

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

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

**Katherine W. Converse, Trustee
of the Katherine W. Converse Living Trust,
Appellant**

Vs.

Decision for Appeal No. 2010-5

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

On Tuesday, September 14, 2010 at 2:00 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 # 2010-5 filed by Katherine W. Converse, Trustee of the Katherine W. Converse Living Trust seeking reversal of a decision by the Barnstable Old King's Highway Regional Historic District Committee granting a Certificate for the Demolition to Gregory A. and Barbara L. Ehret for the demolition of a single family house, basement and concrete patio located at 21 Scudder's Lane, Barnstable, Massachusetts.

Present were Chairman Peter T. Lomenzo, Jr., Dennis; William Collins, Sandwich; Richard Gegenwarth, Yarmouth; Lawrence Houghton, Brewster; Patricia Anderson, Barnstable; James R. Wilson, Commission Administrative Counsel; Gregory and Barbara Ehret, Applicants; Tracey L. Taylor, Attorney for the Applicant; Ben Thompson, Applicant's Architect; Katherine W. Converse, Trustee, Appellant; and Karen Z. Bell, Attorney for the Appellant.

Absent was Paul Leach, Orleans.

The Committee's decision was filed with the Town Clerk on July 16, 2010. The appeal was entered with the Commission on July 23, 2010, within the 10-day appeal period.

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

The Applicant's Presentation:

Tracey L. Taylor, Attorney for the Applicant, addressed the Commission on behalf of her client's application. She described the proposed project as seeking the demolition of a 1,700 square foot three bedroom with two bathrooms house that was built in 1930. She indicated that the application had been submitted in May and was approved by the local Town Committee on July 14, 2010. She asked that the decision of the Town Committee be upheld.

She stated that local Town Committees have substantial discretion in deciding whether or not to issue a Certificate for Demolition and suggested that if there is any rational basis for the decision that the Commission should uphold the Town Committee's determination to grant the Certificate for Demolition.

She reported that the hearing on July 14th was very lengthy with many speakers, but with very little evidence of historical or architectural significance presented to the Committee. She suggested that there was a lot of sentimentality expressed about the property but no evidence that the building had historical significance. She stated that the testimony described the building as being a guest cottage for a local historian and art collector.

She indicated that the house was not listed on the National and/or Massachusetts Register of Historic Places.

She reported that there was no evidence presented that the building was architecturally significant. She stated that there was no claim that the building was associated with a famous architect, designer or builder. She claimed that the building's style and design had no identifiable relevance to a specific architectural period.

Addressing the Appellant's Appeal, she disputed the claim that the Town Committee failed to allow the Appellant, and others, to be fully heard on the issue of the historical significance of the cottage. She stated that the Town Committee Chairman invited all persons present to speak and to offer additional information about the cottage. She went on to dispute the claim that the decision to approve the demolition was based on inaccurate assumptions as to the condition of the building or that the Town Committee failed to properly consider alternatives to demolition.

She requested that the Town Committee's decision be upheld.

The Appellant's Presentation:

Karen Bell, Attorney for the Appellant, addressed the Commission on behalf of her Client's appeal. She stated that the Town Committee acted in error when it issued the Certificate for Demolition. She claimed that the Committee failed to fully appreciate the historical context of the cottage or to accurately understand its structural condition, which caused the decision to be made in an arbitrary and capricious manner resulting in an exercising of poor judgment by the Town Committee.

She cited Section 1 – Purpose and Section 3 – Definitions of the Act to highlight the legal basis of her Client's claim of error. She reviewed the history of the Pond Village neighborhood and its legal designation as a District of Critical Planning Concern (DCPC). She reviewed the history of the cottage and the persons associated with its ownership and use. She acknowledged that the cottage did not represent a commonly recognized architectural style, but would be classified as "a carpenter's vernacular" which reflected a typical Cape Cod cottage built in the 1930s.

She acknowledged that the building was not listed on the National Register of Historic Places, but suggested that it would qualify and reviewed many of the general requirements for such a designation.

She disputed the structural description of the condition of the cottage that had been presented to the Town Committee at its Public Hearing.

She requested the Regional Commission overturn the Town Committee's decision for its failure to properly consider the historical significance of the building and properly evaluate the public's interest in its preservation.

Patricia Anderson asked the Appellant if they had any written material to support the factual disputes about building's condition and its historical significance.

Attorney Bell offered a written statement from Robert Hayden, a Building Mover, stating that the building was structurally sound and could be relocated to another site. She additionally stated that genealogical information had been documented and was available.

Chairman Lomenzo asked if historical information presented by the Appellant had been presented to the Town Committee at the July 14th Public Hearing.

Attorney Bell stated that a substantial portion of the material had been submitted in a written form. The Appellant indicated that some of the genealogical information had not been researched and was not available at the time of the Public Hearing.

The Town Committee's Presentation:

Patricia Anderson addressed the Commission on behalf of the Barnstable Town Committee. She indicated that the Town Committee had two Public Hearings on the application and that letters and testimony were presented at both. She indicated that the first hearing in June was continued so that each of the Town Committee Members would have an opportunity to visit the site and view the building. She indicated that she did not enter the building, but walked around it.

She confirmed that it is a "vernacular cottage" form of architecture. She indicated that the Town Committee was not aware of the structural condition of the building or some of the historical facts being presented by the Appellant at the Appeal Hearing.

She acknowledged that her vote to allow the demolition was in part based on the lack black and white documentation to support the Appellant's statement of facts in opposition to the proposed demolition.

She indicated that it was her Committee's Policy is to encourage preservation by relocation and she expressed concern that the building was not being saved by moving it to another site.

Mr. Geganwarth asked if George Jessop, the Town Committee's Architect Member, who had supported the demolition, if he had gone inside the building to examine its structural condition.

Mr. Jessop, who was in the audience, stated that he had not gone into the building.

Lawrence Houghton asked if the building had a full basement or a crawl space.

Patricia Anderson responded that she had not been into the building and could not answer the question.

Ben Thompson, Applicant's Architect, stated that the building had a 2/3rd full basement and 1/3rd crawl space.

Attorney Taylor asked to clarify the relocation issue by stating that the Applicant explored removing the building to the Appellant's property and decided that there were too many problems and contingencies to the process. She indicated that neighborhood opposition to the proposed relocation had developed.

Public Comment:

Christine Ehret expressed support for the Applicant stating that she was the mother of the applicant and that she lived nearby at 2390 Route 6A. She indicated that she walked by the property on a daily basis and that the subject building was not visible from Route 6A.

She described the cottage as being lightly built and indicated that the building was in poor condition and suggested that it would be very expensive to upgrade the water, electrical and other systems.

Applicant's Final Comments:

Attorney Taylor restated the Applicant's claim that the cottage lacked historical or architectural significance and that there was not a sufficient public interest in the preservation of the building to deny the application.

She asserted that the Town Committee acted properly in granting the Certificate for Demolition and requested that Commission uphold the Town Committee's action.

Appellant's Final Comments:

Attorney Bell restated the Appellant's claim that the cottage has historical and architectural value and a public interest in its preservation.

She requested that the Town Committee's granting of the Certificate for Demolition be reversed and the application denied.

Town Committee's Final Comments:

Mrs. Anderson acknowledged that at the time of the Town Committee public hearing, she did not have the benefit of the genealogy and engineering report.

She indicated that she felt that she would like to have had more information on why the building could not be relocated and preserved.

Commission Discussion:

The members of the Commission reviewed the material submitted for review during the public hearing.

Chairman Peter Lomenzo began the discussion by stating that he believed that the Town Committee made an error in not more fully understanding the building. He indicated that he felt that a greater effort needed to be made to preserve the building by finding a way to relocate it to a neighbor's property. He indicated that there are issues that are not resolved and require more clarification.

Richard Gegenwarth of Yarmouth stated that he visited the property and observed that it is well screened by holly trees and other vegetation. He reported that the house was not visible from Route 6A. It is Cape style house that in his opinion was not very significant.

William Collins of Sandwich stated that he visited the property and confirmed that it could not be seen from Route 6A. He indicated that he felt that the issue of historical significance was made with out all the information that it needed to make a proper determination. He also indicated that he was concerned about the apparent lack of information before the Town Committee when it was making assumptions about the condition of the building and the opportunity to save the building by relocation.

Lawrence Houghton of Brewster indicated that he had visited the site and observed that the building was not visible from Route 6A and that it was screened by the holly trees.

Chairman Peter Lomenzo of Dennis indicated concern that the Town Committee was not aware of some of the historical information about the cottage when it granted permission to demolish the cottage. He observed that the decision lacked clarity about the relocation issue and suggested that a remand to the Town Committee for a determination of the importance of the new information that has become available.

William Collins agreed with a remand for a proper determination on the issue of historical significance and the possible relocation of the building.

Lawrence Houghton agreed that there were too many things that were not properly addressed at the Town Committee level and that an error was made in granting the Certificate for Demolition.

Mr. Geganwarth stated that he felt that the Town Committee did not error in granting the Certificate for Demolition because it was based on what they knew at the time when they made the determination. He indicated that he would uphold the action of the Town Committee.

Mr. Houghton indicated that the error was in the failure of the Town Committee to obtain the information that would enable it to render a proper determination on the application.

Chairman Lomenzo agreed that the error was a failure to obtain the essential information and the need to clarify the relocation issue.

Mr. Collins offered a motion, seconded by Mr. Houghton, to annul the granting of a Certificate of Demolition and remand the application to Town Committee for a new public hearing to determine the historical significance of the cottage and a clarification of the possible relocation of the building.

The motion carried by a vote of 3-1-1. (Collins, Lomenzo, & Houghton in favor; Geganwarth opposed; and Anderson abstaining)

The Commission findings:

The Commission found as follows:

The Town Committee was erroneous in granting a Certificate for Demolition without obtaining sufficient information to render a proper determination on the historical significance of the building.

The granting of a Certificate for Demolition should be annulled and the application remanded to the Town Committee for a new public hearing to determine the historical significance of the cottage and a clarification of the possible relocation of the building.

Determination:

As to Appeal #2010-5, the decision of the Barnstable Committee is annulled and the application remanded to the Town Committee for a new public hearing to determine the historical significance of the cottage and a clarification of the possible relocation of the building. (3-1-1).

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: September 29, 2010

Peter T. Lomenzo, Jr., Chairperson