

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

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DENNIS TOWN CLERK

TTS

Richard W. Gurney, Appellant/Applicant

V.

Decision #2005-4

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

On Tuesday, August 2, 2005 at 7:45 P.M., the Commission held a hearing at the Fire Station Community Room, 340 Route 6A, Yarmouth Port, Massachusetts, on Appeal #2005-4 filed by Richard W. Gurney seeking reversal of a decision by the Dennis Historic District Committee denying a Certificate of Appropriateness covering the alterations to plans approved on July 14, 2004 for a dwelling located at 17 Scargo Heights Road, Dennis, Massachusetts.

Present were Jay Briggs, Sandwich; Deborah Gray, Yarmouth; Roy Robinson, Brewster; Patricia Anderson, Barnstable; Peter Lomenzo, Dennis; James R. Wilson, Commission Counsel; and Richard W. Gurney, Appellant/Applicant.

The Committee's decision was filed with the Town Clerk on June 24, 2005. The appeal was entered with the Commission on July 1, 2005, within the 10-day appeal period.

**The Appellant's Presentation:**

Richard W. Gurney addressed the Commission on behalf of his appeal. He requested that the determination of the Town Committee be reversed and that the Commission grant a Certificate of Appropriateness for the requested alterations to the dwelling.

He contended that the local committee exercised poor judgment, was arbitrary, capricious, and erroneous regarding his application for a Certificate of Appropriateness.

He stated that many of the changes were not viewable from a public way, and, therefore, not subject to review by the Town Committee. Plans of the lots and ways in the immediate vicinity were shown to the Commissioners.

He, additionally, contended that the 75-foot natural buffer zone shown on the plans approved on July 14, 2004 could be cut and ignored as having exceeded the authority of the local committee. The Commissioners examined the site plan that showed the 75-foot natural buffer zone.

He acknowledged that he had made changes to the dwelling and landscape after it was approved without returning to the local committee for review, but he contended that none

of the changes were viewable from a public way. He indicated that he did apply, in April, for a Certificate of Appropriateness for the "as built" changes which application he withdrew when the local committee asked for more detailed plans and greater specifications. He again applied for a Certificate of Appropriateness, which application was heard on June 22, 2005, and which is the subject of this review. He contended that his neighbors made unreasonable demands for changes to the design, and claimed that their objection to the modifications was wrongly influencing the local town committee.

He then reviewed the application that was denied on June 22, 2005. The application requested the following changes:

1. Front elevation: Change wooden clapboards to gray cedar shingles.
2. Left elevation: Slider in walk out area shifted to left of main house, and two windows shifted to right side of walk out. Foundation lowered under family room and mulled window unit installed.
3. Right elevation: Rake board stepped out eight inches with one-inch returns.
4. Rear elevation: Foundation lowered under family room, and two mulled window units installed. Foundation lowered on right side, and one mulled window unit installed.
5. Other changes. Retaining walls for walk out in accordance with revised site plan; modification to electric meter placement; trim color, gutter and white cedar shingle color changed to gray; and shutters changed to black.

He submitted a written explanation of why he sought approval for the above requested modifications.

He presented photographs of the changes, and described to the Commissioners the reasons for making each change. He explained that the siding on the front of the house was changed from clapboard to shingles because the house does not face the road directly. He expressed the opinion that mixing shingles and clapboard on the dwelling "would look awkward."

He indicated that he stepped out the rake board and added returns to give the house a more traditional Cape Cod look.

He went on to state that he lowered the foundation wall in the rear and added windows and shingling because of the natural drop in the grade for the subject property. He claimed that if he had not made these changes there would have been an exposed eight-foot concrete retaining wall, which would have appeared "unsightly."

He stated that he shifted the approved slider on the left elevation because of the location of added steel "I" beam. He stated that the added steel would provide extra structural support for the dwelling.

He indicated that he changed the retaining wall because of the relocation of the slider.

He indicated that he removed the false rake and put a window back in on the left elevation because he felt the false rake might cause a future water leak, and that while he acknowledged that he had agreed to remove the window that he felt putting it back into the design would avoid the appearance of a large blank wall.

He stated that he changed the colors because he felt it would be an "insignificant change."

#### **The Town Committee's Presentation:**

Peter Lomenzo addressed the Commission on behalf of the Dennis Town Committee. He stated that the property was subject to public view and located within the District. He asserted that all of the requested changes were presented to the committee for review, and that that the subject matter of the modifications was within the jurisdiction of the town committee.

He said that his committee reviewed the application, and that the committee properly evaluated the proposed changes and determined that they were not in keeping with the setting and neighborhood. He indicated that changes in the topography, grading, landscaping and the dwelling were not compatible. He said that the changes significantly affected the mass and setting of dwelling. He explained that the increase of concrete exposure and added windows were a substantial alteration that adversely affected the buildings overall appearance and design.

He stated that the committee was not arbitrary. He claimed that there had been full consideration for the original approved plans at the hearing on July 14, 2004. The original plan, as approved, represented a consensus by the town committee and the applicant for the proper dwelling design for the subject property. He expressed the opinion that they were being forced to approve the modification simply because it exists in an "as built" condition. He argued that to approve on that basis would be arbitrary.

He stated that the committee was not capricious, but held lengthy public hearings and many individual site visits on the proposed project.

Mr. Lomenzo submitted, for the Commissioners review, a copy of the minutes in which the town committee reviewed the applicant's project.

**Public Comment:**

Peter K. Stanton, attorney for James and Sandra Mason, stated that the Historic District Act defines "way" in very broad terms, and that the applicant is incorrect in defining jurisdiction in a very narrow "public way" definition. He pointed out that Mr. Gurney agreed to leave the "no cutting" 75 feet natural buffer zone as a condition of approving his proposed house design. He claimed that his clients accepted the granting of the Certificate of Appropriateness in part because the "no cutting" zone would act as a screen to preserve the setting.

He stated that the neighbors, since attending the July 14, 2005 hearing, have been forced to seek proper enforcement of the act. He claimed that a specific plan was approved which was acceptable to them and in compliance with their interest. He stated that the applicant's modifications during construction altered the plans in ways that are not acceptable to them, and that they have been forced to seek enforcement with the Building Department. He indicated that the enforcement of the Act and requiring the applicant to build the house in accordance with the original approved plans is essential for the proper administration of the Historic District law.

John Cichy, identifying himself as a nearby resident, and stated that approximately 10 years ago the then attorney for the Commission had indicated that individuals had the right to cut trees down on their property without interference from the Historic District Act. He suggested that his property has a right to a view of Cape Cod Bay across the applicant's restricted "no cutting" vegetated buffer zone. He, therefore, supported the applicant's contention that the committee exceeded its authority by imposing a restriction on that portion of the lot.

He went on to say that because of the slope of Scargo Hill nearly all of the dwellings on the hill have walk out basements with large exposures similar to that requested by the applicant.

David Keenan stated that he had been hired by the Masons as a building consultant, and indicated that with the assistance of Attorney Stanton had filed a series of complaints about the construction. He stated that the design of the proposed septic system for the property had been located too close to the Masons' well, and that the location of the reserve area had to be changed to properly meet the health code. He reported that the foundation had been altered to create a side and rear "walk out" for the dwelling. This feature, with the addition of windows for the walk out area, created a three - story appearance to the proposed dwelling. In addition it created a larger wall space and increased the massive appearance of the dwelling.

Mr. Keenan pointed out that the applicant, as a former member of the Town Historic District Committee, a realtor and builder was very familiar with the requirements of the law. He claimed that the applicant made a conscious choice to modify the structure without seeking prior approval with the belief that it is easier to gain "forgiveness" than "permission."

John Mullholland addressed the public hearing and said that he was the party most affected by the modifications to the building. He indicated that the added walkout basement with its exposed doors and windows would increase the evening light radiated towards his dwelling. He indicated that the modified dwelling had been described as having a large "motel style" appearance.

Donald Trepte, chairman of the Town of Dennis Board of Selectmen, stated that the failure to have gone back to the Committee prior to making the modifications created a very serious problem for all interested parties. He indicated that it is important to follow the proper procedure, and that every effort has been made by the Town to encourage applicants to obtain a proper public review before the modifications are constructed.

Michael Skol stated that he was an abutter and approved of the original design. He opposed the modifications and indicated that the modifications are clearly visible from Scargo Heights Road. He said that when the leaves come off the trees the building will be very visible.

He pointed out that the applicant on June 21, 2005 gave a view easement to John Cichy across the "no cutting" buffer zone. He submitted a copy of the view easement. The view easement is stamped by the Barnstable Land Court Registry and filed on June 28, 2005. He pointed out that the view easement conflicts with the applicant's agreement with the town committee which was part of the July 14, 2004 Certificate of Appropriateness.

Rev. Philip McConville addressed the public hearing and stated that he and his sister were the former owners of the subject property. He stated that he had lived on Scargo Hill for 37 years, and supported the right of individual property owners to cut down trees to protect their view. He indicated that the walkout and the modifications were necessary because of the slope of the hill upon which the house was being built. He also claimed that Scargo Hill had once been farmland and completely cleared of trees.

Mr. Gurney acknowledged that he had made the changes without the prior approval of the Town Committee. He said that the purpose of the hearing was to determine the appropriateness of the specific changes not to focus on the fact that he had violated the Act. He claimed that the neighborhood was a "hodgepodge" of design, and asserted that his changes were compatible with the design of other buildings in the neighborhood. He reaffirmed that the building was on a slope, and that the addition of windows and the walkout was compatible with what was there. He denied that the house looked like a "motel." He further indicated that he felt the committee failed to properly consider the factors for determining appropriateness under the Act. He stated that the elevation for the lot did not change as asserted by the neighbors.

Mr. Lomenzo, in conclusion, stated that his committee determined that the mass of glass and windows on this property is totally inappropriate for the District. He stated that the committee regularly requires false rakes for buildings of this design and style.

**Discussion:**

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

Roy Robinson observed that Section 10 of the Act directs the committees to determine whether or not the dwelling fits in the neighborhood. He indicated that he felt that the building appeared to fit into the neighborhood. He indicated that he had reservations about imposing a 75-foot no cut requirement on an applicant, but if the applicant had agreed to the buffer zone, it should be binding on the project.

Deborah Gray indicated that she felt the 75-foot no cut zone may be a complex legal issue to be sorted out elsewhere, but where the applicant had agreed to it as a condition of the original approval it ought to be enforced. She indicated that the Town Committee appeared to have acted properly in reaching its determination to deny the changes.

Patricia Anderson stated that she did not see that the Town Committee exercised poor judgment nor were they arbitrary or capricious. She expressed the opinion that the Committee acted properly in denying the application.

Deborah Gray then stated that she agreed with Patricia Anderson that the committee had not acted erroneously in denying the Certificate of Appropriateness for the various modifications.

**The Commission findings:**

The Commission found as follows:

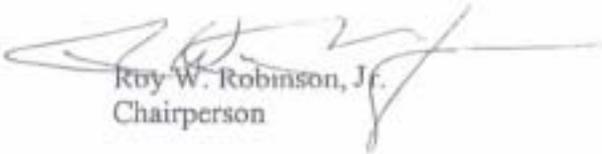
That the Committee did not exceed its authority in refusing to release the "no cutting" zone from the project.

That the Committee was not arbitrary, capricious or erroneous in its action of denying a Certificate of Appropriateness for the proposed "as built" modification.

**Determination:**

As to Appeal #2005-4, the appeal is denied and decision of the Dennis Committee is affirmed (3-0-2) 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 W. Robinson, Jr.  
Chairperson