



**TOWN OF WEST NEWBURY
OFFICE OF THE PLANNING BOARD
381 MAIN STREET
WEST NEWBURY MA 01985
978-363-1100 X125 Fax: 978-363-1119**

**CERTIFICATE OF VOTE
SPECIAL PERMIT FOR COMMON DRIVEWAY
Assessors Map R-3, Lot 14B
87 Crane Neck Street**

November 7, 2023

I. APPLICATION: Special Permit for a Common Driveway at 87 Crane Neck Street, received by the Planning Board on July 27, 2023 and the Town Clerk on July 27, 2023. Note that the Owner Applicant simultaneously submitted an application for a Special Permit for a Reduced Frontage Lot for 87 Crane Neck Street. The Board viewed, distributed, posted and held hearings on the Special Permits jointly.

A Supplemental Information packet dated September 26 was received by the Planning Board and Town Clerk on September 27, 2023.

II. OWNER/APPLICANT: Brook View Trust (William & Dianne Spalding Trustees) 87 Crane Neck Street, West Newbury, MA 01985.

III. REFERENCES:

- Planning Board Application for Special Permit, Received July 27, 2023.
- Plan Sheet C1.1(2 sheets) entitled, "Common Driveway & Stormwater Management Plan, 87 Crane Neck Street, West Newbury, MA; dated 7/26/23; prepared by Williams & Sparages. 189 North Main Street, Suite 101, Middleton, MA 01949.
- Supplemental Information Package Cover Letter from Williams & Sparages, dated September 26, 2023.
- Concept Plan Conventional Subdivision in West Newbury, MA, dated 9/13/2023; prepared by Williams & Sparages, 189 North Main Street, Suite 101, Middleton, MA 01949.
- Updated Common Driveway & Stormwater Management Plan that illustrates the option for a single driveway for each lot, dated 7/26/2023; prepared by Williams & Sparages, 189 North Main Street, Suite 101, Middleton, MA 01949.
- Aerial View titled Sketch Plan, 87 Crane Neck Street, West Newbury, MA
- Section Plan 87 Crane Neck Street, West Newbury, MA; dated 9/1/2023; prepared by Williams & Sparages, 189 North Main Street, Suite 101, Middleton, MA 01949.

RECEIVED BY TOWN CLERK
20 NOV 20 2023

IV. FILING and PUBLIC HEARING INFORMATION:

The Application was filed with the Planning Board and the Town Clerk on July 27, 2023, was published in the Daily News of Newburyport on August 1 and August 8, 2023, and was mailed to Parties in Interest and the Planning Boards of abutting cities and towns on July 27, 2023. The public hearing notice was posted with the Town Clerk on July 27, 2023.

Copies of the Application package were distributed to the Board of Health, Building Inspector, Conservation Commission, Department of Public Works, and Fire and Police Departments for comments. The Police & Fire Chief responded by email on August 1 stating that visibility of street numbers or identification for emergency responders would be key and on August 8 stating the turnaround for fire trucks will be sufficient, but there are limited places to park fire trucks. The Conservation Commission responded by email on August 9 stating that the project presented no concerns and noting that the Conservation approved the crossing, gravel driveway and other work in the wetlands in 2022. The Board of Health responded by email on August 9 stating that the project presented no concerns. The Building Inspector responded on August 23 that the project presented no concerns and the Department of Public Works responded by email on August 25 that the project presented no concerns.

The Public Hearing was opened jointly with the Public Hearing on the Reduced Frontage Lot on August 15, 2023. Board Members Ann Bardeen, Raymond Cook, Timothy Cronin, Brian Murphey and Deborah Hamilton were present and voting.

Chris Sparages representing the Applicant, Brook View Trust presented a plan showing the division of 87 Crane Neck Street into two lots, the front lot of 2.805 acres that includes the existing home, and a reduced frontage back lot of 7.813 acres that the applicant hopes to build on, both lots served by a common driveway. Mr. Sparages described the site's topography and wetland features, noting the applicant received a permit from Conservation Commission in April of 2022 to allow for the construction of a gravel driveway crossing over the wetland. He also noted the applicant has applied for a Stormwater Management Permit from the Board of Health.

Mr. Sparages noted the public benefit of the common driveway is to reduce the number of curb cuts in an area of wetland resources. The shared portion of the common driveway already exists and would be recrowned, the extension is approximately 600 feet and will be gravel except for an area close to the proposed home. The Common Driveway and Utility Easement area will be subject to the covenant restrictions related to the driveway maintenance and both will be recorded at the Registry.

Planning Board members focused their discussion on the alignment, width and use of the existing and proposed driveways, emergency vehicle access and maneuverability, wetland resources, driveway construction standards and maintenance.

The Board received public comments from Attorney Deschenes, representing abutters Chris and Kelly Dukarski and asked for clarification regarding Conservation Commission conditions and when wetlands were delineated. Mr. Sparages responded the Order of Conditions were granted in April of 2022 and wetlands were delineated in July of 2021. Attorney Deschenes questioned

if the frontage of Lot 1 includes any upland area. He opined that the development of the back of the lot would be detrimental to the abutters he represents and further that access to the lot without the common driveway was not reasonable and practical and thus does not meet zoning standards.

Board members agreed that they did not need to schedule a formal site walk. Deb Hamilton agreed to work with Mr. Spaulding to schedule an informal walk for herself and Melanie Cosgrove, 75 Crane Neck Street.

After due consideration Board Members voted unanimously (5-0) to continue the Public Hearing to September 5th at 8:15 pm.

The Public Hearing was continued on September 5, 2023. Board Members Ann Bardeen, Raymond Cook, Timothy Cronin, Deb Hamilton and Brian Murphey were present and voting. In response to a request for a continuation from the Applicant, the Board Members voted (5-0) to continue the public hearing to September 19, 2023 at 8:15 pm.

The Public Hearing was continued on September 19, 2023. Board Members Ann Bardeen, Raymond Cook, Timothy Cronin, Deb Hamilton and Brian Murphey were present and voting. In response to a request for a continuation from the Applicant, the Board Members voted (5-0) to continue the public hearing to October 3, 2023 at 8:15 pm.

The Public Hearing was continued on October 3, 2023. Board Members Ann Bardeen, Raymond Cook, Timothy Cronin, Deb Hamilton and Brian Murphey were present and voting.

Rich Williams of Williams & Sparages presented on behalf of the Applicant. Mr. Williams presented the newly submitted information beginning with the updated Common Driveway Plan. He noted the addition of a gravel turnaround large enough for a ladder truck to back in and drive out, the flagging of additional wetlands, flags D1A- D13A- along Crane Neck Street and back into the property, and noting a piece of property the abutters are currently using as paddock area. Mr. Williams confirmed some wetlands graphics were erroneously not removed outside the new flagging. Mr. Williams discussed the change to the limit of clearing area – approximately 100 feet from the proposed home and septic area. The area of the back lot outside the limit of clearing is noted as an area of forest management where vegetation including trees would be managed, but not clear cut. He noted the applicant has a permit from the Conservation Commission to do that work in the buffer zone.

Mr. Williams presented a sketch plan showing an aerial view of the property and abutting properties, with distance of 950 feet portrayed from the nearest abutting dwelling to the proposed dwelling along with other distances portrayed between neighbor's homes and other elements of the proposed development. Mr. Williams then presented a cross section that illustrated the distance between the proposed house and abutting dwelling and the height and extent of existing tree canopy between the two homes.

Mr. Williams then presented common driveway waiver requests, noting that current requirements for a minor road were for paved roads and asking for a reduction of the 20-foot-

wide travelled way to a minimum width of 14 feet, noting that coarse stone and gravel along the driveway allowed for a wider way. The existing conditions offer a deeper gravel subbase than is required in the minor roadway standards.

The Applicant is also asking for a waiver from pavement and cross slope requirements – noting that they do not intend to pave the common driveway. The cross slope is to prevent puddling and since the driveway does not currently puddle, no change is needed.

Mr. Williams presented options for land development if a Special Permit for a common driveway was not allowed. A Conceptual Subdivision Plan showed a short road could be created to provide the required frontage for each lot, noting it would require disturbing a wetland, creating a new curb cut and changing the streetscape. He also showed a Conceptual Plan for a driveway for each lot, with the driveway for lot one being developed through the wetlands. Mr. Williams noted that each of the alternative options would have a greater impact on the lots' natural resources.

The final change noted on the Common Driveway Plan is the addition of a split rail fence to eliminate the potential looped driveway for Lot 1.

The Board focused its discussion and questions on the possibility of reasonable practical access, benefits of a common driveway, the grade of the common driveway and the potential for runoff.

Attorney Douglas Deschenes of Finneran and Nicholson, representing abutters Mr. and Mrs. Dukarski, challenged the possibility of the conceptual subdivision road providing access. He claimed that practical frontage is required for both lots and opined that Lot 1, due to wetlands along the front that would require filling, did not have practical frontage. In terms of the reduced frontage lot, Mr. Deschenes contends that both lots are required to have reasonable access, but do not. He asked if the new wetland flagging has been certified by the Conservation Commission, as he contends that the upland identified by the new flagging is inaccurate as it seems to be based on vegetation only and not soils. Attorney Deschenes, also opined that waivers to the subdivision road standards are not an option, given the bylaw requires Common Driveway dimensions and construction meet the requirement for Minor Roadway Standards.

The Applicant's attorney Jeffrey Roelofs responded to points raised by Attorney Deschenes, noting that the reasonable practical access language includes the words "the possibility of.....reasonable practical access." He opined that this language makes it clear that the applicant does not need to guarantee approval of a permit.

Mr. Roelofs also noted that roadway standards have been waived for other common driveways as the waiver authority is within the subdivision regulations itself. He noted that even in subdivisions, Boards have the authority to waive the roadway standards.

Board Members voted (5-0) to close the public hearing, noting they would render a decision and post with the Town Clerk within 90 days.

At its regularly scheduled Planning Board Meeting on November 7th, the Board discussed elements of the Common Driveway application. After due consideration the Board voted (5-0) to grant the following waivers and approve the Special Permit for the Common Driveway based on findings of fact and with the below stated conditions.

V. WAIVERS:

Relative to section 7.D.7. of the Zoning Bylaws that requires Common Driveway dimensions and construction meet the requirements of Minor Roadway Standards.

- a. The Planning Board grants a waiver of the requirement for a paved 20' travelled way width. In place thereof a gravel driveway with a minimum width of 14' is required.
- b. The Planning Board grants a waiver of the requirement of a 6" paved surface. In place thereof, a gravel driveway is allowed.
- c. The Planning Board grants a waiver of the requirement of a 2% driveway cross-slope. In place thereof, a gravel driveway of varying cross slopes as exists or to be developed is allowed.

VI. FINDINGS OF FACT:

1. The Planning Board makes the following findings pursuant to Section 9.8 "Common Driveways" of the West Newbury Zoning Bylaw, as amended through April 6, 2023.
 - a. The Common Driveway provides a reasonable public benefit, which would not otherwise be obtained without use of a common driveway. Said benefits include the reduction in the number of curb openings on Crane Neck Street, and protection of significant natural features (wetland resources) which are provided by the common driveway.
2. The Planning Board makes the following findings pursuant to Section 11.2.6 of the West Newbury Zoning Bylaw.
 - a. The specific site is an appropriate location for the use or structure.
 - b. The use developed will not adversely affect the neighborhood.
 - c. There will not be an undue nuisance or serious hazard to vehicles or pedestrians, and adequate and appropriate facilities will be provided to ensure the proper operation of the proposed use, structure or condition.
 - d. The proposed use or structure will be in harmony with the general purpose of this Bylaw.
 - e. The requested use will not overload any public water, drainage, or any other municipal system to such an extent that the requested use or a 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.

VII. CONDITIONS:

1. No more than three residential lots shall ever be served by the common driveway.

2. The length of the common driveway shall not be used to satisfy zoning frontage requirements.
3. Any easement or easement conditions obtained by the property owners over an abutting lot shall be subject to approval of the Planning Board.
4. The Planning Board shall require covenant restrictions for the proper maintenance of common driveways by all affected property owners. All covenants and deed restrictions shall be recorded at the Registry of Deeds, Essex County South and referenced on the plan.
5. 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 Common Driveway Maintenance Covenant as in perpetuity.
6. 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 Common Driveway Maintenance Covenant as in perpetuity.
7. House numbers for each lot shall be posted at the intersection of the Common Driveway and the private driveway.
8. These conditions shall be binding upon the executors' heirs and assigns and successors in title of the owner.
9. Project construction shall be limited to the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, Saturdays from 8:00 a.m. to 3:00 p.m. Construction during the evening, on Sundays and on all holidays, is expressly prohibited.
10. Prior to the endorsement of the plan, the following shall be done:
 1. The Applicant shall make a notation on the plans, which references the conditions and dates of this Certificate of Vote.
 2. Lots 1 and 2 on said Plan shall be labeled "No further Subdivision".
 - a. The endorsed Plan together with a signed copy of the Certificate of Vote shall be recorded at the Registry of Deeds. Three recorded copies of the above shall be submitted to the Planning Board prior to any work on the site. One copy of each of the above shall also be submitted to the Town Clerk.
 - b. An "as-built" or "record conditions" plan shall be provided to the Planning Board upon completion of the common driveway.
 - c. In accordance with West Newbury Zoning By-Law Section 11.2.8, this approval which has been granted by the Planning Board shall lapse within two (2) years from the grant thereof, 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.
 - d. No alteration of these plans shall be made or effected other than by an affirmative vote of four or more members of the Board at a duly posted meeting and upon issuance of a written amended decision.

VIII. ADMINISTRATION:

Following the expiration of the applicable appeal periods, the Applicant shall record this endorsed Certificate of Vote and Plans at the Registry of Deeds. The Applicant shall also secure a statement for recording from the West Newbury Town Clerk, indicating that the applicable

appeal periods have lapsed and that there have been no appeals or that if any appeal has been filed that it has been dismissed or denied. A copy of the recorded documents shall be provided to the Planning Board.

All other stipulations of the Certificate of Vote and Site Plan shall remain in full force and effect.

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.

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.

IX. APPEALS:

Any appeal of this decision shall be made pursuant to Chapter 40A, Section 17 and shall be filed with the Town Clerk and the Superior Court within 20 days after the filing of the decision with the Town Clerk.


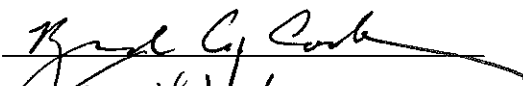
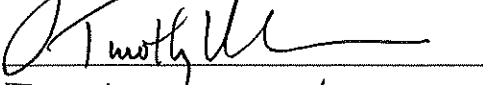
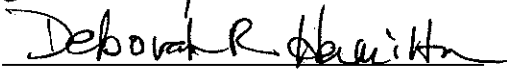
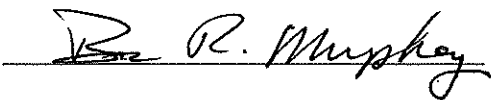
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**CERTIFICATE OF VOTE
SPECIAL PERMIT
Assessors Map R-3, Parcel 14B
87 Crane Neck Street**

At a meeting of the West Newbury Planning Board held on November 7, 2023, Board Members voted to approve the Application for Special Permit for a Common Driveway at 87 Crane Neck Street with Conditions.

➤ Final Certificate of Vote, as approved by the Board

The Vote was as follows:

Ann E. Bardeen	In favor	
Raymond A. Cook	In favor	
Timothy N. Cronin	In favor	
Deborah R. Hamilton	In favor	
Brian R. Murphey	In favor	

REC'D W. NEWBURY CLERK
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