

MEMORANDUM

TO: North Yarmouth Planning Board

CC: Stephen Roberge P.E., SJR Engineering Inc.
Laurie Bachelder, 527,LLC

From: Kate Burch, Planner, North Star Planning

RE: Deacon Hayes Commons Zoning Board of Appeals Remand

Date: March 7, 2023

Project History

On September 13, 2022, the Planning Board voted to approve the final subdivision and site plan for Deacon Hayes Commons with the findings and conclusions in the planner memo dated July 27, 2022, along with five conditions of approval.

The planning board approval was subsequently appealed. The Zoning Board of Appeals (ZBA) held an appeal hearing on November 28, 2022; the appeal was continued on December 14, 2022 and on January 18, 2023. The ZBA remanded sections of the approval back to the Planning Board, as detailed in the ZBA Notice of Decision dated February 1, 2023.

At the Planning Board meeting on February 14, 2023, the Planning Board voted to hold a public hearing on March 14 for the remand and any issues the applicant requests for an amendment. The Board agreed the applicant would submit any additional information for the remand or any amendments by February 28, 2023.

Submission Materials

The applicant provided a submission to the town on February 27, 2023. This submission includes additional information to address each ZBA remand

item. The submission contains updated plans dated February 28, 2023. Changes to the plans are limited to removal of the previous conditions of approval, identification of Common Open Space on the subdivision plan, and adding the notation of “Amended” to the plan title block.

The ZBA remand issues and the applicant’s submissions in response are summarized below. Additional Findings of Fact from the February 2023 submission have been added to the Findings and Conclusions from the September 13, 2022 Board approval, listed below. The new findings based on the additional submission are underlined.

ZBA Remand Issue 1: Performance Guarantee

A \$100,000 performance guarantee was set by the Planning Board to cover the cost of public improvements associated with the project. The application provided a \$100,000 irrevocable letter of credit based on the estimated costs for water service, catch basin, and sidewalks.

The ZBA remanded to the Planning Board to state whether it followed North Yarmouth Land Use Ordinance (LUO) Section 3.8 for performance guarantees (cited in Section 4.4.E.3.g.9 for site plan), as the ZBA found the Planning Board’s Findings of Fact inadequate.

The ZBA requested that the Planning Board clarify if it “reviewed the amount of the Performance Guarantee under Section 3.8 and if it did, whether it relied upon those costs and whether it took into account inflation, provisions for inspection, and provisions for guarantee release.”

Applicant’s response:

The applicant originally provided a cost estimate to the Planning Board for the water service, catch basin, and sidewalks in the amount of \$100,000. In the February 27, 2023 submission, the applicant provided an updated contract for these improvements in the total amount of \$87,700. The contract states that “inflation is not calculated” in this cost, as this is a fixed-price contract.

As the applicant has already provided a \$100,000 irrevocable letter of credit, which has been reviewed by the Town Attorney, Planning Board, and Select Board, this performance guarantee is satisfactory to cover the cost of construction along with a contingency for inflation.

Findings of Fact:

The Site Plan Findings of Fact #7 and Site Plan Conclusions of Law #6 have been updated to reflect the updated information about the performance guarantee.

ZBA Remand Issue 2: Maine DHHS Wastewater Disposal System Approval

The applicant submitted a set of final plans last revised on August 27, 2022, and later submitted engineered septic system plans at the September 13, 2022 Planning Board meeting.

The ZBA questioned if the Planning Board waived the seven-day rule for submittals at the September 13, 2022 meeting, and requests additional findings on whether there is substantial evidence in the record to support the conclusion that “The Proposed subdivision, with conditions added by the Planning Board, will provide for adequate solid and sewage waste disposal.”

Applicant's response:

The applicant provided in the February 2023 submission a final subsurface wastewater disposal system plan that was submitted to DHHS, as well as a letter of final approval and minimum lot size waiver from DHHS. The submission was received more than 7 days prior to the planned March 14 meeting.

Findings of Fact:

The Site Plan Findings of Fact #2, the Subdivision Findings of Fact #5 and the Subdivision Conclusions of Law #3 have been updated to reflect the inclusion of these letters.

ZBA Remand Issue 3: Yarmouth Water District Approval

The ZBA requested further findings as to whether the Planning Board followed Section 5.4A. The Yarmouth Water District received updated engineered subsurface wastewater disposal system plans until the Planning Board meeting on September 13, 2022, and did not submit written comments to the Planning Board at that meeting.

The ZBA questioned if the Planning Board waived the seven-day rule for submittals at the September 13, 2022 meeting, and if the findings and record supports the subdivision conclusion that “The proposed subdivision will not cause an unreasonable burden on an existing [public] water supply.”

Applicant's response:

The applicant provided in the February 2023 submission a letter from the Yarmouth Water District indicating its approval of the final subsurface wastewater disposal system plan that was presented to and approved by Maine DHHS. This letter has been submitted more than 7 days prior to the planned March 14 meeting.

Findings of Fact:

The Subdivision Findings of Fact #8 and Subdivision Conclusions of Law #3 have been updated to reflect the inclusion of this letter.

ZBA Remand Issue 4: Groundwater Standard

The ZBA requested additional findings to show if the application meets the groundwater standard and state the DHHS Hydrogeologic Assessment by Mark Cenci, dated August 26, 2022, supports this conclusion.

Applicant's Response:

The DHHS Hydrogeologic Assessment by Mark Cenci, dated August 26, 2022, states that wastewater will not adversely affect the quality of groundwater on site or on adjacent property. The Yarmouth Water District has also issued an opinion that the development will not adversely affect the quality and quantity of groundwater within the Groundwater Protection Overlay District.

The applicant provided an additional submission with updated rules for the condominiums that contain the provisions to protect against groundwater contamination that were already approved by the Planning Board.

Findings of Fact:

The Site Plan Findings of Fact #2 and Subdivision Findings of Fact #5 have been updated, and Subdivision Conclusions of Law #22 have been added, to describe this information.

ZBA Remand Issue 5: Final Plan Submission to Planning Board and Yarmouth Water District

The ZBA determined it is not clear if the final plan was properly presented to the Planning Board at least 7 days prior to the September 13, 2022 meeting, and if the final plan was properly presented to the Yarmouth Water District at least 7 days prior to the September 13, 2022 meeting.

Applicant's Response:

The final wastewater disposal plans have been presented to the Yarmouth Water District and the Planning Board more than 7 days prior to the planned March 14 meeting. The Yarmouth Water District provided a February 2023 letter that states the development will not adversely affect the quality and quantity of groundwater within the Groundwater Protection Overlay District.

Findings of Fact:

The Subdivision Findings of Fact #8 have been updated to describe this information.

ZBA Remand Issue 6: Storm Water

The ZBA noted that Site Plan Finding #12 states that "Drainage flows southwest towards the manmade stormwater pond," but that the Planning Board did not state whether or how this finding supports a conclusion that each element of Section 9.2.H(4)(a) has been met.

Section 9.2.H(4)(a) states "Storm water from frequently used parking lots ... shall be diverted away from the Groundwater Protection Overlay District, if

possible, and shall not be channeled into bodies of water. Filter strips and vegetated areas shall be installed and maintained wherever possible.”

Applicant's Response:

The proposed development is located entirely within the Groundwater Protection Overlay District, so stormwater cannot be diverted away from the Groundwater Protection Overlay District, but it will be channeled into an existing manmade detention/retention/infiltration pond located on the development. The area between the parking area and the pond will be vegetated and will not be further developed.

Findings of Fact:

The Site Plan Findings of Fact #12, Site Plan Conclusions of Law # 11 and Subdivision Conclusions of Law #17 have been updated to clarify that the proposed development complies with 9.2.H(4)(a).

ZBA Remand Issue 7: Ownership and Maintenance of Common Open Space and/or Recreation Land

The ZBA had questions about ownership and maintenance of common areas for parking and recreation, and whether declarations of covenants and restrictions, and homeowners' association documents to provide for these common areas and facilities should be provided. The ZBA questioned what the lots and common areas and facilities are, and whether lot setbacks are met.

The ZBA remanded the issue of compliance with Section 10.32(D)(2) to the Planning Board for development of findings and determination of compliance.

Applicant's Response:

During the initial Planning Board review, the developer had not yet decided if it would sell or retain the dwelling units, and thus did not provide information as to the form of ownership of the development common areas. The applicant now wishes to make clear that, though the developer may retain

some units, a condominium association (Deacon Hayes Commons) has been incorporated to own and manage the common areas.

In the February 2023 submission, the applicant provided the draft Declaration of Condominium, and described the lots, rights of unit owners to the individual building lot, and rights of owner as to other common areas.

The amended subdivision plan, dated February 28, 2023, that depicts four separate buildings with contiguous area round each depicted as a separate defined lot. Each lot will be conveyed with rights to the defined building lot, shared in common with the two other unit owners within the building. All unit owners within the development will have access to the remaining “common area” on the plan, which includes all areas outside of defined building lots.

The lot area of the four buildings is in compliance because the lots will be served by an advanced wastewater treatment system and the Yarmouth Water District has confirmed the water quality will not be degraded. Setbacks are in compliance with the Village Center District provisions that apply to this application.

In the February 2023 submission, the applicant provided a draft Declaration of Condominium that establishes the right of owners to the individual building lot as well as to the other common areas of the plan.

The Declaration of Condominium states that all land denoted as “Common Open Space and Recreation Land” on the amended subdivision plan from February 2023 will be reserved for open space and recreation to benefit all unit owners, occupants, and their guests, and that structural development shall not be permitted on this area except to serve such open space and recreation purposes.

The applicant proposed a condition of approval that the Town Attorney shall review and approve any changes to the Declaration of Condominium to ensure consistency with these findings and with the LUO.

Findings of Fact:

The Subdivision Finding of Fact #7 has been updated, and Subdivision Conclusions of Law #23__ has been added, to reflect this additional information.

ZBA Remand Issue 8: Affordable Housing

The ZBA found the Planning Board made no finding as to how the designated affordable housing units would continue to be affordable in compliance with Sections 11.2.(C)(7) and 11.2.(B).

Applicant's Response:

In the February 2023 submission, the applicant clarified that Units #2, 5, 7, 8, 9, and 11 will be designated as affordable housing, and provides the affordability covenants that will be incorporated in the deeds for the affordable units. These covenants are enforceable by the Town.

The applicant proposed a condition of approval that the developer shall submit for review and approval by the Town Attorney and Town Manager any proposed change to the affordable covenants for confirmation that the amendment(s) conform to Section 11.2(C) of the LUO.

Findings of Fact:

An additional Subdivision Finding of Fact #11 and additional Subdivision Conclusion of Law #24 have been added to include a description of the affordable housing and its compliance with the LUO.

Applicant: 527 LLC

Owner: same as the applicant

Location: 521 Walnut Hill Road

Zoning: Village Center and Groundwater Overlay

Tax Map Number: Map 7 Lot 62

Proposed Land Use: four 3-unit residential buildings and a 29-space parking lot

Acreage: 2.24 acres

Suggested Motion: To [**approve/approve with conditions/deny**] the Amended Final Subdivision and Site Plan for Deacon Hayes Commons located at Tax Map 7, Lot 62, with the following findings of Fact and Conclusions in the planner memo dated March 3, 2023 and the following condition of approval:

1. The Town Attorney shall review and approve any changes to the Declaration of Condominium to ensure consistency with these findings and with the LUO.
2. The developer shall submit for review and approval by the Town Attorney and Town Manager any proposed change to the affordable covenants for confirmation that the amendment(s) conform to Section 11.2(C) of the LUO.

Site Plan Review - Findings of Fact:

New findings from the additional submission are underlined.

1. Utilization of the Site
 - The existing site is flat and the development is surrounded by residential homes, an auto shop, a preschool, North Yarmouth Town Hall, and Memorial Park.
 - The proposed impervious area will be approximately 25,418 square feet.
 - No wetlands, vernal pools, or significant wildlife habitat were identified within the project area.
 - Toddy Brook stream is located east of the development and stream buffers are shown on the plan. See Sheet 1 Site & Demolition Plan dated February, 2022.
 - Tree clearing on the site will be minimal and limited to those trees that line Parsonage Road.

2. Utilities

- The residential units will utilize underground electricity, cable communications, telephone and water supply.
- The 12" water main is shown on the Grading & Erosion Control Plan revised June 28, 2022 under Walnut Hill and Parsonage Road.
- The 1" domestic water lines will connect to each of the units.
- Each unit will connect to a septic sewer system. See Sheet 2 Grading & Erosion Control Plan dated February, 2022.
- The applicant has provided an updated groundwater impact analysis from Mark Cenci Geologic Inc. dated August 26, 2022. The single septic system exceeds 2,000 gallons per day and is regulated as an Engineered System by the Division of Environmental Health. The calculations provided shown that the wastewater plume does not exceed 5 mg/liter and is directed east.
- More than 7 days prior to the March 14, 2023, meeting of the Planning Board, the applicant provided a letter from Alexander Pugh, Sr. Environmental Hydrologist with the Maine Department of Health and Human Services dated November 29, 2022, subject: Approval, Minimum Lot Size Waiver. This letter states that the subsurface wastewater system proposed by the project "is not considered to be likely to lower the quality of, or otherwise pose a threat to any lake, pond, stream, river, or tidal waters, any underground water supply, or to the public health, safety, and general welfare."
- More than 7 days prior to the March 14, 2023, meeting of the Planning Board, the applicant provided a letter from Alexander Pugh, Sr. Environmental Hydrologist with the Maine Department of Health and Human Services dated November 29, 2022, subject: Approval, Deacon Hayes Commons Engineered SSWW system. This letter issued an approval of the wastewater system design.
- More than 7 days prior to the March 14, 2023, meeting of the Planning Board, The Yarmouth Water District has provided a letter in February 2023 stating that the proposed wastewater septic system will provide adequate protection to the aquifer.
- In light of applicant's submission of the November 29, 2022 DHHS approvals, the February 2023 YWD letter, and the amended final plan at

least 7 days prior to the March 14, 2023, meeting, the ZBA's February 1, 2023 decision identifying timeliness and waiver issues related to LUO Section 5.7(A)(3)(c) and LUO Section 5.4(A) (Sections 3 and 4 of the ZBA decision) have been addressed and are now moot.

3. Building Standards

- The applicant has submitted exterior building plans that comply with the building standards outlined in Section 10.4 of the Zoning Ordinance.

4. Impact on Community Facilities

- No adverse impact on community facilities will result from the development.

5. Hazardous Materials and Emissions

- No hazardous materials and emissions will result from the development.

6. Exterior Lighting

- All residential units will include porch lights and entrance lights.
- The applicant is proposing full cutoff dark sky lighting for the units.

7. Financial and Technical Capacity

- The applicant has provided a letter of financial capacity from GenX Lending dated May 25, 2022.
The applicant has submitted a revised irrevocable letter of credit in the amount of \$100,000, which covers the anticipated cost of \$87,700 for public infrastructure including 12 water main taps, 4 inch water main service for fire suppression, catch basin with grate and sidewalks. The amount of this performance guarantee allows for 14% inflation, which adequately addresses potential cost increases in light of the short construction schedule.

8. Landscaping, Buffers and Screening

- An 8-foot-tall vinyl stockade fence is shown on the Site & Demolition plan revised June 28, 2022 along the northwestern property line to screen from abutting properties.
- One of the landscaped islands has been relocated to be further away from the disposal area shown on the updated Site & Demolition Plan.
- New trees and shrubs are shown on the site plan between the units and surrounding the parking area. The applicant has provided a list of trees and shrubs to be used on the amended site plan dated May 26, 2022.
- A 5 (five) foot wide grassed esplanade will be added between the sidewalk and Walnut Hill Road.

9. Noise

- The proposed development will not result in noise levels that will be objectionable to surrounding uses.

10. Signs

- No new signs will be included for the project.

11. Storage of Materials

- The project will not include any exposed hazardous outdoor storage material.
- The project will not include any garbage disposal units (see Subsurface Wastewater Disposal System application dated March 9, 2022).

12. Stormwater Control

- Drainage flows southwest towards the manmade stormwater pond. See Sheet WS-1 Watershed Plan dated April 18, 2022.
- A 4-foot-wide drip edge has been provided around the homes to infiltrate stormwater runoff. See WS-1 Watershed Plan dated April 18, 2022.

- The applicant has provided both pre and post development stormwater calculations and the project is anticipated to mitigate peak flows to the stormwater pond.
- A new catch basin will be located over the existing 24” diameter culvert to capture the stormwater runoff from Walnut Hill Road. Details for the catch basin are shown on Sheet 3 Construction Drawings.
- The project will comply with DEP and Soil and Water Conservation District Best Management Practices for stormwater and erosion control.
- The project will add less than an acre of impervious area and therefore will not require a DEP permit under Chapter 500.
- Stormwater from the parking lot will be diverted into an existing manmade detention/retention/infiltration pond and will not be channeled into bodies of water. Vegetated areas will be installed and maintained.

13. Protection of Significant Wildlife Habitat

- No significant wildlife habitat is located within the project area.

14. Access Management, Parking and Vehicular Circulation

- Access to the units will come from the paved driveway off Parsonage Road.
- The applicant requested a waiver from estimated peak hour traffic (Section 4.4f.13). Vehicular traffic to the site will be minimal.
- A turnaround space and “no parking” sign is marked on the site plan revised June 28, 2022 for emergency vehicle access.

15. Pedestrian Ways and Bicycle Access

- A new 5-foot-wide paved sidewalk will be added along Parsonage Road, Walnut Hill Road, and on the southern side of the parking lot.
- The sidewalk located along Walnut Hill Road has been moved further away from the street for safety and construction purposes shown on the Subdivision Plan dated June 28, 2022.

- A 5-foot-wide path is shown connecting from the parking area to the manmade pond.
- Each residential unit will have direct access to the public sidewalk and the sidewalk from the parking area.

16. Off-Street Parking and Loading

- The development includes a 29-space parking lot with ADA accessible parking spaces. See Sheet 1, Site & Demolition Plan and Sheet 4 Construction Details updated March, 2022.
- Parking is adequate to accommodate users during the week.
- The locations of snow removal areas are shown surrounding the easterly side of the parking area on the Site & Demolition Plan revised June 28, 2022.

Subdivision Review – Findings of Fact

1. General Layout: Lots, Blocks, Utilities, Monuments, and Back Lots
 - Each of the buildings are on their own individual lots and meet all dimensional requirements from the Ordinance.
 - Units 4, 8, and 11 will be reserved for affordable housing.
 - Iron pipe monuments are shown at the corners of development boundaries on the Boundary Survey dated May 18, 2021.
 - See #2 Site Plan Review for information about utilities.
2. Erosion and Sedimentation Control
 - See #12 Site Plan Review for information about erosion and stormwater management.
3. Floodplain Management
 - The development is not located in a 100-year floodplain.
4. Historic and Archaeological Sites
 - The development does not contain historic or archaeological resources.
5. Sewage and Solid Waste Disposal
 - The applicant has submitted a Subsurface Wastewater Disposal System application in compliance with the State of Maine Subsurface Wastewater Disposal Rules.
 - The applicant has provided an updated hydrogeologic assessment from Mark Cenci Geologic Inc. dated August 26, 2022. The original hydrogeologic assessment dated May 24, 2022 assumed groundwater flow direction towards the manmade pond from four wastewater disposal areas located 100 feet apart. The plan has since been revised to include a single combined wastewater disposal area to be used by all residential units (see Grading & Erosion Control Plan).

- The applicant provided a letter from Alexander Pugh, Sr. Environmental Hydrologist with the Maine Department of Health and Human Services dated November 29, 2022, subject: Approval, Minimum Lot Size Waiver. This letter states that the subsurface wastewater system proposed by the project “is not considered to be likely to lower the quality of, or otherwise pose a threat to any lake, pond, stream, river, or tidal waters, any underground water supply, or to the public health, safety, and general welfare.”
- The applicant provided a letter from Alexander Pugh, Sr. Environmental Hydrologist with the Maine Department of Health and Human Services dated November 29, 2022, subject: Approval, Deacon Hayes Commons Engineered SSWW system. This letter issued an approval of the wastewater system design.

6. Soil Suitability

- The soils are adequate to support the development. See Subsurface Wastewater Disposal System application, “Soil Profile Description and Classification” dated March 9, 2022.

7. Recreation and Open Space Land Development

- The applicant submitted an amended subdivision plan, dated February 28, 2023, that depicts four separate buildings with contiguous area round each depicted as a separate defined lot. Each unit will be conveyed with rights to the defined building lot, shared in common with the two other unit owners within the building. All unit owners within the development will have access to the remaining “common area” on the plan, which includes all areas outside of defined building lots.
- In February 2023, the applicant submitted a draft Declaration of Condominium that establishes the right of owners to the individual building lot as well as to the other common areas of the plan.
- The Declaration of Condominium provides that all land denoted as “Common Open Space and Recreation Land” on the amended subdivision plan from February 2023 will be reserved for open space and recreation to benefit all unit owners, occupants, and their guests.

and that structural development shall not be permitted on this area except to serve such open space and recreation purposes. The Declaration provides the Town of North Yarmouth as well as unit owners the right to enforce the covenant.

8. Water Supply

- The development will utilize public water.
- The applicant has attached a letter from Yarmouth Water District dated June 29, 2022 regarding capacity to serve the project.
- More than 7 days before the March 14, 2023 Planning Board meeting, Applicant submitted a final amended site plan to the Town, a copy of which was provided to the Yarmouth Water District.
- The applicant has provided a letter from the Yarmouth Water District from February 2023 stating the District is satisfied that the proposed wastewater septic system will provide adequate protection to the aquifer.
- In light of applicant's submission of the amended final plan at least 7 days prior to the March 14, 2023, meeting, the ZBA's February 1, 2023 decision identifying timeliness and waiver issues related to LUO Section 5.7(B) (Sections 7 of the ZBA decision) have been addressed and are now moot.

9. Water Quality

- The development will not diminish or adversely impact water quality.
- The applicant has provided an updated groundwater impact analysis from Mark Cenci Geologic Inc. dated August 26, 2022. The single septic system exceeds 2,000 gallons per day and is regulated as an Engineered System by the Division of Environmental Health. The calculations provided shown that the wastewater plume does not exceed 5 mg/liter and is directed east.
- The Yarmouth Water District has provided a letter in February 2023 stating that the proposed wastewater septic system will provide adequate protection to the aquifer.

10. Subdivision Street Connectivity

- See #14 Site Plan Review access management and vehicular circulation standards.

11. Affordable Housing

- Units #2, 5, 7, 8, 9, and 11 are designated as affordable, with covenants to be incorporated in the deeds for the affordable units which limit the sale or rental of those units in accordance with the Town's affordability provisions, for a period of 25 years.

Site Plan - Conclusions of Law:

1. The development **will** reflect the natural capabilities of the site to support development.
2. Utilities serving developments in the Village Center District and Village Residential District **will** be installed underground.
3. The proposed development **will not** result in a negative impact to the environment or to the community facilities or services.
4. The development **will not** contribute emission of dust, ash, smoke or other particular matter.
5. The proposed development **will** have adequate exterior lighting to provide for its safe use during nighttime hours.
6. The applicant **will** have the financial capacity to complete the project. The applicant has submitted a revised letter of credit that meets the standards of Section 3.8 of the LUO and may be drawn upon by the Town if the applicant has not properly completed the stated improvements within the projected construction schedule. The applicant shall notify the Code Enforcement Officer before beginning construction on the public infrastructure improvements, in order to allow accurate monitoring of the time for completion of the improvements. The performance guarantee shall not be released unless and until the Planning Board had determined to its satisfaction that the improvements meet or exceed applicable design and construction requirements. If the applicant seeks an extension of the construction schedule, it must submit the extension request to the Planning Board and provide an updated performance guarantee based on updated costs for completion of the improvements.
7. The landscape **will** be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal, retaining existing vegetation where desirable, and keeping any grade changes in character with the general appearance of neighboring areas.
8. The development **will** control noise levels such that it **will not** create a nuisance for neighboring properties.
9. ~~The size, location, design, color, texture, lighting and materials of all exterior signs **will/will not** detract from the design of proposed buildings and structures. (N/A)~~

10. ~~Exposed non-residential storage areas, exposed machinery, and areas used for storage **will/will not** have sufficient setbacks and screening.~~
(N/A)
11. Adequate provisions **will** be made for the collection and disposal of all storm water that runs off proposed roads, parking areas, roofs and other surfaces, through the diversion of stormwater from the parking lot into an existing manmade detention/retention/infiltration pond and installation and maintenance of vegetated areas, in accordance with Section 9.2(H)(4)(a) of the LUO.
12. Developments **will** be designed to protect and conserve important wildlife habitat to the greatest extent feasible.
13. The layout of the site **will** provide for the safe movement of passenger, service, and emergency vehicles throughout the site.
14. The site plan **will** provide for a system of pedestrian ways within the development appropriate to the type and scale of development.
15. Parking areas **will** be constructed to protect the natural environment and visual character of the community, improve pedestrian safety and accessibility, and promote the quality of life in developed areas.

Subdivision - Conclusions of Law:

1. The proposed subdivision **will not** result in undue water or air pollution.
2. The proposed subdivision **will** have sufficient water available for the reasonably foreseeable needs of the subdivision.
3. The proposed subdivision **will not** cause an unreasonable burden on an existing water supply, as evidenced by the February, 2023 letter from the Yarmouth Water District, the November 29, 2022 DHHS approval of the wastewater system design, and the August 26, 2022, groundwater impact analysis from Mark Cenci Geologic, Inc.
4. The proposed subdivision **will not** cause unreasonable soil erosion or reduction in the capacity of the land to hold water.
5. The proposed subdivision **will not** cause unreasonable highway or public road congestion or unsafe conditions.
6. The proposed subdivision **will** provide for adequate solid and sewage waste disposal.
7. The proposed subdivision **will not** cause an unreasonable burden on the ability of a municipality to dispose of solid waste and sewage.
8. The proposed subdivision **will not** place unreasonable burden on the ability of the local governments to provide municipal or governmental services.
9. The proposed subdivision **will not** have an undue adverse effect on the scenic or natural beauty of the area.
10. The proposed subdivision **will** be in conformance with a duly adopted subdivision regulation or ordinance.
11. The subdivider **will** have adequate financial and technical capacity to meet the standards.
- ~~12. Whenever situated, in whole or in part, within 250 feet of any pond, lake, river or tidal waters, the proposed subdivision **will/will not** adversely affect the quality of such body of water. (N/A)~~
- ~~13. The 100-year flood boundary **is/is not** shown on the plan. (N/A)~~
- ~~14. All freshwater wetlands **have/have not** been identified on maps submitted as part of the application. (N/A)~~
- ~~15. All farmland within the proposed subdivision **has/has not** been identified on maps submitted as part of the application. (N/A)~~

- ~~16. Any rivers, streams, or brooks within or abutting the proposed subdivision **have/have not** been identified on maps submitted as part of the application. (N/A)~~
17. The proposed subdivision **will** provide for adequate storm water management. The Stormwater from the parking area cannot be diverted away from the Groundwater Protection Overlay District due to the property's location entirely within the District. It will be channeled into an existing manmade detention/retention/infiltration pond located within the development, as depicted on the plan. The area between the parking area and the pond is appropriately vegetated and is reserved against future development.
- ~~18. Any lots in the proposed subdivision with frontage on a river, stream, brook, or great pond **have/do not have** a lot depth to shore frontage ratio greater than 5 to 1. (N/A)~~
- ~~19. The long term cumulative effects of the proposed subdivision **will/will not** unreasonably increase the great pond's phosphorus concentration during the construction phase and life of the proposed subdivision. (N/A)~~
- ~~20. If the subdivision crosses municipal boundaries, the proposed subdivision **will/will not** cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality. (N/A)~~
- ~~21. Timber on the parcel **has/has not** been harvested in violation of liquidation harvesting statutes and rules. (N/A)~~
22. The proposed subdivision **will not**, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater on site or on adjacent properties, including the quality and quantity of ground water within the Groundwater Protection Overlay District, as evidenced by the August 26, 2022 Hydrogeologic Assessment of Mark Cenci, the November 29, 2022, letters from DHHS and the February 2023 letter from the Yarmouth Water District.
23. The development **conforms** to Section 10.23 of the LUO as follows:
A. The open space area is designed and landscaped to provide for recreational uses without infringing on the privacy of the residential units.

- B. 1. The land denoted on the Amended Plan as "Common Open Space and Recreation Land" will be permanently reserved as open space via the Declaration of Condominium and deeds referencing the Declaration. The reserved land is 12,752 square feet and is contiguous with other undeveloped common area totaling over 75,000 square feet. The open grassy area and inclusion of the manmade pond are of suitable character for open space and recreation uses.
2. Section 10.23 does not address multifamily buildings, and includes a table stating "guidelines for the percentage of total parcel to be reserved for common open space and recreation land." These guidelines base the amount of land to be reserved on the average size of "single family lots." Although this development does not propose single family lots, the four building lots are each under 10,000. Rounding up to the 10,000 square feet listed in the chart, and applying the corresponding 13% minimum parcel reservation, the Common Open Space and Recreation Land shown on the Amended Plan exceeds 13% of the total parcel.
- C. N/A
- D. The Common Open Space and Recreation Land will be owned by the condominium association, in conformance with subsection D(1)(a).
- E. The Condominium Association conforms with Section 11.9 of the LUO. The applicant has incorporated the Condominium Association. Each deed of conveyance will reference the Declaration of Condominium, which provides for membership by each lot owner as well as the unit owners' rights in the association and to the common open space and other common areas, and details the Association's obligation to maintain those areas. The Declaration provides that the applicant ("Declarant") will convey the common elements to the Association once it has conveyed 75% of the units.
24. The Affordable Housing standards at Section 11.2(C) of the LUO **are met:**

1. The affordable units will be contained within buildings containing market-rate units and will be of the same design and character.
2. The affordable units contain less than 1,500 square feet each.
3. The affordable units will be constructed concurrently with the remainder of the development.
4. N/A
5. N/A
6. The designated affordable units exceed the standard of 20% of the total number of residential dwelling units in the proposed development.
7. The applicant has submitted covenants to be incorporated into the deeds for the affordable units which limit the sale or rental of those units in accordance with the affordability provisions set forth in subsection 11.2(C)(7) and with the definition of "Affordable Housing" set forth in Section 12 of the LUO, for a period of 25 years.
8. As a condition of approval, the developer shall submit for review and approval by the Town Attorney and Town Manager any proposed change to the affordable housing covenants for confirmation that the amendment(s) conform to Section 11.2(C) of the LUO and these findings of fact. Prior to issuance of the certificate of occupancy for a designated affordable unit, the developer shall convey the unit to itself or a successor entity with inclusion of the affordability covenants so that they may bind those units prior to any sale or rental thereof.