



CITY OF SALEM PLANNING BOARD

Form C – Decision
Definitive Subdivision Decision, Stormwater Permit, and Cluster Residential Development
Special Permit
Clark Avenue (Map 6 Lots 7, 8 and 9)
February 22, 2016

Serafini, Darling and Correnti, LLP
C/o Attorney Correnti
63 Federal Street
Salem, Massachusetts 01970

RE: Decision of the Clark Avenue Subdivision – Form C (Map 6, Lots 7, 8, and 9)

On September 17, 2015, the Salem Planning Board opened a Public Hearing for a proposal submitted by NSD Realty Trust (hereafter referred to as “applicant”) to allow the construction of a roadway to serve twenty-six (26) residential lots on Clark Avenue, Assessors Map 6, Lots 7, 8, and 9. The public hearing for the Definitive Subdivision, Form C and Cluster Residential Special Permit was continued to October 15, 2015. At the October 15, 2015, public hearing the Salem Planning Board opened a Public Hearing for the proposal of a Stormwater Permit to allow for activity that results in a land disturbance greater than one acre of land within the City of Salem for the subject subdivision. The Cluster Residential Special Permit and Stormwater Permit were continued to the November 19, 2015, December 3, 2015, December 17, 2015, January 7, 2016, January 21, 2016, February 4, 2016, and February 18, 2016.

At the regularly scheduled Planning Board meeting on February 18, 2016, the public hearing for the Form C-Definitive Subdivision, Cluster Residential Development Special Permit, Stormwater was closed and the Board voted Seven (7) in favor, (Ben Anderson, Matt Veno, Helen Sides, Kirt Rieder, Carole Hamilton, Dale Yale, and Noah Koretz) none opposed, to approve the project. Furthermore the Board finds that all standards for the issuance of the Special Permits has been met by the Owner and that the Plan is in harmony with the purpose and intent of the Zoning Ordinance and would not result in a net negative environmental impact. The Board finds that the subdivision meets the purposes of cluster residential development because the plan is in harmony with the purpose and intent of the Zoning Ordinance to protect and promote health, safety, convenience, and general welfare of the inhabitants of the city and will not result in a net negative environmental impact. The Board finds that the subdivision meets the purposes of residential development because it promotes the more efficient use of land in harmony with existing natural features.

The Board recognized that the building lots created and the buildings to be constructed thereon may have dimensional controls and density regulations varying from those otherwise permitted by the ordinance or by-law and the approvals are subject to the allowing conditions and waivers and/or relief:

1. Conformance with the Plan

- a. Work shall conform to the set of plans containing sheets 1 through 11, entitled, “The Woodlands”, and prepared by Williams and Sparages, 189 North Main Street, Suite 101, Middleton, MA 01949, dated August 17, 2015, and revised September 4, 2015; November 10, 2015; December 7, 2015; and January 22, 2016 and the landscaping plans entitled, “Clark Avenue Entry Perspective” and “Entry Planting Plan” dated December 2, 2015 prepared by LeBlanc Jones Architects, Inc.

2. Endorsement of the Plans

- a. Following the statutory twenty (20) day appeal period, the Planning Board will endorse the original subdivision plans, subject to conditions of this decision, which shall be recorded at the South Essex Registry of Deeds. Prior to endorsement of the plans, the following items must be submitted for approval by the Planning Board:
 - i. A covenant to secure the construction of ways and installation of municipal services, including required description of mortgages and assents of mortgagees.
 - ii. Acceptable form of grants of easements, if applicable.
 - iii. This decision shall be referenced on the original plans prior to the endorsement by the Planning Board; the decision shall be recorded with the plans at the Essex South Registry of Deeds.

3. Amendments

- a. Any modification to the approved plans must receive the prior approval of the Planning Board unless deemed insignificant by the City Planner. Any waiver of conditions contained within this decision shall require approval of the Planning Board.

4. Subdivision Regulations

- a. The Subdivision shall be constructed in accordance with the requirements of the Subdivision Rules and Regulations and any other applicable regulations as affected by this decision.

5. Waivers

- a. In approving the Plans, the Board is hereby granting the following waivers of the Subdivision Rules and Regulations:

- i. Section IV A.4.a: Maximum Length of Dead-end Streets is waived to allow a length of 1089.03 feet based on the requirement for the installation of sprinkler systems in the dwellings.
 - ii. Section IV A.1.f.: Minimum centerline radii of two hundred thirty feet for a curved street.
 - iii. Section IV: Right of way improvements which require street trees to be 3.5 inches caliper, 30 feet on center, in place thereof allow 2 trees per lot.
 - iv. Section IV A.2.a.: Minimum width of sidewalk for a minor/deadend street 5 feet, in place thereof allow a 4 foot concrete sidewalk with a grass strip of no less than 3.5 feet on each side.
- b. In the judgment of the Planning Board, the granting of the above waivers is in the public interest and consistent with the intent of the subdivision control law.

6. Transfer of Ownership

- a. Within five days of transfer of ownership of the subdivision, the Owner shall notify the Board in writing of the new owner's name and address. This shall not include the sale of lots within the subdivision in the ordinary course of business, but only a sale of the entire subdivision. The terms, conditions, restrictions and/or requirements of this decision shall be binding on the Owner and its successors and/or assigns.

7. Security (Section III(B)(5) of the Subdivision Regulations)

- a. Prior to the release of any lots for sale or building, the Planning Board shall require that an acceptable form of surety is posted along with a proposed schedule of releases. If partial release of surety is to be requested, the Planning Board may, at its discretion, require deposits to be broken down in amounts of anticipated requests for release. The applicant agrees to complete the required improvements in accordance with Section V of the Subdivision Regulations for the subdivision. Such construction and installation is to be secured by one and/or in part by the other of the following methods which may from time to time be varied by the applicant with the reasonable approval of the Planning Board.

b. Endorsement of Approval with Covenant

The Owner shall file a covenant, prior to endorsement by the Planning Board, executed and to be duly recorded with the Subdivision Plans by the owner of record, which instrument shall the land, and shall state such ways and services shown on the approved plans dated August 17, 2015, and revised September 4, 2015; November 10, 2015; December 7, 2015 and January 22, 2016 shall be provided to serve any and all lots before any lot may be built upon or conveyed, other than by mortgage; and deed; and/or

- i. **Endorsement of Approval with Bonds, Surety or Tri-Party Agreement**

The Owner shall either file a performance bond, a deposit of money or negotiable securities, or a tri-party agreement in an amount determined by the Board to be sufficient to cover the cost of all or any one phase of the subdivision of the improvements. Surety, if filed or deposited, shall be approved as to form and manner of execution by the City Solicitor and as to sureties by the City Treasurer and shall be contingent on the construction of the roadway through binder course. The amount of the surety shall be reasonably determined by the Engineering Department.

The Owner may file a covenant to secure the construction of ways and services for the entire sub-division and said covenant may be partially released for phases of the sub-division by bond, surety or tri-party agreement being filed for any phase or phases of the subdivision.

ii. **Time Frame**

If such ways and services are not completed within two (2) years of the date of endorsement of the plan, approval of the plan may be rescinded unless an extension is granted by the Planning Board. The Planning Board acknowledges that the timeframe and completion of the entire subdivision is anticipated to be two years, and will not unreasonably withhold extensions.

8. Homeowner's Association

- a. The Draft Home Owners Association Documents shall be submitted to the Department of Planning and Community Development, for reasonable review as to form and content prior to the issuance of any Certificates of Occupancy for the proposed dwellings. These documents shall include the following responsibilities:
 - i. Ownership and/or maintenance of the storm water management system;
 - ii. Ownership and/or maintenance of the trail system and open space (if the open space and trail system are not to be owned by the City of Salem).
 - iii. Ownership and/or maintenance of walls located in the subdivision that are not situated on the lots in the sub-division.
- b. The City of Salem reserves the right to enforce the responsibilities and requirements of the Homeowner's Association documents.

9. Open Space

- a. Open Space as shown on the Plans and consisting of approximately 1.95 acres shall be perpetually preserved as open space. The Open Space shall be placed in a corporation or trust owned or to be owned by the owners of lots within the subdivision with provisions for limited easements for recreational use by residents of the City of Salem; provided that such ownership shall vest the Board sufficient rights to enforce compliance with restrictions imposed by the Board as a condition of its

Cluster Special Permit. The easement documents shall allow for passive, non-motorized recreation and shall empower the City at its discretion, to make improvements to the trail system.

- b. The open space shall be opened for public use upon the issuance of the Certificate of Occupancy for the final dwelling or at such an earlier time as mutually agreed to by the applicant and the Board.

10. Salem Conservation Commission

- a. The applicant shall receive all necessary approvals from the Salem Conservation Commission prior to commencement of any work.

11. Trails

- a. Prior to the release of the final Certificate of Occupancy, the trail for the open space will be laid, flagged and completed by the Owner. The path shall consist of woodchip surface as it will have the least impact on the natural setting.
- b. Trail segments will be cleared by manual cutting of brush and tree saplings no greater than a 3 inch caliper to facilitate passage. All materials cut or cleared shall be chipped and left in place. No earthmoving, grading or mowing will occur. Small brush will be cut and dispersed into the underbrush for wildlife habitat value. No tracked vehicles or mechanical equipment (other than chippers, clippers, loppers, and small chain saws for the clearing) will be employed.
- c. Signage identifying the open space area is to be installed at the trailheads. Sign design and proposed location shall be submitted for approval to the City Planner prior to installation.

12. Safety Improvements

- a. The applicant has agreed to paint a crosswalk which will lead from the end of the sidewalk on the northeasterly side of Clark Avenue to the sidewalk on the southwesterly side of Clark Avenue (which continues to the intersection with Clark Street). The exact location shall be approved by the City's Police Safety Officer.
- b. The applicant has also agreed to paint a center line on a portion of existing Clark Avenue to guide motorists through the bend. The striping and signage shall be installed as shown on the "Proposed Traffic Marking & Signage Plan", dated February 1, 2016, prepared by Williams & Sparages.
- c. The applicant has agreed to repair the sidewalk as needed at the northerly end of Clark Avenue from the end of the existing granite curbing on Clark Avenue northerly to the intersection of Clark Avenue and Clark Street.
- d. The applicant shall work with the City and remove a the rock at 1 Clark Avenue and realigning the fence impeding sight distance on Clark Avenue once the City obtains approval from the private land owner.

13. Board of Health

- a. The applicant shall comply with all requirements of the City of Salem Board of Health.
- b. The applicant shall provide the City Health Agent the name, address and telephone number of the project manager who will be on site and directly responsible for the construction of the project.
- c. If a DEP tracking number is issued for this site under the Massachusetts Contingency Plan, no structure shall be constructed until the Licensed Site Professional responsible for the site certifies that the soil and ground water on the entire site meets the DEP standards for the proposed use.
- d. The developer shall adhere to the drainage plan as approved by the City Engineer.
- e. The developer shall employ a licensed pesticide applicator to exterminate the area prior to construction, demolition, and/or basting and shall send a copy of the exterminators invoice to the Health Agent.
- f. The developer shall maintain the area free from rodents throughout construction.
- g. The developer shall submit the City Health Agent a written plan for dust control and street sweeping which will occur during construction.
- h. The developer shall submit the City Health Agent a written plan for the containment and removal of debris, vegetative waste, and unacceptable excavation material generated during demolition and/or construction.
- i. The Fire Department must approve the plan regarding access for firefighting.
- j. Noise levels from the resultant establishments generated by operations, including but not limited to refrigeration and heating, shall not increase the broadband sound level by more than 10 dB(A) above the ambient levels at the property line.
- k. The developer shall disclose in writing to the City Health Agent the origin of any fill material needed for the project.
- l. The resultant establishment(s) shall dispose of all waste materials resulting from its operations in an environmentally sound manner as described to the Board of Health.
- m. The developer shall install grease traps, to contain grease in gray water, prior to entering the city sewer system in developments with 10 or more units and in compliance with the requirements of the City Engineer.
- n. Radon mitigation systems shall be installed.
- o. The final construction shall comply with all requirements of the Massachusetts State Sanitary code.
- p. The developer shall notify the City Health Agents when the project is complete for final inspection and confirmation that the above conditions have been met.

14. Drainage Infrastructure Improvements

- a. The applicant shall complete drainage improvements at the intersection of Clark Avenue as depicted on the plan entitled “Proposed Drainage Improvement Plan in Salem, MA” dated December 16, 2015, revised January 27, 2016, prepared by Williams & Sparages. The drainage improvements shall be completed to the satisfaction of the City Engineer, including temporary pavement of the trenches, within ninety (90) days of work starting on the proposed subdivision site. Temporary paving shall remain and be maintained by the applicant, until the proposed subdivision is ready for final overlay at which time all final offsite overlay paving will be performed in conjunction with the final overlay of the subdivision.
- b. The pavement replacement program applied to Clark Avenue shall consist of 1½ inches of overlay paving per the limits of the Williams & Sparages plan referenced in paragraph a. above. Final grading of the top mix shall promote stormwater conveyance to the newly installed and existing drainage facilities on Clark Street and not cause any issues with existing driveways. Pavement will take place in conjunction with the final overlay being performed within the Woodlands Subdivision.
- c. If deemed necessary, prior to beginning the drainage improvement work the applicant shall file a Request for Determination of Applicability with the Salem Conservation Commission and a Notice of Intent.

15. Sewer

- a. The applicant shall pay One Hundred Thousand Dollars (\$100,000.00) to the City for the performance of an Infiltration and Inflow Identification and Removal program for the approximately 2,700 linear foot sewer system to which the proposed subdivision shall discharge sewerage. This \$100,000 payment equals a contribution of \$3,846.15 per house in the proposed subdivision of 26 homes.
- b. Payments by the applicant to the City shall be made in accordance with the following schedule:
 - i. \$ 25,000.00 payable prior to the issuance of a building permit for the first house lot;
 - ii. \$ 25,000.00 payable prior to the issuance of a building permit for the eighth house lot;
 - iii. \$ 25,000.00 payable prior to the issuance of a building permit for the sixteenth house lot; and
 - iv. \$ 25,000.00 payable prior to the issuance of a building permit for the twenty-fourth house lot.

16. Fire Department

- a. The applicant shall comply with all requirements of the City of Salem Fire Department, including temporary access during construction.

17. Building Inspector

- a. The applicant shall comply with all requirements of the City of Salem Building Inspector.

18. Lighting

- a. Street lighting shall be in conformance with the plan dated August 17, 2015, and revised September 4, 2015; November 10, 2015; December 7, 2015 and January 22, 2016.
- b. Street lighting installation shall be reviewed and approved by the City Electrician. Street lights shall be outfitted with LED bulbs. The street lighting shall be the responsibility of the Applicant until such time as the City accepts the street.
- c. The Owner shall coordinate with the electric company and the City Electrician regarding the installation of street lighting within the Subdivision.

19. Noise

- a. HVAC units shall be sufficiently buffered and the applicant shall take steps to further mitigate noise emanating from HVAC units if the Board of Health receives any complaints. Notwithstanding the foregoing, the guideline for reviewing such noise is that the broadband sound level should not increase by more than 10 dB (A) above the ambient levels measured at the property line.
- b. The method of screening HVAC units shall be submitted to the City Planner for review and approval prior to installation.

20. Pre-Construction Conference

- a. Prior to the start of work on the approved subdivision, a pre-construction conference shall be scheduled with the City Planner, the City Engineer (or his designee), the Building Commissioner, the Health Agent, and any other departments that may be necessary. The Owner shall submit a construction schedule at the time of the pre-construction conference.

21. Construction Practices

- a. All construction shall be carried out in accordance with the following conditions:
 - i. All construction shall be carried out in accordance with the Rules and Regulations of the Planning Board, and in accordance with any and all rules, regulations, and ordinances of the City of Salem.

- ii. No work shall commence before 8:00 AM on weekdays and Saturdays. No work shall continue beyond 5:00 PM. There shall be no work conducted on Sundays or holidays. Inside work of a quite nature may be permitted at other times.
- iii. Drilling and blasting shall be limited to Monday – Friday between 8:00 a.m. and 5:00 p.m. There shall be no drilling or blasting, or rock hammering on Saturdays, Sundays, or holidays. Blasting shall be undertaken in accordance with all local and state regulations.
- iv. The pre-blast survey shall be extended to include the existing subsurface drain.
- v. All reasonable action shall be taken to minimize the negative effects of construction on abutters. Advanced notice shall be provided to all abutters in writing at least 72 hours prior to commencement of construction.
- vi. All construction vehicles shall be cleaned prior to leaving the site so that they do not leave direct and/or debris on surrounding roadways as they leave the site.
- vii. All construction shall be performed in accordance with the Rules and Regulations of the Planning Board, and in accordance with any and all rules, regulations and ordinances of the City of Salem.
- viii. All construction vehicles left overnight at the site must be completely located on the site.
- ix. A Construction Management Plan and Construction Schedule shall be submitted by the applicant to the Building Inspector for review and approval prior to the issuance of a building permit. Including in this plan, but not limited to, shall be information regarding how equipment will be stores, a description of the construction staging areas and its location in relation to the site, and where the construction employees will pack their vehicles.

22. Blasting

- a. The applicant or argent shall distribute the flyers entitled, “Facts for Massachusetts Property Owners about Blasting” to all abutters within two hundred fifty (250) feet of the blasting area.

23. Construction Traffic

- a. With the exception of off-site improvements required as part of this decision, all construction will occur on site; no construction will occur or be staged within City right of ways. Any deviation from this shall be approved by the Department of Planning & Community Development prior to construction.
- b. A construction traffic management plan and schedule shall be submitted to the Department of Planning & Community Development for review and approval prior to the start of construction.

- c. Any roadways, driveways, or sidewalks damaged during construction shall be restored to their original condition by the Owner.
- d. The Owner shall clean construction vehicles before they exit the construction site, and clean and sweep all streets affected by their construction truck traffic as necessary.

24. Progress Reports

- a. Upon the request of the Planning Board, the owner shall submit reports of the progress of the subdivision's completion.

25. Clerk of the Works

- a. A Clerk of the Works shall be provided by the City, at the expense of the applicant, his successors or assigns, as it deemed necessary by the City Planner. Notwithstanding the foregoing, the parties acknowledge the Project shall be subject to controlled construction, which requires oversight by licensed engineers and architects. Accordingly it is the understanding of the Board, the City Planner and the Applicant that the Clerk of the Works is expected to oversee and review all civil/site improvements related to the project located within the public way, including all utility connections to publicly owned infrastructure. It is also mutually understood that the expense associated with the Clerk of the Works shall be for a reasonable number of hours and at a customary rate of service.
- b. The applicant shall submit a construction plan to the City Planner each season, prior to starting work.
- c. The construction plan will be incorporated into the Clerk of the Works Task Order. No work shall start prior to an approved task order for these services.

26. Utilities

- a. The applicant shall have an engineer certify the utility plans for review by the City Engineer prior to the issuance of any Building permit. The utility plans shall be reviewed and approved by the Office of the City Engineer prior to the issuance of any Building Permit.
- b. All utilities shall be installed underground.
- c. A plan for sidewalks shall be submitted and approved by the City Engineer prior to the issuance of any Building Permit.
- d. The applicant shall install concrete sidewalks with vertical granite curbing throughout the subdivision, according to the approved plans.
- e. Any utility installation for housing lots shall be reviewed and approved by the City Engineer prior to the issuance of a Building Permit.

27. As-built Plans

- a. As-built plans and Street Acceptance Plans, stamped by a Registered Professional Engineer, shall be submitted to the Department of Planning and Community Development and Department of Public Services prior to the issuance of the final Certificate of Occupancy for the subdivision and/or the acceptance of any streets.
- b. The As-Built plans shall be submitted to the City Engineer in electronic file format suitable for the City's use and approved by the City Engineer, prior to the issuance of the final Certificate of Occupancy for the subdivision and/or the acceptance of any streets.
- c. A completed tie card, a blank copy (available at the Engineering Department) and a certification signed and stamped by the design engineer, stating that the work was completed in substantial compliance with the design drawing must be submitted to the City Engineer prior to the issuance of the final Certificate of Occupancy for the subdivision and/or the acceptance of any streets; as well as, any subsequent requirements by the City Engineer.

28. Violations

- a. Violation of any condition contained within this decision may result in revocation of this permit by the Planning Board.

This endorsement shall not take effect until a copy of the decision bearing certification of the City Clerk that twenty (20) days have elapsed and no appeal has been filed or that is such appeal has been filed, and it has been dismissed or denied, is recorded in the Essex South Registry of Deeds and is indexed under the name of the owner of record or is recorded on the owner's Certificate of Title. The fee for recording or registering shall be paid by the owner or applicant.

I hereby certify that a copy of this decision and plans are on file with the City Clerk and a copy is on file with the Planning Board.

Sincerely,



Ben J. Anderson, Chair
Salem Planning Board