

**BOARD OF ZONING APPEALS
RECORD OF MINUTES AND PROCEEDINGS
February 15, 2012**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, February 15, 2012 at 7:15 pm at McCulloch Building, Mary McElroy Meeting Room, 182 Green Street, Weymouth, MA for the purpose of passing on the application of certain persons whose petitions were properly before the Board. Notice of public hearing had been given by mail to the parties in interest of the subject locus and by publication in the Weymouth News.

Present: Richard McLeod, Chairman
 Edward Foley, Vice-Chairman
 Kemal Denizkurt, Clerk
 Chuck Golden
 Jonathan Moriarty
 Robin Moroz, Alternate Member

Staff: Robert Luongo, Economic Development Planner
 George Lane, Town Solicitor
 Jeff Richards, Building Inspector

Recording Secretary: Mary Barker

The Chairman called the hearing to order at 7:15 PM and explained the procedures that would be followed to the people present. A motion was made to open the public hearing and waive the reading of the legal advertisement, and was seconded and unanimously voted.

BZA CASE # 3149-116 Phillips Street, Public Hearing

Application of Richard Keniston for property located at 116 Phillips St., also shown on the Weymouth Town Atlas as Sheet 16, Block 205, Lot 4, located in a R-1 zoning district, seeking to subdivide Lot 4 and separate out Lot B, which is not a buildable lot, for mortgage purposes.

Members sitting: Richard McLeod, Chairman
 Chuck Golden
 Jonathan Moriarty
 Robin Moroz
 Rob Stevens (not present)

Bob Luongo reported to the Board that in a letter dated January 30, 2012 to the Planning Department, the applicant has requested to withdraw his application. A motion was made to approve the applicant's request for withdrawal of the petition and was seconded and unanimously voted.

BZA CASE #3144-R – 102 Weyham Road, Public Hearing (Remand)

Application of Claire & Neal Drew for property located at 102 Weyham Rd., also shown on the Weymouth Town Atlas as Sheet 8, Block 111, Lot 29, located in a R-1 zoning district; Court Remand dated January 12, 2012 to BZA for new hearing and decision on Appeal of Building Inspector's decision (filed under Section 120-119) that the installation of a handicap ramp is exempt from Town of Weymouth Zoning Ordinance

Members sitting: Richard McLeod, Chairman
 Edward Foley, Vice-Chairman
 Kemal Denizkurt
 Chuck Golden
 Jonathan Moriarty

A motion was made by Vice Chairman Foley to open the public hearing and was seconded and unanimously voted.

Solicitor Lane reported that on January 9, 2012 a remand order was entered. He attended the case management conference as counsel for the town. The applicants were not represented by counsel at this proceeding although the judge encouraged it. He reviewed the case history. An application by the Geary's was filed for HP accessible ramp and was certified by the Building Inspector. An appeal by the Drews was filed under the bylaw and was denied with a condition by the Board to install an additional section of fence, 4' in length, to be added to the deck privacy fence. The applicants filed an appeal in Land Court. The case has been remanded back to the Board for a brand new hearing because the annexation of conditions cannot grant unrestricted relief. Solicitor Lane noted case authority whereby conditions cannot be added to the decision due to the doctrine of specificity. The Board is required to consider the matter as a new hearing with the same appeal rights.

Claire and Neal Drew testified that they attended the hearing in Land Court before Judge Piper. Mrs. Drew reported that the judge could see through the whole thing and agreed with them within the first five minutes. They have been dealing for two years with a deck that was illegally put up in close proximity to their property and they want their privacy back. When they brought the matter before the building inspector, the owners then filed for an HP ramp.

Mrs. Drew noted the number of supporters in the room and noted if she had known it would be a popularity contest, they would also have brought in support. Mrs. Drew also reported that she has made 22 unanswered calls to Mr. Zeigler, Assistant Building Inspector. She noted that she and her husband will pursue legal avenues and will not be present at this hearing. Several members of the Board tried to persuade them to stay for the hearing, but they left.

There was discussion on the ramp, which is regulated by the state. The ramp was designed for the specific need of the applicant, and supersedes the setback regulations. Jeff Richards, building Inspector, noted that it is not for the town to define the specific needs of the applicant; it is restricted to the owner and is based on what is presented by the applicant. Jeff Richards was asked if the ramp was built after the permit. He responded yes. He was asked if the deck could fit 4 chairs. Mr. Richards responded yes, but not comfortably. The design had to incorporate

parameters for the ramp, stairs and landing. Unless it was a size beyond commercial application, it wouldn't be questioned.

Solicitor Lane reported that at the case management conference, the Drews had no legal representation. The judge carefully listened to the testimony; however, he never agreed with the Drews. All parties were encouraged to have representation; Mr. Lane on behalf of the Board, and Atty. Reilly representing the plaintiffs. Mr. Lane is required to report back to the judge on the status.

There was a brief discussion on the remand hearing; Kemal Denizkurt asked if any testimony from the original hearing is admissible for this hearing. Solicitor Lane responded that it is not. He believes there is sufficient testimony from Building Inspector and the appellant for the Board to make an informed decision. Mr. Richards noted that much of the documentation from his office is in the record under the Open Meeting Law. Kemal Denizkurt asked if the Building Dept. had received a copy of the plan with the application for a building permit. Mr. Richards responded yes. The Board reviewed the plan and the original application. The deck was not built to the specifications and the applicant was sent a letter to remove the deck. Subsequently the applicants submitted a plan that now included a HP ramp. The relief applied for and previously granted was for the ramp, not the deck. The ramp permit was pulled to rectify the violation. Jonathan Moriarty asked if there was a delay between the building of the deck and the ramp. Mr. Richards responded that he did not deal directly with the application and only dealt with the builder once the violation came to his attention. There was not an unusual delay between violation and the ramp application. The violation was issued on 4/12 and the ramp permit was issued 6/14. The original application dated from 2009.

Kevin Reilly, Attorney with practice at 19 So. Main Street, Randolph testified on behalf of the Geary's. He noted the letter from Jeff Richards on 6/14 indicating the HP ramp is exempt from town ordinance and he concurs with the town solicitor in that the Board cannot modify the underlying result. The sole purpose for the modifications to the home were to create single level living in planning for their future. The ramp was designed to benefit a family member with physical challenges. He showed pictures of the addition and ramp, and noted it is set further back than the original house.

A motion was made by Vice Chairman Foley to accept three photographs as evidence and seconded by Jonathan Moriarty and voted unanimously. The photographs are marked as Exhibit A, B, and C.

Attorney Reilly reported his clients have installed stockade and privacy fencing along the side abutting the Drews and have gone to significant lengths to secure the privacy. The size of the deck is no bigger than code regulations and the landing cannot accommodate a party. At the land court hearing there was opportunity for the parties to compromise but the Drews were not willing. The houses aren't equally set back and he does not see the need for a 4' partition along the back of the deck as the Drews requested. The judge did ask and heard the neighbors' opinions.

Chairman McLeod noted the uniqueness of the situation and noted the Board had sufficient relevant testimony on the limited issue as to whether the Building Inspector exceeded his authority without requiring the addition of testimony from the other neighbors and abutters present. Vice Chairman Foley agreed. Jonathan Moriarty noted that no factual testimony has been presented by the appellant.

Solicitor Lane noted that the remand order was issued on January 9, 2012 and he has 60 days in which to respond back to Land Court. The Board can affirm or reverse the Building Inspector's decision.

A motion was made by Vice Chairman Foley to close the public hearing and was seconded by Jonathan Moriarty and unanimously voted.

To vote on the of BZA Case No. 3144 to approve upholding the decision of the Building Inspector

A motion was made by Vice Chairman to affirm the decision by the Building Inspector and deny the application for appeal and was seconded by Jonathan Moriarty. Unanimously voted.

DECISION OF THE BOARD - Due to the above findings, it was unanimously voted to affirm the decision of the Building Inspector.

Submission- Exhibit A- photograph- front view, 102 Weyham Rd.
Exhibit B- photograph- sideline view of the new fence, addition and deck
Exhibit C- photograph- view of the ramp

Minutes-December 14, 2011

A motion was made by Vice Chairman Foley to approve the minutes of the December 14, 2011 meeting; Case #3149, Case #3152 and Case #3153, seconded by Jonathan Moriarty and was unanimously voted.

Adjournment

At 8:20 PM, there being no further business, a motion to adjourn the meeting was made by Vice Chairman Foley, seconded by Kemal Denizkurt and unanimously voted.

Approved:

Kemal Denizkurt, Clerk

Date