

Department of Permitting & Inspections

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MEMORANDUM

TO: Development Review Board
FROM: Ryan Morrison, Associate Planner
DATE: September 15, 2020
RE: 21-0144SD; 95 Derway Drive

Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: RL Ward: 7N

Owner/Applicant: Claire Pointe Owners Association, Inc. / John Larkin, Inc.

Request: Final plat application for the subdivision of the Claire Pointe planned community into five (5) parcels. One lot each for Buildings A, B, C and D, and one for the common land parcel. No new development is proposed.

Applicable Regulations:

Article 2 (Administrative Mechanisms), Article 4 (Zoning Maps & Districts), Article 5 (Citywide General Regulations), Article 6 (Development Review Standards), Article 10 (Subdivision Review), Article 11 (Planned Development)

Background Information:

This five lot subdivision received preliminary DRB subdivision approval on December 5, 2019. The application is to subdivide five lots within the Claire Pointe planned community. The planned community, originally named 'The Bluffs at Northshore', received final Planned Residential Development (PRD) approval in 1999, and currently contains 4 buildings containing a total of 56 residential units, and associated surface parking. The 434,655 sf property will be subdivided as follows: Buildings A-C (Lots 1-3 respectively) will each be 9875 sf; Building D (Lot 4) will be 12,180 sf, and the common land lot (Lot 5) will be 392,850 sf. No new development is proposed in conjunction with this subdivision request. As part of the preliminary process, the application was reviewed by the City Engineer's office, the Burlington Fire Marshal, the Director of the Parks & Recreation Department, Burlington Electric, and the Burlington School District as required. No comments were received by any of these offices during the preliminary subdivision review.

Previous zoning actions for this property are noted below.

- **Zoning Permit 98-240;** preliminary plat to construct three 4-story structures containing a total of 60 residential units. Approved November 13, 1997.
- **Zoning Permit 00-245;** final plat review to construct four residential structures, each with under-building parking, for a total of 56 units. Approved October 28, 1999.

- **Zoning Permit 01-462**; amend approved buildings by adding gas meters, vents and hose bibs, smaller light fixtures, add a hip roof above garage exit, add dormers to the buildings, and add roofs over entryways. Approved May 24, 2001.
- **Zoning Permit 02-216**; amend approved building elevations as follows: replace roof with decks; and add skylight windows. Approved November 6, 2001.
- **Zoning Permit 02-339**; amend the building design of the PRD to enclose a deck on buildings B, C, and D only. Approved February 5, 2002.
- **Zoning Permit 03-606**; install a new privacy fence. Approved June 12, 2003.
- **Zoning Permit 04-027**; zoning permit extension request to complete previously approved construction. Approved July 21, 2003.
- **Zoning Permit 07-699CA**; relocation of 5 parking spaces adjacent to building D, including minor site changes (grading, sidewalks). Approved May 18, 2007.
- **Zoning Permit 08-637CA**; construct 14 new parking spaces. Approved April 11, 2008.
- **Zoning Permit 10-0956CA**; replace broken dumpster enclosure with new fence. Approved May 28, 2010.
- **Zoning Permit 20-0488SD**; five lot preliminary subdivision of the Claire Pointe planned community. Approved December 5, 2019.

Recommendation: **Consent Approval for final subdivision** as per the following findings:

I. Findings

Article 2: Administrative Mechanisms

Section 2.7.8 Withhold Permit

Per this standard, the applicant is required to remedy all violations and close out all zoning permits issued after July 13, 1989, prior to issuance of a Certificate of Occupancy for this permit. Immediate review indicates ZP10-0956CA has not been issued a Certificate of Occupancy.

Affirmative finding as conditioned.

Article 4: Zoning Maps & Districts

Sec. 4.4.5, Residential Districts:

(a) Purpose

(1) Residential Low Density (RL)

The RL district is intended primarily for low-density residential development in the form of single detached dwellings and duplexes. The district is typically characterized by a compact and cohesive residential development pattern of the respective neighborhood's development history.

The property is located in the RL zone. The subdivision will result in new lots within the PRD for each of the four existing buildings, with the remaining lot encompassing all remaining common space. Because the property was approved as a Planned Residential Development, lot size requirements, in terms of density allowance, is not a factor here since it is calculated across the entire PRD itself, rather than for each lot itself. Article 11 (Planned Development) requires no setbacks for internal lots within a PUD (or similarly, the existing PRD). The only setback concerns for such developments exist for the peripheral lot lines of the PUD itself. Since the proposal simply involves placing each existing building onto their own lot, no changes to the existing setbacks to the peripheral development boundary will occur. See Article 11 below.

Affirmative finding

(b) Dimensional Standards & Density

Because of the PUD status, dimensional requirements apply to the property as a whole, not as individual parcels. Multi-family attached dwellings are also permissible. So technically, the density, lot frontage, lot coverage, and setback requirements of this section do not apply in respect to the placement of the new lots. **Affirmative finding**

(c) Permitted & Conditional Uses

No new construction is included in this proposal. Single family dwellings are permitted uses in the RL zone, while duplexes are conditional uses. Multifamily uses are not permitted in the underlying zone. However, multifamily uses can be permitted within a PUD development. See Article 11 below. No changes are proposed to any existing use. **Affirmative finding**

(d) District Specific Regulations

1. Setbacks

A. Encroachment for Residential Driveways

Not applicable.

B. Encroachment into the Waterfront Setback

Not applicable.

2. Height

A. Exceptions in the Waterfront RM District

Not applicable.

3. Lot Coverage

A. Exceptions for Accessory Residential Features

Not applicable.

4. Accessory Residential Structures and Uses

Not applicable.

5. Residential Density

Not applicable.

6. Uses

Not applicable.

7. Residential Development Bonuses

Not applicable.

Article 5: Citywide General Regulations

Sec. 5.2.2, Required Frontage of Access

Not applicable for the new lots within the PUD. As per Sec. 11.1.4 CDO, frontage requirements apply to the entire project rather than on an individual lot-by-lot basis.

Sec. 5.2.3, Lot Coverage Requirements

See Sec. 4.4.5 (b) above.

Sec. 5.2.4, Buildable Area Calculation

Not applicable. No new development is proposed.

Sec. 5.2.5, Setbacks

See Sec. 4.4.5 (b) above.

Sec. 5.2.6, Building Height Limits

See Sec. 4.4.5 (b) above.

Sec. 5.2.7, Density and Intensity of Development Calculations

See Sec. 4.4.5 (b) above.

Sec. 5.5.1, Nuisance Regulations

Nothing in the proposal appears to constitute a nuisance under this criterion. **Affirmative finding**

Sec. 5.5.2, Outdoor Lighting

Not applicable.

Sec. 5.5.3, Stormwater and Erosion Control

Not applicable.

Article 6: Development Review Standards:

Part 1, Land Division Design Standards

Sec. 6.1.2, Review Standards

(a) Protection of important natural features

The subdivision itself will have no impact on important natural features. **Affirmative finding**

(b) Block size and arrangement

Not applicable.

(c) Arrangement of Lots

The property, and the adjacent Village at Northshore, are unique in that they were developed as Planned Residential Developments, and do not reflect nearby lot arrangements of those along North Avenue and Hardy Avenue. Since the property is tucked away from other nearby development, there is no standard lot arrangement for the proposed lots to conform with.

Affirmative finding

Interior lot lines extending from a street should be perpendicular or radial to the street right-of-way line to the greatest extent possible.

Not applicable. While Derway Drive is a private street, none of the proposed lots will have frontage on it.

(d) Connectivity of streets within the city street grid

Not applicable.

(e) Connectivity of sidewalks, trails, and natural systems

Not applicable.

Article 10: Subdivision Review

Sec. 10.1.8, Preliminary Plat Review

(g) Time Limits for a Preliminary Plat

A preliminary plat approved or conditionally approved by the DRB shall be valid for a period of one (1) year after the date of decision after which the approval shall be void and the applicant shall be required to submit a new subdivision application for approval.

The DRB approved the preliminary subdivision on December 5, 2019. The preliminary approval is still valid. **Affirmative finding**

Sec. 10.1.9, Final Plat Approval Process

During such time that an approved preliminary plat remains effective, the applicant may submit an application for approval of a final plat.

As noted above, the DRB approved the preliminary subdivision on December 5, 2019, thus rendering the preliminary approval still in effect. **Affirmative finding**

(a) Final Plat and Construction Detail Submission Requirements

The applicant may seek approval of a final plat by filing the following items with the administrative officer...

The applicant has submitted a complete application. **Affirmative finding**

(b) Completeness of Submission, Administrator's Action

The final subdivision application was deemed complete on September 2, 2020. **Affirmative finding**

(c) Public Hearing on final plat

The public DRB hearing on September 15, 2020 satisfies this requirement. **Affirmative finding**

(d) Review Criteria

The review of an application for final plat shall also take into consideration modifications to the preliminary plat as required by the DRB, and address all infrastructure designs and detailed site development including the stormwater management systems, erosion control, water and sanitary sewage, utility systems; architectural design, and streets and sidewalks...

No development is proposed with this subdivision. Applicable city departments reviewed the application and offered no comments or recommended conditions of approval. No modifications by the applicant or required by the DRB at preliminary subdivision approval have been made.

Affirmative finding

(e) DRB approval of final plat

Pursuant to Art. 3, Sec. 3.2.8, within forty-five (45) days from the close of the public hearing on the final plat the DRB shall issue Findings of Fact regarding the proposed application's conformance with each of the review standards of (d) above, and may attach such additional reasonable conditions and safeguards as it may deem necessary to implement the purposes of this ordinance and the city's municipal development plan. The decision of the DRB may be to approve, approve with modifications (conditions), or disapprove the final plat. Failure of the DRB to issue a decision within this period shall be deemed approval and shall be effective on the 46th day.

The final subdivision application meets the review standards of (d) above and of Article 11 – Planned Development for its existing PUD status. **Affirmative finding**

Sec. 10.1.10 Performance Bond and Guarantee of Completion

Not applicable. No construction is proposed with this subdivision.

Sec. 10.1.11 Recording of Final Plats

(a) Certifications and Endorsement

Every approved final plat seeking recording in the city land records shall carry the following executed certifications...

All required signature blocks/certifications are included on the final subdivision plan, and will have to be included on the final mylar for recording. **Affirmative finding as conditioned**

(b) Recording within 180-days

The final subdivision must be recorded into the city land records within 180 days from the date of DRB approval. **Affirmative finding as conditioned**

(c) Plat Void if Revised After Approval

No changes, erasures, modifications, or revisions shall be made on any subdivision plat after approval has been given by the DRB and endorsed in writing on the plat, unless said plat is first resubmitted to the DRB and the DRB approves any modification. In the event that such subdivision plat is recorded without complying with this requirement, the plat shall be considered null and void and the DRB shall institute proceedings to have the plat stricken from the records of the chief administrative officer...

This shall be a condition of approval. **Affirmative finding as conditioned**

Sec. 10.1.12 Dedication and Acceptance of Public Facilities

Not applicable. The property is already developed, and no further development is proposed as part of this subdivision.

Sec. 10.1.13 Waivers for Required Improvements

Not applicable.

Sec. 10.1.14 As-built Drawings

Not applicable.

Article 11: Planned Development

Part 1 – Planned Unit Development

Sec. 11.1.4 Modification of Regulations

With the approval of the DRB after a public hearing, the following modifications of the requirements of the underlying zoning may be altered within a planned unit development:

- *density, frontage, lot coverage, and setback requirements may be met as calculated across the entire project rather than on an individual lot-by-lot basis;*
- *required setbacks may apply only to the periphery of the project rather than on an individual lot-by-lot basis;*
- *more than one principal use and more than one principal structure may be permitted on a single lot; and*
- *buildings may be of varied types including single detached, attached, duplex or apartment construction.*

As noted above, the density, frontage, lot coverage, and setback requirements of Sec. 4.4.5 (b) do not apply. The density, frontage, lot coverage and setbacks will all remain as existing.

Affirmative finding

II. Conditions of Approval

1. **Within 180 days of the date of final approval**, the subdivision plat mylar, with all applicable endorsement signatures, shall be filed with the City Clerk per Sec. 10.1.11 of the Comprehensive Development Ordinance. Failure to do so shall render void the final plat approval.
2. **Prior to filing the mylar** in the city land records, the subdivision plat shall be revised to reflect the following:
 - a. Sheet size of 24"x36" with one inch margins on three sides and a two-inch margin on the side to be bound.
 - b. A scale of 1" = 40'.
 - c. Obtain signatures for all certifications and endorsements required under Sec. 10.1.11 (a) of the Comprehensive Development Ordinance. These signature blocks shall be included on the final plat plan.
3. No new construction is included in this preliminary subdivision approval.
4. No changes, erasures, modifications, or revisions shall be made on the subdivision plat after approval has been given by the DRB and endorsed in writing on the plat, unless said plat is first resubmitted to the DRB and the DRB approves any modification. In the event that such subdivision plat is recorded without complying with this requirement, the plat shall be considered null and void and the DRB shall institute proceedings to have the plat stricken from the records of the chief administrative officer.
5. Per **Section 2.7.8, Withhold Permit**, all zoning permits issued after July 13, 1989 must be closed out (issued a Certificate of Occupancy) prior to issuance of a Final Certificate of Occupancy for this permit. See attached permit list. Upon expiration of this new zoning permit, no additional zoning permits may be issued until it, and all prior zoning permits, have been closed out with final certificate(s) of occupancy. It is recommended that certificates of occupancy for the old zoning permits be sought prior to seeking a certificate of occupancy for the new zoning permit.
6. Standard permit conditions 1-15.