



Town of Stow
PLANNING BOARD

380 Great Road
Stow, Massachusetts 01775
(978) 897-5098
stow-ma.gov

Notice of Decision and Decision

January 4, 2022

**57 Barton Road
Hammerhead Lot Special Permit**

1. Petition

This document is the DECISION of the Stow Planning Board (hereinafter the Board) on the petition of Daryl McKay (hereinafter the Petitioner) for property located at 57 Barton Road. This Decision is in response to a Petition for Approval of a Hammerhead Lot Special Permit, as shown on a plan entitled "Plan of Land on in Stow, Massachusetts," dated September 8, 2021 and revised November 23, 2021, prepared by Dillis & Roy Civil Design Group for Daryl McKay. (hereinafter the Plan).

2. Applicant

Daryl McKay
57 Barton Road
Stow, MA 01775

3. Owner

Daryl & Julie McKay
57 Barton Road
Stow, MA 01775

4. Location

Said property is shown on the Stow Property Map Sheet U-1 Parcel 53 (hereinafter the Site), as more fully described in the Petition.

5. Board Action

After due consideration of the Petition, the record of proceedings, and based upon the findings set forth below, the Board, on January 4, 2022, by a vote of five members present at the meeting, voted to **APPROVE** the Hammerhead Lot Special Permit, subject to and with benefit of the following waivers and conditions.

6. Proceedings

The Petitioner presented the Petition to the Board at a duly noticed Public Hearing held on October 26, 2021, continued to November 9th and December 14th 2021, at which session the Public Hearing was closed. Board Members Lori Clark, Karen Kelleher, Margaret Costello, Nancy Arsenault, and John Colonna-Romano were present throughout the proceedings. The record of 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.

7. Exhibits

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

- Exhibit 1 “Plan of Land in Stow, Massachusetts,” dated September 8, 2021, revised November 23, 2021, prepared by Dillis & Roy Civil Design Group for Daryl B. and Julie W. McKay.
- Exhibit 2 Supplemental items and documents required by the Rules, consisting of:
- a) Petition for Special Permit
 - b) Application for Endorsement of a Plan Believed to Not Require Approval
 - c) Certified List of Abutters, Town of Stow
 - d) Certified Mail Receipts for Abutter Notices
 - e) Filing Fee
 - f) Conservation Restriction held by Stow Conservation Trust – Middlesex South Registry of Deeds Book 42902, page 179.
- Exhibit 3 Correspondence from Town Boards and Departments:
- a) Interoffice Memorandum, dated September 29, 2021, from the Treasury Department
 - b) Interoffice Memorandum, dated October 1, 2021, from the Board of Assessors
 - c) Interoffice Memorandum, dated October 1, 2021, from the Police Department
 - d) Interoffice Memorandum, dated October 12, 2021, from the Building Department
 - e) Email dated October 13, 2021, from Steve Nadeau, Superintendent of Streets
 - f) Interoffice Memorandum, dated October 26, 2021, from the Board of Health
- Exhibit 4 Additional Correspondence:
- a) Email dated August 5, 2020, from Daryl McKay
 - b) Letter dated September 23, 2021, from Daryl McKay
 - c) Letter dated October 27, 2021, from Seth Donohoe
 - d) Email dated November 3, 2021, from Frank Ramsbottom, Building Commissioner
 - e) Letter dated November 29, 2021, from Seth Donohoe

Exhibits 1 and 2 are referred to herein as the “Petition”.

8. FINDINGS, CONCLUSIONS and CONDITIONS

- 8.1 The Board reviewed and considered the application as submitted and accepts the application and supporting documentation as submitted as adequate for the Hammerhead Lot Special Permit applied for.
9. Based upon its review of the Petition, exhibits, and the public hearings thereon, the Board makes the following findings and conclusions:
- 9.1 **Finding:** The Site is located in the Residential, Recreation-Conservation and Flood Plain Districts.
- 9.2 **Finding:** The proposed hammerhead lot use is a permitted use in the Residential District under Section 6.1 of the Town of Stow Zoning Bylaws.

9.3 **Finding:** The approval hereby granted is based on and specifically applies to a parcel of land located at 57 Barton Road, shown on the Stow Property Map Sheet U-1 as Parcel 53.

9.4 **Finding:** The Plan shows the reconfiguration of one parcel 53 into two Lots. Lot 2, which is the subject of the Petition, is proposed as a 4.46-acre Hammerhead Lot with 176.08' feet of frontage.

Lot 1 is proposed as a 2.13-acre conventional lot with 200' of frontage and is therefore not the subject of this Hammerhead Lot Special Permit Decision.

Approval Not Required (ANR) Compliance

9.5 **Finding:** The Petition submitted to the Planning Board included an Application for Endorsement of a Plan Believed Not to Require Approval (ANR). Endorsement of the Plan is necessary before Lot 2 can be conveyed as a buildable lot in accordance with MGL c.41 Section 81P.

Finding: In a letter dated September 23, 2021, the applicant granted permission to the Planning Board to suspend action on the ANR application to allow sufficient time for the Hammerhead Lot Special Permit to be considered and acted upon by the Planning Board.

Finding: Upon recording of the Hammerhead Lot Special Permit, Lot 1 shall be subject to the requirements of section 2.1.2 of the Stow Rules and Regulations Governing the Subdivision of Land, regarding Approval Not Required (ANR) Plan submissions.

Finding: Division of the subject parcel into two lots, Lot 1 (conventional lot) and Lot 2 (Hammerhead Lot) requires the endorsement of an Approval Not Required Plan in accordance with Section 2.1.2 of the Stow Rules and Regulations Governing the Subdivision of Land.

Flood Plain District

9.6 **Finding:** Section 2.3.8 of the Stow Zoning Bylaw establishes boundary lines for the Flood Plain Overlay District, which includes all lands designated in three (3) different maps and reports. Section 2.3.8 of the Zoning Bylaw also states that in the event of a discrepancy in the flood plain boundary designation, the boundary that includes a larger area of flood plain shall apply. The three (3) maps and reports are as follows:

- Standard Project Flood Modified delineated on the plan entitled "Flood Plain & Profiles", sheets 2, 3, and 4 of the Assabet River Technical Report, Department of the Army, Corps of Engineers, dated June 1966.
- Limits of the 100-year design storm plain delineated on the plan entitled "Flood Plain – Plan and Profile Heath Hen Meadow Brook, Stow, Massachusetts", by BSC Engineering, Inc., dated February 21, 1975, revised May 2, 1975.
- All special flood hazard areas within the Town of Stow designated as Zone A and AE on the Middlesex County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program.

Finding: The Town of Stow Flood Plain Overlay District map shows that the Flood Plain delineated by the Army Corps of Engineers ("Standard Project Flood Plain Modified") covers a greater area of the site than shown by the FEMA FIRM boundary. According to section 2.3.8 of the Zoning Bylaw, the boundary that includes a larger area of flood plain shall apply.

- 9.7 **Finding:** Section 2.3.9 of the Stow Zoning Bylaw states that where the Standard Project Flood Modified is used as the district boundary, the district boundary shall be determined by the elevations delineated on said plan.

Finding: In a letter dated November 29, 2021, the applicant's engineer demonstrated that the Standard Project Flood Modified is defined by an elevation of 182 feet above mean sea level (National Geodetic Vertical Datum 1929) at the locus. The resulting flood plain shown on the plan in accordance with section 2.3.9 of the Stow Zoning Bylaw is nearly identical to the FEMA FIRM Zone AE also represented on the plan.

Finding: For the purposes of this Petition, the Planning Board is using the elevation of 182 feet above mean sea level as the basis for determining the area within the floodplain.

Standard Dimensional Requirements for All Lots

- 9.8 **Finding:** Section 4.3.2.1 of the Stow Zoning Bylaw states that water beyond ten (10) feet from shorelines shall not be included in determining the minimum LOT area.

Finding: The plan indicates that 11,625± square feet of Lot 2 is beyond 10 feet from the edge of the stream bank. Lot 2 shall therefore be considered 182,754± square feet in area for the purposes of determining minimum LOT area.

- 9.9 **Finding:** Section 4.3.2.1 of the Stow Zoning Bylaw also states that at least 50% of the minimum required LOT area shall be land which is not in a wetlands resource area as defined by Article 9 – Wetlands Protection, of the Town of Stow General Bylaws or Flood Plain District, as defined in the Zoning Bylaw.

Finding: The plan indicates that 97,803± square feet of Lot 2 is land outside the Flood Plain District, greater than the 50% of the 182,754 square feet of lot area required by section 4.3.2.1 of the Stow Zoning Bylaw.

Compliance with Hammerhead Lot Provisions

- 9.10 **Finding:** The proposed hammerhead lot (Lot 2) meets the requirements of Sections 6.1.1 through 6.1.4 of the Zoning Bylaw:

- 6.1.1 The lot meets the minimum frontage requirements of at least 50 feet. The lot has 176.08' feet of frontage.
- 6.1.2 The lot meets the minimum area requirements of at least 180,000 square feet. The lot contains 4.46 acres (194,379+/- sq. ft.) According to Stow Zoning Bylaw section 4.3.2.1, the 11,625± square feet of Lot 2 beyond 10 feet from the edge of water shall not be counted toward the minimum area requirement of section 6.1.2. For the purposes of this section, Lot 2 shall have an area of 182,754± square feet.

- 6.1.3 The lot has sufficient area suitable for buildings. The Plan shows a circle of 150 feet in diameter, that does not overlap any lot line or any wetlands or Flood Plain/Wetlands District.
- 6.1.4 The lot has a minimum width of 50 feet between the street right-of-way boundary and the buildable area without overlapping or crossing any lot line or any Flood Plain/Wetlands District line.

Finding: During the Public Hearing, the Planning Board noted that less than 180,000 square feet of Lot 2 is within the Residential District, and that the remainder of the lot is within the Recreation-Conservation District.

Finding: In a letter dated October 27, 2021, the applicant's engineer stated that section 6.1.2 of the Zoning Bylaw only requires that a LOT have an area of at least 180,000 square feet, and the definition of LOT in the Zoning Bylaw does not state that an area of land must be located within a single zoning district.

Finding: In an email dated November 3, 2021, Building Commissioner Frank Ramsbottom determined that section 6.1.2 of the Zoning Bylaw does not require that the LOT be entirely within the Residential District.

- 9.11 **Finding:** Section 6.1.5 of the Zoning Bylaw requires any building on a Hammerhead Lot be set back at least 40 feet from every property line.

Condition: All proposed dwellings on Lot 2 shall be setback at least 40 feet from every property line.

- 9.12 **Finding:** Section 6.1.6 of the Zoning Bylaw requires that a hammerhead lot shall not be further divided.

Condition: Lot 2 shall not be further divided.

Condition: Prior to conveyance, the seller of Lot 2 shall declare the existence of the Special Permit conditions governing the future use of Lot 2.

- 9.13 **Finding:** Section III(A)(5) of the Conservation Restriction on Lot 2, held by Stow Conservation Trust, recorded at Registry of Deeds book 42902 page 179, prohibits

“...conveyance of a part or portion of the Premises alone, or the division or subdivision of the Premises, (in contrast to the conveyance of the Premises in its entirety, which shall be permitted subject to this Conservation Restriction), without the prior written consent of the holder.”

Finding: The Plan shows that proposed Hammerhead Lot will contain all land subject to the Conservation Restriction, and therefore shall not require the prior written consent of the holder as established in the Conservation Restriction.

- 9.14 **Finding:** The Proposed hammerhead lot meets the requirements of Section 6.1.7 of the Zoning Bylaw (sight distance). The plan shows sight distance exceeding 150' (6 times 25 miles per hour) from the proposed point of access.

- 9.15 **Finding:** The property shown on the Proposed Plan is subject to the provisions of Section 8.9 of the Zoning Bylaw, requiring that any further development or division of the land, which will result in the creation of a total of six (6) or more dwelling units on the property shown on the plan shall require a Special Permit from the Planning Board.

Condition: Any further development or division of the land, which will result in the creation of a total of six (6) or more dwelling units on the property shown on the Plan shall require a Special Permit from the Planning Board in accordance with Section 8.9 of the Zoning Bylaw (Inclusion of Affordable Housing).

Conservation Restriction on Lot 2

- 9.16 **Finding:** 3.53 acres of Lot 2 are subject to a Conservation Restriction held by Stow Conservation Trust, as recorded in Registry of Deeds Book 42902, page 179.

- 9.17 **Finding:** In an email dated August 5, 2020, Dick Perkins and Eve Donahue of Stow Conservation Trust recalled a discussion in which the applicant agreed to maintain the trust's access to the Conservation Restriction via perpetual easement or right-of-way. Stow Conservation Trust noted they currently have access through a dirt driveway along the southern edge of the property, but that future access does not need to be in the same location.

Finding: In the same email, Stow Conservation Trust recounted that the applicant has agreed to demarcate the boundary between building lots and the Conservation Restriction during construction, so that contractors are aware of the boundary and do not inadvertently disturb the Conservation Restriction.

Condition: Prior to issuance of a Building Permit for Lot 2, the applicant shall provide to the Board written approval from Stow Conservation Trust for the location and form of an Easement to access the Conservation Restriction.

Plan Modification: Prior to endorsement, the Plan shall be modified to show the location of an access Easement for the Conservation Restriction located on Lot 2, to be granted to Stow Conservation Trust.

Condition: Prior to issuance of a Building Permit, the applicant shall erect a temporary fence along the boundary between Lot 2 and the Conservation Restriction and provide documentation of such fence to the Stow Building Department.

Barton Road Pavement Condition

- 9.18 **Finding:** In an email dated September 23, 2021, Superintendent of Streets Steve Nadeau noted that Barton Road is a private way and expressed concern that the edge of the road could be damaged by construction activities on Lot 2.

Condition: The Applicant shall provide a Performance Guarantee for the condition of Barton Road in accordance with Section Five (5) of the Planning Board's Rules and Regulations Governing the Subdivision of Land.

- 9.19 **Condition:** Prior to commencement of site work, the Applicant shall submit photographs of the edge of Barton Road along the frontage of Lot 2 to the Planning Board.

Condition: In the event that a bond or escrow account is the chosen method for securing the Performance Guarantee, the Applicant shall submit for the Board's review and approval, an estimate for potential structural and surface repair along the length of Lot 2 that fronts Barton Road.

Sidewalk Requirements

9.20 **Finding:** Section 9.2.7.14 (Special Permits) of the Zoning Bylaw requires that a sidewalk, walkway or path shall be required along the entire frontage of a LOT.

Finding: The Planning Board's Sidewalk Policy as adopted on March 12, 2013 and included in the Town of Stow Planning Board Handbook as Appendix J offers the Applicant two options where the construction of a sidewalk is not feasible:

1. The Board may entertain an offer from the Applicant for contributions toward construction of a sidewalk in a priority location in Town, in accordance with criteria established in the Board's Sidewalk Policy dated March 12, 2013.
2. The Petitioner may elect to provide a fee in lieu of constructing the sidewalk, walkway or path, in accordance with the fee schedule outlined in Appendix J of the Planning Board Handbook.

Finding: The Planning Board advises against the construction of a sidewalk at this time along the frontage for Lot 2 and shall instead accept a fee in lieu of construction.

Condition: In the event the Applicant elects to provide a fee in lieu of constructing the sidewalk, then prior to issuance of a Building Permit for Lot 2, a fee-in-lieu, in accordance with Appendix J of the Planning Board Handbook, shall be provided to the Planning Board.

Legal Provisions

9.21 **Finding:** The Treasurer Collector advised that there are no outstanding past due property taxes.

9.22 **Condition:** This Decision applies only to the requested Special Permits and Site Plan Approval. Other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction, shall not be assumed or implied by this Decision.

9.23 **Condition:** The Planning Board hereby reserves the power to modify or amend the terms and conditions of this approval on the application of the owner, lessee, or mortgagee of the premises or upon its own motion for cause. All provisions of this paragraph applicable to approval shall, where appropriate, be applicable to such modification or amendment. Such power is hereby reserved.

9.24 **Condition:** The Special Permit granted by this decision shall not take effect until a copy of the decision has been recorded, at the owner's expense, in the proper Registry of Deeds and duly indexed or noted on the owner's certificate of title. 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 and the Planning Board.

- 9.25 **Condition:** This Special Permit shall lapse on January 4, 2024, if the Hammerhead Lot Special Permit Plan has not been recorded.

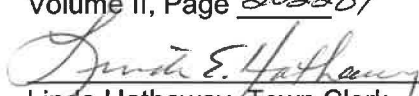
10. APPEALS

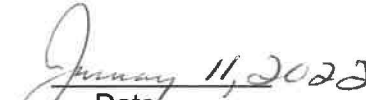
Appeals, if any, shall be made pursuant to Section 17 of the Massachusetts General Laws, Chapter 40A and shall be filed within twenty (20) days after the date of filing this decision with the Town Clerk.

Signed on behalf of and with permission of the Board this 4th day of January 2022.


Karen Kelleher

Received and Filed
Volume II, Page 202201


Linda Hathaway, Town Clerk


Date

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

Linda Hathaway, Town Clerk

Date