



TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION

FILED WITH TOWN CLERK: August 29, 2018

PETITION NO: 4760

HEARING DATE: August 23, 2018

PETITIONER: Gervanio DeOliveira

PROPERTY: 896 Route 28, South Yarmouth, MA
Map & Lot#: 0041.19; Zoning District: B-2
Book/Page: 30876/336

MEMBERS PRESENT AND VOTING: Chairman Steven DeYoung, Sean Igoe, Dick Martin, Thomas Nickinello, Tom Baron and Susan Brita.

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 modification of an existing Variance Petition No. 1675 and subsequent modification to Petition Nos. 3035 and 4245 to allow rental of front home as single-family without owner-occupation.

The property is located in the B-2 Zoning District and contains approximately 20,000 square feet of area. The property is currently improved with two buildings thereon, a front building is a one and one-half-story single family dwelling with 2 bedrooms. The rear building is a one-story two-family dwelling with 3 bedrooms.

The procedural history of this property reflects the grant of an easement by Petition No. 1675 on June 26, 1980 to allow the conversion of the use of the front building on the lot from a retail use to a residential use, thereby allowing both buildings on the lot to be residential.

On October 28, 1993, Petition No. 3035 sought a modification and clarification of language within the text of No. 1675 allowing the 2 buildings on the property to be used for “family and personal use”. The Board found that the 2 buildings may both be residential, the front house shall be non-rental owner-occupied, and the rear house may be a rental property.

On April 9, 2009, Petition No. 4245 requested modification of Petition No. 1675 as previously modified by decision in Petition No. 3035 to delete the “non-rental” restriction set forth in the

Variance relating to the owner-occupied front building/residence. The relief requested was granted by this Board allowing that the front building/residence be rented, conditioned that it remains owner-occupied and only up to two (2) of its bedrooms be rented.

The present Petition requests modification of Petition No. 4245 to allow for the front building/residence to be a non-owner-occupied single-family rental property.

The Board found that, the requested relief should be granted as:

- 1) The change of use would not be substantially more detrimental to the town or neighborhood;
- 2) There exists a special circumstance relating to the current use of the property, and the specific site and structures thereon;
- 3) The requested use will not be substantially more detrimental to the public good; and,
- 4) The proposed change will not substantially derogate from the intent and purpose of the bylaw or of the Variance granted in Petition No. 4245.

Accordingly, a Motion was made by Mr. Nickinello, seconded by Mr. Martin, to grant the modification of the Variance, as requested, with the conditions that: a) there be a review of the status of the rental property in one year; and, b) all rentals shall be for a minimum term of thirty (30) days, c) All Board of Health review and approvals be satisfied. 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, a Variance shall lapse if the rights authorized herein are not excised within 12 months. (See MGL c40A §10)

Steven DeYoung, Chairman