



TOWN OF YARMOUTH  
BOARD OF APPEALS  
DECISION

**FILED WITH TOWN CLERK: December 2, 2013**

**PETITION NO: #4486**

**HEARING DATE: November 14, 2013**

**PETITIONER: Sandbar Management, Inc.,**

**OWNERS: Sandbar Holdings LLC and Mid-Cape 28 Mall, Inc.**

**PROPERTY: 512 & 518 & 532 (portion) Route 28, West Yarmouth, MA  
Map & Parcel: 0031.82, 83 & 85; Zoning District: B2 & HMOD1  
Certificate #: 199116 & C217-83, C217-85, C217-87 and C217-90  
Land Court Lot & Plan: Lot 44-Plan # 26266-F  
Lot 43-Plan # 26266-F**

**MEMBERS PRESENT AND VOTING: Steven DeYoung, Chairman, Sean Igoe, Debra Martin, Bryant Palmer, and Chuck Hart**

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 Sandbar Management, Inc. The Petitioner has previously obtained relief from the Board of Appeals in Petition Nos. 4420 and 4368 to operate the Cape Cod Inflatable Park at 518 and 512 Route 28, West Yarmouth. The Petitioner now seeks permission to reconfigure and expand the Inflatable Park. As discussed with the Building Commissioner at Site Plan Review, the Applicant is seeking 1) to further amend Special Permit #4420 and #4368 and 2) a new Special Permit to reconfigure the Inflatable Park. The Applicant additionally requests an amendment to Condition 13 in Case # 4368 (as amended by Case # 4420). The proposal will increase rear setbacks, relocate the water park portion of the facility behind the Wings building on the adjacent property (which will be created as a new lot to be combined with the existing Inflatable Park property), provide additional buffering, and result in more efficient operations. Specifically, approximately one quarter of the back section of the existing Inflatable Park will be removed from within the fenced area and will instead be repositioned easterly onto the to-be-separated back portion of the adjacent land at 532 Route 28. The three parcels are shown as Parcels 82-C, 83, and 85 (rear) on Assessor's Map 31 and are located in the B2 and HMOD1 Zoning Districts.

The Petitioner was well represented by Attorney Andrew Singer together with Mr. Joseph Marrama principal owner and operator of the facility, and Mr. Kieran Healy, Engineer for the Petitioner. Mary Collins and George Cannon spoke with concerns about the proposal. Correspondence was received from Geneva Smithlin with concerns about the proposal.

The Board's Decision in Case #4420 contains a condition that the Board review and assure compliance with the landscape conditions within one year. The Petitioner requested this review and the Board conducted such review as part of this proposal. The Board found unanimously that there has been compliance with the landscape conditions and that this condition has been satisfied.

A lengthy discussion took place regarding prior questions about noise emanating from the blowers at the Inflatable Park. The Petitioner spent this past summer analyzing the business operation, testing what works and doesn't work, meeting with several neighbors, and proposing solutions to mitigate blower noise. There was also a posted on-site meeting with Board members and neighbors at the Property and at neighboring properties to review new steps being proposed for sound mitigation. The key components of the new sound mitigation proposal are two-fold -- bury the blowers for all of the water park rides plus the four large air park rides along the east side of the middle section of the Inflatable Park and add sand berms around the northerly and easterly perimeters of the Inflatable Park. As was demonstrated during the on-site visit, burying these blowers and installing 15-ft. sand berm buffers adjacent to the Inflatable Park fence dramatically reduces and eliminates the sound off site. Separating these sand berm buffers from the respective property lines will be additional 40 ft.-wide natural vegetated buffers.

The proposal includes additional emergency access via a gate into the relocated water park portion of the facility and sealed, inflatable sitting cabanas in this area for customer use. Along the south side of the relocated water park portion of the facility, there will be a three-foot high berm with a fence on top plus arbor vitae trees in front on the berm. This portion of fence will match the existing fence along Route 28. The remainder of the fence along the east and north sides of the Inflatable Park will be stockade to match the existing fence. There will be no changes in the front and middle portions of the Inflatable Park or to the previously-permitted landscaping, fencing, and screening along Route 28. The hours of operation are not changing. When open (weather dependent), the water park rides will close by 6:00 p.m., and the air park rides will close by 10:00 p.m. There will be no change in the maximum number of restaurant seats (100). However, the main gift shop will be relocated within the current dining area inside the building, and the restaurant seating will all be located outside in the proposed seating area in the "L" configuration and along the exterior of the building as shown.

After further finding that the proposal will abate new and any existing blower noise and will not be substantially more detrimental or more nonconforming to the neighborhood, Zoning District or Town than the existing conditions, that it will not cause or contribute to any undue nuisance, hazard or congestion, that there will be no substantial harm to the established or future character of the neighborhood or Town, and that strict enforcement of the current Zoning By-Law will result in undue hardship to the Property or the owner, a motion was made by Mrs. Martin, seconded by Mr. Palmer, and voted 5-0 in favor, to grant 1) a Modification as requested to Special Permit #4420 and #4368 and 2) a new Special Permit as requested, to reconfigure and expand the Inflatable Park as shown on the submitted plans and also to grant 3) a Modification to Condition 13 in Case # 4368 (as

amended by Case # 4420) as specified below, all of the above consistent with and as prayed for by the petition on the following conditions:

1. The Petitioner shall schedule a review by this Board no later than June 26, 2014, to review and assure compliance with the blower sound mitigation measures;
2. Blowers for all of the water park rides plus the four large air park rides along the east side of the middle section of the Inflatable Park shall be buried;
3. 15-ft. sand berm buffers shall be installed along the northerly and easterly fence of the Inflatable Park;
4. Condition 13 in Petition #4368 (as amended by Case # 4420) shall be deleted and replaced as follows: "This grant of relief is exclusive and limited to this Applicant, Sandbar Management, Inc., and any affiliated entity in which Sandbar Management, Inc. or its principals are majority owners. If any transfer of ownership of the business or park operation to an unaffiliated third party should occur, further review by this Board will be required to determine if the relief shall stay in effect;" and
5. The zoning relief granted herein shall not affect the existing and future operations and redevelopment of the remainder of 532 Route 28 so long as the emergency gate access easement is maintained.

**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