Alva regarding plaza convenience store	8/17/06
Letter from Brian Dunn, Associates regarding Crash Analysis in Yarmouth	8/17/06
Email from office of Singer and Singer, LLC regarding RPP conformance	8/24/06
Letter from office of Singer and Singer, LLC regarding traffic mitigation	8/25/06
Site Plan from Fuss and O'Neill, Inc. (Sheet C-5.0)	9/06/06
Existing and proposed subsurface disposal system plan by The BSC Group	9/06/06
Grading, drainage and utility plan by Coastal Engineering (Sheet S-D2)	9/06/06
Landscape plan by Fuss and O'Neill (Sheet C-9.0)	9/06/06
Letter from office of Singer and Singer, LLC regarding hazardous materials	9/07/06
Letter from office of Singer and Singer, LLC regarding mitigation funds	9/28/06
Landscape maintenance agreement from Seaview Landscaping, Inc.	9/28/06
Letter from office of Singer and Singer, LLC regarding traffic mitigation	10/23/06
<i>Materials from the staff</i>	<i>Date Submitted</i>
Letter from Greg Smith to Singer and Singer, LLC regarding traffic issues	7/20/06
Email from Gab Belfit to Greg Smith regarding water resources	7/21/06
Email from Greg Smith to Singer&Singer, LLC regarding RPP compliance	7/25/06
Letter from Greg Smith to Singer and Singer, LLC regarding completeness	7/28/06
Email from Andrea Adams to Singer and Singer, LLC regarding haz mats	8/25/06
Staff report	10/03/06
<i>Materials from Town of Yarmouth</i>	<i>Date Submitted</i>
Email from Terry Silvia, Yarmouth Town Planner regarding RPP compliance	7/24/06

TESTIMONY

Public Hearing on September 5, 2006:

Greg Smith summarized the proposed project and Staff Report dated October 3, 2006. Mr. Smith discussed the change of use review standards and identified five issue areas of concern that the staff focused its review on, including water resources, natural resources, transportation, hazardous materials, and community character. Mr. Smith stated the applicant has made many changes since staff received the initial application materials on June 29, 2006 in response to staff concerns.

Mr. Terry Silva of the Yarmouth Planning Department stated that he supports a waiver of DRI review under the change of use regulations, given that the applicant has addressed the town's concerns.

Mr. Smith said the staff's recommendation was that the Committee find that project was a Change of Use, but one that did not result in more detrimental impacts on the resources protected by the Act than the immediate prior use, and that the applicant had offered to design the project in a way as to reduce its impacts so that it required no further Commission review. He also recommended that the Committee direct staff to draft a decision, which included specific findings, related to the proposed project design, and a requirement that a Certificate of Compliance be issued prior to the local Certificate of Use and Occupancy. He noted this would allow the Committee to verify that the project had been built in a manner consistent with the Regulatory Committee's review. He also recommended that the findings include that there was a proposed change in the monetary donation to the Town of Yarmouth relative to traffic impacts from \$50,000 to \$75,000. He also stated that the staff opinion at this time is that the project as proposed is not more detrimental than the existing use in any RPP issue area. The Regulatory Committee voted four in favor, one opposed and one abstaining not to require DRI review in any RPP issue area under this Limited DRI Determination for Change of Use application.

JURISDICTION

The proposed project qualifies as a DRI under Section 3(f)(i) of the DRI Enabling Regulations as a Change of Use with a gross floor area greater than 10,000 square feet. Pursuant to Section 4(a) of the DRI Enabling Regulations, the Chief Regulatory Officer determined that the project constitutes a Change of Use on July 28, 2006. Further, as provided in Section 4(a)(iii) of the DRI Enabling Regulations, the applicant then applied for a Limited DRI Determination in accordance with Section 4(b) of the Enabling Regulations, which require the Regulatory Committee determine the scope of the DRI review required.

FINDINGS

The Commission, through the Regulatory Committee, has considered the application of Greshman Brown Associate, Inc. for the proposed CVS Pharmacy change of use project at 451-467 Station Avenue in South Yarmouth, MA, and based on consideration of such application and upon the information presented at the public hearing and submitted for

the record, makes the following findings pursuant to Sections 3 and 4 of the DRI Enabling Regulations:

GENERAL

- G1** The project that is the subject of this Decision project consists of the demolition of an existing 12,500 square foot, five-unit commercial building at 451-467 Station Avenue in South Yarmouth that will be replaced with a new, one-unit commercial building with a footprint of 11,894 square feet (with a mezzanine of 2,325 square feet). The sole tenant of the 14,219 square foot building will be CVS Pharmacy, which is relocating from its existing store across Station Avenue in the Grand Union Supermarket Plaza.
- G2** In accordance with Section 4(b)(ii) of the DRI Enabling Regulations, the project does not involve the demolition or substantial alternation of historic structures.
- G3** The Chief Regulatory Officer made a determination on July 28, 2006 that the proposed project constituted a change of use.
- G4** In accordance with Section 4(b)(vi) of the DRI Enabling Regulations, the Regulatory Committee on October 3, 2006 reviewed the proposed change of use to determine the scope of the project review, which is limited to those RPP issue areas where the impacts are more detrimental (quantitatively and/or qualitatively) than the immediate prior use. The Regulatory Committee considered whether the project's impacts involve deviation from the minimum performance standards (MPS) of the 2002 Regional Policy Plan (RPP) in determining the scope of DRI review. The Regulatory Committee finds that the project has no impacts that are more detrimental (qualitatively or quantitatively) than the immediate prior use. The Committee, in making its determination, also considered the resources protected by the Act and the RPP.
- G5** The project is to be constructed according to the following plans:
- Site plans prepared by Fuss and O'Neill (Sheet C-5) dated September 2006 and received by staff September 6, 2006;
 - Existing and proposed subsurface disposal system plan for "Village Plaza" in South Yarmouth, MA prepared by The BSC Group, Inc. dated October 21, 2003 and received by staff September 6, 2006;
 - Grading, drainage and utility plan prepared by Coastal Engineering (Sheet SD-2) dated 8/23/03 and received by staff September 6, 2006;
 - Exterior elevations and notes plan prepared by BKA Architects, Inc. (Sheet A-4.1) dated July 21, 2006 and received by staff September 6, 2006;
 - Floor plan prepared by BKA Architects, Inc. (Sheet A-1.1) dated July 21, 2006 and received by staff September 6, 2006;

- Roof plan prepared by BKA Architects, Inc. (Sheet A-2.1) dated July 21, 2006 and received by staff September 6, 2006; and
- Landscape plan prepared by Fuss and O'Neill dated September 2006 (Sheet C-9.0)

WATER RESOURCES

- WR1** The site is located in the Mill Pond/ Bass River watershed according to the 2002 RPP Water Resource Classification Map II. A study of the Mill Pond system has shown that the nitrogen loading to the watershed exceeds the estuary's critical nitrogen load. The project will result in a decreased nitrogen load to groundwater, including the Mill Pond/ Bass River watershed, than the immediate prior use.
- WR2** The entire site is located within a Wellhead Protection Area according to the 2002 RPP Water Resource Classification Map I. Nitrogen loading calculations were not provided by the applicant; however, wastewater flows submitted by the applicant demonstrate the proposed development will have fewer impacts than the immediate prior use.
- WR3** The project is expected to result in reduced wastewater flows than the immediate prior use. The existing system utilized technology to achieve denitrification of the wastewater effluent. Title-5 flow from the existing motel is 960 gallons per day (gpd) based on 12,813 square feet of retail/office use. Title-5 wastewater flow for the proposed project is 885 gpd based on the project's 11,894 square feet design.
- WR4** Stormwater improvements to the existing system were made in 2003 to the existing system. The project will use standard catch basins to remove sediment. Infiltration basins will recharge runoff from impervious surfaces. The project will result in a slight improvement (less than one percent) to the existing amount of site impervious site coverage of 78 percent by permeable pavers on a portion of the parking area, which is a slight decrease than the immediate prior use.
- WR5** A stormwater operation and maintenance plan had been prepared to assure that all stormwater structures are adequately inspected and maintained to prolong the effective life of the stormwater system.
- WR6** Additional language to the operation and maintenance plan to address the permeable pavers as per the manufacturers and engineering specification should include periodic vacuuming and replacement of aggregate material in addition to other manufacturing recommendations.

- WR7** The project's impacts in the area of water resources are less detrimental than the immediate prior use.

NATURAL RESOURCES

- NR1** The project site is located in a significant natural resource area (SNRA) due to the presence of a public water supply wellhead protection area. According to application materials, the existing site condition is 78 percent impervious, and the existing pervious areas include buffers to roadways or adjacent developed properties, and have very little habitat value. Consequently, impacts to habitat from the project are not anticipated.
- NR2** The Commission finds that the change in area of the non-vegetated areas on the site is negligible compared to existing conditions. While the project will increase non-vegetated areas by approximately 1,600 square feet, the applicant proposes to incorporate approximately 4,000 square feet of pervious pavers within the parking lot. Since the resource of concern in the SNRA is a public wellhead protection area, and the pervious pavers will allow for stormwater infiltration, the addition of the pavers to the plan may be considered a minor improvement over existing conditions. Consequently, permanently protected open space is not a requirement of this project.
- NR3** The project's impacts in the area of natural resources are less detrimental than the immediate prior use.

TRANSPORTATION

- T1** MR. George Allaire, the Yarmouth Department of Public Works Director testified at the August 18th, 2006 meeting in the Yarmouth Town Hall that he did not have concerns regarding any adverse impacts from the proposed project on the Regional Roadways adjacent to the project site (Old Townhouse Road and Station Avenue).
- T2** The Regulatory Committee adopts this testimony, and finds the project does not have any detrimental impacts on the regional roadways.
- T3** The existing five unit commercial building currently has one full access driveway on Station Avenue and a full access driveway on Old Town House Road in Yarmouth. The applicant proposes to retain both of these full access driveways. Both Station Avenue and Old Town House Road are regional roads as defined in the Regional Policy Plan (RPP). Cape Cod Commission transportation staff has conducted a site visit and reviewed a traffic letter dated June 21, 2006 from Fuss & O'Neill relative to project impacts.
- T4** The applicant has calculated the expected trip generation of this project based on information contained in the Institute of Transportation Engineers *Trip*

Generation manual 7th Edition. A comparison of the trip generation estimates based on the different type of use is shown below in Table 1. As shown in Table 1, these are the estimated net increases at the existing driveways (adjacent roadway impacts would be given a 25 percent pass-by credit for the retail uses). The net increase in vehicle trips due to the types of use (five unit commercial building to CVS pharmacy) is significant during the afternoon and Saturday peak hour.

Table 1 – Trip Generation Estimates (vehicles per hour)

	Existing Use (five unit commercial building)	Proposed Use (CVS)	Net Increase
Average Daily Traffic	1,394	1,828	434
Afternoon Peak Hour	102	158	56
Saturday Peak Hour	149	174	25

T5 The standard of review for transportation safety impacts is 25 or more peak hour trips through a high crash location. Based on information submitted by the applicant, the intersections of Station Avenue/White's Path/Workshop Road, Station Avenue/Old Town House Road and the Old Town House Road/Forest Road are high crash locations. Trip distribution information was not submitted; therefore the Commission could not determine the project's traffic through these intersections. The applicant offered \$75,000 and has since provided to the Town of Yarmouth to offset the congestion and safety impacts of this project.

T6 The Cape Cod Commission regulatory Committee has determined that significant new traffic would be added to the roadway system as a result of this project during the afternoon and Saturday peak hour. The applicant has offered \$75,000 to the Town of Yarmouth to offset the additional trips on the regional roadways.

HAZARDOUS MATERIALS

HM1 According to maps produced for the 2002 (revised) Regional Policy Plan (RPP), the proposed project site is located in an existing Wellhead Protection Area (WHPA). The maximum amount of hazardous materials and wastes that could be on the site at any time would be 51.3 gallons (convenience store) + 25 gallons = 76.3 gallons.

HM2 Tab 8 of the Change of Use application states the existing on-site convenience store accounts for approximately 51.3 gallons of hazardous materials. An August 17, 2006 E-mail from Attorney Anthony Alva to Commission staff states that the

convenience store will be leaving the property completely, and will not be relocated anywhere else on site.

- HM3** The application, an August 24, 2006 E-mail and a September 7, 2006 letter from Attorney Singer states the new CVS will have in inventory approximately 21.4 gallons of hazardous materials. The new photo lab machine will account for 31.3 gallons of new chemicals. This amount is split between 10.4 gallons in the machine, and 20.9 gallons in reserve, in the store, for refilling the machine. The photo lab machine has a 2-gallon waste reservoir, and a pump system that links to a 15-gallon waste drum. Using the information discussed above, the amount of hazardous materials and waste attributable to the project is 69.7 gallons. The size of the photo lab, including the 2.0-gallon on-board primary waste tank, will help limit the store's use of hazardous materials and its generation of hazardous waste over the long term.
- HM4** Attorney Singer's September 7, 2006 letter and the June 29, 2006 Change of Use application reference the CVS training program for employees relative to the photo lab machine and spill prevention. These company programs serve to address the Regional Policy Plan's hazardous materials/waste standards for employee-training programs in proper chemical management, waste disposal, spill control, and emergency response.

COMMUNITY CHARACTER

- CC1** The plans (Sheet A-4.1 dated July 21, 2006 prepared by BKA Associates, Inc.) incorporate a variety into both the building façade and building height that results in a design that is generally consistent with the architectural standards of the RPP and Commission design guidelines. The overall design reduces the apparent mass of the building by the use of dormers, gables and covered walkway projections. The plans show the varied use of a wood-composite clapboard and cedar shingle on the façade and asphalt architectural roof shingles, which also reduce the apparent mass of the building and are consistent with traditional Cape Cod styles. These features of the proposed design demonstrate that the building design does not have more detrimental impacts on community character than the immediate prior existing use.
- CC2** MPS 6.2.7 requires parking to be located to the side or rear of a building in order to promote traditional village design in commercial areas, unless such location would have an adverse or detrimental impact on environmental or visual features on the site, or is infeasible. The CVS pharmacy proposes to locate the majority of parking in front of the building, which is inconsistent with MPS 6.2.7. The project site is located in the town of Yarmouth's B-1 Business District. The B-1 District requires a minimum 75-foot front building setback. The existing convenience store/former restaurant are located approximately 140 feet from Station Avenue, with parking located to the front and side of the building. According to the applicant, improvements to the existing parking field, septic

system and drainage were completed within the last 3 years. The proposed CVS pharmacy would continue to locate the parking to the front and sides of the building in order to utilize these recent improvements. While a portion of the proposed parking could be relocated to the rear of the site, this location would cause conflicts with delivery vehicles and is therefore infeasible.

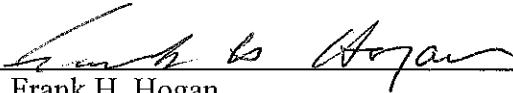
- CC3** MPS 6.2.8 requires that redevelopment of existing strip development provide adequate buffers between parking areas and the street, and significant improvement to interior parking-lot landscaping, as well as façade improvements and frontage buildings, as necessary, to improve the visual character of the site. The proposed project will include additional landscape islands and a 25-foot vegetated buffer along Station Avenue, an improvement over the immediate prior use.
- CC4** The applicant has also proposed to transplant existing trees on-site for use on the property boundaries and within the parking lot. The project plans indicate that a certified arborist will review, inspect and direct the installation of the transplanted trees to ensure their survival. In addition, the applicant has agreed to provide a 3-year landscape maintenance contract for all proposed landscaping, which is an improvement over the immediate prior use.
- CC5** Existing signage on the site consists of an externally illuminated pylon sign. MPS 6.2.11 prohibits internally illuminated signs. The applicant intends to re-use the existing sign, which will continue to be externally illuminated. Proposed building signage will be lit by gooseneck fixtures, which is allowed under MPS 6.2.1.1. and is an improvement over the immediate prior use.

CONCLUSION

Based on the findings above, the Commission hereby determines that the proposed CVS Pharmacy change of use at 451-467 Station Avenue in South Yarmouth, MA is not subject to mandatory review as a Development of Regional Impact in any Regional Policy Plan issue area in accordance with Sections 3 & 4 of the DRI Enabling Regulations because the impacts of the proposed project are not more detrimental than those of the immediate prior use as a retail development.

Prior to the issuance of a Certificate of Occupancy from the Town of Yarmouth, the Applicant must receive a Certificate of Compliance from the Cape Cod Commission. This provision is necessary to ensure that the project for which the Applicant received a Limited DRI Determination Decision (of no mandatory review required) was constructed according to the proposed plans referenced herein in Finding G3 and is consistent with the Findings of this Decision. The Applicant shall provide a minimum of 30 (thirty) business days notice of the intent to seek a Certificate of Compliance from the Commission.

The Commission hereby approves the application of Gershman Brown Associates, Inc. for the proposed change of use redevelopment project to proceed without mandatory DRI review. This decision is rendered pursuant to a vote of the Cape Cod Commission Regulatory Committee on September 5, 2006.



Mr. Frank H. Hogan
Chairman of the Regulatory Committee

12/14/06
Date

COMMONWEALTH OF MASSACHUSETTS

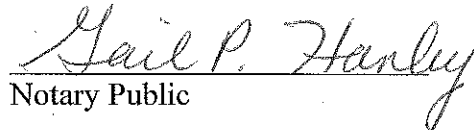
Barnstable, ss

12/14, 2006

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

My Commission Expires:

10/13/11


Notary Public