



TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION

FILED WITH TOWN CLERK: January 23, 2013

PETITION NO. 4426

HEARING DATE: January 10, 2013

PETITIONER: Town of Yarmouth

**PROPERTY: 62 Highbank Road, South Yarmouth, MA
Map and Lot #:0080.117
Zoning District: R-40
Book & Page: 4074/198**

MEMBERS PRESENT AND VOTING: Steven DeYoung, Chairman, Sean Igoe, Joseph Sarnosky, Debra Martin, Gerald Garnick and Richard Neitz, 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, The Town of Yarmouth, was well-represented by Jim Armentrout, Director of Golf. The Petition seeks relief to allow entertainment at the Bass River Golf Course, property located at 62 Highbank Road, South Yarmouth, MA, property in an R-40 Zoning District.

Though issued an entertainment license, the Petitioner's representative had determined that the golf course had not received zoning relief needed due to the use of entertainment in an R-40 Zoning District not generally being a permitted use. In light of this, the Petitioner properly seeks relief.

The relief sought raised substantial controversy from not only abutters to the golf course property, but from multiple parties living within the Town of Dennis. Multiple e-mails and letters had been received and recited to in the record. Various persons attended and generally spoke in opposition to entertainment being allowed in a residential neighborhood. These speakers included Gail Burke, Charles Burke of Dennis, MA and Robert L. Troup of 20 River Drive, South Yarmouth, MA Board member, Robert Howard had recused himself from deliberation and spoke eloquently citing both pros and cons to the Petition.

The Board noted that the golf course had been a good neighbor to abutters for over a century, often utilizing entertainment to enhance the public enjoyment of the facility. The Board was also in agreement with Mr. Armentrout that reasonable entertainment was a needed activity to the success of the golf course and that any "abuses" had occurred in the past when the restaurant was under private management. It was felt that, with the Town's direct oversight and some limiting conditions, the use

would not create any undue nuisance, hazard or congestion nor any substantial harm to the established or future character of the neighborhood or Town. Further, in this instance, literal enforcement of the by-law would involve a substantial hardship to the financial stability of this golf course; that the hardship would be caused due to the vast size, shape and topography of the land and its isolation of the club house from direct, residential abutters; and that the relief merely affirmed an activity which has existed for many years and is licensed by the Town without any substantial detriment to the public good. The grant of relief will not nullify nor substantially derogate from the overall intent or purpose of the by-law.

Accordingly, on Motion made by Mr. Igoe and seconded by Mr. Garnick, the Board voted unanimously in favor of the grant of the Variance as prayed for by the Petition and upon the following conditions:

- 1) All entertainment was to be confined to the interior of the restaurant and within the area marked as "Dance Floor" as shown on the "Seating Plan for Entertainment" filed with the Petition;
- 2) All noise from entertainment was to be confined within the building with all doors and windows being closed when entertainment was being provided,
- 3) There is to be no outside amplification of any music or other entertainment;
- 4) Entertainers are to be limited to 4 at any one time and all entertainment is to be governed by any limitation imposed by the Entertainment License issued by the Town; and
- 5) There be a one year review to determine if there has been substantial compliance with these conditions.
- 6) The hours of entertainment are: May 1-October 15th – 10 p.m..
October 16-April 30th- 9 p.m.

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)

Steven DeYoung, Chairman