

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

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**TOWN CLERK
TOWN OF SANDWICH**

OCT 03 2005

Joel Harder, Appellant/Applicant

Vs.

Decision #2005-5

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

On Tuesday, September 6, 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 #2005-5 filed by Joel Harder seeking reversal of a decision by the Sandwich Historic District Committee denying a Certificate of Appropriateness covering the addition of a third story to an existing two story house located at 77 Freeman Avenue, Sandwich, Massachusetts.

Present were Robert DeRoeck, Sandwich; Deborah Gray, Yarmouth; Roy Robinson, Brewster; Patricia Anderson, Barnstable; Peter Lomenzo, Dennis; James R. Wilson, Commission Counsel; Jane E. Estey, Attorney for the Appellant/Applicant; and Joel Harder, Appellant/Applicant.

The Committee's decision was filed with the Town Clerk on July 28, 2005. The appeal was entered with the Commission on August 4, 2005, within the 10-day appeal period.

The Appellant's Presentation:

Attorney Jane E. Estey addressed the Commission on behalf of her client's appeal. She 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.

She described the proposed project as requiring a six - foot increase to the roof - line and the addition of an extended dormer. She indicated that the it should not be called a three story building because the addition is to convert the existing attic space into living space and would result in only a half story change to the building's appearance.

She described the Town Neck neighborhood as a typical beach cottage area that is located on Cape Cod Bay. She indicated that many of the cottages had been modified over the years to increase their size and make them more suitable for year round occupancy.

Joel Harder presented photographs of his existing house and other houses in the neighborhood. Plans of the proposed changes were shown to the Commissioners.

Mr. Harder stated that the Committee had approved similar proposals and suggested that an approved three and half house was under construction across the street from his house. He stated that there were many larger houses located in the neighborhood and that it was unfair to deny his application.

Attorney Estey asked that the Commission consider the issue of hardship. She indicated that while her client had declined to offer any evidence on the issue at the local hearing she would like to present evidence to the Commission. She indicated that the small size of the applicant's lot and the many zoning and land use regulations created a hardship that would allow the Commission grant the requested Certificate of Appropriateness.

The Town Committee's Presentation:

Robert DeRoeck addressed the Commission on behalf of the Sandwich Town Committee. He stated that the applicant described his proposed project as being change to a "three story building." He indicated that the application was denied because the added height would make the building the tallest building on the Bay side of Freeman Avenue and that because the lot was small (6,000 sq. feet), the height ratio would be inappropriate for the neighborhood.

He indicated that many of the larger houses in the neighborhood were located on larger lots and therefore would not be out scale for their location.

He indicated that the committee was not arbitrary, capricious or erroneous; but was reasonably concerned about the proposed extreme height ratio of the requested structural change to the dwelling.

He suggested that the Committee was willing to consider other alternatives in an attempt to meet the applicant's needs for additional living space. He reported that the increase in height had been opposed by all three (3) of the town committee members that voted on the application.

Public Comment:

Walter Mattson, an immediate abutter and neighbor of the Applicant, claimed that he failed to receive notice of the Town Committee hearing. He indicated that he would have supported the applicant's application.

Mr. DeRoeck pointed out that it was the responsibility of the Applicant to provide the list of abutters and that the list had been certified by the Assessor's office.

Discussion:

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

Roy Robinson stated that he was concerned that an immediate abutter had not been able to attend the Town Committee hearing. He expressed concern that an abutter had not been notified of the public hearing.

Peter Lomenzo expressed concern that the Town Committee would approve a three and half story house across the Street and not allow the applicant to increase his house to three stories. He expressed sympathy for the applicant's position and asked how "immediate surrounding" should be defined and applied under Section 10 of the Act.

Patricia Anderson stated that she agreed with the Town Committee denial. She found that the proposed change in height would have an inappropriate impact on the buildings scale and mass. She expressed concern about the loss of the cottage colony character of the neighborhood.

Deborah Gray stated that she felt that the failure of the abutter to have received notice is a basis to annul the decision. She additionally expressed support for the Town committee's determination that the proposed additional height would be inappropriate. However she supported the Committee's willingness to work with the applicant to find a design that would meet the applicant's need for additional space.

The Commission findings:

The Commission found as follows:

It was an error that the abutter failed to receive notice of the Town Committee's public hearing.

The Town Committee's determination should be annulled.

The Application should be remanded to the Sandwich Town Committee for a new public hearing with new publication and notice to the abutters.

The Applicant and Town Committee should consider alternative designs to meet the applicant's living space needs.

Determination:

As to Appeal #2005-5, the decision of the Sandwich Committee is annulled and the matter remanded for a new public hearing with full notice (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, Barnstable Division, within 20 days of the filing of this decision with the Sandwich Town Clerk.


Roy W. Robinson, Jr., Chairperson