

**TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION**

FILED WITH TOWN CLERK: January 24, 2006

PETITION NO. #3992

HEARING DATE: November 17, 2005 & January 12, 2006

PETITIONER: Socrates & Nafsika Mitrokostas

**PROPERTY: 10 & 10A Ruby Street, West Yarmouth, MA
Map and Parcel: 31.131 Zoning District: R25**

MEMBERS PRESENT AND VOTING: David S. Reid, Chairman, Joseph Sarnosky, Thomas Roche, Diane Moudouris, Sean Igoe, and Douglas Campbell, Alternate.

It appearing that notice of said hearing has been given by sending notice thereof to the petitioner and all those owners of property deemed by the Board to be affected thereby, and to the public by posting notice of the hearing and published in The Register, the hearing was opened and held on January 12, 2006. The matter had been scheduled for November 17, 2005, but was continued at the petitioner's request, at that time.

The petitioner seeks, in the alternative, a modification of an earlier granted Variance (#1391-1976), or a new Variance, so as to allow the continued use and occupation of a two-family dwelling on this property.

The lot is located in the R25 zone. The lot has an area of 8,870 square feet. It is improved with a one-story home, which in 1976, was altered to become a two-family home, pursuant to Variance #1391.

The petitioner presently proposes only non-structural remodeling of the existing structure. However, by the terms of the earlier Variance, it lapsed upon the then owners ceasing to own the property. The property has changed hands at least twice since then, with the petitioner acquiring it in 2005.

The petitioner contends that the condition of the earlier Variance, limiting its benefit to the ownership by the original petitioner, is now an unlawful condition. He therefore requests that the 1976 Variance be modified, removing that condition. In the alternative, the petitioner requests a new Variance, seeking only to continue the historical use. No enlargement of the building is proposed. Having only four (4) existing bedrooms, (two in each unit) on the ground level, the use is not excessive for the lot, and the petitioner contends that it will not be detrimental to the neighborhood. The petitioner also contends that the house, as physically constructed, is not suited to being converted back to a single-family residence.

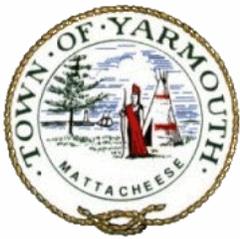
The Board finds that some relief is warranted, under the circumstances. Since the original Variance, while of questionable original legality, has not been enforced as to its limitations, the duplex has continued for many years, beyond the original term intended. No adverse consequences to the neighborhood have been observed, or brought to the Boards attention. The alternatives, of either requiring the 1979 addition to be removed, or converted to a single-family home, are impractical at best. Had the original limitations been enforced, the present situation would not exist. The Board therefore finds that unusual circumstances exist relative to the shape of the structure, which do not generally affect the rest of the neighborhood, thus, since the use already exists, its continuation will not substantially

derogate from the intent and purpose of the bylaw, and will not cause any harm to the character of the neighborhood.

Accordingly, a motion was made by Mr. Igoe, seconded by Mr. Roche, to grant a new Variance, to allow the present two-family use to continue, on the condition that it remain a four (4) bedroom two-family dwelling (2 per unit), that no structural enlargement or alteration is to be made, but that the currently pending renovations may continue to completion. The petitioner must also file with the Board, prior to the recording of this Variance, a revised certified plot plan, showing accurate setbacks for the existing structures. Mr. Igoe, Mrs. Moudouris, Mr. Sarnosky, and Mr. Richards voted in favor of the motion; Mr. Reid voted against the motion. The Variance is therefore granted. Mr. Richards made a motion to allow the petitioner's request to withdraw without prejudice, the balance of the petition. The members voted unanimously in favor.

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)

David S. Reid, Clerk



**TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION**

FILED WITH TOWN CLERK: January 24, 2006

PETITION NO. #4004

HEARING DATE: January 12, 2006

PETITIONER: Ryan and Jamie Doyle

**PROPERTY: 67 Winslow Grey Road, West Yarmouth, MA
Map and Parcel: 40.54 Zoning District: R25**

MEMBERS PRESENT AND VOTING: David S. Reid, Chairman, Joseph Sarnosky, Thomas Roche, Diane Moudouris, Sean Igoe, and Douglas Campbell, Alternate.

It appearing that notice of said hearing has been given by sending notice thereof to the petitioner and all those owners of property deemed by the Board to be affected thereby, and to the public by posting notice of the hearing and published in The Register, the hearing was opened and held on the date stated above.

The petitioner's seek a Special Permit pursuant to bylaw §104.3.2, in order to construct a second story upon their existing single-family home. The property is located within the R25 zone and contains an area of 10,000 square feet. The existing residence is a one-story single-family home having two bedrooms. The proposed second story addition will conform to height requirements of the bylaw. The dwelling, as modified, will contain a total of three (3) bedrooms, all on the second floor.

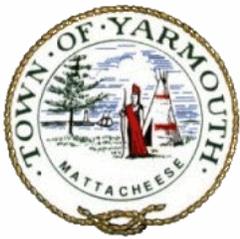
No one spoke in opposition to the proposal. The petitioner presented two letters from neighbors in favor of the proposal.

The Board finds that the house, as proposed, will be compatible with the neighborhood. It will be similar in size to other homes on similar sized lots. The neighborhood is a mix of one-story homes on the smaller lots, and two-story homes on the larger lots. The Board finds that this lot is of adequate size to accommodate the proposal, and therefore will not be substantially more detrimental then the existing home.

Therefore, a motion was made by Mrs. Moudouris, seconded by Mr. Roche, to grant the Special Permit, as requested, for the second story addition to the existing dwelling (not for a raze and replacement), as shown on the petitioner's plot plan dated October 4, 2005, and substantially as shown on the petitioner's proposed architectural sketches. The Board 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 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: January 24, 2006

PETITION NO. #4003

HEARING DATE: January 12, 2006

PETITIONER: Michael & Deborah Carey

**PROPERTY: 26 Windemere Road, West Yarmouth, MA
Map and Parcel: 21.35 Zoning District: R25**

MEMBERS PRESENT AND VOTING: David S. Reid, Chairman, Joseph Sarnosky, Thomas Roche, Diane Moudouris, Sean Igoe, and Douglas Campbell, Alternate.

It appearing that notice of said hearing has been given by sending notice thereof to the petitioner and all those owners of property deemed by the Board to be affected thereby, and to the public by posting notice of the hearing and published in The Register, the hearing was opened and held on the date stated above.

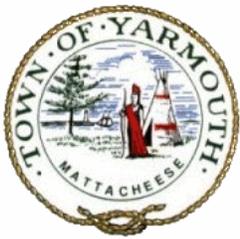
The petitioner's seek a Special Permit per bylaw §104.3.2, in order to expand the existing second floor of this single-family home. The property is within the R25 zone and the lot contains only 4,697 square feet of area. The site contains an existing one and a half story home, built in 2001 pursuant to Special Permit #3691. That Special Permit allowed the demolition and replacement of the original one-story home, pursuant to a previous version of the current replacement bylaw. That permit restricted the second floor to approximately half of the first floor area, containing two small bedrooms. The petitioner's now seek to construct a shed dormer within the front roof, extending the floor area toward the front of the home. There will remain only two bedrooms in the dwelling.

No one spoke in opposition to the proposal. The Board expressed concern for the fact that the lot is less than 5,000 square feet, and might ordinarily be considered adequate for only a small, one story home. However, the petitioners contend that, given the existing structure, which conforms to setbacks and height limits, and site coverage limits, the proposed expansion is not, in and of itself, substantially more detrimental. Despite the Board's customarily cautious approach to such small lots, the Board finds that this addition may be completed without being substantially more detrimental to the neighborhood.

Therefore a motion was made by Mr. Richards, seconded by Mr. Sarnosky, to grant the Special Permit as requested. The members voted unanimously in favor of the motion. 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



**TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION**

FILED WITH TOWN CLERK: January 24, 2006

PETITION NO. #4005

HEARING DATE: January 12, 2006

PETITIONER: Paul R. & Caroline A. Ciaccio

**PROPERTY: 54 Captain Ryder Road, South Yarmouth, MA
Map and Parcel: 77.110 Zoning District: R40**

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

It appearing that notice of said hearing has been given by sending notice thereof to the petitioner and all those owners of property deemed by the Board to be affected thereby, and to the public by posting notice of the hearing and published in The Register, the hearing was opened and held on the date stated above.

The petitioner seeks a Special Permit pursuant to bylaw §104.3.2, in order to be able to construct an addition to their single-family home. The property is in the R40 zone. The lot contains an area of 10,561.9 square feet, and is improved with a two story single-family home with three bedrooms.

The proposed addition would be located on the right (easterly) side of the home, measuring 14' x 34', as shown on the petitioner's plot plan by Sweetser Engineer (10/28/05). It would contain a den and living room on the first floor, and one bedroom and bathroom on the second floor. The home would remain a three bedroom home. The addition would be occupied by the petitioner's family, and would not be occupiable as a separate residential unit.

The addition would extend to within 17' of the closest side lot line. However, the petitioner represents that the existing mature vegetation in the remaining side yard would be retained, to assure additional privacy. The adjoining lots structure is not located close to this shared line.

The Board is satisfied that this addition will not be substantially more detrimental to the neighborhood. Therefore, a motion was made by Mr. Sarnosky, seconded by Mrs. Moudouris, to grant the Special Permit as represented and as requested. The Board members voted unanimously in favor of the motion. 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