

**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. 2010-6

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

On Tuesday, September 14, 2010 at 3:30 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 # 2010-6 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; William Collins, Sandwich; Richard Gegenwarth, Yarmouth; Lawrence Houghton, Brewster; George Jessop, 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 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 August 16, 2010. The appeal was entered with the Commission on August 25, 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 began by noting for the record an objection to the written rebuttal, submitted by the Barnstable Town Committee to the Commission. He claimed that the procedural rules for the processing of appeals do not specifically authorize the submission of a written rebuttal by a Town Committee. He requested that the document be stricken from the record.

Chairman Lomenzo indicated that the Commission would note the request and take it under advisement, but stated that the Commission proceedings were not governed by the strict rules of evidence that one may find in a Court of Law.

Attorney Revere next criticized posted drawings of the project that had been modified by the Town Committee's representative to show the Town Committee's suggested changes. He criticized the action as being prejudicial to his client's presentation and a possible violation of the Architect's copyright protections.

The Chairman noted his comments and suggested that he proceed with the presentation of his appeal.

Atty. Revere asked the Applicant's architect, David Sigl, to describe the additional changes to the plans that were presented at the July 28, 2010 public hearing before the Town Committee.

Mr. Sigl indicated that the modified plans lowered the height of the main central building by one (1) foot and five (5) inches. He indicated that this was accomplished by reducing the roof pitch of the building.

Mr. Sigl described changes to the guest wing, which reduced its overall area by changing the dimension from twenty-eight (28) by forty feet (40) to twenty-six (26) by thirty-six (36) feet and setting back the second floor dormer by two (2) feet. He indicated that these changes reduced the height by one (1) foot four (4) inches.

Mr. Sigl stated that he reduced the connecting distance between the main house and the guest wing from fifteen (15) feet to twelve (12) feet.

Mr. Sigl showed the revised elevation plans to the Commissioners. He reviewed the changes that had been made to the design. He stated that the height and massing of the building had been reduced by the new changes.

Mr. Sigl reviewed the proposed foundation and stonewalls. He described the planting beds and the many variations in the foundation's height and appearance as it appeared in the different elevation plans.

Atty. Revere addressed the Commission and stated that following the Commission's decision to remand the matter to the Town Committee, his Client reduced the size and height of the proposed dwelling and guesthouse wing.

He reviewed the ten-year history of his Client's ownership and the many permitting hearings that had taken place.

He claimed that the Town Committee acted in an arbitrary and capricious manner in denying the Certificate of Appropriateness. He stated that the Town Committee had approved other houses that had similar size, height, mounding and stonewall features. He showed the Commissioners pictures of nearby similar large homes that were located within the Historic District. He compared the proposed building to the large commercial buildings that existed in the harbor area. He characterized the large buildings as being

within the immediate surroundings. He maintained that the Town Committee acted improperly in denying the Certificate of Appropriateness and asked that the Commission reverse the action of the Town Committee and issue a Certificate of Appropriateness for the proposed project.

Chairman Lomenzo inquired as to amount of the size and height reductions that these changes represented and whether they had been presented to the Barnstable Town Committee at the July 28, 2010 hearing.

Atty. Revere indicated that the revised plans were presented to the Town Committee prior to the hearing. Mr. Sigl indicated that the changes to the plans resulted in a five hundred two (502) square foot area reduction and a one (1) foot five (5) inch height reduction.

The Town Committee's Presentation:

George Jessop addressed the Commission on behalf of the Barnstable Town Committee. He stated that the Town Committee, at its public hearing on July 28, 2010, reviewed its concerns about the proposed building's size, height and mass and offered constructive suggestions as to how the concerns could be better addressed.

He suggested that the proposed ten (10) feet high foundation retaining wall topped with a five (5) to seven (7) feet wide terrace was excessive and that its placement on a four (4) feet high mounding of the lot would add an extra fourteen (14) feet of height to the building. He stated that these features would cause the building to tower above all the other buildings located in the neighborhood.

The Town Committee found the massive foundation to be inappropriate. He claimed that it was not required to meet flood plan requirements. He suggested that the proposal to place the garage under the dwelling was not necessary and expressed the opinion that it caused the building's height to stand out and be above all the other buildings in the area. He reported that the Town Committee recommended to the Applicant that the garage be separated from the house and that a separate building be added to the lot to meet the applicant's garage and storage needs. He suggested that this recommendation would provide a compound style appearance to the property and eliminate the need for the massive foundation retaining wall thereby breaking up and significantly reducing the overall massive appearance of the main building.

He indicated that the Town Committee also recommended that the attached guesthouse be separated from the main house. He suggested that this would further enhance a compound style appearance to the project and reduce the massive appearance of the main building.

He stated that the Town Committee found the Applicant unwilling to consider the above-mentioned concerns and suggestions. He reported that the Town Committee offered to continue the hearing to allow the Applicant to address these concerns but was rejected

with a request by a request that the Town Committee vote up or down on the project as submitted.

He indicated that the Town Committee rejected the proposed changes as being insufficient to address the size concerns identified by the Committee. He stated that the one (1) foot five (5) inch reduction in height and the five hundred two (502) feet reduction in area represented a negligible change to the proposed project.

Mr. Jessop reviewed the modifications to the posted plans that he had placed on the walls. He indicated that he had removed the garage and the foundation retaining wall to show how the proposed building would appear if the suggestions of the Town Committee had been accepted. He indicated that this modification would bring the building's height down by almost ten (10) feet and into line with the existing thirty (30) feet height of all the existing residential and commercial buildings located nearby.

Mr. Gegenwarth asked if the commercial nature of the nearby marine business mitigated the high foundation and the building's overall height.

Mr. Jessop responded by stating that the Town Committee found the mounding and high foundation to be excessive and inappropriate.

Public Comment:

Francis I. Broadhurst of Centerville expressed his support for the Applicant and suggested that the proposed building would be an asset and improve the appearance of the area.

Louis Cataldo of 92 Maushop Avenue, Barnstable suggested that the Barnstable Town Committee acted unfairly on the application and urged the Commission to reverse the Town Committee's denial.

Tim Williams of 22 Kent Road, Barnstable expressed support for the Applicant and suggested that the Town Committee completely reversed itself at the July 28, 2010 public hearing by requesting new changes to the design. He encouraged the Commission to reverse the Town Committee denial of the proposed project.

Peter Sampou of West Barnstable stated that he was a member of the Town of Barnstable Conservation Commission and suggested that Orders of Condition can be changed if the Historic District Commission requested changes to the proposed project.

Ann Canedy of Cummaquid expressed her support for the action of the Town Committee in denying the proposed project and expressed the opinion that the height and size of the building was inappropriate for its proposed location.

Applicant's Rebuttal:

Atty. Paul Revere stated that portions of the Applicant's property were in the flood plain and that according to the 1992 FEMA Flood Maps the building needed to be above the seventeen (17) feet elevation.

He suggested that the Applicant had made very a significant effort during the many prior hearings before the Town Committee and that the design as submitted to the July 28, 2010 Hearing was appropriate and ought to have been approved.

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

Town Committee's Rebuttal:

George Jessop stated that the proposed building would be the tallest building in the harbor area.

He indicated that the major concern of the Barnstable Town Committee was the ten (10) foot height of the garage and it's impact on appearance of the overall height of the proposed building.

He requested that the Town Committee determination be upheld.

Commission Discussion:

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

Chairman Lomenzo began the discussion by stating that this was a review of a remand hearing and the action taken by the Applicant and Town Committee in working on the issues of the height and massing of the proposed project. He indicated that within this review, the Commission would determine whether or not the Committee was arbitrary or capricious in its actions? Was the Committee erroneous in its actions? Did the Committee exceed its authority? Did the Committee exercise poor judgment? He asked the Commissioner to comment.

Lawrence Houghton expressed concern that the proposed changes were relatively minor, but indicated that he found the work of the Applicant's architect to have helped to reduce the size appearance of the proposed project.

Richard Gegenwarth stated that the proper use shingles and trim could heavily affect the size appearance of a proposed dwelling. He assumed that the specifications had been carefully reviewed by the Town Committee and found to be acceptable. He expressed the opinion that the proposed size and height of the building did not appear to be excessive.

William Collins of Sandwich stated that he believed that the Town Committee acted correctly in determining that the large size of the proposed building would have a major negative impact on the character of the harbor area. He indicated that he did not believe that the Barnstable Town Committee made an error in denying the application.

Chairman Lomenzo stated that he had hoped that the remand would lead to a clarification and resolution of the issues of size and massing. He indicated that it appears that there is clarification of positions, but that there has not been a satisfactory resolution. It would appear that we provided an opportunity to work out a satisfactory result and that it has not happened. It would appear that it now becomes the Commission's responsibility to resolve the issues raised in the appeal and render a final determination.

William Collins indicated that the location of the proposed building is very prominent and the concerns of the Town Committee appear to be reasonable. The proposed size of the building will affect the character of the harbor area. He indicated that it appears that there was not enough reduction in the size and massing of the building.

Mr. Houghton disagreed and stated that the proposed building was not that different from other large waterfront houses that have been located within the historic district. He expressed the opinion that the lot is large enough to support the size of the proposed building.

Mr. Gegenwarth agreed stating that as a waterfront residence the size and massing appeared to be reasonable. He indicated that by using the right exterior materials and with proper landscaping the proposed building would be appropriate for its location.

Chairman Lomenzo of Dennis asked to see the landscaping plan. He observed that there was screening from the existing trees and the proposed plantings. He indicated that he felt that the Town Committee was somewhat arbitrary in determining that the size of the proposed waterfront dwelling was excessive. He expressed the opinion that the vast improvement to the site is dramatic and superior to what is presently located on the property. He noted that there is nothing wrong with the style of the proposed house. He indicated that he felt that the Committee exercised poor judgment in denying the application.

Mr. Houghton asked if there were a specification sheet on file and approved by the Town Committee. Mr. Sigl indicated that the Town Committee had approved the specifications with the agreement that AZAK and plastic would not be used.

Mr. Jessop confirmed that the specifications and colors had been addressed at the Town Committee hearings and the shingle color and trim materials had been satisfactorily determined.

Mr. Houghton offered a motion, seconded by Mr. Gegenwarth, to annul the Town Committee's decision to deny a Certificate of Appropriateness for the proposed building and to have the Commission issue a Certificate of Appropriateness for the project in

accordance with the plans proposed by the Applicant at the July 28, 2010 hearing and that the specification as agreed and approved by the Town Committee be adopted.

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

The Commission findings:

The Commission found as follows:

The Town Committee acted erroneously in its rejection of the proposed building as modified and presented at the July 28, 2010 hearing.

That a Certificate of Appropriateness should issue for the proposed building as submitted at the July 28, 2010 hearing.

Determination:

As to Appeal #2010-6, the decision of the Barnstable Committee is annulled and the application approved with a Certificate of Appropriateness issued in accordance with the modified plans submitted for the July 28, 2010 hearing and the specifications as approved by the Barnstable Town Committee. (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: October 13, 2010

Peter T. Lomenzo, Jr., Chairperson