



TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION

FILED WITH TOWN CLERK: **October 1, 2013**

PETITION NO: **4481**

HEARING DATE: **September 26, 2013**

PETITIONER: **Deanne Tolley, d/b/a M.A.D. Fitness Center of Cape Cod**

PROPERTY: **299 White's Path, Bay 5, South Yarmouth, MA**
Map & Lot#: 0109.98
Zoning District: B3 and APD
Book/Page: 24810/307

MEMBERS PRESENT AND VOTING: Steven DeYoung, Chairman, Sean Igoe, Chuck Hart, Richard Neitz, Bryant Palmer and Gerald Garnick, Alternate.

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, Deanne Tolley was present along with legal counsel, Paul Tardif, Esq. The Petitioner seeks a Special Permit pursuant to Zoning Bylaw §202.5, in order to use one of the commercial bays on the site for a private sports and recreation club (N8 use) at the site in the B3 Zoning District. The property contains approximately 18,150 square feet of area, and is currently used by the owner of the property, 299 White's Path, LLC, for office, showroom and warehouse uses (O8, D3 and E5) on site. The current business at the property, one an architect's office and the other a carpentry office and workspace, share a showroom on the property. The remaining bays located to the rear of the property are used by the building company to prepare items to be installed in locations off site. There are no plans to alter the existing structure. The property does offer a total of 15 parking spaces designated for employee use and for showroom customers who are scheduled in advance.

The Petitioner proposes to operate her fitness studio in Bay 5 of the property. The hours of operation are scheduled and blocked time, with no more than 8 customers during any one session. Petitioner plans to be open Monday through Friday, with some private sessions with clients during the week, and possibly on Saturdays. All activities will take place inside the bay, and will not include activities outdoors or in the parking areas.

The Board was satisfied and agreed that the use of the property for Petitioner's business would create no undue nuisance, hazard or congestion and that there will be no substantial harm to the established or future character of the neighborhood or town, all pursuant to §103.2.2 of the Zoning Bylaw. The Board was satisfied that the scheduled times and limited customer participation would make the impact of the business to the property minimal, and that based on the current uses of the property, and the representations that parking is not an issue during the day, make it possible for this Board to envision the Petitioner's use working in harmony with the existing uses.

After due consideration, a Motion was made by Mr. Igoe seconded by Mr. Neitz to grant the Special Permit with the condition that the granted relief is to the benefit of this Petitioner only.

The members voted unanimously in favor of the Motion. The relief 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)

Steven DeYoung, Chairman