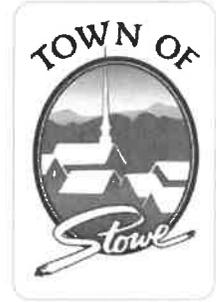


TOWN OF STOWE
DEVELOPMENT REVIEW BOARD
Findings of Fact & Conclusions of Law



PROJECT: 6058

SUBJECT PROPERTY: 144 Thomas Pasture Lane (Lot 67), Stowe, VT (#14-072.670)

PROPERTY OWNER:

Eirene & Brian Heidelberger
1300 Sinclair Drive
Stowe, VT 05672

APPLICANT:

John Grenier, PE, Grenier Engineering PC
PO Box 445
Waterbury, VT 05676

APPLICATION:

The Applicant, John Grenier PE of Grenier Engineering on behalf of property owners, Eirene & Brian Heidelberger (herein referred to as the "Applicant"), requests RHOD review to construct a single-family dwelling, attached garage, and related improvements on Lot 67 in the Robinson Springs Development. The property is served by Thomas Pasture Lane, a privately maintained and owned road.

The subject parcel, consisting of ±5.014 acres and located at 144 Thomas Pasture Lane, Stowe, VT (14-072.670), is in the Rural Residential 5 (RR5) Zoning District and the Ridgeline and Hillside Overlay District (RHOD). The subject parcel is bound to the north by a ±7.29 acre parcel currently owned by Hancock Trust; to the south by a ±9.48-acre parcel currently owned by Clark Abbott; to the west by common land owned by Notch Brook III Homeowners Association, and to the east by Thomas Pasture Lane. The parcel was originally created in 1989 approved by the Planning Commission under subdivision S-83-7 Robinson Springs Development Phase V and later modified in 2013 through an approved boundary line adjustment between Lots 66 & 67. 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 Ridgeline and Hillside Overlay District (RHOD) 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 RHOD review was filed by Applicant John Grenier on June 28, 2019. The application was accepted as administratively complete by Town of Stowe Zoning Director Sarah McShane and referred to the Stowe Development Review Board for a public hearing. A public hearing of the DRB was scheduled for August 6, 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 July 18, 2019. The Applicant provided a completed certificate of service in accordance with Section 2.14(1)(B).

The public hearing to consider the application convened on August 6, 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:

- Chris Austin, Grenier Engineering, PO Box 445, Waterbury, VT 05676
- Erica Dodge (Architect) PO Box 851, Stowe, VT 05672

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

- Town of Stowe Development Application (2 pages); dated 6/28/2019;
- Cover letter from Grenier Engineering Chris Austin, dated 6/26/2019;
- Photographs (2) depicting existing views, no date;
- Glass Manufacturer Specifications, Marvin Dual Pane (5 pages), dated 6/21/2019;
- Hinkley & PR Lighting Cut-Sheet, Fixture LA-1, no date;
- Bantam Union Universal Wall Sconce, Fixture LA-2 (2 pages), no date;
- Versa Star, BK Lighting, Fixture LA-3 (5 pages), no date;
- Hinkley & PR Lighting Cut-Sheet, Fixture LA-4, no date;
- Hinkley Lighting Cut-Sheet, Fixture L-1 (2 pages), no date;
- Kichler LED Fixture with Bracket, Fixture L2 & L4, no date;
- Integral Lighting, Model IL6.xxx.500 Cut Sheet, Fixture L3, no date;
- Kitchler, 12 v MR16 Mini Downlight Textures Architectural Bronze, Sheet L5, no date;
- Hinkley & PR Lighting Cut-Sheet, Fixture P6, no date;
- Building Elevations, Sheet A3.2, prepared by Erica Dodge Architecture, dated 6/24/2019;
- Building Elevations, Sheet A3.1, prepared by Erica Dodge Architecture, dated 6/24/2019;
- Site Grading Plan prepared by Grenier Engineering and Knauf Landscape Architecture, Sheet L1.1, dated 6/24/2019;
- Hardscape Plan prepared by Grenier Engineering and Knauf Landscape Architecture, Sheet L2.1, dated 6/24/2019;
- Pool and Spa Details prepared by Grenier Engineering and Knauf Landscape Architecture, Sheet L3.1, dated 6/24/2019;
- Planting and Lighting Plan prepared by Grenier Engineering and Knauf Landscape Architecture, Sheet L4.1, dated 6/24/2019;
- Heidelberger Residence northwest perspective prepared by Erica Dodge Architecture, no date;
- ANR Natural Resources Atlas Map, dated 7/26/19 (staff);
- Overall Site Plan 'Brian & Eirene Heidelberger', Sheet 1 of 2, prepared by Grenier Engineering, last revised 8/5/2019.

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 RHOD approval was reviewed by the 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 9- Ridgeline and Hillside Overlay District

- Section 15- Parking Regulations

DIMENSIONAL REQUIREMENTS:

1. **Zoning District.** The subject parcel is within the Rural Residential 5 (RR-5) and the Ridgeline and Hillside Overlay District (RHOD) as shown on the Official Town of Stowe Zoning Map (as adopted October 9, 2018).
2. **Lot Area, Lot Width.** The subject parcel is ±5.014 acres. No changes to lot width or lot area are proposed under this application.
3. **Setbacks.** Required minimum district setbacks for the RR5 district are front (70'), side (75') and rear (75'). The provided site plan shows the location of the proposed dwelling and related improvements (i.e. driveway, septic, etc.) in relation to the previously approved building zone. The proposed dwelling and attached garage all appear to be located within the approved building zone. Some of the proposed improvements appear to be located in close proximity of the building zone which is sited to meet minimum setback requirements. Section 2.10(1) provides the Zoning Administrator the authority to require reasonable proof from the applicant that all required setbacks have been satisfied when proposed structures are within fifteen (15') feet of any required setback. Reasonable proof may include a survey, certification of setbacks by a surveyor, or demonstrating physical location of property boundaries. The Board will require the Applicant to provide reasonable proof that the side yard setback has been maintained prior to the issuance of a Certificate of Occupancy.
4. **Maximum Building Coverage.** Does not apply to the RR5 zoning district.
5. **Use.** The Applicant proposes to construct a single-family dwelling and attached garage. Single-family dwellings are a permitted use in the RR5 district.
6. **Density.** The RR5 district allows single-family dwellings at a density of one per five acres. The subject parcel is ±5.014. The Applicant proposes one dwelling unit, in conformance with the density requirements for the district.
7. **Height.** The maximum building height in RR5 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.*" The application materials indicate the proposed height of the dwelling to be 24' 9".

SECTION 9 – RIDGELINE AND HILLSIDE OVERLAY DISTRICT. (1) Under the provisions of the Town of Stowe zoning regulations (as adopted October 8, 2018), the application was reviewed under the applicable provisions of Section 9- Ridgeline and Hillside Overlay District. Staff referred the application to the Board since the project is not eligible for an exemption under Section 9.4(2).

Section 9.5 RHOD Guidelines:

8. **Standard (1) General Requirements:** To protect the unique visual and environmental character of the RHOD, especially those characterized by steep slopes, prominent knolls, ridgelines and significant focal points, the regulations require that all development be designed and sited in a

manner that does not cause undue adverse impact to the visual/scenic landscape character and the physical environment of the town. The Applicant proposes to construct a single-family dwelling, attached garage, and related improvements. The proposed dwelling and garage are generally sited in areas previously cleared. The lot is part of the larger rural residential Robinson Springs Subdivision. The Board finds that the proposal has been designed and sited in a manner that does not cause undue adverse impact to the visual/scenic landscape character and the physical environment of the town.

9. **Standard (2) Designation of Vantage Points:** The regulations define vantage points as maintained (class 3 or higher) public roads, state highways and municipal properties. The Applicant provided several photographs showing the project vicinity. The Applicant's cover letter states that it is the Applicant's position that the site will not be visible from town roads due to the existing topography in combination with the building design and existing natural forested conditions. In the Board's decision for Project 5507 approving the establishment of building and clearing areas, the Board concluded that the *'cleared area will not be visible from any public vantage points. Any future building construction will require RHOD approval.'* Staff visited the property on August 5, 2019 and reported that there are no visible public roads within the property's viewshed. The Board finds the proposal will not negatively impact public vantage points and will have no or very limited visibility from public vantage points.
10. **Standard (3) Standards and Guidelines:** Standard 3 provides guidelines and accompanying illustrations to guide development in a visually and environmentally sensible way without an undue adverse impact to scenic and environmental resources. The Applicant proposes to construct a single-family dwelling, attached garage, and related improvements. The proposed dwelling and garage are generally sited in areas previously cleared. The driveway enters the site from Thomas Pasture Lane and is generally located behind the dwelling. The Board reviewed the applicable standards and guidelines and finds that the proposed improvements will not adversely impact the character of the scenic landscape and no further mitigation measures are warranted.
11. **Standard (4)** The regulations require that development not result in an undue adverse impact on fragile environments, including designated wetlands, wildlife habitats, streams, steep and extremely steep slopes and unique features. All efforts should be made to protect/preserve such areas and promote suitable buffers. The Applicant proposes to construct a single-family dwelling, attached garage, and related improvements. The proposed dwelling and garage are generally sited in areas previously cleared on lands that are generally flat. According to the ANR Natural Resources Atlas there are no fragile environments that would be impacted from the proposed project. The parcel is undeveloped but contains a roughed in driveway and areas previously cleared. A stream on the zoning map is shown running through the lot. In the Board's prior decision, it states the stream was *"re-route when Thomas Pasture Lane was constructed"*. During the hearing the Applicant testified that during the prior Board review Jaron Borg, State of Vermont River Management Engineer, provided written documentation that it was a nonperennial stream and not a jurisdictional waterway for stream alteration permitting. The parcel contains a Class 3 wetland and associated 25' buffer. The ANR Natural Resources Atlas does not depict these wetlands in the Vermont State Wetlands Inventory (VSWI). No improvements are proposed within this buffer area however a rock retaining wall and related improvements are in close proximity. During the hearing the Board voiced concerns about protecting the wetlands during construction. The Board finds that the proposal, if constructed as approved, will not result in an undue adverse impact of fragile environments. As a condition of approval, the Board will require that the wetland buffer be staked out and maintained throughout the duration of construction and for construction

activities to follow the erosion control measures outlined in Section 3.12 to prevent adverse impacts to wetlands.

12. **Standard (5)** The regulations require if the project is on a forested hillside, there will be no significant exposure of buildings, and all development be minimally visible and blend in with surroundings in winter months. The amount and location of clearing adjacent to structures shall be limited; additional tree planting may be required in instances where planting is needed to visually interrupt the portion of structures visible from defined vantage points. The application materials indicate the parcel is previously cleared with minor additional clearing proposed. Building materials are included on the architectural drawings. The Board finds the proposal will be minimally visible and conforms to Standard 5.
13. **Standard (6)** Development shall not detract from the sense of order or harmony of the landscape patterns formed by forests, agricultural fields and open meadows. The Applicant proposes to construct a single-family dwelling, attached garage, and related improvements. The proposed dwelling and garage are generally sited in areas previously cleared on lands that are generally flat. The subject lot was created in 1989 and is amongst a larger rural subdivision intended for residential development. The Board finds that the proposal has been designed and sited in a manner that will not detract from the sense of order or harmony of the landscape patterns.
14. **Standard (7)** During construction, trees identified on the landscaping plan are to be protected. During the hearing the Applicant testified that the site had previously been cleared in accordance with the prior approval and that minor additional clearing is needed near the corner of the swimming pool patio to accommodate grading. The Applicant provided a revised site plan depicting the additional clearing. The Board reviewed the increase in clearing and noted that it will have no visual impact. No other clearing or removal of trees is proposed under this application.
15. **Standard (8)** The regulations require that driveway grades not exceed fifteen (15%) percent and have an average grade that does not exceed twelve (12%) percent. Where necessary, limited steeper grades are acceptable if they serve to better minimize overall erosion potential and environmental/aesthetic impacts, provided adequate access is ensured for fire and rescue vehicles. The driveway enters the parcel from Thomas Pasture Lane and is located to the rear of the proposed dwelling. The proposal includes realigning the existing driveway area to better enter the site. During the hearing the Applicant testified that the driveway grade does not exceed 10%.
16. **Standard (9)** The regulations require that development not result in any building, roof or appurtenant structure being located in a manner which would allow the building, roof or structure to visually exceed the height of land or tree line if it is protected serving as the visual and physical backdrop to the structure as viewed from vantage points. The Applicant provided building elevation designs for the proposed improvements. The elevation drawings note the proposed height of the dwelling to be 24' 9". The architectural drawings indicate the finished floor elevation to be $\pm 1446-47'$. The Board finds the proposal is in conformance with Standard 9 and has been designed in a manner that will not visually exceed the height of the land or tree line.
17. **Standard (10)** The regulations require that massing of a project be designed to minimize visual impacts and contribute to, and harmonize with, the scenic quality of the surrounding landscape. The Applicant provided a building material schedule and colors. Proposed materials and colors are natural earth tones and compatible with the surrounding landscape. The Board finds the proposal is in conformance with Standard 10 and has been designed to minimize visual impacts and compliment the scenic quality of the surrounding landscape.

18. **Standard (11)** Offsite light impacts shall be minimized. Outdoor lighting must comply with the standards contained in Section 4.8 of the regulations. The elevation drawings, Sheets A3.1 and A.3.2, prepared by E/D Architecture show the location of outdoor light fixtures. Cut sheets were provided for each of the proposed outdoor lighting fixtures. The elevation drawings indicate the location and placement of proposed light fixtures on each building elevation keyed to the manufacturer specifications. During the hearing the Applicant testified that all but two light fixtures are located under a covered area. The Board finds the proposed lighting is in conformance with Section 4.8 of the regulations and has been designed to minimize impacts.
19. **Standard (12)** The regulations require that the minimum area for all lots in existence prior to August 3, 1998 be as established for the underlying district. Minimum area for any lot created after August 3, 1998 shall be as established for the underlying district, excluding any portion of the lot with an average steepness (slope gradient) in excess of twenty (20%) percent. The lot area must have an area four times (4x) the minimum lot area identified in the underlying district for that portion of the parcel exceeding 20%. No change in lot area is proposed under this application. The provisions of this section do not apply.

Conclusion: The Board concludes the proposed development is in conformance with all applicable RHOD standards and guidelines.

DECISION

Based upon the foregoing Findings of Fact, in RE: **6058** the Board finds (6-0) that the application meets the Stowe Zoning Regulations, as adopted October 8, 2018, criteria for approval with the following conditions of approval:

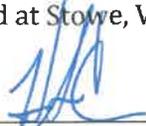
1. This project shall be completed according to the plans hereby approved. Any change to the plans or the proposed use of the property shall be brought to the Zoning Administrator's attention, prior to its enactment, for a determination if an amendment is required. The Zoning Administrator is granted 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 conditions of prior approvals, except as amended herein, remain in full force and effect.
3. The wetland buffer shall be staked out and maintained throughout the duration of construction.
4. 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.
5. Exterior lighting shall be cut-off fixtures as defined by the Illuminating Engineering Society of North America (IESNA). Exceptions to this standard to accommodate a particular "period" or architectural style are allowed, providing the maximum initial lumens generated by each fixture not exceed 2,000 (equivalent to a 150 watt incandescent bulb).
6. Clearing shall be limited to the areas depicted on the Overall Site Plan 'Brian & Eirene Heidelberger', Sheet 1 of 2, prepared by Grenier Engineering, last revised 8/5/2019.
7. Site construction shall be conducted in a manner that keeps the amount of soil exposed at any one time to a minimum.
8. Areas of exposed soil that are not being actively worked, including soil that has been stockpiled, shall be stabilized.
9. Stormwater shall be controlled during construction to minimize soil erosion and transport of sediment to surface waters.

10. 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.
11. 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.
12. 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. Prior to the issuance of a Certificate of Occupancy, the Applicant shall provide the following:
 - Reasonable proof that the side yard setbacks have been maintained. Reasonable proof may include a survey, certification of setbacks by a licensed surveyor, or demonstrating physical location of property boundaries.
 - The first-floor elevation, as approved, shall be confirmed in writing from a professional surveyor licensed in the State of Vermont.
13. 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, P. Aumand, T. Hand, T. Mumley, A. Volansky, M. Diender

Voting to deny: None

Dated at Stowe, Vermont this the 15 day of August 2019

By: 
 Drew Clymer, 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.

