



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

February 6, 2023

NOTICE and DECISION
Lot 2, Harvard Road

SPECIAL PERMIT

Applicant: John P. Giordano

Owner: John P. Giordano

Applicant's Address: 30 Heritage Lane
Stow, MA 01775

Premises Affected:

Lot 2, Harvard Road, Stow, shown on Stow Property Map Sheet R-9 as Parcel No. 38 containing 40,771+/- sq. ft.

Property Deed: Middlesex Registry of Deeds Book 73436, Page 105

Special Permit Requested:

A special permit is sought under Stow Zoning Bylaw Section 4.1.6, to allow construction of a residential dwelling on a pre-existing, non-conforming lot containing at least 40,000 square feet in area and at least 150 feet of contiguous frontage.

A duly posted public hearing was held at 380 Great Road and online via Zoom Web Conferencing Service on November 7, 2022. The Public Hearing was continued to December 5, 2022 (continued without testimony), January 9, 2023, and February 6, 2023. The Public Hearing closed at the conclusion of the February 6, 2023 session. Zoning Board of Appeals Members Mark Jones, Ernest Dodd, David Hartnagel, 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
- Certified List of Abutters
- Application Fee

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- Project Description (letter dated August 7, 2022, from Paul F. Alphen Esq.
- Locus Map (MA GIS)
- Locus Plan from (Town of Stow Assessor's Map R-9)
- Site Plan entitled "Plot Plan, Lot 2 Harvard Road", dated August 26, 2022, prepared by Foresite Engineering
- Architectural Plan entitled "Proposed New Single-Family Dwelling, 137 Harvard Road, Stow, Massachusetts", dated 8-19-22, prepared by SDA comprising of the following sheets:
 - A300 – Rear Elevation
 - A301 – Right Side Elevation
- Photograph and Floor Plan entitled "First Floor Plan" prepared by Frank Betz Associates, Inc.
- Plan 1059 of 1956 (Exhibit A)
- Deed at Book 73436, Page 104 (Exhibit B)
- Deed for Lot 3 to Deborah A. Valentine (Exhibit C)
- Plan of land dated February 2, 2021 (Exhibit D)
- Assessors' Records regarding the dwelling on Lot 3 (Exhibit E)
- Correspondence regarding the 1973 Zoning change (Exhibit F)
- Deeds recorded at Book 31821, Page 240 and Book 11518, Page 192 (Exhibit G)

2. Additional documents submitted by the Applicant:

- Stormwater Report, Dated October 28, 2022
- 10/31/22 - Email from/to Paul Alphen – drainage calculations
- Email from Foresite Engineering – re: Plans to scale from 10/28 Stormwater Report
- Letter, dated December 30, 2022, from Foresite Engineering
- Stormwater Report, revised December 30, 2022
- Grading & Drainage Plan, dated December 20, 2022
- Erosion & Sediment Control Plan, dated December 20, 2022

3. Correspondence submitted Town Departments, Boards and Committee

- Stow Planning Board Memorandum dated October 18, 2022
- Stow Highway Department Email dated November 21, 2022

4. Documents submitted by others:

- Emails from Jonathan Mascia, 157 Harvard Road
 - October 28, 2022 – prior activity on Lot 2 (street tree and property pin removed).
 - November 1, 2022 – state performing PFAS testing in the area
 - November 3, 2022 – photographs and videos indicating re: runoff
 - December 5, 2022 – photographs and videos indicating re: runoff

- February 2, 2023 Email
- February 6, 2023 Certified Letter received

5. Peer Review

- Letter, dated November 30, 2022, from Places Associates, Inc.
- Letter, dated February 2, 2023, from Places Associates, Inc.

Findings of the Board:

1. The Applicant proposes to construct a single-family dwelling on Lot 2, Harvard Road.
2. The Board finds that Lot 2 is non-conforming as to lot size and frontage requirements of the present Zoning Bylaw.
3. Section 4.1.6 of the Zoning bylaw is intended to provide additional rights to build single family dwellings on certain lots in the Residential District that do not conform to zoning area and frontage requirements in effect and is in no way intended to limit any rights set forth as to such lots in Chapter 40A, as from time to time amended. Section 4.1.6 of the Zoning Bylaw further states the Board of Appeals shall grant a special permit for the construction of a single-family dwelling to the owner of any lot of at least 40,000 square feet area and at least 150 feet of contiguous lot frontage in the Residential District, which was separately shown, laid out or described in a plan, deed or certificate of title duly recorded or registered at the Middlesex South District Registry of Deeds, and met all requirements of the Bylaw then in effect, prior to the first publication of notice of the public hearing required before any amendment of the Zoning Bylaw pursuant to said Chapter 40A, increasing such area or frontage requirements, or both, for a residential lot, and situated on a street as defined in the Zoning Bylaws open for use by the public at such date of publication, upon a finding that the conditions in Section 4.1.6.1 are met.
4. The Board finds that Lot 2 qualifies for a Special permit under 4.1.6 of the Zoning Bylaw in that:
 - a) It is located in the Residential District
 - b) It contains at least 40,00 sq. ft of area;
 - c) It contains 150 feet of frontage;
 - d) It was separately shown on a Plan of Land entitled "Kings Grant Park" as Lot 2 containing 40,771 sq. ft. in area and 150 feet of frontage as recorded with the Middlesex South District Registry of Deeds as Plan 1059 of 1956, prior to the 1973 Zoning Bylaw amendment to increase the minimum lot size to 65,340 sq. ft. and 200 feet of frontage.
 - e) The adjoining lot 3 containing 40,449 sq. ft of area with 150 feet of frontage and Lot 4, containing 40,771 sq. ft. of area with 150 feet of frontage, once held in common ownership with lot 2, are also shown on Kings Grant Park Plan of Land as recorded with the Middlesex South District Registry of Deeds as Plan 1059 of 1956.
 - f) Lots 3 and 4 were combined by a deed, dated August 30, 2000, and recorded with the Middlesex South Registry of Deeds at Book 11518, Page 192. Therefore, the combined lots 3 and 4 are considered to be 1 conforming lot as shown on the Town of Stow Assessor's Map Sheet R-9 as parcel 39 containing a single-family dwelling with an

address of 137 Harvard Road.

- g) In accordance with Section 4.1.6.2 of the Zoning Bylaw, although lots 2, 3 and 4 were at one time held in common ownership, the Board of Appeals may only grant a special permit to build on one lot in addition to the lot currently built upon. As Lots 3 and 4 have been combined to be 1 conforming lot, the Board finds that Lot 2 is eligible for a Special Permit under Section 4.1.6.2 of the Zoning Bylaw.
5. During the Public Hearing abutters raised concern about past and potential runoff onto abutting properties and Harvard Road.
6. The Planning Board, in its memorandum dated October 18, 2022, provided an overview of the Planning Board's history with erosion and sedimentation concerns at Lot 2, Harvard Road.
 - a. In March of 2020, the Planning and Conservation Departments received complaints from abutters related to clearing of vegetation on both Parcel 38 (Lot 2) and Parcel 39 (137 Harvard Road) and associated erosion and sedimentation at the Site. It was determined that the clearing resulted in significant increase in stormwater flow off site, impacting neighbors to the west at 153 Harvard Road and to the south at 138 Harvard Road and deterioration of the Harvard Road due to sheeting and ponding of the runoff.
 - b. On November 16, 2021, the Planning Board approved an Erosion Control Special Permit which is currently under appeal by the Applicant with Superior Court (Docket number 2181CV5777)
 - c. The Planning Board, in its memorandum dated October 18, 2022, noted concern that should construction of a dwelling commence without consideration of erosion and sedimentation control, both during and after construction, that stormwater runoff from Lot 2 will drain onto abutting lots, pond over a nearby well at 138 Harvard Road, and continue to degrade Harvard Road, creating a public safety hazard.
7. The Board's Consulting Engineer, Places Associates Inc., reviewed the Stormwater Report and plans as submitted and noted concern about the drainage design. The applicant submitted an updated Stormwater Management Report and Plans addressing items listed in the peer review letter from Places Associates.

In its letter dated February 2, 2023, Places Associates Inc. found the updated drainage report and plans address the concerns raised in their initial review and offered the following comments regarding the trap rock basin:

- The outlet elevation of the swale from the trap rock basin is illegible (overlapping text).
 - Recommend that the bottom of the basin be $\frac{3}{4}$ - $\frac{1}{2}$ " washed stone where possible as it is much easier to walk on for maintenance purposes than trap rock.
8. The Board's Consulting Engineer recommended that the Board incorporate the following conditions in the Special Permit. The Applicant indicated that they find the proposed conditions to be a bit excessive for development of a single-family house with only $\frac{1}{2}$ acre of proposed site disturbance.
 - The roof area cannot exceed 2,828 sq. ft., as documented in the drainage calculations without further evaluation.

- The remaining impervious surfaces cannot exceed 3,580 for the driveway area.
- There can be no further clearing, grading or ledge removal on the westerly side of the lot.
- Limit of clearing should be staked prior to initiation of construction.
- An as-built plan should be required, to be submitted to the Building Commissioner, prior to occupancy, by a Professional Land Surveyor or Engineer certifying that the site was constructed in compliance with the approved drainage calculations, including basin volumes, roof and impervious areas.
- The future homeowner(s) should be made aware of the maintenance requirements for the stormwater provisions.

The Board finds the proposed conditions are reasonable.

9. During the Public Hearing an abutter raised concern that the survey stakes recently installed are incorrect. The Board finds that the Plot Plan (site plan) does not show property bounds and is not stamped by a Professional Land Surveyor.
10. During the Public Hearing an abutter raised concern about ongoing stormwater runoff from the site onto his property. The Board's Consulting Engineer, Places Associates Inc. reviewed the plans and noted the drainage plan appears to be very cautious to not disturb that portion of the lot. Places Associates further noted the biggest concern is that if the drainage system is not maintained, runoff could just flow directly into Harvard Road and make the runoff in the gutter line worse.

The Board's consulting engineer, in its review of the revised Stormwater Report and Plans, noted the following:

- While this single lot is technically not subject to the DEP Stormwater Regulations, they have used some of the basic criterion such as the 2, 10 and 100 year storm analysis for their review. The calculations have utilized the latest rainfall rates from NRCC which have been updated to reflect the more current rainfall rates. The drainage calculates in the stormwater Report reflect the pre-development conditions as wooded, so that the full impact of the lot development is considered, not just from the cleared lot.
 - The stormwater report and plans indicate the applicant has mitigated the impact of impervious surfaces for their property. Understanding the on-going drainage issues experienced by the neighbors, the development of this lot will not improve the current situation, as it appears significant runoff is flowing from the upgradient golf course, across the site and into the neighboring property an Harvard Road.
 - Rainfall events over the past several years have resulted in multiple rainstorm events with very intense rainfall. More intense rainfall has less time to soak int the soil, especially on steep slopes. These types of storms often overwhelm drainage systems and detention basins. These types of events are not the standard used to evaluate the impact of large or small projects.
11. During the Public Hearing an abutter raised concern that there is ledge on the property and concerned about the need for blasting in order to develop the site. The Board finds that blasting at this Site is not appropriate given the location of abutting homes.

The Applicant stated that they will not blast.

12. 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;
- 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, Ernest Dodd, David Hartnagel, Andrew Crosby, and Associate Member Leonard Golder) **VOTES TO GRANT A SPECIAL PERMIT** under 4.1.6 of the Zoning Bylaw to allow construction of a single-family dwelling subject to the following conditions:

1. The proposed construction shall comply with the requirements of Section 3.8.1.9 of the Zoning Bylaw:
 - Pre-development surface water runoff rates and volumes shall not be increased;
 - Pre-development erosion and sedimentation rates shall not be increased; and
 - No building permit, special permit or subdivision approval shall be granted if these conditions cannot be met.
2. Prior to any construction or land disturbance, Lot 2 shall be maintained as shrub/forest cover

and shall not be developed or graded until the following plans are submitted to and approved by the Board:

- Site Plan, the stamped by a Professional Civil Engineer and associated drainage report indicating compliance with Section 3.8.1.9 of the Zoning Bylaw.
 - Survey Plan stamped by a Professional Land Surveyor
3. The roof area shall not exceed 2,828 sq. ft., as documented in the drainage calculations.
 4. Impervious surface shall not exceed 3,580 sq. ft. for the driveway area.
 5. There shall be no further clearing, grading or ledge removal on the westerly side of the lot indicated as undisturbed area on the plan.
 6. Prior to commencement of construction, the Plan shall be modified to indicate the use of $\frac{3}{4}$ "- $\frac{1}{2}$ " washed stone where possible to accommodate ease of access to the basin.
 7. Prior to commencement of construction, the limit of clearing shall be staked.
 8. So that future properties owners are on notice, a deed restriction shall be attached to the property deed requiring ongoing maintenance of the drainage system.
 9. Prior to issuance of an occupancy permit, an as-built plan, stamped by a Professional Land Surveyor or Engineer, certifying that the site was constructed in compliance with the approved drainage calculations, including basin volumes, roof and impervious areas, shall be submitted to the Building Commissioner and the Board.
 10. There shall be no blasting on the site.
 11. 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.
 12. 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;
 13. The proposed construction shall result in no transport by air or water of erodible material beyond the boundary line of the LOT.
 14. The design and construction shall be essentially in conformance with documents and plans on file with the Board.
 15. The proposed construction shall comply with conditions set by other Town Departments, Boards and Commissions.
 16. The proposed construction shall comply with all applicable requirements of the Zoning Bylaw.
 17. 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

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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.

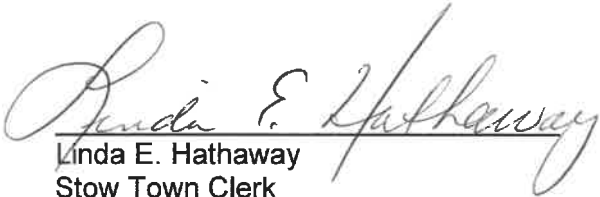
Signed on behalf of and with the permission of the Zoning Board of Appeals.



Ernest E. Dodd
Zoning Board of Appeals Clerk

February 8, 2023

Date Received and Filed
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Linda E. Hathaway
Stow Town Clerk

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