



CAPE COD COMMISSION

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Date: August 7, 1997

Applicant: MCI International, Inc.
ATT: Barbara Siemer Terreri
201 Centennial Avenue
Piscataway, NJ 08854

Project #: TR95021
Project: Marconi-RCA-MCI International Site Subdivision Plan
Chatham, MA

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

Lot/Plan: Lot 1/Land Court Plan #5445A
Certification #: 222
Owner: MCI International, Inc.

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (the Commission) hereby approves with conditions the application of MCI International Inc. for a Development of Regional Impact (DRI) permit under Section 12 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the subdivision of 13 acres into 9 residential lots, including a portion of the Marconi-RCA Wireless Receiving Station National Register site in Chatham, MA. This decision is rendered pursuant to a vote of the Commission on August 7, 1997.

PROJECT DESCRIPTION

The property in question totals 13.19 acres on the south side of Old Comers Road, near the intersection of Route 28 and Old Comers Road in Chatham. The project proposal involves subdivision of the 13 acres into 9 residential lots, one of which would contain two existing structures which are part of the Marconi-RCA Wireless Receiving Station National Register site. With the exception of the area immediately surrounding the two National Register structures, the 13-acre parcel is wooded with substantial grade changes. The property slopes down significantly along the south side of Old Comers Road toward Lover's Lake and an unnamed bog. Downward slopes are also present near the west side of the National Register structures. Subject to conditions contained in this decision, the applicant will protect existing vegetated buffers around the National Register structures on Lot 9 and

along the south side of Old Comers Road, limit exterior alteration of the National Register structures and site, and conduct an archaeological survey to ensure new construction has the least impact on archaeological resources on the site.

The Marconi Station site was listed on the National Register of Historic Places on August 30, 1994. The site includes land on the north side of Old Comers Road, and on both sides of Route 28. It consists of 13 contributing buildings erected in 1914 and three antenna towers built in 1921. All of the structures are in good condition and retain historic integrity both individually and as a group.

PROCEDURAL HISTORY

The Chatham Planning Board requested a Jurisdictional Determination on August 9, 1995. On September 7, 1995, the Commission found that the project requires review as a Development of Regional Impact under Chapter A, Section 3(a), Barnstable County Ordinance 94-10. The project was referred as a Development of Regional Impact by the Chatham Planning Board and received by the Commission on September 27, 1995. The project was reviewed solely for consistency with Section 7 (Historic Preservation) of the 1991 Regional Policy Plan.

A duly noticed public hearing was held on November 13, 1995 in the Selectman's Meeting Room of the Chatham Town Hall for the purpose of taking testimony on the proposed subdivision project. Two subcommittee meetings were held on November 27, 1995 and December 5, 1995 at the Commission office to discuss restrictions which should be placed on the subdivision in order to protect the National Register Historic District. A subcommittee meeting was held on December 14, 1995 at the Commission office during which time the subcommittee reviewed a draft decision and discussed the issue of archaeological sensitivity raised by the Massachusetts Historical Commission. The subcommittee agreed that the draft decision could be brought to the full Commission on January 4, 1996.

On December 29, 1995, the applicant requested a continuance of the project to February 1, 1996 to allow additional time to review the draft decision and to meet with the State Archaeologist. In late January 1996, the applicant requested an extension to conduct an archaeological survey of the site. The applicant and the Commission signed an extension agreement extending the decision time to June 21, 1996. In early June 1996, the applicant requested a second extension because the archaeological survey had not yet been conducted. The applicant and the Commission signed an extension agreement extending the decision time to December 6, 1996. On November 4, 1996, the applicant stated that they were reviewing bids for the survey and requested a third extension to conduct the archaeological resource survey. The applicant and the Commission subsequently signed an extension agreement until June 6, 1997.

On May 20, 1997, the applicant requested a further one-year extension to review the preliminary archaeological survey report. On June 2, 1997, the Regulatory Committee reviewed the applicant's request for a one-year extension agreement and reviewed concerns from the Town of Chatham Town Manager, Assistant Planner and Health Agent regarding extended protection from local and state regulatory changes due to the extension

agreements. The Regulatory Committee voted to allow the applicant a 60-day extension agreement. On June 5, 1997, the applicant and the Commission signed an extension agreement until August 8, 1997. The Subcommittee met on July 10, 1997 to discuss modifications to the January 4, 1996 draft decision.

Materials Submitted for the Record

Town Submittals:

- Letter from Norm Pacun, Chatham Historical Commission, to Planning Board re: MCI International proposed subdivision, dated August 7, 1995.
- Letter from Norm Pacun, Chatham Historical Commission, to Cape Cod Commission re: MCI International subdivision jurisdictional determination, dated August 31, 1995.
- DRI referral form submitted by Chatham Planning Board, dated September 27, 1995.
- Revised subdivision plan for MCI submitted by Catherine Laurent, Assistant Town Planner, dated October 10, 1995.
- Letter from Norman Pacun, Chair, Chatham Historical Commission to Sarah Korjeff, Cape Cod Commission re: November 8, 1995 staff report, dated November 13, 1995.
- Letter from Norman Pacun, Chair, Chatham Historical Commission to Sarah Korjeff, Cape Cod Commission re: protection of National Register site, dated November 21, 1995.
- Letter from Thomas J. Groux, Chatham Town Manager, to Regulatory Committee re: objection to extension, dated May 30, 1997.
- Memo from Terence M. Hayes, Chatham Health Agent, to Catherine E. Laurent, Assistant Town Planner, re: opposition to extension, dated May 30, 1997.
- Memo from Catherine Laurent, Assistant Planner, to Thomas J. Groux, Town Manager, re: opposition to extension, dated June 2, 1997.

Staff Reports and Correspondence:

- Letter from Sarah Korjeff, Commission staff, to Theodore R. vonToerne, Planning Board Chair, re: jurisdictional determination hearing, dated August 17, 1995.
- Cape Cod Commission Jurisdictional Determination Staff Report, dated August 31, 1995.
- Minutes of Jurisdiction Determination public hearing on September 5, 1995.
- Cape Cod Commission Jurisdiction Determination Decision, dated September 7, 1995.
- Development of Regional Impact Notification Form dated October 4, 1995.
- Memo from Sarah Korjeff to Subcommittee re: public hearing, dated October 5, 1995.
- Memo from Sarah Korjeff to Subcommittee re: public hearing, dated October 13, 1995.
- Cape Cod Commission DRI Staff Report, dated November 8, 1995.
- Minutes of DRI Public Hearing, November 13, 1995.
- Memo from Sarah Korjeff to Barbara Siemer/Robin Gregory, MCI representatives, re: covenant language recommendations, dated November 15, 1995.
- Memo from Sarah Korjeff to Subcommittee re: subcom. meeting, dated Nov. 17, 1995.
- Minutes of DRI Subcommittee Meeting, November 27, 1995.
- Minutes of DRI Subcommittee Meeting, December 5, 1995.
- Memo from Sarah Korjeff to Subcommittee re: subcommittee meeting, dated Dec. 13, 1995.
- Minutes of DRI Subcommittee Meeting, December 14, 1995.
- Cape Cod Commission Draft DRI Decision, dated January 4, 1996.
- Extension Agreement between Cape Cod Commission and MCI to June 21, 1996, dated January 26, 1996.

- Letter from Sarah Korjeff to Barbara Siemer, MCI, re: extension, dated February 8, 1996.
- Extension Agreement between Cape Cod Commission and MCI to December 6, 1996, dated June 3, 1996.
- Letter from Sarah Korjeff to Barbara Siemer, MCI, re: extension, dated June 4, 1996.
- Letter from Sarah Korjeff to Barbara Siemer, MCI, re: extension, dated June 18, 1996.
- Letter from Sarah Korjeff to Barbara Siemer, MCI, re: extension, dated October 24, 1996.
- Extension Agreement between Cape Cod Commission and MCI to June 6, 1997, dated November 5, 1996.
- Letter from Sarah Korjeff to Barbara Siemer, MCI, re: extension, dated November 5, 1996.
- Memo from Sarah Korjeff to Subcommittee re: project update, dated February 3, 1997.
- Letter from Sarah Korjeff to Barbara Siemer, MCI, re: extension, dated April 25, 1997.
- Letter from Sarah Korjeff to Barbara Siemer, MCI, re: Regulatory Committee meeting, dated May 23, 1997.
- Extension Agreement between Cape Cod Commission and MCI to August 8, 1997, dated June 5, 1997.
- Letter from Sarah Korjeff to Barbara Siemer Terreri, MCI, re: schedule during 60-day extension period, dated June 13, 1997.
- Memo from Sarah Korjeff to Subcommittee re: subcommittee update, dated June 25, 1997.
- Minutes of Subcommittee Meeting, July 10, 1997.

Submittals from the Applicant:

- Application and Addendum for proposed site subdivision plan, received Oct. 26, 1995.
- Site plans marked "Subdivision Plan of Land in Chatham, Massachusetts as prepared for MCI International, Inc.", prepared by Paul E. Sweetser, stamped and dated July 12, 1995, received October 26, 1995.
- Letter from Robin Gregory to Chatham Planning Board re: subdivision, dated Aug. 8, 1995.
- Memorandum from Tom Patch to Barbara Siemer re: single family definitions, dated November 20, 1995.
- Memorandum and attachment from Tom Patch to Sarah Korjeff/Patricia Daley re: Declaration of restrictions, easements and covenants, dated December 4, 1995.
- Memorandum and attachment from Tom Patch to Patty Daley re: Declaration of Restrictions, Easements and Covenants, received December 26, 1995.
- Letter from Barbara Siemer, MCI, to Sarah Korjeff re: extension, dated December 29, 1995.
- Letter from Barbara Siemer, MCI, to Sarah Korjeff re: extension, dated November 4, 1996.
- Letter from Barbara Siemer, MCI, to Deborah Cox, Public Archaeology Laboratory, re: archaeological survey, dated May 6, 1997.
- Letter from Barbara Terreri, MCI, to Sarah Korjeff re: extension options, dated May 6, 1997.
- Letter from Barbara Terreri, MCI, to Sarah Korjeff re: extension request, dated May 20, 1997.

Submittals from Government Agencies:

- Letter from Massachusetts Historical Commission to Sarah Korjeff re: archaeological resource concerns, dated December 5, 1995.
- Letter from Constance Crosby, Massachusetts Historical Commission, to Barbara Siemer, MCI, re: State Archaeologist Permits, dated February 6, 1996.
- Letter from Constance Crosby, Massachusetts Historical Commission, to Deborah Cox, Public Archaeology Laboratory, re: correspondence with MCI, dated June 11, 1997.

Submittals from the Public:

- Letter from Evelyn Foster to Cape Cod Commission re: history of project site, dated November 10, 1995.
- Letter from Daniel A. Rosenberg to Cape Cod Commission re: impacts to wildlife and historic integrity of project site, dated November 6, 1995.
- Letter from Deborah Cox, Public Archaeology Laboratories, to Barbara Terreri, MCI, re: archaeological survey, dated May 22, 1997.
- Letter from David S. Foster for Evelyn S. Foster re: open space, dated June 1, 1997.

The application and notice of the public hearing relative thereto, the Commission's staff reports, correspondence, notes and exhibits, minutes of the hearing and all written submissions received in the course of the proceedings, including materials submitted on files TR95021 and JD95017, are incorporated into the record by reference.

TESTIMONY

At the November 13, 1995 public hearing, Tom Patch, attorney for the project proponent, explained the project and the proponent's intent to establish easements to prohibit cutting of vegetation in designated areas. He also stated that Lot 9 would be restricted so that it could not be used for single family residences to address staff concerns regarding preservation of the structures. Barbara Siemer, representing MCI, stated that MCI intends to retain the site in its historic state but does not favor a restrictive covenant. Sarah Korjeff presented the staff report, explaining that the Commission's concerns regarding the project include visual impacts of new development, exterior alterations to the buildings on lot 9, and new construction or alteration to lot 9. She recommended that a covenant be placed on the lots to require review of alterations and to ensure maintenance of the vegetated buffers.

Norman Pacun, Chatham Historical Commission, described the history of the National Register site, stated his support for a covenant on the property, and recommended additional language explained in a letter submitted by the Historical Commission. Dr. Bryer questioned whether the Commission would review impacts to local waters. Peter Doelger questioned why the review scope is limited. Charles Imbergamo stated his support for the covenant because it would address future owners of the site.

JURISDICTION

The proposed subdivision project qualifies as a Development of Regional Impact (DRI) under the Code of Cape Cod Commission Regulations of General Application, Chapter A, Section 3(a), Barnstable County Ordinance 94-10 as a substantial alteration to an historic or archaeological site listed with the National Register of Historic Places and Massachusetts Register of Historic Places, outside a municipal historic district or outside the Old King's Highway Regional Historic District.

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 Cape Cod Commission finds that the proposed

Marconi-RCA-MCI International Site Subdivision plan may be granted a DRI approval, with conditions, based upon the following findings:

1. The proposed project includes the subdivision of 13.19 acres into 9 residential lots, including a portion of the Marconi-RCA Wireless Receiving Station National Register site. Lots 1-8 are across the street and adjacent to the National Register site. Lot 9 is included within the National Register site, as shown in the National Register Nomination Form.
2. The Marconi-RCA Wireless Receiving Station has significance in the categories of communications and architecture at the local, state and national levels. The station meets National Register criterion for its long, continuous and distinguished role in the history of wireless communication, particularly in ship to shore communications. It also meets National Register criterion as a distinctive complex of early 20th century mixed industrial and residential buildings in the Craftsman Bungalow style. The site retains integrity of location, design, setting, materials, workmanship, feeling and association.
3. A restrictive covenant would be the most effective means to address long-term preservation of the National Register structures and site-defining elements because not all proposed future alterations would require a local permit and thus further Cape Cod Commission review of substantial alteration may not be assured.
4. Any new construction on Lot 9 or exterior alteration of the existing National Register structures on Lot 9 has the potential to jeopardize the integrity of the structures themselves and of the National Register site as a whole.
5. Construction on Lots 1 through 8 could have a substantial visual impact on the National Register site. If development is set back from the road edge and maintains a vegetated buffer between the National Register site and the new construction, visual impact will be limited.
6. The applicant has agreed to notify the Chatham Planning Board in writing, with copies to the Chatham Board of Selectmen and the Chatham Historical Commission, of any proposed exterior or site alterations to lot 9 which do not require a permit, including but not limited to changes in the amount or location of impervious surface on the site, thus providing an opportunity for determination of substantial alteration and referral to the Cape Cod Commission for further Development of Regional Impact review.
7. To insure consistency with Minimum Performance Standards 7.1.1 (additions and alterations to historic structures) and 7.1.2 (preservation of distinctive qualities) of the 1991 Regional Policy Plan, the applicant has agreed to insure the preservation of the National Register structures and site on Lot 9 through a restrictive covenant which provides notification to all transferees that any demolition or substantial alteration of the property must be referred to the Cape Cod Commission for review, unless and until a preservation restriction is placed on the property or the property comes under the jurisdiction of an historic district commission.

8. Subdivision of the property and subsequent conveyance increases the likelihood of alteration to the National Register property. Transfer of the structures on Lot 9 to individual ownership for use as single family homes could limit the ability of the Cape Cod Commission or any other regulatory body to protect against substantial alteration and demolition of the properties due to incremental changes.

9. Massachusetts Historical Commission (MHC) has identified that the project area possesses a strong likelihood for containing significant archaeological deposits associated with Native American peoples. MHC recommends that an intensive (locational) archaeological survey be conducted in order to identify and evaluate any sites which may be eligible for listing in the National Register of Historic Places, and which will be affected by the proposed project.

10. To comply with Minimum Performance Standard 7.1.3 (archaeological resources) of the 1991 Regional Policy Plan, the applicant has agreed to conduct an archaeological survey of the area prior to siting design for the new structures. A preliminary report on the archaeological survey was completed in the spring of 1997.

11. MHC states that the Stephen Smith House at the western edge of the project area (434 Old Comers Road) has been determined eligible for listing in the National Register of Historic Places. MHC staff recommend that a vegetative buffer be established and maintained at the west end of the project site to help screen the Stephen Smith House.

12. Vegetated buffers, including a buffer of approximately 60 to 85 (sixty to eighty five) feet in depth surrounding Lot 9 and that portion of the National Register site, and a buffer of approximately 30 (thirty) feet in depth along the south side of Old Comers Road within Lots 1 through 8 will effectively protect the National Register site from negative visual impacts of the proposed development. A vegetated buffer of approximately 30 (thirty) feet in depth adjacent to the Stephen Smith House, within Lot 1, will effectively protect the National Register structure from negative visual impacts of the proposed development.

13. The applicant has agreed to insure effectiveness of the vegetated buffers through restrictive covenants on Lots 1 through 9 which require maintenance and replanting and are enforceable by the Cape Cod Commission and the Chatham Planning Board or other municipal agency as determined appropriate by the Commission.

14. The proposed subdivision is consistent with local bylaws and does not lie within a District of Critical Planning Concern.

15. This project was reviewed under the 1991 Regional Policy Plan.

CONDITIONS

The Commission has reviewed the project against the Minimum Performance Standards in Section 7 of the 1991 Regional Policy Plan and has determined that, as conditioned, the project complies with the RPP Minimum Performance Standards.

Based on the findings above, the Commission hereby concludes that the benefits of the proposed project outweigh the detriments. This conclusion is supported by the findings that the proposed restrictions provide for the long-term preservation of the character-defining elements of the National Register structures and site, they serve to reinforce the existing wooded character of the area immediately surrounding the National Register District, and they provide for protection of any archaeological resources found on the site.

The Commission hereby approves the proposed Marconi-RCA-MCI International Site Subdivision Plan, Chatham, MA, subject to the following conditions:

1. The applicant shall provide restrictive covenants for Lots 1 through 9, which restrictive covenants shall reference or append this DRI decision and shall provide that the Commission may unilaterally re-record the restrictions, and which restrictions shall otherwise be in a form and content satisfactory to Commission counsel. The covenants shall provide for the establishment and maintenance of permanent vegetated buffers as shown on the plan of land dated July 8, 1995, revised by hand, received by the Commission on October 26, 1995 and entitled "Subdivision Plan of Land in Chatham, MA as prepared for MCI International, Inc." and described as follows: for Lots 2 through 7, along the south side of Old Comers Road; for Lot 1, along the south side of Old Comers Road and along the west side adjacent to the Stephen Smith House; for Lot 8, along the border with Lot 9 and along the south side of Old Comers Road; for Lot 9, along the entire border with Lot 8. The applicant shall submit a final engineered plan showing the location of the permanent buffers consistent with this condition. Said restrictive covenants shall restrict the cutting of vegetation within the buffer areas and shall provide for maintenance and replanting of vegetation if necessary to protect against visual impacts to the National Register properties, as determined by the Commission or the Chatham Planning Board. Said restrictive covenants shall be enforceable by the Commission and the Chatham Planning Board. The applicant shall submit the final engineered plan and proof of recording of the applicable restrictive covenant(s) prior to the issuance of any partial or final Certificate of Compliance.
2. In order to ensure that the National Register structures and site located on Lot 9 are preserved, the applicant shall provide a restrictive covenant, in a form and content satisfactory to counsel to the Commission, notifying subsequent owners of Lot 9 that demolition and/or substantial alteration of the site and National Register listed structures on Lot 9 requires Cape Cod Commission review, unless and until a preservation restriction is placed on the property or the property comes under the jurisdiction of an historic district commission. Said restrictive covenant shall be in perpetuity and shall be enforceable by the Cape Cod Commission and the Chatham Planning Board or other municipal agency as determined appropriate by the Commission. Said restrictive covenant shall be recorded prior to the issuance of a partial or final Certificate of Compliance.
3. Prior to release and/or conveyance of lots and prior to the issuance of any building permits on Lots 1 through 8, the applicant shall complete an intensive (locational) archaeological survey (950 CMR 70) in compliance with M.G.L. Chapter 9, Sections 26-27C, and Implementing Regulations (950 CMR 71) in areas deemed likely to possess archaeological significance by the Massachusetts Historical Commission. The survey results

shall be considered in the location of new structures on Lots 1 through 8 to determine whether the development can avoid adverse impacts to archaeological resources. Location of site preparation work and new structures shall be reviewed by the Massachusetts Historical Commission for impacts to archaeological sites based on the survey results and shall be approved by the Cape Cod Commission or its designee prior to commencing site preparation or development work.

4. As defined by the Cape Cod Commission's Guidelines for referral of Historic Structures, as may be amended, the Local Historical Commission shall review any application for a building permit on Lot 9 and determine whether the proposed project constitutes a substantial alteration to the exterior of the buildings and/or site. If so determined, the project shall be referred to the Cape Cod Commission for review.

5. The owner of Lot 9 shall provide written notification to the Chatham Planning Board, with copies to the Chatham Board of Selectmen and the Chatham Historical Commission, of any proposed exterior or site changes not requiring Development Permits, including but not limited to changes in the amount or location of impervious surface on the site.

6. Owners of Lot 9 shall provide the Commission with a copy of any Development Permit application, as the term Development Permit is defined in the Cape Cod Commission Act, contemporaneous with the filing of such application with any municipal agency or official in the Town of Chatham. Such copy shall be provided to the Commission for the purpose of allowing the Commission to determine whether the proposed development work is subject to Development of Regional Impact review as a demolition or substantial alteration to a listed historic structure or site.

7. The applicant must obtain a Certificate of Compliance from the Commission prior to the release and/or conveyance of Lots 1-9 and prior to the issuance of any building permits on Lots 1-9. The Certificate of Compliance may be partial.

The Commission hereby grants MCI International Inc. a DRI Approval with Conditions.

Madeleine A. Bebout
Madeleine A. Bebout, Chair

August 7, 1997
Date

Commonwealth of Massachusetts
Barnstable, ss.

Subscribed and sworn to before me this 7th day of August 1997

Katharine K Peters
Name, Notary Public

My commission expires: August 1, 1997