



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

Date: November 15, 2001

Applicants: Dana and Vicki Harding
12 Radcliffe Road
Mashpee, MA 02649

Re: Development of Regional Impact Exemption Request
Section 12(k) of the Cape Cod Commission Act

Project: Herring River Lots DRI Exemption

Project #: EX20066

Book/Page: 12570/107
12570/108
12570/109
9580/309

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby grants the Development of Regional Impact (DRI) Exemption request of Dana and Vicky Harding for the proposed Herring River Lots subdivision of land in the Town of Bourne pursuant to Section 12(k) of the Cape Cod Commission Act (Act), c.716 of the Acts of 1989, as amended. This Decision is rendered pursuant to a vote of the Commission on November 15, 2001.

Decision of the Cape Cod Commission – November 15, 2001
Herring River Lots – Bourne, MA
DRI Exemption Application - EX20066
Page 1 of 8



PROJECT DESCRIPTION

The proposed project is for the subdivision of 41.41 acres of land in Bournedale. The project area lies within the boundaries of the Bournedale District of Critical Planning Concern (DCPC); the Herring River Area of Critical Environmental Concern (ACEC), and is a Significant Natural Resource Area (SNRA).

The proposal is for the subdivision of this 41.41 acres into six lots, with circumstances as follows:

- Four (4) lots totaling 9.01 acres for single family residential development clustered on the far end of the property near an existing roadway. The lot sizes are 1.85 acres, 1.93 acres, 2.03 acres, and 3.20 acres.
- One 6.4-acre parcel to be set aside as open space. Applicants have agreed to place a conservation restriction on this parcel.
- One lot totaling 26 acres to be acquired by the Town of Bourne using Land Bank Funds for the purposes of preservation of open space, conservation and passive recreation.

PROCEDURAL HISTORY

The Town of Bourne Planning Board referred the project to the Commission on July 27, 2001, after receiving a local Application for Approval of Definitive Plan on July 23, 2001. The Commission opened the public hearing for procedural purposes at a pro-forma hearing on September 20, 2001. No substantive action was taken. Co-applicants Vicki and Dana Harding (property owners) and the Town of Bourne Open Space Committee filed a DRI Application on September 14, 2001. Vicki and Dana Harding simultaneously filed a DRI Exemption Application on September 14, 2001. The Exemption Application was deemed complete by Commission staff on September 28, 2001.

A duly noticed Public Hearing pursuant to Section 5 of the Act was held by an authorized Subcommittee of the Commission on the DRI Exemption request and the DRI Application on Tuesday, October 30, 2001 at the Bourne Memorial Community Center. At this hearing the Subcommittee voted to recommend to the full Commission the granting of the DRI Exemption. At the conclusion of the Public Hearing, the DRI Exemption hearing was closed and the DRI Application hearing was continued until November 15, 2001.

On November 15, 2001, the full Commission voted unanimously to grant the DRI Exemption as requested by Dana and Vicki Harding.

Materials Submitted for the Record

Application Materials:

- DRI Referral Form from the Town of Bourne Planning Board, received by Commission on 7/27/01
- DRI Application (with attachments)
- Exemption Application
- Attachment to the Exemption Application (Letter from Dana and Vicki Harding to Cape Cod Commission, dated 9/10/01)
- Definitive Subdivision Plan of Land, Site Plans, dated 7/3/01

From the Cape Cod Commission:

- Letter to Coreen Moore and Dana and Vicki Harding from Stacey Justus, 7/30/01
- Memorandum to DRI Subcommittee members, 9/6/01
- Letter to Dana and Vicki Harding from Stacey Justus, 9/28/01
- Staff Report dated October 24, 2001

Correspondence from Others:

- Facsimile from Dody Adkins-Perry (Bourne Dept. of Planning) to Dorr Fox, dated 9/2/01, re: Town Meeting Article regarding the purchase of the Harding's 26 acres of open space
- Facsimile from Margo Mahl Davis (Massachusetts Historical Commission) to Stacey Justus, dated 10/16/01, forwarding MHC response letter sent to the Town of Bourne

Materials Submitted at the Public Hearing, October 30, 2001:

- Public Hearing Attendance Sign-In Sheet, October 30, 2001
- Letter from Coreen Moore to Ernest Virgilio, Subcommittee Chair, dated 10/29/01
- Letter from Donald Jacobs (Bourne Historical Commission) to Commission, dated 10/29/01, with attached maps titled *Bournedale District of Critical Planning Concern*, *Bournedale Historic Sites*, and *Map of Bourne Vicinity, by Channing Howard-1937*.

The application and notices of public hearings relative thereto, the Commission's staff reports, exhibits and correspondence, the transcript and minutes of hearing and all written submissions received in the course of our proceedings including materials submitted on file #TR20066/EX20066 are incorporated into the record by reference.

JURISDICTION

The proposed Herring River Lots project qualifies as a DRI under Section 3(c) of the Code of Cape Cod Commission Regulations of General Application, Chapter A, as "development which proposes to divide parcel(s) totaling 30 acres or more...." This DRI Exemption is granted subject to Section 12(k) of the Cape Cod Commission Act, as amended.

TESTIMONY

A Subcommittee of the Cape Cod Commission held a public hearing at 7:00 p.m. on Tuesday, October 30, 2001 at the Bourne Memorial Community Building. The following is a summary of the testimony given.

The following people spoke in favor of the project in general and in favor of the Commission granting the DRI Exemption requested:

- Barry Johnson, Bourne Open Space Committee, DRI Application co-applicant
- Vicky Harding, property owner, DRI Application co-applicant and DRI Exemption Application applicant
- Coreen Moore, Bourne Town Planner
- Donald Ellis, Bourne Historical Commission
- Virginia Anderson, Bourne Open Space Task Force

Stacey Justus, Commission staff planner, summarized the Staff Report, which recommended that because the impacts of the proposed project are minor and that the project will not have significant regional impacts outside of the Town of Bourne, that the Subcommittee recommend granting the DRI Exemption request.

The Subcommittee continued the DRI Application hearing until November 15, 2001 and closed the DRI Exemption hearing. The Subcommittee voted unanimously to recommend to the Commission that the project be granted a DRI Exemption.

FINDINGS

The Commission has considered the application of Dana and Vicki Harding for a DRI Exemption regarding the proposed Herring River Lots project. Based upon consideration of such application, and information presented at the Public Hearing and submitted for the record, the Commission makes the following findings pursuant to Section 12(k) of the Act:

General

G1. The proposed project involves the subdivision of 41.41 acres of land into six (6) parcels as shown on the Definitive Subdivision Plan of Land, dated July 3, 2001. Four (4) parcels (of 3.20, 2.03, 1.93, and 1.85 acres) totaling 9.01 acres will be used for the construction of single family residential homes. The applicant proposes to place a conservation restriction on the parcel totaling 6.4 acres. The Town of Bourne, using the Land Bank Funds, will purchase the remaining 26-acre parcel for the purposes of preservation of open space, conservation and passive recreation.

G2. The proposed project qualifies as a DRI under Section 3(c) of the DRI Enabling Regulations as "development which proposes to divide parcel(s) totaling 30 acres or more...."

G3. The site is located in a designated single-family residential, 80,000 sq.ft. (R-80) zoning district in the Town of Bourne.

G4. This parcel is located within the boundaries of the Bournedale District of Critical Planning Concern (DCPC). In the Commission's Decision, dated September 24, 1998, recommending the establishment of the DCPC, the Commission found that Implementing Regulations should strive to protect the following goals and interests that are relevant to this project, including: protection of water quality within zones of contribution to public supply wells; protection of potential well areas; preservation of archaeological sites; protection of rare wildlife habitat and wetlands; maintenance of unfragmented forest habitat; and increasing the percentage of permanently protected open space.

G5. This development proposal and the purchase of the 26-acre parcel by the Town of Bourne are consistent with the goals and interests of the Bournedale DCPC. The open space purchase will permanently protect potential archaeological sites and rare wildlife habitat. It will also significantly increase the percentage of permanently protected open space in the DCPC area and will provide a critical link in the Town's effort to create an uninterrupted corridor of open space from Route 25 to Herring Pond.

G6. The Commission finds that the proposed Herring River Lots project will not have significant regional impacts outside of the Town of Bourne and, therefore, does not require DRI review of this project.

Historic and Archaeological Resources

H1. This parcel lies within an area designated as an Archaeologically Sensitive Area as shown on the map titled "Historic Resources within the Bournedale DCPC Work Map," dated July 15, 1998. Massachusetts Historical Commission (MHC) indicated that there is a known archaeological site adjacent to this project area and that it is located in a known "center for early historic period Native American populations, as well as ancient populations. Proximity to known archaeological sites is a strong indication that an area is likely to contain archaeological resources."

H2. Information submitted for the record at the 10/30/01 Public Hearing by the Bourne Historical Commission indicated that "[s]ubsequent to a study and review of all known records in the Town of Bourne Archives, and a visual ground survey, it was determined that no known archaeological Native American sites appears to have existed on this 14 acre parcel slated for four residential lots and additional open space." According to the map titled "Bournedale DCPC, Bournedale Historic Sites," dated January 27, 2000, the historic Megansett Trail does cross this

parcel, however it appears to be located to the west of most of the 9.01 acres that are proposed to become four single family residential lots.

H3. The Commission finds that the Town of Bourne Historical Commission can work with the project applicants to adequately protect the historic and archaeological resources on this project site.

Natural Resources

N1. This project site is located within the Herring River Area of Critical Environmental Concern and within a Significant Natural Resource Area, due to the presence of unfragmented forest, Potential Public Water Supply Area, existing public water supply Wellhead Protection Area, and rare species habitat. The Natural Heritage Atlas, 2000 – 2001 Edition maps a portion of this area as *estimated habitat for rare species*.

N2. Commission staff worked with the applicant and the Town of Bourne in locating the open space on this parcel. As presently configured, development is proposed well away from the Herring River and its associated wetlands, consistent with the requirements of Minimum Performance Standard (MPS) 2.3.1.2. In addition, the development is sited adjacent to existing development, and clustered away from sensitive resources, consistent with the interest of MPS 2.5.1.1. In addition, the proponents have indicated their intent to place a conservation restriction on the 6.4-acre parcel located adjacent to the river.

N3. The 26-acre lot already approved for acquisition by the Bourne Town Meeting totals 62.8% of the total parcel, or 0.9 acres less than what would be required if this project underwent DRI review. This open space is located adjacent to existing protected open space, consistent with MPS 2.5.1.2, and creating an extensive corridor of protected open space from Herring Pond to Route 25. The applicant's stated intent to place a conservation restriction on an additional 6.4 acres would more than satisfy the DRI open space requirement by raising the total project area as protected open space to 78%.

Water Resources

W1. The proposed project is partially located within a Wellhead Protection Area and a Potential Public Water Supply Area.

W2. Nitrogen loading from the project will remain below the 5 ppm standard (MPS 2.1.1.1) as long as each of the four proposed houses has nine (9) bedrooms or less.

W3. The Commission finds that, given the potential benefits of protecting undeveloped land within a Wellhead Protection Area and the likely minimal water quality impacts, this proposed

development will not have any significant impacts on water resources outside of the Town of Bourne.

Transportation

T1. Traffic generation from the Institute of Transportation Engineers (ITE) *Trip Generation* manual for Land Use Code 210 Single Family Detached Housing estimates the following trips for the four proposed house lots:

- 4 weekday evening and midday Saturday peak hour trips
- 38 weekday daily vehicle trips

T2. Since the excepted peak hour trip generation is below thresholds, the project meets MPS 4.1.1.1, which does not require review and analysis of development peak hour impacts if the regional roadway trips are less than 25 peak hour trips.

T3. Based upon the information stated above in findings T1. and T2., no regional traffic impacts are expected from the project.

CONCLUSION

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

As proposed, the location, character, and environmental effects of the proposed division of land will prevent its having any significant impacts on the values and purposes protected by the Act outside of the municipality in which the development is located.

The Commission hereby grants Dana and Vicki Harding a DRI Exemption from the terms and provisions of the Act, pursuant to Section 12(k) of the Act for the proposed subdivision of 41.41 acres of land in Bournedale, MA.

This Exemption decision is valid for three years from the date of issuance. In order for the applicants to retain the validity of this Exemption, they must, within the three -year period, obtain a certified Definitive Subdivision Plan of Land for this property from the Town of Bourne Planning Board. The layout and construction of the roadway, and the construction of any single

family house on one of the approved four lots does not have to occur within this three-year period in order for this Exemption decision to be valid.

Elizabeth Taylor
Elizabeth Taylor, Chair, Cape Cod Commission

11-15-01
Date

Commonwealth of Massachusetts

Barnstable, ss.

On this 15th day of November, 2001, before me personally appeared Elizabeth Taylor, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

Katharine L. Peters
Notary Public
Commonwealth of Massachusetts

My Commission expires:

