

TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION

FILED WITH TOWN CLERK: February 28, 2007

PETITION NO: #4093

HEARING DATE: February 8 & 22, 2007

PETITIONER: Perini-Cunningham Family Trust

PROPERTY: 167 River Street, South Yarmouth
Map & Parcel: 34.290 Zoning District: RS40

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

This petition seeks a Special Permit under §104.3 in order to demolish a substantial portion of the existing single-family structure, construct in addition to the structure, and replace the existing garage in substantially the same footprint. The property is located in the RS-40 zone. The lot contains approximate 17,000 feet of area and is improved with a two-story single-family home.

The existing structure is non-conforming as to front yard setbacks of the house, and the garage is non-conforming as to its side and rear setbacks. The petitioners propose to move the garage away from the westerly sideline, but will maintain the existing non-conforming rear setback. The house will maintain its existing non-conforming front yard setback, but the expansion will reduce the rear setback to as little as 16.7 feet. The locations of the structures are shown on the petitioner's site plan dated January 5, 2007 with revisions through February 1, 2007. The building elevations and floor plans are shown on the petitioner's architectural plans, dated January 8, 2007, as revised relative to the garage by a new sheet substituted with the Board on February 20, 2007.

The petitioner represents that the older portion of the house will be retained for its historical and architectural significance, if possible. However, in the event that during construction its condition is not as currently believed it may be necessary for it to be replaced rather than preserved, in which event it will be replaced in kind as shown on the architectural plans. The building will also be raised to conform to flood regulations. The septic system will be replaced, located beneath the driveway area. Due to flood regulations, it will be raised somewhat above the current grade at the property edge. The garage, as reflected in the petitioner's modified plan, will be reduced from a three-car garage to a two-car garage, with storage on the ground floor and within the rafters above. No finished or habitable space will be contained within the garage. The new house will have a maximum height above the existing grade of 24'3", approximately 3.5 feet taller than the existing structure. Most of the new construction will be on the south and east sides of the house, away from River Street.

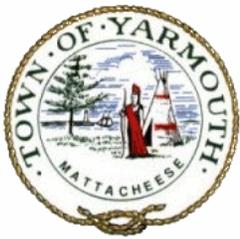
The Board received questions and comments in opposition to the petition from various neighbors of the property. Neighbors expressed concern for the increased size of new house, especially with its increased elevation due to filling and floodplain compliance.

The Board finds that the proposed structure will be architecturally similar to the existing home, and while taller and larger, will not be detrimentally out of scale with other homes in the neighborhood. The re-construction will retain the existing architectural features of the home, to retain its appearance in the neighborhood. The Board finds that the long narrow shape of the lot, abutting the river, makes it impractical for the re-construction to meet current setbacks. While the Board agrees that the new house will be large, given the available space on the lot, it is not so large nor overwhelming to its abutters or neighbors as to result in substantial detriment to the neighborhood. The Board finds that the proposal satisfies the requirements of bylaw §104.3.2 (2) relative to the house, and bylaw §104.3.2 (3) relative to the garage.

Accordingly a motion was made by Mr. Roche, seconded by Mr. Richards, to grant the Special Permit under the two paragraphs cited above, for the re-construction of the house and the garage as shown on the above referenced plans. The members voted unanimously in favor of the motion. The Special Permit is therefore grant.

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 M.G.L. C40A §17 and must be filed within 20 days after the filing of this notice/decision with the Town Clerk.

David S. Reid, Chairman



TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION

FILED WITH TOWN CLERK: March 28, 2007

PETITION NO: #4094

HEARING DATE: February 22, 2007

PETITIONER: Paul N. McBride, III

PROPERTY: 7 Starbuck Lane, Yarmouthport
Map & Parcel: 106.70 Zoning District: R40

MEMBERS PRESENT AND VOTING: David S. Reid, Chairman, John Richards, Joseph Sarnosky, Diane Moudouris, Sean Igoe 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 to create an affordable accessory apartment. The property is located in the R-40 zone. The lot contains 22,010 ft. of area, and is a corner lot between Starbuck Lane and Union Street. The property is improved with an existing single-family home.

The petitioner proposes to construct the detached garage, as shown on the building design plans (Donald I. Meyer, dated July 2, 2004 with revisions through October 12, 2004 – 3 sheets). The new structure will conform to current setbacks. The affordable accessory apartment will be located on the second-floor above the garage, and will contain approximately 676 square feet. Off street parking for four cars will be provided as shown in the petitioner's overlay sketch on his plot plan.

There was some discussion about the existence of a second dwelling unit within the existing structure. Correspondence in the file indicates that it is not there lawfully, although the petitioner disagrees with this assessment. In any event, the petitioner will discontinue that second dwelling use within the residence and will convert that space to become part of the main house. The tenant currently occupying that apartment will move to the new accessory apartment upon construction and confirmation of eligibility. Therefore, if this permit is allowed, the site will contain one single-family dwelling, and one detached two-car garage, with an affordable accessory apartment above. The apartment within the main dwelling, whatever its origins, will be eliminated and abandoned.

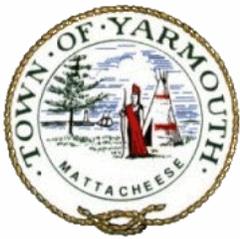
Correspondence was received by the Board from the Department of Community Development relative to the requirements and procedures to be followed for the approval of the apartment and of future tenants. The petitioner is aware of the requirements and limitations of this affordable accessory apartment bylaw, and will execute the necessary covenants to be recorded with the Special Permit.

No opposition or input from the neighborhood was received by the Board. The Board finds that the requirements of §407 are satisfied, and that no additional relief under §104. 3 is required.

Accordingly, a motion was made by Mr. Richards, seconded by Mrs. Moudouris, to grant the affordable accessory apartment Special Permit, as requested, and to allow the withdrawal, without prejudice, the balance of the petition. Members voted unanimously in favor of this motion, and 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 M.G.L. C40A §17 and must be filed within 20 days after the filing of this notice/decision with the Town Clerk.

David S. Reid, Chairman



TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION

FILED WITH TOWN CLERK: February 28, 2007

PETITION NO: #4096

HEARING DATE: February 22, 2007

PETITIONER: Joan Madden

PROPERTY: 7 Kate's Path Village, Kings Way, Yarmouthport
Map & Parcel: 142.1 Zoning District: R40

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

This petition seeks a Special Permit under §104.3. 2, or a modification of a previous Special Permit, #2268, in order to be allowed to construct an open wooden deck to the rear of the petitioner's existing residential unit. The property is located in the R-40 zone, and is improved with a multi-family dwelling. The multi-family use of this building and the surrounding buildings, was the subject of the above referenced prior Special Permit.

As shown in the petitioners supporting materials, the deck will be located to the rear the petitioners unit #7, above the current brick patio. It will be approximately 18 inches above the existing grade, extending 15 feet out from the dwelling, and will be open above except for posts and railings. The layout and construction has been approved by the condominium trustees. The deck itself will conform to current dimensional requirements. However, since the prior Special Permit was tied to specific building plans, and since no decks are provided for in the plans for this building, a modification of that Special Permit is required for this proposed construction.

The Board received no additional correspondence or opposition to the proposal.

The Board finds that the proposed deck is not fundamentally inconsistent with the prior Special Permit, and would likely have been allowed within the scope of that Special Permit had it been requested at that time. The Board therefore finds that this request may be granted as a minor modification of Special Permit #2268.

Accordingly, a motion was made by Mr. Igoe, seconded by Mr. Richards, to grant the modification for the construction of the deck as requested. The members voted unanimously in favor of this motion. The modification of Special Permit to #2268 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 M.G.L. C40A §17 and must be filed within 20 days after the filing of this notice/decision with the Town Clerk.

David S. Reid, Chairman