

Old King's Highway Regional Historic District Commission
First District Courthouse, Barnstable, Mass. 02630 Telephone: 617-362-
TOWN CLERK
TOWN OF SANDWICH

DAVID W. ALLEN
Appellant

VS
THE OLD KING'S HIGHWAY REGIONAL
HISTORIC DISTRICT COMMITTEE FOR
THE TOWN OF SANDWICH
Appellee

MAR 27 1981
12 H 10 M P M
RECEIVED & RECORDED

DECISION
Case #81-2 & 3

A hearing was held on March 25, 1981, by the above Commission on an appeal filed by the above appellant from the decision of the Sandwich Historic District Committee approving the issuance of a Certificate of Appropriateness to Meade-McGrath Fence Co. for modifications to a building located at the corner of Tupper Road and Freezer Road in Sandwich.

Present were: Mr. MacSwan, Barnstable Mr. Hanger, Dennis, Mr. Ivers, Brewster, Mr. Long, Yarmouth, Mr. Sutton, Sandwich, David W. Allen, Appellant, Grattan Gill, agent for the applicant and attorney James R. Wilson.

Submitted to the Commission were the following items:
(1) Plans of the proposed building as modified. (2) Photographs of the building and buildings in the area. Additionally all of the members of the Commission indicated that they had previously viewed the site and were familiar with the neighborhood in question

The matter was reviewed by the Sandwich Committee on February 3, 1981, at which time the four members of the Committee that were present voted in a 2-2 tie on the application. The Chairman of the Town Committee declared that the application was denied for failure to obtain a majority vote and filed the decision with the Town Clerk's office on February 4, 1981. The agent for the applicant then filed an appeal with the Regional Historic District Commission seeking a review of the Committee's action. The appeal was filed February 6, 1981. The Commission's counsel, upon receipt of a copy of the appeal and noting that the Committee had deadlocked on a 2-2 vote, indicated that it appeared as though the Committee had taken no action and that the matter was still properly before the Town Committee for further review in an effort to obtain a final determination either granting or denying a Certificate. The attorney for the Commission contacted the Chairman of the Sandwich Committee and suggested that they place the matter on the agenda for the next meeting and attempt to break the tie. He further recommended that they re-advertise the matter by giving notice to the abutters and publish a notice in the paper of their intention to further review the application. In accordance with the recommendations of the Commission's attorney notice was given to all of the abutters and a notice was published in the paper, a copy of which is attached to this Decision. Additionally, notice was posted in the Town Hall at least 48 hours



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in advance of the Committee's review of the application. The matter was reviewed on February 17, 1981, by the full five member Committee and a vote of 3-2 in favor of the application was recorded. The vote of the Town Committee was recorded on the bottom of the Certificate of Appropriateness.

David W. Allen, a resident of the Town of Sandwich (not an abutter) filed two appeal petitions with the Commission challenging the procedures of the Town Committee and further challenging the decision that the building was appropriate. The appeals were received on February 27, 1981, within the 10-day appeal period.

Mr. Allen addressed the Commission and stated that he wished to have the two petitions for appeal heard separately as he felt that the first challenge, if ruled in his favor, would negate the necessity of hearing the case on the merits. The Commission agreed to review the two petitions in sequence and thereupon addressed the contentions in the first appeal petition. Mr. Allen stated that he attended the first hearing and did not address the Committee and felt that since the Committee appeared to have denied the application that it was unnecessary for him to register his objection to the application. He further indicated that he left the hearing believing that the decision had been denied. He further indicated that he received no notice of the second proceeding and that he felt that it was illegal because, while the notice in the paper had been published six days in advance of the hearing, the statute required a seven day notice for advertising hearings. The Chairman of the Town Committee stated that he had followed the procedures recommended by the attorney for the Commission and felt he had made every effort to fully apprise all interested parties that the matter was going to be heard at the meeting on the 17th.

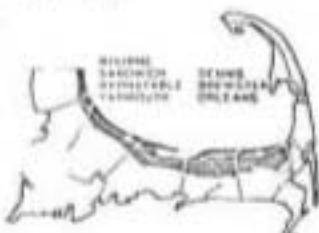
Mr. Long stated that he felt that the 2-2 tie did consist of a denial since the applicant failed to get a majority vote required under the Act.

Mr. Hanger, seconded by Mr. Ivers, then offered the following motion:

That the Commission abide by Attorney Wilson's opinion that the first decision was no action by a 2-2 vote; that the entire matter is now properly before the Commission for review of the second appeal.

VOTE: 3-1-0

The Commission then reviewed the plans and provided Mr. Allen an opportunity to express his objections to the proposed



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building. Mr. Allen stated that he objected to the red roof, the absence of mullions from the windows and indicated he felt the roof line should be broken.

Mr. Gill stated that the red roof had a long history in Cape Cod architecture and offered pictures of Coast Guard facilities and railroad stations which had red roofs. Additionally, he quote from Thoreau's "Cape Cod" a section in which reference was made to the red painted roofs that Thoreau had observed during his visit to the Cape. He further indicated that breaking the roof line would not, in his opinion, improve the appearance of the building nor would adding mullions assist in making the building aesthetically appealing.

Mr. Sutton indicated that he was unaware of any historic features in the area that were of significant notoriety.

Mr. Hanger, seconded by Mr. Ivers then offered the following motion:

That the Commission determine that the proposed building as shown on the plans, is an appropriate structure for the proposed site.

Adopted by the Commission 3-1-0

Based upon the above action the Commission makes the following findings:

1. That the Commission has jurisdiction over the application under the various appeals filed with it.
2. That the alleged approval or disapproval by the Committee on the dates of February 3 and February 17, 1981, have been rendered moot as the Commission has determined that the proposed structure is appropriate.
3. That the Certificate of Appropriateness issued on February 17, 1981, approving the plans as submitted, is affirmed.

This decision may be appealed to the First District Court of Barnstable by filing an appropriate complaint within 20 days of the filing of this decision with the Sandwich Town Clerk.

Respectfully submitted

Elliott B. MacSwan
Elliott B. MacSwan, Chairman

March 26, 1981