

On July 13, 2023, on a motion by Mr. Fraprie seconded by Mr. Mantoni, the Board voted 4-0 to approve these minutes.

**TOWN OF YARMOUTH
ZONING BOARD OF APPEALS
MINUTES for JUNE 8, 2023**

YARMOUTH TOWN CLERK
'23JUL19AM11:09 REC

The Yarmouth Board of Appeals met in quorum at 6:00p.m. on Thursday, June 8, 2023 in the Hearing Room at the Yarmouth Town Offices, located at 1146 Route 28, South Yarmouth, MA. The meeting was held in hybrid mode, where the public could attend in person or via Zoom.

Board Members Present and Voting: Chairman DeYoung, Mr. Martin, Mr. Fraprie, and Mr. Mantoni in-person; Mr. Igoe via Zoom.

Board Members Present: Barbara Murphy, appointed in May 2023, observed.

Staff Present: Dolores Fallon

PETITION 5025: Osteria Mota LLC, dba Leonessa, 43 Route 6A, Yarmouth Port, MA. Map & Lot #: 112.31. Zoning District: R-40. The Applicant seeks the Board's review and transfer of Special Permit 4726-2018 to operate a restaurant on the property in a substantially similar manner as the previous restaurant.

Attorney Eugene Curry represented Taylor Amara and Diego Mota, co-managers of the Leonessa restaurant. Taylor Amara was present with Attorney Curry.

Attorney Curry provided an overview: The petitioner seeks to transfer of Special Permit 4726-2018, previously granted to 43 Main, LLC, d/b/a Grill 43. There have been numerous restaurants here over the years, subject to Special Permit. The petitioner, Leonessa, is operating an Italian restaurant. They opened on April 14, 2023, and are operating the restaurant in a substantially similar manner as the previous restaurants have. Diego Mota (chef & manager) and Taylor Amara (manager) are familiar with the conditions of the previous permit regarding emergency exit, off-site parking (have parking at Cape Cod Cooperative Bank), and valet parking with Chatham Valet. We submit that granting the Special Permit is appropriate. Nothing in the new operation will be detrimental or adverse to the neighborhood. We have received no complaints from any neighbors, and we ask that you grant this permit.

Board Questions:

Mr. Martin: Simple transfer. It's been a restaurant "forever" and I understand it's a very nice restaurant. Glad to have it as part of the community.

Mr. Fraprie: Agree with Dick. I have no questions.

Mr. Mantoni: I'll second that. I have no questions. I wish you luck.

Mr. Igoe: You're going to run it with valet parking? Same as before?

Attorney Curry: Yes, we have valet parking.

Mr. Igoe: Employee parking – they know where they're going to park?

Attorney Curry: Yes, parking at Cape Cod Cooperative.

Mr. Igoe: No cars along Route 6A, you know that, right?

Attorney Curry: Yes.

Mr. Igoe: Any difference in the operations than any of the other previous Special Permits that we've granted for this property?

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Attorney Curry: At one point, there were four conditions, and one of them (Condition #2) was removed several permits ago. So, from that perspective, we're not doing all of them, but the three conditions in Special Permit 4726-2018.

Mr. Igoe: What are your hours of operation?

Taylor Amara: We are open for dinner service from Wednesday through Sunday from 4:30pm-10pm. We're staying closed on Mondays and Tuesdays until we can find some more help.

Mr. Igoe: You'll be around after that for clean-up and everything. Just wanted to get an idea.

Taylor Amara: We're there until about 11pm/11:30pm cleaning up the restaurant and making sure everything is secure and locked up at the end of the night.

Attorney Curry: I would just mention that Diego and Taylor have spent their entire young careers in the restaurant business. They know what they're doing.

Mr. Igoe: That's good to hear. That's all the questions I have.

Chairman DeYoung: I'm going through the multiple decisions that have been rendered concerning this property, and they go back quite a distance. But I was shocked to see my name on one back in 2005. Isn't this 2023? It's time for me to move out of this seat, I think. I have absolutely no questions. I've dined at the restaurant of your predecessor. I haven't dined yet at your facility, but I'm sure it will be fabulous. What we need are darn good restaurants and we know we have a lot of good ones here. Hopefully, this will add to them.

No Public Comments.

Board Discussion and Deliberation:

Mr. Mantoni: There's not much to add. It's a standard transfer and I support it.

Mr. Fraprie: I agree with John. I think it's a good addition. I would support it.

Mr. Martin: Same thing.

Mr. Igoe: I would support this.

Chairman DeYoung: Barbara, do you have anything you'd like to add.

Ms. Murphy: I live in Yarmouth Port and I wish you luck.

Vote:

A motion was made by Mr. Igoe and seconded by Mr. Martin to approve the transfer of Special Permit 4726-2018, incorporating the previous Special Permits as defined in Special Permit 4726, and all other conditions, except as previously modified.

On a roll call vote (5-0), the request to transfer the Special Permit, with the stated conditions, was approved.

- Mr. Mantoni: AYE
- Mr. Igoe: AYE
- Mr. Fraprie: AYE
- Mr. Martin: AYE
- Chairman DeYoung: AYE

Attorney Curry to provide a draft decision.

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PETITION 5026: CIK Auto Group, Inc., dba Cape & Islands KIA, 760 Route 28, South Yarmouth, MA. Map & Lot #: 33.36.1. Zoning District: B-2. The Applicant seeks to modify existing Special Permit 4799-2019 and/or new Special Permit per §303.13 and/or Variance from §303.5.5.2 to replace existing attached sign and to modify existing Variance 4679-2017 and/or new Variance from §303.5.4.1 to allow replacement of oversized nonconforming sign.

Steven Sewell, President and Ted Zambelis, Executive Partner, CIK Auto Group (Cape & Islands KIA).

Mr. Sewell: KIA has rolled out a new image program, upgrading from a “letter sign” to a “signature sign”. We’ll need to be “image compliant” or we’ll be charged more for the cars.

CHANGE THIS:		TO THIS:	
			

Wall signs (2): One wall sign has the “KIA”. The other sign has the “Cape & Islands” name. I negotiated with them to reduce the letter size on the “KIA” and the “Cape & Islands”. Reduced the size from 24” to 18” letters. More square feet coverage and more compliant [with Bylaw].

CHANGE THIS:	TO THIS:
	

Pole sign (1): Moving from a “lollipop” sign to a rectangle with the “signature” sign. It’s less square footage; reduced from ~55 square feet to 40 square feet. The new sign is 10 feet tall.

Board Questions:

Mr. Martin: In 2017, there was a Variance granted. In 2019, it was a Special Permit. I don’t know why that difference might be.

Chairman DeYoung: Change in the sign code. That we could do it by Special Permit.

Mr. Martin: I’m trying to compare apples to oranges. In terms of what’s there now, is anything getting bigger or just a change in shape? What is the total square footage compared to what’s there now?

Mr. Sewell: The new freestanding sign is 40 square feet. It’s shrinking. The new wall signs are substantially smaller on the letters and overall.

Mr. Fraprie: Looks like the Cape & Islands is the same as what you have now?

Mr. Sewell: Cape & Islands is reduced 6 inches on the letters.

On July 13, 2023, on a motion by Mr. Fraprie seconded by Mr. Manton, the Board voted 4-0 to approve these minutes.

Mr. Fraprie: So, it's three signs to replace three signs?

Mr. Sewell: Correct.

Mr. Manton: The signs look nice and as Dick said, they're getting smaller. Any illumination on the freestanding sign by the road?

Mr. Sewell: Yes, it has technology for the backlight to come on at dusk.

Mr. Manton: And that [freestanding sign] remains 6 feet from the road, right?

Mr. Sewell: Correct. Same spot.

Mr. Igoe: No questions.

Chairman DeYoung: I've seen similar signs with that backlighting. To me, it's a classy look.

No Public Comments.

Board Discussion and Deliberation:

Mr. Igoe: I can support this petition. They exceed the limits of the sign code. However, we have given relief to this business before, and they are decreasing the size of the existing signs. They're bringing it more into conformity with the Bylaw. They meet the criteria for a Variance. As we've done with other businesses that are set back from Route 28, it is a bit of a hardship being set back from the road. We have been sensitive to other businesses in town and we've given them relief for the signs for that reason.

Mr. Martin: I agree with Sean. He explained the reason behind the Variance. It's a good application.

Mr. Manton: I don't have anything to add.

Chairman DeYoung: I agree that it's a Variance and that you meet the criteria for a Variance. [Considering] the depth back from Route 28, where this building is located, the signs are modest and the freestanding sign is attractive.

Vote:

A motion was made by Mr. Martin and seconded by Mr. Manton to approve the Variance as requested.

On a roll call vote (5-0), the request for a Variance was approved.

- Mr. Manton: AYE
- Mr. Igoe: AYE
- Mr. Fraprie: AYE
- Mr. Martin: AYE
- Chairman DeYoung: AYE

PETITION 5027: Donald and Judith Sullivan, 213 Old Main Street, South Yarmouth, MA. Map & Lot #: 51.37. Zoning District: RS-40. The Applicant seeks a Variance from §203.5 for side setback relief to build an addition.

Erin Sullivan, daughter of Donald and Judith Sullivan, and her husband, Chris Pedersen, presented on behalf of the petitioners who were also present.

On July 13, 2023, on a motion by Mr. Fraprie seconded by Mr. Mantoni, the Board voted 4-0 to approve these minutes.

Ms. Sullivan: My husband and I have recently returned to the Cape. We're living with my parents, so they can age in place. We did a renovation this past winter that brought my parents downstairs with a bedroom and upgraded bathroom for a primary suite on the first floor. The addition will replace the family room on the first floor, add another primary bedroom on the second floor, and renovate an existing bedroom into a bathroom. We'll extend the back of the house ~8 feet. It's a ~993 square foot addition. Like a lot of houses on the street, there are no straight lines, so our house sits "crooked" on the lot. We're about 4 inches over the side setback.

Board Questions:

Mr. Mantoni: There's no additional kitchen?

Mr. Pedersen: No. This is joint living; this is not an additional apartment. We feel very strongly that we're not kicking them out of their home. We're not relegating them to a portion of their home. We are living together.

Chairman DeYoung: I'm pretty sure they're not going to let you kick them out.

Mr. Fraprie: Looks like they're looking for 6 inches in the setback. With the angle of the house, I'm comfortable with it. I don't have any questions.

Mr. Martin: I guess I'm confused again. Should this be a Special Permit or a Variance?

Mr. Igoe: If I may, the reason they're asking for a Variance is because they're creating a new nonconformity; it's not an extension or an alteration of an *existing* nonconformity. I think they meet the criteria for a Variance.

Mr. Martin: Very nice addition and they're only looking for 6 inches on the sideline setback.

Mr. Igoe: No questions.

Chairman DeYoung: I have no questions. It's a well-kept property. It's wonderful to see families help each other out.

No Public Comments.

Board Discussion and Deliberation:

Mr. Mantoni: It's a reasonable request. Less than half a foot. I plan to support it.

Mr. Fraprie: I echo John's support.

Mr. Martin: I will echo John and Jay.

Mr. Igoe: It's a very de minimus request for relief. They do meet the criteria for a Variance because of the shape of the lot. The way the existing house is situated on the lot. The square addition comes off it, and due to the shape of the lot and how it matches up with the existing house, causes it to go into the setback. It's only 6 inches. I think it's a reasonable request. It would be a hardship for the petitioners if we did not grant this relief. It certainly won't derogate from the purpose and intent of the Bylaw, nor cause any undue harm, nuisance, or congestion. Given those factors, I think they meet the criteria and plan on supporting it.

Chairman DeYoung: What you've just witnessed was a wonderful presentation of a read of our Bylaw that requires us to consider the various aspects before the granting of a Variance. It was very artfully spoken by Mr. Igoe. We share the sentiment that it's a wonderful project.

Vote:

A motion was made by Mr. Martin and seconded by Mr. Fraprie to approve a Variance, as requested.

On a roll call vote (5-0), the request for a Variance was approved.

On July 13, 2023, on a motion by Mr. Fraprie seconded by Mr. Mantoni, the Board voted 4-0 to approve these minutes.

- Mr. Mantoni: AYE
- Mr. Igoe: AYE
- Mr. Fraprie: AYE
- Mr. Martin: AYE
- Chairman DeYoung: AYE

PETITION 5030: Charles and Susan Dean, 45 Carriage Lane, Yarmouth Port, MA. Map & Lot #: 112.50. Zoning District: R-40. The Applicant seeks a Special Permit per §407 for a family related accessory apartment.

Susan and Charles Dean presented their petition: We have a pool house that we want to convert to an accessory apartment. My daughter will be living in the main house and we will be living in the pool house. It's newly constructed and very nice. We're looking forward to them moving down [to the Cape].

Board Questions:

Mr. Mantoni: It's 528 square feet? 22' x 24'?

Ms. Dean: Yes.

Mr. Mantoni: Full bath? Full kitchen?

Ms. Dean: Yes.

Mr. Fraprie: Looks like it's a nice addition and they'll be happy to have family around.

Mr. Martin: Appears to meet all the criteria for a family related accessory apartment under our bylaws. No issues.

Mr. Igoe: No questions.

Chairman DeYoung: I have no questions. It's wonderful that family can support family.

No Public Comments.

Board Discussion and Deliberation:

Mr. Igoe: I would echo Dick that they meet the criteria under Section 407.2 (1-9).

Vote:

A motion was made by Mr. Igoe and seconded by Mr. Fraprie to approve the Special Permit as requested, with no conditions.

On a roll call vote (5-0), the request for a Special Permit was approved.

- Mr. Mantoni: AYE
- Mr. Igoe: AYE
- Mr. Fraprie: AYE
- Mr. Martin: AYE
- Chairman DeYoung: AYE

On July 13, 2023, on a motion by Mr. Fraprie seconded by Mr. Mantoni, the Board voted 4-0 to approve these minutes.

PETITION 5033: Wayne and Theresa Edwards, Trustees of The Edwards Family Trust, 91 Pine Cone Drive, West Yarmouth, MA. Map & Lot #: 22.221. Zoning District: R-25. The Applicant seeks a Special Permit per §104.3.2(2) and/or Variance from §203.5 for side setback relief to build a second-floor addition.

Paul Bettencourt (Bettencourt Construction) presented on behalf of the petitioners who were present in-person at the hearing.

Mr. Bettencourt: This is the main house for the property owners. We're proposing to remove the second floor, add a dormer front and back, and add two bedrooms upstairs. We're vacating a bedroom on the first floor, so that family can visit.

Board Questions:

Mr. Mantoni: You're removing the second floor completely and putting two bedrooms up there?

Mr. Bettencourt: There's a floor there now with stairs and an attic. There'll be a new second floor with a full dormer front and back.

Mr. Edwards: Gives you the extra height upstairs.

Mr. Mantoni: You're going up. You're not expanding your footprint?

Mr. Bettencourt: The footprint is staying the same.

Mr. Fraprie: Is the height today already 21'?

Mr. Bettencourt: It may be a little less than that.

Mr. Fraprie: And the max will be ~21'?

Mr. Bettencourt: Plus or minus a few inches.

Mr. Fraprie: It's well within our height limitations.

Mr. Martin: It's presently an expansion Cape without a very good pitch for upstairs, so you have to add dormers to provide space. The only reason you're here is because you're going a little bit higher on the same footprint.

Mr. Igoe: You're not expanding the foundation, correct?

Mr. Bettencourt: No.

Mr. Igoe: The side setback relief you're seeking is because the rear of the house – which is a side setback because you're on a corner lot. What's the distance?

Chairman DeYoung: 13 feet off the line. Can you tell me how you determined the 22 feet to the ridgeline? How was that calculated?

Mr. Bettencourt: It's ~22 feet on my drawings.

Chairman DeYoung: So your representation is this will not exceed 35 feet as measured properly under our Bylaws?

Mr. Bettencourt: Yes.

Chairman DeYoung: For future reference, we like to see that on plans.

Public Comments:

Chairman DeYoung reads a Conservation Commission memo about approval without conditions and a letter of support from Martha Barcroft, 88 Pine Cone Drive, into the record.

Vote:

A motion was made by Mr. Fraprie and seconded by Mr. Martin to approve the Special Permit, as requested.

On July 13, 2023, on a motion by Mr. Fraprie seconded by Mr. Mantoni, the Board voted 4-0 to approve these minutes.

On a roll call vote (5-0), the request for a Special Permit was approved.

- Mr. Mantoni: AYE
- Mr. Igoe: AYE
- Mr. Fraprie: AYE
- Mr. Martin: AYE
- Chairman DeYoung: AYE

A motion was made by Mr. Martin and seconded by Mr. Fraprie to allow the petitioner to withdraw the request for a Variance, without prejudice, which, on a voice vote, carried unanimously in favor.

OTHER BUSINESS:

Minutes: A motion was made by Mr. Martin and seconded by Mr. Fraprie to approve the May 11, 2023 minutes. On a voice vote (5-0), the minutes for May 11, 2023 were approved.

Adjournment: Mr. Martin made a motion to adjourn, and Mr. Fraprie seconded. The June 8, 2023 Zoning Board of Appeals meeting adjourned at 6:58pm.