

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

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Patrick Doherty, Appellant

Vs.

Decision for Appeal No. 2011-3

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

On Tuesday, April 26, 2011 at 1:30 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 # 2011-3 filed by Patrick Doherty seeking reversal of a decision by the Dennis Historic District Committee granting Paul and Nancy Schuster a Certificate of Appropriateness for a proposed new dwelling to be located at 64 Highland Road, East Dennis, Massachusetts.

Present were Acting Chairman Lawrence Houghton, Brewster; Peter T. Lomenzo, Jr., Dennis; William Collins, Sandwich; Richard Gegenwarth, Yarmouth; George Jessop, Barnstable; James R. Wilson, Commission Administrative Counsel; Paul and Nancy Schuster, Applicants; Jonathon D. Idman, Applicant's Attorney; Gordon Clark, III, Applicant's Agent; and David S. Reid, Appellant's Attorney.

Absent was Paul Leach, Orleans.

The Dennis Town Committee's decision was filed with the Town Clerk on March 24, 2011. The appeal was entered with the Commission on April 1, 2011, 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:

Attorney Jonathan D. Idman addressed the Commission on behalf of the Applicants' application. He showed the Commissioners photographs of other large houses in the neighborhood and a list with the height, size and location of various nearby homes. He stated that the proposed dwelling was of a similar size to the existing nearby homes. He asserted that the approved building was not out of scale with the neighborhood and suggested that the Town Committee acted properly in approving the application for a Certificate of Appropriateness.

He showed pictures of the Appellant's house, which is located directly across the street at 65 Highland Road. He described it as having been approved for a second floor expansion

a few years earlier and suggested that it was in many respects similar in size and design to the Applicant's proposed dwelling.

He described the Appellant's appeal as an effort to protect a private view. He read the Appellant's email to the Dennis Town Committee in which he expressed concern about a possible loss of the view from his "master bedroom" and "porch." Attorney Idman pointed out that the Historic District Act speaks of public views and a not private view. He suggested that the Town Committee acted properly under act in denying the Appellant's request to protect his private view.

He claimed that the proposed dwelling had been designed with sensitivity to the neighborhood and asked the Applicant's designer, Gordon Clark, to describe a change from a two-car garage to a one-car garage that had been adopted to reduce the visual width and screening of the proposed dwelling.

Mr. Clark stated that the Applicant had originally expressed a desire for a two-car garage, but had accepted a reduction to a single-car garage that allowed for the preservation of a greater sideline setback. He indicated that the Town Zoning requires only a fifteen foot sideline setback and the proposed dwelling would have a thirty (30) foot setback on the left and a twenty-two (22) foot setback on the right.

Attorney Idman stated that the proposed dwelling needed to be judged by the character of the present neighborhood and not based on what it may have been before it was subdivided into small lots. He again pointed out the many relatively large homes that have been constructed in the neighborhood.

Chairman Houghton asked for the square footage of the proposed dwelling.

Attorney Idman stated that it would be thirty-two hundred (3,200) square feet.

The Appellant's Presentation:

Attorney David S. Reid addressed the Commission on behalf of the Appellant. He referenced his letter to the Commission dated April 25, 2011 in which he outlined his Client's concern for the increased size of the replacement dwelling and its resulting loss of the neighborhood's water views.

He claimed that the addition of the right and left wings would have a detrimental impact on the neighborhood by reducing the present view of the entrance to Sesuit Harbor and Cape Cod Bay.

He pointed out the close proximity to the famous Shiverick Shipyard and outlined the importance and historical significance of the maritime history of the area.

While he acknowledged the existence of many similar large homes in the neighborhood, he claimed that as the size of dwellings increased, the loss of the water views would increase until eventually they might all be lost.

He asserted that the approval of the Applicant's replacement dwelling was not appropriate for the neighborhood because it would significantly diminish the public's view of the water on the right-hand side. He argued that the addition of the right and left wings should not have been approved.

He requested that the Town Committee's approval be reversed and the Certificate of Appropriateness be denied.

The Town Committee's Presentation:

Peter Lomenzo addressed the Commission on behalf of the Dennis Town Committee. He stated that the Committee is very familiar with the neighborhood. He reported that the Dennis Town Committee had reviewed many projects in the immediate neighborhood and had done an extensive site visit before approving the application.

He defended his Committee's action by describing the proposed dwelling as being a compliment to the setting of Susuet Neck. He pointed out the design features of the proposed dwelling are compatible and similar to the features of other houses located on Harbor Road, Highland Road and Stephen Phillips Road.

He stated that he read the Appellant's email at the public hearing and that the Dennis Town Committee considered the Appellant's view concerns. He reported that the Committee discussed the cutting back of vegetation on the right side of the proposed expansion. He pointed out the sighting limitations that existed for the project and suggested that he felt that the Town Committee made a careful and fair effort to balance the Applicants' needs with those of the Appellant.

He asked the Commission to uphold the Dennis Town Committee's unanimous action in approving the proposed dwelling.

Public Comment:

The Chairman asked for public comment on the Appeal. No one offered to speak from the audience.

The Chairman read aloud a letter dated April 25, 2011 submitted by Jean E. Zorzy and John A. Zorzy of 82 Highland Road in support of the Application and the Dennis Town Committee's issuance of the Certificate of Appropriateness for the proposed dwelling.

Applicants Rebuttals:

Gordon Clark, III pointed out that the height of the building was remaining close to the present height, but that the wings were being added to match the central height of the building. He clarified the overall square footage of the proposed dwelling by indicating that the 3,200 square feet included the garage and suggested that the habitable portion was around 2,900 square feet in area. He also pointed out that the Applicant had tried to minimize increase of the building by not only constructing a single car garage but by adding area toward the rear of the proposed dwelling.

Attorney Idman pointed out the legal standard of review that the Commission is to follow in hearing an appeal from a Town Committee's determination. He reminded the Commissioners that it is not their role to substitute their judgment for that of the Town Committee but rather to determine if there was a reasonable basis for its action in approving the proposed dwelling.

He concluded by asserting that the recorded shows a legally sufficient record to sustain the action of the Dennis Town Committee.

Appellant's Rebuttals:

Attorney Reid asked if the landscape vegetated setback line to the right could be incorporated to the Certificate of Appropriateness as a binding commitment on the project.

Attorney Idman expressed concern that he did not wish to restrict in perpetuity a restriction on landscaping of the subject property.

Chairman Houghton stated that it would be inappropriate to impose such a restriction on the project. He stated that he felt that it would be wrong for the Commission to alter the approved project.

Commission Discussion:

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

Acting Chairman Lawrence Houghton invited the Commissioners to comment on the issues presented in the appeal.

William Collins indicated that it appeared that the Dennis Town Committee did not exceed its authority. He indicated that the Committee appeared to have acted properly and not arbitrarily or erroneously in determining that the proposed dwelling was appropriate under the Act. He stated that he visited the site and observed the many similar houses located in the neighborhood. He further indicated that he felt that the Dennis

Town Committee did make an effort to consider the Appellant's concerns, but that the size and design of the proposed dwelling was not unreasonable for the neighborhood.

Mr. Gegenwarth stated that he felt that the Dennis Town Committee did not exercise poor judgment, but acted properly in approving the application. He indicated that the size and design of the proposed dwelling was reasonable for the neighborhood. He expressed the opinion that it was a well-designed building and that it was appropriate for the neighborhood.

George Jessop stated that he visited the site and observed that the view was already heavily affected by existing vegetation. He indicated that the proposed design was appropriate and that the public views from the street would not be adversely affected by the construction of the proposed dwelling.

Mr. Houghton expressed the opinion that he agreed with the opinions expressed by the other Commissioners.

Mr. Houghton indicated that it appeared that the Dennis Town Committee did not exceed its authority or act in an arbitrary manner. He expressed the opinion that the Town Committee did not exercise poor judgment nor was it capricious or erroneous in its action.

Mr. Gegenwarth moved, seconded by Mr. Collins, to uphold the granting of a Certificate of Appropriateness for the proposed dwelling located at 64 Highland Road.

The motion carried by a vote of 4-0-1. (Collins, Houghton, Gegenwarth & Gessop in favor; and Lomenzo abstaining)

The Commission findings:

The Commission found as follows:

The Dennis Town Committee did not act in an arbitrary or capricious manner in granting the approval of the proposed dwelling.

The Dennis Town Committee acted in a reasonable manner and did not exceed its authority or error in its determination to grant a Certificate of Appropriateness for the proposed dwelling to be located at 64 Highland Road, Dennis, Massachusetts.

The application for a Certificate of Appropriateness was properly granted to the Applicants.

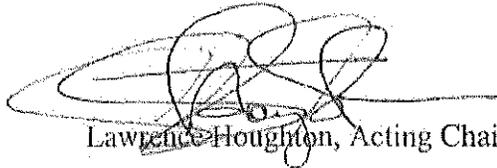
The record shows a legally sufficient ground to sustain the action of the Dennis Town Committee.

Commission's Determination:

As to Appeal #2011-3, the decision of the Dennis Town Committee in granting the Certificate of Appropriateness to Paul and Nancy Schuster is affirmed. (4-0-1).

Any person aggrieved by this decision has a right to appeal to the District Court Department, Orleans Division, within 20 days of the filing of this decision with the Dennis Town Clerk.

Dated: May 16, 2011

A handwritten signature in black ink, appearing to read 'Lawrence Houghton', is written over a horizontal line. The signature is stylized and somewhat illegible.

Lawrence Houghton, Acting Chairperson