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THE CAPE COD COMMISSION



CAPE COD PLANNING AND ECONOMIC DEVELOPMENT COMMISSION

1ST DISTRICT COURT HOUSE, BARNSTABLE, MASSACHUSETTS 02630

TELEPHONE: 508-362-2511

DATE: August 23, 1990 CCC#EX90041
TO: Sandwich Commercial Realty Trust
FROM: Cape Cod Commission
RE: Hardship Exemption Request
Cape Cod Commission Act, Section 23
APPLICANT: Sandwich Commercial Realty Trust
PROJECT: Sandwich Commercial Realty Trust
Lot 8, Cotuit Road, (335 Cotuit Road), Sandwich, MA

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (The Commission) hereby denies the application of Sandwich Commercial Realty Trust for a hardship exemption under Section 23 of the Cape Cod Commission Act (the Act), c. 716 of the Acts of 1989, as amended for a proposed retail building off Cotuit Road in Sandwich containing 18,000 square feet of commercial space. The decision is rendered pursuant to the vote of the Commission on June 7, 1990.

PROJECT DESCRIPTION

This proposed project is a revision to an earlier proposal which consisted of an entertainment complex which was to house three movie theaters with 110 seats each and a twelve lane bowling alley. This earlier proposal received a special permit from the Sandwich Zoning Board of Appeals on August 5, 1988. An extension of the Special Permit was granted in 1989. The Zoning Board of Appeals has voted to grant the extension through July 28, 1990, with a stay pending the decision by the Cape Cod Commission on this request for an exemption.

The proposed project contemplates a change in the use of the locus from the previously permitted recreational use to retail use. This hardship exemption application is for a proposed 18,000 square foot retail building. It includes the construction on one large retail store (approximately 12,000 square feet) with not more than two smaller satellite stores. Ninety (90) parking spaces would be provided. Vehicular access would be off of Cotuit Road. The proposed project would be constructed in accordance with plans prepared by Levy, Eldredge & Wagner Associates, Inc. of Centerville, MA titled "Site Plan of Lot 8 Cotuit Road in Sandwich, Massachusetts for Greenbriar Development Corp.", dated 4/03/90 and revised 4/06/90, 5/29/90 and 6/6/90.

PROCEDURAL HISTORY

This application for a Hardship Exemption under Section 23 of the Act was filed with the Commission on May 2, 1990. A duly noticed public hearing on the application was conducted by the Commission pursuant to Section 5 of the Act on June 7, 1990 at 3:47 p.m. in Rooms 11/12 in the Barnstable County Superior Court House, Route 6A, Barnstable, MA. The hearing notice was read by Commission Secretary Don Near.

Material Submitted for the Record:

Materials submitted by the applicant:

- "Memorandum in Support of an Application for a Section 23, Hardship Exemption", dated June 7, 1990, submitted by Sandwich Commercial Realty Trust;
- Letter dated May 2, 1990 from Steven Pizzuti of O'Malley & Pizzuti, Attorneys at Law, requesting an exemption from the Commission;
- "Traffic Impact & Access Study - Proposed Retail Development, Sandwich, Massachusetts", prepared by McDonough & Scully, Inc., dated May 1990;
- "Site Plan for Proposed Sandwich Family Recreation Center" by M.C. Hardwick Jr., dated 3/18/88.

Letters in opposition to the request:

- Dennis Konary, representing Konary Realty Trust (letter dated 6/3/90);
- Mark Carchidi, representing Sandwich Citizens for Sensible Growth (letter dated 6/7/90).

The Commission heard oral testimony from the applicant, Commission staff and other interested parties:

Attorney Michael Murphy represented the applicant, Sandwich Commercial Realty Trust, giving an overview of the proposed development. Mr. Murphy stated that the applicant had previously obtained a special permit from the Sandwich Zoning Board of Appeals for a different commercial use on the site. Attorney Murphy represented that the Commission should exempt the presently proposed project because it had the same or lower impacts than the originally permitted project.

Commission staff comments were made by Dorr Fox, Chief Regulatory Officer, and Robert Mumford, Transportation Program Manager. Mr. Fox recommended against approval of the exemption request. He stated that since the presently proposed project was significantly different from the originally permitted project that a full DRI review was appropriate. He also stated that the site was in a Zone of Contribution and a Water Resource District. The current development proposal does not meet the current regulations for the Water Resource District. Mr. Mumford stated that the current proposal would generate twice the traffic of the original proposal and that peak hour traffic would be different. He expressed concern that there would be traffic impacts on Route 130 and Cotuit Road.

The following interested parties spoke at the hearing:

- Alan MacKay spoke representing the Sandwich Engineering Department and Planning Board stating the request deserves full CCC review;
- Brian Garner, Esq. spoke for the Sandwich Housing Authority in favor of the request;
- Mark Carchidi, Esq., spoke in opposition to the request on behalf of Sandwich Citizens for Sensible Growth;
- Susan Walker, Sandwich representative to the Assembly of Delegates, spoke in opposition to the request.

JURISDICTION

The proposed 18,000 square foot commercial project of Sandwich Commercial Realty Trust qualifies as a Development of Regional Impact under Section 12(c)(6) of the Act, which requires review of "Any proposed retail or wholesale business, office or industrial development, as well as any private, health, recreational or educational development which has a floor area as follows:

new construction: greater than ten thousand square feet..."

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

FINDINGS

The Commission has considered the hardship exemption application of Sandwich Commercial Realty Trust for the proposed retail project, and based on consideration of such application, the information presented and Commission staff recommendations at the public hearing, makes the following findings pursuant to Section 23 of the Act:

1. There has been no groundbreaking, no substantial investment, and no permit has been granted for the proposed project.

2. The proposal before the Commission for a Hardship Exemption is substantially different from the original proposal which was granted a special permit from the Sandwich Zoning Board of Appeals in 1988. Therefore, the current proposal deserves full DRI review.

3. Traffic impacts:

- the current proposal will generate twice the traffic of the original proposal;
- there are different peak hour traffic patterns between the current proposal and the original proposal;
- new development in the area may have substantially changed traffic volumes and patterns since the original special permit approval;
- the access plan of the current proposal is different from the plan of the original proposal;
- there is the potential for substantial impacts on Cotuit Road and area intersections from this project. There would be a need for mitigation, such as signalization of Route 130 and Cotuit Road and the construction of turn lanes at the site.

4. The site is located in a Zone of Contribution and a Water Resource District. The current proposal does not meet the local development requirements for this district.

CONCLUSION

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

1. That a literal enforcement of the provisions of the act would not involve substantial hardship, financial or otherwise to the applicant. This conclusion is supported by the finding that the project before the

Commission is substantially different from the original permitted project and that no groundbreaking for construction has occurred at the site, no substantial investment has been made in the project and no permits for the current project have been granted.

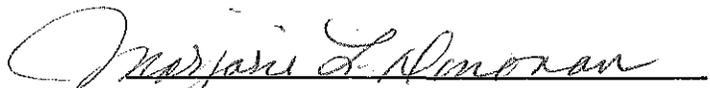
2. That desirable relief may not be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the act. This conclusion is supported by the findings that the project will have negative impacts on traffic in the area and that the site is located in a Zone of Contribution and Water Resource District and the project would not be constructed in a manner consistent with regulations for this district. In addition, the project is a totally new proposal and deserves full DRI review.

The Commission hereby denies Sandwich Commercial Realty Trust a hardship exemption from the terms and provision of the Act, pursuant to Section 23 of the Act.



Richard S. Armstrong, Chairman

8/29/90
Date



Notary

8-29-90
Date

MY COMMISSION EXPIRES
NOV 5, 1993