

BETSY NEWELL

v.

Decision #97-23

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

On Tuesday, January 6, 1998, the Commission held a hearing on Appeal #97-23 filed by Betsy Newell, seeking review of a decision by the Barnstable Historic District Committee allowing a Certificate of Appropriateness to A.G.B. Real Estate Trust for alterations to buildings located at 3401 Main Street, Barnstable, Massachusetts.

Present were Peter Freeman, Barnstable; David Moeller, Yarmouth; Seth Crowell, Dennis; Roy Robinson, Brewster; Marian Reilly, Sandwich; Robert G. Brown, Commission Counsel; Betsy Newell, Appellant, Michael D. Ford, Attorney for the Applicant, Allen Larson, Attorney for Sippican Partners, Agent for A.G.B. Real Estate Trust, Frank C. Shealey, Attorney for A.G.B. Real Estate Trust; and many interested members of the public.

The Committee's decision was filed with the Town Clerk on December 4, 1997. The appeal was entered with the Commission on December 11, 1997 within the 10 day appeal period.

As the appeal arose from the Chairman's Committee, the Commission elected Marian Reilly to preside as Chairman Pro Tem over the hearing.

THE APPELLANT'S PRESENTATION:

Michael D. Ford, Attorney for the Appellant, addressed the Commission in favor of the appeal. He introduced the Appellant and described her as an abutter to the project who also represented the interests of many residents of Barnstable Village. He described the building as one with a gross floor area of 28,000 square feet where the Committee erred in approving the project. He introduced Candace Jenkins who addressed the Commission in favor of the appeal.

Candace Jenkins explained that the Phinney House which is the subject of this appeal had originally been built for Sylvanus Phinney who was a long time custom collector. There have been many alterations to the house but the house still has many original features. She said the Barnstable Committee's review was deficient with regard to scale. It would be appropriate for new construction but not for this project. The project will cover almost all of the lot and there is no mitigation of a large lot. She said the changes to the building itself are also bad in that the building will be completely changed. The changes will leave nothing of the original fabric or character. Should these changes be approved they will render the building a non-contributing element and possibly cause the building to be delisted from the National Register of Historic Buildings. She said this would be a major loss to the District and she asked that the appeal be allowed.

Michael Ford again addressed the Commission in favor of the appeal. He read from sections of St. 1973, c. 470, as amended to show how the Committee had erred. In particular, he said there was little discussion with regard to the historic significance of the building. He said the Committee had "missed one" with regard to this decision and asked that the Committee's decision be reversed.

THE COMMITTEE'S PRESENTATION:

Peter L. Freeman, representing the Barnstable Committee, addressed the Commission to explain the Committee's reasons for approval. He said the Barnstable Committee did not ignore the purposes of the Act and any impression derived from the minutes is wrong in that the meeting minutes are still in draft form and have yet to be approved by the Barnstable Committee. He said the Commission need not reverse the Committee in its entirety. He said the area is one of large buildings, citing the Unitarian Church, Trayser Museum and the Bacon Farm Condominiums. Using the Cape Cod Commission guidelines he argued the project was appropriate. He said the project was also appropriate in that the building is in poor shape and there is a danger of the building falling down.

DISCUSSION:

In general discussion, Allen Larson, Attorney for Sippican Partners, Agent for A.G.B. Real Estate Trust, addressed the Commission in opposition to the appeal. He said the Committee's Decision was neither arbitrary or capricious and there was no evidence of poor judgment with regard to the Committee's decision. He asked that the appeal be denied.

Many persons addressed the Commission in favor of the appeal. Overwhelmingly they were in favor of the appeal with most comments centering on the size and mass of the project as well as the precedent it would set in the District. With regard to the Barnstable Committee's reliance on the design guidelines of the Cape Cod Commission, it was pointed out that the regulations of the Cape Cod Commission are such that if alterations to a structure will cause it to be delisted from the National Register, the application is automatically denied.

In discussion among members of the Commission, there was no consensus as to Appeal #97-23 as neither a vote to uphold the Barnstable Committee nor a vote to overturn the Barnstable Committee nor a vote to remand gained the support of a majority of the quorum.

FINDINGS:

With Regard to Appeal #97-23, a vote to reverse the Barnstable Committee failed (2-2-1) 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. A vote to remand the matter to the Barnstable Committee also failed (2-2-1) to gain a majority of the quorum.

DETERMINATION:

As to Appeal #97-23, 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.

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.

Marian Reilly
Chairman Pro Tem