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November 29, 2022

VIA EMAIL

Town of North Yarmouth
Attn: Planning Board
10 Village Square Road
North Yarmouth, ME 04097

RE: Deacon Hayes Development; Request for Amendment and Additional Findings; 521 Walnut Hill Road

Dear Planning Board members:

527 LLC hereby requests amendment of its site plan approval to address certain areas of the findings of fact which require further specificity, and to address procedural concerns raised by abutters in an appeal currently being considered by the Board of Appeals. It is our hope that these amendments will satisfy any concerns raised in the appeal and therefore eliminate the need for any remand that might otherwise be deemed necessary.

1. Engineered System Review.

527 LLC has diligently pursued approval from Maine DHHS of its engineered wastewater system design and required minimum lot size waiver, and has just received the approval of both. Copies of these documents are enclosed. As such, we request that the Planning Board consider the fact of these approvals and find that any requirement for submission of the DHHS permits prior to final approval has been met. The appellants have also challenged that there is no written statement in the record from the Yarmouth Water District following review of the system design that was ultimately presented to the State. In order to address this concern, we have sought and will be providing the written comment from the District.

2. Deed.

The Planning Board will recall that abutters challenged the deed provided with the application on the ground that it erroneously included land that is not within the correct property boundaries. However, because the deed did correctly include the development area, the Planning Board found it to provide standing as needed. Nevertheless, we are providing a copy of the release deed that will be recorded to correct the description (see enclosed).

3. Open Space.

We are requesting that the Planning Board make additional findings to (1) correct the current statement in the Findings of Fact (#7) that “the development will not include land for recreation or open space development.” We understand from Mr. Smith that this finding was intended to reflect the fact that this was not proposed as an open space development to take

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advantage of development bonuses. However, because open space and recreational areas are to be provided as part of the plan, the current finding is not entirely accurate as written. We further request that the Planning Board develop additional findings, based upon the enclosed Amended Subdivision Plan, to address the open space standards in Section 10.23 of the LUO.

The enclosed Amended Subdivision Plan demonstrates that approximately 13,000 square feet will be reserved against further development as conservation land. All common area, including the conservation area, is to be transferred to a homeowners' association to be formed, and all unit owners (including developer-retained units) will be made subject to covenants contained within the Declaration of Condominium (see draft enclosed) that reserves the common areas for the general common use of dwelling unit owners and occupants, and reserves the denoted "Common Open Space and Recreation Land" to be held for conservation purposes and not to be developed except in support of open space and recreational activities. The Declaration of Condominium will include provisions allowing the Town of North Yarmouth to enforce the conservation covenants along with the unit owners.

Please note that Section 10.23 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, we have considered the average size of the residential lots and are reserving over 13% of the parcel for conservation.

In order to address the Section 10.23 requirements, we suggest that the Planning Board make the following finding:

The requirements of Section 10.23, Recreation and Open Space Land in Developments, are met. An area denoted on the submitted Amended Subdivision Plan as "Common Open Space and Recreation Land" will be owned by a homeowners' association to be formed and reserved through appropriate covenants within or referenced by the Declaration of Condominium to be incorporated by reference in deeds for all units within the development. The covenants will prevent the Common Open Space and Recreation Land from being developed and reserve the land for open space and recreational purposes, with the Town of North Yarmouth and lot owners having rights to enforce the covenants. Additional denoted Common Area will also be owned by the homeowners' association.

As a condition of approval, (1) all unit owners including the developer shall be members of a homeowners' association to be formed which will hold title to all common areas, including the designated Common Open Space and Recreation Land." (2) the Town Attorney shall review all homeowners' association and covenant documents for conformance with this condition and Section 10.23 (as in effect December 2022), prior to commencement of construction. (3) the Amended Subdivision Plan shall be recorded in the Cumberland County Registry of Deeds with reference to the original approved site plan.

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4. Buffering

The appeal raised concerns about whether previously existing trees in the line of the proposed and approved stockade fence between the Dostilio property and 527 LLC were intended to remain to provide additional visual buffer. We seek clarification that the approved plan did not propose, and the Planning Board did not require, that those trees remain. We further request a finding that buffering pursuant to Section 10.14(2) is not required for this development because pursuant to that section, buffering is only required “where there is a transition from one type of use to another use and for screening of mechanical equipment and service and storage areas.” Since this residential use abuts other residential uses, screening is not required.

Thank you for your consideration. We look forward to being heard at the meeting on December 13, 2022.

Sincerely

A handwritten signature in cursive script, appearing to read "Kristin M. Collins".

Kristin M. Collins