

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

P.O. Box 140, Barnstable, Massachusetts 02630-0140

**Chester H. Brearey, Appellant**

**Vs.**

**Decision for Appeal No. 2016-7**

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

On Tuesday, August 16, 2016 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 # 2016-7 filed by Chester H. Brearey seeking reversal of the Sandwich Historic District Committee's granting to Mary Bell Carpenter and Michael O'Brien a Certificate of Appropriateness for a cottage/apartment to be located at 5 Deacon's Path, Sandwich, Massachusetts.

Present were Chairman Lawrence Houghton, Brewster; William Bohlin, Dennis; William Collins, Sandwich; Paul Richard, Barnstable; Richard Gegenwarth, Yarmouth; Ronald Mgrdichian, Orleans; James R. Wilson, Commission Administrative Counsel; Robert Downey of 8 Deacon's Path, speaking in support of the Appellant, and Benjamin Lorsodo Attorney speaking for the Applicant, Mary Bell Carpenter, et al.

Both the Appellant and Applicant had indicated that they had personal conflicts and would not be present at the public hearing.

The Sandwich Historic District Committee's decision was filed with the Sandwich Town Clerk on July 14, 2016. The appeal was entered with the Regional Commission on July 21, 2016, within the 10-day appeal period of Section 11 of the Act.

The Commissioners have reviewed the application with relevant plans and submissions presented to the Sandwich Historic District Committee; the minutes of the July 13, 2016, Sandwich Historic District Committee public hearing; the approval of the application by the Sandwich Historic District Committee; and the Appellant's appeal petition.

The Commissioners have visited the site and are familiar with the neighborhood and location of the Applicant's proposed accessory cottage/apartment at 5 Deacon's Path, Sandwich, Massachusetts.

**Applicant's Presentation:**

Attorney Benjamin Lorsordo of Sandwich addressed the Commission on behalf of the Applicant Mary Beth Carpenter. He stated that his client was unable to attend the hearing.

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He indicated that the Town of Sandwich had adopted a zoning by law change that allowed a property owner to build a *family in law* type accessory dwelling unit on a residential lot provided it was restricted to 800 square feet of usage area. He stated that the accessory unit could not be rented or used other than by a family member and must be maintained within the strict terms of the recently revised Sandwich Zoning by Law. He stated that a deed restriction would be recorded to limit the residential usage of the proposed cottage.

He presented the plan elevations of the proposed dwelling unit and described the appearance of the design as being similar to a traditional ranch style with a white cedar shingle exterior. He stated that the roof pitch would match that of the existing main house and that the windows would be grilled to add to its traditional appearance. He suggested that the traditional exterior architectural features would be a visual improvement over the Texture 1-11 siding of the main house and compatible with the mixed design of the other buildings located in the immediate surroundings.

He pointed out on a submitted plot plan the location of the main house and the accessory unit that would be located to the rear of the main house. He stated that the accessory dwelling unit would be sixty-four (64) feet from the Appellant's property line and constructed on a slopping grade with a walk-out unfinished basement.

He noted that the Appellant had a separate free standing garage building near the abutting property line. The Town of Sandwich Assessing Map showed an additional separate free standing garage building located on the nearby 9 Deacon's Path house lot.

He asserted that nearly all of the claims set forth in the Appellant's July 7, 2016 letter of opposition to the Sandwich Historic District Committee and carried forward in the appeal petition were legally irrelevant to the standards and review process under the Old King's Highway Regional Historic District Act. He claimed that the appeal was for the most part a challenge to zoning related issues of density and usage over which the Sandwich Historic District Committee lacked the legal authority to address.

He concluded by suggesting that the exterior architectural features of the proposed accessory unit would improve the appearance and character of the neighborhood.

#### **Appellant's Presentation:**

The Appellant was unable to attend the public hearing and Robert Downey of 8 Deacon's Path spoke in support of the Appellant's written appeal petition. He indicated that he had spoken with the Appellant and that he and his neighbors mainly opposed the application because of the impact of the four (4) houses in close proximity to one another. He stated that this proposal would cluster four (4) dwelling houses within eighty (80) feet of one another. He claimed that the appearance of the additional free standing accessory dwelling unit would create too much of a clustered appearance for the area.

He suggested that if the accessory unit had been attached to the main house, it probably would have been more acceptable to the neighborhood.

Chairman Houghton asked Mr. Downey to confirm the location of the existing abutting buildings of concern on the submitted plot plan and the Town of Sandwich Assessing Map. The location of the existing buildings in the area and the proposed accessory dwelling unit were again shown to the Regional Commissioners for their review.

#### **Sandwich Historic District Committee's Presentation:**

Mr. Collins presented the Sandwich Historic District Committee's basis for the decision to grant the Certificate of Appropriateness.

He confirmed the Sandwich town meeting's recent adoption of the zoning by-law revision that allowed the proposed free standing accessory dwelling for family use with detailed zoning regulations. He indicated that the zoning change was adopted to move away from a pattern of connected dwellings with attached *in law apartments units*.

He addressed the seven paragraphs of the Appellant's Appeal "*attachment*" which set forth "*the reason for the appeal.*" He pointed out that in the Appellant's first (1st) paragraph, which makes reference to the Sandwich Historical Commission, appeared confusing as it linked two different agencies with different missions and responsibilities. He stated that the regulatory authority of the Sandwich Historic District Committee operates independent of the Sandwich Historical Commission.

He suggested that the next three paragraphs (2nd, 3rd & 4th) were expressions of personal assumptions and beliefs, which he acknowledged may be shared by the members of the Sandwich Historic District Committee, but do not provide reasons or a factual basis for the appeal.

He disputed the accusation of an absence of due diligence on the part of the Sandwich Historic District Committee set forth in the fifth (5th) paragraph by referring to the official record of the minutes of the July 13, 2016 meeting. He stated that the Sandwich Historic District Committee reviewed the application and visited the site before the public hearing. He indicated that the Committee examined the specifications and plans, took public comment, openly read the Appellant's submitted letter of opposition, took questions from the public about the project, and demonstrated a familiarity with the neighborhood and the proposed accessory unit before discussing and rendering its judgment that the unit would be appropriate under the Old King's Highway Regional Historic District Act for the neighborhood. He stated that the zoning issues and considerations are assigned to other agencies and generally are deemed to be outside the authority granted to the Sandwich Historic District Committee in its role of determining *appropriateness* under the Old King's Highway Regional Historic District Act.

Additionally, he indicated that the paragraph sixth (6th) claim, that the Sandwich Historic District Committee ought to have checked on the character and quality of the contractor, was outside the legal authority and scope of the Committee's review process.

In responding to the claims set forth in the seventh (7th) and closing paragraph, Mr. Collins disputed that the decision would set a precedence. He indicated that each application is unique and must be reviewed with out a lingering force of prior precedence. He disputed the claim that the development would be incongruent with the neighborhood, by pointing out that the subdivision was a typical post war contemporary subdivision located behind an apple orchard more than a mile and a half from Route 6A. He described the houses on the street and nearby area as being a mixture of contemporary styles and designs and the Applicant's lot as containing sufficient land area to accommodate the accessory building.

Commissioner Gegenwarth asked when the Applicant's main house was built and the date of 1979 was provided to the Commissioners.

Commissioner Bohlin asked if the proposed accessory building would be facing the Appellant's house instead of the street.

Attorney Lorsordo indicated that the grade and slope of the lot influenced the placement of both the main house and the accessory building. He stated that both buildings would face in an easterly direction toward the Appellant's property.

**Public Comment:**

Chairman Houghton asked for public comment on the appeal.

Susan Christiano of 6 Deacon's Path asked to examine the plans and confirm the placement of the proposed accessory building that would be facing the Appellant's property. She read a letter in which she and her husband expressed concern that the character of the neighborhood would be adversely effected by the addition of a second dwelling on the lot.

She read a letter from Donald and June Richard of 9 Deacon's Path in which they expressed opposition to the allowance of the free standing separate dwelling unit on the lot and suggested that it will negatively impact property values in the neighborhood and set a negative precedence for future development throughout the Cape.

She read a letter from Robert and Maria Amaral of 10 Deacon's Path which expressed the following three (3) reasons for supporting the Appellant's appeal: 1. Potential detrimental impact on property values in the neighborhood. 2. Potential that the building will in the future become a rental property. 3. The construction of the proposed building was opposed by all the neighbors.

Robert Downey of 8 Deacon's Path, who had spoken previously in support of the Appellant's appeal, read a letter in which he and his wife repeated their opposition to the potential clustered density of allowing too many dwellings to be constructed in their neighborhood.

Karen Burke of 3 Deacon's Path expressed concern about the Applicant's compliance with the Sandwich zoning by laws and claimed that the Applicant's existing deck on the western side of the main house had been constructed in violation the Sandwich's Zoning By Law sideline setback requirement by having been constructed six (6) feet from her lot line.

#### **Applicant's Rebuttal & Concluding Statement:**

Attorney Lorsordo reminded the Commissioners that the usage restrictions would be protected by recorded deed restrictions and that the building department would be responsible for enforcing the Sandwich zoning by laws. He emphasized that the town meeting changed the *in law apartment* rules to authorize the *free standing accessory dwelling* and that his client would meet the requirements of the revised zoning by law.

He suggested that if the neighbors were upset with the number of dwelling units permitted on a lot, that they needed to address the issue in the proper forum of the zoning by law and town meeting and not within the regulatory authority of the Sandwich Historic District Committee.

He claimed that the proposed building would be an improvement to the appearance of the neighborhood by adding more traditional building features such as the proposed white cedar shingle siding to the existing contemporary mixture of exterior building features.

He asserted that even though the main house and the accessory building will face the Appellant's house, Deacon's Path is a short contemporary cul-de-sac upon which the facing of the houses was well suited and appropriate for a cluster style development.

He repeated that the distance from the proposed building to the Appellant's lot line will be sixty-four (64) feet and that the Appellant's house would be one hundred (100) feet away. He suggested that the accessory dwelling would be substantially screened by the Appellant's free standing garage and the existing natural vegetation on the Applicant's lot.

He requested that the unanimous (4-0) Sandwich Historic District Committee determination of "*appropriate design*" be sustained by the Regional Commission.

#### **Appellant's Rebuttal & Concluding Statement:**

Mr. Downey stated that the bottom-line is the question of how many dwelling units we want on the street. He suggested that if everyone decided to put an extra unit on their lot, we could have eighteen (18) houses on our street's nine (9) house lots. He expressed the

opinion that all of the property values would drop and that everyone in the neighborhood would suffer from the financial loss.

#### **Sandwich Historic District Committee's Rebuttal & Concluding Statement:**

Mr. Collins denied that the decision would set a precedence for the neighborhood or any future application with in the Sandwich Historic District. He suggested that the appeal appears to improperly mix local zoning issues with the Old King's Highway Regional Historic District regulatory authority. He pointed out that Sandwich Historic District Committee lacks authority over zoning density and usage issues, but rather focuses on the visual appearance of buildings and their exterior design features.

He stated that the Committee was careful to fully review the submitted specifications, plans and site. He claimed that the Committee was not arbitrary capricious or erroneous in its process of reviewing the application. He expressed the opinion that the Committee was careful to stay with in its statutory authority and reasonably determined by a unanimous vote that the visual appearance of the proposed accessory dwelling unit would be appropriate and fit on the house lot in the neighborhood of contemporary houses of mixed styles, variable sizes and the existing arrangement of design features.

#### **Commission Discussion:**

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

Dr. Gegenwarth of Yarmouth indicated that he believed that the Sandwich Historic District Committee stuck to the requirements of the Old King's Highway Regional Historic District Act and properly avoided getting drawn into the Town's locally adopted and administered zoning by law. He suggested that he could not fault the Sandwich Historic District Committee for their approval of the proposed free standing 2nd dwelling unit that appeared to be in keeping with the cotemporary character of the neighborhood.

Mr. Richard of Barnstable stated that the job of the Sandwich Historic District Committee was to judge this proposal for *appropriateness* under the Old King's Highway Regional Historic District Act and not to deal with the application on the basis of zoning by law issues. He suggested that if the Sandwich Zoning By Law recently permitted an accessory 2nd dwelling unit on a house lot, the Sandwich Historic District Committee might be exceeding its authority if it attempted to over-ride the local zoning by law. He suggested that he felt that the Committee did not exceed its authority or exercise poor judgment. He stated that he found that the Sandwich Historic District Committee was not arbitrary, capricious or erroneous in its action and expressed the opinion that the decision should be affirmed.

Mr. Mgrdichian of Orleans stated that after visiting the site and observing the size (.69 acre) of the house lot, he felt that the size and shape were more than adequate to

accommodate the proposed accessory 2nd dwelling unit. He expressed the opinion that the Sandwich Historic District Committee acted properly in approving the application.

Mr. Bohlin of Dennis stated that he took a little different approach to an application of this nature. He indicated that the addition of the 2nd dwelling will change the appearance of the *setting* and while the Sandwich Town Meeting may have allowed it, he had reservations about its *appropriateness*. He suggested that he would not allow this clustering in Dennis.

Chairman Houghton of Brewster stated that he was impressed by his visit to the site and the size and heavy vegetated screening of the house lot. He reported that that it was difficult to see the main house and proposed location of the accessory dwelling from the street. He indicated that the style of the proposed building did not appear to be incongruent with the neighborhood nor did its location on the lot indicate that it is in any way over reaching. He indicated that in his opinion everything that he observed indicated that the Sandwich Historic District Committee acted properly in approving the application.

There being no further comment or thoughts offered, the Commissioners moved on to making findings and the Administrative Counsel distribute a draft of proposed findings for review.

Mr. Bohlin questioned the wording of the first finding which declared that the proposed accessory dwelling was compatible with the neighborhood. He suggested that he found the fact that it was the first accessory dwelling in the neighborhood to make it incompatible and not acceptable.

Dr. Gegenwarth suggested that the Appellant's free standing garage was a compatible 2nd building on a house lot.

Mr. Bohlin repeated his objection to the finding of compatibility.

Mr. Mgrdichian, Dr. Gegenwarth, and Mr. Richard, expressed support for the compatibility and other findings.

Chairman Houghton called for a motion to act on the draft findings.

Mr. Mgrdichian, seconded by Mr. Richard moved that the following findings be adopted and incorporated into the Regional Commission's decision.

**The Commission findings:**

The Commission found as follows:

1. The proposed accessory dwelling is compatible in location, size, scale, material and design for the neighborhood.

2. The proposed accessory dwelling would be congruent with the features of the other buildings in the immediate surroundings.
3. The Commission finds that the Sandwich Historic District Committee did not exceed its authority or exercise poor judgment,
4. The Commission finds that the Sandwich Historic District Committee was not arbitrary, capricious, or erroneous in its action.
5. The Sandwich Historic District Committee decision should be affirmed.

The motion carried by a vote of 4-1-1. (Richard, Gegenwarth, Houghton, & Mgrdichian, in favor; Bohlin opposed; and Collins abstaining)

**The Commission's Determination:**

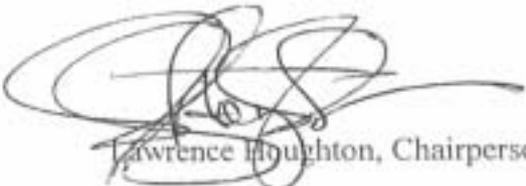
Mr. Gegenwarth moved, seconded by Mr. Richard, that the Commission vote to uphold the decision to grant the Certificate of Appropriateness to Mary Beth Carpenter, et al. for an accessory dwelling located at 5 Deacon's Path, Sandwich, Massachusetts and hereby notes that it determines that the Sandwich Historic District Committee did not exceed its authority or exercise poor judgment and was not arbitrary, capricious or erroneous in its action and that the decision was within the guidelines of the Historic District Act and specific to the location under consideration.

The motion carried by a vote of 5-0-1 (Houghton, Gegenwarth, Mgrdichian, Bohlin, & Richard in favor; none opposed; and Collins abstaining)

As to Appeal #2016-7, the Decision by the Sandwich Historic District Committee in granting a Certificate of Appropriateness to Mary Beth Carpenter, et al. for an accessory dwelling is affirmed. (5-0-1)

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: August 30, 2016



Lawrence Houghton, Chairperson