



TOWN OF YARMOUTH  
BOARD OF APPEALS  
DECISION

**FILED WITH TOWN CLERK: September 29, 2009**

**PETITION NO: #4274**

**HEARING DATE: September 24, 2009**

**PETITIONER: Emilio & Maria Sciaudone & Luigi & Vera D'Amico**

**PROPERTY: 104 Pine Grove/18 Johns Path, South Yarmouth  
Map & Parcel: 0033.210; Zoning District: R25  
Book & Page#: 4869/273**

**MEMBERS PRESENT AND VOTING: Sean Igoe, Vice-Chairman, John Richards, Debra Martin, Joseph Sarnosky, David Reid, and Thomas Roche, Alternate.**

Notice of the hearing has been given by sending notice thereof to the Petitioner and all those owners of property as required by law, and to the public by posting notice of the hearing and publishing in *The Register*, the hearing opened and held on the date stated above.

The petitioner seeks a Special Permit, in order to be allowed to construct a second story addition to their existing residential duplex unit. The property contains 15, 234 square feet of area and is a corner lot. The existing structure is a two-family building, owned and occupied by family members. The other half of the duplex was the subject of a similar Special Permit request in 1993 (#2992). At that time, the relief was restricted to the addition of a second story above that half of the duplex. The current petition seeks alteration of only the remaining one-half (no change to the portion that was the subject of #2992).

The petitioner represents that the addition will not increase the number of bedrooms of the unit; it will remain a 3 bedroom unit. The petitioner will have to secure necessary construction permits and Board of Health approvals in connection with the proposed addition. The petitioner also represents that the work will not necessitate any further alteration or elevation of the building in order to conform to flood plain regulations.

The Board notes that the structure, as proposed, will be quite large for a lot of this size. Given the requirements for any duplex, the proposed substantial addition to it is significant in its non-compliance to the bylaw, even without adding more bedrooms. It also noted that in 1993 that Board had cautioned against additional expansion of the building. The petitioner observes that two of the adjoining/opposing lots surrounding the site are undevelopable, thus reducing the potential impact of this structure. In addition, there are other two-story homes in the immediate area.

During the course of the hearing, the petitioner's noted that the 1993 special permit had not been recorded. The Board observed that the co-owners of the property were not parties to the current petition, although they had written a letter to the Board in support of the request. The Board members indicated that it was necessary to have all of the co-owners subject to the decisions, since this is not a

condominium, and all 4 are owners of both units (notwithstanding any other arrangement or understanding which the owner may have among themselves).

The Board finds that the addition proposed will render the structure, a two-family use, more non-conforming, but not necessarily substantially more detrimental to the neighborhood. Therefore a motion was made by Mrs. Martin, seconded by Mr. Richards, to grant the Special Permit, as requested, based on the following conditions:

- 1) The petitioner will file with the Board a confirmatory or corrected application, signed by all four (4) present owners, or otherwise indicating that it is filed on behalf of all of the owners of the property, so that the permit will be considered granted to, and will be binding upon all four owners;
- 2) This permit is granted based on the petitioner's representation that the renovations presented will not trigger a change in height or elevations due to flood regulations. Any such changes would require that the petitioner return to the Board for further consideration;
- 3) It will remain a 3 bedroom unit, and the entire duplex will remain not more than 6 bedrooms;
- 4) Decision #2992 (of June 23, 1993) is to be attached hereto and incorporated herein by reference (as exhibit "A" to the decision), so that when this decision is recorded, the 1993 decision will be equally a matter of public record.

The members voted unanimously in favor, the Special Permit is therefore granted.

No permit shall issue until 20 days from the filing of this decision with the Town Clerk. Appeals from this decision shall be made pursuant to MGL c40A section 17 and must be filed within 20 days after filing of this notice/decision with the Town Clerk. Unless otherwise provided herein, the Special Permit shall lapse if a substantial use thereof has not begun within 24 months. (See bylaw §103.2.5, MGL c40A §9)

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Sean Igoe, Vice-Chairman