



Old King's Highway Regional Historic District Commission

P.O. Box 279, Hyannis Mass. 02601

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MAXINE LESSER GONSALVES

v.

Decision #89-10

OLD KING'S HIGHWAY REGIONAL HISTORIC
DISTRICT COMMITTEE FOR THE TOWN OF
YARMOUTH

On Tuesday, June 27, 1989 the Commission held a hearing on Appeal #89-10 filed by Maxine Lesser Gonsalves seeking reversal of a decision by the Yarmouth Historic District Committee which had approved a Certificate of Appropriateness to Richard and Margery Gannon for the construction of a fence to be located at Kencomsett Circle, Yarmouthport, Massachusetts.

Present were Janet Francis, Brewster; Christopher Miner; Orleans; Allen Abrahamson, Sandwich; Robert DiMartile, Yarmouth; Robert G. Brown, Commission Counsel; Maxine Lesser Gonsalves, Appellant; and Richard and Margery Gannon, Applicants.

The Committee's decision had been filed with the Town Clerk on May 31, 1989, and the appeal entered with the Commission on June 7, 1989, within the ten day appeal period.

Maxine Lesser Gonsalves, addressed the Commission and stated that she appealed the decision of the Yarmouth Committee because of a prior decision that had been made in March of 1988 which had made a decision regarding the easement. She explained that the fence would cross an easement which she desired to use for access to her property. She said she did not object to the fence but that she did object to it crossing the easement.

Robert DiMartile, representing the Yarmouth Committee, addressed the Commission to explain the Yarmouth Committee's reasons for approval. He stated that the Committee can only act on what is before them. He stated that the Committee had earlier decided differently on another matter but that it was not a precedent setting case. The Yarmouth Committee felt they had no jurisdiction in the matter and the Committee voted to issue the Certificate.

Richard Gannon, Applicant, addressed the Commission in opposition to the appeal. He stated that three attorneys had stated that the easement is question was not an access easement but was a utility easement. He said the matter is currently in litigation and, should the Superior Court not

rule in their favor they will obey the law. Until then they wish to install the approved fence from property line to property line.

After lengthy discussion the Commission made the following determination.

1. That the Yarmouth Committee did not act in an arbitrary, capricious, or erroneous manner in approving the Application. 3-0-1.

2. That the appeal be denied. 3-0-1

Any person aggrieved by this decision has a right to appeal to the District Court Department, Barnstable Division, within 20 days of the filing of this decision with the Yarmouth Town Clerk.

Christopher Miner
Vice-Chairman