



CAPE COD COMMISSION

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DATE: March 31, 1994

APPLICANT: Phyllis Schlosberg/Diane Fernandez
c/o Fred Ambrose
P.O. Box 1910
Brewster, MA 02631

PROJECT #: TR94003

PROJECT: 273 Commercial Street
Provincetown, MA

RE: Development of Regional Impact Exemption
Cape Cod Commission Act, Section 12(k)

BOOK/PAGE: Book 7402, Page 133

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (the Commission) hereby grants the application of Phyllis Schlosberg and Diane Fernandez for a Development of Regional Impact (DRI) Exemption under Section 12(k) of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for demolition of an existing historic structure and construction of a new building at 273 Commercial Street, Provincetown, MA, on March 31, 1994.

PROJECT DESCRIPTION

The proposed project is within the Provincetown National Register Historic District and located off Commercial Street, adjacent to Provincetown Harbor. The proposal is to demolish an existing contributing structure to the Provincetown National Register Historic District and to construct a new single family home on the site. The new structure, as described in plans dated February 15, 1994 and revised March 12, 1994, encompasses several of the existing structure's characteristics. It is three stories, with a variable roofline, clapboard and shingle exterior, and wood trim detailing. The new building

follows essentially the same footprint as the existing structure, but is approximately 25 feet closer to the water; 10 feet from the approximate mean high water line.

PROCEDURAL HISTORY

Provincetown's Historical Commission began review of this project when the owner originally proposed to move and reconstruct the building. The Cape Cod Commission's policy for reviewing alterations to historic structures listed on the State and National Register is to have the Local Historical Commission determine whether the alteration is "substantial." When demolition was proposed, the project tripped Cape Cod Commission review under Section 12(c)(1) of the Act.

The project was referred to the Commission by the Town of Provincetown Building Department on February 18, 1994. The project proponent's application was determined to be complete on February 22, 1994. A public hearing was held by an authorized subcommittee of the Commission on March 15, 1994 in the Provincetown Town Hall in Provincetown, MA. On March 15, 1994, the subcommittee voted to close the public hearing and the record. A public meeting was held on March 15, 1994, following the public hearing.

Based upon testimony received at the public hearing, application materials submitted by the project proponent, written material submitted by all interested parties, and supporting technical information provided by staff, the subcommittee voted unanimously on March 15, 1994 to recommend to the full Commission that the proposed demolition of the existing historic structure and construction of a new building be granted a DRI Exemption. On March 31, 1994, a subcommittee report was presented to the full Commission. Also on March 31, 1994, the Commission voted to grant the applicant a DRI Exemption pursuant to Section 12(k) of the Act.

MATERIALS SUBMITTED FOR THE RECORD

From the applicant:

- Application for Development of Regional Impact Exemption, dated February 15, 1994
- Outline of proposed project located at 273 Commercial Street prepared by F.C. Ambrose, dated February 1994.
- Application for Hardship Exemption, dated February 15, 1994.
- Plan of proposed structure as originally approved by Provincetown Historical Commission, dated January 25, 1994.
- Plan of proposed structure showing casement window alternative, dated February 15, 1994.

- Plan of proposed structure showing compromise between window designs, dated February 15, 1994 revised March 12, 1994.
- Plan of approved septic system, showing to scale the locus of the relocated building, approved March 9, 1993.

From Commission staff:

- Cape Cod Commission Subcommittee report dated March 31, 1994.
- Cape Cod Commission Staff report dated March 11, 1994.

From Public Officials:

- DRI Referral form and attachments, dated February 16, 1994.
- Letter from Regina Binder, Chair, Provincetown Historic Commission, to Cape Cod Commission, dated February 27, 1994, revised March 10, 1994.
- Letter from Suzanne McCain, Massachusetts Historical Commission, to Sarah Korjeff, dated March 15, 1994.

Other Materials:

- Letter from Brian D. Hart to Cape Cod Commission, dated March 15, 1994.
- Letter from Joseph T. Patrick to Cape Cod Commission, dated March 3, 1994.

The application and 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

Fred Ambrose, project manager, presented the project to the subcommittee. Mr. Ambrose stated that the applicant has negotiated with the Provincetown Historic Commission to achieve a structure which is a sensitive infill in the National Register District. An effort was made to match the trim design prevalent in the district. He described the details of the proposed plan for the new structure. Mr. Ambrose explained that the building had to be moved to install a Title V septic system. An engineer was brought to the site and stated that the cost of moving the building and then bringing it up to code was prohibitive. Mr. Ambrose pointed out that the building is a contributing structure to the National Register District, and is not individually listed. Mr. Ambrose also noted that the applicant was planning to apply to the building department to construct a building 2 feet higher than the one represented in the plans before the subcommittee, changing the overall height from 29 feet to 31 feet. He also stated that the applicant would like to return to the Historic Commission to review a change from shingles to clapboards on the front facade of the proposed building.

The Commission staff report noted that the building is listed on the State Register of Historic Places and the National Register of Historic Places. Efforts

should be made to preserve buildings with these designations. If preservation is not possible, however, the building which is constructed in its place should be in keeping with the character of the historic district. Staff also explained the Cape Cod Commission's policy of turning to the Local Historical Commission and the Massachusetts Historical Commission in making decisions regarding historic structures.

Regina Binder, Chair, Provincetown Historic Commission, stated that the historic commission has worked with the applicant since November on the design of the new structure. The design of the original proposal was not in keeping with the character of the district. Ms. Binder stated that the historic commission and the applicant had arrived at a solution which they believed would accommodate the applicant's needs while retaining the character-defining features of the original structure and maintaining the character of the district.

Testimony included Irene Rabinowitz, speaking as a citizen of Provincetown, who noted that the design of the proposed structure fit well with the character of the waterfront. James Oust spoke for Gloria Lumba, restaurant owner and tenant of an adjoining parcel, and stated her concern that moving the building would obstruct the water view from her restaurant.

JURISDICTION

The proposed project qualifies as a Development of Regional Impact (DRI) under Section 12(c)(1) of the Cape Cod Commission Act as "any proposed demolition or substantial alteration of an historic structure listed with the National Register of Historic Places or Massachusetts Register of Historic Places, outside a municipal historic district or outside the Old Kings Highway Historic District."

FINDINGS

The Commission has considered the application of Phyllis Schlosberg and Diane Fernandez for the demolition of an existing structure and construction of a new building at 273 Commercial Street in Provincetown, MA, and based on consideration of such application, the information presented at the public hearing and submitted for the record, the Commission makes the following findings subject to Section 12(k) of the Act:

- 1.) The existing structure at 273 Commercial Street is located within the Provincetown National Register Historic District and listed as a contributing structure to the District. The building is located on a back lot off Commercial Street and only a small portion of the existing building and proposed building are visible from the street.

2.) In order to install an on-site septage disposal system in accordance with Title V and local health regulations to serve the structure, the building must be moved approximately 25 feet back from the existing location. The Board of Health approved the plan for the New septic system on March 9, 1993. The applicant has stated that the cost of moving the structure is prohibitive to the project.

3.) The proposed plan for the new structure is sympathetic to the character of the Provincetown National Register Historic District. The new structure is of wood construction, with some casement and some double hung windows, and is similar in size to the surrounding structures on the harbor.

4.) The Provincetown Historical Commission has worked with the applicant to achieve a design for the new structure which is in keeping with the character of the historic district since November 1993. The Local Historical Commission has found that the plans for the new structure dated February 15, 1994 and revised March 12, 1994 preserve sufficient characteristics of the original structure and are in keeping with the character of the district.

5.) The Massachusetts Historical Commission found that the initial plans for the new structure, dated January 25, 1994 and February 15, 1994, were appropriate in scale, massing, and roof line to the character of the district. MHC further stated that the window design of the January 25, 1994 plan is sympathetic to the character-defining features of the Historic District but the window design of the February 15, 1994 plan is not sympathetic to the district. The revised March 12, 1994 plan addresses the issue of window design in the February 15, 1994 plan and more closely reflects the style of the January 25, 1994 plan.

6.) To comply with Development Review Policy 7.1.5 (where reuse of historic structures is not possible, buildings should be replaced with structures of similar character, mass, proportion and scale when feasible), the applicant has proposed a structure which is of similar character, mass, proportion and scale.

CONCLUSION

Based upon the findings above, the Cape Cod Commission hereby concludes:

The location, character and environmental effects of the proposed demolition of an existing structure and construction of a new building will prevent its having any significant impacts on the values and purposes protected by the Act outside of the community of Provincetown. This conclusion is supported by the findings that the applicant was willing to work with the Provincetown Historical Commission to achieve a design for the new structure which preserves the character-defining features of the original historic structure and

which is in keeping with the character of the surrounding National Register Historic District.

The Commission hereby grants Phyllis Schlosberg and Diane Fernandez a DRI Exemption from the terms and provisions of the Act, pursuant to Section 12(k) of the Act, for the demolition of a contributing historic structure and the construction of a new building, consistent with this decision.

David H. Ernst
David H. Ernst, Chair

3/31/94
Date

Commonwealth of Massachusetts

Barnstable, ss.

Subscribed and sworn to before me this 31st day of March 19 94

Katharine J. Peters
Name, Notary Public

My commission expires:

My Commission Expires December 3, 1997