



CITY OF SALEM PLANNING BOARD

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CITY CLERK
SALEM, MASS

**Decision to Extend Form C Definitive Subdivision, Cluster Residential Development
Special Permit, and Stormwater Management Permit
for Clark Avenue (Map 6 Lots 7, 8 and 9)**

September 8, 2020

Correnti & Darling LLP
C/o Joseph C. Correnti, Esquire
63 Federal Street
Salem, MA 01970

RE: Clark Avenue (Map 6, Lots 7, 8, and 9) Subdivision
Extension of Subdivision, Cluster Residential Development Special Permit, and
Stormwater Management Permit

On Thursday, February 18, 2016 the Planning Board of the City of Salem voted in favor to approve the application of NSD Realty Trust for a Subdivision (Form C) and Cluster Residential Development Special Permit. A Decision was filed with the City of Salem Clerk's Office on February 22, 2016 and endorsed by the Planning Board on September 1, 2016. The plan was then submitted to the Massachusetts Land Court, which issued its approval in May 2017. The applicant closed on the property in June 2017 when site preparation activities first commenced. Pursuant to Condition 25 of the original Decision, a Clerk of the Works was assigned by the City to the site during June 2018 and has been on site regularly since that time. Pursuant to Paragraph 7 of the Decision, the applicant posted a Subdivision Bond to the City in December 2018. No formal request for extension has been received from the applicant until now. Condition "7.b.ii. Time Frame" of the original 2016 Planning Board Decision states:

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and services are not completed within two (2) years of the date of endorsement of the plan, approval of the plan may be rescinded unless an extension is granted by the Planning Board.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.

Two years from the date of endorsement fell on September 1, 2018. The applicant now formally requests an extension of the time to complete the "ways and services" under Paragraph 7.b.ii. of the 2016 Planning Board Decision.

On July 23, 2020, the Board voted to approve an extension to the completion of ways and services for a period ending on or before July 30, 2021, by a vote of seven (7) (Bill Griset, Carole Hamilton, DJ Napolitano, Helen Sides, Kirt Rieder, Matt Venio, and Noah Koretz) in favor and none (0) opposed, with the following conditions:

1. Original Decision

- a. All conditions set forth in the original Decision for the Clark Avenue (Map 6 Lots 7, 8 and 9) Form C/Definitive Subdivision, Cluster Residential Development Special Permit, and Stormwater Management Permit shall remain in full force and effect, except as explicitly modified by the conditions below.

2. 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.

3. Updates

- a. The applicant and/or their representative shall return to the Planning Board with updates, either every 2 months, or at specific times to be requested by the Planning Board, whichever is sooner. These project updates shall detail construction progress made to date, outstanding issues from this decision, and a revised timeline for remaining construction work. The exact dates shall be coordinated with the Planning Board Chair and City Staff.

4. Progress Reports

- a. Upon request from the Planning Board and/or the Department of Planning and Community Development, the owner shall submit a report on the progress of the subdivision construction, estimated time until completion, expected construction activity for the remainder of the project, and other project details. The owner shall provide these updated plans and schedules in writing no later than 14 days following the request.

5. Time Frame

- a. If such ways and services are not completed on or by July 30, 2021, approval of the plan will automatically be rescinded by the Planning Board, unless an extension is granted by the Planning Board prior to July 30, 2021. The Planning Board acknowledges that the timeframe and completion of the entire subdivision is anticipated to last no longer than 2021, but will not unreasonably withhold extensions.

6. Construction Practices

- a. All construction shall be carried out in accordance with the following conditions:
 - i. All reasonable action shall be taken to minimize the negative effects of construction on abutters.

- ii. 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.
- iii. All construction shall take place in compliance with the rules and regulations of the Massachusetts Department of Environmental Protection.
- iv. All provisions in the City of Salem's Code of Ordinance, Chapter 22, Noise Control, shall be strictly adhered to. If stricter measures are required by this Decision, the stricter measures shall apply.
- v. The Owner shall promptly notify the Board of Health of any environmental condition encountered during construction that may adversely impact the abutters to the site.
- vi. With the exception of off-site improvements required as part of this decision, all construction will occur on-site; no construction shall occur or be staged within City right of ways. Any deviation from on-site construction activity shall be approved by the Department of Planning & Community Development prior to the issuance of any new building permits after the date of this extension decision.
- vii. Construction activity, with the exception of street sweeping and landscaping, shall only be permitted Monday to Saturday between 8:00 am and 5:00 pm.
- viii. Due to the proximity of residential homes, active drilling, rock hammering, and blasting shall only be permitted Monday to Friday between 10am to 4:00pm. Blasting and rock hammering shall be limited to rock outcroppings in remaining foundations and trenches and the rock dug out of these locations. Preparation and clean-up work related to these activities may begin during the regularly permitted hours for construction activity but must comply with all other conditions and regulations.
- ix. There shall be no drilling, blasting or rock hammering on Saturdays, Sundays, or holidays. Blasting shall be undertaken in accordance with all local and state regulations.
- x. Following any 30-day period of construction inactivity, the applicant shall provide advance notice to the Mayor's Office at least 3 business days prior to recommencement of construction activity. Additionally, following any 30-day period of construction inactivity, the applicant shall provide advance notice to all abutters by paper leaflet at least 3 business days prior to recommencement of construction activity. These notices are to help facilitate, whenever practicable, better communication to residents through various electronic communication channels. The notification for staff provided by the applicant should include as much detail as possible on the expected location, date/time, and expected duration of the blasting.
- xi. Following any 7-day period of blasting inactivity, the applicant shall provide advance notice to the Mayor's Office at least 3 business days prior to recommencement of blasting activity. These notices are to help facilitate, whenever practicable, better communication to residents through

various electronic communication channels. The notification for staff provided by the applicant should include as much detail as possible on the expected location, date/time, and expected duration of the blasting.

- xii. Onsite rock hammering shall be conducted for the purpose of decreasing the size of blasted or excavated rock with the clerk of the works verbal or written approval and limitations on duration not to exceed the hours of 10:00am to 4:00pm. All rock shall be transported offsite to be crushed and processed elsewhere, except in limited circumstances where there is verbal or written pre-approval from the Clerk of the Works. This limited on-site rock crushing activity shall be conducted at the maximum practicable distance from occupied homes and shall be reviewed and approved by the Clerk of the Works. One suggested location is the end of Woodlands Road near Lot 11.
- xiii. Where practical, all onsite material shall be used as back fill and for other uses on site.
- xiv. All construction vehicles left overnight, must be located completely on the site.
- xv. Any roadways, driveways, or sidewalks damaged during construction shall be restored to their original condition by the Owner, including, but not limited, to Clark Avenue, Clark Street, and Barnes Road. The City Engineer, in consultation with the Clerk of the Works and Meninno Construction, shall assess the condition of the roadways directly impacted by Subdivision construction and traffic and determine the type of repairs required by the owner.

7. Roadways

- a. Areas along Clark Avenue and Barnes Road with extensive potholes shall be reviewed by the City Engineer, Clerk of the Works, and Developer. If the City's assessment determines the damage was caused by Woodlands Subdivision activities, then those sections with rutted and pitted potholes shall be filled and stabilized on a seasonal basis with an industry standard bituminous product, under the supervision of the Clerk of the Works and to the satisfaction of the City, prior to a final re-pavement by the Owner upon completion of the project. During this of this assessment, the City Engineer and Clerk of the Works shall review any community comments and consider these in their assessment. In addition to the work described in the original approval, the Developer agrees to review the paving on Clark Avenue and Barnes Road to determine if any potholes or deteriorated pavement needs to be repaired. This shall be by mutual agreement between the City of Salem, Clerk of the Works, Developer, and the Developer's engineer.
- b. An assessment shall be taken by the City after the project is complete to determine other areas along Clark Street and Barnes Road that should be repaved. This assessment shall be by mutual agreement between the City of Salem, Clerk of the Works, Developer and the Developer's engineer.

- c. Drainage infrastructure improvement conditions 14.a., 14.b., and 14.c. from the original Decision shall remain in effect.

8. Construction Traffic

- a. An updated construction traffic management plan and schedule shall be submitted to the Department of Planning & Community Development for review and approval within 30 days of this decision.
- b. Construction vehicles shall operate at a safe speed, not above limits, along neighborhood streets. Construction vehicles shall come to a complete stop at all intersections and give right of way to personal vehicles, e.g. residents' vehicles. Attention shall be given to the safety of residents, and especially children, when travelling from the Clark Avenue Subdivision site to Highland Avenue.
- c. DPW will explore the addition of more signs, such as a "slow children" sign or other street sign at the entrance to Clark Avenue. Menino Construction shall provide 2 new signs for this purpose.

9. Dust Suppression

- a. All construction vehicles that enter the unfinished dirt area of the construction site shall be cleaned prior to leaving the site.
- b. The Owner shall arrange for street sweeping once every week, during any period when authorized debris or fill materials are hauled on and off of the site. The area to be cleaned is Woodlands Road, Clark Avenue, Clark Street (from Highland Avenue to Barnes Road), and Barnes Road. Street sweeping shall be scheduled at regularly recurring time that is to be agreed to by the City Planner and not to start before noon. Sidewalks along the above-mentioned roads shall be maintained clean of stones and dirt spillage. Sweeping is expected to be curb-to-curb unless a parked car is in the way.
- c. Proper dust suppression is implemented and consistently followed, as provided by Occupational Safety and Health Organization (OSHA), for all rock hammering and material movement on the site. This consideration is with the understanding that all rock crushing and material screening shall not be done on the Clark Avenue Subdivision site, except as provided in Condition 6.a.xiii. listed above.
- d. Proper wet methods shall be utilized to suppress dust, while also minimizing the amount of mud tracked off site by vehicles. These methods shall be determined by the City Engineer and in coordination with the Clerk of the Works and shall incorporate the "Dust Control Management Plan" prepared by Menino Construction for the City of Salem in August 2018, as well as the below specific methods that shall be subject to review by the Clerk of the Works:
 - i. Use of equipment with hoses and nozzles that spray water or other dust suppressants over large areas to wet the materials disturbed during tasks, including haul roads and job sites in general
 - ii. Workers and or equipment to assist applying water or other types of dust suppressants to materials being demolished, abraded, or fractured.

- iii. Large atomized misting devices, as outlined in the “Dust Control Management Plan” from 2018.
- iv. Equipment nozzles adjusted so that water or other dust suppressant spray is directed at the work areas where dust suppression is required.
- v. Timing the application of the water or other dust suppressants to ensure that the materials are still damp when they are disturbed.
- vi. Application of dust suppressants at flow rates sufficient to minimize the release of visible dust, while minimizing the creation of mud
- e. Materials that cannot be processed on site and that are necessary for the construction of the subdivision as approved, including concrete, screened loam, sand, pea stone, and mulch, may be imported in order to construct the subdivision. No other dirt or rock materials shall be brought onto the site unless advance notice is provided to the Clerk of the Works. Additionally, this notice shall provide the reason materials are required and why onsite materials cannot be used.

10. Clerk of the Works/Community Liaison

- a. The City shall secure an additional Clerk of the Works inspector, at the expense of the applicant, their successors or assigns, focused specifically on site and condition issues that are beyond the specific Civil Engineering and City service connections reviewed by the existing Clerk of the Works. This additional Clerk shall regularly visit the construction site to provide oversight and reports back to the City Planner and to act as a community liaison. This Clerk of the Works shall confirm that the applicant complies with the conditions of this extension, the original 2016 Planning Board Decision, and City of Salem regulations.
- b. The Clerk of the Works shall provide the applicant, the City Planner, and the City Engineer reports of inspections including the dates and times on site with all invoices.
- c. It is also mutually understood that the expense associated with the Clerk of the Works shall be for a reasonable number of hours, at a customary rate of service, and within a defined scope of work.
- d. It is mutually understood that the hiring of an additional Clerk will not delay the issuance of permits and the continued normal progression of work in accordance with all City of Salem rules, regulations, and guidelines.
- e. The scope of the work for the current Clerk of the Works, at the cost of the applicant, shall be expanded to include the items set forth in this Condition 10, until an additional Clerk of the Works is retained by the City.

11. Safety Improvements Amendment

- a. Condition 12.d. on page 5 of the original 2016 Planning Board Decision, which reads “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” is hereby null and void and stricken from the Decision.

12. Violations

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

This determination shall become part of the record for this project. I hereby certify that a copy of this Decision to Extend has been filed with the City Clerk and a copy is on file with the Planning Board. The Decision to Extend shall not take effect until a copy of this Decision to Extend bearing the certification of the City Clerk is recorded with the Essex South District Registry of Deeds and is indexed under the name of the owner of record or is registered on the owner's Certificate of Title. The owner of applicant, his successors or assigns, shall pay the fee for recording or registering.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben J. Anderson", with a stylized flourish at the end.

Ben J. Anderson, Chair
Salem Planning Board