

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



**PROJECT:** 6381

**SUBJECT PROPERTY:** Brownsville Road; #01-005.000

**PROPERTY OWNER:**

Vermont Department of FPR  
1 National Life Drive  
Montpelier, VT 05620

**APPLICANT:**

Walter Opuszynski- Vermont Department of FPR  
5 Perry Street, Suite 20  
Barre, VT 05641

**APPLICATION:**

The Applicant, Walter Opuszynski on behalf of Vermont Department of Forests, Parks, and Recreation (herein referred to as the "Applicant"), requests approval to expand and improve an existing roadside pull-off on Brownsville Road. As proposed, the existing pull-off area will be expanded to provide three (3) season parking for seven (7) to ten (10) vehicles and will provide direct connectivity to the Brownsville Trail Network. The improved parking area will allow Vermont Department of FPR to identify a location for a trailhead kiosk to be installed and will reduce excessive vehicles from parking at the junction of Brownsville and McCall Pasture Roads. To connect the improved parking area to the trail network, 400 ft of new woods trail and 1,000 ft of mowed trail through the meadow are proposed.

The subject parcel, consisting of over 3,000 acres, is located in the Putnam State Forest and the Rural Residential 5 (RR5) Zoning District. The property is served by Brownsville Road, a town-maintained Class 4 highway. The application has been reviewed by the Stowe Development Review Board (DRB) under applicable standards of the Town of Stowe Zoning Regulations (as adopted October 9, 2018) for the purpose of conditional use review. The subject parcel contains a state-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]. 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 review was filed by Applicant Walter Opuszynski on September 23, 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 20, 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 October 1, 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 20, 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, D.Clymer, C.Walton, P.Roberts, T.Hand, L.Wasserman, and A.Volansky.

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

- Walter Opuszynski- Vermont Department of FPR, 5 Perry Street, Suite 20, Barre, VT 05641

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

1. Town of Stowe Development Application, dated 8/28/20;
2. Project Narrative (3 pages), no date

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 approval was reviewed by the Stowe Development Review Board (DRB) for conformance with applicable requirements of the Town of Stowe Zoning Regulations (as adopted October 9, 2018) including the following:

- Section 2- Administration and Enforcement
- Section 3- General Regulations
- Section 4- Specific Use Standards
- Section 5- Zoning Districts
- Section 6- Uses, Dimensional Requirements and Density
- Section 15- Parking Regulations

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

1. The subject parcel, consisting of over 3,000 acres, contains a state-owned facility- Putnam State Forest. 24 VSA §4413 establishes limitations on municipal bylaws and states the following:

*"The following uses 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:*

- A. State- or community-owned and operated institutions and facilities.*
- B. Public and private schools and other educational institutions certified by the Agency of Education.*
- C. Churches and other places of worship, convents, and parish houses.*
- D. Public and private hospitals.*
- E. Regional solid waste management facilities certified under 10 V.S.A. chapter 159.*
- F. Hazardous waste management facilities for which a notice of intent to construct has been received under 10 V.S.A. § 6606a."*

Given the existing use being a state-owned facility, the Board's review is limited to the items listed above and only to the extent that regulations do not have the effect of interfering with the intended functional use.

**Dimensional Requirements:**

2. **Zoning District.** The subject parcel contains over 3,000 acres and is located within the Rural Residential 5 (RR5) Zoning District as shown on the Official Town of Stowe Zoning Map (as adopted October 9, 2018).
3. **Lot Area, Lot Width.** No changes to lot area or lot width are proposed under this application.
4. **Setbacks.** Required minimum district setbacks in RR5 are front (70'), side (75') and rear (75'). The Applicant seeks approval to expand and improve an existing roadside pull-off on Brownsville Road. Section 15.6 requires driveways and parking facilities in the RR5 district to be setback 25' from the property line.
5. **Maximum Building Coverage.** Does not apply to the RR5 district.
6. **Use.** The existing parcel contains lands within the Putnam State Forest and associated trails and outdoor recreational facilities. No changes of use are proposed under this application.
7. **Height.** No changes in building height are proposed under this application.

**Section 3.7(2)(A) – Standards of review (Conditional Use Applications):** The Development Review Board must determine that the use will conform to the following set of standards and will not result in an undue adverse effect on the following:

8. **Capacity of existing or planned community facilities and 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 requested modifications would have any adverse impact on existing or planned community facilities and services.

**Conclusion:** 24 VSA §4413 establishes limits municipal bylaws. The Board concludes the capacity of existing or planned community facilities and services cannot be considered or reviewed under 24 VSA §4413.

9. **Section 3.7(2)(A)(2) – Traffic on roads and highways in the vicinity:** The Applicant seeks approval to expand and improve an existing roadside pull-off on Brownsville Road. As proposed, the existing pull-off area will be expanded to provide three (3) season parking for seven (7) to ten (10) vehicles. The proposed improvements are expected to improve parking and traffic on roads and highways in the vicinity.

**Conclusion:** The Board concludes the proposal will not create an undue adverse impact on traffic on roads and highways in the vicinity.

10. **Section 3.7(2)(A)(3) – The character of the area affected:** The subject parcel is in the RR5 zoning district. The general purpose of the Rural Residential district is as follows:

- A. *To maintain the natural and scenic qualities which create and preserve the best possible environment for residential development.*
- B. *To promote the preservation of adequate open space through carefully planned cluster types of development.*

- C. *To encourage agricultural productivity of good farmlands and of forest resources.*
- D. *To permit the establishment of recreational and resort facilities when compatible with the primary purpose of a residential environment.*

The specific purposes in RR 3 and RR 5:

- A. *To eliminate undue demand for new or extended municipal services in outlying areas which would cause a burden on the town.*
- B. *To maintain the rural character and beauty of the existing neighborhoods.*
- C. *To discourage intensive development in areas where slopes or soil conditions dictate otherwise.*

The 2018 Stowe Town Plan (page 130) contains the following policy:

- 11. *The rural character of Stowe's residential countryside, designated as RR-3 and RR-5, will be maintained by:*
  - a. *Ensuring that land subdivision is carefully designed to avoid, to the extent practical, adverse impacts to natural resources, productive farmland and other features which help define the town's rural character and working landscape;*
  - b. *The careful siting and landscaping of development on steep slopes, hillsides and ridgelines; and*
  - c. *Limiting land uses to moderate to low density residential development, farming and forestry, outdoor recreation and home occupations.*

Policies are statements of the town's intent, or position, with regard to specific issues or topics. In certain settings, such as Act 250 proceedings, policy statements will serve as the basis for determining a project's conformance with the Stowe Town Plan.

**Conclusion:** The Board concludes 24 VSA §4413 establishes limits municipal bylaws. The character of area affected cannot be considered or reviewed under 24 VSA §4413.

- 11. **Section 3.7(2)(A)(4) – Regulations and ordinances in effect:** The application was reviewed under applicable conditional use criteria. Applicable bylaws include the Stowe Zoning Regulations, as adopted October 9, 2018. No other municipal bylaws or ordinances apply to this project.

**Conclusion:** The Board concludes the proposal is in conformance with the applicable Stowe Zoning Regulations, as adopted October 9, 2018. No other identified municipal bylaws or ordinances apply to this project. The project was reviewed within the limitations of 24 VSA §4413.

- 12. **Section 3.7(2)(A)(5) – Utilization of renewable energy sources:** No change is proposed with regard to the use of, or access to, the utilization of renewable energy resources.

**Conclusion:** The Board concludes the project is not expected to interfere with the sustainable use of renewable energy resources, access to, direct use or future availability of such resources.

**Section 3.7(2)(B) – Other Standards of Review:**

13. **Section 3.7(2)(B)(1) – Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas.** The parcel is located within the Putnam State Forest. The requested improvements are not expected to impact the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas.

**Conclusion:** The Board concludes 24 VSA §4413 establishes limits municipal bylaws. The scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas cannot be considered or reviewed under 24 VSA §4413.

14. **Section 3.7(2)(B)(2) - Project will not result in undue water, noise or air pollution.** Under the provisions of Section 3.7(2)(B)(2) and 24 VSA §4413, the Board’s authority is limited to the review of noise. The requested improvements are not expected to create undue noise in the vicinity.

**Conclusion:** 24 VSA §4413 establishes limits municipal bylaws. The Board concludes the requested improvements will not result in undue noise pollution.

15. **Section 3.7(2)(B)(3) – Access Management:** The parcel is served by direct access to Brownsville Road, a Class 4 town highway. The enlarged pull-off will require work within the Town Highway right-of-way and coordination with the Department of Public Works.

**Conclusion:** 24 VSA §4413 establishes limits municipal bylaws. The Board concludes the modified access improvements, as conditioned, provide safe and adequate access for the proposed trail improvements.

16. **Section 3.7(2)(B)(4) – Shared Access:** Does not apply.

**Conclusion:** Does not apply.

17. **Section 3.7(2)(B)(5) – Circulation and Parking:** The regulations require parking be provided per the requirements of Section 15 and be designed to minimize the visibility of parking areas from off-site through the location, landscaping and screening of such areas. Table 15.2 does not include minimum parking requirements for outdoor recreational facilities. The Applicant seeks approval to expand and improve an existing roadside pull-off on Brownsville Road. As proposed, the existing pull-off area will be expanded to provide three (3) season parking for seven (7) to ten (10) vehicles.

As proposed, an area roughly 20' x 60' will be improved to provide additional trailhead parking. Boulders will be located to define the boundary of the parking area. As noted in the application, the parking area will be graded and the underlying soils compacted. Six (6) inches of ¾" gravel will be applied and compacted. If needed, filter fabric will be applied to support the base of the gravel. Total estimated volume of gravel is twenty-five (25) cubic yards.

**Conclusion:** The Board concludes the proposed parking improvements represents safe and adequate access for the intended use.

18. **Section 3.7(2)(B)(6) – Pedestrian Circulation and Access:** The regulations require pedestrian circulation within the site, and access through the site to adjacent properties along public roads, be provided. The Applicant requests approval to expand and improve an existing roadside pull-off on Brownsville Road. The improved parking area will allow Vermont Department of FPR to create a location for a trailhead. To connect the improved parking area to the trail network, 400 ft of new woods trail and 1,000 ft of mowed trail through the meadow are proposed.

**Conclusion:** The Board concludes the proposed improvements represents safe and adequate pedestrian access and circulation for the intended use.

19. **Section 3.7(2)(B)(7) – Landscaping and Screening:** The regulations require landscaping details and screening of garbage collection areas, outdoor storage, commercial ventilation systems over two square feet; loading and unloading areas and other outdoor utilities, including solar installations, be provided as part of proposed site development plans. The Applicant requests approval to expand and improve an existing roadside pull-off on Brownsville Road. The improved parking area is surrounded by lands within the State Forests and mature forested areas.

**Conclusion:** The Board concludes the existing mature forests provides adequate screening.

20. **Section 3.7(2)(B)(8) – Stormwater Management:** Section 3.12(2) provides stormwater and erosion control standards for construction-related activities associated with any new construction. The Applicant seeks approval to expand and improve an existing roadside pull-off on Brownsville Road. As proposed, the existing pull-off area will be expanded to provide three (3) season parking for seven (7) to ten (10) vehicles. As proposed, an area roughly 20' x 60' will be improved to provide additional trailhead parking.

**Conclusion:** 24 VSA §4413 establishes limits municipal bylaws. The Board concludes stormwater management cannot be reviewed under the provisions of §4413.

## **DECISION**

On a motion by F.Aumand III, seconded by A.Volanksy, the Development Review Board hereby approves the Applicant's request as outlined in the application dated 8/28/2020 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. The Applicant must obtain approval from the Town of Stowe Department of Public Works for any work within the town highway right-of-way.
4. 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.
5. 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, A.Volansky

Voting to deny: None

The motion PASSES, 7-0.

Dated at Stowe, Vermont this the 9 day of November 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.

