

TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION

FILED WITH TOWN CLERK: **October 23, 2007**

PETITION NO: **#4125**

HEARING DATE: **July 12, 2007, September 13, 2007 and October 11, 2007**

PETITIONER: **Newkirk & Forrester Associates, PC**
 Bonnie C. Forrester, Trustee

PROPERTY: **15 North Road, West Yarmouth**
 Map & Parcel: 0030.171; Zoning District: R25

MEMBERS PRESENT AND VOTING: **David S. Reid, Chairman, Richard Neitz, Joseph Sarnosky,**
Diane Moudouris, Sean Igoe.

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 and or Variance in order to expand an existing office building and use within a residential zone. The property has been the subject of two (2) prior decisions of the Board (#369-1955, #885-1968). The first decision permitted an accounting business to be undertaken within an existing residential structure. The second decision authorized an expansion of the structure and use.

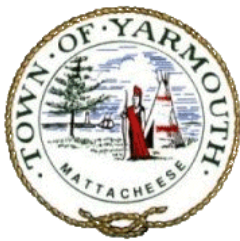
The property is located in the R25 zone. The building is currently used exclusively as accountants' offices. The former residential use was discontinued some unspecified time ago.

After commencing the hearing, it was continued to allow the petitioner to review and gather additional information. At the last hearing, additional information was presented as to the potential make-up of the interior use, and a revised site plan was presented. Because the petition was ultimately withdrawn, no formal findings were made by the Board. However, concerns were expressed for the overall proposal. It was suggested by several Board members that the scope of the addition was too large for the site. What had been allowed before, and what appeared to be work well for the neighborhood, was a low volume accounting business, located within a residential style building, not detracting from the residential character of the neighborhood. The project would substantially increase the size of the building and the volume of its commercial business. It would not be merely an extension of the existing business, and would no longer fit in the residential neighborhood. It would (or could) have a total of 3 or 4 separate businesses. Questions were also raised as to the precise nature of the relief previously granted, and presently needed. The prior decisions are unclear as to the relief intended. A Variance is referenced in the 1968 decision, but it is unclear what provisions of the bylaw were varied.

Because of the sentiment of the Board members, and the lingering questions as to the nature of the relief, the petitioner asked to withdraw the petition.

After a brief discussion, a motion was made by Mr. Igoe, seconded by Mrs. Moudouris, to allow the petition to be withdrawn without prejudice. The members voted unanimously in favor of the motion.

David S. Reid, Clerk



TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION

FILED WITH TOWN CLERK: **October 23, 2007**

PETITION NO: **#4140**

HEARING DATE: **September 13, & 27, October 11, 2007**

PETITIONER: **Roo Inc., dba Flying Pig Restaurant**

PROPERTY: **633 Route 28, West Yarmouth**
 Map & Parcel: 0032.155 Zoning District: B2

MEMBERS PRESENT AND VOTING: **David S. Reid, Chairman, Richard Neitz, Joseph Sarnosky, Diane Moudouris, Sean Igoe.**

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 from bylaw §104.3.2, in order to construct a covered pad for a cooking apparatus, to the rear of the existing restaurant. The property is located in the B2 zone. The existing lot is .48 acres in area. The proposed addition to the rear would be located as approximately shown on the petitioners sketch plan filed with the board, dated April 1982 (with the addition sketched in by the petitioner).

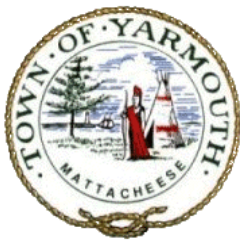
At the scheduled hearing date the petitioner requested a postponement to September 27, 2007. On September 27, 2007, the petitioner did not appear. The board voted to continue the matter until October 11, 2007 and sent the petitioner a letter to this effect. On October 11, 2007, the petitioner did not appear at the hearing, nor had it been in contact with the Board.

The members expressed positive impressions of the petitioner's proposal, in general, but felt disinclined to act upon the request without the presence of the applicant. Since no request to withdraw the matter had been received, the Board members felt that they had no alternative other than to deny the petition, at this time.

Therefore, a motion was made by Mr. Neitz, seconded by Mr. Igoe, to deny the petition without prejudice to the applicants' ability to file a new petition at a later date. The Board members voted unanimously in favor.

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.

David S. Reid, Clerk



TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION

FILED WITH TOWN CLERK: October 23, 2007

PETITION NO: #4144

HEARING DATE: **October 11, 2007**

PETITIONER: **Mollie-Jean C. Miller**
Barnstable County Registry of Deeds Book & Page: 12973/285

PROPERTY: 117 Berry Ave, West Yarmouth
Map & Parcel: 0022.268 Zoning District: R25

MEMBERS PRESENT AND VOTING: David S. Reid, Chairman, Richard Neitz, Joseph Sarnosky, Diane Moudouris, Sean Igoe.

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 add a second story to an existing non-conforming home. The property is within the R25 zone and the lot contains approximately 5,450 square feet of area. The existing single-family one-story home is also non-conforming as to its southerly side setback and its northerly front setback.

The petitioner proposes to add a partial second story, to the rear portion of the home (westerly). The footprint of the house will be maintained. That footprint is shown on the petitioners certified plot plan, dated June 6, 2007, by John L. Newton, RLS. The petitioner has also provided architectural and floor plan “sketches” attached to the plot plan, (6 pages) stamped received by the Board on September 18, 2007. The proposed second floor will be above the kitchen and bathroom, and will have a shed dormer-type design. The front will retain the pitched roof appearance. The house will be not more then 21’ tall to the ridge. The second floor will contain two (2) bedrooms, but the house will have a total of only three (3) bedrooms. The petitioner represents that the existing septic system has been reviewed and will be sufficient for this proposed addition.

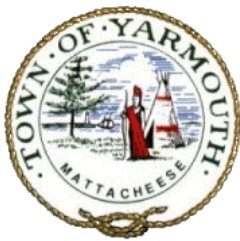
No one spoke in opposition to the request. Three (3) letters were received by the board in favor of the petition, and one neighbor spoke in support of the petition.

The Board finds this to be a substantial addition, for a lot of this size, and some members voiced a concern that this was at least at the outer limits of permissible construction for a lot of only 5,450 square feet. However, it will not be out of scale with its immediate neighbors, and will maintain the existing footprint. The Board therefore finds that the addition will not be substantially more detrimental to the neighborhood. The foot print, above which the addition will be added, itself is almost conforming to the applicable setbacks. No change will occur to the three-season porch or deck to the rear.

Therefore a motion was made by Mr. Neitz, seconded by Mrs. Moudouris, to grant the Special Permit, as requested and as represented, on the condition that there is no further expansion or alteration of the structure without further relief from this Board. 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: **October 23, 2007**

PETITION NO: **#4145**

HEARING DATE: **October 11, 2007**

PETITIONER: **John F. Nellenback & Linda M. Jean**

PROPERTY: **72 Gleason Avenue, West Yarmouth**
 Map & Parcel: 0029.64 Zoning District: R25

MEMBERS PRESENT AND VOTING: **David S. Reid, Chairman, Richard Neitz, Joseph Sarnosky, Diane Moudouris, Sean Igoe.**

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 §104.3.2, in order to enlarge an existing single-family home. The property is located within the R25 zone. The lot contains approximately 11,890 square feet of upland. The property was the subject of a previous Special Permit, (2936-1992), relative to the deck along the southerly side of the house.

The petitioner seeks to extend the house to its rear (east). The home will be extended out beyond the existing rear deck, and the deck will be extended out into the rear yard. The structures will maintain the existing side yard setback, or better. The footprint of the construction is shown on the plan of Existing and Proposed Conditions, by BSC Group, dated September 14, 2007 (one sheet), and on the Architectural Plans by ERT, Architects, Inc. dated August 14, 2007, (one sheet). The existing deck, the subject of the prior relief (#2936-1972) will continue to conform to that decision, and will either be maintained or replaced in kind.

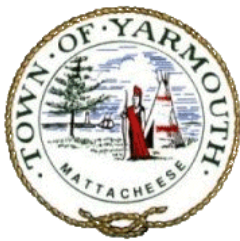
No one appeared in opposition to the requested relief. The Board finds that the paper way, forming the entire southerly boundary of the locus, is unlikely to ever be constructed, due to the presence of wetlands. In addition, the property on its southerly side line of that Way is now all Yarmouth land bank property.

The Board finds that while the additions are substantial, they will not noticeably increase the height of the building, viewed from the street. The lot is substantial for the neighborhood. On balance, the Board finds that the addition itself will not be substantially more detrimental to the neighborhood.

Therefore, a motion was made by Mr. Neitz, seconded by Mrs. Moudouris, to grant the Special Permit, as requested, on the condition that the basement level of the addition not be finished, habitable area, but remain unfinished storage and basement area. 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: **October 23, 2007**

PETITION NO: **#4146**

HEARING DATE: **October 11, 2007**

PETITIONER: **Maryann S. Staudenmayer, Trustee**
 Maryann S. Staudenmayer Revocable Trust

PROPERTY: **134 Water Street, Yarmouthport**
 Map & Parcel: 0130.22; Zoning District: R40
 Barnstable Registry of Deeds Book: 18247 Page :349

MEMBERS PRESENT AND VOTING: **David S. Reid, Chairman, Richard Neitz, Joseph Sarnosky, Diane Moudouris, Sean Igoe.**

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 §104.3.2, in order to expand an existing non-conforming single-family home. The property is in the R40 zone and the lot contains a total of 29,703 square feet of area.

The petitioner proposes to construct an addition to the easterly end of the house. The addition would extend to within 22.2' of the nearest (easterly) lot line. The addition is shown on the petitioner's certified plot plan, by Edward E. Kelley, RLS, dated September 24, 2007. The proposed construction is shown on the building plans by ERT Architect, Inc, dated September 18, 2007 (one sheet).

The addition will extend the dining room and screened porch. It will be one story tall. While the nearest lot line appears to be a rear yard, it is in fact the edge of an unconstructed private way. Based on the existing development of the neighborhood, it appears unlikely that the way will ever be developed. All lots fronting on it have other frontage which they use. One issue arose as to the status of the petitioner's property. It was two lots, but they have been in common ownership and used as one lot. The petitioner acknowledges that the lots have merged, for zoning purposes.

No one from the neighborhood spoke in opposition to the proposal. Several letters were received in support of the request.

The Board finds that the proposed addition will not be substantially more detrimental to the neighborhood. It will not encroach upon any existing or future structures, and is a very modest addition to their home on a substantial lot.

Therefore, a motion was made by Mr. Igoe, seconded by Mr. Neitz, to grant the Special Permit, as requested, based upon the Board's conclusions and assumption that these parcels have merged and are now one lot. The members voted unanimously in favor, the Special Permit is 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 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