

CAPE COD COMMISSION

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Date: April 3, 1997

Applicant: Alice M. Foley
97 Commercial Street
Provincetown, MA 02657

Project #: TR96022
Project: 97 Commercial Street
Provincetown, MA

Re: Development of Regional Impact Hardship Exemption
Cape Cod Commission Act, Section 23

Book & Page #s: Book 4866, Page 325

Owners: Alice M. Foley
Linda Glenn
Christina Crowe
97 Commercial Street
Provincetown, MA 02657

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (the Commission) hereby approves with conditions the Development of Regional Impact (DRI) Hardship Exemption application of Alice Foley, 97 Commercial Street, pursuant to Section 23 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the relocation of a contributing structure in the Provincetown National Register Historic District, Provincetown, MA. This decision is rendered pursuant to a vote of the Commission on April 3, 1997.

PROJECT DESCRIPTION

97 Commercial Street is a narrow lot (approximately 1/10 acre) which reaches from Commercial Street to Provincetown Harbor. It is located within the Provincetown National Register Historic District. There are two structures on the lot, one adjacent to the street, and the other adjacent to the harbor. The structure adjacent to the street is a circa 1840 warehouse structure, believed to have been associated with the original Union Wharf complex and moved to this site in the early 20th century. The applicant proposes to

97 Commercial Street, Provincetown, MA
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demolish this structure and to install a garden and parking space in its place. The applicant has applied for both a Development of Regional Impact approval and a Hardship Exemption.

During the review process, information was distributed to market the property and to encourage the relocation and rehabilitation of the structure. The Provincetown Historical Commission released a request for proposals to relocate and renovate the structure. One response was received and was reviewed by the applicant and the Historical Commission. The proposal to relocate the building is expected to go forward.

PROCEDURAL HISTORY

Following the Cape Cod Commission's Guidelines for Referral of Historic Structures, this project was considered by the Provincetown Historical Commission, which recommended that it be referred to the Cape Cod Commission. The project was referred as a Development of Regional Impact by the Provincetown Building Commissioner on October 18, 1996. A scoping session was held in the Provincetown Town Hall with members of the subcommittee, the Provincetown Historical Commission and the Provincetown Planning Board on November 20, 1996.

A duly noticed public hearing was held on December 11, 1996 at the Provincetown Town Hall for the purpose of taking testimony on the proposed project. The hearing was continued to January 23, 1997 at the Assembly of Delegates Chamber in Barnstable, and to March 6, 1997 at the Cape Cod Commission office in Barnstable. The hearing was closed on March 6, 1997. A duly noticed public hearing to discuss the draft decision for the project was held on April 3, 1997 at the Assembly of Delegates Chamber in Barnstable. Subcommittee meetings were held on December 11, 1996, January 23, 1997, February 3, 1997, March 6, 1997, and March 20, 1997. The subcommittee reviewed the draft decision and voted on their recommendation to the Commission on March 20, 1997.

Materials Submitted for the Record

Town Submittals:

- DRI referral form and attachments submitted by Warren G. Alexander, Building Commissioner, dated October 18, 1996.
- Letter from Lauren Richmond, Historical Commission, to Sarah Korjeff re: referral of project, dated September 25, 1996.
- Letter from Josephine Del Deo to Lauren Richmond, Historical Commission, re: 97 Commercial Street, dated December 10, 1996.
- Letter from Josephine Del Deo to Patricia Weslowski, Massachusetts Historical Commission, re: Provincetown National Register District, dated January 31, 1980; 1880 and 1907 maps of Provincetown, showing 97 Commercial Street, received December 11, 1996.
- Letter from Lauren Richmond, Historical Commission, to Sarah Korjeff re: upcoming actions, dated December 16, 1996.
- Letter and attachments from Lauren Richmond, Historical Commission, to Sarah Korjeff re: interest in 97 Commercial Street, dated January 6, 1997.
- Letter and attachments from Lauren Richmond, Historical Commission, to Sarah Korjeff re: newspaper articles, dated January 8, 1997.

- Letter and attachment from Lauren Richmond, Historical Commission, to Sarah Korjeff re: reuse potential, dated January 11, 1997.
- Letter and attachments from Lauren Richmond, Historical Commission, to Sarah Korjeff re: revolving fund and interested parties, dated January 24, 1997.
- Letter and attachment from Rex Peterson, Permit Coordinator, to Sarah Korjeff re: permits for moving building, dated March 7, 1997.
- Letter and attachment from Rex Peterson, Permit Coordinator, to George Bryant re: septic system, dated March 14, 1997.

Staff Reports and Correspondence:

- Development of Regional Impact Referral Notification Form dated October 24, 1996.
- Letter from Sarah Korjeff to Alice Foley re: application information, dated Nov. 8, 1996.
- Memo from Sarah Korjeff to subcommittee re: project review, dated November 12, 1996.
- Memo from Tana Watt to subcommittee re: scoping session, dated November 12, 1996.
- Letter from Sarah Korjeff to Allen Johnson, Massachusetts Historical Commission, re: project notification form, dated December 2, 1996.
- Memo from Sarah Korjeff to subcommittee re: application information, dated Dec. 5, 1996.
- Staff report dated December 6, 1996.
- Letter from Sarah Korjeff to Jane Gildersleeve and Barry Janoff re: 97 Commercial Street funding opportunities, dated January 10, 1997.
- Marketing and funding information relating to 97 Commercial Street, undated.
- Memo from Sarah Korjeff to subcommittee re: project update, dated January 21, 1997.
- Letter from Sarah Korjeff to Alice Foley re: future meeting dates, dated January 30, 1997.
- Request for Proposals to Relocate and Renovate 97 Commercial Street, undated.
- Staff report dated March 5, 1997.
- Letter from Sarah Korjeff to Alice Foley re: March 6 public hearing, dated March 10, 1997.

Submittals from the Applicant:

- DRI Application and attachments dated November 24, 1996.
- Hardship Exemption application dated November 20, 1996.
- Fax from Alice Foley to Sarah Korjeff re: site landscape design, dated December 5, 1996.
- Fax from Alice Foley to Sarah Korjeff re: subcommittee update, dated January 22, 1997.
- Fax from Alice Foley to Sarah Korjeff re: further meetings, dated January 29, 1996 [sic].
- Fax from Alice Foley to Sarah Korjeff re: recommendations, dated March 15, 1997.

Submittals from Government Agencies:

- Fax from Karen Parker, Massachusetts Historical Commission, to Sarah Korjeff re: historic district data sheet, dated November 8, 1996.
- National Register of Historic Places registration form for Provincetown Historic District, received from Massachusetts Historical Commission on November 26, 1996.
- Letter from Allen F. Johnson, Massachusetts Historical Commission, to Sarah Korjeff re: demolition of 97 Commercial Street, dated December 13, 1996.
- Memo and attachments from Karen Parker, Massachusetts Historical Commission, to Sarah Korjeff re: marketing, recording and moving historic buildings, dated Dec. 19, 1996.

Submittals from the Public:

- Letter from Russell A. Lukes to Cape Cod Commission re: support for demolition request, dated December 8, 1996.
- 1893 Union Railway ledger; 1866 Union Wharf Co. ledger; 1890 newspaper articles mentioning Union Wharf, submitted by George Bryant, received December 1996.
- 1877 Report of the Halifax Commission, with mention of Union Wharf Co., submitted by George Bryant, received January 8, 1997.
- Letter from George Bryant to Sarah Korjeff re: proposal to relocate and restore 97 Commercial Street, dated February 20, 1997.
- Formal proposal to relocate and renovate 97 Commercial Street, with attachments, submitted by George Bryant, received on March 3, 1997.
- Letter from George Bryant to Rex Peterson, Permit Coordinator, re: septic system, dated March 8, 1997.
- Letter from Russell A. Lukes to Cape Cod Commission in support of the applicant's request, dated March 26, 1997.

The application and notice of the public hearing relative thereto, the Commission's staff reports, correspondence, notes and exhibits, minutes of the hearings and all written submissions received in the course of the proceedings, including materials submitted on file TR#96022, are incorporated into the record by reference.

TESTIMONY

At the December 11, 1996 public hearing, Alice Foley, applicant, described how the property was acquired and explained why she would like to demolish the structure. She provided information about the structure and described its current condition. Sarah Korjeff, Commission staff, summarized the staff report, noting that the proposal is not consistent with the Regional Policy Plan. Regina Binder, Historical Commission Chair, stated that the building represents important cultural features in the community. She explained that the Historical Commission suggested adaptive reuse of the building. Lauren Richmond, Historical Commission, presented historic maps of the town showing the 97 Commercial Street site. She also submitted a statement from a former Chair of the Historical Commission regarding the structure's significance. Michael Orlando, past Chair of the Historical Commission, stated his opposition to the demolition proposal. He stated that allowing demolition would set an unfortunate precedent and that alternatives would save the building and accommodate the applicant's needs. Jack Papetses, abutter, stated that the applicant cannot afford to renovate the building. He stated that it would be good if the town took the building and moved it to another location. Rachel White, abutter, stated her concern over changes made in the community. Ms. Foley stated that she has advertised the building for relocation previously and that she does not want to renovate the building. Ms. Foley stated that she would be willing to offer the building for relocation for several months. She also stated that she received a cost estimate of \$8,000 for the demolition of the structure. Mr. Orlando stated concern that this project could set a precedent. Ms. Binder explained that Provincetown has a revolving fund for historic properties which could be used to support preservation of this structure. Jade Mortimer, contractor, offered to estimate the cost of rehabilitation and to rehab the building.

At the January 23, 1997 public hearing, no testimony was taken and the hearing was continued to March 6, 1997 at 1 pm in the Cape Cod Commission office.

At the March 6, 1997 public hearing, Sarah Korjeff, Commission staff, summarized the staff report. She stated that the Provincetown Historical Commission released a request for proposals to relocate the structure and received one response. She explained that the Historical Commission and the applicant met subsequently and determined that the proposal met their criteria. Ms. Korjeff stated that relocating the building allows the project to meet Regional Policy Plan standards. She noted that the timing of the relocation has not been confirmed, but that the town permitting department has indicated that the structure can be moved quickly. She stated that the building inspector has agreed to allow the building to be moved to the existing foundation at the new site as long as it is not used until all necessary permits are in place. Lauren Richmond, Historical Commission, noted that relocating the structure will save the applicant money. She stated that she is pleased with the outcome of the project and that it sets a good example for preservation in Provincetown.

JURISDICTION

The proposed project qualifies as a DRI under Section 3(a) of the DRI Enabling Regulations, Barnstable County Ordinance 90-12, as amended, as "a 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 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 Commission makes the following findings subject to Section 23 of the Act:

Heritage Preservation/Community Character:

HP1. The structure at 97 Commercial Street is a contributing building in the Provincetown National Register Historic District. It is also listed on the State Register of Historic Places. The structure is not individually eligible for listing on the National Register.

HP2. The structure is a circa 1840 warehouse structure, believed to have been associated with the original Union Wharf complex, built in 1831, and moved to this site in the early 20th century. The structure's windows have been altered over time, but the building retains the simple form of a workshop or warehouse. The structure is of "loft" construction, typically found in work buildings of the period along the shore.

HP3. The Massachusetts Historical Commission encouraged the Commission to explore alternatives to demolition to avoid adverse impacts to the district. Financial resources are available to support renovation and reuse of the historic structure. Several low-income housing loans are available which could be used to renovate the structure as affordable housing. Historic rehabilitation tax credits are available for renovation in compliance with

the Secretary of Interior's Standards. In addition, preservation easement tax benefits, and a Provincetown revolving fund for historic property renovation provide potential funding opportunities.

HP4. The cost of relocating the building intact was estimated to be approximately \$10,000 by Hayden Building Movers who visited the site. Two other professional building movers gave phone estimates of the cost of relocating the building at \$6,000 to 8,000 and \$10,000 to 15,000.

HP5. On February 7, 1997, the Provincetown Historical Commission released a request for proposals to relocate and renovate the structure. One response was received, proposing relocation to 467-469 Commercial Street.

HP6. Regional Policy Plan MPS 6.1.2 states that "the distinguishing original qualities of an historic building, structure, landscape or site and its setting shall be preserved. The needless destruction, removal or alteration of historic material or architectural features shall be avoided unless the applicable local authority determines that such removal will not substantially alter or damage the integrity of the building or the site." The Historical Commission and the applicant determined that relocating the structure to 467-469 Commercial Street in Provincetown would provide an appropriate context for the structure along the waterfront and within the National Register District.

HP7. If the structure is removed from the 97 Commercial Street, the character of the surrounding National Register Historic District is best protected by insuring that the lot continues to have a defined street edge, and by insuring that the design for the deck support structure is consistent with the historic structures in the district.

HP8. Prior to relocation or alteration of the building, the structure should be photodocumented to establish a record of the building's character-defining features in their current setting.

HP9. In order to protect the character of the National Register Historic District, any proposal to construct a new building on the site of 97 Commercial Street should be reviewed by the Cape Cod Commission and the Provincetown Historical Commission.

HP10. The structure is best protected from further alteration by a preservation restriction.

HP11. Relocation to 467-469 Commercial Street will maintain the structure within the National Register district and thus it will be subject to review by the Cape Cod Commission if demolition or substantial alteration is proposed in the future.

HP12. The applicant desires the relocation to occur prior to May so that it will not conflict with rental agreements that limit construction during the summer season.

HP13. The Provincetown Building Inspector and his department have not condemned the building or made any statement regarding a need to secure or demolish the building to

protect public safety. All liability for the structure rests with the owner of the building.

HP14. The applicant received an estimate of \$8,000 to demolish the structure and remove debris from the site. Relocation of the structure will eliminate a portion of that cost to the applicant.

General:

G1. The proposed project is consistent with local zoning regulations and does not lie within a District of Critical Planning Concern. Relocation of the structure will require a moving permit, certification of the existing septic system on the 467-469 Commercial Street site, a building permit, and Conservation Commission approval.

G2. The applicant has demonstrated a hardship, based on the death and bankruptcy of two of the original partners in the Trust which purchased this property, current financial difficulties of the Trust, and the inability to accommodate both the structure and a garden and parking area on the site.

G3. The structure has not been used for approximately ten years and there is no economic income to support it.

G4. Relocation and preservation of the structure on a new site allows the project to avoid substantial detriment to the public good and to avoid nullifying or substantially derogating from the intent or purpose of the Act.

CONDITIONS

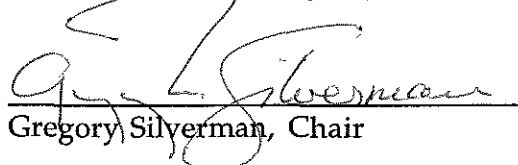
Based on the findings above, the Cape Cod Commission hereby concludes:

A literal enforcement of the Act would involve substantial hardship, financial or otherwise, to the Applicant. This conclusion is supported by findings #G2 and G3.

Cape Cod Commission DRI Enabling Regulations, Section 9(g)(ii)(c) allows for the Commission to waive application of Minimum Performance Standards where the project complies, to the maximum extent feasible, with the Minimum Performance Standards and where any relief granted from the requirements of the Minimum Performance Standards are directly related to the nature of the identified hardship and is the minimum relief necessary to address the hardship. In this case, the Commission finds that the Applicant will allow for the relocation of a contributing structure to the National Register Historic District and will design the vacant site to be compatible with the character of the surrounding historic district. To address the applicant's financial hardship, the Regional Policy Plan requirement to preserve the distinguishing original qualities of the historic building and its setting is relieved to allow for the relocation of the structure to a new site within the Provincetown National Register Historic District. The Commission further finds that the project will not result in a substantial detriment to the public good or derogate from the intent and purposes of the Act, provided the following conditions are met:

1. The building shall be relocated to 467-469 Commercial Street, property owned by George Bryant and Marie-Louise Bryant, as outlined in their proposal to the Provincetown Historical Commission. The Bryants shall be responsible for obtaining all necessary permits and for the relocation of the structure.
2. A preservation restriction shall be placed on the building, developed in conjunction with the applicant and the Bryants. As part of the transfer of the building, a preservation restriction shall be placed in the deed to the relocated structure to ensure its preservation in perpetuity. Said preservation restriction shall describe the required maintenance of the property and shall include a requirement that all work done on the structure shall be approved by the party holding the restriction.
3. Prior to alteration, removal or demolition of 97 Commercial Street, the applicant shall arrange for photodocumentation of the structure. Photodocumentation shall be in the form of archival quality photographs which are keyed by number to a floor plan sketch. Photodocumentation shall provide views of all exterior elevations, interior spaces, and significant features, including windows, doors, moldings, etc.
4. Prior to receiving a building permit for construction of the deck support structure and prior to installation of the site landscape plan, the applicant shall work with the Commission staff landscape architect to design the site plan and deck support structure to ensure that they are compatible with the character of the surrounding National Register Historic District.
5. Any new structures proposed on the site of the 97 Commercial Street structure shall be reviewed and approved by the Cape Cod Commission and the Provincetown Historical Commission.


The Commission hereby grants Alice Foley, 97 Commercial Street, an approval with conditions as a Development of Regional Impact Hardship Exemption pursuant to Section 23 of the Act for relocation of a contributing structure to the National Register Historic District at 97 Commercial Street.


 Gregory Silverman, Chair

4/3/97
 Date

Commonwealth of Massachusetts
 Barnstable, ss.

Subscribed and sworn to before me this 3rd day of April 1997


 Name, Notary Public

My commission expires: