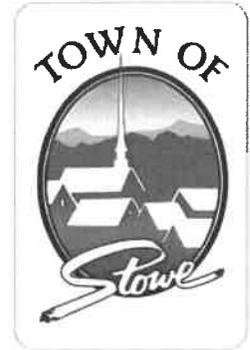


TOWN OF STOWE
DEVELOPMENT REVIEW BOARD
Findings of Fact & Conclusions of Law



PROJECT: 6075

SUBJECT PROPERTY: 276 Mountain Road; #7A-124.000

PROPERTY OWNER(s):

West Branch of Stowe LLC
276 Mountain Road
Stowe, VT 05672

Town of Stowe
PO Box 730
Stowe, VT 05672

APPLICANT:

Harry Shepard III; Town Engineer/DPW Director
Town of Stowe
PO Box 730
Stowe, VT 05672

APPLICATION:

The Applicant, Harry Shepard III- Town Engineer/DPW Director on behalf of the property owners West Branch of Stowe LLC and the Town of Stowe (herein referred to as the "Applicant"), requests conditional use approval for a streambank stabilization project on the North Branch. The project involves the construction of two (2) riprap walls to stabilize approximately ± 300 ft of the streambank. The purpose of the project is to prevent additional erosion and encroachment towards the recreation path and stabilize the actively eroding channel banks in their current locations. Proposed construction access to the site will require the installation of a ± 700 ft temporary gravel access across Mayo Farm Field G from the Cemetery Road parking area. The temporary gravel access is proposed to be removed and restored at the completion of construction. Minor relocations and reconstruction of the recreation path from Bridge #1 to Bridge #2 are also proposed.

The subject parcels (#07-042.000 & 7A-124.000) are located in the Village Residential 40 (VR40) and Flood Hazard District (portions floodway). 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 and flood hazard area review. The subject parcel contains a community owned facility and therefore may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use [24 VSA 4413]. [Municipalities can regulate community owned facilities for compliance with the National Flood Insurance Program (NFIP) and for compliance with a municipal ordinance or bylaw regulating development in a flood hazard area or river corridor, so long as it does not have the effect of interfering with the intended functional use. 24 VSA 4413(a)(1)(2)]. 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 Harry Shepard III on July 30, 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 August 20, 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 August 1, 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 August 20, 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 person(s) attended and participated in the hearing process, and may be afforded status as interested persons with rights to appeal:

- Applicant - Harry Shepard III; Town Engineer/DPW Director, Town of Stowe, PO Box 730, 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 7/30/2019;
2. Aerial Image/Map 'Stowe Rec Path Reconstruction', no date;
3. North Branch Streambank Stabilization Project Details, dated 7/28/2019;
4. Comments from Sacha Pealer, Regional River Scientist & Floodplain Manager, dated 8/9/2019;
5. Revised Aerial Image/Map 'Stowe Rec Path Reconstruction', no date;
6. Memo and Stamped plans from Harry Shepard III; Town Engineer/DPW Director (6 pages), dated 8/14/2019.

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:

Dimensional Requirements

1. **Zoning District.** The subject parcels are located within the Village Residential 40 (VR 40) and Flood Hazard District (portions floodway) as shown on the Official Town of Stowe Zoning Map (as adopted October 9, 2018).

2. **Lot Area, Lot Width.** The ±13.1-acre and ±224-acre parcels are located in the Village Residential 40 (VR 40) district and exceeds the minimum district lot area of 40,000 sf. No changes to lot area or lot width are proposed under this application.
3. **Setbacks.** The North Branch runs throughout the subject parcels. Section 3.10 requires a fifty (50') foot setback from all mapped watercourses. 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.
4. **Maximum Building Coverage.** The maximum building coverage in VR40 is 15%. No changes to existing building coverage are proposed under this application.
5. **Use.** The parcels contain the Stowe Recreation Path- a community-owned facility. Municipal uses are a conditional use within the VR40 District. No changes of use are proposed under this application.
6. **Height.** The maximum building height in VR40 is 28' feet. No changes to building height are proposed.

Section 7- Flood Hazard Area. The Applicant seeks approval for a streambank stabilization project on the North Branch 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.***

7. **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 a streambank stabilization project within the regulatory floodway. 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 regulatory floodway.

8. **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 7/30/2019 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 8/9/2019.

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. During the hearing the Applicant testified that they have obtained a State of VT Stream Alterations permit and hope to secure the Army Corps of Engineers permit in the very near future. The Applicant indicated that they have met with State of Vermont Wetlands Program Staff and made revisions to the plans based on their feedback. No other Federal, State or Municipal permits were identified as required in the application or during the hearing.

9. **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.

ANR Floodplain Coordinator Sacha Pealer provided the following comments:

This segment of the Recreation Path crosses a very dynamic river corridor area between the West Branch and North Branches of the Little River. The project proposal includes stone bank stabilization (riprap) along portions of both rivers, reconstruction/realignment of parts of the paved path, and temporary access construction.

The project is within the Special Flood Hazard Area and regulatory Floodway – Zone AE, as shown on the effective Flood Insurance Rate Map (FIRM) for the Town of Stowe dated August 4, 2005. The project is also within the Fluvial Erosion Hazard Overlay District.

Special Flood Hazard Area

The development standards that seem to apply to this project are in Section 7.7(1) A of Stowe Zoning. Stowe's Flood Hazard District prohibits development within the floodway unless a registered professional engineer certifies a floodway encroachment analysis, demonstrating the project will not cause any rise (0.00 feet) in Base Flood Elevation. The purpose of this standard is to keep the floodway open to effectively carry floodwater. When looking at bank stabilizations and/or public access trails along the river in a floodway, the primary concern is to make sure the proposal does not create a new obstruction to flood flows or redirect flood water onto nearby property.

Bank Stabilization: Usually, riprap or other stabilization is proposed where the river bank is eroding or has recently collapsed; so that the bank edge is moving landward. As long as the riprap is set into the bank face at its current location and does not protrude into the river channel or otherwise raise the ground within the floodway, then the project is unlikely to cause flood elevations to increase. However, Stowe should make sure the project plans are certified by a professional engineer as meeting the "no rise" requirement in Zoning Section 7.7(1) A.

Path Reconstruction/Relocation: The proposed path changes are in the floodway as well, and should likewise be certified by a professional engineer as meeting the "no rise" requirement in 7.7(1) A. I noticed the plan drawings show the typical path surface might be raised above the ground level. I suggest confirming if that is indeed the proposal. While the plan may be to

only raise the path a few inches, the path could act as a miniature berm during some flood conditions. If the path is to be elevated slightly, the professional engineer should include more supporting data – including a hydrologic and hydraulic modelling analysis (H &H) comparing current and proposed conditions—to support a certification of “no rise”. Alternatively, to avoid going through the substantial effort of a full H & H analysis, the path reconstruction can be re-designed to match the existing ground levels.

Temporary access road: To ensure this road doesn't create a floodway obstruction, Stowe may want to stipulate that the road be removed and restored to pre-project grades upon project completion, and set a limit on how long the access road can be in place (e.g. one construction season or less is recommended).

To maintain record of NFIP compliance, it is also recommended that Stowe require as-built documentation, certified by a professional engineer or licensed land surveyor, to be submitted to the Zoning Office upon project completion.

Fluvial Erosion Hazard (FEH) Overlay

Development standards for the FEH District are found in Section 11 of Stowe Zoning. The project is in an area known to be highly sensitive to fluvial erosion and stream channel migration, which I imagine is the impetus for the new riprap and trail rerouting.

While the project does not increase development encroachment toward the river(s) within the FEH (the trail is already there), it continues to maintain a trail in between two dynamic streams that are very close together—at odds with natural stream adjustment process. Not knowing the overall future vision for the recreation path, Stowe is strongly encouraged to consider long-term strategic trail relocations, to place parts of the trail back from the river and/or outside the FEH wherever possible.

Please keep in mind other State, Federal or local permits may be required for this project. The VT DEC Permit Specialist for your area can help to identify other state permits that may be involved. Please also note: VT ANR DEC Rivers Program comments on this project may differ in Act 250 review, if applicable.

You may consider this email to be DEC Flood Hazard Review comments per 24 V.S.A. §4424.

In response to ANR Floodplain Coordinator Sacha Pealer's comments, the Applicant provided a detailed memo prepared by the Town Engineer dated 8/14/2019 certifying the project will not cause any rise in base flood elevations. In addition, the Applicant provided stamped engineer plans. The memo was submitted in fulfillment of the requirements that the project be certified by a professional engineer as meeting the “no rise” and the hydrologic and hydraulic modelling analysis (H &H) requirement to support a certification of “no rise”.

Conclusion: The Board accepts the comments from the Department of Environmental Conservation and concludes the described project, if constructed as conditioned, meets the development standards outlined in Section 7.7 of the Stowe Zoning Regulations and will result in no increase in flood levels during the occurrence of a base flood event. As conditions of approval, the Board will require the following:

- *The riprap shall be set into the bank face at its current location and not protrude into the river channel or otherwise raise the ground within the floodway.*
- *The temporary access road shall be removed and restored to pre-project grades upon project completion. The temporary access road shall not be in place for more than one construction season without additional review and approval by the Development Review Board.*
- *Upon completion of the project and prior to the issuance of a Certificate of Occupancy, the Applicant shall submit as-built documentation, certified by a professional engineer or licensed land surveyor, to the Zoning Administrator.*

10. **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 a streambank stabilization project within the regulatory floodway. The project is not expected to impact any of the conditional use criteria as outlined in the regulations.

Conclusion: The Board concludes the proposed project will not result in an undue adverse effect on the above provisions. The Board notes that a community owned facility may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use [24 VSA 4413].

DECISION

Based upon the foregoing Findings of Fact, in RE: **6075** 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. The riprap shall be set into the bank face at its current location and not protrude into the river channel or otherwise raise the ground within the floodway.
3. The temporary access road shall be removed and restored to pre-project grades upon project completion. The temporary access road shall not be in place for more than one construction season without additional review and approval by the Development Review Board.
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. Prior to the issuance of a Certificate of Occupancy, the Applicant shall submit as-built documentation, certified by a professional engineer or licensed land surveyor, to the Zoning Administrator.

5. Any future development, as defined under the regulations, within the Flood Hazard District shall require review under the regulation in effect at the time of application.
6. 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, M. Diender, A. Volansky, C.Walton, D.Galdenzi

Voting to deny: None

Dated at Stowe, Vermont this the 3rd day of September 2019

By: 
Dew 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.

