

BUILDING CODE BOARD OF APPEALS
MINUTES OF PUBLIC HEARING
February 13, 2003

MEMBERS PRESENT: Dean Trefethen, Chairperson; Bill Colbath (late), Vice-Chairperson; Rick Callaghan, Doug Cummings, Tom Dolbec, Alternate

MEMBERS ABSENT: Frank Landford, Alternate; Art Corte, Alternate

STAFF PRESENT: Tom Clark, Building Official; Kate Pelletier, Recording Secretary

Dean Trefethen explained how the Building Code Board of Appeals meeting is run. He stated that because there were not five members present, the applicants could chose to wait until another meeting or proceed with only four members present. He stated that either way, the applicants would still need three votes in their favor.

Mr. & Mrs. Al-Darraji decided to proceed.

Kenaan Al-Darraji stated that he had filled out the building permit application in September and submitted construction specifications with it as listed on the Building Permit Application Requirements. He stated that when the building permit was issued in October, the Permit Plan Review that Tom Clark prepares was not given to him. He explained that his plans listed a stair riser height of 8 ¼" and the Permit Plan Review had advised him that the maximum stair riser height was 7 ¾". He stated that he never knew of the change because he had not received the Permit Plan Review and that he only found out that there was something wrong when Tom Clark mentioned it to someone else working on the house who passed the information along to him. He stated that the house he is building has five staircases and that the 8 ¼" riser height was the highest of all the staircases. He stated that he had built another house in 1998 when the building codes were different and that the stairs in that house were 8 1/8". He stated that he was not aware that the building codes had changed since then. He noted that the only way he could adhere to the present codes were if he inserted a pie or spiral into the stairs. He explained that he had done that in the last house he built and someone fallen down and sued him because of it. He explained that had no intentions of doing anything other than by the book.

Kathleen Al-Darraji stated that when Tom Clark inspected, there was only one set of stairs in place. She stated that if they had known something was wrong at that time, they could have changed the stairs, however, they were never notified. She stated that if she had received the Permit Plan Review at the time the building permit was issued, they would not have come before the BCBA. She asked the Board to take into consideration the fact that the error was unintentional.

Kenaan Al-Darraji added that for as long as he could remember, the maximum riser height was 8 ½" and that he was not aware that the BOCA code had changed since then.

Tom Clark stated that he believed the mistake was unintentional and that the error was a result of a lack of communication. He stated that the Building Inspection office processes hundreds of permit applications per year and that he uses the Permit Plan Review as an addendum to the application. He stated that he certainly could not guarantee that the Al-Darrajis received the Permit Plan Review, however, he did not believe that a communication breakdown rose to the level of a manifest injustice. He stated that the mistake was discovered at the framing stage, early enough to correct it, and noted that if it had been discovered at the occupancy phase of construction, correction would have been an unreasonable demand. He stated that the stairs comply with the former code, so they are not necessarily unsafe, however, they do not comply with the current code. He stated that he wrote in red ink on the permit application that there was a Permit Plan Review included with the building permit and that the permit application also states that the City of Dover, by issuing the permit, does not express or imply that the ordinances have been complied with. He also noted that by signing the permit application, the applicant accepts responsibility for compliance with the City ordinances. He stated that he certainly makes an attempt to notify the applicant of any issues through the Permit Plan Review and a phone call, however there is a certain responsibility of the applicant to follow up on inspections so that they are aware of any problems.

Kathy Al-Darraji stated that the last time they built a house, a card was left if there was something wrong at the time inspection. She stated that Tom Clark did not leave a card after his framing inspection.

Dean Trefethen asked what the check marks meant on the Permit Plan Review.

Tom Clark explained that a hash mark means that more information is needed and a check mark means that information has been provided. He stated that he did not recall if he went over the complete Permit Plan Review personally with Mr. Al-Darraji.

Dean Trefethen asked what stage of completion the house was currently.

Kenaan Al-Darraji stated that the house is framed, rough plumbing, rough electrical and heating is done, and the sheetrocking is tentatively scheduled for March 1st.

Dean Trefethen asked if the Al-Darrajis had thought of any ways to remedy the situation.

Kenaan Al-Darraji stated that because of the 9'6" ceiling, he did not see a solution.

Tom Clark noted Mr. Al-Darraji's previous suggestion of adding winders.

Kenaan Al-Darraji explained the difficulty he would encounter if he installed winders.

Dean Trefethen asked Tom Clark if the building codes were the same for all stairs.

Tom Clark stated that they were all the same. He also stated that if the City allowed the stairs to remain and someone did fall, the City could be libel.

Doug Cummings asked Tom Clark what coded the Al-Darrajis did not comply with when they built their last house.

Tom Clark stated that he would have to look at the inspection logs to find out.

Tom Dolbec asked the Al-Darrajis when they were made aware that they had to contact the Fire Department for inspection.

Kathleen Al-Darraji stated that the certificate of occupancy sign off sheet instructed her to do so.

Tom Clark stated that the certificate of occupancy sign off sheet, a driveway permit application and water/sewer invoice given out when the building permit is issued.

Public hearing opened.

None.

Public hearing closed.

Rick Callaghan stated that the BOCA code and all life safety codes are designed to produce means of egress in stairways and spaces to move through in a safe manor in the case of a fire or other disasters. The NFPA and BOCA come up with a reanalysis of all stair and tread designs for a purpose. He stated that enforcement of these codes is difficult, and no one can expect that a few people in each community monitor everything that happens, so the burden is put on whoever is enlisted to carry out these projects. He stated that if the homeowner hires a contractor to do the work and a mistake is made, the homeowner would expect the contractor to pay for and correct that mistake. Unfortunately, the same is true when homeowners decide to do the work themselves. He stated that building codes do change from time to time when it is determined that there is a safer way to do things and everyone must adhere to those codes. He stated that a building inspector cannot overlook those codes and that, in his opinion, the Board could not overlook them either or they would be negating the entire process of the research and analysis behind life safety codes. He stated that by accepting this error, the City then becomes libel and that he believes the stairs should be replaced.

Doug Cummings asked Tom Clark if he left a message on the Al-Darrajis answering machine regarding the stair riser height.

Tom Clark stated that he did.

Kathleen Al-Darraji stated that her answering machine broke around Thanksgiving and that they did not get a new one until Christmas. She stated that if Tom Clark left a message with one of her children, it was possible that she did not get the message.

Rick Callaghan stated that there was no question that an effort was made, however there is no requirement that the building inspector come and find someone when something is wrong. He explained that the building inspector has to make the inspection, but the applicant has the responsibility of making sure they are building to code. He stated that a building permit gives permission to start construction, it does not necessarily mean that the plans are in compliance. He stated that it is also the responsibility of the builder to seek the results of any inspections conducted. He stated that the note in red ink on the building permit application stating that there was a Permit Plan Review included should have alerted the applicant that there was a document missing. He stated that he was sure this matter was simply an oversight and that the Al-Darraji had no ill intentions, however, overlooking even an honest mistake does not protect the City from being libel if someone is injured.

Kenaan Al-Darraji stated that every situation is different and that the code had always listed a maximum riser height of 8 ½" prior to the adoption of the 1996 BOCA codes.

Doug Cummings stated that the Building Code Board of Appeals' purpose was solely to determine whether or not the building inspector acted properly.

Kathleen Al-Darraji asked what the procedure was for inspections.

Tom Clark stated that the building permit application states that it is the applicant's responsibility to notify the building inspector's office for inspections. He explained the different methods the inspection office has used for notifying homeowners and contractors of inspections in the past.

Dean Trefethen asked if there was any clause in the building code for allowances in cases like this.

Kenaan Al-Darraji stated that the 2000 International Building Code mentioned a 3/8" allowance.

Tom Clark stated that the maximum riser height was 7 ¾" and in his opinion, 3/8" could not be added to that if 7 ¾" is considered the maximum height.

The Board discussed the 3/8" variation.

Dean Trefethen stated that most of the staircases could be fixed with minimal impact, however the main staircase would be very difficult to fix. He asked if the Board had to provide the applicants with a solution should they decide to make them adhere to the building codes.

Tom Clark stated that the Board members are not building designers.

Rick Callaghan asked when the City adopted the 1996 BOCA codes.

Tom Clark stated that they were adopted in late 1998.

The Board discussed possible solutions and other building and life safety codes that could be applied in this case.

MOTION:

Rick Callaghan made the motion to uphold the building inspector's decision.
Doug Cummings seconded the motion.

Vote U/A

MOTION:

Dean Trefethen made the motion to adjourn.
Doug Cummings seconded the motion.

Vote U/A