

# Town of Scituate

## ZONING BOARD OF APPEALS

600 CHIEF JUSTICE CUSHING WAY  
SCITUATE, MASSACHUSETTS 02066  
(781) 545-8716



Decision of the Scituate Zoning Board of Appeals on the application of John Gouthro of 110 Central Ave, Scituate MA for a Special Permit/Finding under M.G.L. Chapter 40A, Section 6 to extend pre-existing non-conforming front setback with the addition of a new farmer's porch to the front of the home located at 110 Central Ave, Scituate MA.

The application was received, advertised, and a public hearing was duly held on March 28, 2007, with the following members of the Zoning Board of Appeals hearing the application:

John F. Danehey, Chairman  
Albert Bangert  
Brian Sullivan  
Sara J Trezise

The property located at 110 Central Ave, Scituate MA, is in the A-3 residential district and is owned by John and Cheryl A. Gouthro, pursuant to a deed recorded at the Plymouth County Registry of Deeds at Book 33875, Page 216. The property does not comply with the current zoning bylaw requirement as to front setbacks. The front setback in the A-3 Zone is 30 feet. Because the applicant failed to provide a certified plot plan, it is impossible to determine the exact setback of the dwelling, but based on the Septic Repair Plan submitted by the applicant, it appears that the dwelling has a 25 foot front setback. The original dwelling house was constructed in 1951, prior to the adoption of the zoning bylaw in 1953, and therefore enjoys grandfathered status. The board finds that the house is a pre-existing, non-conforming structure entitled to the protection of M.G.L. Ch. 40A Sec. 6.

The applicant proposes to extend the pre-existing, non-conforming front setback by the addition of an 8-foot by 34 foot farmer's porch that would increase the non-conformity of that front setback by 8 feet.

Section 1020.2 of the Scituate Zoning Bylaws grants the Board of Appeals the authority to grant a special permit. M.G.L. Ch. 40A § 6 provides that "[P]re-existing nonconforming structures and uses may be extended or altered, provided, that no such extension or alteration be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming [structure or] use to the neighborhood."

In addressing whether the proposed use of the new structure will be substantially more detrimental to the neighborhood<sup>1</sup> than the existing nonconforming use or structure, the Board considered the guidelines set forth in Powers v. Building Inspector of Barnstable,

<sup>1</sup> The term "neighborhood" generally refers to the immediate environs of the subject property. School Comm. Of Springfield v. Board. Of Educ., 326 Mass. 417, 439 (1972).

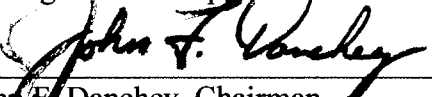
363 Mass. 648 (1973), Derby Refining Company v. City of Chelsea, 407 Mass. 703 (1990), and Building Commissioner of Medford v. McGrath, 312 Mass 461 (1942), i.e., (1) whether the use reflects the “nature and purpose” of the use prevailing when the zoning bylaw took effect; (2) whether there is a difference in the quality or character, as well as degree of use; and (3) whether the current use is “different in kind in its effect on the neighborhood.”

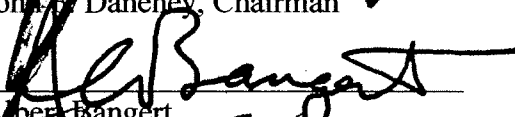
The nature and purpose of the use of the proposed single-family dwelling is practically unchanged from that which existed prior to the adoption of the zoning bylaw, i.e., a single family dwelling. While the proposed porch will increase the present nonconformity, there will be no difference in the quality or character or degree of the use. Many of the homes in the neighborhood have similar porches and many of those porches are set much closer to the street than the applicant is proposing. In addition, no facts were presented to the Board that indicates that the proposed use will be different in kind in its effect on the neighborhood than the use of the current structure.

Based on the information presented, for the foregoing reasons, and upon Motion duly made and seconded, the Board voted unanimously to GRANT the Special Permit and to FIND that the proposed addition/alteration to the existing structure is not substantially more detrimental or injurious to persons, property or improvements in the vicinity than the existing nonconforming use/structure and is in accord with the provisions of Mass. G.L. Ch. 40 A, Section 6 and Sections 810 of the Scituate Zoning Bylaws, subject however to the following limitations:

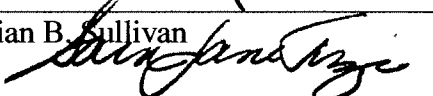
At the time of the application of a building permit, the applicant must supply a plot plan duly certified by a civil engineer. The farmer's porch cannot be build any closer than 17 foot from the front lot line, nor can the porch be enclosed, either now or in the future. Additionally, the building cannot be extended above the porch.

Zoning Board of Appeals

  
John F. Danehey, Chairman

  
Albert Bangert

  
Brian B. Sullivan

  
Sara J. Trezise

Page Three/110 Central Avenue

Filed with the Town Clerk on 5/17/07

This Special Permit/Finding will not become effective until such time as an attested copy of this decision has been filed with the Plymouth County of Deeds after the appeal period of twenty (20) days.

Appeal of any decision of the Zoning Board of Appeals may be made pursuant to M.G.L. Chapter 40A, Section 17, and shall be filed in a court of competent jurisdiction. Proof of that filing shall be provided to the Town Clerk within twenty (20) days of the date of the filing of the decision with the Town Clerk.