

TOWN OF READING, MASSACHUSETTS
ZONING BOARD OF APPEALS
DECISION ON THE PETITION OF THOMAS DOLAN
FOR THE PROPERTY LOCATED AT
49 FAIRVIEW AVENUE, READING, MASSACHUSETTS

March 7, 2013
Case Number #13-02

The Zoning Board of Appeals (the "Board") held a Public Hearing on Thursday, March 7, 2013 in the Selectmen's Meeting Room at Town Hall, 16 Lowell Street in Reading, Massachusetts, to hear the petition of Thomas Dolan, owner (the "Petitioner"). The Petitioner sought a Variance/ Special Permit/ Appeal from Decision of the Building Inspector under Section(s) 5.0/ 6.3.3.2/ 7.4.2 of the zoning bylaws in order to construct a covered roof over the front existing platform that encroaches into the front yard setback on the property located at 49 Fairview Avenue in Reading, Massachusetts.

The Property is located in the Residential S-15 Zoning District and is a legal, non-conforming use (residential dwelling) for the zoning district. The structure is legally non-conforming as to front and side yard setbacks. The Petitioner is requesting a Special Permit under Section 6.3.3.2 of the Zoning By-laws in order to construct a roof, 3.25'x 6.0' over the existing front landing (not the stairs) which is located less than the required 20' front yard setback as denied in the Building Inspector's letter dated February 11, 2013. Petitioner submitted a certified Plot Plan ("Plot Plan") depicting said porch roof proposal. Said plot plan was prepared by Vineyard Engineering & Environmental Services, Inc., 400 W Cummings Park, Suite 4800, Woburn, MA, dated November 5, 2012, and stamped by James J. Abely, PLS.

The Petitioner made a presentation explaining that the existing front landing and stairs will remain the same size and he proposes to construct a roof with two supporting columns over this existing landing so that it is protected from the weather elements. The Plot Plan indicates that the present dwelling structure is located 19.6' from the front yard property line, where 20' is required. The front landing (approximate 4'x6') and stairs have historically been exempt from zoning and permitted within the front yard setback. However, since the petitioner is constructing a **roof over** said landing, the Building Inspector has deemed it part of the dwelling structure and subject to the required 20' front setback requiring approval from this Board.

Section 6.3.3.2 of the Reading Zoning By-laws allows the Board to grant a Special Permit to change or extend a non-conforming structure only if it determines that such a change or extension shall not be substantially more detrimental than the existing non-conforming structure to the neighborhood.

The Board found that the proposed roof over the front landing which is to be located 16'. 4' from the front lot line does not create a new non-conformity and the proposed "roof only" will not be substantially more detrimental to the neighborhood than the existing non-conforming structure. The Board notes that a substantial number of dwellings in this neighborhood have covered landings similar in size to the proposed roof, 3.25' x 6'.

The Chair opened the hearing to public comment and no public comments were received at the meeting. The Chair then closed the public comment portion of the hearing. Following, and upon a

motion duly made and seconded, the Board voted (4-1) to grant the Petitioner's request for Special Permit under Section 6.3.3.2 of the Zoning By-laws in order to construct a roof only with two supporting columns over front landing at 49 Fairview Avenue, Reading, MA, as shown on the referenced Plot Plan.

This Special Permit is conditioned upon the following:

1. The Petitioner shall not be permitted to enclose front landing without first seeking approval from this Board.

Any person aggrieved by this decision of the Board may appeal to the appropriate court pursuant to MGL c. 40A, §17, within twenty (20) days after the date of filing this Decision with the Town Clerk. Notice of appeal with a copy of the complaint must also be filed with the Town Clerk within twenty (20) days as provided in § 17.

This Special Permit shall not take effect until a copy of this Decision, bearing certification of the Town Clerk that twenty (20) days have elapsed after the decision was filed in the Office of the Town Clerk and no appeal has been filed, or if an appeal has been filed within such time, that it has been dismissed or denied, is recorded in the Middlesex South Registry of Deeds and indexed in the grantor's Index under the name of the owner of record, or is recorded and noted on the Owner's Certificate of Title. The fee for recording or registering shall be paid by the Owner or Petitioner. Any person exercising rights under a duly appealed Special Permit does so at the risk that a court may reverse the permit and that any construction performed under the permit may be ordered to be undone.

ON BEHALF OF THE READING ZONING BOARD OF APPEALS



Damase Caouette, Chairman

Zoning Board Members voting on Case Number 13-02
David Traniello, John Jarema, Damase Caouette, John Miles, voted affirmative
Robert Redfern, dissenting vote