

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

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DENNIS TOWN CLERK

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Colette Williams, Appellants

Vs.

Decision for Appeal No. 2013-3

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

On Tuesday, October 22, 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 # 2013-3 filed by Colette Williams seeking reversal of the Dennis Town Committee's granting to Pasquale and Joanne Iachetta a Certificate of Appropriateness for a fence extension to be located at 6 Martin Road, Dennis, Massachusetts.

Present were Chairman Peter T. Lomenzo, Jr., Dennis; Lawrence Houghton, Brewster; Barbara Shaner, Sandwich; Carrie Bearse, Barnstable; Richard Gegenwarth, Yarmouth; James R. Wilson, Commission Administrative Counsel; Colette Williams, Appellant; Pasquale Iachetta and Joanne Iachetta, Applicants.

Absent was Paul Leach, Orleans.

The Dennis Town Committee's decision was filed with the Town Clerk on September 16, 2013. The appeal was entered with the Regional Commission on September 26, 2013, within the 10-day appeal period.

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

Chairman Lomenzo announced that he would be representing his Town Committee and requested that an acting Chairman be elected to conduct the hearing. On motion of Mr. Gegenwarth, seconded by Ms. Bearse, Lawrence Houghton was elected acting Chairman to conduct the hearing. (5-0)

Applicant's Presentation:

Pasquale Iachetta, Applicant, stated that the application was to extend the present fence twenty feet into a "buffer zone" and that permission had been obtained from Peter Nyberg, the original subdivision developer. He claimed that Mr. Nyberg was paying the real estate taxes on the proposed fence extension area and suggested that the Appellant had no ownership interest in the area to be fenced.

Ms. Bearse asked if the proposed fence would be of the same material and appearance as the existing fence.

Mr. Iachetta stated that it would be the same.

Mr. Iachetta suggested that the neighbor/Appellant was improperly using the area and that it had become a "dumping ground."

Appellant's Presentation:

Ms. Williams addressed the Commission on behalf of her appeal. She stated that she did not go to the hearings because she thought that the open space area would be protected and could not be fenced by the Applicant.

Mr. Gegenwarth asked for a clarification of the location of the Appellant's residence.

Ms. Williams indicated that it was directly behind the Applicant's house, but located in the adjoining subdivision. She stated that when she acquired her home on Jannal Drive, she had been told that the twenty-foot buffer zone would be preserved as open space.

Mr. Houghton asked if the objection to the fence was only to its location and not to its appearance.

Ms. Williams indicated that her objection was to the proposed location of the fence extension on her property line and not to the fence's appearance or design features.

The Town Committee's Presentation:

Mr. Lomenzo, addressed the Commission to report on the Dennis Town Committee's actions in granting the Certificate of Appropriateness for the proposed fence extension. He reported that the first public hearing was held on August 28, 2013 at which the proposed family room and a new two-car garage were the main features of discussion. He indicated that there were no comments by abutters or members of the public. He indicated that there was an issue about the chimney and a request that the plans be modified to fully show the proposed changes. With the agreement of the Applicant, the matter had been continued until the next meeting.

He reported that at the next meeting on September 11, 2013 there were no comments from abutters or the public and the application was approved and a Certificate of Appropriateness issued.

He claimed that not only was there no opposition to the application, but he suggested that the placement of the fence in its proposed location was a planning or zoning issue and not a matter for the Dennis Town Committee. He denied that the Committee's action in approving the application was exceeding its authority, an exercise of poor judgment, or arbitrary, capricious or erroneous action by the Committee.

Mr. Gegenwarth expressed concern about the location of the proposed additions to the house and the two-car garage. He inquired about the setback requirements for the Town of Dennis and suggested that placing the addition to the building at the property line would have a significant negative impact on the appearance of the proposed addition.

Ms Bears stated that the appeal was to the extension of the existing fence and not to the appearance of the addition to the house or garage.

Mr. Gegenwarth expressed the opinion that the placement of the garage in the utility easement or on the property line was an error of judgment by the Dennis Town Committee.

Mr. Lomenzo stated that those were zoning issues and not proper considerations for the Dennis Town Committee and suggested that they rested with the Building Inspector to determine.

Public Comment:

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

Applicant's Rebuttal:

Mr. Iachetta presented an email statement dated October 4, 2013 from Daniel Fortier, Town of Dennis Planner, in which he indicated that the Planning Board had no objection or issue to the proposed fence being moved back to the edge of the Appellant's property line.

Appellant's Rebuttal:

Ms. Williams stated that she felt that there had been a great deal of confusion about who owned the open space and who had the right to apply for the extension of the fence.

Dennis Town Committee Rebuttal:

Mr. Lomenzo stated that ownership should not be an issue for the Town Committees to try and address. He suggested that the Building Inspector and the owners of the property must resolve those issues. He indicated that the applicant submitted a certified plot plan with the application.

He concluded by expressing regret that the issues raised by the Appellant had been presented to the Town Committee and dispensed with sooner, but inferred that the decision was proper.

Commission Discussion:

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

Ms. Bearse stated that the Dennis Town Committee appeared to have acted within the purview of aesthetic considerations and had followed the requirements of the Act.

Ms. Shaner stated that she agreed with her fellow Commissioner.

Mr. Gegenwarth stated that he disagreed and expressed concern about the location of the garage and the other structures that were shown on the plot plan. He stated that the proposed locations were inappropriate and suggested that the Dennis Town Committee made an error in approving the application.

Mr. Houghton disagreed with Mr. Gegenwarth and stated that the decision of the Town Committee is based on the aesthetic appearance of the fence and not property line encroachments. He suggested that set back lines are not proper considerations for either the Commission or the Town Committees.

He stated that he believed that the Town Committee acted properly on the information that was presented at the hearings and did not exceed its authority, exercise poor judgment, nor act in an arbitrary, capricious, or erroneous manner in approving the application.

He called for a motion to vote on the appeal.

Ms. Bearse moved, seconded by Ms. Shaner, that the Regional Commission find no error by the Dennis Town Committee and affirm its issuance of the Certificate of Appropriateness for the proposed extension of the fence.

The motion carried by a vote of 3-1-1. (Bearse, Shaner & Houghton in favor; Gegenwarth against and Lomcnzo abstaining)

The Commission findings:

The Commission found as follows:

The Dennis Town Committee did not error in granting a Certificate of Appropriateness.

The Dennis Town Committee did not exceed its authority in granting a Certificate of Appropriateness for the proposed fence extension

The Dennis Town Committee did not act in an arbitrary or capricious manner in granting a Certificate of Appropriateness for the proposed fence extension.

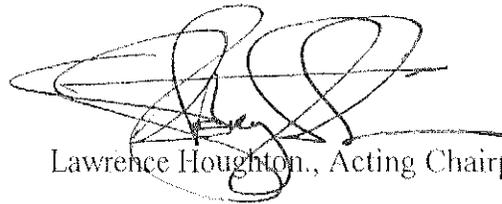
The Dennis Town Committee did not exercise poor judgment in granting a Certificate of Appropriateness for the proposed fence extension.

Commission's Determination:

As to Appeal #2013-3, the Decision of the Dennis Town Committee in granting a Certificate of Appropriateness for the extension of a fence to be located at 6 Martin Road, South Dennis, Massachusetts is affirmed. (3-1-1).

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: October 28, 2013

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

Lawrence Houghton., Acting Chairperson