



# CAPE COD COMMISSION

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DATE: March 21, 2002

TO: Regina Binder, applicant's representative  
Binder Boland & Associates  
P.O. Box 1505  
Provincetown, MA 02657

FROM: Cape Cod Commission

RE: Development of Regional Impact  
Cape Cod Commission Act, Sections 12 and 13

APPLICANT: Nelson A. Hitchcock, III  
c/o Binder Boland & Associates  
P.O. Box 1505  
Provincetown, MA 02657

PROJECT #: TR20086

PROJECT: Kustes/Hitchcock Cottage  
351A Commercial Street (Building #2), Provincetown, MA

BOOK/PAGE: Book 13406, Page 294  
LAND COURT CERT.#: 76427

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## DECISION OF THE CAPE COD COMMISSION

### SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of Nelson A. Hitchcock III as a Development of Regional Impact (DRI) pursuant to Sections 12 and 13 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the proposed Kustes/Hitchcock Cottage demolition and new construction. The decision is rendered pursuant to a vote of the Commission on March 21, 2002.

### PROJECT DESCRIPTION

The Kustes/Hitchcock Cottage, located at 351A Commercial Street (building#2), Provincetown, is listed as a contributing structure on both the National Register of Historic Places and the Massachusetts Register of Historic Places. The applicant



proposes to demolish the existing building #2 on the site, and construct a new dwelling in its place.

The proposed project is located within the Provincetown Historic District, which includes roughly 1,830 properties and was listed on the National Register of Historic Places in 1989. 351A Commercial Street is located on Provincetown harbor, one lot back from Commercial Street, in a densely developed area of the district. The lot is 3,414 square feet and has supported three separate buildings. The Historic District data sheet identifies building #2 as pre-1930 construction, astylistic, and contributing to the significance of the historic district. Building #2 is a one-story, wood frame building, approximately 18 feet by 20 feet, and roughly 10 feet tall. It is very simple in form, and was likely constructed as a storehouse to support maritime pursuits on the nearby wharf. In the late 1900s, it was converted to a one-bedroom dwelling.

The proposed new construction is located slightly landward and westward of the existing building #2, moving it outside Chapter 91 tidelands and into conformance with town setback requirements. The proposed new building is constructed on piles, with the first floor approximately 8 feet above grade. The new building is a one-bedroom dwelling with two floors of living space, a footprint of approximately 14 feet by 21 feet, and a total building height of 30 feet.

#### PROCEDURAL HISTORY

The project was referred to the Commission by the Provincetown Building Commissioner on December 20, 2001. The Commission received the referral on December 21, 2001. A noticed public hearing was conducted by the Commission pursuant to Section 5 of the Act by an authorized subcommittee of the Commission on February 14, 2002 in the Provincetown Town Hall Auditorium. The public hearing was closed on February 14, 2002 and the record was left open for submission of written materials until March 21, 2002.

The subcommittee held a public meeting after the close of the public hearing to deliberate on this project on March 7, 2002.

At the March 7, 2002 subcommittee meeting, the subcommittee voted unanimously to recommend to the full Commission that the project be approved as a DRI, subject to conditions. A final public hearing was held before the full Commission on March 21, 2002. At this hearing, the Commission voted unanimously to approve the project as a DRI, subject to conditions.

#### Materials submitted for the record

##### From the applicant:

- DRI application form and attachments, including a letter from John A. Bologna, P.E., dated January 2, 2002, regarding the condition of the existing structure, received January 10, 2002.
- Existing Building Elevations and Floor Plans for 351A Commercial Street, Provincetown, by Top Floor Design House, dated December 2000, received January 10, 2002.

- Proposed Building #2 Elevations and Floor Plans for 351A Commercial Street, Provincetown, by Top Floor Design House, dated July 2001, received January 10, 2002.
- Existing Site and Sewage Plan for 351A Commercial Street, Provincetown, by Felco, Inc., dated November 17, 1997.
- Proposed Site and Sewage Plan for 351A Commercial Street, Provincetown, by Felco, Inc., dated April 10, 2001.
- Email from Regina Binder to Sarah Korjeff, re: information on design of building 2 at 351A Commercial Street, dated January 25, 2002.

From Cape Cod Commission staff:

- Letter from Sarah Korjeff to Regina Binder, dated December 27, 2001, re: DRI review.
- Memo to subcommittee members, dated January 29, 2002, re: public hearing.
- Staff Report dated February 7, 2002.

From state/local officials:

- DRI referral form and attachments, sent by Warren G. Alexander, Building Commissioner, dated December 20, 2001.
- Letter from Roger W. Keene, Provincetown Historical Commission, re: vote to refer project to Cape Cod Commission, dated December 13, 2001.
- Letter from Brona Simon, MHC, to Regina Binder re: 351A Commercial Street Memorandum of Agreement, dated February 8, 2002.

From the public:

No documents were received.

The application and notices of public hearings relative thereto, the Commission staff's notes, exhibits and correspondence, the transcript and minutes of meetings and hearings and all written submissions received in the course of our proceedings are incorporated into the record by reference.

TESTIMONY

The Commission heard oral testimony at the February 14, 2002 hearing. Regina Binder and Tom Thomson, representing the applicant, explained the proposed project. Roger Keene, Provincetown Historical Commission, stated concern about the demolition of an historic building and the difference between the existing building and the proposed replacement. Tom Boland, Historic District Study Committee, expressed concern about the loss of historic buildings but noted that this building is not significant. Nelson Hitchcock, owner, stated that the building was not represented to him as historically significant and explained that he worked hard to develop an appropriate design that would contribute to the community.

JURISDICTION

The proposed Kustes/Hitchcock Cottage qualifies as a Development of Regional Impact (DRI) under Section 3(a) of the DRI Enabling Regulations governing review of Developments of Regional Impact, which requires review of "any proposed demolition or substantial alteration of an historic structure or destruction or substantial alteration to an historic or archaeological site listed with the National Register of Historic Places or

Massachusetts Register of Historic Places, outside a municipal historic district or outside the Old King's Highway Regional Historic District."

### FINDINGS

The Commission has considered the application of Nelson A. Hitchcock III for the proposed Kustes/Hitchcock Cottage, and based on consideration of such application and upon the information presented at the public hearing and submitted for the record, makes the following findings pursuant to Sections 12 and 13 of the Act:

1. The Kustes/Hitchcock Cottage, located at 351A Commercial Street (building #2), Provincetown, is identified as a contributing structure in the Provincetown Historic District, listed on the National Register of Historic Places and the Massachusetts Register of Historic Places. The structure is one of three buildings on the site and is thought to have been constructed as a storage building to support maritime industries pre-1930 and converted to residential use circa 1990.
2. This type of utilitarian building linked to the town's maritime history is common within the district, but has typically been subject to alteration and reuse. The Provincetown historic district nomination notes that "large numbers of one and two-story wood-frame structures of utilitarian design with shingled walls and roofs were built to serve local fisheries.... While a large number of these structures remain, nearly all have been converted to commercial or residential uses."
3. The character-defining features of building #2 are its small scale, simple form and materials. Due to the building's location set back from public ways and behind other structures in a densely developed area, it is not visible to the general public.
4. A structural survey of building #2 indicates that it has been expanded and altered numerous times. Changes include expansion to the south (as evidenced by a change in roof pitch and detailing on the west side) and to the east (as shown by a change in the roof rafters and floor construction). A small bathroom addition was subsequently added to the southeast corner of the building. The numerous changes to the building have left little historic material related to the district's period of significance.
5. No information was presented by the public to indicate that building #2 was associated with significant persons or that it played a significant role in the history or development of the Provincetown historic district.
6. In a letter dated February 8, 2002, Massachusetts Historical Commission (MHC) determined that the proposed demolition and new construction project will have an adverse effect on Provincetown Historic District due to the destruction or alteration of all or part of an historic property. MHC called for developing a Memorandum of Agreement (MOA) to mitigate the project's adverse effect, with the applicant, MHC, DEP, and the Provincetown Historical Commission as parties to the agreement. The MOA will provide for design review of the proposed replacement structure, and other mitigation as determined appropriate by the parties.

7. The Provincetown Historic District represents a broad collection of historic properties significant during the period circa 1750 to 1940. The area has evolved greatly over time, contributing to the diversity of architectural styles and patterns which make up the historic district today. While demolition of building #2 will have an adverse effect on the district, the building's lack of association with significant persons or architectural styles, its little remaining historic material, and its lack of visibility, the demolition will have a limited effect on the integrity of the historic district. As such, this property appears to be an appropriate location to allow for continued evolution of the historic district.

8. Regional Policy Plan Minimum Performance Standard 6.1.2 requires preservation of the distinguishing, original qualities of an historic building, structure, landscape or site and its setting unless the applicable local authority (historical commission) determines that such removal will not substantially alter or damage the integrity of the building or the site. The Provincetown Historical Commission did not submit formal comments regarding the project, but will have the opportunity to participate in the MOA to address the adverse impact of the project.

9. The proposed new construction is consistent with the character of the surrounding historic district and with Cape Cod architectural styles. It is designed to resemble a wharf building on pilings to reflect the town's architecture and maritime heritage. The building footprint is roughly the size of the existing building #2. The westward move of about 5 feet allows the building to conform with zoning regulations while also creating a fire lane between adjacent properties. The northward move brings the building out of Commonwealth Tidelands, reducing environmental impact. The fenestration, roof pitch and exterior cladding are in keeping with the surrounding architecture.

10. The proposed new construction is significantly taller than the building it proposes to replace. The proposed building is equal in height to the remaining historic building on the property, and is equal to or lower in height than the immediately surrounding buildings. Design review as part of the MOA will provide an opportunity for the Provincetown Historical Commission and other parties to address the appropriateness of the proposed new building height.

11. Preservation of the remaining historic building on the property (building #1) will be a benefit to the historic district and will help to protect the integrity of the site and the historic district.

12. The proposed project requires a special permit from the Provincetown Zoning Board of Appeals, an amendment to the Order of Conditions from the Conservation Commission, an amendment to the Amnesty License from Chapter 91, and extended permission for a remedial system from the Board of Health. Granting the DRI approval is in no way intended to support or oppose the grant of such approvals at the local level or state. The proposed project is otherwise consistent with local development bylaws. Due to the timing of the DRI referral to the Cape Cod Commission, all of the above noted permits had already been issued.

13. The project is consistent with the Provincetown Comprehensive Plan, which states that the distinguishing original qualities of the visible exterior of an historic building, structure, landscape or site and its setting shall be preserved. The Plan also states that the reuse of historic structures in the downtown area will have appropriate use for that particular building. New structures should be built of similar character, mass, proportion and scale and the surrounding building fabric taken into account in the Historic District.

### CONCLUSION

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

The benefits of the proposed project outweigh the detriments resulting from the development. Findings # 3, 4, 5, 6, 7 and 11 support this conclusion. The benefits of preserving an existing historic structure (building #1) on site and constructing a new structure that is consistent with the character of the surrounding historic district and traditional Cape Cod architectural styles outweighs the detriment of demolishing a structure (building #2) that is not associated with significant persons or architectural styles, has little remaining historic material, has extremely limited visibility. Design review as part of the MOA with Massachusetts Historical Commission will ensure that the proposed new building height is compatible and harmonious with the site and the surrounding historic district, as required by the RPP.

- Because the project only trips the DRI threshold relating to demolition or substantial alteration of historic properties, it is only subject to the Minimum Performance Standards in Section 6 (Heritage Preservation/Community Character) of the Cape Cod Regional Policy Plan, per Section 9(g)(ii)(b) of the DRI Enabling Regulations. The proposed project is consistent with the Heritage Preservation/Community Character chapter of the Cape Cod Regional Policy Plan. This conclusion is supported by findings # 8, 9 and 10 that the proposed demolition will have limited impact on the integrity of the historic district and that the Memorandum of Agreement with Massachusetts Historical Commission will help to insure that the proposed new structure will be compatible and harmonious with the surrounding historic area.
- The proposed project is consistent with the Provincetown Comprehensive Plan. This conclusion is supported by finding # 13.
- The proposed project requires special permits and allowances from local boards, all of which have already been granted. This conclusion is supported by finding # 12.

The Commission hereby approves with conditions the application of Nelson A. Hitchcock III for the proposed Kustes/Hitchcock Cottage demolition as a Development of Regional Impact, provided the following conditions are met:

### CONDITIONS

#### GENERAL

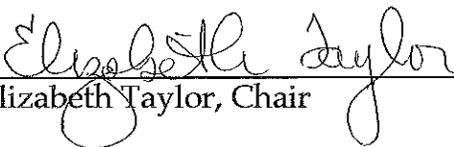
1. This DRI decision is valid for 7 years and local development permits may be issued pursuant hereto for a period of 7 years from the date of the written decision.

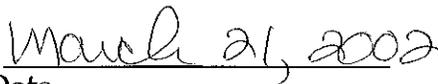
2. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this decision.
3. The applicant shall obtain all state and local permits for the proposed project.
4. No development work, as the term "development" is defined in the Act, shall be undertaken until all appeal periods have elapsed or, if such an appeal has been filed, until all judicial proceedings have been completed. Maintenance work on the historic house necessary to seal the building envelope from weather or to provide increased structural stability shall not be restricted.

#### HISTORIC PRESERVATION

5. The applicant shall proceed with a Memorandum of Agreement (MOA) with Massachusetts Historical Commission (MHC), DEP and the Provincetown Historical Commission to mitigate the adverse impact of demolition of the existing building #2. Design review of the proposed new structure shall be a part of the MOA to ensure appropriate height and scale of the replacement building. The MOA shall also consider requirements to rehabilitate and preserve the remaining historic building (building #1) on the site in an effort to preserve its integrity, to file documentation of the existing building #2 in the town's historic archives, and to further preservation of other existing maritime-related structures in the historic district.
6. The proposed Kustes/Hitchcock Cottage shall be constructed in accordance with the plans dated July 2001 and received January 10, 2002, or with alternative plans reviewed and approved by MHC, the Provincetown Historical Commission, and other parties to the MOA.
7. Prior to issuance of a Building Permit from the Town of Provincetown, the applicant shall obtain a Certificate of Compliance from the Commission, indicating that the MOA process has been completed and that Commission staff has reviewed the final plans and found them consistent with Minimum Performance Standards in the Heritage Preservation/Community Character section of the RPP.
8. Prior to issuance of a Certificate of Compliance, the applicant shall be responsible for providing proof of recording of the decision.

The Cape Cod Commission hereby approves with conditions the application of Nelson A. Hitchcock III as a Development of Regional Impact pursuant to Sections 12 and 13 of the Act, c. 716 of the Acts of 1989, as amended for the proposed Kustes/Hitchcock Cottage located in Provincetown, MA.

  
Elizabeth Taylor, Chair

  
Date

Commonwealth of Massachusetts

Barnstable, ss.

On this 21<sup>st</sup> day of MARCH, 2002, before me personally appeared ELIZABETH TAYLOR, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that SHE executed the same as HER free act and deed.



Notary Public  
Commonwealth of Massachusetts

My Commission expires:

