

CAPE COD COMMISSION

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Date: March 6, 1991
To: Donald F. Henderson, Thomas N. George, Trustees
From: Cape Cod Commission

RE: Development of Regional Impact
Jurisdictional Determination Request
Cape Cod Commission Act, Section 12 (j)

Applicant: Donald F. Henderson, Thomas N. George, Trustees
Project #: JD91017
Project: Willow Street Park Commercial Development
Ansell Hallet Road
West Yarmouth, MA 02673

Map/Parcel: Plan Book 406, Page 38
Map 72, Parcels V3, V4
Map 63, Parcels H5, H6

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby finds that lots #3-6 of the Willow Street Realty Trust project is exempt from review by the Commission pursuant to Section 12(j) and Section 22 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for a proposed commercial development and existing commercial building in West Yarmouth, MA. The decision is rendered pursuant to the vote of an authorized subcommittee of the Commission on February 28, 1991.

PROJECT DESCRIPTION

The project is located at the intersection of Ansell Hallet Road and Willow Street in West Yarmouth, MA. The Applicant has requested a jurisdictional determination for lots #3-6 of a 10-lot subdivision, including proposed construction of a 24,000 square foot trucking/warehouse facility on lots #4-6, and an already completed building totaling approximately 4310 square feet on lot #3. A total of 61 parking spaces is proposed for the warehouse construction. A small isolated wetland is located on lot #3.

PROCEDURAL HISTORY

The 10-lot subdivision received endorsement by the town of Yarmouth Planning Board on October 23, 1985. A covenant was also executed on this date to ensure completion of ways and municipal services. A complete release of the covenant was granted by the Planning Board on October 11, 1988.

The Yarmouth Conservation Commission issued an Order of Conditions on October 6, 1988. This Order of Conditions was amended in February, 1991. Building permits were issued on October 20, 1988. Construction of the commercial building on lot #3 was completed in the spring of 1989. A partial Certificate of Occupancy will be granted for this building in March, 1991. The Applicant has received extensions of the building permits from the Yarmouth Building Inspector for the proposed 24,000 s.f. commercial building through April 20, 1991. Pursuant to Section 12(j) of the Cape Cod Commission Act, the Commission received a request from Willow Street Realty Trust for a jurisdictional determination on February 7, 1991. The jurisdictional determination application was deemed complete on February 14, 1991.

Materials Submitted for the record include:

- Jurisdictional Determination application and Memorandum dated February 6, 1991
- Building Permits #685 & #686 issued October 20, 1988, and Building Permit Extensions through April 20, 1991
- Declaration of Trust, Book 4602, Page 279 and Trust Amendment dated September 30, 1985
- Deed, Book 4602, Page 282
- Yarmouth Planning Board Covenant, dated October 23, 1985
- Yarmouth Planning Board Release of Covenant, dated October 14, 1988
- Subdivision Plan Book 406, Page 38, Low & Weller Associates, dated August 12, 1985
- Site, Sewage, Parking and Drainage Plan, Weller & Associates, dated May 1988, revised through October 20, 1988; 2 sheets
- Sewage System Design & Details, Weller & Associates, dated May 1988, revised through October 14, 1988, 2 sheets
- Site Plan and Topographic Plan, Schofield Brothers, Inc., dated December 12, 1990, site plan revised through January 31, 1991
- Details and Specifications, Schofield Brothers, Inc., dated December 28, 1990, 2 sheets
- Certification of Concurrent Filing with municipal agencies, dated February 5, 1991
- Order of Conditions, issued by the Yarmouth Conservation Commission, dated October 6, 1988
- U.S.G.S. Quadrangle Map of project area
- Response of Executive Director, Cape Cod Commission, dated September 26, 1990
- Excerpts from the Massachusetts State Building Code, 780 CMR Fifth Edition

Additional Materials:

- Letter from Town of Yarmouth Board of Selectmen, dated February 27, 1991

- Letter from Town of Yarmouth Conservation Commission, dated February 25, 1991
- Staff report dated February 22, 1991

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

TESTIMONY

The Commission heard oral testimony at the February 28, 1991 hearing from the Applicant's representative, Attorney Edward Sweeney. He described the three grounds for determining that the Commission would have no jurisdiction under Section 22 of the Act: 1). Section 22(b), Yarmouth Conservation Commission Order of Conditions received October 6, 1988, prior to July 1, 1989 in the Act; 2). Section 22(a), building permits issued October 20, 1988 prior to March 27, 1990 in the Act; and Section 22(e), Planning Board endorsement received October 23, 1985, prior to July 1, 1989 in the Act; further, the roadway and utilities have been completed. Therefore, release of covenant on the subdivision has been obtained and lots #3-6 of the project is exempt from jurisdiction under the Act.

E. Sweeney then described the project and its location. The project is located at Willow Street and Ansell Hallet Road. The jurisdictional determination request is for lots #3-6. New construction would occur on lots #4-6. Lot #3, also to be considered in the determination, contains an existing building. In 1988, when the original building permits and Order of Conditions were obtained, two buildings were proposed for lots #4-6, with a much larger building than is presently proposed. The current proposal is to construct only one building which is also much smaller than originally proposed. A booklet was submitted for the record at this time, along with letters from the Board of Selectmen dated February 27, 1991, Conservation Commission letter dated February 25, 1991 and a portion of Chapter 16 of the Mass. State Building Code. Both letters were in support of his request and verified that the permits obtained would still be valid even with a project change. He described the contents of the booklet, which included a memo which outlined the request for relief and a comparison of the old proposal and the current proposal. He stated that he agreed with the staff recommendations in their report with the exception of disagreeing with staff's assessment that review of development on lots #7-12 may be required if they exceed the 12(c) thresholds. However, he was looking for a recommendation on lots #3-6 only at this time.

A. Young stated that it appeared that the applicants had a de facto case for an exemption under section 22. Therefore, he asked why the applicant was going through with the jurisdictional determination process. E. Sweeney replied that it was necessary in order to obtain bank financing. A. Young then stated that this section of the Act was created largely for this purpose. S. Kaufman asked if the wetlands on lot #3 were filled for construction on lot #3. E. Sweeney replied that the wetlands were not filled for construction on lot #3.

K. Brock then entered all documents received at the hearing into the record. R. Armstrong stated that the subcommittee did have a chance to review all of the information other than the letters submitted today prior to the hearing.

Staff comments were given by S. Rooney. She stated that she had checked with the Town of Yarmouth Building Inspector and Conservation Commission Administrator on the validity of the permits given the project change. Both departments agreed that the permits would still be valid if the project was completed in substantial compliance with the permits issued. She requested that the jurisdictional determination be restricted to a review of lots #3-6. She also stated that the Conservation Commission indicated that the wetland was a small isolated wetland and was not or would not be filled with project construction.

A. Young asked staff if the proposed construction on lots #4-6 would categorically be a DRI under Section 12(c). S. Rooney replied that under Section 12(c) the proposed construction would qualify as a DRI; however, it was exempt under Section 22. A. Young then stated that ordinarily the Commission would make a finding as to whether or not the proposed project qualifies as a DRI and then whether or not it is exempt under Section 22; he didn't see a need for that finding in this case as it was clearly exempt under Section 22.

A. Young then made a motion to close the hearing. S. Kaufman seconded the motion. The motion was approved unanimously. A. Young then made a motion that the Commission find that lots #3-6 are exempt from Commission review under Section 22 of the Act. R. Armstrong amended the motion to state that the decision be based on Section 22 but with a determination of non-applicability under Section 12(j) as requested by the applicant. J. Halachis seconded the amended motion. This motion was approved unanimously. The hearing ended @ 1:50 p.m.

FINDINGS

The Commission has considered the Applicant's request for a Jurisdictional Determination regarding the proposed commercial development for Willow Street Realty Trust, and based upon consideration of such request, upon information presented at the public hearing and submitted for the record, makes the following findings:

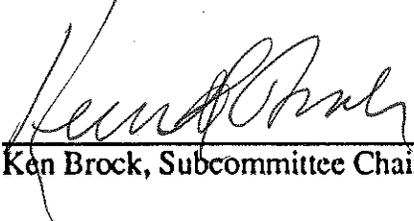
- 1). Section 22(a) states that the Act shall not apply to any development constructed in accordance with a building permit issued prior to the effective date of the Act (March 27, 1990). The development is to be constructed in accordance with building permits #685-686 issued on October 20, 1988, with building permit #686 applying primarily to the completed building on lot #3. Although the proposed development on lots #4-6 has been revised since the original building permits were obtained, Section 113.8 of the Massachusetts State Building Code allows amendments or revisions to a plan upon filing and approval with the local building official. Such approved revisions shall be deemed part of the original application. Plan revision approval was received on February 5, 1991 from the Town of Yarmouth Building Inspector.
- 2). The Applicant has received extensions of the above-mentioned building permits from the Yarmouth Building Inspector through April 20, 1991. Each extension was for a period of six (6) months. Section 114.3 of the State Building Code allows for extensions of time on the original building permit not exceeding six (6) months each.
- 3). Section 22(b) states that the Act shall not apply to any development which prior to July 1, 1989 has received an Order of Conditions under M.G.L. Section 40, Chapter 131. The development is to be constructed in substantial compliance with an Amended Order of Conditions under M.G.L. Sec. 40, Chap. 131. The original Order of Conditions was received on October 6, 1988. This Order of Conditions is still valid provided that the Applicants complete construction in substantial compliance with the original permit.

4). Section 22(e) states that the Act shall not apply to a lot or lots shown on a subdivision plan endorsed by a planning board prior to July 1, 1989, in accordance with Section 81V of M.G.L. Chapter 41, if the planning board has released the security held by it to ensure completion of construction of ways and the installation of municipal services, as required by Section 81U of said Chapter 41, prior to the effective date of this act. The 10-lot subdivision received endorsement by the town of Yarmouth Planning Board on October 23, 1985. A covenant was also executed on this date to ensure completion of ways and municipal services. A complete release of the covenant was granted by the Planning Board on October 11, 1988.

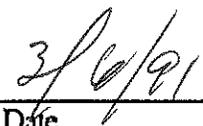
CONCLUSION

The Commission hereby concludes that the proposed Willow Street Realty Trust commercial development on lots #3-6, Ansell Hallet Road in West Yarmouth, MA is exempt from Commission review under Section 12(j) of the Act. This conclusion is based on the following findings: the Applicants had obtained building permits prior to March 27, 1990; and, an Amended Order of Conditions, Planning Board endorsement and release of covenant prior to July 1, 1989.

This decision is rendered by a vote of an authorized subcommittee of the Cape Cod Commission on February 28, 1991.



Ken Brock, Subcommittee Chair



Date

Commonwealth of Massachusetts

Barnstable, ss.
Subscribed and sworn to before me this 6th day of March 1991



Name, Notary Public

My Commission Expires: 12/5/97