



September 25, 2013

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Cape Cod Commission
PO Box 226
Barnstable, MA 02630

Attention: Andrea Adams

RE: Revised Lowe's Proposal

Dear Members of the Cape Cod Commission:

The Association to Preserve Cape Cod (APCC) has reviewed project changes filed by the applicant for the proposed Lowe's Dennis Development of Regional Impact, and submits the following comments.

Land Use

The applicant has proposed several changes to the Lowe's development plan in response to Cape Cod Commission staff comments regarding the project's failure to meet the Land Use Minimum Performance Standards (MPS) for Compact Development (MPS LU1.2). The August 15, 2013 Commission staff report called for increased screening that includes a wider vegetative buffer, reduced building footprint and mixed use frontage buildings in the buffer along Theophilus Smith Road.

Although the proposed building and associated parking have been reduced somewhat and a small retail liner building was added to the plan, APCC believes the project still does not meet standards that comply with MPS LU1.2 for Compact Development. Adding a small retail structure to this proposed larger retail development does not constitute "mixed use."

Community Character

The August 15 Commission staff report stated that the project does not meet several MPS for Heritage Preservation and Community Character. As mentioned above, the applicant reduced the building footprint somewhat, but the scale of the building is still out of character with traditional single use buildings in this area.

Because the building as proposed exceeds the maximum 15,000 square foot allowable footprint and is not designed as multiple distinct massings, the August 15 Commission staff report called for the applicant to provide "full screening" as

an alternate means to comply with MPS community character requirements. MPS HPCC2.5 requires that screening consist of “traditionally scaled frontage buildings within developed areas, and vegetated buffers of 200 feet in depth in outlying areas.”

In reviewing the revised Lowe’s landscape plan, it appears the width of the vegetated buffer that runs between the parking lot and the Cape Cod Rail Trail is 24 to 30 feet wide in some places—essentially the width of one or two trees. The buffer is still not sufficiently wide to fully screen the continuous unbroken length of building and parking lot from the rail trail.

Regarding the vegetated buffer along Theophilus Smith Road, APCC questions whether the revised proposal for vegetated buffer satisfies the specific 200 foot depth requirement stated in HPCC2.5. Additionally, the single 2,500 square foot liner building proposed by the applicant is insufficient to satisfy the MPS HPCC2.5 screening requirements.

The revised plan shows that there is still parking located along the front of the site. The “view corridor” appears to still provide views of the parking lot and building from Theophilus Smith Road, which is inconsistent with MPS HPCC2.5. APCC understands that the view corridors are being proposed as a means to address concerns from the Dennis Police Department, but believes a better solution would be the installation of external security video cameras that can be used to monitor activity in the parking lot.

Traffic

APCC continues to remain gravely concerned that the applicant’s proposal to pay a \$1.636 million fee (revised from \$1.869 million) instead of physically addressing the project’s trip reduction and traffic congestion requirements will result in an unmanageable traffic situation that will exceed the capacity of regional roads and lead to degradation of public safety. This fee-in-lieu-of-mitigation loophole in the transportation MPS does not begin to account for impacts from a project that is as large as the proposed Lowe’s. The unmitigated traffic congestion that will be imposed on area roads will be responsible for long-term detrimental consequences.

APCC also notes that the project continues to fail to meet MPS for traffic safety in several key locations, including Route 134 and Theophilus Smith Road , Route 134 and Market Place/Patriot Square, Route 134 and Bob Crowell Road, and Route 134 and Airline Road.

Water Resources

Using the accepted standard wastewater flow calculation required by the Cape Cod Commission in Technical Bulletin 91-001 that is based on DEP Title 5 design flow, the applicant’s revised total nitrogen load is 248.04 Kg-N/Yr. This load exceeds the Bass River Critical Nitrogen Loading Rate (CNLR) of 57.58 Kg-N/Yr by 190.46 Kg-N/Yr, according to a September 20, 2013 memo from the applicant.

Instead of complying to this Cape Cod Commission standard, Lowe’s is seeking the Flexibility Clause in order to use the applicant’s own calculations, which would show the project exceeding the CNLR by 29.42 Kg-N/Yr. (This is according to revised nitrogen calculations in the applicant’s September 20, 2013 memo. The applicant’s September 11, 2013 project revision memo states that the project will exceed the CNLR by 33.9 Kg-N/Yr.)

Recently, the applicant has proposed to contribute \$200,000 toward an advanced wastewater treatment system for a Dennis Housing Authority development in order to offset the Lowe's project nitrogen load to Bass River. The applicant claims that once treatment of the Dennis Housing Authority development is factored in, the project will result in a net reduction in nitrogen load of 34.1 Kg-N/Yr to the Bass River watershed (according to the applicant's September 11, 2013 memo). However, as with the applicant's calculation for the Lowe's store, the applicant did not base nitrogen loading calculations for the Dennis Housing Authority development on the Title 5 flow standard.

Even so, after subtracting the Dennis Housing Authority development's nitrogen reduction as calculated by the applicant, the Lowe's project will still significantly exceed the CNLR by 150.86 Kg-N/Yr when the standard Title 5 calculation required by Technical Bulletin 91-001 is applied to the Lowe's project site.

As APCC has stated previously, the quality of Bass River—or any of Cape Cod's sensitive water resources—should not be further compromised by new threats from wastewater. Addressing the impact of wastewater on the Cape's water resources is the greatest environmental and economic challenge this region faces. It is therefore imperative that we maintain the greatest level of accountability and preserve the highest standards of planning and regulatory oversight to ensure protection of our water resources.

In the case of the proposed Lowe's, APCC strongly urges the Cape Cod Commission to adhere to the DEP Title 5 flow standards required in Technical Bulletin 91-001 in determining the project's nitrogen load and not allow flexibility on this important issue.

Furthermore, it is APCC's continued position that the Bass River Critical Nitrogen Loading Rate should be met by this project through actual wastewater treatment based on Title 5 flow calculations, and not by a monetary contribution that will allow the project to add to Bass River's nutrient problems.

Conclusion

Despite the revisions to the Lowe's project proposal that were recently submitted by the applicant, APCC notes that with the exception of the elimination of one of three access drives/curb cuts from the original site plan, all of the numerous traffic, water resources and community character concerns identified by APCC in our June 12, 2013 comment letter remain unresolved.

APCC thanks the Cape Cod Commission for the opportunity to comment.

Sincerely,



Ed DeWitt
Executive Director



Don Keeran
Assistant Director