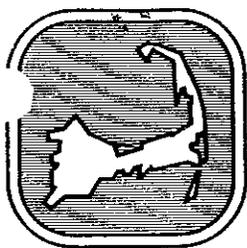


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THE CAPE COD COMMISSION



CAPE COD PLANNING AND ECONOMIC DEVELOPMENT COMMISSION

1ST DISTRICT COURT HOUSE, BARNSTABLE, MASSACHUSETTS 02630

TELEPHONE: 508-362-2511

DATE: October 18, 1990 CCC#TR90004
TO: Mr. William Rogers
FROM: Cape Cod Commission
RE: Hardship Exemption Request
Cape Cod Commission Act, Section 23
APPLICANT: Ms. Linda Maloney
12 Candlewood Drive
Dennisport, MA 02639
PROJECT: North Harwich Industrial Park
Old Chatham Road
North Harwich, MA

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (the Commission) hereby denies the application of Ms. Linda Maloney 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 industrial subdivision on Old Chatham Road in North Harwich, MA. The decision is rendered pursuant to the vote of the Commission on October 11, 1990.

PROJECT DESCRIPTION

The application is for a 19-lot subdivision of approximately 12.2 acres, creating sixteen industrial lots and three residential lots on Old Chatham Road in North Harwich, MA. The site is predominantly wooded and is surrounded by mixed industrial and residential land uses. Access to the site is by residential streets.

PROCEDURAL HISTORY

The project was referred to the Cape Cod Commission as a Development of Regional Impact on April 25, 1990. A public hearing was opened on June 22, 1990 and continued until August 27, 1990. At the August 27 hearing the project was not heard due to the fact that a certified abuttor's list had not been received by the Commission. The hearing was continued to September 17, 1990 at 3:00 p.m. at the Harwich Town Hall, at which time the public hearing was closed. The applicant's representative was contacted on August 28,

1990 regarding the status of the project. He stated that he wished to apply for a Hardship Exemption and submitted a certified abuttor's list and cover letter to that effect on September 13, 1990. A duly noticed public hearing pursuant to this request was held before the full Commission on October 11, 1990 at 3:00 p.m. The hearing notice was read by Commission Secretary Donald Near.

Materials Submitted for the Record

Materials submitted by the Applicant:

- Site Plan (1 sheet) revised August 22, 1989 by Kingsbury Surveying Co. Inc. & Lamtery Associates
- Letter requesting hardship exemption dated September 12, 1990 and received by the Commission September 13, 1990
- Certified abuttor's list submitted September 13, 1990
- Planning Board Subdivision application dated June 6, 1989 and Definitive Subdivision approval dated November 15, 1989
- Agreement to extend decision dated October 11, 1990

Other materials submitted:

- DRI referral form submitted on April 12, 1990
- Cape Cod Commission Staff Report
- Proposed Covenants to the subdivision plan

Materials submitted at the October 11 hearing:

- Letter from the Planning Board re: hardship exemption request dated October 11, 1990
- Harwich Police Department letter dated February 6, 1990 with attachments dated December 13, 1988; July 11, 1989; September 3, 1990; October 10, 1990
- Two letters in opposition
- Petition in opposition to the project

Testimony

The Commission heard oral testimony from the applicant's nephew, Mr. William Rogers on the Hardship Exemption request. Mr. Rogers stated that the hardship request was based on an investment of over \$60,000 for estate planning services, paid over the past three years. He further stated that the applicant could not afford the fee for a DRI review, which would be in excess of \$3000. The applicant had no desire to develop the land; she only wished to subdivide the land for estate planning purposes.

Three letters in opposition to the project were then read, including a letter from the Harwich Planning Board citing traffic concerns. A petition against the project was also submitted into the record. Sharon Rooney then gave a staff report on the project, stating that the staff

recommended a denial of the hardship exemption, based on the following factors: the applicant had failed to provide documentation of hardship or a completed application as required by the Act; and the proposed industrial use of the site presented potential traffic, environmental and community character issues which should be reviewed through the DRI review process. These issues were identified as the following:

TRAFFIC

- Depot Street, which leads to this site, is of regional importance as it provides the only north-south access between several towns in the mid-cape area. Industrial traffic would place additional burdens on this roadway and its intersection with Queen Anne Road.
- Along with traffic generated by Eagle Pond Nursing Home, additional industrial traffic created by this project would adversely impact area roadways.
- The proposal could generate close to 1000 trips per day based on a general classification of industrial and residential uses for the site. This was significant because the roadways are narrow residential streets with limited sight distance and with limited potential to change alignment.

ENVIRONMENTAL ISSUES

- The site is presently an undisturbed woodland. Although the applicant had agreed to place vegetative buffers from proposed uses by covenant, there could be serious environmental impacts created by proposed industrial uses which cannot be adequately determined due to a lack of information provided by the applicant. These impacts could include but not be limited to the following: groundwater, hazardous waste, drainage, wildlife or other natural resource issues. Therefore, the staff was unable to determine if the proposal would be contrary to the intent of the Act.

COMMUNITY CHARACTER

- Community character could be affected by proposed industrial uses as the surrounding area is predominantly residential. Proposed uses may be incompatible with the pattern of existing development and would need to be carefully planned to ensure protection of the existing residential neighborhoods.

Abutters to the proposed subdivision expressed concerns about potential traffic and safety problems created for neighborhood children by the project, especially the type of traffic that would be generated by industrial use. Jim Noonan, Assembly of Delegates, presented letters from the Chief of Police in Harwich objecting to the project along with photos of the site, and expressed concern for neighborhood children who do not have access to sidewalks or bus service in the area who would be endangered by truck traffic created by this project. Public commentators also noted that there was approximately 14-16 feet from the surface to groundwater in this area.

Commission member Vicki Lowell stated that costs involved in subdividing the land for estate planning purposes was technically not a hardship under the Act. The Commission also felt that any subdivision was potentially developable. Therefore, based on the potential impacts of this development, the subdivision should be reviewed as a DRI.

Mr. Rogers stated that the land could be developed as an ANR subdivision creating 8 lots, but that the owner wanted restrictions on the property which could not be imposed through an ANR subdivision. He reiterated the applicant's intentions not to develop the land.

JURISDICTION

The proposed industrial subdivision of Ms. Linda Maloney qualifies as a Development of Regional Impact under Section 12(c)(5) which requires review of "any development which proposes to divide land in common ownership into...ten or more business, office or industrial premises."

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 of Ms. Linda Maloney for the proposed industrial subdivision, and based on consideration of such application and the information presented at the public hearing, makes the following findings pursuant to Section 23 of the Act:

- 1). The applicant failed to provide written documentation of hardship as required by Section 23 of the Act and failed to submit a completed application;
- 2). The proposed use as an industrial subdivision presents potential traffic, environmental and community character issues which cannot be properly reviewed due to a lack of information supplied by the applicant;
- 3). Although the applicant has made a financial investment in the proposed project, costs incurred in subdivision for estate planning purposes cannot be literally interpreted as a hardship under the Act;
- 4). Since development review on the local level has not occurred and no construction has been attempted, compliance with a full DRI review is possible. Such review will provide the Commission with information which will facilitate regulation of any resulting impacts.

CONCLUSION

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

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 findings that although the applicant has made a considerable financial investment in the proposed project, costs incurred in subdivision for estate planning purposes do not constitute a hardship under the Act. Further, the applicant failed to submit any written documentation of a hardship or a completed application to the Commission.

DRI review by the Commission is necessary to consider the merits of the project and evaluate impacts to determine whether or not the project derogates from the intent or purposes of the Act, or is detrimental to the public good. The proposed industrial subdivision presents potential traffic, environmental and community character issues which cannot be reviewed due to a lack of information supplied by the applicant. Compliance with a full DRI review is possible without a hardship, since development review on the local level has not occurred and no construction has been attempted.

The Commission hereby denies Ms. Linda Maloney a hardship exemption from the terms and provisions of the Act, pursuant to Section 23 of the Act.

Richard S. Armstrong
Richard S. Armstrong, Chairman

10/25/90
Date

Jean E. Beane
Notary
My Commission Expires May 2, 1991

10/25/90
Date

CERTIFICATION OF PROPER NOTICE

I hereby certify that the requirements of Section 5(a) of the Act regarding notice of the public hearing concerning the proposed North Harwich Industrial Park in North Harwich, MA were fulfilled, as follows:

1. Notice of the public hearing appeared in the Cape Cod Times on September 27, 1990 and October 4, 1990.
2. Notice of the public hearing was posted in a conspicuous place in the Commission's office at 3225 Main Street, Barnstable, MA 02630; and
3. Copies of all documents subject to notice were made available at the Commission's office during normal business hours.

Katharine Peters
Katharine Peters, Clerk

10/25/90
Date