

CAPE COD COMMISSION

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Date: June 9, 1992

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

Applicant: Town of Barnstable

Project #: JD92037

Project: Private parking lots in the vicinity of the Steamship Authority in Hyannis, MA

Street Address:	Assessors Map/ Lot Number:
27 Pleasant St., Hyannis	327.124
56 Pleasant St., Hyannis	327.134
44 Pleasant St., Hyannis	327.133
66 Pleasant St., Hyannis	327.135
83 School St., Hyannis	327.249
52 South St., Hyannis	327.142
53 Pleasant St., Hyannis	327.121
76 South St., Hyannis	327.138

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby concludes that the private parking lots in the vicinity of the Steamship Authority docks in Hyannis, MA are not Developments of Regional Impact, pursuant to Section 12(j) and Section 22(b) of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended. The decision is rendered pursuant to the vote of an authorized subcommittee of the Commission on June 4, 1992.

PROJECT DESCRIPTION

The application consists of eight parking lots on South St., Pleasant St. and School St. in the vicinity of the Steamship Authority docks in Hyannis Harbor. Five lots, containing a total of 141 spaces, are owned by Maurice McEvoy. One lot is owned by Mark and Kelly Yuskaitas and contains 23 spaces. Celina Bouchard owns a lot with 23 spaces. These lots are applying for relicensing only and are not requesting to expand. Rita Moda owns a lot which is licensed for 19 spaces. However, additional cars have been parked at this location for several years. Ms. Moda is requesting approval for an additional 41 spaces.

Private Parking Lots Jurisdictional Determination - Barnstable, MA
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PROCEDURAL HISTORY

The owners of the parking lots have been parking cars on their property for several years. Each lot is licensed by the Town of Barnstable on an annual basis. Recently it was determined that the Barnstable Zoning Bylaw does not permit the use of parking lots on these sites. Therefore, license renewals have been denied. At the present time, the owners have various Town permits pending, including site plan review approval, a use variance and an administrative appeal. The Town has submitted this application to determine whether the parking lots are Developments of Regional Impact (DRI) pursuant to Section 12(c)(8) of the Act, which states that "Any development the proposed construction or expansion of which will provide facilities for transportation to or from Barnstable County" is a Development of Regional Impact.

The parking lot at 53 Pleasant St., owned by Mr. McEvoy, was granted a special permit by the Barnstable Zoning Board of Appeals. The parking lot owned by Rita Moda on South Street has a special permit for nineteen spaces. These permits were granted prior to July 1, 1989.

The Town of Barnstable filed the application for a Jurisdictional Determination on May 13, 1992. The Commission determined that the application was complete on May 21, 1992. A duly noticed public hearing pursuant to Section 5 of the Act was held by an authorized subcommittee of the Commission on the Jurisdictional Determination request on June 4, 1992 in Barnstable County Superior Courthouse, Rooms 11 & 12, Barnstable, MA. The public hearing was opened at 3:00 p.m. and also closed on June 4, 1992. At the close of the public hearing, the subcommittee held a public meeting, where the subcommittee voted that the Commission did not have jurisdiction by a five to one vote.

DOCUMENTS SUBMITTED FOR THE PUBLIC RECORD

The following documents were submitted for the record:

- application for a jurisdictional determination from the Town of Barnstable;
- letter from Douglas W. Bill, dated May 24, 1992.

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 subcommittee heard testimony at a public hearing on June 4, 1992 at the Barnstable Superior Courthouse in Barnstable, Massachusetts. Robert Smith, Barnstable Town Attorney, Warren Rutherford, Barnstable Town Manager, Robert Schernig, Barnstable Planning Director, Ruth Weil, Barnstable Town Attorney, and Joe Daluz, Barnstable Building Commissioner represented the Town of Barnstable. They explained that they were only interested in knowing whether the parking lots were DRI's based on Section 12(c)(8) of the Act, which states that facilities which provide transportation to and from Barnstable County are DRI's. While two lots have special permits from the Zoning Board of Appeals and all have been granted annual licenses over the past several years, it has recently been determined that they are in violation of the Barnstable Zoning Bylaw. Therefore, the licenses have not been reissued this year. Richard

Anderson, representing Maurice McEvoy, stated that he believes that the lots which have special permits are exempt from the Commission's review. He also stated his opinion that the lots have not been operating illegally since they had been given licenses annually. Gary Nichols inquired whether a special permit triggers DRI review. John Moda stated that the Steamship Authority was in operation prior to the establishment of the parking lots.

The Commission members discussed various issues, including whether the lots provided parking for other facilities other than the boats going to the islands, whether two of the lots were exempt under Section 22(b) of the Act, whether there was an affiliation between the lots and the Steamship Authority, and whether the lots constituted new construction or expansion.

FINDINGS

The Commission has considered the Town of Barnstable's request for a Jurisdictional Determination regarding private parking lots in the vicinity of the Steamship Authority in Hyannis, MA, and based upon consideration of such request, upon information presented at the public hearing and submitted for the record, makes the following findings:

- 1). The proposed uses include parking lots on private properties in a residential district of the Town of Barnstable. The lots are adjacent to or in the immediate vicinity of the Martha's Vineyard/Nantucket Steamship Authority terminal on Hyannis Harbor.
- 2). Until this year (1992), the Town of Barnstable has granted annual licenses to the property owners to operate parking lots. This year, the Town refused to renew the annual parking licenses based upon a determination that the lots violate zoning.
- 3). Some lot owners are currently seeking use variances and/or seeking to overturn the license denial through the Barnstable Zoning Board of Appeals.
- 4). There is no legal relationship between the lot owners and the adjacent facility providing transportation to and from Barnstable County.
- 5). The Barnstable Zoning Bylaw does not require that these lots exist for the Steamship Authority facility to be in compliance.
- 6). The Commission does not have jurisdiction to review the lot at 52 Pleasant St. owned by Mr. McEvoy, and the 19 spaces at 76 South St. owned by Mrs Moda, because those lots, as described in this finding, are exempt pursuant to Section 22(b) of the Act. Those lots received special permits to operate parking lots prior to July 1, 1989.

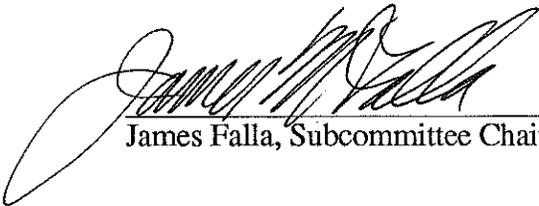
CONCLUSION

The Commission hereby concludes that the parking lot at 53 Peasant Street and nineteen spaces in the lot at 76 South Street are exempt from Commission review under Section 22(b) of the Act. This conclusion is based on the finding that these lots received special permits prior to July 1, 1989. The Commission also concludes that the other lots as listed in this decision do not constitute facilities which provide transportation to and from Barnstable County. This conclusion is based on the findings that there is no legal relationship between the lot owners and the adjacent facility

providing transportation to and from Barnstable County.

Therefore, the parking lots are not subject to review as Developments of Regional Impact pursuant to Section 12(c)(8) of the Act.

This decision is rendered by a vote of an authorized subcommittee of the Cape Cod Commission on June 4, 1992.


James Falla, Subcommittee Chair

6/4/92
Date

Commonwealth of Massachusetts

Barnstable, ss.

Subscribed and sworn to before me this 11th day of June 1992

Katharine L Peters
Name, Notary Public

My Commission expires:  Commission Expires December 5, 1997