

CAPE COD COMMISSION

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DATE: June 24, 1993

APPLICANT: Donald R. Edwards, Trustee
Governor William Bradford Realty Trust
314 Commercial Street
Provincetown, MA 02657

PROJECT #: HDEX93006

PROJECT: The Pilgrim House
336 Commercial Street
Provincetown, MA 02657

RE: Hardship Exemption Application
Cape Cod Commission Act, Section 23

BOOK/PAGE: 7977/342

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby denies the application of Mr. Donald R. Edwards, Trustee of Governor William Bradford Realty Trust for Hardship Exemption pursuant to Section 23 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for a proposed hotel/restaurant redevelopment project in Provincetown, MA. The decision is rendered pursuant to a vote of the Commission on June 24, 1993.

PROJECT DESCRIPTION

The Pilgrim House, located between Commercial and Bradford Streets in Provincetown, MA, was built by Phineas Nickerson circa 1800. The building was once the oldest hotel in Provincetown, and was listed as a contributing structure to a National Register Historic District prior to its destruction by fire in 1990. Extensive alterations were made to the building by numerous owners over its 200+ year history. Prior to the fire, the building contained a hotel, cabaret, patio bar, and possibly office and retail uses.

The proposed project consists of the redevelopment of the original hotel site for the purposes of constructing a 20-room inn, a 500 s.f. office, and a 180-seat restaurant/lounge on an approximately 19,000 s.f. lot. The site is zoned for commercial use, with a mixture of residential and commercial uses surrounding the site. The building is proposed as a 2 -1/2 story shingle and vinyl clad structure with a total floor area of 16,703 s.f. The site is almost completely cleared of

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vegetation and slopes slightly to the west.

PROCEDURAL HISTORY

In December, 1989, a previous owner received a building permit to renovate the original hotel and to construct an addition. On October 28, 1990, a fire destroyed the hotel but not the addition which was under construction at that time. Following the fire, the Bank of New England foreclosed on the owner of the property, and was itself subsequently taken over by the FDIC.

In April, 1992, the applicant, Mr. Donald Edwards, purchased the property and completed renovations to the addition and one other building fronting on Commercial Street. Since the redevelopment did not comply with current zoning bylaws, the Provincetown Building Inspector required completion of reconstruction on all previously existing buildings within two years of the fire (October 28, 1992), in order for the buildings to retain their legal pre-existing non-conforming status.

Since the reconstruction of the hotel could not be completed prior to October 28, 1992, the Provincetown Building Inspector denied a building permit for the project. The applicant appealed this decision to the Provincetown Zoning Board of Appeals (ZBA) in February, 1993, which overturned the Building Inspector's denial, thereby re-establishing the project. The applicant then filed for site plan review approval from the Provincetown Planning Board, which referred the project to the Commission for review as a DRI on March 31, 1993.

A public hearing was held to consider the Hardship Exemption request by a duly authorized subcommittee of the Commission in the Provincetown Town Hall on May 19, 1993. The public hearing was closed on May 19, 1993, with the record closed on June 7, 1993. Subcommittee meetings were held on May 19, 1993 and June 7, 1993.

Based upon testimony received at the public hearings, application materials submitted by the applicant, written materials submitted by all interested parties, and supporting technical information provided by staff, the subcommittee voted unanimously on May 19, 1993 to recommend to the full Commission that the Hardship Exemption request be denied for proposed redevelopment of the Pilgrim House site. On June 10, 1993 the full Commission voted unanimously with one abstention to deny the Hardship Exemption request.

MATERIALS SUBMITTED FOR THE RECORD

From the Applicant:

- Pilgrim House, sketch plan of landscape planting bed, dated June 7, 1993, 1 sheet, prepared by George Hitchcock
- Site Plan of Land, Governor William Bradford Realty Trust, dated February, 1993 and revised through April 21, 1993, 1 sheet, prepared by William N. Rogers, P.E., R.L.S., Provincetown, MA
- Governor William Bradford Realty Trust Proposed New Building "C", 336 Commercial Street, floor plans/elevations, prepared by G.P. & J.P. Kelley, dated January 30, 1993, 4 sheets
- Pilgrim House Inc., Hotel/Boarding House Exterior Fire Escape Systems and Structures, February 20, 1981, 1 sheet, prepared by William N. Rogers Engineers, P.E., R.L.S.,

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- Pilgrim House Inc., Hotel/Boarding House Egress/Fire Safety Schematic Layouts, dated August 8, 1980, 1 sheet, prepared by William N. Rogers Engineers, P.E., R.L.S.
- As-Built Floor Plans, 336 Commercial Street, February 18, 1988, 2 sheets, prepared by R. Wendell Phillips and Associates Inc., Cambridge, MA
- Don Edwards & Co. Proposed Renovations to 336 Commercial Street, Provincetown, MA, dated May 13, 1992, 4 sheets, prepared by J.P. Kelley
- Floor Plans/Elevations, Goldcoast Properties, Inc., 336 Commercial Street, February 10, 1990, 6 sheets, prepared by G.P. & J.P. Kelley
- Easement Agreement, Book 6859/Page 036-043, Barnstable County Registry of Deeds, received June 3, 1993
- general letter from Provincetown Historical Commission, received June 3, 1993
- Perennial Planters Inc., Job Estimate, dated June 2, 1993
- Hardship Exemption application with Development of Regional Impact application with attachments, received April 23, 1993
- Pilgrim House history, untitled, received May 6, 1993
- Massachusetts Historical Commission Nomination Form, dated December 15, 1976
- Cape Codder article, October 30, 1990
- Cape Cod Times article, dated October 30, 1990
- letter from Attny. Myer Singer to Cape Cod Commission staff, dated May 6, 1993
- letter from William N. Rogers II, P.E., R.L.S. to Donald R. Edwards, dated May 6, 1993
- Applicant's calculations of sewage flows, undated, 2 sheets
- Facsimile from Attny. Myer Singer to Cape Cod Commission staff, received May 12, 1993

From public officials/members of the public:

- letter from Provincetown Department of Municipal Finance/Assessors' Office to Cape Cod Commission, dated May 18, 1993
- letter from Provincetown Department of Public Works to George Hitchcock, dated May 17, 1993
- letter from Massachusetts Historical Commission to Lester J. Murphy, Jr. dated May 14, 1993
- letter from Provincetown Planning Board to Cape Cod Commission, dated May 6, 1993
- letter from Provincetown Department of Municipal Finance/Assessors' Office to Cape Cod Commission, dated April 30, 1993
- letter from Provincetown Department of Municipal Finance/Assessors' Office to George Hitchcock, dated April 23, 1993
- DRI Referral Form, received March 31, 1993
- letter from Provincetown Department of Police, to William N. Rogers II, P.E., R.L.S., dated March 2, 1993
- letter from Joseph J. Borgesi, Director of Public Works to Robert O'Malley, Acting Chairman, Provincetown Planning Board, dated March 1, 1993
- letter from Warren G. Alexander, Provincetown Building Inspector to William N. Rogers II, P.E., R.L.S., dated March 1, 1993
- Provincetown Zoning Board of Appeals Decision dated February 4, 1993
- Draft Provincetown Site Plan Review Agreement with Donald R. Edwards, Trustee of Governor William Bradford Realty Trust, undated
- letter from Warren G. Alexander, Provincetown Building Inspector to Attny. Lester J. Murphy, Jr., dated August 24, 1992

- report from Warren G. Alexander, Provincetown Building Inspector to Sue Harrison, Provincetown Planning Board Chair, dated August 3, 1992
- letter from Margaret Roberts, 8 Center Street, Provincetown, MA, citing noise/traffic concerns, received May 19, 1993
- letter from Anne Fausto Sterling, 149 Ivy Street, Provincetown, MA, citing noise concerns, received May 17, 1993, with attached letter dated May 12, 1993
- letter from Peter Tompkins, 139A Bradford Street, Provincetown, MA, in opposition, received May 19, 1993
- letter from Guida Rodrigues, 342B Commercial Street, Provincetown, MA, in opposition, received May 19, 1993

From Cape Cod Commission staff:

- Cape Cod Commission Staff Report, dated May 14, 1993
- Cape Cod Commission Subcommittee Report, dated June 7, 1993

The notices of public hearings relative thereto, the Commission's staff notes, exhibits and correspondence, the transcript and minutes of the hearings and all written submissions received in the course of our proceedings are incorporated into the record by reference.

TESTIMONY

Testimony was received at the May 19, 1993 subcommittee hearing from attorney Myer Singer, who presented the project for the applicant. Mr. Singer noted that the Pilgrim House had been used as a 57-room hotel, as well as providing food service and a lounge for approximately 400 people since its construction in the early 1800's, until a fire destroyed the building in 1990. The property was unused until Mr. Edwards purchased it in 1992. He stated that the proposed project, with 20 rooms, a 500 s.f. office, and 180-seat restaurant/lounge represented a less intensive use and smaller building mass than the original Pilgrim House.

Mr. Singer stated that the basis for the Hardship Exemption request was related to substantial cost and time delays that the applicant that would incur as a result of a full DRI review of the project. He also believed that the project would not derogate from the intent and purposes of the Act, noting that the project was redeveloping an essentially barren site, and citing the ability of the Town of Provincetown to review the project adequately. He stated that the applicant would be willing to incorporate suggestions made in the Commission staff report into the project plans. George Hitchcock, builder for the project, added that the hotel will provide information for guests on alternative modes of transportation available to the site. William Rogers, engineer on the project since 1980, testified that the uses submitted by the applicant were based on historic observations conducted by his firm. Commission staff reported on water resources, transportation and community character issues.

Comments from officials included Alix Ritchie, speaking on behalf of the Provincetown Planning Board, who stated that the project will be subject to extensive review by the Provincetown Site Plan Review Committee, which can require an assessment of many development issues such as traffic impacts, water or septic demand. Kevin Mullaney, Provincetown Health Agent, stated that the historic uses of the property included a lounge or tavern, and that Title V design flow

requirements for this use are 35 gpd, as compared to 3 gpd for a theater. Carlos Eliot, Provincetown Historical Commission, requested that the Historical Commission be involved in the review of the project.

Comments from the public included Peter Tompkins, abutter to the project, who questioned the applicant's request for a Hardship Exemption, and also expressed concern for noise impacts and a lack of sunlight to neighboring structures as a result of the project. Guida Rodrigues expressed opposition to a bar or nightclub use on the property. Sarah Peek spoke on behalf of Margaret Robinson, citing concerns for noise caused by people leaving the facility late at night. Harry Parsekian, abutter, stated that proposed revisions to Title V regulations may impact this project. He also noted that additional impacts to Provincetown Harbor may result from the project and questioned the Hardship Exemption request.

At the May 19, 1993 subcommittee meeting, the subcommittee voted unanimously to recommend to the full Commission that the Hardship Exemption request be denied due to the fact that the applicant did not provide sufficient documentation to support the granting of a Hardship Exemption. On June 10, 1993 the full Commission voted unanimously with one abstention to accept the recommendation of the subcommittee and voted to deny the Hardship Exemption request.

JURISDICTION

The project qualifies as a DRI under Section 12(c)(6) of the Cape Cod Commission Act (Act) as "any proposed...business...development which has a floor area...greater than 10,000 square feet."

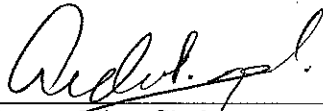
FINDINGS

The Commission has considered the applicant's request for a Hardship Exemption pursuant to Section 23 of the Act, and based upon consideration of such request, upon information presented at the public hearing and submitted for the record, makes the following finding:

1). Section 23 of the Cape Cod Commission Act states that in order to grant a Hardship Exemption, the Commission find that a literal enforcement of the provisions of the Act would involve substantial hardship 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 and purposes of the Act. The applicant did not provide sufficient documentation to support the granting of a Hardship Exemption.

CONCLUSION

Based upon the finding above, the Cape Cod Commission hereby denies without prejudice the application of Mr. Donald R. Edwards, Trustee of Governor William Bradford Realty Trust for a Hardship Exemption pursuant to Section 23 of the Act for the proposed redevelopment of the Pilgrim House site in Provincetown, MA. This conclusion is supported by the finding that the Applicant did not provide sufficient documentation to support the granting of a Hardship Exemption. This decision is rendered pursuant to a vote of the Commission on June 24, 1993.



Andrew Young, Vice-Chairman
Cape Cod Commission

Date

Commonwealth of Massachusetts

Barnstable, ss.

Subscribed and sworn to before me this 24th day of June 1993

Katharine L Peters
Name, Notary Public

My commission expires: