

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

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TOWN CLERK  
TOWN OF SANDWICH

DEC 31 2007

**Richard W. Churchill, Appellant/Applicant**

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RECEIVED & RECORDED

**Vs.**

**Decision #2007-11**

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

On Tuesday, December 4, 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 #2007-11 filed by Richard W. Churchill, seeking reversal of a decision by the Sandwich Historic District Committee denying a Certificate of Appropriateness covering a dock and walkway to be located at 12 Harbor Street, Sandwich, Massachusetts.

Present were Mark Marinaccio, Sandwich; Deborah Gray, Yarmouth; Roy W. Robinson, Jr., Brewster; Patricia Anderson, Barnstable; James R. Wilson, Commission Administrative Attorney; Jonathan D. Fitch, Appellant/Applicant's Attorney; and Allen Osgood, Appellant/Applicant's Designer.

Absent were Peter Lomenzo, Dennis, and Paul Leach, Orleans.

The Town Committee's decision was filed with the Town Clerk on October 26, 2007. The appeal was entered with the Commission on October 31, 2007, within the 10-day appeal period.

**The Appellant/Applicant's Presentation:**

Jonathan D. Fitch, Attorney for the Appellant/Applicant, addressed the Commission on behalf of his client's appeal. He began by advising the Commissioners of the local communities support for the restoration of the Sandwich Boardwalk that is located relatively nearby. He described the historical relationship of the local people to the Sea and the importance of preserving this part of the local "heritage." He described the history of the local area and the change to a residential neighborhood following the collapse of the Sandwich Glass Factory and its related industrial waterfront.

He described the need to protect the marsh from the risk of damage by direct pedestrian activity in the environmentally sensitive "buffer zone." He indicated that the design of the proposed walkway and ramp reflected a contemporary effort to allow access to the tidal Creek. He presented a copy of the Sandwich Conservation Commission's Order of Conditions approving the proposed design. He suggested that the size and height of the structure was necessary, so that sunlight could reach the marsh grass growing under the elevated walkway.

He showed the Commissioners a site plan of the area and used aerial photographs to point out other docks with elevated walkways that had been approved and constructed on the other side of the Harbor.

He showed the Commissioners a photograph of an existing smaller dock that is located on the Applicant's property. He pointed out the environmental "ware" and "damage" that the existing dock was causing to the marsh area. He described it as being an example of the consequence of "the old way of doing things" in the marsh area.

He showed the Commissioners photographs of the Sandwich Boardwalk and pointed out the architectural features that the Applicant's proposed walkway and dock would share with the existing public walkway.

He next showed photographs of a nearby dwelling that had been built on pilings to comply with "flood zone" requirements. He also showed the Commissioners a dwelling with a large deck and suggested that these features reflect important similar features to the applicant's proposed walkway and dock.

He indicated that while the subject property is located in the midst of the old industrial glass factory complex, all physical remnants of the factory works have been removed and replaced by a community of small single family residences that appear to lack all historic architectural value and significance.

He showed the Commissioners a copy of a letter from an environmental consultant explaining the environmental benefits of the design of the proposed elevated walkway and expressing the opinion that the proposal was the best way to access the Creek for boating.

He asked the Applicant's Designer, Allan Osgood, to describe the proposed project.

Mr. Allan Osgood presented the plans for examination.

He explained that the main walkway consisted of five sixteen-foot sections, which gave the elevated walkway an eighty-foot length. He described the walkway as beginning at the grade of the existing house at twelve feet above sea level. He reviewed the plans, which showed the structure's location as it crossed the marsh to a point near the edge of the Creek. He stated that the walkway would have a minimum of a five-foot height above the existing marsh area. He stated that each of the five sixteen-foot sections would have a set of hand railings that would be three feet above the surface of the walkway. In addition, to the minimum five-foot distance from the bottom of the sections to the marsh, each section would be constructed with two by twelve stringers thereby giving an overall height of nine feet from the marsh to the top of the proposed hand railings. At the end of the eighty-foot walkway would be a floating dock that would be connected to the walkway with an aluminum ramp. The ramp and dock would go up and down with the

tide. With the exception of the ramp, the structure is to be of all wood construction. The structures would be supported by twelve-inch diameter wooden pilings.

He claimed that the natural vegetation in the area would obscure much of the structure from public view. In addition, he described the design as being very simple and similar to the other walkways and docks that had been built on the other side of the Harbor.

Deborah Gray inquired as to how the height of the proposed walkway would compare with that of the existing public town Walkway.

Mr. Fitch indicated that the walkway was of similar height but that the bridge portion was substantially higher than his client's proposed walkway.

He went on to state that docks and walkways are an important local coastal feature and their construction is an important contemporary way to preserve the Community's access to its coastal heritage.

Mr. Wilson asked for a clarification of the width dimension of the walkway.

It was explained that the interior width would be four feet and the exterior width five feet, as the pilings would be twelve inches in diameter and the hand rails six inches in width.

Patricia Anderson inquired as to whether or not the structure would have lights.

Mr. Osgood indicated that it would be illuminated, but that it would be restricted to a maximum candle level of .2.

Mr. Fitch showed the Commissioners one more photograph, which he described as being taken in the 1940s and showing the location of the proposed dock with a bulkhead and boat at the location.

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

Mark Marinaccio addressed the Commission on behalf of the Sandwich Town Committee.

He began by suggesting that the applicant's agents had presented a very wide and sweeping picture in their portrayal of the proposed project. He asserted that the proposed project did not involve the approval of a house or decks, nor should it be judged on the environmental protection issues highlighted by the Applicant. He indicated that the focus should be narrowed to the simple issue of the placement of a pier in a particular marsh area. He went on to cite Section 1 of the Act and read the following: "The purpose of this Act is to promote the general welfare of the inhabitants... through the preservation and protection of buildings, settings and places within the boundaries of the regional district..."

He presented a copy of the transcript from the October 24, 2007 hearing and requested that the Commissioners take the time to review it. The Commissioners reviewed the transcript.

He identified the area as being called the "Town Dock Area" and described it as an area subject to significant public use. He indicated that a nearby small existing pier identified by the Applicant as being privately owned by him, was publicly used and called the "Town Dock."

He used photographs and plans to point out the proposed location of the proposed walkway and pier. He indicated that it would be very visible to the public.

He described the area as being "a pristine marsh area" and he asserted that there were no other docks or piers of a similar size or style in this part of the Town. He went on to point out that the walkways and piers mentioned by the Applicant's agents were located on the other side of the Harbor and at least a mile away from the site of the proposed project.

He distinguished the proposed walkway and dock from the large public Town walkway. He claimed that the Town's walkway was not the same as the private pier being proposed by the applicant.

In addressing the Appellant's claim that the Sandwich Committee failed to support its denial with relevant subsidiary findings, he read from the written denial statement which stated as follows: "The Committee felt the location of this style of deck and dock access was inappropriate for this marsh location."

He went on to suggest that the Committee was carrying out its responsibility, as set forth in Section 1 of the Act, by protecting this particular setting from the construction of a structure that the Committee felt would not be compatible with the immediate surroundings.

On the issue of hardship, he pointed out that the Applicant's Agent was asked at the Town Committee hearing if he wished to offer any evidence of hardship and he declined.

In response to the Appellant's claim that the Committee exercised poor judgment, exceeded its authority and was arbitrary and erroneously in its action, he stated that the Sandwich Committee considered the factors set forth in Section 10 of the Act and reached a unanimous (4-0) determination that the specific structure was inappropriate for the specific location within the district.

**Public Comment:**

Robert DeRoeck of 2 Jarvis Street Extension stated that he supported the denial and wanted to point out that the plans call for the placement of eighteen twenty-seven foot pilings in the marsh to support the walkway and pier. He indicated that all the other

boaters use moorings and a dingy to access their vessels. He suggested that the size of the proposed structure would be bad for the relatively "pristine marsh" and its environment.

**Appellant/Applicant's Rebuttal:**

Mr. Fitch stated that the Sandwich Committee appeared to be making a distinction between public projects and private projects. He claimed that the comments of Mr. Marinaccio in pointing out the public nature of the Town's walkway and the private nature of the proposed private walkway and pier, appeared to reflect a different standard was being used to judge the appropriateness of his Client's project.

He stated that there is no difference between the appropriateness of a public project and a private project. He went on to assert that the private property owner should not be required to maintain the natural beauty for the neighborhood. He again stated that docks and access to the water are an important part the local heritage.

**Town Committee Rebuttal:**

Mr. Marinaccio stated that his comments about the distinction between the Town's Walkway and the Applicant's dock were directed to the distinction in use of the two structures. He stated that the public walkway is used to get from one place to another and the dock is used for boats.

**Discussion:**

The members of the Commission reviewed the material submitted for review.

Mr. Robinson stated that he did not agree with the Town Committee's distinction with the Town's Walkway and expressed the opinion that the two structures were very similar in appearance. He expressed concern about the proposed lighting of the pier and dock.

Patricia Anderson stated that she felt that the proposed walkway and dock is going to be very large and have a significant impact on the area. She distinguished the Town Boardwalk as preexisting for more than a hundred years. She indicated that she felt that the Town Committee acted properly and did not exercise poor judgment in denying the application. She stated that she believed that they made the correct decision.

Deborah Gray stated that she felt that the Town Committee was not arbitrary, capricious or erroneous in the manner that it handled the application. She said that in reading over the transcript, it appears that the Committee made a proper effort to ask relevant questions and understand and discuss the factors raised by the Application. She observed that the large "size" of pier and the changes to the natural "setting" were significant factors that supported the Committee's determination to deny the project. She noted that there was an absence of dock and pier remnants in the area.

Mr. Robinson stated that he was still concerned about the lighting issue and felt that a remand might cause the Town Committee to address that issue with greater detail.

Deborah Gray stated that she felt that the lighting was not a factor for the Commission to address because the Town Committee had denied the project. She restated her opinion that the Town Committee had acted properly in denying a Certificate of Appropriateness for the large pier.

Deborah Gray moved to uphold the determination of the Sandwich Town Committee, which motion was seconded by Patricia Anderson.

In support of her motion she again stated that she felt the Committee was not arbitrary, capricious or erroneous in its action and that it did not exercise poor judgment in denying the application for a Certificate of Appropriateness for the proposed walkway and dock.

**The Commission findings:**

The Commission found as follows:

The Sandwich Town Committee's denial was supported by relevant factors.

That the large size of the proposed walkway and dock and the relatively pristine marsh setting were sufficient relevant factors to deny the project.

That the Sandwich Town Committee acted properly in denying the application on the basis of the two above mentioned factors.

**Determination:**

As to Appeal #2007-11, the decision of the Sandwich Town Committee denying the application is affirmed. (2-0-2)

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 Sandwich Town Clerk.

December 31, 2007

  
Roy W. Robinson, Jr., Chairperson