

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

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

**Randall Coleman and Judith Sacco-Coleman, Appellants**

**Vs.**

**Decision for Appeal No. 2012-4**

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

On Tuesday, August 14, 2012 at 1:30 P.M., the Commission held a hearing at the Town of Sandwich Meeting Room located at 16 Jan Sebastian Drive, Sandwich, Massachusetts, on Appeal #2012-4 filed by Randall Coleman and Judith Sacco-Coleman, seeking reversal of the Sandwich Town Committee's approval of Timothy Moll and Nancy Moll's application for a Certificate of Appropriateness for a six (6) foot cedar stockade privacy fence to be located on the western property line at 37 Foster Road, East Sandwich, Massachusetts.

Present were Chairman Peter T. Lomenzo, Jr., Dennis; Lawrence Houghton, Brewster; William Collins, Sandwich; George Jessop, Barnstable; Richard Gegenwarth, Yarmouth; James R. Wilson, Commission Administrative Counsel; Randall Coleman Appellant; Timothy Moll, Applicant; and Steven M. Guard, Applicant's Attorney.

Absent was Paul Leach, Orleans.

The Sandwich Town Committee's decision was filed with the Town Clerk on July 12, 2012. The appeal was entered with the Commission on July 19, 2012, within the 10-day appeal period.

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

**Applicant's Presentation:**

Timothy Moll addressed the Commission and reviewed the history of the application proceedings before the Sandwich Town Committee. He reported that the original filing was for a 210-foot long cedar stockade fence that would be six feet tall. He described the lot as being long and thin as shown on a submitted plan. He indicated that there was evidence of a prior fence that had existed in the same location. He stated that the first hearing had been continued to allow for a site visit by the Sandwich Town Committee.

He reported that following the site visit, a compromise had been worked out to add scalloping to the top of the fence and reduce the six foot section of the fence to eighty feet in length and the remainder on each side to be tapered down to three feet in height as

marked on a submitted plan. He indicated that the eighty-foot section would be located directly behind the dwelling to provide privacy for the home. He reported that an effort to use plantings had not been successful.

Attorney Steven M. Guard, of Norwell, addressed the Commission in support of the Sandwich Town Committee's approval of the proposed modified fence. He claimed that the Sandwich Town Committee had not been arbitrary, capricious or erroneous in approving the modified fence. He indicated that there was evidence of a prior fence and suggested that the fence was appropriate for identifying the property line and to maintain the applicant's privacy. He claimed that there were other similar fences in the neighborhood and that the Sandwich Town Committee had acted properly in approving the fence.

Chairman Lomenzo asked for a clarification of the modifications that had been adopted. The Applicant reported that he had agreed to reduce the height to three feet for a distance of fifty-eight feet on the north and eighty feet on the southern end as shown on the plan. He indicated that the sections would be scalloped.

Commissioner Jessop asked for a clarification of the post style of the wooden stockade fence. The Applicant indicated that the fence would have rails and no caps on the top. He indicated that the better side would face the neighbor and that the fence would remain natural and not be stained.

#### **Appellant's Presentation:**

Randall Coleman addressed the Commission on behalf of his appeal. He stated that the Sandwich Guidelines discourage the use of fences and favor the use of natural barriers in the Beach District. He indicated that at the first hearing this fact was pointed out to the Applicant, but appears to have been neglected by the Town Committee during its subsequent considerations. He claimed that a natural barrier would be more appropriate for the location and suggested that there were no other scallop or stockade fences within the immediate surroundings.

He noted that the compromise design had increased the overall length of the fence to two hundred twenty feet and that the original offer to plant shrubbery to hide the fence had been neglected in the final approved design.

He showed the Commissioners pictures of the marsh and superimposed the effect of the fence on the view of the marsh. He suggested that trees would provide a much better barrier and expressed concern that the stockade would set a poor precedent for the area.

Commissioner Jessop asked the Appellant to clarify his greatest complaint with the approved fence.

Mr. Coleman stated that his biggest objection was that he would have to look at a large stockade fence instead of the marsh. He acknowledged that the applicant's house does

impede his view of the marsh, but he suggested that the compromise gives the Applicant an extra twenty feet on each side of the forty-foot house.

Commissioner Gegenwarth stated that he had spent a good deal of time driving around the neighborhood and reported that he had not observed any large stockade fences.

Commissioner Houghton asked for a clarification about the extra length of the fence.

Mr. Coleman pointed out that the original proposed fence was to have been 210 feet and the final approved fence was 218 feet.

**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 indicated that while the Guidelines do encourage the use of natural barriers, it is not the policy of the Sandwich Town Committee to discourage things but rather to judge the appropriateness of proposed structures. He disputed the Appellant's claim that the Sandwich Town Committee failed to consider the interests of the immediate abutter. He claimed that the site visit was a direct result of the concerns expressed by the Applicant at the first hearing. He read from a letter sent by the Applicant to the Sandwich Town Committee following the first hearing, which expressed appreciation for listening to his concerns.

He reported that at the site visit a careful examination was made of the setting and the remnants of the old stockade fence that had mostly disappeared. He indicated that the site visit did include an observation from many locations and that the compromise reflected an effort to find a solution that would be acceptable to both the Applicant and the Appellant.

He stated that the purpose of the fence was to give privacy to the Applicant and to prevent people from walking through the property. He indicated that he felt that the compromise was both appropriate, reasonable and took into consideration the needs of the Applicant and the Appellant.

Commissioner Jessop asked for a clarification of the location of the taper down. He stated that if the taper down was applied to the eighty foot section behind the house that the actual length of the six foot stockade would be sixty-four feet with two eight foot declining sections.

**Applicant's Rebuttal:**

Attorney Guard stated that Commissioner Jessop was correct in his observation that the actual width of the six foot section was only sixty-four feet and that the taper down would be eight feet on each side of the center section.

He stated that the modified fence was reasonable and would provide appropriate protection for the Applicant and his property.

**Appellant's Rebuttal:**

Mr. Coleman stated that his comments were taken out of context and that the reason for the appeal is that the proposed fence is inappropriate for the proposed location. He claimed that Sandwich Town Committee failed to properly consider the immediate surroundings and that the compromise allowed too much length to the stockade fence.

**Town Committee Rebuttal:**

Mr. Collins claimed that the Sandwich Town Committee made a reasonable effort to find a reasonable compromise that would address the concerns of Applicant and the Abutter. He expressed the opinion that the final design was appropriate for the setting.

**Commission Discussion:**

Commissioner Houghton of Brewster stated that he could not find any fault with the Sandwich Town Committees decision. He observed that the Committee made a site visit and worked to come up with a reasonable compromise. He suggested that both the Applicant and the Appellant will be able to plant vegetation to screen the fence. He indicated that he did not believe that the Sandwich Town Committee had exceeded its authority or acted erroneously in approving the compromise.

Commissioner Jessop of Barnstable stated that he felt that the upgrades to the fence were appropriate and that the Sandwich Town Committee acted properly in visiting the site and observing the setting to assist in the evaluation and review of the proposed fence. He indicated that the Sandwich Town Committee acted properly and the approved fence is appropriate for its intended location.

He expressed the opinion that Sandwich Town Committee did not exceed its authority or exercise poor judgment. He indicated that that the Committee was not arbitrary, capricious or erroneous in approving the proposed fence.

Commissioner Gegenwarth of Yarmouth stated that he agreed with Mr. Jessop that the approved fence was appropriate for its setting and that the Sandwich town Committee had acted properly in approving the compromise design.

Chairman Lomenzo stated that he could not see were the Sandwich Town Committee had failed to properly act on the application. He indicated that he felt that the Sandwich Town Committee spent a reasonable amount of time in reviewing the application. He suggested that the record did not indicate that they acted in an arbitrary or capricious manner.

He expressed concern about the failure of the plans and decision by the Town Committee to clearly indicate the location of the taper down section.

Mr. Wilson advised the Commissioners that they could clarify the matter by incorporating into the vote the transition point and length for the taper down.

Chairman Lomenzo called for a motion to vote on the appeal.

Commissioner Houghton moved, seconded by Mr. Jessop, to sustain the decision of the Sandwich Town Committee in approving the application for a Certificate of Appropriateness for the modified cedar fence with the clarification that the transition of the taper down be eight feet long and be located within the eighty foot middle section located behind the Applicant's dwelling as identified during this hearing by the Applicant and the Chairman of the Sandwich Town Committee.

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

**The Commission findings:**

The Commission found as follows:

The Sandwich Town Committee did not exceed its authority or exercise poor judgment in approving the modified fence.

The Sandwich Town committee did not act in an arbitrary, capricious or erroneous manner in granting approval of the proposed modified fence.

The application for the proposed fence as modified should be sustained.

**Commission's Determination:**

As to Appeal #2012-4, the Decision of the Sandwich Town Committee in granting a Certificate of Appropriateness for a cedar fence to be located at 37 Foster Road, East Sandwich, Massachusetts is sustained with the clarification that the transition of the taper down be eight feet long and be located within the eighty foot middle section located behind the Applicant's dwelling as identified during this hearing by the Applicant and the Chairman of 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: September 5, 2012

Peter T. Lomenzo, Jr., Chairperson