

Old King's Highway Regional Historic District Commission
P.O. Box 2187, Hyannis, Mass. 02601 Telephone 508-775-5793

WARREN J. RUTHERFORD,
TOWN MANAGER OF THE TOWN OF BARNSTABLE,

v.

Decision #93-13/16

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

93 NOV 12 A9 56

TOWN CLERK
BARNSTABLE, MASS.

On Tuesday, October 26, 1993 the Commission held a consolidated hearing on Appeal #'s 93-13 and 93-16, both filed by Warren J. Ritherford, Town Manager of the Town of Barnstable seeking review of a decision by the Barnstable Historic District Committee which had denied a Certificate of Appropriateness for the construction of a new building to be located off Route 132, West Barnstable, Massachusetts.

Present were Pat Rothermel, Dennis; Roy Robinson, Brewster; Peter Freeman, Barnstable; Steve Miner, Sandwich; David Moeller, Yarmouth; Christopher R. Miner, Orleans; Robert G. Brown, Commission Counsel; Michael D. Ford, Attorney for the Appellant; and many interested members of the public.

The Committee's decision in appeal #93-13 had been filed with the Town Clerk on August 26, 1993, and the appeal entered with the Commission on September 4, 1993, within the 10 day appeal period. By agreement, the 30 day determination period was waived.

The Committee's decision in appeal #93-16 had been filed with the Town Clerk on October 7, 1993, and the appeal entered with the Commission on October 12, 1993, within the 10 day appeal period.

Prior to the start of the hearing Michael D. Ford, Attorney for the Appellant, stated that the Appellant wished to withdraw Appeal #93-13 and concentrate on Appeal #93-16. By unanimous vote, the Commission voted to allow the Appellant to withdraw Appeal #93-13 and the hearing proceeded on Appeal #93-16.

THE APPELLANT'S PRESENTATION:

Michael D. Ford, Attorney for the Appellant, addressed the Commission in favor of the appeal. He introduced other representatives of the Appellant and also displayed a map of the area with overlay sections of the immediate area. He stated that the proposed building would be 600 feet from Route 132 and would not be able to be seen from Route 132. He also stated that the proposed building would be at least 1200 feet from the nearest residential dwelling. He did state that the proposed building could be seen from the YMCA property. He stated that, in the original plan, there were 100 foot and 62 foot rooflines and the roof pitch did not meet the guidelines of the Commission. There was also very generous use of glass and brick. In the revised submission, the roofline has been broken up and the glass has either been eliminated or reduced. Only limited amounts of brick are planned. The roof pitch now meets the guidelines of the Commission in nearly all areas.

In addressing the issue of relative size, Attorney Ford stated that the YMCA building is in excess of 20,000 square feet. He stated that the proposed building will be large, but it is in an area of large buildings. The building will be set back from the road and will not make an appreciable visual impact from a public way, except for the YMCA. The amphitheater is in the rear of the building and cannot be seen from the YMCA. The building is appropriate, the Committee determined there is hardship and the project meets the guidelines of the Commission.

With regard to setting, Attorney Ford stated that in order to assess the issue of setting, a building was needed. He stated that there was some support from the Committee for the preservation of open space but that this was not one of the purposes of the Historic District Act.

In discussing the issue of hardship, Attorney Ford stated that many multi-faceted activities are planned in this building and, as a result, a building of this size is needed. In terms of function, the building needs to be this size for the purposes for which it is being used. He stated that this is a condition which is unique to this building. He stated that the reasons put forth by the Committee with regard to lack of hardship are errors of law and constitute poor judgment. There are no alternatives and there is no self-created hardship present. There was clear error in the Committee's findings that there was no hardship.

THE COMMITTEE'S PRESENTATION:

Peter Freeman, representing the Barnstable Committee, addressed the Commission to explain the Barnstable Committee's reasons for denial. He stated that he had voted in favor of the project when it came before the Committee but that he was able to defend the decision. He stated that the Committee looked at a larger area of the district in determining appropriateness.

In discussing hardship, Mr. Freeman stated that the Committee's findings were not as stated by the Appellant. He said that the Town had spent a great deal of money before coming to the Committee. To say that operationally it is difficult is not a hardship. There were certain alternatives which the Town did not follow. The Town did not present anything other than the bald-faced assertion that the building was needed. The Town should have put in a much more detailed presentation. The Town ignored the advice that the Committee gave them and the Town was never able to show that they could not do what the Committee desired.

With regard to appropriateness, Mr. Freeman stated that, while the College is a large structure, it was built prior to the Historic District Act. He also stated that the claim that the building will not be seen through the trees is not meritorious due to the fact that the trees could be taken down.

In addressing the issue of setting, Mr. Freeman stated that "Setting" is defined in the Historic District Act and it is a matter the Committee should take into consideration. He said that the intrusion of such a large building would not be appropriate although a smaller building might well be. The decision should not be read to say that nothing could ever be done on the site. He said the decision was not based on size alone but on size, roofline, pitch and the use of glass and brick. For an extremely long time the Committee has been faced with no consideration from the Town with regard to redesigning the building in an "L" formation. The roof pitch, roofline and texture were three areas which the Town did not and still have not complied with. He said he thought the Barnstable Committee had made a proper finding and he asked that the Committee's decision be upheld.

DISCUSSION:

In response to a question from a member of the Commission, the Appellant's architect stated that the present design was not the first design. He stated that building that had been designed before was an ell, but that it posed real disadvantages. The first building did not fit into the site, but this building will fit in.

Those speaking in favor of the appeal cited the need for the building and stated that the present building in Hyannis is much too small to accommodate the approximately 11,000 senior citizens in Barnstable.

Those speaking in opposition to the appeal stated that the building would be able to be seen from Route 6 and also questioned whether there would be the beginning of a domino effect with the approval of larger and larger buildings in this area.

David Moeller stated that the building was obviously very large and, based on what he had heard with regard to the extent of the meetings and discussions between the Town and the Barnstable Committee, he could not state that the findings of the Barnstable Committee were arbitrary.

Roy Robinson stated that the proposed building resembled an aircraft carrier and that he was not convinced that changing the building would be a substantial hardship.

Steve Carmel stated that he had no real problem with the building, although he felt that the roofline could be broken up more.

Pat Rothermel stated that she had no problem with the building and might have voted for it had she been on the local committee. However, she stated that, in an appellate capacity, she could not see how the Barnstable Committee had erred.

Christopher Miner stated that it was a close call as the local committee had placed most of the emphasis on the size and mass of the building.

FINDINGS:

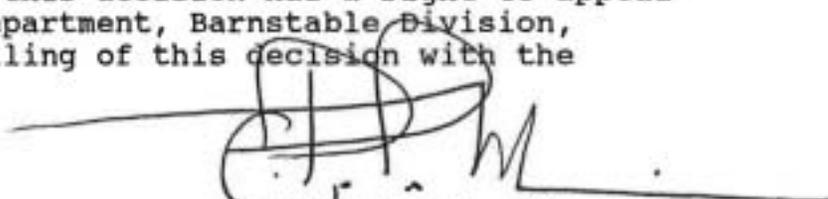
Based on the above, the Commission made the following Findings of Fact:

1. That the Barnstable Committee did not act in an arbitrary, capricious or erroneous manner in denying the Appellant's Application for a Certificate of Appropriateness, and the Appellant has not demonstrated any substantial hardship. 3-2-1.

DETERMINATION:

Based on the above findings, the appeal is denied. 3-2-1.

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.



Christopher R. Miner
Chairman