



TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION

FILED WITH TOWN CLERK: December 17, 2008

PETITION NO. #4224

HEARING DATE: December 11, 2008

PETITIONER: Michael T. Serijan, Trustee of 550 Route 28 Realty Trust

**PROPERTY: 550 Route 28, West Yarmouth, MA
Map and Parcel: 0037.88; Zoning District: B2
Registry of Deeds Book & Page: 14615/297**

MEMBERS PRESENT AND VOTING: Sean Igoe, Chairman, Steven DeYoung, Renie Hamman, Joseph Sarnosky, Diane Moudouris.

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 requests the following variances:

1. A variance from the provisions of Section 203.5 TABLE OF DIMENSIONAL REQUIREMENTS (A) in the B2 zoning district, and Note F thereof, which requires a minimum lot frontage of at least 100 feet on Route 28, in order to reduce the minimum lot frontage on Route 28 to not less than 84 feet.
2. A variance from the provisions of Section 203.5 TABLE OF DIMENSIONAL REQUIREMENTS (A) in the B2 zoning district, and Note H thereof, which requires that lot width shall at least meet the minimum frontage for a depth of 100 feet, so that the lot width may be not less than 84 feet whether measured from West Yarmouth Road or Route 28.

The locus is located in the B2 zone. The site presently consists of a one-story wood framed building which is in a state of disrepair and is unsightly. The locus originally consisted of 1.64 acres of land as shown as Lot B on that plan of land entitled PLAN OF LAND WEST YARMOUTH, MASS. AS SURVEYED FOR CARRIE B. PERRY SCALE: 1 INCH = 40 FEET – FEBRUARY 4, 1958 recorded at the Barnstable County Registry of Deeds in Plan Book 140, Page 75 (hereinafter called the “1958 Plan”). On June 19, 1985 the Yarmouth Planning Board approved an ANR plan entitled PLAN OF LAND LOCATED IN (WEST) YARMOUTH, MASS. PREPARED FOR ARTHUR & DOROTHY JOHANSON SCALE 1” = 40’ JUNE 18, 1985 which plan was recorded at the Barnstable County Registry of Deeds in Plan Book 400, Page 80 (hereinafter called the “1985 Plan”). The 1985 Plan created the locus which was shown as Lot 1 thereon containing 25,237 square feet of land.

Upon its creation in 1958 Lot B's frontage along Route 28 was 121.59 feet and over 581 feet along West Yarmouth Road. When Lot 1 was created by the 1985 Plan only 84.17 feet of frontage remained along Route 28 due to a taking by the Town of Yarmouth for West Yarmouth Road.

The petitioner plans to demolish the existing one story wood framed structure on the locus but is not willing to do so unless the frontage and width deficiencies of the locus are addressed by the granting of the variances requested in the petition.

The Board and the petitioner noted during the hearing that the Board in its Decision No. 2419 filed with the Town Clerk on May 19, 1987 granted variances to allow the existing structure on the locus to remain with its then existing setbacks and the then deficient Route 28 frontage.

No persons spoke in opposition to the proposal. At least one citizen, Robert DuBois of South Yarmouth, spoke in favor of the petition indicating that the granting of the variances would lead to the current structure's demolition, thereby cleaning up that area of land along Route 28. The petitioner and the Board noted that the existing structure was unoccupied and in a severe state of disrepair.

The Board finds that the standards set forth in the by-law and in General Laws Chapter 40A, Section 10 for the granting of variances have been met by the petitioner. Namely, (1) the petitioner did not create the locus as presently configured by way of the 1985 Plan, the petitioner having purchased the locus on December 18, 2001; (2) the locus would have had the minimum 100 feet of frontage along Route 28 and complied with the lot width requirement of the by-law but for the municipal taking to widen West Yarmouth Road; (3) the demolition of the structure would eliminate a decrepit and unsightly structure which would have been nonconforming but for the variances granted in 1987; and (4) the locus has an area of 25,237 square feet according to the 1985 Plan which complies with the by-law's area requirement for the B2 zoning district. The Board also finds that no harm to the neighborhood or substantial derogation from the by-law is foreseen by the granting of the relief requested and that the aforesaid conditions are unique to the locus and are not otherwise prevalent in the B2 zoning district and neighboring properties.

A motion was made by Mr. DeYoung to grant only so much of the petition as requests variances from the lot frontage requirement on Route 28, as required by §203.5 Note F, and the lot width requirement, measured from the Route 28 frontage, as required by §203.5 Note H, (and no other relief is to be inferred), upon the condition that any future buildings and use established on the locus must comply with all other applicable provisions of the Town's zoning by-law, as said by-law may be hereafter amended. The motion was seconded by Mrs. Hammon. The members voted unanimously in favor of the motion. The variances requested by the petitioner are 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, 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