

On September 14, 2023, on a motion by Mr. Fraprie seconded by Mr. Igoe, the Board voted 5-0 to approve these minutes.

**TOWN OF YARMOUTH
ZONING BOARD OF APPEALS
MINUTES for AUGUST 24, 2023**

YARMOUTH TOWN CLERK

'23SEP19PM2:18 REC

The Yarmouth Board of Appeals met in quorum at 6:00p.m. on Thursday, August 24, 2023 in the Hearing Room at the Yarmouth Town Offices, located at 1146 Route 28, South Yarmouth, MA. The meeting was held in hybrid mode, where the public could attend in person or via Zoom.

Board Members Present and Voting: Chairman DeYoung, Mr. Igoe, Mr. Martin, Mr. Fraprie, Mr. Mantoni, and Ms. Murphy (Alternate).

Staff Present: Dolores Fallon; Mark Grylls, Building Commissioner

Due to technician error in video recording of the hearing: No audio between 0:23:45 and 1:09:41 (end of 5047, all of 5045, beginning of 5046). While sound could be heard via Zoom during the hearing, the sound could not be heard on television or on the recording.

PETITION 5047: Safelite Auto Glass Corporation, 40 Whites Path, South Yarmouth, MA. Map & Lot #: 97.16. Zoning District: B-1 & APD. The Applicant seeks a Special Permit per §104.3.2(4) to change or extend a preexisting, nonconforming use (L5) for a vehicle glass repair, replacement and recalibration facility.

Attorney Andrew Singer; James Berthel, Regional Manager, Safelite Auto Glass. In addition, Kevin Sylver (property owner of 40 Whites Path) was in the audience.

Attorney Singer presented an overview:

- Space is a one-story building, 5,082 square feet.
- Tenant is changing; use is not changing (L5 Use); not proposing site changes.
- Health Department reviewed in connection with Aquifer Protection District requirements, and issued a Determination of Non-Applicability.

Board Questions/Answers:

- Hours of operation: 8am-5pm
- 70% of work is done on-the-road via company vans. 30% of the work done on-site is performed on vehicles inside the building/garage. ~3-4 customer vehicles on-site during a two-hour timeframe. Customer appointments are spaced out as jobs are completed.
- Safelite will be a less intensive use than previous business (retail auto parts store). Behind the business is Bayside Tent and Table.
- Prefer trees in front, parking on the side, and no cars backing out to Whites Path.
- Any vehicles stored overnight (company vans or customer vehicles) are locked inside.
- Petitioner has not conducted a new parking calculation. Property owner says front space has been used for parking, but most people pull up on the side.
- Deliveries are made after-hours (~8pm); glass is rolled into the garage bays.

On September 14, 2023, on a motion by Mr. Fraprie seconded by Mr. Igoe, the Board voted 5-0 to approve these minutes.

Chairman DeYoung reads from the petitioner's application for Determination of Non-Applicability related to the Aquifer Protection District, and asks the petitioner about the use of any hazardous materials.

No Public Comments.

Vote:

A motion was made by Mr. Fraprie and seconded by Mr. Martin to approve the Special Permit, as requested with the following conditions: 1) do not stripe the gravel "parking area" in front; 2) plant two 3-inch caliper trees (one tree on either side of the walkway).

On a roll call vote (5-0), the Special Permit, with the stated conditions, was approved.

- Mr. Mantoni: AYE
- Mr. Igoe: AYE
- Mr. Fraprie: AYE
- Mr. Martin: AYE
- Chairman DeYoung: AYE

Attorney Singer will draft the decision for Chairman DeYoung's review.

PETITION 5045: (continued from 8/10/23) **Gail LiDonni, Donna Zalauskas, Nancy Barbieri, J. Ellen Pace, Property Location: 33-37 Seaside Village Road, South Yarmouth, MA. Map & Lot #: 25.298. Zoning District: R-25 & HMOD-2.** The Applicant seeks to reverse the decision of the Building Commissioner, dated June 5, 2023, for clarification/resolution of apparent conflict between use of transient definition as it relates to seasonal employees residing in hotels/motels and Zoning Bylaw §404.5 regarding seasonal employee housing at hotels/motels.

Gail LiDonni, Donna Zalauskas, Nancy Barbieri appeared in-person. J. Ellen Pace attended via Zoom. Ms. LiDonni served as spokesperson for the group.

Prior to the hearing, the following property owners submitted letters in support of this petition:

- Leonard and June Halio, 163 Ocean Avenue, South Yarmouth
- Ken Scarry, 30 Seaside Village Road, South Yarmouth
- Paul and Tina Salvatore, 3 South West Drive, South Yarmouth

In the Zoning Bylaw, Ms. LiDonni noted the distinct definitions and rules for "transients" as a different form of traveler from that of "seasonal employees" (April to October), as well as §202.3: Where a proposed use might be classified under more than one of the following classes, the more specific classification shall determine permissibility; if equally specific, the more restrictive shall prevail. Also, Massachusetts General Law Chapter 140, Section 27, requires a hotel register to be retained "...by the holder of the license for a period of at least one year after the date of the last entry therein, and shall be open to the inspection of the licensing authorities, their agents and the police."

On September 14, 2023, on a motion by Mr. Fraprie seconded by Mr. Igoe, the Board voted 5-0 to approve these minutes.

The petitioners requested the ZBA to reverse the decision of the Building Commissioner, correctly apply §404.5 (Seasonal Employee Housing at Motels/Hotels), and work with the Planning Board to clarify the definition of “transient”.

Chairman DeYoung asked Building Commissioner Mark Grylls to come to the podium.

Building Commissioner Grylls confirmed a permit for 15% employee housing from April 1 to October 31 at the Village Green Motel.

Board Questions/Answers:

- Building Commissioner Grylls is not the licensing authority. He cannot inspect the hotel register at the Village Green Motel, and has no evidence that seasonal employees make up more than 15% occupancy.
- Chairman DeYoung noted that the ZBA does not legislate, that Zoning bylaws are voted at Town Meeting, and that there is no evidence of seasonal employee housing higher than 15% occupancy.

No Public Comments.

Board Discussion:

Mr. Igoe suggested that the petitioners request the hotel register from the proper authority.

Vote:

A motion was made by Mr. Igoe and seconded by Mr. Mantoni to uphold the decision of the Building Commissioner.

On a roll call vote (5-0), the decision of the Building Commissioner was upheld.

- Mr. Mantoni: AYE
- Mr. Igoe: AYE
- Mr. Fraprie: AYE
- Mr. Martin: AYE
- Chairman DeYoung: AYE

PETITION 5046: NSTAR Electric Company dba Eversource Energy, 484 Willow Street, West Yarmouth, MA. Map & Lot #: 73.8, 73.10.1.1, 73.11. Zoning District: B-3, APD, R.O.A.D. The Applicant seeks Variances from §301.4.4 for retaining 4” caliper trees and planting 2” instead of 3” caliper trees; from §301.4.6 for interior parking island landscaping; and from §301.4.7 for driveway spacing, to construct a vehicle staging lot.

Jason St. Martin, Facilities Manager, Eversource, and Jack Moriarty, Moriarty & Associates appeared in-person. Emily Williamson, Civil Engineer for Shive-Hattery in Iowa, appeared via Zoom.

On September 14, 2023, on a motion by Mr. Fraprie seconded by Mr. Igoe, the Board voted 5-0 to approve these minutes.

The vehicle staging lot is to support Cape-centric storms. Adding a fire hydrant on the site per the Fire Department's request. Eliminating the parking lot island in order to "stack" 97 vehicles. Eversource is looking for parcels to own and use as vehicle staging lots during a major outage on the Cape.

Board Questions/Answers:

- Lot is across from the airport, so 3" caliper trees would not meet the FAA limits on height of mature trees (i.e., 20 feet) and is the reason for the 2" caliper trees request.
- Lights will only be "on" when the lot is "operational". When there's nothing happening, everything is shut down.
 - See E101 in Plan Set for the lighting plan (which has been approved by the FAA).
- Petitioner is proposing a 6-foot chain link fence.
 - Board would want an 8-foot black chain link screened fence.
- Feedback: Land has been "stripped". Looks like a bomb went off.
 - See C401 in Plan Set for each tree that will be planted to screen the parking lot.
- Petitioner is *not proposing* an irrigation system on the property.
 - Board would want an irrigation system, shown on a plan, to maintain the trees.
- Mr. Fraprie concerned about maintaining the bike trail easement, ensuring adequate buffer on the side, and a recent approval for solar.
 - Petitioner says solar is not on this parcel; separate project.

Chairman DeYoung asked Building Commissioner Mark Grylls to come to the podium.

Building Commissioner Grylls confirmed the Town Planner's comments by reading from the Site Plan Review document: "Recommend increasing the front yard buffer to a minimum of 30', minimizing gravel/paved area as much as possible (especially in the front corners where additional buffering could be provided), eliminating the 'future trail' shown in the south side buffer."

Board Members want to maintain the bike trail easement and a proper vegetated buffer, so that bike riders see trees, not an expanse of gravel.

No Public Comments.

Board Discussion:

Meet criteria for Variances due to hardship: There is a safety concern of operating on the site with an island in the parking lot. The petitioner is creating a public safety service for the people of Cape Cod by pre-positioning this equipment in times of storms.

Vote:

A motion was made by Mr. Martin and seconded by Mr. Fraprie to approve the Variances, as requested, with the following conditions: 1) surround the entire perimeter with an 8-foot-tall black chain link screened fence; 2) irrigate and maintain all new plantings; 3) maintain a 20-foot

On September 14, 2023, on a motion by Mr. Fraprie seconded by Mr. Igoe, the Board voted 5-0 to approve these minutes.

vegetated buffer, or if it no longer exists, re-plant a 20-foot vegetated buffer, along the southerly property line; 4) one-year review with the Board maintaining authority to require additional landscaping.

On a roll call vote (5-0), the Variances, with the stated conditions, were approved.

- Mr. Mantoni: AYE
- Mr. Igoe: AYE
- Mr. Fraprie: AYE
- Mr. Martin: AYE
- Chairman DeYoung: AYE

Other Business:

Seasons Market on Station Avenue

Mr. Martin raised concerns about the site clearing for the Seasons Market on Station Avenue. Despite Mr. Martin's hopes that the site would not be stripped clear, including keeping the full-size trees in the front buffer, the site has been stripped clear.

Building Commissioner Mark Grylls noted that the owner's plan was to retain any trees that they could, that any trees that couldn't be saved would be replaced, and after installing any utilities, they will replace any buffers that they need to cut into.

Meeting Minutes from 07.13.23 & 07.27.23

A motion was made by Mr. Martin and seconded by Mr. Fraprie to approve both the July 13 & July 27, 2023 minutes. On a voice vote (5-0), the minutes for both the July 13 & July 27, 2023 were approved.

Zoning Administrator discussion

- The appointment of a Zoning Administrator (which would be one of the Board Members) is allowed under the Zoning Board of Appeals' Rules & Regulations.
- Jay Talerman, Town Counsel, attended via Zoom, and confirmed Chairman DeYoung's statement that appointment of a Zoning Administrator is the Board's decision to make.
- Dolores Fallon, Office Administrator for the ZBA, noted that separate Zoning Administrator hearings has an impact on resources beyond the ZBA Office, such as the Assessor's Office for abutter lists; the recording of hearings; the Town Clerk's office for decisions; and the time and expertise of the Building Commissioner.

Mr. Igoe made a motion to table the discussion on the appointment of a Zoning Administrator, and Mr. Fraprie seconded. On a voice vote (5-0), the request to table the discussion on the appointment of a Zoning Administrator, was approved.

Adjournment: Mr. Igoe made a motion to adjourn, and Mr. Fraprie seconded. The August 24, 2023 Zoning Board of Appeals meeting adjourned at 8:04pm.