

CAPE COD COMMISSION

3225 MAIN STREET
P.O. BOX 226
BARNSTABLE, MA 02630
(508) 362-3828
FAX (508) 362-3136

E-mail: frontdesk@capecodcommission.org

DATE: February 9, 2006

TO: Peter G. Brown, Agent / Architect
947 Main Street, Unit 3
Yarmouthport, MA 02675

FROM: Cape Cod Commission

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

APPLICANT: Mannheim Realty Trust
712 Fifth Avenue
New York, NY 10019

PROJECT #: TR05022

PROJECT: Mannheim Realty LLC / 17 Hawthorne Avenue, Hyannisport, MA

BOOK/PAGE: Book 18857 / Page 252

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby denies the application of Mannheim Realty Trust for a Development of Regional Impact (DRI) pursuant to Sections 12 & 13 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the proposed demolition of the residence at 17 Hawthorne Avenue, Hyannisport, MA, and construction of a new residence at that site. The decision is rendered pursuant to a vote of the Commission on February 9, 2006.

PROJECT DESCRIPTION

The Mannheim Realty property, located at 17 Hawthorne Avenue in Hyannisport, is approximately 1/3 acre of land with a one and a half story wood frame building constructed circa 1890 in the late Victorian/Queen Anne style. It is located within the Hyannisport Historic District and is listed as a contributing property on the State and National Registers of Historic Places. The applicant proposes to demolish the existing building and construct a new dwelling in its place. The proposed new dwelling would also be one and a half stories, with a cross gable roof and a one story ell on the south side of the property.

PROCEDURAL HISTORY

The project was referred to the Cape Cod Commission by the Barnstable Town Manager on July 27, 2005 under Section 3(a) of the Cape Cod Commission DRI Enabling Regulations, Barnstable County Ordinance 90-12, as amended.

Duly noticed public hearings were conducted by the Commission pursuant to Section 5 of the Act by an authorized subcommittee of the Commission on September 26, 2005 in the Barnstable Town Hall Selectman's Meeting Room, and on December 15, 2005 in the Cape Cod Commission library. The public hearing and record were closed on December 15, 2005.

At the December 15, 2005 public hearing, the subcommittee voted 3 to 1 to recommend to the full Commission that the DRI application for the proposed demolition and new construction be approved with conditions. The public hearing was re-opened at the full Commission meeting on January 26, 2006. At this hearing, the full Commission voted to remand the project to the subcommittee for consideration of new information received from the Town of Barnstable.

At a duly noticed subcommittee meeting held on January 30, 2006, the subcommittee considered the new information and voted 3 to 1 to recommend to the full Commission that the DRI application for the proposed demolition and new construction be approved with conditions. The applicant agreed to extend the decision time to the close of business on February 17, 2006. At the February 9, 2006 full Commission meeting, the Commission voted 8 to 2 in opposition to the DRI application.

Materials submitted for the record

From the applicant:

- DRI application, including proposed plans and elevation drawings by Peter G. Brown, Architect, dated July 11, 2005, and report by Sara B. Chase, Preservation Consultant, dated 7/13/05, all received July 22, 2005.
- Revised architectural elevations for proposed new residence by Peter G. Brown, Architect, dated 25 August 2005, received September 1, 2005.
- Resume and associated information about Sara B. Chase, preservation consultant, received September 16, 2005.
- Structural report for 17 Hawthorne Avenue by Allen and Major Associates, dated October 27, 2005, received November 1, 2005.
- Extension of the 60-day decision period to February 17, 2006, signed by Peter G. Brown on February 6, 2006.
- Letter from Peter L. O'Keeffe, attorney, to Sarah P. Korjeff, dated February 7, 2006, re: compliance with Barnstable Comprehensive Plan and Regional Policy Plan.

From Cape Cod Commission staff:

- DRI referral notification letter, dated August 5, 2005.
- DRI subcommittee notice, dated September 9, 2005.
- Staff Report, dated September 20, 2005.

- Subcommittee Memo re: engineer's report and upcoming hearing, dated November 18, 2005.
- Minutes of September 26th and December 15th public hearings, and January 30, 2006 subcommittee meeting.

From state/local officials:

- DRI referral form, dated July 27, 2005, received July 29, 2005.
- Letters from Barnstable Historical Commission re: opposition to demolition, dated September 26, 2005, and December 15, 2005.
- Letter from Massachusetts Historical Commission re: adverse effect of demolition, dated May 31, 2005, received June 6, 2005.
- Email from Town of Barnstable Planning Director to Sarah Korjeff re: inconsistency with comprehensive plan and zoning compliance, dated January 20, 2006.
- Letter from Barnstable Historical Commission re: inconsistency with Barnstable Comprehensive Plan, dated January 18, 2006.
- Letter from Ruth Weil, Director, Town of Barnstable Growth Management Department, regarding inconsistency with Barnstable Comprehensive Plan, dated January 23, 2006.

From the public:

- Letter from J. B. McPherson, abutter, in support of new construction, dated October 14, 2005.

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 September 26, 2005 and December 15, 2005 hearings. At the September 26, 2005 hearing, Peter Brown, architect, presented the project, stating that new construction was proposed because the house was unsound based on neglect and deterioration. He reviewed the plans for the proposed new structure, noting that it is designed to be consistent with Queen Anne architecture common in the district. Sara Chase, Preservation Consultant, reviewed her research on the building and its alterations. Sarah Korjeff, Commission staff, presented the staff report, encouraging the applicant to reuse the existing building rather than demolish it. Mrs. McPherson, abutter, spoke to her knowledge of the historic district's establishment. Marilyn Fifield, Barnstable Historical Commission, also spoke to the historic district's creation. Bruce McPherson, abutter, questioned several details of the proposed design.

At the December 15, 2005 hearing, Peter Brown summarized the project, noting the findings of the engineer's report, and stating that their preservation consultant did not believe the building was historically significant. Sarah Korjeff gave a project update and noted concern about incremental loss of buildings in the historic district. George Jessop,

Barnstable Historical Commission, spoke in opposition to the proposed demolition. Marilyn Fifield spoke to the Historical Commission's comment letters. Mr. Brown noted that the district has significance regardless of the Mannheim property. The subcommittee voted to recommend approval of the applicant's proposal for demolition and new construction, and discussed possible mitigation for the demolition.

At the January 30, 2006 subcommittee meeting, the subcommittee reviewed the Barnstable Comprehensive Plan and Minimum Performance Standard 6.1.1 of the Regional Policy Plan. Tom Broadrick, Barnstable Planning Director, stated his opinion that the proposed project was inconsistent with the Barnstable Comprehensive Plan. He did note that Strategy 7.5.1.2 used the language "should" rather than "shall" in order to give some discretion. Leo Cakounes reviewed Strategy 7.5.1.2 of the Barnstable Comprehensive Plan, noting that it does not prohibit demolition, and that it allows features of historic significance to be replaced with similar elements. Peter Brown, applicant's representative, reviewed the findings of Sara Chase, historic preservation consultant, stating that the existing building has little historic significance. Nancy Clark, Chair of the Barnstable Historical Commission, stated that they have submitted three letters calling for preservation of this building, and noted that the Hyannisport Historic District boundaries were drawn to exclude more recent structures of similar scale. Jackie Etsten, Barnstable Planning Department, noted information from the Historical Commission's architect member, and stated the importance of retaining the integrity of the National Register district, noting that it does not currently have new buildings in it. Barbara Flynn, Barnstable Historical Commission Vice Chair, noted that an addition to the building would be easy to accommodate and that preservation is important to the town's economy. Mark Harding stated that his background is in historic restoration and that review of the new information did not cause him to change his position. Bill Doherty stated his belief that infill can be done consistent with the character of the historic district. He stated that after review of the new information he had not changed his position. David Ansel noted his disagreement with the other subcommittee members, stating that demolition of a structure in an historic district should have approval from the Historical Commission. Leo Cakounes moved and Bill Doherty seconded a motion that a finding be made that removal and alteration of distinguishing original stylistic features or examples of skilled craftsmanship of historic significance would not have a significant negative impact on the surrounding historic district. Three members (Harding, Doherty, Cakounes) voted in favor of this motion, and one was opposed (Ansel). A second motion was made finding that the project was consistent with the Barnstable Comprehensive Plan. Leo Cakounes, Mark Harding and Bill Doherty voted in favor. David Ansel was opposed.

At the February 9, 2006 Commission meeting, Sarah Korjeff reviewed the project proposal and the draft decision. Peter Brown, applicant's representative, read a letter from Sara Chase, preservation consultant, stating the building was not part of the original planned resort development in Hyannisport and that it was a poor example of seaside summer resort architecture. Mr. Brown also referenced a letter from Peter O'Keeffe, attorney for the applicant, stating that the project complies with the Regional Policy Plan and Barnstable Comprehensive plan. Patty Daley, Esq., Director of Comprehensive Planning for the Town of Barnstable Growth Management Department, stated the town believes the project is not consistent with the Local Comprehensive Plan. She stated that section 7.5.1.2 of the Local Comprehensive Plan

should be read as a whole, acknowledging the overall intent to preserve historic structures. She also stated that in reading the Plan as a whole, Strategy 7.5.1.2 contemplates having approval of the Historical Commission and/or the Historic District Commission. Nancy Clark, Chair of the Barnstable Historical Commission, presented information from the Historical Commission's architect member stating the building is stable and can be rehabilitated. She noted that the house is a contributing property in the historic district and is worth saving. Barbara Flynn, Vice Chair of the Barnstable Historical Commission, recalled all the letters against the building's demolition and stated her belief that the house can be rehabilitated. Jackie Etsten, Barnstable Growth Management Department staff assigned to Historic Boards, noted that the town does not have authority to stop demolition in a National Register historic district. She stated that the intent is to preserve properties in the National Register district and noted that the high value of the property is partly due to the historic district's success in preserving community character.

Catherine Frazer, Chatham representative to the Commission, stated that the Local Comprehensive Plan's language shows a strong intent to preserve historic structures and she would vote against demolition. Susan Kadar, Truro representative to the Commission, noted that many town entities are asking the Commission to prevent demolition and the Commission should give weight and deference to the town's opinion. She indicated she would vote against the demolition. Frank Hogan, Orleans representative to the Commission, stated the building is a contributing building in the historic district and they have evidence from the town that it is in good condition. He also noted that based upon evidence from staff, the demolition is not consistent with the Regional Policy Plan. He stated he would vote to preserve it. David Ansel, Barnstable representative to the Commission, noted the building has been modified and is not particularly attractive, but he did not want to substitute his personal view for groups like the Barnstable Historical Commission, Massachusetts Historical Commission and Commission staff which have advised against demolition. He also noted that Commission staff member Sarah Korjeff has supported the preservation position. He stated the Local Comprehensive Plan language may not be clear, but the Historical Commission, Planning Director, and the Growth Management Department all are in opposition to demolition and their opinions hold weight. He also noted the high purchase price of the property and the issue of blocking the view from the adjacent building. Leo Cakounes, Harwich representative to the Commission, noted there was only one neighbor who attended and they were in favor of demolition. Mr. Cakounes then described how the building had been altered and how only the roofline and the dormer were unchanged. He noted the structural work that would be necessary to reuse the building and questioned whether the Commission would really be saving something. Elizabeth Taylor, Brewster representative to the Commission, stated she would not vote for the project when the town determined it was inconsistent with their Comprehensive Plan. Mr. Brown, responding to questions, confirmed that the structure was last occupied about three years ago and that significant reconstruction work was necessary to make the house safe and habitable, noting concerns regarding the foundation, first floor joists and roof rafters. Mark Harding, Native American representative to the Commission, noted his training as a historic preservation officer and as a restoration contractor. He stated that it was a difficult decision, but that the building has been so altered that he could not say it was worth saving. Bob Jones, Sandwich representative to the Commission, noted that the owner was aware of the

building's condition and did not make their purchase contingent on demolition. He stated he would be uncomfortable going against the town's opinion regarding consistency with the Local Comprehensive Plan and said he was inclined to preserve the building. The Commission voted 8 to 2 in opposition to the approval of the DRI application for the demolition of the residence at 17 Hawthorne Avenue, Hyannisport.

JURISDICTION

The proposed Mannheim Realty Trust/17 Hawthorne Avenue, Hyannisport, MA project qualified 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 Mannheim Realty Trust for the proposed demolition and new construction at 17 Hawthorne Avenue, Hyannisport, and based on consideration of such application and upon the information presented at the public hearings and submitted for the record, makes the following findings pursuant to Sections 12 & 13 of the Act:

1. The residence at 17 Hawthorne Avenue, Hyannisport, MA, is a contributing property in the Hyannisport National Register Historic District. Because it is a contributing part of the historic district, it is listed on both the National Register of Historic Places and the State Register of Historic Places. The structure is not individually eligible for listing on the National Register.
2. The Mannheim Realty property is a one and a half story residence on approximately one third acre of land. It is located at the corner of Hawthorne Avenue and Atlantic Avenue in the southwest portion of the historic district. The house was built circa 1890, and is constructed in a late Victorian architectural style commonly known as the Queen Anne style, which was a popular style for summer resort architecture in the region. The original building has undergone several alterations, including enclosure of large portions of the wrap-around porch and relocation of the building's central entry. Portions of the original architectural detailing are still visible in some parts of the house.
3. The project is located within the Hyannisport Historic District, which was listed on the National Register of Historic Places in 1987. The district includes approximately 150 contributing properties related primarily to Hyannis' summer resort development in the late 19th and early 20th centuries. The district's character today is largely related to the creation of the Hyannis Land Company formed in 1871-72, which subdivided the area and created one of the Cape's first planned resort communities. Many of the structures in the district were built in the late 1800s and early 1900s and reflect the

Victorian Queen Anne, Shingle, Colonial Revival and other architectural styles that were popular during that period.

4. The Massachusetts Historical Commission, in a letter dated May 31, 2005, noted that demolition of the proposed property would adversely affect the Hyannisport Historic District and encouraged the applicant to consult with the Cape Cod Commission to explore alternatives that would allow the property to remain intact.

5. The Barnstable Historical Commission voted unanimously at its regular meeting on September 20, 2005 to oppose the demolition of the contributing building at 17 Hawthorne Avenue, and stated in letters dated September 26, 2005 and December 15, 2005 that loss of this historic property would compromise the historical integrity and diminish the historic setting and context of the Hyannisport National Register Historic District. The Historical Commission further submitted a letter dated January 18, 2006 stating their belief that the proposed project is inconsistent with the Barnstable Local Comprehensive Plan.

6. Sara B. Chase, historic preservation consultant, evaluated the building's historic significance. Based on her research of 17 Hawthorne Avenue, she presented her opinion that the building has little value for its association with a historical person or event of significance to Hyannisport. She also opined that the property has limited value as an example of architecture of the 1890s or of the Queen Anne style since so many other Queen Anne style houses in the district have more of their original detail visible. The Commission does not adopt this evidence, and finds that the original form and architectural detail of Queen Anne style is still visible in some parts of the house.

7. An engineer's survey conducted for the applicant identified structural concerns related to the building's foundation and first floor framing, as well as deficient roof framing on the second floor. The Commission finds that the owner was aware of the building's condition upon purchase of the property and did not make its purchase contingent upon demolition of the structure. The Commission further finds that, as the Barnstable Historical Commission presented through the opinion of its architect member in a letter dated December 15, 2006, the structural concerns noted in the engineer's survey could be addressed through simple and straightforward corrections.

8. RPP Minimum Performance Standard 6.1.1 requires preservation of an historic structure's key character-defining features. It further states that removal or alteration of distinguishing original stylistic features or examples of skilled craftsmanship shall be prohibited unless the Commission determines that such removal or alteration will not have a significant negative impact on the integrity of the historic property, surrounding historic district, or otherwise distinctive neighborhood. The Commission finds that demolition of the contributing building at 17 Hawthorne Avenue would have a negative impact on the integrity of the historic district, adopting the opinions of both the Barnstable Historical Commission and the Massachusetts Historical Commission, as well as of the Commission staff Preservation Specialist. The Commission finds that the development application for the proposed demolition of 17 Hawthorne Avenue is not consistent with performance standard 6.1.1 of the Regional Policy Plan.

9. The Commission, after consideration of all the evidence, finds that the structure at 17 Hawthorne Avenue is a contributing building to the Hyannisport National Register Historic District and that the incremental loss of the structure would have a significant negative impact on the integrity of the historic district.

10. The Commission finds that, as presented by correspondence from the Town of Barnstable Planning Director dated January 20, 2006, the project is consistent with local zoning.

11. After examining the language of the Barnstable Local Comprehensive Plan, the Commission finds that the Plan's language shows intent to preserve historic structures and encourage their preservation. Upon examination of all the evidence presented, the Commission finds that, as support by correspondence from the Barnstable Historical Commission dated September 26, 2005, December 15, 2005, and January 18, 2006, the Director of the Barnstable Growth Management Department dated January 23, 2006, the Town of Barnstable Planning Director dated January 20, 2006, as well as the testimony provided by Patty Daley, Director of Comprehensive Planning for the Town of Barnstable, Nancy Clark, Chair of the Barnstable Historical Commission, Barbara Flynn, Vice Chair of the Barnstable Historical Commission, Jackie Etsten, Barnstable Growth Management staff, and George Jessop, architect member of the Barnstable Historical Commission, the proposed development application for demolition of the structure at 17 Hawthorne Avenue is not consistent with the Barnstable Local Comprehensive Plan.

12. In examining the proposed development application for demolition of the 17 Hawthorne Avenue structure, the Commission finds that the structure can be preserved on-site and incorporated into the overall design of the development. The Commission adopts the testimony and evidence submitted by the Barnstable Historical Commission, Barnstable Planning Director, Barnstable Director of Comprehensive Planning and Barnstable Growth Management Department, and further finds that the development application for the demolition of the structure at 17 Hawthorne Avenue is inconsistent with Strategy 7.5.1.2 of their Local Comprehensive Plan.

13. The Commission finds that the probable benefits of the proposed project, which include the applicant's ability to build a new structure on the site, do not outweigh the probable detriments of the proposed project, which include loss of a contributing building in the National Register historic district, and the incremental loss of building fabric that helps to tell the story of Hyannisport's development, causing an adverse impact to the integrity and significance of the district.

14. The proposed development fails to satisfy three of the requirements for DRI approval set out by the Cape Cod Commission Act, Section 13(d) as follows: 1) the probable benefits of the development do not outweigh the probable detriments; 2) the development is not consistent with the Regional Policy Plan; and, 3) the development is not consistent with the local comprehensive plan.

15. The proposed project is not located within a District of Critical Planning Concern.

CONCLUSION

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

- The proposed development is not consistent with the Regional Policy Plan, in particular Minimum Performance Standard 6.1.1.
- The probable benefits of the proposed project do not outweigh the probable detriments resulting from the development. Probable project detriments include loss of a contributing historic structure in a National Register historic district, and an adverse impact on the integrity and significance of the Hyannisport National Register historic district.
- The proposed project is not consistent with the Barnstable Local Comprehensive Plan.
- The proposed project appears to be in compliance with local development by-laws.

The Cape Cod Commission hereby denies the application of Mannheim Realty LLC pursuant to Sections 12 & 13 of the Act, c. 716 of the Acts of 1989, as amended, for the proposed demolition and new construction at 17 Hawthorne Avenue, Hyannisport (Barnstable), MA.



Brad Crowell, Vice Chair

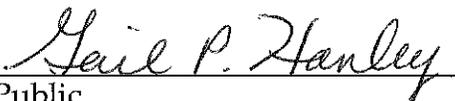
15 FEB 2006
Date

Commonwealth of Massachusetts

Barnstable, ss.

February 15, 2006

Before me, the undersigned notary public, personally appeared Wm. Bradford Crowell in his/her capacity as Chairman of the Cape Cod Commission, whose name is signed on the preceding document, and such person acknowledged to me that he/she signed such document voluntarily for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was [] photographic identification with signature issued by a federal or state governmental agency, [] oath or affirmation of a credible witness, or [] personal knowledge of the undersigned.



Notary Public
My Commission expires: 10/13/11