



CAPE COD COMMISSION

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E-mail: frontdesk@capecodcommission.org

DATE: March 4, 2004

TO: John R. Alger, P.C.
5 Parker Rd., PO Box 449
Osterville, MA 02655

FROM: Cape Cod Commission

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

APPLICANT: Wianno Club
PO Box 249
Osterville, MA 02655

PROJECT #: EX03023

PROJECT: Wianno Club
West Bay Road
Osterville, MA 02655

Lot/Plan: Land Court Certificate #14421A

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby grants the application of the Wianno Club for a Development of Regional Impact (DRI) Exemption pursuant to Section 12k of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the division of 9000 square feet of land from a 36.5± acre parcel. This decision is rendered pursuant to a vote of the Commission on March 4, 2004.

PROJECT DESCRIPTION

The project site consists of a 36.5± acre parcel owned by the Wianno Club. The applicant is seeking to convey ownership of a 9000 s.f. portion of this parcel to the abutting property owner,

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thereby reconfiguring the lot lines of the 36.5 acre parcel such that it "gives" the 9000 s.f. piece to the abutting property. The applicant has stated that the reason for seeking the lot division is because the abutting property (a boat yard) has historically been using the 9000 s.f. area for boat storage, and both parties therefore wish to transfer its ownership for legal reasons.

PROCEDURAL HISTORY

The applicant submitted a DRI Exemption application to the Commission on December 19, 2003 and the application was deemed complete on January 7, 2004. A duly noticed public hearing was conducted by the Commission pursuant to Section 5 of the Act by an authorized subcommittee of the Commission on February 5, 2004 at the Cape Cod Commission offices. The hearing was continued to February 17, 2004, where it was closed, with the record left open for submission of written materials until March 4, 2004.

At the February 17, 2004 public hearing, the subcommittee recommended that the project be granted a DRI Exemption. A final public hearing was held before the full Commission on March 4, 2004. At this hearing, the Commission voted unanimously to grant the DRI Exemption.

Materials submitted for the record

From the applicant:

	<i>Date received:</i>
• DRI application	12/19/03
• Certified abutters list	12/23/03
• Letter re: item 5 on DRI application form	12/31/03
• Confirmation of filing with Town Clerk	1/8/04
• More detailed site plan	2/5/04
• Cover letter and copy of purchase & sales agreement	2/10/04
• Cover letter and purchase & sales extension agreement	2/20/04

From the Commission:

	<i>Date sent:</i>
• Letter to Richard L'Heureux re: DRI application	1/7/04
• Staff report	1/21/04
• Subcommittee memo re: public hearing	1/21/04
• Memo to subcommittee re: update	2/11/04
• Cover memo to subcommittee re: decision	2/20/04

From state/local officials:

• Memo from Tom Broadrick re: decision	3/3/04
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From the public:

No submissions received

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

The subcommittee heard oral testimony at the February 5, 2004 and February 17, 2004 public hearings. On February 5, Richard L'Heureux gave an overview of the project on behalf of the applicant. He explained that the abutting Crosby Boat Yard historically has been storing boats on a portion of the Wianno Club property and that both parties agreed to convey ownership of this land (about 9000 s.f.) so that the boats would be within the boatyard and no longer on Wianno Club property. He said that no change in activity would occur with this lot change and that he saw no regional impacts associated with it.

Martha Hevenor presented the staff report. Seeing no significant impacts to regional resources the staff recommended approving the exemption request. The subcommittee focused its questions on potential for intensification or expansion of boat service with the additional 9000 s.f. and requested documentation of the applicant's assertion that buildings and structures would be prohibited on this land, as well as clarification on whether the land was within a zone of contribution. Raymond Lang, Barnstable Planning Board Chair, noted that he had some concerns about the boatyard's encroachment into the residential zone.

At the February 17 public hearing, Martha Hevenor noted that the applicant had provided a purchase and sales agreement stating that the land would be conveyed with a restriction to prohibit additional structures on it. She also noted that the project is not located within a zone of contribution and explained that under the town's zoning bylaw, the marine use can extend 30 feet into the residential zone. The subcommittee asked the applicant to provide a copy of the extension to the purchase & sales agreement and for documentation to show that the restriction on buildings will be recorded as a deed restriction. They recommended granting the DRI Exemption subject to receiving this information.

JURISDICTION

The proposed Wianno Club division of land qualifies as a Development of Regional Impact (DRI) under Section 3(e) of the DRI Enabling Regulations as a "development which proposes to divide 30 acres or more of land in common ownership..."

FINDINGS

The Commission has considered the application of the Wianno Club for the proposed division of 9000 s.f. from a 36 acre parcel and based on consideration of such application and upon the information presented at the public hearings and submitted for the record, makes the following findings pursuant to Section 12(k) of the Act:

General

G1. The project as proposed consists of a division of land and does not entail any construction or other development activity on this land that would result in additional trip generation. As such, the project does not present significant traffic impacts.

G2. The project site is not located within a mapped Significant Natural Resources Area or a Wellhead Protection Area under the Regional Policy Plan. Given its location outside of these areas, the project does not present significant impacts to natural resources or water resources.

G3. The applicant submitted a purchase and sales agreement stating that the 9000 s.f. would be conveyed with a deed restriction prohibiting the location of any additional buildings or structures on the land.

CONCLUSION

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

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

The Commission hereby grants the Wianno Club a DRI Exemption from the terms and provisions of the Act, pursuant to Section 12(k) of the Act for the proposed division of 9000 s.f. from a 36.5± acre parcel in Osterville, MA.

Susan Kadar
Susan Kadar, Chair

March 9, 2004
Date

Commonwealth of Massachusetts
County of Barnstable

On this 9th day of March, 2004, before me, the undersigned notary public, personally appeared Susan Kadar, proved to me through satisfactory evidence of identification, which were MA Drivers License, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Katharine L. Peters
Notary Public
Commonwealth of Massachusetts

My Commission Expires:

