



CAPE COD COMMISSION

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Date: March 3, 2005

To: Mr. Jonathan Fitch, Esq.
MacNeill & Fitch
88 Route 6A
PO Box 549
Sandwich, MA 02563

From: Cape Cod Commission

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

Applicant: Mr. Ben and Mrs. Lucille Fleet
10 Fleetwood Road
E. Sandwich, MA 02537

Project: Fleet Property, 12 Marshview Circle, E. Sandwich, MA

Project #: EX # 05003

Book/Page: Book 656, Page 55; Sandwich Assessor's Map 62

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby grants a Development of Regional Impact (DRI) Exemption request of Mr. and Mrs. Ben Fleet, owners of the Fleet property in E. Sandwich, MA pursuant to Sections 12 (k) of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended for the proposed Fleet Property subdivision (Project). The decision is rendered pursuant to a vote of the Commission on March 3, 2005.

PROJECT DESCRIPTION

The proposed Project is located on an approximately 74.44 -acre parcel of land at 12 Marshview Circle in E. Sandwich, MA. The property consists of marsh, wetlands, meadow and upland surrounding Carver Creek and Scottys Creek, and abuts the Cowes River. The Project subdivides

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the property into three lots, Parcel A at approximately 29.44 acres, Parcel B at 41+ acres, and Parcel C at 3.12 acres. The Applicant is considering placing conservation restrictions on the two larger parcels, and utilizing Parcel C as a building lot. Parcel A is not a buildable lot as it lacks road frontage and falls within designated wetland and salt marsh. A southeast portion of Parcel C also falls within wetland boundaries. Should the Applicant decide to subdivide or develop Parcel B in the future, that proposal would return to the Commission as a mandatory DRI, as it meets the DRI development threshold for subdivision of land over 30 acres in size.

PROCEDURAL HISTORY

The Project was referred as a DRI to the Commission by the Sandwich Planning Board on September 10, 2004 and was received by the Commission on September 10, 2004 and filed under project # TR/EX 04018. DRI and DRI Exemption applications were submitted by the applicant on October 7, 2004. A hearing was conducted pursuant to Section 5 of the Act by a duly appointed subcommittee on November 1, 2004 at the Sandwich Town Offices, and continued.

The DRI Exemption request was withdrawn by the applicant on December 7, 2004 under project # 04018. The DRI hearing was closed by the Commission on January 20, 2005, and the record left open. A DRI Exemption request was re-submitted on January 27, 2005 and assigned project number EX # 05003. A duly noticed hearing was opened by the subcommittee on February 17, 2005, and continued to March 3, 2005. At a meeting following the February 17, 2005 hearing the subcommittee voted unanimously to recommend an approval of the exemption request by the full Commission. On March 3, 2005 the full Commission voted unanimously to approve the DRI Exemption.

Materials Submitted for the Record

Materials submitted by the Applicant:

- DRI Exemption request dated January 7, 2005
- Withdrawal of DRI Exemption request dated December 7, 2004
- Letter from the Massachusetts Historical Commission December 2, 2004
- Filing with Natural Heritage & Endangered Species, December 2, 2004
- DRI and DRI Exemption Applications, October 10, 2004.
- Plan of Land for Marshview Circle prepared by David C. Thulin, PE, dated July 15, 2004, and signed by the engineer August 7, 2004.
- Natural Resources Inventory prepared by Vaccaro Environmental Consulting, March, 2004.

Materials submitted by the state:

- Letter from Jenna Garvey, Natural Heritage and Rare Species Program dated December 10, 2004 via facsimile.

Materials submitted by the Town:

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- E-mail from Jo Anne Miller-Buntich dated October 28, 2004.
- E-mail from Jo Anne Miller-Buntich dated October 19, 2004.
- Referral from the Town of Sandwich Planning Board, September 10, 2004.

Materials submitted by Cape Cod Commission:

- Memo to the subcommittee from M. Twombly dated January 30, 2005
- Letter to the applicant from M. Twombly dated December 28, 2004.
- Letter from M. Twombly to J. Fitch dated December 28, 2004
- Hearing Minutes from November 1, 2004 public hearing.
- Staff report dated October 25, 2004.
- Fax from M. Twombly to J. Fitch dated October 25, 2004
- Fax from M. Twombly to Jonathan Fitch dated October 22, 2004 regarding filing with Natural Heritage for a rare species habitat determination.

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, and filed under project # TR/EX 04018 and EX 05003, are incorporated into the record by reference.

TESTIMONY

Hearing #1- November 1, 2004

Mr. Jonathan Fitch, attorney for the applicant, described the current proposal for the division of an approximately 74-acre property into three lots, parcels A and B which would not be developed, and parcel C which would be a 3+-acre building lot. He noted that Parcel A (approximately 29.44 acres) is salt marsh and is also not "developable" as it has no road frontage. Mr. Fitch said that the family planned to preserve Parcel B (approximately 41 acres) as open space, but if it was to be subdivided in the future, it would be a mandatory referral to the Commission because of the size. He noted that the Fleet family is entertaining options for open space preservation on Parcels A and B with the town and other entities.

Martha Twombly noted that the property fell inside the Old King's Highway historical district, but that this development proposal would be allowed in that district, and would be consistent with the local comprehensive plan according to the Sandwich town planner.

Heather McElroy said that the Natural Heritage Atlas indicated that a portion of Parcel C, the parcel reserved for development, extended into rare species habitat. She recommended that the Applicant file with Natural Heritage for a determination of the presence of rare species and the boundaries of the rare species habitat, or alternatively if the lot line were moved outside the rare species habitat area a DRI exemption would then be recommended by staff.

Public Testimony

Mr. Alan Jewett, a neighbor, asked whether any development would occur on four or five parcels adjacent to Parcel C, also owned by Mr. Fleet. Mr. Fleet answered that they would not be developed, but may be used to park cars, allow walking access to the open space, or possibly for purchase by the schools for an outdoor classroom. Mr. Jewett suggested that no parking lot be put near existing houses.

Mr. Robert Sprague, an adjacent homeowner, was concerned about the endangered species. He asked about the possibility of reducing the lot size of Parcel C.

Mr. Fitch noted that protection of endangered species will occur when the project goes before the local Conservation Commission, and would like a continuance to work out issues raised by Mr. Jewett and Mr. Sprague.

Ms. McElroy would like to work out the rare species habitat issue prior to the subcommittee making a recommendation.

Hearing #2 – February 17, 2005

Ms. Twombly explained that the applicant had withdrawn the DRI exemption request until the Natural Heritage and Endangered Species Program (NHESP) made a determination on the presence of rare species as mapped. There was no public testimony at the hearing. As soon as the NHESP determined no impact to rare species was likely, the applicant re-filed the DRI Exemption application. With that determination staff recommended that the subcommittee vote to recommend an approval of the DRI exemption to the full Commission.

Jo Anne Miller-Buntich, Development Director for the town of Sandwich, stated that she believed the project did not have regional impacts.

There was no public testimony given.

JURISDICTION

The proposed Fleet Property subdivision qualifies as a Development of Regional Impact (DRI) under Section 3 (c) of the DRI Enabling Regulations as division of land greater than 30 acres.

FINDINGS

The Commission has considered the application of Mr. and Mrs. Fleet for the proposed subdivision of land, and based on consideration of such application and upon the information presented at the public hearing(s) and submitted for the record, makes the following findings pursuant to Sections 12 (k) of the Act:

Findings:

- 1** The proposed Project will consist of division of land into three parcels, A, B, and C. Parcel A at approximately 29.44 acres is not “developable”, Parcel B of approximately 41

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- acres will stay in the ownership of the Fleet Family, who have entered into discussions about placing a conservation restriction on the property in the future. Parcel C is to be reserved for development of a single family home, and is 3.12 acres.
- 2 Based on an October 19, 2004 e-mail from the Sandwich development director, the Project is consistent with local zoning.
 - 3 The site is mapped Significant Natural Resource Area due to the presence of unfragmented forest, wetlands, and rare species habitat. The northern portion of the site, including the northeast segment of Parcel C, is mapped as estimated habitat for rare or endangered species according to the Natural Heritage Atlas, 11th edition.
 - 4 The natural resources inventory (NRI) submitted for the project is consistent with RPP requirements, though the NRI only covers Parcels A and C. The wetlands line has been delineated and approved by the Sandwich Conservation Commission.
 - 5 Parcel C is the only parcel proposed for possible development at this time, and possible further development or subdivision of Parcel B (other than development of one single family home) would require additional Cape Cod Commission DRI review as it would meet the mandatory DRI threshold of subdivision of 30+ acres. Parcel A is almost entirely wetlands, and consequently not suitable for development.
 - 6 Parcel C is mostly upland, though it borders on salt marsh on its north side and on freshwater red maple swamp on its east side. Parcel C is slightly greater than 3 acres, providing more than adequate upland to accommodate a single family residence and associated facilities, while avoiding disturbance of the 100 ft buffer to wetlands.
 - 7 The Natural Heritage and Endangered Species Program has provided comments indicating that the development of a single residential dwelling on Parcel C would not adversely affect state listed rare species or their habitats. Consequently, the Commission finds that development on Parcel C will not impact resources of regional significance. The Natural Heritage Program does recommend siting development on Parcel C outside of the wetland resource areas and buffer zones.
 - 8 A potential vernal pool located off the southeast corner of the site was identified by the field biologists preparing the NRI. No activity is proposed on Parcel B at this time.
 - 9 The applicants intend to permanently protect Parcels A and B, Parcel B containing significant upland area.
 - 10 The proposed Project is located in the Old King's Highway historic district. The Massachusetts Historical Commission has determined that the Project is unlikely to affect significant historic or archaeological resources. The Sandwich Planner has stated that the proposal is consistent with historic landscapes in the Old King's Highway district.
 - 11 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:

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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 Mr. and Mrs. Benjamin Fleet, a DRI Exemption from the terms and provisions of the Act, pursuant to Section 12(k) of the Act for a 3-lot subdivision of a 74.44 acre parcel in Sandwich, MA. This exemption decision shall be valid for three (3) years and its scope shall be strictly construed.

David J. Ansel
David Ansel, Chair

3/11/05
Date

Commonwealth of Massachusetts
County of Barnstable

On this 11th day of March, 2005, before me, the undersigned notary public, personally appeared David J. Ansel, proved to me through satisfactory evidence of identification, which were personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Gail P. Hanley
Notary Public
Commonwealth of Massachusetts

My Commission Expires: October 13, 2011