



CAPE COD COMMISSION

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Date: March 30, 1995
To: Margaret Tonello
From: Cape Cod Commission
Re: Development of Regional Impact Hardship Exemption, Section 23, Cape Cod Commission Act
Project #: HDEX 95005
Project: HillCrest Farms Estates

<u>Lots/Parcel</u>	<u>Owner</u>	<u>Book/Page #</u>	<u>Land Court Certificate</u>
6/35, 35.1 35.2, 35.3 129-155 7/101-112	Margaret Tonello Stella Aittaniemi John Robert Boffetti	1006/49	CTF #122809

Decision of the Cape Cod Commission

Summary

The Cape Cod Commission (Commission) hereby approves with conditions the application of Margaret Tonello for a Hardship Exemption, under Sections 23 of the Commission Act (Act), c. 716 of the Acts of 1989, as amended. This decision is rendered pursuant to a vote of the Commission on March 30, 1995.

Project Description

The proposed project is located off Route 3A in North Sagamore and consists of approximately 39 acres of land subdivided into 39 lots for residential purposes. The applicant has applied for a Development of Regional Impact (DRI) Hardship Exemption and a DRI Exemption. The applicant has voluntarily withdrawn their request for a DRI Exemption.

Procedural History

A definitive subdivision plan for the project was approved by the Bourne Planning Board on September 10, 1987 and later revised and approved on January 28, 1988. A curb-cut permit was obtained for the Project on January 6, 1989, and was extended until December 31, 1990. On May 2, 1988 the applicant filed a Notice of Intent with the Bourne Conservation Commission for a 20,756 square foot portion of the Project known as Lot "A". An Order of Conditions was issued by the conservation commission on June 15, 1988, was extended on June 15, 1991, and subsequently expired on June 15, 1992. Prior to expiration, a Certificate of Completeness was not issued by the conservation commission for the project.

The applicant has performed some work at the entrance off of Route 3A as part of a MA Highway curb cut permit, including an acceleration lane and limited storm drain installation. None of the lots have been released by the Planning Board, which holds a "Form F" road covenant (dated September 28, 1987) to ensure completion of the required infrastructure under the Town's Subdivision Control Regulations. Consequently, no building permits have been applied for or granted by the Bourne Building Inspector.

At the applicant's request there was a judicial review in Massachusetts Land Court that affected the ability of the applicant to proceed with the project. The complaint, by Margaret Tonello et al, was subsequently resolved in March of 1991. The applicant has stated that, because of the uncertainties caused by this proceeding, further development of the project, including installation of the required infrastructure, release of lots, and obtaining building permits, did not occur.

The applicants requested review of their project through the Cape Cod Commission's Jurisdictional Determination (JD) process and the Commission voted that the project was within the Commission's jurisdiction on June 23, 1994.

The DRI hearing process was initiated on February 27, 1995, where a Commission staff person opened the hearing on the DRI Exemption request and the Hardship Exemption request, and continued the hearing to March 9, 1995 at the Bourne Community Center. On March 9, 1995, the subcommittee voted to hold a public meeting on March 13, 1995 and at that meeting voted to have a second public meeting on March 20, 1995.

Materials Submitted for the record

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

Submittals from the applicant

1. Development of Regional Impact Hardship Exemption Application, January 26, 1995
2. Development of Regional Impact Exemption Application, January 26, 1995

Staff Reports and Correspondence

1. Staff Report, March 13, 1995
2. Staff Report, February 23, 1995
3. Letter to Constance Crosby of MA Historical Commission (MHC), February 23, 1995

4. Letter to Margaret Tonello, February 23, 1995
5. Letter to Margaret Tonello, February 9, 1995
6. Letter to Margaret Tonello, January 26, 1995
7. Letter to Margaret Tonello, September 2, 1994

Submittals from the State

1. Letter from MHC to Margaret Tonello, January 27, 1995
2. Letter from MHC, signing off on the project, March 20, 1995

Submittals from the Public

1. Letter from Donald M. Raymond, February 22, 1995
2. Letter from Leona M. Warsowick, February 13, 1995

Testimony

At the March 9, 1995 hearing, Ford OConnor, attorney for the applicant, provided the subcommittee with a history of the project. He discussed the legal dispute that had the project tied up in land court, and he described the engineering and other hard costs that had gone into the project.

The project sat idle for a number of years and due to the land court action, and after the project went through the Commission's Jurisdictional Determination process, the full Commission had determined that the project should return to the Commission with a completed hardship exemption application. Mr. OConnor discussed the staff report suggesting that the issues represented in the report were not significant and that the applicants have invested a lot of money into the project.

Mr. Riley asked about the hard engineering that has already taken place. Mr. OConnor said that the entire road has been roughed in and much of the drainage has also been installed.

Mr. Riley asked about the square footage for the lots to which Mr. OConnor said that zoning required 20,000 sq. ft. minimum lot size and the applicant went beyond the town requirements to 30,000 sq. ft. lots which the town was very supportive of.

Mr. OConnor discussed the open space site plan drawn by the staff and stated that this plan would not meet the town's requirements.

Mr. Jackson asked about affordable housing, to which Mr. OConnor replied that under the hardship there is none. He further said that the town does not require affordable housing for subdivision approval.

Mr. OConnor said that all of the road and engineering expenses would be wasted and that any changes in the subdivision would require that the plan go back to land court which is a costly and time consumptive process. The Tonellos are not developers, they are merely selling the lots. The time spent in land court also contributes to the hardship.

Mr. Jackson asked if the town had any problems with the proposed subdivision prior to the Commission Act to which Mr. OConnor responded that the town didn't have a problem with the project and in fact, approved the subdivision plan.

Ms. Virginia Anderson, Town Water Commissioner, said that this property is not a threat to the water resources and the nearest public supply well is not very close. The project is also not in a Zone of Contribution (ZOC). The ZOC for the Black Pond Well ends at Route 3.

Ed Eichner discussed the water resource issues with respect to the ZOC. He showed the extent of the zone and said that the concern is that if a more refined ZOC delineation could put the subject property within the zone.

Ms. Anderson said that any proposed new wells would not be in the area of the proposed project.

Mr. Jerry Ellis, former planning board member, said that the subdivision was the subject of much dialogue in 1985. He said that the project was discussed by the planning board and the conservation commission and that Mr. Tonello was very cooperative during the whole process and the planning board was pleased with the outcome. This subdivision was approved well before the Commission came into being.

Mr. Eichner said that there is a 5ppm standard for all of Cape Cod. Staff looked at alternative systems including recirculating sand filters and have determined that the applicant could still maintain the same number of lots while meeting 5ppm.

Mr. Prince asked if 5ppm could be achieved by lawn size limitation.

Mr. Eichner said that this was not traditionally accepted.

Mr Paul Tilton said that the project would generate 373 trips per day and 39 trips in the pm peak hour. Route 3A is a roadway of regional significance in the RPP. Mr. Tilton discussed the LOS for the roadway and the 20% trip reduction requirement.

Mr. Finn presented the staff report indicating that affordable housing was an issue, historic preservation, and the open space requirement was also not satisfied.

MHC has not yet made a determination about the site in terms of historic or archaeological sensitivity.

The affordable housing requirement is for a 10% contribution of affordable housing units.

Mr. Finn showed a sketch of an open space plan that the staff had worked out. This drawing would provide 28% open space and because the applicant is applying for a hardship, the staff didn't recommend that the full 60% open space requirement be applied.

Mr. Finn said that there were enough potential regional impacts that would negate the option of a DRI exemption in the staff's opinion.

Jurisdiction

The proposed HillCrest Farms Estate subdivision qualifies as a DRI under the Code of Cape Cod Commission Regulations of General Application, Chapter A, Section 3(c), Barnstable County

Ordinance 94-10. The application for a Hardship Exemption was submitted and initiated by the applicant.

Findings

1. The proposed subdivision consists of 39 lots on 39 acres in North Sagamore in the Town of Bourne.
2. A definitive subdivision plan was approved by the Town of Bourne on September 10, 1987 and a curb cut permit was obtained from MA Highway on January 6, 1989.
3. The applicant made structural changes to Route 3A, including an acceleration lane and drainage work in compliance with the curb cut permit. Other work initiated in response to the intent to proceed with the project include survey work, some drainage, a roughed in roadway and limited landscaping.
4. A boundary dispute led the applicant to seek relief in Massachusetts Land Court in 1988. The subsequent legal action took in excess of 3 years, but was finally settled in the applicant's favor. During the interim, the Cape Cod Commission Act was legislated and the subject property came under the Commission's jurisdiction.
5. The applicant demonstrated a hardship due to the length of time that the project was involved in a legal dispute and in the fact that the financial expenditure to date on the existing project plans and the site work make it difficult for the applicant to fully comply with all of the provisions of the RPP. The hardship is dependent on the nature of the development and the timing of the legal action.
6. The project was designed in excess of the required 20,000 sq. ft. lots, instead the lots were designed at 30,000 sq. ft. each. This lot configuration reduced the overall number of lots that the applicant had available for sale.
7. The Town of Bourne currently has only 5.5% affordable housing units and is working on meeting the town wide 10% affordable housing requirement through their Local Comprehensive Plan.
8. The proposed subdivision is located approximately 3/4 of a mile from the intersection of Route 3A and Meeting House Road and will generate about 373 vehicle trips per day and 39 trips per hour.
9. Alternative denitrifying septic systems are needed as part of this project in order for the proposal to meet the RPP's 5ppm standards under the water resources element in the RPP.

Conditions

1. Nitrogen loading from this development shall remain at or below the 5 ppm nitrogen loading standard in the RPP. In order to meet this standard and develop all 39 lots in the development, a combination of conventional Title 5 septic systems and septic systems with the capability to denitrify, or reduce the nitrogen discharge concentration, will be required.

All lots in the development will be limited to 3 or 4 bedrooms.

Sixty (60) bedrooms (15 four bedroom lots or 20 three bedroom lots) can be developed using conventional Title 5 septic systems. Planned development after 60 bedrooms will have to be evaluated based on the number of bedrooms, the possible number of bedrooms on the remaining lots, and the requirement for the completed development to remain at or below 5 ppm.

The following scenarios are provided as potential development patterns to remain at or below 5 ppm. Additional scenarios which remain at or below 5 ppm may be achieved using, but not limited to, the following scenarios.

Scenario 1:

If all lots are developed with 4 bedrooms, 24 of the lots shall have RSFs or other denitrifying technology and the rest may use conventional Title 5 systems.

Scenario 2:

If all lots are developed with 3 bedrooms, 5 of the lots shall have RSFs or other denitrifying technology and the rest may use conventional Title 5 systems.

Scenario 3:

If 32 lots are developed with 3 bedrooms and conventional Title 5 systems, the remaining 7 lots may have 4 bedrooms, but must have RSFs or denitrifying technology reducing the discharge to 25 ppm total nitrogen or better.

Scenario 4:

After 60 bedrooms, each lot with 4 bedrooms shall be equipped with a denitrifying technology reducing the discharge to 25 ppm total nitrogen (a recirculating sand filter (RSF) according to DEP) or better.

After 60 bedrooms, three 3-bedroom homes with conventional Title 5 septic systems can then be developed and then each remaining lot with 4 bedrooms shall be equipped with a denitrifying technology reducing the discharge to 25 ppm total nitrogen (a recirculating sand filter (RSF) according to DEP) or better.

After 60 bedrooms, ten 3-bedroom homes with conventional Title 5 septic systems can then be developed and then each remaining lot is limited to 3 bedrooms and shall be equipped with a denitrifying technology reducing the discharge to 25 ppm total nitrogen (a recirculating sand filter (RSF) according to DEP) or better.

Since the possible solutions to remain below 5 ppm are dependent on a number of factors, the Cape Cod Commission will provide on-going coordination with the Bourne Board of Health to ensure that the nitrogen loading from this development remains below 5 ppm.

2. The applicant shall contribute two (2) lots to the Town of Bourne for the express purpose of creating two affordable housing units. The affordable housing contributions shall be completed by the conveyance of any of the subdivision lots or shall be completed prior to the issuance of a building permit for any of the lots, whichever occurs first.

3. The applicant shall submit to the Cape Cod Commission for its approval, prior to the conveyance of any of the subdivision lots or the issuance of a building permit for any of the lots, a plan which describes how prospective recipients for the affordable housing lots will be contacted and selected for these lots.

4. The affordable housing lots will be made available to households whose income do not exceed 80% of the area's median income, with adjustments for household size. Prior to the conveyance of the affordable housing lots, the applicant shall submit documentation to the Cape Cod Commission verifying the income eligibility of the prospective households. At this time these income-eligibility limits are as follows:

<u>Household Size</u>	<u>Income Limit</u>
one	\$26,200
two	\$29,950
three	\$33,700
four	\$37,450
five	\$40,450
six	\$43,450
seven	\$46,400
eight	\$49,400

5. Affordable housing units created by this section shall remain affordable year-round through the use of the Cape Cod Commission Affordable Housing Deed Restriction. These restrictions shall be made known to the prospective owner prior to the donation of the affordable housing lots.

6. The applicant shall provide an easement for future pedestrian use on their property south of the site (formerly known as the proposed Wendy's and Office Building site). This easement shall extend from the commuter parking lot property to the northern most part of the applicant's property abutting Route 3A. The easement will be used for a future sidewalk to encourage walking to and from the commuter lot. The easement shall be designated at a location that is consistent with standard design requirements of walkways. The applicant shall provide a conceptual sidewalk on a plan for approval by the Commission, or designee, prior to the sale of any lots.

7. The applicant shall provide a bicycle and walking path connection to the adjacent parcel east of the HillCrest Farms property in an effort to encourage walking to the beach area. The bicycle path and walking path shall be designed to meet AASHTO standards, to be no less than 8 feet and no greater than 12 feet in width and paved with appropriate drainage design as needed. A physical barrier shall be used to prevent motor vehicle access to the path and the barrier may be in the form of permanently reflectorized posts, painted a bright color for improved day time visibility. The posts shall be no wider than 5 feet apart. Alternatively, a split entryway may be used with the two 5 foot wide sections separated by landscaping using indigenous vegetation. The walking path shall conform to a design that is appropriate for use by physically challenged people.

Conclusion

The Commission has reviewed the proposed project against the Minimum Performance Standards in the RPP and concludes that the project proponent has demonstrated a hardship and that the project, as conditioned, complies with the standards in the RPP to the greatest extent possible and that granting of the exemption will not result in substantial detriment to the public good and will not nullify or substantially derogate from the intent or purpose of the Act. The Commission further approves the project as conditioned for a Hardship Exemption.

Kenneth Brock
Kenneth Brock, Chair

3/30/95
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

Subscribed and sworn to before me this 30th day of March 1995

Katharine J Peters

NAME, Notary

My Commission expires:

NOTARY PUBLIC - State of Massachusetts, 0192