



TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION

FILED WITH TOWN CLERK: November 20, 2008

PETITION NO. #4199

HEARING DATE: July 10, August 14, November 13, 2008

PETITIONER: Cape Cod Vacation Condominium Trust

**PROPERTY: 91 Route 28, West Yarmouth, MA 02673
Map and Parcel: 0036.113; Zoning District: B2
Registry of Deeds Book & Page: 2374/38**

MEMBERS PRESENT AND VOTING: David S. Reid, Chairman, Sean Igoe, Renie Hamman, Joseph Sarnosky, John Richards

It appearing that notice of said hearing has been given by sending notice thereof to the petitioner and all those owners of property deemed by the Board to be affected thereby, and to the public by posting notice of the hearing and published in The Register, the hearing was opened and held on the date stated above.

The petitioner seeks a Variance, in order to be allowed to convert the premises from the prior use as a motel, to year-round multi-family dwellings. The site is located within the B2 zone. The lot contains 1.63 acres of land, which is improved with a 63 unit motel within 2 buildings along with an accessory structure originally housing a pool and other facilities.

The petitioner represents that in 1976, the then owner of the motel converted it to Condominium ownership, without any coincident change in use. However, over the years the seasonal motel units, once in separate ownership, morphed into apartment type units rather than motel units. Currently, and for some time now, no motel use is present at the site. No central office or register is present, no centralized rental of units is provided, and units are rented/occupied on a long term basis, not as transient rentals or occupancy (under either the current bylaw definition or the commonly understood usage of the term).

The petitioner seeks to convert all 63 units to small residential units, remaining in Condominium ownership. Some building upgrades would be necessary, under building and fire code requirements. The petitioner represents that they are unable to apply for a Special Permit, under the Motel Conversion Bylaw, because the fragmented ownership of the facility into the individually owned units would make such a conversion, especially the unit size, affordability, and density restrictions, impossible to achieve.

The Board finds that the petitioner does not meet the requirements for the requested Variance. The existing use is the product of a progression of unlawful and often un-permitted alterations and changes. The Board finds that it would be a substantial derogation from the bylaw (§ 404) for it to

allow such a conversion. As proposed, the conversion would not provide the mix of unit sizes and style required by the bylaw. It would not provide the affordable units as required. Its total density would greatly exceed the maximum allowable under the bylaw. To grant this magnitude of relief to a site which falls within the permissible zone, but which chooses not to comply, would frustrate the entire purpose of this conversion bylaw. Furthermore, the petitioners' logistical difficulty in approaching such a conforming conversion is the result of past decisions of the developers and property owners, aggravated by the subsequent non-complying uses by the unit owners, not by any qualifying circumstances especially affecting this site or building. Finally, the Police Department has reported to the Board the history of the involvement of law enforcement at this site within the last year. The breadth of problems and demands on law enforcement resources at the site have demonstrated that its continued operation would be a detriment to public safety and to the welfare of the neighborhood and town.

However, recognizing that at least some of the current owners may have purchased their "units" without fully realizing the depths of the problem at the site, and recognizing that the town has undertaken its enforcement of the applicable bylaw and licensing requirements fairly recently, the Board is willing to allow the petitioner time to complete its conversion to a lawful use. Because of the magnitude of the current non-compliance, the recent public safety problems at the site, and concern for the safety and welfare of the residents in these substandard units, the Board is not inclined to perpetuate this situation for any longer than necessary. The petitioner indicated that the owners and Trustees are committed to seeking a Motel Conversion Special Permit under the current bylaw, but will need up to a year to undertake and complete the permitting process.

After extensive discussion, a motion was made by Mr. Igoe, seconded by Mr. Sarnosky, to grant to the petitioner a one year Variance, to expire on November 14, 2009, during which time the current non-transient rental use may continue, so that the owners can proceed with the process of seeking necessary permits to convert the site to a lawful multi-family use (or other use permitted under the bylaw). As a further condition of the Variance, the petitioner (Board of Trustees and unit owners) must (1) not allow any unit to be leased or rented for a term which will exceed the scheduled expiration of the Variance; (2) assure that any further tenants, and prospective purchasers of any unit, is fully informed of this decision and of the regulatory problem of the site, so that no innocent parties are brought into this situation hereafter. This relief is not intended to excuse the petitioners or unit owners from compliance with any other applicable laws or regulations, including, but not limited to, health codes, fire and building codes, etc.

The members voted unanimously in favor of the motion, the temporary Variance is 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, a Variance shall lapse if the rights authorized herein are not excised within 12 months. (See MGL c40A §10)

David S. Reid, Clerk
Board of Appeals

