

BARNSTABLE
DISTRICT

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

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

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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. 2007-10

**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 #2007-10 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 4, 142 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 142 Maushop Avenue, Barnstable, as an application for permission to the construct of a single family dwelling with an attached garage. He identified the location premises as being the middle lot of a three-lot subdivision. He reviewed a site plan showing the nearby house under construction at 140 Maushop Avenue and the

elevation plans for a similar proposed dwelling and garage to be located at 142 Maushop Avenue. He stated that the dwelling and garage were the same design and style as previously reviewed and approved in Appeal 2007-7. He indicated that the parties were the same parties in this appeal as were before the Commission in Appeal 2007-7 on September 4, 2007.

He stated that the only changes in the plans presented in this application from the prior approved application (Appeal 2007-7) was the deletion of the contested prior proposed break in the stone wall and a modification to the location of the garage and it's door openings.

He indicated that the house was a 3,500 square foot to be located on a two-acre lot. He indicated that it was approximately the same size as the other two houses that were to be constructed on the adjoining lots.

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).

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 advised the Commission that the alleged stonewall entrance violations had been remedied by a modification agreement and indicated that he was unaware of any existing violations on the site.

He suggested that there was not a prohibition against a reapplication for a modified building and site plan that would address the Appellants' objections.

He showed the Commissioners a site plan that had been submitted to the Town Committee showing the lawn, plantings and paving.

He requested that for all of the above reasons that the determination by the Barnstable Town Committee be affirmed.

The Appellant's Presentation:

The Appellant's Attorney, Paul Revere, III, stated that at the time the new application was filed with the Barnstable Committee, the prior application was pending before the Regional Commission. He restated a claim that once an application goes into the appeal process that an applicant should be prevented from reapplying to a local committee.

In addition, he suggested that while the alleged violations may have been subsequently resolved, they existed at the time of hearing before the Barnstable Committee and ought to be linked to action on the application.

He expressed concern that the original stones may still be missing from the entrance and suggested that there may still be existing violations.

He pointed out that while the lots contain two acres, the buildings would be located at one end and fairly close together. He suggested that the "bulking up" of the buildings would be inappropriate.

He disputed the stipulation as only applying to that hearing and not to this new application.

He also suggested that the lot appears to have been "clear cut" with a plan being submitted for approval by the Town Committee.

The Town Committee's Presentation:

Patricia Anderson addressed the Commission on behalf of the Barnstable Town Committee. She stated that when the new application was submitted, it was viewed as a good proposal that would allow the stonewall to remain in place. She pointed out that no opposition was presented to the size, design and style of the proposed buildings. She confirmed that the abutters had been notified of the hearing and that the Committee unanimously approved the application for a new Certificate of Appropriateness.

She indicated that the landscape plan and other submissions were typical of what are submitted for a new house.

Public Comment:

Louis Cataldo and Marcy Dugas, Appellants, asked that their presents be noted and that their comments from the prior Appeal 2007-9 be remembered in this review. Marcy stated that the value of public comments should always be recognized and appreciated.

Applicant's Rebuttal:

WAIVED

Appellant's Rebuttal:

WAIVED

Discussion:

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

Deborah Gray expressed the opinion 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. Lomenzo stated that he would offer a motion to affirm the determination by the Barnstable Committee. He indicated that he felt that the Town Committee acted properly and did not exceed its authority or exercise poor judgment, nor was the Committee arbitrary, capricious, or erroneous in its action.

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 #2007-10, 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