

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



**PROJECT:** 5784

**SUBJECT PROPERTY:** 1009 South Main Street; #07-313.C1A

**PROPERTY OWNER & APPLICANT:**

Albert Hardy  
792 College Parkway  
Colchester, VT 05446

**APPLICATION:**

The Applicant, Albert Hardy (herein referred to as the “Applicant”), request conditional use and design review approval to construct two platform tennis courts (30’ x 60’) with a 16’ x 30’ warming hut. The Stowe Platform Tennis Club is proposed to operate the courts which are expected to serve approximately forty (40) members per court. The subject parcel, consisting of ±2.0 acres and located at 1009 South Main Street (#07-313.C1A), is in the Rural Residential I (RRI) Zoning District and the Stowe Historic Overlay District (SHOD). The property is served by an access drive connecting to VT Route 100 in the Lower Stowe Village. 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) for the purpose of conditional use review and design 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 conditional use and design review was filed by Applicant Albert Hardy on March 22, 2018. Given the parcels location within the Stowe Historic Overlay District, the application was referred to the Historic Preservation Commission by former Zoning Director Richard Baker. The Historic Preservation Commission reviewed the application during the March 28, 2018 and June 13, 2018 regular meetings and voted to recommend approval of the design to the Development Review Board. A copy of the Commission’s written recommendation was submitted and entered into the hearing record.

Following review and recommendations of the Historic Preservation Commission, 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 September 4, 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 16, 2018. The Applicant provided a completed certificate of service in accordance with Section 2.14(1)(B).

The public hearing to consider the application convened on September 4, 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 & Property Owner, Albert Hardy, 792 College Parkway, Colchester, VT 05446;
- Rob Coster- Court Pro- [Rob@court-pro.net](mailto:Rob@court-pro.net)
- Ramsey Hoehm, 380 Sky Acres Drive, Stowe, VT 05672
- Scott Trowbridge, PO Box 675, Stowe, VT 05672
- Todd Trowbridge, no address provided.
- Joe Miles, r.k.Miles, Inc., PO Box 1125, Manchester Center, Vermont 05235
- John D. Grenier P.E., 155 Demeritt Pl # 2, Waterbury, VT 05676
- Betsy & Andrew Waine, 251 Luce Hill Road Unit 64, Stowe, VT 05672
- Jeff & Megan Goss, 915 Stowe Hollow Road, Stowe, VT 05672
- Cindy Jackman, 291 East Tamarack Road, Stowe, VT 05672
- Heather Palmer, 180 Cady Hill Road, Stowe, VT 05672
- Peter Anderson, P.O. Box 566, 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 3/22/2018;
2. [Email] Project Narrative, dated 7/24/2018;
3. Hand-drawn elevation drawings of warming hut (3 pages), dated 3/28/2018;
4. Photograph showing example court, dated 3/28/2018;
5. Portions of property survey showing property boundaries, dated 6/13/2018;
6. Warming hut elevation drawings prepared by Philip Ross, AIA 'Platform Tennis Facility' Sheet SKA-IM, dated 6/10/2018;
7. Partial Site Plan Lot CIA prepared by Philip Ross, AIA 'Platform Tennis Facility' Sheet CSK-I, dated 5/2/2018;
8. Outdoor lighting details 'e-conolight' E-AL2L Series manufacturer details (4 sheets), dated 6/13/2018;
9. Photograph showing example court in the evening, dated 6/13/2018;
10. Photograph showing court stairs, dated 6/13/2018;
11. Photographs (2) showing chain link fencing, dated 6/13/2018;
12. Email description of proposed outdoor lighting, dated 7/9/2018;
13. Stowe Historic Preservation Recommendation, dated 6/14/2018;
14. Photograph of possible building materials, dated 3/28/2018;
15. Hand-drawn plans of proposed courts and decks, dated 3/28/2018;
16. Photograph of proposed window type and material, dated 6/13/2018;
17. Manufacturer details for proposed windows Pella ADM, dated 6/13/2018.

The DRB continued the hearing to a time and date certain, Tuesday, September 18, 2018 at 5:00 PM pending additional information from the Applicant. In advance of and during the September 18<sup>th</sup> hearing, the following additional materials were submitted and entered into the hearing record:

18. Email from Craig Keller, Chief of Permitting Services, VTrans, dated 8/2/2018;
19. Letter from Zoning Director Sarah McShane, Re: Project 5784, dated 9/7/2018;
20. Aerial image showing location of proposed court and possible sight lines, dated 9/18/2018;
21. Photo rendering taken from Rt. 100 showing expected mass and size of proposed platform tennis courts, dated 9/18/2018;

22. Platform Tennis Facility- Site Elevation Drawings prepared by Philip Ross, AIA, Sheet C2, dated 9/18/2018; (mirror image)
23. Photograph of example courts illuminated at night, added during 9/18/2018;
24. Photograph of example court lighting and fabric screen, added during the 9/18/2018;
25. Photograph of tennis court lighting near Stowe Elementary School, no date;
26. Photographs of Fence Screening, dated 9/18/2018;
27. Partial Site Plan Lot CIA prepared by Philip Ross, AIA 'Platform Tennis Facility' Sheet CSK-IC, dated 9/14/2018;

The DRB continued the hearing to a time and date certain, Tuesday, October 2, 2018 at 5:00 PM pending additional information from the Applicant. In advance of and during the October 2<sup>nd</sup> hearing, the following additional materials were submitted and entered into the hearing record:

28. IES Flood Report- Photometric 'Stowe VT Platform Tennis Court Project Lighting Report.IES', (6 pages) submitted for 10/2/2018;
29. Platform Tennis Facility- Platform Tenn Courts- Elevations prepared by Philip Ross, AIA, Sheet C2, dated 9/23/2016 9[sic];
30. Property survey information overlaid on site plan, no date;
31. Revised Partial Site Plan Lot CIA prepared by Philip Ross, AIA 'Platform Tennis Facility' Sheet CSK-IC, dated 9/14/2018;
32. Platform Tennis Facility- Platform Tenn Courts- Elevations (with hand-drawn mesh shown) prepared by Philip Ross, AIA, Sheet C2, dated 9/23/2016 9[sic];

The DRB continued the hearing to a time and date certain, Tuesday, October 16, 2018 at 5:00 PM pending additional information from the Applicant. In advance of and during the October 16<sup>th</sup> hearing, the following additional materials were submitted and entered into the hearing record:

33. Exhibit A: Three photographs of existing conditions, dated 10/4/2018;
34. Exhibit B: Manufacturer details for the warming hut exterior lighting. 4" downlight 10w Titanium CRISP LED Series (2 pages), received 10/9/2018;
35. Exhibit C: Revised Partial Site Plan Lot CIA prepared by Philip Ross, AIA 'Platform Tennis Facility' Sheet CSK-IC, last revised 10/9/2018;
36. Exhibit D: Site Plan Stowe Professional Center Commercial Office Complex for Lot CIB(4) 'Platform Tennis Facility Vermont Route 100 Lot CIA, prepared by Philip Ross, AIA, Sheet C1, dated 10/9/2018;
37. Exhibit E: Revised Platform Tennis Facility- Platform Tenn Courts- Elevations prepared by Philip Ross, AIA, Sheet C2, dated 9/23/2016, last revised 10/9/2018;
38. Exhibit F: Platform Tennis Facility- Preliminary Hut Floor Plan and Elevations prepared by Philip Ross, AIA, Sheet SKA-IM, dated 6/10/2018, last revised 10/9/2018;
39. Exhibit G: IES Flood Report- Photometric 'Stowe VT Platform Tennis Court Project Lighting Report.IES', (6 pages) resubmitted for 10/16/2018;

The DRB continued the hearing to a time and date certain, Tuesday, November 20, 2018 at 5:00 PM pending additional information from the Applicant. In advance of and during the November 20<sup>th</sup> hearing, the following additional materials were submitted and entered into the hearing record:

40. Exhibit H: Email from Joe Miles (abutter) Re: In support of Stowe Platform Tennis, dated 10/18/2018;
41. Exhibit I: Correspondence from John D. Grenier P.E., dated 11/6/2018;

At the request of the Applicant, the DRB continued the hearing to a time and date certain, Tuesday, December 4, 2018 at 5:00 PM pending additional information from the Applicant. In advance of and during the December 4<sup>th</sup> hearing, the following additional materials were submitted and entered into the hearing record:

42. Exhibit J: RAB Light Analysis 'Platform Tennis Facility Stowe, VT' prepared by Cassandra Gonzales, dated 11/14/2018; (Scale 1" = 30 ft)
43. Exhibit K: RAB Light Analysis 'Platform Tennis Facility Stowe, VT' prepared by Cassandra Gonzales, dated 11/14/2018; (Scale 1" = 16 ft)
44. Exhibit L: RAB Light Analysis 'Platform Tennis Facility Stowe, VT' prepared by Cassandra Gonzales- Perspective View and Plan View, dated 11/14/2018;
45. Exhibit M: RAB Light Analysis 'Platform Tennis Facility Stowe, VT' prepared by Cassandra Gonzales – Light post and fixture specifications, dated 11/14/2018;
46. Exhibit N: RAB Light Analysis 'Platform Tennis Facility Stowe, VT' prepared by Cassandra Gonzales – Light fixture specifications (2 pages), dated 11/14/2018;
47. Exhibit O: RAB Light Analysis 'Platform Tennis Facility Stowe, VT' prepared by Cassandra Gonzales – Light post specifications (2 pages), dated 11/14/2018;
48. Exhibit P: Existing Conditions Photographs -provided via email, dated 11/28/2018;
49. Exhibit Q: Signed Petition (2 pages) in support of the application, dated 11/28/2018;
50. Exhibit R: Partial Site Plan Platform Tennis Facility Vermont Route 100 Lot CIA, prepared by Philip Ross, AIA, Sheet C1, last revised 10/29/2018;
51. Exhibit S: Revised Platform Tennis Facility- Platform Tenn Courts- Elevations prepared by Philip Ross, AIA, Sheet C2, last revised 10/29/2018;
52. Email from Betsy & Andrew Waine, 251 Luce Hill Road Unit 64, Stowe, VT 05672, Re: Letter for the meeting Nov. 20, 2018, dated 11/29/2018;
53. Email from Jeff & Megan Goss, 915 Stowe Hollow Road, Stowe, VT 05672, Re: Paddle courts, dated 12/4/2018.

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 conditional use and design review 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 10- Stowe Historic Overlay District
- Section 15- Parking Regulations

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

1. **Zoning District.** The subject parcel contains ±2.0 acres and is served by an access drive connecting to state-maintained VT Route 100. The parcel is in the Rural Residential I (RRI) Zoning District and

the Stowe Historic Overlay District (SHOD) as shown on the Official Town of Stowe Zoning Map (as adopted June 12, 2017).

2. **Lot Area, Lot Width.** The ±2.0-acre parcel is located in the Residential I (RRI) Zoning District which requires a minimum lot area of one (1) acre and 150 ft minimum lot width. The provided survey shows the parcel containing frontage on VT Route 100 and a lot width exceeding 150'. No changes to lot area, frontage, or lot width are proposed under this application.
3. **Setbacks.** Required minimum district setbacks are front (50'), side (30') and rear (40'). The required district setbacks are shown on the revised site plan titled 'Partial Site Plan Lot CIA' prepared by Philip Ross Architects last revised 10/29/2018. No structures or parking improvements are located within the required setback areas.
4. **Maximum Building Coverage.** The maximum building coverage in RR1 is 8%. The regulations define building coverage as follows: "Building Coverage: That portion of a site, expressed as a percentage, occupied by all buildings or structures, (not including public utility structures), that are roofed or otherwise covered and that extend more than three (3') feet above the surface ground level. The building roof overhang up to 6 feet in length is not included as part of the building coverage area." The Applicant is proposing two 30' x 60' platform tennis courts and a 16' x 30' warming hut. The proposed courts will be raised off the ground and be enclosed with a chain link fence. The site plan provides the area tabulations including 2,258 sf (existing building), 480 sf (proposed hut), and 4,535 sf (courts and deck), totaling 7,273 sf. Under the regulations, RR1 district allows 8% lot coverage or 8,065 sf of the subject lot.
5. **Use.** The subject parcel contains an existing oral surgery office and two residential dwelling units. The Applicant proposes to construct two platform courts and a warming hut to be operated by the Stowe Platform Tennis Club. The regulations define Private/Seasonal Club as follows: "16.32 Club, Private: A premises owned or occupied by a membership-based organization that operates for social, recreational, cultural or educational purposes and is open only to members and their guests." Private Club is a conditional use in the RR1 district. As a condition of approval, the Board will require that the club be occupied by a membership-based.
6. **Density.** The subject parcel contains a mix of uses including an existing oral surgery office and two residential dwelling units. The Applicant proposes to construct two platform tennis courts and warming hut. No increase in residential density is proposed under this application. It is noted that the regulations allow a residential density of three (3) units per acre for multi-family in the RR1 district. Table 6.3 notes that density calculations are to exclude the portion of the lot occupied by other uses and their associated densities.
7. **Height.** The maximum building height in RR1 is 28' feet. The provided building elevations for the warming hut show a height of 14' 7" to the peak of the roof, satisfying the maximum district height requirements.
8. **Design Review.** Pursuant to Section 10.5(12), the Stowe Historic Preservation Commission reviewed the application during their March 28, 2018 and June 13, 2018 meetings and voted to approve the proposal as presented. A copy of the SHPC recommendation was provided as part of the hearing record.

**Section 3.7(2)(A) – Standards of review (Conditional Use Applications):** The Development Review Board must determine that the use will conform to the following set of standards and will not result in an undue adverse effect on the following:

9. **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. The Applicant is not proposing any connections to the municipal water or sewer. During the hearing the Applicant verified that the parcel is serviced by private septic and potable water. At the request of the Board, staff directly sought comments from the Stowe Fire Department regarding possible fire safety concerns. On October 4, 2018 staff spoke with Fire Chief Mark Sgantus regarding the project. He requested that the propane tank include a shut off switch/valve in the event of a leak. He also noted that the propane tanks should be protected from vehicles (i.e. placement, bollards, etc.)

**Conclusion:** The Board concludes the proposal, if constructed and maintained as approved, will not result in an undue adverse effect on the Town’s existing or planned facilities or services. As a condition of approval, the Board will require the propane tank to include a shut off valve or switch.

10. **Section 3.7(2)(A)(2) – Traffic on roads and highways in the vicinity:** The subject parcel contains an existing oral surgery office and two residential dwelling units. The Applicant proposes to construct two platform tennis courts and a warming hut [Private/Seasonal Club]. According to the project narrative, the platform tennis courts will be available through a private club membership. Each court is proposed to have approximately forty (40) memberships. Hours of operation are proposed to be 9:00 am-10:00 pm every day, with the exception of Wednesday and Thursday when the courts will not open until 5:00 PM. The Applicant did not provide the estimated number of vehicle trips generated by the existing or proposed uses. The project narrative states the courts will not operate when the office is open (in operation). A notation to the same effect is also on the provided site plan.

**Conclusion:** The Board concludes the proposal represents a nominal increase in traffic on roads and will not create an undue adverse impact on traffic on roads and highways in the vicinity. No additional road improvements will be needed to accommodate proposed courts and warming hut.

11. **Section 3.7(2)(A)(3) – The character of the area affected:** The subject parcel is in the RR1 zoning district. The general purpose of the RR1 district 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 purposes in RR 1 and RR 2:

*“To allow a higher density closer to available municipal services while maintaining the quality of the neighborhoods.”*

During the hearings, the Board heard testimony related to the existing conditions of the nearby and adjacent properties. The parcel is located on the edge of the lower village and is surrounded by a mix of nearby commercial and residential properties. Adjacent property owners raised concerns regarding the proposed outdoor lighting and whether it is appropriate for the RR1 district. Other participants provided testimony regarding the location of the proposed courts, the proximity to an existing gas station, car wash, and convenience store, and the existing noise and light levels from VT Route 100.

**Conclusion:** The Board concludes although the proposal is located within the RR1 district, it is in a transitional area surrounded by primarily commercial properties and is served by Vermont Route 100- a main entrance road into town. Concerns were raised during the hearing regarding the projects location and whether it is appropriate for the district and gateway entrance into town. The Board agrees that the project will have a visual impact, however, finds it will not have an undue adverse effect on the character of the area. Measures, including screening and landscaping, have been required to mitigate possible impacts.

12. **Section 3.7(2)(A)(4) – Regulations and ordinances in effect:** The application was reviewed as a Conditional Use. Applicable bylaws include the Stowe Zoning Regulations, as adopted June 12, 2017. No other municipal bylaws or ordinances apply to this project.

**Conclusion:** The Board concludes the proposal is in conformance with the Stowe Zoning Regulations, as adopted June 12, 2017. No other municipal bylaws or ordinances apply to this project have been identified.

13. **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.

**Conclusion:** The Board concludes 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.

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

14. **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.** There are no known or identified scenic or historic sites located on the parcel. The parcel is within the Stowe Historic Overlay District. The proposal received a positive recommendation from the Stowe Historic Preservation Commission on June 13, 2018.

**Conclusion:** The Board concludes the proposal will not adversely affect the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas.

15. **Section 3.7(2)(B)(2) - Project will not result in undue water, noise or air pollution.** The subject parcel contains an existing oral surgery office and two residential dwelling units. The Applicant request approval to construct two platform tennis courts and a warming hut. According to the project narrative, the platform courts will be available through a private club membership serving approximately forty (40) members. During the hearings, the Board heard various testimony in favor and opposed to the project. Concerns were raised regarding possible noise

levels, noise generated by players, and impacts to adjacent and nearby properties. The Applicant provided testimony that the game is played with a soft ball which creates limited noise. It was noted for the record that the proposed courts are located directly off Vermont Route 100 which creates considerable traffic and vehicular noise and that the game is generally played during winter months and in the evening when people are generally not outdoors. Resident Cindy Jackman provided testimony that from her personal experience, noise generated by the game and players will not impact adjacent property owners. The Applicant testified that the game and players do generate noise, but the project will not result in undue noise pollution.

**Conclusion:** The Board heard conflicting testimony regarding the expected noise generated by the proposal. It is of the Board's opinion that many of the noise concerns raised were speculative and were not substantiated or supported by proof or evidence. The Board therefore concludes the project will not result in undue water, noise, or air pollution. As conditions of approval, the Board will require the following mitigation and protective measures to ensure the project will not result in undue noise pollution:

- *No outdoor music is allowed without prior approval of the Board.*
- *The approved hours of operation shall be 9:00 AM-10:00 PM daily, with the exception of Wednesday and Thursday when the platform tennis club shall not operate until 5:00 PM. Any changes to the hours of operation require additional review and approval by the Board.*
- *The platform tennis club shall be occupied by membership only and not open to the general public.*

16. **Section 3.7(2)(B)(3) – Access Management:** The parcel is served by an 18' shared driveway off from VT Route 100. No change to the curb cut or right-of-way are proposed under this application. 24 VSA §4416 requires proposals involving access to a state highway provide a letter of intent from the Agency of Transportation confirming that the Agency has reviewed the proposed site plan and is prepared to issue an access permit under 19 VSA §1111. Staff contacted Craig Keller, Chief Permitting Services at VT Agency of Transportation, he noted that no improvements are required for this project.

**Conclusion:** The Board finds that the existing driveway and vehicular access are adequate for the existing and intended uses.

17. **Section 3.7(2)(B)(4) – Shared Access:** The parcel is served by an 18' driveway. According to the property survey, the access also serves the rear parcel via 30' right-of-way. As designed, the platform tennis courts and warming hut do not encroach within the 30' right-of-way. Abutting property owner, Joe Miles, provided written testimony that Stowe r.k. Miles Inc. and its land holding company FHS Holdings LLC have a right-of-way over the subject property and that the proposed project will not conflict with their operations. No changes to the shared access are proposed under this application.

**Conclusion:** The Board finds the parcel is encumbered by a 30' right-of-way which provides access to the adjacent parcel and concludes the project will not encroach or interfere with this recorded right-of-way.

18. **Section 3.7(2)(B)(5) – Circulation and Parking:** The regulations require that parking be provided per the requirements of Section 14 and be designed to minimize the visibility of parking areas from off-site through the location, landscaping and screening of such areas. The Applicant is

proposing minor expansions to the existing parking or access improvements. The provided site plan shows the location of fourteen (14) parking spaces. Table 15.2 outlines the minimum parking requirements. The property contains an existing oral surgery office and two residential dwelling units. Duplex residential units require two parking spaces per unit. Offices require one parking space per every 300 sf of gross floor area excluding storage, no less than three spaces. The Applicant reported the total gross floor area of the oral surgeon office to be approximately 1,569 sf with an additional 225 sf of floor area currently used for storage, which under Table 15.2 requires six (6) parking spaces. The provided site plan prepared by Philip Ross, last revised 10/29/2018, shows the location of fourteen (14) parking spaces measuring 9' x 18' including one larger parking space to accommodate accessible parking and van access. The site plan provides a parking tabulation for the existing and proposed uses and designates six (6) parking spaces for the platform tennis club. Eight (8) parking spaces are allotted for the existing office and residential uses.

**Conclusion:** The Board finds that Table 15.2 does not provide parking requirements for outdoor recreational facilities or private clubs. A minimum of eight (8) parking spaces are required for the existing uses, as calculated under Table 15.2. The provided site plan provides for a total of fourteen (14) parking spaces and notes that the parking will be shared between the office use and platform tennis club. Based on the evidence and testimony provided, the Board concludes that the Applicant adequately estimated the number of parking spaces required for the private club given the number of club members, hours of operation, and the maximum number of players per court at any given time. The Board further concludes the parking area will be shared by more than one use (office and private club) and hours of operation will be staggered to accommodate and provide for shared parking. As a condition of approval, the approved hours of operation are 9:00 AM-10:00 PM daily, with the exception of Wednesday and Thursday when play shall not begin until 5:00 PM. Any changes to the hours of operation require additional review and approval by the Board. The Board finds the proposed circulation and parking improvements represent safe and adequate access and circulation for the existing and intended use.

19. **Section 3.7(2)(B)(6) – Pedestrian Circulation and Access:** The regulations require pedestrian circulation within the site, and access through the site to adjacent properties along public roads, be provided. The proposed site plan shows parking area to the rear of the existing building near the proposed platform tennis courts. Stairs leading to the observation deck are provided in three separate locations, as well as a set of stairs leading directly to Court #2. An accessible ramp is shown on the eastern site of court #1. A 42" wide sloped walkway is shown to connect the parking area to the observation deck and the accessible ramp.

**Conclusion:** The Board finds the proposed site layout, including pedestrian circulation and access, represents safe and adequate pedestrian access and circulation for the intended use.

20. **Section 3.7(2)(B)(7) – 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 purpose of the Landscaping Standards as listed in Section 4.6 is as follows:

“These standards are intended to guide the DRB and applicants in developing and reviewing site development plans to ensure that landscaping is designed to enhance the overall appearance of individual properties; integrate new development into its natural and historic surroundings; preserve and enhance the particular identity of individual sites; and

to maintain compatibility among neighboring properties and consistency within the community.”

The provided site plan shows the location of proposed and existing landscaping. The site plan includes a Plant List including four (4) Dark Green Arborvitae 8'-10' in height and 2.5" in diameter; two (2) Eastern White Pine 8'-10' in height and 2.5" in diameter; and one (1) sugar maple 8'-10' in height and 2.5" in diameter. The sugar maple and eastern white pine trees are shown near the driveway entrance. The dark green arborvitae are shown on the western side of Court #1. The proposed landscaping has been designed and sited to provide vegetative screening of the courts and expanded parking area. Existing mature landscaping and trees surround the office and apartment building.

During the hearing the Board heard testimony from an abutter with concerns regarding the proposed placement of the two (2) white pine and the one (1) sugar maple and possible interference with a shared septic system and replacement area. It was also claimed that the sugar maple would not provide year-round screening. The Applicant agreed to relocate the proposed three (3) trees to an area where they would not interfere with septic areas and provide better screening for the adjacent property.

**Conclusion:** The Board concludes the proposed landscaping and screening are appropriate for the intended use and site location. As a condition of approval, the Board will require that the Applicant submit a revised site plan showing the relocated two (2) white pine and the one (1) sugar maple, as proposed in the Plant List shown on the site plan titled 'Partial Site Plan Lot CIA' prepared by Philip Ross, AIA, Sheet C2, last revised 10/29/2018. The relocated trees shall be planted in the area east of Court #2 and the warming hut.

21. **Section 3.7(2)(B)(8) – Stormwater Management:** The subject parcel contains an existing oral surgery office and two (2) residential dwelling units. The Applicant proposes to construct two (2) platform courts and a warming hut. The site plan shows the location of two 15" CGMP culverts. No other stormwater or drainage improvements are proposed or shown on the provided site plan. The Applicant provided photographs dated 10/4/2018 which show the existing conditions including the existing culvert under the 30' right-of-way and a drainage swale located near the eastern portion of the expanded parking area. The Applicant provided testimony that the courts and the observation deck will be constructed to allow for the passage and infiltration of stormwater. Additional impervious surfaces include the 480-sf warming hut and approximately 486 sf to create three (3) additional parking spaces; totaling ~966 sf or 0.002 acres. John Grenier P.E. provided written testimony (dated 11/6/2018) stating "given a drainage area of 0.25 acres directing runoff to the existing swale, a 15" culvert to replace the existing swale is sufficient for the site."

Section 3.12 outlines the requirements for Stormwater and Erosion Control. Section 3.12(2) specifically provides stormwater and erosion control standards for construction-related activities associated with any new construction.

**Conclusion:** The Board finds the proposal will create approximately ~966 sf of additional impervious surfaces. As a condition of approval, the Applicant will be required to follow the applicable provisions of Section 3.12. The Board concludes, if constructed and maintained as approved, the proposed improvements will not cause an undue adverse impact on neighboring properties, town highways or surface waters.

22. **Section 3.7(2)(C).** In addition to other provisions of Section 3.7, the DRB shall be guided by the following standards when reviewing all site development plans in the designated zoning district. These standards apply to all site development plans, including those involving new construction, expansion, alteration or change of use. The DRB may waive the specific requirements of this section when it is found that mitigation through design, screening or other mitigation will accomplish the objectives outlined for the designated districts.

1. Additional HT, **RR**, MOD, UMR Standards: Within the Highway Tourist (HT), (**Rural Residential (RR)**, Meadowland Overlay (MOD)) and Upper Mountain Road (UMR) Districts, site plans shall re-enforce efficient traffic circulation, preserve such important landscape features as open fields, scenic vistas, natural and cultural focal points and a well landscaped highway corridor.

To help achieve these objectives, the following standards shall apply:

- a. Front Yard Treatment: A continuous strip not less than twenty (20') feet deep, measured from the edge of the highway right of- way, shall be maintained between the street line and the balance of the lot, which strip shall be suitably landscaped. Only driveways and pedestrian walks may traverse the required strip. In addition, no portion of the front yard may be used for storage or for any purpose except as provided herein.
- b. Parking: Parking shall be located in the rear and/or side of all commercial and multi-family residential properties, except as provided under Section 14.3 of the regulations. Projects involving the upgrade and expansion of motels and lodges built prior to January 1, 1997 and designed with outside access to individual rooms fronting on parking areas, may continue locating parking within front yards.
- c. Driveway Access: Driveways shall be the minimum width necessary to provide safe vehicular access and promote pedestrian circulation.
- f. Additional RR Standards: Within the Rural Residential (RR) Districts the following is required:
  - i. Treatment of front yard and driveways for all conditional uses in the RR districts: A continuous strip not less than twenty (20') feet deep shall be maintained between the street line and the balance of the lot in all RR Districts, which strip shall be suitably landscaped. Only driveways and pedestrian walks may traverse the required strip. Not more than fifty (50%) percent of the required front yard may be used for driveways and parking. No portion of the required front yard may be used for storage or for any purpose except as above provided. Exceptions to these standards may be granted by the DRB in cases involving pre-existing buildings and/or uses when undue hardship is likely to exist. Cases will be reviewed on an individual basis, taking into account the unique features/circumstances of a site while still providing proper landscaping.
  - ii. Supplemental Standards for Development in the RR 1 District: In addition to the conditional use criteria set forth in these regulations, the DRB shall find that development permitted as a conditional use in the RR 1 District is designed in a

manner compatible with the area's rural character. At a minimum, the Board will consider:

- Adequacy and appropriateness of architectural design and visual context of the project. Generally, architectural designs should reinforce the rural landscape of the district through contextual scale and orientation of the buildings within the site and should reflect vernacular Vermont residential and agricultural building styles and incorporate, where appropriate, traditional materials.
- Buildings should generally be designed with a pitched roof and be of a mass and scale compatible with neighboring properties and the site.

The Applicant provided a site plan and plant list proposing an additional seven (7) trees 8'-10' in height. Mature trees and landscaping surround the existing office/residential building. The proposed expanded parking area is located to the rear of the existing building and is screened by the proposed landscaping and the position of the existing building. The parcel is served by an existing 18' shared driveway off from VT Route 100. No change to the curb cut or right-of-way are proposed under this application. As noted above, as required by 24 VSA §4416 the proposal was forwarded to the Agency of Transportation. In email correspondence to staff, Craig Keller, Chief Permitting Services at VT Agency of Transportation, noted that no improvements are required for this project. The warming hut has been designed with a pitched roof and received positive recommendations from the Stowe Historic Preservation Commission.

**Conclusion:** The Board concludes the revised site plan and architectural drawings satisfy the requirements of Section 3.7(2)(C)(1) and have been designed in a manner compatible with the area's rural character. Where appropriate, the Board waived the specific requirements when it was found that mitigation through design, screening or other mitigation has accomplished the objectives of the RR1 district.

22. **Section 4.8 Outdoor Lighting.** The regulations require that all outdoor lighting shall be installed in accordance with the standards outlined in Section 4.8. The Applicant provided a brief narrative and the outdoor lighting manufacturer specifications. The specifications note that each court will have eight (8) light fixtures for a total of sixteen (16) fixtures- as shown on the site plan and elevation drawings. The manufacturer details for the exterior lighting on the warming hut note the lighting to be recessed in the soffit. The elevation drawings show the position and placement of each light post. The light posts are shown to be approximately 23' in height as measured from the ground surface. The Applicant proposes to install a mesh fabric screen to mitigate any possible impacts of the outdoor lighting. During the initial hearings, the Applicant provided details regarding the mesh fabric, a general photometric plan showing the Average/Maximum/Minimum lighting in foot candles, and a photograph showing an example court illuminated in the evening.

The Board requested the Applicant provide additional lighting data including a photometric report outlining the lighting levels and light distribution. In advance of the December 4<sup>th</sup> hearing the Applicant provided Exhibits J-O which included a lighting analysis prepared by RAB, light post and fixture specifications, light fixture specifications, and light post specifications. The provided information shows measured light intensity in footcandles for the two courts and surrounding areas. During previous hearings, the Applicant agreed to install fabric mesh on the northern and

western sides of the court to mitigate the light dispersion. The fabric mesh is shown on the Revised Platform Tennis Facility- Platform Tenn Courts- Elevations prepared by Philip Ross, AIA, Sheet C2, last revised 10/29/2018.

During the hearing the Board heard considerable testimony and discussion on the proposed lighting and whether the lighting would be on timers or otherwise have electronic shut-off. The Applicant provided testimony that the exterior lighting on the warming hut will be recessed and motion activated. The Applicant's preferred option for court lighting is a manual shut-off switch.

**Conclusion:** After careful review of the proposal and the outdoor lighting requirements, the Board finds the regulations do not provide specific requirements pertaining to outdoor lighting for recreational facilities. Given the absence of regulatory guidance specific to outdoor lighting for recreational facilities, the Board incorporates the following conditions of approval as allowed under Section 4.8:

- *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.*
- *Exterior lighting on the warming hut and court lighting shall include automatic timers or motion activated to reduce the overall energy consumption and eliminate unneeded lighting. The courts shall not be illuminated beyond 10:00 PM or during times in which they are not in use.*
- *Written certification from the lighting manufacturer that the proposed light fixtures are cut-off fixtures as defined by the Illuminating Engineering Society of North America (IESNA) [§4.8(2)(F)].*

The Board concludes the proposed outdoor lighting is designed in conformance with applicable provisions in Section 4.8 and is appropriate for the intended use and site location.

23. **Section 15 Parking Regulations.** – See discussion above.

**DECISION**

Based upon the foregoing Findings of Fact in RE: 5784 the Board hereby approves (4-2) the request to construct two platform tennis courts, warming hut, and related improvements as listed in the application and shown on site plan titled 'Partial Site Plan Platform Tennis Facility Vermont Route 100 Lot CIA, prepared by Philip Ross, AIA, Sheet C1, last revised 10/29/2018' and elevation drawings titled 'Platform Tennis Facility- Platform Tenn Courts- Elevations prepared by Philip Ross, AIA, Sheet C2, last revised 10/29/2018' except as amended herein, 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. Prior to the issuance of a zoning permit, the Applicant shall submit the following:
  - A revised site plan showing the relocated two (2) white pine and the one (1) sugar maple, as proposed in the Plant List shown on the site plan titled 'Partial Site Plan Lot CIA' prepared by Philip Ross, AIA, Sheet C2, last revised 10/29/2018. The relocated trees shall be planted in the area east of Court #2 and the warming hut.

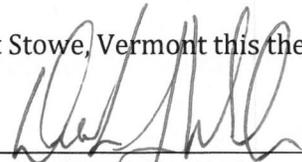
- Written certification from the lighting manufacturer that the proposed light fixtures are cut-off fixtures as defined by the Illuminating Engineering Society of North America (IESNA) [§4.8(2)(F)].
3. During site development the Applicant shall follow the stormwater and erosion control standards as outlined in Section 3.12(2).
  4. Mesh fabric screening, as depicted on 'Platform Tennis Facility- Platform Tenn Courts- Elevations prepared by Philip Ross, AIA, Sheet C2, last revised 10/29/2018' shall be installed on the northern and western sides of Court 1 and Court 2.
  5. No outdoor music is allowed without prior approval of the Board.
  6. The approved hours of operation shall be 9:00 AM-10:00 PM daily, with the exception of Wednesday and Thursday when the platform tennis club shall not operate until 5:00 PM. Any changes to the hours of operation require additional review and approval by the Board.
  7. The platform tennis club shall be occupied by membership only and not open to the general public.
  8. A shut off valve or switch shall be installed and maintained on all propane and fuel tanks.
  9. 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.
  10. Exterior lighting on the warming hut and court lighting shall include automatic timers or motion activated to reduce the overall energy consumption and eliminate unneeded lighting. The courts shall not be illuminated beyond 10:00 PM or during times in which they are not in use.
  11. A certificate of occupancy must be obtained from the Zoning Administrator following the construction but prior to occupancy and use to ensure that is has been constructed as approved by the Development Review Board, as required under Section 2.10 of the zoning regulations.
  12. Prior to a Certificate of Occupancy, the Applicant shall submit the following:
    - Written certification from a professional engineer or surveyor licensed by the State of Vermont that the courts, warming hut, and related improvements have been constructed in conformance with approved plans and meet the required setbacks.
    - Certification from a licensed landscape architect that all landscaping improvements have been completed in conformance with approved plans.
  13. 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: P.Aumand, P.Roberts, A. Volansky, D.Clymer

Voting to deny: D.White, T. Hand

Abstain: None

Dated at Stowe, Vermont this the 18 day of January 2019

By:   
Douglas White, Chair

**Dissenting Opinion-** Board Member Douglas White: This board member voted in opposition of the project given that there was too much conflicting testimony and factual evidence / exhibits including:

- Number of businesses in the existing building on the property;
- Hours of operation had no clear mention that there is to be no simultaneous operations;
- Outdoor Lighting per Section 4.8. The project request conditional use approval. The outdoor lighting that was represented in the application does not fit with the character of the area. The area is within the RR1 zoning district and residential is the primary environment [See Section 3.7(2)(a)(3)(a & d), as well as the specific purposes in RR1 and RR2 districts.]
- Exhibit D: [10-10-2018] contains many structures, parking and utility locations that are not existing. The board should not allow a document to move forward for any person to interpret this approval as acceptance of those items as drawn.

**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.