



# CAPE COD COMMISSION

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Date: December 17, 1997

Re: Jurisdictional Determination Request  
Cape Cod Commission Act, Cape Cod Commission  
Regulations of General Application

Applicant: Town of Sandwich  
130 Main Street  
Sandwich, MA 02563

Project #: JD97030

Project: Heritage Park  
Cotuit Road/Route 130  
Sandwich, MA 02563

Owner: Tsakalos Realty Trust

Lot/Plan: Plan Book 278, Lot 1, page 073  
Book 10735, page 108

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## DECISION OF THE CAPE COD COMMISSION

### SUMMARY

The Cape Cod Commission (Commission) hereby finds that under the Cape Cod Commission Regulations of General Application, Chapter A, Section 3(e) the proposed development known as Heritage Park qualifies as a Development of Regional Impact (DRI), and that pursuant to Section 22(d) of the Cape Cod Commission Act the proposed subdivision called Heritage Park is exempt from DRI review so long as the project is constructed thereafter in accordance with the 1989 special permit. The decision is rendered pursuant to the vote of the Cape Cod Commission subcommittee on December 17, 1997.

## PROJECT DESCRIPTION

The proposed project known as Heritage Park is located in the South Sandwich Business District and has frontage on both Cotuit Road and Route 130 in Sandwich. The project proposes to develop 87,851 square feet in three separate buildings on 12.6 acres: Building A - a two story structure for small retail uses; Building B - a two story structure designed for a single large tenant such as a major supermarket; Building C - a single story structure designed as a bank building with drive-up facilities. The project also includes a 57 seat restaurant. The area is commercially zoned Business Limited 2 (BL-2) and a portion of the site is located within a Zone of Contribution to a public water supply for the town of Sandwich. Approximately five and a half acres of the site have been cleared for development. The remainder of the site is level wooded upland.

## JURISDICTION

The project known as Heritage Park is reviewed by the Cape Cod Commission as a Jurisdictional Determination under the Cape Cod Commission Act, Chapter 716 of the Acts of 1989, as amended (ACT). The purpose of the Jurisdictional Determination Request is to establish whether the proposed project consists of new construction with a gross floor area greater than 10,000 sq. ft. under Cape Cod Commission Regulations of General Application, Chapter A, Section 3(e), Barnstable County Ordinance 94-10, as amended, and whether the project is exempt from Development of Regional Impact review under the provisions of Section 22 of the Act.

## PROCEDURAL HISTORY

On August 23, 1988, the Sandwich Zoning Board of Appeals voted to deny without prejudice a Special Permit to Gateway Development Trust, John Shields, Trustee, for the construction of a 114,400 square foot two-story building on 2.9 acres of land.

On September 13, 1988, the applicant appealed the decision to Superior Court.

In March of 1989 the parties stipulated to a remand of the decision to the Zoning Board of Appeals for further hearings, and agreed that action by the Superior Court would remain pending as to any further decision of the Zoning Board of Appeals.

On April 24, 1989, the applicant submitted a revised special permit application for approval.

On May 23, 1989 the Sandwich Zoning Board of Appeals approved a Special Permit for the construction of an 87,851 square foot commercial project by voice vote. The project included three separate buildings: Building A was a two-story structure for small retail uses; Building B was a two-story structure designed for a single large tenant such as a major supermarket; Building C was a single story structure

designed as a bank building with drive-up facilities. The applicant also proposed a 57 seat restaurant.

On June 27, 1989, the Zoning Board of Appeals voted to grant a special permit for the above-referenced project and signed plans that reflected the approval granted on May 23, 1989.

The owner of the property filed a petition with the Zoning Board of Appeals and the town clerk to file the decision on the project. On July 12, 1989, the Zoning Board of Appeals clerk filed the decision for the approved special permit and signed plans with the Sandwich Town Clerk's office.

In March of 1990 the Cape Cod Commission Act took effect. Section 22(d) of the Act exempts all projects whose permit or approval was subject to judicial review entered prior to July 1, 1989, and that is concluded in the applicant's favor, so long as the development is constructed in accordance with the permit or approval.

On June 11, 1990, Judge Elizabeth Dolan of Superior Court affirmed the vote of the Zoning Board of Appeals that was taken on June 27, 1989.

In early September 1991, a Jurisdictional Determination application was submitted to the Cape Cod Commission. After review of the information, staff's opinion was that the project did not meet the requirements for a Section 22(b) exemption. The applicant then withdrew the Jurisdictional Determination request on September 19, 1991.

On July 10, 1992, the applicant submitted a Hardship Exemption request. A public hearing was held on August 26, 1992 and was continued to October 8, 1992. The hearing was then continued by a hearing officer to November 19, 1993 and closed by the hearing officer due to an incomplete application. On May 27, 1993, the Commission denied the application without prejudice.

On November 6, 1997, the Cape Cod Commission delegated the authority to make the final determination on the project to the subcommittee.

On November 24, 1997, the Cape Cod Commission held a public hearing to determine if the project was exempt under Section 22 of the Act. At the public hearing the applicant withdrew without prejudice the application for a jurisdictional determination.

On December 1, 1997, the applicant submitted an application for a jurisdictional determination to determine if the project was exempt under Section 22 of the Act.

On December 17, 1997, the Cape Cod Commission held a public hearing to determine if the project was exempt under Section 22 of the Act. At the public hearing the Commission found that the project met the criteria for an exemption so

long as the project was constructed thereafter in accordance with said permit or approval.

### MATERIALS SUBMITTED FOR THE RECORD

- Letter dated December 1, 1997 Re: Revised Jurisdictional Determination Application for Heritage Park Project from George H. Dunham, Sandwich Town Administrator
- Jurisdictional Determination Application
- Exhibit "A": "History of Heritage Park" project chronology
- Exhibit "B": Copy of Town of Sandwich Board of Appeals Petition 88-39, Application  
Copies of Town of Sandwich Board of Appeals Petition 88-39 Record of Proceedings and Special Permit Decision & Notice
- Exhibit "C": Copy of Town of Sandwich Board of Appeals Petition 89-15, Application  
Copy of Town of Sandwich Board of Appeals Petition 89-15, Certificate of Granting of Special Permit
- Exhibit "D": Copy of Letter dated June 13, 1990 from Elizabeth A. Lane of Kopelman and Paige, P.C.
- Exhibit "E": Copy of Letter dated October 22, 1991 from Elizabeth A. Lane of Kopelman and Paige, P.C.
- Exhibit "F": Copies of Board of Appeals Special Permit extensions granted from January 11, 1991 to April 10, 1997
- Exhibit "G": Copy of March 1989 "Stipulation as to Remand Decision" executed by each of the appropriate parties in Gateway Development Trust vs. Board of Appeals, Town of Sandwich, Barnstable Superior Court No. 88-868
- Exhibit "H": Copy of June 6, 1990 "Findings of Fact, Rulings of Law and Order for Judgment" issued by Judge Elizabeth Dolan in Superior Court No. 88-868
- Exhibit "I": Copy of June 11, 1990 "Judgment of Findings by Court" issued by Judge Dolan in Superior Court No. 88-868
- Exhibit "J": Copy of Section 22 of the Cape Cod Commission Act

The application and notice of the public hearing relative thereto, the Commission's staff report, and exhibits, minutes of all hearings and all written submissions received in the course of the proceedings, including materials on file for JD97030 are incorporated into the record by reference.

### TESTIMONY

At the December 17, 1997 hearing, Frank Shephard, chair of the subcommittee, decided that the committee would address the issue of whether the project exceeded a threshold prior to addressing the issue of whether the project was exempt. Ilana Quirk, attorney for the town of Sandwich, stated that the town believes that project

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does not impact any other town. Patty Daley stated that this issue was not the subject of this determination. Susan Walker, Sandwich resident stated that she believes that the project has regional impacts because it is located on two regional roads and is partially located in a zone of contribution. Lance Lambros stated that he previously voted that the project is not a DRI because he believes that it does not have any regional impacts outside of the town of Sandwich. The committee voted four to one that the project exceeds the DRI threshold that requires review of all commercial projects exceeding 10,000 square feet of floor area.

Ms. Quirk stated that the project is exempt from Commission DRI review because it was originally denied by the town prior to July 1, 1989, was appealed and was the subject of judicial review at the effective date of the Commission Act. The case was later resolved in favor of the applicant. Section 22(d) of the Act exempts projects in these circumstances. Tana Watt concurred and noted that the exemption is valid provided that the project is constructed in accordance with the approved special permit. Ms. Walker stated that she has concerns over the protection of water resources, impacts to traffic and the provision of open space in relation to the project. The committee voted unanimously that the project was exempt from DRI review under Section 22(d) of the Commission Act. The committee closed the hearing and held a meeting where they discussed the proposed written decision.

### FINDINGS

The subcommittee has considered the applicant's request for a Jurisdictional Determination regarding the proposed Heritage Park exemption from Cape Cod Commission Development of Regional Impact Review. Based upon consideration of such request, upon information presented at the public hearing and submitted for the record, the subcommittee makes the following findings:

1. That the commercial project known as Heritage Park exceeds the threshold under Cape Cod Commission Regulations of General Application, Chapter A, Section 3(e), Barnstable County Ordinance 94-10, as amended, for DRI review as a project with a gross floor area of new construction greater than 10,000 square feet.
2. That the project was originally denied by the Sandwich Zoning Board of Appeals on August 23, 1988. The ZBA denial was appealed, and the project was remanded to the ZBA with the court retaining jurisdiction. While under judicial review by the court, the project was approved by the Zoning Board of Appeals. On June 11, 1990 the court upheld the ZBA decision, concluding judicial review.
3. That the project was the subject of on-going litigation filed prior to July 1, 1989 and resolved in favor of Gateway Development Trust.

CONCLUSION

The Cape Cod Commission concludes that based on Findings #2 and #3 and on information submitted in the jurisdictional determination application, the project is exempt from Cape Cod Commission Development of Regional Impact Review under Section 22(d) of the Act so long as the project is constructed thereafter in accordance with the 1989 special permit issued by the Sandwich Zoning Board of Appeals.

Any revisions to the 1989 special permit and approved plan shall be submitted to the Cape Cod Commission for a determination of whether the revised plan is in accordance with the special permit at the time a proposal is submitted to the town.

Frank Shephard  
Frank Shephard, Subcommittee Chair

Dec 18, 1997  
Date

Commonwealth of Massachusetts

Barnstable, ss.

Subscribed and sworn to before me this 18<sup>th</sup> day of Dec 1997

Katharine K Peters  
Name, Notary Public

My commission expires: Nov 19, 2004