



TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION

FILED WITH TOWN CLERK: September 11, 2013

PETITION NO: #4472

HEARING DATE: August 22, 2013

PETITIONER: Davenport Realty Trust/DeWitt Davenport, Trustee

PROPERTY: 760 Route 28, South Yarmouth
Map & Lot#: 0033.36.1; Zoning District: B2
Book/Page: 17954/96

MEMBERS PRESENT AND VOTING: Steven DeYoung, Chairman, Sean Igoe, Debra Martin, Bryant Palmer and Gerald Garnick.

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, Davenport Realty Trust, seeks a Special Permit in connection with property located at 760 Route 28, South Yarmouth, MA. The property consists of a single building used for commercial business consistent with the B-2 Zoning District in which it is located. The Petition is sought under Zoning By-law §202.5 in order to establish/reestablish uses consistent with H4 of the Table of Uses.

The history of the site is as follows. Consisting of 4.29 acres, a single, two story structure was erected in 1988, according to the Petitioner's representatives its use was initially consistent with an H4 designation, i.e. the sale of autos, boats, motorcycles, mopeds or other motorized recreational vehicles together with servicing of such vehicles/boats as accessory to their sale. This use continued at the property until approximately 2008 when a change of use was sought and allowed for retail sales and service to be conducted at the site in connection with plumbing and HVAC items. Since the close of this business, the site has been unoccupied.

In presenting the Petition, DeWitt Davenport, Christian Davenport and Ross Balboni all appeared and provided a well thought out presentation. This included submission of a "760 Route 28 Timeline" and accompanying photos of the site which were collectively marked as Exhibit 1.

Of note, a site plan review was conducted prior to the Board's consideration of the Petition and which included several recommendations regarding changes at the site, mostly of an aesthetic nature. Prior to appearing on the Petition, the Petitioner had accepted and implemented changes entirely consistent with the site plan review recommendations.

There was substantial discussion by the Board. Mr. Igoe expressed concern that the relief being sought was not in connection with any presently intended use by the Petitioner or a tenant of the Petitioner but, rather in advance of knowing what was precisely being proposed at the site beyond that generally

described by the use table. However, other Board members disagreed with this position, finding that the relief sought was reasonable and could be granted without resulting in any undue nuisance, hazard or congestion nor causing any substantial detriment to the existing or future character of the neighborhood or Town.

Motion was made by Mr. Palmer, seconded by Mr. Garnick to approve the relief sought by the Petition upon the following conditions:

- 1) That the Petitioner is to maintain the plantings now in place and particularly consistent with those depicted in the submitted photographs;
- 2) That there be no painting or body work of vehicles, boats or any other authorized motor driven equipment on the site; and
- 3) That storage of boats for sale or repair be restricted to the lot area to the rear of the building and so as to be screened by the front plane of the existing structure to which the Petitioner represented there was no plan to alter the same.

On this Motion, vote was taken as follows:

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| Ms. Martin | aye |
| Mr. DeYoung | aye |
| Mr. Palmer | aye |
| Mr. Garnick | aye |
| Mr. Igoe | Nay |

and the Special Permit with the stated conditions was, therefore, granted.

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