



Town of Stow  
**PLANNING BOARD**  
380 Great Road  
Stow, Massachusetts 01775-1122  
(978) 897-5098  
stow-ma.gov/planning-board

## **SPECIAL PERMIT AND SITE PLAN APPROVAL**

### **Modification #4**

### **Historic and/or Culturally Significant BUILDINGS and STRUCTURES**

**271 Great Road**

**April 19, 2022**

#### **1. Petition**

This document is the DECISION of the Planning Board (hereinafter, the Board) on the Petition of 29 Culinary, LLC (hereinafter, the Applicant) for a Special Permit and Site Plan Approval Modification under sections 3.3.2.4, 3.2.3.5, 9.2 and 9.3 of the Town of Stow Zoning Bylaw (hereinafter the Bylaw).

This Decision is in response to a Request for Modification of the Special Permit and Site Plan Approval to allow placement of outdoor seating for the existing takeaway food service business, installation of an additional permanent storage shed, and to commence use of a seasonal non-alcoholic drinks trailer on the site.

#### **2. Owner**

Phillips Heritage, LLC  
200 Barton Road  
Stow, MA 01775

#### **Applicant**

Jordan Mackey  
29 Culinary, LLC  
271 Great Road  
Stow, MA 01775

#### **3. Location**

Said property is located at 271 Great Road, Stow Massachusetts. The land is further identified and shown as Parcel 19 on Assessor's Map Sheet U-11 (hereinafter, the site).

#### **4. Board Action**

After due consideration of the Petition, the record of proceedings, and based upon the findings set forth below, the Board, on April 5, 2022, voted 4-1, with three (3) members and one (1) Voting Associate Member present at the public hearing voting to **GRANT** a Special Permit and Site Plan Approval under Sections 3.2.3.5, 3.3.2.4, 9.2 and 9.3 of the Bylaw and (1) one

member voting to deny, subject to and with benefit of the following findings, waivers and conditions.

## **5. Proceedings**

The Petitioner presented the Petition and Site Plan to the Board at a duly noticed public hearing held on March 8, 2022 and closed at the conclusion of that session.

The following Board members were present throughout the proceedings: Lori Clark, Karen Kelleher, Margaret Costello, John Colonna-Romano and Voting Associate Member Mark Jones. The record of proceeding and submission 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:

EXHIBIT 1 Modified Site Plan: Untitled. Received February 7, 2022

Sheet 1

EXHIBIT 2 Supplementary documents required by the Rules consisting of the following:

1. Petition for Special Permit
2. Project narrative
3. Certified Abutters List

EXHIBIT 3 Additional Correspondence

1. Email, dated January 12, 2022, from Jordan Mackey
2. Email, dated March 3, 2022, from Sarah Cleary
3. Email, dated March 4, 2022, from Ross Beyeler and Sarah Batsford

## **7. Findings, Waivers and Conditions**

Based upon its review of the exhibits and the record of proceedings, the Board finds and concludes that:

**7.1 Finding:** The approval hereby granted is based on and specifically applies to a parcel of land located at 271 Great Road, shown on the Stow Property Map Sheet U-11 as Parcel 19.

**7.2 Finding:** The 2.65 acre site is located in the Residential District.

**7.3 Finding:** Section 5.1.1 of the Rules & Regulations for Special Permits states that a Public Hearing shall be held within 65 days but no sooner than 35 days from the petition filing date.

**Finding:** The Public Hearing was opened 29 days from the petition filing date.

**Finding:** All interested parties were duly noticed of the Public Hearing under the requirements of Massachusetts General Laws, Chapter 40A section 11. Certified mail receipts and proof of publication of the Public Hearing notice in a newspaper of general

circulation were provided to the Planning Board before the commencement of the Public Hearing.

**Waiver:** The Board waives the requirement for the Public Hearing to be opened no sooner than 35 days after the petition filing date.

- 7.4 Finding:** The Petitioner requests a waiver from the requirements of Section 3.4 of the Rules for Special Permits, which establishes an application fee of \$500 for Special Permit applications.

**Finding:** The Board finds that staff required to review the petition, provide proper notice and staffing for the Public Hearing, and other associated work justifies the Special Permit application fee.

**Waiver:** The Board **DENIES** the requested waiver from the Special Permit application fee.

- 7.5 Finding:** This Special Permit Modification #4 is in response to the Applicant's request for upgrades to the site for Nan's Market and Rustic Kitchen, which offers the following services in a market setting:

- Take-out food;
- Outdoor seating
- Retail sales;
- Mobile food vending;
- Special outdoor events.

- 7.6 Finding:** The Application includes three (3) requested amendments to the Special Permit and Site Plan Approval Modification #3:

1. Section 7.12 regarding the relocation of outdoor seating to the front yard of the existing restaurant;
2. Section 7.43 regarding placement and use of a seasonal juice trailer in front of the barn portion of the restaurant;
3. Section 7.27 regarding removal of condition to provide plantings along the existing northern fence line.

- 7.7 Finding:** The Application includes two (2) new Site Plan considerations for the Planning Board to review:

1. Placement of backyard storage shed at the rear of the restaurant structure;
2. Installation of moveable walkway lighting;

#### *Location of Outdoor Seating*

- 7.8 Finding:** The Applicant seeks Modification of Section 7.12 of Modification #3, which conditions the following schedule of seating for the Site:

*The forty-two (42) permitted restaurant seats shall be limited to three (3) locations on the site in accordance with the following schedule:*

1. *Fourteen (14) seats shall be permitted on the existing patio space, obstructed from view by the lattice screen and landscaping required in Section 7.9 of the Original Decision;*

2. *Twenty-one (21) seats on the lawn area. Tables and chairs or picnic tables shall be arranged on the lawn (leaching field), set back a distance of thirty (30') feet from all privacy fences and or lot lines.*
3. *A total of forty-two (42) seats may be provided indoors at any time, provided that the outdoor seating in the lawn area and/or patio is reduced to conform to the overall Title V allowance for forty-two (42) total restaurant seats allowed on site. As an example, if the two outdoor locations utilized the maximum number of seats allowed per this Section, then the total number of seats allowed indoors would equal seven (7)*

- 7.9 Finding:** The Application shows the location of six (6) tables in the front yard of the restaurant structure, on a level area, directly north of Route 117.
- 7.10 Finding:** The Applicant stated that they have no intent to use the patio space at the rear of the restaurant for outdoor seating due to the location of the nearby bulkhead and the private nature of the backyard that primarily serves the residence on the second floor.
- 7.11 Finding:** The Planning Board finds that the location of the tables in the front yard of the restaurant, provides an improved degree of screening, given the existing structure and elevation provides an opaque barrier.
- 7.12 Finding:** The Planning Board further finds that the statements that the patio will not be used for outdoor dining is sufficient for the further revision of schedule of seating for Nan's Market.
- 7.13 Finding:** The Planning Board finds that the porch on the ground level of the restaurant could function as an alternative seating area that benefits from the building as a screen from abutting residential properties.
- 7.14 Finding:** The Planning Board finds that outdoor seating at the site also help to create and build community in Stow by providing a place for people to meet and socialize.
- 7.15 Condition:** Section 7.12 of Modification #3 shall be revised to state the following:

The forty-two (42) permitted restaurant seats shall be limited to 2 (two) locations on the site in accordance with the following schedule: For the purpose of this condition a picnic table shall be considered to be six (6) seats.

1. Thirty-six (36) seats shared between the front lawn area west of the parking area and adjacent to the primary entrance walkway, *and* the first floor porch of the restaurant building, which faces south and east. Tables and chairs or picnic tables may be arranged on the front lawn area provided the total number of seats provided does not exceed thirty six (36).
2. A total of forty-two (42) seats may be provided indoors at any time, provided that the outdoor seating in the lawn area and/or porch is reduced to conform to the overall Title V allowance for forty-two (42) total restaurant seats allowed on site. As an example, if the two outdoor locations utilized the maximum number of seats allowed per this Section, then the total number of seats allowed indoors would equal six (6).

**7.16 Condition:** No seating, tables or other structures for use by patrons shall be placed on the eastern side lawn of the restaurant (above the building's leaching area) unless in accordance with a Special Outdoor Event meeting the criteria of Section 7.18 of this Decision.

**Condition:** In no event shall any seating, tables or other structures for use by patrons be placed within thirty feet of the rear yard privacy fence.

**Condition:** There shall be no encouragement or promotion of outdoor dining in areas not specifically designated by this Decision.

**7.17 Condition:** No seating, tables or other structures for use by patrons shall be placed in the rear yard of the restaurant building.

**7.18 Finding:** During the Public Hearing, the Applicant stated that patrons will not be invited into the rear yard of the restaurant building, as that area is a service area and the backyard for the second floor residence.

**Condition:** The opening to the rear yard, north and west of the dumpster pad, shall include permanent or moveable signage indicating that patrons are not allowed in the rear yard service area.

#### *Special Outdoor Event Limitations*

**7.19 Finding:** During the Public Hearing abutting property owners noted the disruptive nature of various events at the site, including the wide variety of activities that take place throughout the warm months.

**7.20 Finding:** For the purpose of maintaining ongoing compliance with the terms of this Special Permit Decision, the Planning Board defines a Special Event as:

*A temporary use or activity on the subject property which extends beyond the typical and/or primary uses associated with the Special Permit.*

- 1. May be promoted or otherwise intended to attract participants in numbers beyond what is considered normal for the property's use and subject to limitations of Title V requirements, and/or;*
- 2. Is unlike the customary activities generally associated with the restaurant use of the property.*

**7.21 Finding:** The Planning Board finds that the prohibition on outdoor seating on the eastern side lawn in Section 7.15 of this Decision greatly reduces everyday activity occurring in close proximity to abutting property owners.

The Planning Board further finds that the conditions on Special Outdoor Events required in accordance with Modification #3 provides restrictions for prohibiting the type of events that result in unacceptable levels of noise and disturbance. For issues relating to managing site safety, circulation, and any other special considerations not contemplated by this Decision, the Event Permit Application process of the Select Board provides for a more tailored approach to event permitting.

**Condition:** Special outdoor events shall be limited by the condition of this Section 7.20 and otherwise may take place between the hours of 8am – 4pm, subject to the following:

- a) There is no amplified sound or generator use, including amplified microphones or speakers;
- b) Tables, serving stations or other areas that concentrate or encourage activity are not set up within thirty feet of the privacy fence;
- c) In the event alcohol consumption is proposed or pursued, the consumption of alcohol shall adhere to all licensing and regulation of the MA Alcohol and Beverage Control Commission and the Stow Select Board;

**Condition:** Prior to holding any Special Outdoor Event, the Applicant shall obtain an Event Permit from the Stow Select Board.

**Condition:** Special Outdoor Events shall not include areas to the rear of the restaurant building.

**Condition:** Evening Special Outdoor Events, including but not necessarily limited to wine and/or farm-to-table dinners that include the serving of food or drink between the hours of 4pm – 8pm shall be limited to two (2) per month.

### *Landscape Plantings*

**7.22 Finding:** Section 7.27 of Modification #3 requires additional evergreens to be planted at clustered intervals along the northern fence line to mitigate noise and provide additional visual screening for abutting properties.

**7.23 Finding:** The Application states that the required plantings of Section 7.27 would harm the roots of the existing pines and potentially cause damage to the trees that could result in a blowdown.

**7.24 Finding:** The Applicant has installed several raised garden beds along the edge of the existing landscaped area on the northern fence line. Additionally, the Applicant has installed a trellis system for vining vegetables, placed in intervals along the northern fence line.

**7.25 Finding:** During the Public Hearing, the Applicant stated that patrons will not be invited into the rear yard of the restaurant building, as that area is a service area and the backyard for the second floor residence.

**Condition:** The opening to the rear yard, north and west of the dumpster pad, shall include permanent or moveable signage indicating that patrons are not allowed in the rear yard service area.

**7.26 Finding:** The Planning Board finds that moving the tables to the front lawn area of the restaurant and prohibiting patrons from the rear of the building, significantly reduces the day-to-day commercial activity that would otherwise take place in close proximity to abutting property boundaries. The Board further finds that the trellis arrangement, together with the raised bed gardens, reduces the chance for patrons to sit under the shade of the pines and in close proximity to the abutting property boundaries. For these reasons, the Planning Board finds that the rationale for requiring additional plantings has changed, and that additional plantings in the same location is unlikely to provide increased benefits to neighboring properties.

- 7.27 Finding:** The Planning Board hereby amends Section 7.27 of Modification #3, to remove the condition regarding the planting of evergreen trees along the northern fence line.

**Condition:** The Applicant shall maintain the gardens and existing vegetation and landscaping in a healthy state that continues to function as natural visual screening for abutting properties, an installation that limits activity near the property line and a measure for sound mitigation.

- 7.28 Finding:** During the Public Hearing the abutting property owner to the east noted a gap in the fence where it connects to the east – west oriented fence along the northeast property line.

**Condition:** The privacy fence on the eastern property line shall connect to the existing fence along the northeast property line in a manner that precludes patrons or pets from accessing the abutting residence. The fence addition shall be of a similar design to the north – south oriented fence between Nan’s Market and the abutting property to the east.

**Condition:** Unless an alternative time frame for completion is approved by the Building Commissioner, the fence connection shall be installed within ninety (90) days of the date of this Special Permit Modification #4.

**Condition:** Any proposed fencing shall be subject to a Building Permit from the Building Department as applicable.

#### *Placement of Storage Shed*

- 7.29 Finding:** The Plan shows the location of two sheds on the property.

**Finding:** An existing shed is located in the north central portion of the property, as shown on the Plan.

**Finding:** During the Public Hearing, abutting property owners noted the location of the existing shed at the north central portion of the property is one of the more visible portions of the site, specifically due to the lack of vegetation or fence.

- 7.30 Finding:** A second existing shed has recently been located adjacent to the rear of the restaurant building. The new shed meets rear yard setback requirements of forty (40) feet. The Application states that the shed will take the place of the white tent that had been temporarily erected in the backyard to provide shelter for outdoor dining supplies during the warm months of 2021.

**Finding:** Dimensions for the newly constructed shed have not been provided.

**Finding:** The Planning Board finds that although the proposed shed adjacent to the existing building is in a suitable location, will blend in visually with the existing building, and is less impactful than the large, white tent that was previously used for the same purpose as the proposed shed, the break in vegetation along the northward jog of the property bound, together with a lack of fencing along the property bound, provides for a clear view into the service area from abutting properties on Crescent Street and represents potential safety and privacy concerns for abutting residents.

**Condition:** All existing sheds shall meet setback requirements of the Zoning Bylaw.

**Condition:** Any shed over 200 square feet shall require a Building Permit.

**Condition:** Dimensions for the shed adjacent to the restaurant building shall be provided to the Planning Board and Building Commissioner.

- 7.31 Condition:** A fence, equal in height to the existing fence along the north east property line, shall be installed along the north to south property line, extending northward from the terminus of the existing fence, approximately fifty (50') feet and/or in a manner that provides a visual screen from homes along Crescent Street to the rear service yard of the restaurant building. The fence shall be constructed in a similar style and of a similar material as the existing fence, to the extent practicable.

**Condition:** Unless an alternative time frame for completion is approved by the Building Commissioner, the fence connection shall be installed within ninety (90) days of the date of this Special Permit Modification #4.

#### *Juice Cart*

- 7.32 Finding:** The Application proposes the placement of 12' foot long x 6' foot wide x 8' foot high juice trailer converted from a horse trailer, located immediately south of the front steps of the restaurant building. The trailer is proposed to be located on the pavement and grass, and will offer fresh juice to customers, including those seated on the front lawn area.

- 7.33 Finding:** A drink cart was proposed and subsequently prohibited per Section 7.43 of Modification #3. The previous modification request proposed the drink cart on the lawn area at the northeastern corner of the property. Abutting property owners raised concerns that the cart would be a visual nuisance and would add to the activity on the lawn area.

The Planning Board finds that while the new proposed location is farther from abutting property owners, the use of the juice cart invites further outdoor activity at the site.

**Condition:** An outdoor, seasonal food and drink cart shall not be operated at the site, unless in accordance with an approved Event Permit from the Stow Select Board.

#### *Lighting*

- 7.34 Finding:** The Application proposes the installation of moveable 150 lumen solar powered LED lights that stand 3' feet off the ground for the purpose of illuminating the parking area and walkways after dark.

**Finding:** Over the winter of 2021/2022, previously installed globe lighting was removed from the site due to non-compliance with the Bylaw.

**Condition:** Prior to installation of the proposed lighting a photo and/or detail of the proposed lighting shall be provided to the Planning Department to ensure compliance.

**Condition:** All exterior lighting shall comply with Section 3.8.1.5 of the Zoning Bylaw.

**Condition:** No additional lighting shall be allowed without prior approval of the Planning Board.



**7.35 Finding:** The existing condition of Section 7.38 of Modification #3 reads:

*Prior to commencement of any further Special Events for the 2021 season and prior to April 1<sup>st</sup> of each successive year, the Applicant shall provide the Board with an operational plan for managing patron numbers and controlling traffic, such as limiting indoor/patio seating during the advertised hours of morning or evening events, working with public safety departments to prohibit illegal parking or install signage, or by other methods.*

**7.36 Finding:** The Planning Board finds that the condition requiring an operational plan is ill suited for the Planning Board and its staff to oversee, due to the public safety goals of the condition. Safety and circulation during regular business operation should be overseen by the Town's Public Safety Departments, with all permitting compliance issues directed by the Zoning Enforcement Officer.

**Condition:** Section 7.38 of Modification #3 shall hereby be amended to read as follows:

The Applicant shall maintain a safe and efficient circulation pattern for vehicles and customers in compliance with the terms of the Special Permit and Site Plan as needed. Assistance with or guidance on managing customers during high demand periods should be addressed to the Stow Police and Fire Departments, and/or Traffic Safety Advisory Committee as applicable.

**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.

**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.

**7.38 Condition:** This Special Permit/Site Plan Approval Modification #4 shall lapse in two (2) years from the date of this Decision unless substantial use or construction has commenced.

**7.39 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.

**7.40 Condition:** The Special Permit Modification granted by this decision shall be recorded, at the owner's expense; in the 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.

**7.41 Condition:** This Special Permit Modification #4 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. 4, all terms and conditions of the Original Special Permit Decision and prior modifications shall remain in full force and effect.

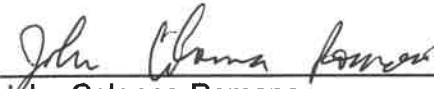
## 8. APPEALS

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.

Witness our hands this 19<sup>th</sup> day of April, 2022

  
Lori Clark

  
Karen Kelleher

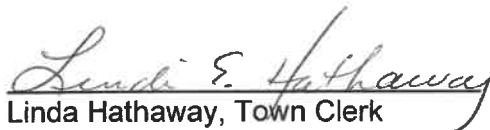
  
John Colonna-Romano

\_\_\_\_\_  
Margaret Costello

  
Mark Jones, Voting Associate Member

  
Date

Received and Filed  
Volume II, Page 596 - 4

  
Linda Hathaway, Town Clerk