



MEMORANDUM



To: Stow Planning Board

From: Brian C. Levey, Esq., Counsel to MAP Holdings, LLC

Date: October 11, 2022

Re: 108-118 Great Road – *Memorandum in Support of Special Permit and Site Plan Approval Applications and Request for Waivers*

JKC Properties LLC and

This Memorandum is in support of ~~JKC~~ MAP Holdings, LLC's requests for the following relief:

1. Petition for Special Permit pursuant to the Town of Stow Zoning Bylaw (the "Bylaw"), § 9.2 or Special Permit Extension pursuant to the Bylaw, § 9.2.8 and the Town of Stow Planning Board Rules and Regulations for Special Permits (the "Board Special Permit Rules"), § 6.7; and
2. Application for Site Plan Approval pursuant to the Bylaw, § 9.3 or Site Plan Approval Extension pursuant to the Bylaw, § 9.3.10 and the Town of Stow Planning Board Rules and Regulations for Site Plan Approval (the "Board Site Plan Approval Rules"), § 6.7; and
3. Request for Waivers pursuant to § 1.5 of each of the Board Special Permit Rules and the Board Site Plan Approval Rules.

SPECIAL PERMIT AND SITE PLAN APPROVAL

I. FACTUAL BACKGROUND

Summer-Fall 2020: Initial Project Permitting

On December 19, 2018, JKC Properties, LLC ("JKC") purchased 108-118 Great Road, Stow (the "Site" or "Property"). Having control of the Site, JKC then sought to develop the roughly 2.5-acre Property. JKC retained a team of professional consultants, created plans and reports and generally prepared to file for approvals with the Town of Stow. Roughly nine months later, on August 30, 2019, under the Bylaw, §§ 3.3, 9.2 and 9.3, JKC filed a Petition for Special Permit and Application for Site Plan Approval with the Stow Planning Board ("Board") to raze a former restaurant building and construct and maintain, on approximately the same footprint, an 8150 square foot, two-story retail and office building along with reconfigured parking, reduced pavement, a new underground stormwater management system, and updated Site lighting and landscaping (the "Project").

After public hearings on October 8, 2019, November 5, 2019, December 3 and 17, 2019 and January 7, 2020, the Board closed the hearing. On February 25, 2020, the Board considered all the materials and testimony before it and voted to unanimously approve the Special Permit and Site Plan Approval subject to conditions. The “Notice of Decision and Decision on Special Permit and Site Plan Approval” dated March 26, 2020 was filed in the Stow Town Clerk’s Office on March 30, 2020 (hereinafter, the “SP/SPA Permit”).

On September 30, 2020, JKC filed a Petition for Special Permit and Site Plan Approval Modification with the Board under Bylaw, §§ 9.2 and 9.3 to amend certain conditions related to pre-existing, non-conforming signage for the Project. This Modification application was heard by the Board at a public meeting on October 27, 2020. On November 17, 2020, the Board considered all the materials and testimony before it and voted to unanimously approve the Special Permit and Site Plan Approval Modification subject to conditions. The “Notice of Decision and Decision on Minor Modification #1, Special Permit and Site Plan Approval” dated November 17, 2020 was filed in the Stow Town Clerk’s Office on December 1, 2020 (hereinafter, the “Modified SP/SPA Permit”).

The plans entitled “Site Plan, 108-118 Great Road, Stow, Massachusetts” dated July 30, 2019 and last revised December 14, 2020, and prepared by Stamski and McNary, Inc. for JKC are the most current plans of record for the Project (the “Plans”). See, attached **Exhibit 1**.

On October 5, 2022, JKC recorded in the Middlesex South Registry of Deeds the SP/SPA Permit and the Modified SP/SPA Permit at, respectively, Book 80796, Page 402 and Book 80796, Page 421. See, attached **Exhibits 2 and 3**.

Impact of COVID-19

On March 10, 2020, Gov. Charles Baker declared a state of emergency in Massachusetts due to the outbreak of the 2019 novel Coronavirus (“COVID-19”). The next day, COVID-19 was characterized by the World Health Organization as a pandemic. The number of reported COVID-19 illnesses were on the rise and deaths were beginning to be reported due to the virus. As a result, the Massachusetts Department of Public Health urged all residents of the Commonwealth to limit activities outside of the home to limit the spread of this highly contagious disease. Gov. Baker issued an Order requiring all businesses and organizations deemed non-essential to close their physical workplaces and facilities to workers, customers and the public and further limited all gatherings to 10 people or fewer. Gov. Baker also found that, “the current public health crisis is preventing people and businesses from complying with the deadlines and conditions of permits, licenses, and other approvals....” See, <https://www.mass.gov/doc/march-26-2020-permit-extension-order/download>.

Project Narrowly Misses Out on Emergency COVID Protections

On March 26, 2020, Gov. Baker issued an “Order Suspending State Permitting Deadlines and Extending the Validity of State Permits, COVID-19 Order No. 17.” See, above link. On April 3, 2020, the Massachusetts Legislature enacted and Gov. Baker approved “An Act to Address Challenges Faced by Municipalities and State Authorities Resulting from COVID-19.”

See, <https://malegislature.gov/Laws/SessionLaws/Acts/2020/Chapter53>. Under this emergency state law – the Acts of 2020, Chapter 53 – Section 17(b)(iii) provides that local permits, including special permits and their deadlines and conditions “shall not lapse or otherwise expire and the expiration date of the permit... shall toll during the state of emergency” which ended 426 days later on June 15, 2021. See, COVID-19 Order No. 69 at <https://www.mass.gov/doc/covid-19-order-69/download>.

The protections of Section 17(b)(iii) were, however, limited to “a permit in effect or existence as of March 10, 2020...” Accordingly, the SP/SPA Permit missed qualifying for what turned out to be a 426-day tolling (or suspension) period by sixteen days as it became “in effect or existence” on March 26, 2020. Naturally, the later-approved Modified SP/SPA Permit also did not qualify for this protection. Had this protection applied, the SP/SPA Permit would have been in effect until May 26, 2023.

Economics Result in Property’s Sale

The Project was not only unprotected by pandemic-related emergency laws, but also negatively impacted by a confluence of events. During COVID-19, as is common knowledge, the construction industry at various times experienced product scarcities, heightened materials’ prices, labor shortages, labor price hikes, supply-chain interruptions, and inflationary pressures. To different degrees, all of these factors have resulted in one stark fact: soaring construction costs. As a result of the regulatory and economic impacts of COVID-19, JKC elected to put the Property on the market. On September 26, 2022, JKC entered into a Purchase and Sale Agreement to sell 108 Great Road to MAP Holdings, LLC (“MAP”).

Renewals or Extensions of Project Permits Requested

Having secured this interest in the Site, MAP has promptly filed with the Board to renew or extend the SP/SPA Permit and Modified SP/SPA Permit. To be clear, having just put this land under agreement, MAP seeks no changes whatsoever to the Project in connection with its applications. It wishes only to keep the current Permits in full force and effect with no changes to the Plans or permit conditions in order to allow time to consider what amendments, if any, it may request from the Board. Based on MAP’s extensive experience as a Dunkin Donuts franchisee, chief among these considerations is the desire to include, among other things, a Dunkin Donuts store within the previously approved building, or some variation of it. To repeat, in connection with this application MAP requests only re-approval of the Plans and permit conditions without any changes.

II. ARGUMENT

A. WHERE THERE IS “GOOD CAUSE” FOR THE PERMIT’S CONTINUATION AND IT IS ARGUABLY STILL IN EFFECT, THE BOARD SHOULD EXTEND THE PERMIT FOR TWO YEARS.

1. Good Cause for Extension Exists.

The Zoning Act, General Laws chapter 40A, § 9, provides as follows:

Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than 3 years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.

(Emphasis added.)

Section 9.2.8 of the Bylaw entitled, “Time Limitation on Special Permit,” uses substantially similar language except for specifying that a special permit lapses after two years, not three, absent good cause. On its face, the SP/SPA Permit expired on its two-year anniversary on March 26, 2022. However, as revised by the Modified SP/SPA Permit, dated November 11, 2020, the SP/SPA Permit arguably has not yet expired and will not expire until November 17, 2022, *two days after the date of the public hearing on this application by MAP*. Thus, for the reasons stated above concerning the global pandemic, support exists for the Board to find that there is “good cause” to extend the SP/SPA Permit, as modified, for two years until November 17, 2024.

2. Status of the Permit.

Section 9.2.8.1 of the Bylaw, which outlines the Board’s procedure for extension, arguably raises the question whether the Modified SP/SPA Permit extended the term of the SP/SPA Permit as the former was approved at a public meeting rather than a public hearing. This section states that, “A reasonable extension of said time, but not more than two additional years, may be granted by the Special Permit Granting Authority after a public hearing has been held where good cause is shown. (Emphasis added.) Moreover, chapter 40A case law also casts doubt on the propriety of approving a substantive change to a permit absent a public hearing.¹ Yet, § 6.9 of the Board Special Permit Rules,² which

¹ “[T]he board may not make a substantive amendment which changes the result of an original deliberate decision, or which grants relief different from that originally granted, without compliance with the relevant notice and hearing requirements. *Huntington v. Zoning Board of Appeals of Hadley*, 12 Mass. App. Ct. 710, 715 (1981).

addresses both amendments and modifications, appears to give the Board some leeway in choosing between a public meeting and public hearing that is in accord with c. 40A. It provides that,

A previously granted Special Permit may be amended upon petition to the Planning Board.... The Planning Board shall determine whether any request for further alterations to a site constitutes a minor modification and therefore does not require an amendment to the Special Permit. Requests for minor modification may be considered where the Petitioner submits sufficient information, including but not limited to...

- Alteration to administrative requirements, including but not limited to the timing of submittals or the sequencing of work or construction tasks, except where such alteration could change the impact on abutting property owners....

The Modified SP/SPA Permit first states that its purpose is “amending conditions related to pre-existing non-conforming signage....” See, Ex. 3, p. 1. It later explains that the Board elected to treat the application as a Minor Modification under the above-quoted “administrative requirements” provision. *Id.* at p. 2. The “Findings” clarify that the decision allowed one of several pre-existing, nonconforming internally illuminated signs at Bank of America to remain so illuminated for up to three years, after which this lighting would be removed. *Id.* at pp. 2-3.

Given the nature of the modification approved and the fact that its time-frame will expire relatively soon, there was and is good reason to treat this change under the “administrative requirements” provision, and not as a substantive change to a permit, and require only a public meeting. Thus, with a valid permit in effect through and including November 17, 2022, and good cause for its extension owing to COVID-19, this Board should grant a two-year extension of the SP/SPA Permit, as modified, through and including November 17, 2024.

B. ALTERNATIVELY, THE BOARD CAN AND SHOULD GRANT A FRESH SPECIAL PERMIT AND SITE PLAN APPROVAL IF IT IS CONCERNED THAT EITHER THE PERMIT IS NOT IN EFFECT OR NO “GOOD CAUSE” EXISTS FOR ITS CONTINUATION.

Out of an abundance of caution, MAP has filed not just for an extension, but also, in the alternative, for a new Special Permit and Site Plan Approval. Since Board members may harbor some concerns or abutters or residents may question whether any Project permit is now in full force and effect because they consider the SP/SPA Permit expired and the Modified SP/SPA Permit ineffective since it was not approved at a public hearing, MAP has filed for these fresh permit approvals. This approach has the advantage of eliminating procedural questions and reducing the likelihood of an appeal while allowing the Board to approve the exact same Project that the Board approved in March, 2020 and modified in November, 2020. Moreover, the two year term of the new approval would be the same as the extension requested.

² Section 6.8 of the Board Site Plan Approval Rules contains similar language.

III. CONCLUSION

Based on the reasons stated and the authorities cited, MAP Holdings, LLC respectfully requests that the Stow Planning Board:

1. Approve its Petition for either Special Permit pursuant to the Bylaw, § 9.2 or Special Permit Extension pursuant to the Bylaw, § 9.2.8 and the Board Special Permit Rules, § 6.7; and
2. Approve its Application for either Site Plan Approval pursuant to the Bylaws, § 9.3 or Site Plan Approval Extension pursuant to the Bylaw, § 9.3.10 and the Board Site Plan Approval Rules, § 6.7.

REQUEST FOR WAIVERS

I. WAIVERS REQUESTED.

Pursuant to § 1.5 of the Board Special Permit Rules and the Board Site Plan Approval Rules, MAP requests waivers from the filing requirements set forth below as they are in the public interest and are consistent with the intent and purpose of the Bylaw and the Board's Rules. Specifically, based on the timing of MAP's securing control of the Site, it has acted with all deliberate speed to file for and seek the Board's approvals in order to keep in place the development prospects for a prominent location on Great Road. This timing has necessitated the filing of a limited set of materials in support of the application, including the final, approved plans. Further, where MAP is seeking no changes to the previously approved plans or the terms and conditions of the previously issued permits, there is little reason to resubmit the same materials. Finally, MAP's counsel has conferred with the Board's Staff regarding an agreed set of materials for this submission.

Accordingly, waivers from the following Board Special Permit Rules and Board Site Plan Approval Rules governing filing requirements are requested:

1. Section 3.3.1. Number of copies. Five copies have been provided.
2. Section 3.3.1(2). Filing fee. A suggested reduced fee of \$250.00 in accord with the limited nature of this application has been provided. See Section 6.9.3 allowing fee reductions.
3. Section 3.3.1 (3). Size of plans. 8.5" X 11" plans only.
4. Section 3.3.1(4), (5), (6) and (8). The stormwater report, deed, development impact statement, letter of corporate vote were presumably submitted for the earlier approvals which MAP does not seek to change.
5. Section 3.4. Filing fee. See above.
6. Section 4.1.2. MAP has submitted a copy of final set of Site Plans approved by the Board and requests all necessary waivers from the other subsections of this section.
7. Section 4.4. Development Impact Statement was presumably submitted for the earlier approvals which MAP does not seek to change.

8. Section 4.5. Other Permits and Variances. Having not yet finalized any of its plans, no final list of approvals has been provided.
9. Section 4.6. Recorded plans were presumably submitted for the earlier approvals which MAP does not seek to change.
10. Sections 4.7, 4.8, 4.9, 4.10, 4.11, and 4.12. All of these sections refer to the specifics of various required plan elements. MAP has resubmitted a copy of the final set of Site Plans approved by the Board and seeks no changes to any and all plans previously approved by the Board.
11. Section 4.13. Stormwater report was presumably submitted for the earlier approvals which MAP does not seek to change.
12. Section 4.14. MAP adopts the earth removal calculation, if any, previously submitted and approved by the Board.
13. Section 4.15. Traffic study was presumably submitted for the earlier approvals which MAP does not seek to change.
14. Section 4.17. Recommendations from other Boards, Committees and Agencies.
Where MAP seeks no changes to the plans approved by the Town twice in 2020, such reconsideration seems redundant.

II. CONCLUSION

Based on the reasons stated and the authorities cited, MAP Holdings, LLC respectfully requests that the Stow Planning Board approve its Request for Waivers identified above pursuant to § 1.5 of each of the Board Special Permit Rules and the Board Site Plan Approval Rules.

Exhibit 1

JULY 30, 2019
REVISED: OCTOBER 25, 2019
REVISED: DECEMBER 14, 2020



LOCUS MAP
SCALE: 1"=200'

PLAN INDEX	
SHEET 1	COVER SHEET
SHEET 2	SITE DEVELOPMENT PLAN
SHEET 3	LAYOUT PLAN
SHEET 4	CONSTRUCTION DETAILS PLAN
SHEET 5	STORMWATER POLLUTION PREVENTION PLAN

APPLICANT/RECORD OWNER
J&C PROPERTIES, LLC
14 NASON STREET, SUITE 302
MAYNARD, MA 01754

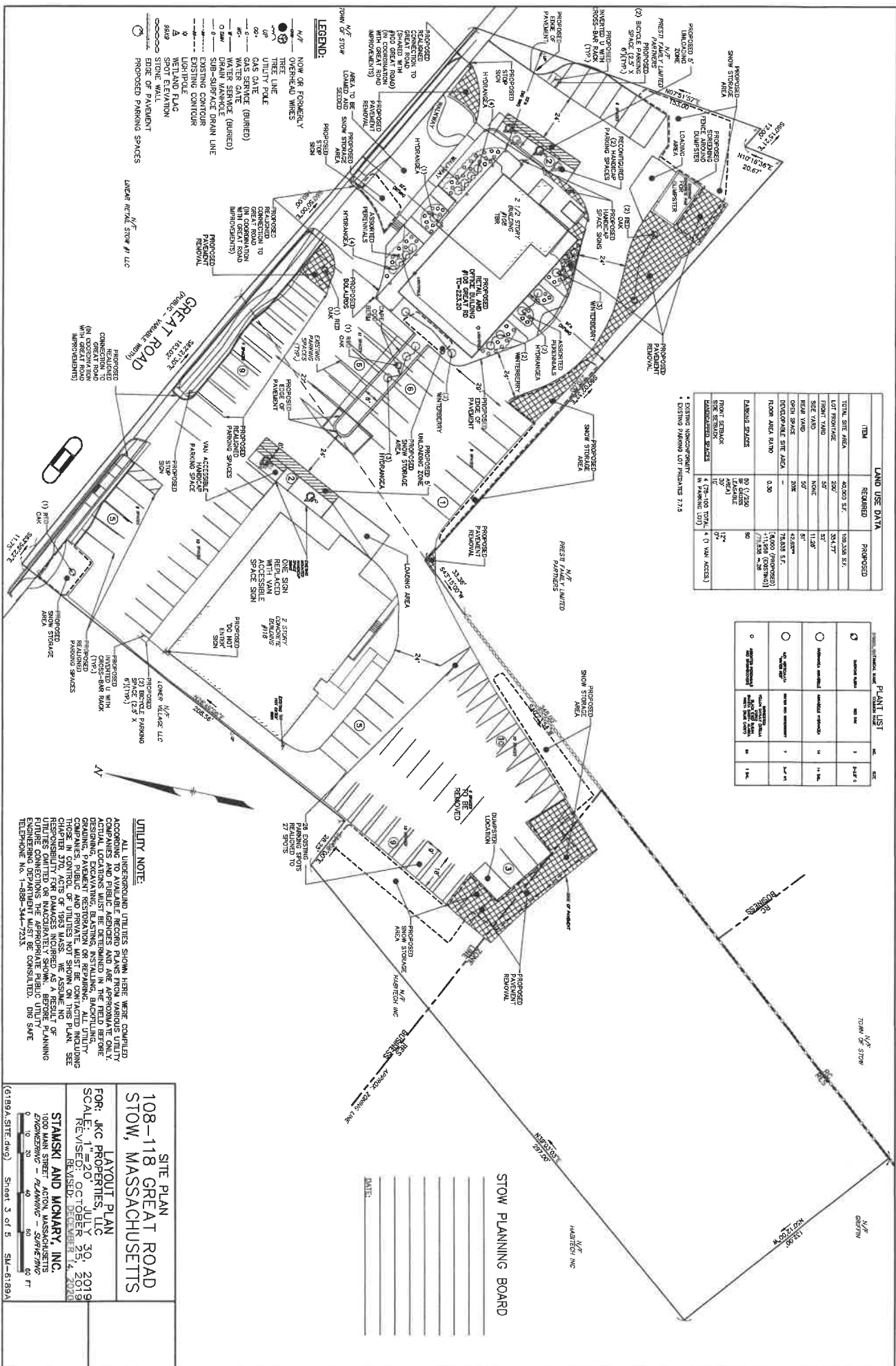
REFERENCES
NAME ADDRESS CITY STATE ZIP
MIDDLESEX REGISTRY OF DEEDS
SOUTH DISTRICT
DEED BOOK 72042 PAGE 557

ENGINEER/SURVEYOR
STAMSKI AND MCNARY, INC.
1000 MAIN STREET
ACTON, MA 01720

ZONING DISTRICT
BUSINESS
RESIDENTIAL

LAND USE DATA			
ITEM	REQUIRED	PROPOSED	
TOTAL SITE AREA	40,000 S.F.	103,308 S.F.	
LOT 108-118	3,000	30,000	
LOT 109	27	11,297	
LOT 110	27	11,297	
LOT 111	27	11,297	
LOT 112	27	11,297	
LOT 113	27	11,297	
LOT 114	27	11,297	
LOT 115	27	11,297	
LOT 116	27	11,297	
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LOT 196	27	11,297	
LOT 197	27	11,297	
LOT 198	27	11,297	
LOT 199	27	11,297	
LOT 200	27	11,297	

PLANT LIST			
SYMBOL	DESCRIPTION	QUANTITY	REMARKS
1	1" x 4" x 8"	1	
2	2" x 4" x 8"	1	
3	3" x 4" x 8"	1	
4	4" x 4" x 8"	1	
5	5" x 4" x 8"	1	
6	6" x 4" x 8"	1	
7	7" x 4" x 8"	1	
8	8" x 4" x 8"	1	
9	9" x 4" x 8"	1	
10	10" x 4" x 8"	1	
11	11" x 4" x 8"	1	
12	12" x 4" x 8"	1	
13	13" x 4" x 8"	1	
14	14" x 4" x 8"	1	
15	15" x 4" x 8"	1	
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99	99" x 4" x 8"	1	
100	100" x 4" x 8"	1	



(6139A SITE.dwg) Sheet 3 of 5 SM-6139A

[illegible][illegible]

DO NOT SCALE

TRANSPORT

3" MIN	BACKFILL CONTAINING NO STONES GREATER THAN 6 INCHES COMPACTED IN 6 (MAX) LIFTS
1" MIN	COMPACTED SELECT ONSITE MATERIAL FOR BACKFILL CONTAINING NO STONES GREATER THAN 3 INCHES

DETAIL

W/ 3" LETTERING
(NO STANDARDS)

C
425 LBS
RIGHT
STN 448, CLASS
358 CHAY IRON
TODIA TROMA AND
OR APPROVED EQUAL.

A
J

222222

[illegible][illegible]

	BOTTOM STONE	E.S.M.G.W.	OFFSET
SUR. CHANG.	211.80	<206.1	>5.7'
ISOLATOR ROW	211.80	<206.1	>5.7'

NOT TO SCALE

SITE PLAN
108-118 GREAT ROAD
STOW, MASSACHUSETTS

FOR: KGC PROPERTIES, LLC
SCALE: 1"=20'
REVISED: OCTOBER 25, 2019
REVISED: DECEMBER 14, 2020

JULY 30, 2019

STAMSKI AND MCNARY, INC.
1000 MAIN STREET
ACQUON, MASSACHUSETTS
ENGINEERING - PLANNING - SURVEYING

0 10 20 40 60 80 FT

Sheet 4 of 5 SM-61892A
(61892A SITE.DWG)

Exhibit 2

Middlesex South Registry of Deeds
Electronically Recorded Document

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Recording Information

Document Number	: 150317
Document Type	: DECIS
Recorded Date	: October 05, 2022
Recorded Time	: 12:20:22 PM
Recorded Book and Page	: 80796 / 402
Number of Pages(including cover sheet)	: 19
Receipt Number	: 2857607
Recording Fee	: \$105.00

Middlesex South Registry of Deeds
Maria C. Curtatone, Register
208 Cambridge Street
Cambridge, MA 02141
617-679-6300
www.middlesexsouthregistry.com



Town of Stow
PLANNING BOARD

380 Great Road
Stow, Massachusetts 01775-1122
(508) 897-5098
FAX (508) 897-4534

NOTICE OF DECISION and DECISION

**Special Permit and Site Plan Approval
108 and 118 Great Road**

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**JKC Properties, LLC
3.26.2020**

1. Petition

This Document is the **DECISION** (hereinafter the Decision) of the Planning Board (hereinafter the Board) on a Request for Special Permit and Site Plan Approval, for the construction of a two story Retail and Office Building at 108 and 118 Great Road, on property owned by JKC Properties, LLC (hereinafter the Petitioner).

This Decision is in response to a Request for Site Plan Approval and Special Permit submitted to the Board on August 30, 2019 (hereinafter the Petition), pursuant to Sections 3.3, 9.2 and 9.3 of the Stow Zoning Bylaw and the Rules and Regulations for Special Permit and Site Plan Approval (hereinafter the Rules). The Petitioner seeks permission to site a two-story Retail and Office Building.

2. Applicant/Owner

JKC Properties, LLC
14 Nason Street
Maynard, MA 01754

- see deed recorded
in BOOK 72042
Page 557

3. Location

Said property is shown on the Stow Property Map Sheet R-29 as Parcels 86 and 87 (hereinafter the Site), as more fully described in the Petition.

4. Board Action

After due consideration of the Petition, the record of proceedings, and based upon the findings set forth below, on February 25, 2020, by a vote of five (5) members present throughout the proceedings, the Board voted to **APPROVE** the request for Site Plan Approval, and by a vote of five members present throughout the proceedings, **GRANT** the Special Permit in accordance with the Findings, Plan Modifications and Conditions contained herein.

108 and 118 Great Road, Stow MA

5. Proceedings

The Petition for Special Permit and Site Plan Approval was received by the Board on August 30, 2019, pursuant to MGL Ch. 40A and Section 9.2 and 9.3 of the Town of Stow Zoning Bylaws (hereinafter the Bylaw). The Board considered the Request and reviewed the Application at a duly noticed Public Hearing on October 8, 2019. The Public Hearing was continued to November 5, November 11, December 3, December 17 and January 7, 2020, at the conclusion of which the Public Hearing was closed. Notice of the hearing was duly published and sent to all parties in interest in accordance with MGL Chapter 40A. Board Members Lori Clark, Karen Kelleher, John Colonna-Romano, Margaret Costello and Associate Voting Member Megan Birch-McMichael were present throughout the proceedings. The record of the proceedings and submissions, upon which this Decision is based, may be referred to in the Office of the Town Clerk or the Office of the Planning Board.

6. Exhibits

Submitted for the Board's deliberation were the following exhibits:

6.1 Documents Required by the Rules, consisting of the following:**EXHIBIT 1 Plans entitled:**

- "Site Plan 108-118 Great Road, Stow Massachusetts, July 30, 2019," prepared by Stamski and McNary, Inc. for JKC Properties, LLC, last revised October 25, 2019.
- Architectural renderings titled "New Commercial Property for 108-118 Great Road, Stow, MA 01775," prepared by Boston Design Partners for JKC Properties, LLC and dated May 2, 2019.

EXHIBIT 2 Application

- Petition for Special Permit
- Development Impact Statement
- Record Deed
- Use Description
- Limited Traffic Study
- Stormwater Operations and Maintenance Manual
- Stormwater Management Report

EXHIBIT 3 Request for Waivers**EXHIBIT 4 Certified List of Abutters****EXHIBIT 5 Filing Fee****6.2 Additional Correspondence submitted by the Petitioner:**

- a) Email from John Cramer, dated November 15, 2019
- b) Revised Site Plan, dated October 25, 2019 showing truck turning radii and proposed landscaping;
- c) Letter from Daniel Carr of Stamski and McNary, dated October 25, 2019.

6.3 Comments received from Town Staff, Boards and Committees:

- a) Memo from the Stow Treasurer/Collector, dated September 5, 2019
- b) Memo from the Board of Assessors, received September 5, 2019
- c) Memo from the Town Clerk, dated September 6, 2019
- d) Email from the Conservation Commission, dated September 25, 2019

- e) Email from the Fire Department, dated December 13, 2019
- f) Memo from the Stow Police Department, dated September 12, 2019
- g) Department of Environmental Protection Sanitary Survey dated 4.3.2019, submitted by the Stow Board of Health.

- 6.4 Correspondence from Places Associates, Inc., Town of Stow Consulting Engineer:
- 1) Letter and Plan markup dated October 21, 2019
 - 2) Letter update, dated November 12, 2019

Exhibits 6.1 through 6.3 are referred to herein as the Plan.

7. Findings and Conclusions

Based upon its review of the Exhibits and the record of the proceedings, the Board finds and concludes the following:

- 7.1 **Finding:** The Petitioner seeks Special Permit and Site Plan Approval for the razing of a vacant 67 seat restaurant at 108 Great Road and construction of two-story retail and office building totaling 8,150 feet of total enclosed space at a similar location on the lot as the former building's footprint. The Plan further proposes upgrades to the existing site plan at 108 and 118 Great Road through reconfiguration of parking spaces, elimination of excess pavement, as well as the addition of an underground stormwater infiltration system and site lighting and landscaping.

Finding: The proposed retail and office building will initially consist of 4 units that may be reconfigured internally to fit the space needs of future tenants. Two retail units are expected on the first floor, totaling 4070 square feet, while the two office spaces occupying the second floor will total 4080 square feet.

- 7.2 **Finding:** The proposed use is located in the Business and Residential District.

Finding: The proposed use, as conditioned herein, is allowed by Special Permit in accordance with the Business District - Section 3.3.2 of the Zoning Bylaw.

- 7.3 **Finding:** The Board reviewed and considered the Application, as submitted, and finds the Application and supporting documentation as adequate for the type of Special Permit applied for.

Site Characteristics

- 7.4 **Finding:** Parcels 86 and 87, known as 108 and 118 Great Road, are referred to as the Site, held in common ownership by JKC Properties, LLC and totaling 2.51 acres. The Site has a combined total frontage of +/-355 feet, meeting the threshold for 200 linear feet of frontage along Route 117 in accordance with Section 4.4(2). Together, the combined lots, held in common ownership meet the frontage and lot area requirements of the Zoning Bylaw.

Finding: The Parcels, held in common ownership, are interlinked and dependent on the infrastructure that each offers to the other, including a shared septic system and public water supply, as well as an interlinked stormwater management system.

Site Circulation

- 7.5 **Finding:** The Plan shows the continued use of three separate curbcuts, two entering onto 108 Great Road and one onto 118 Great Road. Each curbcut conforms to the widths and geometries developed and constructed as part of the 2018 Lower Village Traffic Improvement Project by the Town.

Condition: Any additional curbcuts, including alterations and/or reconfigurations of existing curbcuts shall require further Modification of the Special Permit.

- 7.6 **Finding:** The Board's consulting engineer noted that although the Plan shows entrance to the site by the largest Acton firetruck (3 axle, 40.7' feet long) to simulate the largest mutual aid vehicles accessing the site, not all turns are accounted for and the simulation does not show the trucks completing a full entrance and exit of the site.

Condition: Emergency apparatus shall be able to adequately enter and exit the site from each of the three curbcuts.

Plan Modification: Acton Fire Apparatus turning movements shall be shown navigating around the landscaped islands as conditioned herein, and specifically along the property boundary of 108 and 118 Great Road, for the purpose of demonstrating the ability of trucks to enter and exit the site.

- 7.7 **Finding:** The Police Department submitted correspondence recommending consideration of identifying each of the 108 Great Road curb cuts as entrance only and exit only, with a Do-Not-Enter sign posted at the chosen exit.

Finding: The Town's Lower Village Traffic Improvements were designed to accommodate two-way traffic at each of the curbcuts along Route 117.

Condition: Two way traffic shall be maintained at each curbcut, consistent with the design of the Lower Village Traffic Improvements. The Planning Board reserves the right to modify the Special Permit in accordance with Section 7.40 of this Decision in the event that future communications with Public Safety and Highway Departments find that a one-way circulation pattern may increase vehicular safety.

- 7.8 **Finding:** The Fire Department indicated that the narrow, pre-existing access lane to the west of the building at 118 Great Road is not wide enough to provide meaningful circulation around the building for emergency apparatus and therefore need not be included in the Fire Department's analysis of site circulation.

Finding: The Plan currently shows proposed parking spaces blocking the access to the paved access drive on the western side of the building at 118 Great Road. The access drive is not a viable connection to the rear parking area and unwitting drivers may attempt to use the access and be forced to back their vehicles out if blocked.

Condition and Plan Modification: Prior to issuance of a Building Permit, the Plan shall be modified to limit vehicular access to the side access drive through the use of "Do Not Enter" signage or a similar technique.

Landscape Plan Waiver

- 7.9 **Finding:** The Petitioner requested a waiver from the requirement for a landscape plan in accordance with Section 4.9 of the Rules, as the parking area is pre-existing and the existing landscaping will remain.

Finding: The Planning Board finds that the plan does not meet the expectations and vision for landscaping in the Lower Village as proposed. The Planning Board finds that although the landscaping and parking areas on the site are pre-existing, there are opportunities to better conform to Section 7.7.4 and 7.7.6 of the Zoning Bylaw regarding parking area landscaping.

Waiver: The Planning Board therefore **DENIES** the waiver from Section 4.9 of the Rules for submission of a landscape plan.

Condition: Prior to commencement of construction the Applicant shall submit a landscaping and parking area upgrade plan consistent with the conditions herein.

Parking

- 7.10 **Finding:** The Planning Board finds that the Site's parking arrangement has been reconfigured to bring the overall parking arrangement further in compliance with current Zoning Bylaw requirements of Section 7.3.3.5 and is adequate for the proposed use as conditioned herein.
- 7.11 **Finding:** The Application proposes eighty (80) total parking spaces. Thirty one (31) spaces are proposed at 108 Great Road and forty nine (49) spaces at 118 Great Road.
- 7.12 **Finding:** The Applicant has provided information detailing the square footage of different tenant spaces at the 118 Great Road retail plaza for the purpose of confirming the required number of parking spaces in accordance with Section 7.3.3 of the Zoning Bylaw. The Application meets the required number of spaces to service the existing and proposed parking demands at the Site.

Finding: Section 7.2.3.1 of the Zoning Bylaw provides relief from the parking regulations to be granted by the Zoning Board of Appeals where the Board can find that "it is not practicable to provide the number of parking spaces required..."

Condition: In the event that a use is proposed that would raise the number of parking spaces required by Section 7 of the Bylaw beyond the current allocation, the Applicant shall seek a Special Permit from the Zoning Board of Appeals in accordance with Zoning Bylaw Section 7.2.3.1.

- 7.13 **Finding:** The proposed and existing buildings at 108 and 118 Great Road respectively, contain a variety of existing and proposed uses that are likely to change over time. In the event that such changes trigger a Special Permit from the Zoning Board of Appeals under Section 7.2.3.1, the Planning Board recommends consideration of proposing a shared parking agreement as applicable. A shared parking agreement could be submitted to the Board of Appeals as part of any Special Permit request and would preferably address issues such as the maintenance, striping, and snow plowing of the shared parking area.

- 7.14 **Finding:** The Application does not include any facilities for bicycle accommodation.

Finding: The Planning Board finds that the recently completed Lower Village Traffic Improvements, as well as the proximity of the Assabet River Rail Trail, offer businesses in Lower Village improved bicycle accessibility. The Planning Board finds that that new development should provide facilities to accommodate that accessibility.

Condition: Bicycle accommodations, such as bike racks, shall be incorporated into the site plan.

Plan Modification: Prior to commencement of construction the plan shall be modified to include the location of bike infrastructure and/or accommodation.

- 7.15 **Finding:** The Plan shows existing pavement extending over a corner of property owned by the Presti Family Limited Partnership. No easement for the pavement is shown on the plan.

Condition: Pavement for the parking and access of 108 and 118 Great Road shall not overlap with any abutting properties without an easement providing for such use being submitted to the Board.

Plan Modification: Prior to commencement of construction the Plan shall be modified and approved by the Board to eliminate proposed pavement along the abutting property owned by Presti Family Limited Partnership. In the event an easement is granted for the encroachment, the Plan shall be modified to note the easement and the easement shall be submitted to the Board for review and approval.

Interior and Perimeter Landscaping for Parking Areas

- 7.16 **Finding:** The initial development of 108 and 118 Great Road was constructed prior to the 2003 amendment to Section 7.7.4, 7.7.5 and 7.7.6 of the bylaw and therefore does not comply with the current Zoning Bylaw regarding parking landscaping requirements. Section 7.7.4, 7.7.5 and 7.7.6 of the Zoning Bylaw, governing perimeter and interior landscaping requirements

Finding: The Planning Board finds that the plan does not meet the expectations and vision for parking area landscaping in the Lower Village as proposed.

- 7.17 **Finding:** Section 7.7.4 of the Zoning Bylaw requires perimeter landscaping at all "parking areas with more than five spaces and all loading areas shall be bordered on all sides with a minimum of ten foot wide buffer strip..."

Finding: The Plan shows the removal of 2,178 square feet of excess pavement at the site, focused primarily on the rear portions of the 108 and 118 Great Road parcels.

Addition of Street Tree at Western Curbcut of 108 Great Road

Finding: During the Public Hearing it was noted that an area of pavement immediately west of the primary entrance to 108 Great Road is proposed to be left as pavement, but

striped to preclude parking. Given the proximity of the existing parking to Great Road, this location would be ideal as an area to be loamed and seeded and reserved for the installation of a street tree.

Finding: During the Public Hearing the Applicant indicated concern that a street tree at this location could inhibit sightlines of drivers exiting the property onto Route 117.

Finding: The Planning Board finds that the area of pavement striped for no parking, immediately west of the primary entrance to 108 Great Road (entrance west of proposed building), is up to 15' feet deep, beginning at a setback of 10' feet from the edge of pavement. Although the Application is not a Subdivision, the Planning Board's Rules and Regulations governing the Subdivision of Land require street trees to be planted 10' feet from the edge of the street. Given the depth of the area is at least 10' feet, the Planning Board feels the area of pavement would be an acceptable location for loaming, seeding and the planting of a street tree.

Condition: Unless or until the Applicant submits information from a registered professional engineer that the location of a street tree along west side of the eastern 108 Great Road entrance will detrimentally affect sightlines for vehicles, the area of pavement striped for no parking, and immediately west of the primary entrance to 108 Great Road (entrance west of proposed building), shall be loamed and seeded and planted with a variety of street tree listed on the "*Tree Wardens List of Acceptable Species for Street Tree Plantings in the Town of Stow*," dated 10.3.2017.

Plan Modification: Prior to commencement of construction, the Plan shall be modified to show the area of pavement immediately west of the primary entrance to 108 Great Road (entrance west of proposed building), loamed and seeded and planted with a variety of street tree listed on the "*Tree Wardens List of Acceptable Species for Street Tree Plantings in the Town of Stow*," dated 10.3.2017.

Additional Landscaped Islands

7.18 **Finding:** During the Public Hearing the Board raised concern that there are large swaths of existing pavement at the center of the site that will contain no vegetation to mitigate views, provide shade or add to the aesthetics of the Business District. The Planning Board finds that the plan does not meet the expectations and vision for parking area landscaping in the Lower Village as proposed.

Finding: Zoning Bylaw Section 7.7.5 – Standard Parking Dimensions requires a minimum maneuvering aisle width of 24' feet. The primary access driveway between parking stalls along the 108 Great Road frontage and the middle of the lot measures approximately 34' feet in width. The access driveway between the middle parking stalls and the parking stalls along the rear lot line of 108 Great Road measures approximately 32' feet in width. The Plan does not indicate whether the 10% minimum interior landscaping requirement under Section 7.7.5 of the Bylaw is met.

Finding: Section 7.7.6 of the Zoning Bylaw requires standards for interior parking landscaping requirements.

Finding: The Planning Board's consulting engineer noted the following concerns:

- There is excessive pavement in the aisle widths of 108 Great Road with the potential to create additional islands and buffers;
- A proposed 280' square foot island at the western edge of the mid-lot parking stalls, which straddles the property bound between 108 and 118 Great Road does not indicate any surface treatment, nor any notes on proposed curbing.

Finding: The Planning Board finds that the addition of a landscaped island separating the mid-lot parking stalls could be added while maintaining maneuvering aisle widths in excess of the required 24' feet. The Board finds that the addition of the landscaped island would accomodate additional landscaping and potential for additional shade trees.

Condition: Additional landscaping in the interior parking area shall be provided, separating the two rows of mid-lot stalls at 108 Great Road. The island shall meet the standards for interior landscaping in Section 7.7.6 of the Zoning Bylaw to the extent practicable. At least one shade tree shall be installed on the landscaped island as required in Section 7.7.6.1 and 7.7.6.2 of the Zoning Bylaw. In the event the Applicant provides sufficient indication that underground utilities or stormwater management facilities preclude the installation of shade trees, the Applicant shall provide shallow rooted shrubs and/or grasses as a substitute.

Additional interior parking landscaping, including any proposed islands, shall be designed to meet the requirements of fire apparatus turning radii.

Plan Modification: Prior to commencement of construction, the Plan shall be modified and approved by the Board to show additional interior parking landscaping separating the two rows of mid-lot parking stalls at 108 Great Road. The Layout Plan shall be modified as conditioned herein to show additional landscaping and shall be in compliance with Section 7.7.6 of the Zoning Bylaw to the extent practicable.

Redesign of Proposed Island

Finding: The Plan shows an approximately 280' square foot island at the western edge of the mid-lot parking stalls, which straddles the property bound between 108 and 118 Great Road. There is no treatment noted on the plans for the island, nor any notes on proposed curbing.

Finding: The Board's consulting engineer noted that the purpose of the island is unclear and that the island should contain rounded corners in addition to surface cover and landscaping.

Finding: During the Public Hearing the Applicant noted that the island will be loamed and seeded but is not proposed to have any curbing. The Applicant's engineer noted that the island will contain a proposed diversion manhole cover.

Finding: The Planning Board finds that the plan does not meet the expectations and vision for parking area landscaping in the Lower Village as proposed. The Board finds that the proposed island breaks up the expansive pavement, provides an opportunity for further landscaping and brings the site in better compliance with the interior landscaping standards of Section 7.7.5 of the Zoning Bylaw. However, the island would benefit from a

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redesign to better relate to the required landscaped island in Condition 7.15 and provide for more definition around the perimeter of the mid-lot parking stalls.

Condition: The proposed island at the western end of the mid-lot parking stalls at 118 Great Road shall be redesigned to better conform to the perimeter shape of the mid-lot parking stalls, including the use of rounded corners. The island shall be redesigned to complement the landscaped island relating to Condition 7.15 of this Decision, including but not limited to the potential for creating a T-shaped island conforming to the perimeter shape of the mid lot parking stalls.

In the event that the landscaped island conflicts with truck turning radii as shown on the Plan, the Applicant shall provide a reduced width island that balances the need for emergency access with the conditions as stated herein.

Condition: The proposed island at the western end of the mid-lot parking stalls at 108 Great Road shall be landscaped to meet the requirements of Section 7.7.6 to the extent practicable. In the event the Applicant provides sufficient indication that underground utilities or stormwater management facilities preclude required landscaping, alternative treatments shall be proposed.

Plan Modification: Prior to commencement of construction the Plan shall be modified to show a redesigned landscaped island, with appropriate curbing. The Layout Plan shall be modified to show updated landscaping in accordance with Section 7.7.6 of the Zoning Bylaw to the extent practicable.

7.19 Finding: During the Public Hearing it was noted that the final condition of the area between the proposed building and streetscape sidewalk is not labelled on the Plan.

Condition: The area between the streetscape sidewalk and the proposed building shall be loamed and seeded.

Plan Modification: Prior to commencement of construction, the Plan shall be modified to indicate that the location between the streetscape sidewalk and the proposed building is to be loamed and seeded.

Finding: During the Public Hearing it was noted that the proposed snow storage area to the far northwest corner of the 118 Great Road parcel had formerly contained a mature street tree that was found to be in declining health at the start of the Lower Village Improvements and eventually removed.

The Planning Board finds this location to be suitable for the replanting of a street tree.

Condition: A street tree conforming to the "*Tree Wardens List of Acceptable Species for Street Tree Plantings in the Town of Stow*," dated 10.3.2017 shall be placed at the snow storage area at the far northwest corner of the 118 Great Road Parcel.

Plan Modification: Prior to commencement of construction, the Plan shall be modified to include a notation of the species of street tree to be placed at the snow storage area at the far northwest corner of the 118 Great Road parcel.

Traffic Study

- 7.20 **Finding:** The Application includes the submission of a Limited Traffic Study in accordance with Section 4.15 of the Special Permit Rules. The findings indicate that with the removal of the 67 seat restaurant and the change to retail and office use at the proposed building, the net change in weekday trips at the site will drop by approximately 109 trips per day.

Finding: The Planning Board finds that the Business District fronts along Route 117, a principal arterial in the Town of Stow, and has been designed to effectively manage access along the corridor for business uses.

Finding: The Planning Board finds the Limited Traffic Study as proposed sufficient for compliance with Section 4.15 of the Special Permit Rules.

Lower Village Streetscape Standards

- 7.21 **Finding:** During the Public Hearing the Planning Board noted that the Lower Village Committee's Standard Streetscape and Fencing Style and Specifications, which included the use of split rail fencing and street trees along property frontages in Lower Village, may be difficult to implement at this site. The Board noted that the split rail fence previously existing at the site prior to the Town's construction of the Lower Village Traffic Improvements is being stored at the Highway Department.

Finding: The Planning Board finds that the frontage area where such Streetscape standards would be applied is within the Town's pedestrian easement. The Board would be interested in working with the Applicant at a future time to agree upon the placement of a split rail fence in the grass buffer between the frontage parking stalls and the sidewalk.

Architectural Design of Proposed Building

- 7.22 **Finding:** The Plans include architectural elevations and layouts of the proposed building at 108 Great Road. The Applicant stated during the Public Hearing that he provided the results of the Stow Visual Preference Survey to their architect to inform the design of the structure.

Finding: The Planning Board finds that the Building as proposed includes elements of New England vernacular design that fits with the rural, historic character of Stow. Additionally, the front porch, and pattern of doors and windows is designed to invite pedestrian use and provide visual interest.

Finding: The Planning Board finds the design and placement of the Building on the site suitable for the location and uses proposed.

Condition: The proposed Building shall meet all applicable building code and Americans with Disabilities Act Architectural Access Board requirements.

Condition: In the event that the building elevations and architectural renderings are changed in a manner that alters the proposed roofline, porch features, entrance locations or contains changes that would otherwise alter the building's conformity to the New

England vernacular architectural style, such plans and elevations shall be submitted to the Planning Board for review and approval.

Dumpster Location

7.23 Finding: The Plan shows the location of a dumpster to be placed on an existing concrete pad directly to the south of the easternmost curbcut. No screening is shown on the plan.

Condition: Screening for the dumpster from the road shall be provided.

Plan Modification: Prior to commencement of construction the Plan shall be modified to show fencing, landscaping or another method of screening for the proposed dumpster location.

Stormwater Management and Drainage

7.24 Finding: The Petitioner requested a waiver from the requirement to provide stormwater management and drainage calculations, indicating that a decrease in impervious surfaces and a decrease in rate and volume of runoff leaving the site is achieved through the proposed system.

Finding: The Plan shows stormwater to be managed through the use of two existing leaching catchbasins and one existing catchbasin, each along the boundary between 108 and 118 Great Road. The catchbasins, and associated roof drains from both the existing and proposed buildings, will accept stormwater from both parcels, and direct runoff to a proposed subsurface infiltration system below the paved parking area at the western end of 108 Great Road. The Application indicates that the use of subsurface chambers will mitigate the existing ponding issues at the site during large rain events.

Finding: The Application includes a "Limited Stormwater Report," including calculations showing adequate stormwater storage to meet the 10 year storm event - an improvement over current conditions.

Finding: The Application includes test hole data, proving sufficient offsets to groundwater for the proposed system to function as designed.

Waiver: The Planning Board finds that due to the existing conditions at the site, the Stormwater Report is sufficient to show that the proposed stormwater system is appropriate for the development proposed. The Board further finds that there will be no increase in the rate and volume of runoff from the site. Therefore, the Board **GRANTS** the requested waiver from Section 4.13 of the Rules to provide stormwater management and drainage calculations.

Finding: The Plan includes a Stormwater Pollution Prevention Plan that provides relevant notes on stormwater pollution prevention and details on siltation barrier design. The Plan does not include erosion controls and siltation barriers around the area of the proposed building, walkways and other areas of excavation.

Condition: Erosion Control and sedimentation measures shall be incorporated around the building construction and other areas of excavation.

Plan Modification: The Stormwater Pollution Prevention Plan shall be updated to reflect the use of erosion control and sedimentation measures around the proposed building construction and excavations areas.

Condition: The drainage report and final plans shall be stamped with the seal of Registered Professional Engineer.

- 7.25 **Finding:** The Planning Board's consulting engineer indicated that in addition to including recommendations for annual maintenance of the proposed stormwater system, the Operations and Maintenance Plan for the proposed system should be oriented to a layperson, and describe how to determine proper functionality of the chambered system, as well as to determine if and when remediation is necessary.

Condition: An Operations and Maintenance Plan oriented to a layperson shall be submitted with information adequate to determine proper functionality, remediation and annual maintenance of the proposed stormwater system.

Truck Delivery Hours

- 7.26 **Condition:** Signage indicating hours for all trucks, including delivery and trash removal shall be installed at all loading areas. Hours for trucks, including delivery and trash removal shall be limited from 7:00 a.m. to 5:30 p.m.

Plan Modification: Prior to commencement of construction the Plan shall be modified to include the location of a sign indicating the hours for deliveries in accordance with Section 7.24 of this Decision.

Drinking Water and Wastewater Infrastructure

- 7.27 **Finding:** The Plans show an existing Title V compliant septic system and pump chamber spanning the boundary of 108 and 118 Great Road immediately east of the existing building at 118 Great Road. An associated leaching field, located outside of the developments Interim Wellhead Protection Area, to the rear of the 118 Great Road plaza, was approved on 12.12.2018 and subsequently constructed. The design flow of the approved wastewater system is rated for 4270 gallons per day.

Finding: The Plan shows the location of the existing Public Water Supply well #2286004, its associated Department of Environmental Protection (DEP) Zone 1 radius of 136' feet, as well as the Interim Wellhead Protection Area radius of 439' feet.

Finding: Correspondence received from the Board of Health indicates multiple findings of Public Water Supply non-compliance with DEP Public Drinking Water Supply standards.

Condition: Public Water Supply infrastructure shall be approved by DEP. Planning Board approval of this Decision shall not be deemed approval by DEP or the Board of Health.

Condition: The number of seats in the proposed building shall be limited to the total number as approved by the Board of Health for the Title 5 Septic System and by the Department of Environmental Protection for the Public Water Supply.

Fire Safety Measures

7.28 **Finding:** The Stow Fire Chief indicated his discussions with the Applicant regarding the installation of a possible cistern at the site, given the closest designated water sources for fire-fighting include the cistern at Meeting House at Stow, a pond located behind the Stow Shopping Plaza at 117 Great Road, the cul-de-sac at Heritage Lane, and a Maynard hydrant at the Stow Town line, all of which are considerable distance to the subject parcels.

Finding: During the Public Hearing the Applicant indicated he would consider the use of a cistern at the site, but would need to finalize the construction plans prior to understanding the site limitations.

Finding: The Planning Board recognizes the fire safety benefits that a cistern in Lower Village would provide. Although other properties would benefit from a cistern installation the Planning Board finds that requiring the cistern would place an undue burden on one property owner.

Finding: The Planning Board finds that it would be advantageous for the Town to work with property owners in the Lower Village to find space for a cistern that could be used collectively among the properties.

Utilities

7.29 **Finding:** Section 4.7.3.4 (d) of the Special Permit Rules requires the location and type of all utilities to be shown on the Plan and that such utilities, including electric and gas, "shall be located underground."

Finding: Proposed utilities are not shown on the Plan.

7.30 **Condition:** Utilities serving 108 Great Road, including but not limited to electrical service, shall be located underground.

Condition: In the event that the 118 Great Road parcel is redeveloped, all proposed utilities shall be located underground. The Applicant shall work with the utility provider to utilize existing poles to the extent practicable.

Plan Modification: Prior to issuance of a Building Permit, the Plan shall be modified and approved by the Board, showing the location of utilities serving 108 Great Road, including but not limited to proposed riser poles, overhead wire locations and electrical transformers.

Lighting

- 7.31 **Finding:** Section 4.9.8 of the Special Permit Rules requires the location of any existing or proposed outdoor lighting facilities to be shown on the Plan.

Finding: Section 3.8.1.5 of the Zoning Bylaw requires that no lighting shine on a Street or abutting property in a manner that creates a nuisance or hazard.

Finding: No proposed lighting is shown on the Plan. During the Public Hearing the Applicant indicated that they have obtained the services of an engineer to provide a compliant lighting plan for the site in accordance with the requirements of the Zoning Bylaw.

Condition: Prior to issuance of a Building Permit, a lighting plan conforming to the requirements Section 3.8.1.5 and all subsections, shall be submitted for review and approval by the Board.

Condition: All proposed exterior lighting fixtures shall conform to the Fixture Specific Conditions in Section 3.8.1.5.6 of the Zoning Bylaw. Cut sheets for proposed lighting shall be submitted to the Planning Board, demonstrating full cutoff design compliance.

Condition: Parking lot lighting shall be reduced to the extent practicable for safety concerns, from 10:00 p.m. until the earliest business opening time in the morning.

Signage

- 7.32 **Finding:** Section 4.7.3.4 – Site Improvements of the Special Permit Rules requires the Plans to show the location of all existing and proposed signage for the uses at the site.

Finding: During the Public Hearing the Planning Board stated that aside from the requirements of Section 6.3 of the Zoning Bylaw governing the location, size and type of signs, the Board strongly recommends that the Applicant consult the results of the Sign Visual Preference survey, which indicates the most preferred design attributes of Stow residents.

Condition: Prior to issuance of a Building Permit, the Planning Board shall review and approve the location and design of any proposed signage prior to installation. Proposed signage shall conform to the requirement of Section 6.3 of the Zoning Bylaw and to the Visual Preference Survey results as practicable.

Condition: All sign lighting practices shall comply with Section 6.3 of the Bylaw. Only continuous white lights shall be used for illumination of a SIGN. The illumination for any SIGN shall be shielded, directed and maintained so as to cast no direct beam up into the sky, on a public or private way, pedestrian way, or adjacent property, and shall be of sufficiently low intensity that it shall not cause a glare or reflection that may constitute a traffic hazard or a nuisance.

SIGNS shall not be illuminated between 9:00 p.m. and 5:00 a.m., except during business hours.

SIGNS, which are oscillating, internally illuminated, flashing or operating with moving parts are not permitted.

Each PERMANENT SIGN shall display its permit number at a location readily visible to the inspector.

- 7.33 **Finding:** Several businesses at 118 Great Road have signage that does not conform to Section 6.3 of the Zoning Bylaw, regarding internally lit signs.

Condition: Non-conforming, internally lit signage at 118 Great Road shall be removed.

- 7.34 **Finding:** Prior to the Application for Special Permit a "For Lease" sign servicing 108 Great Road was removed by the contractor constructing the Lower Village Traffic Improvements. In the event that a lease sign is proposed at the site, it shall conform to the dimensions of the sign previously removed.

Condition: In the event the Applicant proposes to locate a lease sign for 108 Great Road, the sign shall conform to the dimensions of the lease sign previously removed by the Town during the construction of the Lower Village Improvements.

Trail Access to Abutting Open Space

- 7.35 **Finding:** The Stow Conservation Commission indicated that the property at 118 Great Road borders upon the Stow Town Forest and that with the number of entrances already managed by the Conservation Commission, the Commission does not recommend access to Town Forest or the Heritage Lane Open Space from 118 Great Road.

Finding: The Planning Board finds that no trail access is proposed in the Application.

Condition: Trail access shall not be proposed or created at either 108 or 118 Great Road without prior approval from the Planning Board, with input from the Conservation Commission.

Legal Provisions

- 7.36 **Condition:** This approval shall not be deemed approval by any other authority having its separate jurisdiction and inspection requirements.

- 7.37 **Finding** – The Board reserves the right to enter the property to review ongoing compliance with the conditions imposed within the Special Permits approved herein.

- 7.38 **Condition** – The Petitioner shall grant permission to agents of the Town of Stow, as said agency is determined by the Stow Planning Board, to enter, inspect and take whatever related actions are necessary to ensure completion of the ways and related infrastructure within the subject property.

- 7.39 **Condition:** This Special Permit/Site Plan Approval shall lapse in two (2) years from the date of this Decision, unless substantial use or construction has commenced.

- 7.40 **Condition:** The terms, conditions and provisions of this Decision shall run with the land and shall be binding upon the Petitioner, its successors in interest and assigns, and shall be enforceable by the Town of Stow.


7.41 **Condition:** The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this Decision, with or without a public hearing, upon the request of the Applicant or upon its own motion.

7.42 **Condition:** This Special Permit shall be recorded in the Middlesex South Registry of Deeds and duly indexed or noted on the Owner's Certificate of Title. Prior to issuance of a Building Permit, a copy of the recorded Decision, certified by the Registry, or notification by the Owner of the recording, including recording information, shall be furnished to the Town Clerk, the Building Commissioner and the Planning Board.

8. APPEALS

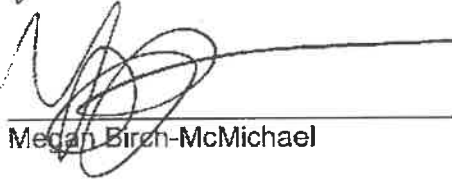
Appeals, if any, shall be made pursuant to Section 17 of the Massachusetts General Laws, Chapter 40A and shall be filed within twenty (20) days after the date of filing this Decision with the Town Clerk.


Lori Clark, Chair

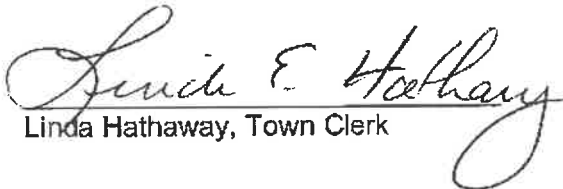

Karen Kelleher

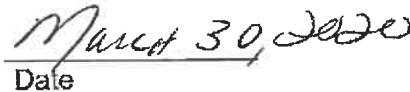

John Colonna-Romano


Margaret Costello

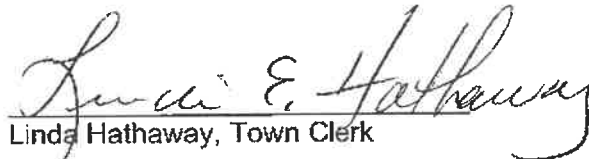

Megan Birch-McMichael

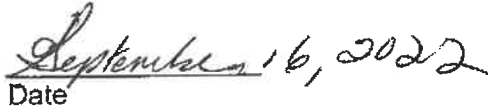
Received and Filed
Volume II, Page 638


Linda Hathaway, Town Clerk


Date

This is to certify that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.


Linda Hathaway, Town Clerk


Date



Town of Stow
OFFICE OF THE TOWN CLERK

Town Building - 380 Great Road
Stow, Massachusetts 01775-2127

(978) 897-4514
FAX (978) 897-4534

TO WHOM IT MAY CONCERN:

Address: 108 and 118 Great Road, Stow Massachusetts

Stow property map: Map R-29, Parcels 86 and 87

Owner: JKC Properties, LLC

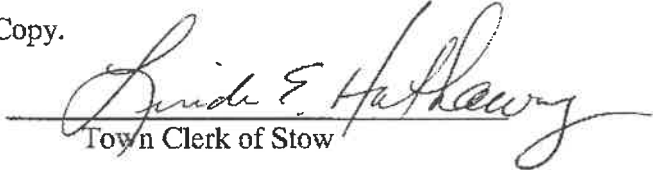
Applicant: JKC Properties, LLC

Date of Filing: March 30, 2020

Book and Page: Volume II, page 638

This is to certify that the Special Permit and Site Plan Approval from the Stow Planning Board for the above property and applicant were filed in my office on the above date and no appeal has been made in the 20 days following.

A True Copy.

Attest: 
Town Clerk of Stow

Date: September 16, 2022

Exhibit 3

Middlesex South Registry of Deeds
Electronically Recorded Document

This is the first page of the document - Do not remove

Recording Information

Document Number	: 150318
Document Type	: DECIS
Recorded Date	: October 05, 2022
Recorded Time	: 12:20:22 PM
Recorded Book and Page	: 80796 / 421
Number of Pages(including cover sheet)	: 7
Receipt Number	: 2857607
Recording Fee	: \$105.00

Middlesex South Registry of Deeds
Maria C. Curtatone, Register
208 Cambridge Street
Cambridge, MA 02141
617-679-6300
www.middlesexsouthregistry.com



Town of Stow
PLANNING BOARD

380 Great Road
Stow, Massachusetts 01775-1122
(508) 897-5098
FAX (508) 897-4534

NOTICE OF DECISION and DECISION

**Minor Modification #1
Special Permit and Site Plan Approval
108 and 118 Great Road**

--
**JKC Properties, LLC
11.17.2020**

1. Petition

This Document is the **DECISION** (hereinafter the Decision) of the Planning Board (hereinafter the Board) on a Request to Modify the Special Permit and Site Plan Approval, for the purpose of amending conditions related to pre-existing non-conforming signage regarding the construction of a two story Retail and Office Building at 108 and 118 Great Road, on property owned by JKC Properties, LLC (hereinafter the Petitioner).

This Decision is in response to a Request for Site Plan Approval and Special Permit Modification submitted to the Board on September 30, 2020 (hereinafter the Petition), pursuant to Sections 3.3, 6.3, 9.2 and 9.3 of the Stow Zoning Bylaw and the Rules and Regulations for Special Permit and Site Plan Approval (hereinafter the Rules). The Petitioner seeks permission to site a two-story Retail and Office Building.

2. Applicant/Owner

JKC Properties, LLC
14 Nason Street
Maynard, MA 01754

*see deed recorded
in book 72042
page 557*

3. Location

Said property is shown on the Stow Property Map Sheet R-29 as Parcels 86 and 87 (hereinafter the Site), as more fully described in the Petition.

4. Board Action

After due consideration of the Petition, the record of proceedings, and based upon the findings set forth below, on November 17, 2020, by a vote of five (5) members present throughout the proceedings, the Board voted to **GRANT** the Special Permit Modification in accordance with the Findings, Plan Modifications and Conditions contained herein.

108 and 118 Great Road, Stow MA

5. Proceedings

The Petition for Special Permit and Site Plan Approval Modification was received by the Board on September 30, 2020 pursuant to MGL Ch. 40A and Section 9.2 and 9.3 of the Town of Stow Zoning Bylaws (hereinafter the Bylaw). The Board considered the Request and reviewed the Application at a duly noticed Public Meeting on October 27, 2020.

On November 17, 2020, the Planning Board voted to **APPROVE** the request for Minor Modification in accordance with Section 6.9 of the Special Permit Rules and Regulations as the nature of the request involved administrative timelines that do not materially affect the site plan as reviewed during the Public Hearing. Board Members Lori Clark, Karen Kelleher, John Colonna-Romano, Margaret Costello and Associate Voting Member Mark Jones were present throughout the proceedings. The record of the proceedings and submissions, upon which this Decision is based, may be referred to in the Office of the Town Clerk or the Office of the Planning Board.

6. Exhibits

Submitted for the Board's deliberation were the following exhibits:

6.1 Documents Required by the Rules, consisting of the following:

EXHIBIT 1 Application for Special Permit Modification

EXHIBIT 2 Filing Fee

6.2 Additional Correspondence submitted by the Petitioner:

a) Letter dated September 30, 2020

6.3 Comments received from Town Staff, Boards and Committees:

a) Email from Building Inspector

b) 12.1.2010 For Lease Sign Permit for 108 Great Road

c) 2.15.1982 Retail Bank Sign Permit for 118 Great Road

6.4 Correspondence from Places Associates, Inc., Town of Stow Consulting Engineer:

1) Letter and Plan markup dated October 21, 2019

2) Letter update, dated November 12, 2019

Exhibits 6.1 through 6.3 are referred to herein as the Plan.

7. Findings and Conclusions

Based upon its review of the Exhibits and the record of the proceedings, the Board finds and concludes the following:

7.1 **Finding:** The Petitioner seeks Modification of the Special Permit and Site Plan Approval for the purpose of amending Section 7.6 to recognize the pre-existing non-conforming status of internally lit signage at 118 Great Road.

7.2 **Finding:** The Board reviewed and considered the Application, as submitted, and finds the Application and supporting documentation as adequate for the type of Special Permit applied for.

Signage

- 7.3 **Finding:** Zoning Bylaw Section 6.3.1.5 states "SIGNS, which are oscillating, internally illuminated, flashing or operating with moving parts are not permitted."

Finding: Condition 7.4 in the Original Decision states that "Non-conforming, internally lit signage at 118 Great Road shall be removed."

- 7.4 **Finding:** The Applicant has indicated that the internally lit signage at the Bank of America ATM site at 118 Great Road was installed prior to the Zoning Bylaw amendment prohibiting internally lit signage.

Finding: The Planning Board finds that the 118 Great Road ATM is a pre-existing non-conforming internally lit sign. The Zoning Bylaw was amended at the 1985 Annual Town Meeting to make several changes to the sign bylaw, including adding the prohibition on internally lit signage. The Building Inspector's submission of a Sign Permit dated 2.15.1982, describes the internally illuminated retail bank sign predating the 1985 zoning bylaw change.

- 7.5 **Finding:** The Planning Board hereby amends the language of Condition 7.4 in the Original Condition as follows:

Condition: With the exception of the pre-existing/non-conforming retail bank sign at 118 Great Road, all non-conforming, internally lit signage at 118 Great Road shall become compliant with the Zoning Bylaw within 30 days of the endorsement of this Decision by the Planning Board.

- 7.6 **Finding:** The Applicant stated that Bank of America will be replacing all signage within a three year timeframe at their Massachusetts locations.

Condition: The Applicant shall require all pre-existing, non-conforming signage to be updated to conform to the current Zoning Bylaw standards upon replacement within a three year period.

- 7.7 **Finding –** The foregoing required modifications and conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all inclusive or to negate the remainder of the Bylaw, Rules, or other applicable laws and regulations. At the time of endorsement, the Plan must be in compliance with the Rules, except for the waivers granted herein.


Condition - This Special Permit Minor Modification No. 1 shall be considered a condition of, and modification to the Original Special Permit and all prior modifications. Except as expressly modified by this Decision Modification No. 1, all terms and conditions of the Original Definitive Subdivision Special permit Decision shall remain in full force and effect.

- 7.8 **Condition:** The terms, conditions and provisions of this Decision shall run with the land and shall be binding upon the Applicant, its successors in interest and assigns, and shall be enforceable by the Town of Stow.

- 7.9 **Condition:** The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this Decision, with or without a public hearing, upon the request of the Applicant or upon its own motion.
- 8.0 **Condition:** This Special Permit shall be recorded in the Middlesex South Registry of Deeds and duly indexed or noted on the Owner's Certificate of Title. Prior to issuance of a Building Permit, a copy of the recorded Decision, certified by the Registry, or notification by the Owner of the recording, including recording information, shall be furnished to the Town Clerk, the Building Commissioner and the Planning Board.

Witness our hands this 17th day of November, 2020.


Lori Clark, Chairman


Karen Kelleher


John Colonna-Romano


Margaret Costello

Leonard Golder

Received and Filed
Volume II, Page 638-1


Linda Hathaway, Town Clerk

December 1, 2020
Date



Town of Stow
OFFICE OF THE TOWN CLERK

Town Building - 380 Great Road
Stow, Massachusetts 01775-2127

(978) 897-4514
FAX (978) 897-4534

TO WHOM IT MAY CONCERN:

Address: 108 and 118 Great Road, Stow Massachusetts

Stow property map: Map R-29, Parcels 86 and 87

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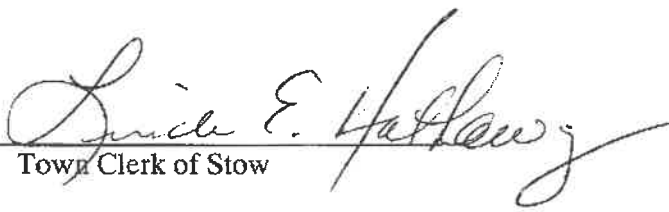
Applicant: JKC Properties, LLC

Date of Filing: December 1, 2020

Book and Page: Volume II, page 638-1

This is to certify that the Minor Modification #1 for Special Permit and Site Plan Approval from the Stow Planning Board for the above property and applicant were filed in my office on the above date and no appeal has been made in the 20 days following.

A True Copy.

Attest: 
Town Clerk of Stow

Date: September 16, 2022