



CAPE COD COMMISSION

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Date: May 12, 1994

To: Mr. Jack Lyons

From: Cape Cod Commission

Re: Development of Regional Impact, Section 12 (e),
Cape Cod Commission Act

Project #: TR94007

Project: Lyon's Cottage Modification on Sandy Neck Barrier Beach,
Barnstable, MA

Applicant: Mr. Jack Lyons
9725 Wyman Way
Upper Marlboro, MD 20772

Lot/Parcel: Map 303, Parcel #7

Decision of the Cape Cod Commission

Summary

The Cape Cod Commission (Commission) hereby approves with conditions the application of Mr. Jack Lyons for a Development of Regional Impact (DRI) permit, under Section 12 (e) of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended. This decision is rendered pursuant to a vote of the Commission on May 12, 1994.

Project Description

The proposed project consists of the renovation and expansion of an existing cottage

Lyons Cottage, Sandy Neck, Barnstable, MA
May 12, 1994 Decision - #TR94007

on an approximately six-acre site in Barnstable, MA. The project is located in the southeastern section of the Sandy Neck Barrier Beach Area of Critical Environmental Concern. Sandy Neck is within the Old King's Highway Regional Historic District and Sandy Neck Cultural Resource District, which is included in the National Register of Historic Places. Sandy Neck is also designated as a scenic landscape by the Massachusetts Department of Environmental Management and is the only area on Cape Cod with this designation outside the lower Cape.

The existing one-story cottage, which was built circa 1875, was originally used as a gunning cottage and in later years as a summer residence. Pitch pines, grasses and shrubs characteristic of the barrier beach landscape surround the cottage. The Great Marshes and Barnstable Harbor lie directly to the east and south.

Procedural History

The Lyons cottage was referred to the Cape Cod Commission under Section 12 (e) of the Cape Cod Commission Act as a discretionary referral on March 23, 1994, by Barnstable Town Manager, Warren Rutherford. The Commission voted to accept the referral as a Development of Regional Impact on March 31, 1994.

A public hearing was held on May 3, 1994 at the Barnstable Town Hall for the purpose of taking public testimony on the proposed project. A subcommittee meeting was also held on May 3, 1994 for the purpose of allowing the subcommittee to discuss the issues related to the project. A subcommittee meeting was held on May 9, 1994, at the Cape Cod Commission offices at which time the subcommittee voted on their recommendation to the Commission.

Materials Submitted for the record

Town Submittals:

- Discretionary DRI referral form and attachments, dated March 23, 1994
- Notice of Intent and Appendices submitted to Town of Barnstable Conservation Commission for Remodeling and Repair, Title V Septic System Upgrade, and Dike Repair at Trail 5 on Sandy Neck in Barnstable, MA, dated March 11, 1994
- Draft Sandy Neck Barrier Beach Management Plan, prepared by Town of Barnstable Natural Resource Department, dated November 1993
- Massachusetts Historical Commission Inventory Form for Bishop/Fogarty Cottage, Sandy Neck Uplands, Barnstable, MA, dated January 1983, additions July 1983
- Executive Office of Environmental Affairs Designation of Sandy Neck Barrier Beach System as an Area of Critical Environmental Concern and Supporting

Findings, dated December 15, 1978

Staff Reports and Correspondence:

- Cape Cod Commission Subcommittee Report dated May 9, 1994
- Cape Cod Commission Staff Report dated April 29, 1994
- Memo to Subcommittee members re: site visit, dated April 28, 1994
- Memo to Subcommittee members re: project information, dated April 28, 1994
- Letter to Leslie-Ann Morse re: discretionary referral, dated April 13, 1994
- Memo to Subcommittee members re: public hearing, dated April 7, 1994
- DRI Notification Form to Norman Hayes, dated April 6, 1994
- Letter to Norman Hayes re: hardship exemptions, dated March 5, 1994 (letter incorrectly dated March 5, 1994; actual date April 5, 1994)
- Cape Cod Commission Staff Report dated March 30, 1994

Submittals from the Applicant:

- Application for Development of Regional Impact, received April 19, 1994
- Letter from Leslie-Ann Morse re: Reservation of Rights, dated April 19, 1994
- Elevation plans dated February 18, 1994
- Elevation plans dated February 18, 1994 showing red outline of existing cottage structure, submitted March 31, 1994
- Request for Certificate of Appropriateness from Old Kings Highway Historic District Committee, dated January 25, 1994
- Elevation plans dated April 28, 1994
- Photographs of Sandy Neck from Barnstable Harbor, submitted May 3, 1994
- Photographs (10) of existing cottage and of cottage colony structures, submitted May 3, 1994

Submittals from Government Agencies:

- Letter from Natural Heritage and Endangered Species Program, Division of Fisheries and Wildlife, re: Lyons Cottage, dated May 3, 1994
- Letter from Massachusetts Historical Commission re: need for further project information, dated April 22, 1994
- Letter from Massachusetts Historical Commission re: historic resources, dated May 9, 1994

Submittals from the public:

- Statement from Nevin Weaver re: reasons for opposing Lyons Cottage Expansion, received May 3, 1994

The application and notice of public hearings relative thereto, the Commission's

staff reports, correspondence, notes and exhibits, minutes of all hearings and all written submissions received in the course of the proceedings are incorporated into the record by reference.

Testimony

At the May 3, 1994 hearing, testimony was presented by the applicant's attorney Ms. Leslie Ann Morse and Mr. Peter Coneen. Ms. Morse described the history behind the cottage and Mr. Lyons' ownership. Ms. Morse submitted several photographs for the record along with a revised architectural drawing showing a reduced building design. Ms. Morse discussed the several meetings that took place between the applicant, representatives from the town and Commission staff. She said that the meetings provided a forum for discussing the sensitive nature of the Sandy Neck Barrier Beach, the concerns of the town and ways to meet the Commission's Minimum Performance Standards. Mr. Coneen, architect for the applicant, presented a brief history of how the design evolved to the present size. Mr. Coneen said that the building design was compared to the nearest cottages on Sandy Neck which are located on the point. The design went through the Old King's Highway Regional Historic District review as well.

Sarah Korjeff, Commission staff described the downsizing of the cottage as worked out in several meetings. The building size has been reduced and the town referring boards were generally satisfied with the final design, Ms. Korjeff said. The applicant has addressed Minimum Performance Standard 2.2.2.3 that allows reconstruction on a barrier beach provided there is no increase in floor area or intensity of use. The applicant has addressed the standard through a reduction of the total proposed building size and height and by building within the existing footprint.

Ms. Pat Anderson, Barnstable Historic Commission read a statement into the record citing the importance of Sandy Neck Barrier Beach from an environmental, historical and archeological perspective.

Mr. Rob Gatewood, Barnstable Conservation Agent, said that the project posed a threat to the character, setting and environmental sensitivity of the barrier beach and the town had wanted the Commission to set parameters for the development.

Mr. Peter Freeman, Chair of the Old King's Highway Historic District, discussed the design history of the project and concluded that the Old King's Highway review was thorough and proper.

Mr. David Martin, resident, asked the subcommittee to approve the project and

don't put the applicant in a "Catch-22" situation.

Mr. Burns McGruber, resident, said that the building seems out of character on the Neck and that if this type of increase occurs elsewhere on the beach, there will be a significant cumulative impact on the resources.

Mr. Nevin Weaver, resident, said that in his opinion, the Title V septic variance does not satisfy environmental concerns. The trail system is also fragile and this should be taken into account Mr. Weaver said.

Mr. William Swift, resident, said that the cottage should be approved.

Mr. James Gould, Chairman of the Barnstable Historic Commission, stated that he appreciates that the Cape Cod Commission accepted the discretionary referral, and that the overall setting is the key to the project's design.

Jurisdiction

The proposed Lyons Cottage qualifies as a DRI under section 12 (e) where "a proposed development which does not exceed one of the specific thresholds in the interim standards and criteria set forth in subsection C...may be referred to the commission by a municipal agency, in the municipality where the development is located,...provided that the commission accepts the referral as a development which may have regional impacts..."

Findings

The Commission has considered the application of Mr. Jack Lyons for the renovation and expansion of an existing cottage located on Sandy Neck in Barnstable, MA, and based on consideration of such application and upon the information presented at the public hearings makes the following findings pursuant to section 12 of the Act:

1.) Sandy Neck Barrier Beach is an extremely dynamic ecosystem sensitive to changes in use and particularly to changes in the intensity of use. Any threat to the existence of rare and endangered species that use the barrier beach, whether through actual takings or disturbance of habitat through increased use, must be examined cautiously. Increased intensity of use could potentially threaten not only the habitat, floral and faunal diversity and rare and endangered species, but the potential also exists for destabilization of the dunes, and other landforms that characterize this

barrier beach. The town is best able to address the threat posed by cumulative increases in intensity of use on Sandy Neck through local and/or regional regulatory measures.

2.) Minimum Performance Standard 2.2.2.3 states that existing structures on a barrier beach may be reconstructed or renovated provided there is no increase in floor area or intensity of use. This standard seeks to prevent increases in intensity of use to prevent vehicle traffic in already stressed areas and additional human use that could potentially threaten the resources on site. The applicant has addressed the Minimum Performance Standard through a reduction of the total proposed building size and height and by building within the existing footprint.

3.) The applicant and his representatives stated on several occasions that they will not convert the existing cottage from a seasonal dwelling into a year round dwelling. The subcommittee acknowledges this commitment on the part of the applicant and finds that the dwelling will be used on a seasonal basis only.

4.) Natural resource concerns regarding the issues of dike repair and type and duration of construction techniques will be resolved at the local level. The town of Barnstable Conservation Commission has the authority to address the protection of natural resources and has stated confidence in their ability to address these concerns.

5.) To comply with Regional Policy Plan Minimum Performance Standard 7.1.2 (the distinguishing, original qualities of an historic building, structure or site and its environment shall be preserved) the applicant has retained the original historic gunning cottage and defined it as a component of the proposed design.

6.) To comply with Regional Policy Plan Minimum Performance Standard 7.2.1 (the height and scale of a structure and any addition to an existing building shall be compatible and harmonious with its site and existing surrounding buildings), the applicant has also reduced the overall height of the proposed structure to within the general height of the surrounding vegetation, and decreased the proposed mass of the building by approximately 35% so that it is in keeping with nearby structures in the cottage colony at the point of Sandy Neck.

7.) To comply with Regional Policy Plan Minimum Performance Standard 7.1.3 (development proposed on or adjacent to prehistoric or historic archaeological sites shall be configured so as to maintain and/or enhance such resources), the proposed structure will remain within the existing disturbed area of the site. The Massachusetts Historical Commission states that the proposed project is located in

an area that has been previously disturbed and thus does not threaten archaeological resources in the Sandy Neck Cultural Resource District.

8.) The final design is approved based on building elevation plans dated April 28, 1994.

Conclusion

Based on the findings above, the Cape Cod Commission hereby concludes that the benefits of the proposed project outweigh the detriments. This conclusion is supported by the findings that the applicant will not convert the existing cottage from a seasonal dwelling into a year round dwelling, that he has reduced the height, scale and massing of the proposed structure to within the general height of the surrounding vegetation, that the historic gunning cottage will be preserved and defined as a component of the proposed structure, and that the project is designed on the footprint of the existing building or within previously disturbed areas so that archaeological resources will not be impacted. It is further supported by the finding that the Town of Barnstable is the only entity under the current regulatory framework able to address the threat posed by cumulative increases in intensity of use on Sandy Neck which may threaten the area's natural resources. Further, the Commission finds that the project is not more detrimental to the protected resource than would be allowable under Regional Policy Plan Goal 2.2.2.

The Commission has reviewed the project against the Minimum Performance Standards in the Regional Policy Plan (RPP) and has determined that the project complies with the RPP. The project will be consistent with the Town of Barnstable zoning bylaws if the applicant obtains all necessary local permits and approvals.

Conditions

The Commission hereby approves with conditions the proposed renovation and expansion of the Lyons Cottage on Sandy Neck in Barnstable, MA, subject to the following conditions:

- 1.) The structure must be constructed as specified in plans notarized by the Cape Cod Commission clerk, dated April 28, 1994.
- 2.) This cottage is restricted to residential seasonal use. The cottage shall not be used for year-round residency. The above language is not intended to restrict inspection, maintenance and/or repair, or short-term visitation to the property.

3.) Prior to submission of the final building design plans to the Barnstable Building Inspector, the applicant or his representative shall provide these plans to the Cape Cod Commission for the purpose of verifying their consistency with those submitted on April 28, 1994. The clerk of the Commission will notarize these plans, which shall then be submitted to the Barnstable building department in application for a building permit.

The Cape Cod Commission hereby grants Mr. Jack Lyons an approval with conditions as a Development of Regional Impact, pursuant to Section 13 of the Act, for the renovation and expansion of the Lyons Cottage on Sandy Neck Barrier Beach in Barnstable, MA.



David H. Ernst, Chair

5/12/94
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

Subscribed and sworn to before me this 12th day of May 1994

Katharine Y. Peters

NAME, Notary

My Commission expires: 