

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 ("ZBA") on the application of Dennis J. Leary of 83 Old Cow Pasture Lane, Kinnelon, New Jersey 07405, hereinafter referred to as "Applicant", for a special permit/finding under M.G.L. Chapter 40A, Section 6 that would allow him to construct a roof over an existing deck and replace/build a roof over the entryway of a dwelling at 4 Lighthouse Road, Scituate, Massachusetts 02066.

The application was received, advertised, and first heard at a duly held public hearing of the ZBA on October 19, 2006, and continued by consent of all parties to November 16, 2006 to enable Applicant to obtain and present a certified plot plan of the property. Applicant was unable to attend the ZBA meeting of November 16th, and the hearing of the application was again continued by mutual consent to the ZBA meeting of December 21, 2006, where Applicant appeared and was represented by counsel, Maureen Hurley, Esq., with the following members of the Board hearing the application:

John F. Danehey, Chairman
Agnes Rona
Albert Bangert

The property is owned by Dennis J. Leary pursuant to a Quitclaim Deed filed and recorded with the Plymouth County Register of Deeds on September 16, 1988 in Book 8175, Page 73.

The subject property is located at 4 Lighthouse Road, Scituate and is in the A-3 residential district. The designated District A-3 lot size is 10,000 sq. ft. The lot size of this property is 3,180 sq. ft. based on records on file with the Town of Scituate. Applicant stated he thought the dwelling on the lot was built in 1908; however the records on file with the Town of Scituate indicate a year of 1920. In either event the dwelling pre-dates the Scituate Zoning Bylaw of 1953 et seq., and therefore, it is grandfathered as a pre-existing non-conforming property and dwelling. It is, however, located in a flood area.

The Applicant proposed two construction projects:

1. To cover the deck on the easterly side of the dwelling, where the side setback from the neighboring lot line to the deck is already only 2'1"; and
2. To cover and enclose the wooden deck which leads to the entryway into the dwelling on the northern side on Lighthouse road.

The Applicant, prior to filing this application before the ZBA had begun construction on these projects but received a Cease and Desist Order from Town of Scituate Building Commissioner/ Zoning Enforcement Officer, pursuant to which he filed the instant application. This Board has previously stated that any modification to a structure without

a proper building permit is a violation of the State Building Code, 780 CMR 110.1¹ and the Town's Bylaws, Section 910.1²

A-3 zoning requires:

- Lot width of not less than 100 feet
- Lot frontage of not more than 100 feet
- Side yard setback of 8 feet
- Rear Yard setback of not less 8 feet for one story detached accessory buildings, and 20 feet for all other buildings.
- Front yard setback of 30 feet.

Under M.G.L. Ch. 40A, Section 6, Applicant would be able to modify the dwelling if it did not increase the non-conformity with current zoning bylaws. However, the applicant's proposal would increase the pre-existing non-conformity of the dwelling with respect to the existing zoning bylaws and would be substantially more detrimental to the neighborhood than the existing dwelling. Bransford v. Zoning Board of Appeals of Edgartown, 444 Mass 852 (August 2005).

The ZBA determined that the proposed construction of the roof on existing deck on the easterly side of the dwelling would increase the non-conformity of the side setback. Adding a roof would be possible to make the covered deck into habitable space that would have less than 2' setback from the neighboring lot, thus further encroaching into the setback. The ZBA also found that the proposed construction would be substantially more detrimental to the neighborhood and detrimental and injurious to persons, property or improvements in the vicinity because it would impede the ability of fire and rescue personnel to access the rear of the neighboring dwelling.

The ZBA determined that while adding a covering to the front deck, facing north to Lighthouse Road would be an intensification of the non-conformity; it would not be substantially more detrimental to the neighborhood or to persons, property or improvements in the vicinity.

For the foregoing reasons the ZBA voted unanimously to:

GRANT the application of applicant Leary for a special permit/finding under M.G.L. 40A, Section 6, to cover the existing front landing/deck leading to the front entrance of the dwelling on Lighthouse Road based on a finding that a de minimus increase in non-conformity would not be more detrimental to the neighborhood, persons and property than the existing non-conformity and further that applicant agree that no further


¹ 780 CMR 110.1 states:

"It shall be unlawful to construct, reconstruct, alter, repair, remove or demolish a building or structure; or to change the use or occupancy of a building or structure; or to install or alter any equipment for which provision is made or the installation of which is regulated by 780 CMR 110.1.

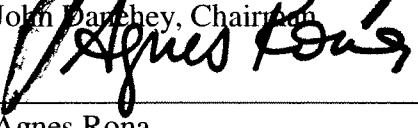
² Section 910.1 of the Scituate Zoning Bylaws states in pertinent part: "It shall be unlawful for any owner or person to erect, construct, reconstruct, convert or alter a structure, or change the use, increase the intensity or use, or extend or displace the use of any structure or lot without applying for and receiving from the building inspector the required permit therefore."

construction would take place on the covered front deck area to create any habitable space.

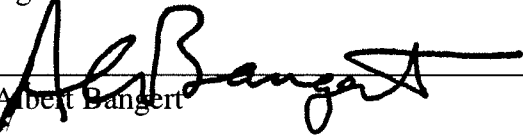
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John Dancy, Chairman



Agnes Rona



Albert Bangert

Filed with the Town Clerk on 3/20/2007

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 Register 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.