



# Old King's Highway Regional Historic District Commission

First District Courthouse, Barnstable, Mass. 02630

Telephone: 617-362-4092

## COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS

Mr. and Mrs. Reginald Nickerson  
Appellants,

VS

Old King's Highway Regional Historic  
District Committee in the Town of  
Yarmouth Appellee

DECISION ON APPEALS  
TO ABOVE COMMISSION

No. 78-8

A hearing was held on September 21, 1978 and October 4, 1978 by the above Commission upon two appeals by the above appellants from two decisions of the Town of Yarmouth Historic District Committee granting certificates of appropriateness to Marietta B. Hickey. Present were: Commission members Bourne, chairman, of Sandwich, MacSwan, of Barnstable, Dwyer, of Dennis, Bonner, of Brewster, and Cole, of Yarmouth; James H. Quirk, Jr. attorney for appellants; Jason A. Rosenberg and Steven E. Ernstoff, attorneys for intervening appellants Mildred Kettell and Marjorie Kettell Golner; Richard C. Anderson and Charles M. Sabatt, attorneys for Marietta B. Hickey; and James R. Wilson, counsel to the Commission.

The decision first appealed from granted a certificate of appropriateness to Mrs. Hickey for the construction of an addition to La Cipollina Restaurant building at 157-161 Main Street ( Rte.6A) Yarmouthport. This appeal is hereafter referred to as the "construction appeal."

The decision next appealed from granted a certificate of appropriateness for the demolition of part of the restaurant building to be replaced by the construction involved in the first appeal. This appeal is hereafter referred to as the "demolition appeal."

As the two appeals involved essentially a single controversy they were, with the approval of counsel, considered at one time and all evidence, so far as relevant, was considered admissible to each.

The decision of the town committee on the construction appeal was filed with the town clerk on August 24, 1978. The petition of appeal was mailed to the proper parties at South Yarmouth on September 2nd and was received by the town clerk on September 5th, and by the Commission not until September 6th, one day after the expiration of the 10 day appeal period specified by Section 11 of the Regional Historic District Act ( Ch.470 of the Acts of 1973, as amended ) as implemented by Article III, Sec. 5(b) of the Commission's

Rules and Regulations, adopted October 5, 1976. The latter rule provides that where the last day of the specified appeal period falls on a Saturday, Sunday or legal holiday the appeal period is extended to the next following business day. In this case the 10th day was Sunday, September 3rd, and September 4th was Labor Day, a legal holiday. Tuesday, September 5th was the next following business day

An issue was therefore presented as to the timeliness of the Construction appeal. The demolition appeal was received in time by the Commission on September 21st, the committee's decision having been filed with the town clerk on September 14th.

With the approval of all counsel abutting owners Mildred Kettell and Marjorie Kettell Golner were permitted to intervene in support of the appeals, with the understanding that they raised no issues not already raised by the original appellants, and subject to whatever procedural defects might apply to the appeals.

Appellants contend that the construction appeal should be considered as timely because it was mailed sufficiently in advance of the final appeal day. They further noted that the application form on which the committee's decision was set forth refers to a " 20 day appeal period" which was the appeal period specified in the regional act before it was amended in 1975. From this it was contended that the town committee should be estopped from contending that the appeal, filed on the 6th of September, was out of time. It did not appear that counsel filing the appeal was misled by the reference in the form of application, and indeed he appears to have made an effort, unfortunately unsuccessful, to file within the permitted 10 day period. After considering the arguments of counsel for the parties and the opinion of counsel for the Commission the Commission decided that the construction appeal failed for being filed out of time and that the Commission had no authority to extend the appeal period provided by the Regional Historic District Act as implemented by the Commission's Rules and Regulations referred to above.

Notwithstanding the decision of the Commission with respect to the timeliness of the construction appeal and in order that all questions raised by the appeals might be resolved the Commission deemed it incumbent upon it to retain jurisdiction of the construction appeal and to consider each appeal on its merits.

As to the construction appeal, appellants contend that the proposed building is excessive in size and inappropriate to its context in the historic district. The building is to be situated behind and connected with the present old restaurant building, which is an old " Cape Cod " style structure, probably originally a dwelling house, fronting on Main Street ( Route 6A ). It is to have a floor area of about 4700 square feet. It will extend across the rear of the old building and the two buildings adjoining on the east, one of which is owned by Mrs. Hickey. The pitch

of the simple gable roof will be substantially the same as that of the old building and the materials and finish will be compatible therewith. Connecting the new building with the old will be a wing replacing in effect the two story extension and one story flat roof addition presently attached to the old building and which are to be demolished pursuant to the permission granted by the certificate involved in the demolition appeal. No serious contention was made that the structures to be demolished have any historic or architectural significance or importance. Opposition to their demolition appears to be based on the fact that it is an essential step in the construction of the new building.

The Commission, all of whose members at the hearing viewed the present building, neighboring buildings and the site, found that the new building while admittedly large would be substantially screened by existing buildings from view from Route 6A. The western end of the new building, well set back from Route 6A, would be narrowly and obliquely visible from 6A through the 15 foot alley separating the restaurant building from the building to the west. To the limited extent that any part of the new building would be visible from Route 6A or any other public place the Commission was of the opinion that it would be architecturally appropriate and would not have any adverse visual effect on the Yarmouthport streetscape which Yarmouthport citizens are understandably anxious to preserve.

No expert or architectural testimony was introduced by appellants in support of their contention that the new building would be inappropriate or that the structures to be demolished were of any architectural or historic importance.

The Commission was therefore of the opinion and decided that the proposed new construction would be appropriate, that the Yarmouth committee had acted properly and did not exceed its authority in granting the certificate for the construction of the new building and the certificate for the demolition of the existing additions to the old building and affirmed each of the decisions here on appeal.

All determinations of the Commission were unanimous, Mr. Cole, chairman of the Yarmouth committee abstaining.

  
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Donald Bourne  
Commission Chairman