



**TOWN OF YARMOUTH  
BOARD OF APPEALS  
DECISION**

**FILED WITH TOWN CLERK: January 29, 2019**

**PETITION: #4785**

**HEARING DATE: January 10, 2019**

**PETITIONER: Gabriela Lopes**

**PROPERTY: 28 Pawkannawkut Drive, South Yarmouth  
Map and Parcel: 0033.20; Zoning District: R-25  
Book/Page: 29764/199**

**MEMBERS PRESENT AND VOTING: Steven DeYoung, Chairman, Sean Igoe, Tom Nickinello, Tom Baron and Susan Brita, Alternate.**

It appearing that notice of the hearing has been given by sending notice to the petitioners and all of those owners of property deemed 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 is Gabriela Lopes who did a fine job in presenting her Petition seeking the grant of a Special Permit under Zoning Bylaw §202.5 (P7A) in connection with her desire to run a Family Day Care Home in a residential district (R-25) and located at 28 Pawkannakut Drive, South Yarmouth, Massachusetts.

The Petitioner comes to the Zoning Board in response to a neighbor, who initiated a complaint, to the Town which was received on October 4, 2018. This prompted a letter from James Brandolini dated October 4, 2018 advising the Petitioner of her need to obtain zoning relief. A subsequent Violation Notice dated October 18, 2018 from Mr. Brandolini, Deputy Building Commissioner, was then sent to the Petitioner who, in response to this, initiated this Petition for grant of Special Permit.

The Petitioner indicated that she had been running a daycare at the location after obtaining her license from the Commonwealth on 6/7/2018. She indicated that she was unaware that, in addition, she would have to obtain a Special Permit from the Town of Yarmouth consistent with the Bylaws relating to the Use Table.

There was significant opposition to the relief requested by the Petitioner. Several neighbors spoke in opposition and several neighbors and interested parties provided correspondence expressing their objection to the relief being sought by the Petitioner. The general gist of the objections were that the neighborhood was a quiet, peaceful area of residential properties. Those in opposition indicated that parents of children being serviced at the daycare center created traffic that was unreasonable for the area and, in particular, the unimproved road which the property abuts and which is the access to the daycare center. Direct abutters were most concerned about the running of a business in this peaceful, quiet residential area. The property for which the Special Permit was sought is directly surrounded by residential properties on modest lot sizes. The subject property has limited driveway access and, as indicated, is serviced by an unimproved road with defects ("potholes"). With multiple children being dropped off and picked up within the same timeframe daily, parents have been forced to park in the middle of the road.

Two sets of photographs were received and marked as Exhibits 1 and 2. No one spoke in favor of the Petition other than the Petitioner.

While the Board accepted the fact that the Petitioner was licensed by the Commonwealth of Massachusetts, that alone is not sufficient to allow this Petitioner to run this business without Zoning Relief. In considering the criteria for the grant of Special Permit, it was the consensus of the members that, if relief were to be granted, the relief would result in undue nuisance, and has had congestion in this particular instance. This neighborhood consists largely of small lots, with modest homes and with many people who have lived in the area for many years. The increase in traffic and the close proximity to other residences of the property for which the Special Permit is sought weighed heavily in the Board's deliberations.

After public input and board discussion and deliberations, a Motion was made by Mr. Igoe, seconded by Ms. Brita to deny the grant of a Special Permit as sought by the Petition. On this Motion, the Board voted unanimously in favor and, therefore, the Special Permit was denied.

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Steven DeYoung, Chairman