

Old King's Highway Regional Historic District Commission  
P.O. Box 2187, Hyannis, Mass. 02601

Telephone 508-775-5793

FRANK C. THIBEAULT

v.

Decision #94-4

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

On Tuesday, September 20, 1994 the Commission held a hearing on Appeal #94-4 filed by Frank C. Thibeault seeking review of a decision by the Sandwich Historic District Committee which had approved a Certificate of Appropriateness to Sandra Tate for a fence to be located at 5 Jarves Street, Extension, Sandwich, Massachusetts.

Present were Chuck Deluga, Dennis; Roy Robinson, Brewster; Robert Miller, Yarmouth; Peter Freeman, Barnstable; Allen Osgood, Sandwich; Robert G. Brown, Commission Counsel; Frank C. Thibeault, Appellant; Michael Ford, Attorney for Frank C. Thibeault; Sanda Tate, Applicant; Jonathan Fitch, Attorney for Sandra Tate; and several interested members of the public.

The Committee's decision had been filed with the Town Clerk on August 25, 1994, and the appeal entered with the Commission on August 31, 1994, within the 10 day appeal period.

In the absence of Christopher R. Miner, Chairman, the hearing was chaired by Peter L. Freeman, Vice-Chairman.

THE APPELLANTS' PRESENTATION:

Mr. Michael Ford, Attorney for the Appellant addressed the Commission in favor of the appeal. He displayed Town of Sandwich Assessors' maps of the general area and also displayed pictures of the specific site in question. He stated that the fence was most likely approved in the belief

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that it would not be visible. He said that the fence is visible from a way or public place as defined in the Old King's Highway statute and is therefore a structure and is not entitled to any exemption. He stated that the size and height of the fence in question is inappropriate to the area. He requested that the Commission find that the Sandwich Committee erred and that the decision of the Sandwich Committee be overturned in its entirety or revised to limit the height of the fence to four feet.

#### THE COMMITTEE'S PRESENTATION:

Allen Osgood, representing the Sandwich Committee, addressed the Commission to explain the Sandwich Committee's reasons for approval. He stated that the Sandwich Committee did take visibility into consideration as it was brought up by the Appellant at the hearing before the Sandwich Committee. He said that the original application before the Sandwich Committee called for a six foot fence with a two foot lattice top. The Sandwich Committee felt this was inappropriate to the neighborhood and the Applicant agreed to reduce the fence to five feet with a one foot lattice top. He reiterated that the Sandwich Committee did consider the neighborhood and did consider the fence to be visible from a public way. He asked that the Commission uphold the decision of the Sandwich Committee.

#### DISCUSSION:

Jonathan Fitch, Attorney for Sandra Tate, addressed the Commission in opposition to the appeal. He stated that the area in questions contained houses which formerly belonged to workers at the Sandwich Glass Factory. The houses were built on small lots and privacy is an issue. He displayed an Assessors' Map of the area and stated that there are examples on almost every lot of some attempt at privacy. He said that his client could have sought an exemption but instead chose to seek a Certificate of Appropriateness.

In discussion among Commission members, a majority of the members of the Commission agreed that, while one or more of them may not have voted in favor of the application had they heard it originally at the local committee level, the consideration given to the application by the Sandwich Committee showed that the decision was not arbitrary or capricious and there was no evidence presented by the Appellant of any clear error or poor judgment.

**FINDINGS:**

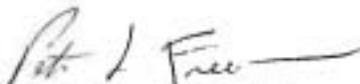
The Commission made the following Findings of Fact:

1. That the Sandwich Committee did not act in an arbitrary, capricious or erroneous manner in determining that the Applicant's application was appropriate for the area. 3-0-2.
2. That the Sandwich Committee did not use poor judgment in determining that the Applicant's application was appropriate for the area. 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  
Vice-Chairman