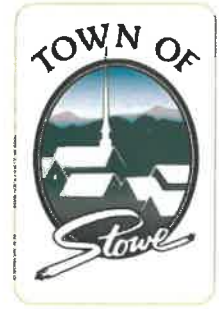


TOWN OF STOWE
DEVELOPMENT REVIEW BOARD
Findings of Fact & Conclusions of Law



PROJECT: 6285

SUBJECT PROPERTY: 0 Bryan Road; #08-044.090 [Lot 9]

PROPERTY OWNER/APPLICANT:

David & Donna Evans
287 Winterbird Road
Stowe, VT 05672

APPLICATION:

Property owners David & Donna Evans (herein referred to as the “Applicant”) request after-the-fact approval to reconfigure the previously approved clearing limits on an undeveloped lot [#08-044.090] on Bryan Road. In 2017 and 2020, the Applicant cleared and removed trees on approximately ±1.87 acres on the subject parcel; portions of this clearing were completed beyond the approved clearing limits. The Applicant now proposes to reconfigure the previously approved clearing area and replant over cleared areas, ultimately reducing the approved clearing area from approximately ±1.24 acres to ±0.89 acres. Included within the application is a proposed landscaping plan to replant approximately ±0.63 acres of the ±1.87 acres that was cleared in 2017 and 2020, portions of which included areas beyond the approved clearing limits. The Applicant also seeks to relocate the previously approved house site from the originally approved location near Bryan Road to an area on the lot approximately ±350 ft to the south and approximately ±25-30 feet higher in elevation. The house site and clearing limits were originally approved by the Town of Stowe Planning Commission in 1989/1990 as part of the Wood Wilson Phase II Subdivision and later revised in 1995.

The subject parcel contains ±9.28 acres and frontage along Bryan Road, a Class 3 town-maintained highway. The parcel is located within the Rural Residential 5 (RR5) zoning district. 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 a minimal alteration subdivision under Section 3.4 was filed by Applicants David & Donna Evans on June 19, 2020. Upon review, the Zoning Administrator found that the proposed alteration would substantially alter the most recent approval and that the proposed alteration would result in a substantial impact under Section 5, Planning and Design Standards [Section 3.4(1)]. The Zoning Administrator therefore determined that the application was not eligible for administrative review under Sections 3.1(4) & 3.4 and referred the application to the Development Review Board for a public hearing and review under the following planning standards: Section 5.1(2) Natural & Scenic Features; Section 5.1(4) Historic Sites & Community Character (specifically for conformance with subsections §5.1(4)(b)(i, iii, and iv); and Section 5.1(6) Screening. A public hearing of the DRB was scheduled for July 21, 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 July 2, 2020 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 July 21, 2020 using a virtual meeting platform, with a quorum of the DRB present. No ex parte communications or conflicts of interests were reported. During the July 21st meeting, the Board determined that a site visit was warranted and scheduled a site visit for 3:30 pm on August 4th, followed by a public hearing at 5:00 pm. Due to significant rain, the August 4th site visit was canceled. The Board opened the hearing on August 4th but immediately continued it to August 18th at 5:00 pm and scheduled a site visit to be held at 3:30 pm prior to the August 18th hearing.

On August 18th the Board held a public site visit on the subject property. In addition to participating Board members, those who attended the site visit included:

- Applicants – David & Donna Evans, 0 Bryan Road
- Bari & Peter Dreissigaker, 1893 Taber Hill Road
- Taylor Bennett, 524 Bryan Road
- Willie Noyes, 49 Bryan Road
- Howard Levine, 615 Bryan Road
- Rob Wardell, 211 Bryan Road

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

- Applicants – David & Donna Evans, 287 Winterbird Road, Stowe, VT 05672
- Tyler Mumley, 11 Moss Glen Falls Road, Stowe, VT 05672
- Reid Krakower, PO Box 1512, Stowe, VT 05672
- Bari Dreissigaker, 1893 Taber Hill Road, Stowe, VT 05672
- Ryan & Taylor Bennett, 524 Bryan Road, Stowe, VT 05672
- Sarah Farley, 129 Bryan Road, Stowe, VT 05672
- Howard Levine, PO Box 3749, Stowe, VT 05672
- Landscape Architect, Michael Lawrence mike@mclasla.com

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

- Town of Stowe Development Application (2 pages); dated 06/18/2020;
- Project narrative (4 pages), dated 6/17/2020;
- Drawing #1-Location Map- Clearing Zone Amendment, dated 06/18/2020;
- Drawing #2-Location Map-Clearing Zone Amendment, dated 06/18/2020;
- Drawing #3-Existing Conditions, dated 06/18/2020;
- Drawing #4-Current Approved Clearing Limits, dated 06/18/2020;
- Drawing #5-Areas Not Cleared Inside Limits and Area Cleared Outside Limits, dated 06/18/2020;
- Amended Clearing Limits, dated 06/18/2020;
- Letter to Donna & David Evans from ZA Sarah McShane, dated 06/23/2020;
- ANR Natural Resources Atlas map, dated 07/01/2020; (staff)
- Letter from David & Donna Evans, dated 7/2/2020;
- Significant Wildlife Habitat & Natural Communities Map in the Stowe Town Plan; (staff)
- Previously approved clearing limits; (staff)
- Existing condition photographs; (staff)
- Photo provided by Bari Dreissigacker, received on 7/14/2020;
- Email from Dave Evans, Subject: What's wrong with this picture?; dated 7/16/2020;

- Email from Dave Evans, Fw: Mountain Rd View (with attached photo); dated 7/21/2020;
- Drawing #7-Potential House Site Without Amendment, dated 07/19/2020;
- Comments from Ryan & Taylor Bennett, 524 Bryan Road, dated 7/20/2020;
- Response Comments from Dave Evans, dated 07/21/2020;
- Four photographs provided by Dave Evans, received on 7/21/2020;
- Comments and photos from Ryan & Taylor Bennett, 524 Bryan Road, dated 7/20/2020;
- Written Comments from Evans dated 8/3/2020;
- Written comments and photos from Ryan & Taylor Bennett, 524 Bryan Road, dated 8/10/2020;
- Written Comments from Evans dated 8/13/2020;
- Written Comments with two photographs from Evans dated 8/13/2020;

During the August 18th hearing, at the Applicant's request, the Board continued the hearing to November 17th pending submission of a professional landscape plan and wildlife evaluation. In advance of the November 17th meeting, the following additional materials were provided:

- Public comments from Ryan & Taylor Bennett and Reid Krakower, dated 11/17/2020;
- Email from Tyler Mumley with Fish & Wildlife response of Noel Dodge, dated 11/17/2020;
- Site Plan 'David Evans Bryan Road Lot 9' prepared by Mumley Engineering, Sheet C-1, dated 11/9/2020;
- Letter from Mumley Engineering, subject Project 6285- Lot 9, Bryan Road Subdivision, dated 11/9/2020;
- Series of aerial photographs and views from the vicinity (project photos), no date;
- Recorded Site Plan Lots 3-9 Wood Wilson Subdivision, MB 10/104 Town of Stowe Land Records;
- Approved Subdivision Plan Phase II Wood Wilson June 1990, signed PC Chair 8/20/90 S-88-21 II;

During the November 17th hearing, the Board continued the hearing to January 5, 2021. In advance of the January 5th meeting, the following additional materials were provided:

- Written comments from David & Donna Evans, dated 11/19/2020;
- Written comments from David & Donna Evans, dated 12/01/2020;
- Written comments from Ryan & Taylor Bennett and Reid Krakower, dated 12/17/2020;
- Written comments from David & Donna Evans, dated 12/19/2020;
- Marked up site plan provided by Mumley Engineering Sheet C- and associated email, dated 11/30/21;

At the request of the Applicant, the Board continued the hearing to March 2, 2021. In advance of the March 2nd meeting, the following additional materials were provided:

- Public comments and photos from Bari Dreissigacker, dated 1/12/2021;
- Presentation from Mumley Engineering- Development Review Board Hearing March 2, 2021;
- Site Plan 'David Evans Bryan Road Lot 9' prepared by Mumley Engineering, Sheet C-1, dated 11/9/2020; [last revised 2/22/2021];
- Clearing Limits 'Bryan Road Lots 3- 9' prepared by Mumley Engineering, Sheet C-1, dated 2/19/2021;
- Evans Property Landscape Enhancement Plan prepared by Mumley Engineering and Michael Lawrence & Associates, dated 1/25/2021;

- Evans Property Landscape Enhancement Plan prepared by Mumley Engineering and Michael Lawrence & Associates, dated 2/9/2021;
- Site Plan Phase II Lots 3-9 Wood/Wilson prepared by North American Consulting Group, as recorded in the Town of Stowe Land Records;
- Public Comments from Ryan & Taylor Bennett, dated 3/2/2021;
- Public Comments (emailed) from Reid Krakower, dated 3/2/2021.

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

The Applicant's request for amended final subdivision approval 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

DIMENSIONAL REQUIREMENTS

1. **Zoning District.** The subject parcel is within the Rural Residential 5 (RR5) zoning district, as shown on the Official Town of Stowe Zoning Map (as adopted on October 9, 2018).
2. **Lot Area, Lot Width.** The subject parcel contains ±9.28 acres. No changes to lot area or lot width are proposed under this application.
3. **Setbacks.** Setback requirements in the RR5 district are 70 feet front (as measured from the right-of-way) and 75 ft sides and rear (as measured from the property line to nearest part of structure on the lot). No structures are proposed under this application.
4. **Maximum Building Coverage.** There is no maximum building coverage in RR5. Does not apply.
5. **Use.** No uses are proposed under this application; however, the lot was created with the intention of constructing a single-family dwelling and related improvements. Does not apply.
6. **Height.** No buildings are proposed under this application. Does not apply.

SUBDIVISION REGULATIONS

SECTION 5.1 – GENERAL PLANNING STANDARDS:

7. **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 seeks after- the-fact approval to reconfigure previously approved clearing limits, ultimately reducing the overall originally approved clearing area from approximately ±1.24 acres to ±0.89 acres.
 - The Applicant also seeks to relocate the previously approved house site from the originally approved location near Bryan Road to an area on the lot approximately ±350 ft to the south and approximately ±25-30 feet higher in elevation.
 - The house site and clearing limits were originally approved by the Town of Stowe Planning Commission in 1989/1990 as part of the Wood Wilson Phase II Subdivision and later revised in 1995.
 - In 2017 and 2020, the Applicant cleared and removed trees on approximately ±1.87 acres on the subject parcel; portions of this clearing were completed beyond the approved clearing limits.
 - Included within the application is a landscaping plan to replant approximately ±0.63 acres of the ±1.87 acres that was cleared in 2017 and 2020. Some of the clearing that has taken place is located outside of the approved clearing limits.
 - Although a building zone was not delineated at the time of original subdivision approval, the approved clearing limits essentially created a building zone by establishing an area where a future house site will be located. The future house site location was shown on the originally approved plans and is located near the driveway entrance to Bryan Road.
 - Both the original and later revised approved clearing limits show an approved house site closer to Bryan Road within a cleared area with a forested treeline on three (3) sides to shield and screen a future dwelling and related improvements. The Applicant proposes reconfigured clearing limits and a future house site and related improvements perched above Bryan Road- approximately ±25-30 ft higher in elevation- impacting areas previously established as clearing limits.
 - According to the ANR Natural Resources Atlas map there are no mapped wetlands, hydric soils, prime agricultural soils, or surface waters located on the subject parcel.
 - There are no brooks, streams, water bodies, ground water resources, wetlands, prime agricultural soils, farmland resources or scenic meadowlands identified on the subject parcel.

- Photographs provided by the Applicant and interested parties show a large, exposed outcropping of ledge. Areas of ledge are highlighted on plans provided by the Applicant.
- The roughed in driveway transverses over the exposed ledge. Large rocks and boulders removed during the construction of the driveway are piled along the lower western side of the driveway.
- The exposed ledge and piled rocks and boulders are visible from locations as near as Bryan Road and as far as Dewey Hill Road and Trapps Lodge, as evidenced in photographs and exhibits provided by the Applicant and interested parties.
- The parcel contains a mix of vegetation of both mature coniferous and deciduous trees and younger re-growth that is naturally growing in areas recently cleared and disturbed. This existing vegetation was evident during the Board's site visit on August 18th and in the various existing conditions photographs provided by the Applicant and by property owners Bari Dreissigaker and Ryan & Taylor Bennett.
- During the November 17th hearing the Applicant's engineer, Tyler Mumley, provided a series of aerial photographs from 1996 and 2018 showing the subject lot and the nearby vicinity, as well as photographs taken in the summer 2020 and November 2020 showing the view from Trapps Resort, Dewey Hill, and photographs taken on the subject lot with views in the southeast direction showing distant views of Mt. Mansfield. The comparison aerial photographs provided by the Applicant illustrates the clearing and tree removal that occurred between the years 1996 and 2018.
- Adjoining property owner Bari Dreissigacker provided a photograph dated 7/14/20 which depicted the clearing and exposed rock outcroppings on the subject lot from an off-site vantage point on the corner of Dewey Farm Road and Stowe Hollow Road. In response to this photograph, the Applicant provided two (2) photographs from the same location- one photograph is 'zoomed in' showing a similar image as depicted in the photograph provided by Bari Dreissigacker; the other photograph submitted by the Applicant is not 'zoomed in.'
- The Applicant provided a photograph, received 7/21/20, taken from Mountain Road at the Lodge at the Toll Road entrance. The Applicant noted that their lot and clearing is located in the middle, 300ft+ below the white house at the top of North Hill Rd. The Applicant noted that many of the 30+ houses at higher elevations can be seen in the photograph. The Applicant also noted that this elevation is comparable and consistent with the elevation of existing dwellings in the vicinity that are sited at similar elevations.
- The Applicant testified that initial clearing was completed in October 2017 and additional clearing occurred in May 2020 which removed trees beyond the allowed clearing limits. The Applicant testified that approximately ±0.63 acres was over cleared beyond the approved clearing limits.
- During the March 2nd hearing the Applicant's Landscape Architect, Michael Lawrence, provided a detailed overview of the existing conditions and proposed plantings. Mr. Lawrence's presentation included photographs from various vantage points, visual renderings, and a planting schedule for proposed and previously planted trees.

Conclusion: When evaluating Section 5.1(2), the Board asked itself two questions. First, whether the project has been designed to prevent *adverse* impact on the items listed in Section 5.1(2). In answering this question, the Board considers the project's surroundings, whether the proposed reconfigured clearing limits and relocated house site are compatible with the surroundings, and areas from where the project is visible. If the Board finds that a project will have an *adverse* impact on any of the items listed in Section 5.1(2), the Board then moves to the second question, to determine whether the impact will be '*undue*'. In weighing whether the identified adverse impact(s) are undue, the Board asks itself:

- 1) Does the project violate a clear, written community standard;
- 2) Will the project offend the sensibilities of the average person; and lastly,
- 3) Has the Applicant failed to take generally available mitigating steps to improve the harmony of the proposed project with its surroundings.

Throughout the public hearings the Board heard considerable testimony and received evidence from the Applicant, interested parties, and registered and licensed professionals. The Applicant provided detailed plans prepared by a licensed engineer, Tyler Mumley of Mumley Engineering, and a professional landscape architect Michael Lawrence. These detailed plans and exhibits illustrated the existing conditions, proposed conditions, and previously approved clearing limits. In evaluating Section 5.1(2), the Board must determine whether the requested reconfigured clearing limits and relocated house site have been 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. Given that no brooks, streams, water bodies, ground water resources and wetlands; prime agricultural soils, farmland resources or scenic meadowlands were identified as located on the parcel or impacted by the project, the Board easily concludes that the requested modifications will not have an undue adverse impact on brooks, streams, water bodies, ground water resources and wetlands; prime agricultural soils, farmland resources and scenic meadowland.

However, the Board must also evaluate and determine that the project has been designed to prevent undue adverse impact on important forest resources; aesthetic resources and scenic vistas, including views onto and arising from subject property. In evaluating this question, the Board considers the project's surroundings, whether the proposed reconfigured clearing limits and relocated house site are compatible with its surroundings, and areas from where the project is visible. The parcel sits amongst nine other lots that were subdivided as part of the Wood/Wilson subdivision originally approved by the Planning Commission in 1989/90. Many of the nearby and adjoining lots are developed with single-family dwellings, which have been constructed in the general area of their associated approved house site. Both the Applicant and interested parties provided numerous photographs identifying multiple off-site vantage points including Bryan Road, Dewey Hill/Stowe Hollow Area, Mountain Road, and Trapps Resort. While the Board recognizes this parcel is not within the Ridgeline and Hillside Overlay District and not subject to the design standards outlined in Section 9, in order to approve the application, the Board must determine that the project has been designed to prevent undue adverse impact on important forest resources; aesthetic resources and scenic vistas, including views onto and arising from subject property. While the Applicant seeks to reduce the overall originally approved clearing area from approximately ± 1.24 acres to ± 0.89 acres, the proposed clearing limits include approximately ± 0.63 acres that has been significantly disturbed with only small naturally occurring vegetation. The proposed clearing limits also extend approximately ± 300 feet to the south exposing large outcrops of ledge and boulders and a

proposed relocated future house site that are clearly visible from many miles away. Therefore, based on the evidence and testimony received, the Board concludes that the proposed reconfigured clearing limits and relocated house site have not been designed to prevent an adverse impact on aesthetic resources and scenic vistas, including views onto and arising from subject property. In determining whether that adverse impact will be 'undue', the Board asked itself:

- 1) Does the project violate a clear, written community standard;
- 2) Will the project offend the sensibilities of the average person; and lastly,
- 3) Has the applicant failed to take generally available mitigating steps to improve the harmony of the proposed project with its surroundings.

While the Board appreciates that the Applicant has taken measures to attempt to re-vegetate the impacted over cleared areas by replanting over eighty-five (85) trees and preparing a professional mitigation plan, it was clear during the hearing that the proposed mitigation was not adequate and would take more than ten (10) years to provide even partial screening of the large, exposed ledge and driveway and proposed house site. Although the Applicant argued that the proposed house site was better and provided more privacy for everyone, the Applicant did not provide sufficient mitigation measures to document that the proposed house site and surrounding expansive clearing areas have been designed to prevent undue adverse impacts on scenic vistas. Further, the Board also received credible evidence and testimony from adjacent property owners that the proposed clearing limits and relocated house site are offensive and are not in harmony with the nearby surroundings. Therefore, based upon the above findings and testimony and evidence received, the Board concludes the project has not been designed to prevent undue adverse impact on aesthetic resources and scenic vistas, including views onto and arising from subject property.

8. **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 to reconfigure previously approved clearing limits and relocate the future house site approximately ±350 ft to the south and approximately ±25-30 feet higher in elevation.
 - 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.
 - According to the Significant Wildlife Habitat & Natural Communities Map in the Stowe Town Plan, the parcel contains a highest priority habitat and connecting blocks, as shown in light green.
 - A habitat block (weighted score =9) covers majority of the parcel. The Applicant testified that the revised clearing limits and relocated house site would not have significant impact on the functions or characteristics of the habitat block.

- During the August 18th hearing, the Board requested that the Applicant provide a professional wildlife evaluation.
- The Applicant provided email correspondence from Tyler Mumley and Noel Dodge a Wildlife Biologist - Regulatory Review Biologist with VT Fish & Wildlife, dated 11/17/2020;

I reviewed the Act 250 application and did a desktop review back on August 31 and had no concerns.

I believe our fisheries division wanted to update the language referencing the Riparian Zone, but not change the width.

The Habitat block layer is very coarse, and given the rate of development in the area it gets outdated rather quickly. Impacts to this particular portion of the block have already occurred with the placement of Bryan road and the development along it. The proposed development of Lot 9 would not add significantly to the impacts already there.

Conclusion: Based upon the above findings, the Board concludes the proposed reconfigured clearing limits and relocated house site will not have an undue adverse impact on significant wildlife habitat and natural communities.

9. **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.

Section 5.1(4)(b)(i-vi) outlines methods for preserving rural character including:

1. *Prohibiting the placement of building zones in visually prominent areas that cannot be adequately screened.*
2. *Restricting development within open fields along public roads. If development must be located within open fields due to constraints elsewhere on the site, building zones should be located at the edges of the field to the maximum extent possible. Additional landscaping may be required to provide a sufficient visual buffer for new development.*
3. *Requiring that building zones be delineated to maximize the privacy afforded to each dwelling unit, by, for example, positioning homes to eliminate direct sight lines to neighboring homes and to prevent a building from being positioned directly above another building on a vertical slope, unless an adequate separation distance and vegetated buffer exists or is provided.*
4. *Requiring a vegetated buffer to provide screening between developments and/or between development and public roadways.*
5. *Requiring lots having frontage on an existing public road to maintain a 50-foot vegetated, screening buffer from the existing public road to minimize the effect of the development on the streetscape. The buffer area shall remain free of buildings, parking, or other structures.*
6. *Requiring the maintenance and preservation of public scenic vistas.*

- The Applicant seeks after- the-fact approval to reconfigure the previously approved clearing limits, ultimately reducing the overall originally approved clearing area from approximately ±1.24 acres to ±0.89 acres.
- In 2017 and 2020, the Applicant cleared and removed trees on approximately ±1.87 acres on the subject parcel; portions of this clearing were completed beyond the approved clearing limits.
- Included within the application is a landscaping plan to replant approximately ±0.63 acres of the ±1.87 acres that was cleared in 2017 and 2020. Some of the clearing that has taken place is located outside of the approved clearing limits.
- No historic features are shown to exist on the lot.
- The parcel sits amongst other residential lots that have been subdivided and developed over the last several decades.
- Although a building zone was not delineated at the time of original subdivision approval, the approved clearing limits essentially create a building zone by establishing an area where a future house site will be located. The future house site location was shown on the originally approved plans and is located near the driveway closer to Bryan Road.
- Both the original and later revised approved clearing limits show a future house site closer to Bryan Road within a cleared area with a forested treeline on three (3) sides to shield and screen a future dwelling and related improvements. The Applicant proposes reconfigured clearing limits and a future house site and related improvements perched above Bryan Road- approximately ±25-30 ft higher in elevation- impacting areas previously established as clearing limits.
- The parcel contains a mix of vegetation of both mature coniferous and deciduous trees and younger re-growth that is naturally growing in areas recently cleared and disturbed.
- During the November 17th hearing the Applicant's engineer, Tyler Mumley, provided a series of aerial photographs from 1996 and 2018 showing the subject lot and nearby vicinity, as well as photographs taken in the summer 2020 and November 2020 showing the view from Trapps Resort, Dewey Hill, and photographs taken on the subject lot with views in the southeast direction showing distant views of Mt. Mansfield. The comparison aerial photographs illustrate the clearing and tree removal that occurred between the years 1996 and 2018.

Conclusion: When evaluating Section 5.1(4), the Board asked itself two questions. First, whether the project has been designed to minimize *adverse* impact on historic sites and the rural character of the Town. In answering this question, the Board considers the project's surroundings, whether the proposed reconfigured clearing limits and relocated house site are compatible with the surroundings, and areas from where the project is visible. If the Board finds that a project will have an adverse impact on historic sites and the rural character of the Town, the Board then moves to the second question, to determine whether that impact will be '*undue*'. In weighing whether the identified adverse impact(s) are undue, the Board asks itself:

- 1) Does the project violate a clear, written community standard;

- 2) Will the project offend the sensibilities of the average person; and lastly,
- 3) Has the applicant failed to take generally available mitigating steps to improve the harmony of the proposed project with its surroundings.

Given that there are no historic sites identified on the parcel or within the project area, the Board quickly confirms and concludes that the project will not have an adverse impact on any historic sites. The Board then asked itself whether the application will have an adverse impact on the rural character of the Town. Section 5.1(4) clearly states that subdivisions in rural areas shall result in minimum undue adverse impact on the rural landscape as characterized by open fields, *forested mountains and hillsides* [emphasis added] and that the rural character exists due to the scenic vistas, large uninterrupted forested areas, open fields along public roads, and limited development along roads.

As discussed above under Section 5.1(2), both the Applicant and interested parties provided numerous photographs identifying multiple off-site vantage points including Bryan Road, Dewey Hill/Stowe Hollow Area, Mountain Road, and Trapps Resort. The Applicant and adjacent property owner Bari Dreissigacker both provided photographs from the corner of Dewey Hill Road and Stowe Hollow Road depicting views of the subject property. Except for the clearing and exposed ledge on the subject property, the photographs show an expansive uninterrupted forested green mountain and hillside. It is these forested mountains and hillsides the regulations specifically call out as features which define the town's rural character. While the Board recognizes there is other development that is either previously approved or pre-dates the regulations that fragments the town's forested mountains and hillsides (as illustrated by photographs provided by the Applicant), the Board must evaluate the application on its own merits and determine if the application has an undue adverse impact on the rural character of the Town. Given the reconfigured clearing limits and relocated house site will clearly be visible and impact vantage points many miles away and that the proposed clearing largely interrupts forested mountains and hillsides that define the rural character of town, the Board concludes that the proposal will have an adverse impact on the rural character of the Town.

In weighing whether those adverse impacts will be undue, the Board relies on the evidence and testimony provided in the record. Adjoining property owners provided numerous photographs illustrating the impacts of the proposed reconfigured clearing limits to nearby properties and off-site vantage points. The Board also physically visited the site and confirmed the scope and impacts of the proposal during the site visit in August. Through this testimony and evidence, it was clear that the project would offend the sensibilities of the average person. Further, in evaluating Section 5.1(4) and whether the adverse impacts are undue, the Board looks to the adopted Town Plan. The policies set forth in the Town Plan are statements of the town's intent, or position, with regard to specific issues or topics. Policy statements can serve as the basis for determining a project's conformance with the Stowe Town Plan. When reviewing the Town Plan, it is evident that the project clearly violates the following policies set forth in the Town Plan including:

Stowe's scenic landscape and rural character will be protected by:

a. The careful siting of residential development to avoid placement in highly visible locations on hillsides and ridgelines, or on open meadows and productive farmland;

and

Development on steep slopes, hillsides and ridgelines should be carefully controlled to avoid adverse impacts on scenic resources, water quality and public safety;

Additionally, the proposed grading of the driveway into the forested hillsides also impacts the rural character. Minimal effort was put forth by the Applicant to alleviate the impacts of the hammered rock, artificially made steep slopes, and tree plantings in disturbed areas. The proposed mitigation was the least possible given the severity of the clearing and rock work. Therefore, based upon the above findings, the Board concludes that the project has not been designed to minimize undue adverse impact on rural character of the area and does not conform to Section 5.1(4).

DECISION

The Development Review Board hereby denies the Applicant's request to reconfigure the previously approved clearing limits and relocate the house site as outlined in the application dated 6/18/2020 [Project 6285].

1. The Applicant failed to demonstrate conformance with Sections 5.1(2) & 5.1(4).
2. The Applicant failed to demonstrate that there have been changes in factual or regulatory circumstances beyond the control of the Applicant; or changes in the construction or operation of the project, not reasonably foreseeable at the time of original approval; or changes in technology that justify amending the previously approved clearing limits and relocating the original house site.

Voting to deny: D.Clymer, P.Aumand, P.Roberts, C. Walton, A.Volansky, L. Wasserman, T.Hand
Voting to approve: None

Dated at Stowe, Vermont this the 6 day of April 2021

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.