



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.

APPLICATION INFORMATION

Project Number	6591		
Application Date	6/8/2021		
Physical Location	124 DISH LN		
Map ID	15-041.100	Tax ID	30219-300
Project Description	RHOD REVIEW TO CONSTRUCT A POND		
Owner	MICHAEL A. NISSENBAUM		
Applicant	MICHAEL A. NISSENBAUM		
Applicant Address	124 DISH LANE STOWE VT 05672		

APPROVALS ON RECORD

Action Taken	Date	End of Appeal Period	Expiration Date
DRB DECISION	9/1/2021	10/1/2021	10/1/2023

Sarah McShane

Zoning Office

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



PROJECT: 6591

SUBJECT PROPERTY: 124 Dish Lane, Stowe, VT (#15-041.100)

PROPERTY OWNER/APPLICANT:

Michael A. Nissenbaum
124 Dish Lane
Stowe, VT 05672

APPLICATION:

The Applicant/property owner, Michael A. Nissenbaum (herein referred to as the “Applicant”), requests Ridgeline and Hillside Overlay District [RHOD] review to construct a pond. The proposed pond surface is approximately 1/3 acre. The subject parcel, consisting of ±33.92 acres (15-041.100), is in the Rural Residential 5 (RR5) Zoning District and the Ridgeline and Hillside Overlay District (RHOD). The existing single-family dwelling located on the parcel was approved by the Development Review Board in a written decision dated May 13, 2014. Under the prior approval, the visual analysis for the single-family dwelling only identified one possible public vantage point on Luce Hill Road, approximately ±3.6 miles away. Under the prior approval, the Board concluded that there was limited visibility and classified the project as a minor under Section 9.4(3)(B). The Applicant now seeks approval for the construction of pond. Under Section 9.4(2)(E), the Zoning Administrator has the authority to review ponds and swimming pools in the RHOD that require no site clearing. The proposed pond involves minor clearing and therefore was referred to the Board for review under applicable RHOD standards. 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) 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 Michael A. Nissenbaum on June 4, 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 July 20, 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 July 1, 2021. 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 20, 2021 at the Akeley Memorial Building, 67 Main Street, with a quorum of the DRB present. Remote participation was available through Zoom. No ex parte communications or conflicts of interests were reported. Members who participated in the review included: D. Clymer, F. Aumand III, T. Hand, P.Roberts, L. Wasserman, C.Walton, and M.Diender.

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

- Michael A. Nissenbaum, 124 Dish Lane, 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 6/4/2021;
- Site Plan showing proposed location of pond, no date;
- Prior DRB Decision [Project 4929], (staff)
- Site Photographs and Aerial images, no date;
- Previously approved visual assessment including cross sections, photographs, etc. (staff)

During the July 20th hearing, the Development Review Board requested additional information and continued the hearing to a time and date certain of August 3rd. Board members participating in the August 3rd hearing included Drew Clymer, Paco Aumand, Andrew Volansky, Thomas Hand, Peter Roberts, Mary Black, and Michael Diender.

In advance of the August 3rd hearing, the Applicant provided the following supplemental information:

- Construction specifications and drawings (3 pages), no date;
- Site Plan prepared by Summit Engineering Inc., Project 8436, dated 7/27/2021.

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

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.** No changes to lot width or lot area are proposed under this application.
3. **Setbacks.** Section 4.10 regulates the construction of ponds and requires that ponds be set back at least ten (10') feet from all property lines, unless the abutting property owner agrees to less. The Applicant owns the adjacent parcel and under a separate application proposes a boundary line adjustment for the proposed pond to be entirely located on one parcel. Following administrative review and approval of the boundary line adjustment and recording the associated survey plat, the proposed pond will meet the setback requirement.

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:

4. **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 man-made pond measuring approximately 160' x 130'. The proposed pond surface is approximately 1/3 acre and is located south of the existing dwelling along the treeline. The application indicates that the pond construction will require clearing of scrub and small trees (most less than 6" diameter). The existing single-family dwelling was approved by the Development Review Board in a written decision dated May 13, 2014. In the visual analysis for the single-family dwelling only one possible public vantage point on Luce Hill Road, approximately 3.6 miles away, was identified. During that review, the Board concluded that there was limited visibility and classified the project as a minor under Section 9.4(3)(B). The proposed pond is located downhill of the existing 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.
5. **Standard (2) Designation of Vantage Points:** The regulations define vantage points as maintained (class 3 or higher) public roads, state highways and municipal properties. In the visual analysis for the single-family dwelling only one possible public vantage point on Luce Hill Road, approximately 3.6 miles away, was identified. The Board concluded that there was limited visibility and classified the project as a minor under Section 9.4(3)(B). Staff provided a series of photographs and cross sections showing potential visibility. The Board finds the proposal will not negatively impact defined public vantage points.
6. **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 man-made pond in an area that has generally been previously cleared. Minor clearing along the treeline will be needed to accommodate the pond and associated grading. The Board reviewed the applicable standards and guidelines and finds that the proposed improvements will not adversely impact the character of the scenic landscape.
7. **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 pond with associated clearing. A Class 2 wetland and associated 50' buffer is located in south-easter portion of the parcel and will not be impacted by the proposed pond. The location of the wetland and wetland buffer is shown on the provided site plan. Otherwise, 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.
8. **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 construction of a man-made pond. The pond sits downhill and lower than the existing dwelling. This provision does not apply.

9. **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 proposed pond is located south of the existing dwelling along the treeline. Minor clearing is proposed to accommodate the pond. The provided site plan shows the location of the existing treeline and proposed treeline. 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.
10. **Standard (7)** During construction, trees identified on the landscaping plan are to be protected. The provided site plan showing existing clearing limits and trees to be removed during construction. The Applicant provided a site plan and aerial images showing the proposed impact to the existing treeline. The aerial image shows other ponds in the vicinity. Clearing associated with the pond appears lower in elevation than the dwelling.
11. **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. No changes to driveway location or grade are proposed under this application.
12. **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. No structures or buildings are proposed under this application. Does not apply.
13. **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. No structures or buildings are proposed under this application. Does not apply.
14. **Standard (11)** Offsite light impacts shall be minimized. Outdoor lighting must comply with the standards contained in Section 4.8 of the regulations. No outdoor lighting is proposed under this application. Does not apply.
15. **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 pond and related clearing have been designed in conformance with all applicable RHOD standards and guidelines.

DECISION

On a motion by Tom Hand, seconded by Michael Diender, the Development Review Board hereby approves the Applicant's request to construct a pond and related clearing as outlined in the application dated 6/4/21 and supplemental materials, subject to the following conditions of approval:

1. The project shall be completed, operated, and maintained in accordance with (a) the conditions of this approval and (b) the permit application, plans, and exhibits on file in the Town of Stowe Zoning Office and other material representations. 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 provided with the application. Lands outside of the shown 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 it 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.

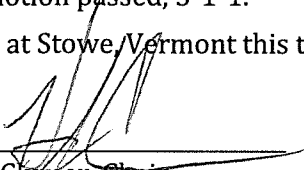
Voting favor: Drew Clymer, Paco Aumand, Thomas Hand, Mary Black, and Michael Diender.

Voting to deny: Peter Roberts

Abstaining: Andrew Volansky

The motion passed, 5-1-1.

Dated at Stowe, Vermont this the 1 day of September 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.