



TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION

FILED WITH TOWN CLERK: July 20, 2016

PETITION NO. #4649

HEARING DATE: July 14, 2016

PETITIONER: Marc G. and Linda S. Perlin

**PROPERTY: 240 South Shore Drive, South Yarmouth, MA
Map and Lot #:0026.73; Zoning District: R-25
Ctf#:602517**

MEMBERS PRESENT AND VOTING: Steven DeYoung, Sean Igoe, Bob Palmer, Doug Campbell and Dick 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 Petitioners are Mark G. and Linda S. Perlin who were well represented by their legal counsel, Michael Stusse of Yarmouth, MA. The Petition seeks either a Special Permit or a Variance in connection with the desired location of a utility shed within the side setback required distance.

Simply stated, the property, located in an R-25 Zoning District, is a corner lot upon which the Petitioners have done a fine job of modifying a pre-existing duplex into a single-family residence. The property is benefited by a garden shed for many years (circa 1965) and was originally 120 ft. in area. The Petitioners seek to replace this garden shed with a smaller shed measuring approximately 112 ft. Of note, however, if placed at the required six-foot distance from the sideline setback, as required by the by-laws, it would result in the shed being too close to the home as it would fall within the 12 foot distance around the home which is necessary to assure fire protection and safety. It was represented that the abutting lot most affected by the proximity of this proposed shed location is likely unbuildable. In any event, of note is the fact that the owners of this directly affected lot each submitted correspondence dated June 27, 2016 expressing their support for the relief sought.

There was discussion by the Board as to whether or not the proper relief to be granted was that of a Special Permit or a Variance. The Board concluded that the proper relief was that of a Variance and, that if there was literal enforcement of the provision of the by-laws as to the small encroachment of this shed and the side setback, hardship both financial and otherwise to the Petitioner would result. The shape and topography of the lot was a factor considered by the Board. The fact that this is a corner lot, coupled with the desire to assure that the Fire Department and its apparatus have ample space around the home each weighed in the Board's deliberations. It was concluded that relief could be granted without causing any detriment to the public good nor derogation from the purposes of the

by-law, particularly as the abutting lot is undeveloped and the new shed is a replacement of an older, unsightly structure.

Motion was made by Mr. Igoe, seconded by Mr. Martin to approve the grant of a Variance, without condition. The board considered this Motion and voted unanimously in favor thereof. Accordingly, the Variance as prayed for by the Petitioner 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, a Variance shall lapse if the rights authorized herein are not excised within 12 months. (See MGL c40A §10)

Steven DeYoung, Chairman