

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss

SUPERIORCOURT DEPT
DOCKET NO.

LAFAYETTE SALEM, LLC,)
 Plaintiff,)
)
 v.)
)
 WILLIAM GRIST, CHAIR and TOM FUREY,)
 HELEN SIDES, CAROLE HAMILTON, ZACH,)
 CAUTER, JONATHAN BERK, and JOSH)
 TURIEL, MEMBERS OF THE CITY OF SALEM)
 PLANNING BOARD, SOUTH RIVER)
 PARTNERSHIP, LLC, NORTH SHORE)
 COMMUNITY DEVELOPMENT COALITION,)
 INC. and NORTH SHORE COMMUNITY)
 HEALTH CENTER,)
 Defendants.)

COMPLAINT

INTRODUCTION

The Plaintiff, Lafayette Salem, LLC (“Plaintiff”) appeals a decision dated January 24, 2023 (“Decision”) rendered by the City of Salem Planning Board (“Board”), which Decision grants special permits from the Salem Zoning Code for a project located at 73 Lafayette Street, 75 Lafayette Street, 85 & 87 Lafayette Street, 89 Lafayette Street, 315 Derby Street, 9 Peabody Street and 15 Peabody Street (the “El Centro Project”)The Application was filed by South River Partnership, LLC (“South River”) . The special permits granted by the Board are for a Site Plan Review, Planned Unit Development Special Permit, Drive-Through Special Permit and Flood Hazard Overlay District Special Permit give approval through a collaborative joint venture

between North Shore Community Development Coalition, Inc. (“NSCDC”) and North Shore Community Health Center (“NSCHC”) to build two buildings, one of which will occupy the corner of Lafayette and Derby, and the second at the nearby site at 9 Peabody. The El Centro Project will include: at 73 Lafayette, a proposed 6-story mixed-use building with commercial space on street level and 19 units of 100% affordable, supportive housing for the elderly above; along Derby Street, a new approximately 41, 500 sf community health clinic; and at 9 Peabody Street, 29 additional age-restricted units, a community room, and a small gallery and commercial space.

The Board made findings including that the El Centro Project is in harmony with the purpose and intent of this ordinance and the master plan of the City without adequately addressing the impact on abutters, neighbors and the community. Specifically, the Board failed to properly address construction mitigation, parking and traffic. The Decision leaves many concerns and impacts to be discussed, addressed and decided at a later date with no assurances to Plaintiff. As such, the Plaintiff contends that the Board exceeded its authority and made a decision that was arbitrary and capricious, inadequate and did not comply with the legal requirements for issuance of special permits.

Parties

1. Plaintiff is a Delaware Limited Liability company with a business address at 26 Columbia Road, Brookline, MA 02446.
2. Defendant, William Grist, is the Chair of the City of Salem Planning Board with an address c/o Elizabeth Rennard, Esquire, City Solicitor, 98 Washington Street, Salem, MA 01970.

3. Defendant, Tom Fury, is a Member of the City of Salem Planning Board with an address c/o Elizabeth Rennard, Esquire, City Solicitor, 98 Washington Street, Salem, MA 01970.
4. Defendant, Helen Sides, is a Member of the City of Salem Planning Board with an address c/o Elizabeth Rennard, Esquire, City Solicitor, 98 Washington Street, Salem, MA 01970.
5. Defendant, Carole Hamilton, is a Member of the City of Salem Planning Board with an address c/o Elizabeth Rennard, Esquire, City Solicitor, 98 Washington Street, Salem, MA 01970.
6. Defendant, Zach Cauter, is a Member of the City of Salem Planning Board with an address c/o Elizabeth Rennard, Esquire, City Solicitor, 98 Washington Street, Salem, MA 01970.
7. Defendant, Jonathan Berk, is a Member of the City of Salem Planning Board with an address c/o Elizabeth Rennard, Esquire, City Solicitor, 98 Washington Street, Salem, MA 01970.
8. Defendant, Josh Turiel, is a Member of the City of Salem Planning Board with a residential address at an address c/o Elizabeth Rennard, Esquire, City Solicitor, 98 Washington Street, Salem, MA 01970.
9. Defendant, South River, is a Massachusetts Limited Liability Company with an address care of North Shore Community Development Coalition, Inc. at 96 Lafayette, Street, Salem, MA 10970.
10. Defendant, NSCDC, is a Massachusetts corporation with a business address at 96 Lafayette Street, Salem, MA 01970.

11. Defendant, NSCHC is a Health Center Program grantee with a business address at 27 Congress Street, Suite 512, Salem, MA 01970.
12. This Court has jurisdiction pursuant to M.G.L. Chapter 140A, Section 17.
13. Plaintiff is an abutter or abutter to abutter located within three hundred (300) feet from the Project and is a persona aggrieved by the Decision of the Defendant Planning Board and has the requisite standing to bring this action.

Facts

14. Plaintiff is the owner of 101 Lafayette Street, Salem, MA (“Plaintiff’s Property”).
15. Plaintiff’s Property is a commercial building with several business tenants including a taco restaurant and bakery/coffee shop.
16. Plaintiff’s Property is leased to various business tenants that have employees and customers who will be impacted by the El Centro Project including during and after construction, as well as with reference to parking and traffic.
17. South River filed an application for special permits for the El Centro Project.
18. NSCDC and NSCHC filed an application for Site Plan Review under Sections 9.5, 8.1, 6.7 and 7.3 of the City of Salem Zoning Ordinance and filed with the Planning Board on April 15, 2021.
19. The El Centro Project will include: at 73 Lafayette, a proposed 6-story mixed-use building with commercial space on street level and 19 units of 100% affordable, supportive housing for the elderly above; along Derby Street, a new approximately 41, 500 sf community health clinic; and at 9 Peabody Street, 29 additional age-restricted units, a community room, and a small gallery and commercial space.

20. The application filed on April 15, 2021 was withdrawn without prejudice on July 15, 2022 due to a lack of eligible Planning Board voting members.
21. A repetitive Application was filed with the Planning Board September 22, 2022.
22. The Planning Boar closed the public hearings on January 19, 2023.
23. The Planning Board reviewed the plans and other submission materials and issued a Decision dated January 24, 2023. A certified copy of the Decision is attached hereto as Exhibit "A".
24. The Planning Board found the El Centro Project, "meets the provisions of the City of Salem Zoning Ordinance Sec. 7.3 Planned Unit Development, Sec. 9.5 Site Plan Review, Sec. 6.7 Drive-Through Facilities, and Sec. 8.1 Flood Overlay District Special Permit.."
25. Plaintiff is most concerned about the impact of the portion of the El Centro Project located at 9 Peabody street.
26. 9 Peabody Street is presently a vacant lot.
27. The current structure of the neighborhood is dense; existing traffic is congested and difficult, and parking in the area is already challenging and limited.
28. The Salem Zoning Ordinance for Planned Unit Development at Section 7.3.9 Conditions sets forth that, "The Planning Board may, in appropriate cases as it determines impose further restrictions upon the planned unit development or parts thereof as a condition to granting the special permit."
29. Plaintiff asserts the Decision does not impose sufficient further restrictions with reference to construction mitigation, parking and traffic as a condition of granting the special permit.

30. The Salem Zoning Ordinance at Section 6.7.5, Drive-Through Facilities, Traffic Impact Study sets forth that, “A detailed traffic impact analysis in accordance with professional standards is required for any special permit or site plan approval application containing a drive-through facility for fast food.”
31. The Salem Zoning Ordinance at Section 6.7.5, Drive-Through Facilities, Traffic Impact Study further sets forth that, “A proposed mitigation plan must be included: A plan (with supportive text) to minimize traffic and safety impacts through such means as physical design and layout concepts or other proposed means: and an interior traffic and pedestrian circulation plan designed to minimize conflict and safety problems...”
32. The Salem Zoning Ordinance at Section 8.1.4, Flood Hazard Overlay District, Special Permit uses sets forth that no structure of building shall be improved or created unless all of the following conditions are found to exist as part of the granting of a special permit by the Planning Board including:
- “There are adequate convenience and safety vehicular and pedestrian movement within the site and in relation to adjacent street and property, particularly in the event of flooding of the lot(s) or adjacent lot(s) caused by either overspill from waterbodies or high runoff.
- Utilities, including gas, electricity, fuel, water and sewage disposal, shall be located and constructed so as to protect against breaking, leaking, short-circuiting, grounding or igniting or any other damage due to flooding.”
33. The Salem Zoning Ordinance at Section 9.5.6, Site Plan Review, Review Criteria, set forth that the Board shall review and request changes to plans in accordance with the following criteria, Adequacy of parking facilities and number of parking space proposed for each development; Adequacy of loading facilities; Adequacy of traffic circulation system for all modes of transit;...”

34. The Decision, under Planned Unit Development Findings, Section 5, references a Pre-Construction Conference to be scheduled as necessary to address how construction will be phased and stages and what impacts will be to the sidewalks and roadways.
35. This is completely vague and does not provide Plaintiff sufficient information to determine the appropriateness or adequacy of construction plans and mitigation.
36. The Decision fails to sufficiently address where trucks, equipment and contractors will park during construction.
37. The Decision fails to sufficiently address whether and where there will be jersey barriers placed on Peabody Street that will impact/remove existing parking spaces.
38. The Plaintiff's tenant which includes two (2) food establishments rely, in part, on parking for their businesses.
39. The Decision for Planned Unit Development at Section 4. Site Specific Conditions addresses parking after the project is built and as needed one year post occupancy.
40. The Decision, for Planned Unit Development Findings, Section 6 Traffic & Circulation, requires applicant to do certain things at a later date, including:
 - a. Provide a plan detailing site access for construction vehicles, material delivery, debris removal, and any other vehicular activity associated with the projects construction;
 - b. The developer shall limit the number of construction worker spaces on-site to ten (1) and encourage workers to carpool or utilize transit by providing a subsidy for MBTA passes to full-time employees and secure spaces on-site workers for workers to supplies and tools;
 - c. The developer shall coordinate construction activities with the City Engineer:..."

41. Section 6. Traffic & Circulation is insufficient as to addressing vehicular activity associated with the project's construction without any specific plan in place, including designated off-site parking from construction workers.
42. The developer is to contribute to the City of Salem Transportation Enhancement Fund, however, it appears no Traffic Study has been conducted.
43. The Decision does reference the Director of Traffic & Parking approving a detailed construction vehicle access, schedule and parking plan at a later date.
44. The construction mitigation plan as set forth and required by the Decision is also vague and subject to determination in the future.
45. Section 13. Board of Health g. proposes, "The developer shall submit a plan for rodent control and maintain the area free from rodents throughout construction."
46. Plaintiff asserts this is inadequate and a robust and adequate rodent control plan needs to be in place, noting that the project is located near water which also contributes to increased rodent activity.
47. 9 Peabody Street is currently a vacant lot, therefore, utilities including electricity, water and gas will need to be brought to 9 Peabody Street.
48. Plaintiff is concerned about the impact of utility work and possible interruptions in service and/or shut offs to Plaintiff's Property and its tenants.
49. Plaintiff is looking to address/review the planned utility work and for assurances in writing that adequate arrangements have/will be made to address the impact including for example generators being available if needed.
50. The Decision requires a Clerk of the Works be provided to the City at the Applicant's expense to address some of the construction concerns including scheduling.

51. The Decision obviously acknowledges construction concerns, and requires a Clerk of the Works, however, Plaintiff cannot determine at this time what arrangements will be made and/or if they will satisfactorily protect Plaintiff's Property.
52. The Decision provides that advance notice shall be provided to all abutters in writing at least 72 hours prior to commencement of demolition and construction of the project .
53. The notice required by the Decision is not sufficient; Plaintiff and his tenants should be provided adequate notice of work to be done as well as large deliveries or the like.
54. The Decision sets forth that "All reasonable action shall be taken to minimize the negative effects of construction on abutters."
55. Again, this statement is vague and does not address some specific concerns that are left to be dealt with at a later date.
56. Plans to discuss issues in the future provides inadequate or no assurances to Plaintiff.
57. The Decision failed to adequately and specifically address construction mitigation, parking and traffic which may have an adverse impact on abutters.
58. All of the foregoing set forth in the Complaint constitute a particularized harm to the Plaintiff.
59. The granting of the special permits by the Board exceeded the authority of the Board and was an abuse of discretion.
60. The Board exceeded its authority and acted arbitrary and capriciously because it approved the special permits without a sufficient plan in place as to construction mitigation, parking and traffic.
61. The Plaintiff is a person aggrieved, within the meaning of M.G.L. c. 40A, § 17, by the decision of the Board to grant the special permits.

62. The Board exceeded its authority and acted arbitrarily and capriciously because the granting of the special permits will cause substantial harm to the Plaintiff and the surrounding neighborhood by causing congestion, decreased parking and adverse impacts during construction.
63. The Board exceeded its authority by not thoroughly vetting issues related to traffic and parking which will necessarily flow as a result of the El Centro Project.
64. The Board failed to give due consideration to the detrimental impact of the El Centro Project on the abutters and neighborhood and conserving the public health, safety, convenience and welfare both during and after construction.
65. The Board failed to provide sufficient, suitable and satisfactory conditions for the El Centro Project including as to construction mitigation, parking and traffic.

COUNT I – ABUSE OF DISCRETION

66. The Plaintiff hereby repeats and re-alleges paragraphs 1-65 above as if fully set forth herein.
67. The Board abused its discretion as a result of the granting of the special permits.
68. The Board acted arbitrary and capricious and exceeded its authority in its granting of the special permits without adequate protections in place as to the impacts of construction mitigation, parking and traffic.
69. The Board failed to adequately address the traffic and parking concerns.
70. The Board failed to properly balance the harm to the neighborhood and community.
71. The Plaintiff is a person aggrieved as a result.

COUNT II – ARBITRARY AND CAPRICIOUS

72. The Plaintiff hereby repeats and re-alleges paragraphs 1-71 above as if fully set forth herein.

73. The Board's Decision is unreasonable, arbitrary and capricious with reference to the handling of construction mitigation, parking and traffic which is subject to be decided at a later date.

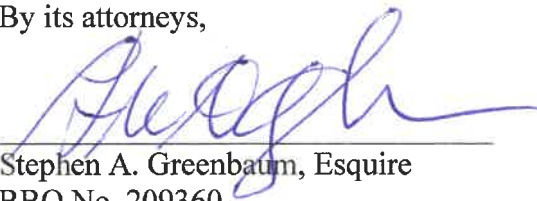
74. The Board's Decision must be revised based upon the foregoing.

WHEREFORE, the Plaintiff respectfully requests this honorable Court:

1. Hear all pertinent evidence and determine the facts;
2. Determine and adjudge that the Board's Decision granting the special permits at issue was an abuse of discretion;
3. Determine and adjudge that the Board's Decision granting the special permits at issue was made in error as matter of law and fact and that the Board acted arbitrary and capriciously;
4. Revise the Decisions of the Board to properly address concerns raised by the Plaintiff;
5. Award the Plaintiff its costs in this action, including but not limited to attorney's fees;
and
6. Grant such further relief as justice and relief as this Court deems just and proper.

Date: 2/9/23

Respectfully submitted,
Lafayette Salem, LLC
By its attorneys,



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EXHIBIT "A"



CITY OF SALEM PLANNING BOARD

2023 JAN 24 AM 11:18

CITY CLERK
SALEM, MASS

Decision

Site Plan Review, Planned Unit Development special permit, Drive-Through special permit, and Flood Hazard Overlay District

73 Lafayette Street (Map 34, Lot 430), 75 Lafayette Street (Map 34, Lot 431), 85 & 87 Lafayette Street (Map 34, Lot 432), 89 Lafayette Street (Map 34, Lot 433), 315 Derby Street (Map 34, Lot 444), 9 Peabody Street (Map 34, Lot 232), and 15 Peabody Street (Map 34, Lot 435)

January 24, 2023

Re: Application of the SOUTH RIVER PARTNERSHIP LLC for the property located at 73 Lafayette Street (Map 34, Lot 430), 75 Lafayette Street (Map 34, Lot 431), 85 & 87 Lafayette Street (Map 34, Lot 432), 89 Lafayette Street (Map 34, Lot 433), 315 Derby Street (Map 34, Lot 444), 9 Peabody Street (Map 34, Lot 232), and 15 Peabody Street (Map 34, Lot 435) for a Site Plan Review, Planned Unit Development special permit, Drive-Through special permit, and Flood Hazard Overlay District special permit for a project in the Entrance Corridor Overlay District in accordance with the following sections of the Salem Zoning Ordinance: Section 9.5 Site Plan Review; Section 7.3 Planned Unit Development; Section 6.7 Drive-Through Facilities; Section 8.1 Flood Hazard Overlay District.

The above properties will be improved through a collaborative joint venture between NSCDC and NSCH. Specifically, the applicant proposes a project that will consist of two buildings, one of which will occupy the corner at Lafayette and Derby, and the second at the nearby site at 9 Peabody. At 73 Lafayette St., applicant proposes a 6-story mixed-use building with commercial space on street level and 19 units of 100% affordable, supportive housing for the elderly above. Along Derby St., applicant proposes a new approximately 41,500 sf community health clinic. At 9 Peabody St., applicant proposes 29 additional age-restricted units, a community room, and a small gallery and commercial space. Additional site improvements include improvements to the underlying culvert, the harbor walk, and Peabody Street Park, the latter two of which the applicant would be responsible for ongoing maintenance, in accordance with the requirements of M. G. L. c.91.

Procedural History

1. An application for a Site Plan Review under Sections 9.5, 8.1, 6.7, and 7.3 of the City of Salem Zoning Ordinance was made by North Shore Community Development Corp. (NSCDC) and North Shore Community Health Center (NSCHC) and filed with the Planning Board April 15, 2021. The Planning Board of the City of Salem opened the public hearing on Thursday, September 9, 2021. The public hearing was continued to October 21,

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- 2021, November 18, 2021, December 16, 2021, January 20, 2022, February 17, 2022, March 17, 2022, April 14, 2022, May 19, 2022, June 16, 2022, July 7, 2022, and September 1, 2022.
2. On July 15, 2022, the applicant submitted a request to withdraw without prejudice due to a lack of eligible voting Planning Board members. A vote was taken at the September 1, 2022, Planning Board meeting to allow the application to be withdrawn without prejudice.
 3. A repetitive application for a Site Plan Review under Sections 9.5, 8.1, 6.7, and 7.3 of the City of Salem Zoning Ordinance was made by North Shore Community Development Corp. (NSCDC) and North Shore Community Health Center (NSCHC) and filed with the Planning Board September 22, 2022.
 4. The Planning Board of the City of Salem opened the public hearing for this application on October 20, 2022 (no testimony), November 3, 2022, November 17, 2022 (no testimony), December 1, 2022, December 15, 2022 (no testimony), January 5, 2023 (no testimony), and January 19, 2023.
 5. The Planning Board closed the public hearing on January 19, 2023.
 6. The plans and other submission material were reviewed by the Planning Board. Throughout its deliberations, the Planning Board has been mindful of the statements of the applicants and their representatives, and the comments of the general public, all as made at the public hearing.

Specific Findings:

The Planning Board, after a public hearing and review of submitted materials and testimony, hereby finds that the proposed project meets the provisions of the City of Salem Zoning Ordinance, Sec. 7.3 Planned Unit Development, Sec. 9.5 Site Plan Review, Sec. 6.7 Drive-Through Facilities, and Sec. 8.1 Flood Hazard Overlay District Special Permit as follows:

Site Plan Review Findings

The Planning Board finds that the proposed project as conditioned complies with all review criteria as identified in Site Plan Review, Sec. 9.5.6. The Plan meets accepted site planning standards and promotes standards such that the development takes place in a manner which shall in all aspects be an asset to the City.

Flood Hazard Overlay District Special Permit Criteria

Pursuant to Section 8.1.2.2(a) of the Salem Zoning Ordinance, the FHOD includes all special flood hazard areas within the City of Salem designated as Zone A, AE, or VE on the Essex County Flood Insurance Rate Map (FIRM) issued by the FEMA.

In considering approval of the Flood Hazard Overlay District Special Permit, the Planning Board hereby makes the findings for the portion of the site within the FHOD pertaining to the Flood Hazard Overlay District Special Permit Application as follows:

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1. The proposed uses comply in all respects to the uses and provisions of the underlying districts in which the land is located.

- i. The property is located in the Central Development (B5) Zoning District as well as Flood Hazard Overlay District, (FHOD) and Entrance Corridor Overlay District (ECOD). The applicant is seeking to construct two (2) buildings, one of which will occupy the corner at Lafayette and Derby and the second at the nearby site at 9 Peabody. At 73 Lafayette Street the applicant proposes a 6-story mixed-use building with commercial space on street level. Along Derby Street, the applicant proposes a new approximately 41,500 sf community health clinic. The applicant proposes that North Shore Bank will relocate from its current ground floor location on Derby to front on Lafayette Street. At 9 Peabody Street 29 units of age-restricted affordable housing are proposed in addition to parking, and a publicly accessible community room. All buildings have been reduced in massing from the original submittal.

2. There is adequate convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets and property, particularly in the event of flooding of the lot(s) or adjacent lot(s) caused by either overspill from water bodies or high runoff.

- i. The project has been designed to allow adequate convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets and property. Garages and building entries are located above the FEMA Flood Zone "AE" (elevation 10), which will prevent flooding of homes, except with respect to 9 Peabody where the elevation change takes place inside the building. A small section of parking is located below elevation 10, but it is not expected that residents will regularly use this parking and impacts will be minimal. While the entry to the site is below elevation 10, the depth of water is only expected to be about 1.5 feet during the 100-year-flood, which should still provide access for emergency vehicles.

3. Utilities, including gas, electricity, fuel, water and sewage disposal, will be located and constructed so as to protect against breaking, leaking, short-circuiting, grounding or igniting or any other damage due to flooding.

- i. All surface utilities (transformer, electric, gas and water meters, hydrant) will be located above the FEMA Flood Zone elevation 10, except where prohibited by the service provider(s). Underground pipes and conduits, sanitary sewer structures and storm sewer structures that cannot be located above the FEMA Flood Zone elevation 10, will be watertight and protected against any damage occurring from flooding.
- ii. All Service connections will be in compliance with the current edition of the Massachusetts Building Code, 780 CMR State Board of Building Regulations Standard, Appendix G: Flood-Resistance Construction.

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4. Where the proposed use will be located within a coastal high hazard area (Zone VE on the FEMA Flood Insurance Rate Maps), the Planning Board shall also find the following conditions to be fulfilled: New structures or substantial improvements shall be located landward of the reach of mean high tide. The support of new structures or substantial improvements shall not be, in whole or in part, by the use of fill.

- i. There is no coastal high hazard area (Zone VE) on the subject property

Planned Unit Development Findings

The Planning Board hereby makes the following findings pertaining to the City of Salem Zoning Ordinance, Sec. 7.3 Planned Unit Development:

7.3.8.1 The proposed planned unit development is in harmony with the purpose and intent this ordinance and the master plan of the City of Salem as this project will add vitality to the Central Development district of the city by adding a community health center clinic complete with urgent care, lab, pharmacy and medical services, as well as a bank and affordable housing for residents who earn below 50% and 30% of the area median income.

7.3.8.2 The planned unit development is designed to provide various types of land use which can be combined in compatible relationship with each other as part of a totally planned development. As proposed, the mixture of residential, commercial and open space is compatible with each other, thereby meeting the purpose and intent of good zoning practices and the master plan of the City of Salem. The compatible relationship among the mixture of uses combined with the inclusion of affordable housing, and pedestrian access to the river front to render it appropriate to depart from the strict provisions of the underlying zoning classifications.

7.3.8.3 The planned unit development would not result in a net negative environmental impact, based on the information from the Environmental Impact Statement and plans. The proposed development is considering LEED, passive house, and a carbon net zero footprint building. The redeveloped site will result in improvements to stormwater management; the mixture of uses and site improvements will promote walking and cycling. As such, the development will result in net improvements to the natural environment.

Decision

In view of these findings, the Planning Board decided at a regularly scheduled meeting on January 19, 2023, by a vote of seven (7) (Chair Bill Grisct, Tom Furey, Helen Sides, Carole Hamilton, Zach Caunter, Jonathan Berk, and Josh Turiel) in favor, and zero (0) opposed to approve the proposed project subject to the following conditions:

1. Conformance with the Plan

- a. Work shall conform to “El Centro 73 Lafayette Street, 9 Peabody Street, Salem, Massachusetts,” with the sheets listed below (the “Plans”):

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Drawing Title	Sheet No.	Prepared By	Issued	Revised
Cover	G0.00	Mass Design Group	09.22.2022	
Requirements, Summaries, Aerial Views	G0.01	Mass Design Group	09.22.2022	
Existing Conditions Survey	G0.02	Mass Design Group	09.22.2022	
Area Diagrams	G0.11	Mass Design Group	09.22.2022	
Site Plan	X-01	Childs Engineering	02.09.2022	
Condition Plan	X-02	Childs Engineering	02.09.2022	
Cross Sections	X-03	Childs Engineering	02.09.2022	
Notes, Symbols, Abbreviations and Legends	C-000	Nitsch Engineering	09.16.2022	December 5, 2022
Utilities Demolition Plan	C-100	Nitsch Engineering	09.16.2022	November 17, 2022
Site Utility Plan	C-200	Nitsch Engineering	09.16.2022	December 13, 2022
Civil Details 1	C-300	Nitsch Engineering	09.16.2022	December 1, 2022
Civil Details 2	C-301	Nitsch Engineering	09.16.2022	November 17, 2022
Civil Details 3	C-302	Nitsch Engineering	09.16.2022	November 17, 2022
Vehicle Tracking	C-1	Nitsch Engineering	07.07.2022	November 17, 2022
Vehicle Tracking	C-2	Nitsch Engineering	07.07.2022	
Vehicle Tracking	C-3	Nitsch Engineering	07.07.2022	
Vehicle Tracking	C-4	Nitsch Engineering	07.07.2022	
	C-5	Nitsch Engineering	05.10.2022	
Vehicle Tracking	C-6	Nitsch Engineering	06.27.2022	
Materials Plan	L1.10A	Mass Design Group	09.22.2022	Superseded
Materials Plan	L1.10B	Mass Design Group	09.22.2022	November 17, 2022
Layout Plan	L1.20A	Mass Design Group	09.22.2022	Superseded
Layout Plan	L1.20B	Mass Design Group	09.22.2022	November 17, 2022
Planting Plan	L1.30A	Mass Design Group	09.22.2022	Superseded
Planting Plan	L1.30B	Mass Design Group	09.22.2022	November 17, 2022
Grading Plan	L2.00A	Mass Design Group	09.22.2022	Superseded
Grading Plan	L2.00B	Mass Design Group	09.22.2022	December 19, 2022
Materials Details	L5.10	Mass Design Group	09.22.2022	November 17, 2022
Lafayette Level 1 Floor Plan	L-A1.01	Mass Design Group	09.22.2022	November 17, 2022
Lafayette Level 2 Floor Plan	L-A1.02	Mass Design Group	09.22.2022	

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Lafayette Level 3 Floor Plan	L-A1.03	Mass Design Group	09.22.2022	
Lafayette Level 4 Floor Plan	L-A1.04	Mass Design Group	09.22.2022	
Lafayette Level 5 Floor Plan	L-A1.05	Mass Design Group	09.22.2022	
Lafayette Level 6 Floor Plan	L-A1.05	Mass Design Group	09.22.2022	
Lafayette Roof Plan	L-A1.06	Mass Design Group	09.22.2022	
Lafayette Building Elevations	A2.01	Mass Design Group	09.22.2022	
Lafayette Building Elevations	A2.02	Mass Design Group	09.22.2022	
Lafayette Building Sections	A3.01	Mass Design Group	09.22.2022	
Lafayette Building Sections	A3.02	Mass Design Group	09.22.2022	
Bank Equipment	LD.A8.01	Mass Design Group	09.22.2022	November 17, 2022
Peabody Level 1 Plan	PB.A1.01	Mass Design Group	09.22.2022	November 17, 2022
Peabody Level 2-3 Plan	PB.A1.02	Mass Design Group	09.22.2022	
Peabody Level 4-5 Plan	PB.A1.03	Mass Design Group	09.22.2022	
Peabody West and East Elevations	PB.A2.01	Mass Design Group	09.22.2022	
Peabody North and South Elevations	PB.A2.02	Mass Design Group	09.22.2022	
Peabody Building Sections	PB.A3.01	Mass Design Group	09.22.2022	
Peabody Building Sections	PB.A3.02	Mass Design Group	09.22.2022	

- b. Prior to issuance of a building permit, the applicant shall submit a revised Site Plan, showing the following changes:
 - i. Remove the proposed crosswalk from Lafayette Street.
 - ii. Add a crosswalk on the northern side of the site driveway that aligns with the corner of Dodge Street.
 - iii. Reciprocal pedestrian ramp on Lafayette at Dodge Street built to State Code CMR 521 standards.
- c. All Federal, State or local Permits required and obtained for the project shall be submitted to the Salem Planning Board upon receipt.

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2. Amendments

- a. Any proposed future changes to the site plan shall be submitted to the City Planner for their review, prior to any changes in the field. The submission shall include a plan sheet with all changes from the plans approved by the Planning Board bubbled, noted, and stamped by a licensed professional engineer or architect. This submission shall also include a brief narrative explaining the proposed changes. If deemed necessary by the City Planner, these amendments shall be brought to the Planning Board. Any waiver of conditions contained within shall require the approval of the Planning Board.

3. Transfer of Ownership

- a. In the event of the transfer of the site as a whole, within five (5) days of such transfer, the Owner shall notify the Board in writing of the new owner's name and address. The terms, conditions, restrictions, and/or requirements of this decision shall be binding on the Owner and its successors and/or assigns.

4. Site Specific Conditions

- a. Where HVAC units are installed on site, they shall be visually screened. The method for screening the unit shall be submitted to the City Planner for review and approval prior to installation. Approved method for screening shall be constructed and installed prior to the issuance of a Certificate of Occupancy. If not screened, units shall be dark in color.
- b. The applicant shall annually purchase 67 passes to the municipal garage at 1 New Liberty Street. The first year of passes shall be purchased prior to the health center receiving a certificate of occupancy. Should the study conducted, as described in Condition 4.e, indicate that the number of passes exceeds the need as determined by the Traffic and Parking Director, the Traffic and Parking Director may reduce the required passes at the request of the applicant.
- c. Prior to the health center receiving a certificate of occupancy, the applicant shall provide \$2,500 in escrow. The escrow funds will be released after the data required in condition 4. d. is collected and the analysis required in condition 4. e. is completed.
- d. One year post 100 percent occupancy of the health center, the applicant shall obtain a year's worth of garage utilization data from the City's vendor who provides the garage's parking management equipment & software. The City's Traffic & Parking Director will identify the specific data that will need to be gathered for this effort.
- e. One year post 100 percent occupancy of the health center, the applicant shall hire a qualified consultant to conduct a one-year utilization analysis of the garage and compare that utilization to an assessment conducted of 2019 utilization data. The analysis shall begin when the development reaches 100% occupancy and cover a one-year period from that date. The analysis will be conducted to determine what, if any, impact the additional purchased passes has on the capacity of the garage.
- f. The applicant shall manage the health center's parking to ensure employees are not parking on public ways.

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- g. Applicant shall install an audio alert signal at the garage entrance of 9 Peabody for exiting vehicles.
- h. Applicant shall install a speed hump at the internal threshold to the garage entrance of 9 Peabody.

5. Pre-Construction Conference

- a. Prior to mobilizing equipment on site for the start of work, a pre-construction conference as necessary shall be scheduled with the City Planner, the City Engineer (or their designee), the Building Commissioner, the Health Agent, Tree Warden and any other departments that may be necessary. The Owner shall submit a construction schedule at the time of the pre-construction conference. The schedule shall include a description of how construction will be phased and staged and what the impacts will be to the sidewalks and roadways.

6. Traffic & Circulation

- a. To ensure that safe vehicular, bicyclist, and pedestrian circulation is maintained throughout construction, applicant shall submit to the City Planner, prior to issuance of a Building Permit, a plan detailing site access for construction vehicles, material delivery, debris removal, and any other vehicular activity associated with the project's construction.
- b. The developer shall limit the number of construction worker parking spaces on-site to ten (10) and encourage workers to carpool or utilize public transit by providing a subsidy for MBTA passes to full-time employees and secure spaces on-site for workers to store supplies and tools.
- c. The developer shall coordinate construction activities with the City Engineer.
- d. The developer shall contribute \$24,000.00 to the City of Salem Transportation Enhancement Fund (TEF), commensurate to the project's impact on the City's transportation network, prior to issuance of a Certificate of Occupancy. The TEF will be used by the city for transportation network services relating to infrastructure and or operation of the transportation network.
- e. Forty-five (45) long-term bicycle parking spaces will be installed within the buildings prior to issuance of a Certificate of Occupancy.
- f. Six (6) parking spots will be equipped with electric vehicle charging stations prior to issuance of a Certificate of Occupancy.
- g. Prior to issuance of Certificate of Occupancy, the developer shall provide a signage plan for the City Planner's review and approval, ensuring adequate wayfinding to the clinical patient drop-off area to the rear of 73 Lafayette Street.

7. Sustainability and Resiliency

- a. Prior to issuance of a Building Permit, the developer shall submit a revised Net Zero Energy Questionnaire to the City Planner for review.
- b. Prior to issuance of a Certificate of Occupancy, the developer shall submit a revised Net Zero Energy Questionnaire to the City Planner for review.

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8. Affordable Housing

- a. The Applicant shall place an Affordable Housing Restriction on 100% of the housing units in the form acceptable to the Commonwealth Department of Housing and Community Development (DHCD). The restrictions shall be in accordance with the eligibility criteria for DHCD's Subsidized Housing Inventory for the purpose of ensuring that the dwelling units will be restricted as affordable housing for households whose annual incomes are sixty percent (60%) or less of Area Median Income ("Low Income Households") with a sales or rental price affordable to said households as determined by DHCD for a period of ninety-nine (99) years from the date of the original conveyance. The Affordable Housing Restriction(s) shall be registered with the Essex South Registry of Deeds.
- b. Affordable Housing Units must be constructed and ready for occupancy at a proportion of one (1) affordable unit for every ten (10) certificates of occupancy released for the market rate units. Ready for occupancy means that 1. The affordable units have a certificate of occupancy, 2. The Affordable Housing Restriction has been registered with the Essex South Registry of Deeds and 3. The lottery has been completed pursuant to Section III of the DHCD Comprehensive Permit Guidelines.

9. Landscaping

- a. An as built landscaping plan accompanied with a letter from a Registered Landscape Architect or certified arborist certifying compliance of the landscaping with the approved plan shall be submitted to the City Planner prior to issuance of the Certificate of Occupancy.
- b. Maintenance of all landscaping on the site shall be the responsibility of the Applicant, its successors or assigns, and any tree or shrub that does not survive shall be replaced.

10. Maintenance

- a. Refuse removal, ground maintenance, and snow removal shall be the responsibility of the applicant. "Refuse removal" includes recycling, which shall be the responsibility of the owner, successors, or assigns. The owner shall provide adequate facilities to ensure all users are able to recycle their trash. Owner is to enter into a contract with a company of the owner's choice to arrange pick-up of recyclable material. A copy of this contract is to be submitted to the City Engineer.
- b. Winter snow in excess of snow storage areas on the site shall be removed off- site.

11. Fire Department

- a. All work shall comply with the requirements of the Salem Fire Department.

12. Building Inspector

- a. All work shall comply with the requirements of the Salem Building Inspector.

13. Board of Health

The owner shall comply with the following specific conditions issued by the Board of Health:

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- a. The individual presenting the plan to the Board of Health must notify the Health Agent of the name, address, and telephone number of the project (site) manager who will be on site and directly responsible for the construction of the project.
- b. 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 meets the DEP standards for the proposed use.
- c. A copy of the Licensed Asbestos Inspector's Report must be sent to the Health Agent.
- d. A copy of the Demolition Notice sent to the DEP, Form BWPAO6, must be sent to the Health Agent.
- e. The developer shall adhere to a drainage plan as approved by the City Engineer.
- f. The developer shall employ a licensed pesticide applicator to exterminate the area prior to construction, demolition, and/or blasting and shall send a copy of the exterminator's invoice to the Health Agent.
- g. The developer shall submit a plan for rodent control and maintain the area free from rodents throughout construction.
- h. The developer shall submit to the Health Agent a written plan for dust control and street sweeping which will occur during construction.
- i. The developer shall submit to the Health Agent a written plan for containment and removal of debris, vegetative waste, and unacceptable excavation material generated during demolition and/or construction.
- j. In accordance with Board of Health Regulation #7, the developer shall ensure that the trash contractor offers recycling to the development.
- k. The Fire Department must approve the plan regarding access for fire fighting.
- l. Noise levels from the resultant establishment(s) 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 measured at the property line.
- m. The developer shall disclose in writing to the Health Agent the origin of any fill material needed for the project.
- n. The resultant establishment shall dispose of all waste materials resulting from its operation in an environmentally sound manner as described to the Board of Health.
- o. The developer shall notify the Health Agent when the project is complete for final inspection and confirmation that above conditions have been met.

14. City Engineer & Utilities

- a. All work shall comply with the requirements of the City Engineer, including but not limited to, the Engineering Rules & Regulations for Site Plan Review & Building Permit Routing Slip Sign Off.
- b. Prior to building permit sign-off, the Applicant shall investigate if the outfall at 9 Peabody Street can be reestablished and reused.
- c. Prior to building permit sign-off, the Applicant shall acquire an easement for the drainage to discharge through City property. All compliance requirements for the discharge are the obligation of the developer.

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- d. Prior to any earth moving activity on the site, the Applicant shall apply for and obtain the required Drainage Alteration Permit.
- e. The Applicant is responsible for paying all fees associated with peer review services requested by the City for services such as review of designs/calculations submitted following site plan review. The City may elect to engage the services of a third-party consultant(s) to perform review of submittals, permit applications, observations and/or testing, etc. The Applicant will be responsible for costs incurred by the City for all such services.
- f. Prior to sign-off of the Demolition Permit, the Applicant shall submit to the Engineering Department a detailed Demolition Plan (Plan);
 - i. Describing the measures that will be taken to protect the integrity of the existing culvert beneath the proposed development at 73 Lafayette Street during the demolition process. The Plan shall outline the means and methods for the demolition of the existing building, schedule for demolition, protective measures for the existing culvert, earthwork and backfill specifications to be utilized adjacent to the culvert and the interim surface conditions (the phase between demolition and construction of the new building and site improvements).
 - ii. An emergency response plan in the event of damage to the culvert (including emergency by-pass pumping).
 - iii. A licensed plumber shall complete building inspections to locate all drain lines (location, size, and material) connected to the existing building (including, but not limited to, sump pumps and roof drains). All services shall be shown on the plan and all services to be abandoned shall be cut and capped in accordance with City regulations.
 - iv. Show existing sewer services to be cut and capped at the main on the demolition plan.
 - v. Coordinate any permitting requirements for protected, shade, or public trees with City staff. Provide for the protection of Public Street Trees during construction. Excavation within the drip line of the canopy of a public shade tree requires a permit.
 - vi. Location and details of proposed erosion controls, including how erosion and sediment controls will be staked/secured to impervious surfaces.
 - vii. The Demolition Plan shall be dated, stamped and signed by a Professional Engineer registered in the Commonwealth of Massachusetts.
 - viii. Plan shall be reviewed and accepted by the City Engineering Department prior to issuance of a Demolition Permit.
- g. Immediately following demolition of the existing building, the applicant shall conduct an inspection (similar in scope and nature to the previous inspection by Childs Engineering) to confirm post-demolition condition of the culvert is similar to that of said Childs Engineering Report. The inspection report shall be submitted to the City Engineering Department for review. Cost of the inspection shall be borne by the Applicant. The Applicant shall repair any additional damage observed during the post-demolition inspection at their expense.

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- h. Prior to sign-off on a building permit, the applicant shall provide detailed building/construction plans and specifications as well as a project schedule depicting the nature and extents of the repairs to the existing culvert walls, and pipes and replacement of culvert roof as noted in the July 15, 2022 Woodard & Curran memorandum and attachments.
 - i. Building Plans including detailed information pertaining to the measures that will be taken to protect the integrity of the existing culvert beneath the proposed development at 73 Lafayette Street during the construction process shall be submitted to the City Engineering Department. The Building Plans shall outline the means and methods for construction of the proposed building and site improvements, schedule, detailed foundation design and calculations demonstrating no loads from the building will be transferred to the culvert, the protective measures for the culvert, earthwork and backfill specifications to be utilized adjacent to the culvert. The Applicant is responsible for all expenses of any inspections, observations or testing required to demonstrate protection of the culvert.
 - ii. All plans submitted shall be dated, stamped and signed by a Professional Engineer registered in the Commonwealth of Massachusetts.
 - iii. Submittals shall be reviewed and accepted by the City Engineering Department.
 - iv. Applicant shall provide uninhibited access to the construction site for City staff, or designee, to observe progress of work.
 - v. Upon completion of the repairs/replacement:
 - 1. Applicant shall provide the City Engineer with copies of all construction submittals (i.e. shop drawings, catalog cuts, inspection/testing reports, etc.).
 - 2. Applicant shall conduct an inspection (similar in scope and nature to the previous inspection by Childs Engineering) to confirm completion and integrity of the repairs/replacement. All costs for such inspection shall be borne by the Applicant.
- i. Prior to building permit sign-off, the Applicant's engineer shall provide a letter stating that the City watermains to serve the proposed development have adequate flow and pressure. Back-up data, including engineering calculations and the results of hydrant flow tests (within one year), shall be included in the letter.
- j. Prior to building permit sign-off, detailed information shall be provided on the water meter location in the building that demonstrates clear access for City staff and future maintenance and that no other connections (tees) exist before the City's main meter. Provide plumbing plans.
- k. Prior to building permit sign-off, the applicant shall provide the fire sprinkler system design to the City.
- l. Prior to issuance of a Street Opening and Trench Permit, the Applicant's Licensed Plumber and/ or Fire Protection Engineer shall complete and submit the Backflow Prevention Device Design Data Sheet for each proposed device. The data sheet

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- shall be submitted to the City Engineer for approval with a check, or money order, in the amount of \$100 made out to the City of Salem for the permit fee. Note: A containment backflow prevention device is required for all commercial and mixed-use properties as well as residential properties with 10 or more units.
- m. Prior to building permit sign-off, the location of the backflow device for the irrigation system shall be provided to the City Engineer. The Backflow Prevention Device Design Data Sheet shall also be provided.
 - n. Prior to building permit sign-off, the project engineer shall provide a letter to the City Engineer stating that the city sewer system to serve the proposed development is in good condition and has adequate capacity to accommodate proposed flows. Back-up data, including engineering calculations and the results of all sewer inspections and existing sewer flow measurements, shall be included in the letter. Additionally, cleaning and CCTV inspections of the sewer main based on the Pipeline Assessment Certification Program (PACP) standards will be required showing the full circumference of the pipe. A copy of the video and logs shall be submitted with the letter. (Note: Any deficiency identified in the system, shall be corrected by the applicant, at the applicant's expense, to the satisfaction of the City Engineer.) Refer to the included figure prepared by the City Engineer for CCTV limits.
 - o. Prior to building permit sign-off, the applicant shall provide clarification on the Utility Plans for the location, size, and material of proposed electric and telecommunications services. A petition for grant of location through the City Council is required for all relocation, size increases, or new electrical and telecommunications conduits within the City's right-of-way. This requirement also applies to any electrical and telecommunication services proposed to be placed underground. All structures to be installed in public right of way (including sidewalks) shall be H-20 load rated.
 - p. Prior to building permit sign-off, the applicant shall provide clarification on how roof runoff will be managed.

15. Clerk of the Works

- a. A Clerk of the Works shall be provided by the City, at the expense of the Applicant, their successors or assigns, as it is deemed necessary by the City Engineer. Accordingly, it is the understanding of the Board, the City Planner, the City Engineer, and the Applicant, that the Clerk of the Works is expected to oversee and review all civil and site improvements related to the Project, including, but not necessarily limited to:
 - i. All utility cut and caps related to the City's Demolition Permit;
 - ii. All new utility installations;
 - iii. All connections to, extensions of, or improvements to publicly owned infrastructure both on the Applicant's site or within the City's right of way and any on-site stormwater or wastewater systems;

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- iv. All new installations or modifications to existing pavement, sidewalk, and curbing; and
- v. All conditions placed on the project by an Order of Conditions from the Salem Conservation Commission.
- b. The Clerk of the Works shall review and approve all proposed, or approved, changes to the original Planning Board decision.
- c. The Applicant shall submit a construction plan that includes a detailed sequence and schedule of all construction activities related to the Clerk of the Works' purview. Once the construction plan is approved, it shall be used to create a Task Order for the Clerk of the Works.
- d. No work, including blasting, demolition, excavation, and grading shall start before an approved task order for the Clerk of the Works' services has been agreed upon and approved by all parties.

16. Construction Practices

- a. All construction shall be carried out in accordance with the following conditions:
 - i. All provisions in the City of Salem's Code of Ordinance, Chapter 22, Noise Control, shall be strictly adhered to.
 - ii. All reasonable action shall be taken to minimize the negative effects of construction on abutters. Advance notice shall be provided to all abutters in writing at least 72 hours prior to commencement of demolition and construction of the project.
 - iii. Drilling and blasting shall be limited to Monday-Friday between 8:00 AM until 5:00 PM. There shall be no drilling, blasting or rock hammering on Saturdays, Sundays, or state and federal holidays. Blasting shall be undertaken in accordance with all local and state regulations.
 - iv. All construction and staging will occur on site or on privately owned adjacent parcels. No construction will occur or be staged within City right of way. Any deviation from this shall be approved by the Department of Planning & Community Development prior to construction.
 - v. Prior to issuance of a demolition, foundation, or building permit, the Applicant shall provide a detailed construction vehicle access, schedule, and traffic plan for review and approval by the Director of Traffic & Parking
 - vi. Any roadways, driveways, sidewalks, or landscaping damaged during construction shall be restored to their original condition by the applicant.
 - vii. All construction vehicles shall be cleaned prior to leaving the site so that they do not leave dirt and/or debris on surrounding roadways as they leave the site.
 - viii. 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.
 - ix. All construction vehicles left overnight at the site, must be located completely on the site.
 - x. Should contaminated materials be encountered onsite, all construction shall take place under the direction and supervision of a Licensed Site

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Professional in compliance with the rules and regulations of the
Massachusetts Department of Environmental Protection.

- xi. The applicant shall promptly notify the Board of Health of any environmental condition encountered during construction that may adversely impact the abutters to the site.

17. As-built Plans

- a. As-built Plans, stamped by a Registered Professional Engineer, shall be reviewed and approved by the Clerk of the Works, then submitted to the Department of Planning and Community Development and Department of Public Services prior to the issuance of the Certificate of Occupancy.
- b. The As-Built plans shall be submitted to the City Engineer in an electronic file format suitable for the City's use and accepted by the City Engineer, prior to the issuance of the Certificate of Occupancy.
- 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 Certificate of Occupancy; as well as, any subsequent requirements by the City Engineer.

18. Violations

- a. Violations of any condition contained herein shall result in revocation of this permit by the Planning Board unless the violation of such condition is waived by a majority vote of the Planning Board.


Record of Vote

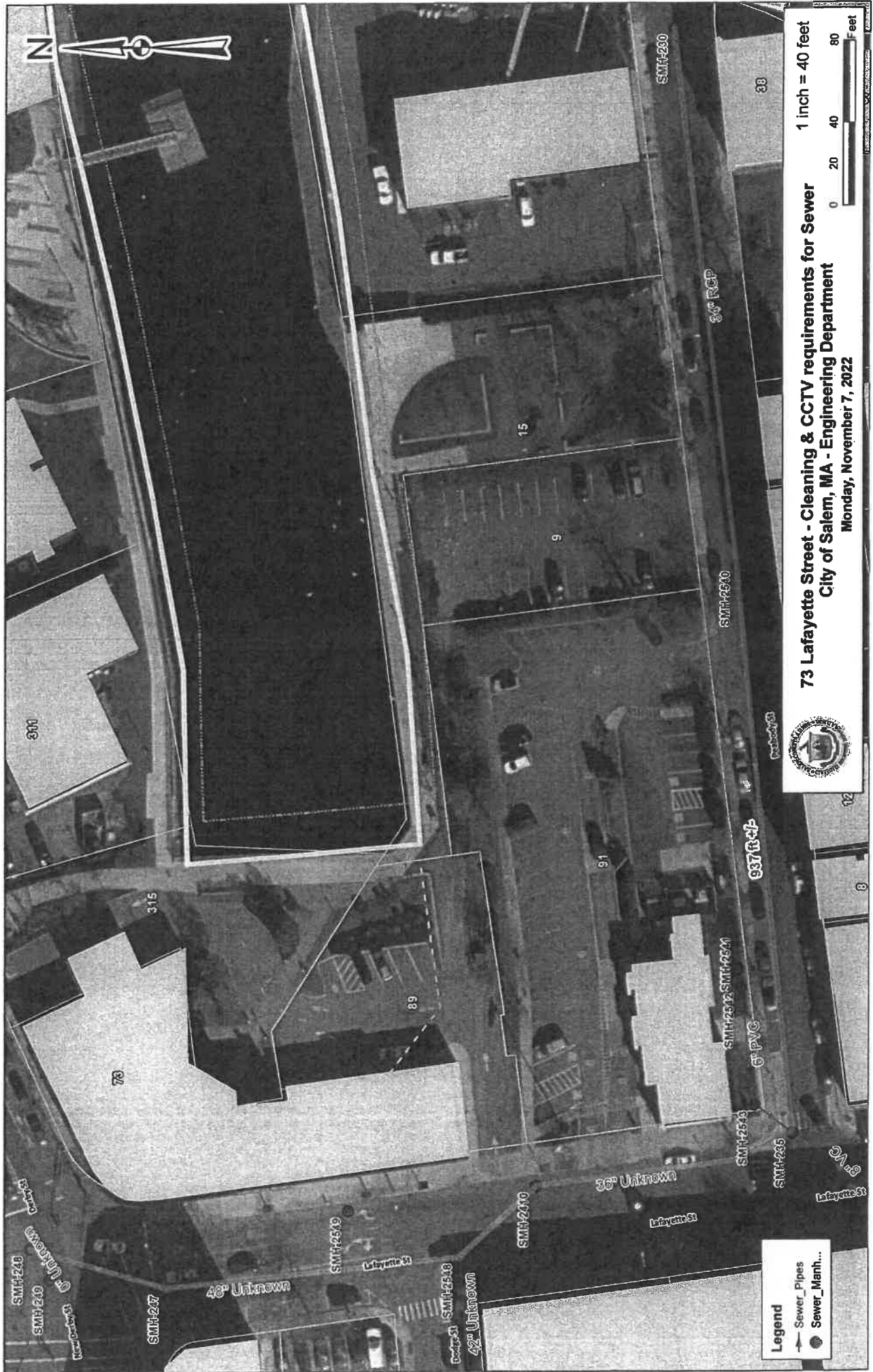
The following members of the Planning Board voted seven (7) in favor and zero (0) opposed to approve the Site Plan Review application subject to the above-stated terms and conditions: (Chair Bill Grisct, Tom Furey, Helen Sides, Carole Hamilton, Zach Caunter, Jonathan Berk, and Josh Turiel).

I hereby certify that a copy of this decision and plans has been filed with the City Clerk and copies are on file with the Planning Board. The Site Plan Review and Special Permits shall not take effect until a copy of this decision bearing the certification of the City Clerk that twenty (20) days have elapsed and no appeal has been filed or that if 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 is recorded on the owner's Certificate of Title. The owner or applicant, his successors or assigns, shall pay the fee for recording or registering.


William Grisct
Chair

A TRUE COPY ATTEST


CITY CLERK
SALEM, MASS.



1 inch = 40 feet

73 Lafayette Street - Cleaning & CCTV requirements for Sewer
City of Salem, MA - Engineering Department
Monday, November 7, 2022



Legend
— Sewer Pipes
● Sewer Manh...