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DISTRICT SANDWICH

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

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Alphonse Galdes and Bridget Galdes, Appellants

Vs.

Decision for Appeal No. 2013-1

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

On Tuesday, May 14, 2013, at 1:30 P.M., the Commission held a hearing at the West Barnstable Fire Station Meeting Room, 2160 Meetinghouse Way (Route 149), West Barnstable, Massachusetts, on Appeal # 2013-1 filed by Alphonse Galdes and Bridget Galdes seeking reversal of the Sandwich Town Committee's granting to Leigh Anne Yoo and Nicholas Yoo a Certificate of Appropriateness for a proposed new dwelling, deck and walkway to be located at 104 Salt Marsh Road, 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 Appellants; Joseph W. Dick, Appellant's Architect; Alphonse Galdes and Bridget Galdes, Appellants; Benjamin J. Losordo, Attorney for the Applicant; Anne M. Michniewicz, Applicant's Architectural Designer; and Leigh Anne Yoo and Nicholas Yoo, Owner/Applicants.

Absent was Paul Leach, Orleans.

The Sandwich Town Committee's decision was filed with the Town Clerk on April 11, 2013. The appeal was entered with the Regional Commission on Monday, April 22, 2013, within the 10-day appeal period.

Copies of the Appeal Petition with attachments, Town's Decision, Application, Plans and correspondence and submissions from the Sandwich Town Committee's public hearings were distributed to the Commissioners for review prior to the Regional Commission's public hearing on the appeal.

Applicant's Presentation:

Anne M. Michniewicz, Applicant's Architectural Designer, stated that she had been designing homes to be built within the regional historic district for thirty years and claimed that the proposed dwelling was designed to meet the Guidelines of the District. She indicated that the house was located on a barrier beach and limited in size, height and location by the many restraints imposed by its beach location. She described the design to be a tradition gambrel similar to other dwellings in the area. She showed drawings of the

proposed dwelling and the neighboring houses. She pointed out the similarity in design features and suggested that the Applicant's proposed dwelling would blend with the existing houses in the neighborhood.

She showed the Commissioners a map of Salt Marsh Road indicating the location the many existing houses that have been built along the barrier beach. She pointed out the location of purposed new house and described it as being in harmony with the location of the other existing houses.

She reviewed a comparison of the proposed building with the other properties on Salt Marsh Road based on the Town of Sandwich Assessor's Records and pointed out the similarity in size and appearance. She pointed out that the property has two cottages on the site and stated that they would be removed and replaced by the proposed single dwelling.

Benjamin J. Losordo, Attorney for the Applicant, presented a Street map showing the setbacks and many variations in size and footprints of the existing dwellings in the area. He stated that the area had once been a collection of small summer cottages that over time many had been up-graded to larger year-round dwellings. He suggested that the location and placement had great variations and that the character had a lot of variety in size, placement and appearance.

He claimed that the beach neighborhood for the Applicant's proposed dwelling needed to be considered in the context of a much larger area than just the two neighboring houses. He stated that while the two adjoining houses may be setback a greater distance from the Bay, most of other houses along the barrier beach were located closer to the Bay and that one of the Applicant's existing houses was much closer to the Bay.

Appellant's Presentation:

Attorney William C. Henchy, of Orleans, addressed the Commission on behalf of the Appellants. He stated that his client's presentation would focus on a claim that the Sandwich Town Committee exercised poor judgment in approving an obviously incongruous structure. He stated that the size and massing of the building was out of scale with the setting and contrast with the two smaller neighboring properties. He claimed that the Sandwich Town Committee misapplied the standard of "immediate surroundings" to the project by including in its consideration properties located beyond the two adjoining properties. He also claimed that the Sandwich Town Committee committed a procedural error by allowing a Town Committee member to vote on the project who had not attended one of the two public hearings on the project.

Joseph W. Dick, Appellant's Architect, showed the Commissioners a sketch of the proposed project and pointed out the features that would contrast with the adjoining properties. He claimed that the proposed dwelling, deck and walkway were too large for the narrow lot. He compared the abutting cottages, which he described as being substantially smaller in square footage and set farther back from the Bay. He pointed out

the proposed dwelling would project closer to the Bay than its neighbors and suggested that its sheer two story walls would have detrimental impact on the nearby neighboring properties.

Attorney Henchy claimed that the Sandwich Town Committee ought to have viewed the application by giving greater attention to the two neighboring properties, instead of looking at the many other houses that existed on the barrier beach. He suggested that the small cluster of three properties should have a common setback from the Bay and that their location, size, style and appearance should be the basis for determining its appropriateness. He argued that considering the setbacks and appearance of the many other properties located along the barrier beach exceeded the Section 10 requirement of examining the proposed project in relation to its immediate surroundings.

Mr. Dick presented to the Commissioners a comparison of the abutting Appellants' property and the Applicants' proposed project. He stated that there are ways to address the relative size of the proposed new dwelling and its large walkway that could reduce its large appearance. He suggested using dormers and breaking up the two story sheer wall appearance of the side of the proposed new dwelling.

Attorney Henchy criticized the large size of the proposed walkway to the beach, suggesting that it was unnecessary to run it from the front of the house to the rear. He claimed that it only added to the scale and mass of the proposed building.

He also suggested that by increasing the set back from the Bay, the design could benefit from being farther away from the identified breaking wave effect zone of the property.

Chairman Lomenzo asked Mr. Dick if his suggestions for changing the design had been presented to the Sandwich Town Committee.

He suggested that they had been presented but not fully addressed by the Sandwich town Committee.

The Town Committee's Presentation:

William Collins, as Chairman of the Sandwich Town Committee, addressed the Commission to report on the Sandwich Town Committee's actions in processing the application. He reported that the first public hearing was held on February 13, 2013 at which the permit for the removal of the two existing cottages was approved and action on the requested Certificate of Appropriateness for the replacement building and structures was continued to allow for a site visit and time to review the large amount of material that had been presented on the proposed project. He acknowledged that a Member of the Town Committee had not been able to attend the February 13, 2013 hearing, but that the Member listened to the tape recording of the first public hearing and fully participated in the site visit and the April 10, 2013 public hearing.

He reported that the entire Sandwich Town Committee participated in the site visit and examined the location both from the road and the beach area. He indicated that the footprint of the proposed building had been stacked.

He indicated that the proposed building had been slightly modified by pulling it back from the Bay and reducing its size in response to the neighbor's request.

He stated that the Sandwich Town Committee determined that the design and scale of the proposed project was appropriate for its setting and in harmony with its immediate surroundings, which included a wider area than just the two, adjoining houses. He reported that at the April 10th public hearing the modified plans received a 4-1 approval from the Town Committee.

Chairman Lomenzo asked if the massing of the proposed building and its sheer wall had been discussed during the review process.

Mr. Collins responded that the Applicant's Designer had pointed out that a second story porch had been removed from the beach side of the dwelling and the dormer stepped in a foot.

Public Comment:

Chairman Lomenzo asked for public comment on the appeal. There was none offered.

Applicant's Rebuttal:

Anne M. Michniewicz, Applicant's Architectural Designer, denied that the walls of the proposed building were sheer as claimed by the Appellant. She pointed out the building has an overhang to breakup its appearance.

She disputed the Appellant's claim that the raised walkway was unique and suggested that they were common in the neighborhood.

She pointed out that the proposed house and walkway were designed to replace two existing cottages, one of which had a garage and the other had a shed.

She suggested that the simple lines of the proposed house were more in keeping with other houses located in its distinct beach neighborhood setting.

She also pointed out that the proposed house as seen from the public's Street view is less wide than the Appellant's house and she suggested that the reason the Appellant does not have a walkway to the beach is because their house is too close to the Applicant's lot line.

Attorney Losordo suggested that his clients had made many major compromises during the evolution of the project. He suggested that they began with consolidating two dwellings into just one dwelling. The second was moving its location a significant

distance back from the Bay. He suggested that many town boards and agencies had publicly reviewed the project and its issues had been well aired in the process.

He concluded by expressing the opinion that the Sandwich Town Committee had acted properly in its review and requesting that the approval be sustained.

Appellant's Rebuttal:

Attorney Henchy stated that the project had universal opposition from the neighborhood and that he was unaware of any public support for the approval of the proposed house and walkway.

He reported that while Mr. Dick's concerns expressed during the public hearing before the Sandwich Town Committee and restated in this public hearing before the Regional Commission were fully presented, it appeared that there was not a substantive discussion of the points being presented.

He claimed that the Applicant's proposed building has a sheer wall and the roof overhang is a minor feature that did not breakup the large wall effect of the two stories. He stated that while there may be many elevated walkways to the beach, his Client's objection was to the size and scale of the proposed walkway that ran all the way from the front yard to the beach.

He concluded by suggesting that the claims of compromise were nothing more than a necessary adjustment caused not by the neighborhood objection to the project, but by the forces of Natures and winter storm erosion.

He asked that the Commission find that the Sandwich Town Committee acted erroneously and that it exercised poor judgment in approving the project.

Town Committee Rebuttal:

Mr. Collins stated that the Town Committee worked very hard to follow proper procedure and did not act in an arbitrary or capricious manner. He claimed that the Town Committee did not make an error of judgment in approving the proposed building and walkway.

He indicated that the Town Committee listened to the Applicants and the concerns of the neighbors. He stated that the materials were not an issue. He claimed that the Committee focused on the general design, size and scale for the setting and determined the project was appropriate by a 4-1 vote.

Commission Discussion:

Chairman Lomenzo closed the public hearing and asked the Commissioners to consider whether or not the Sandwich Town Committee exceeded its authority or exercised poor judgment, was arbitrary, capricious, or erroneous in its action.

Mr. Houghton stated that one of the points of the appeal was the claim that a member of the Sandwich Town Committee that voted for the approval was not present at the first public hearing. He dismissed this claim based on the Town Committee's 4-1 vote, suggesting that even if the vote were disqualified the approval would carry with a 3-1 vote.

He next addressed the size of the neighborhood issue raised by the Appellant and stated that a neighborhood while being a long strip of houses has to be viewed as extending well beyond just the two abutting houses.

He stated that he did not believe that the Sandwich Town Committee made an error or that they were arbitrary or capricious in approving the project.

Mr. Gegenwarth stated that he visited the site and that the walkway was an important element and appropriate for the dune setting. He agreed with Mr. Houghton that the neighborhood was much larger than just the two adjoining houses.

Ms. Bearse stated that she agreed with her fellow Commissioners that it appeared that the Sandwich Town Committee did their due diligence in reviewing the application and approving the project. She reported that she had visited the site and found the proposed building and walkway to be appropriate for the neighborhood.

Chairman Lomenzo stated that Sandwich Town Committee appeared to have done its job properly and expressed support for the comments by the other Commissioners.

He called for a motion to vote on the appeal.

Mr. Houghton moved, seconded by Mr. Gegenwarth, that the Regional Commission find no error by the Sandwich Town Committee and uphold its issuance of the Certificate of Appropriateness for the proposed new dwelling, deck and walkway.

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 did not error in granting a Certificate of Appropriateness for the final proposed dwelling, deck and walkway to be located at 104 Salt Marsh Road, Sandwich, Massachusetts.

The Sandwich Town Committee did not exceed its authority in granting a Certificate of Appropriateness for the final proposed dwelling, 1st floor deck and walkway to be located at 104 Salt Marsh Road, Sandwich, Massachusetts.

The Sandwich Town Committee did not act in an arbitrary or capricious manner in granting a Certificate of Appropriateness for the final proposed dwelling, 1st floor deck and walkway to be located at 104 Salt Marsh Road, Sandwich, Massachusetts.

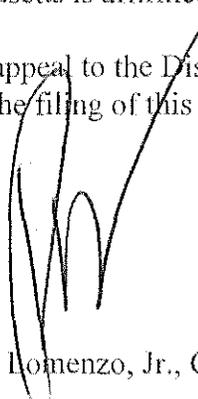
The Sandwich Town Committee did not exercise poor judgment in granting a Certificate of Appropriateness for the final proposed dwelling, 1st floor deck, and walkway to be located at 104 Salt Marsh Road, Sandwich, Massachusetts.

Commission's Determination:

As to Appeal #2013-1, the Decision of the Sandwich Town Committee in granting a Certificate of Appropriateness for a new dwelling, 1st floor deck, and walkway to be located at 104 Salt Marsh Road, Sandwich, Massachusetts is affirmed/ (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: May 31, 2013


Peter T. Lomenzo, Jr., Chairperson