



CAPE COD COMMISSION

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DATE: November 30, 1995
TO: Mashpee High School Building Committee
FROM: Cape Cod Commission
RE: Hardship Exemption
Cape Cod Commission Act, Section 23
Modification of Decision
APPLICANT: Mashpee School Building Committee
c/o Mashpee Town Hall
16 Great Neck Road North
Mashpee, MA 02649
PROJECT: Mashpee High School
Route 151/Old Barnstable Road
Mashpee, MA
PROJECT #: TRMOD95023
BOOK/PAGE: Book 9520/Pages 80, 86, 92, 98, 99

MODIFICATION OF HARDSHIP EXEMPTION DECISION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions a modification to the Development of Regional Impact (DRI) Hardship Exemption decision rendered by the Commission on May 11, 1995 pursuant to Section 23 of the Cape Cod Commission Act, c. 716 of the Acts of 1989, as amended, for a proposed senior high school in Mashpee, MA. The decision is rendered pursuant to a vote of the Commission on November 30, 1995. All findings and conditions attached to the original Hardship Exemption decision dated May 11, 1995 continue to apply except as modified herein.

PROJECT DESCRIPTION

The project consists of the construction of a 183,000 s.f. senior high school building for a total of 1180 students on a 135-acre site. The site is located at the intersection of Route 151/Old Barnstable Road in Mashpee, MA. Route 151 forms the northern boundary of the site, with the Quashnet River forming the eastern boundary. The project site straddles the line of a State-approved Zone of Contribution to the Mashpee Water District well P-1. The modification requests consist of the addition of several outdoor athletic fields and

Mashpee High School Modification - #TRMOD95023
November 30, 1995 Decision

courts, outdoor sports lighting, a proposed irrigation well for planted areas and athletic fields, and the addition of an oil tank and piping to the heating system.

PROCEDURAL HISTORY

The original proposal for the Mashpee High School was reviewed by the Cape Cod Commission in accordance with the CCC/MEPA Joint Review Process. On May 11, 1995 the Commission approved with conditions the Development of Regional Impact Hardship Exemption application of the Mashpee High School Building Committee pursuant to Section 23 of the Cape Cod Commission Act for a proposed senior high school in Mashpee, MA. On July 21, 1995 the Commission received a request from the applicant for a modification to the May 11, 1995 decision. The request for modification was received pursuant to Section 9(n) of the Cape Cod Commission's Enabling Regulations. On August 7, 1995 the Regulatory Committee of the Commission determined that the request was a modification requiring Commission approval based on an October 15, 1992 Commission policy which sets out procedures for review of modification requests.

On October 2, 1995 the Commission received a Notice of Project Change submitted to the Executive Office of Environmental Affairs (EOEA), MEPA unit outlining the proposed modification requests for MEPA and Commission review. The Notice of Project Change was required to be filed with the MEPA unit due to the inclusion of a proposed irrigation well to the project. Commission staff filed comments on the Notice of Project Change on November 7, 1995. On November 15, 1995 the Secretary of EOEA determined that the proposed modifications did not require the preparation of an Environmental Impact Report.

A public hearing on the modification request was conducted by a duly authorized subcommittee of the Commission in the Commission office on November 16, 1995. This hearing was continued to the full Commission meeting on November 30, 1995 in the Chamber of the Assembly of Delegates, 1st District Courthouse, Barnstable, MA. A subcommittee meeting was held on November 16, 1995. As a result of testimony received at the public hearings, application materials submitted by the applicant and technical information provided by staff, the subcommittee voted as described in the Testimony section to recommend to the full Commission that the modification requests be approved, subject to additional conditions as described below. A draft decision was presented to the Cape Cod Commission at the continued public hearing on November 30, 1995. At the close of this hearing, the Commission voted unanimously with one abstention to approve the modification requests.

Materials submitted for the Record

The following materials were received as part of the written record on the Mashpee High School modification request:

From the applicant:

- Notice of Project Change, Symmes Maini & McKee Associates (SMMA), received October 2, 1995
- letter from Brian Lawlor, SMMA to Commission staff dated July 21, 1995 re: proposed modification request
- letter from Brian Lawlor, SMMA to Commission staff dated August 1, 1995 outlining proposed changes
- reduced plan with proposed changes, dated August 1, 1995, prepared by SMMA, 1 sheet
- site preparation, grading, electrical and layout plans, received November 7, 1995, prepared by SMMA, 6 sheets

Cape Cod Commission:

- letter from Commission staff to MEPA unit dated November 7, 1995

Mashpee High School Modification - #TRMOD95023
November 30, 1995 Decision

- letter from Commission staff to Mr. Paul Griffin, Mashpee School Building Committee Chair, dated October 12, 1995
- Subcommittee notification memorandum dated October 12, 1995

Additional materials:

- Certificate of the Secretary of Environmental Affairs on the Notice of Project Change, received November 15, 1995
- letter from Mashpee Fire and Rescue Department, received November 30, 1995

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

TESTIMONY

At the November 16, 1995 public hearing, the subcommittee heard testimony from Mr. Brian Lawlor, Symmes, Maini & McKee Associates, who presented the proposed modifications. He stated that the proposed heating system is currently designed to operate with oil or gas, with a cost comparison indicating that approximately \$66,000 could be saved annually through the use of oil.

Ms. Rooney presented the staff report on the modification requests, reviewing issues posed by the proposed modifications. Staff recommended that the proposed oil tank not be allowed, citing concerns for protection of the Zone II within which the school is located, as well as its proximity to the Quashnet River. Edward Eichner, Water Resources staff, recommended that the subcommittee not allow the oil tank and piping in order to prevent the possibility of any future spill and possible contamination of the groundwater. The subcommittee discussed the construction of the piping and its proposed depth, as well as the possibility of including a state of the art monitoring system to alert the town in the event of a leak or spill.

Comments from local officials included Mr. Peter Dinizio, Mashpee Board of Selectman, who spoke in support of the dual heating system, saying the town would take all possible measures to ensure that the environment is unharmed. He also spoke in support of the proposed athletic field lighting. Mr. R. Gregory Taylor, Director of the Mashpee Department of Public Works, spoke in support of higher levels of lighting. He also said that the town has been environmentally sensitive to date, the oil tank would provide 100% containment, and the town would continue to monitor the oil tank carefully. Bill Martiros, High School Building Committee, spoke in favor of the proposed modifications.

Mr. Prince motioned to keep the record open and to continue the hearing to the Commission meeting on November 30, 1995, at 3:00 P.M. at the First District Courthouse. Mr. Benway seconded the motion. It was unanimously approved. A subcommittee meeting was also held on November 16, 1995. Mr. Benway moved to approve the dual fuel system as designed and described, including the double walled pipe and containment system. The motion was not seconded. The motion was amended to include a state of the art monitoring system. Mr. Brock seconded the amended motion. The motion was voted 3 to 2 in favor.

Mr. Brock made a motion to approve the lighting as designed. Mr. Benway seconded the motion. The motion was unanimously approved. Mr. Brock made a motion to prohibit irrigation if the water level in the Quashnet River falls below 6 inches at the Route 151 culvert. Ms. Bebout seconded the motion. The motion was unanimously approved. Mr. Benway motioned to approve the site plan changes as designed. Ms. Bebout seconded the motion. The motion was unanimously approved.

As a result of testimony received at the public hearings, application materials submitted by the applicant and technical information provided by staff, the subcommittee voted as described above to recommend to the full Commission that the modification requests be approved, subject to additional conditions as described below.

A draft decision was presented to the Cape Cod Commission at the continued public hearing on November 30, 1995. At this hearing, the Commission received testimony from Mr. Brian Lawlor, of Symmes Maini & McKee, representing the School Building Committee. Mr. Lawlor noted that considerable cost savings would result from the use of oil, and that the school had taken great care to design the safest fuel system possible. The applicant was agreeable to all findings and conditions with the exception of condition #8, which he requested be changed to provide a steel containment enclosure rather than reinforced concrete. Andrea Adams, Hazardous Waste planner agreed that steel containment would be acceptable provided the volume of containment was adequate.

Subcommittee chair Herb Olsen described the modification request. Planner Sharon Rooney presented proposed changes to findings and conditions and noted a letter received from the Mashpee Fire and Rescue Department. S. Kaufman asked for clarification on the split vote by the subcommittee for the oil tank/piping request. Mr. Olsen stated that those in favor believed there were adequate safeguards in place to protect the groundwater, while R. Prince stated that he was opposed due to concern for a future water supply source which could be jeopardized if a spill occurred on the site. G. Benway noted that the design of the piping meets all DEP requirements. Bill Martiros, of the Mashpee School Building Committee, noted that the school went to great lengths to protect sensitive resources on the site, and that the dual fuel system request was designed with significant safeguards which could not be guaranteed if residential development, allowed under zoning, was to take place on the 135-acre site instead.

D. LeBlanc made a motion to close the public record and hearing on November 30, 1995. L. Lambros seconded the motion and it was approved unanimously. H. Olsen made a motion to approve the modification to the Hardship Exemption decision as set forth in the draft decision dated November 30, 1995 as amended to allow a steel containment enclosure. G. Benway seconded the motion and it was unanimously approved with R. Prince abstaining.

JURISDICTION

The Mashpee high school qualifies as a DRI under Section 12(i) of the Cape Cod Commission Act which states that ...“any proposed development for which the Secretary of Environmental Affairs (EOEA) requires the preparation of an Environmental Impact Report (EIR) in accordance with the provisions of Sections 61-62(h), inclusive, of Chapter 30 M.G.L. shall be deemed a Development of Regional Impact.”

The project was granted a Hardship Exemption with conditions on May 11, 1995. The Commission received a request for modification of the May 11, 1995 decision pursuant to Section 9(n) of the DRI Enabling Regulations. On July 21, 1995 the Commission received a request from the applicant for a modification to the May 11, 1995 decision. The request for a modification to the decision was received pursuant to Section 9(n) of the Cape Cod Commission's Enabling Regulations. On August 7, 1995 the Regulatory Committee of the Commission determined that the request was a modification requiring Commission approval based on an October 15, 1992 Commission policy which sets out procedures for review of modification requests.

FINDINGS

The following findings shall replace findings #2 & 3, Water Resources, finding #2, Natural Resources, and finding #2, Hazardous Materials/Waste in the May 11, 1995 decision as follows:

Water Resources

2. The project site straddles the line of a State-approved Zone of Contribution (Zone II) to the Mashpee Water District well P-1. The school building is located within the Zone II; the proposed 15,000 gallon above-ground fuel oil tank and wastewater treatment facility are located outside of the Zone II. Only the underground lines to transfer oil will cross into the Zone of Contribution.
3. The high school site abuts the Quashnet River. The Quashnet River supports an active sea-run brown trout fishery and a herring run. These fisheries are sensitive to water quality and water levels. Pumping from the proposed irrigation well for planted areas and athletic fields is unlikely to have an adverse effect on water levels and stream flows within the Quashnet River during low flow conditions.

Natural Resources

2. The applicant has agreed to permanently protect a 500-foot buffer between the development and the Quashnet River to ensure the protection of this valuable ecosystem. This buffer area will be designated as a conservation restriction as outlined in condition #1, Natural Resources, of the May 11, 1995 decision. The additional athletic fields and courts are located outside of the 500-foot buffer to the Quashnet River, with grading and drainage for these facilities directed away from the buffer to prevent erosion. Therefore, the additional fields and courts do not present any potential impacts to habitat or natural resources.

Hazardous Materials/Waste

2. The system of waste transfer and holding tanks discussed in the DEIR have been eliminated and the School Department is committed to minimizing the quantity of hazardous materials used in the school's chemistry program through implementation of a micro-scaling program.

The following finding shall be eliminated with findings # 4 - 7 renumbered accordingly:

Hazardous Materials/Waste

3. Hazardous materials at the school will be limited to cleaning chemicals, lab chemicals including darkroom chemicals, materials used at the on-site waste water treatment plant and fertilizers.

The following findings shall be added to the May 11, 1995 decision of the Cape Cod Commission:

Hazardous Materials/Waste

7. The heating system for the school building, including the boilers, was originally designed to operate with both gas and oil fuel sources.

8. A cost comparison completed by the applicant of September, 1994 Colonial Gas natural gas rates and #2 fuel oil purchased through the Barnstable County oil program indicated that the high school could save approximately \$66,000.00 annually through the use of fuel oil.
9. The tank used to hold the oil will be constructed of double-walled, epoxy-coated steel. It will also be placed in a reinforced concrete containment enclosure of sufficient size to contain one hundred and ten (110) percent of the volume of the tank.
10. Oil will be transferred from the above-ground storage tank to the school's boilers via double-walled steel piping.
11. Both the transfer lines and oil storage tank will incorporate a 24-hour electronic leak detection system.

Community Character

1. Based upon testimony received at the November 16, 1995 public hearing, proposed outdoor lighting for the high school's athletic facilities was determined not to be excessive based upon the school's needs.

CONCLUSION

The following condition shall replace condition #1, General and condition #4, Water Resources, of the May 11, 1995 decision of the Cape Cod Commission:

General

1. The plans as submitted and listed in this decision, as modified by the following conditions and modification decision dated November 30, 1995 shall become part of the written decision and any changes shall be approved by the Cape Cod Commission or its designee.

Water Resources

4. The proposed irrigation well shall not be operated in the event that Quashnet River depths at the Route 151 culvert drop below 0.5 feet.

The following conditions shall be added to the May 11, 1995 decision of the Cape Cod Commission:

Hazardous Materials/Waste

8. The fuel oil storage tank shall not exceed a capacity of 15,000 gallons and be constructed of double-walled, epoxy-coated steel. The tank shall be located adjacent to the wastewater treatment plant outside of the Zone of Contribution and placed in a steel containment enclosure of sufficient size to contain one hundred and ten (110) percent of the volume of the tank.
9. A 24-hour electronic leak detection systems for the above-ground fuel storage tank and oil transfer piping shall be installed prior to issuance of a Certificate of Compliance by the Commission. The school shall submit documentation to the Commission of the leak detection system connection to a location which is manned twenty-four hours a day and year-round.

10. Prior to issuance of a Certificate of Compliance, the high school shall prepare and maintain an emergency response plan on the premises specific to the fuel oil tank. This plan shall identify a qualified emergency spill response firm to be retained in the event of a spill. A copy of this plan shall be provided to the Mashpee Fire Department.

11. Any change in the school's heating system which would result in the following shall be reviewed by the Commission as a Development of Regional Impact:

- a) abandonment or replacement of the above-ground fuel oil tank
- b) the addition of one or more fuel oil tanks regardless of size.

The Commission hereby approves with Findings and Conditions as noted above, the application by the Mashpee High School Building Committee for a modification to the Commission decision rendered on May 11, 1995, as a Development of Regional Impact Hardship Exemption pursuant to Section 23 of the Act for the proposed Mashpee High School in Mashpee, MA.

Summer Kaufman
Summer Kaufman, Chair

11/30/95
Date

Commonwealth of Massachusetts

Barnstable, ss.

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

Katharine D. Peters
Name, Notary Public

My commission expires: