



CAPE COD COMMISSION

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Date: July 25, 1991
To: Patrick M. Butler, Esq.
From: Cape Cod Commission

RE: Development of Regional Impact Hardship Exemption Request
Cape Cod Commission Act, Section 23

Applicant: Cape Cod Hospital
Project #: TR91037
Project: Cape Cod Hospital Emergency Room Expansion
27 Park Street
Hyannis, MA 02601

Map/Parcel: Book 7184, Pages 236-238
Book 472, Page 40

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of Cape Cod Hospital for a Development of Regional Impact Hardship Exemption pursuant to Section 23 of the Cape Cod Commission Act (the Act), c. 716 of the Acts of 1989, as amended, for a proposed emergency room expansion to the Cape Cod Hospital in Hyannis, MA. The decision is rendered pursuant to a vote of the Commission on July 11, 1991.

PROJECT DESCRIPTION

The proposal calls for expansion and renovation of Cape Cod Hospital's emergency room and radiology departments, including new ambulance, emergency vehicle and main entrances. The project also includes relocation of the ambulatory care department and construction of a staff meeting room, library, and conference room. Also proposed is a 75-car parking deck and additional landscaping. New construction totals approximately 38,000 square feet, with renovation of the existing main building totaling approximately 15,500 square feet.

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PROCEDURAL HISTORY

The Applicant filed an application with the Town of Barnstable Site Plan Review Committee on May 9, 1991. The project was referred to the Commission by the Site Plan Review Committee on May 10, 1991.

A Hardship Exemption request under Section 23 of the Act was filed with the Commission on May 24, 1991. Duly noticed public hearings on the application were conducted by an authorized subcommittee of the Commission pursuant to Section 5 of the Act on June 17, 1991 in the Chamber of the Assembly of Delegates, Barnstable 1st District Courthouse, Barnstable, MA; and on July 8, 1991, in the Cape Cod Commission office, 3225 Main Street, Barnstable, MA.

Materials submitted for the record include:

- DRI Exemption, DRI Hardship Exemption, DRI applications and supporting documents
- Existing Site/Floor Plans, Hoskins Scott Taylor & Partners, Inc., March 25, 1991, sheets A-2, A-4, A-7
- Existing Conditions Plan, Downcape Engineering, Inc. dated April 2, 1991, 1 sheet
- Air photos, Existing Conditions, Aero Photo Inc., 2 sheets
- Cape Cod Hospital Signage Photos, undated, 2 sheets
- Locus Map, U.S.G.S. Topographic Map, Town of Barnstable Zoning Map, SCS Map, Town of Barnstable/Yarmouth Assessor's Maps
- Proposed - Site Plan, Axonometric, Ground Floor Plans, First Floor Plan, Elevations, Sections, Planting Plan, Hoskins Scott Taylor & Partners, Inc./Halvorson Co., March 25, 1991, sheets A-1, A-3, A-5, A-6, A-8 through A-11
- Proposed Key Plan Ground Floor Sheet A2.1, Hoskins Scott Taylor & Partners, dated July 11, 1991, replacing Sheet A-6
- Illustrative Site Plan, The Halvorson Co., Inc., dated March 25, 1991
- Proposed Drainage Plan/Details, Downcape Engineering, Inc., dated April 5, 1991, 1 sheet
- Material Safety Data Sheets, H.R. Simon & Co., Inc. Fixer/Replenisher Part A/Dilute, 4 sheets
- Mass. Historical Commission Project Notification Form, dated May 20, 1991
- Proof of Ownership, Book 7184, Page 236-238 and Plan of Land for Cape Cod Hospital, dated May 1976, Downcape Engineering
- Proposed Cape Cod Hospital Expansion, Traffic Assessment & Appendices, Vanasse Hangen Brustlin, Inc., dated April 9, 1991
- Proposed Scope of Services, Comprehensive Parking Study, Cape Cod Hospital, dated June 12, 1991
- Application for Town of Barnstable Site Plan Review, dated May 7, 1991
- Application for Special Permit, Town of Barnstable, dated May 7, 1991
- Cape Cod Hospital Summary of Historical and Forecasted Hospital Utilization, years ending September 30, 1987-1990
- Cape Cod Hospital Historical and Forecasted Use Rates, 1986-1993

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- Cape Cod Hospital Historical Percentage of Hospital Admissions by Zip Code, 1986-1989
- Cape Cod Hospital Service Area Population Trends, Demographic Information and Economic Characteristics
- Notice of Project Change, EOE #8202, dated June 24, 1991
- letter from Thompson Consultants, Inc., dated June 14, 1991 re: Hospital daily water usage
- Affidavit from Thomas J. McClellan, Downcape Engineering, dated June 28, 1991
- Letter from Nutter, McClennen & Fish, dated June 12, 1991 re: solid waste generation
- Supplemental Memorandum in support of Applications for Exemptions pursuant to Sections 12(k) and 23, received June 17, 1991
- Letter from Nutter, McClennen & Fish, dated July 8, 1991 re: hazardous waste volume
- Letter from Nutter, McClennen & Fish to Town of Yarmouth Engineering Dept., received July 11, 1991 re: draft conditions

Additional Materials:

- DRI Referral Form, received May 10, 1991 from Barnstable Building Department
- Cape Cod Commission Public Hearing Minutes, dated June 17, 1991; July 8, 1991; July 11, 1991
- Cape Cod Commission Staff Report, dated June 11, 1991
- Mass. Historical Commission letter dated June 7, 1991
- Town of Barnstable Planning & Development letter to Town Manager dated June 13, 1991
- Town of Barnstable Planning & Development letter to Town Manager dated June 27, 1991
- Town of Barnstable Planning & Development letter to Joseph DaLuz, Building Commissioner, dated June 3, 1991
- Town of Barnstable Dept. of Public Works letter to Town of Barnstable Planning & Development, dated June 13, 1991
- Town of Barnstable Health Dept. letter to Joseph DaLuz, Barnstable Site Plan Review Committee, dated June 11, 1991
- Hyannis Fire Department letter dated June 11, 1991
- Town of Yarmouth Planning & Engineering Departments letter dated June 21, 1991
- Certificate of the Secretary of Environmental Affairs on the Environmental Notification Form, dated May 11, 1990
- Town of Yarmouth Engineering Department memo received May 30, 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

JUNE 17, 1991 SUBCOMMITTEE HEARING:

The Commission heard oral testimony from Mr. James Lyons, president of Cape Cod Hospital, and Attny. Patrick Butler, representing the Applicant. Mr. Lyons gave a presentation of the hospital's need for the proposed expansion, citing that no expansion of the emergency room had taken place in the past 15-17 years, while the volume of emergency room patients had steadily increased to the current level of 49,000 patients in 1990, with severe overcrowding as a result. He also noted that the expansion was not attempted earlier due to financial problems experienced two to three years ago.

Mr. Butler described the project and stated that the proposed expansion is to accommodate existing patients, that the proposal would not have impacts outside of the communities of Yarmouth and Barnstable. In addition, the hospital has one of the busiest emergency rooms in the Commonwealth, with a 3%/year growth expected whether or not the proposed improvements are made. Furthermore, he stated that the expansion will not add new patient beds, new employees, and will not increase the service areas of the hospital. He believed that the only unresolved issues identified in the Commission staff report are traffic and parking. Revisions to the plans resulted in a net increase of 28 parking spaces for the proposed expansion. The Applicant had agreed to complete a comprehensive parking study for the hospital, and had agreed to participate in a general sense in a regional traffic study for the Hyannis/South Yarmouth area by making data from the parking study available to the regional study. However, the hospital has limited financial capability to participate in any mitigation. Mr. Butler stated that the hospital is different from a mall or condominium project and as such should be treated differently. Mr. Butler felt that to not construct the expansion would create a hardship on the residents of the Cape Cod.

Mr. Butler stated that even if the expansion of the hospital were to be found to have regional impacts, the project still has unique financial constraints and hardships. The reasons he felt the hospital should be granted a hardship exemption were as follows:

1. Cape Cod Hospital has one of the highest percentages of medicare beds in the state,
2. If the project would proceed as a DRI the hospital would have an increased construction and permitting cost (a one percent increase in bidding equals \$125,000)
3. The hospital cannot raise its prices to absorb the additional cost the full DRI review would require.

Mr. Butler then concluded that they are seeking a hardship exemption conditioned upon a local traffic study and participation of a general nature in an area-wide traffic study. Mr. Richard Bryant of Vanasse, Hangen, Brustlin, Inc., traffic consultants for the project, noted that there was no causal relationship between the size of the proposed expansion and trip generation, with an overall increase in trip generation at less than 1 trip/hour, or a 10% increase in traffic. He also stated that the area is served by adequate road capacity. He also described the scope of the proposed parking study which included demand management

strategies. Mr. Butler added that this project would address local traffic concerns in the following ways: improved ingress/egress for emergency vehicles; improved parking facilities; improved supervision of Bayview Street in Yarmouth; and the widening of Park Street.

David Ernst asked how long the study would take and what improvements would come of it.

Pat Butler replied it would help mitigate parking and traffic impacts on site and would provide data to local officials for the regional study. David Ernst also asked if the hospital envisioned any follow through with the project by the Commission. Pat Butler said he envisioned further Commission involvement would be to utilize the traffic data for future improvements.

Ken Brock asked if forty percent of the cost of construction was coming from fundraising and if the construction would start before the fundraising occurred. Jim Lyons (Hospital President) stated that the fundraising would happen before and during construction. Mr. Brock asked what would happen if the hospital was unable to raise the amount of money needed for the improvements. Jim Lyons said the improvements are in phases so if not enough money is taken in then they could delay a phase.

Sumner Kaufman expressed concern for possible cross-connection of the stormwater and wastewater lines. Pat Butler said to the best of his knowledge the lines were not combined and the proposed stormwater system could handle the proposed increase in flow.

Commission staff reported that while the expansion was necessary, the hospital is a regional facility. As there were traffic impacts that had not been fully identified, staff recommended that the Hardship Exemption request be denied and that the project be reviewed as a DRI. Neil Andres explained the traffic impacts that have been identified to date. He mentioned that the project has not fully identified and mitigated the impacts of the proposed expansion. One visit/hour projected in the traffic study was averaged over the entire year, while the summer season is when peak traffic occurs. Seasonal adjustment factors were taken off state counts only.

David Ernst asked staff why there were so many Level Of Service (LOS) A's cited in the hospital study compared to other traffic reports they have seen. Neil Andres explained the applicants traffic study did not include the intersections that could have poorer LOS. The study was limited to a few adjacent intersections.

Comments from public officials included endorsements of the project from Ms. Cynthia Cole, Barnstable Representative to the Assembly of Delegates; Commissioner Robert O'Leary; Representative Edward Teague; Senator Henri Rauschenbach; Rep. Cahir and Rep. Klimm. All of the above officials supported a Section 23 Hardship Exemption request.

Comments from local officials included testimony from Mr. Mohammed Tariq of Barnstable Planning & Development Department who stated that the planning department

was in favor of recommending a Section 23 Hardship Exemption request with conditions, including the study of off-site traffic impacts. John Kuchinski, from the Town of Yarmouth Engineering Department, expressed concern with illegal parking on Bayview Street which was not fully addressed by the Applicant, and concern for future employee growth as a result of the expansion. He also noted that implementation of any proposed traffic mitigation was important. Lt. Eric Hubel (Hyannis Fire Department) noted the hospital has addressed all the Fire Departments comments and concerns.

Comments from the public included Peter Suzier (Hyannis resident) who said he supports the project but had a question if Cranbrook (100 unit life-care building) had been included in the traffic study. He felt the traffic study should look at Camp Street, Lewis Street, East Main Street and Route 28. Warren Jacobson spoke in favor of the project. Tom Roach had no objections to the project, but he has some traffic concerns that can be easily addressed (such as trimming of trees and stricter enforcement of parking regulations).

Final comments from the applicant were made by Pat Butler who stated the following:

1. The process (open lines of communication) to date has served all parties well for it has focused down to one major issue,
2. The number of hospital employees will drop,
3. The project will provide a public good,
4. The project will not substantially derogate from the intent or purpose of the Act.

Subcommittee members and Staff discussed continuing all three hearings until July 1st. Alix Ritchie made a motion to recommend a Hardship Exemption with conditions at a continued hearing. These conditions included a traffic study, a preconstruction parking and traffic agreement to be worked out by the hospital and towns, stormwater calculations to be provided, provisions for pedestrian traffic to be shown and a revised landscape plan to be submitted. Alix asked if the hospital staff had any problems with those proposed conditions. No objections were raised by any of the hospital representatives.

Sumner Kaufman said he favors the Hardship Exemption with conditions. Ms. Ritchie made a motion to continue the public hearing until July 8, 1991, with draft conditions to be discussed at this meeting. In addition, a draft decision would be presented to the full Commission on July 11, 1991 with the written decisions due on July 25, 1991. Sumner Kaufman seconded the motion which was unanimously approved. The public hearing was continued until 11:30 a.m. on July 8, 1991.

JULY 8, 1991 SUBCOMMITTEE HEARING:

At this continued public hearing, Commission staff gave a brief report on meetings that had been held between the Applicant, representatives from the Towns of Barnstable and Yarmouth, and Commission staff to discuss proposed draft conditions. As a result of these meetings, the staff had prepared draft conditions attached to a Hardship Exemption approval. These conditions had been agreed to by the Applicant. The subcommittee voted to strike two conditions related to drainage calculations and possible stormwater/sewer cross-connection, as the Applicant had submitted documentation which made those conditions unnecessary. In addition, the Applicant would be submitting hazardous waste

information which, if approved by Commission staff, would eliminate a proposed condition related to receipt of this documentation. The Applicant's representative, Mr. Patrick Butler, requested minor changes to the text of proposed conditions #2 and #4, which the subcommittee approved. Alix Ritchie made a motion to close all three public hearings (DRI Exemption, Hardship Exemption, and DRI), to keep the public record open until the close of business July 12, 1991, with approval of amended meeting minutes dated June 17, 1991. The motion also included that the draft decision denying the DRI Exemption under Section 12(k), and draft Hardship Exemption approval with conditions under Section 23, be forwarded to the full Commission on July 11, 1991. This motion was approved unanimously. David Ernst, who was unable to attend the meeting, had expressed his recommendation of the Hardship Exemption approval with conditions to Chairman Donald LeBlanc by phone.

JULY 11, 1991 CAPE COD COMMISSION MEETING:

Donald LeBlanc, subcommittee chairman, gave a report to the full Commission at this meeting, which included that the subcommittee had voted to recommend a denial of the Section 12(k) DRI Exemption request. He then made a motion to recommend that the full Commission deny the Section 12(k) DRI Exemption request, which was approved unanimously. Commission member Andy Young withdrew from any comment or vote on this project due to a conflict of interest.

Mr. LeBlanc then described that the subcommittee had also voted to recommend approval with conditions to a Section 23 Hardship Exemption request. He briefly described the proposed conditions, which had been approved by the Applicant, Towns of Barnstable and Yarmouth staff, and Commission staff. Two conditions had been eliminated from the most recent draft decision with the submission of drainage information by the Applicant. He noted that the conditions related to a Hospital parking study, local traffic improvements and a commitment to an area-wide traffic study to be coordinated by the Towns of Barnstable and Yarmouth. He then made a motion that the full Commission grant preliminary approval with conditions to a Section 23 Hardship Exemption request. This motion was seconded and unanimously approved.

Discussion on the motion included comments from Don LeBlanc, who noted that credit for the expeditious hearing process was due to cooperation among the Applicant, the Towns of Barnstable and Yarmouth staff, and Commission staff. Attny. Patrick Butler stated that the Applicant was grateful for the coordinated effort by the Commission staff and subcommittee.

David Kellogg stated that the Town of Yarmouth Engineering staff had been closely involved in this project. He noted that while the Town supported the area-wide traffic study, the Town of Yarmouth cannot commit to a specific dollar amount for their participation at this time, and was uncertain as to the timing of the study as it related to the local comprehensive plan for Yarmouth. He also expressed concern that this project had not gone through the full DRI review process. Mr. Kellogg noted that Section 23 of the Act should not be used liberally and was intended primarily for projects such as transfer stations, which were already in progress when the Commission was created. He advised

that the Commission use extreme care in the application of Section 23 of the Act. Chairman Richard Armstrong noted that this was the first time that a project had brought two towns together in a coordinated effort and was pleased at the result.

JURISDICTION

The Cape Cod Hospital expansion qualifies as a DRI under Section 12(c)(6) of the Cape Cod Commission Act (the Act) as "any proposed...private health...development which...(is) an addition greater than five thousand square feet."

FINDINGS

The Commission has considered the application of Cape Cod Hospital for the proposed emergency room expansion in Hyannis, MA, and based on consideration of such application, the information presented at the public hearings and submitted for the record, the Commission makes the following findings subject to Section 23 of the Act:

- 1). During recent years the Hospital has had the highest percentage of Medicare and Medicaid patients of any hospital in the Commonwealth. These payment rates are significantly below the actual cost of providing the services and below the rate of inflation for Hospital expenses. This factor contributes to the Hospital's hardship associated with daily operations.
- 2). The Applicant has demonstrated a financial hardship associated with fundraising and the cost of bond proceeds. At least \$5,000,000 or 40% of the cost of construction will need to be generated from public fundraising. The remaining portion will be derived from bond proceeds which were issued in June, 1990. The debt service associated with the bond issue was over \$1,000,000 in 1990 and will increase annually. Increases in project costs due to delays or extended review procedures would require additional fundraising and perhaps require the Hospital to resort to conventional financing which will increase the Hospital's already substantial debt service costs. Any delay or cost increase could threaten the viability of the project.
- 3). The Applicant has demonstrated a need to proceed with the proposed expansion in as expeditiously a manner as possible. There has been no expansion of the Emergency Department in the past 15-17 years, while the volume of emergency room patients has steadily increased to 49,000 patients in 1990. The Hospital's Emergency Department annually treats 20,000 more patients than the median state average, and it does so with substantially smaller space and more limited facilities.
- 4). The proposed expansion is expected to create adverse Hospital campus parking impacts as well as traffic impacts in the Towns of Barnstable and Yarmouth, and that these impacts have not been completely addressed. However, the Applicant has agreed to prepare a comprehensive parking study and implement the results of such study, as well as a financial contribution towards a regional traffic study.

- 5). The Applicant had submitted incomplete information to the Commission on architectural elevations of a proposed parking deck, but had submitted documentation on the following: a) that no stormwater/sewerline cross-connection exists on the Hospital site; b). the types and quantities of solid/hazardous waste; and c). existing stormwater calculations and proposed drainage improvements.
- 6) The Applicant should address the retention of existing trees and vegetation on the site, in particular where the proposed parking deck abuts neighboring properties.

CONCLUSION

The Commission concludes that a literal enforcement of the provisions of the Act would involve substantial hardship, financial or otherwise, to the Applicant. This conclusion is supported by the following findings: the Hospital has financial hardship associated with daily operations; financial hardship associated with project construction; and a demonstrated public need for the project. The Commission further concludes that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purposes of the Act, providing that the following conditions are met:

1. Prior to the issuance of a building permit, the applicant shall initiate a comprehensive parking study for the Cape Cod Hospital (the Hospital) campus. The geographic boundaries of the study shall include the entire Hospital campus and any adjacent properties leased by the Hospital at the time of initiation of the study. The scope of the parking study shall include, at a minimum, the following items:
 - Inventory and analysis of existing conditions
 - Project initiation-meetings with Cape Cod Commission, towns of Barnstable and Yarmouth representatives, Hospital representatives and traffic consultant
 - Delineation of study area
 - Evaluation of existing parking management system
 - Parking supply inventory
 - Parking accumulation and turnover surveys
 - Compatibility with proposed regional traffic study set forth in condition #4
 - Transportation survey
 - Existing supply and demand analysis
 - Development of future conditions and analysis of potential solutions
 - Estimate future parking requirements
 - Optimize existing facilities
 - Parking and transportation demand management
 - Expand parking supply
 - Develop a recommended parking plan
 - Implementation schedule

The results of this study shall be submitted to the Cape Cod Commission, the Town of Barnstable, and the Town of Yarmouth for review and approval. Based upon the recommendations of the study, Cape Cod Hospital shall implement the first phase of the parking study recommendations prior to receiving a Certificate of Compliance from the Commission. The Towns of Barnstable and Yarmouth shall monitor compliance with the parking study.

The first phase of the recommendations shall address all parking needs currently required by the Hospital and all permitted construction included on plans prepared by Hoskins, Scott, Taylor and Partners, Inc., and any amendments, as follows:

- Cape Cod Hospital, Proposed Ground Floor Plan, sheet A-5, dated March 25, 1991
- Cape Cod Hospital, Proposed First Floor Plan, sheet A-8, dated March 25, 1991

2. Prior to the issuance of a Certificate of Compliance, the Hospital shall implement the following proposed traffic improvements as identified in the Traffic Assessment study prepared by Vanasse, Hangen, Brustlin, Inc. dated April 9, 1991. These improvements shall be subject to approval by the Town of Barnstable prior to implementation:

- Vegetation at the intersection of Lewis Bay Road and the site drive shall be trimmed or transplanted in order to provide adequate sight distance for motor vehicles. The applicant may propose an equivalent alternative if transplanting is infeasible.

- The applicant shall widen the south side of Park Street to properly align with Gleason Street. A sketch plan for the proposed widening shall be submitted to the Commission and the Town of Barnstable for review and approval. The sketch plan shall include the following:

- location of existing right-of-way, pavement and trees greater than 3" caliper dbh, including identification of major and/or specimen trees
- proposed pavement width, including five (5) foot sidewalk (from edge of curb) where right-of-way permits. Sidewalk shall extend from the western limit of the proposed parking deck to the intersection with Bayview Street
- proposed preservation plan for existing trees on the south side of Gleason/Park Street. The applicant may propose an equivalent alternative if transplanting is infeasible.

3. Architectural elevations of the parking deck shall be submitted to the Commission and the Town of Barnstable for approval prior to the issuance of a building permit for such structure. The parking deck shall be designed to provide controlled access.

4. Cape Cod Hospital shall agree to participate in a regional traffic study, to be conducted in conjunction with the preparation of the local comprehensive plans for the Towns of Barnstable and Yarmouth, and coordinated by the Towns of Barnstable and Yarmouth. The scope of this study shall be determined by mutual agreement between the participants and the Towns of Barnstable and Yarmouth.

The Commission hereby grants Cape Cod Hospital a Hardship Exemption with conditions from the terms and provisions of the Act pursuant to Section 23 of the Cape Cod Commission Act, for the proposed expansion to the Cape Cod Hospital Emergency Room in Hyannis, MA.


Richard S. Armstrong, Chairman

7/25/91
Date

Commonwealth of Massachusetts

Barnstable, ss.

Subscribed and sworn to before me this 25th day of July 1991

Katharine L Peters
NAME, Notary Public

My Commission Expires: 12/5/97