

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

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

Tel: 508-775-1766

Arthur McHugh and Patricia McHugh, Appellant/Applicants

Vs.

Decision for Appeal No. 2012-3

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

On Tuesday, June 5, 2012 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 # 2012-3 filed by Arthur McHugh and Patricia McHugh seeking reversal of the Sandwich Historic District Committee's denying of a Certificate of Appropriateness for a new house with 12' X 14' screened porch and deck and a 8' X 10' shed to be located at 3 The Mall, East Sandwich, Massachusetts.

Present were Chairman Peter T. Lomenzo, Jr., Dennis; Lawrence Houghton, Brewster; William Collins, Sandwich; Carrie Bearse, Barnstable; Richard Gegenwarth, Yarmouth; James R. Wilson, Commission Administrative Counsel; William C. Henchy, Attorney for the Appellant/Applicant; Steven Cook, Appellant/Applicant's Designer; and Richard W. Anderson, Appellant/Applicant's Builder.

Absent was Paul Leach, Orleans.

The Sandwich Town Committee's decision was filed with the Town Clerk on May 9, 2012. The appeal was entered with the Commission on May 18, 2012, within the 10-day appeal period.

Copies of the Appeal Petition with attachments, Town's Decision, Application, Plans and correspondence from the Sandwich Town Committee's hearing were distributed to the Commissioners for review prior to the hearing. Minutes of the proceedings were not available.

Appellant/Applicant's Presentation:

Attorney William C. Henchy, of Orleans, addressed the Commission on behalf of the Appellant/Applicant's appeal. He identified the application as being for a Certificate of Appropriateness to replace an existing house. He indicated that the Sandwich Town Committee approved the request to demolish the existing dwelling, but denied the application to construct the proposed new house. He reported that the Sandwich Town Committee stated the reason for the denial as being that the "house plans were too large for the lot size."

He asked Richard Anderson, builder, and Steven Cooke, designer, to describe the plans for the proposed replacement building.

Mr. Anderson indicated that the project had started approximately four to five years earlier with a consideration of an addition to the existing dwelling and evolved into a complete replacement of the three - bedroom dwelling. He stated that the proposed one and a half story dwelling has many features that can be seen on other homes located in the neighborhood.

Mr. Cooke reviewed the plans and stated that the proposed dwelling was designed to fit the triangular lot. It has gable on the front and an intersecting gable with a roof deck and screened in porch on the right hand side. He indicated that there would be views from the porch and roof deck to Cape Cod Bay. He stated that many of the design elements were created to maximize the views.

He identified many architectural features of the proposed dwelling and suggested that the proposed building would fit into the neighborhood through the use of white cedar shingles, white trim, window grills and the gable design features. He claimed that the size of the replacement was only slightly larger than the existing Cape that is to be replaced, and that the new dwelling would meet the Town of Sandwich building height requirements.

Attorney Henchy showed the Commissioners a portion of the Town of Sandwich Assessors Map with a list of living area calculations and a series of photographs of other existing houses in the neighborhood. He claimed that the proposed dwelling was similar and appropriate for the surrounding area.

He asked if the Commissioners had visited the site and were familiar with the neighborhood.

Chairman Lomenzo stated that each Commissioner had independently visited the site prior to the public hearing as a part of their preparation for hearing the appeal and that they were familiar with the area.

Attorney Henchy stated that the area of the proposed new dwelling was 1,962 square feet, which he claimed was fourteen percent larger than the 1,770 square foot average size of the other dwelling located in the neighborhood. He suggested that there were many larger dwellings located nearby.

He claimed that the Sandwich Town Committee did not properly address the purposes of the Historic District Act when it denied the application only on the size issue. He asserted that he found the exterior architectural features to be appropriate and pointed out that the house next door was much larger than the proposed dwelling. He argued that the Sandwich Town Committee made a zoning determination instead of the Historic District decision.

Commissioner Gegenwarth asked for a clarification of the lot coverage comparisons of the nearby houses that had been offered to show that the proposed dwelling would be compatible in size for the neighborhood.

Atty. Henchy suggested that lot coverage was a zoning matter and not a proper consideration under the Historic District Act.

Mr. Gegenwarth suggested that lot coverage was a proper consideration, because it went to the issue of determining an appropriate setting for a proposed dwelling under Section 10 of the Act.

Commissioner Bearnse observed that Minutes appeared to be missing and suggested that it was difficult to determine what had transpired at the prior public hearing. She asked if there had been an opportunity for the Applicant to revise the plans and/or reduce the size of the proposed new dwelling.

Mr. Anderson reported that the Applicant had been asked if the second floor deck could be deleted and that his client had rejected the proposal. He indicated that he believed that little or no consideration of any reasonable changes had taken place at the Sandwich Town Committee public hearings.

Chairman Lomenzo asked for a clarification of the procedures before the Sandwich Town Committee and the number of hearings that had taken place.

Atty. Henchy stated that the project had gone through two separate application and public hearing procedures and asked Mr. Anderson to clarify what had transpired with the applications.

Mr. Anderson reported that he filed two separate applications for a Certificate for Demolition and for a Certificate of Appropriateness. In April, the matter was heard as at a single public hearing and the applications were denied for failure to have obtained permits from other related Sandwich Town Boards and Committees with out addressing the merits of the applications.

He indicated that while preparing to file an appeal to the Commission, he was notified that he could re-submit the applications and the Sandwich Town Committee would fully act on the applications. As a result, he resubmitted the applications and the Certificate for Demolition was approved and the Certificate of Appropriateness, that is the subject of the appeal, was denied.

The Town Committee's Presentation:

William Collins, as Chairman of the Sandwich Town Committee, addressed the Commission to provide the basis of the Sandwich Town Committee's actions in handling the applications. He confirmed the report of Mr. Anderson and indicated that the Sandwich Town Committee had a new staff person and that the Minutes and other

procedural matters were not being handled with the proficiency that the Sandwich Town Committee had experienced in the past. He reported that while he felt that the denial of the application for the proposed replacement dwellings apparent "size" was correct, the written explanation was vague and ought to have been better stated.

He stated that Section 10 of the Act gave to the Sandwich Town Committee the authority to consider the relative size of the proposed building in its setting and the appropriateness of its size as it would appear on the lot.

He denied that the Sandwich Town Committee had been arbitrary or capricious. He suggested that the Sandwich Town Committee was trying to get a balance between the interest of the District and the Owner who wants to improve his property and the neighbors who will have to live with the new structure. He reported that it appeared that the Sandwich Town Committee spent time on the application listening to the needs of the Applicant and the concerns of the neighbors.

He stated that the Sandwich Town Committee appeared not to oppose a larger house on the lot, but rather would request that the Applicant remain within the foot-print of the existing building and find a different manner to expand the size of the dwelling. He suggested that the Sandwich Town Committee was looking for a way to reduce the massive appearance of the proposed replacement building and reach a reasonable compromise with the Applicant and the neighbors.

Commissioners Houghton and Bears expressed concern for the absence of complete and final Minutes from the Sandwich Town Committee.

Chairman Lomenzo asked if after the rejection of the deck removal proposal by the Applicant, were any other modifications discussed or a continuance to allow the Applicant to bring forth new ideas considered.

Mr. Collins reported that the discussions ended and the denial was voted.

Public Comment:

Chairman Lomenzo asked for public comment on the appeal.

Christopher Downs, of 5 Beachway West, East Sandwich, stated that he was the direct abutter to the north of the proposed project. He stated that the Applicant's lot was one of the smallest in the Sandwich Downs Development and the relative increase in size of the proposed building as it related to the small size of the lot was an important consideration under Section 10 of the Act.

He showed the Commissioners a chart showing the amount square footage, lot coverage and elevation increase of the proposed new dwelling. He claimed that it would not be compatible with the surrounding structures or neighborhood. He acknowledged that while there were larger houses in the neighborhood, they were all located on much larger lots

that could better accommodate their larger size. He described the location of the Applicant's property as being very prominent and claimed that the increased size would have a major negative impact on the appearance of the neighborhood.

He requested that the Commission sustain the denial of the application.

Harry Gaumond of 2 Bemis Road, East Sandwich, identified himself as an abutter, and stated that he went through the same process of replacing an existing dwelling in 1999 and that he was required to remain within the foot-print of the former building. He reported that he had to site the house in manner to reduce its appearance of mass in order to obtain the approval of the Sandwich Town Historic Committee.

He pointed out that his dwelling was only twenty-six feet from the applicant's existing dwelling and that the proposed replacement would reduce the distance to twenty-two feet.

Paula Downs, of 5 Beachway West, East Sandwich, stated that she was at the public hearing and claimed that the Applicant had stated that they would not consider any changes or compromise.

James Hanna stated that he was the grandson of the original developer of the Sandwich Downs Development and had spent a lot of time on the beach and observing the area of the proposed project. He stated that the roads were narrow and that the proposed expansion would increase parking and congestion problems for the neighborhood.

Appellant/Applicant's Rebuttal:

Attorney Henchy stated that his client had withdrawn the shed application during the proceedings before the Sandwich Town Committee and that it was no longer a part of the project. He clarified the record by stating that its inclusion in the appeal petition was an error and that it should be disregarded.

He stated that it is very difficult to respond to the issues raised by this hearing when the Minutes are not properly prepared or available. He suggested the process invited too much hearsay.

He stated that much of the discussion at the town public hearing focused on the deck. He claimed that the Sandwich Town Committee made an error in denying the approval for the reasons stated previously. He repeated the claim that the proposed dwelling was compatible with the many dwellings in the neighborhood.

Town Committee Rebuttal:

Mr. Collins acknowledged that Sandwich Town Committee may have made a mistake in wording its reason for denying approval, but that the proposed plans, as submitted, were not appropriate under the Act. He stated that the Sandwich Town Committee would like to try and work with the Applicant to find a reasonable compromise.

Commission Discussion:

Mr. Gegenwarth of Yarmouth he observed that the relative small size of the lot is an important consideration and that the changes of the proposed expansion need to consider the future impact on the area.

Mr. Houghton stated that he was concerned about the many procedural problems that had taken place and that a better effort by all parties to reach a compromise should have taken place.

Carrie Bearse of Barnstable stated that she felt that the poor record made it difficult determine the appropriateness of the action of the Sandwich Town Committee. She stated that she could not vote to reverse the denial of the application. She suggested that the matter should be sent back to the Sandwich Town Committee for so that compromises can be made and a satisfactory resolution found by all parties.

Mr. Lomenzo stated that he agreed that matter should be returned to the Sandwich Town Committee for further review and a possible compromise on the issue of size and mass.

He called for a motion to vote on the appeal.

Mr. Gegenwarth moved, seconded by Ms. Bearse, to annul the decision of the Sandwich Town Committee in denying the application for a Certificate of Appropriateness and the matter be remanded to the Sandwich Town Committee for further review and possible compromise.

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

The Commission findings:

The Commission found as follows:

The Sandwich Town Committee made procedural error in acting on the application for a Certificate of Appropriateness for the proposed dwelling to be located at 3 The Mall, East Sandwich, Massachusetts.

The application for the proposed new dwelling with out the shed should be remanded to the Sandwich Town Committee for further review and possible compromise.

Commission's Determination:

As to Appeal #2012-3, the Decision of the Sandwich Town Committee in denying a Certificate of Appropriateness for a new dwelling to be located at 3 the Mall, East Sandwich, Massachusetts is annulled and the matter remanded to the Sandwich Town Committee. (4-0-1).

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 28, 2012

Peter T. Lomenzo, Jr., Chairperson