



CAPE COD COMMISSION

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Date: July 23, 2009

To: Barry Weiner, Esquire
Ruberto, Israel & Weiner, P.C.
100 North Washington Street
Boston, Massachusetts 02114

Eliza Cox, Esquire
Nutter, McClennen & Fish, LLP
P.O. Box 1630
Hyannis, Massachusetts 02601

From: Cape Cod Commission

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

Applicant/
Owner: Joyce Haseotes, 293 Long Beach Road, Centerville, Massachusetts

Project: Haseotes Addition

Project #: HDEX # 08023

Certificate
of Title: Certificate No. 58363
14594A & 16179A

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (the "Commission") hereby approves with conditions the Hardship Exemption application of Joyce Haseotes (the "Applicant") for an addition to the single-family residence at 293 Long Beach Road in Centerville, MA pursuant to Section 23 of the Cape Cod Commission Act (the "Act"), c. 716 of the Acts of 1989, as amended. The decision is rendered pursuant to a vote of the Commission on July 23, 2009.



PROJECT DESCRIPTION

The property consists of a 0.66-acre lot at 293 Long Beach Road in Centerville identified by the Town of Barnstable as Assessor's Map 185 Parcel 34 (the "site"). The site is abutted by barrier beach and Nantucket Sound to the south, residences to the east and west, and by Long Beach Road to the north. A single-family residence that was constructed circa 1929 occupies the site. At the time of their initial Hardship Exemption application submission, Byron and Joyce Haseotes were originally proposing to construct a 4,276-square foot (s.f.) two-floor addition to their approximately 5,150-s.f. residence. After the passing of her husband, Byron Haseotes, Joyce Haseotes revised the proposed plans to include a 1,937-s.f. one-floor addition to the residence.

The Applicant is seeking an exemption to the limited moratorium on building permits, which was established by the creation of the Craigville Beach District of Critical Planning Concern (DCPC).

PROCEDURAL HISTORY

On October 15, 2008, Attorney Eliza Cox of Nutter, McClennen & Fish, LLP on behalf of Byron and Joyce Haseotes submitted an application to the Commission requesting a Hardship Exemption pursuant to Section 23 of the Act for the construction of a 4,276 s.f. (2,904 s.f. of livable space) addition to their single-family residence at 293 Long Beach Road in Centerville, MA. On December 18, 2008, the application was deemed complete, and a duly noticed public hearing was held to consider this request on January 13, 2009.

After this public hearing and upon receiving feedback from the subcommittee that a revised plan could be more in line with the purposes of the DCPC, the Applicant's team met with Commission staff on several occasions to discuss proposed revisions to the plans. On April 15, 2009, the Commission received revised plans and materials for a proposed addition consisting of 2,853 s.f. on two floors. These plans eliminated unfinished attic space and a closet on the second floor, and a full kitchen, separate entryway/foyer, and a bathroom on the first floor. Additionally, the proposed septic system leachfield location was moved to an area outside of the Centerville River watershed.

In response to Commission staff comments regarding the revised plans, the Applicant again revised the addition plans to reduce the bulk and mass of the structure and submitted the revised civil and architectural plans to the Commission between June 3-8, 2009. The revised plans eliminated the second floor of the addition, consisting of the removal of a bedroom, den/office, medical supply / utility closet, and bathroom, removed the exterior deck proposed along the southern side of the addition on the barrier beach, removed the exterior dormers from the addition, and slightly reduced the height of the addition. The total square footage of the new addition proposed was 1,937 s.f. A duly noticed public hearing to consider the revised request was held on June 10, 2009.

Subcommittee meetings were held on June 15, 2009, June 25, 2009, and July 14, 2009.

On June 15, 2009, the subcommittee deliberated on the project. Based upon the Applicant's assertion that her hardship was a physical one that required the addition to be built, the chair of the subcommittee requested that the Applicant obtain a letter from Mrs. Haseotes' physician commenting on her physical disabilities. Upon receipt of this letter and after further deliberations on the project, at the June 25, 2009 meeting, the subcommittee voted (2 in favor and 1 opposed) to approve the Hardship Exemption application with conditions and directed staff to draft a decision for their review.

On July 14, 2009, the subcommittee reviewed the draft decision and voted (2 in favor and 1 opposed) to forward the draft decision, approving the hardship exemption application with conditions, to the full Commission.

A final public hearing was held before the full Commission on July 23, 2009, during which the Commission voted six in favor and four opposed to approve the Hardship Exemption application.

MATERIALS SUBMITTED FOR THE RECORD

In addition to the list of materials submitted for the record as listed below in Table 1, the application and notices of public hearings relative thereto, correspondence, the minutes of public meetings and hearings, and all other writings contained in the DRI file are hereby incorporated into the record by reference.

TABLE 1: Materials Submitted for the Record	
<i>Materials From the Applicant</i>	<i>Date Submitted</i>
Hardship application materials submitted by E. Cox to Commission staff	10/15/08
Memorandum with attached Hardship exemption application materials submitted by E. Cox to K. Senatori	10/15/08
Letter from E. Cox to Brona Simon (Massachusetts Historical Society) re: project notification form	10/17/08
Email from E. Cox to K. Senatori re: Tuesday meeting date	10/29/08
Email from E. Cox to K. Senatori re: meeting dates	10/30/08
Email from E. Cox to K. Senatori, J. Buntich re: meeting date	10/31/08
Memorandum from E. Cox to K. Senatori re: attached stamped MHC form	11/10/08
Email from E. Cox to K. Senatori re: project update	11/21/08
Letter providing additional information from E. Cox to K. Senatori with attached printed emails from R. Gatewood (Conservation Administrator, Barnstable) re: resource areas	12/5/08
Memorandum and attached civil site plans from E. Cox to K. Senatori	12/17/08
Email from E. Cox to K. Senatori re: public hearing date	12/19/08
Email from E. Cox to K. Senatori re: email confirmation	12/28/08
Email from E. Cox to K. Senatori re: copies	1/6/09

Email from E. Cox to K. Senatori re: copies	1/6/09
Memo with attached supplemental information for Subcommittee from E. Cox to K. Senatori	1/7/09
Email from E. Cox to K. Senatori re: site visit	1/8/09
Email from E. Cox to K. Senatori re: site visit confirmation	1/12/09
Print out of Section 23 of the Cape Cod Commission Act from E. Cox to staff and subcommittee	1/13/09
Email from E. Cox to K. Senatori re: conference call	1/26/09
Email from E. Cox to K. Senatori re: draft minutes, availability	2/6/09
Email from E. Cox to K. Senatori re: meeting time, minutes	2/9/09
Email from E. Cox to K. Senatori re: meeting minutes	2/9/09
Email from E. Cox to K. Senatori re: meeting time	2/11/09
Revised elevation & floor plan submitted by hand from E. Tolley to K. Senatori	2/12/09
Minutes from public hearing on 1-13-09 with revisions by E. Cox to K. Senatori	2/12/09
Email from C. McGrath to K. Senatori re: scheduling	3/5/09
Email from C. McGrath to K. Senatori re: scheduling	3/6/09
Email from E. Cox to K. Senatori re: thanks	3/9/09
Updated plans, nitrogen loading calculations, 'revised' minutes	3/12/09
Memorandum from E. Cox to K. Senatori re: attached updated plans and calculations	4/15/09
Memorandum from E. Cox to K. Senatori re: response to S. Michaud's comments	4/24/09
Email from E. Cox to K. Senatori re: meeting time change	4/29/09
Email from E. Cox to K. Senatori re: meeting time confirmation	4/29/09
Email from E. Cox to K. Senatori re: possible scheduling conflict	5/13/09
Email from E. Cox to K. Senatori re: thanks	5/13/09
Email from E. Cox to K. Senatori re: meeting date change	5/15/09
Email from E. Cox to K. Senatori re: meeting scheduling	5/20/09
Email from E. Cox to K. Senatori re: meeting time	5/20/09
Memorandum from E. Cox to K. Senatori re: response to January staff report	5/20/09
Email from E. Cox to K. Senatori re: deed restrictions, lowest point of addition	5/28/09
Email from E. Cox to K. Senatori re: attendance confirmation	5/27/09
Revised septic, sketch, and site plans submitted by hand	5/28/09
Email from E. Cox to K. Senatori re: attached deed restrictions & town comments	5/29/09
Email from B. Weiner to J. Wielgus re: plan & staff report revisions	6/1/09
Email from E. Tolley to K. Senatori, E. Cox re: confirmation of lowest point of addition	6/3/09
Email from E. Cox to K. Senatori re: confirmation of deck removal	6/3/09
Fax from E. Cox to K. Senatori re: confirmation of deck removal	6/3/09
Memorandum from B. Weiner to K. Senatori re: attached Coastal Resources consultant payment	6/3/09

Memo from E. Tolley to K. Senatori re: Attached and revised floor and exterior elevation plans	6/3/09
Memorandum from E. Cox to K. Senatori re: attached updated civil site plans, nitrogen loading calculations, updated lot coverage calculations, mailing materials	6/3/09
Email from E. Cox to K. Senatori re: revised civil/septic plans	6/5/09
Email from E. Cox to K. Senatori re: attached updated civil/septic plan	6/5/09
Memorandum from E. Tolley to K. Senatori re: Attached and revised floor and exterior elevation plans	6/8/09
Email from E. Cox to K. Senatori re: attached revised architectural plans	6/8/09
Email from E. Cox to K. Senatori re: out of office	6/12/09
Memorandum from E. Cox to K. Senatori re: attached revised civil site plan; full size	6/5/09
Email from B. Weiner to K. Senatori re: attendance confirmation	6/15/09
Email from E. Cox to K. Senatori re: recording information	6/24/09
Email from E. Cox to K. Senatori re: total s.f.	6/24/09
Email from E. Cox to K. Senatori with attached plan	6/29/09
Email from E. Cox to K. Senatori re: copies	7/10/09
Email from E. Cox to K. Senatori with attached draft deed restrictions	7/14/09
Email from E. Cox to K. Senatori with revised draft deed restrictions	7/16/09
Email from E. Cox to K. Senatori with revised draft deed restrictions	7/21/09
<i>Materials from Commission Staff</i>	<i>Date Submitted</i>
Email from K. Senatori to J. Buntich re: meeting with applicant	10/28/08
Email from K. Senatori to E. Cox re: application completeness	10/28/08
Email from K. Senatori to J. Buntich re: project comments	12/7/08
Email from K. Senatori to J. Buntich re: public hearing	12/22/08
Email from K. Senatori to E. Cox re: public hearing confirmation	12/22/08
Email from K. Senatori to E. Cox re: copies	1/6/09
Staff report	1/6/09
Email from K. Senatori to E. Cox re: public hearing	1/7/09
Email from K. Senatori to J. Buntich re: public hearing	1/7/09
Email from K. Senatori to E. Cox re: site visit time/day	1/7/09
Email from K. Senatori to J. Buntich re: comments for staff report	1/7/09
Email from K. Senatori to E. Cox re: site visit	1/9/09
Email from K. Senatori to E. Cox re: attached comment letter	1/11/09
Fax from K. Senatori to E. Cox re: attached comment letter from anonymous	1/12/09
Email from K. Senatori to E. Cox re: site visit confirmation	1/12/09
Email from K. Senatori to E. Cox re: nitrogen loading calculations	1/21/09
Email from K. Senatori to E. Cox re: meeting conflict	2/6/09
Email from K. Senatori to E. Cox re: draft minutes, meeting dates	2/6/09
Email from K. Senatori to E. Cox re: word doc, meeting date	2/9/09
Email from K. Senatori to E. Cox re: meeting confirmation	2/11/09
Email from K. Senatori to C. McGrath re: meeting date/time	3/6/09
Email from K. Senatori to E. Cox re: S. Michaud's attached comments	4/23/09

Email from K. Senatori to J. Buntich re: S. Michaud's attached comments	4/27/09
Email from K. Senatori to E. Cox re: meeting	4/29/09
Email from K. Senatori to E. Cox re: meeting time change	4/29/09
Email from K. Senatori to E. Cox re: noticing delay	5/13/09
Email from K. Senatori to E. Cox re: hearing confirmation	5/15/09
Email from K. Senatori to E. Cox re: meeting time	5/19/09
Email from K. Senatori to E. Cox re: meeting/memorandum	5/20/09
Memorandum via facsimile from K. Senatori to E. Cox re: Coastal Resources Consultant Fee	5/21/09
Email from K. Senatori to E. Cox re: attached updated staff report	5/27/09
Email from K. Senatori to E. Cox re: list of deed restrictions	5/28/09
Email from K. Senatori to E. Cox re: lowest point of renovation	6/3/09
Email from K. Senatori to E. Cox re: revised memo	6/3/09
Email from K. Senatori to E. Cox re: revised memo for mailing	6/3/09
Email from K. Senatori to E. Cox & B. Weiner re: updated staff report	6/3/09
Email from K. Senatori to E. Cox re: revised civil plans	6/5/09
Email from K. Senatori to B. Weiner re: updated staff report	6/9/09
Email from K. Senatori to E. Cox re: attached email in support	6/10/09
Email from K. Senatori to E. Cox re: subcommittee meeting date	6/12/09
Email from K. Senatori to J. Buntich re: Haseotes past permits	6/12/09
Email from K. Senatori to J. Buntich re: subcommittee meeting	6/17/09
Email from K. Senatori to J. Buntich re: meeting date, attached letter	6/24/09
Email from K. Senatori to E. Cox re: recording information, mtg dates	6/24/09
Email from K. Senatori to E. Cox re: s.f. totals	6/24/09
Email from K. Senatori to E. Cox re: s.f. clarification	6/24/09
Email from K. Senatori to E. Cox requesting plan	6/26/09
Email from K. Senatori to J. Miller Buntich re: subcommittee meeting	6/30/09
Email with decision from K. Senatori to E. Cox, B. Weiner, J. Buntich	7/7/09
Email from K. Senatori to E. Cox requesting copies	7/10/09
Email from K. Senatori to E. Cox with attached draft decision	7/16/09
Email from K. Senatori to E. Cox re: deed restrictions	7/16/09
Email from K. Senatori to E. Cox re: proposed language	7/23/09
Email from K. Senatori to J. Buntich re: proposed language	7/23/09
Materials from Town of Barnstable	Date Received
Email from J. Buntich to K. Senatori re: meeting dates	10/28/08
Email from J. Buntich to K. Senatori, E. Cox re: meeting	10/30/08
Email from J. Buntich to K. Senatori re: meeting & town comments	12/5/08
Email from J. Buntich to K. Senatori re: meeting with staff	12/9/08
Email from J. Buntich to K. Senatori re: Tom McKean's (Director of Public Health, Barnstable) attached comments	1/5/09
Email from J. Buntich to K. Senatori re: town comments	1/7/09
Email from J. Buntich to K. Senatori, S. Korjeff re: draft comments	5/19/09
Email from J. Buntich to K. Senatori re: meeting attendance	6/12/09
Email from J. Buntich to K. Senatori re: past permit discussions	6/14/09
Email from J. Buntich to K. Senatori re: attached ZBA files	6/15/09

Email from J. Buntich to K. Senatori re: meeting attendance	6/24/09
Email from J. Buntich cc: K. Senatori re: accessory uses	7/16/09
Email from J. Buntich cc: K. Senatori re: revised drafts	7/22/09
Materials from Others	Date Received
Email from anonymous to K. Senatori re: opposition to project	1/5/09
Letter from J. Driscoll in support of the project	6/6/09
Letter from J. and B. Haseotes in support of the project	6/9/09
Email from A. Marty to K. Senatori in support of the project	6/9/09
Email from J. Bielung to K. Senatori in support of the project	6/10/09
Letter from E. Weber, M.D. to K. Senatori re: Mrs. Haseotes' health	6/16/09

TESTIMONY

Public hearing – January 13, 2009

A public hearing was held at 6:00 pm on January 13, 2009 in Rooms 11&12 of the Barnstable Superior Courthouse.

Attorney Eliza Cox of Nutter, McClennen & Fish, LLP, Mr. Erik Tolley of ERT Architects, and Mr. Mike Perrault of P.M.P Associates, Inc. presented the proposed addition plans on behalf of Byron and Joyce Haseotes. The Applicant's team indicated Mr. Haseotes currently lives in the house, but that is has become dangerous for him, as the hallways are very narrow and that the bathrooms aren't wheelchair accessible. The Applicant also noted that the addition has to be elevated and they are connecting to the existing house but they are not making any alterations to the existing house. The Applicant's team suggested that the amount of time and money and investment that the client made prior to the implementation of the DCPC, together with Mr. Haseotes' medical conditions and the fact that this existing home does not accommodate his needs, constitute a substantial hardship.

Ms. Kristy Senatori, Ms. Sarah Korjeff, and Mr. Scott Michaud presented the staff report. Staff gave a brief overview of the existing site setting, the Cape Cod Commission's jurisdiction, an overview of the DCPC, staff analysis in the applicable resource issue areas, and conclusions. Staff explained the purpose of the DCPC building permit moratorium and said that the regulations are anticipated in June of this year. Staff said that an applicant may apply for a Hardship Exemption for any development that can demonstrate that a suspension of action on a local development permit application during a period of moratorium constitutes a substantial hardship. Staff suggested that the project as proposed would substantially derogate from the intent and purpose of the DCPC and the Act in the area of water resources, coastal resources, and community character. Staff noted they had not received nitrogen-loading calculations and the Applicant's counsel responded that they would be provided.

Subcommittee members asked questions of the Applicant's team and Commission staff regarding the existing house, specifics regarding the proposed FAST septic system and leachfield and their proposed locations, Mr. Haseotes' physical disabilities, and the use of the house by the Haseotes family. Subcommittee members voiced concerns about the purpose of the DCPC with regard to the bulk and scale of the houses, and asked additional questions regarding the scale of the proposed addition in relation to the neighboring community, and raised flooding concerns.

Ms. Jo Anne Miller Buntich, Director of Growth Management for the Town of Barnstable, said that the Town is in agreement with the analysis provided by the staff. She applauded the denitrifying system that is proposed, but said that the Town has additional concerns about flows because this is an area identified by the town for sewerage. She questioned the undesignated areas in the proposed addition and raised concerns about flooding. She said the Town concludes that the hardship exemption derogates from the DCPC.

Subcommittee members suggested a continuation of the hearing based on the staff's need to review the nitrogen loading calculations, and they requested dramatically scaled-down plans.

Public hearing – June 10, 2009

A public hearing was held at 6:00 pm on June 10, 2009 at the Cape Cod Commission office.

Ms. Senatori presented the staff report. She noted that the project as originally proposed consisted of a three-bedroom addition of approximately 4,276 s.f. on two floors. An exterior deck along the southern side of the addition was also proposed and the septic system's leach field was sited within the Centerville River watershed. She noted the applicant made revisions to the plans and the new proposal now consists of a two-bedroom, 1,937 s.f. addition on one floor. She noted the elimination of the proposed deck and that the applicant moved the septic system leach field outside of the sensitive watershed.

She noted that while the original deadline for the town to adopt its implementing regulations for the DCPC was June 12, 2009, the town requested and received a 90-day extension of this timeframe and the new deadline for adopting the implementing regulations is September 10, 2009.

She stated that Commission standards allow for existing structures on barrier beach to be reconstructed or renovated provided there is no increase in floor area, footprint, or intensity of use. Ms. Senatori stated that since the applicant is proposing an increase in footprint, it is not possible for the applicant to meet this standard without a Hardship Exemption.

Ms. Senatori also indicated that the applicant worked with the Town of Barnstable and has proposed to place deed restrictions on the property that would include: 1) a view corridor restriction that would prohibit structures within the 30' westerly side yard setback, requiring the planting of low growing vegetation and maintenance of the height of vegetation; 2) that the house with the proposed addition presents the full build-out of the property; 3) a bedroom restriction limited the residence to a total of 6 bedrooms; and 4) a use restriction limiting the property use to single family residential only which includes no accessory apartments.

Ms. Senatori also noted that earlier in the day staff received four letters from abutters to the project in support of the project, and the subcommittee now has those letters.

Attorneys Barry Weiner of Ruberto, Israel & Weiner and Eliza Cox of Nutter, McClennen and Fish, presented on behalf of the Applicant. Attorney Weiner respectfully noted that Byron Haseotes passed away on May 25, 2009. He also noted that the Haseotes' hardship is financial and physical. He also noted the unique architecture of the interior of the house and stated that a lot of the interesting design depends on the different levels of living space. He explained that

given the disabilities of Mrs. Haseotes, these levels, which are accessible by sets of stairs are, difficult for her to get to. He noted that the family has invested roughly \$75,000 on architects, engineers, and lawyers on the assumption the addition would be permitted. He further explained that Mrs. Haseotes was having difficulty navigating the stairs in the house due to heart, hip, and back conditions, which have been getting increasingly worse.

Attorney Weiner noted that the proposed addition was consistent with the architecture of the existing house and the size, bulk, and design of surrounding houses. He further explained that the design tried to accommodate concerns expressed by Commission staff and the Town while making the additional bulk as attractive as possible and consistent with existing surroundings as well as reduce it as much as possible while still addressing the Applicant's needs. Attorney Weiner explained that the proposed addition contains caregiver's accommodations, Mrs. Haseotes' bedroom, a bathroom, a den, a living area, and a mudroom. He explained this provides Mrs. Haseotes with the ability to provide for herself (with caregivers help) and that this space fits her needs without going beyond them.

Mr. Weiner reiterated the deed restrictions that were agreed to by the Applicant as identified earlier by Commission staff and also noted the plumbing fixtures in the existing home would be upgraded to low flow fixtures. He stated that this project does not substantially derogate from the intent or purpose of the act.

Ms. Jo Anne Miller Buntich stated that the original plans proposed roughly an 83% increase in structure size and the current plans represent roughly a 38% increase. She noted this is closer to the structure limitation of 25% that the DCPC regulations might include. She expressed appreciation for the deed restrictions and further stated that the town has no opinion on the subcommittee's ability to find and determine the extent of the hardship relief.

Ms. Heidi Davis, Mrs. Haseotes' eldest daughter, stated that this is a very substantial financial hardship and her mother is not able to navigate through her home and is deteriorating fast. Ms. Davis stated that she currently uses a walker right now and will most likely end up in a wheelchair.

Mr. Ari Haseotes, Mr. Haseotes' son, agreed with his sister's previous comments and also noted there has been substantial investment made and he explained that his concern is his mother and he would like the house to be as navigable and user friendly as possible for her. He noted that his mother has a significant heart issue and has gone through numerous procedures that required a defibrillator to get her heart back in rhythm.

Mr. Bob Angelo and Mr. Dom Gautrau, two neighboring property owners, testified in support of the project.

The subcommittee had questions regarding the expiration of the moratorium, the height of the utility area over the addition, local permitting, the length of the deed restrictions, the extent of the kitchen in the addition, the goals of the DCPC, nitrogen loading and wastewater flows, construction on the barrier beach, the FAST system, and Mrs. Haseotes' needs.

The public hearing was continued to the full Commission meeting on July 23, 2009 at 3:00 pm at the First District Courthouse Assembly of Delegates Chamber in Barnstable, Massachusetts for the purpose of accepting further testimony on this Hardship Exemption application.

Subcommittee meeting – June 15, 2009

A subcommittee meeting was held on June 15, 2009. The subcommittee deliberated on whether the Applicant has met her burden of proving a hardship exists, financial or otherwise, and whether the proposed addition presents a substantial detriment to the public good or nullify or substantially derogate from the intent or purpose of the Cape Cod Commission Act.

Attorney Weiner outlined the Applicant's financial hardship and stated that approximately \$75,000 was spent on architects, engineers, and legal counsel prior to the DCPC nomination.

The subcommittee had questions for the Applicant regarding Mrs. Haseotes' disabilities and the architecture of the existing residence.

Ms. Brookshire noted that the applicant was both Mr. and Mrs. Haseotes and the emphasis at the time of the application and up until his passing, was on Mr. Haseotes' condition and need for a handicap accessible addition to accommodate his needs. As Mrs. Haseotes is now the sole applicant, Ms. Brookshire asked when Mrs. Haseotes' condition deteriorated to the extent that an addition and caretaker was needed to fill her needs. Attorney Weiner explained that Mr. Haseotes' condition was so severe (as he was wheelchair bound) that when the application was filed they chose to focus only on him. He noted that Mrs. Haseotes' health conditions predate January 2009 by several years and have gotten worse.

The subcommittee asked for clarification on the fact that the original plans were not solely to accommodate any physical disabilities but instead appeared to provide more space for family and recreational activities. Attorney Weiner noted he was not part of the project at that point but when he was retained he looked at the plans and realized the addition was roughly 5,000 square feet of space. He explained to the Haseotes family that that he would want to see the addition relate directly to the hardship.

The subcommittee had questions and deliberated on the size of the addition and the type of rooms it included, Mrs. Haseotes' medical disabilities, and whether Mrs. Haseotes is capable of self-care.

Ms. Davis testified that she has rearranged both her and her small children's lives in order to be on the Cape with her mother this summer. She noted that her mother's heart condition is very severe and precludes her from taking the stairs. She explained that they are working on finding a health care provider who can live in the house with her. Ms. Davis testified that her mother needs assistance with shopping and driving but increasingly needs assistance to bathe. She stated that her mother is able to feed herself and could do the food preparation if everything was accessible. Ms. Davis stated that her mother stopped driving sometime this winter and that technically she still has a license but she doesn't drive at all. Ms. Davis also stated her mother would eventually have a caretaker during the summer months.

Mr. Richardson noted that there were six months between when the DCPC nomination was made and when it was recorded at the registry of deeds. He asked why the Applicant waited so long to file for a Hardship Exemption. Mr. Tolley stated that a substantial amount of work was done before the DCPC was in place. He noted that the original plan was not likely to pass as a Hardship Exemption and he worked with the firm Nutter, McClennen, and Fish for six months drawing various plans for the family until one was agreed on.

Commission staff noted that the subcommittee has to decide whether a literal enforcement of the act involves a substantial hardship, financial or otherwise and if they find there is a hardship, then they must decide if desirable 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.

Mr. Weiner noted that he worked with Commission staff to address their concerns.

Ms. Brookshire noted that the purpose of the DCPC moratorium is to allow the Town of Barnstable time to create regulations that will protect the natural resources on the barrier beach area and Centerville River. She noted that one concern she has is the issue of community character.

Mr. Richardson noted that the house is big to begin with and he would like to see another design for the addition. Mr. Tolley answered that this is the fifteenth version of the plans for the addition and that nine iterations came as a result of feedback from the Commission. He explained that if the hardship were approved today he would have difficulty getting permits by September 10, 2009 when the DCPC implementing regulations are enabled.

Mr. Putnam stated that he is not convinced a hardship exists, however he is very sympathetic to the Haseotes family. Mr. Putnam stated that the only question they need to answer is if there is a hardship as defined by the regulations. He stated that he does not think that there is.

Mr. Richardson stated that based on the testimony from Ms. Davis, Mrs. Haseotes' health is declining and if no action is taken now more significant action may need to be taken later. He stated that he believes there is a hardship. Mr. Richardson stated that Mrs. Haseotes' condition is creating the hardship and granting the project by allowing the creation of a handicapped accessible addition would be the relief necessary to address it.

Ms. Brookshire stated she believes there is a hardship as well but wasn't sure if it was substantial enough to override the DCPC moratorium two weeks before the moratorium expires. Ms. Brookshire stated she wished she could hear testimony from Mrs. Haseotes or a doctor's report on Mrs. Haseotes.

Ms. Brookshire stated that she had reservations about voting today and would like a doctor's report that would help convince her this hardship is so substantial that the applicant can't wait until the DCPC moratorium ends. She noted that this is a very emotional issue that will have to be decided based on the facts and testimony presented. She stated she would like to vote without having any reservations and be able to explain her position in good faith to the Town. She reiterated in order to feel this way she will need to see a doctor's report.

Mr. Weiner answered that he will provide one. Mr. Weiner asked Mr. Putnam if a physician's letter, which documents Mrs. Haseotes' condition in terms of the physical nature of the hardship, would help him change his opinion. Mr. Putnam stated it would interest him and depending on what it says it could persuade him.

Subcommittee meeting – June 25, 2009

After receiving a letter from Mrs. Haseotes' physician, a subcommittee meeting was held on June 25, 2009. At that meeting, the subcommittee deliberated on whether the Applicant has met its burden of proving a hardship exists by virtue of the DCPC moratorium.

Ms. Brookshire stated that she feels there is both a financial and an 'otherwise' hardship. She noted that the Applicant spent \$75,000 based on the assumption that the addition could be built. She noted the original plans depicted an addition that deviated from the purpose of the hardship request; to make a livable, year round addition for first Mr. Haseotes and now Mrs. Haseotes. She also noted that many revisions of the plans have been made, and the square footage has decreased dramatically from approximately 4,200 s.f. to 1,937 s.f. as a result of cooperation between the Applicant, staff, and Town. She also noted the legal, architectural and engineering expenses that the Applicant has incurred and the fact that the architect stated that nine plans out of the fifteen different versions for the addition came as a result of Commission staff input. She stated that the financial hardship was created in part, due to the willingness of the Haseotes family to take the concerns of the Town, Commission staff, and subcommittee into consideration. She noted she believes there is both a financial and physical hardship.

Ms. Brookshire moved that a financial hardship exists. Mr. Putnam seconded the motion for discussion purposes.

Ms. Brookshire noted that if the subcommittee finds there is no financial hardship, then the \$75,000 that has already been expended on the project would be for naught. Ms. Brookshire stated she believes it qualifies as a financial hardship.

Mr. Putnam noted that the Applicant's expenditures were made at their discretion and that they were not forced to make them. He stated that it is not a financial hardship as they spent the money because they wanted to, not because they had to. Mr. Putnam stated that the judgments made to spend the money were made before the Commission was involved and that the expenditures were made on a voluntary basis.

Mr. Richardson said he also believes that losing \$75,000 is a hardship.

Ms. Brookshire called for a vote that there is a financial hardship. The motion passed with two in favor and Mr. Putnam opposed.

Ms. Brookshire noted that §23 of the Cape Cod Commission Act states a hardship can be financial or otherwise. She stated she would like to discuss the 'otherwise' aspect of this hardship.

Ms. Brookshire read the testimony from Ari Haseotes on page seven of the June 10, 2009 minutes, *“He explained his concern is his mother and he would like the house to be as navigable and user friendly as possible for her. He noted that his mother has a significant heart issue and has gone through numerous procedures that required a defibrillator to get her heart back in rhythm.”* Mr. Richardson moved to adopt this verbal testimony as a finding that Mrs. Haseotes has a physical hardship, and Ms. Brookshire seconded the motion. The motion passed with Mr. Richardson and Ms. Brookshire voting in support of the motion and Mr. Putnam voting in opposition.

Ms. Brookshire read the testimony from on page seven of the June 10, 2009 minutes, *“Ms. Heidi Davis noted she was Mrs. Haseotes’ eldest daughter. She explained she was here to reinforce Mr. Weiner’s comments that this is a very substantial financial hardship. She also noted her mother is not able to navigate through her home and is deteriorating fast.”*

Ms. Brookshire noted the subcommittee received a letter from Eric Weber, M.D., Mrs. Haseotes’ physician, dated June 16, 2009 discussing Mrs. Haseotes’ physical capabilities.

Mr. Richardson moved to adopt the verbal testimony of Ms. Davis and written testimony of Eric Weber M.D. as findings that a physical hardship exists, and Mr. Putnam seconded the motion. The motion passed unanimously.

Ms. Brookshire stated that the design of the house is extremely difficult for Mrs. Haseotes to navigate, as there are many different levels of living space. She stated due to the houses unique design, it would be extremely detrimental to gut the inside and renovate it in order to be more wheelchair accessible.

Mr. Putnam noted Mrs. Haseotes doesn’t currently need a wheelchair, and she could ambulate on a ramp that could be installed in the existing house.

Mr. Weiner stated given the steepness of the ramp, getting up or down would cause problems for Mrs. Haseotes. He noted the letter from the Doctor suggested the current plans fill all of Mrs. Haseotes’ present and future needs.

Mr. Richardson noted Mrs. Haseotes is very ill and if the Doctor stated Mrs. Haseotes needs these accommodations they should vote on the issue and move on.

Mr. Richardson moved that a literal enforcement of the provisions of the Act would involve substantial hardship, financial or otherwise to the applicant. Mr. Putman seconded the motion for discussion purposes. The motion passed with Ms. Brookshire and Mr. Richardson voting in support of the motion and Mr. Putnam voting in opposition of the motion.

Mr. Richardson made a motion that the desirable 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. Ms. Brookshire seconded the motion and the motion passed with Mr. Richardson and Ms. Brookshire voting in support of the motion, and Mr. Putnam opposed.

Ms. Brookshire noted the subcommittee has received written testimony from abutters and oral testimony from Mr. Bob Angelo and Mr. Dom Gautrau in support of the project. She reiterated the subcommittee should also consider testimony from the family and from Mrs. Haseotes' doctor. She noted the project will not contribute nitrogen to the Centerville river watershed and that most of the MPS have been met.

Ms. Brookshire noted that a concern is the fact the house is increasing its footprint on a barrier beach. She stated that by approving the hardship, the subcommittee is saying the Applicant has met the MPSs to the maximum extent feasible and that the addition is absolutely necessary for Mrs. Haseotes to continue living in her house.

Mr. Putnam stated the project does not conform to the intent of the Act. He stated that it is increasing the size of a building that is located on a barrier beach, in direct conflict with MPS 2.2.2.3.

Ms. Brookshire noted that moving the septic system outside of the Centerville river watershed is an overall improvement to the recharge area of the watershed. She stated that the FAST system would also decrease the nitrogen load.

Ms. Brookshire noted that the area is mapped as Endangered Species Habitat, however any concerns they had could be addressed at the local level. She noted that the DCPC purpose is partially to protect and preserve the waterfront and the shoreline from inappropriate use. She noted the land is a FEMA mapped A-zone. She noted that the house is designed to have an elevation of 12 feet, one foot higher than necessary, and that the new addition will be on pilings to protect it in the case of a flood. She noted that Community Character was originally a concern, however the size of the house had decreased substantially and that the view corridor has increased and will remain as such through the deed restriction. She noted that the house is increasing the footprint on a barrier beach but that the subcommittee could vote that it was the minimum relief necessary to address the hardship.

Ms. Brookshire stated she was looking for a motion to adopt her statements as findings as she just outlined. Mr. Richardson made the motion. Mr. Putnam seconded the motion. The motion passed unanimously.

Mr. Richardson moved to adopt the deed restrictions on page eight of the staff report as a condition to the decision. Mr. Richardson identified the deed restrictions as: 1) a view corridor restriction that would prohibit structures within the 30' westerly side yard setback; require the planting of low growing vegetation and maintenance of the height of the vegetation (subject to and in accordance with Conservation Commission approval); 2) the house with the proposed addition represents full build-out on the property (no further expansions, additions or changes to the bulk of the structure) 3); a bedroom restriction; and 4) the use would be restricted to single family only; no accessory apartments. Mr. Putnam seconded the motion, which passed unanimously.

Mr. Richardson moved that the relief granted relates directly to the nature of the hardship and is the minimum relief necessary to address the hardship and that the Applicant has shown that a

hardship exists. Ms. Brookshire seconded the motion. The motion passed with Mr. Richardson and Ms. Brookshire voting in support, and Mr. Putnam opposed.

Mr. Putnam stated he was voting in opposition of the project for three reasons. The first being he does not believe a hardship exists, the second being it is not the minimum relief that can be granted to allow her to live in her home, and the third being it does not support the purposes of the DCPC.

Mr. Richardson moved to direct staff to draft a decision approving the hardship with conditions, which will include the testimony and findings and conditions as discussed today. Mr. Putnam seconded the motion. The motion passed unanimously.

Subcommittee meeting – July 14, 2009

On July 14, 2009, the subcommittee met to review the draft decision. Ms. Senatori reviewed the draft decision and ran through a brief summary of the project, the procedural history, materials submitted for the record, testimony from the public hearings and subcommittee meetings, Cape Cod Commission jurisdiction over the project, and the standard of review for the project, which includes §23 of the Act, the standard for hardship exemptions. She reviewed each individual general, natural resource, community character, and coastal resource finding.

She stated that at the June 25, 2009 public meeting, the subcommittee found that the Applicant fulfilled the burden of showing that the DCPC moratorium had created a hardship. She noted that the subcommittee found that a literal enforcement of the provisions of the Act would involve waiting until after the DCPC regulations are drafted in September 2009 to permit and construct the addition. She stated that at the June 25, 2009 meeting, the subcommittee found that relief from this requirement may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act, and that the relief being granted relates directly to the nature of the identified hardship and is the minimum relief necessary to address the hardship. She noted that all of this was substantiated in the findings of the decision as she previously outlined.

She noted that the decision approves the project with conditions and reviewed each of the general conditions. She noted that general condition number five places the following deed restrictions on the property: a view corridor restriction prohibiting structures within the 30' westerly side yard setback, and requiring the planting of low growing vegetation and maintenance of the height of the vegetation (subject to and in accordance with approval by local boards); that the house with the proposed addition represents full build-out on the property (no further expansions, additions or changes to the bulk of the structure); a bedroom restriction limiting the total number of bedrooms within the existing house and addition to six; and the use of the residence and property is restricted to single-family use only; including, but not limited to, prohibiting accessory apartments. She continued to review with the subcommittee each of the water resources conditions, community character conditions, and coastal resources conditions.

Ms. Brookshire stated that previously, JoAnne Miller-Buntich (Interim Director of Growth Management for the Town of Barnstable) had concerns with the roof height of the addition. She noted that Ms. Buntich wanted to see the roof height slightly decreased. She stated that the Applicant's architect previously explained to the subcommittee why decreasing the roof height

isn't feasible, as space is needed for mechanical equipment and ductwork. She stated that she would like testimony from the architect adopted as a finding.

Mr. Richardson agreed.

Ms. Senatori stated she would amend the draft decision accordingly.

Ms. Cox added that this testimony was presented during the July 10, 2009 public hearing and at the June 15, 2009 subcommittee meeting.

Ms. Wielgus suggested that this be added to general finding 14, which adopts other testimony from the architect.

Mr. Putnam stated he has no concerns with the draft decision but disagrees with the approval of the project.

Mr. Richardson made a motion to adopt the decision as amended, approving with conditions the hardship exemption application of Joyce Haseotes. Mr. Putnam seconded the motion and the motion passed with Mr. Richardson and Ms. Brookshire voting in support and Mr. Putnam voting in opposition.

Ms. Brookshire stated she was looking for a motion to forward the draft decision, as amended, to the full Commission for the July 23, 2009 meeting. Mr. Richardson made the motion, and Mr. Putnam seconded it. The motion passed unanimously.

JURISDICTION

The Site is located within the Craigville Beach DCPC, which is an area that is currently subject to a building permit moratorium. The purpose of the moratorium is to allow the town to develop implementing regulations that will be applicable to the area and protect the resources identified in the nomination process.

In accordance with Section 11(c) of the Act, the power of a municipality to grant development permits is suspended until the implementing regulations are effective. However, during the moratorium, the Act allows a municipality to grant a development permit "for development within the district if:

- (1) the commission has certified in its acceptance of the nomination that the type or class of proposed development is not substantially detrimental to public health, safety or general welfare and does not contravene the purposes of this act and a development by-law or by-laws had been in effect immediately prior to the nomination of such areas and development permits could have been granted until the by-laws; or
- (2) a development has received approval as a development of regional impact within the seven year period next preceding the nomination of the geographic area in which said development is located, in whole or in part and such approval is still valid; or
- (3) a development of regional impact has been referred to the commission for review prior to the first published notice of the nomination of a district of critical planning

- concern in which said development is located, in whole or in part, and subsequently is approved; or
- (4) a development is authorized by a development agreement which has been approved by the commission and the relevant municipality or municipalities; or
 - (5) the commission has not expressly found in accepting a nomination that the issuance of development permits for a single-family house or houses on lots held in common ownership or on lots in separate ownership may be substantially detrimental to the protection of the public health, safety and welfare or in light of the factors specified in clauses (1) and (2) of subsection (a) of section ten, might contravene the purposes of this act.”

The proposed development does not fall into any of these exceptions provided by the Act.

When the DCPC was created, the Cape Cod Commission issued a DCPC Acceptance Decision dated February 21, 2008 (the “Decision”) that described the resources and provided guidelines for the future implementing regulations.

The Decision states “[t]he Commission further finds that in accepting the nomination of the DCPC that the issuance of development permits for a single-family home...may be substantially detrimental to the protection of the public health, safety and welfare...including...the presence of significant natural, coastal, water cultural, architectural, historic resources and...might contravene the purposes of the Act.” Furthermore, the Decision lists development allowed to continue during the DCPC moratorium. Included in this list is “[n]ormal and customary repair or maintenance to a single-family home as determined by the Barnstable Building Commissioner. Such repair shall not increase the number of bedrooms or wastewater disposal capacity or result in an increase in impervious area” and “[n]ormal and customary repair or maintenance to existing open air decks without structural or other cover that are not entirely impervious and does not increase decked area.”

The Decision states “[p]ursuant to Section 11(c) of the Cape Cod Commission Act, ‘the acceptance of a nomination for consideration for designation as a district of critical planning concern shall continue to suspend the power of a municipality to grant development permits for development within the nominating district...’” In accordance with the Decision, an applicant may apply for a hardship exemption for “any development that can demonstrate that suspension of action on a local development permit application during the limited moratorium constitutes a substantial hardship.” Further, “[h]ardship applications will be heard by the Cape Cod Commission...in accordance with Section 23 of the Cape Cod Commission Act.”

Section 23 of the Act states that the Commission may “grant an exemption, in whole or in part and with appropriate conditions...where the commission specifically finds that a literal enforcement of the provisions of the Act would involve substantial hardship, financial or otherwise, to the applicant and that desirable 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 intent/purpose of the Commission Act in allowing for a moratorium while implementing regulations are being developed for a DCPC is to provide a “time out” for development for an identified area so that implementing regulations may be developed.

The intent of the Act in developing a Regional Policy Plan is to “present a coherent set of regional planning policies and objectives to guide development...to protect the region’s resources, which shall reflect and reinforce the goals and purposes set out in section one.” (Commission Act §7)

One of the goals and purposes of Section One is the preservation of coastal resources. The planning section of the coastal resources section of the RPP identifies that an “important consideration for coastal floodplain management is factoring relative sea-level rise into development projects.” A specific goal of the DCPC decision is to “preserve and enhance flood hazard protected provided by the barrier beach, estuarine and tidal marsh systems for coastal properties in the Craigville Beach District.” One of the main issues identified by both the Act and this DCPC itself is the concern of development upon a barrier beach.

These interests must be weighed against the standards for a Hardship Exemption, which is the only exception provided from this moratorium of the Craigville DCPC as outlined in the DCPC decision. As such, the Enabling Regulations governing the Hardship process must be applied. The Enabling Regulations in its requirements in allowing a Hardship Exemption directs that compliance with the RPP to the “maximum extent feasible” is required.

Additionally, the Commission’s Enabling Regulations state “Projects should comply to the maximum extent feasible with the Minimum Performance Standards of the Regional Policy Plan (RPP). Any relief granted from the requirements of the Minimum Performance Standards shall relate directly to the nature of the identified hardship and shall be the minimum relief necessary to address the hardship.”

The Commission must consider the purposes of the Act, which includes protection of coastal, natural, historic, architectural, cultural values and the purpose of the preservation of coastal resources, the protection of groundwater, surface water and ocean water quality, as well as other natural resources of Cape Cod, as well as the preservation of historic, cultural, archeological, architectural and other recreational values.

In order to determine whether relief could be granted without nullifying or substantially derogating from the intent/purpose of the Act, the Commission must also consider the intent of the Act in developing a Regional Policy Plan as well as the intent of the DCPC itself. The purpose of regulating development in the barrier beach area as identified in the Craigville DCPC decision is to protect natural resources including the barrier beach, prevention of flood damage, protection of public health and safety, reduction of risk to people, property and municipal safety and from storm surge and sea rise.

FINDINGS

The Commission has considered the application of Joyce Haseotes, 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 23 of the Act:

General Findings:

- GF1. The Commission finds that the Applicant is Joyce Haseotes. The Hardship Exemption application was submitted naming both Byron and Joyce Haseotes as joint Applicants. However, Byron Haseotes passed away on May 25, 2009, during the timeframe of the review of this application.
- GF2. As the first substantive hearing was held on January 13, 2009, the RPP in effect at this time is the 2002 RPP.
- GF3. The Site consists of 0.66 acre at 293 Long Beach Road in Centerville identified by the Town of Barnstable as Assessor's Map 185 Parcel 34. A 5,150 s.f. residence, constructed in 1929 and owned by Byron and Joyce Haseotes, is currently on the site.
- GF4. The addition is proposed in accordance with the following plans, which are attached to this decision as Exhibit A:
- Proposed Conditions for: The Haseotes Family, prepared by ERT Architects, Inc. of Yarmouthport, MA, and dated June 4, 2009
 - Sheet No. A-1 Proposed Exterior Elevations (Exhibit A-1)
 - Sheet No. A-2 Proposed First Floor Plan (Exhibit A-2)
 - Septic System Design plan, prepared by P.M.P Associates of East Bridgewater, MA, and dated April 27, 2007 with latest revision dated June 2, 2009 (Exhibit A-3)
 - High Strength Fast 1.0 Septic System Design Details plan, prepared by P.M.P Associates of East Bridgewater, MA, and dated December 11, 2008 with latest revision dated June 2, 2009 (Exhibit A-4)
- GF5. The Commission finds that the purpose of the Craigville Beach DCPC as stated in the Commission's Acceptance of DCPC Nomination Decision dated February 21, 2008, is to address redevelopment concerns in the Craigville Beach District by allowing the town to plan and adopt zoning strategies that will provide additional protections to guide redevelopment in a way that contributes to and respects the character and historic development patterns of the area, protects natural resources including but not limited to the barrier beach, groundwater and coastal water quality, prevents flood damage, protects public health and safety and reduces the risk to people, property and municipal safety personnel from storm damage and relative sea level rise.

The Commission's Acceptance of DCPC Nomination Decision states "[t]he Commission further finds that in accepting the nomination of the DCPC that the issuance of development permits for a single-family home...may be substantially detrimental to the protection of the public health, safety and welfare...including...the presence of significant natural, coastal, water cultural, architectural, historic resources and...might contravene the purposes of the Act." Furthermore, the Decision lists development

allowed to continue during the DCPC moratorium. Included in this list is “[n]ormal and customary repair or maintenance to a single-family home as determined by the Barnstable Building Commissioner. Such repair shall not increase the number of bedrooms or wastewater disposal capacity or result in an increase in impervious area” and “[n]ormal and customary repair or maintenance to existing open air decks without structural or other cover that are not entirely impervious and does not increase decked area.”

GF6. The following chronology of events describes the important milestones in the DCPC process and includes key dates associated with the Applicant’s project:

September 14, 1987	Applicant: All Cape Engineering prepared “Sketch Plan of Land”
December 15, 1992	Applicant: Taylor Design Associates prepared Revision-A site plan “for conservation”
December 9, 2006	Applicant: Mike Perrault prepared Site Plan identified as “Preliminary Plans for: Byron & Joyce Haseotes”
April 27, 2007	Applicant: P.M.P. Associates, LLC prepare “Septic System Design” plan
February 12, 2008	DCPC: First Nomination received for Craigville Beach and Centerville Village area DCPC
February 15, 2008	DCPC: Notice of Nomination consideration – starts full moratorium
February 21, 2008	DCPC: DCPC nomination accepted by the Commission, full moratorium ended, limited moratorium began
April 3, 2008	DCPC: Commission voted to forward to Assembly of Delegates for designation as a DCPC
April 11, 2008	Applicant: Division of Fisheries and Wildlife correspondence
May 21, 2008	DCPC: Assembly of Delegates approves DCPC ordinance
June 4, 2008	DCPC: County Commissioners approved
June 13, 2008	DCPC: DCPC ordinance recorded at the Registry of Deeds
September 23, 2008	Applicant: ERT Architects, Inc. prepared “Proposed Conditions” plans
October 14, 2008	Applicant: Submission of Project Notification Form to the Massachusetts Historical Society
December 18, 2009	Applicant: Hardship Exemption application complete
April 15, 2009	Applicant: Submitted revised plans and materials to the Commission
June 3-8, 2009	Applicant: Submitted revised plans and materials to the Commission
June 12, 2009	DCPC: One year to complete implementing regulations
September 10, 2009	DCPC: 90-day extension to complete implementing regulations

GF7. The Commission finds that the existing residence totals 5,150 s.f. (3,370 s.f. on the first floor and 1,792 s.f. on the second floor). The Applicant proposes a 1,937 s.f. one-floor addition to the existing residence. Hardship relief is sought to allow for the issuance of local permits for this addition during the Craigville Beach DCPC moratorium.

GF8. The Commission finds that the Applicant has agreed to place the following deed restrictions in perpetuity upon the property (as outlined in GC6):

- 1) A view corridor restriction prohibiting structures within the 30' westerly side yard setback, and requiring the planting of low growing vegetation and maintenance of the height of the vegetation (subject to and in accordance with approval by local boards);

- 2) That the house with the proposed addition represents full build-out on the property (no further expansions, additions or changes to the bulk of the structure);
 - 3) A bedroom restriction limiting the total number of bedrooms within the existing house and addition to six (6); and
 - 4) The use of the residence and property is restricted to single-family use only; including, but not limited to, prohibiting accessory apartments.
- GF9. The Commission adopts the testimony of the Applicant's counsel and finds that the Applicant expended approximately \$75,000 on attorney's fees, engineers, and architects for the proposed addition plans prior to the DCPC moratorium.
- GF10. The Commission adopts the oral testimony of Ari Haseotes and finds that the Applicant has a significant heart issue and has gone through numerous procedures that required a defibrillator to get her heart back in rhythm.
- GF11. The Commission adopts the oral testimony of Heidi Davis and finds that the Applicant is not able to navigate through her home, that she is physically deteriorating fast, that she currently uses a walker, and that she will likely need a wheelchair soon.
- GF12. The Commission adopts the written testimony of Dr. Eric Weber, Mrs. Haseotes' physician, and finds that Mrs. Haseotes has a heart condition, an arthritic hip, and back issues. The Commission further finds based on Dr. Weber's testimony, that Mrs. Haseotes needs to avoid stairs, she must reduce her daily activities, and she must bring in help to assist her with basic functions, including cooking, bathing, cleaning, and driving. Additionally, based on Dr. Weber's testimony, the Commission finds that given Mrs. Haseotes' present limitations and the difficulties posed by the existing multi-level house, new living space on one floor and a live-in caregiver are immediate needs of Mrs. Haseotes. Finally, the Commission finds based on Dr. Weber's testimony, that the proposed addition represents a direct and necessary response to Mrs. Haseotes' physical limitations and requirements.
- GF13. The Commission adopts the testimony of Erik Tolley, the Applicant's architect, and finds that the unique architecture and multiple levels of living space in the existing residence prohibit its renovation or rehabilitation to provide for handicapped-accessible living areas. Additionally, the Commission adopts the testimony of Mr. Tolley and finds that the need to house the duct work, mechanical equipment, and electrical equipment in the attic space above the addition prohibits a decrease in the roof height.
- GF14. The Commission finds that based on written and oral testimony, that six abutters and/or neighboring property owners support the project.
- GF15. The Commission adopts the testimony of Michael Perrault, the Applicant's engineer, and finds that the project will not contribute nitrogen to the Centerville River watershed, which is an impaired watershed.
- GF16. By virtue of the addition, the Commission finds that the project does not meet MPS 2.2.2.3, which allows existing structures on barrier beaches or coastal dunes to be

“reconstructed or renovated, provided there is no increase in floor area, footprint, or intensity of use.”

- GF17. The Commission finds that the Applicant requires wheelchair-accessible living space, caretaker’s quarters, and a reasonable connection to the existing residence. The Commission finds the proposed 1,937 s.f. one-floor plan is the minimum relief necessary to accommodate Mrs. Haseotes’ disabilities.
- GF18. Based on Finding GF9, the Commission finds that a literal enforcement of the provisions of the Act would involve substantial financial hardship. The Commission further finds that the Applicant has fulfilled its burden to demonstrate a financial hardship exists.
- GF19. Based on Findings GF10 through GF13, the Commission finds that a literal enforcement of the provisions of the Act would involve substantial “otherwise” hardship. The Commission further finds that the Applicant has fulfilled its burden to demonstrate that an “otherwise” hardship exists.
- GF20. The Commission finds that relief from the moratorium may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.
- GF21. The Commission finds that the project complies to the maximum extent feasible with the Minimum Performance Standards of the Regional Policy Plan.
- GF22. Based on Findings GF16 through GF17, the Commission finds that the relief granted from the requirements of the Minimum Performance Standards relates directly to the nature of the identified hardship and is the minimum relief necessary to address the hardship.

Water Resources Findings:

- WRF1. The Commission finds that the Town of Barnstable has identified the District in its Comprehensive Wastewater Management Plan as a priority area for a sewage-collection system. A goal of the DCPC ordinance is to provide the Town of Barnstable with an opportunity to develop regulations protective of water quality and to evaluate sewer-neutral policy options for the District.
- WRF2. The Commission finds that the project will expand an existing home resulting in two (2) new bedrooms. The Applicant has agreed to record a deed restriction with the Town of Barnstable thereby restricting the number of bedrooms to six (6) and effectively limiting Title-5 wastewater flows to 660 gallons per day (gpd).
- WRF3. The Applicant has agreed to refit the house’s entire plumbing system with low-flow fixtures. The Commission finds that these measures will limit wastewater flows, consistent with a goal of the DCPC ordinance to provide the Town of Barnstable with an opportunity to evaluate sewer-neutral policy options for the District.

WRF4. The Commission finds that the project will result in a net reduction in nitrogen load to groundwater and thereby meets MPS 5.1 which requires development and redevelopment to maintain or improve water quality where existing development exceeds an identified nitrogen-loading standard or where there are documented marine water quality problems. The net reduction in nitrogen load to groundwater will be achieved through use of a FAST® denitrifying septic system. Based on Technical Bulletin 91-001, the project will result in a nitrogen loading concentration of 5.6 milligrams per liter (mg-N/L or ppm-N).

WRF5. The Commission finds that the project meets RPP MPS 3.1, which requires development to meet critical nitrogen limits for nitrogen-sensitive estuaries. The project site straddles the Centerville River watershed boundary shown on RPP Water Resource Map II and delineated by the Massachusetts Estuaries Project, a collaborative program that provides technical support to MADEP as it implements provisions of the Clean Water Act. The northwest corner of the site drains to the Centerville River, a nitrogen-sensitive estuary for which a Total Maximum Daily Load for nitrogen has been approved by USEPA.

The proposed expansion of the house will occur outside the Centerville River watershed, in an area that drains to Nantucket Sound. The project will replace an existing cesspool on the south (Nantucket Sound) side of the house with a FAST® system proposed for the north (Centerville River) side of the house and the septic layout plan was modified on March 30, 2009 to shift the septic soil absorption system (SAS) from the Centerville River watershed.

Natural Resources Findings:

NRF1. The Commission finds that the property is located in a Significant Natural Resource Area, wetland resource areas, and a Riverfront Area. The site is also located on Long Beach, a barrier beach, the coastal beach portion of which is mapped as endangered species habitat.

NRF2. The Commission finds that the project has components that will require review and consideration by local boards for consistency with state and local wetland regulations, but that due to the nature of the actual area to be developed and the project's proximity to other development, impacts of regional significance to natural habitat resources are not anticipated.

Community Character Findings:

CCF1. The Commission finds that the Craigville Beach DCPC was created primarily out of response to out-of-scale development of single-family homes. When the DCPC was designated by the Assembly of Delegates, it noted the threat posed by the siting and massing of redeveloped residences, which could affect the historic character of the area, and eliminate viewsheds to Nantucket Sound. To address these concerns about building bulk, neighborhood scale, and views to the water, the town is developing new regulations for the area.

CCF2. The proposed project involves an addition to an existing waterfront residence on Long Beach Road. The Commission finds that although the proposed addition represents an

increase in building mass and building footprint, it is in keeping with the scale and height of buildings in the neighborhood.

CCF3. The existing residence is approximately 75 feet wide, spanning roughly half of the 150-foot wide lot. The Commission finds that the proposed addition would span over approximately 38 feet, leaving an approximately 30-foot wide open area on the west side of the lot. The Applicant has agreed to a deed restriction that would prohibit structures within the 30-foot westerly side yard setback and require the planting of low growing vegetation and maintenance of the height of the vegetation in this area, maintaining an open view across the property to the water.

Coastal Resources Findings:

CRF1. The Commission finds that the property is located entirely within Land Subject to Coastal Storm Flowage, is FEMA-mapped A-Zone, and the entire parcel is designated as barrier beach.

CRF2. RPP MPS 2.2.2.2 requires elevation of a structure in an A-zone to accommodate for sea level rise rates of one foot over the next 100 years. The Commission finds that the Applicant has committed to constructing the addition with the lowest member of the structure having an elevation of at least 12 feet NGVD, in accordance with plans entitled Proposed Conditions for: The Haseotes Family, Sheet No. A-1 Proposed Exterior Elevations, prepared by ERT Architects, Inc. of Yarmouthport, MA, and dated June 4, 2009.

CRF3. The Commission finds that the addition will be on piers, there will not be vegetated mounds around the addition, and that the latticework around the piers will allow floodwaters to freely flow under the addition and will be designed in a manner that would break away during a severe storm event.

CRF4. RPP MPS 2.2.2.3 requires that existing structures on barrier beach may be reconstructed or renovated "provided there is no increase in floor area, footprint, or intensity of use." The Commission finds that by virtue of the addition, the Applicant does not meet this standard. However, the Commission further finds that relief from this standard is the minimum relief necessary.

Based on the findings above, the Commission hereby concludes:

- 1) The Applicant has fulfilled its burden to show that the DCPC moratorium creates a hardship. A literal enforcement of the provisions of the Act would involve waiting until after the DCPC regulations are drafted in September 2009 to permit and construct the addition. Relief from this requirement 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 relief necessary to address the hardship.

The Cape Cod Commission hereby approves with conditions the Hardship Exemption application of Joyce Haseotes, provided the following conditions are met:

CONDITIONS

General Conditions:

GC1. The addition shall be constructed in accordance with the following plans, which are attached to this decision as Exhibit A:

- Proposed Conditions for: The Haseotes Family, prepared by ERT Architects, Inc. of Yarmouthport, MA, and dated June 4, 2009
 - Sheet No. A-1 Proposed Exterior Elevations (Exhibit A-1)
 - Sheet No. A-2 Proposed First Floor Plan (Exhibit A-2)
- Septic System Design plan, prepared by P.M.P Associates of East Bridgewater, MA, and dated April 27, 2007 with latest revision dated June 2, 2009 (Exhibit A-3)
- High Strength Fast 1.0 Septic System Design Details plan, prepared by P.M.P Associates of East Bridgewater, MA, and dated December 11, 2008 with latest revision dated June 2, 2009 (Exhibit A-4)

Any deviation from the above plans shall require approval by the Commission through a modification of this decision, pursuant to the Modifications section of the Commission's Enabling Regulations. The Applicant shall submit to the Commission any additional information deemed necessary to evaluate any modifications to the approved plans.

GC2. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this decision.

GC3. No development work, as the term "development" is defined in the Act, shall be undertaken until all appeal periods have elapsed or, if such an appeal has been filed, until all judicial proceedings have been completed.

GC4. The Applicant agrees to allow Commission staff to enter onto the property, which is the subject of this decision at reasonable times and after reasonable notice for the purpose of determining whether the conditions contained in the decision are met.

GC5. The Applicant shall place the following deed restrictions in perpetuity upon the property:

- 1) A view corridor restriction prohibiting structures within the 30' westerly side yard setback, and requiring the planting of low growing vegetation and maintenance of the height of the vegetation (subject to and in accordance with approval by local boards);
- 2) That the house with the proposed addition represents full build-out on the property (no further expansions, additions or changes to the bulk of the structure);
- 3) A bedroom restriction limiting the total number of bedrooms within the existing house and addition to six (6); and
- 4) The use of the residence and property is restricted to single-family use only; including, but not limited to, prohibiting accessory apartments.

Prior to a full Commission vote on the Hardship Exemption application, the Applicant shall submit copies of the draft deed restrictions to Commission staff and Town of Barnstable counsel for review and approval. Prior to obtaining a building permit for the addition, the Applicant shall provide copies of the recorded deed restrictions to Commission staff and the Director of Growth Management for the Town of Barnstable.

- GC6. After the completion of construction for the project, the Applicant shall obtain a Final Certificate of Compliance from the Commission, which states that all conditions in this decision pertaining to the project have been met.

Water Resources Conditions:

WRC1. The Applicant shall limit Title 5 wastewater flows to 660 gallons per day.

WRC2. The Applicant shall refit the house's entire plumbing system with low-flow fixtures.

WRC3. The Applicant shall install a FAST® denitrifying septic system as shown on Septic System Design plan, prepared by P.M.P Associates of East Bridgewater, MA (dated April 27, 2007 with latest revision dated June 2, 2009) and in accordance with the High Strength Fast 1.0 Septic System Design Details plan, prepared by P.M.P Associates (dated December 11, 2008 with latest revision dated June 2, 2009). The soil absorption system shall be located outside the Centerville River watershed mapped as described in WRF5.

WRC4. The Applicant shall remove or fill and disconnect the existing cesspool on the south side of the house.

Community Character Conditions:

CCC1. In accordance with Sheet No. A-1 Proposed Exterior Elevations, prepared by ERT Architects, Inc. of Yarmouthport, MA, and dated June 4, 2009, the maximum height of the addition shall be no higher than 23 feet 9 inches as measured from the ground to the highest roof peak.

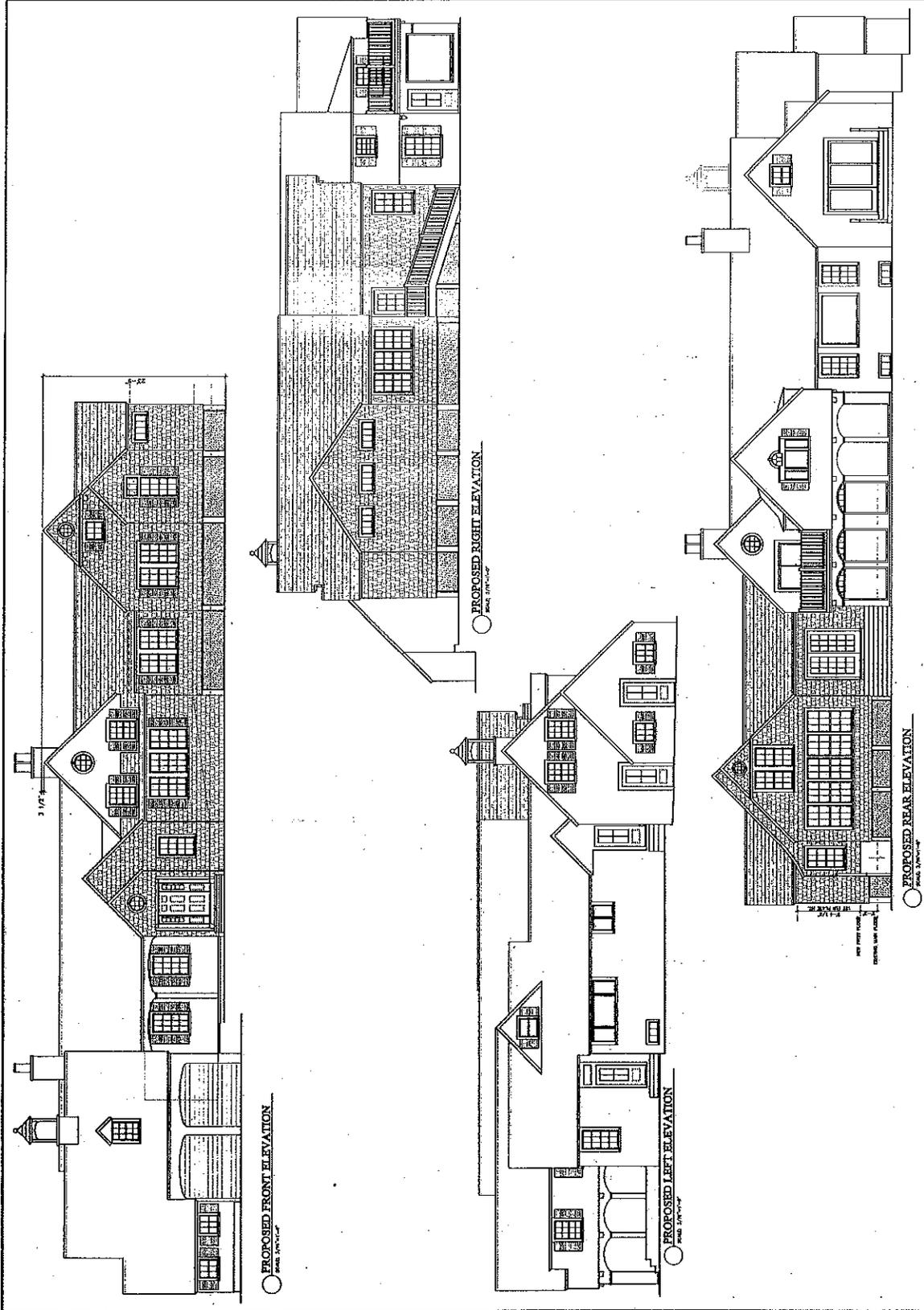
CCC2. The addition shall be constructed in accordance with Sheet No. A-2 Proposed First Floor Plan, prepared by ERT Architects, Inc. of Yarmouthport, MA, and dated June 4, 2009, which shows that the addition will provide living area only on the first floor, and no additional deck area shall be constructed.

Coastal Resources Conditions:

CRC1. The Applicant shall construct the addition with the lowest member of the structure having an elevation of at least 12 feet NGVD.

CRC2. The Applicant shall construct the addition on piers and the latticework around the piers shall allow floodwaters to freely flow under the addition and shall be designed in a manner that would break away during a severe storm event. The Applicant shall not construct vegetated mounds around the addition.

Exhibit A-1



ERT
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PROPOSED CONDITIONS
 FOR
**THE HASEOTES
 FAMILY**
 391 LONG BEACH ROAD
 CENTERVILLE, MA

THIS SHEET IS TO BE USED IN CONJUNCTION WITH THE ARCHITECTURAL CONTRACT AND THE SPECIFICATIONS.
 ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
 ALL FINISHES ARE TO BE AS NOTED.
 ALL MATERIALS ARE TO BE AS NOTED.
 ALL WORK IS TO BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND ALL APPLICABLE REGULATIONS.
 THE ARCHITECT ASSUMES NO LIABILITY FOR THE ACCURACY OF THE INFORMATION PROVIDED BY OTHER PROFESSIONALS.
 PROJECT # 040109

DATE ISSUED: 08/24/09
 REVISIONS:
 1. REMOVAL OF NEW 2ND FLOOR
 2. REMOVAL OF EXISTING SMALL PORCH
 3. ADDITION OF NEW PORCH
 4. ALL WORK TO BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND ALL APPLICABLE REGULATIONS.
 TO REFLECT NO "NO" FOR "OR" MARKS

PERMIT SET
 CONTRACT SET
 PROGRESS SET

REGISTRATION

UNLESS OTHERWISE NOTED,
 SHEET NO.
A-1
 PROPOSED
 ELEVATION
 TOTAL NUMBER OF SHEETS
 2

THIS SHEET SHOULD
 BE ACCOMPANIED BY
 A COMPLETE SET OF
 PROGRESS DRAWINGS

PROPOSED FRONT ELEVATION

PROPOSED RIGHT ELEVATION

PROPOSED LEFT ELEVATION

PROPOSED REAR ELEVATION

