

# CAPE COD COMMISSION

3225 MAIN STREET  
PO Box 226  
BARNSTABLE, MA 02630  
508-362-3828  
FAX: 508-362-3136

DATE: June 17, 1991  
TO: Kenneth Eldredge  
FROM: Cape Cod Commission

RE: Development of Regional Impact Request  
Cape Cod Commission Act, Sections 12 and 13

APPLICANT: Acme Laundry  
PROJECT #: TR 90108  
PROJECT: Acme Laundry Subdivision  
Rte. 28, Chatham, Ma.

MAP/PARCEL#:

LAND COURT CERT #,  
or BOOK and PAGE #:

## DECISION OF THE CAPE COD COMMISSION

### SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of Leo Eldredge and Kenneth Eldredge for a DRI approval under Sections 12 and 13 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the proposed Acme Laundry Definitive Subdivision Plan. The decision is rendered pursuant to the vote of the Commission on June 6, 1991.

**PROJECT DESCRIPTION**

The project involves the subdivision of a 15.89 acre parcel into two lots, including one front lot of approximately five acres, located along Rte 28, and one rear lot of approximately ten and one half acres. The parcel is located within the R20 and the R40 Zones in the Town of Chatham, Ma. An adjoining two acre lot, also owned by Leo Eldredge and Kenneth Eldredge, is contaminated by a hazardous waste oil spill connected with the former use of the property by the Eldredge's Acme Laundry Company.

**PROCEDURAL HISTORY**

This project was referred to the Commission by the Chatham Planning Board on October 1, 1990. A duly noticed public hearing was conducted by the Commission, pursuant to Section 5 of the Act, by an authorized subcommittee of the Commission on November 28, 1990 at the Chatham Town Hall in Chatham Ma. The public hearing was continued until February 20, 1991, when an extension was requested by the applicant. Subsequent hearings were held on April 17, 1991, continued to May 9, 1991 and continued again to May 16, 1991 when the applicant requested an additional extension until June 21, 1991. A final hearing was held on May 23, 1991 and closed. The record was left open for submission of written materials until June 5, 1991. The subcommittee gave a report to the full Commission on June 6, 1991 in the Chamber of the Assembly of Delegates, Route 6A, Barnstable, Ma. The Commission voted at this meeting to approve with conditions the application of the Acme Laundry subdivision plan as a Development of Regional Impact. The conditions were agreed to by the applicant and approved by the subcommittee.

The Applicant applied for the approval of a definitive subdivision plan from the Planning Board of the Town of Chatham. This permit is pending.

**Materials submitted for the record include:**

- document titled Wastewater Leachate Assessment: Ryders Hill Project Frost Fish Creek and Ryders Cove, Chatham,

Massachusetts January 25, 1987;

- plan titled Groundwater Contour Plan, April 1987, by Goldberg-Zoino and Associates Inc;
- document titled Lot Line Investigation, Acme Laundry Chatham, Massachusetts, October 1987;
- plan titled Site Development Plan Ryder's Hill Drive, December 28, 1987;
- document titled Report on the Wetlands Vegetation Bordering Frost Fish Creek, Related Companies Northeast, Inc. February 22, 1988;
- document titled Hydrogeologic Investigation, Former Acme Laundry Facility Route 28, Chatham, Massachusetts, March 1988;
- document titled Evaluation of the Potential Health and Environmental Effects Associated with the Presence of Petroleum Hydrocarbons at the Former Acme Laundry Site Chatham, Massachusetts, May 1988;
- document titled Land Use Manager: Split Lots Vol. 5, Edition No. 9, November 1988;
- document titled Ground Water Discharge Permit Application Former Acme Laundry Facility, Orleans Road Chatham, Massachusetts, May 1989;
- document titled Remedial Response Implementation Plan, Former Acme Laundry Facility, Orleans Road Chatham, Massachusetts, November 1988 revised February 1989;
- black and white aerial photograph submitted by Eldredge

Surveying Inc. Feb. 12, 1991;

- document titled Archaeological Investigation, Acme Laundry Route 28, Chatham, Massachusetts, February 1991;
- document titled Environmental Notification form, Ryder's Hill, February 26, 1988;
- document titled Wildlife Habitat Assessment, Acme Laundry Company Route 28, Chatham, Massachusetts, IEP inc. April 1991;
- document titled Traffic Impact Assessment, Proposed Acme Laundry Company Residential Subdivision, Chatham, Massachusetts, by Robert C. Blumenthal, May 1991;
- plan titled Topographical Plan of Land in Chatham, Ma. April 1, 1991, revised May 16, 1991;
- decision extension agreements dated February 15 and May 23, 1991;
- plan titled Topographical Plan of Land in Chatham, Ma, September 7, 1990 revised May 16, 1991, May 24, 1991 and June 4, 1991;

**Additional Materials:**

- letter to Kenneth Eldredge from the Department of Environmental Quality Engineering re: Lien on the Acme Laundry Property, November 20, 1987;
- memorandum from Richard F. Delaney, Director, MCZM to Steve Davis, Director, MEPA Unit, re: EOEA # 6908 Chathamport - Ryder's Hill, January 20, 1988;

- memorandum from the Town of Chatham Department of Planning and Development, January 26, 1988;
- letter from the Town of Chatham Conservation Commission, to John Clark, CZM, Acme Laundry Subdivision, March 18, 1988;

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- memorandum from Eldredge Surveying and Engineering Inc. re: Information to be included on Developers Plan, September 10, 1990;
- letter of transmittal from Eldredge Engineering, Oct. 29, 1990, DRI application;
- quitclaim deed, Oct. 29, 1990 # 5459 077-078;
- exhibit A Oct. 29, 1990 #5489 079-085;
- letter from the Town of Chatham, Department of Planning and Development re: Acme Laundry Definitive Subdivision, Chatham, November 13, 1990;
- letter from the Town of Chatham Water Quality Laboratory, November 26, 1990;
- letter from the Town of Chatham Planning Board, re: Definitive Subdivision Plan, November 27, 1990;
- letter from the Town of Chatham, Conservation Commission re: Concerns over Acme Laundry Subdivision, November 27, 1990;
- letter from Robert Hall, re: Agreement for Extension, February 8, 1991;
- document titled Presentation Plan for Acme Laundry

- Subdivision, April 17, 1991;
- letter from Robert Hall, re: Wildlife Habitat, April 23, 1991;
  - letter from the First United Methodist Church, Chatham, Ma. re: affordable housing in relation to the Acme Laundry Subdivision, April 30, 1991;
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- letter from the First Congregational Church, Chatham, Ma. re: affordable housing in relation to the Acme Laundry Subdivision, April 30, 1991;
  - letter from Saint Chrisopher's Church, Chatham, Ma. re: affordable housing in relation to the Acme Laundry Subdivision, April 30, 1991;
  - letter from the Town of Chatham, Department of Planning and Development re: final draft of the Chatham Project Review group's recommendations on the Acme Laundry Subdivision, May 3, 1991;
  - letter from the Town of Chatham Department of Planning and Development, re: Acme Laundry, Definitive Subdivision Plan May 3, 1991;
  - letter from the Town of Chatham, Department of Planning and Development, re: Acme Laundry Definitive Subdivision Plan, Chatham May 3, 1991;
  - letter from Robert C. Blumenthal Associates re: Traffic Impacts, May 8, 1991;

**Testimony**

The Subcommittee heard oral testimony at the November 28, 1991 hearing from Robert Hall, attorney for the Applicant and from Terry Eldredge, surveyor and engineer for the Applicant and from the Cape Cod Commission staff. The applicant and his representatives discussed the project as a DRI and the need for more time to gather the information required by Commission staff for full review of the project. The original subdivision was made up of five front lots zoned for single family residences and one rear lot zoned for multi-family residences. Staff comments concerned the environmental sensitivity of the site, the traffic concerns, the hazardous waste site and the staff's inability to analyze the benefits in relation to the detriments of the proposal without a development plan to accompany the subdivision plan.

The Subcommittee heard oral testimony at the April 17, 1991 hearing from Robert Hall, attorney for the Applicant as well as a presentation on the subdivision layout for the site. Staff for the Cape Cod Commission presented a report covering the concerns and issues regarding water quality, the sensitive nature of the surrounding wetlands, as well as the environmental sensitivity of the site and the lack of any development plan beyond the proposed subdivision of land.

Oral testimony was heard at the May 9, 1991 hearing from the Applicant's representatives Hall and Eldredge, as well as from Charleen Greenhalgh, the Chatham Town Planner. A letter from the Chatham Planning Board was read into the record citing concerns over any proposed development on the parcel of land. Three identical letters were submitted by Chatham churches and one was read into the record. The letters were in favor of an affordable housing provision as part of any condition to develop the property. Site coverage, environmental sensitivity of the site, access to Route 28, affordable housing and the continued lack of any development plans were the primary concerns of the Cape Cod Commission Staff.

On May 16, 1991, a hearing was held to discuss conditions on the proposed current subdivision of the parcel and future development of the site. Oral testimony was heard from Robert Hall, and Terry Eldredge, the applicants attorney and engineer respectfully. The question of access to the lots was discussed and the subcommittee requested that road access be shown on the plan. An additional concern over access to the front lots precipitated a change in lot number from five individual lots to one larger lot located along Route 28. Both the applicant and the subcommittee agreed that future subdivision of these lots would require prior review and approval by the Commission as reflected by the conditions. At a hearing on May 23, 1991, the subcommittee heard oral testimony from the applicants representatives and from Cape Cod Commission staff concerning the final draft of thirteen (13) conditions to be placed on the project if it were to be accepted. The site plan and the conditions were recommended for approval by the subcommittee and were agreed upon by the applicant.

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

#### **JUNE 7, 1991, CAPE COD COMMISSION MEETING:**

Subcommittee Chair Donald Near presented a report to the full Commission at a meeting held on June 7, 1991. The report on the project to the Commission included the procedural history, a description of the project and the proposed conditions as worked out by the subcommittee. The Commission voted to approve the project with conditions as proposed by the subcommittee.

### **JURISDICTION**

The proposed Acme Laundry Definitive Subdivision Plan qualifies as a



Development of Regional Impact (DRI) under section 12(c)(4) of the Act. Section 12(c)(4) requires review of any development which proposes to divide land of fifteen acres or more which was in common ownership as of January first, nineteen hundred and eighty-eight. and which was the result of an earlier subdivision within the last seven years. The project was referred to the Commission by the Chatham Planning Board on October 1, 1990.

### FINDINGS

The Commission has considered the application of Kenneth and Leo Eldredge for the proposed Acme Laundry Definitive Subdivision Plan, and based on consideration of such application and upon the information presented at the public hearing and submitted for the record, makes the following findings pursuant to Sections 12 and 13 of the Act:

1. Approval of the proposed subdivision will allow the applicant to obtain funding using the subdivided land as collateral. This funding will be used to finance the clean up and remediation of the adjacent hazardous waste site.
2. This site is bordered on two sides by wetlands and on a third side by Frost Fish Creek, an anadromous fish run. The site's proximity to these environmentally sensitive areas, it's variable topography and the partial inclusion of the property within the Pleasant Bay ACEC requires an additional measure of protection. A protective boundary of land, in essence a buffer area, is necessary to prevent any deleterious impacts to the fragile site itself or to the surrounding sensitive border lands. This buffer area, agreed upon by the sub-committee and the applicant, is delineated on the subdivision plan. The buffer will insure protection of these bordering ecologically sensitive areas from additional water quality problems to either ground or surface waters.
3. The site fronts on Route 28. Multiple access from this parcel the road would substantially increase safety problems related to traffic. The limit of a single curb cut upon the subdivision of the property will prevent significant traffic impacts. Impacts from future, specific development

proposals on the site will be evaluated by the Commission at the time said proposal comes under Commission review.

4. Maintenance of wildlife habitat is important for a region's ecological health and vitality. This habitat is necessary to preserve biological diversity of both plant and animal species and to prevent species from reaching critical threatened or endangered levels. Preservation of wildlife habitat on the site and surrounding the property is important. Habitat will be protected by the existence of these buffer areas. Conditions that guarantee minimum site disturbance and that require a minimum percentage of site revegetation and restoration will also help to preserve this habitat.

5. Any future development on the site will require prior review and approval by the Commission. Protection of the property's natural vegetation, sensitive, variable topography and sensitive, environmental location will be maintained and insured by this review. Custody and care of the site's natural characteristics must be integral to any future development proposal or plan.

6. An assessment of affordable housing needs as required by the Regional Policy Plan in effect at the time will be insured by Commission review of future development on the site.

### **CONCLUSION**

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

The benefits of the proposed project outweigh the detriments resulting from the development. This conclusion is supported by the facts that the project as proposed will provide the following: clean up of a hazardous waste site that potentially threatens regional water quality interests; traffic and water resource mitigation will be provided for during

subdivision development and future development plan implementation through continued Commission review; wildlife habitat and sensitive environmental characteristics of the site will be protected now and during any future development through continued Commission review. Furthermore, the proposed subdivision is consistent with local development by-laws.

The Commission hereby approves, with conditions 1 - 3 for the subdivision of this land and conditions 1 - 13 for future development of this land, this DRI pursuant to Section 13 of the Act.

**Conditions for the Subdivision**

1. No development shall occur, as defined by Sec. 2 (e) of the Cape Cod Commission Act beyond this approved division of land, without additional review and approval by the Cape Cod Commission. No further division of this land may take place, including ANR plans, without prior review and approval by the Cape Cod Commission. The approval of this subdivision in no way shall be construed to permit the construction of the roadway on the plan without prior review and approval by the Cape Cod Commission.
2. There shall be a permanent, natural, undisturbed buffer at least 100' in depth on the land between Rte 28 and any development. This land shall remain undisturbed as a natural buffer with the exception of Ryder's Hill Drive as indicated on the subdivision plan. Within this buffer area, the former Acme Laundry site shall be revegetated using native plant materials.
3. A permanent, natural, undisturbed buffer at least 100' deep shall be maintained between the wetlands, Frost Fish Creek and the development and shall be drawn on the subdivision plan. A permanent, natural, undisturbed buffer of at least 50' deep shall be maintained between the ACEC boundary and the development along the southeast lot line and shall be shown on the plan. This restricted area shall remain permanently undisturbed.

**Conditions for Future Development**

1. Future development and density of the site, for 8 years following the date of the Chatham Planning Board endorsement of the plan, shall be restricted to no greater than the zoning by-law in effect, as of the date of the submittal of the definitive subdivision plan to the Chatham Planning Board. The Town of Chatham Coastal Conservancy District set back shall be observed using the FEMA 11' floodplain contour.
2. An assessment of critical nitrogen loading limits of the Frost Fish Creek/Ryder's Cove ecosystem shall be conducted to assess the nutrient assimilative capacity of the ecosystem. Density limits shall be based in part on this critical loading limit and the utilization of calculations and values in effect at the time and approved for such use by the Cape Cod Commission. These assessments shall be provided to the Water Resource Office and shall be approved by the Cape Cod Commission prior to development.
3. The runoff channels leading from Route 28 onto the front lot and the drainage area that serves this runoff system shall not be altered in any way without prior approval by the Cape Cod Commission.
4. There shall be a single curb cut opposite Rowland drive, as drawn on the plan as Ryder's Hill Drive, to provide the safest access/egress for this site. Further curb cuts off of lot 1 shall be prohibited.
5. Every reasonable effort shall be made to maximize sight distance along Route 28 to the east of the site drive. Landscaping shall be designed and maintained so as not to obstruct intersection visibility.
6. An affordable housing proposal shall be submitted for the Cape Cod Commission's review and approval at the time a proposed development plan for housing is submitted for review to the Cape Cod Commission.
7. Any subsequent development proposal shall be consistent with the

provisions of the Regional Policy Plan in effect at that time, if applicable. Due to the area's environmental sensitivity, no more than 25% of the site shall be permanently disturbed for the purposes of constructing roads, parking areas, buildings, septic systems or any other development as defined by the Cape Cod Commission Act. In addition, 60% of the site must be maintained in a totally undisturbed, natural, vegetated state and the remaining 15% must be restored as indicated under conditions 8 through 11.

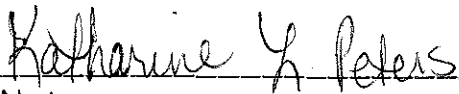
8. Site disturbances shall be planned to minimize destruction of native vegetation and the development designed to minimize cut and fill of slopes. Earth work calculations shall be submitted to the Cape Cod Commission prior to any and all road work and/or construction activity that may disturb the natural vegetation on the site.
9. The Owner/Developer shall retain a registered landscape architect/certified arborist to perform construction observation services to ensure that unnecessary site disturbances are minimized. The landscape architect/arborist shall perform these services and submit compliance reports to the Commission for each of the following activities:
  - a. Tagging mature/specimen trees or areas of natural vegetation to be retained during construction (completed in two phases, one each for roadway and building construction);
  - b. Roadway layout and construction;
  - c. Undisturbed buffer determination/flagging;
  - d. Site clearing for building construction;
  - e. Erosion control and site grading;
  - f. Site revegetation.

These activities shall be completed in chronological order. Compliance reports must be approved by Commission staff prior to commencing the next development activity listed above.

- 10. A proposed grading and erosion control plan shall be submitted to the Cape Cod Commission for approval prior to any development activity. Sideslopes greater than 2 -1/2 :1, horizontal to vertical, shall be avoided wherever possible.
- 11. A revegetation plan utilizing native vegetation to the maximum extent possible shall be submitted to the Cape Cod Commission for approval prior to any development activity.
- 12. No development shall occur, beyond this approved division of land, as defined by Sec. 2 (e) of the Cape Cod Commission Act, without additional review and approval by the Cape Cod Commission.
- 13. Future development shall comply with, but not be limited to, the above stated conditions. The Commission reserves the right to impose further conditions on any future development of the site at the time of review of such future development.

  
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 Richard Armstrong, Chair

6/17/91  
 Date

  
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 Notary

6/17/91  
 Date

My commission expires: 12/5/97