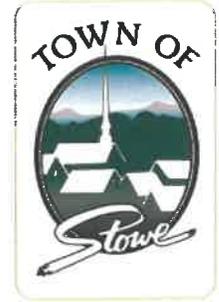


**TOWN OF STOWE**  
**DEVELOPMENT REVIEW BOARD**  
Findings of Fact & Conclusions of Law



**PROJECT:** 6190

**SUBJECT PROPERTY:** 385 Thomas Pasture Lane (Lot 75), Stowe, VT (#15-042.750)

**PROPERTY OWNER:**

The Ori Ben-Akiva 2014 Trust  
385 Thomas Pasture Road  
Stowe, VT 05672

**APPLICANT:**

Jeff McBride-Birdseye  
3104 Huntington Road  
Richmond, VT 05477

**APPLICATION:**

The Applicant, Jeff McBride of Birdseye on behalf of property owners, the Ori Ben-Akiva 2014 Trust (herein referred to as the "Applicant"), requests RHOD review to construct a single-family dwelling, attached garage, and related improvements on Lot 75 in the Robinson Springs Development. The property is served by Thomas Pasture Lane, a privately owned and maintained road.

The subject parcel, consisting of ±4 acres and located at 385 Thomas Pasture Lane, Stowe, VT (15-042.750), 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 ±5.6 acre parcel owned by Caliban Properties; to the east by a ±5.7-acre parcel owned by Shapiro US Family Trust and a ±11.3 acre parcel owned by Steven & Jane Greenfogel; to the south by a ±15.96 acre parcel owned by Richard & Susan Leadeu, and to the west by a ±1.88 acre parcel owned by Maren Gurevich. The parcel was originally created in 1989 as approved by the Planning Commission under subdivision S-83-7(V) Robinson Springs Development Phase V (plat dated 10/23/89). In 2008 the Development Review Board approved the construction of a single-family dwelling on this parcel. During that review the Board classified the project as a minor, as defined under Section 9.4(3)(B). The application has been reviewed by the Development Review Board 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 Jeff McBride on February 7, 2020. 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 Development Review Board was scheduled for March 17, 2020 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 February 27, 2020. 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 March 17, 2020 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. Members who participated in the review included: Drew Clymer, Leigh Wasserman, Tom Hand, and Peter Roberts.

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

- Robin Blodgett, Birdseye- 3104 Huntington Rd, Richmond, VT 05477
- John Grenier, Grenier Engineering, PO Box 445, Waterbury, VT 05676

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

- Town of Stowe Development Application (2 pages); dated 2/7/2020;
- Architectural Drawings prepared by Birdseye, dated 3/2/2020;
  - Table of Contents
  - Project Description
  - Grading Plan prepared by Grenier Engineering
  - Landscape and Lighting Plan
  - Architectural Plans Level 1 (2 pages)
  - Architectural Elevation B- North/West
  - Architectural Elevation D- South/East
  - Project Rendering A- Elevation from Lower Meadow
  - Project Rendering B- Aerial from South/West
  - Project Rendering C- Aerial from South/East
  - Project Rendering D- View from Driveway
  - Project Rendering E- View of Entry Courtyard
  - Project Rendering F- View from Hot Tub
  - Proposed Project Materials
  - Window and Door Specifications
  - Site Photographs- Summer
  - Site Photographs- Winter
- Site Plan 'Ben-Avika Dickenson' prepared by Grenier Engineering, Sheet 1 of 1, last revised 2/26/2020;
- Previously approved visual assessment prepared by Cushman Design Group; (staff)

The Development Review Board 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 ±4 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. The hot tub and patio appear to be located near the rear yard setback.

Section 3.4(2) states "*Dimensional requirements and property setbacks are not applicable to: public utility structures no more than 100 sq. ft. in area, bus shelters, handicap access ramps, lampposts, patios or terraces at grade level, swing sets and similar playground equipment, flag poles, barbecue pits, decorations such as statues or similar items, playhouses, signs and fences that are not part of a structure.*" Section 2.5(K) also exempts "*Freestanding residential accessory structure, such as a shed, tree house, swimming pool, hot tub, doghouse, child's play house or similar structure with a floor area not more than one hundred (100) sq. ft and a height of not more than ten (10') feet which may be lawfully located within any yard except front yard, but not closer than five (5') feet from any property lines. No more than two (2) such exempted structures per side or rear yard are permitted.*" This exemption does not apply to structures requiring design review under Section 10." During the hearing the Applicant testified that the proposal has been designed to avoid any encroachments into the setback. 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 setbacks have 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 (1) per five (5) acres. The subject parcel is ±4 and is part of the approved Robinson Springs Planned Residential Development (PRD) of varying lot sizes.
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 roof height of the dwelling to be 22' 10", as measured from the north/west side.

**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. With the exception of a clump of trees that is noted to be cleared, 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 did not provide a visual assessment of the project. The Board previously approved a single-family dwelling on the lot in 2008 under Project 3775. In the Board's decision the project was considered a minor. As part of the prior review, Cushman Design Group provided a visual assessment identifying two (2) public vantage points- one (1) on Luce Hill Road approximately ±3.44 miles from the project site, the other from Upper Hollow Road approximately ±7.68 miles from the project site. Staff provided the previously approved visual assessment. Staff visited the property on March 4, 2020 and reported that any impacts to public vantage points would be from such a distance that any impact would be minimal. During the hearing the Board discussed the possible visibility of the project and agreed that it will not be significantly visible from public vantage points. The Board finds the proposal will not negatively impact public vantage points and will have 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. With the exception of a clump of trees that is noted to be cleared, 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 to the side of 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.
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 along the eastern portion of the parcel- no

development is proposed within 50' of the mapped watercourse. No wetlands, deer wintering areas, or hydric soils are shown on the ANR Natural Resources Atlas. The Board finds that the proposal, if constructed as approved, will not result in an undue adverse impact of fragile environments.

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 to include an existing clump of trees. 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. The Applicant provided a site plan showing the existing treeline and proposed clearing and a landscaping plan (page 5) depicting proposed landscaping and screening. An existing clump of trees in the center of the lot is proposed to be removed, as well as three (3) other trees identified on the site plan. Proposed trees are shown near the parking area and in front of the dwelling. No other clearing is noted in the plans. The proposal maintains much of the existing treeline around the existing roughed in driveway and around the project site. 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 side of the proposed dwelling. During the hearing the Applicant testified that the average driveway grade has been designed to not exceed 12% with a portion at the very top to be 15% grade.
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 average roof height to be 27' 6". 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 architectural drawings, page 5, prepared by Robitaille Curtis show the location of outdoor light fixtures with a fixture key. Cut sheets were provided for each of the proposed outdoor lighting fixtures. The elevation drawings do not indicate location and placement of proposed light fixtures, however this information is shown on a landscape and lighting plan (pg 5). Fixture F1 is a LED strip light; F2 is a wall mounted recessed luminaire; F3 is a pole mounted fixture 35.4" in height; F4 is a dimmable tree mounted LED flood light; F5 is a recessed wall mounted light. During the hearing the Applicant testified that the interior lighting had not been designed but it is expected to be a mixture of pendent lighting and recessed fixtures. The Applicant also testified that interior shades will be installed on all of the 2<sup>nd</sup> floor windows. 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**

On a motion by T.Hand, seconded by L.Wasserman, the Development Review Board hereby approves (4-0) the Applicant's request to construct a single-family dwelling and related improvements as outlined in the application dated 2/7/2020 and supplemental materials, 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. 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. Prior to the issuance of the zoning permit, the Applicant shall submit the following:
  - o Revised architectural drawings labeling the first-floor elevation tied to a datum;
  - o Revised site plan relabeling the existing treeline as "No Cut Zone";
  - o Revised Landscape & Lighting Plan with an exterior lighting key indicating fixture type and the proposed mounting height for tree mounted light fixtures.
4. Clearing for construction shall be restricted to the areas shown on the approved site plan entitled Site Plan 'Ben-Avika Dickenson' prepared by Grenier Engineering, Sheet 1 of 1, last revised 2/26/2020 and amended herein. The 'No Cut Zone', as shown on the approved site plan, shall be maintained to provide a natural backdrop and screening of the dwelling and be

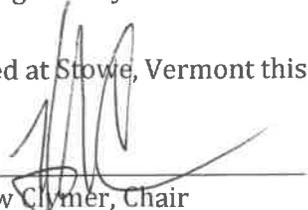
left undisturbed except as necessary to remove dead or diseased trees and to promote the health of the forest.

5. Landscaping shall be installed as shown on the approved plans. Any dead and dying plants and trees shall be replaced within one (1) year of death.
6. 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.
7. 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).
8. The use of reflective exterior surfaces or windows is strictly prohibited.
9. Site construction shall be conducted in a manner that keeps the amount of soil exposed at any one time to a minimum.
10. Areas of exposed soil that are not being actively worked, including soil that has been stockpiled, shall be stabilized.
11. Stormwater shall be controlled during construction to minimize soil erosion and transport of sediment to surface waters.
12. 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.
13. 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.
14. A Certificate of Occupancy must be obtained from the Zoning Administrator following the construction but prior to occupancy and use to ensure that is 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 setbacks have been maintained. Reasonable proof may include a survey, certification of setbacks by a licensed surveyor, or demonstrating physical location of property boundaries.
15. 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: Drew Clymer, Leigh Wasserman, Tom Hand, and Peter Roberts.

Voting to deny: None

Dated at Stowe, Vermont this the 26 day of March 2020

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.