



Town of Stow
PLANNING BOARD

380 Great Road
Stow, Massachusetts 01775-1122
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SPECIAL PERMIT AND SITE PLAN APPROVAL

Modification #3

Historic and/or Culturally Significant BUILDINGS and STRUCTURES

271 Great Road

June 15, 2021

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 permit renovation of historic buildings and the site to change the use from the existing 6-bedroom Bed and Breakfast Establishment, currently known as the Stowaway Inn, to a mixed use facility comprising of a café, retail gift shop, residential dwelling and associated infrastructure.

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 June 15, 2021, by a vote of five (4) members and one (1) Voting Associate Member present at the public hearing, voted to **GRANT** a Special Permit and Site

Plan Approval under Sections **3.2.3.5, 3.3.3.4, 9.2 and 9.3** of the Bylaw, 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 23, 2021. The Public Hearing was continued to March 30, 2021 and April 20, 2021, and closed at the conclusion of the April 20, 2021 session.

The following Board members were present throughout the proceedings: Lori Clark, Leonard Golder, Karen Kelleher, Margaret Costello, John Collonna-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 5, 2021

Sheet 1

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

1. Petition for Special Permit
2. Project narrative
3. Development Impact Statement
4. Certified Abutters List
5. Locus Map

EXHIBIT 3 Additional Correspondence

1. Letter, dated March 29, 2021 from Todd Estabrook and Tami Alyn Magnuson
2. Letter, dated April 1, 2021 from Todd Estabrook and Tami Alyn Magnuson
3. Letter, dated April 4, 2021 from Weston Fisher and Shirley Burchfield
4. Letter, dated April 12, 2021 from Todd Estabrook and Tami Alyn Magnuson
5. Letter, dated April 12, 2021 from Kathleen Fisher
6. Email, dated April 18, 2021 from Sarah Cleary and Dave Batsford
7. Email, dated April 20, 2021 from Allison McCarthy
8. Email, dated April 20, 2021 from Karen Martinsen Fleming

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:** The proposed Modification regards upgrades to the site for Nan’s Market and Rustic Kitchen, which offers take out food service in a market setting. The Modification includes the addition of wooden planter boxes and picnic tables, together with low wattage string lighting, for the purpose of moving all forty-one (42) Title-V approved restaurant seats outdoors. The proposed outdoor dining was described as taking place through normal business hours to 8pm.

Incidental to the outdoor seating are the following proposed site upgrades:

- Directional signage for customers;
- Additional buses and landscaping;
- Slate pedestrian path across lawn area;
- Waste baskets.

Additionally, the Application states the intention to hold small, private gatherings on the property, with the inclusion of an occasional small tent and casual outdoor buffet service. During the Applicant’s Public Hearing presentation to the Planning Board, they indicated the intention to utilize a small camper trailer, retrofitted as food cart, as well as include yoga and garden classes, wine dinners, and child friendly events, such as petting zoos, to the event schedule.

Historic and Culturally Significant Building Special Permit

- 7.4 Finding:** 271 Great Road was permitted on July 1, 2015 under Section 3.2.3.5 of the Zoning Bylaw which provides

“for uses not otherwise permitted in the Residential District, if such uses preserve historic and/or culturally significant BUILDINGS and STRUCTURES, provided that the historic and/or cultural character of the site, and BUILDING or STRUCTURE, in the opinion of the Special Permit Granting Authority, is not significantly altered, and the Special Permit Granting Authority finds that such uses, with any necessary mitigation measures, are in harmony with the character and uses permitted in the Residential District.”

- 7.5 Finding:** No changes to the exterior architectural components of the building are proposed. The Board finds the proposed building renovations, as conditioned herein, will not significantly alter the historic and cultural significance of the historic buildings.

Condition: The exterior of the historic structures shall be maintained in such a manner that will retain the historic character in keeping with the existing historic façade using like materials.

Accessory Outdoor Seating

- 7.6 Finding:** The primary use of *Nan’s Rustic Kitchen and Market*, the current tenant of 271 Great Road, and the subject of this Special Permit Modification petition, is the offering of take-out food service and small-scale retail in a market setting.

- 7.7 Finding:** Section 3.2.3.4 states that “accessory outdoor service at a patio or seating area” is an allowed use by Special Permit for restaurants.

- 7.8 Finding:** The Application describes the removal of all indoor, as well as currently permitted patio seating to be moved outdoors, for a total of forty-two (42) seats to be located outdoors.

The Original Decision permitted fourteen (14) of the forty-one (41) total seats permitted to be located on a now existing patio at the northwest corner of the existing building. The current Application indicates that the existing patio is now proposed for use as a space for retail displays and that the fourteen (14) seats permitted for the location will be moved to the proposed outdoor seating area as shown on the prepared Plan.

Finding: The Applicant indicated that the proposed location for outdoor seating provided the safest and most logical place for guests to eat outdoors, given its close proximity to the parking area and the lack of easy access to the rear of the building.

Condition: The existing patio at the northwest corner of the building shall not be used for outdoor seating.

Plan Modification: Prior to endorsement, the Plan shall be modified for review and approval by the Planning Board to include a note that outdoor seating shall not be permitted on the existing patio.

Addition of Food Cart

7.9 Finding: During the Public Hearing the Applicant indicated their intention to utilize a small camper trailer, retrofitted as a mobile food cart, to serve food and drink outdoors.

7.10 Condition: In the event the Applicant chooses to utilize a food cart or camper trailer to serve food and/or beverages, the following conditions shall apply:

- a) All relevant permits and licenses from the MA Department of Public Health and Stow Board of Health shall be secured;
- b) The location of the food cart, in a position that directs queuing away from the parking, shall be shown on the plan;
- c) No lighting, with the exception of low wattage string patio lighting located under a canopy or other extension of the structure, shall be allowed on the food cart;
- d) No outdoor generators shall be utilized;
- e) The hours of operation of the food cart shall adhere to the hours of operation and Special Outdoor Event conditions of this Decision.

Number of Outdoor Dining Seats

7.11 Finding: The Plan shows the addition of eight (8) picnic tables along the north east portion of the property boundary, although the application states the proposed addition of ten (10) tables. The detail of the tables, including the number of seats at each table has not been provided.

Finding: The Board of Health submitted correspondence noting that seating cannot exceed 42 seats per the previously approved Title V seating capacity approved in conjunction with Public Water Supply #2286035. The Board of Health noted that if the Board were to assume each table seats six (6), people, the eight (8) tables proposed would exceed capacity.

Finding: The Planning Board finds that without a detail on the picnic table type to be used, it is not possible to determine whether the proposal is in keeping with the Title V seating capacity.

Condition: Prior to endorsement, a detail for the picnic tables, as well as the total number proposed, shall be submitted to the Planning Board for review and approval to ensure that the seating capacity at each table will result in a total number of seats that does not exceed the Title V seating capacity of forty-two (42).

Condition: Accessory outdoor seating shall occur only on the proposed picnic tables or on temporary tables set up for any special dining event. Under no circumstance shall the total number of seats provided for a special event surpass 42 seats.

Fencing at 259 Great Road

- 7.12 Finding:** The Original Decision included a condition requiring a six (6) foot tall privacy fence extending along the eastern and northeastern property bounds.

Finding: During the Public Hearing, an abutter at 259 Great Road indicated that their late father had asked that the required fence not be installed in 2015, at the time of Approval of the Special Permit. The former property owner has since passed, and the new owners of 259 Great Road have submitted a letter requesting that a fence taller than six (6) feet be installed to block views of the Nan's parking area and to ensure children and patrons do not wander off the property, and onto the property at 259 Great Road.

Finding: The Zoning Bylaw prohibits fences taller than eight feet.

Condition: The previously permitted, but unconstructed fence along the eastern property bound with 259 Great Road shall be installed at a modified height of (8) feet above grade and extend south from the northeast corner of the property, along the 259 Great Road boundary to a point just north of Route 117, in the location as shown on the proposed plan.

Fencing Along Proposed Outdoor Dining Area

- 7.13 Finding:** The Plan shows the placement of eight (8) picnic tables along the fence line north of the septic system leaching area. Additionally, the Plan proposes the installation of hanging patio lights, strung diagonally from the fence out over the proposed tables, and back to the fence, along the majority of the fence line.

- 7.14 Finding:** During the Public Hearing, abutters along Crescent Street and Great Road indicated that the proximity of the outdoor dining tables and associated lighting would concentrate noise and activity along the property line, adding to their view of the new use and creating an environment of activity that is not in keeping with the Residential District.

Abutting property owners stated further concerns with the potential for the restaurant to obtain a liquor license, which could further exacerbate the noise and activity issues at the site. The Planning Board does not have jurisdiction regarding the approval of liquor licenses. However, the Planning Board is considering the site plan and proposed use, with an understanding that such an approval could be provided by the Stow Select Board at a future date.

Condition: There shall be no alcohol served outdoors until a liquor license has been granted by the Stow Select Board, in accordance with all applicable state statutes.

- 7.15 Finding:** The Planning Board finds that the Original Special Permit for 271 Great Road approved a market and retail shop, together with a fourteen (14) seat outdoor dining patio at the rear of the building. During the 2015 Public Hearing, the abutting 151 Crescent Street Property owner raised concern about loss of privacy and noise due to the proposed patio at the rear of the property. The Petitioner revised the original plan submission by reducing the size of the patio from 1,100 sq. ft. to 700 sq. ft. to accommodate 14 outdoor seats, screened by an eight (8') foot high latticed trellis, along with a six (6') foot high fence along the northern and eastern border of the property, as well as additional landscaping to block view of the patio and address privacy concerns raised by the abutter.

The Planning Board finds that accessory outdoor dining is a common accessory use in the restaurant industry, and that similar to the Original Decision in 2015, the relatively large, vegetated site provides an opportunity to extend the height of the fence and add additional landscaping in a manner that can adequately mitigate abutter concerns.

- 7.16 Finding:** In accordance with the 2015 Plan, there is an existing fence immediately north of the septic system leaching area that is six (6) feet tall. The Planning Board finds that an extension of the fence to a height of eight (8) feet, either solid or latticed, would provide an additional visual barrier between abutting homes and the proposed use, including the potential food and beverage trailer.

Condition: All portions of existing fence, not including the eight (8) foot fence required at the 259 Great Road boundary, shall include a two (2) foot extension, either solid or latticed, for a required height of eight (8) feet.

Plan Modification: Prior to endorsement, the Plan shall be modified for review and approval by the Board, showing a detail for the fence height extension.

Lighting

Existing

- 7.17 Finding:** The existing Special Permit Plan included three types of approved lighting, including:

1. Two (2) Wall Pack Fixtures to be installed on the barn
2. Four (4) LED Bollard Fixtures in the parking area
3. Three existing Light Poles to remain.

- 7.18 Finding:** Abutters to the proposed use noted ongoing concerns with spotlights and other existing building lighting at the site staying lit beyond normal operation hours. The Zoning Enforcement Officer was notified and is currently working with the Applicant to convert four (4) globular post lights to full cutoff, as well as redirect the sign lighting to the downward position. The Building lights and bollard lights were to remain as is.

- 7.19 Finding:** The proposed Plan shows low wattage string lighting extending from the fence diagonally over the proposed tables. The Applicant has indicated that any proposed patio lighting will be hung from the fence instead of along a string line out over the tables.

The Planning Board finds that patio lighting, such as globe shaped string lights, are an appropriate form of mood and safety lighting for a patio seating area and do not typically light any area beyond the immediate surrounds. The Board further finds that patio

lighting is below the threshold for requiring full cutoff lighting in accordance with Section 3.8.1.5.6.

Due to concerns from abutters in regard to lighting, the placement of string lights against the fence would provide a natural barrier, shielded from the abutting residents along Crescent Street, while still providing some lighting for diners during low light periods.

Condition: No exterior lighting shall shine on adjacent properties or towards any street in such a manner as to create a nuisance or hazard.

Condition: Patio style string lighting shall be attached to and strung along the fence rather than extend away from the fence. In the event the Applicant constructs a latticed fence extension, the string lights shall be placed below the lattice to avoid unwanted light trespass.

Plan Modification: Prior to endorsement, the Plan shall be modified for review and approval by the Board to include a detail on the proposed patio string lighting.

- 7.20 Condition:** No exterior lighting shall shine on adjacent properties or towards any street in such a manner as to create a nuisance or hazard.
- 7.21 Condition:** All exterior lighting shall comply with Section 3.8.1.5 of the Bylaw.
- 7.22 Condition:** By 8pm, all patio lighting shall be turned off each evening that the outdoor dining area is in use.

Landscape Plan

- 7.23 Finding:** No landscape plan was submitted for the proposed Special Permit Modification.
- 7.24 Finding:** The Plan corresponding to the Original Decision, dated February 13, 2015 and last revised June 10, 2015, includes a "Lighting and Landscape Plan."
- 7.25 Finding:** Based upon the photos provided in the Application, some of the abutting homes on Crescent Street have less natural vegetation and screening during certain months than others along the existing rear fence line. The Planning Board finds that additional evergreen landscaping in targeted areas along the fence line would provide noise attenuation, as well as evergreen screening that can block views of the proposed use.

Condition: Additional evergreen trees, including but not limited to, eastern hemlock, white cedar, white pine or balsam fir shall be added to the landscape plan in clustered intervals along the existing fence line, specifically positioned to reduce views of the proposed use from abutting property's along Crescent Street.

Plan Modification: The Plan shall be modified for review and approval by the Board to show additional evergreen trees in clustered intervals along the existing fence line, specifically positioned to reduce views of the proposed use from abutting property's along Crescent Street.

- 7.26 Finding:** The *Lighting and Landscaping* Plan of February 13, 2015, appears to show proposed landscaping along the southern half of the fence line with 259 Great Road that has not been entirely installed.

Condition: All landscaping shown on the February 13, 2015 Lighting and Landscaping Plan shall be installed in accordance with the Plan.

Hours of Operation

7.27 Finding: The Original Decision included hours of operation from 7:00 am to 9:00 pm.

Condition: Hours of typical operation for Nan's Rustic Kitchen and Market shall be limited to 7:00 am to 9:00 pm. Any proposed expansion of typical hours shall require a modification to this decision. Hours related to specific events shall be governed under Section 7.26 of this Decision.

Special Outdoor Events

7.28 Finding: The Application states the intention to hold small, private gatherings and events on the property, with the inclusion of an occasional small tent and casual outdoor buffet service. During the Applicant's Public Hearing presentation to the Planning Board, they indicated the intention to utilize a small camper, retrofitted as food and drink bar, as well as include yoga classes, wine dinners, and child friendly events, such as petting zoos, to the event schedule.

7.29 Finding: The existing Special Permit Plan, dated February 13, 2015 includes a note that the lawn area is to be used for "outdoor seasonal sales."

7.30 Finding: During the Public Hearing the Applicant indicated that they have worked out arrangements with the Highrock Church to allow for staff to park in the church parking lot.

7.31 Finding: The Planning Board finds that Accessory Uses related to businesses are common in Stow's Business District, as they provide for a variety of uses that are typically associated with certain business types. "Accessory Uses" are defined in Stow's Zoning Bylaw as:

"any USE which is incidental and subordinate to a PRINCIPAL USE."

The Planning Board finds that although located in the Residential District, the uses described in the Nan's Rustic Kitchen and Market Application could be classified as subordinate, incidental and otherwise accessory to the principal market and takeout food service use. The Board further finds that the lawn area, originally proposed for outdoor sales in the 2015 Special Permit, is substantial enough to provide adequate separation from vehicles, and as conditioned herein, provides adequate screening from abutting residences.

Given that the proposed Accessory Use events are proposed to take place in the Residential District in accordance with Section 3.2.3.5 of the Zoning Bylaw regarding preservation of historic structures, the Planning Board finds that conditions limiting event frequency, hours of operation and number of attendees is appropriate.

7.32 Condition: Special outdoor events, including but not limited to fitness and/or gardening classes and children's programming, may take place between the hours of 8am – 4pm, provided the following:

- a) There is no amplified sound or generator use, including amplified microphones or speakers without an approved entertainment license from the Stow Select Board;
- b) All parking, with exception of off-site parking for staff, is contained on-site in designated spaces;
- c) Where the serving of food or drink is specifically included as part of the event, no more than 42 patrons may be on-site at any given time.

7.33 Condition: Special outdoor events and programming, such as wine and/or farm-to-table dinners that include the serving of food or drink between the hours of 4pm – 8pm shall adhere to the following:

- a) There is no amplified sound or generator use, including amplified microphones or speakers;
- b) All parking, with exception of off-site parking for staff, is contained on-site in designated spaces;
- c) No more than 42 patrons are in the Outdoor Dining Area at any given time;
- d) Consumption of alcohol shall adhere to all licensing and regulation of the MA Alcohol and Beverage Control Commission the Stow Select Board;
- e) No more than two Special Outdoor Events as described in Section 7.32 of this Decision shall take place each month.

Plan Modification: The Plan shall be modified to specifically delineate the area of proposed seating, as well as the lawn area, as the Outdoor Dining Area.

Liquor Licensing

7.34 Finding: During the public hearing, abutters noted concern about the potential for a liquor license to be issued for the proposed café use.

Finding: The Board finds that issuance of a liquor license is under the jurisdiction of the Select Board and the Alcoholic Beverages Control Commission and subject to the requirements of M. G. L. c. 138, §15A and 16B.

Condition: This approval shall not be deemed approval to serve alcohol. In the event the Petitioner proposes to serve alcohol, a separate application for license shall be filed with the Select Board.

Applicability / Compliance / Recordation

7.35 Finding: The Board finds the proposed use, as conditioned herein, complies with Sections 3.2.3.5 (Uses permitted in the Residential District by special permit, granted by the Planning Board); 9.2 (Special Permit) and 9.3 (Site Plan Approval) of the Bylaw.

7.36 Condition: In the event the owner proposes to demolish any of the historic structures on the site, the owner shall give 180 days' advance notice, in writing, to the Town of Stow Planning Board, Building Commissioner, Historical Commission, Community Preservation Committee and Board of Selectmen. This condition shall be specifically referenced in the property deed.

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

7.38 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 Modification No. 3 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. 3, all terms and conditions of the Original Special permit Decision shall remain in full force and effect.

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.

7.39 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.

7.40 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.

7.41 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.

7.42 Condition - The Special Permit Modification granted by this decision shall not take effect until a copy of the decision has been 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.

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 15th day of June, 2021

Lori Clark

Karen Kelleher

John Colonna-Romano

Margaret Costello

Mark Jones, Voting Associate Member

Date

Received and Filed
Volume II, Page 596

Linda Hathaway, Town Clerk