



CAPE COD COMMISSION

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E-mail: frontdesk@capecodcommission.org

DATE: August 14, 2003

TO: Attorney Kevin Kirrane
Shellback Way Realty Trust
133 Route 28, PO Box 560
Mashpee, MA 02649

FROM: Cape Cod Commission

RE: Development of Regional Impact
Cape Cod Commission Act, Sections 12 and 13

APPLICANT: Shellback Way Realty Trust
133 Route 28, PO Box 560
Mashpee, MA 02649

PROJECT #: DR-20005

PROJECT: Brynwood Associates subdivision
Route 151/Old Barnstable Road
Mashpee, MA

MAP/PARCEL: Map 73 parcels 47, 46, 30, 31; Map 66 parcel 107

LOT/PLAN: Book 5168, Page 216

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby procedurally denies without prejudice the application of Shellback Way Realty Trust, represented by Attorney Kevin M. Kirrane, as a Development of Regional Impact (DRI) pursuant to Sections 12 and 13 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the proposed Brynwood Associates subdivision at the intersection of Route 151 and Old Barnstable Road in Mashpee, MA. The decision is rendered pursuant to a vote of the Commission on August 14, 2003.

PROJECT DESCRIPTION

The project consists of a 7-lot subdivision on approximately 27 acres of commercially zoned land in Mashpee. The project site is located at the intersection of Route 151 and



Old Barnstable Road, with access proposed from both Route 151 and Old Barnstable Road.

PROCEDURAL HISTORY

The project, "Brynwood Associates," (preliminary subdivision plan) was referred to the Commission as a discretionary referral by the Town of Mashpee Planning Board on February 10, 2000. On February 17, 2000, the Commission voted to accept the referral as DRI. On April 13, 2000 a Hearing Officer opened the public hearing on the project at the Commission's office pursuant to Section 5 of the Act. On July 10, 2000, a Hearing Officer closed the hearing on the project and left the record open pursuant to Section 5 of the Act.

On September 11, 2000 the Town of Mashpee Planning Board referred the project "Brynwood Associates/Shellback Way" (definitive subdivision plan) to the Commission as a discretionary referral. On September 21, 2000 the Commission voted to accept the referral. On November 6, 2000 a Hearing Officer opened the public hearing on the project at the Commission's office pursuant to Section 5 of the Act. On February 1, 2001, a Hearing Officer closed the public hearing on the project and left the record open pursuant to Section 5 of the Act.

On March 15, 2001, an agreement was executed to consolidate the review of both projects as the same project, to be called "Brynwood Associates" and to be reviewed within the timeframe for "Brynwood Associates."

The applicant appealed Commission jurisdiction in Barnstable Superior Court in March 2000. Nine extensions to the 60 day decision period were granted to the following dates while litigation was pending: October 6, 2000; January 6, 2001; April 13, 2001; November 16, 2001; February 22, 2002; May 31, 2002; September 20, 2002; March 14, 2003; August 29, 2003.

At its regularly scheduled meeting on July 31, 2003, the Commission's Regulatory Committee voted to recommend to the full Commission that the project be procedurally denied.

A final public hearing was held before the full Commission on August 14, 2003. At this hearing, the Commission voted unanimously to procedurally deny the project.

Materials submitted for the record

From the applicant:

- Extension fee waiver request from Attorney Kevin Kirrane

Date received:

August 15, 2002

From Cape Cod Commission:

- Letter to Michael Dunning re: referral
- Memorandum/Staff Report
- Letter to Michael Dunning re: DRI notification
- Memo to subcommittee re: hearing time/place
- Memo to subcommittee re: pro-forma hearing

Date sent:

February 11, 2000

February 11, 2000

February 24, 2000

March 13, 2000

March 22, 2000

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- Letter to Kevin Kirrane re: closing of hearing June 21, 2000
- Letter to Kevin Kirrane re: extension agreement June 27, 2000
- Memo to Regulatory Committee re: extension July 5, 2000
- Letter to Kevin Kirrane re: procedural denial July 26, 2000
- Letter to Kevin Kirrane re: extension August 22, 2000
- Memo to Commission members re: discretionary referral of definitive subdivision plan September 15, 2000
- Letter to Kevin Kirrane re: referral September 20, 2000
- Letter to Kevin Kirrane re: DRI notification September 27, 2000
- Letter to Kevin Kirrane re: extension November 21, 2000
- Letter to Kevin Kirrane re: extension December 4, 2000
- Letter to Kevin Kirrane re: request to consolidate referrals February 13, 2001
- Letter to Kevin Kirrane re: extension July 9, 2001
- Letter to Kevin Kirrane re: extension September 27, 2001
- Letter to Kevin Kirrane re: extension December 31, 2001
- Letter to Kevin Kirrane re: extension April 1, 2002
- Letter to Kevin Kirrane re: extension July 23, 2002
- Letter to Kevin Kirrane re: extension January 6, 2003
- Letter to Kevin Kirrane re: extension July 15, 2003
- Memo to Regulatory Committee re: procedural denial July 25, 2003

From state/local officials

- Discretionary referral
- Discretionary referral

Date received:

- February 15, 2000
- September 11, 2000

From the public:

- Letter in opposition, Stephen Connolly, Falmouth Housing Trust

Date received:

- August 8, 2003

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

TESTIMONY

No testimony was provided on this project. Hearing Officers opened and closed hearings.

JURISDICTION

The proposed project is subject to Commission jurisdiction based on the Commission's acceptance of the discretionary referral(s) of the project from the Mashpee Planning Board pursuant to Section 12(e) of the Act.

FINDINGS

The Commission has considered the application of Shellback Way Realty Trust for the proposed Brynwood Associates subdivision in Mashpee, MA, and based on consideration of such application, and submitted for the record, makes the following findings pursuant to Sections 12 and 13 of the Act:

1. The project is subject to Cape Cod Commission jurisdiction under Section 12(e) of the Act.
2. On February 10, 2000 the Commission received a discretionary DRI referral of the project from the Mashpee Planning Board. The Commission voted on February 17, 2000 to accept the referral as a DRI.
3. On March 16, 2000 the applicant's attorney filed a complaint in Barnstable Superior Court appealing the Commission's decision to accept the discretionary referral.
4. The extended timeframe for the Commission's decision on the project ends on August 29, 2003.
5. The applicant has not submitted a completed DRI application, thereby providing no information on which to conduct a substantive hearing, or on which to base a decision by the Commission.

CONCLUSION

The Commission hereby procedurally denies without prejudice the application of Shellback Way Realty Trust for the proposed Brynwood Associates subdivision as a Development of Regional Impact. This denial is rendered pursuant to Sections 12 and 13 of the Act, c. 716 of the Acts of 1989, as amended.

This conclusion is supported by the finding that the applicant failed to comply with the procedures of the Commission Act and Commission regulations requiring submission of a completed DRI application.

Susan Kadar
Susan Kadar, Cape Cod Commission Chair

Aug 14, 2003
Date

Commonwealth of Massachusetts

Barnstable, ss,

On this 14th day of August, 2003, before me personally appeared Susan Kadar, 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

My Commission expires:

