



## Zoning Board of Appeal Meeting Minutes

November 28, 2022, at 5:00 PM

Wescustogo Hall & Community Center

**Call to Order:** (20:05-20:25) Meeting started with the Pledge of Alliance. Zoning Board of Appeals (Board) Members Present: Thaddeus Day, Jim Briggs, Norman Smith, Paul Napolitano, Kevin Robinson, and Alternate Mike Mallory. Board Chair Napolitano called the meeting to order at 5:00 PM

**Minutes:** (20:26-21:35) Board Member Robinson, seconded by Board Member Smith moved to approve September 28, 2022, meeting minutes. Vote 4 yes/0. Board Member Day abstained.

Board Member Smith, seconded by Board Member Robinson moved to approve the October 03, 2022, meeting minutes. Vote 4 yes/0. Board Member Day abstained.

**Administrative Appeals: (21:36-45.25)** Chair Napolitano asked the attorney who delivered a letter to the Board at the beginning of the meeting requested recusal of several Board members to provide an explanation.

Kristin Collins, Attorney for 527 LLC, requested a recusal by Chair Napolitano, Board Member Robinson, and Alternate Mallory due to bias against the project. Chair Napolitano said he was not biased against the project but objected to the late delivery of the letter, recused himself, and stood up and left the Board's area.

Vice-Chair Robinson took over the meeting as Acting Chair. He explained that he signed the petition in his capacity as President of the North Yarmouth Veteran Memorial Park, but that in his personal capacity, he was impartial, and so refused to recuse himself.

Attorney Collins stated that signing the petition was evidence of bias and a conflict of interest.

James Katsiaficas, Attorney for the Board, advised that all parties are entitled to speak to the issue.

Keith Richard, Attorney for the Dostilios, objected to the recusal request because Kevin Robinson was president of NYVMP and acting on their behalf. He was not biased and should not be recused.

Board members Jim Briggs, Norman Smith and Thaddeus Day felt that Acting Chair Robinson acted as president of NYVMP and that he was not biased. Board Member Briggs, seconded by Board Member Smith moved to not recuse Acting Chair Robinson. Vote 3 yes/0.

Attorney Collins stated that alternate Board member Mallory should recuse himself due to a conflict of interest.

Attorney Richards had no comments when given his opportunity to speak and ask questions.

Attorney Katsiaficas suggested that the four Board members vote whether alternate Board member Mallory must be recused.

Acting Chair Robinson, seconded by Board member Day moved that alternate Board member Mallory should not be recused. Vote 3 yes/ 1 Board member Briggs.

Acting Chair promoted alternate Board member Mallory to full member status to fill the vacancy caused by Chair Napolitano's recusal.

**Appeal Public Hearing:** (45.19-1:17:13) Deacon Hayes Commons Major Subdivision

Acting Chair Robinson welcomed everyone to the meeting and public hearing, and read a statement explaining the process and public participation.

Attorney Richard stated that his clients want the Town's Land Use Ordinance ("LUO") followed. He noted that the appeal raised fourteen issues, but was limited his presentation to the following six issues:

**Issue 1:** The septic system design.

**Issue 2:** The Parking Area.

**Issue 3:** Performance guarantee.

**Issue 4:** Schools (LUO Section 5.8 C).

**Issue 5:** Water district comments and review.

**Issue 6:** The open space and common area. Atto

Attorney Richard offered a packet of documents and photographs to the Board.

Attorney Collins, (1:17:14-2:01:36) for the Applicant objected to the Appellants' offer of documents and photographs to the Board, since these had not been presented to the Planning Board.

Acting Chair Robinson asked Attorney Katsiaficas to speak on the matter of the documents. He asked if the Planning Board had seen this information and whether the plans and photographs part of the Planning Board record? If they were not, they should not be accepted by the Board. Acting Chair Robinson, seconded by Board member Day moved they will take this under advisement.

Attorney Collins continued to address the Appellants' arguments.

Acting Chair Robinson thanked Attorney Collins and asked if there are any questions. Attorney Richard spoke and stated that although these may appear to be technical issues, they are requirements of the LUO. Attorney Richard explained he did not try to sneak in evidence that was not appropriate. In the April minutes, there were comments by the engineer that there were mature trees along the boundary line, and it is information the Planning Board had and can be used in the Appeal. Page one of the Planning Board finding of facts, number one, utilization of the site will be limited to those trees that line Parsonage Road. The factual assumption was wrong, and it was an issue that should be sent back to the Planning Board. Section 10.2 was never applied because based on the finding of fact, the Planning Board concluded that there was no common area or space, and we know that is wrong. Section 10.2 has guidelines about the common space. You can get a waiver for minor subdivisions, but this is major.

Acting Chair Robinson asked to hear from Eric Gagnon, Superintendent of the Yarmouth Water District, regarding the septic system plans and documents provided to the District, and Mr. Gagnon addressed the matter.

**Public Comment (2:01:37-2:10:55)**

Link Merrill, 1572 North Road, felt that he Planning Board did not follow the LUO and cited specific parts of the plan he felt went against the ordinance.

Acting Chair Robinson stated that we must be careful to avoid presenting new information. The roadway was new information and not in the package and should not be considered.

Judy Potter, 551 Walnut Hill Road, was concerned about the LUO not being followed, the septic system, and lack of information provided to the abutters and Planning Board members.

Ryan Thompson, 5188 Walnut Hill Road, was concerned about the parking lot and not much of a buffer between his property.

Attorney Richard had no comments on the public comments.

Attorney Collins addressed the concerns about the trees and the Yarmouth Water District. Board member Day asked a question about the tree cutting and Attorney Collins provided an answer.

Attorney Richard commented on the trees being cut down.

Board member Mallory asked both attorneys about Judy Potter's statement regarding the size of the project and the parking.

Attorney Collins stated Mr. Mallory raised an issue that is not even in the appeal.

Laurie Bachelder, 865 Oak Hill Road for Applicant 527 LLC, provided an explanation on why the trees were cut down.

Judy Potter, 551 Walnut Hill Road, raised her concern about the deed to the project property. Acting Chair Robinson stated that is true but does not have to be done before approval. Attorney Collins states it also is not a part of the appeal and should not be discussed tonight.

Linc Merrill, 1572 North Road, raised concerns about the common land and setbacks.

Acting Chair Robinson stated he feels he needs to review the Planning Board record materials and have another meeting. Board Member Day suggested they continue. The Board took a break.

**Break (2:42-2:52.27)**

**Appeal Public Hearing resumed: (2:52:27-4:33)**

Acting Chair Robinson started the review process through each of Appellants' arguments.

1. LUO Section 3.8B type and guarantees.

2. LUO Section 2E Boundaries and setbacks. Board Member Day talks about section 10.23 which is where common land is supposed to be discussed. Board member Day advised he does not know what side or rear setbacks should be. Day advised we need a plan from the Planning Board that defines the use of all areas of the property. Acting Chair Robinson states that if we do not know how the land is going to be used than they need to address all issues of the LUO. Attorney Richard withdrew this argument. The Board moved on to the next section.

3. LUO Section 5.7A3C.

**Public Comments:**

Sol Dostilio, 15 Parsonage Road, spoke on the septic system plan.

Attorney Collins responded to the issue raised about the septic system plan.

Richard Parenteau, 52 Pine Ridge Road, commented on LUO Section 5.6, preliminary plan for major subdivision

Attorney Katsiaficas responded to the comment on Section 5.6, preliminary plan for a major subdivision. Acting Chair Robinson stated we will get options from Board members and remand the matter back to the Planning Board to ask if LUO Section 5.7 (3) support was met.

4. LUO Section 5.4, special submission requirements of the Land Use Ordinance. Concern was raised about notification and provision of the updated septic plan to the Planning Board and the Yarmouth Water District.

Acting Chair Robinson wanted 9/8/2022 correspondence to be part of the record. He wanted to know if the Planning Board followed the 7-day rule or if it was waived. Do they need an updated plan in writing from the Yarmouth Water District? These are questions to take back to the Planning Board.

Acting Chair Robinson inquired about a 3-hour limit to meetings. Attorney Katsiaficas states there is nothing in the current Board Bylaws on time; the Board will follow up on this issue at a future meeting.

Acting Chair Robinson suggested ending this meeting. Attorney Katsiaficas recommended that the Board first close the public meeting and then continue deliberations. Acting Chair Robinson, seconded by Board member Day moves to close the public meeting. Vote 4 yes/0 Alternate Board Member Mallory abstained.

Board member Day, seconded by Acting Chair Robinson, moved to continue the appeal to a future date. Vote 4 yes/0. Board member Mallory abstained.

**Adjournment** Board Member Day, seconded by Board Member Briggs, moved to adjourn the Board meeting at 9:18PM. Vote 4 yes/0.