

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

P.O. Box 140, Barnstable, Massachusetts 02630-0140
Tel: 508-744-7586

BARNSTABLE TOWN CLERK

**Mary Ellyn Holst Johnson, Richard P. Johnson
and Joan K. Tompkins, Appellants**

2014 AUG 25 AM 9:40

Vs.

Decision for Appeal No. 2014-3

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

On Tuesday, August 12, 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 # 2014-3 filed by filed by Mary Ellyn Holst Johnson, Richard P. Johnson, and Joan K. Tompkins seeking reversal of the Barnstable Town Committee's granting to James and Linda Hannoosh a Certificate of Appropriateness for replacing windows, constructing a balcony, replacing an existing cupola, modifying an entry and installing solar panels all to be located at 35 Williams Path, west Barnstable, Massachusetts.

Present were Chairman Peter T. Lomenzo, Jr., Dennis; Lawrence Houghton, Brewster; Lynda Haller, Sandwich; Carrie Bearse, Barnstable; Richard Gegenwarth, Yarmouth; James R. Wilson, Commission Administrative Counsel; Mary Ellyn Holst Johnson and Joan K. Tompkins, Appellants; Kevin Kirrane, Attorney for the Applicants; James Hannoosh and Linda Hannoosh, Applicants; and Ed Mogan, Applicant's Builder.

Absent was Paul Leach, Orleans.

The Barnstable Town Committee's decision was filed with the Barnstable Town Clerk on July 10, 2014. The appeal was entered with the Regional Commission on July 18, 2014, within the 10-day appeal period.

Copies of the Appeal Petition with attachments, Town's Decision, Minutes, Application, Plans, correspondence and submissions from the Barnstable Town Committee's public hearing were distributed to the Commissioners for review and it was announced that all of the Commissions had visited the site of the proposed project prior to the Regional Commission's August 12, 2014 public hearing on the appeal.

Applicant's Presentation:

Dr. James Hannoosh, Applicant, stated that his property has a view of Sandy Neck which they wished to enhance. He indicated that in 2013 he had proposed a 2nd floor family room to be located over the garage, which was rejected by all the members of the Barnstable Town Committee. He reported that he returned to the Town Committee on April 23, 2014, with a much simpler proposal that would stay within the building's foot

print and preserve the existing character of the building and the neighborhood. The revised proposal included replacing windows, constructing a balcony, replacing an existing cupola, modifying an entry and installing solar panels on the south facing roof. He indicated that this proposal appeared to be more acceptable to the Town Committee and a formal submission was filed and a hearing held on July 9th, 2014, at which the revised scaled down proposal was unanimously approved by the Town Committee as submitted.

Appellants' Presentation:

Mary Ellen Johnson of 61 Williams Path, West Barnstable, stated that the reason for filing the appeal was a failure by the Barnstable Town Committee to properly address the size of the proposed cupola. She indicated that she had attended the public hearing on July 9th, 2014 and that both the applicant and the Town committee had ignored her request to have the exact size and dimensions of the copula disclosed. She expressed concern for the lighting of the copula and suggested that trees had been previously removed without proper disclosure and/or approval.

Joan K. Tompkins of 280 High Street, West Barnstable, stated that her property also abutted the Applicant's property. She indicated that the balcony, window and entry modifications and solar panels were all acceptable but that the copula was a problem. She indicated that she had attended the July 9th 2014, hearing and claimed that the dimensions of the copula were not disclosed. She confirmed that she and a member of the Town Committee had asked for the dimensions and that the requests had been ignored. She again requested that the copula's size and the amount of lighting be disclosed.

Commissioner Gegenwarth asked if the drawings of the copula had been available to the Appellants and the Town Committee.

Mrs. Johnson stated that the Applicant had shown the drawings to her prior to the meeting, but had not disclosed the specific dimensions of the new copula.

Commissioner Gegenwarth observed that the drawings indicated a scale of ¼ inch = 1 foot and suggested that a ruler would indicate the size of the copula.

Commissioner Lomenzo asked if the trees were a part of July 9th 2014, application or a prior application.

Mrs. Johnson indicated that it was from a prior application which had previously approved the attached garage.

Barnstable Town Committee's Presentation:

Carrie Bearse, addressed the Commission to describe the Barnstable Town Committee's actions in granting the Certificate of Appropriateness for the proposed changes to the building. She stated that the application and drawings were available for examination at

the office of the Old King's Highway Town Committee at 200 Main Street, Hyannis, MA, prior to the hearing. She stated that the plans were to scale and indicated a scale of ¼ inch + 1 foot. She denied that the Barnstable Town Committee had exercised poor judgment or had been erroneous in its action as the size of the copula was clear from the drawings. She stated that the drawings indicated that the proposed copula was approximately four and a half feet wide and would stand approximately eight feet above the ridge line.

Chairman Lomenzo asked if the issue of the size of the copula had been a concern for the Barnstable Town Committee.

She responded that it had not been a problem because the scale was printed on the drawings and that the drawings had been prepared to scale.

Public Comment:

Chairman Lomenzo asked for public comment on the appeal.

Joseph J. Botelho of 91 Williams Path, West Barnstable, MA stated that he shared the concern about the size of the proposed cupola and expressed support for the Appellants position.

Alexander Schermer of 42 Williams Path, West Barnstable, MA indicated that he supported the application and the Barnstable Town Committee's approval.

Applicant's Rebuttal:

Kevin Kirrane of Mashpee, Attorney for the Applicant, claimed that all of the construction by the Applicants had been done in accordance with the prior approved plans. He assured the Regional Commission that there would be no increase in the wattage of the light in the copula or the time that it would be in operation. He stated that the new copula would not be living space, but would only be used as a place for the observation of the Sandy Neck area.

He indicated that the copula was in keeping with the design and scale of the building's other features and appropriate for the site. He claimed that the Barnstable Town Committee did not exceed its authority, exercise poor judgment, act in an arbitrary or capricious manner. He suggested that the determination was not erroneous.

He requested that the decision of the Barnstable Town Committee be affirmed.

Appellant's Rebuttal:

Mrs. Johnson requested that she be given the exact dimensions of the copula and the wattage of its light.

Joan K. Tompkins expressed the opinion that the dimension of the copula were not clear and that specifications ought to have been provided more openly at the hearing.

Barnstable Town Committee Rebuttal:

Mrs. Bearse stated that all of the Barnstable Town Committee records and videos are available for the public and that information is easily obtainable at the Town offices. She stated that the drawings were to scale. She confirmed that the vote to approve the application was unanimous.

Commission Discussion:

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

Mr. Gegenwarth stated that he did not see any error or violation by the Barnstable Town Committee. He indicated that the drawings were prepared to scale and that the Town Committee, Appellants and Public had reasonable access to the drawings and its related information.

Mr. Houghton stated that he agreed that the information was there and that the Barnstable Town Committee did not exceed its authority, exercise poor judgment nor was it arbitrary, capricious or erroneous in approving the proposed changes to the building.

Ms. Haller stated that she had visited the site of the proposed project at various times of the day and evening and observed the lighting of the existing copula. She indicated that it appeared to be muted and not too bright or offensive. She stated that she agreed that the Barnstable Town Committee acted properly and did not error in approving the project.

Mr. Lomenzo stated that his observations were similar and that the size and scale of proposed copula appeared to be appropriate for the dwelling. He indicated that the Barnstable Town Committee appeared to have acted within the scope of its authority and had not exercised poor judgment or been arbitrary or capricious. He expressed disappointment that the dimensions and wattage of the lighting had not been more clearly expressed during the hearing, but indicated that the information was sufficiently available to the Barnstable Town Committee and the Appellants prior to the hearing.

He called for a motion to vote on the appeal.

Mr. Houghton moved, seconded by Mr. Gegenwarth, that the Regional Commission find that the Barnstable Town Committee did not exceed its authority or exercised poor judgment and had not been arbitrary, capricious or erroneous and that the decision to grant the Certificate of Appropriateness should be affirmed.

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

The Commission findings:

The Commission found as follows:

The scale drawings and information available to the Barnstable Town Committee was sufficient to approve the application

The Barnstable Town Committee did not exceed its authority or exercise poor judgment and was not arbitrary, capricious or erroneous in granting the Certificate of Appropriateness to the Applicants.

The Certificate of Appropriateness was properly granted to the Applicants.

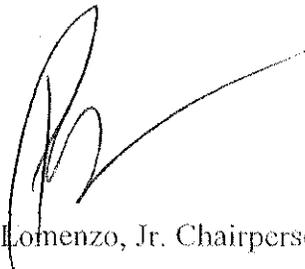
The determination by the Barnstable Town Committee should be affirmed.

Commission's Determination:

As to Appeal #2014-3, the Decision of the Barnstable Town Committee in granting a Certificate of Appropriateness to James and Linda Hannoosh for replacing windows, constructing a balcony, replacing an existing copula, modifying an entry and installing solar panels all to be located at 35 Williams Path, West Barnstable, 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 Barnstable Town Clerk.

Dated: August 25, 2014


Peter T. Lomenzo, Jr. Chairperson