

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



**PROJECT:** 6092

**SUBJECT PROPERTY:** 110 Cape Code Road; #07-028.000

**PROPERTY OWNER/APPLICANT:**

Edwin & Jennifer Bitter  
110 Cape Cod Road  
Stowe, VT 05672

**APPLICATION:**

The property owners Edwin & Jennifer Bitter (herein referred to as the "Applicant"), have requested amended final subdivision review for a 2-lot subdivision of parcel #07-028.000 located at 110 Cape Cod Road. The Applicant proposes to subdivide the existing  $\pm 4.56$  parcel into two (2) lots, Lot 1 being  $\pm 2.02$  acres and containing an existing single-family dwelling and related improvements; and Lot 2 being  $\pm 2.54$  acres with a designated building zone and designed to accommodate a 3-bedroom single-family dwelling. A mapped watercourse runs generally north/south along the eastern boundary of proposed Lot 2. As proposed, Lot 2 will be accessed via curb cut off Weeks Hill Road with a stream crossing to access the building zone. This subdivision was originally approved under Project 5969 in a written decision dated 04/26/2019. Prior to recording the approved plat, the Applicant proposed revisions to the lot configuration which require additional review by the Board. Staff referred the lot configuration revisions to the Board as a subdivision amendment.

The subject parcel is owned by Edwin & Jennifer Bitter and located 110 Cape Cod Road (#07-028.000) in the Rural Residential II (RRII) zoning district. The parcel contains frontage along Cape Cod Road and Weeks Hill Road, both Class 3 town-maintained highways. There are no known prior subdivision conditions of approval which apply to the parcel. 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 amended 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 amended final subdivision review was filed by Applicant Edwin Bitter on August 15, 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 September 17, 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 29, 2019 and posted at the Library, Town Office, 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 September 17, 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. Board members which participated in the review include Paco Aumand, Drew Clymer, Peter Roberts, Chris Walton, Andrew Volansky, Michael Diender.

The following persons attended and participated in the hearing process, and may be afforded status as interested persons with rights to appeal:

- Applicant – Edwin Bitter, 110 Cape Cod Road, Stowe, VT 05672
- Chris Guerra, 379 Weeks Hill Road, Stowe, VT 05672
- Arnold Somweber, 31 Cape Cod Road, 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 08/15/2019;
- Survey and Subdivision Plan for Edwin & Jennifer Bitter prepared by McCain Consulting Inc., Sheet 1 of 1, dated 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 amended final subdivision review was reviewed by the Stowe Development Review Board (DRB) for conformance with applicable requirements of the Town of Stowe subdivision regulations (as amended through July 16, 2012) including the following:

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

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

1. **Zoning District.** The subject parcel is within the Rural Residential II (RRII) zoning district, as shown on the Official Town of Stowe Zoning Map (as adopted on October 9, 2018).
2. **Lot Area, Lot Width.** The Applicant proposes a 2-lot subdivision of parcel #07-028.000 located at 110 Cape Cod Road. Lot 1 is proposed to contain ±2.02 acres including an existing single-family dwelling and related improvements. Lot 2 is proposed to contain ±2.54 acres and is currently undeveloped. The RR2 District requires a minimum lot area of 2.0 acres and a minimum lot width of 200 ft. Lot width is defined as “*The width of a lot measured at right angles to its lot depth at the minimum front yard setback.*” Both lots appear to meet the minimum required lot area and lot width.
3. **Setbacks.** Setback requirements in the RR2 district are 60 feet front and 50 ft sides and rear, as measured from the property line to nearest part of structure on the lot. The required setbacks are labeled on Lot 2. Section 15.6 provides further setback requirements for driveways and parking facilities. In the RR2 District parking and driveways are required to be a minimum of 10 ft as measured from the property line. 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 plan depict the location of a stream or watercourse generally running

north/south along the eastern portion of Lot 2. 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."*

A 50' vegetation buffer is proposed on both sides of the mapped watercourse. Under the prior application, a 12' wide driveway crossing over this watercourse was approved. The provided subdivision plan depicts the building zone to accommodate for a 50' watercourse setback. The proposed property line allows for a 10' required setback for the existing pond on Lot 2.

4. **Maximum Building Coverage.** There is no maximum building coverage in RR2. Does not apply.
5. **Use.** The Applicant proposes a 2-lot subdivision. No uses are proposed under this application; however, under the previously approved plan the application materials indicated that a septic system for Lot 2 was designed to support a 3-bedroom single-family dwelling. Lot 1 contains an existing single-family dwelling and related improvements.
6. **Height.** No buildings are proposed under this application. Prior to the issuance of any zoning permit(s), the Applicant will be required to demonstrate compliance with the maximum height requirements in effect at the time of application.

## **SUBDIVISION REGULATIONS**

### **SECTION 5.1 – GENERAL PLANNING STANDARDS:**

7. **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 subdivide the ±4.56 parcel into two (2) lots, Lot 1 being ±2.02 acres and containing an existing single-family dwelling and related improvements; and Lot 2 being ±2.54 acres with a building zone as defined under the regulations and designed to accommodate a 3-bedroom single-family dwelling. A mapped watercourse runs generally north/south along the eastern boundary of proposed Lot 2. Lot 2 is proposed to be accessed via upgraded stream crossing and curb cut off Weeks Hill Road.

**Conclusion:** The Board concludes the proposed lots 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.

8. **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 subdivide the existing parcel into two (2) lots. A mapped watercourse runs generally north/south along the eastern boundary of proposed Lot 2. This watercourse is protected under Section 3.10 and requires a 50-ft protective buffer as noted above. A man-made pond is located on Lot 2. No other natural or scenic features are shown or noted on the provided plan. The proposed subdivision plan shows a designated building zone on Lot 2. According to the ANR Natural Resources Atlas map there are no mapped wetlands or other identified natural resources on the parcel.

**Conclusion:** The Board concludes the proposed 2-lot 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. As a condition of approval, the Board will require a fifty (50') foot vegetation buffer be left in an undisturbed state with the exception of minimal clearing necessary to accommodate and build the private driveway, bridge, and utility crossings.

9. **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 a 2-lot subdivision of parcel #07-028.000 located at 110 Cape Cod Road. The Applicant proposes to subdivide the existing parcel into two (2) lots. Lot 1 is currently developed with an existing single-family dwelling. Lot 2 is proposed to accommodate a 3-bedroom single-family dwelling. No wildlife habitat or natural communities are shown on the provided plan. According to the ANR Natural Resource Atlas, no rare, threatened, or endangered species, deer wintering areas, or significant natural communities are located on the parcel.

**Conclusion:** The Board finds the proposed 2-lot subdivision will not have an undue adverse impact on significant wildlife habitat and natural communities.

10. **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. No historic features are shown to exist on either proposed lot. Section 5.1(4)(b)(i-vi) outlines methods for preserving rural character, including prohibiting building zones in visually prominent areas, requiring vegetated buffer to provide screening, among others. The proposed subdivision sits amongst numerous residential lots that have been subdivided and developed over the last several decades.

**Conclusion:** The Board concludes that there are no known historical resources located on the parcels and the 2-lot subdivision has been designed to minimize undue adverse impact on rural character of the area.

11. **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. The Applicant proposes to access the proposed lot via Weeks Hill Road, a Class 3 town highway. No reserved strips are proposed.

**Conclusion:** The Board concludes the proposed subdivision provides adequate access.

12. **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.

**Conclusion:** The Board concludes the existing and proposed lot contains existing mature trees and landscaping. Any future plan to develop the lots will require review under the Regulations in effect at time of application.

13. **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 Applicant is not proposing any pedestrian access improvements under this application. The Applicant proposes a 2-lot subdivision of parcel #07-028.000 located at 110 Cape Cod Road. The Applicant proposes to subdivide the existing parcel into two (2) lots; one lot will contain an existing single-family dwelling, the other intended for the future development of a single-family dwelling. No pedestrian improvements are noted within the application or on the provided drawings.

**Conclusion:** This provision is not applicable. Any future plan to develop the lot will require review under the Zoning Regulations in effect at time of application.

14. **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 subdivide the existing parcel into two (2) lots, Lot 1 being ±2.02 acres and Lot 2 being ±2.54 acres. Lot 2 is designed to accommodate a single-family dwelling which under current ITE standards will result in no more than ten (10) additional trip ends per day, representing a nominal increase in traffic on the roads and highways in the vicinity.

**Conclusion:** The Board concludes no additional road improvements will be needed to accommodate the proposed 2-lot subdivision. The proposed subdivision will not create unreasonable traffic congestion or cause unsafe conditions.

15. **Section 5.1(9) – Municipal Facilities:** The Board must find that the proposed subdivision will not create an undue burden on municipal facilities or create an unreasonable demand for municipal services. Staff requested comments on the proposal from respective Town departments including the Department of Public Works, Fire Department, Stowe Electric, Police Department, EMS, and Parks and Recreation. No Municipal Department review forms returned indicated that the proposed subdivision would have any adverse impact on municipal facilities and services.

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

16. **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 a 2-lot subdivision. Both lots are designed of regular shape meeting the dimensional requirements of the RR2 district.

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

17. **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. A building zone is shown on Lot 2. As noted above, the building zone appears to meet the required setbacks including the required watercourse setback. The regulations define Building Zone as *‘The area designated on a plat within which shall be located the principal building and/or house site.’*

**Conclusion:** The Board concludes the proposed lot provides an adequate building site for the intended purpose.

18. **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 a 2-lot subdivision. Lot 1 is developed and contains a single-family dwelling. The Driveway Entrance Permit issued by DPW includes a condition that the bridge is required to be designed to AASHTO HS20 wheel loading standards.

**Conclusion:** The Board concludes the proposed subdivision provides adequate fire protection facilities.

19. **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 future development plans are proposed under this application. A zoning permit will be required for the residential development of Lot 2.

**Conclusion:** The Board concludes any future proposal to develop Lot 2 will require review under the Regulations in effect at time of application.

20. **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 subdivided lots will be served by individual driveways and on-site wastewater and potable water systems. No common infrastructure is proposed under this application.

**Conclusion:** This provision is not applicable.

21. **Section 5.2 – Prominent Hillside and Ridgelines (RHOD)-** The parcels are not within the RHOD. This provision is not applicable.

22. **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.

**Conclusion:** This provision is not applicable. The Applicant proposes a 2-Lot subdivision.

23. **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. As noted in previous approved decision, the Applicant obtained a driveway access permit from the Department of Public Works for the curb cut on Weeks Hill Road.

**Conclusion:** The Board concludes no private or public roads are proposed under this application, rather a privately owned and maintained driveway as defined under the regulations.

**24. Section 5.5 – Utilities and Stormwater Management:** All subdivisions shall make adequate provisions for stormwater and required utilities.

The DRB is authorized to require the underground installation of power and telephone lines wherever it is appropriate to maintain and protect the visual character and property values of an area or neighborhood. In addition, the DRB may place restrictions on the location and design of utility transformers, translosures, meter boards and related equipment in order to minimize adverse visual impact. The provided subdivision plan does not show the location of power and telephone lines to serve the proposed lot.

The DRB is authorized to require the installation of street lighting in any subdivision in the Stowe Village or commercial areas. Lighting shall be installed in accordance with the Stowe Zoning Regulations. The proposed lot is in the RR2 district. This provision does not apply.

All stormwater management activities required by the Town shall adhere to current State of Vermont erosion prevention and sediment control standards and to the requirements of Section 3.12 of the Stowe Zoning Regulations. No stormwater management or erosion control measures are proposed under this application.

Monuments shall be placed on all subdivided parcels in conformance with the Rules of the Board of Land Surveyors.

**Conclusion:** The Board concludes the proposed 2-Lot subdivision provides adequate provisions for required utilities. Any future development of the lot will require additional review under the regulations in effect at the time of application.

**DECISION**

Based upon the foregoing Findings of Fact, in RE: **6092** the Board finds (6-0) the requested Two-Lot subdivision meets and 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 prior 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 accommodate the development allowed under Section 3.10.
4. The Applicant shall obtain a zoning permit for the construction of the bridge and driveway. The bridge shall be designed to AASHTO HS20 wheel loading standards. The residential driveway serving Lot 2 shall not exceed 16' in width.
5. The proposed driveway shall be designed and maintained to meet B-71 standards.
6. Pursuant to 24 VSA Chapter 117, the subdivision survey plat shall be submitted for recording in the land records of the Town of Stowe within 180 days of the date of this approval, or the approval shall expire.
7. The subdivision survey plat shall be prepared in accordance with Section 4.3 of the Stowe Subdivision Regulations.

8. The Applicant shall file the subdivision survey plat, signed by the Chair or other authorized representative of the Development Review Board, with the Stowe Town Clerk in accordance with the requirements of 27 V.S.A. Chapter 17 and Section 4.3 of the Stowe Subdivision Regulations. No land development associated with this subdivision shall be commenced until such time as the survey plat has been duly signed and filed in the Land Records. Two paper copies of said plat shall be filed with the Zoning Administrator.
9. 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".*

10. Monuments shall be placed on all subdivided parcels in conformance with the Rules of the Board of Land Surveyors.
11. 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: P.Aumand, D.Clymer, P.Roberts, C. Walton, A.Volansky, M. Diender  
Voting to deny: None

Dated at Stowe, Vermont this the 26 day of September 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.

