

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



**PROJECT:** 5875

**SUBJECT PROPERTY:** 435 Moscow Road; #03-033.000

**PROPERTY OWNER:**

Stowe Electric Department [c/o Ellen Burt]  
56 Old Farm Road  
Stowe, VT 05672

**APPLICANT:**

Bread Loaf Corporation  
1293 Route 7  
Middlebury, VT 05753

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

The Applicant, Bread Loaf Corporation on behalf of the Stowe Electric Department, (herein referred to as the "Applicant"), request amended conditional use approval to modify a previous approved site plan (Project 5711). The Applicant request approval to modify the outdoor light fixture and correct the height of the previously submitted outdoor light poles for the parking area; installation of an emergency generator and landscape screening; and approval to modify the driveway and parking area surface from hard pack gravel to asphalt. Project #5711 was approved by the Board in a written decision dated November 15, 2017.

The subject parcel, consisting of ±4.5 acres and located at 435 Moscow Road (#03-033.000), is in the Moscow Commercial (MC) Zoning District and Flood Hazard Overlay District (FHOD). The property is served by Moscow Road, a Class 2 town-maintained road and is bound to the north and east by Moscow Road and to the south by the Little River. The application has been reviewed by the Stowe Development Review Board (DRB) under applicable standards of the Town of Stowe Zoning Regulations (as adopted June 12, 2017) as an amendment to a previously approved conditional use.

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 amended conditional use review was filed by Applicant John Dale of Bread Loaf Corporation on August 20, 2018. The application was accepted as administratively complete by Town of Stowe Zoning Director Sarah McShane and referred to the Development Review Board for a public hearing. A public hearing of the DRB was scheduled for September 18, 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 30, 2018. The Applicant submitted a completed certificate of service in accordance with Section 2.14(1)(B).

The public hearing to consider the application convened on September 18, 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:

- John Dale, Bread Loaf Corporation, 1293 Route 7, Middlebury, VT 05753
- John Johnston, Bread Loaf Corporation, 1293 Route 7, Middlebury, VT 05753
- Etienne Morris, 460 Sylvan Park Road, Stowe, VT 05672
- Paul Morris, 460 Sylvan Park Road, Stowe, VT 05672
- Trish Waugh, Stowe Electric Department, PO Box 190, Stowe, VT 05672
- Dave Kresock, Stowe Electric Department, PO Box 190, Stowe, VT 05672
- Ellen Burt, Stowe Electric Department, PO Box 190, Stowe, VT 05672
- Ron Crawford, 81 Smithfalls Lane, Stowe, VT 05672

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

1. Town of Stowe Development Application, dated 8/16/2018;
2. Architectural Site Plan 'Stowe Electrical Department Office Building', Sheet A-1.2, prepared Bread Loaf, dated 12/11/12; (depicts location of proposed emergency generator);
3. Stowe Electrical Dept Site Lighting Layout, prepared by Swaney Lighting Associates, Inc., dated 10/19/2017;
4. Architectural Site Plan 'Stowe Electrical Department Office Building', Sheet A-1.2, prepared Bread Loaf, dated 12/11/12; (depicts location of proposed outdoor lighting);
5. Manufacturer details and specifications for outdoor lighting (4 pages), Beacon Light Fixture, dated February 7, 2018;
6. Manufacturer details and specifications for outdoor lighting (2 pages), VK 2300 LED Series Alumilite, no date;
7. Manufacturer details and specifications for Emergency Generator, Kohler Power Systems, Model 100REZGD (3 pages), no date;
8. Town of Stowe Development Review Board (DRB) written decision Project 5711, dated 11/15/2017. (Staff)

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 conditional use 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 4- Specific Use Standards
- Section 5- Zoning Districts
- Section 6- Uses, Dimensional Requirements and Density
- Section 7- Flood Hazard Overlay District
- Section 10- Stowe Historic Overlay District
- Section 15- Parking Regulations

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

1. The subject parcel contains ±4.5 acres and is located at 435 Moscow Road (#03-033.000). The parcel is within the Moscow Commercial (MC) Zoning District and the Flood Hazard District as shown on the

Official Town of Stowe Zoning Map (effective July 3, 2017). The Applicant request approval to modify a previous approved site plan (Project 5711). The Applicant request approval to modify the light fixture and to correct the height of the previously submitted outdoor light poles; installation of an emergency generator and landscape screening; and approval to modify the driveway and parking area surface from hard pack gravel to asphalt.

2. In a written decision dated November 15, 2017 (Project 5711), the Board granted approval for the construction of a 3,842-sf office building and a 5,628-sf garage for use of the Stowe Electrical Department. The buildings are currently under construction. During its review of the original application, the Board concluded that the proposal will not result in undue adverse impact on traffic on roads and highways in the vicinity, will be completed in conformance with the regulations and ordinances in effect, and will not restrict the utilization of renewable energy sources. Based on the above findings, the Board finds the proposed amendments will not impact the conditional use criteria as outlined in Section 3.7.
3. 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. The requested site plan amendments are not expected to generate a significant increase in traffic on roads and highways in the vicinity or adversely impact existing or planned community facilities.
4. 24 V.S.A. §4413 establishes limitations on municipal bylaws and states the following:

*“The following uses may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use:*

*A. State- or community-owned and operated institutions and facilities.*

*B. Public and private schools and other educational institutions certified by the Agency of Education.*

*C. Churches and other places of worship, convents, and parish houses.*

*D. Public and private hospitals.*

*E. Regional solid waste management facilities certified under 10 V.S.A. chapter 159.*

*F. Hazardous waste management facilities for which a notice of intent to construct has been received under 10 V.S.A. § 6606a.”*

The approved use of the parcel is a community owned facility- Stowe Electric Department. The Board’s review is limited to the items listed above and only to the extent that regulations do not have the effect of interfering with the intended functional use.

5. **Section 3.10 Setbacks from Watercourses:** To protect water quality and maintain the scenic beauty of the Town’s watercourses, there shall be no development, excavation, landfill or grading in any zoning district within a minimum distance of fifty (50') feet from the top of the bank of any watercourse in the Town. The top of the bank shall mean the point along a stream bank where an abrupt change in slope is evident. Within the fifty (50') foot setback, a vegetation buffer shall be left in an undisturbed state with the exception of minimal clearing necessary to accommodate and build public recreation and transportation paths, recreational river accesses, driveways, public or private road and utility crossings, landscaping, permitted impoundments and dams and stream bank stabilization and restoration projects.

Private driveways and private and public roads within the buffer, with a width of no greater than sixteen (16') feet, may also be allowed when reasonably necessary to permit access to a lot.

The parcel is bound to the south by the Little River, as shown on the Town's Official Zoning Map. The revised Architectural Site Plan prepared by Bread Loaf (Sheet A-1.2) (dated 12/11/12) shows the location of the Little River, the 50' setback from top of bank, the location of the proposed emergency generator, and associated screening. Portions of the generator were originally proposed to be located within the 50' watercourse setback. Prior to the hearing, the Applicant revised the plans to show the proposed generator outside of the 50' watercourse setback.

**Conclusion:** Based on the above findings, the Board finds the proposed revisions in conformance with the required setbacks from watercourses.

6. **Section 4.6 Landscaping and Screening:** The regulations require landscaping details and screening of garbage collection areas, outdoor storage, commercial ventilation systems over two square feet; loading and unloading areas and other outdoor utilities, including solar installations, be provided as part of proposed site development plans. The Applicant provided a revised architectural site plan (Sheet A-1.2) which depicts the proposed emergency generator and surrounding landscaping. As proposed, the generator will be screened by five (5) Redwing Viburnum. The listed maturity height of Redwing Viburnum is 8'. The proposed generator will only be used during emergency situations. Provided with the application were two plans both entitled 'Architectural Site Plan, Sheet A-1.2.' One site plan shows the location of the emergency generator and the surrounding landscaping, the other shows the location of the outdoor lighting. The depicted landscaping on the two plans is inconsistent. During the hearing, the Applicant reported that the landscaping as shown on the lighting plan evolved during the original permitting and that it did not show the final approved landscaping. During the hearing, the Applicant also requested the flexibility to install a different species of trees. It was reported that an abutting property owner recently requested that two previously approved trees be replaced with a species of comparable maturity height and screening.

**Conclusion:** The Board concludes the proposed landscaping and screening are appropriate for the intended use and site location. As a condition of approval, the Applicant will be required to provide an updated site plan 'Architectural Site Plan 'Stowe Electrical Department Office Building', Sheet A-1.2, prepared Bread Loaf' depicting the location of proposed emergency generator, a revised planting legend incorporating the additional five (5) Redwing Viburnum, and the most recent revised date. The Applicant will also be required to maintain landscaping in a healthy condition. Dead or dying plants shall be replaced within one growing season with a comparable plant (type, form, size at maturity, etc.).

7. **Section 4.8 Outdoor Lighting.** The regulations require that all outdoor lighting shall be installed in accordance with the following standards:
  - A. Sodium vapor lights are prohibited.
  - B. All lighting fixtures shall be shielded and aimed so that illumination is directed only to the designated area and does not cast direct illumination or cause glare beyond the boundary lines of a property.
  - C. The mounting height of a lighting fixture shall be defined as the vertical distance from the grade elevation directly below the fixture to the bottom of the lighting fixture. The height shall be the minimum necessary to illuminate the project area, and in no case shall exceed sixteen (16') feet for parking lot lighting.

(2) When reviewing lighting plans pursuant to this section, including proposed gas station canopy or apron lighting, proposed illumination of building façades or parking area lighting, the DRB shall consider

appropriate levels and distribution of illumination. In determining appropriate levels of illumination, the Board will consider the following guidelines.

- A. *Parking lot and security lighting should be designed and installed with a minimum illumination level of not less than 0.2-foot candles and not greater than 1.0-foot candles, and with a uniformity ratio of not more than 4:1.*
- B. *Light fixtures mounted under canopies shall be recessed so that the lens cover does not extend beyond the bottom surface (ceiling) of the canopy; lights should not be mounted on the top or sides of the canopy, and the sides (fascias) of the canopy should not be illuminated.*
- C. *Areas around the pump island(s) and under canopies should be illuminated so that the maximum horizontal luminance is no greater than 2.0-foot candles and the uniformity ratio is no greater than 4:1. Areas used for parking or vehicle storage should be illuminated in conformance with standards for parking areas.*
- D. *The maximum illumination on any vertical surface of a building, or angular roof surface, should not exceed 2.5-foot candles and lighting should be carefully located, aimed and shielded so that light is directed only on the building façade.*
- E. *Lighting installations should include timers, dimmers, and/or sensors to reduce the overall energy consumption and eliminate unneeded lighting.*
- F. *Exterior lighting shall be cut-off fixtures as defined by the Illuminating Engineering Society of North America (IESNA). Exceptions to this standard to accommodate a particular "period" or architectural style, providing the maximum initial lumens generated by each fixture not exceed 2,000 (equivalent to a 150-watt incandescent bulb) may be permitted.*

Under previous approval, the Applicant proposed eight (8) parking area light post and fixtures 13.5' in height. On page 4 of the Board's decision dated November 15, 2017 (Project 5711), Section 4.8 findings include the following statement "Eight 13.5-foot high parking lot posts with dark sky lighting are proposed." The Applicant is requesting approval to modify the light fixture and light pole height. The proposed light pole height is a 13.5' light post mounted on a 30" pier for a total mounting height of 16'. A photometric plan showing the lighting levels and distribution was provided. During the hearing, it was noted that the photometric plan shows the lighting levels and distribution for the Urban Series fixture, a non-standard fixture. The Applicant reported that they are seeking the optional fixture change to the Alumlite VK Series if the fixture can be adapted to meet the required lighting provisions.

Under prior approval, the Board required as a condition of approval that all outdoor lighting not be illuminated between the hours of 6:00 PM and 7:00 AM unless motion activated. The Applicant is not requesting any modifications to this condition of approval.

**Conclusion:** The Board concludes the proposed modified outdoor lighting is in conformance with Section 4.8 and has been designed to minimize spill into the night sky and is appropriate for the intended use and site location. As a condition of approval, the Applicant will be required to submit an updated Lighting Plan which correctly notes the proposed height pole installation height to not exceed 16' and a most recently revised date.

8. **Section 7- Flood Hazard Area.** The provisions of Section 7 apply only to the proposed development within the floodplain (i.e. paving portions of the parking area). Section 7.4 outlines when a permit is required within the Flood Hazard Area. A permit is required for all proposed construction or other development, including the placement of manufactured homes, in areas of special flood hazard. Prior to the issuance of a zoning permit, conditional use approval by the DRB is required for: (1) New buildings; (2) Substantial improvement of existing buildings; and (3) Development in a floodway. The Applicant is not proposing any new buildings, substantial improvement of existing buildings, or development in the floodway. The proposed modification of the parking paving material from hard pack gravel to asphalt is eligible for administrative review pending Flood Hazard Area review.

**Review Required.** The regulations require that all development and subdivisions within the Flood Hazard District be reviewed to assure that such proposals minimize potential flood damage, public facilities and utilities such as sewer, gas, electrical, and water systems are constructed so as to minimize flood damage, and adequate drainage is provided to reduce exposure to flood hazards.

Development as defined under the Flood Hazard Area District is “any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, extraction or drilling operations or storage of equipment or materials.” The Applicant proposes to modify the parking paving material from hard pack gravel to asphalt. Portions of the parking area are within the Flood Hazard Area District, as shown on the provided site plan. During the hearing, the Applicant testified that they are seeking the optional change in parking area surface from hard pack gravel to asphalt. If the project budget allows, the desired parking area surface is asphalt. The Applicant reported that the change in parking area material is not expected to significantly alter drainage patterns.

**Section 7.5 Procedures.** In accordance with Section 7.5(1) and 24 V.S.A. §4424, prior to issuing a permit, a copy of the application and supporting information must be submitted by the administrative officer to the State National Floodplain Insurance Program Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management. A permit may be issued only following receipt of comments from the Agency or the expiration of thirty (30) days from the date the application was mailed to the Agency, whichever is sooner. Pursuant to Section 7.5(1) and 24 V.S.A. §4424, the application was referred to ANR Floodplain Coordinator Rebecca J. Pfeiffer on 9/4/2018 for review and comment. No comments were received for consideration during the hearing.

**Conclusion:** Based on the above findings, the Board concludes the project entails paving within the Flood Hazard Area District and will require, as a condition of approval, that the zoning permit not be issued until receipt of comments from the Agency or the expiration of thirty (30) days from the date the application was mailed to the Agency and any comments received be incorporated into the relevant zoning permit conditions.

## **DECISION**

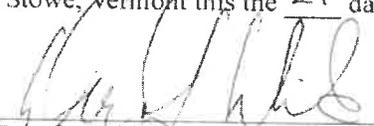
Based upon the foregoing Findings of Fact, in RE: **5874** the Board finds (5-0) the requested amendments meet the Stowe Zoning Regulations, as amended through July 3, 2017, subject to the following conditions of approval:

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 zoning permit shall not be issued until receipt of comments from the Agency or the expiration of thirty (30) days from the date the application was mailed to the Agency. Any comments received shall be incorporated into the relevant zoning permit conditions.
4. Prior to the issuance of a zoning permit, the Applicant shall submit the following information:
  - An updated site plan ‘Architectural Site Plan ‘Stowe Electrical Department Office Building’, Sheet A-1.2, prepared Bread Loaf’ depicting the location of the proposed emergency generator, a revised planting legend incorporating the additional five (5) Redwing Viburnam, and the most recent revised date.
  - An updated Lighting Plan which correctly notes the proposed pole installation height to not exceed 16’ and the most recent revised date.
  - A revised photometric plan which correctly depicts the lighting levels for the selected outdoor light fixture and approved installation height of 16’. The revised photometric plan must include a most recent revised date.

5. The Board authorizes the Zoning Director to administratively approve, under Section 2.7, minor landscaping revisions with a different species which provides comparable screening and is of comparable maturity height.
6. Landscaping shall be maintained in a healthy condition. Dead or dying plants shall be replaced within one growing season with a comparable plant (type, form, size at maturity, etc.).
7. Parking lot lighting shall be designed and installed with a minimum illumination level of not less than 0.2-foot candles and not greater than 1.0-foot candles and with a uniformity ratio of not more than 4:1 as required under §4.8(2)(A).
8. The Board approves the optional change in parking area surface from hard pack gravel to asphalt and the optional light fixture change to Alumilite.
9. A certificate of occupancy must be obtained from the Zoning Director following the construction but prior to occupancy and use to ensure that it has been constructed as approved by the Development Review Board, as required under Section 2.10 of the zoning regulations.
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 purpose of ascertaining compliance with the conditions of approval.

Voting favor: D.White, M.Deinder, C.Walton, A. Volansky, T.Mumley  
 Voting to deny: None  
 Abstain: T. Hand

Dated at Stowe, Vermont this the 29 day of September 2018

By:   
 Douglas White, 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.