



Town of Stow
BOARD OF APPEALS
380 Great Road
Stow, Massachusetts 01775-2127
978-897-7258

April 3, 2023

NOTICE and DECISION
89 Kingland Road

SPECIAL PERMIT

Applicant: Thomas Payne

Owner: Jill Sullivan and Thomas Payne

Address: 89 Kingland Road
Stow, MA 01775

Premises Affected:

Address 89 Kingland Road, Stow, shown on Stow Property Map Sheet U-04 as Parcel No. 62 containing 10,411+/- sq. ft.

Property Deed: Middlesex Registry of Deeds Book 1577, Page 187

Special Permit Requested:

A special permit is sought under G.L.c.40A, s.6 and Stow Zoning Bylaw Section 3.9 (Non-Conforming Uses and Structures), to allow construction of single-family dwelling on a pre-existing, non-conforming lot.

A duly posted public hearing was held at 380 Great Road and online via Zoom Web Conferencing Service on March 6, 2023. The public hearing was continued to April 3, 2023, and concluded at the close of the April 3, 2023 session. Zoning Board of Appeals Members Mark Jones, David Hartnagel, Andrew DeMore, Andrew Crosby, and Associate Member Leonard Golder were present throughout the proceedings.

The following documents were submitted for the Board's consideration:

1. Application comprising of the following documents:
 - Application form, revised 03/24/2023
 - Project Narrative

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- Property Deed
- Certified List of Abutters
- Application Fee
- Letter dated 03/27/2023
 - Architectural Plan entitled Tom Payne, 89 Kingland Road, Stow MA, prepared by Tuck and Tuck Architects, dated 12-21-22, comprising of the following sheets:
 - A1.0 – Basement Plan
 - A1.1 – Floor Plans
 - A2.1 – East Elevation
 - A2.2 – North Elevation
 - A2.3 – West Elevation
 - A2.4 – South Elevation
 - Site Plan entitled ZBA Permit Plan, 89 Kingland Road, prepared by Dillis and Roy Civil Design Group, dated 02/02/2023, revised 03/24/2023

2. Correspondence from Town Departments, Boards and Committees

- Email, dated February 9, 2023, from Police Chief Michael Sallese
- Email, dated February 9, 2023, from Building Commissioner Frank Ramsbottom
- Interoffice Memorandum, dated February 22, 20223, from Conservation Commission
- Interoffice Memorandum, dated March 30, 2023, Conservation Director

Findings of the Board:

1. The lot is pre-existing non-conforming as to size and frontage requirements of the present Zoning Bylaw. The property contains 10,411 sq. ft. and 60 (sixty) feet of frontage.
2. The Applicant proposes to remove the existing 2-bedroom dwelling and construct a new single-family dwelling with an attached garage, a paved driveway, new sewage disposal system, and well.
3. The existing 2-bedroom dwelling does not conform to the side and rear yard setback requirements of the present Zoning Bylaw.
4. The existing dwelling has a total living area of 786 sq. ft.
5. Access to the existing dwelling is provided via a concrete stairway adjacent to a large concrete retaining wall.
6. The finished floor area of the proposed 2-bedroom dwelling is 2,060 sq. ft. The floor area of the attached garage is 720 sq. ft.
7. The proposed dwelling does not conform to the northerly and southerly side and rear yard requirements of the present Zoning Bylaw.
8. The existing dwelling is located 8.1 feet from the southerly side property line. The proposed dwelling and attached garage is located 8.1 feet from the southerly side property line, resulting in no further encroachment into the required 25-foot side yard setback of the current Zoning

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Bylaw. Therefore, the Board finds that the southerly side of the proposed dwelling does not create a new non-conformity and is subject to this Special Permit under Section 3.9 of the Zoning Bylaw for expansion of a pre-existing non-conforming structure.

9. The existing dwelling is located 20.7 feet from the northerly side property line. The proposed dwelling and attached garage is located 17 feet from the northerly property line resulting in an increase in encroachment into the required 25-foot side yard setback of the current Zoning Bylaw. The Board finds this further encroachment creates a new non-conformity and is subject to this Special Permit under Section 3.9 of the Zoning Bylaw for expansion of a pre-existing non-conforming structure.
10. The existing dwelling is located 16.5 feet from the rear property line. The proposed structure is located 27.3 feet from the rear property line resulting in a decrease in encroachment of the required 40-foot rear yard setback of the current Zoning Bylaw. Therefore, the Board finds that the proposed dwelling does not create a new non-conformity and is subject to this Special Permit under Section 3.9 of the Zoning Bylaw for expansion of a pre-existing non-conforming structure.
11. The existing dwelling and proposed dwelling and attached garage meet the required 30-foot front yard setback of the current bylaw.
12. The plan shows proposed retaining walls and steps 17 feet from the property line and grading to the property line.
13. The Conservation Commission advised the proposed work is within the 100-foot buffer to Lake Boon and will require submission of a Notice of Intent.
14. In addition to wetlands permitting issues, the Conservation Commission noted concern about the feasibility of the actual construction operation on such a small lot.

The Conservation Commission is a direct abutter to the proposed project and owns land immediately north of the subject lot as well as land across Kingland Road from the subject Lot.

The Conservation Commission is concerned about the potential for physical injury to the Town of Stow conservation land during construction and asked that the plan be modified to maintain at least a five-foot setback between work and the abutting town land.

Based on input from the Conservation Commission, the applicant revised the plan to increase the setback of the proposed concrete landing area and stairs from 1-foot to 17 feet from the northerly property line,

The Conservation Commission advised that the applicant has no deeded rights to use any of the adjacent land owned by the Conservation Commission for materials storage, access, vehicle parking by contractors, or construction operations and asked that the Plan be modified to create a physical barrier between work on the lot and the Town's abutting land with construction fencing (straw wattle is insufficient) and erect signage in this regard. The Conservation Commission further requested that a bond or security arrangement be made by which the town can ensure that any harm done to town owned land is corrected.

15. The Conservation Commission advised that the town land provides public access to Lake Boon. The current Open Space and Recreation Plan calls for the creation of a canoe/kayak

launch with parking on the side of Kingland Road opposite the subject lot.

The applicant acknowledged that they are aware of the potential for increased activity on the abutting property.

16. The Building Commissioner advised that if the proposed house has soffits closer than 5 feet from the property line, they would need to be fire rated.

17. The Police Chief advised that the roadway must be open for emergency vehicles during construction.

The Board finds the site plan contains adequate space in the location of the proposed driveway for vehicle maneuvering and parking for construction workers personal vehicles.

18. The Board makes the following findings under Section 3.9.7.1.2 of the Zoning Bylaw:

- The proposed construction does not conform to the requirements of the present bylaw.
- The proposed construction intensifies the existing northerly side yard non-conformity. The Board finds there is no substantial increase in the non-conforming nature of the northerly yard setback.
- The proposed construction maintains the southerly side yard non-conformity. The Board finds there is no substantial increase in the non-conforming nature of the southerly side yard setback.
- The proposed construction improves the rear yard non-conformity. The Board finds there is no increase in the non-conforming nature of the rear yard setback.
- The proposed dwelling meets the front yard setback.
- The proposed construction will not be substantially more detrimental to the neighborhood than the existing non-conforming structure or use. The proposed two-bedroom single family dwelling will fit into the architectural character of the neighborhood. The proposed use, a two-bedroom single family dwelling, is the same as the existing use.

19. The Board makes the following mandatory findings as required by Section 9.2.6 of the Zoning Bylaw:

The Board finds the proposed use and development, as conditioned herein:

- a. is in harmony with the purpose and intent of the Zoning Bylaw;
- b. will not be detrimental or injurious to abutting properties or ways, the neighborhood, community amenities or the Town of Stow;
- c. is appropriate for the site for which the petition is submitted and is related harmoniously to the terrain and to the use, scale and proportions of existing and proposed BUILDINGS in the immediate vicinity that have functional or visual relationship to the proposed use;
- d. includes sufficient mitigating measures for any adverse effects noted in reports from town boards and agencies, reports from consultants and public hearings;
- e. will result in no pollution or contamination of the GROUND WATER, a GROUND WATER recharge area, a well, pond, stream, watercourse or inland wetland;

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- f. will result in no significant effect on the "level of service" (LOS) of the town roads or intersections of these roads;
- g. will result in no significant effect on level of service for any service provided by the Town;
- h. will result in no redirection of existing surface water runoff such that there would be material impact on abutting parcels or downstream properties;
- i. will result in no transport by air or water of erodible material beyond the boundary line of the LOT;
- j. will provide adequate provision for pedestrian traffic; and
- k. will comply with requirements of Site Plan Approval and all other applicable requirements of this Bylaw.

VOTE

Pursuant to Massachusetts General Laws, Chapter 40A, after referring to the application for Special Permit, the Board, by roll call vote of the five members present throughout the proceedings (Mark Jones, David Hartnagel, Andrew DeMore, Andrew Crosby, and Associate Member Leonard Golder) **VOTES TO GRANT A SPECIAL PERMIT** to allow construction of a 2-bedroom single-family dwelling with attached garage, subject to the following conditions:

1. The proposed construction shall result in no pollution or contamination of the GROUND WATER, a GROUND WATER recharge area, a well, pond, stream, watercourse or inland wetland.
2. The proposed construction shall result in no redirection of existing surface water runoff such that there would be material impact on abutting parcels or downstream properties;
3. The proposed construction shall result in no transport by air or water of erodible material beyond the boundary line of the LOT.
4. The design and construction shall be essentially in conformance with documents and plans on file with the Board and modified as conditioned herein.
5. Prior to commencement of construction, the plan shall be modified to create a physical barrier between work on the abutting lots (93 Kingland Road and the abutting Town Conservation Land), with construction fencing (straw wattle is insufficient) and signage to prevent storage of materials storage, access, vehicle parking by contractors, or construction operations.
6. There shall be no parking on the abutting Conservation Land.
7. There shall be no parking of construction vehicles or construction workers' private vehicles on Kingland Road.
8. The property deed shall provide notice that public access to Lake Boon directly abutting the property.
9. Prior to commencement of construction, the applicant shall provide a Performance Guarantee to ensure that any harm done to town owned land is corrected. The form and amount of such performance guarantee shall be submitted to and approved by the Board.
10. The proposed construction shall comply with all applicable requirements of the Building Code.

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11. The proposed construction shall comply with conditions set by other Town Departments, Boards and Commissions.
12. The proposed construction shall comply with all applicable requirements of the Zoning Bylaw.
13. Exterior construction activity shall take place only between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday (excluding holidays), and 8:00 a.m. to 12:00 p.m. Saturdays unless specific approval is granted by the Building Commissioner.

The Board has complied with all statutory requirements in the granting of this Special Permit.

Two copies of this decision, together with copies of the application for special permit, site plans, other plans, and records, have been filed with the Town Clerk. A detailed record of the proceedings, setting forth the reasons for the decision, shall be filed within fourteen (14) days with the Town Clerk and shall be a public record. Copies of this decision have been or will be mailed to all parties, persons and boards as required by Chapter 40A, Sections 11 and 15.

This Special Permit shall lapse with two (2) years of recording unless substantial use or construction has commenced or in the case of a permit for construction or reconstruction, if construction has not begun by such date, except for good cause (Massachusetts General Laws Chapter 40A, Section 9).

This Special Permit 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 Board of Appeals, Town Clerk and Building Inspector.

Any appeal from this decision shall be made pursuant to Massachusetts General Laws Chapter 40A, Section 17 and must be filed within twenty (20) days after the decision has been filed with the Town Clerk.


Zoning Board of Appeals


Mark Jones

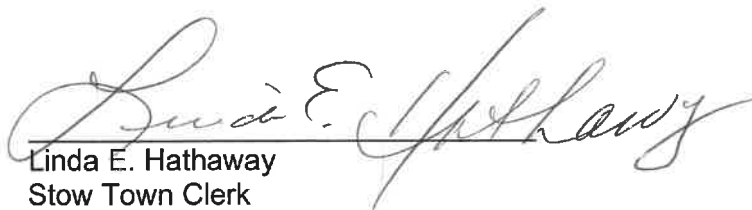

David Hartnagel


Andrew DeMore


Andrew Crosby


Leonard Golder


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Linda E. Hathaway
Stow Town Clerk