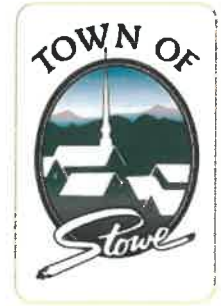


TOWN OF STOWE
DEVELOPMENT REVIEW BOARD
Findings of Fact & Conclusions of Law



PROJECT: 6516

SUBJECT PROPERTY: 0 Werner Road Stowe, VT (#07-104.000/07-104.060 [Lot 6])

PROPERTY OWNER & APPLICANT:

Elerson & Anne Roberts
PO Box 96
Stowe, VT 05672

APPLICATION:

The Applicant, Bobby Roberts, on behalf of property owners Elerson & Anne Roberts (herein referred to as the "Applicant"), requests RHOD review to expand the previously approved clearing limits and to construct a single-family dwelling and related improvements. The subject parcel, Lot 6- consisting of ±3.5 acres (07-104.060), is in the Rural Residential 5 (RR5) Zoning District and the Ridgeline and Hillside Overlay District (RHOD). The parcel was originally created in 2010 under Project 4082 as part of the eight (8) lot Planned Residential Development [PRD]/ subdivision approved by the Development Review Board on October 13, 2009. The application has been reviewed by the Development Review Board under applicable standards of the Town of Stowe Zoning Regulations (as adopted October 9, 2018) and the Town of Stowe Subdivision Regulations (effective through July 16, 2012) for the purpose of Ridgeline and Hillside Overlay District (RHOD) 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 review was filed by Applicant Bobby Roberts on March 25, 2021. 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 Development Review Board was scheduled for May 18, 2021 and warned by the Zoning Director in accordance with Section 2.14 of the regulations and 24 V.S.A. §4464. The hearing notice was published in the Stowe Reporter on April 29, 2021.

The public hearing to consider the application convened on May 18, 2021 utilizing the remote meeting service Zoom, with a quorum of the DRB present. There was no physical place to attend the meeting, all participation was via telephone or online. No ex parte communications or conflicts of interests were reported. Members who participated in the review included: Drew Clymer, Leigh Wasserman, Francis Aumand III, Tom Hand, Andrew Volansky, Chris Walton, and Peter Roberts.

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

- Bobby Roberts, PO Box 96, Stowe, VT 05672

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

- Town of Stowe Development Application (2 pages); dated 3/25/2021;
- Series of photographs showing visibility and existing conditions, no date;
- Photographs of light fixtures, windows, and building materials, no date;

- Site Plan/Worksheet Brush Hill Properties LLC/Lot 6 prepared by Little River Survey Company, Sheet 1 of 1, Job 14061, dated May 2021;
- Lot 5 & 6 Hillside Profile prepared by Little River Survey Company, dated August 2009;
- Elevation drawings prepared by Kim Brown Projects dated 5/4/2021 including:
 - Sheet A-1 [Isometric Views]
 - Sheet A-2 [Isometric Views- Interior]
 - Sheet A-3 [Foundation Plan]
 - Sheet A-4 [1st Floor Plan]
 - Sheet A-5 [2nd Floor Plan]
 - Sheet A-6 [Front & Left Elevations]
 - Sheet A-7 [Right & Rear Elevations]
- Various photographs of the lot and nearby surroundings, no date;
- DRB Decision for 4082 dated 10/13/2009 & associated subdivision plat; (staff)

The Development Review Board continued the hearing to a time and date certain, June 1, 2021 to allow the Applicant to submit additional supporting information. In advance of the June 1st hearing the Applicant provided the following information:

- Revised site plan prepared by Little River Survey Company, Sheet 1 of 1, Job 14061, dated May 2021;
- Outdoor Light Fixture Cut-Sheets, no date.

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

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

- 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 9- Ridgeline and Hillside Overlay District

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

- Section 5.2(1)- Subdivision within the Ridgeline and Hillside Overlay District (RHOD)

DIMENSIONAL REQUIREMENTS:

1. **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).

2. **Lot Area, Lot Width.** The subject parcel, Lot 6, is ±3.5 acres. No changes to lot width or lot area are proposed under this application.
3. **Setbacks.** Required minimum district setbacks for the RR5 district are front (70'), side (75') and rear (75'). Lot 6 is part of a previously approved Planned Residential Development (PRD) which requires a double setback along the perimeter. The minimum setback for one and two-family dwellings on individual interior lots is ten (10') feet. A building zone was not designated at the time of subdivision approval, rather clearing limits were established which govern the area for future development. The Applicant proposes to expand the previously approved clearing limits and establish a building zone. The footprint of the dwelling, parking, driveway is shown on the site plan. Section 15.6 requires driveways, except for common driveways, to be setback 25' from the property line in the RR5 district, unless the abutting property owner agrees to less. Under current regulations, the term driveway means "16.48 Driveway: A roadway used to access not more than three (3) dwelling units that is in private ownership." The site plan shows the location of the proposed driveway, clearly meeting the 25' setback.
4. **Maximum Building Coverage.** Does not apply to the RR5 zoning district.
5. **Use.** The Applicant proposes to construct a single-family dwelling. Single-family dwellings are a permitted use in the RR5 district.
6. **Density.** The RR5 district allows single-family dwellings at a density of one (1) per five (5) acres. The subject parcel is ±3.5 acres and is part of a previously approved Planned Residential Development (PRD).
7. **Height.** The maximum building height in RR5 is 28' feet. The regulations define building height as the "*Vertical distance measured from the average elevation of the proposed finished grade at the front or rear of the building to the highest point of the roof for flat and mansard roofs, and to the average height between the highest ridge and its contiguous eave for other types of roofs. On sloping sites the height will be measured on the uphill side.*" The building height is labeled on the plans with a total roof height to be 24' 2". The maximum finished first floor elevation of the building is 1002'.

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:

8. **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 to construct a single-family dwelling and related improvements. The lot is part of an eight-lot subdivision/PRD created in 2010 intended for future residential development. Previously required clearing limits and topography restrict the visibility of the parcel and proposed dwelling. 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.

9. **Standard (2) Designation of Vantage Points:** The regulations define vantage points as maintained (class 3 or higher) public roads, state highways and municipal properties. No identified public vantage points were identified in the application or during the public hearing. The Applicant provided a series of photographs depicting existing conditions and potential visibility. In the Board's decision approving the subdivision the following findings and conclusions were made:

23. **Section 5.2 – Prominent Hillside and Ridgelines:** The parcel has 34.4 acres within the RHOD. The property has vantage points from West Hill Road, from the intersection of Baird Road to Route 100 and West Hill Road in the vicinity of the Percy Hill intersection. Other public roads may have some other limited visibility from certain points. The applicant previously submitted hillside profiles for the lots to show the relationship of the existing trees and development. The proposed house sites for Lots #2 through #7 are on relatively flatter areas of the parcel. Lot #8 is located on the backside of a knoll. In all locations, the applicant proposes to leave existing trees of approximately 100 feet to screen development from off-site. Lot #1 is on a steeper section of the site and will require a larger clearing area to accommodate the required cut and fill for development. Again, large trees are proposed to remain in order to screen development from off-site. None of the proposed development will extend above the ridgeline. Portions of some roofs and buildings may be visible from certain areas in town. The additional clearing completed after the preliminary approval has increased the amount of cleared area. This new area is connected to proposed future clearing areas. In order to reduce the total amount of cleared areas, the newly cleared area should be left to re-vegetate.

Conclusion: The Board will require, as a condition of approval, that that the final plan be revised to show the clearing limits as originally approved on March 17, 2009 with the exception of the stormwater management areas. All building construction on the lots will require review and approval under Section 5.2 before a zoning permit is issued.

The Applicant provided a series of photographs showing the parcel and nearby vicinity. Staff testified that she visited the site, and the parcel is not visible from any public vantage points. The RHOD district line bisects the parcel; rear portions of the parcel are not within the RHOD. The Board finds the proposal will not negatively impact public vantage points.

10. **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 to construct a single-family dwelling and related improvements. The original subdivision approval did not establish a building zone, rather clearing areas. The Applicant proposes to designate a building zone and expand previously approved clearing limits. The original clearing areas established a house site for a 40' x 50' building footprint. According to the ANR Natural Resources Atlas, the lot is fairly flat with grades of less than <5% and less than <15%. The Board reviewed the applicable standards and guidelines and finds that the proposed improvements will not adversely impact the character of the scenic landscape.
11. **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 to construct a single-family dwelling and related improvements. No fragile environments are identified within the submitted application. The Board finds that the proposal, if constructed as approved, will not result in an undue adverse impact of fragile environments.

12. **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. During subdivision review, the Applicant provided a cross section showing existing treelines, estimated building heights, and proposed clearing limits. Lot 6 was estimated to have a 25' building height. As shown on the cross section, given the tree height of downslope trees and the estimated elevation of the dwelling, the proposed dwelling is not expected to be visible or have significant exposure. The Board finds the application will not create any significant exposure of buildings and will not be visible from designated vantage points.
13. **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 to construct a single-family dwelling and related improvements. The site is characterized by mature treeline on a steep slope. The subject lot is generally sited on lands that are relatively flat. The subject lot was created in 2010 and is part of a previously approved 8-Lot subdivision/PRD. The Applicant proposes to expand previously approved clearing limits to allow greater space for lawn and the proposed dwelling. 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.
14. **Standard (7)** During construction, trees identified on the landscaping plan are to be protected. The provided site plan showing existing and proposed clearing limits. No landscaping is proposed under this application.
15. **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 ANR Natural Resources Atlas indicates most of the lot contains slopes of less than 15%. The site plan shows the driveway location, during the hearing the Applicant confirmed the proposed driveway would not exceed 15% in grade.
16. **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. As noted above, as part of subdivision review the Applicant provided a cross section showing existing topography, treelines, and estimated building heights. Given the slope and estimated tree heights in front of the proposed dwelling, it does not appear the proposed dwelling will exceed the height of the land or treeline. The RHOD district boundary bisects the parcel with rear portions of the lot outside of the RHOD district. The building height is labeled on the plans with a total roof height to be 24' 2". The maximum finished first floor elevation of the building is 1002'. The Board finds the proposal has been designed in a manner that will not visually exceed the height of the land or tree line.

17. **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 proposed building incorporates gable roofs, a covered porch, varies rooflines, etc. to minimize the any visual impact of the building. The Board finds the proposal is in conformance with Standard 10 and has been designed to minimize visual impacts and compliment the scenic quality of the surrounding landscape.
18. **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 provided a photograph showing proposed light fixtures. The elevation drawings depict the location of outdoor light fixtures. The proposed fixtures appear to be a decorative lantern style and a shielded barn style fixture. The Board finds the proposed lighting is in conformance with Section 4.8 of the regulations and has been designed to minimize impacts.
19. **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: Based upon the above findings, the Board concludes the proposed dwelling and related improvements have been designed in conformance with all applicable RHOD standards and guidelines.

Section 5.2 Subdivision within the Ridgeline and Hillside Overlay District (RHOD): (1) All subdivisions located within the Ridgeline and Hillside Overlay District shall conform to the submission requirements, standards and guidelines of Section 9 of the Stowe Zoning Regulations. A building zone was not designated at the time of subdivision approval, rather clearing limits were established which govern the area for future development. The Applicant proposes to expand the previously approved clearing limits. The provided site plan shows the location of the previously approved clearing limits and the proposed revised clearing limits. The Applicant proposes to expand the clearing limits encompassing additional area to the west of the dwelling and areas to the east of the road which are not located within the RHOD district. During the hearing, the Board heard testimony and received evidence that the subject lot and proposed improvements would not be visible from designated public vantage points due to location, topography, and existing mature forest cover.

Conclusion: Based upon the above findings, the Board concludes the proposed alterations to clearing limits and proposed dwelling and related improvements, have been designed in accordance with Section 5.2 of the Town's adopted subdivision regulations and Section 9 of the town's adopted zoning regulations.

DECISION

On a motion by Chris Walton, seconded by Leigh Wasserman, the Development Review Board hereby approves the Applicant's request for amendments to clearing limits and to construct a single-family dwelling and related improvements as outlined in the application dated 03/25/21 and supplemental materials, subject to the following conditions of approval:

1. The project shall be completed and maintained according to the project 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 such change being made, for a determination whether 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 it 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. Prior to the issuance of the zoning permit, the Applicant shall submit the following:
 - A. Pursuant to 24 VSA Chapter 117, the subdivision survey plat depicting the modified clearing limits on Lot 6 shall be submitted for recording in the land records of the Town of Stowe within 180 days of the date of this approval, or the approval shall expire. The final survey plat as recorded shall be prepared in accordance with Section 4.3 of the Stowe Subdivision Regulations and shall include the following notation:

"This plat is subject to the terms and conditions of subdivision approval by the Stowe DRB per the Subdivision Regulations of the Town of Stowe. The terms and conditions of the approval and related information are on file in the Stowe Zoning Office."
 - B. The Applicant shall file the final survey plat depicting the modified clearing limits on Lot 6, signed by the Chair or other authorized representative of the Development Review Board, with the Stowe Town Clerk in accordance with the requirements of 27 V.S.A. Chapter 17 and Section 4.3 of the Stowe Subdivision Regulations. No land development associated with this subdivision shall be commenced until such time as the survey plat has been duly signed and filed in the Land Records. Two paper copies of said plat shall be filed with the Zoning Administrator.
4. Clearing shall be restricted to the areas shown on the approved site plan/worksheet entitled 'Lot 6- Brush Hill Properties, LLC' prepared by Little River Survey Company, last revised May 2021, [and amended herein]. Lands outside of the shown clearing limits shall be left undisturbed except as necessary to remove dead or diseased trees and to promote the health of the forest.
5. All outdoor lighting fixtures shall be shielded and aimed so that illumination is directed only to the designated area and does not cast direct illumination or cause glare beyond the boundary lines of a property.
6. 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.
7. 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. Prior to the issuance of a Certificate of Occupancy, a licensed surveyor shall submit written confirmation that the finished floor elevation of the dwelling does not exceed 1002'.

8. 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: Leigh Wasserman, Francis Aumand III, Andrew Volansky, Chris Walton, and Peter Roberts.

Voting to deny: None

Abstaining: Tom Hand

The motion passed, 5-0-1.

Dated at Stowe, Vermont this the 18 day of June 2021

By: 
Francis 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.