

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

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

**Joseph B. Gill, Appellant**

**Vs.**

**Decision #2007-5**

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

On Tuesday, May 1, 2007 at 7:45 P.M., the Commission held a hearing at the Fire Station Community Room, 340 Route 6A, Yarmouth Port, Massachusetts, on Appeal #2007-5 filed by Joseph B. Gill seeking reversal of a decision by the Barnstable Historic District Committee granting a Certificate of Appropriateness to Michael Longo for a new house and three car garage to be located at 22 Burning Tree Lane, West Barnstable, Massachusetts.

Present were Mark Marinaccio, Sandwich; Joshua Crowell, Dennis; Deborah Gray, Yarmouth; Roy W. Robinson, Jr., Brewster; George Jessop, Barnstable; James R. Wilson, Commission Counsel; Joseph B. Gill, the Appellant; Patrick M. Butler, Attorney for the Appellant; Michael Longo, Applicant; and Lynne G. Turner, Attorney for the Applicant.

Absent was Paul Leach, Orleans.

The Committee's decision was filed with the Town Clerk on March 29, 2007. The appeal was entered with the Commission on April 6, 2007, within the 10-day appeal period.

**The Applicant's Presentation:**

The Applicant's architect, Anne M. Michniewicz, addressed the Commission and described the proposed project as consisting of a new 1½ story Gambrel with a three-car garage. She stated that the proposed dwelling had 3,406 square feet of "living area" with an additional 838 square feet of unfinished space over the garage. She described the design as being of a "traditional historic style" similar to other dwellings located in the neighborhood. She suggested that it's 83-foot front yard set back and the low 1½ story front profile of the proposed dwelling would be very compatible with the other homes located in the subdivision. She indicated that a view easement, the location of nearby wells and the proposed on site septic system had played important parts in selecting the location for the proposed dwelling and garage.

She stated that at the request of neighbors and the Town Committee vegetated landscaping had been increased and the driveway altered. She stated that the applicant had removed a proposed widow walk from the dwelling and incorporated many wooden features such as heavy wooden trim and special expensive wooden windows and shutters

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to increase the dwellings compatibility with the traditional wooden style of other houses located within the neighborhood. She pointed out that the design omitted the modern large expanses of glass that are featured on the backside of many of the existing houses located within the Point Hill subdivision.

She showed pictures of other houses in the neighborhood and suggested that the proposed house would be no larger in scale than many that had been located nearby.

The Appellant's attorney, Lynne G. Turner, addressed the Commission on behalf of her client and pointed out that the Historic District was not restricted to a single type or style of architecture but was created to encourage a variety of styles and designs.

She stated that the Barnstable Town Committee had carefully reviewed the proposed project and asserted that the Applicant had modified the proposed design to accommodate many of the neighborhood and Barnstable Committee's suggestions.

She expressed the opinion that the Town Committee had acted properly in approving the modified plans and that the proposed dwelling had been located appropriately on the lot.

#### **The Appellant's Presentation:**

The Appellant's attorney, Patrick M. Butler, submitted five letters from neighbors supporting his client's opposition to the proposed dwelling; copies of the draft minutes from the March 14<sup>th</sup> and March 28<sup>th</sup> Meetings of the Barnstable Town Committee; a set of full size plans of the proposed building; a copy of the expired private deed restrictive covenants for the Point Hill subdivision; and many photographs of the existing dwellings that are located within the immediate neighborhood.

He indicated that in reviewing the minutes of the March 14<sup>th</sup> and 28<sup>th</sup> Meetings, it appeared that the applicant failed to make sufficient modifications to the project to warrant the approval and requested that the application be remanded to the local Town Committee for further review and/or modification.

Mr. Butler suggested that the view easement and the site of the septic system could have been altered so that the location of the proposed buildings could be more appropriately placed on the lot. He pointed out that the view easement was self-created/imposed and therefore could be modified if requested by the Town Committee. He argued that the failure of the Town Committee to require the applicant to alter the placement of the buildings could be found to have been an error and thereby support a remand of the application for further review on the site location issue.

Mr. Butler stated that the footprint of the proposed building was too large for the neighborhood and suggested that the building would appear "massive" when compared to other buildings in the immediate surroundings. He showed pictures of the other houses located on Burning Tree Lane, and claimed that much of the building's interior space

would not be used for "living space." He suggested that the Town Committee was in error when it did not require the Applicant to reduce the size of the proposed building.

He asserted that original private restrictions that expired in 1999 set a strong traditional character for the neighborhood that ought to have been given greater weight by the Town Committee. He suggested that many of the requirements contained within the original private Design Covenants were in close harmony with the intent and purposes of the Old King's Highway Regional Historic District Act. He claimed that the Town Committee acted erroneously by failing to sufficiently protect the established traditional historic style and character of the Point Hill subdivision.

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

George Jessop addressed the Commission on behalf of the Barnstable Town Committee. He stated that when the project was presented at the first hearing on March 14<sup>th</sup>, the neighborhood turned out in large numbers and many public concerns were offered to the Town Committee. He reported that a proposed widow's walk was a major concern and was subsequently removed from the design by the applicant.

He reported that all of the Town Committee members visited the site. He stated that he visited the site twice and observed the proposed location of the dwelling and garage from many vantage points. He indicated that the Town Committee was familiar with the subdivision and had reviewed other dwellings that had been built and/or modified within the Point Hill subdivision.

He reported that altering the dwelling and garage's location was considered and rejected by the Town Committee's architect and engineer. He asserted that the location and design of the driveway was altered and many wooden features added to the design at the request of the Town Committee.

He stated that the size and scale of the proposed dwelling was considered and found to be appropriate. He reported that additions and expansions to existing homes within the neighborhood had been requested and previously approved by the Town Committee. He noted that the abutting Appellant's house had a 2-story front elevation and appeared to be as "massive" as the Applicant's proposed 1½ story Gambrel.

#### **Public Comment:**

Richard Weiler of 39 Hilliards Hayway, West Barnstable stated that he believed that the "scale and size" of the proposed dwelling will have an adverse impact on the character of the neighborhood.

Audrey Loughnane, owner of the subject lot, listed other houses in the neighborhood that had larger square footage than the proposed dwelling. She stated that her neighbors have three car garages and bigger houses. She expressed the opinion that the house would fit nicely on the lot and be very attractive.

Robert Stolte of 25 Burning Tree Lane, expressed appreciation for the changes that the Applicant had made after the first hearing, but expressed concern that the proposed three-car garage may appear to "massive" for the neighborhood.

Michael Turner, Attorney for John Loughnane, stated that Mr. Gill, the Appellant, has a three-car garage, as does another resident of the subdivision. He indicated that many houses in the area are "huge" and far larger in scale than the proposed dwelling. He asserted that the house is "reasonable" for the neighborhood and therefore the decision of the Town Committee was "reasonable" and "not arbitrary or capricious." He claimed that the house is well designed and that the determination of the Town Committee was without error and should be affirmed.

Richard Lonstein, a buyer of the lot, stated that he felt that it is a "lovely house" that will "fit nicely" into the neighborhood.

Kevin Boyer, builder of the proposed dwelling, stated that as the architect had pointed out, the design is "objectively traditional" with outstanding and very high-end details and specifications including extended racks, window pediments, carousel doors, and high-end Andersen Windows. He showed pictures of another nearby dwelling and suggested that the proposed dwelling was not more "massive" in appearance than many of the neighboring houses. He affirmed that changes had been made to accommodate many of the neighborhood concerns.

**Appellant's Rebuttal:**

Mr. Butler renewed his request that the matter be remanded to the Town Committee and stated that the issue of building location on the lot and the apparent size of the proposed dwelling might best be resolved with a remand. He suggested that a remand would provide an opportunity for the applicant and the neighbors to get together and reach a resolution of their differences. He supported his request with a restatement that the view easement and location of the septic system are open for a better review.

**Applicant's Rebuttal:**

The Applicant's architect, Anne M. Michniewicz, stated that the issue of the building's size has been addressed by the pictures of the many other buildings located within the neighborhood that appear to have greater size and mass than the proposed dwelling. She expressed the opinion that the view easement should be considered an advantage as it requires the greater front yard set back from the street. She suggested that if the size of the dwelling is a concern, moving the building into the view easement area and thereby closer to the street would make the building appear bigger not smaller. She indicated that while the septic system might be moved, such a re-location might have an adverse impact on the future use of the lot for a swimming pool, patio, or other potential future amenities.

Additionally, she stated that rotating the house would only expose the side of the dwelling to the street and detract from the standard preferential frontal appearance positioning on the lot. She pointed out that turning the garage would expose the hidden three large garage doors to the street. In addition to pointing out that the Appellant and others in the neighborhood had three car garages, she indicated that the extra garage space would serve to keep vehicles and other items out of sight and enhance the overall neighborhood's appearance.

Attorney Turner stated that the issue before the Commission is whether the Town Committee acted in an arbitrary or capricious manner. She pointed out that Mr. Jessop described a significant and detailed review and intervention into the design and features of the proposed dwelling by the Town Committee. She stated that the record shows that the Town Committee addressed the location and size issues in a rational and reasonable manner. She suggested that the Town Committee appeared to have been sensitive to the needs of both the neighbors and the Applicant and to have exercised their judgment in a well-reasoned and proper manner. She requested that the Commission uphold the Town Committee's decision.

#### **Town Committee Rebuttal:**

Mr. Jessop stated that he felt that the Town Committee tried to take into considerations all the interests of the parties. He indicated that he felt that the Town Committee acted properly in granting the Certificate of Appropriateness.

#### **Discussion:**

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

Chairman Robinson began the deliberations by stating that he had been to visit the site and viewed the whole neighborhood. He described the area as beautifully maintained by the owners. He indicated that he did have some questions about the view easement and issues raised by the Appellant. He indicated that the matter could be continued to allow the Commissioners to take a view of the site. He suggested that the Commission could consider remanding the application back to the Town Committee. He invited comment from the other Commissioners

Deborah Gray began by indicating that she had visited the site and read the Memorandum and all of the paper work submitted to the Commission. She stated that she had not been able to find an error, that the Town Committee had been arbitrary or capricious, or exercised poor judgment. She pointed out that the Committee members had visited the site before the first hearing and had considered many changes to the project. She stated that she felt that the proposed dwelling appeared to be attractive and not "too massive" for the neighborhood and that the location with 83-foot setback from the street was proper. She expressed the opinion that she could not fault the Town Committee for their action in granting the Certificate of Appropriateness.

Mark Marinaccio stated that he agreed with Deborah Gray's assessment. He indicated that he ran some numbers on the submitted square footage provided and noted the trend toward larger homes as you moved toward the water. He noted that in reviewing the submitted minutes from the two hearings, he could not see where the Town Committee neglected their responsibility in properly acting on the application.

Joshua Crowell stated that he disagreed with his colleagues. He expressed the opinion that the Town Committee acted erroneously on the issue of appropriateness in terms of appearance. He indicated that he found that everything located within the subdivision was very traditional in a variety of styles and that the facade of the proposed dwelling is a classic revival that he might expect to see in Newton, Wellesley or Dover, but not in the particular neighborhood. He recommended a remand to the Town Committee for more modifications to the building's features.

Roy Robinson stated that he was having difficulty making up his mind and invited more discussion. He asked if the members wished to make another site visit.

Deborah Gray and Mark Marinaccio indicated that they were satisfied with their prior visits and that another visit was not necessary, unless Mr. Crowell felt that he would wish to return to the site. Mr. Crowell indicated that another visit was not necessary.

Deborah Gray offered a motion to affirm the action of the Town Committee, which was supported by Mark Marinaccio.

A question was raised as to the effect of a tie vote and Attorney Wilson advised the Commissioners that a tie vote would sustain the Town Committee's decision.

Mr. Butler suggested to the Commissioners that the matter be continued to the next meeting to allow for the Appellant and Applicant to work out the changes that would cause his client to possibly withdraw the appeal.

Mrs. Turner opposed the suggestion and stated that the issues of the view easement and septic system have been carefully examined and fully discussed.

Mr. Robinson suggested that the Commissioners consider remanding the matter back to the Town Committee and let the Town Committee rehear the matter so that possible adjustments could be worked out between the parties.

Mr. Jessop stated that the Town Committee spent substantial time discussing the issues and he felt that a remand would not change the Town Committee's determination on the application.

**The Commission findings:**

The Commission found as follows:

That the Town Committee was not arbitrary or capricious in granting the Certificate of Appropriateness.

That the Town Committee was not erroneous in granting the Certificate of Appropriateness.

That the Town Committee did not exceed its authority or exercise poor judgment in granting the Certificate of Appropriateness.

**Determination:**

As to Appeal #2007-5, the decision of the Barnstable Committee to grant the Certificate of Appropriateness is affirmed (3-1-1).

Gray, Marinaccio & Robinson – Voting Affirmative: Crowell – Voting Negative:  
Jessop – Voting to Abstain.

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