

Old King's Highway Regional Historic District Commission

P.O. Box 279, Hyannis Mass. 02601

Telephone: 617-775-1766

THE COMMUNITY OF JESUS, INC.

v.

Decision #91-2

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

On Tuesday, June 11, 1991 the Commission held a hearing on Appeal #91-2 filed by The Community of Jesus, Inc. seeking review of a decision by the Orleans Historic District Committee which had denied a Certificate of Appropriateness for a new building to be located at 11 Bay View Drive, Orleans, Massachusetts.

Present were Brendan Joyce, Dennis; Jan Francis, Brewster; Peter Freeman, Barnstable; Willard Sheppard, Yarmouth; Christopher Miner, Orleans; Allen Osgood, Sandwich; Robert G. Brown, Commission Counsel; John Ingwersen, Architect for the Appellant; Christopher W. Kanaga, Esq., Attorney for the Appellant; and many interested members of the public.

The Committee's decision had been filed with the Town Clerk on May 8, 1991, and the appeal entered with the Commission on May 14, 1991, within the 10 day appeal period.

Christopher W. Kanaga, Attorney for the Appellant, addressed the Commission in favor of the appeal. He gave a brief background of the Appellant, stating that the Community of Jesus was an ecumenical christian community located in Orleans, Massachusetts. He said that many members of the community live within walking distance of the church and that it would be impossible for the Appellant to construct the proposed chapel elsewhere as it would necessitate the removal of approximately 30 households. He defined the reasons for the original application as three: 1. space needs; 2. physical expression; and 3. liturgical and symbolic requirements. With regard to space needs, he stated that the congregation is unable to worship together as the building holds only 260 persons and there are sometimes many more than that in attendance. With regard to physical expression, he stated that any church structure is an expression of beliefs and that the beliefs of the Appellant are expressed in the proposed design. In terms of liturgical and symbolic requirements, he stated that sacred music in the form of Gregorian Chant is central to the Appellant's beliefs and that the Appellant is well-known for its music and for its choir. He said that Gregorian Chant would be much better expressed in a high-vaulted stone ceiling.

John Ingwersen, Architect for the Applicant, addressed the Commission in favor of the appeal. He described the present buildings and surroundings through the use of aerial photographs. Using site plans and renderings he described the proposed construction and the intended uses of the proposed chapel. He stated that the chapel would have 540 seats, mostly on the floor with a small balcony and room on the sides for the choir. Using cross-sections he described the verticality of the structure and said that an acoustical engineer had been hired to assist in designing the structure with height and bulk to be kept to a minimum. He said that the exterior of the building is a reflection of the interior of the building. He described the style as American with its roots in Gothic style. With regard to materials, he stated that East Weymouth stone would be used and that it would be compatible with the natural features of the area. He displayed a collection of photos of stone buildings on Cape Cod and a separate collection of stone churches within the historic district.

Christopher Kanaga again addressed the Commission on behalf of the Appellant. He stated that the area is not residentially zoned but is, in fact, business zoned. Addressing the issue of hardship, he mentioned the Tri-Town Septage Plant, the 500 foot tower used by WKPE and the office building owned by Coastal Engineering, all of which are located in the District. He said that the proposed chapel will not derogate from the intent and purpose of the Act but will, rather, support the intent and purpose of the Act. He said that the Orleans Committee found that substantial derogation exists whenever the guidelines are not met and that this nullifies the variance provisions of the Act. He mentioned the constitutional questions involved and said that forcing a church to look like a house favors existing churches by forcing out other churches.

Christopher Miner, representing the Orleans Committee, addressed the Commission to explain the Orleans Committee's reasons for denial. He said that although the Orleans Committee particularly liked many aspects of the Appellant's project, they (the Orleans Committee) felt that it was completely inappropriate for the area. He said that the Committee looked very carefully at the intent and purposes of the Act prior to coming to their conclusion. He described the Rock Harbor area and stated that, although the Appellant's property abutted a business zone, it was mostly residential in nature and that most of the larger buildings in the area belonged to the Appellant and that, while the

buildings of the Appellant are long, they are not very high. He said that, in a vacuum, the building is very nice but it was much too large for its immediate surroundings. He cited the SLEEPER opinion where it was stated that the intent and purpose of the Act was to suppress the obviously incongruous. He said that the Committee did not compare the Underground Mall, the Septage Treatment Plant or the Coastal Engineering building because they were not in the immediate surroundings. With regard to hardship, he stated that a hardship did exist in a religious context. He stated that the Committee did find that there would be substantial detriment to the public welfare and substantial derogation from the intent and purpose of the Act. He disagreed with the analysis of Attorney Kanaga with regard to the use of the District Guidelines to determine hardship. He stated that denial was not automatic and that there was a matter of degree here. He said that the Committee felt that it was obvious that there was a substantial derogation from the intent and purpose of the Act. He said he disagreed with Attorney Kanaga's analysis of the variance procedure under the Act, stating that if the analysis were followed that hardship could be found in any application which did not meet the District Guidelines, the exception would soon swallow the rule. He concluded by saying that he believed that the record showed that the Orleans Committee had not acted in an arbitrary, capricious or erroneous manner and did not use poor judgment.

Many members of the public addressed the Commission to comment on the appeal. Those speaking in favor of the appeal stated that there was a need for the Appellant for a larger church in order to accomodate all of the members of the community and also to facilitate Gregorian Chant. Those speaking against the appeal stated that the project was too massive and would not be in keeping with the Old King's Highway Regional Historic District.

Attorney Kanaga concluded by stating that the other buildings which he had mentioned did not further the intent and purpose of the Act while the building proposed by the Appellant would.

FINDINGS:

The Commission made the following Findings of Fact:

1. That the Orleans Committee did not act in an arbitrary, capricious or erroneous manner in determining that the Appellant's application was inappropriate for the area.
- 4-0-2.

2. That the Orleans Committee did not act in an arbitrary, capricious or erroneous manner in determining that, notwithstanding hardship, approval of the proposed application would result in substantial detriment to public welfare and substantial derogation from the intent and purpose of the Act and that the appeal should be denied.
5-0-1

DETERMINATION:

Based on the above findings, the appeal is denied and the determination of the Orleans Historic District Committee is affirmed.

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 Orleans Town Clerk.

Peter L. Freeman
Chairman

Trial Court of The Commonwealth District Courts of Massachusetts

Barnstable, ss

District Court Department
Orleans Division

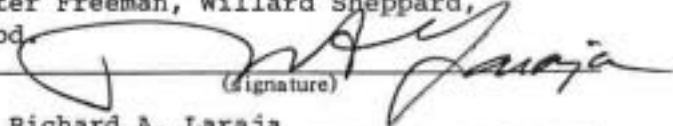
THE COMMUNITY OF JESUS, INC.,
Plaintiff

Civil Action No. 9126 CV 0339

v.
OLD KING'S HIGHWAY REGIONAL
HISTORIC DISTRICT COMMISSION, ET AL,
Defendants

STIPULATION OF DISMISSAL (Rule 41(a) (1) (ii))

Pursuant to Rule 41(a) (1) (ii), the parties herein have stipulated that this action on behalf of The Community of Jesus, Inc., plaintiff herein, be dismissed as to all defendant(s) The Old King's Highway Regional Historic District Commission and Brendan Joyce, Janet Francis, Peter Freeman, Willard Sheppard, Christopher Miner and Allen Osgood.


(signature)

Richard A. Laraja
(name)

Attorney for Plff. _____

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Attorney for _____

(signature)

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Note: Must be signed by all parties or their attorneys.

This form prescribed by the Chief Justice of the District Courts