



## **DRAFT – 03/21/22 For Board Review/Deliberation**

Town of Stow  
**BOARD OF APPEALS**  
380 Great Road  
Stow, Massachusetts 01775-2127  
978-897-2784

**March 21, 2022**

**NOTICE and DECISION**  
**92/102 Great Road**

**SPECIAL PERMIT**

**Applicant:** Richard Presti

**Owner:** Presti Family Limited Partnership

**Address:** 92/102 Great Road  
Stow, MA 01775

**Premises Affected:**

92/102 Great Road, Stow, shown on Stow Property Map Sheet R-29 as Parcel No. 83 and 85A containing 4.5+/- acres

**Property Deed:** Middlesex Registry of Deeds Book 44389, Page 43

**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 a carport on a lot containing a pre-existing, non-conforming use.

A duly posted public hearing was held online via Zoom Web Conferencing Service on February 7, 2022. The Public Hearing was continued without testimony to March 7, 2022 at 380 Great Road, Stow and online via Zoom Web Conferencing and closed at the conclusion of the March 7, 2022 session. Zoning Board of Appeals Members Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore 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
- Project Description
- Detail Sheet for 20' Wide Arrow Carport

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- Plot Plan indicating location of Auto Repair Garage, Septic System and proposed carport.
2. Correspondence received from others
- Letter dated 01/21/22 from Mark Forgues
  - Email dated 03/01/22 from Dorothy Granat
  - Email dated 03/02/22 from Kathleen Fisher
  - Email dated 03/07/22 from Kathleen Fisher

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

1. The existing use is pre-existing non-conforming as confirmed in the Zoning Board of Appeals Decision dated December 20, 2017.
2. The existing structures, auto sales room and repair garage conform to the front, side and rear yard setback requirements of the present Zoning Bylaw. **(Check Setback to 1 White Pond Road)**
3. The newly constructed carport conforms to the front, side and rear yard setback requirements of the present Zoning Bylaw and does not intensify any existing nonconformities.
4. The requested carport was constructed without benefit of a building permit or special permit under Section 3.9 (Non-Conforming Uses and Structures) of the present Zoning Bylaw.
5. The Applicant described the need for the carport to provide for a covered area for Car Lot Express to prepare a vehicle for delivery (pre-check, inspection, vacuum interior, wipe down, put license plates on, etc.) and to have the ability to deliver a vehicle comfortably to a customer and not be directly in the hot sun or inclement weather.
6. An abutter to the property requested that the Zoning Board of Appeals require a site plan addressing the following statements:

**(Does the Board want to expand the scope beyond the specific application request for a carport and require submission of a site plan**

- 5.1 The Application was not filled out in full and does not show a locus plan, general characteristics including zoning groundwater protection or property line setbacks, or an adequate description of what the plan is for.

**The Board finds the application for the newly constructed carport, as conditioned herein, is minor in nature and therefore accepts the Application as submitted.**

- 5.2 A Site Plan indicating the location of 144+ vehicles as approved by Class II licenses issued by the Select Board in compliance with the current zoning bylaw.

**The Board finds the application for the newly constructed carport, as conditioned herein, is minor in nature and therefore accepts the Application as submitted.**

**The Board has no jurisdiction as the issuance of Class II Licenses.**

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- 5.3 The Application indicates the car lot is located on 4.5 acres which includes property Map R29, parcel 85A which is not grandfathered and therefore, the car lot should be limited to 1.6 acres as shown on Assessor's Map R29, as parcel 83. This lot does not meet the grandfathering laws and no special permit has been approved for use of this property. Any new business opening on a non-grandfathered property needs a special permit.

**The Board finds the December 20, 2017 Zoning Board of Appeals Decision, currently under appeal, relates to properties described as 84-92 Great Road as shown on Assessor's Map R-29, Parcels 85A and 83, therefore the car lot use is grandfathered as to both parcels 85A and 83. As the December 20, 2017 Decision is currently under appeal, the Board awaits a determination by Land Court.**

- 5.4 The existing twenty foot right of way to be kept open for access to the home at 84 Great Road.

**Although not the subject of this Application. The Board finds the twenty-foot right of way appears to be intended to provide for access to the residence at 84 Great Road, currently owned by the Applicant. The Board further finds that the right of way was extinguished as indicated in a deed filed at the Middlesex South Registry of Deeds in Page 20942, Page 298.**

- 5.5 Austin Sweeney/Yolo Moto requested a license for 10 outside spaces. The license was issued for four outside spaces. If expanded, where would the additional six spaces be located?

**The Board makes no determination as to unknown expansions that may be proposed at a future date. The Board has no jurisdiction on issuance or expansion of Class II Licenses issued by the Select Board.**

- 5.6 All vehicles, whether temporary or on display should be on permanent asphalt that does not allow gas, oil, or other fluids to seep through over time. The current lot was recently partly stripped out and reground tar was put in place of asphalt which is not liquid tight to stop groundwater contamination.

**The Board finds the newly constructed carport is located on a paved surface.**

**The Board finds the Application is solely for the newly constructed carport and is not relevant to other disturbed areas on the site. The Board has no jurisdiction over enforcement issues, if any.**

- 5.7 Compliance with Board of Health inspection as required by Select Board Class II License for Car Lot Express (80 vehicles)

The Board finds there is no record on file in response to the required inspection by the Select Board for the Class II License for Car Lot Express. However, the Nashoba Associated Boards of Health did conduct a site investigation at 92 Great Road on November 26, 2021.

In its report, dated December 13, 2021, Nashoba Associated Boards of Health stated the following items needed to be addressed:

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- Have a plumber inspect the trough in the garage bay to ensure it's not connected to the plumbing.
- Mechanics on site need to obtain a hazardous waste generator's IDs
- Cease the on-site washing of vehicles.
- Provide a copy of the deactivation paperwork from DEP for the Public Water Supply.

**The Board finds the Application relates solely to the newly constructed carport. Compliance with the above noted concerns are under the jurisdiction of the Select Board and Board of Health.**

- 5.8 Compliance with exterior lighting within the carport and throughout the entire site.

**The Board finds the December 20, 2017 Zoning Board of Appeals Decision, currently under appeal, relates to the entire site and requires compliance with Section 3.8.1.5 of the Zoning Bylaw. As the December 20, 2017 Decision is currently under appeal, the Board awaits a determination by Land Court.**

**The Board further finds the application currently before the Board relates solely to the newly constructed carport and was not addressed in the December 20, 2017 Decision. Therefore, lighting related to the carport shall comply with Section 3.8.1.5 (Exterior Lighting) of the current Zoning Bylaw.**

7. During the Public Hearing concern was raised about the carport being used to wash cars. The Applicant advised that washing of cars on site has ceased since notice from the Board of Health.
8. During the Public Hearing an abutter noted that it should be known where cars are now being washed.

**The Board has no jurisdiction over off-site car washing.**

9. During the Public Hearing an abutter noted concern about activity conducted on the site since the appeal of the 2017 Decision. The site has been stripped, there is no indication as to who parks where, handicap access, fire lanes or snow storage. Trash has been expanded into the back next to an abutting property and a monitoring well. The Applicant stated the carport is not located near the well or the street.

**The Board finds the Application relates solely to the newly constructed carport and is not relevant to other disturbed areas on the Site**

**The Board has no jurisdiction over enforcement issues, if any.**

10. During the Public Hearing an abutter noted concern about water quality as there is a large aquifer that covers Lower Village and she called DEP who visited the site.

**The Board finds that concerns raised by DEP were addressed in the Nashoba Associated Boards of Health report, dated December 13, 2021. The special permit for the carport does not affect the aquifer.**

11. During the Public Hearing an abutter stated that the carport should be removed until a

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Special Permit is granted.

**By issuance of this Special Permit, the Board finds no need for removal of the carport.**

12. **In accordance with MGL, C. 40A, section 6 and Section 3.9.6 of the Stow Zoning Bylaw, and as determined by the December 20, 2017 Decision, the Board finds the existing use is lawfully preexisting nonconforming an the newly constructed carport conforms with the dimensional requirements of the current bylaw.**
13. **WAIVER – The Board accepts the Application as submitted and waives the requirement for a detailed site Plan. The Application for the newly constructed carport is minor in nature and does not warrant submission of a site plan for the entire site. The carport provides cover for an existing parking space and does not reduce or expand the existing parking areas.**
14. 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**

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Special Permit, the Board, by roll call vote of the five members present throughout the proceedings (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore) **VOTES TO GRANT / DENY A SPECIAL PERMIT** to allow a carport subject to the following conditions:

1. Access to the residence at 84 Great Road shall be maintained.
2. Lighting attached to or within the carport shall comply with the requirements of Section 3.8.1.5 (exterior lighting) of the current Zoning Bylaw.
3. Use of the carport shall be limited to those uses described in the Application for purposes of having the ability to deliver a vehicle comfortably to a customer and not be directly in the hot sun or inclement weather. Such activities include preparing a vehicle for delivery including pre-check, inspection, vacuum interior, wipe down, put license plates on, etc.  
There shall be no car washing on site.
4. Use of the carport shall result in no pollution or contamination of the GROUND WATER, a GROUND WATER recharge area, a well, pond, stream, watercourse or inland wetland.
5. The carport shall result in no redirection of existing surface water runoff such that there would be material impact on abutting parcels or downstream properties;
6. The carport shall result in no transport by air or water of erodible material beyond the boundary line of the LOT.
7. The carport use shall comply with conditions set by other Town Departments, Boards and Commissions.
8. The carport shall comply with all applicable requirements of the Zoning Bylaw.
9. 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

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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.

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

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Ernest E. Dodd  
Zoning Board of Appeals Clerk

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Linda E. Hathaway  
Stow Town Clerk