

CAPE COD COMMISSION

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Date: April 6, 2006

To: Attorney Michael Ford
PO Box 665
72 W. Main Street
Harwich, MA 02671

From: Cape Cod Commission

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

Applicant: Mr. and Mrs. John J. Curtin, Jr.
C/o Attorney Michael Ford
PO Box 665
72 W. Main Street
Harwich, MA 02671

Project: Mr. and Mrs. John J. Curtin, Jr. Residence, 120 Scudder's Lane, Barnstable

Project #: HDEX # 06004

Book/Page: Book 7242, Page 168

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves the Hardship Exemption (the "Project") application of Mr. and Mrs. John J. Curtin, Jr. for a new two-story, single-family residential dwelling and detached garage at 120 Scudder's Lane 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 April 6, 2006.



PROJECT DESCRIPTION

The Hardship Exemption application describes the property as a 1.91-acre lot at 120 Scudder's Lane that is located on the north side of Route 6A in Barnstable, MA. The project site is currently occupied by a pre-existing, non-conforming historic structure (boathouse) that will remain on the property. The Project is to construct a new 3,261-square-foot, single-family residence with an approximately 360-square-foot attached garage and a detached, two-car garage that is approximately 529-square-feet. The Applicant is seeking an exemption to the limited moratorium on building permits, which was established by the creation of the Pond Village District of Critical Planning Concern (DCPC).

PROCEDURAL HISTORY

The applicant filed a Hardship Exemption application from the Pond Village DCPC on February 7, 2006. A duly noticed public hearing was held on March 16, 2006 in Rooms 11 and 12 of the Barnstable Superior Courthouse, Barnstable, 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 April 6, 2006, during which the Commission voted unanimously to approve the Hardship Exemption.

MATERIALS SUBMITTED FOR THE RECORD

By Applicant:

- Hardship Application dated February 7, 2006 and associated application materials
- Two emails from Mr. J. Idman dated March 7, 2006, Re: Additional Information
- Emails from Mr. J. Idman dated March 8, 2006, Re: Landscape Narrative
- Facsimile from Mr. M. Ford dated March 8, 2006, Re: Landscape Narrative

By Commission Staff:

- Staff Report dated March 10, 2006

The application and notices of public hearings relative hereto, 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 its proceedings are incorporated into the record by reference.

TESTIMONY

The Commission received testimony at the March 16, 2006 public hearing from the following:

Mr. P. Dascombe, Commission planner, explained that the application was for a hardship exemption from the Pond Village DCPC moratorium on building permit issuance that was in effect. Mr. Dascombe described the site location and the timing associated with the creation of

the Pond Village DCPC. Mr. Dascombe noted that the project site had been excluded from the first Pond Village nomination, but included in the second nomination. Mr. Dascombe described the process for seeking relief from the building permit moratorium and the findings for Hardship Exemptions. Mr. Dascombe briefly described the project's consistency with the minimum performance standards of the Regional Policy Plan, particularly the issues of water resources, community character and natural/coastal resources. Mr. Dascombe concluded that the project as proposed was unlikely to nullify or derogate from the intent of the Commission Act or be detrimental to the public good.

Mr. M. Ford, representing the Applicant, stated that the Applicant had proceeded with their plans in good faith after being excluded from first DCPC area and that after learning that the property was later included in the DCPC, were of the understanding that their project was permitted and therefore was not subject to the building permit moratorium. Mr. Ford said that his client and the town had initially interpreted the word "permitted" in the DCPC decision to mean "allowed". Mr. Ford stated that it was several months later that the Barnstable Planning Board clarified that the intent of the word "permitted" had meant that a permit had to have been "issued". Mr. Ford stated that Old King's Highway Regional Historic District Commission and Barnstable Conservation Commission approval had been granted and that his client was amenable to a condition requiring that the existing vegetation remain undisturbed at the property boundary with Scudder's Lane. Mr. Ford concluded that his client had proceeded in good faith and would suffer substantial hardship, financial and otherwise, if further delay were required.

Mr. Thomas Broadrick, Director of Planning, Zoning and Historic Preservation, Town of Barnstable, concurred with the description of the sequence of events and interpretations made by Commission staff and the Applicant's representative. Mr. Broadrick also stated that he believed that it was unlikely that any more hardship exemption applications would be seen in the area before new implementing regulations for the DCPC were created.

Mr. R. Boocock of 86 Scudder's Lane asked several questions about the project, particularly regarding whether there was a walkway or dock proposed. Mr. Ford indicated it was a walkway, not a dock. Mr. Boocock stated he had no objections to the proposed 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 and adopted by the Barnstable County Assembly of Delegates on January 18, 2006. The Project is not specifically exempt from the limited moratorium on all building permits, which is currently in effect as part of the DCPC.

FINDINGS

The Commission has considered the application of Mr. and Mrs. John J. Curtin, Jr. 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 site is a 1.91-acre property located at 120 Scudder's Lane, Barnstable, MA and is located in the Pond Village DCPC. The Project is to construct a new 3,261-square-foot, single-family residence with an approximately 360-square-foot attached garage and a detached, two-car garage that is approximately 529-square-feet. The new residence is to be constructed in a manner that is handicap accessible as the owners have limited mobility and have limited use of their existing residence due to its lack of handicap accessibility.
- G2.** The Pond Village DCPC was accepted by the Cape Cod Commission in two adjoining parts, the first on July 21, 2005, and the second on September 15, 2005. The Curtin property was initially included in the first DCPC boundary, however, prior to the nomination being submitted to the Commission by the Barnstable Planning Board, the property was excluded from the first DCPC boundary. The property was later included in the second DCPC boundary.
- G3.** Pursuant to Section 11 of the Commission Act, a moratorium on building permit issuance was established for the Pond Village DCPC and will remain in effect until the town adopts implementing regulations for the area. This moratorium became applicable to the Curtin property on September 1, 2005, when the notice of the nomination for consideration of the second DCPC area was published.
- G4.** The 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.** The Applicant relied on the vote of the Barnstable Planning Board on June 6, 2005 that excluded the property from the first Pond Village DCPC nomination and proceeded in good faith with planning and preparing plans for the proposed residence.
- G6.** At the time of the second Pond Village DCPC nomination by the Barnstable Planning Board in August 26, 2005, which included the Applicant's property in the DCPC area, the Applicant objected to the vote as they had proceeded in hiring a general contractor and applied for construction approvals.
- G7.** The Applicant received Old King's Highway Commission approval on September 20, 2005 and November 9, 2005 and received an approval/Order of Conditions from the Barnstable Conservation Commission on November 1, 2005.
- G8.** In December 2005, the Applicant attempted to secure a building permit from the town but was prevented from doing so due to the building permit moratorium.
- G9.** The Applicant has demonstrated that any additional delay in proceeding due to the limited building permit moratorium would involve a substantial hardship, both financially and personally. The Applicant has demonstrated a financial hardship in terms of the additional costs associated with re-applying for permits already obtained which would expire before the limited moratorium was lifted and the additional costs associated with

re-hiring contractors that have been lined up for construction. The Applicant has demonstrated a personal hardship in terms of the delay in inhabiting a handicap accessible dwelling.

- G10.** 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 derogating from the intent or purpose of the Act, and without detriment to the public good.

Water Resource Findings:

- WR1.** The groundwater flowing beneath the site drains directly to Barnstable Harbor, away from Hinckley Pond. Hinckley Pond, for which phosphorous loading is a concern, will not be affected by the project.
- WR2.** The site will be tied into the public water supply. State on-site wastewater regulations (Title 5) prescribe a design flow of 550 gallons per day for a 5-bedroom house. The project will use a standard Title-5 septic system to dispose of wastewater to groundwater on site without nutrient removal. Other nutrient sources to groundwater will include fertilizers applied to turf.
- WR3.** The parcel is large enough for dilution of the site's nitrogen-loading concentration in groundwater to 4.96 parts per million (ppm), which is less than the regional limit of 5 ppm set by the RPP. A critical nitrogen load is currently being determined for Barnstable Harbor through the Massachusetts Estuaries Project so that appropriate nitrogen additions to the system from land use in its watershed can be determined. A preliminary assessment prepared by the Commission for DEP in 2002 notes that Barnstable Harbor is generally well flushed by the tides and is not expected to experience nitrogen levels that are inconsistent with its classification as an Outstanding Resource Waters. Therefore, the project is not expected to have a significant impact on Barnstable Harbor's water quality.
- WR4.** The order of Conditions issued by the Barnstable Conservation Commission adequately addresses the need for erosion controls during project construction.
- WR5.** The application describes how stormwater that drains portions of Scudder's Lane discharges onto the south end of the project parcel. The applicant has indicated that vegetated surface treatment of this stormwater would be incorporated into the project design and improves stormwater management, as described in the landscape narrative dated March 8, 2006.
- WR6.** Based on the above, the project is not expected to have significant detrimental impacts on water resources as currently designed.

Community Character Findings:

- CC1.** The proposed residence is located within the Old Kings Highway Regional Historic District and has been reviewed and approved by the Historic District Committee on September 20, 2005 and November 9, 2005. The proposed structure is traditional in form

and materials and oriented so that the narrow end of the building is facing the open water of Barnstable Harbor.

- CC2.** When the Pond Village DCPC was established, community character concerns were identified primarily along Route 6A, along Scudder Lane, and along the waterfront of Barnstable Harbor. While the proposed residence is located on Scudder's Lane, the building location is situated in a manner that is unlikely to result in any significant visual impacts from the neighborhood. Firstly, the location of the building is significantly lower than the elevation of the roadway at Scudder's Lane; therefore the house will have limited impact on views to the water from the road. Furthermore, the southern property line abutting the street is heavily vegetated and provides a dense vegetated buffer that screens views to the site. This vegetation is to be retained until the DCPC implementing regulations are in place as a condition of this decision. Although both neighboring properties will see the new residence, the siting of the structure and the topography of the site is such that neither neighbor will have their views to the water impaired.
- CC3.** In terms of views to the project from the water, the site is already cleared and nestled within existing residential development on the shore. The existing single-story boathouse structure will remain on site, which partially screens the lower story of the structure from water views. In addition, the narrowest profile of the residence is presented to the harbor, thus minimizing the visual impact from the water.
- CC4.** The siting and design of the building together with the proposed maintenance of existing vegetation on the property, results in a project that is not expected to have a significant impact on community character in the District.

Natural Resources

- NR1.** The project is not located in a Significant Natural Resource Area (with the exception of the wetlands), and the only site related development located within the 100 ft buffer to the wetland edge is invasive species management. This is consistent with RPP requirements. The site is also not mapped as rare species habitat by the Natural Heritage Atlas. Therefore, the development of this single-family dwelling is consistent with the minimum performance standards of the RPP and is not expected to have a significant detrimental impact on resources of regional significance.

Coastal Resources

- CR1.** Work is proposed to occur within the 100-foot protective buffer to the bordering vegetated wetland and saltmarsh (MPS 2.2.3.11). However, this work has been reviewed, approved and conditioned by the local Conservation Commission and entails the removal of invasive plants and vegetation that is damaged and no longer viable. The decision by the local Conservation Commission that requires removal of invasive species from the buffer zone may reduce the likelihood of infestation offsite and within the Area of Critical Environmental Concern (ACEC).
- CR2.** The proposed walkway, which will be constructed (in part) within the ACEC, is designed in a modular fashion and the decking is conditioned by the Conservation Commission to

be removed between mid-October and mid- May. It also does not extend to Mean High Water, and thus is not subject to the prohibition on docks and piers within the ACEC. In addition, the walkway is a use expressly allowed by the Commission's regional standards (MPS 2.2.2.10), and its construction, maintenance and use are not anticipated to cause significant adverse impacts.

- CR3.** It is unlikely that the project as shown on the plans and conditioned by the local Conservation Commission will have significant adverse impacts.

CONDITIONS

- G1.** The project shall be constructed in accordance with the following plans:
- i. Plans prepared by Olson Design Associates (Sheet A-1 and A-2 dated September 8, 2005 and revised November 3, 2005; Sheets A-3, A-4, S-2 and S-5 dated October 11, 2005 and revised November 3, 2005; Sheet G-1 dated October 19, 2005; Sheet S-1 dated October 19, 2005 and revised November 3, 2005; Sheet S-3 dated October 11, 2005 and revised October 19, 2005.)
 - ii. Plans prepared by Edward E. Kelley dated September 6, 2005 and revised October 14, 2005
 - iii. Plans prepared by A.M. Wilson dated October 25, 2005 titled "Landscape Graphic"
- G2.** Prior to issuance of a demolition permit or building permit for any construction, the Applicant shall obtain a Preliminary 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.** 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.
- G4.** The Applicant shall provide the Commission with a minimum of 30 days notice prior to seeking issuance of each of the certificates associated with this decision.
- G5.** Prior to issuance of a Preliminary Certificate of Compliance, the Applicant shall submit a drawing for review and approval by the Commission staff that shows the area of undisturbed vegetation on the southern property line adjacent to Scudder's Lane. This vegetation shall remain undisturbed until such time as the implementing regulations for the Pond Village DCPC become effective.
- G6.** Prior to issuance of a Preliminary Certificate of Compliance, the Applicant shall submit a drawing for review and approval by the Commission staff that shows the proposed surface stormwater treatment described in the memorandum from Mr. Howard Woolard dated March 8, 2006.

CONCLUSION

Based on the Findings above, the Commission hereby concludes:

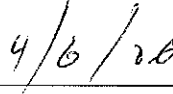
- 1.) The Applicant has demonstrated that a hardship exists in conforming with the requirements of the Pond Village DCPC and a literal enforcement of the provisions of the Act would involve additional delays that would represent financial and personal hardships to the Applicant, and
- 2.) That relief 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 Mr. and Mrs. John J. Curtin, Jr. 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 120 Scudder's Lane, Barnstable, MA.



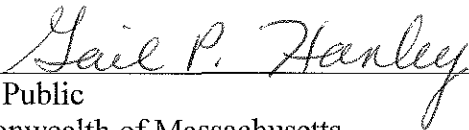
Alan Platt, Chair



Date

Commonwealth of Massachusetts
County of Barnstable

On this 6th day of April, 2006, before me, the undersigned notary public, personally appeared Alan Platt, 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.



Notary Public
Commonwealth of Massachusetts

My Commission Expires: 10/13/11