

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

P.O. Box 140, Barnstable, Massachusetts 02630-0140
Tel: 508-775-1766 FAX 508-775-9248

Stuborn Limited Partnership, Appellant/Applicant

V.

Decision #2005-1

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

On Tuesday, April 5, 2005 at 7:30 P.M., the Commission held a hearing at the Fire Station Community Room, 340 Route 6A, Yarmouth Port, Massachusetts, on Appeal #2005-1 filed by Stuborn Limited Partnership seeking reversal of a decision by the Barnstable Historic District Committee denying a Certificate of Demolition and Removal covering two buildings located at 153 Freezer Road, Barnstable, Massachusetts.

Present were Robert DeRoeck, Sandwich; Deborah Gray, Yarmouth; Roy Robinson, Brewster; Peter Lomenzo, Dennis; Paul Leech, Orleans; Patricia Anderson, Barnstable; James R. Wilson, Commission Counsel; and Edwin E. Taipale, Attorney for the Appellant/Applicant.

The Committee's decision was filed with the Town Clerk on January 18, 2005. The appeal was entered with the Commission on January 19, 2005, within the 10-day appeal period. The public hearing date was continued by written agreement beyond the thirty (30) day review period under the Act until the hearing date of April 5, 2005.

The Appellant's Presentation:

Edwin E. Taipale addressed the Commission on behalf of the applicant's appeal. He requested that the determination of the Town Committee be reversed and that the Commission grant a Certificate of Demolition and Removal for the existing "cannery" building and a residential dwelling located on the site. He presented photographs of the existing buildings. He stated that the Town Committee had been arbitrary and capricious and exceeded its authority in its denial of the application. He presented a copy of a 2001 letter from the Massachusetts Historical Commission, which had indicated that the site lacked any archeological significant features. He presented a copy of a July 15, 2002 structural engineering report by The Dempsey Group, Inc. on the condition of the "cannery" building. He stated that both buildings were beyond repair and that restoration was not practical.

He stated that the "cannery" building had been constructed in 1945 as a temporary mackerel processing facility during the war. He described the building as being constructed with wooden poles stuck in the ground and covered with a plywood building

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material. He indicated that the roof had holes and was in a leaking condition. He stated that the structure had sustained significant structural decay over the years and could not be safely used in its current condition.

He indicated that the pole supports made boat storage not a practical usage and that the old cannery usage was outdated and not economically practical.

Mr. Taipale indicated that the residential building was at first a fish house moved to the site. He stated that a two-story structure was added in the 1930s. He claimed that a fire had destroyed the historical portion of the building in the 1960s. He stated that the building was not habitable, as it could not be safely occupied in its current condition.

The Town Committee's Presentation:

Patricia Anderson addressed the Commission on behalf of the Barnstable Town Committee. She stated that both buildings represent a significant part of Barnstable Harbor's maritime history. The "Cannery" was built during World War II to support the war effort. She suggested that so many buildings and structures have been lost in the area that saving these two marine related buildings has even greater historical value to the District.

She disputed the applicant's claim that a fire had destroyed the historically significant portion of the residence in the 1960s. She indicated that records and research indicate that a long and verified history exists and is associated with the residential building. She stated that a portion of the building was built during the 2nd half of the 19th Century as Captain Jerauld's Fish House. She indicated that it was moved to its current location in 1932 and that it is the nucleus of the Bassett House, as it exists today.

She stated that the Barnstable Committee was acting properly when it denied the application to demolish the two buildings. She indicated that it would be detrimental to the interests of the Historic District Act, to allow the applicant to destroy the subject buildings.

Public Comment:

James Kittredge showed the Commissioners old can labels from the Cannery that had been preserved in a glass frame. He related his personal experience in transporting workers to the site to work in the cannery. He expressed the opinion that the proposed demolition would destroy an important link to a part of the Barnstable Harbor's rich maritime history.

Ann Canedy expressed the opinion that the long maritime history needed to be preserved. She supported the Committee's denial and encouraged the Commission to deny the appeal and sustain the Committee's action.

John Julius of Hyannis stated that he felt that a property owner ought to be able to develop his property without the historic district's committee's restraint. He suggested that the applicant had a Constitutional right to destroy the buildings.

Louis Cataldo stated that the current condition of the subject buildings was "a blight" on the neighborhood. He indicated that he felt that the Committee was wrong to deny the application.

Discussion:

The members of the Commission reviewed the photographs and items submitted during the hearing.

Roy Robinson stated that he felt that the committee was correct in requiring a separate application for the removal of the two buildings. He indicated that he could not fault the Committee for its procedures in hearing the applications.

Peter Lomenzo stated that he could not find sufficient evidence to support the applicant's claim that the town committee had been arbitrary and/or capricious or erroneous in reviewing the application. He indicated that in his opinion there was sufficient factual basis to support denying the applicant's request to demolish the two historic buildings. He expressed concern that the buildings were at risk of falling down from neglect but felt that that should not be a basis approving the application.

Deborah Gray stated that she felt that the structural engineer's report was persuasive and that the applicant had presented strong evidence to support the request to demolish the "cannery" building. She indicated that the "cannery" was well beyond restoration and that it has out lived its life. She expressed the belief that in her opinion the building lacked architectural significants and could be taken down.

Paul Leech indicated that he shared Mrs. Gray's opinion that the "cannery" building appeared to be in very poor condition and may not be worth saving. However he felt that the fish house did appear to be in a condition that could be saved. He indicated that because the application was for both buildings he felt that he could not say that the town committee was wrong in its denial.

Robert DeRoeck stated that he felt that he could not see that the town committee made an error in denying the application. He indicated that the local committee appeared to make complete review of the application and reached a reasonable determination on the facts as presented.

The Commission findings:

The Commission found as follows:

That the Committee was not arbitrary, capricious or erroneous in its action of denying a Certificate of Demolition and Removal for the two buildings.

That the Committee did not exceed its authority in denying a Certificate of Demolition and Removal for the two buildings.

Determination:

As to Appeal #2005-1, the appeal is denied and decision of the Barnstable Committee is affirmed (4-1-1) in accordance with the findings set forth above.

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


Roy W. Robinson, Jr.
Chairperson