

OLD KING'S HIGHWAY REGIONAL HISTORIC DISTRICT COMMISSION

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

Marc Howard and Jocelyn Howard, Applicant/Appellants

Vs.

Decision for Appeal No. 2014-2

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

On Tuesday, July 29, 2014, 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 # 2014-2 filed by Marc Howard and Jocelyn Howard seeking reversal of the Yarmouth Town Committee's disapproval of a Certificate of Appropriateness for 24 roof mounted solar panels to be located at 30 Outward Reach, Yarmouth, Massachusetts.

Present were Chairman Peter T. Lomenzo, Jr., Dennis; William Collins, Sandwich; Carrie Bearnse, Barnstable; Richard Gegenwarth, Yarmouth; James R. Wilson, Commission Administrative Counsel; Jocelyn Howard, Applicant/Appellant and Jason Stoots, Agent for the Applicant/Appellant.

Absent were: Lawrence Houghton, Brewster and Paul Leach, Orleans.

The Yarmouth Town Committee's decision was filed with the Town Clerk on June 24, 2014. The appeal was entered with the Regional Commission on July 2, 2013, within the 10-day appeal period.

Copies of the Appeal Petition, Minutes, Town's Decision, Application, and submissions from the Yarmouth Town Committee's public hearing were distributed to the Commissioners for review prior to the Regional Commission's public hearing on the appeal. The Commissioners visited the site prior to the hearing.

Applicant/Appellants' Presentation:

The Appellant/Applicants' Agent Jason Stoots, of E2 Solar, Route 6A, Dennis, Massachusetts, addressed the Commissioners on behalf of the Appeal.

He stated that the reason for the appeal was that the Yarmouth Town Committee denied the project because of improper factors such as (1) the home's future salability, (2) inefficiency in the proposed system, and (3) source of payment for the system.

He claimed that (4.) the 1972 home was not historic, (5) that the neighborhood was not historic, and (6) that an electric transformer located in front of the home was not historic.

He presented pictures of other properties that had been approved with roof mounted solar panels and suggested that the Yarmouth Town Committee's decision had been arbitrary in denying this project.

He suggested that the proposed system would generate \$50,000 worth of electricity over its life time and meet all of the Applicants' electric needs.

He presented a letter of support from Lisa M. Bartan and Janna Lambine, who were described as neighbors that did not object to aesthetics of the panels on the front of the house.

He indicated that the unbalanced appearance of the panels was caused by an effort to save an oak tree which if removed might be a way to make the solar panel array more balanced and acceptable.

He indicated that changes in the array or modifications to the project might have been possible, if the Yarmouth Town Committee had asked to continue the review to a future date.

He suggested that the Town Committee erred by not proposing a continuance to work out a possible compromise.

Jocelyn Howard stated that she supported the efforts to maintain the quality of Route 6A and the historic district and believed that that their solar panel project would help to protect the long term future of the environment.

The Town Committee's Presentation:

Richard Gegenwarth addressed the Commission on behalf of the Yarmouth Town Committee decision to deny the application.

He confirmed, as reflected in the Yarmouth Town Committee's Minutes, that the application was denied by the Town Committee because the appearance of the solar panels was determined to be inappropriate.

He suggested that because of the existing light color of the roof and the dark color of the panels, the unbalanced appearance of the panels would be very prominent and inappropriate for its setting.

He acknowledged that a member of the Yarmouth Town Committee may have used improper subjective words such as "eye sore" to characterize the proposal, but claimed that during the hearing, the applicant's agent had failed to express a willingness to consider modifications to the roof color or the appearance of the panel array.

He defended the comments and questions about the projects costs and possible inefficiency as relating to the Commission's Guideline - (B.5 Energy Conscious Design) that requires a solar panel system to "...function in a practical manner..."

He pointed out that Guideline (B.5.a.) requires that the system have "Minimum visual impact on the surrounding neighborhood."

He stated that the purpose of the Historic District Act is to preserve and protect the appearance of all the houses and neighborhoods located within the historic district and not just the historic buildings and structures located along Route 6A.

He claimed that the Yarmouth Town Committee had approved many other solar panel projects, but indicated that this denial was an exception because of the unique appearance of the solar panel array and its apparent relatively low (80%) efficiency.

Note: The Applicant/Appellants' Agent disputed the claim of low efficiency by pointing out that the system met the minimum requirements for the benefit of tax credits.

Public Comments:

Chairman Lomenzo noted that the letter of support submitted by the Applicant/Appellants from Lisa M. Bartaan and Janna Lambine contained the only comments from the public.

Commission Discussion:

Chairman Lomenzo announced that the purpose of the deliberation is to determine if the Yarmouth Town Committee had (1.) exceeded its authority, (2.) exercised poor judgment, (3.) was arbitrary, (4.) capricious, or (5.) erroneous in its action.

He asked the Commissioners for their comments.

Commissioner Collins of Sandwich stated that he did not believe that the Yarmouth Town Committee had made an error denying the proposed solar panel array.

Commissioner Bearse of Barnstable expressed concern for the negative subjective comments by the members of the Yarmouth Town Committee and suggested that a compromise ought to have been found for the roof mounted solar project.

Chairman Lomenzo of Dennis stated that, while a remand might provide the opportunity to work out a compromise, he indicated that the Yarmouth Town Committee appeared to have had a reasonable basis for its denial.

He therefore expressed the opinion that the denial must be upheld and the Applicant/Appellants should not be seeking a remand from the Regional Commission.

He suggested that the Applicant/Appellants should return to the Yarmouth Town Committee and explore changes that may lead to an expedited approval.

Mr. Collins moved, seconded by Mrs. Bearse that the Regional Historic District Commission uphold the disapproval of the requested roof mounted solar panels for the dwelling located at 30 Outward Reach, Yarmouth, Massachusetts.

The motion carried by a vote of 3-0-1. (Lomenzo, Collins, & Bearse in favor and Gegenwarth abstaining)

The Commission findings:

The Commission finds as follows:

The Yarmouth Town Committee did not exceed its authority in the disapproval of the requested roof mounted solar panels for the dwelling located at 30 Outward Reach, Yarmouth, Massachusetts.

The Yarmouth Town Committee did not exercise poor judgment in the disapproval of the requested roof mounted solar panels for the dwelling located at 30 Outward Reach, Yarmouth, Massachusetts.

The Yarmouth Town Committee did not act in an arbitrary or capricious manner in the disapproval of the requested roof mounted solar panels for the dwelling located at 30 Outward Reach, Yarmouth, Massachusetts.

The Yarmouth Town Committee did not error in the disapproval of the requested roof mounted solar panels for the dwelling located at 30 Outward Reach, Yarmouth, Massachusetts.

Commission's Determination:

As to Appeal #2014-2, the Decision by the Yarmouth Town Committee is affirmed. (3-0-1).

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 Yarmouth Town Clerk.

Dated: August 4, 2014


Peter T. Lomenzo, Jr., Chairperson