

56
9
15
3 PLANS



RECEIVED
TOWN CLERK
WEST NEWBURY, MA
2021 APR 29 PM 3:02

**TOWN OF WEST NEWBURY
PLANNING BOARD
TOWN OFFICE BUILDING
381 MAIN STREET
WEST NEWBURY MA 01985
978-363-1100 X 125 Fax: 978-363-1119**

SO. ESSEX #326 Bk: 39986 Pg: 369
06/16/2021 12:12 APVL Pg 1/9

**CERTIFICATE OF VOTE
APPROVAL OF A DEFINITIVE SUBDIVISION PLAN
519 MAIN STREET, 0 STEWART STREET
(Assessor's Map R-14, Lots 36 & 54)**

April 20, 2021

At a meeting of the West Newbury Planning Board (hereinafter the "Board") held on April 20, 2021 Board members voted to APPROVE WITH CONDITIONS the above referenced Application filed for Definitive Subdivision Plan Approval, in accordance with the provisions of M.G.L. Chapter 41, Section 81L, et. seq. for a subdivision with 4-lots on a proposed roadway off Main Street by a vote of 5 to 0. Planning Board members Ann E. Bardeen, Timothy Cronin, Raymond A. Cook, Brian R. Murphey and Wendy Reed were in attendance during the course of the public hearing and voted in favor. The approval incorporates by reference all the plans and drawings noted below as submitted by the Applicant/Owner, Deer Run Land Development LLC (hereinafter, the "Applicant"), and to the Applicant's heirs, successors and assigns as their interest may appear and subject to the Conditions of this Decision to be met. The Board responded to Plans and Applications, which are incorporated by reference into this Decision. The submittal is further described as follows:

OWNER/APPLICANT:

Deer Run Land Development LLC, 6 Mechanic Street, Kennebunk, Maine

APPLICATION AND OTHER MATERIALS FILED BY APPLICANT:

- Form C, Application for Approval of a Definitive Subdivision Plan, filing date: June 30, 2020, with the following attachments:
 - Notice of Submission to the Board of Health dated June 30, 2020;
 - Schedule D – Project Information Summary;
 - Schedule E – Environmental Impact Statement;
 - Stormwater Report dated June 30, 2020;
 - Definitive Plan (hereinafter the "Plan") entitled, "Definitive Subdivision Plan Deer Run Lane West Newbury, MA" with an initial submission date of June 30, 2020, revised through April 20, 2021, and comprised of: Cover Sheet; Existing Conditions Plan (3 Sheets); Lotting Plan (2 Sheets); Grading, Drainage & Utility Plan (3 Sheets); Street Plan & Profile Sheet; Detail Sheet (2 Sheets); Watershed Map – Existing Conditions; Watershed Map – Proposed Conditions; various scales: drawn by Williams & Sparages, 189 North Main Street, Suite 101, Middleton, MA 01949 (hereinafter the "Definitive Plan").
- Additional Materials submitted during the course of the public hearing:

- Three comment letters from Meridian Associates dated November 10, 2020, January 29, 2021, and March 15, 2021.
- Two response letters from Williams & Sparages dated January 12, 2021 and February 24, 2021, regarding Meridian Associates' comment letters;
- Letter dated February 7, 2021 in response to Kate Day Emails dated 10/20/20 and 11/17/20;
- Letter dated February 7, 2021 in response to Valerie Gingrich Letter dated 11/16/20;
- Response to DEP Comments (DEP File No. 078-0723) dated February 26, 2021;
- Letter in Support of Requested Waivers dated March 2, 2021;
- Legal documents: Access Easement (from Deer Run Land Development LLC to Stacy R. Vuylsteke); Deer Run Homeowners Association Declaration of Trust; Grant of Non-Motorized Trail Easement.

PRELIMINARY SUBDIVISION PLAN FILING:

A Preliminary Subdivision Plan Application (Form B) was filed on February 11, 2020. A public meeting was held on March 4, 2020 to consider the application. The Board provided feedback but took no action on the plan.

DEFINITIVE PLAN FILING, PUBLIC HEARING & SITE WALK INFORMATION:

The Application package was filed with the Town Clerk and the Planning Board on June 30, 2020. The Board postponed the scheduling of the public hearing due to the COVID 19 State of Emergency declared in March 2020. At its September 15, 2020 meeting, the Board scheduled the public hearing for October 20, 2020. In accordance with the requirements of M.G.L. Chapter 41, Section 81T, and Rules and Regulations Governing the Subdivision of Land, Section 3.3.4.1.4. (hereinafter "Rules and Regulations") Legal Notice was published in the Daily News of Newburyport on October 5, 2020 and October 12, 2020, mailed to abutters and the Planning Boards of abutting communities on October 5, 2020, and posted with the Town Clerk on October 5, 2020.

Pursuant to Section 3.3.4.1.1 of Planning Board Regulations, copies of the submittal were distributed to Town Counsel, the Board of Health, Building Inspector, Conservation Commission, Department of Public Works, Fire, Open Space Committee, Police, and Water Departments. During the course of reviewing the Preliminary and Definitive Subdivision Plan submittals, responses were received from the Building Inspector (October 5, 2020 Email from Sam Joslin), Department of Public Works (Memo dated February 25, 2021 and verbal comments provided at the March 16 public hearing from Wayne Amaral), the Fire Department (October 19, 2020 Email from Michael Dwyer); the Water Department (Memo dated February 26, 2020 from Michael Gootee); the Board of Health (Email dated November 17, 2020 from Paul Sevigny) and the Open Space Committee (Letter dated March 23, 2021 from Patricia Reeser). Comments were also received from the following entities: Letter dated March 16, 2021 from the Essex County Trails Association; Email dated March 16, 2021 from the West Newbury Riding and Driving Club; and Letter dated March 26, 2021 from the Historical Commission. All responses are incorporated herein by reference and are on record in the Planning Board office.

The Public Hearing was opened on October 20, 2020 and was continued to November 17, 2020 (no discussion), December 1, 2020 (no discussion), December 15, 2020 (no discussion), January 5, 2021 (no discussion), January 19, 2021 (no discussion), February 2, 2021, February 16, 2021 (no discussion), March 2, 2021, March 16, 2021 and April 6, 2021. The Public Hearing was closed on April 20, 2021. A site walk was conducted on November 28, 2020.

On October 20, 2020, the Planning Board secured Meridian Associates, 500 Cummings Center, Suite 5950, Beverly, MA 01915 to conduct a peer review of the Application Materials and Plan pursuant to the contract dated September 29, 2020, and Additional Assistance Authorization dated March 4, 2021. Meridian

Associates provided 3 comment letters dated November 10, 2020, January 29, 2021, and March 15, 2021. Williams and Sparages responded to these comments in letters dated January 12, 2021 and February 24, 2021. All materials related to the peer review are incorporated herein by reference and are on record in the Planning Board office.

WAIVERS OF THE RULES AND REGULATIONS:

The Applicant requested waivers in the letter from Williams & Sparages regarding, "Letter in Support of Requested Waivers" dated March 2, 2021 as follows:

1. Section 4.2.4.9 requires the minimum frontage on the existing street of the parcel to be subdivided be at least the frontage required for the zoning district in order to provide for the right-of-way and buffers to abutting properties. Waiver is requested to reduce the frontage requirement of 150-feet to the existing frontage of 142.52-feet.
2. Section 4.2.4.11 requires the centerline of the road shall be located from the sidelines of the existing abutter lots a distance of at least one half the frontage required from the zoning district. Waiver is requested to reduce this distance from 75-feet to 71.26-feet as shown.
3. Section 4.4.11 requires the nearest edge of the top of the embankment of the top of the embankment of the stormwater basins shall be located a minimum of 25-feet from any roadway and property lines, and shall be screened from adjacent lots and streets by a greenbelt of appropriate plantings. Waiver is requested to be approved as shown.
4. Section 5.2.3 requires that the pavement in the roadway to be constructed in three (3) courses being a 2-1/2 inch binder course, a 2-inch binder course and 1-1/2 inch top course. Waiver is requested to allow that the roadway be constructed in two (2) courses being a 2-1/2 inch binder course and a 1-1/2 inch top course.
5. Section 3.2.3.7 requires major features of land such as existing walls, fences, trails, monuments, buildings, large trees, wooded areas, outcroppings, ditches, swamps, water bodies and natural waterways. Waiver is being requested to not be required to show large trees on the plans.

After due consideration, at the April 20, 2021 meeting, the Board voted unanimously to APPROVE the requested waivers, finding that the above-referenced provisions may be waived because such action is in the public interest and not inconsistent with the Subdivision Control Law. The Board found that the following aspects of the project will promote the public interest.

- a. Housing Diversity and Contribution per Inclusionary Housing Bylaw: The project would promote housing diversity in Town by: 1. Providing duplex housing units, an alternative housing type for buyers that may be more affordable than single family homes on the same lot; and 2. Providing a Housing Contribution Payment in accordance with the Town's Inclusionary Housing Requirements pursuant to Section 5.F. of the Zoning Bylaw.
- b. Trails: The project would provide for over 2,600 linear feet of new public access trail easements, which extends existing trail easements from 519R Main Street (Assessor's Parcel R14-54) across the rear of the 519 Main Street Parcel (Assessor's Parcel R14-36) to the abutting property of Austin Realty Trust II, John Austin, Trustee. A trail head is proposed at the end of the proposed cul-de-sac of Deer Run Lane. The proposed trail extension will bring the existing trail system closer to the Mill Pond Trail network, as the Austin property abuts Poor House Lane, which is directly

adjacent to the Mill Pond trail system.

FINDINGS AND VOTE

The Planning Board made the following findings in support of the proposal:

1. The lots on the Definitive Plan are in conformity with the West Newbury Zoning Bylaw.
2. The project meets the intent and purpose of Massachusetts General Law Chapter 41, Sections 81K-81GG "The Subdivision Control Law" by protecting the safety, convenience and welfare of residents; and the Rules and Regulations by, in addition to what is stated in the Subdivision Control Law, maintaining the Town's rural character, conserving natural resources, accommodating growth with minimum disruption to the natural environment and quality of life, and assuring orderly development.
3. The Definitive Subdivision Plan conforms to the design standards and requirements of the Rules and Regulations, with the exception of the above-referenced waivers that are approved by the Board.

The Board then voted 5-0, to APPROVE the request, subject to the following CONDITIONS OF APPROVAL, which are designed to promote the health, convenience, safety and general welfare of the community and to benefit the Town:

1. Housing Contribution Payment (West Newbury Zoning Bylaw Section 5.F.6.): There are six (6) new housing units in the project. Ten percent (10%) of the new housing units results in a Fractional Affordable Housing Unit of 0.6. The Applicant has chosen to make a Housing Contribution Payment in Lieu of a Fractional Affordable Housing Unit. Pursuant to said Section, the payment shall be equivalent to four percent (4%) of the Average Market Sales Price for the market rate units in the project. The Housing Contribution Payment shall be paid in full prior to the issuance of a final occupancy permit for any portion of the project. Any discrepancies between this Condition 1. and Section 5.F.6. shall favor Section 5.F.6.
2. Performance Guarantee: Prior to endorsement of the Plan by the Planning Board, the Applicant shall secure the construction of ways and the installation of municipal services in a manner provided for in M.G.L. Chapter 41, Section 81U.
3. Modifications: Any changes to or deviations from the approved Plan must be brought to the attention of the Planning Board. Minor changes or deviations may be authorized by the Planning Board or its designee, without formal refile, as minor field changes, if the Planning Board determines that such changes are warranted to meet field conditions or to improve site conditions.
4. Pre-Construction Conference: Pursuant to the Rules and Regulations Section 6.4.1., prior to beginning construction the Applicant shall arrange for a conference with Town Officials to review construction requirements and procedures. Town Officials are identified in the Rules and Regulations Section 3.3.4.1.1. The Applicant shall submit and discuss the construction schedule, and provide a contact list including the Applicant, Contractor, Engineer, Surveyor, and a 24-hour emergency contact.
5. Hours of Construction: Construction hours shall be in compliance with the Town of West Newbury Zoning Bylaw Section 7.A.4, which regulates intensity of noise from the property line during the hours between 8:00 P.M. and 7:00 A.M. Any discrepancy between this condition and the language of Section 7.A.4. shall be in favor of Section 7.A.4. Construction shall include deliveries of materials, arrival of vehicles on site, running of motors, moving of earth and all equipment, dwelling unit construction, and related noise such as hammering, nail gun use, sawing, compressor usage, etc.

6. **Control of Dust and Debris and Vibration:** The Applicant shall provide appropriate measures to limit construction debris, dust, and materials on the site and to control vibration from construction activities. In the event that debris is carried onto any public way, the Applicant shall be responsible for all cleanup of the roadway. All cleanups shall occur within twenty-four hours after first written notification to the Applicant by the Board or its designee. Failure to perform such cleanup may result in the project being shut down until said public way is clear, Town cleanup at the Applicant's expense, or other measures deemed appropriate in the reasonable judgment of the Town. In the event that dust, dirt and other materials are carried onto abutting private property, the Applicant shall be responsible for cleanup.
7. **Construction Inspections:** The Planning Board will employ an outside technical consultant for inspection services at the Applicant's expense pursuant to the Rules and Regulations Section 6.6. The Board's consultant shall inspect all roadway, infrastructure and drainage improvements pursuant to Section 6.5. of the Regulations, and any other elements as requested by the Board, at the expense of the Applicant. Attendance by the Inspector at meetings, conferences, review of subsequent plans, releases, documents etc. shall also be at the expense of the Applicant.
8. **Construction, Excavation, Demolition:** Activities related to buildings, foundations, street opening, soil removal and trench excavation shall comply with the requirements of the Town of West Newbury Bylaws, Section V.
9. **Water Department Requirements:** The Applicant shall adhere to the February 25, 2021 Memorandum from Water Department Superintendent Michael Gootee, as may be amended by him, which is incorporated herein by reference.
10. **Stormwater Management:** All aspects of the Stormwater Management System, which is described in the Stormwater Report dated June 30, 2020, shall be the sole responsibility of the Applicant, and not the Town. All elements of the Stormwater Report, which includes the Construction Period Pollution Prevention Plan & Erosion & Sedimentation Control Plan, Long Term Post Construction Operation & Maintenance Plan, Long Term Pollution Prevention Plan, shall be properly established and adhered to by the Applicant.
11. **Trails and Trail Easements:** Trails shall be provided as shown in the Plan and as stipulated in the Trail Easement incorporated herein by reference, to be recorded herewith.
12. **Street Name:** Upon recommendation from the Historical Commission and in accordance with Section 5.9.2. of the Rules and Regulations, the street shall be named "Major Boyd Drive".
13. **As-Built Plan and Street Acceptance:** It is the intent of the Applicant to have Major Boyd Drive accepted by Town Meeting through the Street Acceptance process. At the completion of the project, a final As-Built Plan and Profile shall be submitted to the Planning Board for review and approval pursuant to Sections 5.16. and 5.17. of the Rules and Regulations. Upon the Planning Board's approval of the As-Built Plan and Street Acceptance Plan, the Applicant shall propose Street Acceptance to the Select Board for approval at Town Meeting. The Applicant shall submit all necessary documentation and plans to support Street Acceptance and acceptance of a deed and easements, as appropriate, as required by the Select Board. Should the Town Meeting vote affirmatively to accept the street as a public way, the Applicant shall record the deed to the Town and the Street Acceptance Plan at the Southern Essex District Registry of Deeds. Proof of recording shall be provided to the Planning Board and the Select Board.

14. Restriction of Further Subdivision of Lots: Approval has been granted by the Planning Board for a Definitive Subdivision of 4 Lots. Further Subdivision as it is defined by Massachusetts General Laws, Chapter 41, Section 81-L of any of the lots for new building lots is prohibited.
15. Hold Harmless and Indemnification:
 - a. In the event the Town must perform any service, maintenance and/or repair in an emergency situation, the Town shall not be held responsible for any damage to any person or property.
 - b. In such a circumstance, the Applicant shall indemnify and hold harmless the Town of West Newbury, its agents, servants and employees from liability for claims for personal injury or property damage and shall fully reimburse the Town for any work performed.
16. Town's Right to Perform Work:
 - a. If at any time the Applicant fails, upon written request from the Select Board of the Town of West Newbury, to maintain or repair any part of any way, or drainage system (including all related pumps and equipment) to the reasonable satisfaction of the Board of Selectmen of the Town of West Newbury, then the Town shall have the right, but not the obligation, to enter upon any and all of said Use Areas, the common areas, and any way to perform such maintenance or affect such repairs as it deems appropriate and to charge the current Owner or Owners the full cost, including actual costs or imputed value of any labor involved plus related administrative costs, incurred by the Town in so doing.
 - b. The Town shall have a cause of action in damages for such sum against said Applicant and in such action shall be entitled to recover the reasonable value of its attorney's time and any expenses or costs incurred therein. In addition, any such costs or expenses as aforesaid may be taxed as a Betterment.
17. Administration
 - a. The following legal documents have been submitted by the Applicant and are incorporated herein by reference: Access Easement (from Deer Run Land Development LLC to Stacy R. Vuylsteke); Deer Run Homeowners Association Declaration of Trust; Grant of Non-Motorized Trail Easement.
 - b. All Covenants, Declarations, Easements, Agreements and other required documents, including those listed in 17.a., are to be recorded with the endorsed Plans.
 - c. A note shall be placed on the cover sheet of the Plan as follows: See the Form I, Approval with Covenant Contract, Recorded Herewith.
 - d. Any outstanding invoices must be paid in full prior to endorsement of the Plan.
 - e. Following recording, the Applicant shall submit a full set of the recorded Plan, and a digital copy of the entire plan submittal, as recorded, to the Planning Board. Additional recorded copies shall be submitted for distribution to the Building Inspector, Board of Health, Conservation Commission, DPW Director, and Water Department.
 - f. All applicable laws, bylaws, rules, regulations, and codes of state law, federal law, and the Town of West Newbury shall be complied with, and the Applicant shall obtain all necessary permits, licenses, and variances, as applicable.
 - g. In accordance with Section 3.3.4.2.8. of the Rules and Regulations, this approval which has been granted by the Planning Board shall lapse within two years from the date of Planning Board filing the Certificate of Vote with the Town Clerk, or on April 29, 2023, if a substantial use thereof has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause.
 - h. No further amendment, alteration, waiver or other change of this Certificate of Vote shall occur other than by filing, approval, and recording of a modification to the approved Plan in accordance with M.G.L. Chapter 41, Section 81W, if deemed necessary by the Planning Board. See also

Condition 3. of this Certificate of Vote for provisions related to modifications to the Definitive Plan.

- i. The action of the Planning Board does not waive or alter any other permit or approval requirements, including, but not limited to, those of the Board of Health, the Inspection Department, and the Conservation Commission.
- j. The Conditions of this Approval shall run with the land and shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. Purchasers of all lots shall be forever bound by all applicable conditions and restrictions contained in this Certificate of Vote.
- k. In the event of a conflict between the Plans and this Certificate, the terms of this Certificate shall govern.

18. Recording of Documents: This Decision and related plans and documents must be recorded at the Southern Essex District Registry of Deeds. It is the responsibility of the Applicant to record a certified copy of any Certificate of Vote of the Planning Board granting Approval of a Definitive Subdivision Plan and related Plans stating that the appeal period has lapsed and that there have been no appeals or that if any appeal has been filed that it has been dismissed or denied. Proof of recording of the Certificate of Vote and all other documents must be provided to the Planning Board before the Decision becomes final.

APPEALS: Appeals, if any, shall be made pursuant to Massachusetts General Laws, Chapter 41, Section 81-BB, and shall be filed within twenty (20) days after the filing of this Notice of Certificate of Vote in the Office of the Town Clerk of the Town of West Newbury.

(The remainder of this page has been intentionally left blank.)

CERTIFICATE OF VOTE

At a meeting of the Planning Board held on April 20, 2021, Board Members voted to APPROVE WITH CONDITIONS the Application for a Definitive Subdivision Plan under M.G.L. Chapter 41, Section 81L, et. seq. for 519 Main Street and 0 Stewart Street, also known as Major Boyd Drive, subject to the Conditions of this Certificate of Vote.

The Vote was as follows:

Brian R. Murphey

In favor B. R. Murphey

Raymond A. Cook

In favor Raymond A. Cook

Timothy Cronin

In favor Timothy Cronin

Ann E. Bardeen

In favor Ann E. Bardeen

Wendy Reed

In favor Wendy Reed



TOWN OF WEST NEWBURY

Michael P. McCarron
Town Clerk

381 Main Street
West Newbury, MA 01985
978-363-1100 ext. 110
978-363-1117 (Fax)
mmccarron@wnewbury.org

June 14, 2021

Applicants and Owners: Derr Run Land Development, LLC

Locus: 519 Main Street, West Newbury, MA 01985

TO WHOM IT MAY CONCERN:

This is to certify that on April 29, 2021 the attached decision of the West Newbury Planning Board was filed with the Town Clerk granting Approval of a Definitive Subdivision Plan for the abovementioned mentioned property.

More than twenty days have elapsed since the filing and no appeal of this decision has been filed with the Town Clerk.

This notice is given to indicate that there was no filing of an appeal in accordance with the provisions of Massachusetts General Laws.

ATTEST

Michael P. McCarron
Town Clerk

Date:

6-14-2021