

# CAPE COD COMMISSION

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DATE: February 26, 1991  
TO: Mashpee Zoning Board of Appeals

Little River Boat Yard, Inc.  
15 Riverview Road, Seconsett Island  
Mashpee, MA 02649

FROM: Cape Cod Commission  
RE: Development of Regional Impact  
Jurisdictional Determination  
Cape Cod Commission Act, Section 12(j)  
PROJECT #: JD91013  
PROJECT: Little River Boat Yard, Inc., Boat Storage Rack

## SUMMARY

The Cape Cod Commission (Commission) hereby finds that the existing boat storage rack owned by Mr. William Burtis d/b/a Little River Boat Yard, Inc. is required to be reviewed under section 12(c)(6) of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended. The Commission further finds that the existing boat storage rack is not exempt from review pursuant to Section 22 of the Act. This decision is rendered pursuant to the vote of an authorized subcommittee of the Commission on February 25, 1991.

## PROJECT DESCRIPTION

The Jurisdictional Determination application for the above referenced project was referred to the Commission by the Mashpee Zoning Board of Appeals. The application was deemed complete on Wednesday, February 6, 1991. The application seeks a determination of whether an existing boat storage rack belonging to Mr. William Burtis, Little River Boat Yard, Inc. of 15 Riverview Road, Seconsett Island, Mashpee, Massachusetts requires review under section 12(c) of the Cape Cod Commission Act, and whether the project is exempt from Commission review under section 22 of the Act.

The Little River Boat Yard has been in existence as a marina for many years. Prior to construction of the boat storage rack, boats were stored on the ground amongst existing cottages. The owner now proposes to store boats in an existing boat storage rack 50'(w) x 182'(l) x 29'(h).

## PROCEDURAL HISTORY

On August 12, 1986 the Mashpee Building Inspector issued a building permit to Mr. William Burtis of the Little River Boat Yard to demolish 13 cottages and construct two (2) boat storage rack buildings, each two stories high (18 feet). A single boat storage rack, three stories high (29 feet) was built in April or May of 1989. The existing building is 50'(w) x 182'(l) x

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29'(h). On July 31, 1989 the Town of Mashpee issued a stop work order because the building under construction was different from construction allowed by the building permit. In addition, the building permit was issued in error because the owner should have obtained a special permit prior to receiving a building permit. The owner obtained a special permit from the Mashpee Zoning Board of Appeals for the building on July 11, 1989, subsequent to construction of the storage rack building.

In a suit brought by neighboring property owners, the court invalidated the July 11 special permit and issued an order enjoining the use of the storage rack and ordering its removal. The owner's attorney has filed a motion to stay that court order, pending the issuance of a new special permit by the Mashpee Zoning Board of Appeals. The Mashpee Zoning Board of Appeals filed a Jurisdictional Determination with the Commission to determine whether the project must be referred to the Commission for review prior to issuance of the new special permit.

MATERIALS SUBMITTED FOR THE RECORD

- Jurisdictional Determination Application Form and addendum.
- Certification that the above referenced application was filed with the Mashpee Town Clerk, Board of Appeals and Building Inspector.
- Application for a special permit for the Little River Boat Yard dated December 18, 1990.
- Board of Appeals public hearing notice for the special permit application.
- Decision of the Board of Appeals granting a special permit, dated July 11, 1989 including grant of extension of time for filing that decision.
- Building Permit #417 dated 7/26/85.
- Building Permit #1285 dated 5/4/88, Building Permit Job Weather Card #1285 dated 5/4/88, and attendant application.
- Building Permit #unknown dated 8/12/86.
- Building Permit #603 dated 10/9/87, extending building permit dated 8/12/86, and attendant application..
- Environmental Site Investigation performed by Lincoln Environmental, Inc. and dated May 3, 1990.
- Memorandum from Mashpee Board of Health to the Board of Appeals dated 1/24/91 addressing 5 health concerns with the pending special permit.
- Deed at Book 2921, Pages 258 through 261 conveying the subject real property to William and Jean Burtis.
- A locus map , copied from U.S.G.S. Falmouth quadrangle.
- Definition of the term "auxiliary".
- Barnstable Superior Court decision, Superior Court No. 89-850, John Driscoll et al vs. Board of Appeals, Town of Mashpee et al -and- Little River Boat Yard. Inc. vs. Building Inspector, Town of Mashpee, dated 11/2/90 and attendant Judgements on Findings.
- Excerpts from depositions of the Mashpee Building Inspector and Mr. William Burtis relating the Superior Court Case #89-850.
- Zoning Map showing subject property, dated 11/9/59.
- "Plan of Land at Seconsett Island, Mashpee Mass., Property of William H. and Doris Prentice" dated 5/12/49.
- Plan entitled "Bungalow Lots at Seconset, Waquoit Bay" dated 1919.
- Plan entitled "Little River Boat Yard, Mashpee, Massachusetts" by Golden Giant Inc., drawn by Dave Jennison, dated 1/16/89, sheets 1 through 4.
- Plan entitled "Proposed Improvement Plan for Little River Boat Yard" prepared by Braman Engineering of Buzzards Bay, MA, dated 8/26/88, one sheet.
- An 8.5" x 11" plan, dated 1/10/91 and revised 1/22/91, showing location of existing building on property and height of building.
- Letter from Attorney William Henchy, representing neighboring property owners, dated February 4, 1991 and requesting Commission review.

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- Letter from Attorney William Henchy to Mashpee town counsel dated January 18, 1991.
- Staff report dated 2/20/91.
- Letter dated February 18, 1991 from Edward Cavefield in opposition to the project.
- Letter dated received on February 11, 1991 from Chester Kobinsky in opposition to the project.
- Letter dated February 11, 1991 from Betty C. Davidson in opposition to the project.
- Letter dated February 19, 1991 from Ronald Francoeur in opposition to the project.

The application and notices of public hearings relative thereto, the Commission's staff notes, exhibits and correspondence, the transcript of minutes and meetings and hearings and all *written submission received in the course of the proceedings are incorporated* into the record by reference.

TESTIMONY

At the February 25, 1991 hearing, the subcommittee heard from the owner's representative, Attorney John Connolly. Connolly represented that the existing boat storage rack is a primary use of the project site, and that the storage rack is required by a town bylaw, therefore, the building cannot be considered "auxiliary" under section 12(c)(6) of the Act. He argued that because boat storage is a principal use of the site, that the 10,000 square foot threshold should apply. He further represented that the project should be exempted due to the length of time that the owner has been involved with the local regulatory process.

The subcommittee also heard from Attorney William Henchy, representing neighboring landowners. Henchy represented that section 12(c)(6) of the Act addresses both use and building size. He argued that this building is "auxiliary" as contemplated by the Act because it is not connected to a main building, and that the 5,000 square foot threshold applies. He further represented that this project is not exempt under section 22 of the Act because the special permit was received after the July 1, 1989 deadline found in section 22, and because the special permit was annulled by a court.

Details of information provided at the public hearing are available in the minutes of the hearing and public meeting at the office of the Cape Cod Commission.

FINDINGS

The Commission has considered the application of the Mashpee Zoning Board of Appeals for the boat storage rack building owned by Mr. William Burtis d/b/a the Little River Boat Yard, Inc. and based on consideration of such application and upon the information presented at the public hearing, makes the following findings pursuant to Section 12(j) of the Act:

1. The Cape Cod Commission Act requires review of certain developments as Developments of Regional Impact. Section 12(c)(6) of the Act reads in relevant part:  
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: ...addition or auxiliary buildings: greater than 5,000 square feet;....
2. Section 12(c)(6) of the Act addressed both uses and sizes of buildings. Regarding use, the marina sells gasoline and services boats and is a "retail or wholesale business". The boat storage rack is a "private recreational development".
3. Regarding size, the boat storage rack building is currently 50'(w) x 182' (l) x 29' (h). The owner proposes to remove a 40' section from the length of the building. With the 40' section removed, the floor area of the building will be 7,100 square feet.

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4. Section 12(c)(6) is intended to distinguish between connected buildings (additions) and unconnected buildings on the same lot (auxiliary uses). When determining jurisdiction, the issue of principal use or subsidiary use of the of the addition or auxiliary building is not relevant. The boat storage rack building is not an addition because it is not connected to a main building. The building is auxiliary to the existing marina uses on the site.

5. Section 22 of the Cape Cod Commission Act exempts projects from Commission review. The relevant portion of section 22 reads as follows:

This act shall not apply to any development which prior to July 1, 1989 has received one of the following: ...a special permit or variance under chapter 40A; ...and which development is constructed or is thereafter constructed in substantial compliance therewith.

6. The Mashpee Zoning Board of Appeals issued a special permit to Mr. Burtis d/b/a the Little River Boat Yard pursuant to M.G.L. chapter 40A. The special permit granted to the Little River Boat Yard, Inc. for the subject boat storage rack was recorded with the Mashpee Town Clerk on July 11, 1989.

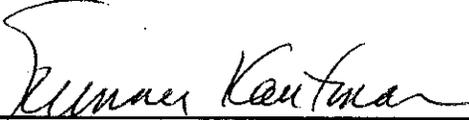
7. The owner "received" the special permit on July 11, 1989, ten days after the statutory deadline for receiving an exemption from Commission review.

8. The special permit granted to the Little River Boat Yard, Inc. for the subject boat storage rack was annulled in a court proceeding. Therefore, the special permit is no longer valid and the boat storage rack cannot be "constructed in substantial compliance" with a valid special permit.

CONCLUSION

Based upon the findings above, the Commission hereby concludes:

The boat storage rack is required to be reviewed under section 12(c)(6) of the Act. This conclusion is supported by the findings that the building's use is included in section 12(c)(6), that the building is auxiliary to the existing marina uses on the site, and that the building size exceeds 5,000 square feet. That the boat storage rack is not exempt from Commission review under section 22 of the Act. This conclusion is supported by the findings that: the special permit was issued ten days after the cutoff date for obtaining an exemption from review under section 22; the special permit was thereafter annulled by a court of law, therefore the building cannot be completed in "substantial compliance" with the special permit as required for an exemption under the Act; and the special permit is not longer valid because it was annulled by the court.

  
Sumner Kaufman, Subcommittee Chair  
Cape Cod Commission

Feb 27, 1991  
Date

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Decision

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

Subscribed and sworn to before me this 27<sup>th</sup> day of Feb 19 91.

Name, Notary Katharine G Peters

My commission expires: December 5, 1997