



CAPE COD COMMISSION

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E-mail: frontdesk@capecodcommission.org

Date: November 30, 2000

To: Mr. Stephen Jones, Counselor at Law
252 Underpass Road
Brewster, MA 02631

From: Cape Cod Commission

RE: Development of Regional Impact Exemption
Cape Cod Commission Act. , Section 12(k)

Project: Barbour Nominee Trust ANR

Project #: EX 20028

Applicants: Jennifer B. Fish/ Eleanor Barbour, Trustees

Registry of Deeds Book/Page #: 8213 - 294

Lot/Plan #: 543-9

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby grants the application of Jennifer B. Fish and Eleanor Barbour, Trustees, for a Development of Regional Impact (DRI) Exemption pursuant to Section 12(k) of the Cape Cod Commission Act (Act), for a 5-lot Approval Not Required (ANR) Plan in the town of Brewster, MA. The decision is rendered pursuant to a vote of the Commission on November 30, 2000.

PROJECT DESCRIPTION

The applicants propose to subdivide a 31.9 acre parcel of land containing one home at the southwest corner of the property, into five lots. The site is located east of and abuts Route 137, and lies north of Millstone Road on the edge of Old Chatham Road. Access to the two building lots is from Carol Ann Road to Old Chatham Road, which is a private road. The surrounding



area to the south and east is residential. The property is bounded on the north by two conserved properties, one owned by the Town of Brewster, and the other owned by the Orenda Wildlife Trust.

The DRI Exemption application proposes to create five lots: Lot 1 contains an existing dwelling on 5.4 acres, Lot 2 is a 1.7 acre building lot, Lot 3 is a 4.4 acre building lot, Lot 4 is approximately a half-acre and will be "traded" with an abutter to create a buildable lot, and Lot 5 is 19.9 acres which has been deeded to the Brewster Conservation Trust as open space.

The property is zoned Residential Medium by the Town of Brewster, allowing building lots of 60,000 square feet. Each of the building lots will be served by town water. Residential land use is located south of the site.

PROCEDURAL HISTORY

The Cape Cod Commission received a referral letter from Steven Eldedge, Chair of the Brewster Planning Board, on September 5, 2000. Stephen Jones, the applicant's attorney, then filed a DRI application September 18, 2000 and a DRI Exemption application September 20, 2000. The DRI Exemption application was deemed complete on October 4, 2000. A duly authorized subcommittee of the Commission held a public hearing to consider the DRI Exemption request on November 2, 2000 at the Brewster Town Hall. The public hearing was continued to November 10, 2000. The public hearing was closed by a hearing officer on Nov. 10, 2000 and the record left open for submission of all materials. At a subcommittee meeting held following the November 2, 2000 public hearing, the subcommittee voted unanimously to recommend approval of the DRI Exemption request to the full Commission. On November 30, 2000 the full Commission voted unanimously to approve the DRI Exemption.

MATERIALS SUBMITTED FOR THE RECORD

From the applicant:

- Site plan by Soule Land Surveying dated May 20, 2000, with a correction received November 29, 2000
- Quitclaim Deed, received September 12, 2000, to gift the 19.9 acres to the Brewster Conservation Trust as open space.
- Conservation Land open space calculation letter, October 26, 2000
- Brewster Zoning Map, October 30, 2000
- DRI Application, September 18, 2000
- DRI Exemption Application, September 20, 2000

- Letter from Attorney Roger V. O'Day for Brewster Conservation Trust, July 13, 2000 accepting Barbour gift of land
- Nitrogen Loading calculations
- Letter from Mass. Historical Commission, February 2, 2000 re: that the project is unlikely to affect significant historic or archaeological resources.
- Plant and Wildlife Habitat Assessment by Mario DiGregorio, March 6, 2000
- Letter to Mario DeGregorio dated February 22, 2000 Division of Fisheries and Wildlife re: lack of endangered or threatened species on the site
- Application for Endorsement of Plan Believed Not to Require Approval dated September 5, 2000
- Quitclaim deed re: property ownership dated September 16, 1992

From the Cape Cod Commission:

- Cape Cod Commission staff report dated October 25, 2000
- subcommittee notices dated September 29, 2000, October 4, 2000 and October 31, 2000
- letter to applicant re: complete application dated October 4, 2000
- memo to the subcommittee from staff correcting an error in the staff report re: Brewster zoning

From public officials:

- Referral letter from Steven Eldredge, Brewster Planning Board, September 5, 2000

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

JURISDICTION

The Barbour Nominee Trust subdivision qualifies as a DRI under Section 3(e) of the Cape Cod Commission Enabling Regulations as "a development which proposes to divide parcels of land totaling 30 acres or more".

TESTIMONY

At the November 2, 2000 public hearing, attorney Stephen Jones described the residential subdivision of the Barbour property, with one of the owners, Jennifer Barbour Fish, in attendance. He described that the proposed project would subdivide the property into fewer lots than were allowed by the Brewster zoning bylaws. He explained that the owner was willing to gift the open space portion of the subdivision to the Brewster Conservation Trust and submitted a

signed deed for the record. Mr. Jones indicated that the two building lots proposed would be served by a private road that was already in existence, and would require no additional service by the Town of Brewster.

Planner Martha Twombly provided an overview of the DRI Exemption process and indicated that the finding required to grant an exemption would conclude that there is no significant impact on land use, natural resources/open space, transportation and community character outside of the town. She noted that there is no endangered or threatened wildlife or plant life on the site, nor are there any known archaeological or historic sites. Though the majority of the site is considered a Significant Natural Resource Area, being located in wellhead protection and water recharge areas, Title V septic systems for the small number of lots proposed are below RPP standards for nitrogen-loading and would not impact regional water supplies. Since only two building lots are being created, traffic generated by the proposed subdivision would have little effect on regional roads.

Comments from the public included Douglas Erickson, who pointed out that the applicant went to great measures to protect open space, and supported the DRI Exemption. Peter Hown expressed concern that neighbors would not have access to walking trails on the property. Jillian Douglass, Assistant to the Brewster Town Administrator, expressed the town's support of the project. Kathy O'Brien Horn asked if the Conservation Trust could purchase Lot 3 to increase the amount of open space. Paul Tilner asked if the town could purchase more land. Beth Finch of the Brewster Conservation Trust said she was very happy working with the applicant on the conservation land and was in support of the project.

FINDINGS

The Commission has considered the application of Ms. Jennifer Fish and Ms. Eleanor Barbour, Trustees of the Barbour Nominee Trust, for a proposed 5-lot ANR Plan in Brewster, MA. Based on consideration of such application, and the information presented at the public hearing and submitted for the record, the Commission makes the following findings subject to Section 12(k) of the Act.

1. The Barbour Nominee Trust proposes to subdivide a 31.9 acre property located east of Route 137 and north of Old Chatham Road in Brewster, MA into five lots as shown on the plan dated May 20, 2000 entitled "Plan of Division of Land in Brewster, MA as prepared for Eleanor F. Barbour and Jennifer B. Fish, Trustees of Barbour Nominee Trust. One lot includes an existing dwelling and 5.4 acres, two lots are building lots of 1.7 and 4.4 acres respectively, one lot is a .5 acre parcel that will make an abutting property a buildable lot, and the final lot is a 19.9 acre parcel that has been deeded to the Brewster Conservation Trust as open space. There is a power line right-of-way easement on the east edge of the property.

2. The property is zoned Residential Medium, with minimum lot sizes of 60,000 square feet and 200 feet of road frontage required. Current Brewster zoning laws would have allowed the applicant to subdivide the property into more lots than proposed. The reduced number of lots is consistent with RPP goals to limit land-consumptive development in Cape Cod towns.
3. The majority of the site is considered a Significant Natural Resource Area under the Regional Policy Plan due to the presence of unfragmented forest, and the project's location within a wellhead protection area for the Brewster water supply and the marine water recharge area to the Namskaket River. Nitrogen loading from the addition of two building lots on this site is well below RPP requirements using Title V systems. If this project had been reviewed as a DRI in wellhead protection and water recharge areas, denitrifying systems may have been required. However, only slight improvements would result. Considering the low density of the plan, there is not significant threat to water supplies and no further mitigation would need to be done.
4. The applicant provided a natural resources inventory as required by the Regional Policy Plan. The inventory did not indicate the existence of any wetlands or vernal pools, or any unusual, endangered or threatened species. The inventory also noted that the uniformity of vegetation on the site limits the value of the property for significant species diversity. However, the size of the parcel and its adjacency to other permanently protected open space improves the value of the area for habitat and open space interests.
5. The northern boundary of the Barbour property abuts two other permanently protected parcels, one owned by the Town of Brewster and the other by the Orenda Wildlife Trust. The 19.9 acres of conserved land in this proposal was sited contiguous to these conserved areas in order to increase the amount of unfragmented forest habitat in the area.
6. Had this project been reviewed as a DRI, the provision of permanently protected open space would have been a condition of approval. As a component of their DRI Exemption application, the Barbour Nominee Trust proposed permanently protecting a portion of the site through donation to the Brewster Conservation Trust. The applicants calculated the required amount of open space using the RPP point system. By gifting the 19.9 acre open space parcel to the Brewster Conservation Trust during the DRI Exemption review process and prior to Commission approval of the exemption request, the applicant exceeds the open space requirement under the RPP.
7. The two building lots are located adjacent to the Old Chatham Road, which is a private road. Therefore, no traffic will be entering directly onto public roads, and the minimal number of lots does not add enough cars to meet the regional transportation threshold for increased trips onto regional roads.
8. The applicants received a confirmation from the Massachusetts Historical Commission that this proposed subdivision is unlikely to affect any significant historic or archaeological resources.

9. As proposed, the community character and environmental effects of the project will not have any significant impacts on values and purposes protected by the Act outside of the municipality in which the development is located.

CONCLUSION

Based upon the findings above, the Cape Cod Commission hereby concludes:

As proposed, the location, character and environmental effects of the proposed subdivision will prevent its having any significant impacts on the values and purposes protected by this act outside the municipality in which the development is located. This conclusion is supported by the findings listed above.

The Commission hereby grants Ms. Jennifer B. Fish and Ms. Eleanor Barbour, Trustees of the Barbour Nominee Trust, a DRI Exemption from the terms and provisions of the Act, pursuant to Section 12(k) of the Act for a 5-lot ANR plan of a 31.19 acre parcel in Brewster, MA. This exemption decision shall be valid for three (3) years and its scope shall be strictly construed.

Frank Shephard
Frank Shephard, Chair

11-30-00
Date

Commonwealth of Massachusetts

Brewster, ss.

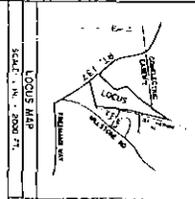
Subscribed and sworn to before me this 30th day of Nov 2000

Katharine L. Peters

Name, Notary Public

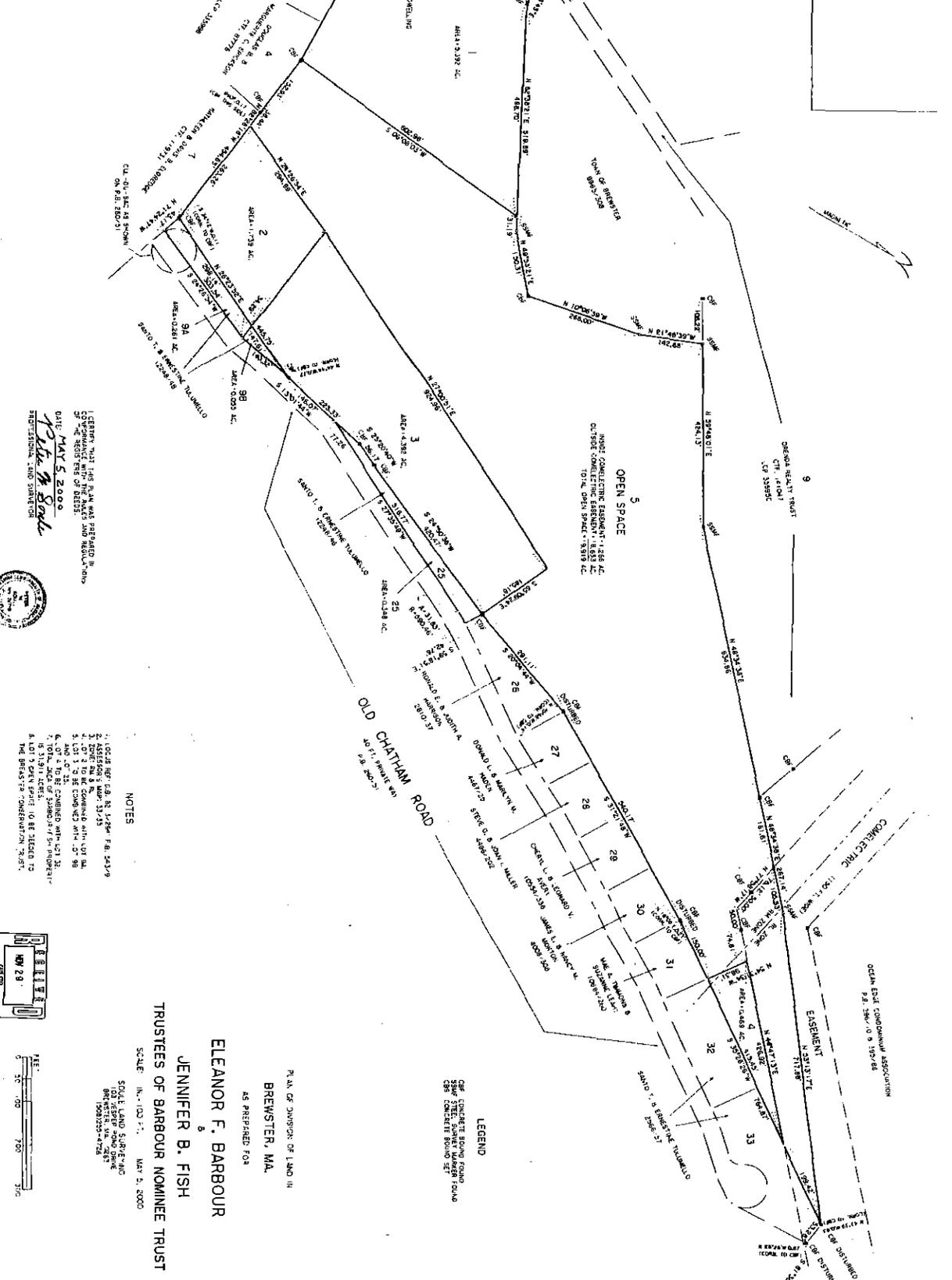
My commission expires:





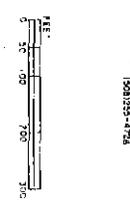
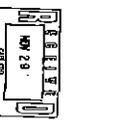
LONG POND ROAD (RT.137)
60 FT. PUBLIC 1950 & I. L. O.

DATE SUBMITTED: _____
 DATE SAVED: _____
 APPROVAL VOT REQUIRED
 BREWSTER PLANNING BOARD



LEGEND
 CONCRETE FOUNDATION
 SAND & GRAVEL TRACT
 SAND & GRAVEL TRACT

NOTES
 1. LOT 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33
 2. ZONE 2A & B, 3A & B, 4A & B, 5A & B, 6A & B, 7A & B, 8A & B, 9A & B, 10A & B, 11A & B, 12A & B, 13A & B, 14A & B, 15A & B, 16A & B, 17A & B, 18A & B, 19A & B, 20A & B, 21A & B, 22A & B, 23A & B, 24A & B, 25A & B, 26A & B, 27A & B, 28A & B, 29A & B, 30A & B, 31A & B, 32A & B, 33A & B
 3. LOT 1 TO BE COMBED WITH LOT 2
 4. LOT 1 TO BE COMBED WITH LOT 3
 5. LOT 1 TO BE COMBED WITH LOT 4
 6. LOT 1 TO BE COMBED WITH LOT 5
 7. LOT 1 TO BE COMBED WITH LOT 6
 8. LOT 1 TO BE COMBED WITH LOT 7
 9. LOT 1 TO BE COMBED WITH LOT 8
 10. LOT 1 TO BE COMBED WITH LOT 9
 11. LOT 1 TO BE COMBED WITH LOT 10
 12. LOT 1 TO BE COMBED WITH LOT 11
 13. LOT 1 TO BE COMBED WITH LOT 12
 14. LOT 1 TO BE COMBED WITH LOT 13
 15. LOT 1 TO BE COMBED WITH LOT 14
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 26. LOT 1 TO BE COMBED WITH LOT 25
 27. LOT 1 TO BE COMBED WITH LOT 26
 28. LOT 1 TO BE COMBED WITH LOT 27
 29. LOT 1 TO BE COMBED WITH LOT 28
 30. LOT 1 TO BE COMBED WITH LOT 29
 31. LOT 1 TO BE COMBED WITH LOT 30
 32. LOT 1 TO BE COMBED WITH LOT 31
 33. LOT 1 TO BE COMBED WITH LOT 32



ELEANOR F. BARBOUR
 JENNIFER B. FISH
 TRUSTEES OF BARBOUR NOMINEE TRUST

PLAN OF DIVISION OF LAND IN
 BREWSTER, MA
 AS PREPARED FOR

SCALE: 1" = 100 FT.
 MAY 5, 2000

SOIL LAND SURVEYING
 101 KESPER ROAD
 BREWSTER, MA 01828
 (508) 838-7282

