

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



**PROJECT:** 5947

**SUBJECT PROPERTY:** 0 Butternut Lane; #06-042.010

**PROPERTY OWNER:**

Sheppard, Brogna, Gardner, Stowe LLC  
41 Gauthier Drive  
Essex Junction, VT 05452

**APPLICANT:**

Paul Brogna &  
David Burke, O'Leary-Burke Civil Associates  
13 Corporate Drive  
Essex Junction, VT 05452

**APPLICATION:**

The Applicant, Paul Brogna and David Burke on behalf of property owners Sheppard, Brogna, Gardner, Stowe LLC (herein referred to as the "Applicant"), requests amended PRD and conditional use approval for the construction of more than one (1) two-family dwelling on a single parcel as required under Table 6.1 'Residential Uses'- Dwelling, Unit, Two Family (More than one two-family building/lot). The Applicant's original submittal involved the planned construction of two 2-family dwelling units and two single-family dwelling units on parcel #06-042.010 located on Butternut Lane. The parcel contains two (2) existing two-family dwellings (duplexes), 26 and 42 Butternut Lane, constructed in 2008/2009. During the preliminary staff review of the application, staff noted that the parcel could not support the number and type of dwelling units proposed. In response, the Applicant eliminated the single-family dwelling shown as Building F in order to conform with the district density requirements. Pursuant to Section 13.2, the Applicant also seeks a dimensional modification for an increase in maximum building lot coverage.

The subject parcel, consisting of ±4.65 acres and located on Butternut Lane (#06-042.010), is in the Upper Mountain Road (UMR) Zoning District. The property is served by Butternut Lane, a privately owned and maintained road. The subject parcel is bound to the north by property currently owned by Charles and Janet Perkin, to the west by the West Branch of the Little River, and to the south by multiple properties accessed via Strom Farm Lane. The application has been reviewed by the Stowe Development Review Board (DRB) under applicable standards of the Town of Stowe Zoning Regulations (as adopted October 9, 2018) for the purpose of conditional use and amended PRD 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 amended PRD review was filed by Applicant David Burke, O'Leary-Burke Civil Associates on January 10, 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 February 19, 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 January 31, 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 February 19, 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:

- David Burke, O'Leary-Burke Civil Associates, 13 Corporate Drive, Essex Junction, VT 05452;
- Paul Brogna, 149 Overlake View, Williston, VT 05495
- Brad Gardner, PO Box 21, Colchester, VT 05446
- Richard Smith, 1313 Washington St. #601, Boston, MA 02118
- Robert Cruickshank, 32 Copeland Avenue, Reading, MA 01867
- John Irish, PO Box 1372, Burlington, VT 05402
- Jay Ladieu, 56 Erikson Lane, Pembroke, MA 02359

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

1. Town of Stowe Development Application, dated 12/21/2018;
2. Correspondence from O'Leary-Burke Civil Associates, PLC, RE: Butternut Road (Tax Map 6, Parcel 42.01) Conditional Use Two-Family Units Buildings B & C (4 pages), dated 12/26/2018;
3. Photographs of the two duplex units, no date;
4. Email from Guy Babb, Re: Stowe Riverwalk Zoning Issue, dated 7/26/2018;
5. Memorandum from Guy L. Babb Esq., Re: Stowe Riverwalk Zoning Issue, dated 7/26/2018 (2 pages);
6. Re: Appeal of Taft Corners Associates, Inc. No 99-431, Environmental Court Decision (7 pages), dated 8/11/2000;
7. Email Correspondence between David Burke and Sarah McShane, Re: 8020: Stowe Butternut Lane (6 pages), various dates;
8. Butternut Lane Build Out Plan- Sheppard, Brogna, Gardner, Stowe LLC prepared by O'Leary-Burke Civil Associates PC, Plan Sheet #1, Job 8020, dated 12/20/2018;
9. Butternut Lane Build Out Plan (w/Aerial Image Shown)- Sheppard, Brogna, Gardner, Stowe LLC prepared by O'Leary-Burke Civil Associates PC, Plan Sheet #1, Job 8020, dated 12/20/2018;
10. Planning Commission decision S-02-17, dated September 24, 2002; (staff)
11. Comments from Ed Pierce, Permit Coordinator VTrans, dated 1/31/2019;
12. Butternut Lane Build Out Plan (w/Aerial Image Shown)- Sheppard, Brogna, Gardner, Stowe LLC prepared by O'Leary-Burke Civil Associates PC, Plan Sheet #1, Job 8020, last revised dated 1/25/2019;
13. Comments from Department of Public Works (Harry Sheppard), Re: Project 5947-Butternut Lane, dated 2/5/2019 at 7:05 PM;
14. Comments from Dave Kresock, Director of Operations Stowe Electrical Department, dated 2/8/2019;
15. Butternut Lane Build Out Plan- Sheppard, Brogna, Gardner, Stowe LLC prepared by O'Leary-Burke Civil Associates PC, Plan Sheet #1, Job 8020, dated 2/14/2019 (last revised);
16. Email comments from David Burke, Re: Project 5947-Butternut Lane, dated 2/14/2019 at 10:35 AM;
17. Written comments Richard Smith (Unit 26A), Robert Cruickshank (Unit 26B), John Irish (Unit 42A), Jay Ladieu (Unit 42B), dated 2/16/2019 [existing duplex owners];
18. Comments from Department of Public Works (Harry Sheppard), Re: Project 5947-Butternut Lane, dated 2/19/2019 at 4:14 PM;

At the request of the Applicant, the DRB continued the hearing to a time and date certain, Tuesday April 2, 2019, to allow time for additional research and modifications to the drawings. The Board voted in favor (6-0) to continue the hearing to Tuesday April 2, 2019. Prior to the April 2, 2019 hearing, the following information was provided and entered into the hearing record:

19. Cover letter from David W. Burke of O'Leary-Burke Civil Associates, PLC, dated 3/18/2019;
20. Cut sheet (2 pages) for the proposed outdoor lighting, no date;
21. Photographs (2 pages) showing front elevation portion of existing duplex, no date;
22. Building Elevations, Stowe Duplex, Sheet A102 prepared by Sheppard Construction Stowe, VT, dated 3/15/2019;
23. Bitternut Lane Build Out Plan- Sheppard, Brogna, Gardner, Stowe LLC prepared by O'Leary-Burke Civil Associates PC, Plan Sheet #1, Job 8020, dated 3/18/2019 (last revised).

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.

#### **PROCEDURAL HISTORY:**

In 2002 the Applicant received preliminary (S-02-04) and final (S-02-17) subdivision approval from the Stowe Planning Commission for the subdivision [planned residential subdivision] of four lots each to contain a duplex building. The duplex units shown in the provided application materials as Building C and Building D were approved administratively under permits 3366 and 3701 in 2007 and 2008 respectively. Project 3366 was renewed and obtained a Certificate of Occupancy in 2008. Project 3701 was renewed in 2009. Project 3701 does not appear to have received a Certificate of Occupancy. In July 2008 the town adopted the Fluvial Erosion Hazard Overlay District which impacted portions of the parcel and prevented the construction of new buildings within this overlay district. In May 2011 the town's zoning regulations were updated to include a modified use chart to require conditional use review for the construction of more than one (1) two-family dwelling on a single parcel.

In the summer of 2018, the Applicant inquired about the permitting process to complete the previously approved residential development. After seeking legal counsel, the Applicant and Zoning Administrator agreed that obtaining prior subdivision approval does not create a vested right to develop subdivided lots under the provisions of the zoning ordinance in effect at the time of subdivision approval. Given the town's zoning regulations were revised in May 2011 to require conditional use review for the construction of more than one (1) two-family dwelling on a single parcel, the Applicant is therefore required to obtain conditional use approval to construct more than one (1) two-family dwelling on a single parcel as noted under Table 6.1 'Residential Uses'- Dwelling, Unit, Two Family (More than one two-family building/lot). The Applicant also seeks amended PRD review to modify the previous configuration and location of dwellings.

**FINDINGS OF FACT & CONCLUSIONS OF LAW:** The Applicant's request for amended PRD and 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 October 9, 2018) 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 District
- Section 11- Fluvial Erosion Hazard Overlay District
- Section 13 – Planned Unit Development
- Section 15- Parking Regulations

**Dimensional, Density & Other Requirements:**

1. **Zoning District.** The subject parcel contains ±4.65 acres and is served by Butternut Lane, a privately owned and maintained road with access to the Mountain Road (VT 108). The parcel is located in the Upper Mountain Road (UMR) Zoning District as shown on the Official Town of Stowe Zoning Map (as adopted October 9, 2018).
2. **Lot Area, Lot Width.** The ±4.65 -acre parcel is located in the UMR district. The provided site plan depicts the parcel containing approximately 204.30' of frontage along Mountain Road. Lot width is defined as *"The width of a lot measured at right angles to its lot depth at the minimum front yard setback"*. The minimum lot width in the UMR district is 200'. 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'). The Applicant seeks approval for the construction of two 2-family dwelling units and one single-family dwelling unit on parcel #06-042.010 located on Butternut Lane. The provided site plan shows the location of the proposed buildings, all of which appear to be located outside of the required district setbacks. The required district setbacks are shown and labeled. Section 15.6 provides further setback requirements for driveways and parking facilities. The regulations require a minimum 10 ft setback in UMR for driveway and parking facilities. 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.
4. **Maximum Building Coverage.** The maximum building coverage in UMR is 8%. The regulations define building coverage as follows... *"16.22 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."* Uncovered decks do not contribute to the maximum building coverage requirement as noted in the definition of 'Building Coverage'.

The Applicant provided the existing building coverage equaling ±3.79% and proposed building coverage equaling ±4.69%; for a total building coverage of approximately ±8.48%. The Applicant requested a 0.48% modification of the maximum building lot coverage. Pursuant to Section 13.2, *"to achieve the objectives set forth in this section, the DRB may modify applicable area and dimensional requirements of the underlying zoning districts"*. The Board agreed to modify the maximum building coverage requirement given the minor nature of the request and upon finding that the requested modification will not be discernible.

5. **Use.** The parcel contains two (2) existing duplexes, or two-family dwelling units as defined under the regulations. The Applicant proposes to construct two 2-family dwelling units and one single-family dwelling unit. Single and two-family dwelling units are a permitted use in the UMR zoning district. As noted above, the construction of more than one (1) two-family dwelling on a single

parcel as listed under Table 6.1-'Residential Uses'- Dwelling, Unit, Two Family (More than one two-family building/lot), requires conditional use review.

6. **Height.** The maximum building height in UMR 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." During the continued hearing, the Applicant provided architectural drawings of the proposed duplex units. As proposed each unit will be approximately 25' in height, as defined under the regulations.
7. **Density.** The Applicant proposes to construct two 2-family dwelling units and one (1) single-family dwelling unit. The parcel contains two (2) existing 2-family dwelling units and ±4.65 acres. The Applicant provided a revised site plan with a density notation indicating the allowable and proposed density. The existing and proposed density equals ±3.67 acres. The parcel is approximately ±4.65 acres, satisfying the density requirements.
8. **Other.** The Applicant seeks approval to extend the DRB approval timeframe from two (2) years to five (5) years, pursuant to Section 2.9. Section 2.9 states "Effective Dates- If after the DRB approval no zoning permit has been issued within two (2) years (or longer if approved by the DRB), such approval shall become null and void." The application materials indicate that the site infrastructure is complete and "while build-out could occur in two years, we request DRB's consideration for a 5 year period to allow for buyer input on items such as interior lighting, countertops, cabinets, etc..." During the initial 2/19 hearing, the Board was reluctant to extend the DRB approval timeframe beyond the standard two (2) years.

**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. The application materials state that the site infrastructure including electric on-site sewer and municipal water are existing and currently serve Buildings C and D.

Harry Sheppard, DPW Director provided the following comments [dated 2/5/2019 at 7:05 PM] on behalf of the Department of Public Works:

*Public Works has reviewed the subject DRB application and offers the following comments:*

1. *The applicant proposes to connect the proposed buildings to the municipal water system. To my knowledge, the existing water main extension installed for this development was never been conveyed to the Town. We have no record documents regarding the size, material, location, installation, testing or ownership of this water utility. Accordingly, please be advised that unless the Applicant has record to the contrary, the proposed units would not be directly connected to the municipal system. For situations such as this, where we will have multiple customers connected to the municipal water system thru a private water distribution pipe, a Consecutive Water System Agreement with the Owner of the private water system is required. Does the Applicant have ownership rights of the existing water main? If no, who does and are*

*they agreeable to allowing the proposed connections? Is the existing water main adequate? Was it inspected, tested and certified? Attached is a template for a Consecutive Water System Agreement that we generally use. If the DRB is inclined to approve the application, I recommend that it be conditioned upon acceptance of a Consecutive Water System Agreement by the Water Commission.*

2. *The allocation record is confusing for this one-lots of starts, stops, twists and turns. The property was originally allocated in 2002 for 48 bedrooms-this was reduced that same year to 24. I suspect that the 4 existing units-12 bedrooms, were connected using these allocations. Finance has no records of receiving payment for this original allocation but regardless of this, anything that the applicant believes may be remaining has long expired. In 2008, additional water allocations were approved for additional 9 bedrooms. A loan for these allocations was paid in full in 2015. These were for Buildings E and F under WW 5-4814 and 4815. These too have technically expired but since the loan was paid in full, the Water Commission will likely approve, upon application, an extension. It appears, unless the applicant has other record to the contrary, additional allocations are required for Buildings A and B (9 bedrooms?). Copy of our Water/Sewer Allocation and Connection Permit Applications is attached for their information.*

Prior to the 2/19 hearing, Harry Sheppard, DPW Director provided the updated comments [dated 2/19/2019] on behalf of the Department of Public Works:

*I have reviewed the follow-up comments and additional information submitted by the Applicants and, if the DRB is inclined to approve the application, Public Works recommends the following conditions of approval.*

1. *Prior to a Zoning Permit;*

- *1a. A Consecutive Water System Agreement between the Town and the Owner of the existing 4" water main, using the template documents previously provided, shall be approved by the Water Commissioners and filed on the Land Records.*
- *Prior to the issuance of a Water Connection Permit.*
- *1b. Test pits shall be excavated to confirm the location, depth and material of the 4" service main.*
- *1c. Furnish equipment and undertake a pressure/leakage in accordance with AWWA C900*
- *1d. Supply As-Built drawings of existing water system.*

*Items 1b and 1c shall be undertaken and observed by the Stowe Water Department. Any deficiencies encountered (Standard Specifications attached) shall be remedied to the satisfaction of the Water Dept.*

2. *Additional water allocations for more than 9 additional bedrooms is required. (As previously noted, the 2008 allocations have expired. Given that they have paid for 9 additional bedrooms in full, I am confident that the Water Commission will extend these allocations but they need to apply. I recommend the revised bedroom count be established and they make allocation application for the additional bedrooms required and we will have the Water Commissioners reapprove the original 9 beds previously paid at the same time.*

3. *The function and adequacy of the existing stormwater system shall be reviewed and acceptable to Public Works prior to issuance of any Certificate of Occupancy. (The drawing submitted does not show any stormwater system as described and the existing contours shown suggest the site is draining onto properties to the south-not towards a "sedimentation basin". Our current regulations require 0.5 acres of impervious as the threshold for stormwater management (3-12f). We need to affirm no increase in runoff to downgradient abutters after the snow clears and we can see what exists).*

Dave Kresock, Director of Operations, Stowe Electrical Department provided the following comments dated 2/8/2019:

*"The customer will need to complete SED's Line Extension Application prior to work commencing in order for SED to review the plans. An easement is required for primary line extensions."*

No other Municipal Department review forms were returned.

**Conclusion:** The Board concludes the proposal, as conditioned, will not result in an undue adverse effect on the Town's existing or planned facilities or services. As a condition of approval, the Applicant will be required to obtain municipal water allocation and a Consecutive Water System Agreement from the Town of Stowe Water Commission.

10. **Section 3.7(2)(A)(2) – Traffic on roads and highways in the vicinity:** The Applicant proposes to construct two 2-family dwelling units and one single-family dwelling units. The application materials state Butternut Lane currently serves four (4) dwelling units and the overall number of units has been reduced from the original proposal (previously approved eleven (11) units to ten (10) units) [staff could not locate any such past approvals for eleven (11) units.] The Applicant did not provide estimated total vehicle trips. Staff estimates under current ITE standards each proposed unit is expected generate no more than ten (10) additional trip ends per day.

**Conclusion:** The Board concludes the proposal will not create an undue adverse impact on traffic on roads and highways in the vicinity.

11. **Section 3.7(2)(A)(3) – The character of the area affected:** The subject parcel is in the UMR zoning district. The purpose of the UMR district is *"To control development along the "upper" Mountain Road in a manner that allows for residential, recreation and low-density commercial uses of property while preserving the rural character of the landscape, discouraging strip development and promoting the ongoing viability of existing land uses."* The Applicant requests approval to construct two 2-family dwelling units and one single-family dwelling unit. Adjacent to the subject parcel are other nearby residential, commercial and lodging uses. The application states *"Butternut Lane is both perpendicular to and lower in elevation than the Mountain Road with both attributes resulting in low visual impact."* Single-family and two-family units are a permitted use in the UMR district.

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

12. **Section 3.7(2)(A)(4) – Regulations and ordinances in effect:** The application was reviewed under applicable conditional use and amended PRD criteria. Applicable bylaws include the Stowe Zoning Regulations, as adopted October 9, 2018. No other known or identified municipal bylaws or ordinances apply to this project.

**Conclusion:** The Board concludes the proposal is in conformance with the Stowe Zoning Regulations, as adopted October 9, 2018. The Applicant will be required to obtain a municipal water allocation and connection permit(s).

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. The application states that the *"build out of the project will not preclude rooftop solar."*

**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.** The property is bordered to the west by the West Branch of the Little River and contains lands within the Fluvial Erosion Hazard Overlay District. According to the ANR Natural Resources Atlas, there are no rare threatened endangered species, significant natural communities, deer wintering areas, or natural communities. There are no known or identified scenic or historic sites located in the project vicinity.

**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 Applicant requests approval to construct two 2-family dwelling units and one single-family dwelling unit. The project is not expected to result in undue water, noise or air pollution. 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. This 50 ft buffer along the river is shown on the revised site plan and will be required to be left in an undisturbed state.

**Conclusion:** The Board concludes the project, if constructed as approved, will not result in undue water, noise, or air pollution.

16. **Section 3.7(2)(B)(3) - Access Management:** The parcel is served by Butternut Lane with direct access to Mountain Road. No expansions or improvements to the existing curb cut are proposed under this application. The application states that Butternut Lane is an existing paved road which was originally approved to serve a total of eleven (11) units [staff could not locate any such past approvals for eleven (11) units]. 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 referred the application to Craig Keller, Chief of Permitting Services and Ed Pierce, Permit Coordinator at Vermont Agency of Transportation. Ed Pierce provided written comments dated 1/31/2019 indicating there are no concerns with the proposal.

**Conclusion:** The Board finds no changes to the existing access are proposed under this application and concludes the existing access is adequate for the intended and existing use(s).

17. **Section 3.7(2)(B)(4) - Shared Access:** The parcel is served by Butternut Lane with direct access to Mountain Road. Butternut Lane is an existing privately owned and maintained road which

currently serves Building C and Building D. Under this application, Butternut Lane will serve the additional units proposed. As noted above, no changes to the existing access are proposed under this application. The application materials indicate that Butternut Lane provides shared access to the parcel to the north, however this access does not appear on the provided site plan.

**Conclusion:** The Board concludes that the existing shared access is sufficient for the intended and existing use.

18. **Section 3.7(2)(B)(5) – Circulation and Parking:** The regulations require 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 requests approval to construct two 2-family dwelling units and one single-family dwelling unit. The revised site plan provides the existing and proposed parking calculations. Under existing conditions, the lot contains two (2) spaces per unit plus six (6) additional spaces. The Applicant proposes to construct an additional twenty (20) parking spaces to serve the proposed units for a total of thirty-six (36) obstructed and unobstructed parking spaces. Under the regulations, a total of two (2) parking spaces are required per dwelling unit. During the hearing, the Applicant testified that the revised plans include a 20' x 40' paved turn-around area and incorporate additional pull-off areas for shared parking.

**Conclusion:** The Board concludes the proposed circulation and parking improvements represents safe and adequate access and circulation for the existing and proposed 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. No pedestrian circulation or access improvements are proposed under this application. The application materials state *"Butternut Lane is an existing paved road with adequate width for shared pedestrian use."*

**Conclusion:** The Board concludes the proposed site layout, including pedestrian circulation and access, represents safe and adequate pedestrian access and circulation for the intended and existing use(s).

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 Applicant requests approval to construct two 2-family dwelling units and one single-family dwelling unit. The lot contains existing mature trees and landscaping. During the April 2<sup>nd</sup> hearing, the Applicant reviewed revised plans showing the location of additional landscaping. The provided plans include a street tree landscaping schedule and depict existing and proposed landscaping. A typical foundation planting plan is shown on the revised plan with a notation that the street tree and foundation plantings be installed near completion of each proposed unit. The revised site plan also depicts the location of a proposed paved dumpster pad with a fenced enclosure.

**Conclusion:** The Board concludes the proposed landscaping provides adequate screening and is designed to enhance the overall appearance of the property. As a condition of approval, the Board will require the Applicant provide a revised plan showing a minimum of 2.5" caliper and include native origin plantings, as required under Section 4.6(3)(D)(1 & 5).

21. **Section 3.7(2)(B)(8) – Stormwater Management:** The Applicant requests approval to construct two 2-family dwelling units and one single-family dwelling unit. The application materials state “*Butternut Lane includes a drainage swale on the southerly side which conveys run-off to a sediment basin at the end of the road.*” Section 3.12(2) provides stormwater and erosion control standards for construction-related activities associated with any new construction as follows:

- A. Site construction will be conducted in a manner that keeps the amount of soil exposed at any one time to a minimum.
- B. Areas of exposed soil that are not being actively worked, including soil that has been stockpiled, will be stabilized.
- C. Stormwater shall be controlled during construction to minimize soil erosion and transport of sediment to surface waters. All development involving the disturbance of more than one-half acre shall submit an erosion and sediment control plan that incorporates the State of Vermont erosion prevention and sediment control practices before a zoning permit is issued.
- D. Soil disturbance shall not be allowed between the period of October 15 to April 15 unless in application materials include erosion control measures that are adequate to ensure compliance with (A), (B) and (C) as noted above, taking into account winter and spring conditions.
- E. All development must provide for an adequate stormwater drainage system to ensure that existing drainage patterns are not altered in a manner to cause an undue adverse impact on neighboring properties, town highways or surface waters.
- F. All development that creates more than 1/2 (one-half) acre of additional impervious surface must provide for an adequate stormwater drainage system to ensure that stormwater runoff is not increased beyond the boundaries of the project as determined by the standards used for the State of Vermont stormwater management permits. Such development shall submit a stormwater management plan prepared and sealed by a registered engineer before a zoning permit is issued.

At the request of staff, the Applicant provided total existing and proposed impervious surfaces as follows:

*Butternut Lane is an existing paved Road which is super-elevated to a roadside swale along the south side which leads to a sedimentation / infiltration area just beyond the west end of the Road. There have been no known run-off issues at the Site since the Applicants 2008 purchase and subsequent completion of the road and its storm water components.*

*The existing impervious area for Butternut Lane, the two Duplexes, their driveways and walkways is 0.49 acres.*

*The additional impervious area is the two additional Duplexes and two single Units, their driveways and walkways which total 0.39 acres (< 0.5 acres). [Note: The Applicant subsequently removed one of the single-family dwellings, resulting in a decrease in proposed impervious surfaces.]*

Harry Sheppard, DPW Director provided the following comments [dated 2/5/2019 at 7:05 PM] on behalf of the Department of Public Works:

1. *Regarding stormwater, little is indicated. Their cover letter makes reference to an existing drainage swale and sediment basin. These are not shown on the plan provided and the existing contours indicated suggest otherwise. Additional information as to what exists and it's adequacy to meet current stormwater requirements for the proposed increase in impervious area is recommended.*

During the hearing, the Applicant provided an overview of the existing and proposed stormwater improvements. The provided site plan shows the location of existing catch basins and a 12" storm pipe beneath shallow grassed swale with an outlet shown on the western portion of the parcel.

**Conclusion:** The Board concludes if constructed and maintained as approved, the proposal 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 Board 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 Board 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.
- d. **Additional UMR Standards:** In addition to the conditional use criteria of the regulations, the Board shall find that proposed development is designed in a manner compatible with area's rural character. At a minimum the Board will consider:

- Adequacy and appropriateness architectural design and visual context of the project. Generally, architectural designs shall 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; and
- 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 photographs and elevation drawings showing the proposed architectural design of two duplex buildings and indicated that the proposed dwellings will be similar in design. The provided drawings include gable roofs and a main front entrance.

**Conclusion:** The Board concludes the proposed development is 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 UMR district.

**Section 4: Specific Use Standards:**

23. **Section 4.8 Outdoor Lighting.** The regulations require that all outdoor lighting shall be installed in accordance with the Section 4.8(A-C). When reviewing lighting plans pursuant to Section 4.8, 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 guidelines outlined in Section 4.8(2)(A-F).

The Applicant provided manufacturer cut-sheets and building elevations showing the location of the outdoor light fixtures. The Applicant testified that outdoor lighting will be installed on the front and rear entrances and no flood lights are proposed under this application.

**Conclusion:** The Board concludes the proposed 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.

**Section 7- Flood Hazard District:**

24. The property is bordered to the west by the West Branch of the Little River and contains lands within the Flood Hazard District. No development is proposed within this area. Any future development, as defined under Section 7 of the regulations as, "*any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials*" will require review and approval under the regulations in effect at the time of application.

**Section 11- Fluvial Erosion Hazard Overlay District:**

25. The property is bordered to the west by the West Branch of the Little River and contains lands within the Fluvial Erosion Hazard Overlay District. The Fluvial Erosion Hazard Overlay District boundary is shown on the provided site plan. No development is proposed in this area. Any future development, as defined under the regulations as "*the division of a parcel into two or more parcels,*

*the construction, reconstruction, conversion, alteration, relocation, enlargement or demolition of any building or other structure, the construction of any pond or of any mining, excavation or landfill, and any change in the use of any building or other structure or land or extension of the use of the land" will require review and approval under the regulations in effect at the time of application.*

**Section 15- Parking Regulations:** See discussion above.

## **DECISION**

Based upon the foregoing Findings of Fact, in RE: **5947** the Board finds (5-0) the proposal meets the Stowe Zoning Regulations, as adopted on October 9, 2018, subject to the following conditions of approval:

1. The 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. The Zoning Administrator is granted the authority to review and administratively approve non-material modifications to the approved plans upon finding that the proposed change or alteration would not have affected the decision made or any conditions if had been included in the plans as approved.
2. All prior conditions of approval, unless amended herein, remain in full force and effect.
3. The Applicant shall obtain individual zoning permits for the two-family dwellings and single-family dwellings. No additional DRB approval is required for the dwellings so long as they are generally sited as represented in the application and depicted on plans prepared by O'Leary-Burke Civil Associates PLC, dated 12/20/2018 [Last revised 3/18/2019] and the Building Elevations, Stowe Duplex, Sheet A102 prepared by Sheppard Construction Stowe, VT [dated 3/15/2019] as provided in the application.
4. Prior to the issuance of any zoning permit, the Applicant shall:
  - Obtain an approved Consecutive Water System Agreement between the Town and the Owner of the existing 4" water main. Said agreement shall be recorded in the Town Land Records.
  - The Applicant shall submit a revised site plan including a planting schedule depicting a 2.5" caliper (minimum) and native origin plantings, as required under Section 4.6(3)(D)(1 & 5), remove the building footprint outline from river, and number the parking spaces.
5. The Applicant shall obtain all necessary municipal water allocation and connection permit(s).
6. Unless additional information is located and found acceptable to the Department of Public Works, prior to the issuance of a Water Connection Permit the Applicant shall:
  - (1b) Test pits shall be excavated to confirm the location, depth and material of the 4" service main.
  - (1c) Furnish equipment and undertake a pressure/leakage in accordance with AWWA C900.
  - (1d) Supply As-Built drawings of existing water system.Items 1b and 1c shall be undertaken and observed by the Stowe Water Department. Any deficiencies encountered shall be remedied to the satisfaction of the Stowe Water Department.
7. All mechanical systems shall be located or screened in a manner that they are not visible from the public right-of-way.
8. Landscaping shall be installed as shown in provided plans prepared by O'Leary-Burke Civil Associates PLC, dated 12/20/2018 [Last revised 3/18/2019] and amended herein. Any dead and dying plants and trees as shown on said plan shall be replaced within one (1) year of death.

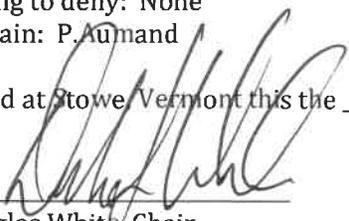
9. All outdoor lighting fixtures shall be shielded and aimed so that illumination is directed only to the designated area and does not cast direct illumination or cause glare beyond the boundary lines of a property.
10. The Applicant shall complete Stowe Electrical Department Line Extension Application prior to commencing the project in order for Stowe Electrical Department to review the plans. An easement is required for primary line extensions.
11. The 50 ft buffer along the river shall be left in an undisturbed state.
12. Site construction shall be conducted in a manner that keeps the amount of soil exposed at any one time to a minimum.
13. Areas of exposed soil that are not being actively worked, including soil that has been stockpiled, shall be stabilized.
14. Stormwater shall be controlled during construction to minimize soil erosion and transport of sediment to surface waters.
15. Soil disturbance shall not be allowed between the period of October 15 to April 15 unless adequate erosion control measures are provided to ensure compliance with the provisions of Section 3.12(2)(A-C) taking into consideration winter and spring conditions.
16. An adequate stormwater drainage system must be maintained to ensure that existing drainage patterns are not altered in a manner to cause an undue adverse impact on neighboring properties, town highways or surface waters.
17. Any future development, as defined under Section 16 the regulations within the Fluvial Erosion Hazard Overlay District, will require review and approval under the regulations in effect at the time of application.
18. A Certificate of Occupancy must be obtained from the Zoning Administrator 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. The function and adequacy of the existing stormwater system shall be reviewed and acceptable to the Department of Public Works prior to issuance of any Certificate of Occupancy.
19. 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 approval, the Applicant 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, C.Walton, A. Volansky, T.Mumley, T. Hand

Voting to deny: None

Abstain: P. Aumand

Dated at Stowe, Vermont this the 16 day of April 2019

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 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.

