

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

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

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DENNIS TOWN CLERK



James A. Gilrein, II, Appellants

Vs.

Decision for Appeal No. 2013-4

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

On Tuesday, December 17, 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 # 2013-4 filed by James A. Gilrein, II seeking reversal of the Dennis Town Committee's granting to Michael Dunford and Katherine Dunford a Certificate of Appropriateness for a new house to be located at 19 Joy Lane, Dennis, 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; James A. Gilrein, II, Appellant; Katherine Dunford, Applicant; Jim Hagerty of Reef Cape Cod Home Builder's, Applicant's Designer; and Matt Teague of Reef Cape Cod's Home Builder, Applicant's Builder.

Absent was Paul Leach, Orleans.

The Dennis Town Committee's decision was filed with the Dennis Town Clerk on November 15, 2013. The appeal was entered with the Regional Commission on November 21, 2013, within the 10-day appeal period.

Copies of the Appeal Petition with attachments, Town's Decision, Minutes, Application, Plans, correspondence and submissions from the Dennis Town Committee's public hearings were distributed to the Commissioners for review prior to the Regional Commission's December 17, 2013 public hearing on the appeal.

Chairman Lomenzo announced that he would be representing the Dennis Town Committee and requested that an Acting Chairman be elected to conduct the public hearing.

On motion of Mr. Gegenwarth, seconded by Mr. Collins, Lawrence Houghton was elected Acting Chairman to conduct the public hearing. (5-0)

Applicant's Presentation:

Katherine Dunford, Applicant, stated that due to a work commitment, her husband, Michael Dunford, would not be able to attend the public hearing and that she would be representing the owner's interest in the matter. She asked her designer, Jim Hagerty and her builder, Matt Teague, both of Reef Cape Cod's Builder of Dennis, to describe the proposed Project and the application process that had taken place before the Dennis Town Committee.

Mr. Hagerty reported that the Dennis Town Committee had granted a Certificate for the Demolition of the existing single story ranch house with out objection and that, as indicated by the appeal, the focus of the opposition was to the design features of the proposed replacement house.

He reviewed the history of the application process and showed the Commissioners the initial proposed design for the house. He indicated that neighborhood concern for the size and mass of the proposed dwelling was raised at the first hearing held on October 9, 2013, and that the public hearing had been continued to allow an opportunity to make changes to the design that might address some of the neighborhood objection to the proposed new dwelling.

He stated that the Bay views from the proposed new dwelling were an important feature for the Applicants and claimed that the proposed design met the zoning and building requirements for the area. He stated that the lot had an eight-foot drop in grade. He reported that the Town of Dennis maximum height regulation was based on a calculation of the average height and acknowledged that while the proposed two car garage under feature and the small walkout attic loft may give the dwelling a three and half stories appearance, the house was only a two story dwelling.

He reported that after the initial public hearing on October 9, 2013, he had met with the neighbors on-site to hear their objections to the proposed design. He stated that the design was modified by adding a small covered front entry, cutting back almost 30 % of the front porch area, changing a roof line by adding a gambrel style with a gable to soften it's appearance and adding windows to a large wall space that had been void of windows.

He reviewed a collection of pictures of other houses in the neighborhood and identified similar design features such as the gambrel roof and garage under style. He submitted a list of house size comparisons and stated that the proposed design was compatible with the neighborhood.

Commissioner Collins asked for a clarification of the grade modifications to the lot.

Matt Teague stated that his degree was in Civil Engineering. He reported that the Dennis Board of Health has a regulation that new houses should be built at or above the street grade and that the existing ranch style house that is to be replaced is located a couple of feet below the existing street grade. He indicated a concern about drainage during a sever

rain storm and stated that 3 feet of fill would be necessary to bring the house lot up to a proper level above the street grade.

Commissioner Jessop asked for a clarification of the change in elevation of the first floor of the existing house and the proposed new house. He also expressed concern about the appearance of two roof styles instead of using the gambrel roof style through out the design.

Mr. Teague indicated that the level of the first floor change was similar to the amount of fill that would be required for the lot and therefore the increase would be approximately three feet.

Commissioners Jessop and Gegenwarth expressed concern about the long straight stairways for access to the first floor and suggested that more design modifications ought to be considered by the Applicants.

Acting Chairman Houghton asked for a clarification of the number of meetings or interactions with the neighbors had taken place prior to the approval by the Dennis Town Committee.

Mr. Teague indicated that the on-site meeting was the only interaction with the neighbors prior to November 13, 2013.

Mr. Hagerty concluded the presentation by claiming that the proposed design fits the building requirements for the site and meets the interests of the Act. He asserted that the Applicants gave up three feet of permitted additional building height and that the design is similar in scale and size to other new houses located within the neighborhood. He suggested that the proposed house is in keeping with the growth changes that are taking place and requested that the decision of the Dennis Town Committee be affirmed.

Appellant's Presentation:

Mr. Gilrein addressed the Commission on behalf of his appeal. He reported that at the November 13, 2013 public hearing, Chairman Lomenzo had reported that he (Mr. Lomenzo) had told the Applicant to address the issues of size, massing and a possible lowering of the house to reduce the over arching appearance that had been raised during the October 9, 2013 public hearing.

In addition, he reported that Chairman Lomenzo repeated that he (Mr. Lomenzo) had previously encouraged the Applicants to discuss the size issues with the neighbors.

Mr. Gilrein claimed that he, and not the applicants, had reached out to the Applicants and their agents, which he claimed resulted in only a 10-minute site visit with little or no change that would address the abutters' raised issues.

He reported that Applicants had not submitted their revised plans in a timely fashion and that he had only been able to examine the new elevations 2 hours before the November 13, 2013 public hearing. He stated that he requested a continuance at the November 13, 2013 public hearing in order to better prepare a response to the revised plans and to allow more neighbors to comment on the revised submission. He indicated that his request was ignored and/or not acted upon by the Dennis Town Committee.

He disputed the claim made by the Applicant's agent that they had done what was appropriate to engage the abutters in the application process. He claimed that 5 of the nearby neighbors had expressed opposition to the apparent size and height of the proposed building. He asserted that the application lacked any neighborhood support and that even members of the Dennis Town Committee publicly expressed concern for the size and height issues that were being raised by the neighbors.

Mr. Gilrein pointed out that none of the proposed modifications had changed the size or height of the proposed building.

He expressed the opinion that the Dennis Town Committee exercised poor judgment by acting too quickly and without a proper review of the concerns for the building's massing, size, height and the adverse impact that its four story appearance would have on a neighborhood of one and two story dwellings.

He claimed that the Dennis Town Committee had acted arbitrary in granting the Certificate of Appropriateness after ignoring its own voiced observations that the building appeared to be too big for the lot and the neighborhood.

He asserted that the Dennis Town Committee had acted in a capricious manner by not allowing the requested continuance of the November 13, 2013 public hearing and by shifting from a publicly voiced position of opposition to the building's size and height to an approval without addressing the neighborhood opposition to the tall appearance of the proposed building.

He concluded by stating that he had 5 letters from neighbors in support of his appeal and asked that the following letters be added to his presentation to the Commission:

- 1.) Letter of Elizabeth Heye Solfisburg of 14 Peter Road, Dennis, Ma expressing concern that the proposed building was "too big" for the neighborhood.
- 2.) Letter of Anne Mroz of 6 Peter Road, Dennis, Ma expressing concern that the proposed building is "too large for its small lot" and not in keeping with the surrounding neighborhood.
- 3.) Letter of Paul Saidnawey of 20 Paul Street, Dennis, Ma expressing concern for the size, height and general fit of the proposed house in the neighborhood.

- 4.) Letter of Paul T. White of 15 Peter Road, Dennis, Ma expressing concern about the “procedures” followed by the Dennis Town Committee in approving the proposed building.
- 5.) Letter of Barbara & Thomas Martin of 19 & 28 Paul Street, Dennis, Ma expressing concern for the failure of the applicants to make changes to the “massing or height or to consider the concerns of the neighborhood.

Mr. Martin, who lives at 28 Paul Street and submitted the above 5th letter, assisted and supported Mr. Gilrein in his presentation. He stated his frustration with the process and the approval of the proposed house by the Dennis Town Committee. He confirmed many of the allegations made by Mr. Gilrein in the Appeal Petition and requested that the Certificate of Appropriateness be annulled and the Applicants be directed to reduce the size and modify many of design features of the proposed dwelling.

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 dwelling. He reported that at the first public hearing on October 9, 2013 a Certificate for the Removal of the existing single story ranch house was granted without opposition or controversy.

He confirmed that both the neighbors and the Dennis Town Committee expressed opposition to the massing, size and positioning of the proposed replacement house on the small lot. He also confirmed that he had strongly urged the Applicants to work with the neighbors.

He suggested that he and his Committee continue to encourage parties to work together to try and resolve their differences. He indicated that in this situation, he had assumed that during the time from the first public hearing to the time of the second public hearing that the parties had been working toward an acceptable resolution to the issues in dispute.

Mr. Lomenzo stated that there may be building or zoning issues but suggested that they were not proper considerations for the Dennis Town Committee. He declared that they rested with the Building Inspector to determine.

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. He acknowledged that it was a split 3-2 vote, but that he felt that it was a reasonable determination.

Commissioner Collins asked if the modified plans had been filed with the Dennis Town Committee prior to the November 13, 2013 public hearing. Mr. Lomenzo confirmed that they had not been submitted or reviewed prior to the hearing. He stated that it had been the policy of the Dennis Town Committee to allow modified plans to be submitted at the time of the public hearing.

Commissioner Jessop asked for clarification of the maximum permitted height for houses in the area. Mr. Lomenzo confirmed that the height was 35 feet and that it was an average calculation from the lot grade to the ridgeline of the roof.

Public Comment:

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

Applicant's Rebuttal:

Katherine Dunford began by stating that they depended upon their Agents, Reef Cape Cod Home Builders, to meet with the neighbors. She indicated that she felt that they had adequately represented their interests in the matter.

She expressed the opinion that the modified plans addressed the majority of the neighbors concerns and listed the following changes that were incorporated into the revised plans:

The front porch was reduced by about 30% and more definition was added to the front entrance.

The roof area on the right side of the house was reduced by approximately 30%, changing the roofline and eliminating a gable and windows on the side facing Mr. Gilrein's house.

The appearance of the back of the house was improved by adding a couple of windows and architectural molding.

She claimed that the house was only a two-story house and that the loft in the attic, with its sliding door, was not a third story, but an opportunity to take advantage of a Bay view.

She concluded by stating that she felt that the modified plan represented a reasonable compromise and requested that the Regional Commission uphold the decision made by the Dennis Town Committee.

Appellant's Rebuttal:

Mr. Gilrein stated that the view of Cape Cod Bay is an important amenity for the neighborhood and adds value to the all the properties that are located in the area.

He acknowledged that he had been involved in the sale of the lot to the Applicants as the listing broker.

Mr. Martin stated that he felt that the failure to act on the request for a continuance was a clear error of procedure and unfair to the abutters. He claimed that the neighbors should

have been given a reasonable time to review and prepare their observations about the revised plans. He asserted that the Dennis Town Committee vote to approve the application was prejudicial to the rights of the abutters. He pointed out that the Applicants had been granted two prior continuances and the abutters denied their only request with out an explanation or a vote by the Dennis Town Committee.

Dennis Town Committee Rebuttal:

Mr. Lomenzo stated that he felt that the building was appropriate for the neighborhood and that a good faith effort to modify the appearance of the building had been made by the Applicants.

He denied that the Dennis Town Committee made any procedural errors.

He concluded by suggesting that it is difficult for people to attend the scheduled hearings, but that the delay in acting on an application can be unfair to the applicants.

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.

Mr. Jessop began by observing that it was good to see a neighborhood where the residents appeared to retain strong interaction with one another. However he noted that larger houses were replacing the older small cottages and that zoning appeared to be permitting the changes to take place. He cited the new averaging height regulation as an example of the Town of Dennis effort to allow lot owners to enjoy views when building on hills and slopes. He also indicated that the raising of the grade by three feet appeared to be proper.

He noted that the Dennis Town Committee attempted to bring the Applicants and the neighbors together to find a way to interact together so that a compromise of the competing interests could be found for all parties. He expressed disappointment that it did not happen, but suggested that the record did not appear to show that Dennis Town Committee had acted in error in making its decision to approve the proposed house.

Mr. Collins stated that he felt that more review was in order and that parties needed more time to find a better design for the lot. He suggested that considerable opposition and frustration exist within the neighborhood and that a better chance to address it ought to be provided to the parties. He expressed reluctance to support the decision that appeared to have been made with little time for neighborhood review or comment. He indicated that he was troubled by the failure to grant the requested continuance and felt a remand would give time to better address the needs of the abutters.

Mr. Gegenwarth stated that he had visited the site and felt that he would not have approved the proposed design. He indicated that he believed that there was too many

design features that were inappropriate. He recommended that the application should be returned to the Dennis Town Committee to allow a closer examination of the proposal and an opportunity for more modifications that would reduce the tall appearance of the proposed dwelling and allow it to blend into its setting. He suggested that the white color and vinyl shakes would emphasize the large appearance of the proposed building.

Mr. Houghton expressed concern for the failure of the Dennis Town Committee to act on the requested continuance. He indicated that the failure of the Dennis Town Committee to discuss and act on the requested continuance to have been a mistake.

He stated that the design needs to be changed and the application returned to the Dennis Town Committee for more changes to be presented by the Applicants.

He called for a motion to vote on the appeal.

Mr. Collins moved, seconded by Mr. Gegenwarth, that the Regional Commission find that an error by the Dennis Town Committee in not acting on the requested continuance and that the issuance of the Certificate of Appropriateness be annulled and that the matter be remanded to the Dennis Town Committee for a continuation of its public review and possible design modifications.

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

The Commission findings:

The Commission found as follows:

The Dennis Town Committee made an error in not acting on the requested continuance.

The Dennis Town Committee should not have granted a Certificate of Appropriateness for the proposed building located at 19 Joy Lane, Dennis, Massachusetts.

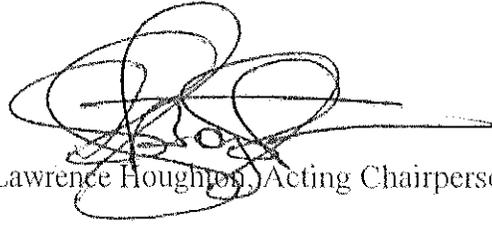
The Certificate of Appropriateness should be annulled.

The application should be remanded to the Dennis Town Committee for a continuation of the public review and possible design modifications.

Commission's Determination:

As to Appeal #2013-4, the Decision of the Dennis Town Committee in granting a Certificate of Appropriateness for the proposed new house to be located at 19 Joy Lane, Dennis, Massachusetts is annulled and the application is remanded to the Dennis Town Committee for further public review on the issues of massing, size and height of the proposed building. (4-0-1).

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.

A handwritten signature in black ink, appearing to be 'L. Houghton', written over a horizontal line. The signature is somewhat stylized and scribbled.

Dated: December 30, 2013

Lawrence Houghton, Acting Chairperson