

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

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

Sandwich Historical Commission, Appellant

Vs.

Decision for Appeal No. 2010

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

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TOWN CLERK
TOWN OF SANDWICH

On Tuesday, May 18, 2010, at 3:00 P.M., the Commission held a public hearing at West Barnstable Fire Station Meeting Room, 2160 Meeting House Way (Route 149), West Barnstable, Massachusetts, on Appeal # 2010-2 filed by the Sandwich Historical Commission seeking reversal of a decision by the Sandwich Historic District Committee's granting to Irving & Carolyn Freeman a Certificate of Demolition for the 1827 Heman Nye, Sr. House, located at 211 Old King's Highway (a.k.a. Route 6A), Sandwich, Massachusetts.

Present were Chairman Peter T. Lomenzo, Jr., Dennis; Barbara Shaner, Sandwich; Richard Geganwarth, Yarmouth; Lawrence Houghton, Brewster; James R. Wilson, Commission Administrative Counsel; Irving and Carolyn Freeman, Applicants; Anne Michniewiez, Applicant's Architect; Benjamin J. Losordo, Attorney for the Applicants; William F. Daley and Jonathan A. Shaw for the Sandwich Historical Commission, Appellant. Absent: Paul Leach, Orleans & Patricia Anderson, Barnstable.

The Committee's decision was filed with the Town Clerk on April 16, 2010. The appeal was entered with the Commission on April 22, 2010, within the 10-day appeal period.

Copies of the Appeal Petition, Town's Decision and Minutes from the Town Committee's hearing were distributed to the Commissioners for review.

The Applicant's Presentation:

Attorney Benjamin J. Losordo addressed the Commission on behalf of the Applicant's application. He initially requested that the appeal be dismissed and submitted a Motion to Dismiss the appeal, claiming that the Appellant, Sandwich Historical Commission, was not an "Aggrieved Person." He submitted a Memorandum of Law in support of the motion.

Chairman Lomenzo stated that the Commission would take the Motion and Memorandum under advisement.

Mr. Losordo presented pictures of the house and a plan of the property. He indicated that the house was located about a half mile outside of core village area, screened by vegetation and setback approximately 110 feet from the Street. He claimed that it was

only minimally visible to the public and suggested that there should be less public interest in the preservation of the building.

He indicated that the Applicants had explored many ways of rehabilitating the house and found the costs too great. He indicated that the house had a serious mold problem.

While he acknowledged that the house was probably built in 1827, he claimed that structurally, it did not meet present codes and any effort to restore or save the house would be too burdensome and costly to the applicant.

He indicated that there was a shoemaker's shop located on the property that the applicant would preserve.

He presented and read letters of support for the demolition from nearby neighbors.

Anne Michniewicz reviewed the applicant's use of the house and the efforts made to find a way to restore and add on to the dwelling. She indicated that the cost and expenses of upgrading the plumbing system, electrical system and other related systems became too great for the Applicant to proceed with their efforts to preserve the 1827 house.

Mr. Geganwarth asked if the inside of the house had been upgraded over the years.

Anne Michniewicz stated that some upgrading had been done, but that the main part of the house was for the most part untouched.

Chairman Lomenzo asked if there had been a formal site visit conducted by the Town Committee.

Ms. Michniewicz indicated that it had not been done, but suggested that the practice of the Committee is for the individual members to visit the site informally before the hearing.

The Appellant's Presentation:

William F. Daley, Chairman of the Sandwich Historical Commission, stated that the house was built in 1827 and is identified as No. 76 in the Sandwich Historical Asset List. He stated that the house is one of approximately three hundred and fifty (350) historic homes that are more than a hundred years old in the Town. He described the building as a Cape Cod style home that is presently habitable and occupied.

Jonathan Shaw, a member of the Sandwich Historical Commission, reviewed the seven (7) claims of error set forth in the Commission's appeal petition. He suggested that the failure to make a formal viewing or examination of the interior of the property was an error. He pointed out the Committee's failure to seek independent verification of the Applicant's description of the poor condition of the property. He showed photographs of the property and the gravestones of the original occupants of the subject property who

were buried nearby. He claimed that the absence of a statement of detailed facts by the Town Committee either in its Minutes or in a written decision reflected a failure to fully consider and/or properly address the legal issues raised the proposed demolition. He went on to claim that the Town Committee appeared to act in an arbitrary and capricious manner by not adopting substantial findings on the historical value of the house.

In addition, he pointed out that the tape recording of the Town Committee's was of poor quality and that there appeared to be little or no record of the final determination to approve the demolition.

The Commissioners examined the Town Committee's Minutes of the hearing and its determination and observed the absence of any facts or details supporting the approval of the application for the Certificate for Demolition. The Commissioners also noted the failure to separate the record of the action taken on the application for the Certificate of Appropriateness for the proposed replacement dwelling.

The Town Committee's Presentation:

Barbara Shaner addressed the Commission on behalf of the Sandwich Town Committee. She indicated that the Town Committee did not make a formal joint viewing, because of a concern that it might violate the Open Meeting Law. She indicated that she thought that all the members had independently viewed the building from the Street. She indicated that her Committee had no funds to obtain independent verification of the condition of the dwelling.

She stated that the tape recorder was old, but that it was all that Town had provided to the Town Committee. She indicated that the meetings stopped being televised within the past year, but that their Committee had no control over the issue.

She indicated that the majority of the Committee voted in favor of the Application based upon the stated failed efforts by the Applicant to try and save the building.

Mr Gaganwarth asked if the Committee Members had been inside the building.

She indicated that the Members felt that it would be too complicated and suggested that it might be considered trespassing.

Public Comment:

Paul White of 295 Rote 6A, East Sandwich, stated that he was concerned about the process. He indicated that he felt that the Town Committee needed to more thoroughly examine and discuss the application.

Betty Allen of 252 Route 6A, East Sandwich, stated that she lived in an 1827 house on Route 6A and that she had made a major effort to restore her home. She indicated that restoration is very important and expressed the opinion that that the subject half Cape

should not be destroyed. She suggested that the Applicant owns additional land upon which he could build a new house without destroying the older 1827 Dwelling.

Applicant's Rebuttal:

Mr. Losordo asked his client, Carolyn Freeman, to speak to the health issues that her family had experienced with the subject property.

Mrs. Freeman stated that she had allergies. She indicated that they bother her when they try to stay in the house. She stated that her daughter would no longer stay in the house.

Mr. Losordo stated that a majority of the Committee voted to grant the application. He indicated that all of the evidence was presented and the Committee made a proper determination.

Anne Michniewicz asserted that Mr. Hayden had verified the condition of the property. She showed the Commissioners a copy of a hand written statement describing the poor condition of the subject building.

Appellant Rebuttal:

Mr. Daley asserted that the Town Committee did not ask any questions nor take the time to discuss the issues raised by the Sandwich Historical Commission. He restated their claim that the Committee failed to properly review and discuss the application.

Mr. Shaw indicated that the process was defective.

Town Committee's Rebuttal:

Ms. Shaner stated that she felt that her Town Committee acted properly in acting on the application

Motion to Dismiss:

Mr. Lomenzo requested that the Parties address the Applicant's Motion to Dismiss the appeal based on the issue of "standing."

Mr. Shaw stated that Section 3 of the Historic District Act defines "person" broadly so as to include "municipal agency" of which the Town Historical Commission is included. The Historical Commission is under MGLA Chapter 40 Section 8d charged with the protection and preservation of the historical assets of the Town.

Mr. Losordo stated that the Courts have ruled that the interests are a general public interest and not individual to the Appellant.

Mr. Lomenzo suggested that the Commission should follow the wording of the Chapter 470 of the Acts of 1973, as amended. He cited Section 3 and Section 11. Both Mr. Gaganwarth and Mr. Houghton indicated that they agreed with Mr. Lomenzo's suggestion.

Mr. Gaganwarth moved, seconded by Mr. Houghton, that the Applicant's Motion to Dismiss be denied. (Passed 3-0)

Commission Discussion on the Appeal:

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

Mr. Gaganwarth stated that he was concerned that the Committee did not have a formal viewing of the property. He indicated the opinion that the application ought to have had a better examination of the issues and that a report of a structural engineer ought to have been presented to the Committee.

Mr. Houghton stated that he was concerned that it appeared that not enough time and review had been put into the process. He suggested that perhaps the Appellant and the Applicant could work together to find a better alternative to the destruction of the 1827 dwelling.

Mr. Lomenzo stated that he agreed with his fellow Commissioners. He felt that the Committee made some errors in handling of the application. He expressed the opinion that the absence of a formal site visit was a mistake. He suggested that reasonable due diligence would require a greater review by the Town Committee. He additionally expressed concern at the absence of a clear and complete record of the Town Committee proceedings. He indicated that he supported a remand for further review by the Town Committee.

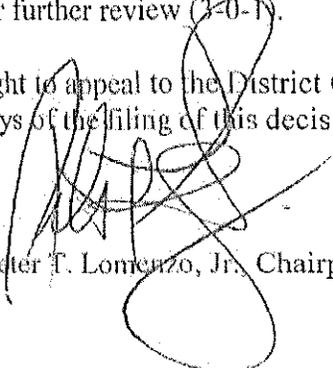
Mr. Gaganwarth moved, seconded by Mr. Houghton, that the determination by the Sandwich Committee be annulled and that the Application be remanded to the Sandwich Committee for further review and action.

Determination:

As to Appeal #2010-2, the decision of the Sandwich Committee is annulled and the matter returned to the Sandwich Committee for further review (3-0-1).

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 Sandwich Town Clerk.

Dated: June 8, 2010


Peter F. Lomenzo, Jr. Chairperson