

PAUL FITZGERALD

v.

Decision #97-1

Decision #97-6

**OLD KING'S HIGHWAY REGIONAL HISTORIC
DISTRICT COMMITTEE FOR THE TOWN OF
BARNSTABLE**

On Tuesday, May 20, 1997 the Commission held a combined hearing on Appeal #'s 97-1 and 97-6 filed by Paul Fitzgerald, seeking review of decisions by the Barnstable Historic District Committee which had denied Certificates of Appropriateness for alterations to a building located at 91 Salten Point Road, Barnstable, Massachusetts.

Present were Peter Freeman, Barnstable; Roy Robinson, Brewster; Marian Reilly, Sandwich; Robert Miller, Yarmouth; Seth Crowell, Dennis; Michael D. Ford, Counsel for the Appellant; Paul Fitzgerald, Appellant; Robert G. Brown, Commission Counsel; and many interested members of the public..

The Committee's decision in Appeal #97-1 was filed with the Town Clerk on December 31, 1996. The appeal was entered with the Commission on January 8, 1997 within the 10 day appeal period. The 30 day determination period was waived by agreement.

The Committee's decision in Appeal #97-6 was filed with the Town Clerk on April 22, 1997. The appeal was entered with the Commission on May 1, 1997 within the 10 day appeal period.

THE APPELLANT'S PRESENTATION

Michael D. Ford, Attorney for the Appellant, addressed the Commission in favor of the appeals. He displayed an elevation of the property which showed a proposed 4' by 10' balcony on the subject property off Salten Point Road. He recounted the procedural history of the property before the Barnstable Historic District Committee, starting in 1986 when the original application was submitted for a second floor and was approved by the Barnstable Committee. The 1986 approval by the Committee was appealed to the Commission which upheld the Committee on a 2-2 vote. This was appealed to the Barnstable District Court who upheld the

Committee's decision. Although the building permit was issued for the second floor, the balcony was not constructed. In December of 1996, an application was filed for the balcony and it was denied on a 3-2 vote with the Committee stating that to approve the balcony would increase the footprint of the property.

With regard to the second decision, Attorney Ford again stated that the Committee was again in error with regard to its arguments regarding the building's footprint. He stated that many buildings in the area had undergone substantial increases in the size of their respective footprints. There is no historic significance to the building and the Committee is in error in that its findings are contrary to the findings of the 1988 trial judge whose findings are, pursuant to the Historic District Act, final and conclusive.

In the judge's findings in 1988 there were no findings that the proposed balcony would derogate from the architectural integrity of the cottage. Further, Attorney Ford stated that his client is obligated to build the balcony as it exists on an approved application for which a building permit was issued.

THE COMMITTEE'S PRESENTATION

Trish Savage, representing the Barnstable Committee, explained the Barnstable Committee's reasons for denial. She agreed that the cottage had no historic significance, however, she said that the Committee felt that since the house was part of a community, it did have an historic aspect. She said that the sense of place in the area was determined by the closeness of the houses in the community and the Committee felt a cantilever balcony would not be appropriate because it would create a cityscape, tenement like effect. She said there are many different style houses in the area and that Attorney Ford was using very different house for his comparisons.

DISCUSSION:

In discussion among members of the Commission, there was no consensus as to Appeal #97-1 as neither a vote to uphold the Barnstable Committee nor a vote to overturn the Barnstable Committee gained the support of a majority of the quorum. With regard to Appeal #97-6 a majority of the Commission felt that, with regard to this application the Barnstable Committee had not presented a sustainable reason for their decision.

FINDINGS:

With Regard to Appeal #97-1, a vote to reverse the Barnstable Committee failed (2-1-2) to gain a majority of the quorum. Likewise, a vote to uphold the Barnstable Committee also failed (2-2-1) to gain a majority of a quorum.

With regard to Appeal #97-6, the Commission made the following Findings of Fact:

1. That the Barnstable Committee used poor judgment in denying the Appellant's application. 3-1-1.
2. That the appeal be allowed and a Superceding Certificate of Appropriateness issue, pursuant to plans on file with the Barnstable Historic District Committee. 3-1-1.

DETERMINATION:

As to Appeal #97-1, the failure of the Commission to achieve a vote carrying a majority of the quorum has the effect of affirming the decision of the Barnstable Committee. As to Appeal #97-6, however, based on the above findings, the appeal is allowed, subject to plans on file with the Barnstable Historic District Committee.

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.

Robert N. Miller
Vice-Chairman