

**LEO MOGAVERO**

**v.**

**Decision #97-2**

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

On Tuesday, February 18, 1997 the Commission held a hearing on Appeal #97-2 filed by Leo Mogavero, seeking review of a decision by the Sandwich Historic District Committee which had denied a Certificate of Appropriateness for additions to a building located at 8 Oyster Hill Drive, Sandwich, Massachusetts.

Present were Peter Freeman, Barnstable; Roy Robinson, Brewster; Marian Reilly, Sandwich; Robert Miller, Yarmouth; Chick Craig, Dennis; Robert G. Brown, Commission Counsel; Andrew F. Gelson, Attorney for the Appellant; Leo Mogavero, Appellant; Michael Hart, Member of the Sandwich Historic District Committee; and James Coughlan, abutter to the subject property.

The Committee's decision was filed with the Town Clerk on January 23, 1997. The appeal was entered with the Commission on January 30, 1997 within the 10 day appeal period.

**THE APPELLANT'S PRESENTATION:**

Andrew F. Gelson, Attorney for the Appellant, addressed the Commission in favor of the appeal. He submitted photographs of other homes with decks in the Sandwich Historic District and gave a recap of the procedural history of the project from August of 1996 to the filing of the current application. He said that the Committee in 1996 had appeared to be concerned with screening of the deck from Oyster Hill Drive and a reapplication was commenced in January of 1997 with a plot plan and a professional landscaping plan and drawings in the hope of alleviating the Committee's concerns over screening. The Sandwich Committee did a site visit and a further landscaping plan was prepared. The Committee denied the application for a Certificate of Appropriateness and Attorney Gelson cited four reasons for error in the Sandwich Committee's decision: 1. He described the deck as a 14 x 28 foot detached deck which was given a temporary approval in August of 1996. Attorney Gelson stated that if the deck was appropriate then it is appropriate now; 2. Attorney Gelson stated the deck is indeed appropriate and the visibility factor from Oyster Hill Drive is a minor factor. He stated the material in this deck is the same as is used in most decks and that the issue of an attached versus

detached deck is a red herring; 3. Attorney Gelson stated the Sandwich Historic District Committee failed to give consideration to the issue of hardship incurred by Mr. Mogavero; and 4. The Sandwich Historic District Committee's decision was arbitrary as it was influenced by Mr. Mogavero's personality conflict with a member of the Sandwich Historic District Committee.

Attorney Gelson said that, due to these errors, the appropriate thing for the Commission to do would be to reverse the decision of the Sandwich Historic District Committee and issue a Certificate of Appropriateness to Mr. Mogavero.

#### **THE COMMITTEE'S PRESENTATION:**

Marian Reilly, representing the Sandwich Committee, addressed the Commission to explain the Sandwich Committee's reasons for denial.

She distributed pictures that were originally presented at the appeal hearing held in October of 1996 and also distributed copies of letters from the Sandwich Building Inspector's office revoking the Appellant's building permit and informing him that he must seek approval from the Sandwich Historic District Committee. She also recounted the procedural history of the case and said that the Committee had been presented with a pencil sketch on August 14, 1996 and were told that a wedding was to take place that weekend. She said that, as a favor, the Sandwich Historic District Committee authorized a temporary Certificate of Exemption and that no finding had been made at that meeting that the deck was appropriate.

She stated that the property is located in Sandwich Village which is one of the most historic areas in town. She said that if there is a hardship present it is self-imposed by the Appellant and that the Sandwich Historic District Committee felt that the deck was architecturally and aesthetically inappropriate.

#### **DISCUSSION:**

Leo Mogavero, Appellant, addressed the Committee in favor of the appeal. He stated that he had never attempted to circumvent the law and felt he had taken an eyesore and turned it into something attractive. He regretted any conflict with members of the Sandwich Historic District Committee but said he felt he had been strung along by the Sandwich Historic District Committee and felt the Sandwich Historic District Committee had not provided enough guidance with respect to what they would consider appropriate.

Michael Hart, a member of the Sandwich Historic District Committee, addressed the Commission in opposition to the appeal. He stated that, contrary to what may have been expressed by the Appellant, he felt the Sandwich Historic District Committee had based its decision on the Historic District Act and not on personal preference.

James Coughlan, an abutter to the Appellant, addressed the Commission in opposition to the appeal. He said that, in his opinion, the Appellant

had been treated well before the Sandwich Committee and had by no means been strung along. He also stated that visibility from Oyster Hill Drive was not a minor factor as had been stated by Attorney Gelson and that the deck was very visible from Oyster Hill Drive.

In discussion among Commission members there was consensus that there were actions that could be taken to make the deck appropriate within the meaning of the Historic District Act and that, based on this application, the Sandwich Committee had not erred and had sustainable reasons for denying the Appellant's Certificate of Appropriateness. There was a difference of opinion as to whether the appeal should be remanded to the Sandwich Historic District Committee or whether the appeal should be denied, with the Appellant reapplying to the Sandwich Historic District Committee.

**FINDINGS:**

Upon Motion duly made and seconded, the Commission made the following Findings of Fact:

1. That the Sandwich Committee did not act in an arbitrary, capricious or erroneous manner, or use poor judgment in denying the Appellant's application for a Certificate of Appropriateness.  
3-0-2.

2. That the Sandwich Committee had sustainable reasons for acting in denying the Appellant's application for a Certificate of Appropriateness as the deck, as currently constructed, is not compatible with or appropriate in the historic district and that any claim of hardship by the Appellant would fail as the claimed hardship was self-imposed. 3-0-2.

3. That the appeal be denied. 3-0-2.

**DETERMINATION:**

Based on the above findings, the appeal is denied.

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.

Peter L. Freeman  
Chairman