



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

**February 6, 2023**

**NOTICE and DECISION**  
**Lot 3 Packard Road**  
**SPECIAL PERMIT**

**Applicant:** Jeffrey D. Smith, Trustee, Metacom Realty Trust

**Owner:** Jeffrey D. Smith, Trustee, Metacom Realty Trust

**Address:** Jeffrey D. Smith, Trustee, Metacom Realty Trust  
P. O. Box 331  
Stow, MA 01775

**Premises Affected:**

**0 Packard Road**, Stow, shown on Stow Property Map Sheet R17 as Parcel No. 20D containing 11.3408 acres.

**Property Deed:** Middlesex Registry of Deeds Book 75973, Page 307

**Special Permit Requested:**

A special permit is sought under Stow Zoning Bylaw Section 4.1.6 (Standard Dimensional Provisions/40,000 sq. ft. Lots).

A duly posted public hearing was held at 380 Great Road and online via Zoom Web Conferencing Service on January 9, 2022. Zoning Board of Appeals Members Mark Jones, Ernest Dodd, 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
- Narrative
- Stow Assessors Map R-17 (with locus indicated)
- Certified List of Abutters
- Property Deed (Parcel D, as shown on an Approval Not Required under the Subdivision Control Law (ANR) Plan dated February 17, 2020, entitled "Plan of Land on Great Road

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& Packard Road in Stow, Massachusetts”, prepared by Foresite Engineering, as shown on Stow Assessors’ Map Sheet R17 as parcel 20D, and recorded with Middlesex South Registry of Deeds a Plan No. 413 of 2020.

- ANR Plan entitled “Plan of Land in Stow, Mass, owned by Ethel A. Herrick, Dated August 9, 1965, prepared by Harlan E. Tuttle, Surveyor.
- Plot Plan entitled “Plot Plan, Lot 3 Packard Road (Part of Map R-17, Parcel 20D, Stow, Massachusetts”, dated December 2, 2022, prepared by Foresite Engineering.

### **Findings of the Board:**

1. The Applicant seeks a Special Permit for non-conforming frontage on Lot 3 as shown on the ANR Plan entitled “Plan of Land in Stow, Mass, owned by Ethel A. Herrick, Dated August 9, 1965, prepared by Harlan E. Tuttle, Surveyor, and formerly shown on Stow Assessor’s Map Sheet R17 as Parcel 20.
2. Lot 3 is now shown as a portion of Parcel D (an 11.34-acre parcel) as shown on the ANR Plan dated February 17, 2020, entitled “Plan of Land on Great Road & Packard Road in Stow, Massachusetts”, prepared by Foresite Engineering, as shown on Stow Assessors’ Map Sheet R17 as parcel 20D, and recorded with Middlesex South Registry of Deeds a Plan No. 413 of 2020.

The 2020 ANR Plan includes the following notes:

MAP U9, Parcel 31

- Parcel D, Area = 11.34 AC+,
- Area = 494,006. Sq. Ft±
- (Not to be considered a Buildable Lot)
- (WOODED)

Map R17, Parcel 31

- Map R17 Parcel 20
- (Lot 3 on Plan No. 1194 of 1965
- (ORCHARD)

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. Lot 3, containing 2.77± acres and 184.69 feet of frontage was created by a Plan entitled 'Plan of Land in Stow, Mass, owned by Ethel A. Herrick, Dated August 9, 1965, prepared by Harlan E. Tuttle, Surveyor and recorded at the Middlesex Registry of Deeds, So. District as Plan Number 1194 of 1965. The Plan also shows, Lot 4 containing 1.30± acres and 151 feet of frontage.

At the time lots 3 and 4 were created (in 1965), they complied with the Stow Zoning Bylaw minimum lot area requirement of 40,000 sq. feet and the minimum front yard requirement of 150 of frontage.

Lot 4 was conveyed from Herrick to Fisher on September 10, 1965 by deed recorded in Book 10936, Page 149.

Lot 3 was conveyed from Herrick to Field on August 11, 1976, by deed recorded in Book 13058, Page 328.

5. The Applicant describes Lot 3 Packard Road, Assessor's Map R-17, Parcel 20D as a 2.77-acre lot, which is inconsistent with Town of Stow Assessor's Map and the property deed as conveyed to the Applicant. In 2020, the Stow Planning Board endorsed a Plan entitled "Plan of Land on Great Road & Packard Road in Stow, Massachusetts", prepared by Foresite Engineering and recorded with Middlesex South Registry of Deeds a Plan No. 413 of 2020 showing Lot 1, Lot 2, Parcel B, Parcel C, 143 Packard Road and Parcel D.

Parcel D on this plan was depicted as an 11.34-acre Lot comprising of the parcel D formerly shown on Assessors Map Sheet U9 as Parcel 20 and Lot 3 formerly shown on Assessors Map Sheet R17 as Parcel 20 (created by the 1965 plan noted above).

By deed, recorded on June 2, 2020, at Book 74973 page 208, Parcel D (which includes Lot 3 and the former parcel D), containing 11.34 acres was conveyed to Jeffrey D. Smith, Trustee of the Metacom Realty Trust (the applicant) as one parcel.

Consistent with the 2020 Plan, the Stow Assessor's Map was updated to reflect Parcel D as a single 11.34-acre parcel on Assessor's Map Sheet R17, Parcel 20D.

6. The lot is non-conforming as to lot frontage requirements of the present Zoning Bylaw.  
The Board finds that Parcel D, as shown on the 2020 Plan and conveyed to Jeffrey D. Smith, Trustee of the Metacom Realty Trust (the applicant) conforms to the current zoning minimum lot area requirement of 65,340 sq. ft. but is non-conforming as to the current zoning minimum 200-foot front yard requirement.
7. During the Public Hearing the applicant's engineer explained that, although depicted as one 11.34-acre parcel, the intent of the creation of the lot(s) conveyed to the Applicant in 2020 was to create two separate parcels (lot 3 and parcel D) with lot 3 protected under the provisions of Section 4.1.6.1 of the Zoning Bylaw and Parcel D not to be considered a building lot.
8. The Board finds Lot 3, as shown on the 1965 Plan, complies with the conditions stated in

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Section 4.1.6.1.

Lot 3, containing 2.77± acres and 184.69 feet of frontage and Lot 4 containing 1.30± acres and 151 feet of frontage were created by a Plan entitled 'Plan of Land in Stow, Mass, owned by Ethel A. Herrick, Dated August 9, 1965, prepared by Harlan E. Tuttle, Surveyor and recorded at the Middlesex Registry of Deeds, So. District as Plan Number 1194 of 1965. Both lots 3 and 4 were held in common ownership and complied with the minimum lot area requirement of 40,000 sq. feet and the minimum front yard requirement of 150 feet of frontage.

Lot 4, as depicted on the 1965 Plan and Assessors Map Sheet R17 as parcel 21 was conveyed from Herrick to Fisher on September 10, 1965, by deed recorded in Book 10936, Page 149. Lot 4 is currently owned by Dorothy G. Sonnichsen, is documented by deed recorded in Book 14317 Page 303 dated May 31, 1981 and remains undeveloped.

Lot 3 was conveyed from Herrick to Field on August 11, 1976, by deed recorded in Book 13058, Page 328 and is currently owned by the Applicant and remains undeveloped.

9. Both the 1965 and 2020 Plan show a stream across the lot. The Stow Conservation Department stated that the Conservation Commission will require the filing of a Notice of Intent for work within 100' of wetlands and riverfront area to the stream under the Wetland Protection Act and the Town of Stow Wetlands Protection Bylaw.

As the application does not put forth a development plan and wetlands have not been delineated, the Board makes no determination as to compliance with Section 4.3.2.3 of the Zoning Bylaw (Area Suitable for Building).

10. Section 9.2.6 (Mandatory Findings) of the Zoning Bylaw states the Special Permit Granting Authority shall not issue a special permit unless without exception it shall find that the proposed use and development:

- 9.2.6.1 is in harmony with the purpose and intent of this Bylaw;
- 9.2.6.2 will not be detrimental or injurious to abutting properties or ways, the neighborhood, community amenities or the Town of Stow;
- 9.2.6.3 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;
- 9.2.6.4 includes sufficient mitigating measures which shall be implemented as part of the special permit for any adverse effects noted in the Development Impact Statement, reports from town boards and agencies, reports from consultants and public hearings;
- 9.2.6.5 will result in no pollution or contamination of the GROUND WATER, a GROUND WATER recharge area, a well, pond, stream, watercourse or inland wetland;
- 9.2.6.6 will result in no significant effect on the "level of service" (LOS) of the town roads or intersections of these roads. A significant effect on level of service is a projected use of greater than five percent (5%) of the reserve capacity of a road segment or turning movement by the proposed use at the completion of its development. Reserve capacity calculations are to be done by a registered professional engineer using accepted methods of traffic analysis and shall include both projected growth in traffic during the period of development and projected

- 9.2.6.7 traffic from other uses and developments which have applied for approval under the Zoning Bylaw prior to the close of the public hearing; will result in no significant effect on level of service for any service provided by the Town, including fire, police and ambulance. Proof of no significant effect is the lack of need for the Town to add equipment and/or staff specifically due to the development;
- 9.2.6.8 will result in no redirection of existing surface water runoff such that there would be material impact on abutting parcels or downstream properties unless an appropriate easement is obtained to an existing watercourse;
- 9.2.6.9 will result in no transport by air or water of erodible material beyond the boundary line of the LOT (See also Section 3.8. Use Regulations, General);
- 9.2.6.10 will provide adequate provision for pedestrian traffic; and
- 9.2.6.11 will comply with all requirements of Site Plan Approval and all other applicable requirements of this Bylaw.

11. As the Application does not propose development plan of the lot at this time, the Board does not have sufficient information to make the mandatory findings as required by Section 9.2.6 of the Zoning 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, Andrew DeMore, Andrew Crosby and Associate Member Leonard Golder) **VOTES TO GRANT A SPECIAL PERMIT** under Section 4.1.6 of the Zoning Bylaw subject to the following conditions:

1. This special permit shall be considered only as a determination that the lot meets the criteria for rights to build a single family dwelling on the lot under Section 4.1.6 of the Zoning Bylaw. This special permit shall not be considered approval of a site plan for development and construction.
2. Development and construction of a single-family dwelling on the lot shall be subject approval and conditions set by the Conservation Commission, Board of Health, Building Department or any Town Department, Board or Commission as may be required.
3. Prior to commencement of construction, the Applicant shall submit a new application for approval a site plan consistent with the mandatory findings as stated in Section 9.2.6 of the Zoning Bylaw.
4. To correct the inconsistencies with the property deed and plan on record at the Registry of Deeds and Town of Stow Assessor's Map and record, an ANR Plan, separating Parcel D into two parcels as formerly shown on Assessor's map U9 as Parcel 31 and Assessor's Map R17 as parcel 20 shall be submitted to the Planning Board for endorsement and recording,
5. 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.

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