

BARNSTABLE
HISTORIC DISTRICT

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

P.O. Box 140, Barnstable, Massachusetts 02630-0140

Tel: 508-775-1766 FAX 508-775-9248 '07 NOV 27 P 3:33

Joseph F. Dugas, individually and as Trustee of the Dugas Family Irrevocable Trust, Marcy S. Dugas, Louis Cataldo as Trustee of the Cataldo Family Trust, Clifford S. Macdermid, Dori J. MacDermid, James M. Rogers, Judith A. Rogers, John Field and Kristen Bearse, Appellants

Vs.

Decision No. 2007-9

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

On Tuesday, November 6, 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 #2007-9 filed by Joseph F. Dugas, individually and as Trustee of the Dugas Family Irrevocable Trust, Marcy S. Dugas, Louis Cataldo as Trustee of the Cataldo Family Trust, Clifford S. MacDermid, Dori J. MacDermid, James M. Rogers, Judith A. Rogers, John Field and Kristen Bearse, Appellants seeking reversal of a decision by the Barnstable Historic District Committee granting a Certificate of Appropriateness to Four Acres Realty Trust for a single family dwelling with attached garage to be located on Lot 3, 141 Maushop Avenue, Barnstable, Massachusetts.

Present were Mark Marinaccio, Sandwich; Peter Lomenzo, Dennis; Deborah Gray, Yarmouth; Roy W. Robinson, Jr., Brewster; Patricia Anderson, Barnstable; James R. Wilson, Commission Administrative Counsel; Joseph F. Dugas, Marcy S. Dugas and Louis Cataldo, Appellants; Paul Revere, III, Attorney for the Appellants; Howard Woollard, Applicant; and Michael D. Ford, Attorney for the Applicant.

Absent was Paul Leach, Orleans.

The Committee's decision was filed with the Town Clerk on October 11, 2007. The appeal was entered with the Commission on October 22, 2007, within the 10-day appeal period.

The Applicant's Presentation:

The Applicant's Attorney, Michael D. Ford, addressed the Commission and described the proposed project at 141 Maushop Avenue, Barnstable, as an application for permission to the construct of a single family dwelling with an attached garage. He reviewed a site plan showing the nearby house under construction at 140 Maushop Avenue and the plans for a similar proposed dwelling and garage to be located at 141 Maushop Avenue. He stated

that the dwelling and garage were the same design and style as previously reviewed and approved in Appeal 2007-6. He indicated that the parties were the same parties in this appeal as were before the Commission in Appeal 2007-6 on September 4, 2007.

He stated that the only changes in the plans presented in this application from the prior approved application (Appeal 2007-6) was the deletion of the contested prior proposed break in the stone wall, a modification in the location of the garage door openings, and moving the dwelling back from the front yard stone wall by approximately ten (10) feet.

He pointed out that at the prior appeal hearing before the Commission, the Appellants had stipulated that the proposed style and design of the proposed dwelling and garage had been acceptable to the neighbors (Appellants) and that the only contested issue had been a proposed break in the stonewall.

He stated that Appellants had filed an appeal to the Barnstable District Court, contesting the Commission's affirming of the granting of permission to add a break in the stonewall.

He indicated that the Applicant had decided to delete the proposed break in the wall and had submitted a new revised application to the Barnstable Town Committee to address the neighbors' objection to the proposed break in the wall.

He reported that no opposition had been submitted to the proposed revised plans and that none of the Appellants or their attorney had appeared at the Barnstable Town Committee's hearing.

He indicated that the revised plans had been unanimously approved by the Barnstable Town Committee following its public hearing on the new application.

The Appellant's Presentation:

The Appellant's Attorney, Paul Revere, III, began by explaining that his clients' failure to argue the merits of the appearance of the proposed buildings at the former appeal hearing was not a waiver of their rights to contest the issue in future proceedings. He suggested that the focus at the prior hearing was "on the proposed break in the stone walls and the many alleged violations by the applicant." He inferred that he felt that at the prior hearing no argument needed to be offered on the merit or non-merit of the proposed "style and design" of the buildings.

He asserted that because the prior application was under appeal to the Barnstable District Court, that it was improper for the Barnstable Town Committee to hear the new application. He suggested that once an appeal was filed, the Town Committee lost jurisdiction over the proposed project and that it was an error for the Barnstable Town Committee to hear a new application on the same property.

He reviewed the five (5) reasons for the appeal set forth in the Appellants' Petition For Appeal.

He restated his prior claim that the Barnstable Town Committee made an error by favorably acting upon an application when alleged violations existed for work done by the Applicant under a prior Certificate of Appropriateness. He again stated that two years earlier, the Applicant had been granted permission to make a break in a stone wall to construct an access road to the subject property and that when the Barnstable Town Committee held a public hearing on the new application, the Applicant had not complied with all of the conditions set forth in the prior Certificate of Appropriateness.

He pointed out that the prior Certificate of Appropriateness required the construction of returns. He showed the Commission plans and photographs of the site indicating the absence of the required returns.

He argued that it was an error for the Barnstable Town Committee to grant a new Certificate of Appropriateness for the construction of the dwelling and garage with out fully addressing his clients' demand for a strict enforcement of conditions set forth in the prior Certificate of Appropriateness.

He went on to assert that the Applicant had cleared the lots, altered other stonewalls in the area and placed two granite posts on the premises without obtaining the prior approval of the Barnstable Town Committee.

He again claimed that it was wrong for the Barnstable Town Committee to grant a Certificate of Appropriateness when the Applicant was in violation of the Historic District Act.

He next argued that the proposed buildings were "too large" and "massive" for the neighborhood. He pointed out that the "size" and "mass" of a proposed building is a proper factor for consideration. He suggested that the Barnstable Town Committee failed to properly consider the impact of the construction of the proposed dwellings would have on the appearance of the neighborhood. He characterized the proposed dwellings as being "McMansions" and suggested that they would not be consistent with the purposes of the Historic District Act.

He alleged that the Barnstable Town Committee erred by failing to require the Applicant to submit three items of information with the Application. These items were a proper plot plan, photographs of the property and an outline of proposed tree cutting and alterations to the grading of the lots. He stated that these items were required under the Commission's Guidelines (Section A.7. a., d. & e.) and that it was an error for the Town Committee to not strictly require adherence to the Commission's Guidelines.

The Town Committee's Presentation:

Patricia Anderson addressed the Commission on behalf of the Barnstable Town Committee. She stated that when an application is submitted to her Committee, it is their procedure to schedule a public hearing and hear the application on its merits. She

indicated that the matter was duly advertised and that proper notice was given to the abutters. She confirmed that the Appellants and their attorney failed to appear and/or object to the proposed revised plans. She reported that when the Appellant's Attorney had appeared at a prior public hearing in July, he had stated that the building "design and style" was acceptable to his clients.

She stated that the Barnstable Town Committee did not agree with the new allegation that the dwelling was a "McMansion." She reported that the Barnstable Town Committee reviewed the proposed size, design, style and location of the proposed buildings. She confirmed that the Committee unanimously approved the application for a new Certificate of Appropriateness.

She again indicated that issue of the alleged violations is a matter that is best handled by the Building Commissioner's Department. She stated that an Assistant Building Commissioner attends all of the Barnstable Town Committee's meetings and has heard the Appellant's alleged complaints. She indicated that linking this application to the alleged violation issue was a procedure that the Committee rejected.

She expressed the opinion that the matter of enforcement is better handled separately and ought to be left in the hands of the Enforcement Officer. She again indicated support for the fact that the power to prosecute violations and the duty to enforce the Historic District Act rested with the Barnstable Building Commissioner (See Section 12 – Enforcement).

Public Comment:

Louis Cataldo, an Appellant, stated that he felt that the Barnstable Town Committee was supposed to listen to the interests of the abutters and enforce the Act. He indicated that he had attended most of the public hearings on this development and that he saw violations of the Act taking place that were being ignored.

He stated that his main concern was with the increased traffic that this development had brought to the area. He claimed that Maushop Avenue was supposed to be a dead-end street. He expressed an objection to the noise of the heavy construction trucks going in and out of the development. He indicated the abutters were very upset and concerned about the increased traffic. He expressed the opinion that the road was being damaged by the heavy traffic. He reported that the increased noise was disturbing his infirmed wife and that his house was being shaken by the traffic of the heavy construction trucks.

He asserted that the Applicant had broken his word. He claimed that a lot was going to be turned over to a conservation trust and not be developed.

He again suggested that the Barnstable Town Committee and Regional Commission should hold up all new requests for approvals until the abutters concerns are satisfactorily resolved.

Marcy Dugas, an Appellant, began by stating that she wanted Mr. Lomenzo to stop participating in the proceedings. She stated that she felt that she had observed him making inappropriate facial expressions toward the Applicant during the hearing.

She again claimed that there are still some violations of the Act that are not being properly addressed.

She said, "that there are a lot of abutters who are very concerned about this property, these stone walls and this particular builder and how he is treating the neighborhood."

She suggested that the Applicant was "harassing the neighbors in the area" by trying to get around the regulations by continuing to submit applications that would allow him to continue to build. She complained that this action forces the neighbors to come out to multiple public hearings and spend a lot of money on legal representation. She said that it is very costly for the people to try to do appeals to protect their rights.

She accused the Applicant of having a total disregard for the neighbors feeling. She ended her comments by stating: "...there is no relief or end to the process and it is getting unbearable."

Joseph Dugas, an Appellant, stated that he had a signed letter from the Applicant in which he promised to never remove any of the original rocks or stones from the entrance to the property. He pointed out that this was an application by Mr. Woollard and his Trust. He suggested that the simple solution to all this conflict would be for the Applicant to put the old stones back. He claimed that the Appellants do not care what the Applicant does with the stonewall located at 141 & 142 Maushop Avenue.

He claimed that Mr. Cataldo has indicated that he only wants those original stones put back at the entrance to the subdivision. He questioned what had happened to the original stones and noted that the Applicant had erected two granite pilings with out permission at the entrance to the subdivision.

Mr. Dugas additionally indicated that at the planning board subdivision hearing, Mr. Woollard had promised to convey a lot to a land trust and suggested that the land trust had ten thousand dollars (\$10,000) that would be paid to the Applicant when he conveyed the lot to the land trust.

Applicant's Rebuttal:

The Applicant's attorney, Michael D. Ford, began by stating that the proceedings appear to have gotten off the track of what should be the focus of the review. Notwithstanding that, he suggested that the Commissioners should be aware that the individuals sitting there, as well as the other Appellants, have from the beginning objected to Mr. Woollard's development plan. He said that the Appellants have objected in the Planning Board, in the Land Court, in the Appeals Court, in the Superior Court, in the District Court, and before the local Old King's Highway Committee, the Old King's Highway

Regional Historic District Commission and the Zoning Board of Appeals. He claimed that every avenue that these people could possibly use has been taken in an attempt to stop this development. He advised the Commissioners that there was a case pending in the Appeals Court, one in the Superior Court and one in the District Court. He indicated that the Appellants are the Plaintiffs in each of the cases.

He next addressed the size of the proposed house. He reminded the Commissioners that the proposed dwellings are being located on two acre lots. He indicated that the location and setting made the proposed dwelling an appropriate size for its location.

On the issue of the alleged noncompliance with the conditions of the prior Certificate of Appropriateness for the stonewall located at the entrance to the development, he reported that the Applicant had been back before the Barnstable Town Committee at a separate meeting and had reached an agreement to modify the returns and build the opening in a manner that was satisfactory to the Barnstable Town Committee.

He indicated that he felt that his client has been proactive in addressing the stonewall issues raised by the Appellants and that returning to the local Town Committee was a proper procedure under the Act. He pointed out that there is nothing in the Act or in the Regulations that would prevent an applicant from reapplying to the local Town Committee with new plans.

Appellant's Rebuttal:

The Appellant's Attorney, Paul Revere, III, indicated that many of the issues in this appeal were similar to those in the first appeal and that the applicant should not be allowed to make an end run around the Appellate procedure.

Discussion:

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

Chairman Robinson stated that the present dispute had similarities to other neighborhood situations where a developer attempts to build on vacant land that has been left undeveloped for a long period of time. He suggested that the Historic District Act does not prevent the development of vacant land. He invited comment from the other Commissioners

Mr. Marinaccio indicated that he did not see any evidence that showed that the Barnstable Town Committee had acted erroneously or violated the requirements of the Act or the Commission's Rules and Regulations. He indicated that he felt that the Barnstable Committee acted in a reasonable manner in approving the new Application for a Certificate of Appropriateness.

Deborah Gray stated that in going over the list of issues set forth in the appeal petition she once again felt that the alleged outstanding violations of an applicant did not prevent the local Town Committee from hearing and deciding the application on its merits. She pointed out that neither the Act nor the Regulation prevent a reapplication from being reviewed by a Town Committee.

She noted that the Town Committee is required to act on all applications within forty five (45) days of the submission and to refuse to accept an application or fully review an application would run the risk of having an approval granted by default under Section 9 of the Act.

On the issue of the size of the proposed dwelling and garage, she indicated that she did not agree with the Appellant's "McMansion" characterization. She felt that the size was appropriate for the setting and that the local town committee did not make an error in approving the revised plans.

Mr. Robinson stated that he agreed with Mrs. Gray's observations and supported the right of the Applicant to reapply to the local Town Committee for the approval of the new plans.

Mr. Lomenzo stated that the request for a remand needed to come with some factual allegations about what the Town Committee did not listen to or did not do at the public hearing. He indicated that he did not see any factual issues or value to a remand of this matter back to the local Town Committee.

Mr. Robinson raised the issue of enforcement of the Act in Barnstable. He asked if there was a problem with the Building Commissioner's willingness to enforce the Act.

The Applicant stated that the Building Commissioner had been to the site and was aware of the conditions of the modifications that needed to be done to entrance. He reported that a Certificate of Compliance for the house under construction on Lot 140 would not be issued until he fully complied with the conditions of the modification agreement.

Patricia Anderson stated that there was not an enforcement problem with the Barnstable Building Department.

The Commission findings:

The Commission found as follows:

That the Barnstable Town Committee did not act erroneously in granting the Certificate of Appropriateness while allegations of violations of the Historic District Act were being asserted by abutters.

That the Barnstable Town Committee did not act erroneously in acting upon a new application for a revised plan when an appeal is pending in the District Court on a prior Application for the same property.

That the Barnstable Town Committee was not erroneous in acting on the application with the plans, specifications and material presented at its hearing.

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

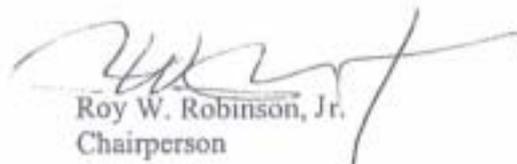
That the Barnstable Town Committee did not exceed its authority or exercise poor judgment in granting the Certificate of Appropriateness.

Determination:

As to Appeal #2007-9, the decision of the Barnstable Committee to grant the Certificate of Appropriateness is affirmed (4-0-1).

Lemenzo, Marinaccio, Gray, and Robinson – Voting Affirmative:
Anderson – 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