



## CAPE COD COMMISSION

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Date: December 1, 2005

To: Lois Ann Demko

From: Cape Cod Commission

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

Applicant: Lois Ann Demko  
2653 Main Street  
PO Box 1191  
Barnstable, MA 02630

Project: 2653 Main Street, Barnstable, MA home expansion

Project #: HDEX # 05029

Book/Page: Map 258, Parcel 043

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### **DECISION OF THE CAPE COD COMMISSION**

#### **SUMMARY**

The Cape Cod Commission (Commission) hereby approves the Hardship Exemption (the "Project") application to the Pond Village District of Critical Planning Concern (DCPC) limited moratorium of Lois Ann Demko for a 600 square foot (sf) home expansion at 2653 Main Street in Barnstable, 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 December 1, 2005.

#### **PROJECT DESCRIPTION**

The Hardship Exemption application describes the property as a .51 acre lot at 2653 Main Street in Barnstable, MA on the south side of Route 6A. It currently includes a 600 sf cottage, and has a

Hardship Exemption Decision – Ms. Lois Ann Demko  
Barnstable, MA  
December 1, 2005

Title-5 septic system that was installed at the time the owner purchased the property in 2002. Ms. Demko proposes to expand her 600 sf cottage to 1200 sf for the addition of one bedroom and one bathroom. Ms. Demko is seeking an exemption to the limited moratorium on building permits which was established by the acceptance of the Pond Village DCPC by the Cape Cod Commission.

### **PROCEDURAL HISTORY**

The applicant filed a Hardship Exemption application from the Pond Village DCPC on November 3, 2005. The application was deemed complete on November 16, 2005.

A duly noticed public hearing was held on November 28, 2005 at the Cape Cod Commission offices in Barnstable, MA. Following 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 December 1, 2005. At this hearing the Commission voted 8 to 2, with 2 abstentions, to approve the Hardship Exemption.

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

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

- Hardship Application dated November 3, 2005
- Letter dated November 4, 2005; copy of Order of Conditions from the Barnstable Conservation Commission dated October 25, 2005; Quitclaim deed
- Email dated November 5, 2005
- Email dated November 16, 2005
- Email dated October 31, 2005
- Site plan dated August 23, 2005 by Arne H. Ojala, Down Cape Engineering, Inc.
- Copy of Certificate of Appropriateness from the Old Kings Highway Regional Historic District Committee dated September 14, 2005
- Statement of account and copies of invoices from Northside Design Associates dated November 4, 2005
- Site Plans and elevations A.O, A.1, A.2, A.3, and S.1 from Northside Design Associates dated October 17, 2005

#### ***By the Town of Barnstable***

- Parcel map

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

- Staff Report dated November 16, 2005

#### ***By Interested Parties:***

- Email from Edie Vonnegut Squibb and John Squibb dated November 15, 2005

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 Commission received testimony at the November 28, 2005 public hearing from the following:

Ms. Twombly explained that Ms. Demko was before the Commission to request a hardship exemption from the Pond Village DCPC, which has a limited moratorium in effect. Ms. Twombly stated that Ms. Demko had expended approximately \$ 15,000.00 and was well along in her design and permitting process when the DCPC was nominated by the Commission, and that she would experience family and financial hardship if she could not initiate ground breaking soon.

Martha Twombly described the proposed Project as a home expansion from a 600 square foot (sf) cottage, to a 1200 sf home, adding one bedroom and one bathroom. She noted that the septic system was replaced in 2002 with a Title V system for three bedrooms. Ms. Twombly explained that the Pond Village DCPC was nominated in two phases to protect water quality in Hinkley's Pond and to protect community character. The second DCPC nomination included properties within the 300' boundary to Hinkley's Pond, thereby picking up Ms. Demko's property. She noted that Ms. Demko's septic system was well outside of the 300' boundary to Hinkley's Pond.

Regarding community character, Ms. Twombly pointed out that the design was consistent with the existing cottage, with a pitched roof, architectural details, and clapboard exterior. She said that the staff recommended granting the hardship exemption.

Ms. Demko stated that she had purchased the cottage with intentions of expanding it when she could raise the money, and had taken out a home equity loan in early 2005 for the purpose of designing and building the addition. She said she was aware of the first Pond Village DCPC and had received notice of it. She said that in speaking with town representatives she was assured it did not affect her property. She wasn't aware of the second Pond Village DCPC nomination.

Barnstable Planning Director Tom Broadrick said that the town recognizes when an individual has been expending funds and moving through the development process. He said that the town supports the hardship exemption to the DCPC moratorium for this Project.

### **JURISDICTION**

The Project is located within the boundaries of the Pond Village DCPC, which was nominated by the Cape Cod Commission for designation as a DCPC on September 15, 2005. The Project is not exempt from a limited moratorium on all building permits, which is currently in effect as part of

the DCPC, as the proposed expansion includes more than 25% of the floor area of the existing home.

### FINDINGS

The Commission has considered the application of Ms. Demko 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 proposed 2653 Main Street, Barnstable, MA Project is a 600 sf expansion of an existing 600 sf residential home to add one bedroom and one bathroom on a .51-acre property.
- G2.** The Project will be built in accordance with the following plans: Site Plans and elevations A.O, A.1, A.2, A.3, and S.1 from Northside Design Associates dated October 17, 2005.
- G3.** The Project is consistent with local zoning and the Barnstable Local Comprehensive Plan, and will require a building permit from the Barnstable Building Department.
- G4.** The Applicant has expended \$15,800.00 for a Title-5 septic system in 2002, and approximately \$6,446.00 in design and permitting fees prior to the nomination of the DCPC, and planned to begin construction in November 2005.
- G5.** Ms. Demko purchased the home in 2002 with the intent to expand the cottage. According to her testimony she received a home equity loan in early 2005 to fund the design and construction of the addition.
- G6.** Ms. Demko has received Old King's Highway Commission approval on August 25, 2005 prior to the nomination of the second DCPC. She also applied for and received an approval/Order of Conditions from the Barnstable Conservation Commission.
- G7.** The Applicant has expended a significant amount of time and money, and completed a large part of the permitting process prior to the nomination of the DCPC.
- G8.** Ms. Demko has demonstrated a need to begin construction as soon as possible to complete the addition by May, 2006 when her daughter is moving home from college. In her testimony, Ms. Demko said that if she does not receive a hardship exemption to allow her to complete the addition she will be forced to sell the house and find other housing.
- G9.** Ms. Demko is a single mother supporting two daughters, and works as a free-lance journalist.

**G10.** A Hardship Exemption may be granted to the Applicant without derogating from the intent or purpose of the Act, and without detriment to the public good.

**Water Resource Findings:**

**WR1.** A Title-5 septic system was installed in 2002.

**WR2.** The DCPC decision rendered by the Commission proposes a number of local-ordinance guidelines to direct development in the district, including limitations on wastewater increases within the DCPC area. One recommendation is for DCPC regulations to include a minimum 300-foot setback from Hinckleys Pond for wastewater disposal facilities. Ms. Demko's wastewater leach field is outside of the 300-foot buffer to Hinkley's Pond.

**Community Character Findings:**

**CC1.** The existing building on the site is a small, simple cottage, likely built in the early to mid 1900s. The proposed addition is located in the rear and will not exceed the height of the existing building. Because of the addition's modest scale, it will have little visual impact on the neighborhood and will not have a negative impact on the district's historic resources.

**CONCLUSION**

Based on the Findings above, the Commission hereby concludes:

- 1.) The Applicant has demonstrated that a hardship exists in conforming with all of the requirements of the Pond Village DCPC. 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 Ms. Lois Ann Demko as a Hardship Exemption from the Pond Village DCPC pursuant to Section 23 of the Act, c. 716 of the Acts of 1989, as amended, for the proposed expansion at 2653 Main Street, Barnstable, MA.

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Alan Platt, Chair

\_\_\_\_\_  
Date

Commonwealth of Massachusetts  
County of Barnstable

On this 1st day of December, 2005, before me, the undersigned notary public, personally appeared Alan Platt, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, 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.

\_\_\_\_\_  
Notary Public  
Commonwealth of Massachusetts

My Commission Expires: \_\_\_\_\_