



# CAPE COD COMMISSION

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Date: November 13, 2008

To: Eliza Cox  
Nutter McClennen & Fish, LLP  
PO Box 1630  
Hyannis, MA 02601-1630

From: Cape Cod Commission

RE: District of Critical Planning Concern (DCPC)  
Hardship Exemption  
Cape Cod Commission Act, Section 23

Applicant: Thomas and Mary Capizzi  
1010 Craigville Beach Road  
Centerville, MA 02632

Project: Capizzi Widow's Walk, 1010 Craigville Beach Road, Centerville

Project #: HDEX # 08012

Lot/Plan#: Lots 3 & 5 on LCP 181621  
Land Court Certification #: 177710

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## DECISION OF THE CAPE COD COMMISSION

### SUMMARY

The Cape Cod Commission (Commission) hereby approves the Hardship Exemption (the "Project") application of Thomas and Mary Capizzi for the construction of a roof deck atop an existing two-story residence at 1010 Craigville Beach Road in Centerville, MA pursuant to Section 23 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended. The decision is rendered pursuant to a vote of the Commission on November 13, 2008.

### PROJECT DESCRIPTION

The property at 1010 Craigville Beach Road is roughly one acre, and is set back from Craigville Beach Road approximately 350 feet, backing up to the Centerville River. An existing residence



is on the site, with the original 1 1/2 story portion construction circa 1950 comprising approximately 1,410 square feet, and a recently completed two-story addition comprising approximately 1,600 square feet. The two-story addition has a flat roof measuring roughly 20 x 30 feet where the roof deck is proposed. Main support posts for the roof deck railing are already in place, having been installed along with the roof structure. The railing and an exterior stair to access the roof deck have not been constructed. The Applicant is seeking an exemption to the limited moratorium on building permits, which was established by the creation of the Centerville Village/Craigville Beach District of Critical Planning Concern (DCPC).

### **PROCEDURAL HISTORY**

The applicant filed a Hardship Exemption application from the Craigville Beach DCPC on July 3, 2008, with supplemental application materials submitted on August 14, 2008 and September 4, 2008. A duly noticed public hearing was held on October 20, 2008 in the Barnstable Town Hall hearing room, Hyannis, MA by a subcommittee of the Commission. During the hearing, the subcommittee voted unanimously to recommend to the full Commission that the Project be granted a Hardship Exemption.

A final public hearing was held before the full Commission on November 13, 2008, during which the Commission voted unanimously to approve the Hardship Exemption.

### **MATERIALS SUBMITTED FOR THE RECORD**

#### ***By Applicant:***

- Hardship Application dated July 3, 2008 and associated application materials
- Memo from Patrick Butler dated August 14, 2008, with supplemental application materials and photographs
- Memo from Patrick Butler dated September 3, 2008, re: additional explanation of hardship
- Petition in support of the project signed by 22 abutters, presented on October 20, 2008

#### ***By Commission Staff:***

- Staff Report dated October 16, 2008.
- Letter from Sarah Korjef to Eliza Cox dated July 17, 2008, re: additional information needed

#### ***By Town:***

- Email from JoAnne Miller Buntich dated July 15, 2008, re: photos of subject property

#### ***By Public:***

- Letter from Janice Steeves dated October 15, 2008, re: noise concerns

The application and notices of public hearings relative hereto, exhibits and correspondence, the transcript and minutes of meetings and hearings and all written submissions received in the course of its proceedings are incorporated into the record by reference.

## TESTIMONY

The Commission received testimony at the October 20, 2008 public hearing from the following:

Patrick Butler, representing the Applicant, stated that his client's project meets the criteria for a Hardship Exemption. He noted that in June 2007 Mr. Capizzi began the process of applying for an addition to his house. Mr. Butler described the history of the permit process and the establishment of the Craigville Beach DCPC, noting that the applicant's plans for a roof deck on the addition were submitted to the Barnstable Building Commissioner in November 2007, several months before the DCPC nomination, but were not immediately approved because of questions as to whether zoning relief would be required. He noted that the structural supports had already been put in place, and that Mr. Capizzi has not been able to get a final Certificate of Occupancy because of the incomplete roof deck. Mr. Butler also noted that the proposed height of the deck railing would be well below the height of several other structures in the neighborhood. Mr. Butler submitted a petition with signatures from neighbors in support of the project. He stated that the project does not derogate from the purposes of the Commission Act.

Sarah Korjeff, Commission planner, explained why the project was before the Cape Cod Commission, noting the development permit moratorium in effect under the Craigville Beach DCPC. Ms. Korjeff described the Commission's Hardship Exemption process. She stated that the Capizzi's hardship argument is based on the fact that they applied for permits for the roof deck months before the DCPC was nominated and that they were held up due to an incorrect determination that the proposed deck would require zoning relief. Ms. Korjeff stated that the proposed roof deck would not exceed the average height of buildings in the neighborhood, and was unlikely to make the building significantly more visible from public areas. She stated that because of the modest height and bulk of the structure, the addition is unlikely to have a significant impact on community character and, as such, does not represent a substantial detriment to the public good or nullify or substantially derogate from the intent of the Act or the DCPC.

Ms. JoAnne Miller Buntich, Assistant Director of Growth Management, Town of Barnstable, stated her support for the project and her belief that it does not impact the resources the DCPC is designed to protect. She noted that properties on the north side of the Centerville River are a higher elevation and their view isn't impacted by the project.

## JURISDICTION

The Project is located within the boundaries of the Craigville Beach DCPC, which was submitted by the town of Barnstable on February 12, 2008, nominated by the Cape Cod Commission for designation as a DCPC on April 3, 2008, and adopted by the Barnstable County Assembly of Delegates on May 21, 2008. The Project is not specifically exempt from the limited moratorium on development permits, which is currently in effect as part of the DCPC.

## FINDINGS

The Commission has considered the application of Thomas and Mary Capizzi for the proposed Project, and based on consideration of such application and upon the information presented at the

public hearing and submitted for the record, makes the following Findings pursuant to Section 23 of the Act:

**General Findings:**

- G1.** The property at 1010 Craigville Beach Road is roughly one acre, and is set back from Craigville Beach Road approximately 350 feet, backing up to the Centerville River. An existing residence is on the site, with the original 1 1/2-story portion constructed circa 1950 comprising approximately 1,410 square feet, and a recently completed two-story addition comprising approximately 1,600 square feet. The two-story addition has a flat roof measuring roughly 20 x 30 feet where the roof deck is proposed. Main support posts for the roof deck railing are already in place, having been installed along with the roof structure. The railing and an exterior stair to access the roof deck have not been constructed.
- G2.** The Craigville Beach DCPC was nominated by the Town of Barnstable on February 12, 2008, and accepted by the Cape Cod Commission on February 21, 2008. The proposed project is within the boundaries of this DCPC.
- G3.** Pursuant to Section 11 of the Commission Act, a moratorium on building permit issuance was established for the Craigville Beach DCPC and will remain in effect until the town adopts implementing regulations for the area. Properties within the DCPC became subject to the moratorium on February 15, 2008, when notice of the nomination for consideration of the DCPC area was published in the Cape Cod Times. A limited moratorium on development permits within the DCPC began on February 21, 2008 when the Commission accepted the town's nomination for consideration.
- G4.** The proposed Project is consistent with the existing local zoning and the Barnstable Local Comprehensive Plan, and will require a building permit from the Barnstable Building Department.
- G5.** In November 2007, the Applicant attempted to secure a building permit from the town but was prevented from doing so due to uncertainty about whether the proposed roof deck would require zoning relief. The town ultimately determined that no zoning relief was needed in February 2008, after the DCPC nomination had been submitted and the building permit moratorium had begun.
- G6.** The Applicant has fulfilled its burden to show that any additional delay in proceeding due to the limited building permit moratorium would involve a substantial hardship. The Applicant has demonstrated a financial hardship in terms of the monies spent in architectural drawings and in the construction and installing of roof deck support posts. The Applicant has also stated that they were prevented from receiving a final Certificate of Occupancy for their two-story addition because this work is incomplete. The Commission finds that a literal enforcement of the provisions of the Cape Cod Commission Act would involve substantial hardship both financial and otherwise.

- G7.** As demonstrated through the project's consistency with the applicable minimum performance standards of the Regional Policy Plan described below, a Hardship Exemption may be granted to the Applicant without nullifying or substantially derogating from the intent or purpose of the Act, and without substantial detriment to the public good.

**Community Character Findings:**

- CC1.** The proposed residence is sited well back from Craigville Beach Road and backs up to the Centerville River. The original building on the site is a low, 1 1/2-story structure, approximately 20 feet in height at its highest point. A cluster of six similar structures is grouped together on an adjoining lot between the Capizzi property and Craigville Beach Road. These structures are typical of the small beach cottages found in this area and are among the lowest height structures in this portion of the DCPC.
- CC2.** In 2007, prior to establishment of the DCPC, a 2-story flat roofed addition with a height of approximately 25 feet was built at the property. Though the addition is more massive than the original structure due to its flat roof, the modest height increase of roughly 5 feet is consistent with the character of the surrounding neighborhood. The proposed roof deck and associated railing would increase the height of the 2-story structure by approximately 3 additional feet.
- CC3.** When the Craigville Beach DCPC was established, community character concerns were identified, noting that the siting and massing of redeveloped residences could affect the historic character of the area, and viewsheds to Nantucket Sound may be lost. The proposed project is set well back from Craigville Beach Road, and does not block public views of the water. It will not block views to Nantucket Sound from properties on the other side of the Centerville River because of its relatively low building height and narrow profile, and because it is sited at a lower elevation than properties across the river.
- CC4.** The subject property is visible from some public areas in the DCPC, including portions of Craigville Beach, Craigville Beach Road, and open areas along the Centerville River. Given the siting and massing of the existing structure, the modest increase in height of the proposed roof deck is still consistent with the character of the area and will not have a significant impact on community character in the DCPC.

**CONDITIONS**

- G1.** The project shall be constructed in accordance with plans prepared by Sharon Malone-Johnson and titled "Addition Plans for Tom and Mary Capizzi," dated September 1, 2005, revised June 14, 2006, and revised August 24, 2007.
- G2.** Prior to receiving a temporary or Final Certificate of Occupancy from the Town of Barnstable, the Applicant shall obtain a Final Certificate of Compliance from the Commission which states that all conditions in this decision pertaining to issuance of a building permit have been met.

G3. The Applicant shall provide the Commission with a minimum of 30 days notice prior to seeking issuance of the certificate associated with this decision.

CONCLUSION

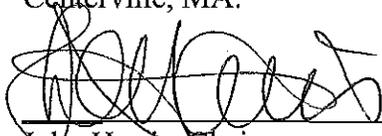
Based on the Findings above, the Commission hereby concludes:

1.) The Applicant has demonstrated that a hardship exists in conforming with the requirements of the Craigville Beach DCPC and a literal enforcement of the provisions of the Act would involve additional delays that would represent financial and personal hardships to the Applicant, and

2.) That relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.

The relief granted relates directly to the nature of the identified hardship and is the minimum necessary to address the hardship.

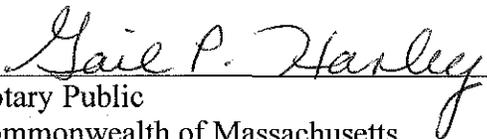
The Cape Cod Commission hereby approves the application of Thomas and Mary Capizzi as a Hardship Exemption from the Craigville Beach DCPC pursuant to Section 23 of the Act, c. 716 of the Acts of 1989, as amended, for the proposed roof deck at 1010 Craigville Beach Road, Centerville, MA.

  
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John Harris, Chair

Nov 13 2008  
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Date

Commonwealth of Massachusetts  
County of Barnstable

On this 13 th day of November 2008, before me, the undersigned notary public, personally appeared John Harris, 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.

  
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Notary Public  
Commonwealth of Massachusetts

My Commission Expires: 10/13/11