



TOWN OF YARMOUTH  
BOARD OF APPEALS  
DECISION

**FILED WITH TOWN CLERK:** June 30, 2015

**PETITION NO:** 4604

**HEARING DATE:** June 25, 2015

**PETITIONER:** Ann Marie Properties, LLC (Purchaser from Robert B. Our Co., Inc., current owner)

**PROPERTY:** 313 White's Path, South Yarmouth, MA  
Map & Lot#: 0109.95  
Zoning District: B3 and APD  
Book &Page: 10188/ 300

**MEMBERS PRESENT AND VOTING:** Chairman Steven DeYoung, Sean Igoe, Debra Martin, Chuck Hart and Bryant Palmer

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 a Special Permit pursuant to Zoning Bylaw §406 and 202.5 to allow a G1 use within the Aquifer Protection District (APD). The property is currently owned by Robert B. Our Co., Inc., and Petitioner plans to purchase the property if all necessary permits and relief are secured.

The lot is located in the B3 Zoning District and contains approximately 49,670 square feet of area, and is currently unimproved with any structures. The Petitioner proposes to construct an approximate 9,900 square foot steel frame building which will house the operations of Johnstone Supply, which is a wholesale distributor of Heating, Ventilation and Air Conditioning equipment and parts (G1 Use), and will store up to 100 gallons of hazardous materials on the location, with various forms of secondary containment. This use requires a Special Permit in the APD. The project has been well vetted by the Yarmouth Board of Health, which issued a Memorandum (the "Memorandum") dated June 15, 2015 regarding the operation of the Petitioner's business at this location. On June 1, 2015, the Petitioner appeared before the Board of Health, which found that the proposal will adequately control all hazardous materials and protect the intent of the APD bylaw. The Board of Health issued its unanimous recommendation to proceed to this Board for relief.

No one spoke in opposition to the proposal. This Board was impressed with the thoughtful Memorandum drafted by Carl E. Lawson, Jr., the Hazardous Waste Inspector from the Board of Health, and was satisfied that with the imposition of the conditions and regulations recited in the Memorandum, that the proposal would meet the requirements under the Bylaw for the issuance of a

Special Permit. As such, the Board of Health Memorandum is hereby incorporated in its entirety by reference. In addition, compliance with the recommendations of the Site Plan Review Comment Sheet, dated May 26, 2015, will be a condition of this relief.

The Board finds that the Petitioner has demonstrated the requirements of Zoning Bylaw §406 for the issuance of a Special Permit, in that the proposal will not be substantially more detrimental nor cause undue nuisance, hazard or congestion and that there will be no substantial harm to the established or future character of the neighborhood or Town. Finally, the Board finds that groundwater quality resulting from on-site waste disposal and other on-site operations will not violate federal or state standards for drinking water at the down gradient property boundary.

Accordingly, a Motion was made by Mr. Igoe, seconded by Ms. Martin, to grant the Special Permit, as requested, incorporating all of the 6 Board of Health Regulations in the Memorandum, specifically recited on Page 5 thereof. The members voted unanimously in favor of the Motion.

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