

TOWN OF STOW  
PLANNING BOARD

Minutes of the May 11, 2021 Planning Board meeting

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

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

*Karen Kelleher moved to approve the minutes of the May 4, 2021 meeting as amended  
John Colonna-Romano seconded*

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

**Public Input**

Resident Jon Mascia asked for any updates about 137 Harvard Rd. Town Planner Jesse Steadman said that the Planning Department has received an application for an Erosion Control Special Permit. Jesse Steadman said that a public hearing would be scheduled for the Special Permit sometime in June.

Margaret Costello said that it is obvious to her that water is coming down the hill at 137 Harvard Rd and asked how it was known that the water was not coming from a source other than the cleared areas at the site. Lori Clark said that it was incumbent on the site engineer to provide all relevant site conditions and calculations. Margaret Costello said that it appeared to be a bigger issue than the clearance on the site. Karen Kelleher said they would need to show that the rate volume of water coming off their property was not increased. Margaret Costello said that the water coming off the cleared hill may move over to abutting properties on that side of Harvard Road. Lori Clark said that the engineer would need to demonstrate any such flows to the Planning Board.

Lori Clark said that everyone on the abutters list certified by the Board of Assessors would receive official notice of the future public hearing by mail.

**Planner's Report**

Town Planner Jesse Steadman said he had received a request from the Fire and Police Departments to ensure that the developments at Pennie Lane were marked with street signage so that emergency vehicles could easily locate the site during construction. Jesse Steadman suggested that the Planning Board include requirements for street signage during construction in a future update of the Subdivision Rules and Regulations. Jesse Steadman reported that the developer would be installing interim street signage soon.

Jesse Steadman informed the Planning Board that there have been ongoing issues with a fire cistern at the under-construction Joanne Drive subdivision. Jesse Steadman reported that the builder has hit ledge at the location of the cistern, and that the Town has received complaints about use of a generator used to de-water the under-construction cistern. Jesse Steadman said that the builder will be contracting with a blaster to complete the cistern.

Lori Clark asked if the generator is running continuously. Jesse Steadman confirmed that it is. Mark Jones said that placing hay bales around the generator could mitigate the noise issue. Margaret Costello asked for more information about how the blasting work would be handled. Jesse Steadman said that blasting is tightly regulated by the State and that the protocol is very specific. Jesse Steadman said that the Stow Fire Department will need to issue a permit for blasting work, and that any dwelling within 200ft of the blasting zone will be inspected. John Colonna-Romano remarked that all buildings within a certain distance will need to have a monitor attached.

Mark Jones said that commonly used explosives can pollute groundwater with perchlorides. Jesse Steadman said that state regulations have been updated to address this potential issue.

Jesse Steadman said that a \$15k grant had been received from the Metropolitan Area Planning Council (MAPC) to create a climate resiliency coalition in partnership with OARS for the Assabet River Watershed. Jesse Steadman said that this coalition will be set up to allow towns to functionally share resources and expertise regarding climate resiliency measures. Jesse Steadman said that the watershed approach differs from typical regional collaboration as it recognizes the ecological interconnectedness of communities that share a watershed.

Jesse Steadman said that state representative Kate Hogan had contacted him requesting a list of shovel-ready, design-ready, and aspirational projects. Karen Kelleher said it was encouraging that the state government was reaching out to municipalities. Jesse Steadman said that the state legislature appeared to be anticipating an increase in federal dollars that could be distributed to municipalities, following recently passed federal legislation.

Jesse Steadman updated the Board about discussions with a potential buyer for the Bose property. Jesse Steadman said the Board should anticipate a proposal similar in scale to the previously proposed buildout of the Bose site. Jesse Steadman said he would schedule a date to present some information about the preliminary proposals for the site to the Board in the weeks following Town Meeting.

Len Golder asked if there was more than one prospective buyer for the site. Jesse Steadman said that Bose has not informed him about all bids they have received, but that the developer he had spoken to appeared most serious about the site. Jesse Steadman said that the bidder is assembling a full proposal for the development of the site. Mark Jones asked if the bidder has been asked about other available sites in the area. Jesse Steadman said he would follow up with the developer about what made the Bose site specifically attractive to them.

### **Lot 1 – Joanne Drive, Scott Bracci**

Planning Board members introduced themselves.

Scott Bracci said his address was 48 Forest Road.

Scott Bracci said he is not attempting to stop any development but is interested in minimizing impact to his property value and privacy. Scott Bracci said the builders were attempting to put in as many lots as possible.

Scott Bracci noted that the Joanne Drive subdivision had changed hands since he has lived at his house. Scott Bracci said that he was happy to have participated in the permit hearing process to influence outcomes in such a way to minimize impacts to him and his property. Scott Bracci listed some of the mitigation measures that he had requested and seen written into the eventual Special Permit decision. Scott Bracci said that a past engineer had assured him that the location depicted on the definitive subdivision plan was where the house would eventually land.

Scott Bracci said that there was no apparent issue until a few weeks prior when the foundation was laid. Scott Bracci said that he was unsure what happened along the line to change the location of the foundation to be 20-25 feet closer to his house. Scott Bracci said there has been no apparent sign off on the new location of the new foundation. Scott Bracci said that the new location would be more intrusive to his private enjoyment of his property.

Scott Bracci said he is appearing before the Planning Board to find out what went wrong. Scott Bracci said he was looking for more help and support from the Planning Board than he had so far received. Lori Clark said that she recalled Scott Bracci's sensitivity about the abutting lot and the fact that the Board did a site walk to try to understand this issue at the time of permitting.

The Board viewed an overlay of the approved subdivision plan with the as-built location of the foundation which demonstrated the apparent change in foundation location. Lori Clark asked if the Planning Department had heard from the builder about his reasoning for moving the footprint. Scott Bracci said that Chuck Black had told him he had shifted the location of the house to reposition the driveway. Scott Bracci had asked where the revised plans had been approved. Scott Bracci said that it was not acceptable that the as-built location was allowed even though it meets all the setback requirements laid out in the Special Permit decision.

Lori Clark said the Board does not typically specify the exact location of houses to be built in a new subdivision but does regulate other general characteristics of a site to ensure orderly creation of lots. Scott Bracci said that there should have been a more stringent process given that Joanne Drive was permitted under Stow's Planned Conservation Development (PCD) bylaw. Lori Clark said that, knowing all the discussion that was had with Scott Bracci, additional conditions could have been included in the decision to specify the location of the house on lot 1 more clearly.

Karen Kelleher said that the Board does not specify exact locations of houses because at the subdivision stage they do not know the final location of supporting infrastructure. Karen Kelleher said that the Board could have included some more conditions about the specific location given all the other conditions the Board included to mitigate the impacts of lot 1.

Margaret Costello said that this issue would reappear in the future, and that the Board should anticipate heading off this issue at future developments. Margaret Costello asked if an alternative was to require a re-pouring of the foundation. Lori Clark said that it was more of a process issue, and that Chuck Black had not violated any bylaw or decision. Karen Kelleher said that the Board had not specified the exact location, because the Board does not typically do this.

John Colonna-Romano said that the Board could do better at this for special subdivisions, such as those permitted under the PCD bylaw, in the future since the tolerances are more critical. Lori Clark asked Scott Bracci if there are additional mitigations that could alleviate his privacy concerns. Scott Bracci said that

all he has gotten back from the Town was apathy. Scott Bracci said that he had spoken with Chuck Black about being upset with the Town. Len Golder said the Scott Bracci should coordinate with Chuck Black about possible mitigation measures.

Lori Clark said that the Board had the option to reopen the permit for minor modification. Lori Clark said that the Board had not failed to notify Scott Bracci of any changes in the plan, since Chuck Black had not been required to notify the Planning Board about the location of the foundation as long as it complied with the conditions of the Special Permit. Lori Clark said the Board had only been made aware of any issue when Scott Bracci contacted the Town about his concerns. Lori Clark asked if there were specific measures that Scott Bracci wants the Board to require of Chuck Black. Scott Bracci said he was going to meet with Chuck Black to discuss possible mitigation measures later in the week.

Karen Kelleher said that she understands Scott Bracci's frustration but that the Planning Board is limited in its authority to specify precise outcomes of subdivision development. Karen Kelleher said that the Planning Board was limited in what it could require of Chuck Black at this stage since he had not violated any condition of the approved Special Permit.

Leigh Hildebrandt asked if the change in location of the driveway had been signed off on by the Planning Board. Mark Jones said that the house and the newly located driveway conforms to the Special Permit decision and the Zoning Bylaw, and that the builder was under no obligation to notify to the Board of these changes. Mark Jones said that both the developer and the planning board rely on this decision for any ability to act. Lori Clark repeated that the Board has never specified the exact location of a house on a subdivision plan, because there are often unknowns going into construction related to final locations for drainage, septic, and well systems. Karen Kelleher said that the Board is amenable to finding measures to mitigate the impacts on Scott Bracci.

Bill Byron said that the Town does not have enough control over these types of subdivisions. Bill Byron said that if an elevated deck was built the house would have a clear view of the neighbors. Bill said that the Town needs to have greater control over development.

Margaret Costello said that she does not sympathize with the developer in this case, and that the developer should have communicated the change in plans to the Board. Lori Clark said that the Board has no legal standing to require the developer to change the location here but that they could express their frustration to the builder and facilitate communication with Scott Bracci.

Lori Clark said that it is difficult to write a permit decision or zoning bylaw that accounts for all possible outcomes. Karen Kelleher said that a subdivision plan is only to approve the lots and supporting infrastructure and not the houses. Len Golder said that builders may need to change the location of the house at the time of construction if new information is uncovered. John Colonna-Romano said that in this case, where the sensitivity of an abutter was known to the Board, some more specific conditions should have been in place about the exact location of the house.

Lori Clark said that there was a miscommunication between Scott Bracci and the builder that the location depicted on the site plan was where the house was certain to be built. Lori Clark said that abutters need to be clearly informed that anything on a subdivision plan is subject to change, according to conditions. Mark Jones cautioned the Planning Board against requiring an exact location for a house as part of a

subdivision approval, citing an example that had come before the Zoning Board of Appeals where requiring an exact location would have created significant burdens on both the applicant and the Board.

Lori Clark reiterated that a major issue was that Scott Bracci had been allowed to believe that the approximate location depicted on the subdivision plan was exactly where the house was eventually going to be built.

John Colonna-Romano asked if the building commissioner had inspected the building permit for compliance. John Colonna-Romano said there could be something written into future decisions that would force the Building Commissioner to flag the site if the location changed by more than a certain amount.

Lori Clark suggested sending a letter to Chuck Black, which would have no legal weight, but may encourage Chuck Black to work with Scott Bracci on mitigations.

John Colonna-Romano said that the ongoing challenge for the Board has been to codify concerns from abutters into permitted decisions.

Lori Clark reiterated that the appropriate action by the Board for this subdivision was to oversee the orderly creation of new lots, and not specify the exact location of all dwellings that would be built. Lori Clark said there needs to be some flexibility afforded to builders to accommodate unknowns during construction.

Board members requested that Town Planner Jesse Steadman draft a letter to Chuck Black detailing their concerns. Jesse Steadman said that he would attend the meeting between Scott Bracci and Chuck Black if requested, but that he was concerned about managing Scott Bracci's expectations regarding the Planning Board's legal authority to require anything of Chuck Black in this instance.

Mark Jones said that Chuck Black was operating from a decision and bylaw in front of him, that followed a hearing process overseen by the Planning Board that was meant to account for abutters' concerns, and did no apparent wrong by locating the foundation where it made most sense to build. Lori Clark said that Chuck Black was aware of the sensitivities surrounding Lot 1.

### **Special Permit Deliberation – Stow House of Pizza**

Lori Clark reminded abutters in attendance that no further input could be accepted by the Board.

John Colonna-Romano asked why an approval for outdoor dining had been written into the draft decision. Karen Kelleher said that it is helpful for a Special Permit decision to permit some activity so to incentivize the site remediation work and requested by abutters and the Planning Board during previous hearings. Karen Kelleher also said it was necessary to incentivize the applicant to return to the Planning Board for final endorsement.

Lori Clark asked if the Board or Planning Department had heard anything from the applicant after the attempted withdrawal and no-shows at previous public hearings. Jesse Steadman said the department has not received any updates on work planned at the site.

Lori Clark said the Board should approve as little as possible. Lori Clark and Len Golder said that the Board should not have to design the applicant's outdoor dining. Lori Clark said that no *additional* seating should be approved other than the unpermitted seating already in use at the site.

Jesse Steadman said that a Special Permit is to allow an applicant to do something with their site with conditions and does not mandate any work be done. Lori Clark said that given that the applicant had earlier requested to withdraw the outdoor dining Special Permit application, the Board should draft their decision to compel site remediation work. Karen Kelleher said the Board could condition that existing outdoor dining be disallowed until the site has been remediated.

Leigh Hildebrandt asked if the Board could condition how the site is regraded, Lori Clark said that that is something the Board would negotiate in their deliberations.

Mark Jones said that the applicant could withdraw the outdoor seating and the Board would need to request enforcement from the Building Commissioner following a denial of the Special Permit application. Jesse Steadman said that once a decision is signed by the Board, they may request enforcement from the Building Commissioner. Len Golder said that the decision should require work to commence and be completed within a certain timeframe.

Jesse Steadman asked if the Board would prefer the pile of fill be hauled away or graded over the site. Lori Clark said that screening was her greatest concern, and that the site should look neat and acceptable, and that the impact of lights on the abutters needs to be mitigated. Karen Kelleher said that it would be significantly disruptive to the site to remove the fill.

Leigh Hildebrandt asked if Stow House of Pizza was currently permitted for the seating. The Board confirmed that Stow House of Pizza does not hold a permit for existing outdoor seating.

Lori Clark said that she preferred a decision that would require existing tables should be removed until remediation is complete, with any amount of further outdoor seating requiring a new special permit application.

Jesse Steadman asked if there were any gaps in the mitigating conditions that the Board would like to see strengthened. Karen Kelleher commented that the fence and plantings should be more specific about the location of the plantings. Margaret Costello said that the heights of the fencing should be specified along the whole length since the heights would vary according to the natural grade.

Lori Clark said the decision should specifically require screening abutters from the dumpsters on site.

Margaret Costello asked if it were possible for Stow House of Pizza to simply remove the fill and walk away from the situation. Lori Clark said it was important to be specific about what was required of the applicant for remediation so that a decision could serve as the basis for any future enforcement that would require remediation work.

## **108 – 118 Great Road Rendering Revisions**

Jesse Steadman reminded members that the Board has no specific jurisdiction over the aesthetic design of the proposed new building but that the Board had asked the builder to update the design to be more in line

with the Special Permit decision. Jesse Steadman said that the revised design gave the site more architectural symmetry and better reflected the new one-story design. Jesse Steadman said the scope had been reduced to one story to make space for utilities and storage space in the attics above the main commercial spaces.

Margaret Costello asked about the timeframe for construction. Jesse Steadman said the applicant wants to break ground over the summer. Lori Clark asked if the issue abutters had about vegetation clearing and screening at the other parcel would have an impact on this building. Jesse Steadman said that he had spoken with the site owner who had requested that screening be installed at the same time as the construction on the new building.

Dorothy Granat (11 White Pond Rd) asked for clarification about the requirement for a 30ft-wide landscaped buffer between the parking lot and abutting residential parcels. Jesse Steadman said that the Zoning Bylaw does not require a buffer to begin at the edge of the parking lot, which in this case is the edge of the business district but may instead be located along the edge of the parcel itself.

The Board agreed that the revisions to the building elevations were a slight improvement over what they had seen before. Jesse Steadman said it was clear the applicant had taken the Board's earlier design suggestions seriously.

### **Annual Town Meeting Zoning Articles**

Jesse Steadman said that the Active Adult Neighborhood (AAN) Overlay District bylaw proposal could be amended at Town Meeting to raise the minimum tract of land. Jesse Steadman brought up prior discussions around possibility an applicant could develop two smaller AAN developments and also an industrial use at the Athens Lane site. Jesse Steadman clarified to the Board that this action would be permissible under current zoning. Lori Clark asked how the bylaw could be changed to limit this possibility. Jesse Steadman said that the minimum tract for an AAN development could be raised to 50 acres from 25. Jesse Steadman said the Board should consider whether it was agreeable to allow for multiple possible uses at the Athens Lane site. Lori Clark asked if it was possible for a 40B to be developed alongside two AANs at the site. Jesse Steadman said that it was technically possible, although unlikely given known site constraints.

Karen Kelleher commented that regardless of any such changes, a 40B comprehensive permit could still be applied for that would cover the entire site. Lori Clark asked about the possible downsides to increasing the minimum tract size. Jesse Steadman responded that it could make the whole AAN zoning instrument less attractive in favor of a 40B. Jesse Steadman said he did not want to go to Town Meeting and falsely say that only 132 units could be developed at the site under any circumstances.

Len Golder said that certainty about how the site could be developed would be better. If the developer rejects this, then the Board could go back to Town meeting. Len Golder clarified that the minimum tract should be increased to make more certainty.

Karen Kelleher said that Jesse Steadman should review any proposed amendment with Town Counsel, since it would be a more restrictive condition than was noticed in the public hearing. Lori Clark said if it were changed, it would be based on comments received during the public hearing.

Mark Jones said it was important to state at Town Meeting that the Planning Board cannot make a developer do anything, but that he was not opposed to increasing the minimum tract of land.

Karen Kelleher said that the 25 acre minimum tract was part of the original AAN and that there had been no issue with past AAN developments. Karen Kelleher commented that increasing the minimum tract would not end all uncertainties, since the developer could just as easily develop one AAN plus a 40B under current zoning.

Len Golder said that if it was amenable to Town Counsel, the minimum tract should be increased, and that this would help passage at Town Meeting. Lori Clark said that the scale of the undesirable outcome should be minimized, and so the minimum tract should be increased.

Dorothy Granat asked if the requirements under discussion would be changed across all parcels in the AAN Overlay District. Lori Clark said that it would be changed across all parcels and that the Board was only discussing a single dimensional requirement. Lori Clark said Jesse Steadman should get input from Town Counsel and look to schedule a short meeting to discuss bringing an amendment to Town Meeting.

#### **Acceptance of 0 Great Road – Assessors Map R29-100A**

*Karen Kelleher moved to recommend acceptance of the lot at 0 Great Road, shown on Assessors map R29 as parcel 100A, at Town Meeting*  
*John Colonna-Romano seconded*

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

*Margaret Costello moved to adjourn*  
*Karen Kelleher seconded*

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

Respectfully submitted,

Malcolm Ragan