

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

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

Tel: 508-775-1766

Stuborn, LLC, Appellant/Applicant

Vs.

Decision for Appeal No. 2010-3

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

On Tuesday, June 1, 2010 at 3:00 P.M., the Commission held a hearing at the West Barnstable Fire Station Meeting Room, 2160 Meeting House Way (Route 149), West Barnstable, Massachusetts, on Appeal # 2010-3 filed by Stuborn, LLC seeking reversal of a decision by the Barnstable Historic District Committee denying a Certificate of Appropriateness for a proposed single family dwelling with garage and attached guest house to be located at 153 freezer Road, Barnstable, Massachusetts.

Present were Chairman Peter T. Lomenzo, Jr., Dennis; Patricia McArdle, Sandwich; Richard Geganwarth, Yarmouth; Lawrence Houghton, Brewster; Carrie Bearse, Barnstable; James R. Wilson, Commission Administrative Counsel; Stuart Bornstein, Manager, for the Appellant/Applicant; Paul Revere, III, Attorney for the Appellant/Applicant; David Sigl, Architect for the Appellant/Applicant; and Norman Hayes and Kieran Healy of the BSC Group, Consultants and Surveyors for the Appellant/Applicant.

Absent was Paul Leach, Orleans.

The Committee's decision was filed with the Town Clerk on April 26, 2010. The appeal was entered with the Commission on May 6, 2010, within the 10-day appeal period.

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

The Appellant/Applicant's Presentation:

Attorney Paul Revere addressed the Commission on behalf of the Applicant's appeal. He criticized the action of the Town Committee in denying his client's application. He claimed that the Town Committee acted in an arbitrary and capricious manner by its action of determining that the size of the proposed residential building was too large.

He asked Norman Hayes of BSC Group to describe the site of the proposed project to the Commissioners.

The site consists of a triangular shaped peninsular of land containing approximately three (3) acres of salt marsh and four (4) acres of upland that is located at the entrance to Barnstable Harbor.

Mr. Hayes used aerial photographs and plans to describe the site. He described the site as a being located near to a large commercial marina that contained many large commercial buildings. He suggested that the location of the proposed building would be screened by natural vegetation and the view shed would not be as visually great and/or prominent as the peninsular location might appear.

He indicated that since acquiring the property in 1997, the Applicant has cleaned the property by removing a number of marine related buildings, structures and debris from the site. He stated that approximately 38,200 sq. feet of the parcel would be cleared of invasive growth and debris for additional environmental improvements to the site.

Atty. Revere asked David Sigl, Architect, to describe the plans for the residential dwelling, guesthouse and garage. He showed the site plan and sets of elevations to the Commissioners. He reviewed the changes that had been made to the original design to address the concerns expressed by the Town Committee.

He stated that the height and massing of the building had been reduced by a change to the elevation of the attached guesthouse. He showed the Commissioners the original submitted elevation plan and the revised elevation plan.

Chairman Lomenzo inquired as to the length of the ridgeline of the main house. Mr. Sigl indicated that it was seventy (70) feet long.

Atty. Revere stated that the large "size" of the proposed residence was the only reason for the Town Committee's denial. He indicated Section 10 Section 3 of the Historic District Act allows a Town Committee to consider the "size" of a proposed building, but argued that the consideration was restricted to a comparison with other buildings in the "immediate surroundings."

He pointed out the presents of large commercial buildings nearby and suggested that the Town Committee acted erroneously when it denied the application for the proposed large dwelling and guesthouse because of their proximately to the large commercial buildings.

He went on to point out that Barnstable Village has many large historic residential dwellings. He mentioned the Bacon Farm as an example. He additionally suggested that the mounding of the lot for greater height was historically appropriate.

He offered a list of large dwellings that have been approved within the Historic District and claimed that the Town Committee was acting arbitrary and capricious when it denied permission to build the Applicant's proposed dwelling.

Chairman Lomenzo asked if a specific guideline or definition as to an acceptable "size" and/or "massing" of the proposed building had been stated or given to the Applicant during the public hearings before the Town Committee.

Atty. Revere stated that the Town Committee had given no guidance on the issue.

The Town Committee's Presentation:

Carrie Bearse addressed the Commission on behalf of the Barnstable Town Committee. She stated that the Town Committee reviewed the proposed project at its public meetings on February 24, 2010, March 10, 2010, March 24, 2010 and April 14, 2010. She stated that all procedures, including the proper filing of written time extensions, had been followed and a proper decision of denial had been filed within the required time limits. She asserted that the Applicant was given the opportunity to hear the Town Committee's concerns about the height, size and massing of the proposed single-family dwelling.

She identified three size features that were stated in the Town Committee's written denial of the Application. She described the Committee's concern about the large square footage of the building, the proposed increased elevation above the existing grade and the unique massive appearance of the building, which the Committee found to be inappropriate for the area.

She stated that the Town Committee was concerned about the height of the building and the impact of the mounding of the lot. She indicated that much of the lot was presently at elevation 14 feet above mean sea level (MLW) and that the site plan called for raising the proposed basement of the building to eighteen (18) feet above mean sea level (MLW). She indicated that the Town Committee was concerned that the added fill with its steep grade and sea wall would significantly increase the appearance of the building's height.

In addition she expressed the opinion that the many high walls that surrounded the proposed building would add greatly to the massive appearance of the proposed building.

She asserted that the proposed dwelling and guesthouse would have the largest square footage of any single-family dwelling located within the Town's Historic District. She pointed out that in addition to the 10,422 square feet of living space on the upper two floors, the plans called for an additional 5,000 square feet of basement garage space. She stated that this square footage did not include the large area of porches. She indicated that Barnstable Village and the residences in the area all have a much smaller size than the proposed single-family dwelling.

She requested that the Town Committee's denial be affirmed.

Chairman Lomenzo asked if there were a specific way that the Applicant could know the exact height or size of the proposed building that would be acceptable to the Town Committee.

Carrie Bearse responded that the Town Committee did not give specific guidance to the Applicant, but deferred to the Applicant it's architect to adjust the design and plans to reduce the size and massive appearance of the proposed dwelling.

Public Comment:

Joyce Preston of Cummaquid expressed concern about the conservation requirements of the project.

Craig Schelter of 105 Pin Oak Drive, Barnstable expressed concern about the large scale of the proposed dwelling and suggested that its strategic location at the entrance to Barnstable Harbor would cause it to have a major impact on the appearance of the whole area. He suggested that the prominent location of the project required more design review than it had presently received.

Tim Williams of 22 Kent Road, Barnstable expressed support for the Applicant and encouraged the Commission to reverse the Town Committee denial.

Albert Barbour of 226 Indian Trail Road, Cummaquid expressed support for the Town Committee's denial of the application.

John Julius, a realtor and resident of Centerville, expressed support for the Applicant and asked the Commission to reverse the Town Committee's denial.

Keith Mackenzie-Bette, an architect from Barnstable Village, stated that the building was out of scale with its setting and encourage the Commission to sustain the Town Committee's denial.

Louis Cataldo of 92 Maushop Avenue, Barnstable suggested that the proposed dwelling would improve the neighborhood and urged the Commission to reverse the Town Committee's denial.

David Munsell of Route 6A, Barnstable expressed support for the Applicant and suggested that the Town Committee's denial should be reversed.

Gabrielle Black of Route 6A, West Barnstable expressed support for the Town Committee's denial and expressed the opinion that the proposed building was too large and inappropriate for the site.

Ann Canedy of Cummaquid expressed her support for the action of the Town Committee in denying the proposed project. She reviewed the history of the hearings and the reasons set forth in the Town Committee's decision. She asked that the Commission to uphold the denial.

Rebuttal

Atty. Revere read portions from a letter from John Falacci of Barnstable in support of the application and stating that the action of the Town Committee was an encroachment on the property rights of the owner.

He suggested that the Applicant had made very significant efforts to reduce the massing of the building and asked Mr. Segil to review the impact of the lowering of the guesthouse wing.

Mr. Segil showed the Commissioners before and after plans of the guesthouse wing.

Atty. Revere stated that the Applicant was significantly reducing amount building space on the lot and that the four acre size of the lot made the proposed building very reasonable for its location.

He asked the Commission to reverse the Town Committee's decision and grant a Certificate of Appropriateness to the Applicant.

Carrie Bears stated that the building, while being referred to a two-story building, appears to be three and one-half story building. The size is inappropriate for the proposed location. She stated that it is not the Town Committee's job to redesign the building for the Applicant.

Commission Discussion:

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

Chairman Lomenzo began the discussion by stating that determining whether the Barnstable Committee made a mistake of one of the five types set forth in Section 11 of the Historic District Act. He highlighted the points by asking the following questions. Did the Committee exceed its authority? Did the Committee exercise poor judgment? Was the Committee arbitrary in its actions? Was the Committee Capricious in its actions? Was the Committee erroneous in its actions? He asked each Commissioner to comment.

Patricia McArdle of Sandwich stated that she did not see very much of a change from the original plans and expressed concern about the large number of windows in the proposed design. She also expressed concern about the height of the building.

Lawrence Houghton expressed concern for the absence guidelines or specific direction from the Town Committee on the issues of height, size and massing. He indicated that the scaling back of the guesthouse wing was significant and that with more discussion the concerns of the Town Committee could be better addressed.

Chairman Lomenzo of Dennis stated that it appeared that the Applicant and the Town Committee did an excellent job of presenting their respective positions in the matter.

He indicated that he shared Mr. Houghton's opinion that better guidance on the issue of size, height and massing ought to have been given to the Applicant. He referred to the fifty-foot roofline Guideline on Page 31 (6d) of the Bulletin and expressed concern that it appeared not to have been addressed at the Committee level. He additionally referred to the confusion over the height of the proposed building.

He suggested that a remand for further review might lead to a more appropriate and acceptable conclusion in the review process.

The Commission findings:

The Commission found as follows:

The Town Committee was erroneous in not being more specific in its rejection of the proposed building.

The Town Committee and Applicant need to work together to develop a satisfactory size, height and mass configuration for the proposed dwelling and attached guesthouse.

Determination:

As to Appeal #2010-3, the decision of the Barnstable Committee is annulled and the Application remanded to the Barnstable Town Committee for further review on the issues of size, height and mass. (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 Barnstable Town Clerk.

Dated June 28, 2010

Peter T. Lomenzo, Jr., Chairperson