

**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**

**CERTIFICATE OF VOTE  
APPROVAL OF SPECIAL PERMIT APPLICATIONS FOR  
THREE REDUCED FRONTAGE LOTS and  
A COMMON DRIVEWAY TO SERVE THREE LOTS  
SULLIVANS COURT EXTENSION  
ESTATE HOMES AT RIVERS EDGE  
(Assessor's Map R-11, Lot 18)**

**April 21, 2015**

At a meeting of the West Newbury Planning Board (hereinafter the "Board") held on April 7, 2015, Board members voted to approve with Conditions the Applications filed for Special Permit for three Reduced Frontage Lots (Section 6.A.1) and A Common Driveway to serve three lots (Section 7.D.) for the Estate Homes at Rivers Edge, off Sullivans Court, by a vote of 5 to 0. Planning Board members Ann E. Bardeen, Richard W. Bridges, Raymond A. Cook, Brian R. Murphey and John Todd Sarkis voted in favor of approval. The approval incorporates by reference all the plans and drawings noted below as submitted by the Applicant, Walker Development Corporation, (hereinafter the "Applicant") and the Owners, Kathryn Coffin, Louise F. Beard, Vincent P. Sullivan, and Priscilla J. Santos (hereinafter the "Owners") and to the Applicants' and Owners' heirs, successors and assigns as their interest may appear, 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:

**APPLICATIONS FILED:**

Application for Reduced Frontage Lots, Section 6.A.1. of the Zoning Bylaw, for Lots 1, 3, and 4 and

Application for a Common Driveway, Section 7.D of the Zoning Bylaw, to serve Lots 2, 3, and 4.

**OWNERS:**

Kathryn Coffin, 541 Main Street, Louise F. Beard, 11 Poores Lane, and Vincent P. Sullivan, P.O. Box 31, all in West Newbury, and Priscilla J. Santos, 8065 Long Branch Terrace, Glenn Burnie, MD

**APPLICANT:**

Walker Development Corporation, 447 Boston Street, Topsfield MA 01983

**REFERENCES:****Civil Engineering Plan, "the Plan"**

Prepared for:

Walker Development Corporation, 447 Boston Street, Topsfield MA 01983

Prepared by:

Civil Design Consultants, Inc., P.O. Box 2237, Methuen MA 01844

Stamped By: Thomas E. Neve, Registered Professional Engineer and Registered Professional Land Surveyor

Dated: October 9, 2014; revised January 7, 2015, revised April 7, 2015, March 3, 2015, March 31, 2015, and noted as FINAL

**Drainage Report, Estate Homes at River's Edge**

Prepared by: Civil Design Consultants, P.O. Box 2237, Methuen, MA 01844-1097

Stamped By: James E. Hanley, Registered Professional Engineer

Dated: October 9, 2014, revised January 7, 2015; and Existing Watershed Plan, Sheet EWP-1 dated October 9, 2014 ; and Existing Watershed Plan showing Proposed Conditions, Sheet PWP-1, dated October 9, 2014, revised January 7, 2015.

**Planting Plan** for: Thomas E. Neve, prepared by Thom McMullen, Landscape Architect, dated April 1, 2015.

**PRE-APPLICATION CONFERENCE and SITE WALK:**

Pre-Application Conferences, in compliance with Section II.1. of Planning Board Regulations, were held in conjunction with meetings to discuss a Preliminary Subdivision Plan Application. Discussions were held on April 22, May 6, May 20, June 17, August 19, 2014.

**FILING and PUBLIC HEARING INFORMATION:**

The Application package was filed with the Town Clerk and the Planning Board on October 10, 2014. In accordance with the requirements of M.G.L. Chapter 40A, §11., Legal Notice was published in the Daily News of Newburyport on October 20 and 27, 2014, mailed to abutters and abutting communities on October 17, 2014, and posted with the Town Clerk on October 16, 2014. Copies of the Application package were distributed to the Board of Health, Building Inspector, Conservation Commission, Department of Public Works, Fire, Police, and Water Departments in compliance with Section II.B.2. of Planning Board Rules and Regulations.

The Applications were filed concurrently with an Application for a Definitive Subdivision Plan for six lots and related infrastructure, including the Extension of Sullivans Court, under M.G.L. Chapter 41 Section 81T-81GG and the Town of West Newbury Rules and Regulations Governing the Subdivision of Land. The Public Hearings were held concurrently.

Responses to the Applications submitted were received from Gary Bill, DPW Director, Michael Gootee, Water Department, Paul Sevigny, Health Agent, and are on file in the Planning Board Office. The responses were primarily in response to the Definitive Subdivision filing.

The Public Hearing was opened on November 3, 2014, and continued to November 18, December 2, December 16, 2014, and January 20, February 4 (postponed due to lack of a quorum), February 17, March 3, March 24, and April 7, 2015. The Public Hearing was closed on April 7, 2015.

#### **CERTIFICATION PURSUANT TO M.G.L. CHAPTER 39, §23D.**

The statute is referred to as “the Mullen Rule Law”. Certification has been made by the following members:

Richard W. Bridges, for Public Hearing held on March 3, 2015

John Todd Sarkis, for Public Hearing held on March 24, 2015

#### **DESCRIPTION OF PARCEL:**

The parcel, located in the Residential C Zoning District, consists of 13.3 acres with 337.12 feet of frontage on Sullivans Court. Access to Sullivans Court is from Whetstone Street, off Main Street. The terrain of the parcel slopes toward the Merrimack River.

In recent years, the property has been used agriculturally as a field for growing crops such as corn. Much of the parcel has been cleared for the fields, with sparse vegetation growing primarily around the edges of the parcel and in the wetland areas. The parcel has frontage on the Merrimack River.

#### **PROPOSED PARCEL DATA, REDUCED FRONTAGE LOTS:**

<b>LOT NUMBER</b>	<b>FRONTAGE IN FEET</b>	<b>AREA IN SQUARE FEET</b>	<b>AREA IN ACRES</b>	<b>CONTIGUOUS AND BUILDABLE AREA (CBA) IN SQUARE FEET</b>
<b>1</b>	113.80	47,640	1.094	45,810
<b>3</b>	102.75	134,198	3.08	104,890
<b>4</b>	101.91	45,878	1.05	45,710

In the Residential C District, the minimum Lot Area for a Reduced Frontage Lot is 40,000 square feet, and CBA is 30,000 square feet.

For the Reduced Frontage Lots, The Planning Board has determined that Lots 1, 3, and 4 meet the requirements of Section 6.A.1., a through f.

### **COMMON DRIVEWAY DATA:**

The distance from the intersection of the cul-de-sac and the common driveway to each private driveway is as follows:

Lot 2: 290 feet

Lot 3: 315 feet

Lot 4: 240 feet

For the lots served by the Common Driveway, the Planning Board has determined that adequate frontage and access exist for each lot, in compliance with Section 7.D.4. of the Zoning Bylaw.

### **Waiver Granted:**

The Owner has requested a Waiver from Section 7.D.7. to allow the common driveway to be built with a cross section as shown on the plans.

### **FINDINGS for APPLICATIONS FOR REDUCED FRONTAGE LOTS AND COMMON DRIVEWAY SPECIAL PERMITS**

The Planning Board makes the following Findings under Section 8A.2.f. of the Zoning Bylaw:

1. The specific site is an appropriate location for the use.
2. The use developed will not adversely affect the neighborhood.
3. There will not be an undue nuisance or serious hazard to vehicles or pedestrians, and adequate and appropriate facilities have been provided to ensure the proper operation of the proposal.
4. The proposed use is in harmony with the general purpose of the West Newbury Zoning Bylaw as amended.
5. The requested use will not overload any public water, drainage, or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the town will be unduly subjected to hazards affecting health, safety or the general welfare.

### **CONDITIONS OF APPROVAL**

#### **A. Conditions of Approval, Reduced Frontage Lots, Section 6.A.1.**

1. In compliance with Section 6.A.1.f. of the Zoning Bylaw, a restriction shall be placed on the deed for Lots 1, 3, and 4, and on all future deeds, as follows: "Lot 1 (OR Lot 3 OR Lot 4) has been approved by a Reduced Frontage Special Permit, and it shall not be further subdivided, or reduced in area, or changed in size or shape. This deed restriction shall remain in effect in perpetuity."
2. This restriction shall be noted in the Declaration of Restrictive Covenants as in perpetuity.
3. In the event that the Owner is required to make minor lot line or area revisions due to changes in wetland demarcation, he may return to the Planning Board to request a Minor Modification to the Special Permit. The Planning Board shall determine that the spirit and intent of the Bylaw have been maintained in any Modification.
4. The following notation shall be added to Sheet C-3 of the Plan: "Lots 1, 3, and 4 have been approved by a Reduced Frontage Special Permit, and shall not be further subdivided, or reduced in area, or changed in size or shape after the Plan has been recorded at the Registry of Deeds".
5. Proof of recording must be submitted to the Planning Board and the Building Inspector prior to issuance of a Building Permit for Lots 1, 3, and 4.
6. All applicable laws, bylaws, rules, regulations, and codes of the Town of West Newbury shall be complied with, and the Applicant shall obtain all necessary permits, licenses, and variances, as applicable.

**B. Conditions of Approval, Common Driveway, Section 7.D.**

1. Declaration of Driveway, Access, and Utility Easement and Common Driveway Maintenance Covenant:
  - a. A Declaration of Driveway, Access, and Utility Easement and Common Driveway Maintenance Covenant (the "Declaration") shall be submitted and approved by the Planning Board.
  - b. The Declaration shall be recorded with the approved Plans.
  - c. A note stating: "See Declaration of Driveway, Access, and Utility Easement and Common Driveway Maintenance Covenant Recorded Herewith" shall be placed on the Title Page of the approved Plan.
2. Proof of recording of the Declaration must be submitted to the Planning Board and the Building Inspector prior to issuance of a Building Permit for Lots 2, 3 or 4.

3. Lots 2, 3, and 4 may not be sold or transferred until the Declaration has been recorded.
4. The Town of West Newbury is not responsible for repair, maintenance, plowing or snow and ice control of the Common Driveway. This is the responsibility of the owners, and shall be noted in the Declaration as in perpetuity.
5. Future Lot owners shall not petition the Board of Selectmen for repair, maintenance, plowing, or snow and ice control of the Common Driveway. This Condition shall be noted in the Declaration as in perpetuity.
6. The Common Driveway shall be constructed in accordance with the plans approved by the Planning Board. Any deviation must be reviewed with and approved by the Planning Board.
7. House numbers for each lot shall be posted at the intersection of the Common Driveway and the private driveway.
8. Inspection of Construction: The construction of the Common Driveway shall be inspected as part of the Definitive Subdivision Plan construction. See the Certificate of Vote for that submittal and inspection requirements, all other applicable Conditions.

### **Administration**

#### **CONDITIONS:**

All requirements of Section 7.D. of the Zoning Bylaw, Common Driveways, must be complied with unless otherwise waived by the Planning Board.

Any outstanding invoices must be paid in full prior to endorsement of the Plan.

Following recording, the Owner shall submit a full set of all Plans printed in color, and a digital copy of the entire plan submittal, as recorded, to the Planning Board. Additional recorded copies may be required.

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 Owner shall obtain all necessary permits, licenses, and variances, as applicable.

In accordance with Section 8.A.2.h. of the Town of West Newbury Zoning Bylaw, this approval which has been granted by the Planning Board shall lapse within two years from the date of Planning Board filing with the Town Clerk, or on April 30, 2017, 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.

For the Reduced Frontage Lots, filing and recording of the required Plan under M.G.L. Chapter 41 Section 81, and Planning Board Subdivision Regulations, and all required documents, shall fulfill this obligation. For the Common Driveway, construction of the proposed Common Driveway must be substantially commenced by the specified date.

No further amendment, alteration, waiver or other change in the Special Permit shall occur other than by filing, approval, and recording of a modification to the Special Permit. In compliance with the provisions of Section 8.A.2.g.4) the Planning Board shall determine if a modification is a Major or a Minor Modification, and act accordingly.

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.

The Conditions of this Special Permit shall run with the land and shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. The owners and purchasers of all lots shall be forever bound by all applicable conditions and restrictions contained in this Decision.

The Owner shall make a notation on Sheet C-1 of the Plans, in addition to notes as stated above, as follows:

“See Certificate of Vote dated April 21, 2015, Recorded Herewith.”

(Continued to Page 8)

This Certificate and related plans and documents must be recorded at the Southern Essex District Registry of Deeds. It is the responsibility of the Owner to record a certified copy of any Certificate of Vote of the Planning Board granting a Special Permit 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 Decision and all other documents must be provided to the Planning Board before the Decision becomes effective.

**APPEALS: Appeals, if any, shall be made pursuant to Massachusetts General Laws, Chapter 40A, Section 17, 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.**

At a meeting of the Planning Board held on April 7, 2015, Board Members voted to approve the Applications for Special Permits for Reduced Frontage Special Permit and Common Driveway subject to the Conditions of this Certificate of Vote, and subject to the following:

Final Certificate of Vote and Conditions, as approved by the Board,

Final Plans, to be approved by the Board,

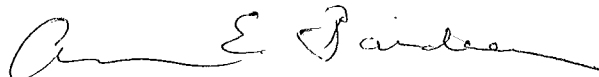
All Easements, Declarations, and other documents as required and approved by the Board, which are to be recorded with the final approved Plans,

Any other documents deemed to be necessary.

The Vote was as follows:

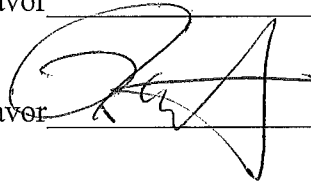
Ann E. Bardeen

In favor



Ricard W. Bridges

In favor



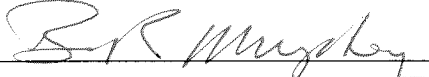
Raymond A. Cook

In favor



Brian R. Murphey

In favor



John Todd Sarkis

In favor

