

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



PROJECT: 6001

SUBJECT PROPERTY: 1652 Mountain Road #06-088.000

PROPERTY OWNER & APPLICANT:

Ampersand Properties LLC
Ken Biedermann
PO Box 1139
Stowe, VT 05672

APPLICATION:

Mr. Ken Biedermann of Ampersand Properties LLC (herein referred to as the "Applicant"), requests final subdivision review to dissolve internal property lines and resubdivide the previously approved parcels located at 1652 Mountain Road. The subject parcels were approved by the Development Review Board (DRB) in 2006 under application S-05-31F. The previously approved project consisted of a Planned Unit and Planned Residential Development of commercial buildings, single-family dwellings, duplex, and multi-family units situated on twenty-one (21) individually subdivided lots. The approved subdivision plat was recorded in the Town Land Records in 2007, however the project was never executed, and all associated local permits have since expired. The Applicant now seeks approval to dissolve all internal property lines of the previously approved twenty-one (21) subdivided lots and resubdivide the parcel into two (2) lots as follows:

- Lot 1A, consisting of ± 3.7 acres [exclusive of highway right-of-way] with +275 feet of frontage along Cape Cod Road and ± 480 feet of frontage along Mountain Road (VT Rt. 108). Lot 1A contains the existing mixed-use building (retail and residential) located at 1652 Mountain Road. Lot 1A is encumbered by an existing 50' right-of-way which follows an existing access road along the northern portion of Lot 1A [the 50' right-of-way is centered on the shared property line with 1189 Cape Cod Road]; a proposed 50' right-of-way to provide access to Lot 1B; and an existing 20' easement over the southern portion of the lot along Mountain Road for the Stowe Recreation Path.
- Lot 1B, consisting of ± 10.8 acres and frontage along Mountain Road (VT Rt. 108). Lot 1B is undeveloped and contains an open meadow. The West Branch of the Little River runs generally northeast/southwest through the center of the parcel. Lot 1B is encumbered by an existing 18' easement centered on the Stowe Recreation Path.

The subject parcel(s) (#06-088.000) are owned by Ampersand Properties LLC and located primarily within the Mountain Road Village (MRV) zoning district with portions within Highway Tourist (HT) zoning district, as shown on the 'Overall Site Plan' prepared by Grenier Engineering PC. The parcels also contain lands within the Flood Hazard Overlay District, Fluvial Erosion Hazard Area, the Meadowland Overlay District, and the Source Protection Overlay District. 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. 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 Ken Biedermann on April 5, 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 May 21, 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 May 2, 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 May 21, 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:

- Ken Biedermann, PO Box 1139, Stowe, VT 05672
- David Wolfgang, PO Box 1507, Stowe, VT 05672

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

1. Town of Stowe Development Application, received 04/06/2019;
2. Cover letter from Grenier Engineering PC, dated 04/19/2019;
3. Overall Site Plan 'Ampersand Properties LLC- Tax Parcel 06-088.00', Sheet 1 of 1, prepared Grenier Engineering PC, dated 04/18/2019;
4. ANR Natural Resources Atlas, dated 4/24/2019; (staff)
5. Development Review Board decision (S-05-31F), dated 7/11/2019 (and associated recorded plats); (staff)
6. VT Agency of Transportation Jurisdictional Opinion, Subject: DRB Application #6001, Ampersand Properties LLC, dated 4/30/2019;
7. Overall Site Plan 'Ampersand Properties LLC- Tax Parcel 06-088.00', Sheet 1 of 1, prepared Grenier Engineering PC, last revised 05/13/2019;

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 subdivision review/boundary line adjustment 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

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

1. As defined under the subdivision regulations, minimal alterations may be approved by the Zoning Administrator and are not required to follow the notice and hearing requirements for proposed subdivisions requiring DRB approval. *“Minimal Alteration shall mean a change to existing parcels that either 1) involve the alteration, reconfiguration or relocation of existing property lines between existing parcels in a manner which does not result in any additional lots, plots, parcels of land (also referred to as a lot line adjustment) or movement of town highway and does not result in more than a 20% change in existing area of any existing lots....”* The Applicant proposes to dissolve the internal property lines of the lots located on Tax Map 06-088.00 and resubdivide the lots resulting in two parcels as noted above. The proposed adjustments will result in a +20% change in existing lot area and therefore not eligible for administrative review as a minimal alteration.
2. **Zoning District.** The subject parcels are located primarily within the Mountain Road Village (MRV) zoning district with portions within Highway Tourist (HT) zoning district as shown on the Official Town of Stowe Zoning Map. The parcels also contain lands within the Flood Hazard Overlay District, Fluvial Erosion Hazard Area, the Meadowland Overlay District, and the Source Protection Overlay District.
3. **Lot Area, Lot Width.** As described above, the Applicant seeks subdivision/ boundary line adjustment approval to dissolve the internal property lines and resubdivide the lots as follows:
 - o Lot 1A consisting of ±3.7 acres [exclusive of highway right-of-way] with +275 feet of frontage along Cape Cod Road and ±480 feet of frontage along Mountain Road (VT Rt. 108).
 - o Lot 1B consisting of ±10.8 acres and frontage along Mountain Road (VT Rt. 108).

The minimum lot area in MRV is 20,000 sf. The minimum lot width in MRV is 100 feet. Proposed Lot 1A and Lot 1B both exceed the minimum lot area and lot width requirements for the MRV district. Lot 1B will also contain lands with the HT district. As proposed, Lot 1B will satisfy the lot area and lot width requirements for both the HT and MRV districts.

4. **Setbacks.** Required minimum district setbacks for the MRV are front (20’), side (10’), and rear (10’). Lot 1A, as proposed, will contain the existing mixed-use building located at 1652 Mountain Road and maintains frontage along Cape Cod Road and Mountain Road. Per Section 3.4(D), corner lots apply the front setbacks on all streets, while side yard setbacks apply to the remaining sides. The provided site plan labels and depicts a 20 ft front setback, along both Mountain Road and Cape Code Road. It appears portions of the existing building lies within the front setback, as measured from the Mountain Road right-of-way. The building was constructed circa 1900 predating the adoption of the town’s zoning regulations and is therefore considered legally nonconforming as defined under the regulations. No new structures are proposed under this application. Lot 1B is undeveloped. Section 3.10 outlines minimum setbacks from watercourses and requires a minimum 50 ft setback including a vegetation buffer be left in an undisturbed state. The provided subdivision and site plan depict the location of a stream or watercourse generally running north/south along the eastern portion of Lot 1B. This watercourse is shown on the official zoning map and is protected under Section 3.10 of the town’s zoning regulations which require the following:

“Within the fifty (50’) foot setback, a vegetation buffer shall be left in an undisturbed state with the exception of minimal clearing necessary to accommodate and build public recreation and transportation paths, recreational river accesses, driveways, public or private road and utility crossings, landscaping, permitted impoundments and dams and stream bank

stabilization and restoration projects. Private driveways and private and public roads within the buffer, with a width of no greater than sixteen (16') feet may also be allowed when reasonably necessary to permit access to a lot."

Any future development of either lot will be required to meet the relevant zoning regulations in effect at the time of application.

5. **Maximum Building Coverage.** The maximum building coverage in MRV is 20%. No new structures are proposed under this application. The revised site plan includes a notation regarding the existing building coverage for Lot 1A to be 6.75%. Lot 1B is undeveloped.
6. **Use.** Lot 1A contains a mixed-use building comprised of retail and residential uses. Lot 1B is undeveloped. No changes of use are proposed under this application.
7. **Height.** The maximum building height in HT is 28' feet. No changes of height are proposed under this application.

SUBDIVISION REGULATIONS

SECTION 3- GENERAL SUBDIVISION APPLICATION PROCEDURES

8. **Section 3.1(3):** Minor subdivisions are defined as all subdivisions that propose less than five (5) lots, do not involve the construction of a public road, do not involve the construction of public utilities, and are not deemed to be a minimal alteration. Minor subdivisions allow the submission of one application and related materials to be reviewed by the Board. The proposal involves dissolving internal lot lines and resubdiving the parcel into two lots- a minor subdivision.

SECTION 5.1 – GENERAL PLANNING STANDARDS:

9. **Section 5.1(1) – Character of Land for Subdivision:** Prior to the approval of a subdivision plat, the subdivider has the responsibility to satisfy the Board that the land to be subdivided is of such a character that it can be used for the intended purposes without undue adverse impact on public health or safety, or the environment or, neighboring properties or the rural and historic character of the community as outlined in the regulations. Subdivision plats shall conform to the zoning regulations, any interim zoning, subdivision regulations, and other applicable statutes, ordinances, bylaws and/or regulations. In addition, subdivision plans should be in general accordance with Stowe's Municipal Plan. The Applicant proposes to dissolve the internal property lines of the lots located on Tax Map 06-088.00 and resubdivide the parcel resulting in two lots as noted above.

Conclusion: The Board concludes proposed reconfigured parcels can be used for the intended purposes without undue adverse impact on public health or safety, or the environment or, neighboring properties or the rural and historic character of the community.

10. **Section 5.1(2) – Natural and Scenic Features:** All subdivisions shall be designed to prevent undue adverse impact on: brooks, streams, water bodies, ground water resources and wetlands; prime agricultural soils, farmland resources and scenic meadowland; important forest resources; aesthetic resources and scenic vistas, including views onto and arising from subject property. In order to preserve natural and scenic features, the Board is authorized to:
 - a) Establish or limit the building site or other improvements to avoid the parcelization, isolation, or destruction of natural features;

- b) Require setbacks from property boundaries or identified natural features greater than specified in the Zoning Regulations in order to create buffer zones and prevent degradation to significant natural features;
- c) Establish preserve areas where development is restricted or prohibited, and specific land management techniques are employed to protect or enhance significant natural features.

The Applicant proposes to dissolve the internal property lines of the lots located on Tax Map 06-088.00 and resubdivide the parcel resulting in two lots as noted above. Lot 1A is previously developed. Lot 1B is undeveloped but contains scenic meadowlands and other natural features such as the West Branch of the Little River and prime agricultural soils. No construction activities are proposed under this application.

Conclusion: The Board concludes the proposed subdivision has been designed to prevent undue adverse impact on natural and scenic features as noted under Section 5.12(C) of the town's subdivision regulations. Any future development of the lot(s) will be required to meet the regulations in effect at the time of application including preventing undue adverse impact on natural and scenic features.

11. **Section 5.1(3) – Protection of Significant Wildlife Habitat and Natural Communities:** All mapped significant wildlife habitat areas are required to be shown on subdivision site plans. If any portion of a proposed subdivision is within an identified significant wildlife habitat area the Board may require the submission of a wildlife habitat assessment, prepared by a wildlife biologist or comparable professional, to identify potentially impacted habitat and provide recommended management strategies. Vermont Fish and Wildlife Department staff may also be consulted to provide guidance with this review. The Applicant proposes to dissolve the internal property lines located on Tax Map 06-088.00 and resubdivide the parcel resulting in two (2) lots as noted above. Lot 1A is previously developed containing a mixed-use building of retail and residential uses and related appurtenances. Lot 1B is undeveloped. Staff provided an ANR Natural Resources Atlas map showing fragile areas, amphibian and reptile crossings, rare threatened endangered species, uncommon species, deer wintering areas, and natural communities. The proposed resubdivision does not appear to impact any said habitats or communities.

Conclusion: The Board concludes the proposed subdivision will not have an undue adverse impact on significant wildlife habitat and natural communities.

12. **Section 5.1(4) – Historic Resources and Community Character:** Subdivisions are required to minimize undue adverse impact on historic sites and the rural character of the Town. Subdivisions in rural areas shall result in minimum undue adverse impact on the rural landscape as characterized by open fields, forested mountains and hillsides. The rural character exists due to the scenic vistas, large uninterrupted forested areas, open fields along public roads, and limited development along roads. Individual lots and building zones shall be delineated so as to mitigate the visual impact of new development on views from existing roadways, adjacent properties, and offsite vantage points. The Applicant proposes to dissolve the internal property lines of the lots located on Tax Map 06-088.00 and resubdivide the parcel resulting in two lots as noted above. Lot 1B contains an open meadow protected under the Meadowland Overlay District (Section 8).

Conclusion: The Board concludes the proposed subdivision has been designed to minimize undue adverse impact on rural character of the area.

13. **Section 5.1(5) – Reserved Strips:** No privately-owned reserved strip which controls access to any part of the subdivision or to any other parcel of land from any street or from any land dedicated to public use shall be permitted. No reserved strips are proposed. As proposed, Lot 1A is encumbered by a right-of-way to provide access to Lot 1B and an existing 50' right-of-way centered on the existing access road to provide additional access to Lot 1B.

Conclusion: This provision is not applicable.

14. **Section 5.1(6) – Screening and Landscaping:** The DRB is authorized to require the planting or preservation of trees or other vegetation to provide visual screening of development or to otherwise soften and/or lessen the impact of development on natural features and scenic vistas. Street trees along public or private roadways may also be required in order to establish a canopy effect in developed areas and where existing street trees are already present in the vicinity. The size, type, or location of such trees shall depend on the particular land parcel. Section 4.6 (Landscaping Standards) of the Zoning Regulations shall be used as a guideline for any required landscaping. A maintenance plan of all existing and proposed landscaping shall be prepared and submitted for review. Such a plan shall address specific measures to be taken to ensure the survival, and if necessary, replacement, of designated landscaping during and after the construction; parties to be responsible for ongoing maintenance; and any Town obligations for maintenance. The Applicant proposes to dissolve internal property lines resulting in a total of two (2) lots. No changes to the existing landscaping or screening are proposed under this application.

Conclusion: This provision is not applicable. Lot 1A is previously developed. No changes to the existing landscaping or screening are proposed under this application.

15. **Section 5.1(7) – Pedestrian Access:** The Board is authorized to require rights- of-way to facilitate pedestrian circulation within the subdivision and to ensure access to adjoining properties or uses. The Stowe Recreation Path runs along the southern portion of both lots. An existing 20' easement over the southern portion along Mountain Road on Lot 1A is depicted to accommodate for the Stowe Recreation Path. An 18' wide easement centered on the path is shown on Lot 1B. No changes to pedestrian access are proposed under this application.

Conclusion: The Board concludes the existing pedestrian access and improvements, represents safe and adequate pedestrian access and circulation for the existing uses.

16. **Section 5.1(8) – Traffic:** The regulations require traffic to be generated by the proposed subdivision not to create unreasonable traffic congestion or cause unsafe conditions regarding use of existing roadways. To satisfy this standard, the Board is authorized to request the preparation of a traffic impact study to address all concerns relative to traffic impact and safety. The Applicant proposes to dissolve the internal property lines resulting in two reconfigured parcels. No changes or increases in use are proposed under this application.

Conclusion: This provision is not applicable. Any future proposal to develop the reconfigured lots will require review under the Regulations in effect at time of application.

17. **Section 5.1(9) – Municipal Facilities:** No municipal department review forms returned indicated that the proposed boundary line adjustment/subdivision would have any adverse impact on their respective departments.

Conclusion: The project will not create an undue burden on the Town's existing or planned facilities or services.

18. **Section 5.1(10) – Lot Configuration:** Flag lots, elongated lots, and other odd shaped lots which include narrow strips of land are prohibited unless the Board finds the configuration is appropriate given the existing topography and natural features, existing development, or the existing configurations of internal or adjacent lots. The Applicant proposes to dissolve the internal property lines resulting in two (2) reconfigured parcels. The proposed property line is straight and allows for regularly shaped lots.

Conclusion: The Board concludes the amended lot configuration is of regular shape, avoids flag and elongated lots, and contains sufficient buildable area.

19. **Section 5.1(11) – Building Zone:** The Board must find that the proposed subdivision provides adequate building sites for each proposed lot. Such sites may be restricted to a specific building zone, to be depicted on the plat, located and sized to ensure compliance with all of the provisions of Section 5 of the regulations. Lot 1A is previously developed. Lot 1B is undeveloped and contains an open meadow and other above mentioned natural and scenic resources. No additional development is proposed under this application.

Conclusion: The Board concludes the proposed lots are adequate for their intended purpose and existing uses. Any future development of either lot will be required to meet the regulations in effect at the time of application.

20. **Section 5.1(12) – Fire Protection Facilities:** The regulations require adequate water storage or distribution facilities for fire protection to be available. This may include the installation of ponds and dry fire hydrants and the extension of public water with fire hydrants. Where practicable, or where required by the Board, fire hydrants shall be installed by the subdivider. Construction of driveways and roads shall be in general compliance with the Stowe Fire Department Construction Standards where applicable. All lots shall be designed to allow for reasonable access by emergency vehicles to the building zones. The Applicant proposes to dissolve the internal property lines resulting in two reconfigured parcels. Lots 1A is previously developed and is encumbered by existing and proposed right-of-ways to serve Lot 1B. No changes to fire protection facilities are proposed under this application.

Conclusion: This provision is not applicable. Any future proposal to develop the reconfigured lots will require review under the Regulations in effect at time of application, including fire protection facilities.

21. **Section 5.1(13) – Disclosure of Subsequent Development Plans:** Whenever a subdivider submits a proposal for development on only a portion of a parcel, the Board is authorized to require a general indication of the intended uses of the remaining portion of land. Such an indication shall include access, type of use, intensity of use, and phasing. The Board is authorized to require the execution of a development agreement between the applicant and Town which ensures the ongoing integration of future development with each phase of subdivision or may require a note on the plat restricting future development of the remaining land without further review by the Board. No additional development is proposed under this application or noted in the application materials.

Conclusion: This provision is not applicable. Any future proposal to develop the reconfigured lots will require review under the Regulations in effect at time of application.

22. **Section 5.1(14) – Private Enforcement Mechanisms:** As a condition of subdivision approval, the Board may require the formation of a homeowner’s association, consisting of the owners of all properties within the subdivision, to ensure the continual maintenance of shared driveways and other shared facilities. The Board shall require that such enforcement mechanisms be recorded before any zoning permits are issued. The lots are currently in common ownership. During the hearing the Applicant described the location of the existing and proposed rights-of-way.

Conclusion: This provision is not applicable.

23. **Section 5.2 – Prominent Hillside and Ridgelines (RHOD)-** All subdivisions located within the RHOD shall conform to the submission requirements, standards, and guidelines of Section 9 of the Stowe Zoning Regulations. The proposed lots are not within the RHOD.

Conclusion: This provision does not apply.

24. **Section 5.3 – Open Space and Cluster Development:** Except for exemptions granted under Section 5.3(6), the Board shall, in subdivisions having lots or potential dwelling sites for five (5) or more family dwelling units (excluding accessory apartments), and for all Planned Residential Developments (PRDs), require that the subdivision plat designate one (1) or more areas of character, size, shape and location suitable to be used as open space, park or playground. The Applicant proposes to dissolve the internal property lines resulting in two reconfigured parcels. This provision does not apply.

Conclusion: This provision does not apply.

25. **Section 5.4 – Road Standards and Coordination with Public Highways:** All proposed public and private roads shall be designed to ensure the safe and efficient movement of vehicles. Roads shall be logically related to topography so as to produce usable lots and reasonable road grades and shall be in harmony with existing and proposed public highways. Wherever extensions of proposed roads could rationally provide public access to adjacent properties or connection to existing public State or Town highways, a right of way across the subdivider’s property may be required. No new road or driveways are proposed under this application.

Conclusion: The Board concludes no changes to the existing access road/driveway are proposed under this application. The subdivision plan provides for rights-of-way to serve Lot 1B.

26. **Section 5.5 – Utilities and Stormwater Management:** All subdivisions shall make adequate provisions for stormwater and required utilities. No changes to stormwater or utilities are proposed under this application.

Conclusion: The Board concludes no additional utilities and stormwater management improvements are proposed under this application.

DECISION

Based upon the foregoing Findings of Fact, in RE: **6001** the Board finds (7-0) the requested subdivision 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. A fifty (50') foot vegetation buffer along both sides of the mapped watercourse shall depicted and noted on the recorded plat. The buffer shall be left in an undisturbed state with the exception of minimal clearing necessary to allow for the activities noted in Section 3.10.
4. The subdivision survey plat depicting the approved subdivision 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. The Applicant shall file two (2) paper copies of said plat with the Zoning Administrator.
5. The Applicant shall file the Mylar 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 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.
6. 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".

7. 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, T. Hand, P.Aumand, C.Walton, T.Mumley, A.Volansky

Voting to deny: None

Dated at Stowe, Vermont this the 4 day of June 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.