

# CAPE COD COMMISSION

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Date: June 25, 1992

To: Robert Erickson  
88 Skaket Road  
Orleans, MA 02653

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From: Cape Cod Commission

Re: Development of Regional Impact Hardship Exemption

Applicant: Robert Erickson

Project #: TR 92032

Project: Angle Tree Manor Congregate Care Facility

Project Address: 220 Brackett Road  
North Eastham, MA 02651

Map/Parcel # Eastham Assessors Map 8, Lot 134A

## DECISION OF THE CAPE COD COMMISSION

### Summary

The Cape Cod Commission (Commission) hereby denies the application of Robert Erickson, for a Development of Regional Impact (DRI) hardship exemption under section 23 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the development of a congregate care facility in Eastham, MA. The decision is rendered pursuant to the vote of the Commission on June 25, 1992.

### Project Description

The proposed project is a congregate care facility with three buildings. Two of the buildings will be used as primary residences and the third building will house the support services. In total, there would be 124 residential units and support services including kitchen and dining facilities, meeting area, chapel, library, storage, work rooms, sundry shop, laundry services, barber and beauty shop and mechanical area. Total building coverage for the project would be 129,900 square feet, with total site coverage of 59,900 square feet. One hundred and sixty three (163) parking spaces would be provided for residents and guests. In addition, a tertiary sewage treatment plan is proposed to handle the septic needs of the project.

## Procedural History and Testimony

A DRI referral was submitted by Kenneth Bates, Eastham Building Inspector/Zoning Agent on April 8, 1992. The project met a threshold, Section (12) (c) (7) of the Act, which includes any proposed development, including the expansion of existing developments, that is planned to create or accommodate more than thirty dwelling units. A subcommittee was selected to review the project and on May 15, 1992, a site visit was conducted with the applicant, subcommittee and commission staff. The first public hearing was duly noticed and held on May 20, 1992 at the Eastham Town Hall at 1:00 p.m. to open a hardship exemption hearing and a DRI hearing. The purpose of the May 20th hearing was to hear the hardship arguments only. The applicant(s), Robert Erickson and Karen Underhill, offered testimony in support of their hardship. Commission staff presented a report recommending that the hardship be denied due to the lack of information that would have been necessary to determine whether the hardship, if granted, would derogate from the intent and purposes of the Act. Testimony was received from local officials, a representative of ComElectric and from the general public. After all interested parties had an opportunity to offer testimony, the subcommittee voted 4 - 1 to deny the hardship exemption at this hearing.

On June 4, 1992, a second public hearing was noticed and held at the Cape Cod Commission Offices at 10:00 a.m., in order to review the project as a DRI. The applicant asked the subcommittee to accept a letter of withdrawal for the project and the subcommittee voted to accept the withdrawal. The hearing was closed at the June 4th hearing and the subcommittee voted to present the subcommittee recommendation of denial of the hardship exemption and acceptance of the withdrawal for the DRI to the full Commission on June 11, 1992. The full Commission voted to accept the recommendation of the subcommittee and the applicant's withdrawal request at the June 11th meeting.

## Submittals for the Record

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.

### Town Submittals

1. DRI referral form from Building Inspector Kenneth Bates, April 8, 1992.
2. Copy of a letter from ComElectric to Henry Taintor, Chairman of the Eastham Zoning Board of Appeals, re: electric transmission right of way, April 8, 1992.
3. Application for permission to rent Eastham Town Hall for a public hearing, April 17, 1992.
4. Letter from the Eastham Conservation Commission re: natural resource concerns of project, April 27, 1992.

### Submittals from the Applicant

1. Development of Regional Impact Hardship Exemption Application, with attachments, April 30, 1992.
2. Project Description proposal from the Madecom Group prepared for the Applicant, May 7, 1992.
3. Letter from Karen Underhill to the Executive Committee re: Hardship Exemption argument, May 14, 1992.

4. Site Report Relative to Hazardous Material, Nickerson Service Station, Route 6 Eastham, Consulting Engineers and Environmental Scientists, Inc., received in hand May 20, 1992.
5. Phase II, Comprehensive Site Assessment, Nickerson Service Center, Geo-Environmental Technologies, Inc. received in hand May 20, 1992.
6. Department of Environmental Protection Bacteriological Analysis Report-Contaminant ID# 3100, received in hand, May 20, 1992.
7. Water Quality Analysis, Oakgrove Cottages, Envirotech Laboratories, received in hand May 20, 1992.
8. Site and Health and Safety Plan, for Route 6 and Oak Road, Eastham, prepared by Geotechnical and Environmental Services, Inc. received in hand May 20, 1992.
9. Letter of Withdrawal from Karen Underhill, representing the Applicant, June 6, 1992.

### Plans

1. Angle Tree Manor, Master Site Plan, May 7, 1992.

### Commission Staff Reports and Correspondence

1. Letter to Walter Stratton, Eastham Town Planner, re: DRI form, April 1, 1992.
2. Letter to Henry Taintor, Chairman of the Zoning Board of Appeals, informing him of the Commission review, April 9, 1992.
3. Letter to Walter Stratton, Eastham Town Planner, enclosing a DRI application, May 12, 1992.
4. Staff Report, May 19, 1992.
5. Letter to Henry Taintor, Chairman of the Zoning Board of Appeals, re: suspension of local review, May 27, 1992.
6. Memo to the Subcommittee, re: informing the subcommittee of the project and date for the hearing. undated
7. Subcommittee Report, June 4, 1992.
8. Letter to Henry Taintor, Chairman of the Zoning Board of Appeals, re: subcommittee recommendation, June 4, 1992.

### Public Submittals

1. Computer printout of Eastham Water Tests from 1985 - 1990. submitted May 20, 1992.

### **Jurisdiction**

The project was referred to the Commission on April 8, 1992 by the Eastham Building Inspector/Zoning Agent under Section 12 (c) (7) of the Act and reviewed under the provisions of Section 23 of the Act.

### **Findings**

The Commission has considered the application of the Applicant, Mr. Robert Erickson, for a hardship exemption for a congregate care facility in Eastham, MA. Based on consideration of such application and upon the information presented at the public hearings, the Commission makes the following findings pursuant to Section 23 of the Act.

1. The Commission finds that information submitted by the applicants demonstrates that he has filed for Chapter 11 and is in bankruptcy, thus creating a personal, financial hardship.
2. The applicant claims that he can not afford the filing fee that must accompany the application in

order to make the application complete. In addition, the applicant states that he can not afford the studies necessary to determine if the project as proposed, would have an adverse impact on water quality, natural resources, traffic and other values protected by the Act and the Regional Policy Plan.

3. Access to the proposed project site is uncertain and use, and/or development of alternative access ways to the property remain in question.


4. The site is environmentally sensitive, with a wetland area, and at least two vernal pools located on the property. A lack of site-specific information demonstrating that the project would not have an adverse impact on the environmentally sensitive areas of the property was not submitted. Therefore, it was impossible to determine potential adverse impacts on these environmentally sensitive areas if the project were to be constructed.

5. Although the applicant submitted water quality information for the nearby areas, the applicant failed to provide site-specific information demonstrating that the project would not have an adverse impact on the water quality of the immediate and surrounding area, including potential adverse impacts to the private wells adjacent to the project site.

6. It is impossible to determine if the project would be in compliance with the Regional Policy Plan's Minimum Performance Standards based on the lack of information submitted.

### Conclusion

Based on the findings above, the Cape Cod commission hereby denies the application for a hardship exemption because granting said hardship could result in substantial detriment to the public good and would nullify or substantially derogate from the intent or purposes of the Act. This conclusion is based on the findings that: The site is environmentally sensitive and the applicant has not provided the information necessary to determine if the project has adequate, legal access or would have an adverse impact on the wetlands, the vernal pools or the water quality of the surrounding area.


  
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Richard Armstrong, Chairman

6/25/92  
date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

Subscribed and sworn to before me this 25<sup>th</sup> day of June 1992

  
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NAME, Notary

My Commission expires: My Commission Expires December 3, 1997