

MEMORANDUM

To: Weston Zoning Board of Appeals

cc: Kathleen Lynch, VHB

From: Brian C. Levey, Esq., Counsel to 269 North Ave, LLC

Date: January 19, 2017

Re: Kendal Village – Proposed Tree Protection Condition

The proposed tree protect conditions herein were first circulated to VHB on December 13, 2016.

ON-SITE TREES

Site Preparation Plan shows the site divided into front and rear areas. In the rear area there will be limited disturbance as the Innovative Alternative septic system (“IA system”) will be installed here. Since the IA system can be installed around trees, the plan identifies trees in the rear area that are greater than six (6) inches in caliper and notes that they will be protected as provided in the detail on the same plan.

OFF-SITE TREES

Off-site trees proximate to on-site structures and pavement are identified on the Site Layout Plan. The off-site trees are proximate to any on-site construction are labeled 1 through 11 and fall into three groups: the four (4) off-site trees south of Building D (tree nos. 1 -4), the four (4) off-site trees north Building E and the northerly end of the hammerhead driveway (tree nos. 5-8) and the three (3) off-site trees north of Building B (tree nos. 9-11).

The Applicant believes that tree no. 11 is a safe distance from any construction and the abutting home at 273 North Avenue to warrant any protection. For the remaining ten (10) trees (nos. 1 -10), the Applicant proposes the following conditions:

1. As part of the construction management process, prior to the commencement of construction including site preparation, a Certified Arborist shall be retained by the Town at the expense of the Applicant. The arborist will inspect these trees in order to categorize and document with pictures) their health and recommend protections for adding to, revising or eliminating those listed below except for Condition 5 with which the Applicant shall comply in all events.
2. For the benefit of all eleven (11) off-site trees, in each area where proposed structures or pavement is in proximity to an off-site tree, the Project will be designed to meet the existing grade three (3) feet before the property line (as shown in the plan).

3. Near tree no. 4, excavation for the retaining wall footings shall be done using an air spade, either directly by or under the guidance of a Certified Arborist. The air spade should be used to determine and define the limit of excavation. While constructing this retaining wall and backfilling behind it, exposed roots shall be protected as directed by the Certified Arborist.
4. Any required root pruning of abutters' trees, if necessary, shall be performed either directly by or under the guidance of a Certified Arborist. Any such root cutting shall occur only on the Applicant's property (unless there is permission or legal right to enter onto abutting property) and shall occur only in accordance with all of the requirements of Massachusetts state law.
5. Prior to the issuance of any building permit or the commencement of construction of the Project, the Applicant shall provide to an escrow agent to be suggested by the Applicant and approved by the Board the sum of \$_____ (either in cash or a performance bond) to be held in escrow for a period of time not to exceed three (3) years from the date of the issuance of the final certificate of occupancy for the Project. The monies in escrow shall be held by the escrow agent in an interest bearing account to compensate any abutter whose trees (nos. 1-11) are damaged by the Project to the point of having to be removed by the Applicant, its successors or assigns. In the event of substantial damage to an abutter's tree, the affected abutter, with the agreement of the Applicant, may seek payment from the escrow agent. In the event the Applicant and the affected abutter do not agree, affected parties may pursue available private remedies including litigation or mediation. At the conclusion of the third year following the issuance of the final certificate of occupancy, if any monies remain in the escrow account and no abutter's claims remain outstanding, any remaining monies shall be returned to the Applicant along with the accrued interest.