

Memo

To: Zoning Board of Appeals
From: Planning Board
Date: October 18, 2022
Re: Special Permit – Lot 2, Harvard Road

The purpose of this memo is to provide the Zoning Board of Appeals with an overview of the Planning Board's history with erosion and sedimentation concerns at Lot 2, Harvard Road, shown on Assessor's Map R-9 as Parcel 38.

Zoning Violation and Subsequent Provision of Erosion Control Special Permit

In March of 2020, staff from the Planning and Conservation Departments received complaints from abutters related to clearing of vegetation on both Parcel 38 and 39 and associated erosion and sedimentation at the site. Due to the clearing, a significant increase in stormwater flowed off site, directly impacting neighbors to the west at 153 Harvard Road and to the south at 138 Harvard Road. In addition, the clearing resulted in deterioration of the roadway due to sheeting and ponding of the runoff.

The Building Commissioner and Planning Department staff reviewed the extent of clearing at 137 Harvard Road and Lot 2 and agreed it exceeded the 32,000 square foot threshold as required by Section 3.8.1.10 of the Zoning Bylaw, thereby triggering the need for an Erosion Control Special Permit which the owner applied for in May 2021.

Conditions of Approved Erosion Control Special Permit

The Planning Board approved an Erosion Control Special Permit on November 16, 2021, attached here. The Applicant filed an appeal with the Superior Court on December 10, 2021. The appeal, under docket number 2181CV05777, is open. Should construction of a dwelling commence without the requirements of the conditions laid out in the approved decision, the Board strongly believes a significant increase in runoff will again negatively impact abutting lots and the condition of Harvard Road. Please see the following conditions specific to Lot 2:

Section 7.23

Condition – Lot 2 shall be maintained as shrub/forest cover and shall not be developed or graded to a land cover that will provide for an increase in the rate of runoff without sufficient mitigating measures provided to the Board as part of a Special Permit Modification request.

Section 7.24

The Board acknowledges that regrowth of vegetation in the years since the clearing ceased has further mitigated runoff concerns. However, if the parcel is to be developed, sufficient mitigation measures will be needed. The Planning Board's consulting engineer offered several recommendations for managing overland flows, even in a non-build scenario:

- *Addition of a swale on the northern side of Harvard Road although such a swale would harm certain street trees and be ineffective during snow bank season;*
- *Addition of a catch-basin near the driveway of 153 Harvard Road, just off the edge of road to catch overland and roadway runoff;*
- *Installation of a slotted trench-drain across the throat of the driveway at 153 Harvard Road to minimize icing potential, along with an attending swale or piping to convey the captured runoff to the next catch-basin;*
- *Review of downstream catch-basin to review capacity for further flows.*

Section 7.25

Please note that the Superintendent of Streets provided comments related to possible design solutions and stated concern for the potential for pollutants to enter to Town's Municipal Separate Storm Sewer Systems Permit (MS4):

- *Utilizing a swale on the northern road edge could convey water to the existing culvert and create management and compliance issues regarding the potential for contaminated water to be conveyed to the Town's MS4 system;*
- *The Town does not know the capacity of the catchbasin and pipes in the vicinity of 153 Harvard Road and is unsure whether further runoff captured through trench-drain could be adequately managed by the existing infrastructure in place.*

Sections 7.26 – 7.28

Stormwater has long been a seasonal concern in this portion of Harvard Road. Sections 7.26 through 7.28 of the Erosion Control Special Permit detail pre-existing conditions while validating that clearing on Lot 2 exacerbated the issue.

Section 7.33

A condition under Section 7.33 of the decision describes the need to replace a property bound that was removed during clearing of Lot 2:

The Applicant shall replace a bound, in the form of an iron rod or pin, that was removed during the clearing of Lot 2. The Applicant shall supply the Board with a copy of the survey stamped by a registered surveyor or engineer licensed to do business in the Commonwealth of Massachusetts, and which was used in determining property bounds during the clearing of Lot 2.

Conclusion

The Planning Board is concerned that if construction is allowed to commence on Lot 2 without consideration of erosion and sedimentation control, both during and after construction, that stormwater runoff from Lot 2 will drain into abutting lots, pond over a nearby well at 138 Harvard Road, and continue to degrade Harvard Road, creating a public

safety hazard. The Board recommends the ZBA request the Applicant's engineer to provide existing stormwater calculations to provide a baseline to ensure post construction flows do not exceed. Per the Massachusetts Stormwater Handbook, "stormwater management systems shall be designed so that post-development peak discharge rates do not exceed pre-development peak discharge rates".

Please contact the Planning Department if members wish to review our files or discuss further.



Town of Stow
PLANNING BOARD

**380 Great Road
Stow, Massachusetts 01775**
(978) 897-5098
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**NOTICE OF DECISION AND DECISION
Black Oak Builders, LLC c/o John P. Giordano
EROSION CONTROL SPECIAL PERMIT
AND SITE PLAN APPROVAL**

**137 Harvard Road
November 16, 2021**

1. Petition

This document is the DECISION of the Stow Planning Board (hereinafter, the Board) on the Petition of Black Oak Builders, LLC c/o John P. Giordano (hereinafter, the Petitioner) for property located at 137 Harvard Road.

This decision is in response to an application filed by the Petitioner for an Erosion Control Special Permit and Site Plan Approval, submitted to the Board on April 10, 2021 (hereinafter the Petition), pursuant to Sections 9.2, 9.3, 3.8.1.9 and 3.8.1.10 of the Stow Zoning Bylaw (hereinafter the Bylaw) and Special Permit and Site Plan Approval Rules and Regulations (hereinafter the Rules). The Petitioner seeks permission to resume construction and grading, and stormwater management at 137 Harvard Road and adjoining lots.

2. Petitioner/Property Owner

Lot 2	137 Harvard Road
Black Oak Builders, LLC	
c/o John P. Giordano	John P. Giordano
30 Heritage Lane	30 Heritage Lane
Stow, MA 01775	Stow, MA 01775

3. Location

Said property is located at 137 Harvard Road and is shown as Parcels 38 and 39 on Assessor's Map Sheet R-9 (hereinafter, the Site).

4. Board Action

After due consideration of the Application and Petition, the record of proceedings, and based upon the findings and conclusions set forth below, the Board, on November 16, 2021 by a vote of 5 members present at the public hearing, voted to **GRANT** the requested Erosion Control Special Permit and Site Plan.

5. Proceedings

The Petitioner presented the Petition at a duly noticed Public Hearing held on June 29, 2021 at which time the Petitioner presented the Petition. The Public Hearing was continued until July 27, 2021 and closed at the conclusion of the September 21, 2021 session. Board Members Lori Clark, Nancy Arsenault, John Colonna-Romano, Karen Kelleher, and Margaret Costello were present throughout hearing. 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 Plans

1. Plan entitled "Erosion and Sedimentation Control Plan," dated April 30, 2021, and prepared by Foresite Engineering consisting of one sheet.

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

1. Application dated April 12, 2021
 - Petition for Special Permit
 - Development Impact Statement Form – Parcel 38
 - Development Impact Statement Form – Parcel 39
 - Certified List of Abutters
 - Record Deed for 137 Harvard Road
 - Record Deed for Lot 2
 - Record Plan - 137 Harvard Road

EXHIBIT 3 Additional information submitted by the Petitioner:

1. Site Disturbance Plan submitted February 22, 2021
2. Letter titled "Land Disturbance and Erosion Control Special Permit Thresholds," dated February 18, 2021.
3. Email Dated September 15, 2021 from Richard Harrington
4. Parcel 38 Rendering, dated September 15, 2021
5. 137 Harvard Road Rendering, dated September 15, 2021
6. Lot 3 and 4 Progress Contours, dated September 15, 2021
7. Lot 2 Progress Contours, dated September 15, 2021
8. 137 Harvard Road and Lot 2 Harvard Road, Erosion Control and Sedimentation Plan markups, by Rich Harrington, received September 21, 2021.

EXHIBIT 4 Comments received from Residents and Abutters:

1. Email dated March 30, 2020 from Kathleen Konno
2. Letter dated May 29, 2020 from Jonathan Mascia
3. Email dated April 5, 2020 from Megan Birch-McMichael

4. Email dated April 8, 2020 from Kathleen Konno
5. Email dated May 7, 2020 from Megan Birch-Mcmichael
6. Email dated May 29, 2020 from Jonathan Mascia
7. Email dated May 29, 2020 from Kathleen Konno
8. Email dated June 1, 2020 from Jonathan Mascia
9. Letter dated June 1, 2020 from Jonathan Mascia
10. Email dated June 5, 2020 from Jonathan Mascia
11. Email dated July 15, 2020 from Jonathan Mascia
12. Letter dated September 1, 2020 from Walter Jabs
13. Email dated July 24, 2020 from Kathleen Konno
14. Email dated July 31, 2020 from Kathleen Konno
15. Email dated August 10, 2020 from Kathleen Konno
16. Email dated September 22, 2020 from Kathleen Konno
17. Email dated September 22, 2020 from Jonathan Mascia
18. Email dated October 13, 2020 from Kathleen Konno
19. Email dated November 16, 2020 from Scott Hayes
20. Email dated November 20, 2020 from Kathleen Konno
21. Email dated January 16, 2021 from Kathleen Konno
22. Letter dated February 18, 2021 from Foresite Engineering
23. Email dated March 2, 2021 from Jonathan Mascia
24. Letter dated March 3, 2021 from Foresite Engineering
25. Email dated March 9, 2021 from Jonathan Mascia
26. Letter dated March 4, 2021 from Lynne and Jonathan Mascia to Select Board
27. Email dated March 11, 2021 from Jonathan Mascia
28. Email dated April 29, 2021 from Jonathan Mascia
29. Email dated April 30, 2021 from Jonathan Mascia
30. Letter dated May 26, 2021 from Jesse Steadman to John Giordano
31. Email dated May 5, 2021 from Kathleen Konno
32. Email and Photos dated July 9, 2021, from Kathleen Konno
33. Photos stamped July 12, 2021 from Kathleen Konno
34. Email dated July 12, 2021 from Jonathan Mascia
35. Email dated July 12, 2021 from Kathleen Konno
36. Email dated July 16, 2021 from Kathleen Konno
37. Email dated July 26, 2021 from Kathleen Konno
38. Email and photo dated July 16, 2021 from Kathleen Konno
39. Email dated July 18, 2021 from Jonathan Mascia
40. Email dated July 20, 2021 from Jonathan Mascia
41. Email dated September 8, 2021 from Jonathan Mascia

EXHIBIT 5 Comments received from other Town Boards, Committees and Departments, and State Agencies:

1. Email and Photo stamped March 30, 2020 from Kathy Sferra
2. Email dated March 30, 2020 from Craig Martin
3. Letter dated April 2, 2020 from Craig Martin, Building Commissioner
4. Email dated May 13, 2020 from Superintendent of Streets, Steve Nadeau
5. Email dated May 15, 2020 from Superintendent of Street, Steve Nadeau
6. Letter dated June 18, 2020 from Craig Martin, Building Commissioner
7. Letter dated March 25, 2021 from Building Commissioner Craig Martin to Scott Hayes, Foresite Engineering.

8. Letter dated May 6, 2021 to Black Oak Builders, LLC, c/o John Giordano
9. Interoffice email dated May 15, 2021 from Town Planner to Building Commissioner
10. Letter dated September 15, 2020 from Craig Martin, Building Commissioner to Walter Jabs
11. Letter dated March 16, 2020 from Barbara Huggins Carboni, KP Law
12. Email dated May 4, 2020 from Kathy Sferra
13. Email dated May 15, 2020 from Craig Martin, Building Commissioner
14. Email #2 dated May 15, 2020 from Craig Martin, Building Commissioner
15. Email dated May 21, 2020 from Craig Martin, Building Commissioner
16. Email dated May 29, 2020 from Craig Martin, Building Commissioner to Jonathan Mascia
17. Email dated June 2, 2020 from Craig Martin, Building Commissioner to John Giordano
18. Email dated June 2, 2020 from Craig Martin, Building Commissioner to Town Planner
19. Email dated June 17, 2020 from Craig Martin, Building Commissioner
20. Email dated July 21, 2020 from Craig Martin, Building Commissioner
21. Letter dated March 25, 2021 from Craig Martin Scott Hayes
22. Email dated August 19, 2021 from Superintendent of Streets
23. Email dated September 22, 2021 from Cyndie Colosi, Board of Health
24. Email dated November 13, 2020 from Steve Nadeau, Superintendent of Streets
25. Email dated January 11, 2021 from Jesse Steadman to Building Commissioner
26. Email dated April 7, 2021 from Jesse Steadman to Craig Martin, Building Commissioner
27. Email dated April 8, 2021 from Building Commissioner Craig Martin to Jesse Steadman
28. Email dated May 1, 2021 from Karen Kelleher to Jonathan Mascia
29. Email dated May 10, 2021 from Town Planner to Scott Hayes
30. Inter-office Memorandum dated May 21, 2021 from Craig Martin, Building Commissioner
31. Inter-office Memorandum dated May 25, 2021 from Brad Brightman, Treasurer
32. Inter-office Memorandum dated May 27, 2021 from Michael Sallese, Police Chief
33. Inter-office Memorandum dated May 24, 2021 from Kristen Fox, Principal Assessor
34. Inter-office Memorandum dated June 1, 2021 from Kalen Gendron, Stow Board of Health
35. Email dated May 26, 2021 from Town Planner to Sue Carter, Places Associates, Inc.
36. Email dated July 14, 2021 from Town Planner to Richard Harrington
37. Email dated July 16, 2021 from Town Planner to Richard Harrington
38. Email dated July 14, 2021 from Richard Harrington to Jesse Steadman
39. Email dated July 27, 2021 from Kalene Gendron, Nashoba Board of Health
40. Email dated July 29, 2021 from Steve Nadeau, Superintendent of Streets
41. Email dated September 15, 2021 from Richard Harrington
42. Email dated September 15, 2021 from Jesse Steadman to Sue Carter

43. Email dated September 21, 2021 From Jesse Steadman to Susan Carter, Places Associates, Inc.

EXHIBIT 6 Comments received from the Board's Consulting Engineer:

1. Email dated July 26, 2021 from Sue Carter, Places Associates, Inc.
2. Email dated September 17, 2021 from Sue Carter, Places Associates, Inc.
3. Email dated September 21, 2021 from Sue Carter, Places Associates, Inc.

Exhibits 1 through 3 are referred to herein as the Petition.

7. FINDINGS, CONCLUSIONS and CONDITIONS

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

- 7.1 **Finding** - The site is located on two parcels, 137 Harvard Road, as shown as Parcel 39 and Lot 2 shown as Parcel 38 on Assessor's Map Sheet R-9. The total site area is comprised of 2.8 acres.
- 7.2 **Finding** - The site is located in the Residential District.
- 7.3 **Finding** - The renovation of the associated single family home is allowed in the Residential District and is subject to an Erosion Control Special Permit under Sections 3.8.1.10, 9.2 and 9.3 of the Bylaw and Special Permit and Site Plan Approval Rules and Regulations.

Finding - The proposed use, as conditioned herein meets the requirements of Sections 3.8.1.10, 9.2 and 9.3 of the Bylaw.

Initial Zoning Violation

- 7.4 **Finding** – On March 26, 2020, residents abutting the single-family home at 137 Harvard Road (Parcel 39) and adjacent, vacant Lot 2 (Parcel 38), notified the Conservation Commission office of substantial clearing at the site and concerns over erosion and sedimentation at the site. On March 30, 2020 Planning Department staff notified the Planning Board that the clearing, grading and site disturbance at the site was estimated to be well in excess of the 32,000 square foot threshold requiring an Erosion Control Special Permit in accordance with Section 3.8.1.10 of the Zoning Bylaw.

On April 2, 2020, Craig Martin, then Building Commissioner, ordered a Cease and Desist on all activities at the subject parcels until an Erosion Control Special Permit had been approved by the Planning Board. On May 6, 2020 the Planning Board sent correspondence requesting compliance with the Building Commissioner's order after receiving correspondence from neighboring property owners that work on the home and site had continued. On June 18, 2020, Craig Martin sent a letter to the Applicant indicating the lack of response to the April 2, 2020 letter and stating the accumulated fines associated with the unpermitted work.

Determination of Zoning Applicability

- 7.5 **Finding** - On September 1, 2020 Walter W. Jabs Jr., representing Black Oak Builders, LLC delivered a letter to the Building Commissioner indicating that due to the separate ownership of Lot 2 and 137 Harvard Road, the Applicant had not reached the 32,000

square foot threshold to trigger Erosion Control Special Permit requirements under Section 3.8.1.10 of the Zoning Bylaw.

On February 18, 2021, in response to requests by the Planning Board and Building Commissioner to apply for an Erosion Control Special Permit, Foresite Engineering submitted a letter indicating that neither the disturbance of 13,828 square feet on Parcel 39, nor the disturbance of 23,617 square feet on Parcel 38 triggered the threshold for an Erosion Control Special Permit, due to the parcels being under separate ownership.

On March 3, 2021, Foresite Engineering requested a written determination of the Zoning Enforcement Officer, as to the applicability of Section 3.8.1.10 as it relates to Parcels 38 and 39. On March 25, 2021, Building Commissioner Craig Martin indicating that the Secretary of the Commonwealth finds John Giordano to be the Manager and Resident Agent of Black Oak Builders, LLC, as well as the owner of 137 Harvard Road. The Building Commissioner found:

“when contiguous lots are controlled by the same individual the lots are in common ownership for the purposes under the Zoning Bylaw.”

7.6 **Finding** – Zoning Bylaw Section 3.8.1.10 (3) identifies a “site” as multiple parcels that “are part of the same development proposal.” The Planning Board finds that the definition of a site for the purpose of determining applicability of an Erosion Control Special Permit does not consider the ownership of the parcels making up the site.

Finding - The Planning Board finds that Lot 2 and 137 Harvard Road are to be considered a site as defined by Section 3.8.1.10, given that the parcels were cleared at the same time by the same contractor and therefore are found to be part of the same development proposal.

Finding - The Planning Board further finds that the combined disturbance on Parcels 38 and 39 totals 37,445 square feet, therefore triggering an Erosion Control Special Permit in accordance with Section 3.8.1.10 of the Zoning Bylaw.

Erosion Control Special Permit Application

7.7 **Finding** – On May 10, 2021, Black Oak Builders, LLC submitted an Erosion Control Special Permit Application.

7.8 **Finding** – The Plan indicates that the following work had been completed prior to approval of an Erosion Control Special Permit:

Lot 2	
Tree Clearing	23,617' square feet
Lot 3 & 4 (137 Harvard Road)	
Lawn Restoration	9539' square feet
Septic Tank and Walkway Installation	2513' square feet
Gas Service Trench	1771' square feet
Total	37,445' square feet

- 7.9 **Finding** – The Development Impact Statement indicates that sheet flow from the site is split, with part of the site draining to a catchbasin and culvert at a low point where the gas service meets Harvard Road and the western portions of the site draining to a culvert headwall along Harvard Road.

Abutter Concerns

- 7.10 **Finding** – The property owner at 153 Harvard Road submitted multiple pieces of correspondence from the time of the initial site disturbance in March of 2020, through the conclusion of the Public Hearing in September of 2021, detailing concerns with the unpermitted work, including:

- Safety of uninspected work having been completed;
- Buildable status of Lot 2;
- Increased wind and tree damage on 153 Harvard Road due to tree removal on Lot 2 that removed wind barrier;
- Increased flooding, runoff and soil erosion due to tree removal on Lot 2, including basement flooding;
- Damage to residential water supply due to runoff;
- Concern regarding inspections and status of septic system at 137 Harvard Road;
- Road icing and flooding due to Wedgewood Pines, including concern over school bus drop off and pick up during the winter months;
- Removal of the southwest property bound (iron rod);
- Increased property flooding due to runoff from Wedgewood Pines golf course, upgradient from 153 Harvard Road.

- 7.11 **Finding** – The property owner at 138 Harvard Road submitted multiple pieces of correspondence from the time of the initial site disturbance in March of 2020, through the conclusion of the Public Hearing in September of 2021, detailing concerns with the unpermitted work, including:

- Increase in stormwater runoff through the existing culvert at the base of the gas service area;
- Flooding of the yard and impacts to the well at 138 Harvard Road;
- Installation of an upgraded septic system in proximity to the well at 138 Harvard Road.

Site Visit Findings

- 7.12 **Finding** – On July 26th, 2021 the Planning Board, Applicant, the Board's Consulting Engineer and abutters attended a site walk at the 137 Harvard Road site. During the site visit, the Applicant's engineer described the existing topography of the site, and the specific areas along the gas service line and backyard of 137 Harvard Road where the topography had been modified. The Applicant's engineer indicated that the drainage issues and concerns stated by the property owner at 153 Harvard Road were not due to clearing on Lot 2, but to pre-existing conditions related to upgradient topography at Wedgewood Pines Golf Course.

Septic System

- 7.13 **Finding** – In response to the site visit, the Board’s consulting engineer recommended that the septic system leaching field at 137 Harvard Road be examined due to an observed sheen on the surface and sewage odor.

Finding – The Superintendent of Streets submitted correspondence indicating that issues with the septic system could trigger compliance issues regarding illicit discharge of pollutants into the Town’s MS4 system.

Finding – On July 27, 2021 Kalene Gendron of Nashoba Regional Board’s of Health conducted a site visit to 137 Harvard Road to inspect the condition of the septic system leach field, in response to the Board’s Consulting Engineer’s site visit recommendations. No smell or visual breakout at the leachfield was observed.

Condition - All wastewater facilities installed at 137 Harvard shall comply with Board of Health regulations and Title V of Massachusetts General Law.

- 7.14 **Finding** – Ponding on the north side of Harvard Road, straddling the boundary with 137 Harvard was observed at the site walk. The Applicant’s engineer stated that the leaching field and road shoulder would need to be regraded to eliminate the ponding.

Condition – The depression along the property line with 137 Harvard Road, which is causing ponding during heavy rain events, shall be eliminated by the Applicant through regrading and maintained in perpetuity.

Improvements to Gas Service Line

- 7.15 **Finding** - In response to the site visit, the Board’s consulting engineer recommended the following actions could be taken to mitigate concerns regarding the installation of the gas line:

- Installation of trap rock to act as a leaching trench;
- Consideration of installation of a yard drain at the top of the gas service swale to control ponding and runoff;
- Installation of stone lined swale to recharge runoff and direct to existing culvert;

- 7.16 **Finding** – During the site visit, the gas service area showed signs of scouring and erosion, as previously installed sand and gravel had washed out in heavy rains.

- 7.17 **Finding** - The Superintendent of Streets indicated that the gas line area of 137 Harvard Road would benefit from a swale to provide increased retention of stormwater.

- 7.18 **Finding** – On September 15, 2021 the Applicant’s engineer submitted progress prints showing the work that has taken place since the Application was submitted, as well as updated 2 foot contours for each lot comprising the site. The progress prints submitted detail the stabilization of the gas service area, including the installation of woodchips, and crushed stone installed in a terraced formation. Inspection of the site by Planning Staff confirmed the installation of tiered stone along the swale with stone at the base of

the hillside providing recharge prior to the culvert under Harvard Road, leading to 138 Harvard Road.

Finding – The Board’s consulting engineer noted that the stone installed at the gas service area could be used as a recharge area at the toe of the slope.

Finding – The Applicant’s engineer noted that the work at the gas service area was undertaken as emergency work prior to the issuance of the Special Permit Decision to mitigate the runoff concerns of neighboring property owners.

7.19 **Finding** – the Board’s consulting engineer noted that when running drainage calculations “woods” is similar to “brush/weeds/grass,” in terms of the rate and volume of runoff. Therefore, the Planning Board’s consulting engineer concluded that regardless of whether climate change or severe storms contributed to the issues noted at the site through 2021, their office agrees that there has been no increase in the rate and volume of runoff at the site after installation of the stone check dams at the gas service line slope.

7.20 **Finding** – The Planning Board finds that although it is not typical for an Applicant to undertake work prior to the issuance of a Special Permit Decision, the installation of a stone lined swale, and crushed stone installed at the base of the gas service line slope is consistent with the recommendations from the Board’s consulting engineer and helped to mitigate runoff during the time it took to close the Public Hearing and render a Decision.

Finding – Prior to the close of the Public Hearing, the abutting property owner at 138 Harvard Road stated that the volume of runoff through the culvert at the toe of the gas service line slope has decreased since the installation of the terraced stone check dams.

7.21 **Finding** – The Board’s consulting engineer recommended installation of a yard drain at the top of the gas service swale to control ponding and runoff. The yard drain has not been installed.

Finding – The Applicant has installed trap rock along the gas service line swale and terraced rock recharge basin at the toe of the service line slope in response to erosion concerns where the gas line was installed.

Condition - The Board’s consulting engineer recommended that some combination of the following drainage mitigation measures be installed and maintained in perpetuity.

1. Installation of trap rock along the gas line service swale to act as a leaching trench;
2. Consideration of installation of a yard drain at the top of the gas service swale to control ponding and runoff;
3. Installation of stone lined swale to recharge runoff and direct runoff to existing culvert;

Lot 2

- 7.22 **Finding** – In the Residential District, the Zoning Bylaw requires a minimum lot size of 1.5 acres, together with a frontage of 200 feet for the construction of a dwelling.

Finding - Lot 2 contains 40,771 square feet and has approximately 150 feet frontage, less than area and frontage requirements in the Zoning Bylaw.

Finding – The Planning Board finds that Lot 2 was not the subject of a previous dwelling and despite the Applicant’s perceived ownership differences between Black Oak Builders, LLC and John Giordano, the fact that John Giordano is also the agent and manager of Black Oak Builders, LLC, precludes the notion that the lots are in separate ownership.

On March 25, 2021, Building Commissioner Craig Martin stated that “when contiguous lots are controlled by the same individual the lots are in common ownership for the purposes under the Zoning Bylaw.” Therefore, the Planning Board finds that Lot 2 is not to be considered a buildable lot as the entire 3 lot site would be considered as one parcel for zoning purposes.

Finding – Lot 2 is not to be considered a buildable lot.

Plan Modification – Within sixty (60) days from the date of the Special Permit endorsement, a note shall be added to the Plan stating that Lot 2 is not to be considered a buildable lot.

Lot 2 Runoff

- 7.23 **Finding** – The Board’s consulting engineer reviewed LiDAR data for the pre-development condition at the site, particularly Lot 2, for the purpose of ground-truthing contours provided by the Applicant regarding the post development condition. The Board’s consulting engineer found that there does not appear to be any significant changes in the drainage patterns based upon the analysis.

Finding – The Board’s consulting engineer reviewed the Development Impact Statement provided by the Applicant and finds that the pre and post site conditions, forest and shrub cover respectively, have similar drainage curve numbers and time of concentration for runoff. The Board’s consulting engineer finds that this fact is evidence that there is no increase in the post-development rate and volume of runoff from the site.

Condition – Lot 2 shall be maintained as shrub/forest cover and shall not be developed or graded to a land cover that will provide for an increase in the rate of runoff without sufficient mitigating measures provided to the Board as part of a Special Permit Modification request.

- 7.24 **Finding** – During the July 2021 sitewalk, the Board’s consulting engineer witnessed overland sheet flow from Lot 2 and surmised it could be a condition more similar to spring than summer, given the heavy rains during the summer of 2021. The Board’s consulting engineer offered the following recommendations for managing the overland flows:

- Addition of a swale on the northern side of Harvard Road although such a swale would harm certain street trees and be ineffective during snow bank season;
- Addition of a catch-basin near the driveway of 153 Harvard Road, just off the edge of road to catch overland and roadway runoff;
- Installation of a slotted trench-drain across the throat of the driveway at 153 Harvard Road to minimize icing potential, along with an attending swale or piping to convey the captured runoff to the next catch-basin;
- Review of downstream catch-basin to review capacity for further flows.

Finding – The Planning Board recommends that the Superintendent of Streets evaluate the documented street drainage patterns and potential mitigation measures outlined by the Board’s consulting engineer in Section 7.23 of this Decision, for the purpose of determining short, medium and long term strategies for ensuring public safety.

7.25 **Finding** – The Superintendent of Streets noted the following concerns with making any upgrades along the frontage of 153 Harvard Road:

- The runoff described by the property owner at 153 Harvard Road is a private property issue and not the obligation of the Town to resolve;
- Issues regarding runoff at the driveway of 153 Harvard Road are emanating from Harvard Road;
- Ledge in the roadway in that area would require significant funding to design a permanent solution;
- Utilizing a swale on the northern road edge could convey water to the existing culvert and create management and compliance issues regarding the potential for contaminated water to be conveyed to the Town’s MS4 system;
- The Town does not know the capacity of the catchbasin and pipes in the vicinity of 153 Harvard Road and is unsure whether further runoff captured through trench-drain could be adequately managed by the existing infrastructure in place.

Finding – The Planning Board recommends that the Superintendent of Streets evaluate the documented street drainage patterns and potential mitigation measures outlined by the Board’s consulting engineer in Section 7.23 of this Decision, for the purpose of determining short, medium and long term strategies for ensuring public safety.

7.26 **Finding** – The property owner at 153 Harvard Road submitted multiple pieces of correspondence indicating that although they believed that the clearing of Lot 2 exacerbated the runoff issues they have been experiencing, the majority of the flooding and icing problems they have at their property is due to runoff from the Wedgewood Pines fairways upgradient from 153 Harvard Road.

7.27 **Finding** – The Superintendent of Streets noted that the issue of roadway flooding at the location in front of 153 Harvard Road and Lot 2 has been a seasonal issue for over 15 years.

7.28 **Finding** – The Planning Board finds that based upon the historical information provided by the Superintendent of Streets, the correspondence submitted by the abutting property owners and the findings made by the Board’s consulting engineer, runoff flowing over and along the frontage of 153 Harvard Road is a pre-existing condition that is likely

related more to topography, upgradient land uses, and excessive rainfall than any clearing undertaken by the Applicant on Lot 2.

- 7.29 **Finding** – The Planning Board recommends that the Highway Department continue to work with the property owner at 153 Harvard Road, and with the Town Administrator to determine what short, medium and long term solutions may be the most feasible for addressing safety concerns along Harvard Road in the vicinity of 153 Harvard Road.

Finding – The Planning Board further finds that enough evidence of runoff and overland flows has been provided to suggest that the Planning Board should begin discussions with Wedgwood Pines Country Club to determine whether any drainage work upgradient of Harvard Road has taken place since the course's initial permitting. Further the Planning Board should open a dialog with the Golf Course owners to properly inspect the boundaries of the golf course with other properties in the area during a rain event to determine whether any feasible solutions may exist for mitigating overland flow of water.

Septic Design at Lot 2

- 7.30 **Finding** – During the Public Hearing abutters noted that a septic system design had been approved for Lot 2.

Condition – Approval of a septic system design under Title V and the Stow Board of Health does not equate to a determination that the lot is buildable in accordance with the Stow Zoning Bylaw and Chapter 40A of Massachusetts General Law.

Removal of Property Pin

- 7.31 **Finding** – The Abutter at 153 Harvard Road provided a photo showing the location of an iron property pin at the southeast corner of his lot that was removed upon the initial clearing of Lot 2 by the Applicant.
- 7.32 **Finding** – The Planning Board finds that a pin installed at the corner of Lot 2 and 153 Harvard Road would be helpful in determining any future runoff issues that may arise, as well as potential solutions to resolve existing runoff issues on Harvard Road.
- 7.33 **Condition** – The Applicant shall replace a bound, in the form of an iron rod or pin, that was removed during the clearing of Lot 2. The Applicant shall supply the Board with a copy of the survey stamped by a registered surveyor or engineer licensed to do business in the Commonwealth of Massachusetts, and which was used in determining property bounds during the clearing of Lot 2.

Miscellaneous

- 7.34 **Condition** - All expenses for construction inspections, recording and filing of plans and documents shall be borne by the Petitioner.
- 7.35 **Condition** - Exterior construction activity shall take place only between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday excluding official Town of Stow holidays and 8:00 a.m. to 12:00 p.m. Saturdays unless specific approval is granted by the Building Commissioner.
- Condition** – In the event that the Building Commissioner authorizes an exception to the posted hours, notice shall be provided to the Police Department and the Board.

- 7.36 **Finding** - 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.
- 7.37 **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.
- 7.38 **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 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 16th day of November, 2021.

Lori Clark
Lori Clark

Karen Kelleher
Karen Kelleher

Nancy Arsenault
Nancy Arsenault

John Colonna-Romano
John Colonna-Romano

Margaret Costello
Margaret Costello

Received and Filed
Volume II, Page 705

Linda S. Hathaway
Linda Hathaway, Town Clerk

November 23, 2021
Date

This is to certify that the twenty (20) day appeal period on this decision has passed and there have been no appeals made to this office.

Linda Hathaway, Town Clerk

Date