

**OLD KING'S HIGHWAY REGIONAL HISTORIC DISTRICT
COMMISSION**

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Association for the Preservation of Scargo Lake

V.

Decision #2003-9

**Old King's Highway Regional Historic
District Committee For the Town of
Dennis**

On Tuesday, August 5, 2003 at 7:45 P.M., the Commission held a hearing at the Fire Station Community Room, 340 Route 6A, Yarmouth Port, Massachusetts, on Appeal #2003-9 filed by Barbara L. Bertozzi on behalf of the Association for the Preservation of Scargo Lake seeking reversal of a decision by the Dennis Historic District Committee granting a Certificate of Appropriateness for the construction of a Greek Revival style dwelling with 3 car garage to be located at 72 Scargo Hill Road, Dennis, Massachusetts.

Present were Jeffery Wilson, Barnstable; Linda Marsh, Sandwich; Deborah Gray, Yarmouth; Roy Robinson, Brewster; Peter Lomenzo, Dennis; James R. Wilson, Commission Counsel; Barbara L. Bertozzi, James Mason, Sandra Mason, for the appellant; and Everett W. Boy, Charles N. Flinkstrom for the applicant.

The Committee's decision was filed with the Town Clerk on June 26, 2003. The appeal was entered with the Commission on July 7, 2003, within the 10-day appeal period.

The Appellant's Presentation:

Barbara L. Bertozzi addressed the Commission on behalf of the appeal and requested that the determination of the Town Committee be reversed and that the Commission deny the Certificate of Appropriateness for the proposed dwelling. She stated that the minutes of the Town Committee wrongfully referred to the Appellant as being "anti-development" when one of their petitions states that they are not against development. She went on to say that the proper address for the property was "Dennis" and not "East Dennis" as listed in the public notice by the Town Committee. She said that the main concern was that when the hearing was over that the drive way was to have been modified with more of an "S" shape and "asphalt" driveway material changed to "gravel." She went on to say that the committee did not take reasonable steps to protect the "wooded setting" and expressed the opinion that the "massive Greek revival style" was not compatible with the other houses in the neighborhood. She confirmed that the concerns raised in the appeal were presented at the hearing before the local committee.

The Applicant's Presentation:

Everett Boy addressed the Commission on behalf of the Applicant and stated that the applicant agreed to use "gravel" instead of "asphalt." He stated that the issue of protecting the "wooded setting" was addressed at length with the site plans being modified to show large areas of "undisturbed" zones and a re-shaping the driveway to provide more of an "S" shape. He presented to the Commissioners a copy of the plan showing these changes and stated that he had made copies of the modified site plan, which were left with the Town Committee to show the agreed upon changes. Mr. Lomenzo confirmed that the plan reflected the agreed upon modifications.

Mr. Boy offered plans showing another approved dwelling in the area that reflected the Greek revival style. As further support for the action of the local committee's in granting the Certificate of Appropriateness, he suggested that the Historic District is characterized as having an "eclectic" mix of styles and design features. He additionally indicated that the house would be located a significant distance back from the edge of the road. He showed plans and elevations of the proposed dwelling to the Commissioners.

He stated that the building Inspector received a marked up copy of the site plan and changes that had been required by the local committee. He stated that the applicant would adhere to the conditions imposed by the committee.

The Town Committee's Presentation:

Peter Lomenzo addressed the Commission on behalf of the Dennis Town Committee. He stated that the Dennis Committee did not exceed its authority but focus its consideration to the location and setting of the proposed dwelling. He indicated that the committee was not arbitrary because it considered the suggestions of the Appellant and required the Applicant to modify the plans to protect the interest and concerns mentioned at the public hearing. He further stated that all abutters were properly notified. He felt that the Committee was clear in its determination and that the decision should be affirmed.

Public Comment:

Sandra Mason addressed the Commission and offered photographs of the Scargo Hill area as reflected over the last sixty years showing changes and the "scalping" of the hill by removing the green vegetation. She suggested that the commission should require greater buffer zones to protect the vegetation and natural setting. She pointed out that the Town Clerk copy of the decision showed "asphalt" instead of "gravel" as the material for the driveway.

James Mason addressed the Commission and suggested that the private covenants should have been attached to the decision and made a part of the public enforcement authority. He further read a letter from a neighbor who could not be present in which he expressed the need to protect the natural setting of the neighborhood.

Discussion:

The members of the Commission reviewed the photographs and submissions by the appellant and applicant. Some of the Commissioners indicated that they had visited the neighborhood. Commission Counsel suggested that what was filed with the Town Clerk should match what is on file with the Town Committee and the Building Inspector. The Commissioners acknowledged that plans do not get filed with the Town Clerk, but that the decisions or notices of decisions should spell out any changes that are being imposed on the application. In this application the Applicant, Town Committee, and Building Inspector appear to have copies of the modified plans.

Mr. Robinson stated that he had visited the site. He expressed his opinion that the Greek revival style and size of the proposed building would be appropriate for the lot. He indicated that he felt that the change to "gravel" and other modifications to the site plan were clearly agreed upon.

Deborah Gray stated that she felt that it was unfortunate that the Town Clerk did not check with the building department for clarification of the modifications. She indicated that it appeared that the town committee had been diligent in its review of the proposed building and that they had not been arbitrary, capricious, or erroneous in their action. She expressed the opinion that the size of the house was not excessive. She indicated that she could not fault the Committee for their decision.

Jeffery Wilson indicated the opinion that due diligence had been done by the Dennis Committee. He felt that a reasonable give and take by the parties appeared to have taken place and that he supported the Committee's determination.

Linda Marsh stated that she agreed with Deborah Gray's opinion that the proposed building was not too massive and that the Committee did consider the concerns of the Appellants in a reasonable manner. While she shared the concern for protecting the trees and vegetation, she felt that committee did not error in their decision.

The Commission found as follows:

That the Certificate for Appropriateness is confirmed with a "gravel" driveway, "undisturbed zones," and altered "S" shaped driveway as shown on the attached site plan marked "Exhibit A."

That the Certificate of Appropriateness shall be in accordance with all conditions set forth by the Town Committee and placed on file with the Building Department.

That the Committee was not arbitrary, capricious or erroneous in its action.

That the Committee did not exceed its authority.

Determination:

As to Appeal #2003-9, the appeal is denied and decision of the Dennis Committee is affirmed (4-0-1) in accordance with the findings set forth above.

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

Roy Robinson
Chairman