



**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. Any conditions of approval required to issue a zoning permit have been met and your zoning permit will be issued without any further action required from you.

Please contact the Planning and Zoning Office at 253-6141 if you have any questions.

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**APPLICATION INFORMATION**

**Project Number** 6360  
**Application Date** 9/2/2020  
**Physical Location** 0 MAIN ST [7A-039.010]  
**Map ID** 7A-039.010 **Tax ID** 01039-010  
**Project Description** INSTALL OUTDOOR LIGHT FIXTURES ON SOUTH SIDE OF REC PATH PARKING AREA  
**Owner** TOWN OF STOWE  
**Applicant** TOWN OF STOWE HARRY SHEPARD  
**Applicant Address** PO BOX 730  
STOWE VT 05672

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**APPROVALS ON RECORD**

Action Taken	Date	End of Appeal Period	Expiration Date
DRB DECISION	10/29/2020	11/28/2020	11/28/2022

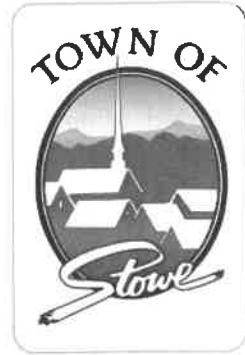
*Sarah McShane*

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Zoning Office



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



**PROJECT:** 6360

**SUBJECT PROPERTY:** Rec Path Parking Lot; #7A-039.010

**PROPERTY OWNER:**

Town of Stowe  
PO Box 730  
Stowe, VT 05672

**APPLICANT:**

Harry Shepard III; Town Engineer/DPW Director  
Town of Stowe  
PO Box 730  
Stowe, VT 05672

**APPLICATION:**

The Applicant, Harry Shepard III- Town Engineer/DPW Director on behalf of the Town of Stowe (herein referred to as the "Applicant"), requests approval for the installation of four (4) parking lot light fixtures on the south side of the Rec Path Parking Area to provide minimal outdoor lighting. The proposed parking area lighting will allow for the elimination of an existing large metal spotlight on a nearby utility pole. The proposed improvements are part of the utility relocation project.

The subject parcel (#7A-039.010) is in the Village Residential 40 (VR40) zoning district, Stowe Historic Overlay, and Flood Hazard District. 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 purposes of conditional use, design review, and flood hazard approval. The subject parcel contains a community owned facility and therefore may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use [24 VSA 4413]. [Municipalities can regulate community owned facilities for compliance with the National Flood Insurance Program (NFIP) and for compliance with a municipal ordinance or bylaw regulating development in a flood hazard area or river corridor, so long as it does not have the effect of interfering with the intended functional use. 24 VSA 4413(a)(1)(2)]. 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 conditional use/design review/flood hazard area review was filed by Applicant Harry Shepard III on August 27, 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 October 6, 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 September 17, 2020 and posted at the Town Office, Library, 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 October 6, 2020 via virtual meeting hosted by Zoom, with a quorum of the DRB present. No ex parte communications or conflicts of interests were

reported. Members who participated in the review included: F.Aumand III, C.Walton, T.Hand, M.Diender, L.Wasserman, A.Volansky.

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

- Applicant - Harry Shepard III; Town Engineer/DPW Director, Town of Stowe, PO Box 730, Stowe, VT 05672

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

1. Town of Stowe Development Application, dated 8/27/20;
2. Aerial Image/Map 'Town of Stowe- Rec Path Lot Lighting', 9/1/20;
3. FIRMETTE, dated 8/31/20;
4. Stowe Public Parking Photometrics prepared by Swaney Lighting Associates Inc., dated 5/19/20;
5. Manufacturer details for proposed light poles and fixtures, (6 pages)
6. Comments from Rebecca Pfeiffer, River Corridor & Floodplain Protection Manager, dated 9/15/20;

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 conditional use/design review/ flood hazard approval was reviewed by the Development Review Board (DRB) for conformance with applicable requirements of the Town of Stowe Zoning Regulations (as adopted on October 9, 2018), including the following:

- Section 2- Administration and Enforcement
- Section 3- General Regulations
- Section 4- Specific Use (Section 4.8- Outdoor Lighting)
- Section 5- Zoning Districts
- Section 6- Uses, Dimensional Requirements and Density
- Section 7- Flood Hazard District
- Section 10- Stowe Historic Overlay District

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

#### **Section 7- Flood Hazard Area.**

The Applicant seeks approval to install four (4) outdoor light posts within the Flood Hazard Overlay District. Section 7.4 outlines when a permit is required within the Flood Hazard Area. A permit is required for all proposed construction or other development, including the placement of manufactured homes, in areas of special flood hazard. Prior to the issuance of a zoning permit, conditional use approval by the DRB is required for: (1) New buildings; (2) Substantial improvement of existing buildings; and (3) Development in a floodway. Since the proposal does not involve the construction of a new building; substantial improvement of an existing building; or development within the floodway, the Board's review is limited to the flood hazard standards as outlined in Section 7.7(2)(A)(1-4).

1. **Review Required.** The regulations require that all development and subdivisions within the Flood Hazard District be reviewed to assure that such proposals minimize potential flood damage, public

facilities and utilities such as sewer, gas, electrical, and water systems are constructed so as to minimize flood damage, and adequate drainage is provided to reduce exposure to flood hazards.

Development as defined under the Flood Hazard Area District is "any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, extraction or drilling operations or storage of equipment or materials." The Applicant seeks approval to install four (4) outdoor light posts and associated improvements.

2. **Section 7.5 Procedures.** In accordance with Section 7.5(1), a copy of the application and supporting information was submitted by the Zoning Director to the State National Floodplain Insurance Program Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section in accordance with 24 V.S.A. §4424. A permit may be issued only following receipt of comments from the Agency or the expiration of thirty (30) days from the date the application was mailed to the Agency, whichever is sooner. Pursuant to Section 7.5(1), the application was referred to ANR Floodplain Rebecca Pfeiffer on September 1<sup>st</sup> for review and comment in accordance with 24 V.S.A. §4424. ANR Floodplain Coordinator Rebecca Pfeiffer provided written comments dated 9/15/2020.

*...For this project, it is relatively straightforward. From my review, it looks like it is only in the Flood Hazard District; the FEH Overlay District does not appear to extend to the south side of the parking lot at the confluence.*

*In the FHD, the applicable standards would be primarily found under the Floodway Fringe/Development standards that applies to all development: 7.7(1)(2)(A):*

- 1. Designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure during the occurrence of the base flood;*
- 2. Constructed with materials resistant to flood damage;*
- 3. Constructed by methods and practices that minimize flood damage; and*
- 4. Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or 82 accumulating within the components during conditions of flooding.*

*Chris's email below provides information confirming that the electrical connections will all be made watertight. The plan sheet with contours and the ANR Atlas map confirms that the flood elevation is between 699.8' & 700.1', resulting in a flood depth of approximately 3' during a 1% annual chance flood. While the exterior lights would be assumed to be anchored and made with water-resistant materials, the representative from the Public Works department can confirm with the Board that the proposed bases described below (2' round, 2' exposed concrete) will be adequate to resist movement from flooding in 3' flood depths, and that flood resistant material described in the light's spec sheet (construction details on page 1 for the Viper S lights) will be used. More information about acceptable flood resistant materials can be found in FEMA's Technical Bulletin 2: Flood Damage-Resistant Materials Requirements (published 8/2008).*

*If the DPW representative can confirm that the lights would be adequately anchored for 3' flood depths and that the light's construction materials would be adequately flood resistant, then the proposal would appear to meet the Stowe Flood Hazard development standards and the minimum National Flood Insurance Program (NFIP) standards.*

*As always, other State, Federal or local permits may be required for this project. The VT DEC Permit Specialist for your region should be able to help identify any other State Environmental Permits that may be necessary. These comments are offered in accordance with 24 VSA §4424.*

3. The regulations require that proposed development be reviewed by the Board to assure that all necessary permits have been received from those government agencies from which approval is required by Federal, State or Municipal law. No other Federal, State or Municipal permits were identified as required in the application or during the hearing.

4. **Section 7.7 Development Standards.**

*(2) Floodway Fringe Areas (i.e., special flood hazard areas outside of the floodway)*

*A. All Development - All development shall be reasonably safe from flooding and:*

- 1. Designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure during the occurrence of the base flood;*
  - 2. Constructed with materials resistant to flood damage;*
  - 3. Constructed by methods and practices that minimize flood damage; and*
  - 4. Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.*
5. According to the Department of Public Works the project incorporates the following design standards in accordance with the town's flood hazard regulations:
- Proposed improvements offer no net excavation or fill to the floodway, with the exception of the four (4) concrete bases which will be two feet (2') diameter and have approximately two feet (2') exposed above grade.
  - Lights are to be on 14' high poles for a luminaire height of 16' above the parking lot grade. (EL. 711 min.)
  - All electrical connections are to be watertight to address any flooding impacts.
  - The precast concrete bases are seven feet (7') in overall length. Two feet (2') are exposed at a three-foot (3') flood depth, which provides a five foot (5') embedment that will be adequate in holding all associated materials in place during the Q100 event, and beyond.

**Conclusion:** The Board accepts the comments from the Department of Environmental Conservation. Based on the above findings, the Board concludes the described project, if constructed as proposed, meets the development standards outlined in Section 7.7 of the Zoning Regulations and has been designed to be reasonably safe from flooding.

6. **Section 3.7(2)(A) – Standards of review (Conditional Use Applications):** The Development Review Board must determine that the use will conform to the standards outlined in Section 3.7(2)(A) and will not result in an undue adverse effect on capacity of existing or planned community facilities and services, traffic on roads and highways in the vicinity, the character of the area affected, regulations and ordinances in effect, utilization of renewable energy sources, and the additional standards outlined in Section 3.7(2)(B). Given the proposal involves a community owned facility the application may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise,

lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use [24 VSA 4413].

The Applicant seeks approval for the installation of four (4) parking lot light fixtures on the south side of the Rec Path Parking Area. The project will not impact any of the conditional use criteria as outlined in the regulations.

**Conclusion:** Based on the above findings, the Board concludes the proposed project will not result in an undue adverse effect on the above provisions. The Board notes that a community owned facility may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use [24 VSA 4413].

7. **Section 4.8 Outdoor Lighting.** All outdoor lighting shall be installed in accordance with the following standards listed in Section 4.8.

The Applicant seeks approval for the installation of four (4) parking lot light fixtures on the south side of the Rec Path Parking Area. The proposed light fixture is a 'VIPER S' small viper luminaire to be mounted on a 14' high pole for a luminaire height of 16' above the parking lot grade.

The proposed light fixture appears to be fully cut-off and is dark sky approved, as noted on the manufacturer specifications.

The Applicant provided a photometric plan showing the light levels measured in foot candles and light distribution. Light levels range from 0.0-foot candles increasing to 2.9-foot candles near the entrance of the stairs connecting to the upper parking area. The average foot candle measurement is 0.55-foot candles.

**Conclusion:** Based on the above findings, the Board concludes the proposed parking area lighting is appropriate for the existing use, is in conformance with Section 4.8(1)(A-C), and has been designed to reduce light pollution.

8. **Section 10- Stowe Historic Overlay District.** On August 26<sup>th</sup> the Historic Preservation Commission reviewed the proposal. On a motion by Commission member Baraw, seconded by Mr. MacDonald, the Commission unanimously recommended approval of the project as presented.

**Conclusion:** Based on the above findings, the Board accepts the recommendation of the Historic Preservation Commission and concludes the light fixtures conform to the design review standards in Section 10.

## **DECISION**

On a motion by M.Diender, seconded by C.Walton, the Development Review Board hereby approves the Applicant's requests to install four (4) parking lot light fixtures as outlined in the application dated 8/27/20 and supplemental materials, subject to the following conditions of approval:

1. The 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

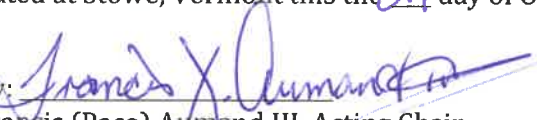
approved plans upon finding that the proposed change or alteration would not have affected the decision made or any conditions if had been included in the plans as approved.

2. A certificate of occupancy must be obtained from the Zoning Administrator following the construction but prior to occupancy and use to ensure that it has been constructed as approved by the Development Review Board, as required under Section 2.10 of the zoning regulations.
3. Any future development, as defined under the regulations, within the Flood Hazard District shall require review under the regulation in effect at the time of application.
4. 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: F.Aumand III, C.Walton, T.Hand, M.Diender, L.Wasserman, A.Volansky.

Voting to deny: None

Dated at Stowe, Vermont this the 29 day of October 2020

By:   
Francis (Paco) Aumand III, Acting 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.