# Town Of Sandwich

THE OLDEST TOWN ON CAPE COD

**BOARD OF APPEALS**

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**Minutes**
**August 14, 2012**

**7:00pm**
**Present:** Harold Mitchell, Chair, Robert Jensen, Vice Chair, Erik VanBuskirk, Fred Watt, and James Killion
Nathan Jones, Town Planner
**Absent:** Christopher Neeven


TOWN CLERK
TOWN OF SANDWICH

AUG 29 2012

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**7:05pm**
**ADBI #12-14**
**125 Spring Hill Road and 80 Roos Road**
**Wamester**

Mr. Mitchell read the Public Hearing Notice into the record. He also read the following letter into the record:

- Sandwich Conservation Commission, David D. DeConto, Natural Resources Officer, dated August 2, 2012

Attorney Michael Ford, representing the applicant, reviewed the history for the Board. The applicant has owned these two lots shown on the submitted site plan. On 2010 a storm took out the stairs that existed as access to the dune. Wamesters filed an application with the Conservation Commission to replace the stairs. While the appearance of the stairs will be a little different in order to meet Con Com requirements, they would be placed in the same location. At the ConCom hearing the question of zoning relief was raised since the stairs will be crossing a common boundary line. In a meeting with Mr. Paul Spiro, Inspector of Buildings, Mr. Wamester gave an affidavit that during his ownership the stairs were present. He also understood from his neighbors that the stairs had been there for a longer time. Mr. Mitchell read Mr. Spiro's denial of request letter into the record at this time. Mr. Ford also read the definition of a yard. He made the point that stairs are a customary accessory to property and asked the Board to find these stairs to the beach to be a customary yard accessory. He said that the ConCom review is the key here as a plan of 2001 shows the cut made for the stairs, and the proposed stairs would use the same cut to avoid further disturbance of the vegetation.

**7:19pm**
**Variance #12-15**
**125 Spring Hill Road and 80 Roos Road**
**Wamester**

Mr. Mitchell read the PHN into the record. There were no comment letters. Attorney Ford said that the applicant was petitioning for a variance on side set-back requirements. He discussed criteria for a variance:

- Topographical element –
  - There is a drop-off to the beach
  - Stairs have been there for some time as evidenced in the 2001 plan
  - Over common boundary line
  - New slice would have to be cut to put stairs in front of house
- Hardship element –
  - Difficult to access beach without stairs
- Public good would be served in preserving and protecting the dunes and the current opening
- The purpose and intent of the by-law is to grant variance in this unique situation

Mr. VanBuskirk said that there was a flyover done in 1999 that should show the stairs. The Board was shown copies of the 2003 and 2007 flyovers. Mr. Killion asked if Atty. Ford could explain why the engineering firm did not show stairs on the plan previously submitted. Mr. Ford could not. Mr. Watt wanted to know if any neighbors had spoken to Mr. Spiro. The Board was told that the neighbors were in Europe at the time.

Mr. Mitchell asked if there had always been two separate lots and was there a reason that they could not be combined into one lot. Atty. Ford explained that one lot was held by the Wamesters and the other by a corporation owned by Mr. Wamester. If the lots were combined, the required 45' setback requirement could not be met. Mr. Jensen asked how long an Order of Condition was valid – he thinks maybe three years. There were no other Board questions or comments.

Mr. Mitchell opened the Public Hearing for comment.
Attorney Lois Farmer, representing Michael Karl and Cathy Anne Walter, addressed the Board with the following concerns:

- She questioned if separate applications should have been submitted
- Representation of frontage on application
- Scope of the project – stairs were not in place for 10 years
- Picture of stairs circa 2010 – stairs were washed away and rebuilt several times with no permitting and were originally constructed illegally

She stated that the stairs had been modest; now they would be larger than the majority of the stairs in the neighborhood. She said that her clients do not object to the proposed location of the new stairs. They are not objecting if a variance is granted for the two properties. Atty. Ford said that frontage had nothing to do with the applications.

Mr. Karl, 82 Roos Road, addressed the Board. He said the proposed stairs are about five times larger in scope that the original stairs. He also said that the applicant had said in the past that he intended to develop the vacant lot. At this point Atty. Ford said that the project was not five times larger. He also stated that the applicants must meet the performance standards of the Wetlands Protection Act. Mr. Wamester said that he had never indicated that he intended to develop his lot. Mr. Karl questioned how the stairs could be considered a yard accessory. He also questioned the fact that the stairs were there ten years ago. There is another survey with the As Built for the driveway which does not show the stairs. He is also concerned about the percentage of lot coverage. He also feels that there should be two separate applications.

Lorenzo Demonico, 84 Roos Road, has been in Sandwich since 1992 and never thought stairs to the beach would be such an issue. He said that stairs go up and are washed away and replaced in other areas with no question. He also noted the length of time that has been spent on the question of replacing these stairs.

Paul O'Leary, 119 Salt Marsh Road, gave a history of the neighborhood over the last 27 years that he has been in the area. He said that some type of stairs have been in place for that time. He added that there have been changes to the stairs to conform to the slope of the dune.

Cathy Anne Walter, 82 Roos Road, said she understands Mr. Demonico's concern with time as she and her husband have been in litigation with the Wamesters and Hollands for several years. She is concerned that only one design was presented to the Conservation Commission with no alternative design. Also, she said she was tired of the issue of her placing a cross on her property twice a year and this was one of the pictures that had been submitted and mentioned by Atty. Ford.

Atty. Ford asked the Board to focus on Mr. O'Leary's evidence. Mr. Killion said that Town Counsel should be asked about having two separate applications. Mr. Watt said he would like to hear from Mr. Spiro after he has an opportunity to here the evidence presented at this meeting. The Board should not consider evidence not available to Mr. Spiro at the time he made his decision. Mr. Ford said he would make sure that Mr. Spiro would hear the proceedings of tonight's meeting. He also said that that if the Board dealt favorably with the appeal, the variance request would be withdrawn. He said he and his client would do whatever is needed for the Board to be able to make a decision.

Mr. Jensen moved that the Public Hearing for ADBI #12-14 and Variance #12-15, 125 Spring Hill Road and 80 Roos Road be continued to the meeting on September 11, 2012 at 7:05 and 7:06pm respectively. Mr. Watt seconded. The vote was unanimous.

**8:05pm**
**8 White Cap Path**
**Davis**
Mr. Jensen recused himself from the discussion. Mr. Jones reminded the Board that at the last meeting he was asked to look into the discrepancy between the findings and the plans for the above listed property. Finding #7 states: "Existing sq ft of the dwelling is stated as being 720 and proposed new construction will be 1,884 sq ft" while the plan shows the sq. ft to be 3468. The Conservation Commission has told Mr. and Mrs. Davis that this needs to be resolved for consistency of permits. Attorney Jonathan Fitch, representing the Moores, and Attorney Brian Wall, representing the Davis's, were present. After listening to both attorneys, the Board agreed that it can make a correction to the permit, if necessary. The Board believes the intention of the finding was to reflect the footprint of the proposed structure. It was agreed to listen to the digital recording of the meeting and discuss it at the next meeting.

Mr. Jensen returned to the Board.

**8:21pm**
**BOA Policy for Agenda Procedure**
The Board discussed this document at the last meeting held on July 24, 2012. The Board was in favor of adding this document to Board of Appeals applications; however, a vote could not be taken since the item was under Board Discussion. Mr. Watt motioned that the Policy Notification document be approved for attachment to future Board of Appeals applications. Mr. Jensen seconded. The vote was unanimous.

**8:23pm**
**Board Discussion**
It was noted by Mr. Killion that, if an error was made in the Special Permit decision for 8 White Cap Path, the Board is obligated to make a correction.

There was no comment on an application submitted by the Planning Board.

Mr. Jensen moved to adjourn. Mr. Watt seconded. The vote was unanimous. The meeting adjourned at 8:31pm.

Respectfully submitted,
Marilyn K. Bassett