



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

**February 7, 2021**

**NOTICE and DECISION  
122 South Acton Road**

**SPECIAL PERMIT**

**Applicant:** Nicholas Hatch  
Adrienne Hatch

**Owner:** Nicholas and Adrienne Hatch

**Address:** 122 South Acton Road  
Stow, MA 01775

**Premises Affected:**

122 South Acton Road, Stow, shown on Stow Property Map Sheet R-21 as Parcel No. 42-6 containing .92 Acres.

**Property Deed:** Middlesex Registry of Deeds Book 49426, Page 341

**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 an above ground swimming pool and deck on a pre-existing, non-conforming lot.

A duly posted public hearing was held online via Zoom Web Conferencing Service on January 3, 2021. The Public Hearing was continued to February 7, 2022 and closed at the conclusion of the February 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
- Plot Plan
- Project Description (email dated December 13, 2021 from Adrienne Hatch)

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#### Other Correspondence

- Letter dated December 26, 2021 from Ulrich Thomann and Nicole Strange-Thomann, 128 South Acton Road.
- Plan entitled "Plan of Land in Stow, Mass, owned by Wallace M. Fletcher, Marion M. Fletcher, dated February 22, 1973
- Email, dated February 7, 2022 from Nicole Stange-Thoman

#### Findings of the Board:

1. The property is located in the Residential District and is comprised of 42,0235 sq. ft. with 150-feet of frontage.
2. The lot is pre-existing non-conforming as to lot size and frontage requirements of the present Zoning Bylaw.
3. The existing structure (single-family dwelling) conforms to the front, side and rear yard setback requirements of the present Zoning Bylaw.
4. The proposed above ground swimming pool and deck does not intensify any existing nonconformities.
5. During the Public Hearing, the following concerns were raised by abutters at 128 South Acton Road which is located downhill from the proposed swimming pool:
  - Lack of detail in the application concerning type, size and shape, installation and maintenance of the proposed swimming pool.
  - Risk of flooding onto their property should the proposed swimming pool overflow or develops a leak.
  - Impact on groundwater storage and well water levels due to filling of the proposed swimming pool.
  - Risk of pollution and odor from chlorination for maintenance of the proposed swimming pool.
  - Noise exposure from use of the proposed swimming pool.
  - Overall negative impact of the proposed swimming pool and its use on property value, ability to use and enjoy their property and adverse impact of the proposed project on the immediate surrounding environment (water, soil, plants and wildlife).
6. Board members conducted a site visit and discussed their observations at the February 7, 2022 session of the public hearing.

The Board Finds the proposed location for the pool meets the property line setback requirements of the current Zoning Bylaw.

The Board Finds that, based on topography of the lot, drainage in the area flows primarily toward the Applicant's driveway and South Acton Road. Although the abutters property at 128 South Acton Road is protected by a short berm, there is small area between the abutter's house and the berm where water could flow during an unlikely catastrophic event.

7. During the public hearing it was noted that the pool will initially be filled by a tanker truck and water will be kept in the pool year-round which is common for an above ground pool to maintain integrity of the structure.
8. During the Public Hearing it was noted that the pool filter is routinely backwashed and therefore should be located on the opposite side of the pool from property at 128 South Acton Road.

Abutters at 128 South Acton Road requested that the Board condition the special permit to require that the Applicant prove that the proposed project will not be detrimental to the abutting property and its immediate environment and that an independent professional evaluation (in person) of the applicants' proposal and its impact on property at 128 South Acton Road, including an official record/statement or the re-measurement of the actual property boundaries.

The Board finds adequate protection is provided for the abutting property at 128 South Acton Road.

Property line setback requirements will be confirmed with a formal plan with an application for building permit. Existing wells will not be impacted as the pool will be filled by a tanker truck. As water will be maintained in the pool year-round there should be no cause for runoff from the pool being drained.

In the event of a major leak the water would likely go from the location of where the rupture occurs and then will spread out.

9. 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, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore) **VOTES GRANT a SPECIAL PERMIT** to allow construction of an above ground swimming pool and deck 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.
5. The proposed construction shall comply with conditions set by other Town Departments, Boards and Commissions.
6. The proposed construction shall comply with all applicable requirements of the Zoning Bylaw.
7. The pool filter shall be located on the opposite side of the pool from the property at 128 South Acton Road.
8. 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

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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.

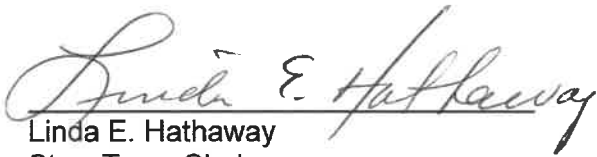


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Ernest E. Dodd  
Zoning Board of Appeals Clerk

*February 10 2022*

Date Received and Filed  
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Linda E. Hathaway  
Stow Town Clerk