



TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION

YARMOUTH TOWN CLERK

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FILED WITH TOWN CLERK: July 18, 2012

YARMOUTH TOWN CLERK

PETITION NO: #4373

HEARING DATE: April 12, 2012

PETITIONER: Cape Cod & Islands Association of Realtors

**PROPERTY: 22 Mid Tech Drive, West Yarmouth, MA
Map & Parcel: 0074.26; Zoning District: B3
Doc. #:777,415; Ctf #: 154585**

MEMBERS PRESENT AND VOTING: Steven DeYoung, Chairman, Joseph Sarnosky, Sean Igoe, Bryant Palmer and Robert Howard (Non-voting Alternate).

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 is the Cape Cod & Islands Association of Realtors which seeks to modify certain restrictions imposed in connection with the grant of a Special Permit in Decision #3556. The Petition is concerning property located at 22 Mid Tech Drive, West Yarmouth, MA, property located in the B-3 Zoning District. The Petitioner was very ably represented by Michael Stusse, Esq., and Ms. Joan Witter, the Associations President, appeared in support of the requested relief.

The original grant of Special Permit was rendered in 1999 prior to development of the site. A very comprehensive written decision relating to the Zoning Board of Appeals consideration and relief was authored by the Board's then Chairman, David Reid and aptly supported the Decision to grant relief. As well, the Decision succinctly and clearly delineated certain conditions to the relief granted. Of note, it was the Petitioner itself which proposed the restrictions which were incorporated into the Decision as conditions and which, in pertinent part read as follows:

- 1) restrict the basement area to storage only, with no regular work stations or offices (other than short-term work area for an employee doing filing work on the stored materials." The avowed purpose of this and the other restrictions proposed by the Petitioner (and incorporated as conditions by the Board) was to control parking usage below the otherwise calculated demand.

Since the grant of Special Permit, the Petitioner has developed the site in accordance with the relief granted in Decision #3556.

As a practical matter, the Petitioner now seeks relief based upon improvements to the building. The petitioner sought and received permits from the Building Department to alter and improve the basement area. The work contemplated by these permits has now been completed. However, the Petitioners ability to utilize these improvements is limited by the conditions imposed under Decision #3556.

Discussion did proceed regarding the circumstances that allowed the completion of the improvements/renovation to the basement area. While interesting, these discussions were of little practical value as the fact exists that they were made in conformity with a properly issued Building Permit. In fact, though the Board initially heard this matter on April 12, 2012 and granted relief as wherein below noted, the actual Decision was delayed due to a Motion for Reconsideration brought by one of the Board members. This Motion was heard on June 14, 2012 and, after consideration, was not favorably acted upon. Accordingly, the original Decision of April 12, 2012 stands by the unanimous vote of the members and as set-forth herein.

After due consideration of all facts received by the Board from both proponents and opponents to the Petition, Motion was made by Mr. Igoe, seconded by Mr. Palmer, to modify Special Permit #3556 only as follows:

That the condition restricting the basement storage area to storage only, with no regular work stations or offices be modified to allow the use of such area by direct employees of the Association only (and not to include Association Members in general) on conditions that:

- 1) the area not be utilized by parties other than Association employees and not be leased or rented to any third party;
- 2) That any other use must be the subject of further relief by this Board; and
- 3) That this relief is for the sole benefit of this Petitioner and shall not be considered as relief granted to all other persons/ parties who may acquire interest in the property through this Petitioner.

No permit shall issue until 20 days from the filing of this decision with the Town Clerk. This decision must be recorded at the Registry of Deeds and a copy forwarded to the Board of Appeals. 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, MGL c40A §9)



Steven DeYoung, Chairman