

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



**PROJECT:** 5951

**SUBJECT PROPERTY:** 90 Strom Farm Lane; #06-049.000

**PROPERTY OWNER:**  
Riverbend at Stowe LLC  
7 Shandel Circle  
Andover, MA 01810

**APPLICANT:**  
Patricia Kules  
Little River Survey Company LLC  
PO Box 1208  
Stowe, VT 05672

**APPLICATION:**

The Applicant, Patricia Kules of Little River Survey Company LLC on behalf of property owner Riverbend at Stowe LLC (herein referred to as the “Applicant”), requests approval to amend a prior condition of subdivision approval to allow for the construction of an additional dwelling unit on the subject parcel. In 1983 the Stowe Planning Commission granted final subdivision approval of the parcel (#83-10) with the condition that “*there shall be no additional dwelling units constructed on the within subdivided lots.*”

The subject parcel, consisting of ±2.0 acres and located at 90 Strom Farm Lane (#06-049.000), is in the Upper Mountain Road (UMR) Zoning District and contains an existing single-family dwelling constructed circa 1964. Portions of the property are also within the Flood Hazard District and the Fluvial Erosion Hazard Overlay District (FEH). The subject parcel is bound to the north by property owned by K2 Realty LLC, to the west by a parcel containing two existing duplexes on Butternut Lane, to the south by the West Branch of the Little River, and to the east by Strom Farm Lane. The application has been reviewed by the Stowe Development Review Board (DRB) as an amendment to a previously approved subdivision under applicable standards of the Town of Stowe Zoning Regulations (as adopted October 9, 2018) and Town of Stowe Subdivision Regulations (effective through July 16, 2012).

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 an amendment to a previously approved subdivision was filed by Applicant Patricia Kules of Little River Survey Company LLC on February 4, 2019. 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 March 5, 2019 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 February 14, 2019. 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 March 5, 2019 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:

- Patricia Kules, Little River Survey Company LLC, PO Box 1208, 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, received 2/4/2019;
2. Planning Commission minutes from April 18, 1983;
3. Planning Commission minutes from June 20, 1983;
4. Portions of recorded plat (#83-10) signed by Planning Commission on 7/11/1983;
5. Flood Insurance Rate Map (FIRM)- Town of Stowe, Panel 25 of 40, Map #500066 0025C, Map Revised 2/4/1983; (staff)
6. Flood Insurance Rate Map (FIRM)- Town of Stowe, Panel 76 of 105, Map #5000660076E, Map Revised 8/4/2005; (staff)
7. Hand drawn sketch of subject parcel, no date;
8. National Flood Hazard Layer FIRMette, dated 2/25/2019;
9. 1983 and 2005 FEMA for Riverbend at Stowe, Sheet 1 of 1, Job# 18356, prepared by Little River Survey Company LLC, dated December 2018;
10. Site with 2005 FEMA for Riverbend at Stowe, Sheet 1 of 1, Job# 18356, prepared by Little River Survey Company LLC, dated December 2018;
11. Photograph showing view from building zone, dated 3/4/2018;
12. Town of Stowe Zoning Map, showing Special Flood Hazard Area, no date.

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 an amendment to a previously approved subdivision was reviewed by the Stowe Development Review Board (DRB) for conformance with applicable requirements of the Town of Stowe Zoning Regulations (as adopted October 9, 2018) and Town of Stowe Subdivision Regulations (effective through July 16, 2012).

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

**Dimensional, Density & Other Requirements:**

1. **Zoning District.** The subject parcel contains  $\pm 2.0$  acres and is served by Strom Farm Lane, a privately owned and maintained road. The parcel is located in the Upper Mountain Road (UMR) Zoning District. Portions of the property are also within the Flood Hazard District and the Fluvial Erosion Hazard Overlay District (FEH), as shown on the Official Town of Stowe Zoning Map (as adopted October 9, 2018).
2. **Lot Area, Lot Width.** The  $\pm 2.0$  -acre parcel is located in the UMR district. The previously recorded subdivision plat depicts the parcel containing approximately  $\pm 131.6'$  of frontage along Strom Farm Lane. No changes to lot area or lot width are proposed under this application.

3. **Setbacks.** Required minimum district setbacks in UMR are front (50'), side (50') and rear (50'). No changes to the location of any buildings, structures, or parking are proposed under this application. Section 3.10 outlines minimum setbacks from watercourses and requires a minimum 50 ft setback including a vegetation buffer be left in an undisturbed state. The regulations define watercourse as... "16.183 Watercourse: Any naturally flowing water, including rivers, streams and creeks as depicted on the Official Zoning Map." The subject parcel abuts the West Branch of the Little River which is shown on the official zoning map. Under the current regulations, a 50' riparian setback would be required for any future development.
4. **Maximum Building Coverage.** The maximum building coverage in UMR is 8%. No changes to maximum building coverage are proposed under this application.
5. **Use.** The parcel contains an existing single-family dwelling and related improvements constructed in the mid-20<sup>th</sup> century. No changes of use or expansions of use are proposed under this application.
6. **Height.** The maximum building height in HT is 28' feet. The regulations define building height as the "Vertical distance measured from the average elevation of the proposed finished grade at the front or rear of the building to the highest point of the roof for flat and mansard roofs, and to the average height between the highest ridge and its contiguous eave for other types of roofs. On sloping sites the height will be measured on the uphill side." No changes in height are proposed under this application.
7. **Density.** The Applicant seeks approval for an amendment to a prior condition of approval. No changes to density are specifically proposed under this application, however the Applicant requests approval to remove a prior subdivision condition restricting an additional dwelling unit. In the UMR district, single-family dwellings are allowed at a density of one unit per acre.

**Section 2.16- Flexibility and Finality in the Permitting Process (Stowe Club Test)**

8. Section 2.16 outlines the requirements for amending previously approved permits or approvals as follows:
  - (1) In order to determine if it is appropriate under the circumstances to allow an amendment of a permit or approval, the Board shall evaluate any application that proposes an amendment of a final approval and assess the competing policies of flexibility and finality in the permitting process. An amendment is considered a request to modify the project plans, exhibits, and /or representations by the applicant that lead to the decision and which have been incorporated into the approval through a specific or general condition. For the purpose of this section, conditions include all stated conditions in a decision and elements of a recorded plat or plan.
  - (2) In balancing the competing policies of flexibility and finality (referred to herein as the Stowe Club Test) three kinds of changes justify altering a condition of a permit or approval:
    - A. Changes in factual or regulatory circumstances beyond the control of a permittee;
    - or
    - B. Changes in the construction or operation of the permittee's project, not reasonably foreseeable at the time the permit was issued; or
    - C. Changes in technology.

(3) Even where the Board finds such a change as described above, there are certain situations where an amendment may not be justified, for instance where the change was reasonably foreseeable at the time of the original.

9. The Applicant provided copies of Planning Commission minutes April 18, 1983 and June 20, 1983. The 4/18/83 minutes describe portions of the lot as “*mostly flood plain that could not be developed.*” The Planning Commission granted final approval of the subdivision on June 20, 1983 with the condition “*no additional dwelling units would be allowed there.*”

10. Staff provided copies of the following flood insurance rate maps:

- Flood Insurance Rate Map (FIRM)- Town of Stowe, Panel 25 of 40, Map #500066 0025C, Map Revised 2/4/1983; (staff)
- Flood Insurance Rate Map (FIRM)- Town of Stowe, Panel 76 of 105, Map #5000660076E, Map Revised 8/4/2005; (staff)

11. The Applicant provided the following documents:

- 1983 and 2005 FEMA for Riverbend at Stowe, Sheet 1 of 1, Job# 18356, prepared by Little River Survey Company LLC, dated December 2018;
- Site with 2005 FEMA for Riverbend at Stowe, Sheet 1 of 1, Job# 18356, prepared by Little River Survey Company LLC, dated December 2018;

**Discussion:** The flood insurance map in effect at the time of Planning Commission decision appears to show Strom Farm Lane as ‘unnamed road’. As depicted, the mapped floodplain encompasses much of the area at the end of the unnamed road and includes Zone B and Zone A6. Subsequent flood insurance maps contain additional details including an aerial photograph underlaid the flood maps. The flood insurance map last revised 8/4/2005 depicts a significantly reduced floodplain area. The Applicant argues that it is this change in *regulatory circumstance* that allows for a modification to the prior subdivision approval.

During the hearing the Board reviewed the provided documents including a map entitled “1983 and 2005 FEMA for Riverbend at Stowe” which depicts the mapped base flood in effect at the time of Planning Commission decision and the current mapped floodplain, as mapped by FEMA. Staff provided testimony that FEMA updates the flood insurance maps when new or more accurate information becomes available.

**Conclusion:** Based upon the above findings, the Board concludes changes in factual or regulatory circumstances beyond the control of a permittee justify altering the condition of subdivision approval, as noted in the June 20, 1983 Planning Commission minutes and recorded plat (#83-10) signed by Planning Commission on 7/11/1983.

## **DECISION**

The DRB hereby approves (4-1-1) the amendment requested by the Applicant as listed in the application and supporting materials, subject to the following conditions of approval:

1. The DRB approves removing the previous condition of approval restricting additional dwellings from being constructed on the lot.

2. All conditions of prior approvals, except as amended herein, remain in full force and effect.
3. Any future application to develop the lot will require review under the regulations in effect at the time of submission.
4. These conditions of approval shall run with the land and are binding upon and enforceable against the permittee and his successors.

Voting favor: D.White, P.Aumand, T.Mumley, T. Hand

Voting to deny: D. Clymer

Abstain: A. Volansky

Dated at Stowe, Vermont this the 11 day of March 2019

By: *Douglas White*  
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 a permit based on a determination that the permittee violated the terms of the permit or obtained the permit based on misrepresentation of material fact.