



Notice of DRB Decision
Town of Stowe Zoning Office
PO Box 730
Stowe VT 05672

You recently received approval for the project listed below from the Development Review Board. Attached is a copy of the DRB decision for your records. Please note that there are conditions of approval required to be met before your Zoning Permit can be issued. Once you fulfill these conditions your zoning permit will be sent to you

APPLICATION INFORMATION

Project Number	6310		
Application Date	7/16/2020		
Physical Location	0 WADE PASTURE RD		
Map ID	15-042.850	Tax ID	30217-050
Project Description	AMEND PRIOR APPROVAL; RHOD REVIEW FOR SITE CLEARING; DELINEATE BUILDING ZONE		
Owner	HARPER PHILLIPS		
Applicant	GRENIER ENGINEERING CHRIS AUSTIN		
Applicant Address	PO BOX 445 WATERBURY VT 05676		

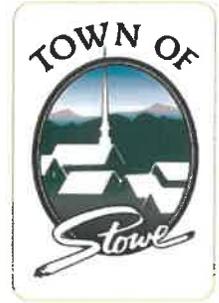
APPROVALS ON RECORD

Action Taken	Date	End of Appeal Period	Expiration Date
DRB DECISION	10/2/2020	11/1/2020	11/1/2022

Sarah McShane

Zoning Office

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



PROJECT: 6310

SUBJECT PROPERTY: 0 Wade Pasture Road, Stowe, VT; Tax Map 15-042.850
[e911 number to be assigned]

PROPERTY OWNER(s):
Harper Phillips
70 S. Winooski Ave #104
Burlington, VT 05401

APPLICANT:
John Grenier- Grenier Engineering
PO Box 445
Waterbury, VT 05676

APPLICATION:

The Applicant, John Grenier of Grenier Engineering, on behalf of property owner Harper Phillips (herein referred to as the "Applicant"), requests Ridgeline and Hillside Overlay District [RHOD] review to clear a building zone and install a residential driveway and a subdivision amendment to remove a prior permit condition restricting development on the five (5) acre portion of the lot. The subject parcel, consisting of ±15.6 acres and located at 0 Wade Pasture Road, Stowe, VT (15-042.850), 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 ±100.55 acre parcel currently owned by Wayne Carey; to the west by Wade Pasture Road; to the south by a ±10.76 acre parcel owned by Daniel & Sayre Wardell; and to the east by a ±128.10 acre parcel owned by Symphony LLC. The parcel, Lot 85, was originally approved by the Stowe Planning Commission under subdivision S-90-11. The five (5) acre portion was later added under S-01-18 approved by the Planning Commission on September 25, 2001. The application has been reviewed by the Development Review Board (DRB) 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 and amended 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 RHOD/subdivision amendment was filed by Applicant John Grenier on July 17, 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 Board was scheduled for September 15, 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 August 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 September 15, 2020 using the virtual meeting platform 'Zoom', with a quorum of the DRB present. No ex parte communications or conflicts of interests were reported. Members who participated include: D. Clymer, F. Aumand III, T. Hand, P. Roberts, L. Wasserman, M. Diender.

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

- *Chris Austin*
John Grenier, P.O. Box 445, Waterbury, VT 05676

- Harper Phillips, 70 S. Winooski Ave #104, Burlington, VT 05401

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

- Town of Stowe Development Application (2 pages); dated 7/15/2020;
- Project narrative from Grenier Engineering, dated 8/31/2020;
- Site Plan 'Harper Phillips- Robinson Springs Lot 85 Wade Pasture Road' prepared by Grenier Engineering, Sheet 2 of 2, last revised 8/27/2020;
- Overall Site Plan 'Harper Phillips- Robinson Springs Lot 85 Wade Pasture Road' prepared by Grenier Engineering, Sheet 1 of 2, last revised 8/27/2020;
- Photographs (5) of various vantage points showing existing conditions, no date;
- Three (3) ANR Natural Resources Atlas Maps, dated 8/24/2020;
- Planning Commission Decision (S-01-18) and associated application materials; (staff)

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 RHOD/subdivision amendment 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) & Town of Stowe Subdivision Regulations (effective through July 16, 2012).

SECTION 2.16 FLEXIBILITY AND FINALITY IN THE PERMITTING PROCESS (STOWE CLUB TEST)

1. The Applicant seeks a subdivision amendment to remove a prior permit condition restricting development on the five (5) acre portion of the lot. The Applicant seeks to amend the prior approval and proposes a driveway, clearing schedule, and a delineated building zone on the five (5) acre portion of the parcel. At the outset of the hearing, the Board reviewed Section 2.16 and the circumstances in which to allow an amendment of a permit or approval as outlined in Section 2.16(2)(A-C).
2. On September 25, 2001 the Stowe Planning Commission approved the transfer of five (5) acres from a 100-acre parcel to Lot 85 of the Robinson Springs Subdivision and to establish a 50' right-of-way to the remaining ninety-five (95) acres. Under application [S-01-18], it was presented and approved not to allow development on the five (5) acre portion of the lot. This restriction is noted in the application and in the Planning Commission's decision and meeting minutes.
3. Three kinds of changes justify altering a condition of a permit or approval:
 - A. *Changes in factual or regulatory circumstances beyond the control of a permittee; or*
 - B. *Changes in the construction or operation of the permittee's project, not reasonably foreseeable at the time the permit was issued; or*
 - C. *Changes in technology.*
4. During the hearing, the Applicant provided an overall context and history of the lot configuration. Mr. Phillips testified that the added five-acre portion of the lot was part of land swap in which the five (5) acres was swapped in return for a 50' right-of-way. He reported the larger adjacent parcel of ±95 acres had been intended to be subdivided into five (5) additional lots as part of the Phase 8

Robinson Springs Development. The project was never completed. The larger adjacent parcel is now conserved with only one house site. The Applicant testified that the five-acre portion of the lot was not proposed for development at the time but rather intended to be a deferred lot. Staff testified that the Applicant's testimony is consistent with her research.

Conclusion: Based on the above findings, the Board concludes the Applicant provided sufficient testimony and evidence to grant approval for the requested permit amendment. Section 2.16(A & B) provides the Board the authority to modify past permit conditions under certain appropriate circumstances. The Applicant provided a history of the lot configuration and permitting sequence; the Board concurs that there have been changes in factual circumstances beyond the control of a permittee and there have been changes in the construction and operation of the permittee's project, not reasonably foreseeable at the time the permit was issued.

DIMENSIONAL REQUIREMENTS:

5. **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).
6. **Lot Area, Lot Width.** The subject parcel is ±15.6 acres. No changes to lot width or lot area are proposed under this application.
7. **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 setbacks and proposed improvements (i.e. driveway, septic, etc.). No buildings are proposed under this application.
8. **Maximum Building Coverage.** Does not apply to the RR5 zoning district.
9. **Use.** The Applicant proposes clearing and site improvements. No uses are proposed under this application.
10. **Density.** Does not apply.
11. **Height.** Does not apply.

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:

12. **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 clearing and site improvements on a previously approved undeveloped lot (Lot 85) in the Robinson Springs Residential Subdivision. No buildings are proposed under this application. The Applicant proposes clearing areas for a future house site and a residential driveway. The lower portions of the lot contain the primary septic leachfield and replacement leachfield areas which are served by an existing drive and gravel

parking area. 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.

13. **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 and existing conditions. The Applicant's project narrative states "*the proposed site is expected to have views of the Worcester mountain range to the east-southeast....In an effort to see this location from town roads, we were unable to view this site due to the existing topography. The top of Weeks Hill is in the foreground view, which blocks any vantage points toward Route 100 North. Weeks Hill Road remains fully screened from view as it turns toward the south almost immediately after the intersection with Wade Pasture Road.*" Staff visited the site on July 10th and confirms there is little, if any, impacts to defined vantage points given the location, topography, and surrounding vegetation and forest cover. The Board finds the proposal will not have significant negative impacts on public vantage points.
14. **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 clearing and site improvements. No buildings are proposed under this application. A proposed clearing area is noted on the site plan. The proposed driveway enters the site from the western portion of the lot. According to the project narrative, the lot contains approximately eight (8) acres of conservation zone that will be retained as natural undisturbed areas. The proposed clearing area is approximately ±1.8 acres or 11.5% of the lot. The Board reviewed the applicable standards and guidelines and finds that the proposed improvements will not adversely impact the character of the scenic landscape and no further mitigation measures are warranted.
15. **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 clearing and site improvements. No buildings are proposed under this application. According to the ANR Natural Resources Atlas there are no fragile environments that would be impacted from the proposed project. The parcel is undeveloped. No wetlands, deer wintering areas, or hydric soils are shown on the ANR Natural Resources Atlas. Portions of the lot contains very steep slopes in excess of 25%. In general, these areas are not proposed to be impacted and will remain undeveloped. The Board finds that the proposal, if constructed as approved, will not result in an undue adverse impact of fragile environments.
16. **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 Applicant proposes clearing and site improvements. No buildings are proposed under this application. According to the project narrative, the lot contains approximately eight (8) acres of conservation zone that will be retained as natural undisturbed areas. The proposed clearing area is approximately ±1.8 acres or 11.5% of the lot. The proposed clearing area on the upper portion of the lot generally encompasses the driveway and future house site. Other areas are not proposed to be cleared or

disturbed. Any future dwelling or non-exempt buildings/activities will require full RHOD review. The Board finds the proposal will be minimally visible and conforms to Standard 5.

17. **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 clearing and site improvements. The lot contains a forested cover with a small portion of land previously cleared. No buildings are proposed under this application. The Applicant provided photographs showing existing conditions, topography, landscaping, etc. 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.
18. **Standard (7)** During construction, trees identified on the landscaping plan are to be protected. The Applicant provided a site plan showing proposed clearing limits. The proposed clearing area is located on the upper portion of the lot and generally encompasses the driveway and future house site. The proposed clearing area is approximately ± 1.8 acres or 11.5% of the lot. No other clearing or removal of trees are proposed under this application.
19. **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 the western portion of the lot from Wade Pasture Road. According to the ANR Natural Resources Atlas this portion of the lot generally contains slopes between 5-10%. During the hearing the Applicant confirmed that the driveway will be roughed-in and has been designed to have an average grade of 8% with a 10% maximum at sections. The Board finds that the proposed driveway has been designed to conform to Standard 8.
20. **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 proposes clearing and site improvements. No buildings are proposed under this application. Any future dwelling will require review by the Board and conformance with Standard 9.
21. **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 proposes clearing and site improvements. No buildings are proposed under this application. This standard does not apply.
22. **Standard (11)** Offsite light impacts shall be minimized. Outdoor lighting must comply with the standards contained in Section 4.8 of the regulations. The Applicant proposes clearing and site improvements. No buildings or outdoor lighting are proposed under this application. This standard does not apply.
23. **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 F.Aumand III, seconded by M.Diender, the Development Review Board hereby approves the Applicant's request for RHOD/subdivision amendment approval as outlined in the application dated 7/15/2020 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. Clearing shall be restricted to the areas shown on the approved site plan entitled '*Overall Site Plan Harper Phillips- Robinson Springs Lot 85 Wade Pasture Road*' prepared by Grenier Engineering, Sheet 1 of 2, last revised 8/27/2020. Lands outside of the approved clearing areas shall be left undisturbed except as necessary to remove dead or diseased trees and to promote the health of the forest.
4. Site construction shall adhere to the standards outlined in Section 3.12(2)(A-E) including:
 - o The amount of soil exposed at any one time must be kept to a minimum.
 - o Areas of exposed soil that are not being actively worked, including soil that has been stockpiled, must be stabilized.
 - o Stormwater shall be controlled during construction to minimize soil erosion and transport of sediment to surface waters.
 - o Soil disturbance shall not be allowed between the period of October 15 to April 15 unless adequate erosion control measures are provided as outlined in Section 3.12(2)(A-C) taking into consideration winter and spring conditions.
 - o An adequate stormwater drainage system must be continuously 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.
5. A Certificate of Occupancy must be obtained from the Zoning Administrator following the construction but prior to occupancy and use to ensure that the project has been constructed as approved by the Development Review Board.
6. These conditions of approval shall run with the land and are binding upon and enforceable against the permittee and his successors. By acceptance of this approval, the Applicant agrees to allow authorized representatives of the Town of Stowe to access the property subject to this approval, at reasonable times, for purpose of ascertaining compliance with the conditions of approval.

Voting favor: D. Clymer, F. Aumand III, T. Hand, P.Roberts, L. Wasserman, C. Walton

Voting to deny: None

The motion PASSES, 6-0.

Dated at Stowe, Vermont this the 2nd day of October 2020

By: [Signature]
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.

