



TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION

FILED WITH TOWN CLERK: July 27, 2009

PETITION NO: #4262

HEARING DATE: July 23, 2009

PETITIONER: Calvin W. Anderson

**PROPERTY: 45 Frost Avenue, South Yarmouth
Map & Parcel: 0066.75; Zoning District: R40
Document #682802**

MEMBERS PRESENT AND VOTING: Steven DeYoung, Chairman, John Richards, Sean Igoe, David Reid, Diane Moudouris, and Robert Palmer, 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 applicant seeks a Special Permit under Bylaw §407 seeking to convert a former family related apartment to his primary residence and the main dwelling house to an affordable rental unit. The property is a 21,662 sq. ft. lot in the R-40 district, improved by a three bedroom home, two-car garage with an apartment over the garage of approximately 784 sq. ft. The property was the subject of two prior grants of Special Permits nos. 3891 and 3930, allowing the family related apartment and allowing the increase in size of the family related apartment, respectively.

The applicant now seeks to utilize the family related apartment as his primary residence and to rent the main structure pursuant to the requirements of §407.3.2.

The Board heard from the applicant and his spouse that they are traveling nurses and, though from time-to-time away from their home on temporary assignments, that it was their intention to occupy the accessory apartment as their primary residence. They acknowledged an understanding of the terms of §407.2.9 and §407.3.2., paragraph 1.

Though the applicant was cited by the Zoning Enforcement Officer for violations of the prior Special Permits, the Board accepted the applicant's well-reasoned explanation and generally concurred that an affordable unit of this type being made available was desirable for the Town and that the grant of the requested relief would create no substantial harm to the established or future character of the neighborhood if the applicant complies with the bylaws terms and limitations, as represented by them.

Therefore, on Motion made by Mr. Igoe and seconded by Mr. Reid, it was unanimously voted to allow the issuance of a Special Permit as sought by the applicant on the conditions that:

1. The owner(s) of the property occupy the apartment as their primary residence;
2. That the accessory structure (the main portion of the dwelling) be rented as an affordable dwelling unit subject to the requirements of all applicable State law, the terms of Bylaw §407.3.2; and;
3. That the applicant abide by all requirements imposed by §407, both at the commencement of the rental of the structure and in the future.

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