



TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION

FILED WITH TOWN CLERK: August 15, 2016

PETITION NO: 4656

HEARING DATE: August 11, 2016

PETITIONER: Patricia A. Burke

PROPERTY: 5 Patricia Avenue, West Yarmouth, MA
Map & Lot#:0076. 212; Zoning District: R-40
Book/Page: 3423/135

MEMBERS PRESENT AND VOTING: Chairman Steven DeYoung, Sean Igoe, Richard Martin, and Bryant Palmer.

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 pursuant to Zoning Bylaw §104.3.2, in order to alter a legally pre-existing non-conforming single family dwelling. The property is located in the R-40 Zoning District, and contains approximately 10,114 square feet of area. The property is located on a corner lot, as it has frontage on both Patricia Avenue and Louise Lane. As such, the property contains two front yards and two side yards. The property is currently improved with a two story single family structure having 3 bedrooms and 2 baths, and constructed in approximately 1978. The house complies with the current 30 foot setback on both roads, and complies with the side setback to the north, but encroaches into the side setback on the east by approximately 5 feet.

The proposal is to construct an addition to the west side of the house, the first floor to accommodate a 2 car garage, a half bath, and an entryway, the second floor of which will house a new Master Bedroom. The plan is also to add a covered porch and a deck to the property, both of which will comply with the existing front and side setbacks. The addition, however, will encroach into the front setback on the west side by approximately 9.5 feet. The proposal will still be in keeping with the neighborhood, and will not be a safety concern on this side road. In addition, there is approximately 10 feet of grassed area between the actual edge of pavement and the boundary of the layout, which will still keep vehicles 30 feet from the new structure. The number of bedrooms will not change and will stay at 3, which is to remain static based on Board of Health regulations. The remaining part of the existing home will be reconfigured internally as shown on the plans which were submitted to the Board, marked as an exhibit in as to which the property will be constructed consistent with the plans. The lot coverage will be 21.1%.

Some abutters spoke in opposition to the project, based on concerns about the size of the proposed structure. The Board also had concerns regarding permitting an encroachment into a front yard setback. However, the Board noted its position that corner lots, such as this one, need to be addressed differently than other lots. Specifically, the Board noted that if this was not a corner lot, that the Petitioner could build the addition as a matter of right. In addition, the aesthetics of the addition from the exterior of the house demonstrated the need for the style and breadth of the design, and that it would be in keeping with the other homes in the neighborhood.

The Board was in unanimous agreement that the expansion of the structure would not be substantially more detrimental to the neighborhood, zoning district, or Town, than the existing non-conforming structure. Further, the Board found that the relief sought would not create any undue hazard, nuisance nor congestion.

Accordingly, a motion was made by Mr. Igoe, seconded by Mr. Palmer, to grant the Special Permit, as requested, with the following conditions:

1. The property shall contain a maximum total of 3 bedrooms, none of which will be located in the basement floor of the structure;
2. The office on the first floor will be constructed with a 5 foot wide, cased opening, and shall not contain any closets;
3. The craft room in the basement will be constructed with a 5 foot wide, cased opening, and shall not contain any closets;
4. The proposal shall be constructed in accordance with the plans, including floor plans, submitted to the Board as Exhibit 2.

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)

Steven DeYoung, Chairman