

# BARNSTABLE COUNTY

In the Year Nineteen Hundred and Ninety-One

## Ordinance No. 91-11

(as amended December 11, 1991)

To amend regulations for the Cape Cod Commission for the purpose of reviewing proposed developments of regional impact as established by Barnstable County Ordinance 90-12 and amended by Ordinance 90-14.

***BARNSTABLE COUNTY hereby ordains:***

- | <u>Section</u> | <u>Proposed Change</u>   |
|----------------|--|
| 1 (a)          | Replace the word "These" with the word "The" and replace the word "adopted" with the word "amended".   |
| 1 (b)          | Replace the word "final" with the word "superseding". After the word "ordinance" delete the words ", or until the Assembly of Delegates adopts the final regional policy plan pursuant to Section 8 of the Act, whichever occurs first." and replace with "or until six months after the Assembly of Delegates adopts the amended Regional Policy Plan pursuant to a five-year review as required by Section 3 of Barnstable County Ordinance 91-8."   |
| 1 (c)          | <p>After the definition of the word "<u>Clerk</u>" add the following definition:<br/>"<u>DRI</u> - A Development of Regional Impact, reviewed by the Commission pursuant to Sections 12 and 13 of the Act.<br/>Change the definition of the term "<u>Executive Director</u>" to place a period after the word "Commission" and delete the words "or a person designated by the Executive Director in his or her stead".<br/>After the definition of the term "<u>Executive Director</u>" add the following definitions:<br/>"<u>Gross Floor Area</u>: The gross floor area of a building is the sum (in square feet) of the area at each floor level, including but not limited to cellars, basements, mezzanines, penthouses, corridors, lobbies, stores, and offices, that are included within the principal outside faces of exterior walls, not including architectural setbacks or projections. Included are all stories or areas that have floor surfaces with clear standing head room (6 feet, 6 inches, minimum) regardless of their use. Also included are enclosed storage buildings. Where a ground level area, or part thereof, within the principal outside faces of the exterior walls is left unenclosed, the gross floor area of the unenclosed portion is said to be considered as a part of the overall square footage of the building. All unroofed areas are to be excluded from the area calculations;<br/><u>MEPA</u>: Massachusetts Environmental Policy Act, M.G.L. chapter 30, sections 61-62H;<br/><u>Regional Policy Plan</u> - Barnstable County Ordinance 91-6, Cape Cod Regional Policy Plan;<br/><u>Secretary</u> - The Secretary of the Massachusetts Executive Office of Environmental Affairs."</p> |

- 2 (a) (1) Replace "(1)" with "(i)". Delete the word "interim" in the first sentence. At the end of the section, add the following sentences: "DRI. Informal jurisdictional interpretations are available from the Commission staff. Formal Jurisdictional Determinations are available pursuant to Section 12(j) of the Act and Section 2 of the Cape Cod Commission's Administrative Regulations."
- 2 (a) (2) Replace "(2)" with "(ii)". Delete the words "Mass. Gen. L. c. 30, 61-61H" in the first sentence. In the beginning of the second sentence add the word "MEPA". At the end of the section, add the following sentence: "DRI Applicants who are also subject to regulation under MEPA may seek a Joint Review Process under MEPA and the Act pursuant to a November 25, 1991 Memorandum of Understanding between the two agencies."
- 2 (b) (1) Replace "(1)" with "(i)". Delete the word "interim" in the first sentence.
- 2 (b) (2) Replace "(2)" with "(ii)". Replace the words "the provisions of Mass. Gen. L. c. 30, 61-62H" with the word "MEPA". Replace the words "Clerk of the Commission" with the word "Clerk". At the end of the section, add the following sentence: "DRI Applicants who are also subject to regulation under MEPA may undergo a Joint Review Process under MEPA and the Act pursuant to a (Date to be determined) Memorandum of Understanding between the Secretary and the Commission."
- 2 (b) (3) Replace "(3)" with "(iii)". Add the words "of the Act" to the last sentence.
- 3 (a) Delete the word "interim" in the first sentence. At the end of the section, add the following language: "The standards and criteria in Section 12(c)(1-8) are further defined below:
- (i) For the purposes of Section 12(c)(7), a dwelling unit shall be deemed to be a unit providing living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation, whether in a complete, individual unit or a unit sharing common amenities. A dwelling unit shall include but not be limited to rooms in nursing homes and congregate care facilities."
- 3.1 Renumber as "Section 4".
- 4 Renumber as "Section 5".
- 4 (b) (3) Replace the term "gross floor area" with the term "Gross Floor Area".
- 4 (b) (5) Replace "5." with "6.". Add a new number 5 as follows: "5. The name of Person owning the subject property, if known."
- 4 Insert after Section 4 the following language:
- "SECTION 6. Transitional Exemption from DRI Review
- (a) Projects which meet or exceed the provisions set forth in Sections 22(a) through 22(e) of the Act shall be deemed to be exempt from DRI review.

(b) For the purpose of determining if the project is exempt under Section 22(b) of the Act, a special permit or variance shall be deemed to be received upon filing with the town clerk. An Order of Conditions shall be deemed to be received upon the date of signature of the Order of Conditions, or if a Superseding Order of Conditions is rendered, then upon the date of signature of the Superseding Order of Conditions. A statement of the Secretary that the environmental impact report adequately complies with MEPA is deemed to be received upon the date of signature of the Secretary's Certificate of Adequacy."

- 5 Renumber as "Section 7".
- 5 (a) At the end of the section, add the sentence: "A pre-application conference between the Applicant and Commission staff is strongly encouraged to determine what information is required to be included in the DRI Application Form."
- 5 (b) After the words "such application" insert the words "and all subsequent submittals". After the words "proposed development pending" delete the period and add the words "and municipal agencies before which the Applicant expects to have local development permits pending for the proposed development."
- 6 Renumber as "Section 8". Renumber section 8"(j)" as section 8"(k)". Add a new section 8(j) as follows: "Two (2) copies of development plans (sheet size 24" x 36") drawn at a scale of 1"=40' plus one (1) copy of development plan(s) reduced to fit on an 11" x 17" sheet. If the plan requires more than one sheet, a cover sheet at the scale of 1"=200' showing the entire project shall be provided."
- 7 Renumber as "Section 9".
- 7 (a) Replace the term "8(a)-(j)" with the term "8(a)-(k)". In the third sentence, replace the word "may" with the word "shall" and delete the words "at any time prior to the opening of the public hearing or during a continuance thereof".
- 7 (b) In the last sentence, replace the words "An Applicant may, however," with the words "However, Applicants are encouraged".
- 7 (c) In the first sentence, after the words "discretionary referral" delete the comma and add the words "or a vote of the Commission to review the project on its own pursuant to Section 12(h) of the Act,".
- 7 (d) Renumber as section 9"(e)". In section 9(e)(1.), after the words "of the Act" add the words "and also by publication of an unofficial hearing notice in a second newspaper of general circulation in the municipality(ies) in which the DRI is located". Add a new section 9(d) as follows: "The Commission shall hold a public hearing within ninety days of the Secretary's certification that no environmental impact report is required, or, if an environmental impact report is required, within forty-five (45) days after the Secretary certifies the adequacy of the final environmental impact report. The public hearing regarding review of a DRI which was accepted for review or required to be reviewed pursuant to MEPA filings shall be closed within ninety (90) days following its opening date, unless extended by mutual agreement with the Applicant."


- 7 (e) Renumber as section 9"(f)". In the first sentence, replace the term "7(d)" with the term "9(e)"
- 7 (f) Renumber as section 9"(g)". In the first sentence, delete the words ", when available," and replace the period after the words "local comprehensive plans" with the words ", when available." In the second sentence, replace the words "the proposed development meets the four criteria set forth in Section 13(d) of the Act." with the words ":
- (i) the probable benefit from the proposed development is greater than the probable detriment;
  - (ii) the proposed development is consistent with the Regional Policy Plan and the local comprehensive plan of the municipality(ies) in which the proposed development is located, when available;
  - (iii) the proposed development is consistent with municipal development bylaws, or if it is inconsistent, the inconsistency is necessary to enable a substantial segment of the population to secure adequate opportunities for housing, conservation, environmental protection, education, recreation, or balanced economic growth;
  - (iv) if the proposed development is located in whole or in part within a designated district of critical planning concern, it is consistent with the regulations approved or adopted by the Commission pursuant to Section 11 of the Act; and
  - (v) conditions attached to a DRI approval of the proposed development are in conformance with regulations and policies of the applicable local historic district and/or the Old Kings Highway Regional Historic District."
- In the last sentence, replace the words "set forth in Section 13(d) of the Act" with the word "above".
- 7 (f) Insert after the newly proposed section 9(g), a new section 9(h) as follows:  
"9(h) The Commission may condition proposed developments as it deems appropriate, pursuant to Section 13(g) of the Act. Exactions for off-site improvements shall have a rational nexus to an impact attributable to the proposed development, must reasonably benefit the proposed development, and shall be proportionate to the impact created by the proposed development.
- 7 (g) Renumber as section 9"(i)". Insert after section 9(g), a new section 9(j) as follows: "(j) Failure of an Applicant to pay the filing fee specified in Section 6 of the Commission's Administrative Regulations, Schedule of Fees, by the opening of the public hearing will result in a procedural denial of the proposed development." Insert after section 9(i) and the newly inserted section 9(j), a new section 9(k) as follows: "(k) An Applicant may withdraw an application for DRI review from consideration by the Commission at any time so long as such withdrawal is in a form approved by the Commission and so long as the Applicant provides documentation that the project has also been withdrawn from consideration at the local level. Failure to provide a Commission-approved withdrawal form will result in a procedural denial of the DRI

application. An Applicant who has withdrawn an application from Commission review shall be charged for staff time expended on the withdrawn application. The Commission shall be reimbursed for such charges prior to or at the time of withdrawal. The Commission shall not consider any subsequent application for the same or a different project submitted by the Applicant unless the filing fee has been paid."

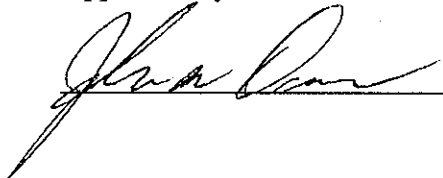
- 7 (h) Renumber as Section 9"(l)". In the first sentence, remove the comma after the work "clerk" and add the words "by certified mail,". In the last sentence, delete the words "after the Commission has established an official publication as required by Section 5(i) of the Act," and also replace the words "such publication" with the words "its official publication, The REPORTER, as required by Section 5(i) of the Act."
- 7 (i) Renumber as section 9"(m)". In the second sentence, replace the word "Applicant" with the word "Commission", replace the word "submit" with the word "retain", and delete the words "to the Commission". After section 9(m) add a new section 9(n) as follows: "(n) Amendment(s) and Modification(s) of DRI decisions shall be subject to the Regional Policy Plan. When an applicant seeks a modification or amendment to a previously approved DRI, the Commission or its designee shall make a determination whether such modification or amendment is required to undergo a new public hearing. If it is determined that a new public hearing is necessary, such hearing shall be opened within 60 days of receipt of a fully completed DRI application addressing the impacts from the proposed modification or amendment. The public hearing shall be closed within 90 days of its opening date. The Commission shall render a decision on the proposed modification or amendment within 60 days of the close of the public hearing. Any party aggrieved by an amendment or modification to a DRI decision may appeal the Commission's decision to the Barnstable County Superior Court or the Land Court if such appeal is filed within thirty days after the Commission has sent the applicant written notice, by certified mail, of its decision and has filed a copy of its decision with the town clerk of any municipality in which the proposed development is located."

Throughout the regulations, except in the proposed definition of the term "DRI", replace the words "Development of Regional Impact" with the term "DRI".

Adopted on December 18, 1991 by the Assembly of Delegates

  
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Susan V. Walker, Speaker

Approved by the Board of County Commissioners January 8, 1992, at 10:07 a.m.

  
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Victor Matt Lowell