

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

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

Harold P. Gaumond, Jr. and Christopher Downs, Appellants

Vs.

Decision for Appeal No. 2012-6

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

On Tuesday, November 13, 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 # 2012-6 filed by Harold P. Gaumond, Jr. and Christopher Downs, seeking reversal of the Sandwich Historic District Committee's granting Arthur McHugh and Patricia McHugh a Certificate of Appropriateness for a new house with 12' X 14' screened porch and deck 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; Kevin M. Kirrane, Attorney for the Appellants; Harold P. Gaumond, Jr.; Christopher Downs; William C. Henchy, Attorney for the Applicant; Steven Cook, Applicant's Designer; and Richard W. Anderson, Applicant's Builder.

Absent was Paul Leach, Orleans.

The Sandwich Town Committee's decision was filed with the Town Clerk on October 11, 2012. The appeal was entered with the Commission on October 19, 2012, within the 10-day appeal period.

Copies of the Appeal Petition with attachments, Commission's Prior Remand Decision in Appeal 2012-3, 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 Town Committee proceedings were distributed prior to the opening of the public hearing.

Applicant's Presentation:

Attorney William C. Henchy, of Orleans, addressed the Commission on behalf of the Applicant. He reported that following the Commission's remand decision, he had appeared before the Sandwich Town Committee three to four occasions seeking to find an attempted to find acceptable modifications to the proposed design. He indicated that a public site visit by the Town Committee had been conducted before the final approval.

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to 2 vote) was granted. He asked if the Commissioners had seen the new plans, which had been approved by the Committee.

Chairman Lomenzo stated that the Commissioners had copies of the plans.

He stated that the new design reduced the overall square footage of the house by 237 square feet and made changes to reduce the massing appearance of the building. He suggested that the State Building Code required some of the special requirements in the walls and ceiling height, which he would ask the Builder to explain in more detail to the Commission.

He claimed that the features of the building were appropriate and the new changes were consistent with the purposes of the Historic District Act. He stated that the action by the Town Committee properly followed the remand decision of the Commission in Appeal No. 2012-3. He asserted that the Town Committee carefully reviewed the proposed changes and did not act in an arbitrary or capricious manner, but reasonably approved the new design.

He asked Richard Anderson, Applicant's Builder, to describe the design modifications that had been made to the proposed replacement building.

Mr. Anderson indicated that the raised septic system and its retaining wall had been lowered. He stated that the 2nd floor deck over the screened porch had been reduced to half its original size and that the roof had been lowered by 15.25 inches by reducing the pitch.

Mr. Cooke, Applicant's Designer, compared the new design features with the original house that is being removed from the lot. He pointed out that the 1958 framing was substandard by today's requirements. He stated that the State Building Code requires a higher ceiling and the use of 2" X 10" or 2" X 12" studs for the floor plat form and in other parts of the building, which increases the height of the building. He pointed out the gable setback or indent shown on the right elevation.

Appellant's Presentation:

Attorney Kevin Kirrane, of Mashpee, addressed the Commission on behalf of the Appellants. He claimed that the Town Committee failed to properly consider the relative size of the proposed new dwelling in the context of its setting. He pointed out that the lot is only 5,663 square feet in area. He described Sandwich Downs as an old summer cottage colony type development with many small houses on small lots. He indicated that larger houses had been built in the area, but on multiple lots or lots with sufficient size to support their size. He indicated that the proposed dwelling would have a larger footprint and that nearly all of the lot would be disturbed to accommodate the building, driveway and septic system. He stated that the building would be closer to the sidelines and frontline of the lot.

He claimed that the proposed dwelling would be ten feet taller than the average height for other houses in the neighborhood and that the average lot size for the neighborhood was 15,000 square feet. He asserted that the Town Committee failed to properly consider these factors in the determination of appropriateness.

He pointed out that the relative size of the building and lot were important factors in the first denial of the project by the Town Committee in May and that the remand had suggested that the Applicants try to work out a compromise with the Committee and the neighbors.

He claimed that the neighbors were never factored into any discussion of a compromise and that the modifications resulting from the remand were minor. He asserted that the Town Committee had been arbitrary and capricious and in error by its action in approving the house with only minor changes.

He raised concern about the Town Committee's vote to approve the project in which a member, Richard Alger, appeared to have removed himself from the first hearing on August 8, 2012, and then voted on the final vote to approve the Application on October 10, 2012.

Mr. Gaumond stated that the reduction in size to the building was only 96 square feet from the deck.

Mr. Downs stated that there were 125 lots in the Sandwich Downs Development and only four lots were as small as the Applicant's lot.

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 remand. He indicated that the Town Committee tried to stay away from set back, square footage and footprint issues because of their zoning nature. He stated that he felt that the Committee did address the size issue in the changes presented by the Applicant.

He reported that the Committee invited comment from the neighbors at the public hearings, but did not allow it at the site visit.

He listed the modifications the building and retaining wall and suggested that after visiting the site a majority of the Committee felt that the changes were sufficient to approve the project.

Commissioner Bearnse asked if the style or footprint of the building had changed.

Mr. Collins indicated that it had not changed.

She asked if a Member had removed himself at the first meeting and then had voted on the approval. Mr. Collins indicated he was surprised to hear of the issue and suggested that he could check with the Secretary.

Chairman Lomenzo asked if the Neighbors or abutters had been brought into the effort to reach a compromise and had they made any specific size change requests. Mr. Collins reported that they had been invited to speak at the public hearings, but not at the site visit.

Public Comment:

Chairman Lomenzo asked for public comment on the appeal.

Paula Downs, of 5 Beachway West, East Sandwich, stated that she had wanted to hear what was being said during the site visit and because the Applicant had refused to allow them to go on to the property.

Applicant's Rebuttal:

Attorney Henchy stated that while the Appellant's may disagree with the Committee ultimately found, the major focus of the hearings and site visit was on the relative size of the building.

He suggested that all of the submissions by the Appellants focused on size of the lots and houses in the neighborhood and a comparison with the Applicant's lot and proposed new house.

He reviewed the houses in the neighborhood and showed pictures of the Appellant's property.

He stated that after speaking with his client, he learned that Richard Alger had been removed himself from the meeting was a clerical error in the Minutes. He reported that Mr. Alger had removed himself from a prior matter with a different Applicant, but not this Applicant's proceedings.

He reported that nothing was discussed during the site visit and suggested that the reason the neighbor were not allowed on the property was because the owners were not present and that he, as their agent, did not wish to take the responsibility for any damage or injury that might have occurred.

He indicated that the Zoning Board of Appeals had approved the setbacks and size of the proposed house and that all other required approvals had been obtained.

Mr. Lomenzo asked for a clarification of the submitted plans and a review of the overlay plan of the new house footprint and the existing house. Mr. Cooke showed the Commissioners a Conservation Commission Plan, which showed the two footprints.

Appellant's Rebuttal:

Attorney Kirrine stated that the issue of relative size is the important issue in this matter and that while the zoning Board of Appeal may address footprint and setback issue, they are equally important issues for the Town Committee.

He claimed that his Clients had specifically requested that the Applicant stay within the existing buildings footprint.

He suggested that the expansion outside the footprint made the new building too large in its appearance on the small lot.

He pointed out that the remand suggested reduction in the size and mass of the proposed building.

Town Committee Rebuttal:

Mr. Collins stated that the Town Committee worked very hard to follow proper procedure and felt that Mr. Alger had not removed himself from the matter. He suggested that the Committee had tried to find a compromise on the size issue.

He claimed that the Town Committee had not exceeded its authority or acted in an arbitrary or capricious manner. He stated that the lot had been staked and that the site visit had allowed the Members to properly determine that the building was appropriate for its setting.

He acknowledged that the vote was a split vote (3 to 2), but it was sufficient to approve the Project.

Commission Discussion:

Mr. Gegenwarth of Yarmouth suggested that the appearance of the lot may be deceptive because the road layout is different from the constructed road. He expressed the opinion that the proposed dwelling will appear much larger than the present house and that the redesign reflected very little reduction in size.

He expressed concern about the record of attendance in the Minutes and suggested that some of the Members that voted to approve the Application may not have attended all of the meetings.

Mr. Houghton suggested that perhaps the hearing should be continued to allow time to verify the record.

Ms. Bears agreed that she had problems with the record and also did not see that enough of a change or compromise had taken place.

Chairman Lomenzo voiced concern about the documentation and procedures reflected in the Minutes and suggested that a continuance might be the way to clarify what happened at the Town Committee level.

Atty. Wilson advised that to continue the hearing more than a few days would require the written consent of all parties. CMR: 1:04 Clause (5) He went on to suggest that if Commissioners determined, as suggested by Mr. Gegenwarth and Ms. Bearse, that the determination to issue the Certificate of Appropriateness was in error because the size and/or design had not been altered sufficiently, the Commissioners could rule on the basis of that issue and bypass the procedural issues.

Carrie Bearse of Barnstable stated that she felt that the plans were not sufficiently changed from the original plans and therefore would make the Town Committee's determination an error. In addition she indicated that the Minutes appear to be insufficient to explain a basis for approving so few changes to the original plan.

Mr. Gegenwarth agreed with Ms. Bearse and suggested that a continuance is unnecessary.

Chairman Lomenzo stated that he was focused on the errors of procedure because they appear to be so obvious on the record and verifiable with time to investigate and get at the truth. He asked if there were a motion to continue the hearing and there was none.

Mr. Gegenwarth stated that he felt that there were procedural errors in the actions by the Town Committee.

Ms. Bearse stated that in addition to the procedural errors, it appeared that the Town Committee acted in an arbitrary and capricious manner in approving nearly the same plan that it had previously rejected.

Mr. Houghton agreed that there had been procedural error and that the house did not show a significant change from the original proposal that had been rejected by the Town Committee.

Chairman Lomenzo stated that he felt that this matter had been remanded to provide an opportunity to work out reasonable compromise with the Applicant, Abutters and Town Committee and that it failed to happen.

Mr. Gegenwarth suggested that perhaps a remand would provide an opportunity to reach a better result.

Ms. Bearse expressed concern that a remand would only continue the problems and suggested that the matter ought to end and allow the parties all have a new start and a clean slate to follow the proper procedures and find reasonable determinations.

Mr. Houghton agreed that the Commission should not remand the matter but bring closure to the current process.

He called for a motion to vote on the appeal.

Ms Bearnse moved, seconded by Mr. Houghton, to annul the decision of the Sandwich Town Committee in granting the Certificate of Appropriateness based on the arbitrary and capricious action and procedural errors reflected in the record and deny the Certificate of Appropriateness.

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

The Commission findings:

The Commission found as follows:

The Sandwich Town Committee made procedural errors in acting on the remand for the proposed dwelling to be located at 3 The Mall, East Sandwich, Massachusetts.

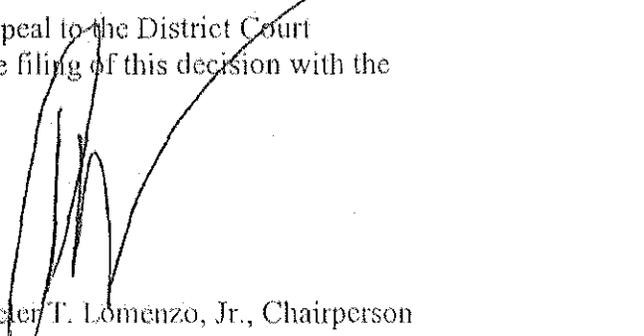
The Sandwich Town Committee acted in an arbitrary and capricious manner in approving the application for the proposed new dwelling.

Commission's Determination:

As to Appeal #2012-6, the Decision of the Sandwich Town Committee in granting a Certificate of Appropriateness for a new dwelling to be located at 3 the Mall, East Sandwich, Massachusetts is annulled and the Certificate of Appropriateness is denied. (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: December 7, 2012


Peter T. Lomenzo, Jr., Chairperson