

**OLD KING'S HIGHWAY REGIONAL HISTORIC DISTRICT
COMMISSION**

P.O. Box 140, Barnstable, Massachusetts 02630-0140
Tel: 508-744-7586

Amy Hemmings, Applicant/Appellants

Vs.

Decision for Appeal No. 2014-4

**Old King's Highway Regional Historic
District Committee for the Town of Dennis**

2014 SEP -3 AM 11:01
DENNIS TOWN CLERK
RECEIVED



On Tuesday, August 26, 2014 at 1:30 P.M., the Commission held a hearing at the West Barnstable Fire Station Meeting Room, 2160 Meetinghouse Way (Route 149), West Barnstable, Massachusetts, on Appeal # 2014-4 filed by Amy Hemmings seeking reversal of the Dennis Town Committee's denial of a Certificate of Appropriateness for a stockade fence 6 ft. X 259 ft. located at 40 Hickory Lane, South Dennis, Massachusetts.

Present were Chairman Peter T. Lomenzo, Jr., Dennis; Lawrence Houghton, Brewster; William Collins, Sandwich; Carrie Bearse, Barnstable; Richard Gegenwarth, Yarmouth; James R. Wilson, Commission Administrative Counsel; and Amy Hemmings, Applicant/Appellant.

Absent was Paul Leach, Orleans.

The Dennis Town Committee's decision was filed with the Dennis Town Clerk on July 23, 2014. The appeal was entered with the Regional Commission on July 28, 2014, within the 10-day appeal period.

Copies of the Appeal Petition with attachments, Town's Decision, Minutes, Application, Plans, correspondence and submissions from the Dennis Town Committee's public hearing were distributed to the Commissioners for review and it was announced that all of the Commissions had visited the site of the proposed project prior to the Regional Commission's August 26, 2014 public hearing on the appeal.

Chairman Lomenzo announced that he would be representing the Dennis Town Committee and requested that an Acting Chairman be elected to conduct the public hearing.

On motion of Mr. Gegenwarth, seconded by Ms. Bearse, Lawrence Houghton was elected Acting Chairman to conduct the public hearing. (5-0)

Applicant/Appellant's Presentation:

Amy Hemmings addressed the Commission on behalf of her appeal and stated that she had two children and a pair of Boxers. She indicated that the fence was needed for safety

and protection against coyotes and other threats. She stated that she lived alone with her small children and that she had just bought the house in March of this year. She stated that she had paid \$7,000.00 to ProFence Company to put up the fence and that she had been unaware of the Old King's Highway Regional Historic District permitting requirements.

She acknowledged that she had violated the Act, but asked the Commissioners to permit the fence to remain in place.

Mr. Collins asked if some of the sections of the fence were only four feet high.

She acknowledged that there were four foot high sections on the front side of the house.

Ms. Bearse asked the Applicant/Appellant if she had made any attempt to request a continuance of her hearing or contact the Town Committee or its Secretary prior to her failure to appear at the scheduled public hearing on her application.

The Applicant/Appellant acknowledged that she did not contact anyone prior to her scheduled hearing.

Dennis Town Committee's Presentation:

Mr. Lomenzo, addressed the Commission to describe the Dennis Town Committee's actions in denying the application. He reported that the fence had been put up without a certificate of Appropriateness and that a violation notice had been sent to the Applicant/Appellant as per the enforcement procedures of the Building Inspector's office.

He indicated that the Applicant/Appellant, after receipt of the violation notice, filed an application for the approval of the fence in its "as built" condition. Notice of the public hearing on the application was given to the Applicant/Appellant and the abutters. The public hearing was scheduled for July 23, 2014, at which time the Applicant/Appellant failed to appear.

He indicated that the Dennis Town Committee had concerns about the appearance of the fence and felt that they could not approve it "as is" or without more information from the Applicant/Appellant, who had neglected to appear at the scheduled public hearing.

Mr. Lomenzo suggested that there was no legal ground for granting the appeal. He stated that the Dennis Town Committee had the authority to deny an application when the owner or agent failed to appear and in this situation when the "as built" fence's appearance was found to be inappropriate.

He suggested that the proper procedure was for the Applicant/Appellant to reapply to the Dennis Town Committee.

Ms. Bearse asked if the Dennis Town Committee had approved similar wooden stockade fences in the past.

Mr. Lomenzo indicated that wooden stockade fences had been approved, but that the Town Committee wished to discuss possible modification that would make the application more acceptable and that because the Applicant/Appellant had failed to appear, there had been no opportunity to discuss any possible modifications to the existing stockade fence.

Public Comment:

Acting Chairman Houghton asked for public comment on the appeal and there was none.

Commission Discussion:

Acting Chairman Houghton closed the public hearing and asked the Commissioners to consider whether or not the Dennis Town Committee exceeded its authority or exercised poor judgment, was arbitrary, capricious, or erroneous in its action.

Mr. Collins stated that did not see were the Dennis Town Committee had exceeded its authority or exercised poor judgment. He indicated that the action did not appear to have been arbitrary, capricious or erroneous.

Ms. Bearse expressed concern for the inconvenience to the Applicant/Appellant, but felt that she would need to reapply to the Dennis Town Committee and start the process over again.

Mr. Gegenwarth stated that he did not see any error by the Dennis Town Committee.

He indicated that while he was sympathetic toward the Applicant/Appellant's situation, the proper procedure would be for the Regional Commission to deny the appeal and the Applicant/Appellant reapply to the Dennis Town Committee.

Mr. Houghton stated that while he felt empathy for the Applicant/Appellant, he agreed that the information before the Regional Commission did not indicate that the Dennis Town Committee did not exceed its authority, exercise poor judgment nor was it arbitrary, capricious or erroneous in denying the application.

He called for a motion to vote on the appeal.

Mr. Gegenwarth moved, seconded by Mr Collins, that the Regional Commission find that the Dennis Town Committee did not exceed its authority or exercised poor judgment and had not been arbitrary, capricious or erroneous and that the decision to deny the Certificate of Appropriateness should be affirmed. It is recommended that the Building Inspector take no additional enforcement action so long as the Applicant/Appellant

promptly reappplies and pursues the approval of an appropriate wooden stockade fence for her property.

The motion carried by a vote of 4-0-1. (Houghton, Collins, Gegenwarth & Bearnse in favor; and Lomenzo abstaining)

The Commission findings:

The Commission found as follows:

The Dennis Town Committee did not exceed its authority or exercise poor judgment and was not arbitrary, capricious or erroneous in denying the Certificate of Appropriateness to the Applicant.

The Certificate of Appropriateness was properly denied to the Applicants.

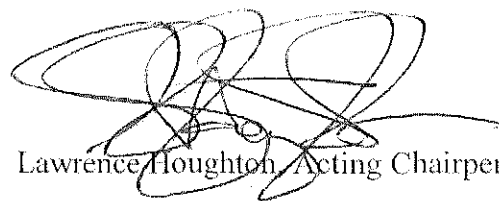
The determination by the Dennis Town Committee should be affirmed.

Commission's Determination:

As to Appeal #2014-4, the Decision by the Dennis Town Committee in denying a Certificate of Appropriateness to Amy Hemmings for a wooden stockade fence located at 40 Hickory Lane, South Dennis, Massachusetts is affirmed. (4-0-1).

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.

Dated: September 3, 2014


Lawrence Houghton, Acting Chairperson