

**BOARD OF ZONING APPEALS  
RECORD OF MINUTES AND PROCEEDINGS  
DECEMBER 5, 2007**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, December 5, 2007 at 7:00PM at McCulloch Building, Whipple Center Conference Room, 182 Green Street, Weymouth, MA for the purpose of passing on the application of certain person whose petitions were properly before the Board. Notice of the 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  
Chuck Golden  
Francis Kenneally  
Martin Joyce

**Staff:** Rod Fuqua, Principal Planner

**Recording Secretary:** Christine Callbeck

The Chairman called the hearing to order and explained the procedures that would be followed to the people present. Mr. Foley made a MOTION to OPEN THE PUBLIC HEARING and the MOTION was SECONDED by Mr. Joyce. UNANIMOUSLY VOTED. Mr. Joyce made a MOTION to WAIVE THE READING OF THE LEGAL ADVERTISEMENT and the MOTION was SECONDED by Mr. Kenneally. UNANIMOUSLY VOTED.

**BZA Case #2991 39 & 45 WINTER STREET**

Application of KFC U.S. Properties, Inc. at 39 & 45 Winter Street, also shown on the Weymouth Town Atlas Sheet 33, Block 376, Lots 19 & 20, located in a B-1 zoning district seeking a special permit for the drive thru window service and a variance for signage.

Mr. Joyce made a MOTION to CONTINUE THE PUBLIC HEARING to January 23, 2008 until the traffic engineer can do a review, Mr. Golden SECONDED the MOTION. UNANIMOUSLY VOTED.

**BZA Case #2992 240 UNION STREET**

Application of Michael J. Colon for property at 240 Union Street, also shown on the Weymouth Town Atlas Sheet 50, Block 573, Lot 14, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-40, 120-51 and Table 1 for a second story addition and attic expansion.

Mr. Joyce made a MOTION to OPEN THE PUBLIC HEARING and the MOTION was SECONDED by Mr. Foley. UNANIMOUSLY VOTED. Mr. Foley made a MOTION to WAIVE THE READING OF THE LEGAL ADVERTISEMENT and the MOTION was SECONDED by Mr. Joyce. UNANIMOUSLY VOTED.

Mr. Carl Lewis of Kneeland Construction was present representing Mr. Michael J. Colon. Mr. Lewis stated that the proposed project is to add 450 sq. ft. on the second floor of the existing home. This will be an increase of a master bedroom, living room, kitchen and study. To the

attic the owner plans to add a shed dormer on the side of the house which will house a master bedroom and bathroom. The home was originally built as a single family and then converted into a two family. The existing lot creates issues with adding on, the best solution is to go up. The addition that they are proposing is in keeping with the neighborhood and the other colonial homes in the area.

Mr. Fuqua stated that it is standard procedure to advertise for a special permit and/or variance. In this case, the request is for both special permit and variance. An R-1 district limits to 2 ½ stories, this will be a 3<sup>rd</sup> story. The variance is to permit a 3<sup>rd</sup> story.

Mr. Lewis gave letters of support from the neighbors to the Chairman. Chairman McLeod stated that he received two letter of support from Peter Horton 236 Union Street and neighbors at 235-233 Union Street.

Chairman McLeod asked what will be going into the attic space. Mr. Lewis answered a master bedroom and bathroom.

Mr. Fuqua gave a review of the project:

Conservation	No objections
Health	History of non-compliance with Housing Code for this property from a prior owner. No issues with current owner.
DPW	Water and sewer mitigation fees required by the board
Schools	No objections

Mr. Fuqua asked Mr. Lewis if the driveway is shown on the site plan. Mr. Lewis answered no. Mr. Fuqua asked what the distance from the back of the house to the edge of the grass is. Mr. Colon answered approximately 12 – 15 feet.

Mr. Peter Horton, 236 Union Street stated that he sent a letter of support and approval of the project to the board.

Mr. Kenneally made a MOTION to CLOSE THE PUBLIC HEARING and was SECONDED by Mr. Foley. UNANIMOUSLY VOTED.

Mr. Foley asked members if they remembered variance issues in the president road area where applicant wanted to go up and neighbors said no. Is blocking access to the garage enough hardship?

Mr. Fuqua asked the board if they see reasonable point where there are other alternatives to go up and out. Mr. Fuqua suggested that the board could look at the site to see if there is sufficient space to go out. The application could be considered favorable or unfavorable depending on their judgement.

Mr. Lewis stated that the desire is for an additional 700 sq. ft. on the 2<sup>nd</sup> floor. Chairman McLeod asked how many bedrooms are on the first floor. Mr. Lewis answered 2 bedrooms; the first floor is a 5 ½ room apartment.

Mr. Foley made a MOTION to CLOSE THE PUBLIC HEARING and was SECONDED by Mr. Kenneally. UNANIMOUSLY VOTED.

### FINDINGS

The Board found that the SPECIAL PERMIT AND VARIANCE would not derogate from the intent and purpose of the Zoning Ordinance, and the requested relief could be granted without substantial detriment to the public good nullifying or substantially derogating from the intent and purpose of the Ordinance based on the following.

- (1) The specific site is an appropriate location for such a use.
- (2) The use involved will not be detrimental to the established or future character of the neighborhood or town.
- (3) There will be no nuisance or serious hazard to vehicles or pedestrians.
- (4) Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- (5) The public convenience and welfare will be substantially served.

### DECISION OF THE BOARD:

The Board was familiar with the site and had the benefit of a plan. The majority of the members had viewed the site in question. Due to the above findings, Mr. Foley made a MOTION to APPROVE THE SPECIAL PERMIT AND VARIANCE with sufficient hardship with the location of the garage on the lot. To do the expansion any other way is not possible because the driveway is on the right side. Shape of the lot does not allow for it. Mr. Kenneally SECONDED the MOTION. UNANIMOUSLY VOTED.

### **BZA Case #2886R 39 REGATTA ROAD**

Application of Jack Knight at 39 Regatta Road, also shown on the Weymouth Town Atlas, Sheet 2, Block 12, Lot 20, located in an R-1 zoning district seeking relief from the front yard setback for the purpose of constructing a farmer's porch across the front of the property. Decision of February 15, 2006 was appealed by the applicant and the case was remanded back to the Board of Zoning Appeals by direction of Superior Court.

Attorney Gregory Galvin, law offices at 775 Pleasant Street stated that this application is slightly different because it is seeking BZA permission for a project that is 75% completed; the addition of a porch type structure. The porch is on a slab with a roof over it. The porch is located in the front yard setback. The setback is just less than 14 feet. Several other properties on Regatta Road have similar extensions from the home into the setback area. The location of porch is a hardship, could not put on sides or back of house due to the coastal bank. The applicant sees this as a hardship. Applicant has a granddaughter and daughter that live with him. He feels that the porch is a safer place for the granddaughter to play. Attorney Galvin told board members that there are other lots in the area that have same kinds of setbacks. There is a home at 253 Wessagusset Road that significantly extends into the front setback. The applicant has spoken with his neighbors and many of them are here in support of this project.

Mr. Foley asked if water runs into the garage. Mr. Knight stated that he had to put a berm in to stop the water from running into the garage. Chairman McLeod asked if the porch helps with the runoff. Attorney Galvin stated yes, the slope directs the water to the right side past the house and not into the garage. Chairman McLeod asked if the shape of the lot and topography adds to the hardship. Attorney Galvin stated the porch assists in directing the water away from the garage. Attorney Galvin stated that Lots 18 and 19 have extended back into the setback.

Mr. Fuqua clarified the courts orders. When sent back to reconsider the judge offered two options: either compare property in his neighborhood or other properties in Weymouth. Attorney Galvin has pointed out the homes on Regatta Road, River Street and Wessagusset Road. Mr. Fuqua stated that the board has handled similar cases with farmer's porches. Mr. Fuqua cannot recall a farmer's porch being turned down. The second option is to find a hardship that runs with the land. Attorney Galvin has pointed out that the slope of the property is a hardship. The coastal bank runs less than a foot on his property. Mr. Foley asked board members if BZA looks at back of house for a location for porch and gets into coastal bank is that a financial hardship.

Mr. Randy Courier, 35 Regatta Road stated that the porch looks nice. There is a water issue at almost every home on Regatta. Mr. Courier has the same water issue, he lines up sandbags to stop the water. Mr. Courier is in favor of Mr. Knight's porch.

Mr. Shawn O'Sullivan, Regatta Road feels that it is definitely a safety issue for Mr. Knight's granddaughter. The porch looks nice.

Mr. David DiTocchio, 100 Great Hill Drive stated that the porch looks nice and it does deflect the water.

Mr. Warren Hall, 45 Regatta Road stated that he has the same problem as Mr. Knight. Soon he will be looking to fix the problem. Mr. Hall has to buy fill due to the washout.

Mr. Jim Coughlin, Lindale Avenue stated that the porch is an esthetic improvement. Everyone has water problems on Great Hill Drive. He congratulates Mr. Knight on the improvements to his home, it looks nice.

Mr. Foley made a MOTION to CLOSE THE PUBLIC HEARING and was SECONDED by Mr. Joyce. UNANIMOUSLY VOTED.

#### FINDINGS

The Board found that the VARIANCE would not derogate from the intent and purpose of the Zoning Ordinance, and the requested relief could be granted without substantial detriment to the public good nullifying or substantially derogating from the intent and purpose of the Ordinance based on the following.

- (1) The specific site is an appropriate location for such a use.
- (2) The use involved will not be detrimental to the established or future character of the neighborhood or town.
- (3) There will be no nuisance or serious hazard to vehicles or pedestrians.
- (4) Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- (5) The public convenience and welfare will be substantially served.

#### DECISION OF THE BOARD:

The Board was familiar with the site and had the benefit of a plan. The majority of the members had viewed the site in question. Due to the above findings, Mr. Foley made a MOTION to APPROVE THE APPLICATION FOR VARIANCE due to topography of lot, nowhere else to place the porch. Valid concern for the safety of his granddaughter. Mr. Kenneally SECONDED the MOTION. UNANIMOUSLY VOTED.

**MINUTES**

Mr. Foley made a MOTION to AUTHORIZE THE CLERK TO APPROVE MINUTES OF NOVEMBER 28, 2007 when the minutes come in. Mr. Golden SECONDED the MOTION. UNANIMOUSLY VOTED.

**ADJOURNMENT**

There being no further business to come before the Board of Zoning Appeals, a MOTION to adjourn was made by Mr. Foley and SECONDED by Mr. Golden, UNANIMOUSLY VOTED to adjourn at 8:22PM.

Approved:

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Richard McLeod, Chairman

Dated:

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