

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

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YARMOUTH
HISTORIC
DISTRICT

Diane Owen Hughes, Appellant

Vs.

Decision #2007-3

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

On Tuesday, April 3, 2006 at 7:45 P.M., the Commission held a hearing at the Fire Station Community Room, 340 Route 6A, Yarmouth Port, Massachusetts, on Appeal #2007-3 filed by Diane Owen Hughes seeking reversal of a decision by the Yarmouth Historic District Committee granting a Certificate of Appropriateness covering a new sign and alterations to a dwelling located at 450 Main Street, Yarmouth Port, Massachusetts.

Present were Mark Marinaccio, Sandwich; Peter Lomenzo, Dennis; Deborah Gray, Yarmouth; Roy Robinson, Brewster; James R. Wilson, Commission Counsel; Peter Hughes for the Appellant; Claire Gonet, Applicant; and Paul R. Tardif, Attorney for the Applicant.

Absent were Patricia Anderson, Barnstable and Paul Leach, Orleans.

The Committee's decision was filed with the Town Clerk on April 8, 2007. The appeal was entered with the Commission on April 13, 2007, within the 10-day appeal period.

The Applicant's Presentation:

Attorney Paul R. Tardif addressed the Commission on behalf of his client's application. He stated that his client wished to turn her property into a B&B and had been before the Yarmouth Board of Appeals for a permit to operate the B&B. He indicated that a condition of the Town zoning permit was that the owner convert an existing triple window into an entrance door for the guests.

He showed the Commissioner plans and pictures of the property and its location. He stated that the front door facing Route 6A and the existing rear door would not be altered. He indicated that the rear door would be used as a private entrance for the owner.

He showed a picture of the existing triple window and plans and a picture of the proposed door. He suggested that the existing window was not compatible with the building's historic appearance and that a door had previously been located near its proposed location.

Mr. Hughes stated that the Committee exercised poor judgment in accepting irrelevant criteria, false evidence and an inappropriate design. He indicated that he felt that the Committee had been improperly influenced by the Board of Appeals Special Permit and suggested that the permit was conditional upon an independent determination by the Town Committee that the proposed structural modifications for the new entrance should not be influenced by the proposed new B&B use and/or the convenience of the future guests.

He again pointed out that the Applicant had implied that a door had once existed in the proposed location, which his 1940 picture clearly disputed. He added that during the initial hearing the Applicant had inferred that the former owner had supported the belief that a door had existed at the proposed location of the new entrance. He stated that this inaccuracy was brought to the Town Committee's attention by a letter from the former owner that was presented at the 2nd hearing.

Mr. Hughes criticized the approval of the proposed sign post because it showed a "No Vacancy" sign that may not meet the local sign code and suggested that its approval reflected a failure by the Town Committee to give a proper scrutiny to the application.

Mr. Lomenzo asked the Appellant when the existing triple box bay window, which was to be replaced by the new entrance, had been added to the building. Mr. Hughes indicated that it had existed for about thirty or forty years.

Mr. Lomenzo asked if the various concerns that he had presented to the Commission had been presented during the public hearings before the local Town Committee. Mr. Hughes acknowledged that the points had been presented but suggested that the Committee in its action failed to give proper consideration to the preservation of the building's historical authenticity. He reported that one member of the Town Committee had stated that the proposed door would be "esthetically" more appropriate than the present triple box bay window.

The Town Committee's Presentation:

Deborah Gray addressed the Commission on behalf of the Yarmouth Town Committee. She indicated that the Committee properly held two public meetings on the application for a new sign and side door entrance. She reported that all the Town Committee members have seen the building and are aware of its classic Georgian Colonial appearance. She identified the building as a National Register Contributing Building and not a National Landmark as some people may have claimed. It is one of three Hundred and Ten that have been identified within the Town's Historic District.

She pointed out that the entrance that was approved at the 2nd meeting was modest and designed to match the existing front door. She indicated that the Town Committee after hearing all the concerns unanimously determined that the proposed new entrance would not significantly detract from the historical appearance of the building.

She expressed the opinion that the Town Committee carefully reviewed the application and considered the concerns of the neighbors. She acknowledged that the Town Committee is aware of the building's historical significance.

She indicated that the Town Committee was aware of the fact that the prior door was not located where the triple box bay window exists, but was located on the "Beverly Jog" where now exists a small window.

She observed that the building's features reflected alterations over time and that even the front entrance appeared to reflect the changes that can occur with the passage of time and changes of use and ownership. She identified the changes to the proposed sign and entrance that the Applicant incorporated after the first hearing that addressed many of the concerns expressed at the public hearing.

She added that the Board of Appeals Special Permit was a separate review and did not limit the Town Committee's review of the proposed structural changes. She expressed the opinion that the Town Committee's determination was not influenced by anything that might have taken place at the Board of Appeals zoning review or what may have been written in the Special Permit.

She suggested that the Town Committee considered the factors set forth in Section 10 of the Act in making its determination and was not arbitrary, capricious or erroneous in issuing the Certificate of Appropriateness for the proposed sign and new side entrance.

Public Comment:

Joel Chasen expressed concern about altering a 1721 Georgian Colonial by adding the new entrance. He suggested that cutting the door is not necessary and will destroy important historical timbers in the building.

Jerry Rosen, of 438 Main Street, indicated that whether a door existed previously at the location should not be the determining factor. The building has a long history and should not be judged by the narrow factor of what was or was not a feature in the past.

Jessica McConnell, of 446 Main Street, identified herself as an abutter and expressed her opposition to the proposed changes to the building. She supported everything that Peter Hughes stated during the hearing. She expressed the opinion that the building is an "antique" that needs to be preserved with its original features.

Discussion:

The members of the Commission reviewed the pictures, plans, photographs and other items submitted for review during the hearing.

Mr. Robinson began the discussion by stating that he felt that all parties had made a good presentation. He observed that the value of "preservation" versus "aesthetics" had been

well presented by the Appellant. He indicated that he agreed with the concept that "preservation" was an important factor to be considered in a determination of appropriateness.

However he indicated that he could not agree that proposed change from a triple bay window to the proposed door would destroy the buildings historical integrity or authenticity. He stated that he agreed with the Town Committee's determination that the proposed change would improve the buildings appearance by diminishing the incongruous effect of existing three-panel window.

Mr. Lomenzo commented that it appeared that the Town Committee was aware of the concerns raised by the Appellant. He observed that the historical value of the building and its design were discussed and changes made to reduce the impact of the proposed new door. He stated that he did not find the action of the Town Committee to exceed its authority or be exercising poor judgment. He indicated that the detail of the issues presented reflected a thorough review and therefore could not be classified as arbitrary or capricious.

After seeing the pictures, plans, data and hearing the testimony, he stated that he could not see where the Town Committee, in passing upon the application, had made an error or failed to properly apply the many factors identified in Section 10 of the Act.

Mark Marinaccio agreed with Mr. Lomenzo and stated that he observed no evidence that the decision process of the Town Committee was faulty or its judgment in error.

The Commission findings:

The Commission found as follows:

The Town Committee did not exceed its authority or exercise poor judgment.

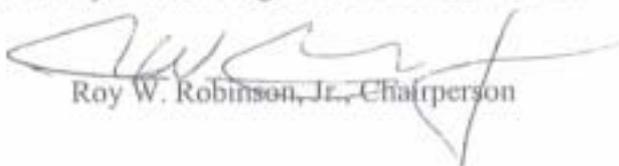
The Town Committee was not arbitrary, capricious, or erroneous in approving the application.

The Town Committee acted properly in granting the Certificate of Appropriateness.

Determination:

As to Appeal #2007-3, the decision of the Yarmouth Committee is affirmed (3-0-1) 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 Yarmouth Town Clerk.


Roy W. Robinson, Jr., Chairperson