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CAPE COD
COMMISSION

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CAPE COD COMMISSION STAFF MEMORANDUM

DATE: October 25, 2024
TO: Committee on Planning and Regulation
RE: Proposed Minor Modification Type #2
Canal Street Crossing (CCC No. 19007)

SUMMARY

The Applicant, 21 Hunters Brook Rd. Inc, requests a Minor Modification Type #2 to the Development of Regional Impact (DRI) approval for Canal Street Crossing (CCC No. 19007) ("Project"). The approved DRI consists of a 3-story medical office building, a four-story Assisted Living Facility and fifteen (15) age-restricted Townhouses. The requested modification would decrease the size of the medical office building and lower it from three floors to two floors, eliminate the assisted living facility, and add seventeen (17) townhomes to the Project ("Proposed Modification").

Staff reviewed the approved DRI in relation to the Proposed Modification and assessed the changes for impacts to resources protected by the Cape Cod Commission Act ("Act") or Regional Policy Plan ("RPP"). Based on that review, staff recommend that the Committee on Planning and Regulation could properly find that the Proposed Modification is substantially similar proposal to the approved DRI and would not result in different or increased impacts to the resources protected by the Act or RPP. If the Committee on Planning and Regulation ("Committee") makes the recommended findings, the Committee may approve the Minor Modification Type #2.

BACKGROUND

The DRI Decision, approved July 11, 2019, approved a mixed-use development located at 21 Hunters Brook Road in Bourne which includes: a three-story, +/- 40,000-sf medical office building, fifteen (15) age-restricted townhomes, and a +/- 89,000-sf assisted living facility, with associated site work including site access and driveways, utilities, landscaping, and stormwater management ("Approved DRI"). As of the date of this memo, the DRI Decision is valid and in effect.

The Conditions to approval of the DRI Decision require the Applicant to:

- Obtain certificates of compliance prior to issuance of building permit(s) and certificate(s) of use and occupancy;
- restrict two (2) of the age-restricted townhomes and nine (9) of the assisted living facility in perpetuity as affordable for those earning 80% of Area Median Income (AMI) or lower;
- permanently protect a total of 7.15 acres for open space purposes;
- provide certain renewable energy power purchase agreement(s);
- manage and monitor for invasive species on the site;
- install solar panels and energy conservation measures the residential units; and
- perform transportation mitigation measures, including making a transit donation and adding signage, striping, signal upgrades, and electric vehicle charging stations.

To date, the Applicant has not obtained any certificates of compliance for the Project or completed the items above.

REQUESTED MODIFICATION

The Applicant submitted a request for a Minor Modification Type #2 to the Approved DRI on July 1, 2024. Supplemental information was submitted on August 30, 2024. The modification proposes the following changes to the Approved DRI:

- decrease the size of the medical office building by +/- 2,800 s.f. and lower it from three floors to two floors;
- eliminate the 90-bed, four-story assisted living facility;
- add seventeen (17) townhomes to the Project, for a total of thirty-two (32) townhomes;
- add a clubhouse building and tennis court associated with the townhome portion of the Project.

The modified Project proposes new impervious area of +/- 4.46 acres. This has been reduced from the Approved DRI which included new impervious area of +/- 4.76 acres. Age restricted townhouse units are clustered and primary access will continue to be provided by a driveway off Hunters Brook Road. The modified Project includes a one-way interconnection between the commercial parking area and the age restricted residential road. The number of parking spaces will be reduced from a total of 235 to 228. The modified Project proposes significantly less wastewater than the Approved DRI such that the Applicant has removed the wastewater treatment plant. The Applicant instead proposes alternative (I/A) wastewater treatment.

STANDARD OF REVIEW

Pursuant to Section 11(b)(ii) of Chapter A, *Enabling Regulations of the Code of Cape Cod Commission Regulations of General Applications* (revised November 2021), a Minor Modification Type #2 includes a substantially similar proposal to the original project but 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. A proposed change shall not result in different or increased impacts to the resources protected by the Act and/or the RPP. Such a minor modification may be approved by the Committee on Planning and Regulation and does not require further review by the Commission.

DISCUSSION

The Approved DRI consists of a mixed-use development that includes a medical office building, assisted living facility, and age-restricted residences. While the Proposed Modification seeks to eliminate the assisted living facility and increase the number of townhouses, the proposal is still for a mixed-use development of a medical office building and age-restricted residences, consistent with the Approved DRI. Accordingly, staff recommend that this substantially similar to the original proposal and does not involve a Change of Use.

With respect to the site plan, the modification proposes minor changes to the site plan, consistent with the removal of the assisted living facility and addition of townhouses in the portion of the site that would have been occupied by the assisted living facility. The proposed layout and site access is broadly consistent with the Approved DRI and results in a reduction in overall development of the site.

The following chart provides a comparison between the Approved DRI and the Proposed Modification:

	Approved DRI	Proposed Modification
Townhouses	15 total (all 2-bedrooms)	32 total (20) 2-bedrooms; (12) 1-bedrooms
Clubhouse	None	+/- 1,200 s.f. clubhouse & tennis court
Medical Office Building	3-story +/- 38,180 s.f	2-story +/- 35,380 s.f
Assisted Living Facility	4-story, 90-beds +/- 89,940 sf	None
Wastewater	22,850 gpd Wastewater Treatment Facility	9,970 gpd Two I/A Systems
Water Use	22,850 gpd	+/- 10,000 gpd
Parking	235 spaces total	228 spaces total
Impervious Area	4.7 acres	4.46 acres
Vehicle Trips		
<i>Weekday Daily Total</i>	1,762	1,636
<i>Weekday Peak AM</i>	124	111
<i>Weekday Peak PM</i>	170	159

To qualify for a Minor Modification Type #2, the modification cannot result in different or increased impacts to resources protected by the Cape Cod Commission Act or Regional

Policy Plan. Commission staff reviewed the modification application for different or increased impacts to regional resources and make the following recommendations:

Water Resources

The Approved DRI included a single advanced wastewater treatment facility, designed to treat up to 22,850 gallons per day of wastewater from all of the buildings and structures located on the project site. The Approved DRI included findings that wastewater would be treated to a maximum effluent nitrogen concentration of 5.0 mg/L, which resulted in a site-wide nitrogen loading of 3.0 mg/L.

The Proposed Modification would provide wastewater treatment to the medical office building and residential buildings separately. The new proposal would utilize two KleanTu Nitro systems, designed to treat wastewater to a maximum effluent nitrogen concentration of 11 mg/L. Although this is a higher effluent nitrogen than in the original proposal, the expected wastewater flow from the updated proposal has decreased significantly to 9,970 gpd or 44% of the originally proposed flow. This results in less nitrogen mass being generated from wastewater compared to the Approved DRI plans. This system will be operated under a MassDEP Piloting Use Permit and there will be a monitoring and sampling program associated with it.

The approach to treating stormwater runoff is largely unchanged compared to the Approved DRI, and it is expected that both the volume of runoff, and nitrogen loading from stormwater would both be reduced under the new proposal.

Overall, staff suggest that the Proposed Modification would not result in different or increased impacts to water resources.

Open Space

The Applicant provided summary of the changes to site coverage resulting from the new site plan, and a description of any resulting changes to the area of development impact and corresponding open space calculations, based on Placetypes, compared to what was Approved in the DRI decision. The Conditions in the Approved DRI Decision requiring the Applicant to permanently protect certain on-site and off-site open space in Bourne will remain in effect. Staff suggest that the Proposed Modification does not result in different or increased impacts to open space. No changes to findings or conditions would be necessary specific to open space.

Wetlands

Staff reviewed site plans and confirmed that no additional work is proposed in wetland resource areas. No different or increased impacts to this resource are expected. No changes to findings or conditions would be necessary specific to wetlands.

Community Design

Staff reviewed the site plans and building elevations and materials. The building design is consistent with the Approved DRI and the Community Design Technical Bulletin. The townhouses will be clustered, and the Proposed Modification would result in a slight

decrease in impervious surface. Staff suggest that no different or increased impacts to this resource are expected.

Transportation

The Approved DRI requires several mitigation measures associated with the Project. A traffic memorandum associated with the revised site plan was submitted. The Proposed Modification would result in a reduction of 126 (unadjusted) daily trips with a reduction of 13 peak hour morning trips and a reduction of 11 in the afternoon peak hour. Commission staff suggest that the Proposed Modification is not likely to result in a major change to the overall trip generation in comparison to what was previously studied and reviewed and that no different or increased impacts to this resource are expected.

The Applicant has requested that certain mitigation measures—a signal upgrade a Sandwich Road/Mid-Cape Connector and a bus stop on site—be removed from the Proposed Modification. These mitigation measures were largely associated with the assisted living facility. Staff suggest that these measures are not necessary if the assisted living facility is removed.

Housing

The Approved DRI requires the Applicant to provide affordable housing consistent with the Housing Technical Bulletin and Regional Policy Plan. The Applicant was required to provide two (2) townhouse units and nine (9) assisted living facility units as affordable to those earning 80% of area median income (AMI) or lower. The Proposed Modification would eliminate the assisted living facility and increase the number of townhouses, requiring the affordable housing mitigation to be recalculated. The Applicant proposes to meet the requirement by providing four (4) of the thirty-two (32) townhouse units as affordable to those earning 80% or less than AMI. This will result in 12.5% of the units being designated as affordable, exceeding the 10% requirement of the Regional Policy Plan. Other findings and conditions in the Approved DRI relative to housing would remain unchanged and no different or increased impacts to housing are expected.

Energy

The Approved DRI requires the Applicant to procure a portion of the site's energy from off-site renewable sources in the form of a five-year power purchase agreement. The Proposed Modification will instead incorporate approximately 250 kW of on-site solar. The Proposed Modification would not change the requirement that the Applicant install solar panels on the townhouse units and incorporate energy conservation measures as proposed and described in the Approved DRI. Staff suggest that no different or increased impacts to energy are expected.

CONCLUSION

Staff suggest it is appropriate to review the proposed changes as a Minor Modification Type #2 taking into consideration that:

- the use is substantially the same as originally approved;

- the proposed changes do not meet or exceed a mandatory threshold for new DRI review;
- changes to the buildings and site are consistent with the Approved DRI Decision and any potential impacts are addressed or mitigated through the design;
- impacts to resources protected by the Act and RPP are not different in kind than those addressed in the Approved DRI Decision;
- impacts to resources protected by the Act or RPP are not increased from what was approved under the DRI Decision; and
- the proposed changes are not contrary to the findings or conditions contained in the DRI Decision.

Accordingly, the Committee could properly find that the Proposed Modification is substantially similar proposal to the Approved DRI and would not result in different or increased impacts to the resources protected by the Act or RPP. If the Committee makes this finding, the Committee may approve the Minor Modification Type #2 and direct staff to draft a Modification Decision.