

Old King's Highway Regional Historic District Commission

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EXIT 7 REALTY TRUST

v.

Decision #89-9

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

TOWN CLERK & TREASURER JUN 14 4:19 PM

On Tuesday, June 13, 1989 the Commission held a hearing on Appeal #89-9 filed by Exit 7 Realty Trust seeking review of a decision by the Yarmouth Historic District Committee which had denied a Certificate of Appropriateness for a new building to be located at 89-99 Willow Street, Yarmouth Port, Massachusetts.

Present were Paul McGuinness, Dennis; Jan Francis, Brewster; Peter Freeman, Barnstable; Robert DiMartile, Yarmouth; Christopher Miner, Orleans; Allen Abrahamson, Sandwich; Robert G. Brown, Commission Counsel; Roger Lang, Architect for the Appellant; and James Quirk, Esq., Attorney for the Appellants.

The Committee's decision had been filed with the Town Clerk on May 3, 1989, and the appeal entered with the Commission on May 12, 1989. The 30 day period for determination was waived by agreement of the parties.

James Quirk, Attorney for Exit 7 Realty Trust addressed the Commission and distributed a site plan of the area along with a packet of documentation of past decisions from the Town of Yarmouth Board of Appeals and the Yarmouth Historic District Committee regarding the site itself or sites in the Yarmouth Historic District. Attorney Quirk commented on the 1954 variance which described the neighborhood and the 1986 decision of the Yarmouth Historic District Committee regarding the Cape Cod Artificial Kidney Center, where a roof much longer than 50 feet had been allowed. Attorney Quirk stated that the locus was subject to hardship conditions and introduced Richard O'Hearn to describe the hardship conditions.

Richard O'Hearn addressed the Commission on behalf of the Appellants and described the property in question. He stated that the property is long and narrow and is bounded by the railroad and Willow Street. He added that there is an additional hardship in that an underground cable was run through the property to service a railroad switching station and that this also hinders the use of the property. He stated that various dimensional variances were needed to build on the property and that they had all been granted.

Roger Lang, Architect for the Appellants addressed the Commission in favor of the appeal. He presented a slide demonstration of the locus and the surrounding area. He stated that the site and the surroundings were primarily industrial and commercial and that the site was remote, both architecturally and geographically from the historic area of the District. He stated that the guidelines used by the Committee must be flexible and used with discretion. With regard to the proposal he stated that he had not been present at the Committee hearing but had studied the minutes of the meeting. He felt that the proposal was not ill-scaled, inappropriate or unprecedented in the District. He stated there are many ways to "punctuate" a roof. He described how the building is slightly fan shaped so that the roofline will be approximately 70 feet between articulations. He stated that the proposal met all of the guidelines of the District and that the denial was unwarranted.

Attorney Quirk again addressed the Commission and stated that an Applicant has a right to a determination of hardship. He also expressed the concern that an Applicant has no idea as to what might be expected of them when applying to the local Committee. He added that the residential neighborhood in the area was not in existence when the Town of Yarmouth Zoning Board of Appeals acted in 1954 and had only come into being since then.

Robert DiMartile, representing the Yarmouth Committee, addressed the Commission to explain the Yarmouth Committee's reasons for denial. He cited the Guidelines of the Commission, particularly those dealing with the undesirability of rooflines more than 50 feet in length. He stated the Committee felt strongly that changes in plate height, direction and elevation were necessary. The Committee felt that the building was inappropriate because of the length of the building and its height. He stressed that the decision was not based on personal taste but was a collective decision of the Committee based on criteria in the Historic District Act. Considering all of the features, primarily the massiveness, the local Committee did not act in an arbitrary manner and its decision should be upheld.

Willard Sheppard, a member of the Yarmouth Historic District Committee addressed the Commission in opposition to the appeal. He agreed with the comments of Mr. DiMartile that the building was much too massive.

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Gary Ellis, Builder/Architect member of the Yarmouth Historic District Committee addressed the Commission in opposition to the appeal. He stated that the building will be seen in its full 200 foot existence and will look like a large rectangular box.

Gordon Clark, a member of the Yarmouth Historic District Committee addressed the Commission in opposition to the appeal. He stated that the building will look much more massive than what is shown and that the building will be nothing more than a large box.

Milton Smith, a former member of the Yarmouth Historic District Committee addressed the Commission in opposition to the appeal. He stated that the building had not been designed with the Historic District in mind. He said he did not feel there was any case for hardship present.

Mr. & Mrs. Dennis Cotto of Cummaquid Heights both addressed the Commission in opposition to the appeal. They stated that the buffer proposed by the Appellants would be ineffective and that the back of the building needed to be given as much consideration as the front of the building.

Donald Judge, a resident of Cummaquid Heights, addressed the Commission in opposition to the appeal. He stated the building looked like an army barracks.

Robert Bianchi, Esquire, addressed the Commission on behalf of the Sandyside Corporation, an abutter to the locus. Attorney Bianchi stated that the Sandyside Corporation was opposed to the appeal for a number of reasons. He said that the minutes of the Yarmouth Committee clearly state that the massiveness of the building was the problem and that the building is very boxlike in design. He requested that the Commission deny the appeal because the Yarmouth Historic District Committee did not act in an arbitrary, capricious or erroneous manner.

Robert DiMartile again addressed the Commission in opposition to the appeal. He stated that the issue of hardship could not really be given that much consideration because hardship relief can only be granted in circumstances where there will not be substantial derogation from the intent and purposes of the Act. He stated the Committee felt that the allowance of the application would do just what

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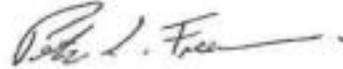
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After lengthy discussion the Commission made the following determinations:

1. That the Yarmouth Committee did not act in an arbitrary, capricious or erroneous manner in denying the Appellants Certificate of Appropriateness. 5-0-1.

2. That the appeal be denied. 5-0-1.

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.



Peter L. Freeman
Chairman

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TOWN OF YARMOUTH

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