



TOWN OF YARMOUTH  
BOARD OF APPEALS  
DECISION

**FILED WITH TOWN CLERK:     October 19, 2012**

**PETITION NO:                 #4411**

**HEARING DATE:             September 13, 2012**

**PETITIONER:               Daniel J. & Patricia M. Gallivan**

**PROPERTY:                 796 Route 6A, YarmouthPort, MA  
Map & Parcel: 0134.163; Zoning District: R-40  
Ctf. #: 171135; Doc. #: 947,766**

**MEMBERS PRESENT AND VOTING: Steven DeYoung, Chairman, Joseph Sarnosky, Sean Igoe, Debra Martin, Bryant Palmer and John Richards (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 seeks relief pursuant to Zoning By-law §104.3.2 in connection with property located in an R-40 Zoning District and located at 796 Route 6A, YarmouthPort, MA. The relief is sought in connection with the Petitioner's desire to install a pool along the easterly side yard at his home. The proposed pool would result in a 10' setback from the Petitioner's easterly abutter, instead of a 15' setback.

The property is a well-established area, through the abutting lot is not developed. The Petitioner could, conceivably, locate the pool a distance of two feet from his house and thus require no relief. However, as he pointed out, this might well result in too narrow of a separation from the house to the pool edge which could interfere with emergency personnel's access if an emergency developed. The Board noted that the pool, while not necessary, was at ground level and would not create any esthetic difficulty to the abutter. Mr. Sarnosky was opposed to the Special Permit noting that the Petitioner could remedy this problem by moving the pool closer to the Petitioner's home. The remainder of the Board members felt that the Petitioner presented a good rationale for the proposed location and that the relief, if granted, would create no nuisance, hazard nor congestion nor would it result in any substantial harm to the existing or future character to the neighborhood or town.

A Motion was made by Ms. Martin, seconded by Mr. Igoe, to grant the Petition on the condition that the Petitioner erect stockade fencing around the back and side yards at least 6 feet in height so as to enclose the backyard inclusive of the pool area. On this Motion, the Board (Igoe, DeYoung, Martin, Palmer) voted in favor, with one member (Sarnosky) opposed. Therefore, the Special Permit was granted on the condition stated.

**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)**

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Steven DeYoung, Chairman