

# CAPE COD COMMISSION

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Date: September 22, 1994; amended October 31, 1994

To: Mr. Robert Baum, P. C.  
50 Milk Street  
Boston, MA 02109

From: Cape Cod Commission

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

Project #: TR94008

Project: Nehemiah Lovell House Project Reconstruction, Osterville, MA

Applicant: Catherine A. McDowell, Trustee  
Nehemiah Lovell Realty Trust  
619 Main Street  
Centerville, MA

Map/Lot: 141/10-1,10-2

## Decision of the Cape Cod Commission

### Summary

The Cape Cod Commission (Commission) hereby approves with conditions the application of Ms. Catherine A. McDowell for a Development of Regional Impact (DRI) permit, under Section 3(1) of the Cape Cod Commission DRI Enabling Regulations, Barnstable County Ordinance 90-12, as amended. This decision is rendered pursuant to a vote of the Commission on September 22, 1994.

Nehemiah Lovell House, Osterville, MA  
September 22, 1994 Decision, amended October 31, 1994 - #TR94008

## Project Description

The proposed project is located on the site of the Nehemiah Lovell House, listed individually on the National Register of Historic Places. The proposal is to reconstruct the Lovell House, using photographic information and earlier architectural drawings of the structure to replicate exterior architectural details. The structure will be approximately 2,000 square feet for commercial use. Two other new structures are under construction on the site, to the side and rear of the Lovell House. A second National Register structure originally on the site, a barn, was demolished while attempting to move it to another site. The reconstruction will include several elements of the original structure displayed in an interactive way in the public entry area. The site will include an interpretive plaque which explains the significance of the original structure and represents the difference between it and the reconstruction. The applicant will make original materials available to interested historical or educational organizations and will compile a document which explains the historical and structural evolution of the Lovell House, based on evidence uncovered during the stripping and moving of the building and shown in photographs of this process.

## Procedural History

In September, 1993, the town of Barnstable referred the Lovell House to the Commission because an emergency demolition permit was sought for the National Register structure. The Executive Committee of the Commission reviewed the proposed emergency demolition and heard the opinion of a licensed architect that the building was structurally sound and not in danger of collapse. At that time, the applicant submitted a letter withdrawing the application to demolish the Lovell House. The Executive Committee voted to accept the letter and received notification from the town of Barnstable that the request for a condemnation order was also withdrawn.

The Nehemiah Lovell House was referred to the Commission under Section 3(1) of the Cape Cod Commission DRI Enabling Regulations, Barnstable County Ordinance 90-12, as amended on May 27, 1994 by the acting Barnstable Building Inspector. Representatives of Massachusetts Historical Commission (MHC) visited the site on June 21, 1994 and stated in a letter dated June 23, 1994 that the work already completed on the property clearly constituted a substantial alteration.

On July 18, 1994, the Executive Committee reviewed letters from the Barnstable Building Inspector regarding the need for emergency foundation and roof work to

protect the integrity of the Lovell House. The Executive Committee voted to allow the emergency work subject to MHC approval of appropriate methodology for said repairs. Performance specifications were forwarded to the building inspector and the applicant on July 19, 1994.

A public hearing was held on July 20, 1994 at the Chamber of the Assembly of Delegates for the purpose of taking testimony on the proposed restoration project. On August 1, 1994, the Lovell House collapsed while being prepared for a new foundation. The Barnstable Building Inspector ordered the structure's immediate disassembly and the Commission provided instructions on the preservation of structural members and sheathing on site or at Silvia and Silvia Associates in Osterville so they would be available for accurate replication, reuse and interpretation of the history of the structure. The structure was demolished using a backhoe and the building materials were left on site or dumped at the Silvia and Silvia Associates shop. A new foundation has been poured on the site and the building inspector has issued a stop work order on the project.

Two subcommittee meetings were held on August 4, 1994 and August 18, 1994 at the Cape Cod Commission offices to discuss the demolition of the structure and a request to continue work on the foundation. The subcommittee determined that a new public hearing was required due to the changes in the applicant's proposal occasioned by the demise of the original structure. A public hearing was opened and closed on September 7, 1994 in rooms 11 and 12 of the Barnstable Superior Court House for the purpose of taking public testimony on the proposed reconstruction. A subcommittee meeting was held September 15, 1994 for the purpose of allowing the subcommittee to discuss issues related to the project.

A subcommittee meeting was held on September 22, 1994, at the Cape Cod Commission offices during which time the subcommittee voted on their recommendation to the Commission.

#### **Materials Submitted for the record**

##### Town Submittals:

- DRI referral form, cover letter, and cease and desist order from Barnstable building inspector, dated May 27, 1994
- Letter from Alfred Martin, building inspector, to A.M. Wilson re: cease and desist order, dated May 27, 1994.
- Letter from Arlene Wilson to Alfred Martin, building inspector, re: DRI referral, dated May 31, 1994.

- Memo from Barnstable Historical Commission to Cape Cod Commission re: restoration of Lovell House, received July 6, 1994.
- Letters (two) from Alfred Martin, building inspector, to Sarah Korjeff re: emergency work on Lovell House, dated July 18, 1994.
- Photographs of Nehemiah Lovell House, submitted July 20, 1994.
- Letter from Alfred Martin, building inspector, to Sarah Korjeff re: structural components of Lovell House, dated July 29, 1994.
- Letter from Alfred Martin, building inspector, to Arlene Wilson re: inspection of Lovell House following collapse, dated August 2, 1994.
- Letter and attachments from Alfred Martin, building inspector, to Gregory M. Silverman re: order to disassemble Lovell House, dated August 5, 1994.
- Letter from Ralph Crossen, Building Commissioner, to Sarah Korjeff re: request to construct decking on foundation, dated August 23, 1994.
- Massachusetts Historical Commission Inventory Form for Nehemiah Lovell House, Osterville, MA, recorded by Candace Jenkins, dated 1986.
- Past correspondence between building inspector and project proponent re: Lovell House permitting prior to Cape Cod Commission review, building department files.
- Assessors information on the Lovell House property

#### Staff Reports and Correspondence:

- Cape Cod Commission Subcommittee Report dated September 19, 1994
- Cape Cod Commission Staff Report dated September 1, 1994
- Cape Cod Commission Staff Report dated July 20, 1994
- Letter from Max Ferro to Sarah Korjeff re: condition of Nehemiah Lovell House, dated October 4, 1993.
- Letter from Sarah Korjeff to Arlene Wilson re: cease and desist, dated May 27, 1994.
- Development of Regional Impact Referral Notification Form and memo from Sarah Korjeff to Arlene Wilson, dated June 6, 1994.
- Memo from Sarah Korjeff to Subcommittee re: Lovell House, dated June 30, 1994.
- Letter from Sarah Korjeff to Arlene Wilson re: DRI review, dated June 30, 1994.
- Letter from Sarah Korjeff to Allen Johnson, Massachusetts Historical Commission, re: Lovell project review, dated July 6, 1994.
- Letter from Sarah Korjeff to Arlene Wilson re: Cape Cod Commission review, dated July 11, 1994.
- Memo from Sarah Korjeff to Subcommittee Members re: Lovell project status, dated July 11, 1994.
- Memo to Subcommittee members re: site visit, dated July 15, 1994
- Letter from Sarah Korjeff to Albert (sic) Martin, building inspector, re: emergency work, dated July 19, 1994.
- Letter from Patricia Daley to Arlene Wilson re: disassembly of Lovell House, dated

August 1, 1994.

- Letter from Patricia Daley to Ralph Crossin, building commissioner, re: cease and desist order, dated August 9, 1994.
- Memo from Sarah Korjeff to Subcommittee Members re: August 18, 1994 subcommittee meeting, dated August 15, 1994.
- Memo from Patty Daley to Subcommittee Members re: proposed construction activity prior to DRI decision and procedure for consideration of replacement building, dated August 18, 1994.
- Letter from Sarah Korjeff to Grattan Gill, architect, re: project specifications, dated August 22, 1994.
- Memo from Sarah Korjeff to Subcommittee Members re: September 7th public hearing, dated September 1, 1994.
- Memo from Staff to Subcommittee Members re: meeting with building inspector and applicant proposals, dated September 15, 1994.

Submittals from the Applicant:

- Application and background materials relative to restoration of Lovell House, dated July 8, 1994, received July 12, 1994.
- Elevation plans marked "Details, Exterior Elevations, Restoration of the Nehemiah Lovell House," two sheets, prepared by Northside Design Associates, dated June 30, 1994, received July 12, 1994 and July 19, 1994.
- Letter from Arlene Wilson to Sarah Korjeff re: construction methods for work on Lovell House, dated May 2, 1994.
- Letter from Arlene Wilson to Sarah Korjeff re: revised site plans for Lovell House project, dated June 8, 1994.
- Letter from Arlene Wilson to Alan (sic) Johnson, MHC, re: site visit to Lovell House, dated June 13, 1994.
- Letter from Arlene Wilson to Sarah Korjeff re: roof shingling, dated June 29, 1994.
- Letter from Arlene Wilson to Allen Johnson, MHC, re: Lovell House restoration, dated June 29, 1994.
- Letter from Arlene Wilson to Sarah Korjeff re: construction sequencing and building materials, dated July 15, 1994.
- List submitted by A.M. Wilson Associates Inc. re: historic structures worked on by Gordon Clark, dated July 18, 1994.
- Letter and photographs from Arlene Wilson to Sarah Korjeff re: restoration of Michael Smith residence, dated July 19, 1994.
- Site plan for 679-683 Main Street in Osterville, MA, prepared by A.M. Wilson Associates Inc., latest revision 7/20/94 - Relocate building C, received July 20, 1994.
- Economic Information on the Lovell Project, submitted by A.M. Wilson, Associates, Inc. July 20, 1994.

- Letter submitted by Gordon Clark, Northside Design Associates, re: condition of Lovell House and reconstruction methodology, dated July 20, 1994.
- Letter from Robert J. Baum to Patricia Daley re: foundation construction, dated August 9, 1994.
- Letter from Grattan Gill, architect, to Sarah Korjeff re: reconstruction proposal, dated August 16, 1994.
- Letter from Grattan Gill, architect, to Sarah Korjeff re: project specifications, dated August 18, 1994.
- Letter from Robert J. Baum to Patricia Daley re: extension agreement, dated August 31, 1994.
- Letter from Grattan Gill, architect, to Sarah Korjeff re: project specifications, dated September 1, 1994.
- Letter from Robert J. Baum to Patricia Daley re: extension agreement, dated September 6, 1994.
- Drawings and design specifications developed by Grattan Gill, architect, submitted September 7, 1994.
- Project Team resumes, submitted by A.M. Wilson Associates Inc.
- Letter and Specifications submitted to MHC by Antonia Kenny, Architect, for C.H.I.P. project, dated December 1, 1993.

Submittals from Government Agencies:

- Letter from Massachusetts Historical Commission re: substantial alteration of Nehemiah Lovell House, dated June 23, 1994
- List of preservation consultants from Massachusetts Historical Commission, received July 18, 1994.
- Letter from John D. O'Brien, Economic Development Council, to Ken Brock re: economic value of Lovell House project, dated July 20, 1994.
- Letter from Massachusetts Historical Commission re: proposal to reconstruct Lovell House, dated August 31, 1994

Submittals from the public:

- Letter from Brad Boyd to Arlene Wilson re: support for preservation of Lovell House, dated July 6, 1994.
- Letter from Robert F. Hayden, Jr. to Cape Cod Commission re: moving of the Lovell House, dated August 5, 1994.
- Letter from Elisabeth Eaton Clark to Cape Cod Commission re: loss of Lovell House, dated August 6, 1994.
- Memo from Osterville Village Association to Cape Cod Commission re: concern over loss of Nehemiah Lovell House, dated August 12, 1994.
- Letter from Carlos A. Monge Jr. to Floyd Silvia re: confirmation of the restoration

of Armstrong-Kelley Park driveway, dated August 13, 1994.

- Letter from James R. Adams to Cape Cod Commission re: destruction of Lovell House, dated August 16, 1994.
- Letter from Robert J. Baum to Jay Larmon re: statements in correspondence to Cape Cod Commission, dated August 23, 1994.
- Letter from Andrea Leonard to Cape Cod Commission re: improving protections for historic properties, dated August 27, 1994.
- Letter from Carl A. Monge Jr. to Floyd Silvia re: agreement to restore Armstrong-Kelley Park driveway, dated August 30, 1994.
- Certified Letter from Carl A. Monge, Jr. to Floyd Silvia re: restoration of Armstrong-Kelley Park driveway, dated September 3, 1994.
- Letter from Jay Larmon to Cape Cod Commission re: need for investigation of Lovell House demolition, dated September 7, 1994.
- Letter from Robert J. Smith, Osterville Village Association, to Cape Cod Commission re: concern for Lovell House site, dated September 12, 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 July 20, 1994 public hearing, Robert Baum, attorney for the applicant, stated that the applicant intends to restore the structure consistent with the Regional Policy Plan and that the project provides for balanced economic development. Arlene Wilson, project consultant, explained the permitting for the project and stated that there are no environmental issues associated with the site. Ms. Wilson stated that the term "substantial alteration" is ill-defined in the Act and that she did not believe work being done on the site constituted a substantial alteration. Gordon Clark, architect for the applicant, explained the proposed methodology for restoration of the building's exterior features.

Patricia Anderson, Barnstable Historic Preservation Division, described the historical significance of the Lovell House and stated the need for a preservation architect working on the project. She agreed that the Secretary of the Interior's Standards would be appropriate for the restoration of the structure. Donald Bain, chair, Barnstable Historical Commission, stated that the applicant should have an expert certified by MHC to oversee the restoration.

Sarah Korjeff presented the staff report, stating the relevant RPP Minimum

Performance Standards and the belief that a certified preservation consultant working with the Secretary of the Interior's standards could direct a successful rehabilitation.

John O'Brien, Cape Cod Economic Development Council, stated his support for the project because of its economic development benefits. Joe DaLuz, former Barnstable building commissioner, stated that the current building inspector should be involved in the project review. Carl Monge, President, Cape Cod Horticultural Association, requested adequate parking on the site. Peter Kenney spoke about historic preservation and stated his agreement with using the Secretary of the Interior's Standards. Jay Larmon, Osterville Village Association, stated that this project indicated a larger issue of preservation of all historic houses on Cape Cod.

At the September 7, 1994 public hearing, Grattan Gill, architect for the applicant, explained his involvement in the project and presented a series of drawings showing the proposed floor plan and specifications for architectural details. He discussed the difference between the original structure and the proposed reconstruction and noted the need to discuss several issues relating to the building code with the building inspector. He stated his belief that the accuracy of the reconstruction would rate a nine on a scale from one to ten. Mr. Gill explained the accessibility and state building code requirements and their effect on the structure.

Ron Silvia, contractor, described the proposed downspouts as aluminum and stated that details regarding the hardware had not been finalized. Mr. Gill stated that they are trying to maintain the residential character of the structure. He stated that they would backfill as much as possible around the foundation in order to maintain the low appearance of the structure.

Sarah Korjeff presented the staff report, stating that the proposed project meets Minimum Performance Standards for new construction but should include proposals to address the loss of the National Register structure. She also stated that the Commission should review its policies to address how historic resources can be better protected.

Patricia Anderson, Barnstable Historic Preservation Division, stated that a replication has no meaning and suggested that the site be left as open space. She also suggested that a revolving fund be created for historic structures and that early construction techniques be used if a reconstruction is built. Donald Bain, Chair, Barnstable Historical Commission, stated his support for Ms. Anderson's comments and noted that there should be a deterrent value in the Commission's ruling. Jane



Eshbaugh, Barnstable Local Planning Committee, stated that the Commission must have stricter plans and Minimum Performance Standards to address historic structures. Jay Larmon, Osterville Village Association, submitted a statement for the record. Raye Green stated her agreement with Ms. Anderson and Mr. Bain.

### Jurisdiction

The proposed Lovell House reconstruction qualifies as a DRI under Section 3(1) of the Cape Cod Commission DRI Enabling Regulations, Barnstable County Ordinance 90-12, as amended. This section, [previously section 12(c)(1) of the Act] states that "any proposed demolition or substantial alteration of an historic or archaeological site listed with the National Register of Historic Places or Massachusetts Register of Historic Places, outside a municipal historic district" shall be presumed to be a development of regional impact. The Nehemiah Lovell House was listed on both the National Register of Historic Places and the Massachusetts Register of Historic Places.

### Findings

Based on the testimony received at the public hearings, application materials submitted by the project proponent, written material submitted by all interested parties, and supporting technical information provided by staff, the subcommittee voted on September 22, 1994 to recommend to the full Commission that the proposed reconstruction and interpretation of the Nehemiah Lovell House be granted a DRI approval with conditions. The following findings made by the subcommittee led to this recommendation:

- 1.) The Nehemiah Lovell House was individually listed on the National Register of Historic Places and outside of a municipal historic district and the Old Kings Highway Regional Historic District. The building lot is located on Main Street in the village of Osterville and is visible from the street.
- 2.) The Executive Committee of the Commission approved an emergency work permit allowing foundation and roof work to be done on the structure, subject to approval of the methodology by the Massachusetts Historical Commission and subject to the condition that "the structure, when placed on the new foundation, will be moved forward no more than six (6) feet on the site." The building was moved by crane to another portion of the lot, a new foundation hole was dug and cribbing erected, and the structure was placed on the cribbing. The Lovell House collapsed before the new concrete foundation was poured. After the collapse of the

historic structure, but before a DRI approval issued, a new foundation was poured in excess of six (6) feet forward on the site. The Commission makes no finding as to whether the difference in the placement of the new foundation was a contributing factor in the collapse of the structure. The Commission finds that with respect to the replacement structure, the placement of the foundation in excess of six (6) feet forward on the site is acceptable.

3.) The proposed reconstruction will recreate the exterior details of the original structure as closely as possible, based on photographic evidence and elevations completed prior to the collapse of the structure, with the exception of the removal of a chimney from the two story portion of the structure, the reorientation of the chimney in the 3/4 Cape portion of the structure; the widening of exterior doors by two inches, and addition of a ramp to the rear door to accommodate accessibility requirements; an increase in the height of exterior doors, and an overall increase in height of the structure to meet building code requirements.

4.) The proposed reconstruction shows as much sensitivity as possible to the residential character of the original structure within constraints required by the State Building Code and accessibility requirements.

5.) Though the proposed reconstruction is not preferable to preservation and restoration of the historic structure, it serves the purpose of encouraging traditional Cape Cod architectural design in new construction and maintains the small scale village character of the community. The proposal is consistent with Development Review Policies 7.1.5 (where reuse is not possible, historic structures should be replaced with structures of similar character, mass, proportion and scale) and 7.2.16 (traditional building materials such as wood shingles, clapboards and brick should be used for new construction), as well as Minimum Performance Standards 7.2.1 (the height and scale of a new building shall be compatible and harmonious with its site and existing surrounding buildings) and 7.2.2 (the mass and scale, roof shape, roof pitch, and proportions and relationships between doors and windows shall be consistent with traditional Cape Cod architectural styles).

6.) A document which presents a photographic history of the structure and explains the historical and construction evolution of the Lovell House, based on photographic and physical evidence uncovered during the stripping and moving of the building, supplemented by information on the demise of the structure, will help to convey the significance of the Nehemiah Lovell House and to increase awareness as to the importance of preventing the loss of such significant historic structures. This is consistent with the intent of Minimum Performance Standard 7.1.2 (the

distinguishing, original qualities of an historic building shall be preserved).

7.) An interpretive plaque or storyboard on the site, located where it is visible from the public sidewalk, which explains the significance of the Nehemiah Lovell House and represents the difference between it and the reconstruction, will help to convey the significance of the Nehemiah Lovell House and increase public awareness regarding the differences between the original structure and its reconstruction. This is consistent with the intent of Minimum Performance Standard 7.1.1 (additions or alterations to historic structures shall be consistent with the building's architectural style and shall not diminish its historic and architectural significance).

8.) The applicant has offered to make available the original materials from the Lovell House to interested historical or educational organizations. This will allow their use for research and other educational purposes.

9.) Incorporating several elements of the original Lovell House structure in an interactive display in the public entry area of the reconstruction will help to preserve public awareness of the historical significance of the Lovell House.

10.) Appropriate plantings which relate to the historic character of the site surrounding the original Lovell House will help to retain some of the historic character of the site and further the historic preservation effort.

11.) The final design is approved based on specifications and detail drawings submitted August 18, 1994 and September 1, 1994, to be redrawn in a complete set of elevations and detailed construction drawings and resubmitted to the Commission and the Building Inspector prior to the granting of a building permit for this structure.

### 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, under the present circumstances, a reconstruction of the Nehemiah Lovell House is the best available alternative, serving to encourage traditional Cape Cod architectural design in new construction and interpreting the significance of the original structure. The several interpretive measures will help to represent and preserve the historic significance of the original Lovell House.

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 Minimum Performance Standards for new construction. The project will be consistent with the Town of Barnstable zoning bylaws and regulations when it completes the municipal site plan review process.

### Conditions

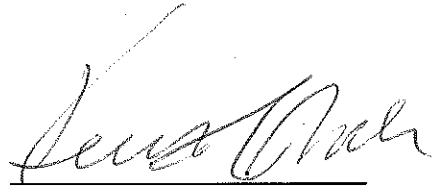
The Commission hereby approves with conditions the proposed reconstruction of the Nehemiah Lovell House, Osterville, MA, subject to the following conditions:

- 1.) The structure shall be constructed as specified in plans to be submitted to the Commission which are completely consistent with the design specifications and sketches of architectural elements presented to the Cape Cod Commission in correspondence from the architect dated August 18, 1994 and September 1, 1994.
- 2.) The applicant shall compile a document which presents a photographic history of the structure and explains the historical and construction evolution of the Lovell House, based on photographic and physical evidence uncovered during the stripping and moving of the building, supplemented by information on the demise of the structure. This document shall be provided to the Cape Cod Commission for dissemination prior to issuance of a Certificate of Occupancy.
- 3.) The applicant shall develop and install an interpretive plaque or storyboard on the site, located where it is visible from the public sidewalk, explaining the significance of the Nehemiah Lovell House and representing the differences between the original structure and its reconstruction prior to issuance of a Certificate of Occupancy.
- 4.) The applicant shall offer the original materials from the Lovell House to interested historical or educational organizations so they may be used in educational and architectural research projects. The applicant shall notice availability of materials to MHC, Sturbridge Village, and Historical Commissions and Societies in Barnstable County for a period of at least 4 months.
- 5.) The applicant shall work with the Commission staff to develop the plans to permanently incorporate several elements of the original Lovell House structure in an interactive display in the public entry area of the reconstruction prior to submission of final plans per condition #7.

6.) Appropriate plantings which relate to the historic character of the site shall be developed with the Commission staff and installed surrounding the original Lovell House.

7.) No building permit shall be issued for the reconstruction of the Lovell House unless the plans presented have been notarized by the Cape Cod Commission for the purpose of verifying their consistency with the specifications submitted during the DRI review process. The clerk of the Commission shall notarize these plans, which shall then be submitted to the Barnstable building department in application for a building permit.

8.) No occupancy permit shall be issued for this structure unless and until a certificate of compliance is issued by the Cape Cod Commission certifying that the above conditions have been met.

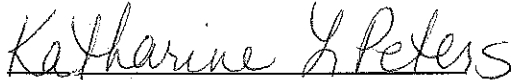
  
\_\_\_\_\_  
Kenneth Brock, Chair

11/9/94  
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

Subscribed and sworn to before me this 9<sup>th</sup> day of Nov 1994



NAME, Notary

My Commission expires: \_\_\_\_\_