

BARNSTABLE COUNTY ASSEMBLY OF DELEGATES

In the Year Two Thousand and Ten

Ordinance 10-08

To amend Sections 13 and 14 of the Code of Cape Cod Commission Regulations of General Application Chapter A Enabling Regulations to read as follows.

Barnstable County hereby ordains:

SECTION 13: Modifications to Approved Projects

(a) Filing Requirements and Procedure for Filing

(i) 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.

(ii) Applicants shall file a written request with the Commission seeking a meeting with the Regulatory Committee for consideration of a modification request. Such written request shall include the name and Commission file number of the approved project, copies of all local approvals for the project, and any other information, including plans showing the proposed modification, if applicable, which the Applicant deems relevant to the requested modification. The Commission staff will place the modification request on the Regulatory Committee's schedule as soon as practicable.

(iii) Any and all modifications to findings and conditions of an approved Development of Regional Impact shall be processed through this section.

(b) Procedure for Processing

(i) Proposals for revisions to approved Developments of Regional Impact (DRI), DRI Exemptions and Hardship Exemptions shall be reviewed by the Commission's Regulatory Committee, at a public meeting, to determine which modification category listed in Section 13(c) is applicable to the proposed modification.

(ii) When making its determination, the Regulatory Committee shall consider the following factors: proposed Changes of Use; changes to the site plan; changes to impacts to resources protected by the Act and/or the Regional Policy Plan (RPP); changes in the number or character of units, floor area or outdoor commercial area; changes to architectural design or building facade; changes to the findings or conditions of the Commission's original decision; and, other factors that the committee deems relevant to the determination.

(iii) Following the Regulatory Committee's determination, the Commission or Regulatory Committee shall issue a written modification decision.

(c) Modification Categories

Except in the case of Minor Modifications type #1, the Regulatory Committee shall determine

which of the following categories apply to each modification request:

(i) Minor Modification #1

Includes 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. Such Minor Modifications 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. The Executive Director shall issue a written determination to that effect and send copies to the Applicant, Municipal Agency and the town clerk, building inspector and DRI Liaison of the Municipality(ies) in which the proposed development is located. Upon the approval of a Minor Modification #1, the project proponent may apply for, and Municipal Agencies may issue, local development permits consistent with the approved modification. Minor Modifications #1 shall be governed by the RPP in effect at the time of the original approval.

(ii) Minor Modification #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 Regulatory Committee and does not require further review by the Commission. The Regulatory Committee shall issue a written decision and send copies to the Applicant, Municipal Agency and the town clerk, building inspector and DRI Liaison of the Municipality(ies) in which the proposed development is located. Upon the Regulatory Committee's approval of a Minor Modification #2, the project proponent may apply for and Municipal Agencies may issue a local development permit consistent with the approved modification. Minor Modifications #2, as determined by the Regulatory Committee, shall be governed by the RPP in effect at the time of their original approval.

(iii) Major Modification

Includes a similar proposal to the original project but involves a major Change of Use or changes to the site plan, findings, or conditions of the original approval, any of which would result in different or increased impacts to the resources protected by the Act and/or the RPP. Major Modifications may be limited to those subject areas where different or increased impacts have been identified. The Regulatory Committee shall specify the scope of the DRI review in its decision.

Major Modifications shall be reviewed by the Commission or its designee. Proposed Major Modification applications shall be submitted to the Clerk and shall proceed through the DRI review or DRI Exemption review process consistent with Sections 12, 13 or 23 of the Act, as applicable, and the Commission's regulations.

[1] Major Modifications to approved DRIs shall be reviewed by the Commission or its designee for consistency with Section 13(d) of the Act including consistency with the RPP in effect at the time of the opening of the public hearing on the modification request. If the applicant fails to proceed continuously and expeditiously through the DRI review process the

Commission reserves the right to review the proposal for compliance with a subsequent RPP.

[2] Major Modifications to approved DRI Exemptions and Hardship Exemptions shall be reviewed by the Commission or its designee for consistency with Sections 12(k) or 23 of the Act and/or other sections of the Act, as applicable. The Commission shall consider the impacts of the original development proposal together with the impacts of the proposed modification, taking into account any mitigation already provided. If the rationale for granting the original Exemption no longer exists, the proposed modification shall be reviewed as a DRI per Sections 12 and 13 of the Act. Such modifications shall be reviewed for consistency with the RPP in effect at the time of the opening of the public hearing on the modification request. If the applicant fails to proceed continuously and expeditiously through the DRI or Exemption review process the Commission reserves the right to review the proposal for compliance with a subsequent RPP.

[3] Major Modifications that involve a Change of Use shall be subject to DRI review following a determination by the Regulatory Committee or its designee that the project would cause more detrimental impacts on any of the resources protected by the Act and RPP than those of the immediate prior use. However, the scope of the DRI review may be limited to those subject areas where impacts are significantly increased. The Regulatory Committee or its designee shall specify the proposed scope of the DRI review in its determination.

(iv) New Project

Includes a substantially different proposal compared to the original project. Such proposals shall not be considered a modification but instead shall be considered a new DRI or Exemption submittal. New Projects shall be reviewed by the Commission or its designee. Proposed New Projects shall be submitted to the Clerk and shall proceed through the DRI review or Exemption review process consistent with Sections 12, 13 or 23 of the Act, as applicable, and the Commission's regulations. Any project that itself meets or exceeds the standards and criteria for DRI review set forth in Section 3 shall be considered a new DRI. New DRIs shall be reviewed for consistency with the RPP in effect at the time of the opening of the public hearing on the new DRI application. If the applicant fails to proceed continuously and expeditiously through the DRI review process the Commission reserves the right to review the proposal for compliance with a subsequent RPP.

(d) Applicants for projects that are determined to be Minor Modifications under Sections 13(c)(i) and 13(c)(ii) above shall file revised plans with the Clerk for recording at the Barnstable County registry of deeds. The applicant shall be responsible for all filing fees at the registry of deeds.

(e) The approval of a modification under Sections 13(c)(i - iii) shall not extend the seven-year time period of validity of the originally issued DRI or Hardship Exemption approval, nor shall it extend the time period of validity for DRI Exemptions with respect to the issuance of local development permits in reliance on said approval.

SECTION 14: Developments on Locations Subject to Prior DRI Decisions

The proponent of a proposed development or portion of development as that term is defined by the Act that does not meet or exceed any of the thresholds identified in sections 2(d) or 3, has not

BARNSTABLE COUNTY ASSEMBLY OF DELEGATES

Ordinance 10-08: Amendments to Section 13 and 14 Chapter A Enabling Regulations

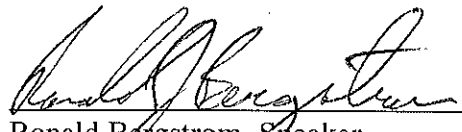
May 19, 2010

page 4

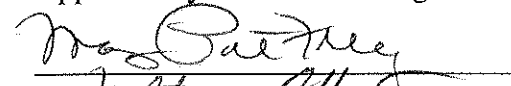
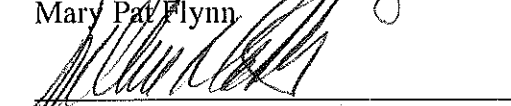
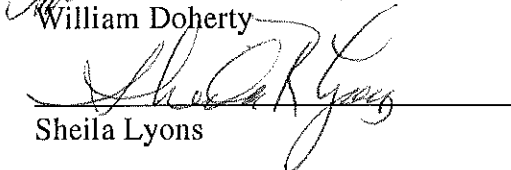
been referred in conjunction with section 2(b), and which was subject to a prior Cape Cod Commission Development of Regional Impact decision for which the DRI permit has expired and for which no conditions are applicable or remain outstanding, may seek a certification from the Regulatory Committee that the proposed development does not require DRI review is not a DRI. The Chief Regulatory Officer or his/her designee shall advise the Committee whether a proposed development meets or exceeds a DRI threshold, whether the DRI permit has expired, and whether there remain outstanding any applicable conditions from a prior decision; if neither predicate applies, such a development is eligible for a certificate pursuant to this section. If the Regulatory Committee finds that the proposed development substantially complies with the minimum performance standards of the RPP and has no significant adverse impact upon the purposes and values identified in Section One of the Act, the Committee may authorize such a certificate.

Upon making this finding, the Regulatory Committee may authorize the Executive Director to issue a certificate in recordable form that the proposed development is not a DRI. The certificate shall describe the proposed development in specific detail or by schematic plans attached to the certificate. If the Regulatory Committee finds the proposed development involves substantial deviation from the RPP and significant impact upon the purposes and values identified in Section One of the Act, the development shall be reviewed as a DRI and shall be eligible for limited review as a DRI pursuant to Section 5 of these regulations.

Adopted by the Assembly of Delegates on May 19, 2010.


Ronald Bergstrom, Speaker
Assembly of Delegates

Approved by the Board of Regional Commissioners 5-26-10 at 11:30 AM
Date Time


Mary Pat Flynn

William Doherty

Sheila Lyons