



## CAPE COD COMMISSION

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DATE: March 17, 2005

TO: Patrick M. Butler, Attorney  
Nutter, McClennen & Fish  
P.O. Box 1630  
Hyannis, MA 02601

FROM: Cape Cod Commission

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

APPLICANT: Carol A. McCarthy  
455 Turtleback Road  
Marstons Mills, MA 02648

PROJECT #: TR04017

PROJECT: Union Parsonage/Souza Property, 1159 Main Street, Cotuit, MA

BOOK/PAGE: Book 13577/Page 110

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### DECISION OF THE CAPE COD COMMISSION

#### SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of Carol A. McCarthy for a Development of Regional Impact (DRI) Hardship Exemption pursuant to Section 23 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the proposed demolition of the Union Parsonage/Souza Property at 1159 Main Street, Cotuit, and construction of a new residence at that site. The decision is rendered pursuant to a vote of the Commission on March 17, 2005.

#### PROJECT DESCRIPTION

The Union Parsonage/Souza Property, located at 1159 Main Street, is a simple, Greek Revival style residence built in 1854. It is located within the Cotuit Historic District and

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 will incorporate several distinctive features of the existing building into the proposed structure. The applicant applied for a Hardship Exemption.

### PROCEDURAL HISTORY

The project was referred to the Cape Cod Commission by the Barnstable Town Manager on July 29, 2004 under Section 3(a) of the Cape Cod Commission DRI Enabling Regulations, Barnstable County Ordinance 90-12, as amended.

A hearing officer opened the public hearing for procedural purposes on September 21, 2004. Following receipt of a complete application, a duly noticed public hearing was conducted by the Commission pursuant to Section 5 of the Act by an authorized subcommittee of the Commission on December 15, 2004 in the Cotuit Library at 871 Main Street, Cotuit. The public hearing was closed on December 15, 2004 and the record was left open for submission of written materials until March 17, 2005.

The subcommittee held a public meeting to deliberate on this project on February 25, 2005 at the Cape Cod Commission office.

At the February 25, 2005 subcommittee meeting, the subcommittee voted unanimously to recommend to the full Commission that the proposed demolition and new construction be approved with conditions. A final public hearing was re-opened at the full Commission meeting on March 17, 2005. 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, including proposed elevation drawings dated June 21, 2004, site plan and associated materials, dated August 10, 2004.
- Existing Conditions Inspection of 1159 Main Street, Cotuit, by Turning Mill Consultants, dated June 23, 2004.
- Letter from George N. Gakidis, GNG Design Inc., to Whom it May Concern, re: building at 1159 Main Street, Cotuit, dated June 21, 2004.
- Letter from Robert Bodjiak, Turning Mill Consultants, to Souza Family, re: new construction cost estimate, dated October 7, 2004.
- Letter from Robert Bodjiak, Turning Mill Consultants, to Souza Family, re: proposed costs to upgrade existing structural deficiencies, dated October 8, 2004.
- Letter from Robert Bodjiak, Turning Mill Consultants, to Souza Family, re: feasibility of existing conditions, dated November 11, 2004.
- Letter and attached plans from Patrick Butler and Eliza Cox, to Sarah Korjeff, re: application materials, dated November 18, 2004.
- Letter from Patrick Butler to Sarah Korjeff re: extension request, dated 1-10-05.
- Fee Waiver request Application and narrative re: extension, received 1-12-05.
- Sketch elevations of new residence, drawn by GNG Design Inc., dated 1-14-05.
- Sketch elevations of new residence, drawn by GNG Design Inc., dated 1-21-05.

- Letter from Eliza Cox to Sarah Korjeff re: structural engineer fee, dated 1-21-05.
- Cover memo from Eliza Cox to Sarah Korjeff, re: McCarthy/Souza property, and site plans, floor plans and elevation drawings of new residence at 1159 Main Street, drawn by GNG Design Inc., undated, received 2-18-05.
- Architectural elevations for proposed new residence by GNG Design Inc., undated, received February 18, 2005.
- Architectural elevations for proposed new residence by GNG Design Inc., dated February 25, 2005.

From Cape Cod Commission staff:

- DRI referral notification letter, dated August 3, 2004.
- DRI subcommittee notice, dated November 30, 2004.
- Staff Report, dated December 7, 2004.
- Historical Structural Report by John A. Bologna, P.E., Coastal Engineering Co., Inc., dated December 14, 2004.
- Minutes of December 15, 2004 public hearing and February 25, 2005 subcommittee meeting.

From state/local officials:

- DRI referral form, dated July 29, 2004, and Historic inventory form (Form B), received July 29, 2004.
- Email correspondence from Jim Gould and Barnstable Historic Preservation staff, re: history of Union Parsonage, received June 18, 2004.
- Email correspondence from Tom Broadrick, Director of Planning, Zoning and Historic Preservation, to Barnstable Historical Commission members, re: 1159 Main Street Cotuit site visit, dated August 11, 2004.
- Memo from K. Davis, Massachusetts Historical Commission, to Sarah Korjeff, re: 1159 Main Street, Cotuit, National Register nomination form, press release, and mailing labels, dated August 17, 2004.
- Memo from Tom Broadrick to Sarah Korjeff and others re: recommendation to demolish the structure and maintain the front façade in a new building, dated December 15, 2004.
- Letter from Tom Broadrick to Sarah Korjeff re: comprehensive plan and zoning compliance, dated March 17, 2005.

From the public:

- Letter from Bob Hayden, Hayden Building Movers, to Souza Family re: moving building at 1159 Main Street, Cotuit, dated June 21, 2004.
- Letter from Steven A. Mojo to Cape Cod Commission, re: Union Parsonage/Souza Property, dated December 1, 2004.
- Letter from Guile Wood to Carol McCarthy re: Inspection of 1159 Main Street, Cotuit, dated November 30, 2004.
- Letter from E. J. Brown, Rogers and Marney Inc. Builders, to Mr. and Mrs. David McCarthy, re: 1159 Main Street, Cotuit, undated, received December 15, 2004.
- Email correspondence from James Gould, Cotuit Historical Society, to Sarah Korjeff, re: design of proposed new structure at 1159 Main Street, Cotuit, dated 2-23-05.
- Letter from Barnstable Historical Commission dated March 16, 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 December 15, 2004 hearing. At the hearing, Patrick Butler, attorney for the applicant, presented the proposed project and discussed the applicant's hardship argument. Sarah Korjeff, presented the staff report. Barbara Parker, part owner of the building, spoke in favor of the project. Carol McCarthy, part owner, stated that the family tried to save the house and asked for a quick resolution. Jim Souza, neighbor, spoke in favor of the project. Dan Kadar, project developer, cited the cost of renovation of the building versus new construction. George Gakidis, project designer, discussed the architectural design of the project. Robert Bodjiak, project engineer, discussed the structural condition of the building and moisture issues. Tim Scales, project developer, noted that the Barnstable Historical Commission had approved demolition of the building. Jack Thomas, Water Commissioner, stated support for the project. Ronald Mycock, neighbor, noted concern about mansions being built in Cotuit and stated his support for the proposed project. Jim Adams stated his support for demolition of the existing building. Paul Souza, part owner, spoke in favor of the project. Deborah Duarte, part owner, noted her support for the proposed design. Barry Nagel, Historical Society of Cotuit and Santuit, stated his desire that the building be preserved or that the new design be more similar to the existing building. Susan Hardy stated support for the proposed project. MaryLou Nagel, neighbor, noted that she was required to meet preservation standards in work on her own home and that this building should be held to the same standards. Robert Hayden, Hayden Building Movers, stated that there may be hidden costs in restoring this building.

### JURISDICTION

The proposed Union Parsonage/Souza Property 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 Carol A. McCarthy for the proposed Union Parsonage/Souza property demolition and new construction, 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 Section 23 of the Act:

1. The Union Parsonage/Souza Property, located at 1159 Main Street, Cotuit, is a contributing property in the Cotuit National Register Historic District. As such, 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 Souza Property is a one and a half story residence on approximately one half acre of land. The house dates from 1854, and is constructed in the Greek Revival style. The original structure is simple in detailing, following the common Greek Revival form of a three-bay, gable end structure facing the street and a side ell on the same plane. The building's Greek Revival detailing is largely hidden under aluminum siding applied in the 1980s.
3. The project is located within Cotuit Historic District, which was listed on the National Register of Historic Places in 1987. The district includes 90 contributing properties and encompasses approximately 95 acres along Main Street and Cotuit Bay. The majority of the district's development occurred during the mid 19th century, as successful maritime industries such as shipbuilding, salt making and shipping fueled its growth. The district also experienced growth during the late 19<sup>th</sup> century and early 20<sup>th</sup> century as its long coastline became a popular location for summer resort development.
4. Based on structural surveys conducted for the applicant and the Commission, the existing structure is considered to be in poor condition. The Commission's consultant, John Bologna, PE, noted in his report that vinyl siding and aluminum foil-faced foam were installed around the exterior of the building, trapping moisture in the structure. He also noted ample evidence of settlement and deterioration of the structure. Mr. Bologna concluded that extensive work would be required to stabilize the building and that little original building material would be left after damaged exterior components were stripped away.
5. It is unlikely that the building could be moved to a new location based on its structural condition.
6. In the approximately 18 months that the building was on the market, the applicant was unable to locate a buyer interested in preserving or restoring the building.
7. The property is owned by many members of a large family, many of whom testified as to financial concerns regarding the sale of the property.
8. The applicant demonstrated a hardship, based on the poor structural condition of the building and the financial situation of the owners.
9. 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 of historic or aesthetic significance 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 proposed project does not meet this standard.

10. Photo-documentation of the historic structure, prior to its demolition, will establish a record of the structure's character-defining features in their original setting. Such photo-documentation is logically kept with the Historical Society of Cotuit and Santuit.

11. Following demolition of the building, the character of the Cotuit Historic District will be best protected by insuring that the new construction maintains the scale, massing, and setback of the existing historic building.

12. The design of the proposed new dwelling is consistent with RPP Minimum Performance Standard 6.2.4 regarding new development within historic districts. The proposed design incorporates some elements of the existing building, and the building height, scale, roof shape and materials are consistent with surrounding buildings in the historic district .

13. Representatives of the Historical Society of Cotuit and Santuit reviewed the proposed design of the new building on February 23, 2005. They stated that they were satisfied with the scale and form of the proposed building, but requested additional Greek Revival trim details be added to the design. They requested an opportunity to review final design plans for the structure when they are submitted to the Commission for compliance.

14. According to a letter from the Town of Barnstable Planning Director dated March 17, 2005, the project is consistent with zoning in that the parcel is zoned for single family residential use and the proposed structure is a single family residence. The new construction will need to comply with the bulk regulations in effect for that zoning district.

15. According to a letter from the Town of Barnstable Planning Director dated March 17, 2005, the project is consistent with the Barnstable Local Comprehensive Plan, acknowledging that change will occur and new development shall respect the traditional character of the neighborhood.

### CONCLUSION

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 #4 through #8.

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 provide for photo-documentation of the historic building prior to its demolition, and the replacement structure will undergo design review to insure that it is consistent with the character of the historic district. To address the applicant's financial hardship, the Regional Policy Plan requirement to preserve the historic structure's key character-defining features is relieved and new construction consistent with the character of the historic district will be allowed on the site. 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:

### 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 necessary 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.
5. The proposed new dwelling shall be constructed in accordance with those plans approved by the Commission and with final plans approved by Commission staff.

#### HISTORIC PRESERVATION

6. Prior to submittal of a Building Permit application or receipt of a Certificate of Compliance, the applicant shall submit final site plans and elevation drawings (final working drawings) for approval by Commission staff to insure consistency with RPP performance standards and with the design goals of this review. The final plans shall be based on plans developed and submitted by GNG Design Inc., and dated February 25, 2005.
7. Prior to submittal of a Building Permit application or receipt of a Certificate of Compliance, the applicant shall provide photo-documentation of the existing building to the Cape Cod Commission and the Historical Society of Cotuit and Santuit.
8. Prior to submittal of a Building Permit application or receipt of a Certificate of Compliance, the applicant shall be responsible for providing proof of recording of the decision.
9. Prior to issuance of a Building Permit from the Town of Barnstable, the applicant shall obtain a Certificate of Compliance from the Commission, indicating that Commission

staff has reviewed the final plans and found them consistent with RPP performance standards, and that all other required conditions have been met.

The Cape Cod Commission hereby approves with conditions the application of Carol A. McCarthy for a Hardship Exemption pursuant to Section 23 of the Act, c. 716 of the Acts of 1989, as amended for the proposed Souza/Union Parsonage demolition and new construction located in Cotuit (Barnstable), MA.

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David Ansel, Chair

\_\_\_\_\_  
Date

Commonwealth of Massachusetts

Barnstable, ss.

\_\_\_\_\_, 2005

Before me, the undersigned notary public, personally appeared \_\_\_\_\_, 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: