



TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION

FILED WITH TOWN CLERK: November 20, 2008

PETITION NO: 4213

HEARING DATE: Sept 25; Oct. 9, and Nov. 13, 2008

PETITIONER: James Morrison

**PROPERTY: 23-25 New Hampshire Avenue, West Yarmouth
Map & Parcel: 0016.37; Zoning District: R25
Book & Page: 22963/30860**

**MEMBERS PRESENT AND VOTING: David S. Reid, Chairman, Joseph Sarnosky, Sean Igoe
Renie Hamman and Diane Moudouris.**

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 per bylaw §104.3.2, in order to alter and expand an existing non-conforming two-family home. The property is in the R25 zone. The lot contains 6,620 square feet of area. The site contains an existing two-family home.

The petitioner has filed with the Board a Site Plan, by R. J. Cadillac, PLS, dated November 28, 2003 (2 sheets w/revisions to 9/02/08) and re-signed by the surveyor on September 2, 2008. The petitioner also filed architectural drawings with the Board. After several revisions, the final version, acted upon by the Board, were prepared by ERT Architect, Inc., dated 10/22/08 (Sheet A1).

The existing structure has all habitable space on the ground floor level. A second "floor" exists above the original flat roof of the structure. This roof was added, according to the building permit, as only a cosmetic alteration, and is not permitted for any habitable space. As outlined in a memorandum from the Building Commissioner, the site has a complex regulatory history, preceding the current petitioner's ownership. This history includes significant misrepresentations or misunderstandings as to the size of the lot, and as to the scope and purpose of past building permits and alterations, and difficulty by the Building Inspector's office in gaining access to the structure to verify improvements and the scope of past work done.

The petitioner now proposes to overcome all of that history by completely replacing this second level with a new second story, as shown in the architectural plans. The use will remain a duplex, with each unit having only two (2) bedrooms. The overall height of the structure will remain as is. The new structure will remain within the footprint of the existing structure. Some non-conforming alterations have already been removed by the petitioner.

No one spoke in opposition to the proposal. The Board finds that the proposed structure will be in keeping with the neighborhood character. It will be lower in height than other homes in the neighborhood. The Board finds the design itself to be compatible and not more detrimental to the neighborhood. The Board was hesitant to allow the expansion of this two-family home on such a small lot. However, given historical development of the site, and the existing conditions and development, including the fact that this petitioner relied in good faith upon the previously issued permits and approvals when purchasing the home, the Board finds the overall development to be an acceptable solution.

Therefore, a motion was made by Mr. Igoe, seconded by Mrs. Moudouris, to grant the Special Permit, to allow the alteration and expansion of the structure, as represented and as proposed, on the condition that this Special Permit shall be considered to supersede all previous relief, to become a two-story, four-bedroom (total) duplex residence, as shown in the above referenced plans. The members voted unanimously in favor, the Special Permit 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, the Special Permit shall lapse if a substantial use thereof has not begun within 24 months. (See bylaw §103.2.5, MGL c40A §9)

David S. Reid, Clerk