

TOWN OF WEYMOUTH, MASSACHUSETTS  
BOARD OF ZONING APPEALS  
NOTICE OF DECISION ON SPECIAL PERMIT/VARIANCE  
24 CALDWELL STREET

(To be mailed forthwith to the owner and applicant, if not the owner.)

**Owner:** Jane C. Cleary  
**Address:** 24 Caldwell Street  
Weymouth, MA 02191

**Date:** September 28, 2016

**Applicant:** Jane C. Cleary  
**Address:** 24 Caldwell Street  
Weymouth, MA 02191

**Case #:** 3303

**Representative:** N/A

**Site Address:** 24 Caldwell Street  
**Sheet:** 2  
**Block:** 5  
**Lot:** 10

RECEIVED  
TOWN OF WEYMOUTH  
TOWN CLERK'S OFFICE  
2016 SEP 28 AM 10:36

**Zoning District:** R-1

Board of Zoning Appeals application filed on August 1, 2016.

After a public hearing on September 7, 2016, advertised in the Weymouth News on August 24, and August 31, 2016, the Board of Zoning Appeals at its meeting of September 7, 2016

**VOTED TO GRANT THE SPECIAL PERMIT** under Weymouth Zoning Ordinance Section 120-40, Extension or change of a nonconforming lot; and

**VOTED TO GRANT THE VARIANCE** under Weymouth Zoning Ordinance Section 120-52, Lot size under 5,000 SF;

to grant relief for the petitioner to construct a ~7' X ~44' wrap-around deck located above the roof of a first floor extension, per plan by CCR Associates, "Proposed 2<sup>nd</sup> Story Deck, 24 Caldwell Street, Weymouth, MA", dated July 27, 2016.

**SPECIAL PERMIT FINDINGS:**

**The specific site is an appropriate location for such a use:**

*The addition of a deck is consistent with the architecture of the neighborhood and serves a legitimate purpose of increasing ocean views.*

**The use involved will not be detrimental to the established or future character of the neighborhood or town:**

*Elevated decks are common in this neighborhood.*

**There will be no nuisance or serious hazard to vehicles or pedestrians:**

*The deck is elevated and will not impact vehicular or pedestrian access.*

**Adequate and appropriate facilities will be provided for the proper operation of the proposed use:**

*All construction will be monitored by the Inspector of Buildings and comply with the Massachusetts Building Code*

**The public convenience and welfare will be substantially served:**

*The project will increase the assessed value of the home.*

## **VARIANCE FINDINGS:**

The existing home was built in 1928 and is part of an established neighborhood consisting primarily of small lots. The home is currently only 664 SF and, given the size and shape of the lot, options for expansion are limited. Reducing the size of the existing deck and squaring off the existing building is the most appropriate option.

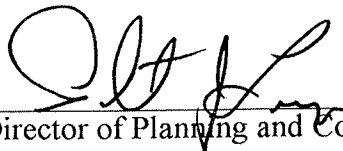
Under MGL Chapter 40A, Section 11, the approval of the Board of Zoning Appeals will NOT take effect until it has been recorded in the Norfolk Registry of Deeds.

After the twenty (20) day appeal period has passed, the Town Clerk will send to the petitioner: (1) the certificate that no appeal was filed, (2) the certificate of granting of variance and/or special permit, and (3) the Record of Proceedings. The petitioner shall record these documents with the Norfolk Registry of Deeds, Dedham, MA, with the appropriate filing fee.

When a receipt from the Registry of Deeds is presented to the Building Inspector (to show that the decision has been recorded), the proper permit will be issued.

Decision filed with the Town Clerk on September 28, 2016

**IMPORTANT:** Notice is further given that any person aggrieved by this decision may appeal, according to MGL Chapter 40A, Section 17, and said appeal, if any, must be filed with the Town Clerk within twenty (20) days after the filing of the decision with the Town Clerk.



Robert J. Luongo, Director of Planning and Community Development

**BOARD OF ZONING APPEALS (BZA)**  
**RECORD OF MINUTES AND PROCEEDINGS**  
**Wednesday, September 7, 2016**

**Members Present:** Richard McLeod, Chairman  
Kemal Denizkurt  
Chuck Golden  
Jonathan Moriarty  
Ed Foley

**Also Present:** Bob Luongo, Planning Director  
Eric Schneider, Principal Planner  
Lee Hultin, Recording Secretary

Chairman McLeod called the Board of Zoning Appeals meeting to order at 7:10 p.m. at the McCulloch Building, 182 Green Street and explained the procedures that would be followed to the people present.

**Case #3303** – The petitioner, Jane Cleary for property located at **24 Caldwell Street**, also shown on the Weymouth Town Atlas sheet 2, block 5, lot 10, located in the R-1 zoning district. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

Special Permit;	120-40	Extension or change of use, non-conforming lot
Variance;	120-52	Lot size under 5,000 SF

Presently located on the ~2800 SF lot is an existing single-family dwelling. The petitioner seeks to construct a ~7' X ~44' wrap-around deck located above the roof of a first floor extension.

**Sitting Members:** Richard McLeod  
Kemal Denizkurt  
Chuck Golden  
Jonathan Moriarty  
Ed Foley

Ed Foley made a motion to open the public hearing on Case #3303 and was seconded by Jonathan Moriarty.  
**VOTED UNANIMOUSLY**

Ed Foley made a motion to waive the reading of the publication on Case # 3303 and was seconded by Jonathan Moriarty.  
**VOTED UNANIMOUSLY**

Appearing before the Board was Jane Cleary and her friend Jim Kurk. The applicant is requesting a Special Permit and Variance to build a wrap-around deck on the second floor of two sides of an existing home. The front side yard setbacks are currently nonconforming. The installation of 4"x4" support posts will slightly increase the nonconformity. Per MGL, the applicant also requires a variance as the lot is less than 5,000 s.f.

Mr. Kurk said this was a two story house that had a one story screen porch that was converted into living space a number of years ago. Ms. Cleary would like to build a deck around one corner of the house.

Eric Schneider said he discussed this with the Building Inspector and he is fine with the plan.

There were no neighbors opposed and have signed off in support on the application.

The public was given the opportunity to speak and there were no comments.

Ed Foley made a motion to close the public hearing on Case #3303 and was seconded by Jonathan Moriarty. VOTED UNANIMOUSLY

Ed Foley made a motion to approve Variance on Case #3303 and was seconded by Jonathan Moriarty. VOTED UNANIMOUSLY

**Variance Criteria for Approval.** Weymouth Zoning Ordinance Section 120-119A(3).  
The Three Required Findings For Granting A Variance:

***Finding #1: Soil, Shape, Topography***

Owing to circumstances relating to soil conditions, shape or topography of the land or structure and especially affecting such land or structure but not generally affecting the zoning district in which it is located.

- The board must also find that the peculiarity is unique to the zoning district where the parcel is located.
- The peculiarity must not be found in the district as a whole.

***Finding # 2: Hardship***

A literal enforcement of the provisions of the ordinance or bylaw would involve substantial hardship, financial or otherwise.

***Finding # 3: Public Good***

Desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the ordinance or bylaw.

**Variance Finding:**

*The existing home was built in 1908 on a small lot typical for this neighborhood. The area is at full build out and the lot is bordered on two sides by public ways further constricting it. Their lot is hindered by the fact that it is less than 5,000 square feet.*

Ed Foley made a motion to approve a Special Permit for Case #3303 and was seconded by Jonathan Moriarty.

VOTED UNANIMOUSLY

**Special Permit Criteria for Approval.** The Board of Zoning Appeals may approve any Special Permit applications only if it finds that, in its judgment, all of the following conditions are met in accordance with Zoning Ordinance Section 120-122D.

1. The specific site is an appropriate location for such a use.  
*The addition of a deck is consistent with the architecture of the neighborhood and serves a legitimate purpose of increasing ocean views.*
2. The proposed use or structure will not be detrimental or adversely affect the character or future character of the neighborhood or town.  
*Elevated decks are common in this neighborhood.*
3. There is not a potential for nuisance or serious hazard to vehicles or pedestrians.  
*The deck is elevated and will not impact vehicular or pedestrian access.*
4. There are adequate and appropriate facilities, utilities and other public services provided for the proper operation of the proposed use.  
*All construction will be monitored by Inspector of Buildings and comply with the Massachusetts Building Code.*
5. That the public convenience and welfare will be substantially served with the proposal.  
*The project will provide additional outdoor space and increase views of the ocean.  
The future appraised value of the home will be increased.*

THE COMMONWEALTH OF MASSACHUSETTS

WEYMOUTH

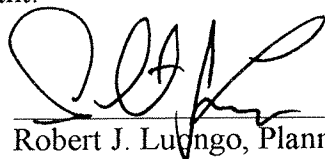
BOARD OF APPEALS

September 28, 2016

Certificate of Granting of Variance or Special Permit  
(General Laws Chapter 40A, Section 11)

The Board of Appeals of the Town of Weymouth hereby certifies that a Variance or Special Permit has been granted to Jane C. Cleary, 24 Caldwell Street, Weymouth, MA 02191, affecting the rights of the owner with respect to land or buildings at 24 Caldwell Street, also shown on the Weymouth Town Atlas Sheet 2, Block 5, Lot 10, and the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision granting said variance – special permit, and that copies of said decision, have been filed with the Planning Board and the Town Clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 (last paragraph) provides that no variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the Town Clerk that twenty days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the owner or applicant.



Robert J. Lucingo, Planning Director

Kathleen Deree, Town Clerk

Case # 3303

Date of Hearing: 9/7/2016