

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

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

**Stuborn, L.P., Appellant/Applicant**

**Vs.**

**Decision #2008-3**

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

On Tuesday, April 1, 2008 at 7:45 P.M., the Commission held a hearing at the Fire Station Community Room, 340 Route 6A, Yarmouth Port, Massachusetts, on Appeal #2008-3 filed by Stubon, L.P., seeking reversal of a decision by the Barnstable Historic District Committee denying a Certificate for Demolition or Removal for the "Cannery Building" located at 153 Freezer Road, Barnstable, Massachusetts.

Present were Patricia McArdle, Sandwich; Peter Lomenzo, Dennis; Deborah Gray, Yarmouth; Roy W. Robinson, Jr., Brewster; Robert Stahley, Barnstable; James R. Wilson, Commission Administrator; Stuart Bornstein, and Paul Revere, III, Appellant/Applicant's Attorney.

Absent was Paul Leach, Orleans.

The Town Committee's decision was filed with the Town Clerk on February 20, 2008. The appeal was entered with the Commission on March 3; 2008, within the 10-day appeal period.

**Review of Petition for Appeal and attached six (6) Exhibits:**

At the commencement of the public hearing, it was announced that prior to the hearing, each Commissioner had been given a copy of the appeal Petition with its related (6) Exhibits to review in advance of the Public Hearing. Included in the Exhibits was a copy of a letter of denial that had been filed with the Town Clerk as the Committee's Decision. The Appellant/Applicant asserted that this letter was not formally adopted by a vote of the Town Committee and left it "unclear" as to the basis of the Town Committee's action on the application in denying the request for permission to demolish the "Cannery Building."

The Appeal Petition asserts that a series of factors were not clearly or properly addressed by the Town Committee and requests that the Commission address all substantive factual issues during the review hearing and ultimately grant the Certificate for Demolition or Removal to the Petitioner.

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**Recommendation:**

The following recommendation from the Commission Administrator was given to the Appellant/Applicant and Commissioners:

"While the Minutes of the Town Committee's hearing may provide much of the information, I believe that there is a need to require the Town Committee to demonstrate that it properly considered the factors to be reviewed for a Certificate for Demolition or Removal and/or the denial of a variance under the hardship section of the Act. The failure to set forth specific factual findings in the written decision will make appellate review of the matter very difficult.

I therefore recommend that Commission annul the determination and remand the Application back to local Town Committee for a timely public hearing resulting in a revised written decision that contains the adoption of specific factual findings on the following issues:

1. *Certificate For Demolition or Removal* (Section 10, Clause b)
  - a.) Architectural or historic interest of the "cannery building"
  - b.) Detrimental to the public interest
2. *Hardship/Variance* - (Section 10, Clause c)
  - a.) Unique hardship affecting the building, but not affecting the District generally
  - b.) Substantial hardship
  - c.) It would not be detrimental to the public welfare or interest to grant the Certificate for Demolition or Removal
  - d.) It would not be a substantial derogation from the intent and purposes of the Act to grant the Certificate for Demolition or Removal.

Additional procedural requirements:

- 1.) The Committee is to hold the hearing and vote to adopt its written finding so that the revised written determination is filed with the Town Clerk, Commission and a copy sent to the Applicant on or before **Friday, May 16<sup>th</sup> 2008**.
- 2.) The Commission will review the revised written decision at a public hearing to be held at its regular monthly meeting on **Tuesday, June 3, 2008.**"

**Discussion:**

Mr. Lomenzo expressed support for the recommendation and offered a motion to adopt it as given. Mrs. McArdle seconded the motion.

Mr. Revere and Mr. Bornstein expressed concern that this procedure not delay the Commission's review. They suggested that the remand be called "a re-opening of the hearing" as opposed to a "hearing" and requested that the remand be limited to an opportunity to adopt written findings without hearing new testimony or public comment.

The Commissioners agreed that the hearing could be referred to as a "re-opening" of the prior hearing, so that the prior submissions would not need to be resubmitted but that the Town Committee would be permitted to hear additional facts and comments. It being stated that the Town Committee should be given the fullest discretion to act in the matter, including the opportunity to hear new evidence and to change and/or modify its ultimate determination.

The motion to nullify the decision of the Town Committee and to remand the matter to the Town Committee to take additional action in accordance with the above recommendation as modified and/or clarified was approved.

**The Commission findings:**

The Commission found as follows:

That it was an error when the Town Committee failed to make more substantial specific written factual findings in this matter.

That the determination by the Town Committee should be annulled and the application remanded to the Town Committee for further action in accordance with the above recommendation.

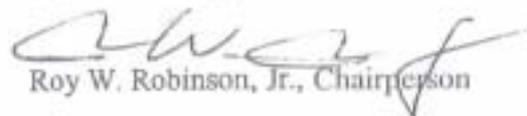
That the matter be scheduled for review at the June 3, 2008 Commission Meeting.

**Determination:**

As to **Appeal #2008 - 3**, the decision of the Barnstable Town Committee denying the application is annulled and the matter is remanded to the Barnstable Town Committee for further action in accordance with the above requirements. (4-0-1)

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.

April 3, 2008

  
Roy W. Robinson, Jr., Chairperson

BARNSTABLE

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**Stuborn, L.P., Appellant/Applicant**

**Vs.**

**Decision #2008-3-(Final)**

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

On Tuesday, June 3, 2008 at 7:45 P.M., the Commission held a hearing at the Fire Station Community Room, 340 Route 6A, Yarmouth Port, Massachusetts, on Appeal #2008-3 filed by Stubon, L.P., seeking reversal of a decision by the Barnstable Historic District Committee denying a Certificate for Demolition or Removal for the "Cannery Building" located at 153 Freezer Road, Barnstable, Massachusetts.

Present were Patricia McArdle, Sandwich; Peter Lomenzo, Dennis; Richard E. Gagenwarth, Yarmouth; Roy W. Robinson, Jr., Brewster; Patricia Anderson, Barnstable; James R. Wilson, Commission Administrator; Stuart Bornstein, Applicant/Appellant4; and Paul Revere, III, Appellant/Applicant's Attorney.

Absent was Paul Leach, Orleans.

The Town Committee's decision was filed with the Town Clerk on February 20, 2008. The appeal was entered with the Commission on March 3, 2008, within the 10-day appeal period.

The Commission remanded the matter to the Barnstable Committee on April 1, 2008 for further review and to make specific written findings. (See Decision #2008-3 filed with the Town Clerk on April 3, 2008)

The Barnstable Town Committee re-opened the public hearing on April 23, 2008, heard additional testimony and made a series of specific written findings. The written decision with an addendum was filed with the Town Clerk and Regional Commission on May 6, 2008.

In accordance with the remand order, the matter was scheduled for review at the June 3, 2008 regular monthly Commission meeting.

**Review of Town Committee's Written Findings:**

At the commencement of the public hearing, it was announced that the Town Committee's written findings with their addendum had been distributed to all the Commissioners for review in advance of the hearing.

**Appellant/Applicant's Presentation:**

Paul Revere, III addressed the Commission on behalf of Stuborn, L.P. and highlighted many of the items set forth in the written appeal petition. He described the Cannery Building as a serious safety hazard and beyond repair. He showed pictures of the building and pointed out many of its structural defects.

He dramatically demonstrated the rotten and weakened condition of the pine support posts. He suggested that the building had been designed for short-term use during the Second World War. He expressed the opinion that it would soon fall down on its own.

He described the building as being very limited in its potential for re-use. He mentioned the risk of fire and other problems that inhibit the buildings future use.

**Town Committee's Presentation:**

Patricia Anderson described the findings made by the Town Committee in denying the application. She stated that the condition of the property was self-imposed by the owner's neglect and failure to properly maintain the building.

She claimed that the building had an important history and that it's demolition would be detrimental to a public interest under the Act. She expressed the opinion that proper fencing and the restoration of the building could address all the public safety concerns.

She denied that the Town Committee had been arbitrary and/or erroneous in it's action on the application and encouraged the Commissioners to sustain the Town Committee's denial of the application for the demolition of the Cannery Building.

**Public Comments:**

Jeffrey A. DeCiccio stated that the Cannery Building was a hazard and that the location at the entrance to Barnstable Harbor needed to be cleaned up. He supported the Owner's application and stated that it was time to allow the demolition of the building.

Ann Canedy stated that she supported the Town Committee's denial of the application and pointed out the building's history and its historical value to the Town.

Stuart Bornstein stated that "public safety" was the main reason for reversing the Town Committee's denial.

Joseph Dugas stated that he was in full support of the applicant's request to demolish the Cannery Building.

**Discussion:**

Mr. Lomenzo stated that he did not agree with the Town Committee's determination that the Cannery Building had great historical value. He indicated that in his opinion the Town Committee was erroneous in its judgment that the building is historically significant. He indicated that he favored annulling the Town Committee's denial and issuing the Certificate for Demolition or Removal.

Mr. Gagenwarth agreed with Mr. Lomenzo. He stated that the building had been in poor condition for many years. He indicated that in his opinion, the Town Committee was in error when it held the Owner's neglect against the applicant. He expressed the opinion that the Cannery Building ought to have been torn down in 1975.

Mrs. McArdle indicated that public safety supports the demolition of the building and that the public interest would be better served by allowing the applicant to demolish the building.

Mr. Robinson stated that he agreed with the statements of the other Commissioners.

**The Commission findings:**

The Commission finds as follows:

That it was an error when the Town Committee determined that the Cannery Building had great historical value.

That a public safety interest supports the demolition of the Cannery Building.

That the determination by the Town Committee should be annulled and the application for a Certificate for Demolition or Removal of the Cannery Building should be approved.

**Determination:**

As to **Appeal #2008 - 3**, the decision of the Barnstable Town Committee denying the application is annulled and the determination is reversed. The Commission hereby approves the application and issues the Certificate for Demolition or Removal. (4-0-1)

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.

June 23, 2008

  
Roy W. Robinson, Jr., Chairperson