



TOWN OF YARMOUTH  
BOARD OF APPEALS  
DECISION

**FILED WITH TOWN CLERK:** February 23, 2018

**PETITION NO:** 4726

**HEARING DATE:** February 22, 2018

**PETITIONER:** 43 Main, LLC, d/b/a Grill 43

**PROPERTY:** 43 Route 6A, Yarmouth Port, MA  
Map & lot#: 0112.31; Zoning District: R-40  
Title: Book 23697, Page 67

**MEMBERS PRESENT AND VOTING:** Chairman Steven DeYoung, Sean Igoe, Richard Martin, Richard Neitz and Tom Nickinello.

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 the Board's review and transfer of Special Permit No. 3999-2005, previously granted to Marietta Hickey, Trustee of 43 Hallett Street Real Estate Trust, d/b/a Abbicci Restaurant, Special Permit No. 4244-2009, approving the transfer from the 43 Hallett Street Real Estate Trust to J. Ford O'Connor, Trustee of Willow Realty Trust, and Special Permit No. 4597-2015, previously granted to Trevi Restaurant Group, Inc., d/b/a Primavera Restaurant.

Special Permit No. 3999-2005 addressed various extensions and additions in connection with the former Abbicci's Restaurant which necessitated relief from the alteration and extension of the non-conforming building and utilized by the Restaurant and the use in a residential zone. The Special Permit was granted, with conditions, by unanimous vote of the members of the Board then sitting.

The present Petitioner, 43 Main, LLC, d/b/a Grill 43, intends to enter into a lease for the operation of the building and intends to proceed with the use of the premises in a substantially similar matter as the Abbicci Restaurant, i.e. to continue its operation as a dining establishment. The applicant explained that the restaurant will utilize off premises parking for employees, and valet parking as required in Condition No. 3 of Special Permit 3999-2005. Petitioner indicated that Conditions 1, 3 and 4 were all satisfactory and agreed to be bound by them, with Condition 2 previously removed as a requirement for subsequent operators/owners.

No correspondence was received, and no one spoke either in favor or against the Petition. The Board determined that the transfer of Special Permit No. 3999-2005, Special Permit No. 4244-2009, and Special Permit No. 4597-2015 will result in a continuation of the Board's expectations as to the lack

of adverse impact of the new restaurant to the neighborhood and the suitability of the Petitioner's parking requirements.

Accordingly, a Motion was made by Mr. Neitz, seconded by Mr. Martin, to approve the transfer of 3999-2005, Special Permit No. 4244-2009, and Special Permit No. 4597-2015 to the present Petitioner on the following conditions:

1. That the present Petitioner is to be subject to the terms and conditions of Special Permit 3999-2005, with the exception of Condition 2 previously removed by amendment,, Special Permit No. 4244-2009, and Special Permit No. 4597-2015; and
2. The Special Permit is allowed to be transferred to this Petitioner and its anticipated restaurant operation. Should the business operation not proceed as per the Petitioner's representations or if ownership should change, the matter will have to be reviewed further by the Board consistent with the prior approval.

On this Motion, the members voted unanimously in favor and the transfer is therefore granted.

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, the Special Permit shall lapse if a substantial use thereof has not begun within 24 months. (See bylaw §103.2.5, MGL c40A §9)

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Steven DeYoung, Chairman