



Town of Stow
PLANNING BOARD

**380 Great Road
Stow, Massachusetts 01775**
(978) 897-5098
FAX (978) 897-2321

Notice of Decision and Decision

2.23.2021

**44 Hiley Brook Road
Hammerhead Lot Special Permit**

1. Petition

This document is the DECISION of the Stow Planning Board (hereinafter the Board) on the petition of James A. and Janice L. Dow, (hereinafter the Petitioner) for property located at 44 Hiley Brook 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 Hiley Brook Road in Stow, Massachusetts," dated October 2, 2020, prepared by Foresite Engineering, for James and Janice L. Dow. (hereinafter the Plan).

2. Applicant

James A. and Janice L. Dow
44 Hiley Brook Road
Stow, MA 01775

3. Owner

James A. and Janice L. Dow
44 Hiley Brook Road
Stow, MA 01775

4. Location

Said property is shown on the Stow Property Map Sheet R-4 Parcel 7 (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 February 23, 2021, by a vote of five members present at the meeting, voted to **GRANT** the Hammerhead Lot Special Permit, subject to and with benefit of the following waivers and conditions. The Planning Board further voted to authorize Karen Kelleher to sign this Decision on behalf of the Board.

6. Proceedings

The Petitioner presented the Petition to the Board at a duly noticed Public Hearing held on Tuesday November 10 and continued to November 17th, December 8th and December 15th at which session the Public Hearing was closed. Board Members, Lori Clark, Karen Kelleher, Margaret Costello, John Colonna-Romano, and Leonard Golder 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 on Hiley Brook Road in Stow, Massachusetts," dated October 2, 2020, prepared by Foresite Engineering, for James A. and Janice L. Dow.
- EXHIBIT 2 Supplemental items and documents required by the Rules, consisting of:
- a) Petition for Special Permit
 - b) Certified List of Abutters, Town of Stow
 - c) Filing Fee
 - d) Subsurface Sewage Disposal Inspection Form for 41 Hiley Brook Road, dated September 13, 2001.
- EXHIBIT 3 Correspondence from Town Boards and Departments:
- a) Interoffice Memorandum, dated October 27, 2020, from the Board of Assessors
 - b) Interoffice Memorandum, dated November 7, 2020 from the Board of Health
 - c) Interoffice Memorandum, dated October 29, 2020 from the Police Department
- EXHIBIT 4 Correspondence from abutters, residents and the public:
- a) Email dated 11.12.2020 at 3:21 PM from Mike Teliszewski and Christina Siniawski
 - b) Email dated 11.12.2020 at 4:28 PM from Mike Teliszewski and Christina Siniawski
 - c) Email and letter dated 11.12.2020 at 4:53 PM from Mike Teliszewski and Christina Siniawski
 - d) Email dated 12.7.2020 from Mike Teliszewski and Christina Siniawski

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 as conditioned herein.
- 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 and Recreation/Conservation District and the Floodplain Overlay District.
- 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 the original parcel of land located at 44 Hiley Brook Road, shown on the Stow Property Map

Sheet R-4 as Parcel 7 and to the two proposed parcels of land shown on the Stow Property Map Sheet R-4, Parcel 7, Lot 1 and Parcel 7, Lot 2.

- 9.4 **Finding:** The Plan shows the reconfiguration one parcel 7, into two Lots. Lot 2, the Hammerhead Lot portion of the Petition, is proposed as a 8.5 acre Hammerhead Lot with 51.26' feet of frontage and an existing dwelling, septic system, drinking water well and swimming pool. The existing dwelling meets the setback requirements of the Zoning Bylaw.

The remaining land after the proposed conversion to a Hammerhead Lot is shown as proposed Lot 1, a 1.54 acre conventional lot with 203.54' feet of frontage.

Approval Not Required Compliance

- 9.5 **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 submission.

Condition: 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 Subdivision Rules and Regulations.

Finding: The Applicant indicated that Lot 1 should not be subject to the Hammerhead Lot Special Permit, including the placement of any conditions on Lot 1.

Finding: The Planning Board finds that Lot 1 is subject to this Hammerhead Lot Special Permit Decision as its creation is incumbent upon the division of Parcel 7 via the Hammerhead Lot Special Permit process.

Plan Modification: Prior to recording the Special Permit Decision, the Plan shall be modified to include a note that Lot 1 and Lot 2 are subject to the terms of this Special Permit and shall be submitted for Approval Not Required Endorsement in accordance with Section 2.1.2 of the Subdivision Rules and Regulations.

Compliance with Hammerhead Lot Provisions

- 9.6 **Finding:** The proposed hammerhead lot meets the requirements of Section 4.3.2.5 of (Lot Shape). For purposes of this provision the index of regularity shall be no lower than 0.25. The proposed hammerhead lot has an index of regularity of 0.74.

- 9.7 **Finding:** The proposed Hammerhead Lot meets the requirements of Sections 6.1.1 through 6.1.5 of the Zoning Bylaw:

- 6.1.1 The lot meets the minimum frontage requirements of at least 50 feet. The lot has 51.26' feet of frontage.
- 6.1.2 The lot meets the minimum area requirements of at least 180,000 square feet. The lot contains 8.5 acres (370,399+/- sq. ft.).
- 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 line and the buildable area without overlapping or crossing any lot line or any Flood Plain/Wetlands district line.

6.1.5 The Plan shows the existing dwelling is set back at least 40 feet from every property line.

9.8 **Finding:** Section 6.1.6 requires that a hammerhead lot shall be no further divided.

Condition: The proposed hammerhead lot 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.

9.9 **Finding:** The Proposed hammerhead lot meets the requirements of Section 6.1.7 of the Zoning Bylaw (sight distance). The existing driveway for the proposed hammerhead lot is approximately 15' feet wide and located immediately south of the southernmost lot line for proposed Lot 1. The plan shows sight distance of 150' (6 times 25 miles per hour).

9.10 **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)

Sidewalk Requirements

9.11 **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. The Plan shows a 15' sidewalk easement along the frontage of the proposed Hammerhead Lot 2. The Application provides no indication of conformance to Section 9.2.7.14 as it relates to Lot 1.

Finding: The Planning Board finds that Lot 1 is also subject to the provisions of Section 9.2.7.14.

Condition: In the event that the Applicant chooses not to construct the required sidewalk, then prior to endorsement of the Plan, a grant of easement, in recordable form, shall be submitted to the Planning Board for acceptance by the Board of Selectmen.

Plan Modification: In the event that the Applicant chooses not to construct the required sidewalk, then prior to endorsement of the Plan, a grant of easement, in recordable form, shall be submitted to the Planning Board for acceptance by the Board of Selectmen.

Finding: Neighboring property owners raised concern over any unnecessary alteration of the streetscape along proposed Lot 1, given the rural nature and narrow widths of Hiley Brook Road. The Planning Board finds that conditions imposed by this Decision seek to mitigate unnecessary clearing along the proposed Lot 1, and therefore advises against choosing to construct a sidewalk.

Condition: The Planning Board advises against the construction of a sidewalk at this time along the frontage for Lot 1 and shall instead accept either a fee in lieu of

construction or the donation of a 15' foot sidewalk easement along the frontage of proposed Lot 1 and Lot 2.

Undisturbed Buffer Along Frontage of Lot 1

- 9.12 **Finding:** Abutters to the proposed Hammerhead Lot raised concern that the Development of Lot 1 would alter the rural character of the neighborhood through its associated clearing of land and forest. During the Public Hearing, residents discussed the potential for utilizing a buffer easement along the frontage of Lot 1 to preserve trees.

Finding: The Planning Board finds that a no-cut buffer along the frontage of Lot 1 will provide a direct benefit to preserving the rural nature of Hiley Brook Road.

Condition: No trees shall be cut along the full length of the Lot 1 frontage from the Hiley Brook right-of-way, east toward the interior of Lot 1 for a distance of 60' feet.

Condition: The deed for Lot 1 shall include language specifically referencing an 60' foot no-cut buffer and said deed should be provided to the Planning Board for review and approval prior to conveyance of Lot 1.

Plan Modification: Prior to endorsement, the Plan shall be modified for review and approval by the Board to include the location of a 60' foot deep "no-cut buffer" of mature trees along the full length of the Lot 1 frontage from the Hiley Brook right-of-way, east toward the interior of Lot 1.

Common Driveway Provisions

- 9.13 **Finding:** During the Public Hearing, concern was raised that the addition of a driveway at the proposed Lot 1 would degrade the rural character of Hiley Brook Road and further impact the abutting homes directly across the street from 44 Hiley Brook Road.

Finding: The location of a proposed driveway for Lot 1 is not shown on the Plan.

Finding: The Planning Board finds that the creation of a Common Driveway utilizing the existing driveway at 44 Hiley Brook Road would provide the following benefits:

- Mitigate additional headlight glare onto abutting properties;
- Provide safe and adequate access to proposed Lot 1 along a relatively narrow stretch of rural roadway;
- Maintain the rural, forested nature of Hiley Brook Road.

Finding: Town Counsel has provided an opinion dated February 18, 2021, indicating that it is within the Planning Board's authority to require the use of a Common Driveway for either of the subject lots in accordance with the Special Permit applied for under Section 6.1 and 9.2 of the Zoning Bylaw.

Condition: A Common Driveway, which utilizes the existing 44 Hiley Brook Road driveway and complies with Section 6.2 of the Zoning Bylaw, shall be constructed for the purpose of providing access to the buildable area of the proposed Lot 1.

There shall be no driveway access to the proposed Lot 1 directly from Hiley Brook Road. All construction vehicles shall utilize the Common Driveway for construction of the Common Driveway and future construction of any dwelling units at proposed Lot 1.

Plan Modification: In the event the Applicant chooses to construct a Common Driveway, then prior to endorsement the Plan shall be modified to show a Common Driveway that complies with Section 6.2 of the Zoning Bylaw.

Condition: Prior to endorsement of the plan, documentation creating a Homeowners Association shall be submitted for review and approval by the Planning Board.

Condition: The owners of the lots served by the Common Driveway shall bear and have joint and several responsibilities and obligations for the repair, maintenance, reconstruction and snowplowing of the Common Driveway so as to provide continuous year-round access for vehicle traffic for the convenience of the owners of the lots, and to provide continuous year-round access for all emergency, fire, rescue, police, moving construction and maintenance vehicles

Condition: No building permit shall be issued until a Common Driveway Covenant, in recordable form, running to and for the benefit of the Town, has been approved by the Planning Board and designed to assure compliance with this provision. No building permit shall be issued for any of the lots approved herein until after said Covenant has been recorded at the Registry of Deeds and proof of said recording has been provided to the Building Commissioner and Planning Board.

Condition: Homeowners Association documents and the deed for each lot shall include reference to the Common Driveway Covenant.

9.14 **Finding:** The Planning Board's preference is for the creation and use of a Common Driveway at 44 Hiley Brook Road, rather than an independent driveway servicing the proposed Lot 1. However, the Board may consider relief from the requirements for construction of a Common Driveway where the Applicant can demonstrate the following:

- Construction of a Common Driveway utilizing the existing 44 Hiley Brook Road is precluded due to specific physical or environmental constraints that cannot be reasonably overcome, including but not limited to the existence of shallow ledge, or proximity to unique or otherwise regulated natural resources, such as vernal pools, wetland resource areas and/or streams;
- A proposed independent driveway to Lot 1 is located in a manner that will not cause sweeping headlight glare onto abutting properties on the opposite side of Hiley Brook Road;
- A proposed independent driveway to Lot 1 contains adequate sight lines in relation to the posted speed of Hiley Brook Road;
- A proposed independent driveway to Lot 1 includes a width of clearing within the required undisturbed buffer of not more than 30 feet.

Condition: Construction of an independent driveway serving proposed Lot 1 shall not be permitted unless designed in accordance with the criteria established in Section 9.14 of this Decision.

Plan Modification: In the event that the Planning Board provides relief from the requirement to construct the Common Driveway, then prior to endorsement the Plan

shall be modified to show the location of the independent driveway serving proposed Lot 1 in accordance with the criteria established in Section 9.14 of this Decision.

Condition: The Approval Not Required plan shall include a noted referencing the existence of the Special Permit conditions relative to this Decision.

Construction Vehicles Along Hiley Brook Road

- 9.15 **Finding:** Abutters raised concern regarding the narrow widths of Hiley Brook Road, the shallow frontage of homes across the street from the proposed Lot 1, and the impact of construction vehicles on traffic and safety.

Finding: During the Public Hearing, the Applicant indicated that they would be amenable to allowing construction vehicles associated with the future development of Lot 1 to access Lot 1 until such time as the driveway curb cut and access has been created.

Condition: Construction vehicles associated with the construction of Lot 1 shall utilize the existing 44 Hiley Brook Road driveway and the required Common Driveway. No construction vehicles shall be parked along Hiley Brook Road.

Plan Modification: Prior to endorsement, the Plan shall be modified to include a note that all construction vehicles associated with work at Lot 1 shall utilize the existing driveway for 44 Hiley Brook Road.

Plan Modification: Prior to endorsement, the Plan shall be modified to include a note that no construction vehicles shall park along Hiley Brook Road during the construction of Lot 1 except as necessary for the connection of utilities and maintenance of trees that present a safety hazard.

Tree Removal

- 9.16 **Finding:** Abutters to the proposed Lot 1 raised concern regarding the safety of their property during the clearing of trees along Hiley Brook Road.

Condition: All contractors associated with the clearing of trees for the driveway of Lot 1 shall be licensed to perform such work in the State of Massachusetts.

Location of Abutting Wastewater Systems

- 9.17 **Finding:** Section 2.1.2.12 of the Subdivision Rules and Regulations requires that the location of all septic systems within 150' of the locus of the lot to be created are shown on the plan.

The owners of 41 Hiley Brook Road indicated that their approved septic system is within 150 feet of Lot 1, but is not shown on the plan. A sketch of the sewage disposal system dated 9.13.01 was provided by the Applicant to demonstrate the approximate location of the system in relation to Lot 1.

The Planning Board finds that the information from the submitted sketch can be added to the Special Permit plan to provide sufficient information for the future owner of Lot 1 to adequately site a proposed septic system and drinking water well.

Condition and Plan Modification: Prior to endorsement, the location of the existing septic system at 41 Hiley Brook Road shall be added to the Plan.

Mailbox Location

- 9.18 **Finding:** Abutting property owners expressed concern regarding the location of mailboxes for proposed Lot 1. The Planning Board indicated that the final location of the mailbox will be determined according to Postal Service guidelines and preference of the Stow Postmaster.

Legal Provisions

- 9.19 **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.
- 9.20 **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
- 9.21 **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.
- 9.22 **Condition:** This Special Permit shall lapse on February 23, 2023 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 and with the permission of the Board this 23rd day of February, 2021

Received and Filed
Volume II, Page _____

Linda Hathaway, Town Clerk

Date