

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



PROJECT: 5974

SUBJECT PROPERTY: 1746 Mountain Road; #06-085.000

PROPERTY OWNER & APPLICANT:

Baraw Enterprises, Inc.
DBA Stoweflake Resort & Spa
PO Box 369
1746 Mountain Road
Stowe, VT 05672

APPLICATION:

The Applicant, Baraw Enterprises, Inc. (herein referred to as the "Applicant"), has requested re-approval of a 4-lot subdivision of parcel #06-085.000 located at 1746 Mountain Road. The proposed subdivision received prior approval under Project 5767 in a written Development Review Board decision dated April 10, 2018. The Applicant was unable to satisfy the conditions of approval within the required statutory time frame and the approved subdivision subsequently expired. Per Section 3.5 of the Town of Stowe Subdivision Regulations, the Applicant requests re-approval of the final plan for recording upon the Board finding there are no changes proposed from the previous approval and there have been no bylaw changes that would affect the previous approval.

The subject parcel is owned by Baraw Enterprises, Inc. and located 1746 Mountain Road (#06-085.000). The split lot, as defined under the regulations, includes lands within the Mountain Road Village (MRV) and Rural Residential II (RRII) zoning districts. The parcel contains frontage on Mountain Road, a state-maintained highway, and Cape Cod Road, a Class 3 town highway. The application has been reviewed by the Development Review Board (DRB) under applicable standards of the Town of Stowe subdivision regulations (as amended through July 16, 2012) for the purpose of final subdivision review (re-approval).

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 review was filed by Applicant Julie Hoyt on behalf of Baraw Enterprises, Inc. on March 18, 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 Representative- Julie Hoyt, PO Box 1019, Stowe, VT 05672
- Scott Baraw- Baraw Enterprises Inc., PO Box 369, Stowe, VT 05672

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

- Cover letter from Olson & Associates PLC, Re: DRB Application for Reapproval, dated 3/18/2019;
- List of property abutters, no date;
- Town of Stowe Development Application (2 pages); dated 03/18/2019 (received);
- Notice of DRB decision, dated 4/10/2018 & DRB written decision for Project 5767;
- Extension of time to Record Final Plan, dated 9/24/2018;
- Comments from Stowe Electrical Department, David Kresock, dated 4/2/2019.
- Comments from Department of Public Works [Harry Sheppard], dated 4/11/2019;
- Copies of previously approved surveys including:
 - Survey of Baraw Enterprises, Inc. DBA Stoweflake Resort & Spa PUD Boundary Line Adjustment Lots G & K, Sheets 3 of 4, prepared by Grenier Engineering (Daniel Mulligan No. 613), dated September 2018;
 - Survey of Baraw Enterprises, Inc. DBA Stoweflake Resort & Spa PUD Subdivision of Lots H1 & H2, Sheets 2 of 4, prepared by Grenier Engineering (Daniel Mulligan No. 613), dated September 2018;
 - Survey of Overall Baraw Enterprises, Inc. DBA Stoweflake Resort & Spa PUD Subdivision of Lots H1, H2, G & K, Sheets 1 of 4, prepared by Grenier Engineering (Daniel Mulligan No. 613), dated September 2018;
 - Subdivision and Boundary Line Adjustment Plan of Owner Baraw Enterprises, Inc. DBA Stoweflake Resort & Spa PUD Subdivision of Lots H1, H2, G & K, Sheets 4 of 4, prepared by Grenier Engineering (Daniel Mulligan No. 613), dated September 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 final subdivision review was reviewed by the Stowe Development Review Board (DRB) for conformance with applicable requirements of the Town of Stowe subdivision regulations (as amended through July 16, 2012) including the following:

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

SECTION 3.5 SUBDIVISION PLAT FILING REQUIREMENTS

(1) Filing with the Town Clerk and Listers: The approval of the final subdivision application, shall expire 180 days from such approval, unless, within such 180-day period, a final subdivision plat shall have been duly filed or recorded in the office of the Town Clerk. No plat showing a new street or highway may be filed

or recorded in the office of the town clerk until it has been approved by the DRB, and such approval is endorsed in writing on such plat, or the certification of the town clerk showing the failure of the DRB to take action within forty-five (45) days is attached thereto and filed or recorded with said plat. The Zoning Administrator may extend the date for filing the plat by an additional 90 days, if final local or state permits or approvals are still pending. If a final subdivision plat has not been recorded within the above deadline, the applicant may request re-approval by the DRB within 12 months from the date of the DRB decision. The DRB may re-approve the final plan for recording if the DRB finds there are no changes proposed from the previous approval and there have been no bylaw changes that would affect the previous approval. Any updating approval requires a public hearing and notice as outlined in Section 2.14 of the Zoning Ordinance and 24 VSA Chapter 117.

1. The Applicant submitted an original application to create and reconfigure four (4) individual parcels each containing a single-family dwelling. The application was referred to the Board under Project 5767. A warned public hearing was scheduled on April 3, 2018 in which the Board closed the hearing that evening.
2. The Board issued a written decision including findings of fact and conclusions of law on April 10, 2018 (Project 5767) approving the application with conditions. The Board's approval contained a condition requiring the following:
 2. *The plan not be recorded until:*
 - *The Town and Baraw Enterprises Inc enter into a Consecutive Water System Agreement.*
 - *That the dwellings on lots H1 and H2 be reconnected to either the municipal system in Cape Cod Road or to the Stoweflake System under a Consecutive Water System Agreement.*
3. The Applicant was unable to satisfy condition #2 within the required statutory time frame for recording a subdivision plat (180 days). The Applicant subsequently received a 90-day administrative extension, as allowed under Section 3.5 of the Town of Stowe Subdivision Regulations, as amended through July 16, 2012.
4. The Applicant was unable to satisfy condition #2 within the extended 90-days.
5. The Applicant submitted a complete application on 3/18/2019 requesting re-approval pursuant to Section 3.5(1) of the Town of Stowe Subdivision Regulations, as amended through July 16, 2012.
6. Pursuant to Section 3.5(1) *"If a final subdivision plat has not been recorded within the above deadline, the applicant may request re-approval by the DRB within 12 months from the date of the DRB decision. The DRB may re-approve the final plan for recording if the DRB finds there are no changes proposed from the previous approval and there have been no bylaw changes that would affect the previous approval."*

Conclusion: Pursuant to Section 3.5(1), the Board finds there are no changes from the previous approval and there have been no bylaw changes that would affect the previous approval.

DECISION

Based upon the foregoing Findings of Fact, in RE: **5974** the Board finds (4-0) the application meets the Town of Stowe subdivision regulations (as amended through July 16, 2012) subject to the following conditions of approval:

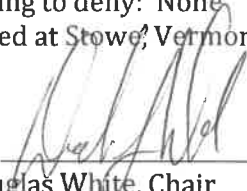
1. This project shall be completed according to the plans hereby approved. Any change to the plans or the proposed use of the property shall be brought to the Zoning Administrator's attention, prior to its enactment, for a determination if an amendment is required.
2. All conditions of previous approvals, except as amended herein, remain in full force and effect.
3. The subdivision survey plat shall not be recorded until:
 - The Town and Baraw Enterprises Inc enter into a Consecutive Water System Agreement.
 - That the dwellings on lots H1 and H2 be reconnected to either the municipal system in Cape Cod Road or to the Stoweflake System under a Consecutive Water System Agreement.
4. Pursuant to 24 VSA Chapter 117, the subdivision survey plat shall be submitted for recording in the land records of the Town of Stowe within 180 days of the date of this approval, or the approval shall expire.
5. The subdivision survey plat shall be prepared in accordance with 27 VSA §1403 and Section 4.3 of the Town of Stowe subdivision regulations (as amended through July 16, 2012).
6. The Applicant shall file the subdivision survey plat, signed by the Chair or other authorized representative of the Development Review Board, with the Stowe Town Clerk in accordance with the requirements of 27 V.S.A. Chapter 17 and Section 4.3 of the Stowe Subdivision Regulations. No land development associated with this subdivision shall be commenced until such time as the survey plat has been duly signed and filed in the Land Records. Two paper copies of said plat shall be filed with the Zoning Administrator.
7. The final survey plat as recorded shall carry the following notation:

"This plat is subject to the terms and conditions of subdivision approval by the Stowe DRB per the Subdivision Regulations of the Town of Stowe. The terms and conditions of the approval and related information are on file in the Stowe Zoning Office".
8. Monuments shall be placed on all subdivided parcels in conformance with the Rules of the Board of Land Surveyors.
9. 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 purposes of ascertaining compliance with the conditions of approval.

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

Voting to deny: None

Dated at Stowe, Vermont this the 26 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.

