

**TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION**

FILED WITH TOWN CLERK: December 28, 2005

PETITION NO. #3999

HEARING DATE: December 9, 2005

**PETITIONER: 43 Hallet Street Real Estate Trust, Marietta Hickey, Trustee
dba Abbicci Restaurant**

**PROPERTY: 43 Route 6A,
Map and Parcel: 134.53 Zoning District: R40**

MEMBERS PRESENT AND VOTING: David S. Reid, Chairman, John Richards, Diane Moudouris, Steven DeYoung and Debra Martin.

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 a Special Permit per bylaw §104.3.2 (3) & (4), and §301, in order to be permitted to expand an existing non-conforming building and its use. The existing building is non-conforming as to several setback and area requirements, and the use is non-conforming in the residential zone, and the existing parking lot is non-conforming to current commercial parking requirements. The site has the benefit of several prior decisions, not affected by the current proposed modifications.

The petitioner has filed revised plans with the Board. The final plans, considered by the Board are:

- 1) BSC Group-Site Plan, dated October 6, 2005, with revisions through December 15, 2005,
- 2) Floor Plans (Sheet A1) and Building Elevation drawings (Sheet A2) by Cotuit Bay Design both dated December 19, 2005.

The proposed modification, as shown on said plans, will add a new entry way, containing handicapped accessible bathrooms, to the west side of the building, square off several segments of the middle section of the building, and adding a southerly facing dormer to the second floor of the existing front building segment. The petitioner will also be installing a new foundation under the main building section, which will raise the height of the buildings ridge by 12-14" above the existing elevation. The petitioner proposes to reconfigure the seating for the first floor of the restaurant, and add an 18 seat function room to the second floor of the main building. The second floor function room will not be used for regular restaurant customer seating, but will be limited to pre-arranged group functions. In this manner, the petitioner represents that the parking lot will remain adequate, without expansion, since groups of this sort (business meetings, wedding rehearsal dinner, etc) tend to come at off peak dinner hours and tend to car-pool.

The petitioner represents that she has been operating the present restaurant business using valet parking since 1981. The petitioner has a prescribed business plan, based upon reservation and anticipated seating needs, which has proven to be effective in anticipating and dealing with customer parking. Valet's are able to utilize the existing lot for customer parking needs, and the petitioner's employees park off-site at one of two

prearranged sites. While her seating capacity of the restaurant will be increased from 75 to 96, 18 of them will be restricted to the function seating. These will be used for mid-week business meetings, and other events, which, in the petitioner's experience, tend to be scheduled for times and days which do not coincide with her peak dining hours.

The petitioner has received near unanimous support from her residential neighbors for the existing and proposed operation. One neighbor expressed an ongoing objection to the tall pole mounted lights in the parking lot. The petitioner represents that they belong to the electric utility company, but that she will investigate their replacement with lower and more appropriate light fixtures.

The Board finds that there are special features of this business operation which justify some relaxation of the parking lot requirements, including the undesirability of over building the parking lot in this residential neighborhood, and the alternative arrangements which the current operation has developed. The Board also finds that the physical renovation and additions will not be substantially more detrimental to the neighborhood, if operated as represented and anticipated by the petitioner.

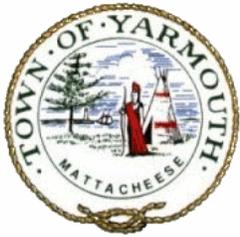
Therefore, a motion was made by Mrs. Moudouris, seconded by Mr. Richards, to grant the Special Permit, under §104.3.2 (3) & (4) and §301, for the alterations and extension of the non-conforming building and use, without an upgrade of the parking lot to current requirements, on the following conditions:

- 1) The exterior stairway on the easterly side of the building, is to be used for an emergency exit only, and not for regular customer access,
- 2) The second floor is to be used only as a function room, as requested, limited to pre-arranged group event seating, and not for general restaurant customers or overflow seating,
- 3) The present parking system shall be maintained, including off-site employee parking and valet customer parking, so as to maintain all customer parking on site within the designated parking areas,
- 4) This Special Permit (for the use expansion and from the parking lot requirements) is limited to this business and this applicant. Should the business or ownership change, the matter will have to be reviewed by the Board in order to determine whether the transfer of the Special Permit would continue to fulfill the Boards expectations as to the lack of adverse impact and suitability of the parking arrangements.

On this motion, the members voted unanimously in favor, and 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)

David S. Reid, Clerk



**TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION**

FILED WITH TOWN CLERK: December 28, 2005

PETITION NO. #4000

HEARING DATE: December 9, 2005

PETITIONER: Timothy T. Lynch

**PROPERTY: 15-17 Manchester Road, Yarmouthport
Map and Parcel: 134.53 Zoning District: R40**

MEMBERS PRESENT AND VOTING: David S. Reid, Chairman, John Richards, Diane Moudouris, Steven DeYoung and Debra Martin.

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.

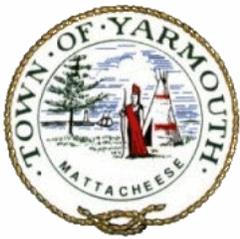
The petitioner seeks a Special Permit per bylaw §104.4, to convert an existing two-family home to condominium ownership. The property contains an existing duplex, on a lot of approximately 18,750 square feet. The lot is within the R40 zone, and therefore non-conforming as to the lot size and the two-family use.

The neighborhood, however, is composed of similar sized lots most with very similar two-family homes. No alteration of the building is proposed, and no change of use is proposed. The two dwelling units are currently year round residences and will remain so. The draft condominium documents provide for the maintenance of the condominium facilities, which will include the shared septic system. The petitioner agreed to add to the Master Deed, paragraph 5 "Modification of the Units", language that will alert owners to the need to comply with zoning, and will include a reference to this Special Permit in with the Unit Deeds as well.

The Board finds that the requirements of §104.4 have been met. A motion was made by Mr. Richards, seconded by Mr. DeYoung, to grant the Special Permit, as represented and as requested. The members voted unanimously in favor, the Special Permit was 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



**TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION**

FILED WITH TOWN CLERK: December 28, 2005

PETITION NO. #4002

HEARING DATE: December 9, 2005

PETITIONER: New Cingular Wireless PCS, LLC

**PROPERTY: 24 Old Hyannis Road, Prospect Hill Water Tank Yarmouthport
Map and Parcel: 104.10 Zoning District: R40**

MEMBERS PRESENT AND VOTING: David S. Reid, Chairman, John Richards, Diane Moudouris, Steven DeYoung and Debra Martin.

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 Special Permit under bylaw §408, to locate an additional set of telecommunication antennae, and supporting equipment at this municipally owned site.

The property currently contains the Town of Yarmouth water tank and its accessory equipment. There is also currently located one set of antennae for another telecommunication company. The proposed new antenna equipment will be located below the top ridge of the tank. Its support equipment will be located within a fenced in equipment area, to be located as shown on the petitioner's plans. The petitioner currently has a lease for the use of the area from the town. The petitioner understands the approval of the Old Kings Highway committee will also be required.

Concerns were expressed by one abutter about the access way to the tank, both in terms of the appropriate control of gate, and the right to use it for such commercial/non-municipal activities. The Board directed the matter to the Town Administrators office for such concerns and issues.

The Board finds that the petitioner's submissions are adequate for this purpose, and that the additional submissions requirements may be waived for this existing site. The Board noted that no APD relief has been requested at this time. Should the petitioner wish to operate a propane gas generator, additional relief or compliance will be needed. The Board finds that the requirements of §408 have been met.

Therefore, a motion was made by Mr. DeYoung, seconded by Mrs. Martin, to grant the Special Permit, as requested, to allow the telecommunication antennae and supporting equipment, as proposed. The members voted unanimously in favor of the motion.

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

