

TOWN OF STOWE
BOARD OF ADJUSTMENT

FINDINGS OF FACT AND CONCLUSIONS OF LAW

IN RE: Spruce Peak Realty, LLC (Owner)
7320 Mountain Road
Stowe, Vermont 05672

BA 14-002-23

Mt. Mansfield Company, Inc. (Applicant)
5781 Mountain Road
Stowe, Vermont 05672

PROCEDURAL HISTORY:

The Board of Adjustment received this application on May 21, 2003. The application was warned in the Stowe Reporter and posted on May 29, 2003. Public hearings were held on June 17, 2003 & July 2, 2003. This decision was rendered at the Board's regularly scheduled hearing held on August 5, 2003.

OVERVIEW OF APPLICATION:

1. This application is the first phase of what will become a much larger resort development known as the Spruce Peak Hamlet at Stowe Mountain Resort. As envisioned, that Hamlet will consist of a mixture of single-family homes, condominiums, lodging, commercial & retail uses, and resort related infrastructure and amenities.
2. Spruce Peak Realty LLC has applied for authorization to construct the first six (6) structures in a nineteen (19) structure condominium complex to be located in the "Upper Townhouse" area as shown on the overall site plans (Sheet C-3.2 – dated 4/22/03). This complex is to be known as the "Mountain Cabins". As proposed, each structure is a duplex, and as such, this application will result in twelve new dwelling units located on a spur driveway which will ultimately serve nineteen (19) townhouses, containing 38 individual units. The driveway is twenty (20') in width and dead ends in a cul-de-sac.
3. As submitted, this application seeks authorization for construction of buildings #'s 27 through 38.
4. The development is part of a Ski - PUD, which has received the approval of the Stowe Planning Commission on May 5, 2003. That approval created the lot upon which the condominiums will be located, and assigned the required zoning densities to that lot. The approval of the SKI-PUD is a prerequisite of approval by the DRB.
5. The project roadways, utilities, infrastructure, and related items were approved by the Planning Commission as a part of the Ski - PUD. The Board of Adjustment is reviewing this project under the conditional use criteria of the Ordinance.
6. As required by Zoning Regulations of the Town of Stowe (last revised March 19, 2002), the Board reviewed this application pursuant to Section 4.7 (Conditional Use Standards), Section 4.9 (Site Plan Review), and Section 18 – Ski - PUD as a new Conditional Use.
7. The following plans and specification were submitted to and reviewed by the Board, and are by reference a part of this decision:

Sheet C3.2	Northeast Site Grading & Drainage Plan	(4/22/03)
Sheet LN-5	Landscaping Plan	(5/15/03)
Narrative	Written Narrative – Section 4.7(2) of Zoning Ordinance	(5/21/03)
Letter	Letter to applicant from TRC	(5/13/03)
Document	Municipal Impact Questionnaire:	(8/26/99)
Letter	Ability to Serve Letter (Sewer Dept.)	(10/15/02)
Letter	Ability to Serve Letter (Water Dept.)	(03/03/03)
Document	Exterior Materials Study	(06/17/03)
Document	Mountain Cabins Slope Study	(06/26/03)
Letter	Applicant’s Mid Hearing Response to DRB	(06/30/03)
Permit	State of Vermont Storm water Discharge Permit	(05/23/03)
Plans	Building Plans, Floor Plans & Construction Details	(06/23/03)
Plans/Specifications	Exterior Lighting Information – Location & Type	(07/02/03)

STANDARDS OF REVIEW:

4.7(2)(A) – Standards of review (Conditional Use Applications): Pursuant to the requirements of the Stowe Zoning Ordinance, all Conditional Use Applications are reviewed under the requirements of Section 4.7(2)(A):

8. **Section 4.7(2)(A)(1) – Capacity of existing or planned community facilities & services:** The project is being constructed as part of the overall Spruce Hamlet, a major resort expansion at the Mt. Mansfield Company. The Board is reviewing a small portion of the whole project and must independently reach positive findings on this issue. This project requires municipal water and sewer services, both of which have been expanded and extended to the resort. At full build out, the resort will contain over 400 residential units clustered at the base of the ski resort. The development of the overall project will place significant demands upon community facilities and services, most notably the Public Safety Services (Police, Fire & Rescue). Section 18.4(1)(C) requires that a Ski-PUD provide “Supplementary fire and police protection.” Currently the resort has proposed to install fire alarms and sprinklers in the new structures as a method of mitigating the potential for impact. The Mt Mansfield Company also maintains a private security operation at the resort. In addition, the resort is planning a phased project which will be constructed over as many as ten years. The applicant has received the approval of the Stowe Technical Review Committee as evidenced in a letter dated 5/13/03.

Conclusion: Based on the findings above, the Board concludes that there will be no adverse impact on the capacity of existing or planned community facilities and services as a result of this phase of the application. This assessment will be reviewed during each future phase of the project, and if the cumulative affects from the project become unduly adverse, the Board will address those affects at that time.

9. **Section 4.7(2)(A)(2) – Traffic on roads and highways in the vicinity:** As part of master planning the project with the District V Environmental Commission and the Stowe Planning Commission, the applicant has prepared a traffic study and offered increased funding to the public transit system. The Board is reviewing a small portion of the whole project and must independently reach positive findings on this issue.

Conclusion: Based on the findings above, the Board concludes that while there will be increased traffic from this project, this increase will be minimal, since this proposal is for only 12 units. As such the Board finds that there will be no undue impact on traffic congestion or safety on area roads and highways in the vicinity from this phase of the project. This assessment will be reviewed during each future phase of the project, and if the cumulative affects from the project become unduly adverse, the Board will address those affects at that time.

10. **Section 4.7(2)(A)(3) – The character of the area affected:** The condominium project is located on a partially wooded hillside above the existing Spruce Peak Base Lodge and parking areas. The construction of the resort planned improvements will result in significant changes to the entire base lodge area, including extensive clearing, re-grading, and construction of multiple structures, utilities, roadways, and associated infrastructure. This construction will be occurring internally to the resort, and the project layout and architecture are in keeping with the ski resort theme

Conclusion: Based on the findings above, the Board concludes that while the character of this area will be changed by the project, the change is carefully planned and is in keeping with a logical expansion of the resort. The layout of the site, clearing restrictions, architecture and the use of muted natural colors are instrumental in keeping these changes from becoming unduly adverse. As such, the Board finds that there is no undue adverse impact on the character of the area as the result of this phase of the project.

11. **Section 4.7(2)(A)(4) – Bylaws then in effect:** The Zoning Regulations do permit the proposed use (Reference Section 18 – Ski Planned Unit Development). Section 18.4(4)(D) Standards of Development states that “development should not occur on areas characterized by slopes of 20% or greater”. A slope analysis prepared by the applicant shows that the slope of the site for one building (units 35/36) exceed the recommended 20% maximum. This slope is at the rear of the units. In this location, the Landscaping plan (Sheet LN-5 dated October 2000) shows that the existing vegetative cover is allowed to remain very close to the rear (downhill) side of the building. The applicant testified that the existing vegetative cover will remain as shown on that plan. The applicant has already received approval from the Planning Commission, as well as all necessary approvals for municipal services (water, sewer, power).

Conclusion: Based on the findings above, the Board concludes that, in this case, if the existing vegetative cover remains intact and undisturbed as shown on the Landscaping plan, then the undesirable effects of building on this particular steep slope will be mitigated. In making this finding, the Board is not making a general finding on steep slopes with regard to this or any other future projects. The Board also concludes that overall, the project as proposed, complies with the purposes of the Zoning Ordinance, and is in conformance with Bylaws then in effect.

Section 4.7(2)(B) – Other Standards of Review:

12. **Section 4.7(2)(B)(1) – Will Not Cause Unreasonable Soil Erosion or Reduction in the Capacity of the Land to Hold Water:** The applicant has submitted a proposed site and grading plan (Sheet C3.2 dated 4/22/03). That plan provides for erosion control on the site, and for the management of storm water runoff. Storm water runoff is to be collected into a series of surface ditches and storm drains and transmitted to storage ponds for treatment. These plans have been reviewed at the State level and a Storm Water Discharge Permit has been issued.

Conclusion: The Board will accept the issuance of the State Storm Water Discharge Permit as proof of compliance with this requirement, and therefore concludes that the project will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water.

13. **Section 4.7(2)(B)(2) – Undue Adverse Effect on the Scenic or Natural Beauty of the Area:** The proposed development is located on a wooded hillside above the existing base lodge and parking area. The applicant is proposing to remove trees on the hillside, re-grade the area, and to construct roadways, infrastructure, and the condominiums themselves.

Conclusion: Based on the findings above the Board concludes that this construction will likely have an adverse effect on the scenic and natural beauty of the area. The Board further concludes that this negative effect is mitigated by the applicant’s plans to closely restrict clearing and regarding, the tightly clustered buildings, and the architecture and materials to be used.

14. **Section 4.7(2)(B)(3) – Undue Water, Noise or Air Pollution:** As outlined in Item 11, the applicant has obtained the necessary Storm Water Discharge Permit from the Agency of Natural Resources. After construction is complete, there are no activities proposed as part of this application which would result in air or water pollution.

Conclusion: Based of the findings above, the Board concludes that there will be no undue air or noise pollution, and will rely upon the Agency of Natural Resources expertise in concluding that there will be no undue water pollution.

15. **Section 4.7(2)(B)(4) – Adequacy of Driveway Access:** Access to the condominium project is over an internal access driveway leading from Vermont Route 108, to and through the SKI-PUD. To allow flexibility and assure a cohesive development project, a SKI-PUD is exempted from most of the minimum standards of the underlying Ordinance. However, the Board must still find that the proposed project design has been completed in a manner which assures proper and safe access to the proposed project. This development will eventually contain thirty-eight (38) dwelling units in close proximity to one another, and are accessible only along a single 20' wide, dead-end, access roadway. Originally, the applicant proposed to allow parking on this service driveway to supplement the parking at each residential unit. In addition, the proposed buildings are located in close proximity to the driveway, reducing the available maneuvering room within the development.

Conclusion: Based of the findings above, the Board concludes that any action which restricts vehicular access would be considered an adverse impact on this criterion. The Board is concerned that parking on the service driveway would, at a minimum, reduce the traveled way down to a single narrow lane. Were cars to be parked incorrectly, it is possible that the entire area might become inaccessible by larger vehicles, including emergency services and snow removal equipment. As such, the Board will place conditions upon its approval to assure proper driveway access exists for this development. The Board concludes that the project will only have adequate driveway access if the proposed driveway is kept clear of piled snow and parked cars at all times.

16. **Section 4.7(2)(B)(5) – Shared Access:** The internal roadways and this driveway serve multiple uses within the resort, and are a shared access.

Conclusion: Based on the findings above, the Board concludes that the applicant has made provisions for the use of shared access.

17. **Section 4.7(2)(B)(6) – Circulation and Parking:** Parking in this section of the development is extremely limited, with only the minimum required parking (two spaces per unit) being provided at the development site. Furthermore, the Board notes that the proposed parking is “stacked” meaning that one car parked at each unit will be blocked in by the car behind it. The Board finds further that there is a very high probability of a higher than average parking demand for these units as they are 4 and 5 bedroom condominiums located directly slope-side at Spruce Peak. It is probable that extended families, or multiple family groups will utilize these units at peak times, compounding the parking difficulty. The applicant has testified that it will require any additional automobiles to be parked at one of the satellite parking lots and will not allow parking along the internal driveway. However, the applicant is not proposing any shuttle service from the “Mountain Cabins” project to or from those satellite lots. The applicant has testified that it will truck away accumulated snow from the roadsides after snow events to assure that a 20' traveled width is maintained, and that the cul-de-sac remains free and clear.

Conclusion: The applicant has met only the minimum standard for proper circulation and parking within the development of this phase. The Board remains concerned about the functionality of the proposed parking arrangements along this narrow driveway (see Item 14), and will closely review this topic in

subsequent applications for continued development at the "Mountain Cabins" site. The Board will impose conditions relating to this criterion to assure that proper circulation is maintained.

18. **Section 4.7(2)(B)(7) – Pedestrian Circulation and Access:** The applicant is proposing a series of walking paths connecting the condominiums to the base lodge area. This increases the probability that residents and guests will walk to these amenities (and to the satellite parking areas). These paths will be maintained year-round and will provide connections between these residential units and the other amenities at the resort. There are no formal sidewalks proposed in this area of the resort.

Conclusion: Based upon the findings above. The Board concludes that the applicant has made adequate provisions for pedestrian circulation and access around the site, provided that the walking paths are maintained so as to be passable year round.

19. **Section 4.7(2)(B)(8) – Landscaping and Screening:** The applicant has provided a grading plan showing the proposed limits of clearing of the existing forest. A planting and landscaping plan was also presented demonstrating additional mitigation in this location (Sheet LN-5 – Landscaping Plan).

Conclusion: The applicant has, through very tight controls on building location and clearing limits, protected significant areas of existing forest cover. As discussed in Item 10, the maintenance of this cover is fundamental to granting an approval to build on this site due to the steepness of the slope. Therefore, providing that the removal of cover is limited to those areas as shown on the site plan, the Board concludes that there is adequate screening at this location.

20. **Section 4.7(2)(B)(9) - Storm water Management:** The applicant has submitted engineering plans and details for the project (Sheet C3.2, dated 04/22/03). There are extensive plans for storm water management as part of this project. Storm waters are to be collected and transmitted to storm water retention ponds for disposal and treatment. The plans have been reviewed and approved by the State of Vermont (Reference the Storm water Discharge Permit dated 5/23/03).

Conclusion: Based upon the findings above, the Board concludes that the applicant has made adequate provisions for storm water management.

Section 4.9(1) – Site Development Plan Review Procedure

The following Findings of Fact and Conclusions of Law were reached under the Site Plan Review criteria:

21. **Section 4.9(1)(A) – Compatibility with Stowe Municipal Plan:** The Stowe Municipal Plan supports improvements to and expansions of the resort economy in the Town of Stowe. This is the first phase of a much larger development project, the final design of which is the result of a collaborative process between the Town and the developer, along with local and State agencies and other interested parties.

Conclusion: Based upon the findings above, the Board concludes that the application is compatible with the Goals and Objectives of the Stowe Municipal Plan.

22. **Section 4.9(1)(B) – Adequacy of Driveway Access:** The project is to be served by a new internal access driveway, which will be constructed through the development to serve the various phases. This main access driveway is designed as a new private roadway. The main driveway into the Spruce Peak development will enter the State Highway from Route 108. The "Mountain Cabins" phase one condominium complex is served by a dead-end service driveway 20' in width. See Item 14 for a fuller discussion. The applicant has agreed through restrictions in the condominium association bylaws and other actions, to keep the driveway clear of obstructions, and to prohibit parking on the driveway. This parking prohibition will be actively enforced by the applicant to assure the driveway remains clear.

Conclusion: Based upon the findings above, the Board concludes that if the self imposed parking restrictions on this project are rigorously enforced, the applicant has made provisions for adequate driveway access. See Item 14 for a fuller discussion of the driveway issue.

23. **Section 4.9(1)(C) - Shared Access:** The applicant is proposing one main access driveway, which will serve the majority of the proposed development. This access drive to the condominiums themselves is a shared access roadway.

Conclusion: Based upon the findings above, the Board concludes that the applicant is providing a shared access driveway.

24. **Section 4.9(1)(D) – Circulation and Parking:** Parking in this section of the development is extremely limited, with only the minimum required parking (two spaces per unit) being provided. Furthermore, the Board notes that the proposed parking is “stacked” meaning that one car parked at each unit will be blocked in by the car behind it. The Board finds further that there is a very high probability of a higher than average parking demand for these units as they are 4 and 5 bedroom condominiums located directly slope-side at Spruce Peak. It is probable that extended families, or multiple family groups will utilize these units at peak times, compounding the parking difficulty. The applicant has testified that it will require any additional automobiles to be parked at one of the satellite parking lots and will not allow parking along the internal driveway. However, the applicant is not proposing any shuttle service from the “Mountain Cabins” project to or from those satellite lots. The applicant has testified that it will truck away accumulated snow from the roadsides after snow events to assure that a 20’ traveled width is maintained, and that the cul-de-sac remains free and clear.

Conclusion: Based upon the findings above, the Board concludes that the applicant has met only the minimum standard for adequate circulation and parking. The Board remains concerned about the functionality of the proposed parking arrangements, and will closely review this topic in subsequent applications for continued development at the “Mountain Cabins” site. The Board will impose conditions relating to this criterion to assure that proper circulation is maintained.

25. **Section 4.9(1)(E) – Pedestrian Circulation and Access:** The applicant has proposed a number of pedestrian paths connecting these condominiums with the balance of the resort. These paths will be maintained on a year round basis.

Conclusion: Based upon the findings above, the Board concludes that the applicant is providing for adequate pedestrian circulation and access, provided that the walking paths are maintained so as to be passable year round.

26. **Section 4.9(1)(F) – Landscaping & Screening:** The applicant has planned to closely restrict the amount of clearing on the property to minimize the disturbance of the slope and to reduce the visual impact on the hillside itself. The applicant also proposes substantial supplemental plantings (Sheet LN-5, dated October 1, 2000)

Conclusion: The applicant has, through very tight controls on building location and clearing limits, protected significant areas of existing forest cover. As discussed in Item 10, the maintenance of this cover is fundamental to granting an approval to build on this site due to the steepness of the slope. Therefore, providing that the removal of cover is limited to those areas as shown on the site plan, the Board concludes that there is adequate screening at this location.

27. **Section 4.9(1)(G) – Storm Water Management:** The applicant has submitted engineering plans (Sheet C3.2) and details for the project, and a State storm water discharge permit has been issued.

Conclusion: Based on the findings above, the Board concludes that the applicant has adequately addressed the needs for storm water management and treatment at this site.

DECISION

Based upon the foregoing Findings of Fact, in re: **#BA 14-002-23 (Mt. Mansfield Company & Spruce Peak Realty, LLC)**, the Board took the following action:

A motion was made by Mr. Coppock and seconded by Mr. Brink to approve the application with the following conditions:

CONDITIONS OF APPROVAL

1. Any change to the plans or the proposed use of the property shall be brought to the Zoning Administrator's attention, prior to its enactment, for a determination if an amendment is required.
2. This application is approved pursuant to the plans, specifications, and site plans admitted into evidence. The project approved shall be completed in a manner which is consistent with the Board's findings and conclusions and the approved plans and specifications.
3. A copy of the easement which allows access and construction on the property shall be provided for the Board's review and approval.
4. The Board shall receive a copy of the "Mountain Cabin" Association Bylaws as it pertains to parking for review prior to the issuance of a Certificate of Occupancy on the first unit.
5. Parking shall be prohibited on the new street serving the condominiums, and the applicant shall install signs clearly prohibiting parking. This prohibition is to be rigorously enforced.
6. With regards to units 35/36 which are to be constructed on slopes over 20%, such construction is allowable only because the applicant testified that the existing vegetative cover as shown on the landscaping plan (Sheet LN-1 dated October 2000) will remain, and that this will not be disturbed either before, during or after construction. If the applicant determines that any additional clearing is needed, the plans for such clearing shall be presented to the Board for review and approval prior to implementation.
7. The pole lighting shown on the landscaping plan (Sheet LN-1 dated October 2000) will not be installed during this phase of construction.
8. All lighting installed at this site shall conform to the Town of Stowe Zoning Ordinance, and shall at a minimum shall meet the following requirements:

Outdoor: All exterior lighting on the property shall be installed and operated in accordance with the requirements of Section 4.4 of the Zoning Ordinance. All lighting fixtures shall be of a design which prevents the light source, directly or indirectly, from being apparent beyond the area being illuminated, and all light fixtures shall be shielded and/or aimed so that they do not cast direct illumination or cause glare beyond the property boundary. In no instance shall the installation or operation of the lighting approved herein cause the source of illumination to be visible from a public roadway or from a neighboring property.

Interior: All interior lighting, and the lighting of entryways, signs, or similar features, shall be done in a manner which prevents the light source from being visible from a public roadway or a neighboring property, nor shall it illuminate or cause glare beyond the property boundary.

The Zoning Administrator will not issue a Certificate of Occupancy for the use approved herein until such time as all of the outdoor lighting has been installed, and has been inspected during the evening hours for compliance with these requirements.

VOTING IN FAVOR: MR. BRINK, MR. COPPOCK, MR. IZZO, MR. WALTON, MR. ZBIKOWSKI, AND MR. AUMAND. VOTING TO DENY: NONE. VOTING TO ABSTAIN: NONE. ABSENT: MR. MORTON

The motion carries, the application is approved.

Dated at Stowe, Vermont this the 5th day of August, 2003.

By: _____
C. Bryant Brink, Chairman
Stowe Board of Adjustment

Any interested person may appeal this decision to the Vermont Environmental Court within thirty (30) days in accordance with 24 V.S.A. S 4471.

The foregoing represents the decision of the Stowe Board of Adjustment, and is NOT a permit. A zoning permit will not be issued by the Administrative Officer until all other necessary approvals have been obtained. Commencement of the activities described within this decision without a valid permit constitutes a violation of the Stowe Zoning Regulations as provided in Section 23.4.

THE USE OR OCCUPANCY OF ANY BUILDING OR ACTIVITY APPROVED IN THIS DECISION REQUIRES THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY. NO CERTIFICATE OF OCCUPANCY WILL BE ISSUED UNTIL SUCH TIME AS ALL OF THE CONDITIONS OF THIS DECISION HAVE BEEN FULFILLED.