

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

P.O. Box 140, Barnstable, Massachusetts 02630-0140
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John B. Austin and Christine Froula, Appellant/Applicant

Vs.

Decision #2006-1

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

On Tuesday, May 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 #2006-1 filed by John B. Austin and Christine Froula seeking review and reversal of the Barnstable Historic District Committee's March 30, 2006 decision on an application for a Certificate of Appropriateness covering proposed modifications to a previously approved new dwelling to be located at 58 Shepard's Way, Barnstable, Massachusetts.

Present were Robert DeRoeck, Sandwich; Deborah Gray, Yarmouth; Roy Robinson, Brewster; Patricia Anderson, Barnstable; Peter Lomenzo, Dennis; James R. Wilson, Commission Counsel; and John B. Austin and Christine Froula Appellant/Applicants.

Absent was Paul Leach, Orleans.

The Committee's decision was filed with the Town Clerk on March 30, 2006. The appeal was entered with the Commission on April 10, 2006, within the 10-day appeal period.

The Appellant's Presentation:

Christine Froula addressed the Commission on behalf of her appeal. She requested that the determination of the Barnstable Town Committee be reversed and that the Commission grant a Certificate of Appropriateness for the requested construction of the two and one half story dwelling.

She stated that her husband's family had owned the subject property for many years. She described the proposed project as being in planning for many years and in the permitting process for two (2) years.

She presented four (4) scaled elevations and a site plan of the proposed dwelling. Photographs and pictures of the site and other buildings in the area were shown to the Commissioners.

The dwelling was described as reflecting features of an old-fashioned two and one-half story farmhouse with energy conservation design and environmental protection concerns.

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She reported that the Barnstable Town Committee had issued a Certificate of Appropriateness for the dwelling on August 10, 2005. The proposed dwelling was to have been located in the center of the 2.46 acre lot.

Subsequently, they were advised that the Cape Cod Planning Commission had placed a building moratorium (DCPC zone) on the site.

As a result, they applied to the Cape Cod Planning Commission for a "hardship exemption" for the project.

In January 2006, the "hardship exemption" was issued on the condition that the septic system and building be relocated to a site that was a greater distance away from the abutting Hinckley Pond.

She acknowledged that the new site would be closer to her neighbor's house, but suggested that it would be less visible to the general public. She also acknowledged increasing the size of the building's footprint by approximately two feet. She indicated that neither she nor her husband were aware that the changes required a new approval by the Barnstable Historic District Committee. She expressed the opinion that they thought that the increase in size and the site location change were details and insignificant changes to the project.

They began construction and shortly thereafter were given a "stop work" order from the Town Building Department.

Following the issuance of the "stop work" order, the applicant filed for two Certificates of Appropriateness addressing (1) the new location of the proposed dwelling and (2) the increase in size and its changes to the building. The Barnstable Historic District Committee approved the location change, but denied the Certificate of Appropriateness for changes to the house because they would excessively increase the overall height of the building.

The Applicants claimed that the denial of the Certificate of Appropriateness for a "relatively modest" increase in height was an error.

The Town Committee's Presentation:

Dorothy Stahley addressed the Commission on behalf of the Barnstable Town Committee.

She stated that while the Committee had approved the original proposed design, that a majority of the Committee felt that the increase in height would make the building more visible and suggested that the changes to the windows and other features of the buildings would have significant impact on an extremely sensitive (DCPC) neighborhood.

She indicated that her committee had not received proper plans until the day of the hearing and suggested that it was difficult to work with materials submitted by the applicants.

She said that the Town Committee had acted properly in denying the application.

Public Comment:

Stephen E. Berglund stated that he and his neighbors were sympathetic to the applicant's effort to build their home on the site. He stated that he was troubled by the relocation to the upper corner of the lot.

David Munsell suggested that the matter should be returned to the Town Historic District Committee for another review.

Ned Handy stated that he supported the Applicants and hoped that the Commission would grant the appeal and approve the application.

Discussion:

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

Roy W. Robinson, Jr. stated that he had visited the site and examined the plans. He observed that the neighborhood might best be described as "eclectic." He noted that it contained many different styles and sizes of dwellings.

Peter Lomenzo indicated that he had visited the site and after seeing the plans and hearing the testimony determined that the Barnstable Historic District Committee had made an error in judgment in refusing to approve the increase in height to the proposed building. He noted that the public view from Route 6A was across a relatively long distance and suggested that the proposed changes to building would appear relatively modest.

Deborah Gray stated that she felt that it was unfortunate that the location of the building had to be changed. She indicated that she had visited the site and agreed that the change in the plans appeared at a distance to be relatively minor. She noted that the proposed location was relatively remote from public view and that the Town Historic District Committee appeared to have made an error in not granting a Certificate of Appropriateness for the changes in size.

Robert DeRoeck stated that he had examined the plans and that he was in agreement with the opinion that the Certificate of Appropriateness should have been issued by the Barnstable Historic District Committee.

The Commission findings:

The Commission found as follows:

It was an error to deny the application for a Certificate of Appropriateness.

The Town Committee's determination should be annulled.

A Certificate of Appropriateness should issue for the construction of the proposed dwelling as shown on the site plan dated July 29, 2005 and revised Dec. 30, 2005 and the four elevations approved by the OKHHD Commission on May 2, 2006. (See copy of plans placed on file with the Barnstable Historic District Committee by the Old King's Highway Regional Historic District Commission)

Said Certificate to be subject to use of traditional wooden siding, roofing material and all other specifications as previously approved by the Barnstable Historic District Committee.

Determination:

As to Appeal #2006-1, the decision of the Barnstable Committee is annulled and the Certificate of Appropriateness issued (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 Barnstable Town Clerk.


Roy W. Robinson, Jr.
Chairperson