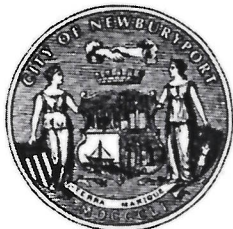


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CITY OF NEWBURYPORT
PLANNING BOARD
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NEWBURYPORT, MA 01950
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WWW.CITYOFNEWBURYPORT.COM

**RECORD OF PROCEEDINGS AND
SMART GROWTH DISTRICT PLAN APPROVAL DECISION**

APPLICANT: Three Boston Way, LLC
231 Sutton Street, Suite 1B
North Andover, MA 01845

PROPERTY OWNER: Three Boston Way, LLC

FILE NO.: 2019-SGD-01

PROPERTY ADDRESS: **3 Boston Way**

DECISION DATE: 03/04/20

MAP/PARCEL(S): 78-1-I

BOOK/PAGE: 37775-0478

ZONING DISTRICT: I1B/SGOD

PROCEDURAL HISTORY:

An application for a Smart Growth District Plan Approval pursuant to Section XXIX Smart Growth District of the City of Newburyport's Zoning Ordinance was made by the above-referenced owner and filed with the Planning Board on 10/23/19 for the following request: *5 story residential building comprised of 84 rental units (hereinafter, the "Project")*.

A public meeting on the application was held at Newburyport City Hall on 11/20/19 and continued to 12/18/19, 1/15/20, 2/5/20, and 3/4/20.

Upon a motion made by Anne Gardner and seconded by James Brugger, the Planning Board voted as follows to approve the Smart Growth Plan pursuant to the Newburyport Zoning Ordinance (NZO), Smart Growth District (SGD) Section XXIX-H(3)(d):

Bonnie Sontag, Chair	<u>Yes</u>	Don Walters	<u>Yes</u>	Leah McGavern	<u>Yes</u>
James Brugger	<u>Yes</u>	Anne Gardner	<u>Yes</u>	MJ Verde	<u>Yes</u>
Tania Hartford	<u>Absent</u>	Rick Taintor	<u>Yes</u>	Elisabeth DeLisle	<u>Not Voting</u>

The motion having received a majority vote of all the members of the Planning Board, acting as Plan Approval Authority (PAA), in accordance with Section XXIX-H of the Newburyport Zoning Ordinance, the application for Smart Growth Plan Approval was therefore approved.

PLANS AND DOCUMENTS:

This Smart Growth District Plan Approval application was accompanied and augmented by the following plans, drawings, documents, and submittals, which are hereby incorporated into this decision:

- Application for Smart Growth Plan Approval pursuant to Section XXIX of the City of Newburyport’s Zoning Ordinance was made by the above-referenced applicant (with authorization from the property owner) and filed with the Planning Board on October 23, 2019.
- Site Plan set entitled “ 3 Boston Way, Submittal to Planning Board Under SGD Section XXIX, Newburyport Smart Growth District”, submitted by 3 Boston Way, LLC, 231 Sutton Street, North Andover, MA 01845. Sheets included in this plan set are according to the following sheet number, title, original date, and most recent revised date:

Sheet No.	Sheet Title	Original Date	Revised Date
A0.0	Coversheet	10/23/19	1/23/20
A0.1	Fire Truck Access Site Plan	10/23/19	
A0.2	Ladder Truck Fire Rescue Sections	10/23/19	
A1.1	Site Plan & Parking Garage	10/23/19	1/23/20
A1.2	Floor Plan with Unit Mix / Affordable Location	10/23/19	
A1.3	First Floor Plan	10/23/19	
A1.4	Second Floor Plan	10/23/19	
A1.5	Typical Floor Plan (3 rd & 4 th Floor Plan)	10/23/19	
A1.6	Fifth Floor Plan	10/23/19	
A1.7	Roof Plan	10/23/19	
A1.8	Elevations- East & North	10/23/19	12/11/19
A1.9	Elevations- South & West	10/23/19	12/11/19
A1.10	East Elevation	12/6/19	12/11/19
A1.11	Building section	10/23/19	
A1.12	Balcony and signage details	10/23/19	
C-1	Existing Conditions Plan	10/23/19	1/23/20
C-2	Site Layout Plan	10/23/19	1/23/20
C-3	Grading & Drainage Plans	10/23/19	1/23/20
C-4	Utility Plan	10/23/19	1/23/20
C-5	Construction Details I	10/23/19	1/23/20
C-6	Construction Details II	10/23/19	1/23/20
C-7	Construction Details III	10/23/19	1/23/20
C-8	Construction Details IV	10/23/19	1/23/20
C-9	Erosion Control & Site Preparation Plan	10/23/19	1/23/20
L0.0	Colored Context Plan	10/23/19	1/23/20
L0.1	Colored Plan	10/23/19	1/23/20
L1.1	Planting Plan	10/23/19	1/23/20
L1.2	Planting Enlargements	10/23/19	1/23/20

L2.1	Site Improvements Enlargements	10/23/19	1/23/20
L3.1	Photometric Lighting Plan	10/23/19	1/23/20
L4.1	Site Improvement Details 1	10/23/19	1/23/20
L4.2	Site Improvement Details 2	10/23/19	1/23/20

- A “Drainage Report” for the Smart Growth Development at 3 Boston Way, Newburyport, MA, prepared by The Morin Cameron Group, Inc., originally dated October 23, 2019 and further revised on January 23, 2020.
- The above plans and submission materials were reviewed by the Planning Board, and a peer review of engineering and Stormwater design was conducted by Christiansen & Sergi, Inc., on behalf of the Planning Board. Additional comments were received from various City Departments on the draft plans which were subsequently revised to address outstanding issues satisfactorily. A full copy of this documentation is on file with the Newburyport Office of Planning & Development, 60 Pleasant Street, Newburyport, MA 01950.
- 3D Color Renderings of the proposed Project (building, site and landscaping) are on file with the Newburyport Planning Board and the Office of Planning & Development.
- 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, as made at the public hearing.

FINDINGS:

In order to grant Smart Growth Plan Approval, this Board must first determine that the applicant’s project meets certain specific criteria, as provided in Section XXIX-H of the NZO. These criteria and the Board’s project specific findings for each are enumerated here:

1. Consistency with Purposes of Smart Growth District

The objectives of the Smart Growth District include promoting sustainable development, concentrating development close to the commuter rail station, encouraging mixed use development, increasing the range of housing choices and ensuring predictable permitting. Pursuant to SGD Section XXIX-H(3)(a) the Planning Board hereby determines that the application and proposed Project is consistent with the purpose and intent of Section XXIX as more fully set forth in Section XXIX-A:

2. Transit-Oriented Development

The Project is located on a parcel directly adjacent to both the MBTA Commuter Rail line and the City of Newburyport multi-use Clipper City Rail Trail. The single, multi-family structure is within steps of the commuter rail that can take residents through the North Shore and into Boston. The parking, site layout and landscaping are configured in such a way as to encourage pedestrian activity, promote connectivity and allow for transportation choice.

3. Encourage Sustainable Mixed-Use Development

The 84-unit residential structure will feature live/work units on the first floor that are to allow for commercial activity and, if the economy allows, transition from living space to pure commercial space. The ceiling height on the first floor will allow for future commercial development as well as the construction techniques that will enable an efficient transition from residential space to commercial. Additionally, there will be approximately 1,055 square feet of first floor common space, comprised of both a shared office work space and additional amenities for the residents.

4. Increase Housing Diversity

This Project will increase housing diversity in several ways: (1) by providing the City with 84 rental units at a time when housing trends indicate a loss of rentals in the City; (2) by providing an assortment of bedroom types to meet a variety of family types; and (3) by providing 21 deed-restricted affordable units for individuals and families that make 80% or less of the Area Median Income.

5. Beautify and Enliven New Center

This Project's architecture and building articulation, signage, landscaping, lighting and pedestrian-oriented spaces have been designed to create a livable and vibrant new center in Newburyport.

6. Embodies High Quality Development Standards

The Project is consistent with the Ordinance's Design Standards, Section XXIX-I, and thusly respects the patterns of New England construction that have and continue to define historical Newburyport while embracing modern architectural trends. The building itself, while standing five stories tall, creates a pedestrian-friendly environment by including awnings, signage and window features that are pedestrian-scal

7. Compliance with Development & Performance Standards of Smart Growth District

In addition, the Planning Board has determined that the project complies with the development and performance standards set forth in SGD Sections XXIX-F, XXIX-G, XXIX-I. The Project meets the dimensional and parking regulations, and design standards contained within the SGD Ordinance or that applicable waivers have been granted thereto by the Planning Board in accordance with said Section XXIX.

8. Mitigation of Any Potential Impacts of the Project

Further, the Board has determined that any potential impacts of the Project on adjacent and nearby properties have been adequately mitigated.

9. Affordable Housing Distribution

The Board has determined that the Project plans comply with Section XXIX-G (4) of the SGD Ordinance with respect to the size and distribution of affordable housing units.

10. Authority from the Owner

The Applicant has submitted documentation evidencing permission of the property owner to submit this Project for Smart Growth Plan Approval pursuant to the Newburyport SGD Ordinance.

11. Review of Project Plans by City Boards & Departments

In accordance with the Newburyport SGD Ordinance, Section XXIX-H(2)(b), the Planning Board (acting as Plan Approval Authority) provided copies of the Project application materials to various City Boards and Departments for their subsequent review and comment. Any comments or concerns received from other boards or departments have been considered and/or addressed by the applicant to the satisfaction of this Board.

WAIVERS REQUESTED:

- Pursuant to the Newburyport SGD Ordinance, Sections XXIX-H (3)(c) and XXIX-H(d)(iii), the Board hereby grants waivers of the Newburyport Smart Growth District (SGD) Dimensional and Parking Requirements (XXIX-F) and Design Standards (XXIX-I) in as much as the above referenced and approved final plans may require, having found "consistency of such variations with the overall

purpose and objectives of the SGD” and that “such waivers will allow the Project to achieve the density, affordability, mix of uses, and/or physical character preferred” under the Newburyport SGD Ordinance.

- The Planning Board also grants waiver from the requirement to submit an Affirmative Fair Housing Marketing Plan at this time or prior to issuance of Building Permits for the project. The applicant will submit this plan at a later date and prior to the grant of any Occupancy Permits in the project. This plan is subject to review and approval by the Department of Housing and Community Development in accordance with MGL Chapter 40R and regulations promulgated thereunder.

STANDARD CONDITIONS:

In view of the foregoing findings, the Planning Board hereby grants a Smart Growth Plan Approval pursuant to Section XXIX Smart Growth District subject to the terms and conditions stated below:

1. Recording of Decision and Approved Plans: The applicant shall file this decision with the Southern Essex County Registry of Deeds (or Land Court if registered land) and a copy of the decision stamped with the recording information (Book/Page or Land Court document number) shall be included with the application for any related Building Permits. To ensure compliance with this decision, site/construction plans issued to any contractors shall make clear reference to this written decision and conditions of approval contained herein.
2. All Construction to Match Approved Plans: Prior to the granting of a Building Permit, the applicant shall submit the written certification of a registered Architect or Civil Engineer to the Building Commissioner that the Project will be constructed in accordance with the approved plans and conditions and that plans submitted with the application for a Building Permit are in compliance with this approval and the above referenced plans. It shall be the responsibility of the applicant to ensure that all construction of the project is in full compliance with the above referenced plans.
3. Consistency with Approved Plans: Any proposed material change to the *use, size, configuration, footprint or height* of the existing or proposed buildings shall require an amendment of this permit, this approval having been based on a review of the buildings and site design as presented to the Board on the above referenced drawings.
4. Minor Modification to Project Plans: Pursuant to Section XXIX-H(4)(a), the Applicant may request minor modifications to the above referenced and approved Plan Set and this decision without a Public Hearing. The written request must include a list of all proposed modifications as well as plan(s) illustrating the proposed modifications. Upon review of the proposed modifications, the Planning Board may at its discretion determine them to be “major” and schedule a Public Hearing in accordance with Section XXIX-H(4)(b).
5. Modifications to Approved Plans: The applicant, property owner, and their successors or assigns, shall adhere to the above referenced and approved plans which are incorporated herein by reference. Should the applicant and/or property owner determine that a plan(s) needs to be modified, they shall notify the Planning Board and Office of Planning and Development (OPD) of the proposed modifications in writing and obtain approval from the Planning Board (or OPD as specified herein) for such modifications prior to making any changes in the field. The OPD shall determine whether such modifications are minor or major (material) in nature. The Planning Board shall schedule a public hearing for review and approval of any changes deemed major or

material in nature to the permit originally issued. Any major or material alterations or changes to the above referenced plans shall require prior approval by the Planning Board. Minor changes may be approved in writing by the OPD without further review by the Planning Board. The determination as to whether an alteration or change in plans is material and therefore subject to Planning Board review shall be made at the discretion of the OPD.

6. As-Built Plans: One hard copy and one digital (Adobe .pdf) copy of as-built plans stamped by a professional engineer shall be submitted to the Office of Planning and Development at the completion of the project. Said plans shall contain a certification, made by a registered architect or civil engineer, that final site and building construction is consistent with approved plans and conditions set forth by the Planning Board as part of this Smart Growth Plan Approval. The applicant shall, prior to the start of construction, deposit \$5,000 into the Planning Board's 53G peer review account for the purposes of hiring a third party engineering firm to verify the accuracy of construction/installation and the final as-built plan. Any unused funds shall be returned to the applicant at the time of initial occupancy.
7. Digital Copy of Approved Plans: Prior to any construction, the applicant shall provide the Newburyport Director of Planning & Development with one (1) copy of the entire approved plan set in both CAD and .pdf formats as well as a 3D model of the approved Project in "SketchUp" or similar format approved by the Director of Planning & Development.
8. Submission of As-Built Plans: One hard copy and one .pdf copy of foundation as-built plan shall be provided to the Office of Planning and Development and Building Department upon foundation completion. One hard copy and one .pdf copy of as-built site plan stamped by a professional engineer shall be submitted to the Office of Planning and Development at the completion of the construction. Certification shall be provided to the Office of Planning and Development that the as-built plans match approved plans.
9. Digital Plans: Prior to any construction, the applicant shall provide the Office of Planning & Development with one (1) copy of the entire approved plan set in both CAD and .pdf formats. All digital mapping data must be delivered in the Massachusetts State Plane Coordinate system with a horizontal datum of NAD83, units of U.S. survey feet and a vertical datum of NAVD 88.
10. Project Review Fees: Per Section 4 of the Planning Board's Regulations Governing Fees and Fee Schedules, Project Review Fees shall be paid in full prior to the start of work.
11. Term of Approval: This Smart Growth Plan Approval is valid for two (2) years from the date from filing with the City Clerk, shall run with the land, and may be further extended upon written request of the applicant based upon reasonable justification for delay in initiating the Project. Such timeline shall be stayed during the period of any appeal of this Project's Plan Approval.
12. Provision of Construction Documents: The applicant shall provide documentation to the Building Commissioner and Zoning Administrator with the application for any related Building Permits illustrating that the proposed work has been reviewed and approved by the Water, Sewer, and Engineering Divisions of the City's Department of Public Services (DPS).
13. Installation of Utilities: No Building Permit shall be issued unless connections to all public utilities have been reviewed and approved by the respective City departments, and no Certificate of Occupancy shall be granted unless the proposed utilities are installed in accordance with the above referenced and approved plans. All utility work shall be done in compliance with regulations and instructions issued by the Newburyport Department of Public

Services (DPS), including (but not limited to) the installation of curbing, pavement, sidewalks, pavement markings, and other infrastructure.

14. Water Service Connections: The design and construction of all water utilities must meet Federal, State and local standards and the latest version of Newburyport Water Works Construction Guidelines and Construction Policies. Contractors are prohibited from operating or connecting to any part of the existing water system without written authorization and field oversight by the Newburyport Department of Public Services (DPS) Water Division. Prior to construction the applicant shall provide to DPS and the City's Water Division, for their review and approval, product cut sheets for pipes, valves, fire hydrants, tapping sleeves and related specifications as well as any applicable construction drawings.
15. Sewer Service Connections: The design and construction of all sewer utilities must meet Federal, State and Local standards and the latest version of Newburyport Sewer Department Construction Guidelines and Construction Policies. Contractors are prohibited from operating or connecting to any part of the sewer system without written authorization and field oversight by the Newburyport DPS Sewer Division.
16. Curb Cuts: Any new driveway curb cuts that have egress to the public right of way must be approved by the Director of Public Services or Designee in advance of construction.
17. Fire Department Review and Approval: The applicant, owner, successors, or assigns shall be responsible for designing the utilities to meet City standards and ensuring compliance with fire codes prior to commencing work under this approval. The applicant shall provide documentation to the Building Commissioner and Zoning Administrator with the application for any related Building Permits illustrating that the proposed work has been reviewed and approved by the Newburyport Fire Department (NFD).
18. Stormwater Management Permit: If the project involves more than 10,000 square feet of land disturbance, the applicant, owner, his successors or assigns, shall obtain a Stormwater Management Permit under the City of Newburyport Stormwater Management Ordinance (Code of Ordinances, Chapter XVII) from the Department of Public Services prior to beginning any site work, including tree clearing and/or regrading.
19. Site Lighting: All lighting fixtures, including but not limited to, signage, building, parking lot, site, decorative, and security, shall feature cut off fixtures so that the lights are pointed downward reducing light pollution and glare onto abutting properties.
20. Hours of Construction: The developer shall take reasonable care not to disturb surrounding properties and property owners during construction. Construction work shall be limited to the hours between 7 a.m. and 5 p.m. Monday through Friday and 8 a.m. and 4 p.m. on Saturday.
21. Permit Compliance Contact Form: No site work or construction related to this permit shall begin until a Permit Compliance Contact Form is completed and submitted to the Office of Planning and Development.
22. Completion of Landscaping: Pursuant to Section XXIX-I(g)(ix) all landscaping shall be installed prior to the issuance of an Occupancy Permit for the Project, unless this timeline is waived or modified by the Planning Board on the basis of reasonable seasonal constraints.
23. Erosion & Pollution Controls During Construction: During construction the applicant shall comply with all provisions contained within the above referenced and approved Stormwater Pollution Prevention Plan.

24. Maintenance of Stormwater Management System: After construction the applicant shall be responsible for compliance with the above referenced and approved Stormwater Best Management Practices Long-Term Pollution Prevention Plan (post-construction system maintenance).
25. Pre-Construction Meeting: The Applicant shall schedule a Pre-Construction meeting with the Project team, the Building Commissioner, the Planning Director and other representatives from the City as appropriate to review all construction drawings and conditions. At this meeting, the Applicant shall provide a (1) construction schedule and (2) contact sheet for the project manager and any other project team members to whom the City may reach out to should an issue arise.
26. Construction Review: The proposed construction will require regular inspection by the Planning Board's consultant engineer as well as the Department of Public Services (DPS). Such inspections are necessary to ensure that the proposed project is constructed in accordance with the approved plans, to summarize and estimate the cost of remaining work, and to immediately address any issues that may arise during the construction of the project. The cost of such review and inspections shall be borne by the applicant. To cover the cost of these services the applicant shall replenish and maintain a Project Review Fee of \$5,000. Such funds shall be held by the Planning Board in an escrow account. Whenever notified that the funds in said escrow account have depleted to less than twenty-five (25) percent of the initial Project Review Fee, the applicant shall immediately thereupon deposit sufficient funds to return the account to the initial balance. The balance of said peer review account shall be replenished to the initial Project Review Fee prior to any construction on site. Upon completion of the project, any remaining funds shall be returned to the applicant.
27. Construction Schedule: No site work or construction related to this permit shall begin until an estimated Construction Schedule is completed and submitted to the Office of Planning and Development.
28. DHCD Approval of Affordable Housing Units & Eligibility for Subsidized Housing Inventory:
Prior to issuance of any Occupancy Permit, and before marketing of any unit within this Project, the applicant shall provide to the City's Director of Planning & Development the final, DHCD-approved Affordable Housing Deed Restriction and Affirmative Fair Housing Marketing Plan for all units within the Project designated as affordable. Said Restriction and Plan shall comply with the Newburyport SGD Ordinance Section XXIX-G and the most recent Affirmative Fair Housing Marketing and Resident Selection Plan Guidelines issued by the Department of Housing & Community Development (DHCD):

The Affordable Housing Restriction must be approved by DHCD's 40R program staff prior to execution and recording in order to verify that these documents are compliant with the associated 40R requirements under 760 CMR 56.00. Such Plan must describe the resident selection process for the affordable units and must set forth a plan for affirmative marketing that provides maximum opportunity to low or moderate income households, including minority households.

The applicant's Project consists of 100% rental housing units, 25% of which will be affordable, in accordance with the Newburyport SGD Ordinance, thereby qualifying such units for inclusion on the City's Subsidized Housing Inventory (SHI). The applicant shall assist the City's Office of Planning & Development by completing any documentation required by DHCD for the inclusion of all rental units within this Project on the City's SHI.
29. Rental Rates to be Published: The Applicant shall publish rental rates for all affordable units

within the Project. This information may be published on printed material and/or online copy of the initial affordable rental rates shall be provided to the Director of Planning & Development at the time of initial occupancy.

30. **Recognition of Adjacent Business & Industrial Uses:** Prior to obtaining a Certificate of Occupancy, and in order to ensure the compatibility of a mix of uses within and adjacent to this Project, the Applicant shall include in residential lease agreements within the project language that clearly discloses the adjacency of lawful preexisting business and industry park uses and proximity to the MBTA Commuter Rail Station.

SPECIAL CONDITIONS:

In addition to the foregoing standard conditions, the Planning Board hereby grants approval subject to the special conditions stated below:

1. Prior to the grant of any Occupancy Permits in the project, the applicant shall provide documentation to the City's Director of Planning & Development, and Zoning Administrator, that cross easements have been granted between 1 & 3 Boston Way to allow for the proposed connections and overlap of parking, landscaping and utilities, as depicted on the above referenced and approved plans. To ensure adequacy of vehicular access, emergency access, utility connections and otherwise, said easements shall provide necessary access for the other/adjacent lot (1 & 3 Boston Way, respectively), regardless of ownership, for as long as the proposed use(s) remain in existence.

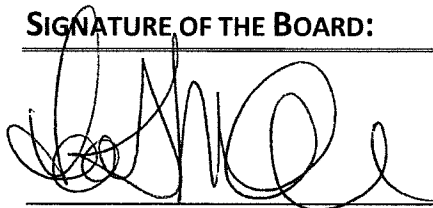
CONCLUSION AND DECISION:

For all of the reasons stated herein, the petition for a SGD Plan Approval is therefore **APPROVED**.

NOTICE OF APPELLATE RIGHTS

In accordance with M.G.L. Chapter 40R Section 11, an appeal of any decision made by the Planning Board, acting as Plan Approval Authority (PAA) under the Newburyport SGD Ordinance may be made by any aggrieved party to any court authorized to hear appeals under M.G.L. Chapter 40A Section 17. Such appeal may be brought within twenty (20) days after the decision has been filed in the Office of the City Clerk. Notice of the appeal, with a copy of the complaint shall be given to the City Clerk so as to be received within such 20 days. Such appeals shall be governed by the applicable provisions of M.G.L. Chapter 40R.

SIGNATURE OF THE BOARD:



Leah McGavern, Vice- Chair

3.13.2020

Date

CITY CLERK CERTIFICATION OF APPEAL PERIOD :

I, _____, City Clerk of the City of Newburyport, hereby certify pursuant to M.G.L. Chapter 40A Section 17, that the Smart Growth Plan Approval decision for the property known as 3 Boston Way was filed in the Office of the City Clerk on _____.

Pursuant to M.G.L. Chapter 40A Section 11, this decision was also filed in the Office of Planning and Development and twenty (20) days have elapsed after the decision was filed and NO APPEAL has been filed.

City Clerk

Date