

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



PROJECT: 5970

SUBJECT PROPERTY: 4527 & 4583 Mountain Road [#11-103.00 & 11-097.00]

PROPERTY OWNER & APPLICANT:

Castine Mountain Road LLC, c/o Nick Lizotte
PO Box 323
Stowe, VT 05672

APPLICATION:

The Applicant, Nick Lizotte of Castine Mountain Road LLC (herein referred to as the "Applicant"), requests final subdivision/PUD approval to create a four (4) lot Planned Unit Development (PUD) consisting of the existing parcels located at 4527 & 4583 Mountain Road [#11-103.00 & 11-097.00]. The proposal is to create four (4) lots as follows:

- Lot 1, consisting of ± 3.4 acres, a lot width of approximately ± 140 ft, and frontage along Mountain Road.
- Lot 2, consisting of ± 0.96 acres, a lot width of approximately ± 244 ft, and frontage along Mountain Road.
- Lot 3, consisting of ± 0.37 acres and a lot width of approximately ± 296 ft.
- Lot 4, consisting of ± 0.70 acres, a lot width of approximately ± 224 ft, and frontage along Mountain Road.

As proposed, Lot 1 will contain the existing, and previously approved and permitted, buildings at 4527 Mountain Road. Lot 2 is proposed to remain undeveloped at this time with a designated development envelope, or building zone, as defined under the regulations. An internal access road, located within a 30' wide right-of-way, is proposed on portions of Lot 2 to serve Lots 1, 3 and 4. Lot 3 is proposed to contain the existing building at 4583 Mountain Road, commonly referred to as the Bear's Lair Inn. Lot 4 is proposed to remain undeveloped at this time with a designated development envelope, or building zone, as defined under the regulations, and served by the common access drive/30' wide right-of-way serving Lots 2, 3, and 4.

The proposed lots are served by Mountain Road (VT-108), a state highway maintained by the Vermont Agency of Transportation. The proposed lots are within the Upper Mountain Road (UMR) zoning district with portions also within the Rural Residential 5 (RR5) (Lot 1) district and the Fluvial Erosion Hazard Overlay District (FEH). All of the proposed lots contain lands within the Flood Hazard Overlay District as regulated under Section 7 of the town's zoning regulations.

Pursuant to Sections 13.2 and §13.3(3)(3)(a), the Applicant has requested the following waivers and modifications:

- A waiver of the double perimeter setback requirement along the northern and eastern boundaries of the proposed PUD. The Board may grant a waiver upon finding that all of the criteria outlined in Section 13.3(3)(3)(a) (1-3) are met.

- Per Section 13.2, the Applicant seeks a dimensional modification for the required minimum lot size for Lots 1-4. In the UMR district, minimum lot size is based on the proposed use. The Applicant has not identified the future use(s) of the proposed lots.
- Per Section 13.2, a dimensional modification is required for the minimum lot width of Lot 1.
- The Applicant seeks a reduction in the required 50 ft right-of-way to 30 ft to serve the internal PUD access road.

Per Section 13.2, the Board *may* modify applicable area and dimensional requirements of the underlying zoning districts to achieve the objectives set forth in Section 13 [Planned Unit Development].

The subject parcels are bound to the north by Mountain Road (VT-108), to the west by a ±16.8-acre parcel currently owned by Thomair, to the east by ±4.75-acre parcel currently owned by Montchilly Inc. (Northern Lights Lodge), and to the south by the West Branch of the Little River. The application was referred to the Development Review Board for final subdivision/PUD approval under the Town of Stowe Zoning Regulations (as adopted October 9, 2018) and the Town of Stowe Subdivision Regulations (effective through July 16, 2012). Other applicable zoning provisions include: Section 2 Administration and Enforcement, Section 3 General Regulations, Section 4.6 Landscaping Standards, Section 4.8 Outdoor Lighting, Section 5 Zoning Districts, Section 6 Uses, Dimensional Requirements and Density, Section 7 Flood Hazard Overlay District, Section 11 Fluvial Erosion Hazard Overlay District, Section 13 Planned Unit Development, and Section 15 Parking Regulations.

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 final subdivision/PUD review was filed by property owner Castine Mountain Road LLC on March 15, 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 April 16, 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 March 28, 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 April 16, 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:

- Applicant Nick Lizotte of Castine Mountain Road LLC, PO Box 323, Stowe, VT 05672
- Gunner McCain, McCain Consulting Inc., 93 South Main Street, Waterbury, VT 05676
- Michael Seaberg & Shannon Hillpot, 4441 Mountain Road, Stowe, VT 05672

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

- Town of Stowe Development Application, dated 3/14/2019;

- Cover letter from McCain Consulting Inc, Re: Preliminary Layout Application (4-lot PRD) [4 pages], dated 3/14/2019;
- Perimeter Buffer Area Diagram- Proposed PUD, dated 3/13/2019;
- Aerial photograph showing location and area of buildings in the vicinity, prepared by McCain Consulting Inc. no date;
- 4527 & 4583 Mountain Road PUD Plan, Castine Mountain Road LLC, prepared by McCain Consulting Inc, Sheet C-1, dated 3/13/2019;
- ANR Natural Resources Atlas (staff), dated 3/20/2019;
- Comments from Stowe Electrical Department, David Kresock, dated 4/2/2019;
- Email comments Department of Public Works [Harry Sheppard], dated 4/11/2019 at 11:49 AM;
- Written comments and photographs from Michael Seaberg, submitted during the 4/16/2019 hearing;
- 4527 & 4583 Mountain Road PUD Plan, Castine Mountain Road LLC, prepared by McCain Consulting Inc, Sheet C-1, last revised 4/9/2019.

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 final subdivision/PUD approval was reviewed by the Stowe Development Review Board (DRB) for conformance with applicable requirements including the following:

Town of Stowe Zoning Regulations (as adopted October 9, 2018)

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

Town of Stowe Subdivision Regulations (effective through July 16, 2012)

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

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

1. The subject parcels are located primarily within the Upper Mountain Road (UMR) with portions lying within the Rural Residential 5 (RR5) Zoning District. Portions of the parcels are also within the Fluvial Erosion Hazard Overlay and Flood Hazard District as shown on the Official Town of Stowe Zoning Map.
2. Proposed Lot 1 contains an existing multi-family dwelling and a previously approved duplex. Proposed Lot 3 contains an existing building of lodging use, commonly referred to as the Bears Lair Inn. No proposed future use(s) of Lots 2 or 4 were identified or defined in the application. The Applicant’s project narrative states *“the Applicant is requesting the approval of development*

envelopes on Lots 1-4, with final uses, and building layouts, landscaping, lighting, parking, etc. to be subsequently applied for at a later date.”

3. As noted above, the subject parcels are primarily located within the UMR zoning district. The purpose of the UMR district as stated in the town's adopted zoning regulations 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.”*
4. Pursuant to Section 13.1 the purpose of Planned Unit Development is:
 - (1) To facilitate and encourage flexibility of development of large parcels of land;*
 - (2) To preserve a maximum of open space while permitting multiple uses thereof;*
 - (3) To integrate productive uses related to tourism and recreation; and*
 - (4) To add to business and employment opportunities and to the economic base of the community.*
 - (5) To provide for efficient use of public facilities and infrastructure.*
 - (6) To encourage and preserve opportunities for energy-efficient development.*

To achieve the objectives set forth in Section 13, the Board is given the authority to modify applicable area and dimensional requirements of the underlying zoning districts [§13.2].

5. Pursuant to Section 13.3.3(A), the Applicant seeks a waiver of the double perimeter setback requirement. Standard required minimum district setbacks in UMR are front (50'), side (50') and rear (50') as set forth in Table 6.2. As shown on the provided plans, proposed Lot 1 contains an existing multi-family dwelling and a previously approved duplex (Project 5768). Said duplex is labeled as Building #3 on the provided plan and is located within the required double perimeter setback. Portions of the proposed development envelopes on Lots 2 & 4 are also within the double perimeter setback, as measured from Mountain Road.

Per Section 13.3(3)(A): *“Along the outside boundary of the project, the structure setback shall be twice the setback requirement for the district in which it is located. The setback shall be free of all buildings, structures, and parking areas, but may contain signs and may be crossed by necessary access driveways. In HT, VC, LVC, MRV, MRC, or MC zones, regular setbacks shall apply, except on that line which abuts RR zones. The DRB may grant a waiver from the double setback requirement when all of the following criteria are found to be met:*

- i. The double setback is not found necessary to protect the privacy of neighboring properties due to topography, existing vegetation to remain, proposed landscaping or other mitigation measures being proposed by the applicant.*
- ii. The double setback is not found necessary to protect the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas; and*
- iii. The double setback is not found necessary to protect the character of the area affected as defined by the purpose of the zoning district. “*

The Applicant requested a waiver for the double setback requirement as measured from the northern and eastern property boundaries of the proposed PUD. The northern boundary borders Vermont Route 108 (the Mountain Road) and the eastern boundary borders property currently owned by Montchilly Inc., containing an existing lodge and associated improvements. The Applicant argues that the double perimeter setback is not necessary for the privacy to the

neighboring properties across Mountain Road and to the east, as the project does not impose any additional impacts to these properties; that the double setback is not necessary to protect scenic, aesthetics, or historic sites; and based on analysis of existing development in the vicinity of the project, the double setback is not necessary to protect the character of the area affected, as defined by the purpose of the zoning district. The Applicant has the burden of proof with respect to all waiver requests.

During the hearing the Applicant's consultant reviewed an aerial image depicting existing properties in the general vicinity, also located within the UMR district. This exhibit is noted above as '*Aerial photograph showing location and area of buildings in the vicinity, prepared by McCain Consulting Inc. no date;*'. The image illustrates the location of existing structures, the associated approximate building area, and distance from the Mountain Road. The Applicant maintains that the location, size, and scale of the existing buildings on the subject parcels and the proposed building zones on Lots 2 & 4 are compatible with the existing settlement pattern in the general vicinity.

During the hearing the Board received oral testimony from property abutter Michael Seaberg. Mr. Seaberg and Shannon Hillpot also submitted written testimony and photographs during the 4/16 hearing. The provided photographs document the existing conditions and landscaping along the shared property boundary. The property abutters argued that waiver of the double setback requirement along the shared property boundary will negatively impact the adjacent property containing the Northern Lights Lodge and the privacy of hotel guests. Mr. Seaberg testified that many hotel guests use this area for recreational purposes and the lodge has historically used this area for weddings. He argued that the double setback requirement along this boundary is necessary to protect the privacy of his adjacent property.

Staff provided a copy of the ANR Natural Resources Atlas [dated 3/20/2019] which depicts ANR mapped wetlands, prime agricultural soils, significant natural communities, deer wintering areas, and habitat blocks. The ANR Natural Resources Atlas depicts the subject lots containing prime b agricultural soils and mapped Class 2 wetlands. Class 2 wetlands are shown along the eastern portion of Lot 1 in the area of the requested double perimeter setback.

Conclusion: Based on the information presented during the public hearing and provided with the application materials, the Board denies the requested double perimeter setback waiver. The Applicant failed to come forward with evidence regarding the future use(s) of the proposed lots. The Board is, therefore, unable to determine whether the existing vegetation and landscaping previously approved under separate applications provides the necessary mitigation to protect the privacy of neighboring properties, scenic and natural beauty, and the character of the area affected if the requested waiver were granted.

The adjacent property abutter provided current photographs illustrating the existing conditions in the area of the requested waiver. Those photographs depict a thin mix of coniferous and deciduous vegetation and the location of the existing buildings on the adjacent parcel. Given, the sparse screening and close proximity of the existing buildings on the adjacent property, it is possible that future development of the proposed PUD lots will adversely impact the privacy of the neighboring property depending on the uses for which those lots are developed. Since the Applicant failed to come forward with evidence regarding the future use(s) of the proposed lots, the Board is unable to fully evaluate that issue and reach a definitive conclusion. The evidence that was presented during the public hearing was inadequate to persuade the Board that the requested waiver should be granted. In light of the fundamental nature of the requested waiver to this project, as presented, the Board did not conduct a full review of all other applicable sections of the Town of Stowe Zoning

Regulations and Subdivision Regulations. It reserves the right to do so in appropriate circumstances in the future.

DECISION

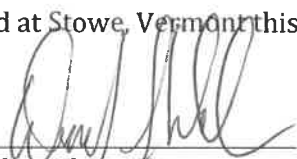
The Development Review Board hereby denies (4-0) the Applicant’s request for a 4-Lot subdivision/PUD (Project 5970) of the parcels [#11-103.00 & 11-097.00], as described in the application dated 3/14/2019, associated supporting materials, and the draft subdivision plan prepared by McCain Consulting, dated 3/13/2019 [last revised 04/09/2019], pursuant to the following applicable provisions of the Town of Stowe Zoning Regulations (as adopted October 9, 2018) and the Town of Stowe Subdivision Regulations (effective through July 16, 2012):

1. The Applicant failed to produce either the quantum or quality of evidence sufficient to convince the Board that it should exercise its discretion in favor of granting the requested double perimeter setback waiver. More specifically, the Applicant failed to demonstrate, to the Board’s reasonable satisfaction, that the requested waiver met all of the criteria listed in Section 13.3(3)(A)(i-iii).
2. The Applicant failed to present sufficient evidence of the future use(s) of the proposed PUD lots. As such, the Board cannot confirm that the double perimeter setback is not necessary to protect the privacy of neighboring properties; the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas; and the character of the area affected as defined by the purpose of the UMR zoning district [Section 13.3(3)(A)(i-iii)].
3. The Board will review without prejudice any future application which eliminates the need for a double setback waiver or demonstrates full conformance with the provisions of Section 13.3(3)(A)(i-iii).

Voting in favor of approval: None

Voting to deny: D. White, D. Clymer, P. Aumand, T. Mumley

Dated at Stowe, Vermont this the 6 day of May 2019

By: 
Douglas White, Chair

NOTICES:

1. 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.
2. 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.