

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



**PROJECT:** 6048

**SUBJECT PROPERTY:** 4515 Mountain Road; #11-106.000

**PROPERTY OWNER/APPLICANT:**

Stephen & Jennifer (Raymond) Burnett  
4515 Mountain Road  
Stowe, VT 05672

**APPLICATION:**

The Applicant, Stephen & Jennifer (Raymond) Burnett (herein referred to as the "Applicant"), requests conditional use approval for the after-the fact construction of permanently affixed wooden posts on the existing deck within the regulatory floodway. The subject parcel (#11-106.000), located at 4515 Mountain Road, is in the Upper Mountain Road (UMR), Flood Hazard District (portions floodway), and Fluvial Erosion Hazard Overlay District. The parcel contains approximately  $\pm 0.4$  acres and includes an existing single-family dwelling. The property is bound to the west and north by a  $\pm 4.75$ -acre parcel owned by Montchilly Inc., to the east by a  $\pm 0.5$ -acre parcel owned by VTRE Investments LLC, and to the south by the West Branch Little River. 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 purposes of conditional use review and flood hazard area 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 conditional use and flood hazard area review was filed by Applicant Stephen & Jennifer (Raymond) Burnett on June 16, 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 July 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 June 27, 2019 and posted at the Town Office, Library, and Police Station. 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 July 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 - Jennifer Burnett, 4515 Mountain Road, Stowe, VT 05672

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

1. Town of Stowe Development Application, dated 6/17/2019;
2. Project Narrative with photographs, no date;
3. Comments from Sacha Pealer, Regional River Scientist & Floodplain Manager, dated 6/26/2019.

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 conditional use and flood hazard approval was reviewed by the Development Review Board (DRB) for conformance with applicable requirements of the Town of Stowe Zoning Regulations (as adopted on October 9, 2018), including the following:

- Section 2- Administration and Enforcement
- Section 3- General Regulations
- Section 5- Zoning Districts
- Section 6- Uses, Dimensional Requirements and Density
- Section 7- Flood Hazard District

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

1. **Zoning District.** The subject parcel contains ±0.4 acres and is located within the Upper Mountain Road (UMR), Flood Hazard District (portions floodway), and Fluvial Erosion Hazard Overlay Districts as shown on the Official Town of Stowe Zoning Map (as adopted October 9, 2018).
2. **Lot Area, Lot Width.** The ±0.4-acre parcel is located in the UMR district and does not meet the minimum district lot area of 1 acre. As such, it is a pre-existing nonconforming lot, as defined under the regulations. No changes to lot area or lot width are proposed under this application.
3. **Setbacks.** No setback encroachments are proposed under this application.
4. **Maximum Building Coverage.** The maximum building coverage in UMR is 8%. No changes to existing building coverage are proposed under this application.
5. **Use.** The existing residential structure is used as a single-family dwelling. Single-family dwellings are a permitted use within the UMR District. No changes of use are proposed under this application.
6. **Height.** The maximum building height in UMR is 28' feet. No changes to building height are proposed.
7. **Section 7- Flood Hazard Area.** The Applicant seeks approval for the after-the fact construction of permanently affixed wooden posts on the existing deck within the regulatory floodway. Section 7.4 outlines when a permit is required within the Flood Hazard Area. A permit is required for all proposed construction or other development, including the placement of manufactured homes, in areas of special flood hazard. Prior to the issuance of a zoning permit, conditional use approval by the DRB is required for: (1) New buildings; (2) Substantial improvement of existing buildings; and (3) *Development in a floodway.*
8. **Review Required.** The regulations require that all development and subdivisions within the Flood Hazard District be reviewed to assure that such proposals minimize potential flood damage, public facilities and utilities such as sewer, gas, electrical, and water systems are constructed so as to minimize flood damage, and adequate drainage is provided to reduce exposure to flood hazards.

Development as defined under the Flood Hazard Area District is “any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, extraction or drilling operations or storage of equipment or materials.” The Applicant seeks approval for the after-the fact construction of permanently affixed wooden posts on the existing deck within the regulatory floodway. The wooden posts are lag bolted, with three 6” lags per post, 5” above the base of the existing posts. In accordance with Section 7.4(3), staff referred the application to the Board for conditional use review since the project involves development within the floodway.

9. **Section 7.5 Procedures.** In accordance with Section 7.5(1), a copy of the application and supporting information was submitted by the Zoning Director to the State National Floodplain Insurance Program Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section in accordance with 24 V.S.A. §4424. A permit may be issued only following receipt of comments from the Agency or the expiration of thirty (30) days from the date the application was mailed to the Agency, whichever is sooner. Pursuant to Section 7.5(1), the application was referred to ANR Floodplain Coordinator Sacha Pealer on 6/18/2019 for review and comment in accordance with 24 V.S.A. §4424. ANR Floodplain Coordinator Sacha Pealer provided written comments for the board’s consideration dated 06/26/2019.

The regulations require that proposed development be reviewed by the Board to assure that all necessary permits have been received from those government agencies from which approval is required by Federal, State or Municipal law. No other Federal, State or Municipal permits were identified as required in the application or during the hearing.

10. **Section 7.7 Development Standards.** Development within the regulatory floodway is prohibited unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice by a registered professional engineer certifying that the proposed development will result in no increase in flood levels during the occurrence of the base flood. Junkyards and storage facilities for floatable materials, chemicals, explosives, flammable liquids, or other hazardous or toxic materials, are prohibited within the floodway. The Applicant did not provide a hydrologic and hydraulic analyses.

ANR Floodplain Coordinator Sacha Pealer provided the following comments:

*The new posts and the existing deck are located within the Special Flood Hazard Area and regulatory Floodway of the West Branch Little River – Zone AE, as shown on the effective Flood Insurance Rate Map (FIRM) for the Town of Stowe dated August 4, 2005.*

*Development standards for the floodway are found in Section 7.7(1) A of Stowe Zoning. Stowe’s Flood Hazard District prohibits development within the floodway unless a registered professional engineer conducts and certifies a hydraulic analysis, demonstrating the project will not cause any rise in Base Flood Elevation. The purpose of this standard is to keep the floodway open for floodwater conveyance and make sure development doesn’t block or divert floodwaters.*

*However, FEMA guidance does give local officials some discretion to allow minor projects in the floodway, when the project will have negligible impact on base flood elevations. The text below is from page 5-23 in FEMA Publication 480: NFIP Floodplain Management Requirements (web link embedded):*

**Minor projects:** Some projects are too small to warrant an engineering study and the certification. Many of these can be determined using logic and common sense: a sign post or telephone pole will not block flood flows. Barbed wire farm fences that will be pushed over or ripped out early in the flood may also be permitted without a certification; however, larger more massive fences could be an obstruction to flood flows and may require an engineering study and certification. A driveway, road or parking lot at grade (without any filling) won't cause an obstruction, either.

NFIP Requirements

5-23

*Given the size of the posts, and the small portion of the posts likely to be below Base Flood Elevation, this project could qualify as a "minor project".*

*The application states that the new posts are mounted to the existing deck railing posts and are thus suspended about 1 ½ to 2 ½ feet above the ground level. To get a rough idea of base flood depths, I reviewed the FEMA flood study data and LiDAR (detailed terrain elevation information) for the deck location, as follows:*

- 1) The house is approximately 150 feet downstream of FEMA Flood Study cross section "Y" (dashed line) – measured with the ANR Natural Resources Atlas tool.*
- 2) In the FEMA Flood Study for Stowe (dated 8/4/2005), the flood profile shows how Base Flood Elevation changes along the West Branch. At around 150 feet below cross section "Y", the Base Flood Elevation is approximately 895'.*
- 3) Looking at LiDAR (detailed terrain elevation information from VCGI), the ground around the deck varies in elevation from 893 to 892 feet.*

*From this desktop review, it appears that base flood depths are roughly 2-3 feet next to the deck. These are ballpark numbers and should not be relied on for any future substantial improvement or elevation of the house itself but give a feel for how much the posts might contact the floodwater during the base flood (1% annual chance flood). More major floodplain development projects will require the services of a land surveyor or engineer to confirm Base Flood Elevation and land elevations.*

*Based on the application information, it appears that short lengths of the posts may extend below Base Flood Elevation. The new posts are reported to be the same width as the original posts to which they are bolted (4" x 4") and appear to be largely "in line" with the original posts as far as moving water is concerned. Given this information, the amount of new post making contact with the base flood is extremely minor.*

*This project looks to me like it meets FEMA's criteria for a "minor project" that would not require an engineer's certification, but it is ultimately up to the community. If the town agrees the project meets the FEMA criteria above, then the town's rationale should be well documented in the permit file. Allowing development in the floodway as a "minor project" can be a slippery slope, if the town is not careful.*

**Conclusion:** The Board concludes the described wooden posts on the existing deck are a minor project, as defined and allowed under *FEMA Publication 480*. Upon finding that the wooden posts

will have minimal impact and are not expected to obstruct flood flows, the Board agreed to waive the hydrologic and hydraulic analyses requirement.

11. **Section 3.7(2)(A) – Standards of review (Conditional Use Applications):** The Development Review Board must determine that the use will conform to the standards outlined in Section 3.7(2)(A) and will not result in an undue adverse effect on capacity of existing or planned community facilities and services, traffic on roads and highways in the vicinity, the character of the area affected, regulations and ordinances in effect, utilization of renewable energy sources, and the additional standards outlined in Section 3.7(2)(B).

The Applicant seeks approval for the after-the fact construction of permanently affixed wooden posts on the existing deck within the regulatory floodway. The proposed residential improvement is not expected to impact any of the conditional use criteria as outlined in the regulations. The parcel contains a single-family dwelling, a permitted use in the UMR district.

**Conclusion:** The Board concludes the parcel contains a single-family dwelling, a permitted use in the UMR district. As such, the proposed residential improvement will not result in an undue adverse effect on the above provisions.

#### **DECISION**

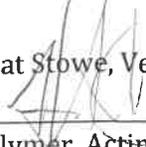
Based upon the foregoing Findings of Fact, in RE: **6048** the Board finds (6-0) the proposal meets the Stowe Zoning Regulations, as adopted on October 9, 2018, subject to the following conditions of approval:

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. Any future enlargement or alteration of the deck, except for removing the wooden posts or removing portions of the deck, shall require additional review under the regulations in effect at the time of application.
3. Any future development, as defined under the regulations, within the Flood Hazard District, Floodway, and Fluvial Erosion Hazard Overlay District shall require review under the regulation in effect at the time of application.
4. 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.
5. 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.Clymer, T.Hand, P. Aumand, M. Diender, A. Volansky, P. Roberts

Voting to deny: None

Dated at Stowe, Vermont this the 29 day of July 2019

By:   
Dew Clymer, Acting 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.