

TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION

FILED WITH TOWN CLERK: July 6, 2006

PETITION NO. #4045

HEARING DATE: June 22, 2006

PETITIONER: Simon & Sandra Kendrick

**PROPERTY: 61 Flicker Lane, West Yarmouth
Map and Parcel: 86.214; Zoning District: R40**

MEMBERS PRESENT AND VOTING: John Richards, Chairman, Diane Moudouris, Joseph Sarnosky, Sean Igoe, Thomas Roche.

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's request a Special Permit per bylaw §104.3.2, in order to retain an addition and deck, attached to their single-family home. The property is in the R40 zone and the lot contains 16,160 square feet of area.

The existing house is located approximately 21' from its rear lot line. At some point, prior to the petitioner's purchase of the property, the prior owner had commenced to construct a new room, above a pre-existing rear deck. The petitioner, after purchasing the home, continued the construction, and built a new adjoining deck. The new room extends to within 9' of the rear lot line and the new deck to within 10.9'. Subsequent investigation revealed that the original deck had not been constructed with the benefit of a lawful building permit, but had been repaired with a permit several years before. The new room, and new deck, however, had not been issued any permits for construction, or wiring. As a result, a stop work order had been served on the petitioner.

The petitioner represented that the work he performed was non-structural, merely completing the job substantially undertaken by the prior owner. However, some discrepancies in the description of the work performed, and the sequence of events, concerned the Board, and caused it to question other details of the events leading up to the petitioner's Special Permit request. The Board finds that the petitioner is not free from responsibility for the unlawful construction, and acted less than diligently in correcting the situation after it was brought to his attention by the Building Department.

The Board received opposition to the request from the nearest abutter to the rear. However, the Board also received from the neighbor's letters of support and of praise for other improvements made to the premises by the petitioners.

The Board members expressed concern that, if the work had not already have been done (as it has), they would not be inclined to allow the addition to this proximity to the lot line, especially with the

closest abutter expressing concern for its impact upon his property. The petitioner, having not secured appropriate permits and relief in advance, should not now be treated more favorably, since the hardship from a denial is, at least in part, of his own doing.

After lengthy discussion, a motion was made by Mr. Igoe, seconded by Mr. Richards (for purpose of discussion) to grant the Special Permit, as requested, to allow the addition and deck to remain, as is, and be completed, upon securing the necessary building permits. Mr. Igoe, Mr. Sarnosky, Mr. Richards voted in favor; while Mr. Roche and Mrs. Moudouris voted against the motion. The motion therefore failed to pass by the requisite majority.

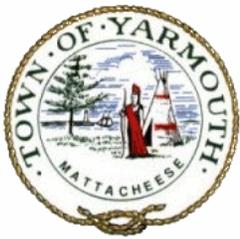
A second motion was then made by Mr. Igoe, seconded by Mr. Richards, to grant only so much of the petition as requested permission to retain the existing enclosed room, upon the foot print of the former deck, on the condition that no further construction or expansion of the house, including decks and any exterior additions, be allowed except upon further Special Permit from the Board. The members voted unanimously in favor of this motion.

A third motion was made by Mrs. Moudouris, seconded by Mr. Sarnosky, to deny the balance of the petition, and required that the new deck, under construction to the rear of the house, be removed in its entirety. Mrs. Moudouris, Mr. Sarnosky, Mr. Richards and Mr. Igoe voted in favor; Mr. Roche voted in opposition to the motion.

The petition was therefore granted, in part, and denied in part.

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: July 6, 2006

PETITION NO. #4049

HEARING DATE: June 22, 2006

PETITIONER: Michael & Amy Petsche

**PROPERTY: 109 Seaview Avenue, Unit #2
Map and Parcel: 25.72 Zoning District: R25**

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

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.

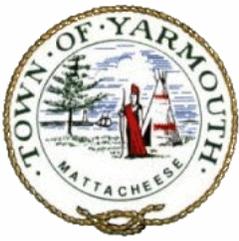
The petitioner seeks a Special Permit pursuant to §104.3.2, in order to expand an existing deck attached to their condominium unit. The property is in the R25 zone. It consists of a former motel now converted to condominium ownership by prior relief. The petitioner's request affects only Unit #2. The proposed deck will be an open (no roof or walls) deck, extending toward the interior of the site. It will enclose an area within an open L, adjoining their unit. It will measure, at its extremes, 28' wide and 15' wide, along its adjoining walls of the unit. No expansion of the unit or its occupancy is involved. The petitioner was reminded of the need to secure any necessary amendments to the Master Deed, relating to this expansion of this unit.

One letter of opposition was received; however it mistakenly assumed that the deck was on the exterior (rear) wall of the unit, rather than the interior of the building (facing the parking lot and courtyard). The Board finds that the proposed construction of an open deck, as proposed, may be made without being substantially more detrimental to the neighborhood.

A motion was made by Mr. Richards, seconded by Mrs. Moudouris, to grant the Special Permit, as requested, on the condition that the petitioner secures any necessary amendments to the Master Deed and file a copy therefore with the Board. 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



TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION

FILED WITH TOWN CLERK: July 6, 2006

PETITION NO. #4050

HEARING DATE: June 22, 2006

PETITIONER: Harold G. & Jill Levine

**PROPERTY: 16 Church Street, Yarmouthport
Map and Parcel: 122.72 Zoning District: R40**

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

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.

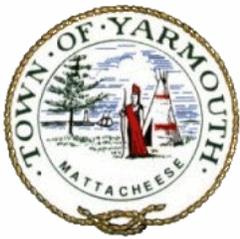
The petitioner request a Special Permit, per bylaw §104.3.2, to allow the existing non-conforming pool-deck to remain as shown on the petitioner's plans filed with the Board. The property is located in the R40 zone, and the Old Kings Highway District. The deck in question surrounds the petitioner's existing pool. However, when constructed it was determined that the south westerly corner of the deck was only 19.3' from the adjoining side lot line, where 20' is required by the bylaw. The petitioner's lot contains 36,955 square feet of area and the existing single-family home. The property, and its other improvements, has been the subject of several prior decisions, not related to this present request. However, the Board is mindful of this history.

One neighbor did express opposition to the request, citing prior non-compliance with the bylaw, and the earlier requests for relief which affect her property. However, the present request is on the opposite side of the house, and has no adverse impact upon her property. The Board also finds that the present situation is the result of an inadvertent construction oversight, probably the result of the fact that the house is situated on an angle to the front and side lot lines. In any event, the resulting encroachment of approximately 8", for a small corner of the deck, is insignificant to the overall impact of the construction upon the neighborhood. The Board finds that the encroachment in question will not be substantially more detrimental to the neighborhood.

A motion was made by Mr. Igoe, seconded by Mr. Richards, to grant the Special Permit, as requested. The members voted unanimously in favor, 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 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: July 6, 2006

PETITION NO. #4051

HEARING DATE: June 22, 2006

PETITIONER: Paula Dolan Pare'

**PROPERTY: 62 Flicker Lane, West Yarmouth
Map and Parcel: 86.215 Zoning District: R40**

MEMBERS PRESENT AND VOTING: John Richards, Chairman, Diane Moudouris, Joseph Sarnosky, Sean Igoe, Thomas Roche.

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.

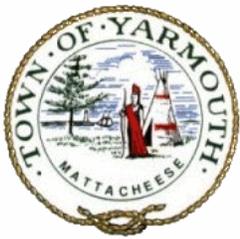
The petitioner requests a Special Permit, in order to convert an existing deck into a family room, with a handicapped accessible ramp and entrance. The property is located in a R40 zone. The lot contains 18,490 square feet of area, and an existing single-family home.

The petitioner's home includes, at its rear, an open deck, measuring approximately 12' x 24', which extends to within 13.9' of the rear lot line. The lot is on a cul-de-sac. The request is to construct, on the footprint of the deck, an enclosed family room, with wheelchair ramps extending from the driveway to this new addition and its entrance to the home. The petitioner represents that, due to her medical condition, it is anticipated that she will be wheelchair bound in the foreseeable future, and this is the best option available to her to make her home accessible. No additional bedrooms would be added. No increase in the non-conforming nature of the structure would result. The addition, as shown on the petitioner's site plan, by BSC Group (June 9, 2006), and its ramp will remain over 13' from the rear lot line. Several neighbors wrote to the Board in support of the request. No one voiced any opposition to the request.

The Board finds that the proposed construction will not be substantially more detrimental to the neighborhood than the existing deck. A motion was made by Mr. Sarnosky, seconded by Mr. Roche, to grant the Special Permit, as requested. 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



TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION

FILED WITH TOWN CLERK: July 6, 2006

PETITION NO. #4052

HEARING DATE: June 22, 2006

PETITIONER: Geoffrey & Rebecca Newton and Kathryn Diaz

**PROPERTY: 168 Route 6A, Yarmouthport
Map and Parcel: 122.39 Zoning District: R40**

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

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's seek to have an existing Special Permit, and its related relief, transferred to themselves, as prospective purchasers of the premises and business at issue. The lot is located in the R40 zone, and contains a large single-family home, in which is operated a Bed & Breakfast business. The business is the subject to Board of Appeals Special Permit decision #3377 (3/18/97), as well as collateral variances relating to its parking area and sign. The Special Permit, by its original terms, was limited to the original applicant. The petitioner's, as prospective purchasers of the property, now wish this permit to be transferred to them.

No change of use in the business is proposed. The petitioner will occupy the premises as their principal residence. The operation will be limited to not more than 5 guest rooms. As shown on the petitioner's floor plan sketches, there is one guest room on the first floor (with an attached sitting room, which does not contains sleeping accommodations for guests), and four (4) guest rooms on the second floor. No change to the residence are proposed, or approved, at this time. The petitioner's have some experience in the hospitality field, and appear confident and capable of operating the business successfully.

No opposition to the proposal was received by the Board. The Board finds that there have been no change of circumstances since the earlier Special Permit was granted, and that its operation has not proven problematic for the neighborhood. The petitioner's appear ready, willing and able to operate the enterprise, upon the same terms and conditions as are presently in effect.

Therefore a motion was made by Mr. Richards, seconded by Mr. Sarnosky, to grant the petition and transfer the Special Permit, to operate the Bed & Breakfast business, to the petitioners, on the same terms and conditions presently in place, including that it remain their principal residence and that the permit not be transferred without approval of the Board in the future. The members voted unanimously in favor in favor of the motion, the Special Permit is therefore granted, as requested.

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