

TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION

FILED WITH TOWN CLERK: **October 3, 2006**

PETITION NO: **#4071**

HEARING DATE: **September 28, 2006**

PETITIONER: **Jon Lundstrom**

PROPERTY: **7 Powers Lane, West Yarmouth**
Map & Parcel: 14.70 Zoning District: R25

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

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 per bylaw §104.3.2, in order to raze and replace an existing non-conforming single-family home. The property is located within the R25 zone. The petitioner's lot contains 9,675 square feet of area, and is also noticeably non-conforming as to its easterly setback, having only 3.6' of separation between its deck and lot line.

The petitioner proposes to build a new home, on the same foundation footprint, but with a slight cantilevered expansion to the west side of the building. The proposed dwelling is fully shown in the petitioner's architectural plans, by Northside Design Associates, dated July 23, 2004, revised August 14, 2006, (Sheets A.0-A.4). The home will have three (3) bedrooms. The ground floor would contain only an open car port, and mechanical room (no habitable space).

No opposition was received from the neighborhood. The petitioner represented that the building design had received the approval of the neighborhood association.

The home design is generally consistent with other homes in the immediate neighborhood. The neighborhood consists of a gated subdivision. While the home is large for the size of the lot, it is compatible with the neighborhood, and many of the homes are only used seasonally or as second homes.

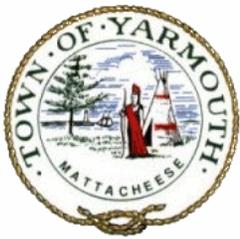
An area of concern to the Board was the third-floor "observation" room. It does not appear to the Board members to conform to the height limitations of the bylaw, restricting habitable third stories to areas within habitable attics. The petitioner agreed to leave this observation room as an unfinished and unheated area, and add doors to close it off from the rest of the house.

The Board finds that the proposed replacement home will not be substantially more detrimental to the neighborhood. The most offensive setback deficiency, to the east, will remain. However, it appears each of the homes in this row are similarly off-set to the east, leaving yard space on the west side of each home. As a result, in terms of actual separation, the homes are, respectively, reasonably spaced from each other.

A motion was made by Mr. Richards, seconded by Mrs. Moudouris, to grant the Special Permit, as requested, on the condition that the third floor “observation room” be isolated from the rest of the home, and remain as an unfinished, unheated and uninhabitable area. 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 M.G.L. C40A §17 and must be filed within 20 days after the filing of this notice/decision with the Town Clerk.

David S. Reid, Chairman



TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION

FILED WITH TOWN CLERK: October 3, 2006
PETITION NO: #4072
HEARING DATE: September 28, 2006
PETITIONER: Angeline Abrantes Cavalcanti Coutinho
PROPERTY: 70 Adams Road, West Yarmouth
Map & Parcel: 62.39 Zoning District: R40

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

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 request a Special Permit under bylaw §202.5, for Use P7, a family day care operation, within a single-family home. The property is located in the R40 zone. The lot contains approximately one-third of an acre, and is improved with a single story two-bedroom one family dwelling. The petitioner proposes to have not more than 6 children at the home (including her own child). The business would operate 6 days per week, Monday through Saturday, from 7:00 am to 5:00 pm. Because she has no formal or enclosed play yard, the children initially would be restricted to the family room of the house. No outdoor activity or play would be allowed, at this time. The petitioner has commenced her training and is awaiting approval of her license from the State for this service.

Concerns were expressed by the neighborhood for this proposal. Most concerns centered on the recent activities at the house. Concerns were expressed that a business was being operated from the residence, as numerous cars and trucks regularly were at the house early in the morning. Concern was also expressed that improvements had been made at the house, and basement, and that more than one family was residing there.

The petitioner assured the board that no business was operating from the house, and that only one family lived there, although a relative had been staying with her this summer.

The Board finds that the petitioner's request may be granted, provided her representations and assurances are correct. However, because of the neighbors concerns, and the petitioner's lack of past experience with this operation, the board decided to grant a temporary permit at this time.

Therefore a motion was made by Mr. Richards, seconded by Mrs. Moudouris, to grant the Special Permit, as requested, on the following condition;

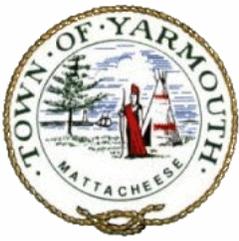
- 1) The petitioner secure, and file with the Board, her license from the State for the day care business,
- 2) The use will be undertaken entirely within the home, in the family room of the house,
- 3) The Special Permit will expire on June 1, 2007, unless earlier extended. The petitioner will have the right to apply in the spring for an extension of the permit;

- 4) Before the petitioner may undertake this use, the petitioner shall have the premises inspected by the Building Commissioner's office. The Commissioner shall report to the Board on his findings. This Special Permit shall only be exercised if the Commissioner confirms to the Board that the lawful occupancy limit for the 2 bedroom single-family home is not being exceeded, and that there is in fact no business being operated from the house.
- 5) Once commenced, the day care facility shall be limited to a total of 6 children, and may operate Monday through Saturday, 7:00 am to 5:00 pm.

The members voted unanimously in favor of the motion, 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 M.G.L. C40A §17 and must be filed within 20 days after the filing of this notice/decision with the Town Clerk.

David S. Reid, Chairman



TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION

FILED WITH TOWN CLERK: **October 3, 2006**

PETITION NO: **#4073**

HEARING DATE: **September 28, 2006**

PETITIONER: **Nancy F. Mesmer**

PROPERTY: **9 Green Way, South Yarmouth**
Map & Parcel: 90.59 Zoning District: R40

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

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 under bylaw §407.5, in order to retain a pre-existing but un-permitted accessory apartment. The property is located in an R40 zone. The lot contains approximately 14,810 square feet of area. The lot contains the petitioner's primary residence, a one-story single-family home.

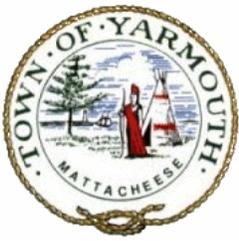
Located in the basement of the home is a 780 square foot one-bedroom apartment. It has been present and occupied for several years. The petitioner has now begun the process of securing, after the fact, all necessary permits and inspections for the apartment. The petitioner proposes to continue to rent it, as an affordable accessory apartment, within the constraints of §407 and §407.3.2. The petitioner was advised of, and understands the restrictions on future rentals, and the limitations of this Special Permit, including that the dwelling must remain her principal residence, and that if Special Permit lapses upon transfer of the property.

The Board finds that the requirements of §407 are met at this property. The lot is of sufficient size, there is adequate parking, and the site will continue to appear to be a single-family home.

A motion was made by Mr. Richards, seconded by Mr. Roche, to grant the Special Permit, as requested. The members voted unanimously in favor of the motion, the Special Permit was therefore 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 M.G.L. C40A §17 and must be filed within 20 days after the filing of this notice/decision with the Town Clerk.

David S. Reid, Chairman



TOWN OF YARMOUTH
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DECISION

FILED WITH TOWN CLERK: **October 3, 2006**

PETITION NO: **#4074**

HEARING DATE: **September 28, 2006**

PETITIONER: **Arthur and Joanne Hartford**

PROPERTY: **126 Berry Avenue, West Yarmouth**
Map & Parcel: 22.176 Zoning District: R25

MEMBERS PRESENT AND VOTING: **David S. Reid, Chairman, Ms. Diane Moudouris, Mr. John Richards, Mr. Sean Igoe and Mr. Thomas Roche.**

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 to raze and replace a non-conforming single-family home, pursuant to bylaw §104.3.2. The property is located in an R25 zone. The site contains approximately 9,918 square feet of area, and is improved with a 5 bedroom one-story single-family home. The existing structure is also non-conforming as to its front and side yard setbacks.

The petitioner proposes to construct a 2 story single-family home, with an attached one-car garage and three (3) bedrooms. The structure would be situated so as to conform to all setbacks, except its easterly side yard, where the setback would be increased from 4.2' to 7.7', as shown on the petitioner's site plan, dated June 14, 2006.

No one appeared in opposition to the proposal. The petitioner indicated a willingness to relocate the structure, on site, in order to maximize setback compliance, if that were the preference of the board. The Board members agreed that, since the house will face Franklin Street, and will conform to that front setback, some latitude could be given to the westerly (Berry Avenue) setback in order to achieve a more conforming side yard to the east. A modest reduction of the Berry Avenue setback would not be detrimental to the neighborhood, especially give the fact that the existing circular driveway on Berry Avenue would be eliminated, and all traffic to the site would now enter via Franklin Street. The elimination of the potential for cars backing out on to Berry Avenue is itself a significant improvement for the neighborhood.

Accordingly, a motion was made by Mr. Igoe, seconded by Mr. Richards, to grant the Special Permit, as requested, on the condition that;

- 1) The house, as proposed, be shifted 5 feet to the westerly (Berry Avenue) side of the lot, leaving a setback from Berry Avenue of not less than 25', and increasing the easterly side yard setback of not less than 12', and
- 2) That a revised site plan showing this new building location be filed with the Board prior to the issuance of a building permit for the new house.

The members voted unanimously in favor of the motion, 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 M.G.L. C40A §17 and must be filed within 20 days after the filing of this notice/decision with the Town Clerk.

David S. Reid, Chairman