

TOWN OF STOWE
DEVELOPMENT REVIEW BOARD
Findings of Fact & Conclusions of Law



PROJECT: 5859

SUBJECT PROPERTY: Werner Road; 07-104.000

PROPERTY OWNER: Brush Hill LLC
PO Box 96
Stowe, VT 05672

APPLICANT: Bobby Roberts, PO Box 96, Stowe, VT 05672

APPLICATION:

(Application materials on file at the Stowe Town Office, procedural history attached.)

The Applicant, Bobby Roberts on behalf of Brush Hill LLC (herein referred to as the "Applicant"), has requested final subdivision review and planned residential development (PRD) approval to amend a previously approved PRD and subdivision. The Applicant proposes to dissolve Lot 3 (± 2.0 acres) into Lots 2 & 5 and further subdivide a ~ 2.0 -acre parcel off Lot 4. As proposed, Lot 2 will become ± 4.4 acres, Lot 5 will become ± 2.5 acres and Lot 4 will be subdivided to include a ± 2.0 -acre parcel (as measured to the road right-of-way) and ± 11.3 -acre parcel consisting of an existing single-family dwelling and conserved area as delineated on the provided survey plat. Lots 2 & 5 are currently undeveloped but have been designed to accommodate single-family dwellings. The ± 2.0 -acre parcel is proposed to remain undeveloped at this time but has been designed to accommodate a residential house-site. No additional lots and no changes to access or previously approved open space/conservation easement are proposed under this application. Lots 2 & 5 and the existing residential dwelling on Lot 4 have access via 50' private road and utility easement off from Brush Hill Road.

The 8-lot PRD/subdivision received final approval from the Board in a decision dated October 13, 2009 (Project 4082). The approved plat was signed by the Board Chair on February 16, 2010 and recorded in the town land records. The subject parcel(s) are located on Werner Road (#07-104.000), in the Rural Residential 2 (RR2), Rural Residential 5 (RR5), and the Ridgeline and Hillside Overlay (RHOD) zoning districts. The application has been reviewed by the Development Review Board (DRB) under applicable standards of the Town of Stowe Zoning Regulations (as adopted June 12, 2017) and the Town of Stowe subdivision regulations (as amended through July 16, 2012) for the purpose of conditional use, PRD, and subdivision review.

The Development Review Board's ~~procedural history~~ and relevant findings are attached.

REVIEW PROCESS:

(Application materials, hearing notices, meeting minutes on file at the Stowe Town Office.)

An application for PRD amendment and final subdivision review was filed by Applicant Bobby Roberts, on July 23, 2018. The application was accepted as administratively complete by Town of Stowe Zoning

Director Sarah McShane and referred to the Stowe Development Review Board for a public hearing. A public hearing of the DRB was scheduled for August 21, 2018 and warned by the Zoning Director in accordance with Section 2.14 of the regulations and 24 V.S.A. §4464. The hearing notice was published in the Stowe Reporter on August 2, 2018.

The public hearing to consider the application convened on August 21, 2018 at the Akeley Memorial Building, 67 Main Street, with a quorum of the DRB present. No ex parte communications or conflicts of interests were reported.

The following persons attended and participated in the hearing process, and may be afforded status as interested persons with rights to appeal:

- Applicant, Bobby Roberts, PO Box 96, Stowe, VT 05672
- Paul Sakash- No address provided

The following materials were submitted in support of the application and entered into the hearing record:

- Town of Stowe Development Application (2 pages); dated 7/21/2018;
- Survey plat titled 'Consolidate Lot 3 into Lots 2 & 5, Subdivide Lot 4- Brush Hill Properties LLC' prepared by Little River Survey Company LLC, drawn by GEB, Job 14061, Sheet 1 of 1, dated April 2018;
- Previously approved DRB decision, dated 10/13/2009; (staff)
- Previously approved PRD/Subdivision Plat, dated 2/16/10 by DRB Chair; (staff)
- [Revised] Survey plat titled 'Consolidate Lot 3 into Lots 2 & 5, Subdivide Lot 4- Brush Hill Properties LLC' prepared by Little River Survey Company LLC, drawn by GEB, Job 14061, Sheet 1 of 1, dated April 2018.

The DRB continued the hearing to a time and date certain, Tuesday, September 4, 2018 at 5:00 PM pending additional information from the Applicant. In advance of the September 4th hearing, the following additional materials were submitted and entered into the hearing record:

- DRB decision (Project 5533), dated 2/14/2017; (staff);
- Survey plat titled 'Consolidate Lot 3 into Lots 2 & 5, Subdivide Lot 4- Brush Hill Properties LLC' prepared by Little River Survey Company LLC, drawn by GEB, Job 14061, Sheet 1 of 1, dated April 2018, last revised 8/29/2018; (showing proposed 25' right-of-way);
- Survey plat titled 'Consolidate Lot 3 into Lots 2 & 5, Subdivide Lot 4- Brush Hill Properties LLC' prepared by Little River Survey Company LLC, drawn by GEB, Job 14061, Sheet 1 of 1, dated April 2018, last revised 8/30/2018; (showing proposed shared driveway);
- Survey plat insets- Showing possible access scenarios 1, 2, and 3; no date;
- Email from Craig Keller, P.E., Chief of Permitting Services, VT Agency of Transportation, dated 8/30/2018;

The DRB adjourned the hearing that evening, following the submission of testimony and evidence, marking the start of the 45-day period for the issuance of written findings and a decision.

FINDINGS OF FACT & CONCLUSIONS OF LAW:

The Applicant's request for amended PRD approval was reviewed by the Stowe Development Review Board (DRB) for conformance with applicable requirements of the Town of Stowe Zoning Regulations (as adopted June 12, 2017), including the following:

- Section 2- Administration and Enforcement
- Section 3- General Regulations
- Section 5- Zoning Districts
- Section 6- Uses, Dimensional Requirements and Density
- Section 13- Planned Unit Development

The Applicant's request for the proposed subdivision was reviewed under the Town of Stowe subdivision regulations (as amended through July 16, 2012) including the following:

- Section 2- General Provisions
- Section 3- Administration and Enforcement
- Section 4- Subdivision Requirements
- Section 5- Planning and Design Standards

During its review of the application, the Board made the following Findings of Fact:

1. **Zoning District.** The subject parcels are within the Rural Residential 2 (RR2) and Rural Residential 5 (RR5), and the Ridgeline and Hillside Overlay (RHOD) zoning districts as shown on the Official Town of Stowe Zoning Map (effective July 3, 2017). The zoning district boundaries are not shown on the provided plat.
2. **Lot Area, Lot Width.** The Applicant proposes to dissolve the previously approved Lot 3 (± 2.0 acres) into Lots 2 & 5 and further subdivide a ~ 2.0 -acre parcel off Lot 4. As proposed, Lot 2 will become ± 4.4 acres, Lot 5 will become ± 2.5 acres and Lot 4 will be subdivided to include a ± 2.0 -acre parcel (as measured from the to the road right-of-way) and ± 11.3 -acre parcel consisting of an existing single-family dwelling and conserved area as shown on the provided survey plat. Section 16.87 of the regulations define Lot Area or Size as 'the area or size of a lot, not including the land lying on the street side of the street line.'

The subject parcels are within the Rural Residential 2 (RR2), Rural Residential 5 (RR5) which require a minimum lot area of two (2) acres and five (5) acres respectively. Section 13.4(3) allows the Board the authority to modify applicable dimensional requirements of the underlying zoning districts in association with PRD approval. Lots 2, 3, and 5 were previously approved to be 3.3 acres, 2.0 acres, and 1.6 acres. As proposed, the lot area of Lots 2 & 5 will be increased to 4.4 acres and 2.5 acres. The ~ 2.0 -acre parcel proposed to be subdivided off Lot 4 is in the Rural Residential 2 (RR2) and meets the required lot area of two (2) acres and the minimum lot width of 200 ft. Proposed Lots 2 & 5 are within the Rural Residential 5 (RR5) which requires a minimum lot width of 300 ft. The provided survey plat indicates the lot dimensions for the proposed revised Lots 2 & 5, both will meet the required lot width.

3. **Setbacks.** Proposed Lots 2 & 5 are located within the Rural Residential 2 (RR2) and Rural Residential 5 (RR5) zoning districts. Required minimum district setbacks for Rural Residential 2 (RR2) are front (60'), side (50') and rear (50'). Required minimum district setbacks for Rural Residential 5 (RR5) are front (70'), side (75') and rear (75'). Section 13.4(5)(B) requires "along the outside boundary of the project, the structure setback shall be twice the setback for the district in which is located." The required district setbacks and double outer perimeter PRD setbacks are

shown on the revised plat for proposed Lots 2 and 5, as well as the proposed ~2.0-acre parcel fronting Vermont Route 100.

The minimum setback for one and two-family dwellings on individual interior lots is ten (10') feet. One and two-family dwellings must be located at least twenty (20') feet from each other. The distance between multi-family dwellings cannot be less than permitted by the Vermont Department of Fire Safety. Internal setbacks are shown on Lots 2 & 5.

4. **Maximum Building Coverage.** The maximum building coverage does not apply to the Rural Residential 2 (RR2) and Rural Residential 5 (RR5) zoning districts.
5. **Use.** The Applicant received prior approval for an 8-lot Planned Residential Development (PRD) in a written decision dated October 13, 2009. In the decision, it is noted that the PRD is intended to consist of eight (8) single-family dwellings. No changes of use are proposed under this application.
6. **Height.** The maximum building height in Residential 2 (RR2) and Rural Residential 5 (RR5) zoning districts is 28'. No buildings are proposed under this application.

SECTION 13- PLANNED UNIT DEVELOPMENT STANDARDS:

7. **Section 13.4(1) Purpose.** The purpose of Planned Residential Development (PRD) is to enable and encourage flexibility of development of land to preserve open space, to integrate housing of various types into a harmonious grouping and to facilitate adequate and economical provision for streets and utilities.
8. **Section 13.4(3) General Requirements.** A PRD project may be approved as a conditional use by the DRB in any district. Such approval shall be concurrent with approval required under the subdivision regulations. A final plat plan will be filed in the land records within one hundred eighty (180) days of such approvals.

To achieve the PRD objectives, the DRB may modify applicable dimensional requirements of the underlying zoning districts. The Applicant did not request any additional modifications to the zoning regulations.

9. **Section 13.4(4) Density of Residential Development.** In a PRD, the overall allowable density of development shall be the same as the density permitted by the underlying zoning district(s) with the exception of the affordable housing density bonus permitted under the Regulations. In a PRD that spans more than one zoning district, the DRB has the authority to approve the allowed density anywhere within the project area. With DRB approval, dwelling units in a PRD may include one family, two family, multi-family dwellings, including apartment buildings, or any combination thereof. No time-sharing or interval ownership is allowed unless in Ski-PUD and Resort-PUD.

The previously approved PRD included a lot density analysis that considered each of the zoning district requirements and the limitations of development on slopes of greater than 20% in the Ridgeline and Hillside Overlay District. Under the previous approval, the Applicant proposed to construct eight (8) single-family dwellings. As proposed, Lot 3 will be dissolved into Lots 2 & 5, reducing the total proposed units to seven. No development is proposed at this time on the ~2.0-acre parcel to be subdivided off Lot 4, however a building envelope and access are shown on the plat to demonstrate its potential for development. Any future development proposed on the lot will be subject to the regulations in effect at the time of application.

10. Section 13.4(5) Standards for Development.

- A. *A parcel of land must be a minimum of three (3) acres in size to be eligible for consideration as a PRD. In addition, the project must consist of a minimum of three (3) dwelling units.*
- B. *Along the outside boundary of the project, the structure setback shall be twice the setback requirement for the district in which it is located. The setback shall be free of all buildings, structures, and parking areas, but may contain signs and may be crossed by necessary access driveways. The DRB may grant a waiver from the double setback requirement when all of the following criteria are found to be met:*
 - i. *The double setback is not found necessary to protect the privacy of neighboring properties due to topography, existing vegetation to remain, proposed landscaping or other mitigation measures being proposed by the applicant.*
 - ii. *The double setback is not found necessary to protect the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas; and*
 - iii. *The double setback is not found necessary to protect the character of the area affected as defined by the purpose of the zoning district.*
- C. *The minimum setback for one and two-family dwellings on individual interior lots shall be ten (10') feet. One and two-family dwellings shall be located at least twenty (20') feet from each other. The distance between multi-family dwellings shall not be less than permitted by the Vermont Department of Fire Safety.*
- D. *Any lots approved in a PRD that are less than the minimum lot size of the underlying zoning district, may not be subdivided further in the future. This does not apply to lot-line adjustments.*

The 'parent' lot contains over 40 acres of land and is proposed to consist of seven dwelling units, satisfying the requirements of Section 13.4(5)(A). In DRB decision dated October 13, 2009, the Board waived the double setback requirement for Lots 7 & 9 since the lots are adjacent to town property. The revised survey plat shows the double setback along the perimeter of the PRD for Lots 2 & 5, as well as along the proposed ~2.0-acre lot. Internal setbacks are shown on Lots 2 & 5. The Applicant proposes to dissolve Lot 3 (± 2.0 acres) into Lots 2 & 5 and further subdivide a ~2.0-acre parcel off Lot 4. As proposed, Lot 2 will become ± 4.4 acres, Lot 5 will become ± 2.5 acres and Lot 4 will be subdivided to include a ± 2.0 acre parcel (as measured from the road right-of-way) and ± 11.3 acre parcel consisting of an existing single-family dwelling and conserved area as shown on the provided survey plat.

Conclusion: The Board finds the requested amendments are in conformance with the PUD standards as outlined in Section 13.

11. Section 13.4(8) Required PRD Open Space. Excluding land retained for agricultural use.

- A. The plan for the entire project area shall take fullest advantage of all natural features, such as natural watercourses and drainage, topography, existing trees, outlook and other features.
- B. Land that is not included in building lots, streets, rights-of-way, or utility easements, shall be reserved as open space for recreation, conservation, agriculture or the enhancement of the natural environment.

- C. Open Space shall contain no building or development, except one primarily devoted to a purpose for which the open space is intended, including swimming pools, tennis and other recreation facilities and minor incidental buildings connected therewith, including agriculture.
- D. The plat shall identify all areas of open space, and shall contain the following statement relating to those lands so designated: *“The lands designated as open space on this plat shall remain in open space. The open space shall run with the land and shall apply to future conveyances of all or parts of the hereon open space, unless otherwise specifically approved by the DRB”.*

Conclusion: Under previous approval, a ± 9-acre open space conservation easement area was designated on Lot 4. The total previously approved open space equaled 19.5%. The Board finds no changes to the previously approved conservation area are proposed under this application.

SECTION 3.7(2)(A) – STANDARDS OF REVIEW (Conditional Use): The Development Review Board must determine that the proposal will conform to the following set of standards and will not result in an undue adverse effect on the following:

12. **Capacity of existing or planned community facilities and services:** Staff requested comments on the proposal from respective Town departments including the Department of Public Works, Fire Department, Stowe Electric, Police Department, EMS, and Parks and Recreation. No Municipal Department review forms returned indicated that the proposed development would have any adverse impact on existing or planned community facilities and services.

Conclusion: The project will not result in an undue adverse effect on the Town’s existing or planned facilities or services.

13. **Section 3.7(2)(A)(2) – Traffic on roads and highways in the vicinity:** The Applicant request approval to amend previously approved PRD/Subdivision (project #4082) to dissolve Lot 3 (±2.0 acres) into Lots 2 & 5 and further subdivide a ~2.0-acre parcel off Lot 4. As proposed, Lot 2 will become ±4.4 acres, Lot 5 will become ±2.5 acres and Lot 4 will be subdivided to include a ±2.0 acre parcel (as measured from the road right-of-way) and ±11.3 acre parcel consisting of an existing single-family dwelling and conserved area as shown on the provided survey plat. No increase in traffic is expected as a result of the proposal.

Conclusion: The proposed development will not create an undue adverse impact on traffic on roads and highways in the vicinity.

14. **Section 3.7(2)(A)(3) – The character of the area affected:** The subject parcel is in the RR2, RR5, and Ridgeline & Hillside Overlay district. The general purpose of the RR districts is as follows:
- A. To maintain the natural and scenic qualities which create and preserve the best possible environment for residential development.
 - B. To promote the preservation of adequate open space through carefully planned cluster types of development.
 - C. To encourage agricultural productivity of good farmlands and of forest resources.
 - D. To permit the establishment of recreational and resort facilities when compatible with the primary purpose of a residential environment.

The specific purpose of the RR2 district is “To allow a higher density closer to available municipal services while maintaining the quality of the neighborhoods.”

The specific purposes of the RR5 district are:

- A. To eliminate undue demand for new or extended municipal services in outlying areas which would cause a burden on the town.
- B. To maintain the rural character and beauty of the existing neighborhoods.
- C. To discourage intensive development in areas where slopes or soil conditions dictate otherwise.

Existing uses within the general vicinity include a mix of residential, agriculture, forestry, and open space.

Conclusion: The proposal will not adversely affect the character of the area as defined under the town's zoning regulations.

15. **Section 3.7(2)(A)(4) – Regulations and ordinances in effect:** The application is being reviewed under the PRD requirements, conditional use, and subdivision regulations. Applicable bylaws include the Town of Stowe Zoning Regulations, as amended through July 3, 2017 and the Town of Stowe Subdivision Regulations, as amended through July 16, 2012. No other municipal bylaws or ordinances apply to this project. The proposed ~2.0 acre parcel fronting Rt. 100 is served by a state-maintained road. Access to the road is subject to review by the VT Agency of Transportation under 19 VSA §1111.

Conclusion: The proposal conforms to the regulations and ordinances in effect at the time of application. Access to the proposed ~2.0 acre lot fronting Rt. 100 is required to obtain a §1111 permit from the VT Agency of Transportation.

16. **Section 3.7(2)(A)(5) – Utilization of renewable energy sources:** No change is proposed with regard to the use of, or access to, the utilization of renewable energy resources. The project is not expected to interfere with the sustainable use of renewable energy resources, access to, direct use or future availability of such resources.

Conclusion: The proposal will not adversely affect the utilization of renewable energy sources.

Section 3.7(2)(B) – Other Standards of Review:

17. **Section 3.7(2)(B)(1) – Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas.** The subject parcels contain forested hillsides, steep slopes and a brook running through Lot 2. The Applicant proposes to dissolve Lot 3 (±2.0 acres) into Lots 2 & 5 and further subdivide a ~2.0-acre parcel off Lot 4. As proposed, Lot 2 will become ±4.4 acres, Lot 5 will become ±2.5 acres and Lot 4 will be subdivided to include a ±2.0-acre parcel (as measured to the road right-of-way) and ±11.3-acre parcel consisting of an existing single-family dwelling and conserved area as delineated on the provided survey plat. The Applicant is not proposing the construction of any additional buildings or structures under this application. Any future development of the redesigned lots will require review and approval under the regulations in effect at the time of application. The required district and PRD setbacks and clearing limits are shown on Lots 2 and 5, effectively creating a building envelope or building zone. A 'brook' is noted in the legend and shown running through Lot 2. Section 3.10 protects watercourses and requires a 50 ft setback, however this surface watercourse does not appear on the Official Zoning Map and is therefore not regulated under Section 3.10. Areas of clearing are shown on revised Lots 2 and 5.

Conclusion: The Board finds the proposal will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas. Designated building zones (i.e. proposed house sites) are shown to establish clearing limits and future location of house sites.

18. **Section 3.7(2)(B)(2) - Project will not result in undue water, noise or air pollution.** The Applicant proposes to amend the previously approved PRD and further subdivide Lot 4. Lot 4 is intended to remain undeveloped at this time. The Applicant is not proposing the construction of any additional buildings or structures under this application. Any future development of the redesigned lots will require review and approval under the regulations in effect at the time of application.

Conclusion: The Board concludes the proposal will not result in undue water, noise, or air pollution.

19. **Section 3.7(2)(B)(3) –Access Management:** The interior lots are served by a private road (Werner) off from Brush Hill Road. The Applicant proposes to subdivide a ~2.0-acre parcel off Lot 4. The proposed lot is shown to have approximately 260 feet of frontage on Route 100. The ~2.0-acre parcel off Lot 4 is intended to remain undeveloped at this time, however during the hearing the Applicant provided evidence demonstrating access to the lot and testimony that VT Agency of Transportation is prepared to issue a §1111 permit to access the parcel.

Conclusion: The redesigned interior lots (Lots 2 & 5) will have access via a private road (Werner) off from Brush Hill Road. The proposed ~2.0-acre parcel to be subdivided off Lot 4 is not intended for development at this time, however the revised plat shows a proposed single access to the lot. The Applicant provided testimony that VT Agency of Transportation is prepared to issue a §1111 permit to access the parcel.

20. **Section 3.7(2)(B)(4) – Shared Access:** No changes proposed.

Conclusion: This provision is not applicable.

21. **Section 3.7(2)(B)(5) – Circulation and Parking:** The Applicant proposes to dissolve previously approved Lot 3 and merge the lands into Lots 2 and Lots 5. A ~2.0-acre parcel is proposed to be subdivided off Lot 4. The ~2.0-acre parcel is not proposed for development at this time, however has been designed to adhere to the double setback requirement and accommodate a potential access. No changes to the previously approved private road are proposed. The redesigned Lot 2, 5, and ±2.0-acre lot will be required to demonstrate conformance with the parking requirements at the time of zoning permit application.

Conclusion: The Board finds that the proposed amendments are in conformance with Section 3.7(2)(B)(5) and Section 14 and have been designed to minimize the off-site visibility of parking areas from through the location, landscaping and screening of such areas.

22. **Section 3.7(2)(B)(6) – Pedestrian Circulation and Access:** No changes proposed.

Conclusion: This provision is not applicable.

23. **Section 3.7(2)(B)(7) – Landscaping and Screening:** No changes proposed. See discussion above regarding designated building zones.

Conclusion: This provision is not applicable.

24. **Section 3.7(2)(B)(8) – Stormwater Management:** The Applicant proposes to dissolve Lot 3 (and associated site development i.e. dwelling, parking, accessory structures), thereby reducing the total impervious surfaces. No other changes to impervious surfaces or storm drainage patterns are proposed.

Conclusion: This provision is not applicable.

SUBDIVISION REGULATIONS

SECTION 3- GENERAL SUBDIVISION APPLICATION PROCEDURES

25. **Section 3.1(3):** Minor subdivisions are defined as all subdivisions that propose less than five lots, do not involve the construction of a public road, do not involve the construction of public utilities, and are not deemed to be a minimal alteration. Minor subdivisions allow the submission of one application and related materials to be reviewed by the Board. The Applicant proposes to dissolve Lot 3 (± 2.0 acres) into Lots 2 & 5 and further subdivide a ~ 2.0 -acre parcel off Lot 4. As proposed, Lot 2 will become ± 4.4 acres, Lot 5 will become ± 2.5 acres and Lot 4 will be subdivided to include a ± 2.0 -acre parcel (to the road right-of-way) and ± 11.3 -acre parcel consisting of an existing single-family dwelling and conserved area as delineated on the provided survey plat.

SECTION 5.1 – GENERAL PLANNING STANDARDS:

26. **Section 5.1(1) – Character of Land for Subdivision:** Prior to the approval of a subdivision plat, the subdivider has the responsibility to satisfy the Board that the land to be subdivided is of such a character that it can be used for the intended purposes without undue adverse impact on public health or safety, or the environment or, neighboring properties or the rural and historic character of the community as outlined in the regulations. Subdivision plats shall conform to the zoning regulations, any interim zoning, subdivision regulations, and other applicable statutes, ordinances, bylaws and/or regulations. In addition, subdivision plans should be in general accordance with Stowe's Municipal Plan. The Applicant proposes to dissolve Lot 3 (± 2.0 acres) into Lots 2 & 5 and further subdivide a ~ 2.0 -acre parcel off Lot 4. As proposed, Lot 2 will become ± 4.4 acres, Lot 5 will become ± 2.5 acres and Lot 4 will be subdivided to include a ± 2.0 -acre parcel (to the road right-of-way) and ± 11.3 -acre parcel consisting of an existing single-family dwelling and conserved area as delineated on the provided survey plat. The ~ 2.0 -acre parcel proposed to be subdivided off Lot 4 is not intended for development at this time, however has been designed to adhere to the double setback requirement and accommodate a potential access. The subject parcels contain forested hillsides, steep slopes and a brook running through Lot 2.

Conclusion: The Board concludes the land to be subdivided is of such a character that it can be used for the intended purposes without undue adverse impact on public health or safety, or the environment or, neighboring properties or the rural and historic character of the community.

27. **Section 5.1(2) – Natural and Scenic Features:** All subdivisions shall be designed to prevent undue adverse impact on: brooks, streams, water bodies, ground water resources and wetlands; prime agricultural soils, farmland resources and scenic meadowland; important forest resources; aesthetic resources and scenic vistas, including views onto and arising from subject property. In order to preserve natural and scenic features, the Board is authorized to:

a) Establish or limit the building site or other improvements to avoid the parcelization, isolation, or destruction of natural features;

b) Require setbacks from property boundaries or identified natural features greater than specified in the Zoning Regulations in order to create buffer zones and prevent degradation to significant natural features;

c) Establish preserve areas where development is restricted or prohibited, and specific land management techniques are employed to protect or enhance significant natural features.

Under previously PRD and subdivision approval, a 9-acre conservation easement on Lot 4 was set aside as open space and limits of clearing on each lot were clearly delineated in plans. The revised plans show a stream on Lot 2. This stream does not appear of the Official Zoning Map and is not regulated under Section 3.10. Under prior approval, specific building zoning were identified on plans as clearing areas. Each building zone (except for Lots 7 & 8) were designed to meet or exceed the double setback requirements required under Section 18.3(1) of the regulations. In a decision dated October 13, 2009, the Board waived the double setback requirement for Lots 7 & 8 given that the lots were adjacent to property owned by the Town of Stowe.

Conclusion: The Board concludes the proposed subdivision/PRD revisions have been designed to prevent undue adverse impact on natural and scenic features as noted under Section 5.12(C) of the town's subdivision regulations.

28. **Section 5.1(3) – Protection of Significant Wildlife Habitat and Natural Communities:** All mapped significant wildlife habitat areas are required to be shown on subdivision site plans. If any portion of a proposed subdivision is within an identified significant wildlife habitat area the Board may require the submission of a wildlife habitat assessment, prepared by a wildlife biologist or comparable professional, to identify potentially impacted habitat and provide recommended management strategies. Vermont Fish and Wildlife Department staff may also be consulted to provide guidance with this review. The Board's prior decision dated October 13, 2009 finds that the natural and scenic features were adequately protected.

Conclusion: The Board finds the revised subdivision/PRD will not have an undue adverse impact on significant wildlife habitat and natural communities.

29. **Section 5.1(4) – Historic Resources and Community Character:** Subdivisions are required to minimize undue adverse impact on historic sites and the rural character of the Town. Subdivisions in rural areas shall result in minimum undue adverse impact on the rural landscape as characterized by open fields, forested mountains and hillsides. The rural character exists due to the scenic vistas, large uninterrupted forested areas, open fields along public roads, and limited development along roads. Individual lots and building zones shall be delineated so as to mitigate the visual impact of new development on views from existing roadways, adjacent properties, and offsite vantage points. No historic features are shown to exist on the parcel. The Board's past final subdivision/PRD decision noted that there are no known historical resources located on the property.

Conclusion: The Board concludes that there are no known historical resources located on the property and the revised PRD/subdivision has been designed to minimize undue adverse impact on rural character of the area.

30. **Section 5.1(5) – Reserved Strips:** No privately owned reserved strip which controls access to any part of the subdivision or to any other parcel of land from any street or from any land dedicated to public use shall be permitted. No reserved strips are proposed.

Conclusion: This provision is not applicable.

31. **Section 5.1(6) – Screening and Landscaping:** The DRB is authorized to require the planting or preservation of trees or other vegetation to provide visual screening of development or to otherwise soften and/or lessen the impact of development on natural features and scenic vistas. Street trees along public or private roadways may also be required in order to establish a canopy effect in developed areas and where existing street trees are already present in the vicinity. The size, type, or location of such trees shall depend on the particular land parcel. Section 4.6 (Landscaping Standards) of the Zoning Regulations shall be used as a guideline for any required landscaping. A maintenance plan of all existing and proposed landscaping shall be prepared and submitted for review. Such a plan shall address specific measures to be taken to ensure the survival, and if necessary replacement, of designated landscaping during and after the construction; parties to be responsible for ongoing maintenance; and any Town obligations for maintenance. The Applicant proposes to utilize the existing trees for the purpose of providing screening and landscaping on the residential lots. Under prior Board approval, the Board required that twenty 5-ft trees, comprised of a mix of birches and pines, be planted along the exposed roadway within one year of completing the road.

Conclusion: The Board concludes adequate landscaping and screening has been provided under previous approvals.

32. **Section 5.1(7) – Pedestrian Access:** The Board is authorized to require rights- of-way to facilitate pedestrian circulation within the subdivision and to ensure access to adjoining properties or uses. The Applicant is not proposing any pedestrian access improvements under this application. The residential lots are intended for the development of single-family dwellings and related appurtenances.

Conclusion: The Board concludes the lots have been designed to accommodate single-family dwellings and no additional pedestrian access improvements are required under this amended PRD/subdivision application.

33. **Section 5.1(8) – Traffic:** The regulations require traffic to be generated by the proposed subdivision not to create unreasonable traffic congestion or cause unsafe conditions regarding use of existing roadways. To satisfy this standard, the Board is authorized to request the preparation of a traffic impact study to address all concerns relative to traffic impact and safety. The Board previously approved an 8-lot PRD/subdivision and found the proposal would not adversely affect traffic in the area.

Conclusion: The Board concludes traffic impacts were previously reviewed under prior decisions. The Applicant’s proposal to dissolve one residential lot (Lot 3) will reduce the total expected number of vehicle trips.

34. **Section 5.1(9) – Municipal Facilities:** The lots will be served by on-site potable water and septic systems. The proposed subdivision will not create an undue burden on municipal facilities or create an unreasonable demand for municipal services. No municipal department review forms returned indicated that the proposed development would have any adverse impact on their respective departments.

Conclusion: The project will not create an undue burden on the Town’s existing or planned facilities or services.

35. **Section 5.1(10) – Lot Configuration:** Flag lots, elongated lots, and other odd shaped lots which include narrow strips of land are prohibited unless the Board finds the configuration is appropriate given the existing topography and natural features, existing development, or the existing configurations of internal or adjacent lots. The Applicant proposes to dissolve Lot 3 (± 2.0 acres) into Lots 2 & 5 and further subdivide a ~ 2.0 -acre parcel off Lot 4. As proposed, Lot 2 will become ± 4.4 acres, Lot 5 will become ± 2.5 acres and Lot 4 will be subdivided to include a ± 2.0 -acre parcel (to the road right-of-way) and ± 11.3 -acre parcel consisting of an existing single-family dwelling and conserved area as delineated on the provided survey plat.

Conclusion: The Board finds the amended lot configuration is of regular shape, avoids flag and elongated lots, and contains sufficient buildable area.

36. **Section 5.1(11) – Building Zone:** The Board must find that the proposed subdivision provides adequate building sites for each proposed lot. Such sites may be restricted to a specific building zone, to be depicted on the plat, located and sized to ensure compliance with all of the provisions of Section 5 of the regulations. Under prior approval, specific building zoning were identified on plans as clearing areas. Each building zone (except for Lots 7 & 8) were designed to meet or exceed the double setback requirements required under Section 18.3(1) of the regulations. In Board decision dated October 13, 2009 the Board waived the double setback requirement for Lots 7 & 8 given that the lots were adjacent to property owned by the Town of Stowe.

Conclusion: The Board concludes the revised building zones on Lots 2 & 5 and the ~ 2.0 lot fronting Rt. 100 are adequate for their intended purpose.

37. **Section 5.1(12) – Fire Protection Facilities:** The regulations require adequate water storage or distribution facilities for fire protection to be available. This may include the installation of ponds and dry fire hydrants and the extension of public water with fire hydrants. Where practicable, or where required by the Board, fire hydrants shall be installed by the subdivider. Construction of driveways and roads shall be in general compliance with the Stowe Fire Department Construction Standards where applicable. All lots shall be designed to allow for reasonable access by emergency vehicles to the building zones. Under prior decision, the Board noted that the Fire Department raised concerns that the steepness of the road could provide difficult access in the winter if the road is not adequately maintained.

Conclusion: No changes to fire protection are proposed under this application. Under prior approvals, the Board concluded that adequate fire protection facilities could be provided.

38. **Section 5.1(13) – Disclosure of Subsequent Development Plans:** Whenever a subdivider submits a proposal for development on only a portion of a parcel, the Board is authorized to require a general indication of the intended uses of the remaining portion of land. Such an indication shall include access, type of use, intensity of use, and phasing. The Board is authorized to require the execution of a development agreement between the applicant and Town which ensures the ongoing integration of future development with each phase of subdivision or may require a note on the plat restricting future development of the remaining land without further review by the Board.

Conclusion: No further development is proposed.

39. **Section 5.1(14) – Private Enforcement Mechanisms:** As a condition of subdivision approval, the Board may require the formation of a homeowner's association, consisting of the owners of all properties within the subdivision, to ensure the continual maintenance of shared driveways and other

shared facilities. The Board shall require that such enforcement mechanisms be recorded before any zoning permits are issued. The lots are currently in common ownership. Prior DRB findings noted that a homeowner's association and related private enforcement mechanisms for the maintenance of the road, stormwater system, and open space will be required.

Conclusion: As a condition of approval, the Applicant will be required to record the Home Owners Association documents in the town land records prior to the issuance of a zoning permit.

40. **Section 5.2 – Prominent Hillsides and Ridgelines:** The parent parcel contains 34.4 acres within the RHOD. The redesigned Lots 2 and 5 are entirely within the RHOD, portions of the proposed ~2.0 acre parcel are within the RHOD. The prior Board approval reported that the property has vantage points from West Hill Road, from the intersection of Baird Road to Route 100 and West Hill Road in the vicinity of the Percy Hill intersection and that other public roads may have some other limited visibility at certain areas. The Applicant previously submitted hillside profiles for the lots to show the relationship of the existing trees and development. It was noted in the Board's decision that none of the proposed development would extend above the ridgeline. The Board required as a condition of approval, that the final plan be revised to show the clearing limits as originally approved on March 17, 2009 with the exception of the stormwater management areas.

Conclusion: This Board finds the reconfigured Lots 2 and 5 have been designed in conformance with Section 5.2 and have been designed to protect the town's prominent hillsides and ridgelines. It is noted that all building construction on the lots in the RHOD will require review and approval under Section 9 before a zoning permit is issued.

41. **Section 5.3 – Open Space and Cluster Development:** Except for exemptions granted under Section 5.3(6), the Board shall, in subdivisions having lots or potential dwelling sites for five (5) or more family dwelling units (excluding accessory apartments), and for all Planned Residential Developments (PRDs), require that the subdivision plat designate one (1) or more areas of character, size, shape and location suitable to be used as open space, park or playground. The previously approved plans required the designation of ±9-acres of open space. No changes to open space are proposed under this application.

Conclusion: The Board concludes adequate open space has been provided under previous approvals.

42. **Section 5.4 – Road Standards and Coordination with Public Highways:** All proposed public and private roads shall be designed to ensure the safe and efficient movement of vehicles. Roads shall be logically related to topography so as to produce usable lots and reasonable road grades and shall be in harmony with existing and proposed public highways. Wherever extensions of proposed roads could rationally provide public access to adjacent properties or connection to existing public State or Town highways, a right of way across the subdivider's property may be required. No new road or driveways are proposed under this application. Access improvements were reviewed under the previously approved application and found to meet the necessary requirements.

Conclusion: The Board concludes no changes to the previously approved access road and driveways are proposed under this application.

43. **Section 5.5 – Utilities and Stormwater Management:** All subdivisions shall make adequate provisions for stormwater and required utilities. No new stormwater or utilities are proposed under this subdivision application. Utilities and stormwater management improvements were reviewed under the previously approved site development plan and found to meet the necessary requirements.

Conclusion: The Board concludes no additional utilities and stormwater management improvements are proposed under this application.

DECISION

Based upon the foregoing Findings of Fact, in RE: **5859** the Board finds (6-0) the requested amendments meet the Stowe Zoning Regulations, as amended through July 3, 2017 and the Town of Stowe subdivision regulations (as amended through July 16, 2012) subject to the following conditions of approval:

1. This project shall be completed according to the plans hereby approved. 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. All conditions of previous approvals, except as amended herein, remain in full force and effect.
3. The subdivision survey plat 'Consolidate Lot 3 into Lots 2 & 5, Subdivide Lot 4- Brush Hill Properties LLC' prepared by Little River Survey Company LLC, drawn by GEB, Job 14061, Sheet 1 of 1, dated April 2018, last revised 8/30/2018, as amended herein, shall be submitted for recording in the land records of the Town of Stowe within 180 days of the date of this approval, or the approval shall expire.
4. The Applicant shall file the Mylar plat, signed by the Chair or other authorized representative of the Development Review Board, with the Stowe Town Clerk in accordance with the requirements of 27 V.S.A. Chapter 17 and the Stowe Subdivision Regulations. No land development associated with this subdivision shall be commenced until such time as the survey plat has been duly signed and filed in the Land Records.
5. The final survey plat as recorded shall carry the following notation:

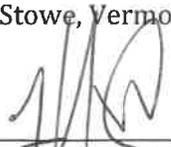
"This plat is subject to the terms and conditions of subdivision approval by the Stowe DRB per the Subdivision Regulations of the Town of Stowe. The terms and conditions of the approval and related information are on file in the Stowe Zoning Office".

6. The final plat as recorded shall also include the following revisions:
 - Label the ±2.0-acre lot fronting VT Route 100 as **Lot #3**;
 - Depict the proposed single access and curb cut on Lot #3 setback a minimum of 10' from the adjacent property line, as preliminarily approved by the VT Department of Transportation.
7. No preconstruction clearing is allowed on lots within the RHOD without additional review by the Board.
8. Prior to the issuance of a zoning permit for Lot 3 (±2.0-acre parcel fronting VT Route 100), the Applicant shall submit a copy of the VT Agency of Transportation §1111 permit to the Zoning Director.
9. Prior to the issuance of a zoning permit for the development of any residential lot, the Applicant shall record homeowner's association and related private enforcement mechanisms for the maintenance of the road, stormwater system, and open space.
10. These conditions of approval shall run with the land and are binding upon and enforceable against the permittee and his successors. By acceptance of this permit, the permittee agrees to allow authorized representatives of the Town of Stowe to access the property subject to this approval, at reasonable times, for purposes of ascertaining compliance with the conditions of approval.

Voting favor: D.Clymer, T. Hand, M. Diender, C.Walton, A. Volansky, T.Mumley

Voting to deny: None

Dated at Stowe, Vermont this the 21 day of September 2018

By: 
Drew Clymer, Acting Chair

- NOTICES:**
1. In accordance with 24 V.S.A. § 4449(e), applicants are hereby notified that state permits also may be required prior to land subdivision or construction. The applicant should contact the DEC Permit Specialist for District #5 (802-505-5367) to determine whether state permits are required.
 2. The applicant or another interested person may request reconsideration of this decision by the Development Review Board, including associated findings and conditions, within 30 days of the date of this decision by filing a notice of appeal that specifies the basis for the request with the Secretary of the Development Board. Pursuant to 24 V.S.A. § 4470, the board may reject the request within 10 days of the date of filing if it determines that the issues raised on appeal have already been decided or involve substantially or materially the same facts by or on behalf of the appellant.
 3. This decision may also be appealed to the Environmental Division of the Vermont Superior Court by the applicant or another interested person who participated in the proceeding before the Development Review Board. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Division Court Proceedings.
 4. In accordance with 24 V.S.A. § 4455, on petition by the municipality and after notice and opportunity for hearing, the Environmental Division may revoke this permit based on a determination that the permittee violated the terms of the permit or obtained the permit based on misrepresentation of material fact.