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RECEIVED BY
MARTHA'S VINEYARD
COMMISSION

MAR 30 1978

DATE: February 3, 1978
TO: Edgartown Board of Health
Edgartown Building Official
FROM: Martha's Vineyard Commission
SUBJECT: Development of Regional Impact Decision
RE: Residential Construction
APPLICANT: Greg E. Carter

SUMMARY

The Board of Health and Building Inspector of the Town of Edgartown are not permitted by the Martha's Vineyard Commission to grant the fifteen development permits for the Applicant's proposed residential construction. This decision was by vote of the Martha's Vineyard Commission on February 2, 1978. The local Board of Health and Building Inspector may grant development permits only in accordance with this decision and with the conditions contained herein, and they may, if authorized by local development ordinances and by-laws, place additional conditions upon or disapprove the development permits.

DECISION OF THE MARTHA'S VINEYARD COMMISSION

A Public Hearing was held on February 2, 1978 by the Martha's Vineyard Commission (the "Commission") at 8:00 p.m. at the Commission Offices, Olde Stone Building, New York Avenue, Oak Bluffs, Massachusetts upon due public notice to consider the application of Greg E. Carter, individually and as Trustee of various nominee trusts, (the "Applicant") for construction of fifteen disposal works construction permits, in the Town of Edgartown (the "Application"),

Chappaquiddick Island. The Applicant proposes construction of residential dwelling units on the fifteen one acre lots, which are shown on a plan entitled "Plan of Land in Edgartown - "Caleb's Common" dated December 4, 1973 prepared by Essex Survey Service, Inc., 30 Center Street, Nantucket and 47 Federal Street, Salem, more particularly the lots to be built upon are identified on said plan as lots 15, 16, 17, 21, 22, 23, 24, 25, 27, 28, 29, 30, 37, 38 and 45 (the "Locus"). The development proposed by this D.R.I. Application is planned to create or accommodate more than ten dwelling units, and it is, thus, a Development of Regional Impact ("DRI") under the Commission's Criteria and Standards, Development of Regional Impact Checklist 3.40. The Application was referred to the Commission for its review pursuant to Chapter 637 of the Acts of 1974, as amended, and Chapter 831 of the Acts of 1977 (the "Act"). The Application and the Notice of Public Hearing are incorporated herein. No objections to the notice or jurisdiction of the Commission or otherwise was made by any person.

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The Hearing was held pursuant to the Act and Massachusetts General Laws, Chapter 30A, Section 2 and was chaired by Edith Potter, Chairman of the Commission's Land Use Planning Committee. A motion to suspend the reading of the hearing notice passed unanimously. Mrs. Potter described the development proposed by the Application; Francis M. Doran, Esquire, of Natick, Massachusetts, appeared representing the Applicant. He and Mr. Carter spoke in favor of the proposal and, among other matters, described the

history of the Caleb's Common development and the applicable Town zoning and subdivision regulations.

In March of 1966 the Town of Edgartown adopted Zoning By-Laws for a Residence District and included Chappaquiddick Island in its entirety within that district. In part, the then applicable zoning regulation provided that no dwelling could be erected on a lot containing less than one acre of land. On January 15, 1973 the owners and developers of the Locus, William Brine, Jr. and John Black, recorded in the Registry of Deeds a plan of land including the Locus entitled "Plan of Land in Edgartown" dated December 14, 1972 prepared by Essex Survey Service, Inc. On that date Edgartown did not have a Planning Board, none having been established in accordance with Massachusetts General Laws Chapter 41. In March of 1973 the Town amended its Zoning By-Law and, among other things, established the R-120 Residential District for Chappaquiddick Island. That district includes the Locus. The amended regulations established a minimum lot size of three acres for the district and it permitted on each lot one single-family detached dwelling, together with one non-commercial guest house not exceeding the size of the principal residential structure. Thereafter, the Town established a Planning Board. On April 2, 1974 the Planning Board reviewed the December 14, 1972 plan, apparently with the voluntary cooperation of the then owners of the Locus, and the plan was approved with four conditions. This approved plan was entitled "Plan of Land in Edgartown dated December 7, 1973" and the Plan, with the Planning Board's endorsement,

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was recorded at the Dukes County Registry of Deeds on April 5, 1974. The various plans are incorporated by reference. The Applicant, Mr. Greg E. Carter, purchased the Locus. Title was conveyed into a Trust known as The Chappaquiddick Land Trust on January 16, 1975.

By deeds dated November 25, 1977, Carter conveyed alternate lots within the Locus to various nominee trusts, in each of which he is trustee with an office at 75 Federal Street, Boston, Massachusetts. The effect of the conveyances was to checkerboard the lots so that no two contiguous lots were in common ownership. On November 30, 1977 Greg E. Carter applied for fifteen Disposal Works Construction Permits to the Edgartown Board of Health. On December 13, 1977 the Town Board referred these Applications to the Commission as a Development of Regional Impact. On December 16, 1977 the November 25, 1977 deeds checkerboarding the lots were recorded at the Dukes County Registry of Deeds. On January 10, 1978 Greg E. Carter, as Trustee, applied for fifteen Building Permits, one for each lot within the development of the Locus, with the Town of Edgartown, Building Official. Thereafter, following one postponement of the hearing caused by the Commission learning of Mr. Carter's conveyances to the nominee trusts and defective notice arising thereby, the Hearing was held. Mr. Doran and Mr. Carter presented testimony in favor of the Application. Mr. Robert Marshall, Mr. Harold Kelley, Mrs. Mary Kelley, all of Chappaquiddick, and Mr. Robert Woodruff, Executive Director of the Vineyard Conservation Society, West Tisbury, Massachusetts,

spoke in opposition to the development proposal.

The proponents explained that the applications for fifteen development permits were made in December and January so as to preserve the rights to development of the Locus under the provisions of Massachusetts General Laws, Chapter 40A, Section 5A and the new Zoning Act. The Applicant sought to preserve the 1973 Town Zoning By-Law development density of one dwelling unit per acre by applying for development permits for the remaining fifteen unbuilt upon lots. The present zoning by-law has a minimum lot size of three acres. Mr. Carter explained that he did not wish to develop and build upon the fifteen lots at the same time but has made arrangements to do so only to protect as much as possible his development right to the one acre minimum lot size. He expressed his concern for Chappaquiddick and his desire to stretch out growth over a longer term. He also expressed willingness to cooperate in certain development controls if they were desired by the Commission.

Testimony presented by opponents expressed concern for the potential which development of the Locus has for drastic change in the character of Chappaquiddick Island. Concern was raised over the impact that introduction of fifteen new houses and associated automobile traffic would have on the already intolerable delays experienced during summer months for use of the three car Chappaquiddick Ferry, existing vehicular circulation and pedestrian safety along Dock Street. Potential public health problems with sewage disposal and water supply wells located on the same lot were discussed, as was the potential destruction of quahog and in a form suitable for recording of the location and lot

unique plant species. Hunting, fishing, and recreational qualities of the Island would be harmed and surface and ground water pollution could result from the development. A marginal entry road serving the Locus has water drainage problems and it could not handle increased traffic of the magnitude to be created by the development.

Mrs. Potter read letters of opposition into the record from: Yvonne LaCroiz, Janice Smith, Dr. Edward Self, Rev. Benjamin Lake, Joanne Patterson, Phillip Walsh, Mrs. Alan D. Slater, Leland Brown and Vance Packard, President of the Chappaquiddick Island Association. No letters were received in favor of the Application.

The Hearing was closed and the Commission recessed to allow the Land Use Planning Committee to consider the testimony and make a recommendation to the Commission.

The Land Use Planning Committee recommended that the Commission not approve the Application. The Committee recommended that the allowable density of single family residential dwelling units which may be constructed on the Locus under the Application should not exceed five units together with one accessory guest unit for each principal dwelling. The Applicant should be allowed to combine lots and to place dwelling units on such combined lots as he deems most appropriate subject, however, to the total development density of the Locus having no more than 5 dwelling units and accessory guest units. This allowed density will permit development of the Locus in a manner consistent with municipal development ordinances and by-laws. The Applicant should notify the Commission and the town permit granting authorities in writing in a form suitable for recording of the location and lot

arrangement for the construction of five dwelling units and accessory units.

The Commission discussed the Application and voted to accept the Committee's recommendation.

Under the Act, the Commission is required to make findings after its review of the development proposal. It must consider the probable benefits and detriments of the proposal. In this matter the Commission has considered the factors enumerated in the Act and has considered its Draft Policies for Large Scale Development, together with the information presented at the Public Hearing. The Commission finds that the probable detriments from the development as proposed by the Application would exceed the benefits but that the Application conditioned as provided herein will not interfere substantially with the achievement of any general plan of the Town of Edgartown or of Dukes County, or violate any local development ordinances and by-laws.

The Commission specifically finds that the development as proposed in the Application will be more detrimental than beneficial when compared to alternative manners of development or development occurring in alternative locations. This is so because the development of the Locus as proposed will create impacts which will change the character of Chappaquiddick Island by the sudden introduction of fifteen additional dwelling units together with the allowed construction of additional accessory dwelling units. The existing transportation access facilities by way of Chappaquiddick Ferry from Edgartown to the Island are presently strained to their practical carrying capacity and additional traffic generated by use of structures to be developed under the Application will further burden that facility.

The Commissioners found that potential impact on ground and surface waters and public health problems associated with the developments are detriments under the Act. Furthermore, the proposed development will not conform to the density development regulations of the existing Edgartown Zoning By-Laws which limit density to one dwelling unit per three acres, a density which the Commission believes is consistent with the fragile land forms of Chappaquiddick Island and the special historic, cultural, aesthetic and visual qualities of the Island.

The Commission finds the Application with the conditions approved by it is consistent with local development ordinances and by-laws and the Locus may be developed in accordance with this decision subject, of course, to the Applicant obtaining any other development permits which may be required by the Town or other law.

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The Commission adopted the recommendation of the Land Use Planning Committee and places the following conditions upon the development proposed by this Application:

1. That the allowable density of the single family residential dwelling units which may be constructed on the Locus which was the subject of the Development of Regional Impact Application shall not exceed five such units together with accessory guest units allowed by the Town Zoning By-Law. The Applicant may elect to place such dwelling units on lots aggregated, if necessary, as he deems most appropriate subject to the

provisions of local development ordinances and by-laws. The Applicant shall notify the Commission and the town permit granting authorities in writing, within ninety days from recording of this decision, in a form suitable for recording of the location and lot arrangement for the five units;

- 2. That there shall be not less than 200 foot separation between any leaching area of a sanitary disposal system and any domestic water supply well.

The Commission approves the Town of Edgartown officials' granting of applicable development permits only in accordance with this decision.

This decision is written consistent with the VOTE OF THE COMMISSION:

February 2, 1978

George H. Mathiesen
George H. Mathiesen, Chairman

Norman Friedman
Notary Public

my commission expires: 11/10/83

Edgartown, Mass. March 6 1978
at 2 o'clock and 00 minutes PM
Received and entered with Dukes County Deeds
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Attest: *Sewerly W. King*
Register

