



TOWN OF YARMOUTH  
BOARD OF APPEALS  
DECISION

**FILED WITH TOWN CLERK:** March 20, 2018

**PETITION NO:** 4709

**HEARING DATE:** March 8, 2018

**PETITIONER:** Robert K. Boucher and Karen D. Boucher

**PROPERTY:** 571 Route 6A, Yarmouth Port, MA  
Map/lot#: 0124/ 76; Zoning District: R-40  
Book & Page: 28467/ 231

**MEMBERS PRESENT AND VOTING:** Chairman Steven DeYoung, Richard Neitz, Thomas Nickinello, Tom Baron and Susan Brita.

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.

Having had numerous discussions with the Yarmouth Building Department, the Petitioner comes to the Board seeking relief for both the placement of a structure, and the continued use being made of the property. Specifically, the Petitioner is seeking a Special Permit pursuant to Zoning Bylaw §104.3.2(2), 202.5, and 203.5, a Variance from Bylaw Sections 202.5, and to overturn the Decision of the Building Commissioner. The property is located in the R-40 Zoning District, and contains approximately 16,794 square feet of area, and is currently improved with a two-story single family dwelling, which encroaches into the side setbacks by 9 inches on the east and 2.5 feet on the west.

The property is currently occupied one of Petitioner's family members, Bethany Jakubson, who owns and operates a traveling educational zoo, featuring birds of prey, reptiles and mammals, which she takes to off-site venues throughout Cape Cod. The animals are housed at the Property. In an effort to expand the species of animals available for her business, Ms. Jakubson sought to create dedicated exterior cages in the back yard of the Property, with an accessory shed being utilized as a de facto vapor lock, to allow access to the pens, but with the security that the birds would not escape. A building permit was secured for the shed. When the construction of the pens onto the sides and rear of the shed piqued the interest of an abutter, the Building Department issued a stop work order, determining that the accessory structure would need to meet the dimensional requirements of the zoning district and that the pens were being constructed without the prior issuance of a building permit. The Building Department also learned of the existence of Ms. Jakubson's vast array of animals kept at the Property, and

determined that such a use was classified as Veterinary Services, which was not a use allowed pursuant to Use Table §202.5 of the Zoning Bylaw.

After receiving a Violation Notice, dated July 10, 2017 (Decision of the Building Commissioner) consistent with the findings recited above, Petitioner commissioned a survey of the property, in order to prepare for a hearing before this Board. It was then learned that portions of the shed and associated pens, were actually located on abutting property, and would need to be moved. Petitioner now proposes to move the shed, and the east and west pens (eliminating the southerly pen) to a location which now complies with the bulk requirements of the Bylaw. The Building Department confirmed this fact, and any relief requested by the Petitioner regarding the structure was withdrawn without prejudice as unnecessary.

Ms. Jakobson described in detail the nature of her business, and the fact that it actually takes place entirely off-site, and that her animals, as the tools of her trade, are merely stored at the Property. No rehabilitation is conducted on site. Rather, Ms. Jakobson's veterinarian either comes to the Property when needed, or animals are transported to the office of the veterinarian. In addition, the animals are routinely inspected by representatives of the United States Department of Agriculture, to ensure compliance with the Animal Welfare Act, and as a component of the issuance of Ms. Jakobson's license as a traveling exhibitor. It was determined that none of the Town of Yarmouth's General Bylaws were being violated based on the constitution of the animals she currently owns. The pens being constructed, measuring 12 feet by 8 feet, will not have peaked roofs, but rather, will be open to the elements, and covered with a coated heavy-duty wire mesh fencing. One bird will be housed in each pen. It is contemplated that a red-tailed hawk and an owl will be secured to live in the new structure. Ms. Jakobson assured the Board that no noise or odor will result from this proposal, and that waste will be removed from the pens, and will not attract vermin.

Despite the objection from one abutter that this could be considered a business, the Board was satisfied that there was not Veterinary Services being conducted at the Property. Rather, the Board appreciated the Building Department's decision to seek clarification from the Board of Appeals as to whether this unique use could be made at the Property. The Board was also mollified that with certain conditions, to which the Petitioner assented, that the current use at the Property could continue without affecting the surrounding uses in the neighborhood. Although typically not granted, the Board was in agreement that having vetted this use, the Decision of the Building Commissioner could be overturned, and the use actually being made of the property was not in contravention of any bylaw. Instead, the current use of the Property by Ms. Jakobson was accessory to the residential use of the zoning district, and thus permissible.

Accordingly, a Motion was made by Mr. Neitz, seconded by Mr. Nickinello, to Overturn the Decision of the Building Commissioner, but with the following conditions:

1. Any relief granted by the Decision is unique to this Petition, and will not apply to subsequent owners of the Property without further approval of the Board of Appeals;
2. No flammable products will be kept in the new shed;

3. Petitioner shall permit the Board of Health to conduct an annual inspection of the Property to ensure compliance with health codes; and
4. Ms. Jakobson's business shall continue to be conducted off-site, and no members of the public shall be permitted at the Property as a customer of Ms. Jakobson's business.

The members voted unanimously in favor of the Motion.

Mr. Neitz made a Motion to allow the Petitioner to withdraw without prejudice the remainder of the requested relief. Mr. Nickinello seconded and Motion carried unanimously.

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)

---

Steven DeYoung, Chairman