



TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION

FILED WITH TOWN CLERK: March 30, 2015

PETITION NO. #4580

HEARING DATE: March 12, 2015

PETITIONER: Town of Yarmouth, Parks and Recreation

**PROPERTY: 31 Dupont Avenue, South Yarmouth
Map and Lot #:0100.1; Zoning District: R-40
Book & Page: 4738/242**

MEMBERS PRESENT AND VOTING: Steven DeYoung, Chairman, Sean Igoe, Bryant Palmer and Richard Neitz.

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 Pat Armstrong, Parks and Recreation Director. The Petition seeks a Variance under By-law §202.5, Use Table N3 to permit theatrical productions, bands, orchestras and entertainment inclusive of outdoor entertainment at its facility located in the Flax Pond Recreation Area, 31 Dupont Avenue, South Yarmouth, property in an R-40 Zoning District.

Each Board member expressed concerns over noise affecting the immediate, abutting residential area. During the hearing, no exhibits were received. No one spoke in opposition to the requested relief.

The Board considered the requested zoning relief only. Clearly, it is the Board of Selectmen that will decide as, if and when entertainment licenses are required. However, the Board was unanimous in its belief that the grant of the relief could be considered as 1) literal enforcement of the By-law regarding Use Table designation N-3 would create a substantial hardship (economic) upon the Town by loss of the prospective revenues; 2) the hardship relates to the shape, location and topography of the land, in that the facility is located immediately adjacent to a pond while otherwise surrounded by woodland; and 3) the relief can be granted, with conditions without creation of any detriment to the public good nor nullification nor substantial derogation from the purpose and intent of the By-laws.

Mr. Palmer then made a Motion, seconded by Mr. Neitz, to approve the requested relief. The Board considered the Motion and voted unanimously in favor of it upon the following conditions:

- 1) Hours of entertainment be limited to 9:00 A.M. to 9:00 P.M. inside the building and from 9:00 A.M. to 7:00 P.M. outside the building;
- 2) The Petitioner present the matter for a review in one year and be required to furnish the Board any noise complaints relating to use of the building;
- 3) If 40 or more attendees are anticipated, a Recreational Staff person must be in attendance. If more than 80 attendees are anticipated, two Recreational Staff persons must be in attendance; and
If 40 or more attendees are anticipated at any event where alcohol is to be served, a police detail is required.

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 exercised within 12 months. (See MGL c40A §10)

Steven DeYoung, Chairman