



# CAPE COD COMMISSION

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DATE: May 27, 1993 #CCCHDEX 92050

TO: Dennis Konary and Bernice S. Konary, Trustees  
Konary Realty Trust  
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West Yarmouth, MA. 02673

FROM: Cape Cod Commission

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

APPLICANT: Dennis Konary and Bernice S. Konary, Trustees

PROJECT: Heritage Park: a 62,760 sq.ft. commercial complex including cinemas,  
restaurants and shops.

BOOK/PAGE# : Book 4439, Page 126

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## DECISION OF THE CAPE COD COMMISSION

### SUMMARY

The Cape Cod Commission (Commission) hereby denies without prejudice the application of the Dennis Konary and Bernice S. Konary, Trustees 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 a proposed commercial complex in Sandwich, MA. The decision is rendered pursuant to the vote of the Commission on May 27, 1993.

### PROJECT DESCRIPTION

The 12.6 acre site is located off of Route 130 and Cotuit Road in Sandwich, MA. Approximately five and half acres of the site has recently been cleared for development. The remainder of the site is level wooded upland. Abutting land uses include the Sandwich Town Cemetery to the west of Route 130, several small commercial plazas and offices to the north and single family homes to the east along Cotuit Road. The land south of the site is currently undeveloped. This area, often referred to as the golden triangle, is zoned Business Limited 2 and is located within a Zone Of

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The proposed commercial complex consists of three buildings totalling 62,760 square feet of floor space and provides 467 parking spaces. Building "A" which contains the 736 seat cinema, a common courtyard and shops is 36,160 square feet in size. Building "B" originally had a large hardware store and smaller shops contained in a 26,500 square feet structure. Building "C" is a small 2,100 square foot structure located at the southeastern corner of the property.

Buildings "A" and "C" may each contain a restaurant due to the 1,000 gallon grease trap shown on the Heritage Park Site Plan dated 6/23/92. Proposed restaurant uses are not discussed in the "Memorandum In Support Of The Application" prepared by the applicant's attorney. However, the Massachusetts Historical Commission's Notification Form prepared by the applicant's attorney does list a restaurant facility as a proposed use.

The project will have entrances on both Mashpee Road (Route 130) and Cotuit Road. The interior circulation layout does provide access to the town's proposed affordable housing development south of this site.

#### PROCEDURAL HISTORY

On May 23, 1989, the Sandwich Zoning Board of Appeals (ZBA) voted in favor of a special permit application for a development totalling 87,851 sq.ft. on this site. The original plan called for retail shops, a food court and restaurant to be developed on the site. The plan was signed by the ZBA on June 27, 1989 and filed with the Town Clerk on July 12, 1989. Section 22(b) of the Cape Cod Commission Act exempts projects which were granted a special permit prior to July 1, 1989, provided the "development is thereafter constructed in substantial compliance" with the special permit. In 1991 the applicant proposed changing the project by subtracting some retail space and adding a cinema. A Jurisdictional Determination application was filed with the Commission in early September of 1991. After review of the information, staff's opinion was the project did not meet the requirements for a Section 22(b) exemption. The applicant then withdrew the Jurisdictional Determination request. A Hardship Exemption request was filed on July 10, 1992. A public hearing was held August 26, 1992 the hearing was continued to October 8, 1992 and continued by a hearing officer to November 19, 1993 and closed by the hearing officer due to an incomplete application. Letters of extension were filed on November 19, 1992 and January 27, 1993.

#### MATERIALS SUBMITTED FOR THE RECORD

<u>From the Applicant:</u>	<u>Prepared by:</u>	<u>Date:</u>
Hardship Exemption Application	C. Sabatt	July 10, 1992
Memorandum in support of the application	C. Sabatt	July 10, 1992
Update Traffic Assessment (May 19991)	Atlantic Design Engineers, Inc.	July 10, 1992
Completion of the required filling fee	C. Sabatt	July 27, 1992
Update Traffic Analysis	Atlantic Design Engineers, Inc.	Sept. 9, 1992
 <u>From the state:</u>		
Mass. Historical Commission	No significant resources	Aug. 19, 1992

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From the public:

M. Carchidi	Questions about the project	Sept. 10, 1992
APCC	Concerns with Nitrate loading & traffic	Sept. 11, 1992
M. Carchidi	Concerns with Nitrate loading & traffic	Aug. 25, 1993

From the Town of Sandwich:

Board of Selectmen	Letter of support	Dec. 13, 1991
Board of Selectmen	Letter of support	June 9, 1992
Planning Board	Letter of support	Aug. 25, 1992
Board of Appeals	Support/concern with traffic/ nitrate loading	Sept. 16, 1992

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

TESTIMONY

At the August 26, 1992 public hearing, Attorney Charles Sabatt made a presentation on the procedural history and description of the proposed project for the applicant. H. Elins noted the letters that had been received by the Commission to date. Mary Gale, Vice-Chair of the Sandwich Housing Authority spoke in support of the project. Susan Walker chair of the Assembly of Delegates raised several concerns (Water resources and traffic) with the project and recommend the subcommittee hold to Commission's 5 ppm nitrogen loading standard. Bruce Rosinoff (speaking as a resident of Sandwich) spoke in favor of the Hardship Exemption. Karen Crosby spoke about traffic and wastewater concerns. Carol Jacobson expressed concerns about traffic on the local roads. The staff explained that a hardship could be recommended if the applicant would address the Wastewater issue through a modification of the development and the submission of a complete traffic study. After some discussion the subcommittee voted to continue the public hearing to allow the applicant time to file a complete traffic study and to work with staff on the nitrogen loading issue. A hearing officer continued the October 8, 1992 hearing and closed the November 19, 1992 hearing without testimony.

JURISDICTION

The proposed commercial development entitled Heritage Park qualifies as a Development of Regional Impact under Sections 12 (c)(6) and 13 of the Act, which requires review of any proposed retail or wholesale business which has a floor area greater than 10,000 square feet of new construction.

FINDINGS

The Commission makes the following finding subject to Section 23 of the Act:

- 1). The Applicant failed to submit to the Cape Cod Commission a fully completed application for DRI review. Specifically, the Applicant failed to provide transportation information required by Cape Cod Commission regulations. The Applicant therefore, did not provide sufficient information on which to base a favorable decision.

CONCLUSION

Based upon the finding above, the Cape Cod Commission hereby denies without prejudice the proposed Heritage Park as a Development of Regional Impact pursuant to Section 23 of the Act.. This conclusion is supported by the finding that the Applicant failed to comply with procedures of the Act and Commission regulations requiring submission of a fully completed application to the Commission. This decision is rendered pursuant to a vote of the Commission on May 27, 1993.

  
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 Alix Ritchie, Chair  
 Cape Cod Commission

5/27/93  
 \_\_\_\_\_  
 Date

Commonwealth of Massachusetts

Barnstable, ss.

Subscribed and sworn to before me this 27<sup>th</sup> day of May 1993

  
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 Name, Notary Public

My Commission expires: My Commission Expires December 3, 1997