



CAPE COD PLANNING AND ECONOMIC DEVELOPMENT COMMISSION

1ST DISTRICT COURT HOUSE, BARNSTABLE, MASSACHUSETTS 02630

TELEPHONE: 508-362-2511

CCC#EX90020

DATE: September 13, 1990

FROM: Cape Cod Commission

RE: Hardship Exemption request,
Cape Cod Commission, Section 23

APPLICANT: Michael J. Princi, and Paul R. O'Connell, III
as Trustees of Cedar Street West Barnstable Realty
Trust, and Crowell Construction, Inc.

PROJECT: Berkshire Trail Subdivision

MAP/PARCEL: Assessors Map 88, parcel 5; Map 108, parcel 2;
Map 109, parcels 2,3,4,13,14,15

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of Michael Princi and Paul O'Connell, III as Trustees of Cedar Street West Barnstable Realty Trust, and Crowell Construction, Inc. for a Hardship Exemption under Section 23 of the Cape Cod Commission Act, c. 716 of the Acts of 1989, as amended, for the proposed Berkshire Trail Subdivision, a 48-lot residential subdivision located at Cedar Street in West Barnstable. This decision is rendered pursuant to a decision of the Cape Cod Commission on May 24, 1990.

PROJECT DESCRIPTION

This application is for a proposed 48-lot residential subdivision of single family homes located off of Cedar Street in West Barnstable, MA.

PROCEDURAL HISTORY

This application for a Hardship Exemption under Section 23 of the Act was filed with the Commission on April 25, 1990. A duly noticed public hearing on the application was conducted by the Commission pursuant to Section 5 of the Act on May 24, 1990 at 4:17 p.m. in rooms 11-12 of the Barnstable County Superior Court House, Route 6A, Barnstable, MA.

Materials submitted for the record:

An application for tentative approval of a preliminary subdivision plan from the Town of Barnstable, dated March 26, 1990. An application for approval of a definitive plan from the Town of Barnstable, dated June 12, 1989. A letter with attached documentation from the Department of Planning and Development of the Town of Barnstable describing town review of the proposed project, dated May 22, 1990. A letter with attached documentation from the Board of Health of the Town of Barnstable describing its review of the proposed project, dated July 12, 1989. Plans prepared by Schofield Brothers, Inc. of Route 6A, Orleans, MA, including: "Subdivision plan, Berkshire Trail, Barnstable MA", sheets 1 through 3, dated October 16, 1989; "Subdivision plan, Berkshire Trail, Barnstable MA", sheets 1 through 5, dated June 12, 1989; "Proposed Well and Septic Locations, Cedar Street West Barnstable Realty Trust", showing no date; and "Plan of Land in Barnstable, MA" dated August 1, 1989 and certified on August 10, 1989. Materials, provided to the Commission members by the Applicant at the Hearing on June 7, 1990, documenting the history of the Berkshire Trail Subdivision project to date. Materials provided by the Applicant and intended to serve as a "DRI application", comprised of: a cover letter to the Executive Director and an abstract; copies of a declarations of trust, covenants, mortgages and related documents; local permit applications and municipal agency meeting minutes; and a hazardous materials site report. Materials provided by the Applicant and intended to serve as a "Hardship Exemption Application", comprised of: a cover letter to the Executive Director and an abstract; copies of a declarations of trust, covenants, mortgages and related

documents; and local permit applications and municipal agency meeting minutes. A letter from Attorney Peter Sundelin to Mr. Ed Bell of the Office of the State Archeologist at the Massachusetts Historical Commission dated May 25, 1990 relaying the Commission decision. A letter dated June 13, 1990 from the Massachusetts Historical Commission to Attorney Michael Princi recommending a professional archaeological survey of lots 47 and 48 of the proposed subdivision. A photocopy of several pages from a book entitled "Barnstable, Three Centuries of a Cape Cod Town" by Donald G. Trayser, dated 1939, and describing a burial site in the vicinity of lots 47 and 48 in the proposed subdivision. A map entitled "Sketch Plan, Showing the Location of an Ancient Indian Burial Ground as Described by Tyster Ranta" by Kingsbury Surveying Co., Inc., of 121 Route 6A, Sandwich, MA, dated June 19, 1975.

Public hearing testimony:

Attorney Michael J. Princi, for the Applicants. Mr. Princi described the proposed project and testified to its degree of completion and to costs incurred to date. Mr. Princi also gave his opinion regarding traffic impacts of the proposed development on area intersections.

Staff provided comments regarding probable impact to water quality and traffic impacts. Commission member Kaufman reported that he met with the Barnstable Site Plan Review Committee who recommended that the exemption be approved with the condition that the roads be designed to accommodate possible development of the westerly adjoining property.

Attorney Peter Sundelin spoke for a Mr. Jim Jenkins and reported that an ancient indian burial ground may exist on lots 47 and 48 of the proposed subdivision. He provided written materials to support that position.

JURISDICTION

The proposed Berkshire Trail Subdivision qualifies as a Development of Regional Impact under Section 12(c)(7) of the Act because it proposes to "create or accommodate thirty or more dwelling units".

The application and notice of the public hearing relative thereto, the Commission staff's notes and exhibits and all written submissions received in the course of our proceedings are incorporated into the record by reference.

FINDINGS

The Commission has considered the hardship exemption application of Michael J. Princi and Paul O'Connell, III, and Crowell Construction, Inc. for the proposed residential subdivision, and based on consideration of such application and the information presented at the public hearing, makes the following findings and imposes the following condition pursuant to Section 23 of the Act:

1. Preliminary subdivision plans were submitted and approved in 1987. The covenant held by the Barnstable Planning Board on the property has not been released, but roads are completed and utility conduits have been installed.
2. The mortgage on the property totals \$1.3M at a monthly cost of \$10,000. The Applicants' spent \$1.1M improving the property prior to March 27, 1990 and will recognize revenues only upon the sale of the lots. Two lots are currently under purchase and sale agreement.
3. Based upon the Institute of Traffic Engineers estimates, additional traffic resulting from the proposed subdivision will not degrade the Level of Service (LOS) of area roads to an unacceptable level.
4. No undue adverse impacts to water quality will result from the construction of the single family homes as proposed.
5. A possibility exists that an ancient indian burial ground exists under two of the lots (lots 47 and 48) in the proposed subdivision. The possible existence of such remains is based upon a map prepared on June 19, 1975 by Kingsbury Surveying Co., Inc. and text in a book published in 1939 identifying the vicinity as one containing an ancient indian burial ground. It is the recommendation of the State Archeologist of the Massachusetts Historical Commission (MHC) that unmarked human burials that may be located within the project area can only be identified through the completion of a professional archaeological survey of lots 47 and 48. The MHC staff is available to assist the applicant in developing a scope for an archaeological survey. The results of such survey will enable the applicant to take prudent and feasible steps to avoid impacting burials that may be discovered during the survey.

In light of the considerations discussed in the record and within the Decision, the Commission sets forth the following condition:

1. The applicant will conduct an intensive (locational) archaeological survey, pursuant to 950 CMR 70, to locate and identify unmarked human burials and other archaeological remains that may be affected by the proposed development of lots 47 and 48. Prior to beginning the survey, the applicant shall submit to the MHC and Commission staff any additional information in his possession concerning the possibility of a burial ground on lots 47 and 48. Additional information received from the applicant will be reviewed by Commission and MHC staff, in consultation with the applicant, to determine the scope of the survey to be performed. The survey should include (1) background research to gather and evaluate the documentary and oral information on the history and prehistory of the area to provide a predictive and interpretive context for the survey, and (2) non-intrusive subsurface testing to locate graves. The survey is to be conducted by the applicant at no cost to the town of Barnstable. The name and qualifications of the consultant retained to perform the survey are to be submitted to the Commission and approved prior to the beginning of testing. No construction shall commence on lots 47 and 48 until the Cape Cod Commission has given its approval based upon the results of the above mentioned survey.

CONCLUSIONS

Based upon the findings above, the Cape Cod Commission hereby concludes:

1. That a literal enforcement of the provisions of the Act would involve substantial hardship, financial or otherwise to the applicant. This conclusion is supported by the findings that road work is completed and utility conduits are installed, and a sizable mortgage on the property exists and revenues to offset that mortgage will only be available from the sale of lots. Further, the Applicant has already obtained subdivision approval from the appropriate municipal agency.
2. That desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act with respect to lots 1 through 46 of the proposed subdivision, and that such relief may be

granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act with respect to lots 47 and 48 with the imposition of the condition relating to a possible ancient indian burial ground. This conclusion is supported by the findings that no undue adverse impacts to water quality will result from construction of the proposed subdivision and that LOS on area roads will remain at an acceptable level. In addition, the imposition of the condition listed above will protect cultural, historical and archaeological values required to be protected under the Act.

The Commission hereby approves with one condition the application of Michael J. Princi and Paul O'Connell, III as Trustees of Cedar Street West Barnstable Realty Trust, and Crowell Construction, Inc. for a Hardship Exemption from the terms and provisions of the Act, pursuant to Section 23 of the Act.



Richard S. Armstrong, Chairman

9/25/90
Date



Notary
My Commission Expires Sept. 25, 1992

9/25/90
Date