



TOWN OF YARMOUTH  
BOARD OF APPEALS  
DECISION

**FILED WITH TOWN CLERK:**      **January 31, 2011**

**PETITION NO:**                      **#4327**

**HEARING DATE:**                      **January 13, 2011**

**PETITIONER:**                      **Estate of Edith P. Pynn**

**PROPERTY:**                      **16, 18 & 22 Lake Road, West Yarmouth**  
**Map & Parcel: 0049.100;101;102    Zoning District: R25**

**MEMBERS PRESENT AND VOTING:** **Steven DeYoung, Chairman, Sean Igoe, Debra Martin, Richard Neitz, and Robert Howard.**

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 is the Estate of Edith P. Pynn, by David Pynn, Executor. Appearing on behalf of the applicant is Steven Pizzuti, Esquire, who presented the petition.

This petition seeks various forms of relief concerning property located and known as Lots 174, 175 and Park lot as shown on a subdivision plan of land entitled "Swan Lake Shores", recorded at Barnstable Registry of Deeds Plan Book 20, Page 15. This property is located in an R-25 Zoning District. The applicant seeks to re-divide the current three lots to create two lots and, further, to obtain relief from the frontage required and the reduction of the minimum lot size from 25,000 sq. ft. to 19,223 sq. ft. for one of the new lots.

There was substantial discussion regarding this petition by both the Board and persons who appeared. No exhibits were received.

The Petitioner's representative explained that, though designated on the original plan as "Park", in fact the decedent, Edith P. Pynn, had a home on the westerly side of the property with this designation for many years. Mr. Pizzuti represented that he had reviewed various deeds regarding abutters' lots and those in close proximity and found no deeded rights to anyone to this so-called "Park".

Mr. Philip Proia, owner of Lot 105, an abutting parcel, raised concerns about access to his lot. Mr. Brent Delillo and Ms. Leanne Delillo, owners of 10 Lake Road, an abutting parcel, expressed concerns about potential further development to the rear (Lots 174 and 175) of Ms. Pynn's former residence. Once these concerns were resolved, they appeared to not be opposed to the requested relief.

Noting that this subdivision is comprised of lots of 5,000 – 7,000 sq. ft. generally, the Board took note that the petitioned relief would not be inconsistent with the neighborhood; that the re-division would result in Lots 174 and 175 not being developed as they would merge into and become part of the new Lot 1; that each resulting lot would be far in excess of size as compared to other lots in the neighborhood; that each resulting lot would now exceed or substantially approach current R-25 zoning; that the creation of a right of way as shown on the plan of the proposed re-division would allow access to lots abutting to two new lots; and, that the resulting re-division would not be more detrimental to the neighborhood.

Specifically, the Board found that the grant of Special Permit under Bylaw §104.3.5 for the re-division of Lots 174, 175 and the “Park” into Lots 1 and 2 as shown on “Plot Plan of Land Prepared for Edith P. Pynn, Estate, Stephen J. Doyle, Surveyor”, dated 11/29/10, would not create any undue nuisance, hazard or congestion and that no substantial harm to the established or future character of the neighborhood or Town would result.

Further, the Board found that the grant of variances for the reduction of lot frontage for Lots 1 and 2 shown on the said plan and reduction in minimum lot size for Lot 2 (19,223 sq. ft.±) was appropriate and reasonable in that literal enforcement of the bylaws would result in a substantial financial hardship; the hardship exists due to the shape of the parcel as a whole and that relief can be granted without substantial derogation from the intent and purpose of the bylaw.

Accordingly, on Motion made by Ms. Martin, seconded by Mr. Neitz, it was voted unanimously to grant a Special Permit under §104.3.5 on the condition that the right of way as shown on Petitioner’s plan remain so as to provide access to abutting lots; and, on Motion made by Mr. Neitz and seconded by Ms. Martin, it was voted unanimously to grant a variance for reduction in minimum frontage from 150 feet to 140.58 feet under §203.5 and to reduce minimum lot size from 25,000 sq. ft. to 19,223 sq. ft. under §203.5.

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) Unless otherwise provided herein, a Variance shall lapse if the rights authorized herein are not exercised within 12 months. (See MGL c40A §10). This Decision must be filed with the Barnstable County Registry of Deeds, Route 6A, Barnstable.

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Steven DeYoung, Chairman