



# CAPE COD COMMISSION

3225 MAIN STREET  
P.O. BOX 226  
BARNSTABLE, MA 02630  
(508) 362-3828  
FAX (508) 362-3136

E-mail: [frontdesk@capecodcommission.org](mailto:frontdesk@capecodcommission.org)

**DECISION OF THE CAPE COD COMMISSION  
ACCEPTANCE OF DISTRICT OF CRITICAL PLANNING CONCERN (DCPC)  
NOMINATION  
BARNSTABLE DCPC**

Date of Nomination: February 23, 2001  
Date of Acceptance: March 15, 2001  
Nominating Agency: Barnstable Town Manager/Town Council  
Location of District: Barnstable, MA  
Type of District: Affordable Housing Implementation District  
Growth Management District

## **BOUNDARY**

The proposed boundary of the District of Critical Planning Concern (DCPC) encompasses all lands within the district boundaries of the entire Town of Barnstable, which consists of approximately 60 square miles (from 1990 U.S. Census – area excludes 2.74 square miles of open water, ponds, and rivers, but includes wetlands and marsh area).

## **GENERAL STATEMENT OF PURPOSE AND REASONS FOR ACCEPTANCE**

In accepting the nomination of the Barnstable DCPC the Cape Cod Commission (Commission) makes the following findings:

1. There is a need for special planning and regulations in the Barnstable DCPC that will preserve or maintain values and resources intended to be protected by the Act.
2. Regulatory and/or planning tools are available which are likely to be effective in protecting or otherwise meeting the objectives of the proposed district.
3. Growth management and affordable housing are two of the most important regional issues identified in the Regional Policy Plan.



4. Due to the rapid rate of residential development in the town of Barnstable, the DCPC nomination as presented by the Barnstable Town Manager and Town Council explicitly identifies concerns with regard to the provision of an adequate supply of affordable housing to meet the town's 10% goal. The nomination further identifies very serious concerns on the part of the town to provide adequate municipal infrastructure and services in a timely manner. The DCPC will protect against development that would negatively impact the area's infrastructure capacity, economic resources, water resources systems, and affordable housing. The purpose of the DCPC is to address these concerns by allowing the town to plan and adopt zoning strategies designed to control the rate of residential development and to establish a policy whereby affordable housing is given preference through a residential growth cap.

5. Long-term planning will allow the town to determine a reasonable rate of residential development. The identified rate of development will establish a linkage between new residential development, the development of new affordable housing, and the ability of the town to finance necessary infrastructure and municipal services. Additional regulatory reform, supported by the legal authority provided by the Cape Cod Commission Act, will allow the town to establish a sustainable growth rate and encourage or require the development of affordable housing.

6. Based upon a lottery conducted by the Building Commissioner, the town proposes to issue residential building permits that result in the creation of additional dwelling units in an amount not to exceed 10 residential dwelling unit permits per month. Affordable housing dwelling units shall be exempt from this limit. Affordable housing dwelling units for the purpose of this decision shall mean residential dwelling units permitted under Chapter 40B and units meeting the requirements of the town of Barnstable and in receipt of a Certificate of Affordability from the Office of the Town Attorney.

7. Similar to an overlay district, the DCPC includes all parcels within the town to be used for new residential development. The proposed boundary of the District is reasonably related to the purposes of the District and follows an easily definable boundary.

8. The issuance of development permits, other than those specified below, for a single-family house or houses on lots held in common ownership or on lots in separate ownership may be substantially detrimental to the protection of the public health, safety and welfare, and would be contrary to the purposes of the Act and District of Critical Planning Concern.

#### **TYPES AND CLASSES OF DEVELOPMENT WHICH MAY PROCEED**

Pursuant to Section 11(c) of the Cape Cod Commission Act, "the acceptance of a nomination for consideration for designation as a district of critical planning concern shall continue to suspend the power of a municipality to grant development permits for development within the nominated district..."

The Commission, in conjunction with the Barnstable Town Manager/Town Council, has identified the following types or classes of proposed development which may proceed notwithstanding this nomination during consideration and designation and until Implementing Regulations are adopted pursuant to Section 11(d) & (e) of the Act, provided however that such permits could have been issued in accordance with bylaws and regulations in effect in the town of Barnstable at the time of the local permit application. These types or classes of proposed development shall be deemed not substantially detrimental to the protection of public health, safety, and welfare and will not contravene the purposes of the Cape Cod Commission Act and the DCPC nomination. Where a type or class of development is not included below, it may not proceed unless the district fails or until Implementing Regulations are adopted.

1. All non-residential development permits.
2. Permits to expand, alter or replace existing residential structures or any systems therein so long as such expansion, alteration or replacement does not result in the creation of additional residential dwelling unit(s).
3. Permits to create additional affordable housing residential dwelling units pursuant to Section LXV of the General Ordinances, the so-called "Amnesty" ordinance.
4. Residential building permits that result in the creation of additional dwelling units in an amount not to exceed 10 residential dwelling unit permits per month. Affordable housing dwelling units shall be exempt from this limit.
  - Subject to the preferences stated herein, the monthly allotment of residential building permits shall be issued based upon a lottery conducted under the direction of the Barnstable Building Commissioner.
  - In the event that all 10 permits are not issued in a given month, the remainder of permits shall be added to the next month's total and issued in a subsequent lottery subject to the preferences stated herein.
5. Permits for septic system installation or necessary upgrades for existing residences and to serve residential dwelling units.
6. Developments of Regional Impact (DRIs) with a currently valid DRI approval, and DRIs referred for review prior to the first published notice of the District of Critical Planning Concern nomination and subsequently approved, all in accordance with Section 11 of the Cape Cod Commission Act.
7. Permits leading to the filing of a fully completed application for a building permit with the Barnstable Building Department.
8. Any development which constitutes emergency work as defined by Section 24 of the Cape Cod Commission Act. The proponent of any emergency work must notify the

Commission immediately upon applying to a municipal agency or official for an application to conduct such emergency work. Emergency work shall be permitted and proceed only in accordance with the standards and procedures set forth in Section 24 of the Act.

9. Any development which can demonstrate that suspension of action on a local development permit application during the limited moratorium constitutes a substantial hardship. Hardship applications will be heard by the Cape Cod Commission in accordance with Section 4 of the Administrative Regulations, Code of Cape Cod Commission Regulations and in accordance with Section 23 of the Cape Cod Commission Act.

10. Activities exempt under Section 22 of the Cape Cod Commission Act.

11. Where an applicant demonstrates to the Commission that the delay or withholding of a permit would constitute a compensable taking under Section 11(h) of the Cape Cod Commission Act and where approval would not result in a reasonably foreseeable danger to public health or safety.

12. Permits for uses and structures accessory to existing residential development in compliance with other relevant statutes, regulations and ordinances, as long as no additional residential structures are constructed.

13. Permits issued upon complete applications in the possession of the building commissioner on or before March 14, 2001. The Town Manager may by regulation establish a process whereby individual applications involving substantial hardship, financial or otherwise, after a hearing by the Town Manager or his designee, are exempted. Permits issued pursuant to this paragraph shall count as part of the annual capped total under the Implementing Regulations to be adopted in connection with this DCPC.

14. The District of Critical Planning Concern created by this process shall expire following the adoption of the implementing regulations hereunder, except that portion of the DCPC needed to enforce the growth control established hereby by superseding the provisions of MGL c. 40A s. 6.

#### CONCLUSION

In accepting this DCPC nomination for consideration, the Commission is making available the DCPC tool to deal with regional development pressures that the Town is unable to address with local tools alone. The Commission recognizes that this is a partnership with the Town and hereby agrees;

1). Should the Town wish to withdraw from the process at any time, the Commission will accede to that request, and thereupon the DCPC shall become a nullity; and

2). That the Commission will not adopt implementing regulations for the DCPC unless those regulations have the approval of the Barnstable Town Council.

Based on the findings above, the Cape Cod Commission hereby accepts the nomination of the town of Barnstable as a District of Critical Planning Concern.

Frank Shephard  
Frank Shephard, Chair

dated as of 3-15-01  
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

Subscribed and sworn to before me this 20<sup>th</sup> day of March 2001

Katharine L Peters

