

**HENRY KELLEY II**

**v.**

**Decision #97-3**

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

On Tuesday, April 22, 1997 the Commission held a hearing on Appeal #97-3 filed by Henry Kelley II, seeking review of a decision by the Dennis Historic District Committee which had allowed a Certificate of Demolition to Bruce W. Krysiak for the demolition of buildings located at 42 & 48 Elm Street, Dennis, Massachusetts.

Present were Peter Freeman, Barnstable; Marian Reilly, Sandwich; Robert Miller, Yarmouth; Seth Crowell, Dennis; Robert G. Brown, Commission Counsel; Myer Singer, Attorney for the Applicant; Henry Kelley II, Appellant; and many interested members of the public.

The Committee's decision was filed with the Town Clerk on March 17, 1997. The appeal was entered with the Commission on March 26, 1997 within the 10 day appeal period.

**THE APPELLANT'S PRESENTATION:**

Henry Kelley II, Appellant, addressed the Commission in favor of the appeal. He identified himself as a member of the Town of Dennis Historical Commission but stated he was not speaking on behalf of the Commission. He stated that the subject house was built somewhere between 1780-1792 by a member of the Crowell family who was descended from the first settlers of the Town of Dennis. He displayed pages from various ancient atlases of Cape Cod and showed that the house is located on all of these atlases. He said the style of the home is not common on Cape Cod and there is no other surviving style of home such as this in the Town of Dennis. He also stated that the property contains a c.1840 barn and that detached barns are getting more and more scarce in the District. He said the property fronts on Elm Street which is a quaint street with a lot of Cape Cod architecture. He asked that the appeal be allowed.

**THE COMMITTEE'S PRESENTATION:**

Seth Crowell, representing the Dennis Committee, addressed the Commission to explain the Dennis Committee's reasons for approval. Mr. Crowell stated that he and Mr. Kelley rarely disagree but this was one time they did disagree. He said the Dennis Committee was first approached in November of 1995 by an agent for the owner to

discuss demolishing the buildings at 42 & 48 Elm Street. He said the Committee later met on site and toured the property, observing rotted beams, crumbling masonry, etc. On December 4, 1995 the Committee approved a Certificate of Demolition which was not appealed at that time. The Certificate has since expired. The house has been unoccupied since that time and has further deteriorated. The structure no longer retains its original appearance as several additions have changed the character of the structure. Hardship exists as restoring the structure would be prohibitively expensive. Public welfare was considered by the Committee and the Committee felt public welfare would be served by allowing the application as the house is in grave disrepair and invited problems, noting a recent fire on the site.

**DISCUSSION:**

Myer Singer, Attorney for the Applicant, addressed the Commission in opposition to the appeal. He stated the Appellant is not a person aggrieved under the Historic District Act and distributed a brief memorandum supporting his position. He further stated that the house will further decay and deteriorate if the appeal is allowed and that the house will either be demolished or fall from neglect. He said it would not be in keeping with the intent of the Historic District Act to allow the buildings to remain in their present condition and he distributed letter from the applicant and other persons in opposition to the appeal and in favor of the original application.

In general discussion among members of the public, some persons felt the house was in such disrepair it should be demolished and question who would benefit if the appeal was allowed. Those in favor of the appeal felt the house should be preserved and said all persons in the District and Town would benefit if the house were preserved.

Henry Kelley II again addressed the Commission in favor of the appeal. He said that if the appeal is denied, the Dennis Committee will have become an agent for demolition by neglect. He further stated that the hardship in this case is one of the property owner's own creation and should not have been considered. He said the applicant does not have any substantial hardship in this matter as, if the appeal is allowed, they will simply get their deposit back and look elsewhere. With regard to the issue of standing, he identified himself as owner or representative of four properties in the neighborhood.

In discussion among Commission members there was consensus that this was a difficult decision as the historic importance of the house was unquestioned. However, members of the Commission felt they should not give the same consideration they would as if sitting as Committee members but should examine whether or not the

Dennis Committee had a rational basis for acting as they did. In further discussing the application and the ultimate decision of the Dennis Committee, the members of the Commission were satisfied that the Dennis

Committee had a rational basis for acting as they did as the building is in decrepit condition, with virtually no hope of being restored.

**FINDINGS:**

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

1. That the Dennis Committee did not act in an arbitrary, capricious or erroneous manner, or use poor judgment in allowing the Applicant's application for a Certificate of Demolition.  
3-0-1.

2. That the Dennis Committee had sustainable reasons for acting in allowing the Applicant's application for a Certificate of Demolition as the buildings are in poor condition with virtually no hope they can be restored. 3-0-1.

3. That the appeal be denied. 3-0-1.

**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, Orleans Division, within 20 days of the filing of this decision with the Dennis Town Clerk.

Peter L. Freeman  
Chairman