

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



**PROJECT:** 6228

**SUBJECT PROPERTIES:** 1110 Weeks Hill Rd (#10-121.000) & 0 Weeks Hill Rd (10-123.000)

**PROPERTY OWNER(S):**

Barry & Penny Shonio  
PO Box 1031  
Stowe, VT 05672

Estelle Cook-Sampson D.L.  
2659 Woodley Road  
Washington DC 2008

**APPLICANT:**

George N. McCain Jr. P.E.  
McCain Consulting Inc.  
93 South Main St. Suite 1  
Waterbury, VT 05676

**APPLICATION:**

The Applicant, George N. McCain Jr. P.E., of McCain Consulting Inc., on behalf of property owners Shonio and Cook-Sampson (herein referred to as the "Applicant"), requests final subdivision approval for a boundary line adjustment between two (2) adjacent parcels on Weeks Hill Road in order to accommodate a replacement wastewater (i.e. septic) system. Involved parcels include the  $\pm 0.25$  acre parcel belonging to Shonio and located at 1110 Weeks Hill Road (10-121.000) and the  $\pm 4.02$  acre undeveloped parcel belonging to Sampson and located at 0 Weeks Hill Road (10-123.000). Following the boundary line adjustment, the Shonio parcel will include  $\pm 0.38$  acres and the Sampson parcel will include  $\pm 3.89$  acres, as measured from the edge of the highway right-of-way. The subject parcels are located within the Rural Residential 3 (RR3) and are served by Weeks Hill Road, a town highway. The application was reviewed by the Development Review Board under the Town of Stowe Subdivision Regulations (effective through July 16, 2012) and the Town of Stowe Zoning Regulations (as adopted October 9, 2018).

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 final subdivision review was filed by Applicant George McCain Jr. P.E. and received by the Zoning Director on April 22, 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 DRB was scheduled for May 19, 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 April 30, 2020. 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 May 19, 2020 with a quorum of the DRB present. No ex parte communications or conflicts of interests were reported. The hearing was held remotely using 'Go To Meeting' with no physical meeting space. Board members participating in the 5/19 review included: Drew Clymer, Tom Hand, Andrew Volansky, Leigh Wasserman, Peter Roberts, Chris Walton, and Francis Aumand III.

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

- Gunner McCain, McCain Consulting Inc., 93 South Main St. Suite 1, Waterbury, VT 05676

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

- Town of Stowe Development Application, dated 4/22/2020;
- 'Boundary Line Adjustment Between Barry & Penny Shonio and Robert & Estelle Sampson' prepared by McCain Consulting Inc., Sheet 1 of 1, dated 4/21/2020,
- 'Site Plan Barry & Penny Shonio and Robert & Estelle Sampson- Failed System Replacement & Boundary Line Adjustment' prepared by McCain Consulting Inc., Sheet C1, dated 4/7/2020;
- Project Narrative & List of Adjoiners from McCain Consulting Inc., dated 4/22/2020;

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 final subdivision approval was reviewed by the Development Review Board (DRB) for conformance with applicable requirements including the following:

Town of Stowe Zoning Regulations (as adopted October 9, 2018)

- Section 2- Administration and Enforcement
- Section 5- Zoning Districts
- Section 6- Uses, Dimensional Requirements and Density

Town of Stowe Subdivision Regulations (effective through July 16, 2012)

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

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 Rural Residential 3 (RR3) zoning district as shown on the Official Town of Stowe Zoning Map (as adopted October 9, 2018).
2. **Lot Area, Lot Width.** The Applicant proposes a boundary line adjustment between two (2) adjacent parcels of land. Following the boundary line adjustment, the Shonio parcel will include  $\pm 0.38$  acres and the Sampson parcel will include  $\pm 3.89$  acres, as measured from the edge of the highway right-of-way. The minimum lot size in the RR3 district is three (3) acres. The Shonio parcel is a pre-existing nonconforming parcel which does not conform to current dimensional standards. The Applicant proposes to add an additional  $\pm 0.13$  acres to this parcel thereby decreasing its nonconformance. The Sampson parcel will maintain  $\pm 3.89$  acres thereby conforming to current district standards.

The minimum lot width in the RR3 district is 250 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.*" As stated above, the Shonio lot is a preexisting nonconforming lot that does not meet current dimensional requirements. Following the

boundary line adjustment, the Shonio lot width will be  $\pm 185$  ft- approximately  $\pm 55$ -60 ft greater than its existing lot width. The Sampson lot will be approximately  $\pm 260$  ft in lot width.

3. **Setbacks.** Setbacks within the RR3 district are as follows: Front 70 ft; Side 60 ft; Rear 60 ft. Setback is defined as “*The shortest distance between the nearest portion of a structure on a lot and the edge of a road right-of-way, a shoreline, or a property line. This open space defined by the setback shall be referred to as the front yard, side yard, or rear yard.*” The Sampson lot is undeveloped- the boundary line adjustment will have no impact on setbacks to this lot. The front, rear, and one side setback of the Shonio lot will not change following the boundary line adjustment. The southern side setback will be increased to approximately  $\pm 90$  ft.
4. **Maximum Building Coverage.** Does not apply to the RR3 district.
5. **Use.** No changes of use are proposed under this application, this standard is not applicable.
6. **Height.** No change in height is proposed under this application, this standard is not applicable.
7. **Density.** No change in density is proposed under this application, this standard is not applicable.

**Conclusion:** The Board concludes the proposed boundary line adjustment conforms to the applicable district dimensional requirements. The Shonio lot will be become more conforming; the Sampson lot will continue to meet district dimensional standards.

## **SUBDIVISION REGULATIONS**

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

1. **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 a boundary line adjustment between two (2) adjacent parcels of land. No additional development of either parcel is proposed under this application. The Shonio parcel is developed with a single-family dwelling. The Sampson lot is undeveloped but contains a curb cut and driveway off Weeks Hill Rd.

**Conclusion:** The Board concludes the proposal is in conformance with Section 5.1(1), Character of the Land for Subdivision.

2. **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 a boundary line adjustment between two (2) adjacent parcels of land. No additional development of either parcel is proposed under this application. The Bloody Brook runs along the rear of the Sampson parcel appearing to form the rear property line.

**Conclusion:** The Board concludes the proposal is in conformance with Section 5.1(2), Natural and Scenic Features.

3. **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 DRB 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 boundary line adjustment between two (2) adjacent parcels of land. No additional development of either parcel is proposed under this application. This provision is not applicable.

**Conclusion:** The Board concludes the proposal is in conformance with Section 5.1(3), Protection of Significant Wildlife Habitat and Natural Communities.

4. **Section 5.1(4) – Historic Resources and Community Character:** Subdivisions are required to minimize undue adverse impact on historic sites and the character of the Town. Subdivisions in or adjacent to existing village areas, including Stowe Village, Lower Village, Moscow and designated commercial growth centers, shall be designed to reflect traditional village settlement patterns characterized by an appropriate scale of development, an interconnected street network with development oriented to the streetscape, a mix of land uses and pedestrian access. 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. The subdivision regulations define village and rural areas as follows:

***Area, rural: Any area in the Town of Stowe not defined as a village area.***

***Area, Village: All areas within the VC, VR, MRV, MCR, LVC, and MC Zoning Districts.***

The Applicant proposes a boundary line adjustment between two (2) adjacent parcels of land. No additional development of either parcel is proposed under this application. The proposed boundary line adjustment will have no impact on historic resources or community character.

**Conclusion:** The Board concludes the proposal is in conformance with Section 5.1(4), Historic Resources and Community Character.

5. **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. No reserved strips are proposed. Each lot will continue to be served by individual curb cuts and driveways.

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

6. **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. The Applicant proposes a boundary line adjustment between two (2) adjacent parcels of land. No additional development of either parcel is proposed under this application. The intent of the boundary line adjustment is to accommodate a replacement wastewater system area.

**Conclusion:** The Board concludes the proposal is in conformance with Section 5.1(6), Screening and Landscaping.

- 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. No pedestrian improvements are proposed under this application.

**Conclusion:** This provision does not apply.

- 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 DRB shall use nationally accepted traffic engineering standards when evaluating the impact of traffic. The Applicant proposes a boundary line adjustment between two (2) adjacent parcels of land. No additional development of either parcel is proposed under this application. The property line adjustment will have no impact on traffic.

**Conclusion:** The Board concludes the proposal in in conformance with Section 5.1(8), Traffic.

- Section 5.1(9) – Municipal Facilities:** The Applicant must demonstrate 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 development would have any adverse impact on existing or planned community facilities and services. The proposed lots will be served by onsite wastewater systems and potable water sources and a Class 3 town-highway.

No additional municipal comments were received.

**Conclusion:** The Board concludes the proposal is in conformance with Section 5.1(9), Municipal Facilities.

- 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 proposed lots are all of regular shape.

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

- 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. The Shonio lot contains a single-family dwelling, no changes to building footprint are proposed under this application. The Sampson lot is undeveloped. Following the boundary line adjustment the Shonio lot will

be brought into greater compliance with district dimensional standards and the Sampson lot will continue to meet or exceed minimum district dimensional requirements.

**Conclusion:** The Board concludes the proposal is in conformance with Section 5.1(11), Building Zone.

12. **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. Comments from the Fire Chief were requested. No changes to fire protection facilities or driveway accesses are proposed.

**Conclusion:** The Board concludes no changes are proposed.

13. **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 noted in the application materials. The Sampson lot is undeveloped and may be developed in the future in accordance with the regulations in effect at the time of application.

**Conclusion:** The Board concludes the proposal is in conformance with Section 5.1(13), Disclosure of Subsequent Development Plans.

14. **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 Applicant proposes a boundary line adjustment between two (2) adjacent parcels of land. No additional development of either parcel is proposed under this application. Each lot is privately owned and maintained. No shared improvements or need for private enforcement mechanisms are needed.

**Conclusion:** The provision does not apply.

15. **Section 5.2 – Prominent Hillsides and Ridgelines:** The subject lots are not within the RHOD.

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

16. **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. The Board may require the designation of open space when a subdivision consists of the creation of additional lots from a previously approved subdivision where the total new and previously approved lots is greater than four (4) lots. The Applicant proposes a boundary line adjustment between two (2) adjacent parcels of land. No additional development of either parcel is proposed under this application.

**Conclusion:** The provision does not apply.

**17. 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. Section 16.48 of the Zoning Regulations define the term 'Driveway' as follows... "A roadway used to access not more than three (3) dwelling units that is in private ownership." The Applicant proposes a boundary line adjustment between two (2) adjacent parcels of land. No additional development of either parcel is proposed under this application. Each lot is served by individual curb cuts and driveways. No changes are proposed under this application.

**Conclusion:** The provision does not apply.

**18. Section 5.5 – Utilities and Stormwater Management:** All subdivisions shall make adequate provisions for stormwater and required utilities. Section 5.5 (2) states "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 Applicant proposes a boundary line adjustment between two (2) adjacent parcels of land. No additional development of either parcel is proposed under this application.

**Conclusion:** The provision does not apply.

## **DECISION**

On a motion by F. Aumand III, seconded by A.Volansky, the Development Review Board hereby approves the Applicant's request for Final Subdivision approval for a boundary line adjustment (Project 6228) between parcels #10-121.000 & 10-123.000 as described in the applications dated 4/22/20 & 4/17/20 and associated supporting materials subject 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. 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. The final survey plat as recorded shall be prepared in accordance with Section 4.3 of the Stowe Subdivision Regulations and shall include the following notations:
  - a. *"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".*
4. The Applicant shall file the final 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.
5. Monuments shall be placed on all subdivided parcels in conformance with the Rules of the Board of Land Surveyors.
6. These conditions of approval shall run with the land and are binding upon and enforceable against the Applicant and his successors. By acceptance of this approval, the Applicant agrees to allow authorized

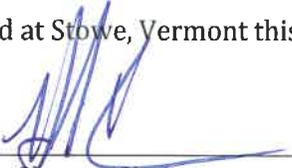
representatives of the Town of Stowe to access the property subject to this approval, at reasonable times, for purposes of ascertaining compliance with the conditions of approval.

Voting in favor: Drew Clymer, Tom Hand, Andrew Volansky, Leigh Wasserman, Peter Roberts, Chris Walton, F.Aumand III

Voting to deny: None

Motion PASSED 7-0

Dated at Stowe, Vermont this the 2 day of June 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.