

TOWN OF NORTH ANDOVER
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REVIEW OF CPC APPLICATION
RE: North Parish Unitarian Church

Background

On February 2, 2024, Stephanie Harrington and Deborah Putnam submitted an application to the Community Preservation Committee of North Andover in relation to an exterior renovation project of the town's North Parish Unitarian Church. The project ("the 1836 Meeting House Exterior Preservation Project") is estimated to cost \$780,000. Of the project cost, the application seeks an award of \$480,000 in CPC funds pursuant to the Historic Preservation purpose of the Act.

The church is a Gothic revival, 1836 Meeting House. It is listed on the National Historic Preservation List. As noted in the applicants' submittal papers: "the Meeting House is part of the historic district of the town," and its steeple is "an indispensable part of [the town's] historic landscape."

The applicants are representatives of "The Friends of the 1836 Meeting House of North Andover," ("Friends") a private, non-for-profit group created by town residents "to inform, share, and support the ongoing preservation and long-term sustainability of the Meeting House with the community at-large. The FOMH assert that their organization "separates any religious functions/costs from the preservation of the meeting house."

The work proposed is aimed at the building's envelope: the north, south, east, and west façade; roof insulation and partial attic clean out; storm windows, trim rot repair, painting 9 spires; and fabrication on the steeple.

It is also relevant to note that the meeting house services many community groups and services such as: People's Pantry food assistance, LGBTQ Youth Support Group, Buddhist meditation groups, music series, addiction recovery support groups, and in honor of Black History Month, two musical events

In furtherance of their application, and in light of the Anti-Aid Amendment, the applicants have submitted an analysis of their application utilizing a three-factor test previously used by the Commonwealth's Supreme Judicial Court when reviewing the appropriateness of using public

funds for the renovation of an active house of worship. The FOMH submits that in awarding their application, the CPC would not run afoul of the Anti-Aid Amendment.

Discussion

There is no blanket prohibition, either under the Commonwealth's Anti-aid Amendment, or the constitution, prohibiting the use of public historic preservation funds for a church building. *Caplan v. Town of Acton*, 479 Mass. 69, 94 (2018) (“We do not suggest that fair consideration of the risks that prompted the passage of the anti-aid amendment means that every historic preservation grant for a church building will be unconstitutional.”) Rather, when the grant of public funds is for the renovation of an active house of worship, “careful scrutiny under the three-factor Springfield test” is warranted., citing *Commonwealth v. School Comm. of Springfield*, 382 Mass. 665, 675 (1981).

Under the three-factor test the judge must consider: i) whether a motivating purpose of each grant is to aid the church; ii) whether the grant will have the effect of substantially aiding the church; and, iii) whether the grant avoids the risks of the political and economic abuses that prompted the passage of the anti-aid amendment. *Caplan*, at 71.

While the Acton case centered on an award of CPC funds for the interior of the church, it did not opine on whether such expenditure of funds would impermissible if used on the building's exterior: “[w]e expressly did not decide whether a landmark designation of a church exterior would also infringe on the free exercise of religion.” *Caplan*, at 92. Such is the case here. Regardless, there is much in the Acton case – its analysis, holding, dicta, as well as the dissenting opinions – that is instructive for the present case.

Here, the application is submitted by a third-party, not-for-profit, and is aimed at preserving the building's envelope: the north, south, east, and west façade; roof insulation and partial attic clean out; storm windows, trim rot repair, painting 9 spires; and fabrication on the steeple. As such, the present application differs from the Acton case in two substantive ways – the applicant is not the church, but a group dedicated to preserving the historic structure; and the work is to the exterior of the building. These facts weigh heavily in applying the following three-factor test articulated in the *Springfield* case.

i) whether a motivating purpose of each grant is to aid the church;

Analysis of this first prong requires a determination of the “primary purpose” of the funds, and often whether there is any evidence of a “hidden purpose.” In its application, the Friends state that they separate preservation of the meeting house from “any religious function/costs.” Consistent with that assertion, the funds would be used to maintain and preserve the exterior of the structure (spires, belltower, gothic windows, and façade). There is no evidence that with this application, there is a hidden purpose to aid the church.

ii) whether the grant will have the effect of substantially aiding the church;

This second prong considers whether a grant award will “substantially aid” the church. This is a more difficult analysis since arguably any monies used to help maintain the exterior of the church will aid or even substantially aid the church by freeing up its monies to spend elsewhere, namely on those items which are more in keeping with its “essential enterprise,” as a place of worship. While this second prong turns ultimately on a finding, or not, of whether the grant results in “substantial aid to the church,” there are other considerations under this prong.

First, the purpose of the act must be considered, and not frustrating its designed purpose. If the finding of “substantially aids” is to be applied broadly – meaning that virtually any expenditure of funds on a house of worship structure substantially aids the church – then even the most historically valuable structures in the Commonwealth, would never be eligible for CPC grants. Just as it would be problematic to utilize public funds for religious purposes, so to it would be equally problematic to deny funds meant for historic preservation simply because such funds would be used to preserve a church structure. Moreover, such a result is contrary to the holding of the *Acton* case, where the Court expressly stated that a “fair consideration of the risks that prompted the passage of the anti-aid amendment means that every historic preservation grant for a church building will be unconstitutional.”

In the present case while the grant, if awarded, would undoubtably aid the church, fair consideration must be given to the high costs associated with historic preservation efforts; and that such expenses are either wholly unrelated to, or greatly in excess of ordinary maintenance expenses of a church not housed in a historically significant structure. If the effect, therefore, of the grant is the preservation of certain exterior historic elements, then the ultimate beneficiary is the stability of a community’s historic inventory, which without such funds may decline.

The prong therefore involves somewhat of a balance between fulfilling the goals of the statute and guarding against the use of public dollars to substantially aid a church. Here *Acton* provides further guidance. Consideration should be given as to whether the funds “lessen the financial burden” of the church; whether an award has the effect of “underwriting its essential function as an active house of worship”; and whether there is a way to “cabin the effect of the public funding.”

In light of the above, one approach to this application is to consider each of the specific requests within the overall scope of work proposed, and whether the repair/restoration of each advances historic preservation or an essential church functions. For example, any and all work to preserve the steeple of the church, which features one of just 23 remaining working bells cast by Paul Revere, and is one of the most well-known and photographed structures in New England, predominantly advances a national and local historic interest.¹ If the specific methods and materials used to preserve the exterior façade of the meeting house are part of ongoing

¹ Steeples have been seen as “freighted with religious meaning,” but in this context it could fairly appear as more historically important than religiously significant.

historic requirements, a finding could be made by the CPC that the funds are advancing historic preservation and not the essential functions of the church. Last consideration could, and should, be given that the applicant is not the church, but the private non-for-profit group created by town residents “to inform, share, and support the ongoing preservation and long-term sustainability of the Meeting House with the community at-large. The FOMH assert that their organization “separates any religious functions/costs from the preservation of the meeting house.”

iii) whether the grant avoids the risks of the political and economic abuses that prompted the passage of the anti-aid amendment

This final prong is perhaps the most challenging of all three. The specific risks articulated in the *Acton* decision are: “liberty of conscience” (whenever a citizen is taxed to support the religious institutions of others), “improper government entanglement with religion,” and threats to “civic harmony” (making the question of religion a divisive political question).

Acton does provide helpful dicta for analyzing prong three. The following examples of permissible expenditures, although not on-point when applied to our fact pattern, nevertheless help direct inquiry under this prong: “we can imagine various circumstances where such grants would survive careful scrutiny, including for instance, where historical events of great significance occurred in the church, or where the grants are limited to preserving church property with a primarily secular purpose.” *Acton* is further helpful in providing a clear example of what would not survive careful scrutiny: preservation of the stained-glass window with its “explicit religious imagery” visible on the interior where it conducts its worship services.

The CPC may find this application to be more in line with permissible grants of funds where: the building houses many other purely secular groups (although its main function is as a place of worship); the structure has great national and local significance, and is the most iconic structure in North Andover; all of the grant funds are to be used on the exterior of the building; all of the improvements may be seen and enjoyed by all members of the public; the applicant is a not-for-profit group with a secular mission; and, the nature and scope of work tips heavily towards historic preservation rather than the advancement or aid of religion.

Conclusion

For the foregoing reasons, the CPC may award a grant in whole or in part from the Friends as it is to be applied to the Meeting House.