

TOWN OF STOW  
PLANNING BOARD

Minutes of the April 20, 2021 Planning Board meeting

Planning Board members present: Lori Clark, Margaret Costello, Karen Kelleher, John Colonna-Romano,  
Mark Jones, Len Golder

Lori Clark called the meeting to order at 7:00pm

*Karen Kelleher moved to approve the minutes of the April 13, 2021 meeting as amended  
John Colonna-Romano seconded*

**Roll Call Vote:** Lori Clark -**Yea**; Karen Kelleher -**Yea**; John Colonna-Romano -**Yea**;  
Margaret Costello -**Yea**

*Karen Kelleher moved to approve the minutes of the April 14, 2021 meeting as amended  
John Colonna-Romano seconded*

**Roll Call Vote:** Lori Clark -**Yea**; Karen Kelleher -**Yea**; John Colonna-Romano -**Yea**;  
Margaret Costello -**Yea**

**Planner's Report**

Jesse Steadman informed the Board that all warrant articles the Planning Board had a role in have been submitted to the Board of Selectman for Annual Town Meeting. Jesse Steadman said that the article to improve trail access to the Kane Land near the Gleasondale Mill had been submitted, and that an article regarding the Stow Acres development is also forthcoming. Karen Kelleher asked where zoning issues would be in the order at Town Meeting. Jesse Steadman responded that zoning related items generally fall toward the end of the Warrant.

Jesse Steadman reminded the Board about a focus group for the Stow Acres project the following night. Jesse Steadman also informed the Board that there will be one additional public forum related to Stow Acres during the first week of May.

Jesse Steadman suggested that the Board begin drafting and deliberating on Rules and Regulations for the Active Adult Neighborhood (AAN) Overlay District bylaw, and further suggested that a future meeting be mostly dedicated to this topic.

Jesse Steadman informed the Board that the GO Stow! Taxi ride program will begin offering rides this week, and that the Stow Independent will soon publish an article about the program.

Jesse Steadman reported that he had not heard anything back from the owner of 137 Harvard Rd about intent to file an Erosion Control Special Permit application. The Board noted that a zoning determination letter had previously been sent to the site owner, which found that they were required to apply for the Erosion Control Special Permit, and that the 30-day period for the owner to appeal this determination was

set to end on April 25, at which time the Board will request that the Building Commissioner reinstate fines on the owner for non-compliance.

Jesse Steadman told the Board that he would begin drafting language for a Special Permit Decision for Stow House of Pizza in the coming week.

Jesse Steadman told the Board that he had received an as-built drawing from Jillian's Lane, and that the Department's consulting engineer would soon review. Jesse Steadman said he would inform the Board when the applicant could be released from the Performance Guarantee Agreement.

#### **44 Hiley Brook Rd Common Driveway Determination**

John Colonna-Romano said the Board must determine if the submitted Approval Not Required (ANR) plan met the spirit of what the Board requested in the prior Hammerhead Lot Special Permit decision. Len Golder asked if there would be traffic light glare to abutters at the location of the proposed separate driveway for the new lot. John Colonna-Romano commented that it looked like the driveway was farther away from houses than the existing driveway. Len Golder noted that fewer trees would have to be cleared to construct a new separate driveway than to upgrade the existing driveway, according to the site engineer. John Colonna-Romano questioned how many trees would actually need to be cut for an improved driveway, as those trees had not been represented on the site plan.

Lori Clark asked if there was any clearing planned for the utility easement depicted across the new lot on the plan. Karen Kelleher noted that zoning required the applicant have underground utilities connecting to any new construction under a Special Permit.

Margaret Costello said that many details had been omitted from the plan, and that not all of the trees had been shown. Lori Clark responded that only the ones relevant to the proposed new driveway had been depicted.

Karen Kelleher asked the Board if the applicant had adequately met the conditions of the Special Permit. John Colonna-Romano listed conditions set by the Board in the Special Permit decision and commented that they had been met, besides showing that construction of a common driveway is precluded due to environmental constraints.

John Colonna-Romano asked Site Engineer Scott Hayes to clarify the tree cutting that would take place to upgrade the existing driveway to common drive standards. Scott Hayes said the drive would need to be widened to 16 feet with a gravel base, and this would require clearing many wide-diameter trees. Scott Hayes said that there are fewer large trees at the site of the proposed new driveway than along the existing driveway.

John Colonna-Romano asked for clarification about the depicted utility easement. Scott Hayes said that the easement is to deliver services to the existing dwelling. Scott Hayes could not speak to Hudson Light & Power's exact requirements for a new power connection to the lot to be created but did say to the Board that he believed a new connection could be made with minimal soil disruption.

Mark Jones asked what environmental impact was motivating the use of a new driveway rather than a common driveway. Scott Hayes responded that removing larger diameter trees would be a greater impact

than the removal of the one 10-inch diameter pine that would be necessary at the proposed location. Mark Jones verified that no claim was being made about environmental constraints that could not be reasonably overcome.

Margaret Costello asked about the contents of the lot interior, and if further tree cutting would be necessary to construct the driveway beyond the no-cut cuffer. Scott Hayes responded that tree clearing was going to have to take place inside the no-cut buffer for any site work or construction of a new dwelling.

Margaret Costello commented that the Board has never done a site visit at 44 Hiley Brook Road.

Scott Hayes drew the Board's attention to the 21-day deadline to make a determination on an ANR plan and referenced the changes that had been made to the plan as per the Special Permit conditions.

Mike Teliszewski (41 Hiley Brook Rd) commented that his property includes a horse stable directly across from the site of the proposed new driveway, and raised concerns that lights shining onto the horse stable could spook animals. Mike Teliszewski also said that the realtor had argued with him that the new lot was already created and ready for sale.

Len Golder asked Scott Hayes if there was any other suitable site for the proposed new driveway. Scott Hayes responded that he could look into potential other locations.

Mark Jones commented that Scott Hayes has not presented environmental categories preventing construction. Mark Jones said that he believes the argument that this condition has been met but cutting down fewer trees is weak.

Karen Kelleher asked Mike Teliszewski if he felt that the common driveway would impact negatively him. Mike Teliszewski said that he did not believe it would with his current use but was concerned about impacts should he choose to stable horses in the existing structure.

Margaret Costello asked if the existing driveway would have to be widened to bring it up to common driveway standards. Jesse Steadman said that regardless of any existing bylaw requirements, the fire chief would likely require a maintainable surface of 20 feet wide.

Lori Clark requested that Scott Hayes ask the site owner to allow the entire Board to visit the site.

### **Nan's Market Special Permit Hearing Continuation**

Lori Clark reconvened the special permit hearing at 7:30pm

Board members introduced themselves.

Lori Clark introduced the 3<sup>rd</sup> session of the Public Hearing. Lori Clark asked if the applicant had any new information to share with the public hearing and the Planning Board. Jordan Mackey offered no new information. Len Golder raised concern about the stormwater ditch on the east side of the property. Len Golder noted that the applicant had previously proposed some potted plants to buffer the parking lot and suggested that a similar approach be taken on the ditch. Jordan Mackey commented that an 8-foot fence

will be soon be installed to create a barrier between abutters and said ditch, and that site landscaping will be rearranged soon to create a barrier between customers and the stormwater ditch.

Len Golder also brought up the location of the previously discussed moveable drink bar and raised concern that this would create a safety and liability issue. Len Golder proposed an alternative location for the bar. Jordan Mackey commented that the bar could be moved around the lot to the most suitable location according to any conditions from the Planning Board. Len Golder suggested Jordan Mackey speak with an insurance adjuster about the best location.

Len Golder commented that he approved of the use of parking lot attendants on busy Saturdays. Jordan Mackey also commented that on weekends staff would be parking in the nearby church parking lot.

Karen Fleming (151 Crescent Street) said she has lived at her current address since 1968 and had not received notice of the Public Hearing. Karen Fleming said that a lot of compromises were made by herself and other abutters to Nan's Market during the hearings for the original Special Permit in 2015. Karen Fleming said that Nan's is currently in violation of numerous conditions placed on the existing Special Permit, and specifically drew attention to parking lot lighting remaining on past its intended shut off time.

Karen Fleming said that the proposed outdoor seating would add to the already-increased impacts to the surrounding neighborhood. Karen Fleming questioned how the Board considered the business use appropriate to be located in a residential Zoning District and argued that the use was violating her right to quiet enjoyment of her property. Karen Fleming said that abutters had heavily compromised on the first change during discussions for the original Special Permit and says they were assured that the use would not be expanded upon. Karen Fleming reiterated that Nan's Market is within a residential Zoning District and said no mitigation efforts can minimize the impacts that would be caused by permitting outdoor dining.

Dave Batsford (159 Crescent Street) said he believed the Planning Board's discussions had all been about how to mitigate potential impacts of outdoor seating, and that it appeared to him as if the Planning Board had already made up their minds to approve the Special Permit Modification.

Lori Clark responded to Dave Batsford, saying it is the Planning Board's duty to ask questions of abutters and the applicant to collect any and all pertinent information for a Permit, and that none of these questions should be taken to imply a decision has already been made.

Sarah Cleary (159 Crescent Street) said that she had seen work related to the proposed Special Permit modification already taking place on site. Sarah Cleary noted that Nan's Market had been conducting tree work on trees located on abutter's properties. Sarah Cleary commented that Nan's is already offering some limited outdoor seating even though the outdoor seating had not yet been permitted.

Applicant Jordan Mackey said that the tree work in question had been cleared with all abutters. Jordan Mackey said that some seats had already been placed on the lawn in anticipation of some level of outdoor seating, if not the full 41 seats being proposed. Jordan Mackey said that he is aware of issues with the lighting not being turned off until past closing time, and that he is working to fix this issue. Karen Fleming (151 Crescent Street) insisted that she had never been contacted about tree maintenance work.

Allison McCarthy (155 Crescent) commented that she had moved to Stow from a house in Natick near route 9 with the intent to avoid vehicle noise near her home, and that her view is now the parking lot of Nan's. Allison McCarthy said she agreed with a comment from an earlier session of the Public Hearing from Todd Estabrook and Tammy Magnuson about requiring an additional 12-15 ft tall tree line as a buffer between Nan's and abutters. Allison McCarthy said abutters were correct in 2015 to oppose the business getting a liquor license and that she is opposed to them receiving one now.

Todd Estabrook (259 Great Road) commented that he would like a row of 12-15ft arborvitaes planted between his property and Nan's. Todd Estabrook said he has already obtained a quote for the tree planting.

Mark Forgues (9 White Pond Rd) commented that this case looks to him like spot zoning, and that requirements of buffers between business and residential districts should be enforced on this use. Mark Forgues also commented that he believes an unsuitable use was permitted at the site just because it is located in an historic structure.

Abutter Sarah Cleary said that the issue of lights not being turned off at night was major for her given her view of the site. Sarah Cleary also said that Jordan Mackey has been promising a fix to the lighting complaints for some time now and that the issue has still not been resolved.

Dave Batsford raised concern about increased traffic impacts on Great Road and argued that this permit was likely to evolve and be expanded upon in coming years if approved.

Mark Forgues commented that advertising materials from Nan's depicted string lights and noted that outdoor lighting is supposed to all be full cutoff lighting per Stow's Zoning Bylaw. Mark Forgues raised concern that trucks are parking on the curb to make deliveries to the business and said he does not want to see the rural community filled with businesses.

Site owners Shirley Birchfield & Weston Fisher commented that the applicant lives on the property and ask for trust in what the applicant and business owners are trying to do with the site. Weston Fisher argued that the proposed use is meant to serve as an asset to the abutters as well as the rest of the community.

Sarah Cleary said she appreciated the intent expressed by the applicant, but that the proposed work did not meet this intent.

Karen Fleming said what counts are actions not words. Karen Fleming reiterated that she had not been approached by the applicant about the prior tree work, and that she believes the business is operating successfully enough such that no change in operations is necessary.

Applicant Jordan Mackey said that the current proposal has nothing to do with a future liquor license, and noted that the Board of Selectman, not the Planning Board, has jurisdiction over any such license.

Margaret Costello commented that the proposed work in the seating area appears to have changed over the course of the hearing. Margaret Costello asked Jordan for the facts about tree cuttings. Allison McCarthy commented that Jordan Mackey's father had communicated with her about the work. Jordan

Mackey said that some of the limbs had fallen into abutters yards but that no trees located on their property had been felled.

Mark Forgues commented that no traffic study was done on the original Special Permit in 2015 and that a new one is warranted. Jordan Mackey said that he would like to see such a traffic study and would like to see a speed limit reduction on that stretch of 117.

Sarah Cleary raised concern about unregulated events being hosted in the proposed outdoor seating area and said that a permit approval would be interpreted as an implicit approval for a whole range of uses.

Margaret Costello asked why the existing patio has been reserved for applicant's family. Jordan Mackey clarified that the patio would be reserved for other uses related to the retail operation. Jordan Mackey said that it would be a better business decision to have the seating proximate to the existing lawn near the parking lot.

Jordan Mackey said that it is not critical for the success of the business to have the liquor license. Jordan Mackey said he is happy to put the seating wherever he may be required, but that he believes the space proposed is best.

Weston Fisher offered support for the idea of a trial period for outdoor seating. Sarah Cleary said that tables are already being put out the Nan's lawn and that that is not acting as a good neighbor. Sarah Cleary said she has been working to get the lights shut off at night for 4 weeks.

Len Golder asked about the sort of events Nan's was planning on hosting. Jordan responded that events would not include weddings, parties, or dances. Jordan Mackey offered examples like wine dinners on weekends between 5-7. Jordan Mackey said events could also include small-scale petting zoos, donut pop-ups, and yoga on the lawn. Jordan Mackey said current capacity limits would still apply.

Lori Clark asked if the Board would entertain closing the hearing. Len Golder said the applicant and neighbors should continue to meet on an informal basis to come to some understandings on issues raised.

*Karen Kelleher moved to close the hearing*  
*John Colonna-Romano seconded*

**Roll Call Vote:** Lori Clark -**Yea**; Karen Kelleher -**Yea**; John Colonna-Romano -**Yea**; Margaret Costello -**Yea**; Len Golder -**Yea**

### **Other Business**

The Planning Board agreed to continue discussion for the ANR plan for 44 Hiley Brook Road at the April 27 meeting. The Board also agreed to continue ongoing business for Hallock's Point on May 18.

Tentatively, upcoming Planning Board meetings will be May 4, 11, and 25, and June 8, 15, and 22.

Margaret Costello recommended the Yapp Conservation Land in Littleton to see Marsh Marigolds.

*Karen Kelleher moved to adjourn the meeting*

*Margaret Costello seconded*

**Roll Call Vote:** Lori Clark -**Yea**; Karen Kelleher -**Yea**; John Colonna-Romano -**Yea**; Margaret Costello -  
**Yea**; Len Golder -**Yea**

Respectfully submitted,

Malcolm Ragan