



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

Your DRB project listed below was recently denied by the Development Review Board. Attached is a copy of the DRB decision for your records.

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

APPLICATION INFORMATION

Project Number 6596
Application Date 6/8/2021
Physical Location 1386 PUCKER ST
Map ID 07-074.000 Tax ID 04027
Project Description SUBDIVIDE EXISTING PARCEL INTO LOT 1 OF ±4 ACRES AND LOT 2 OF ±2.4 ACRES & CHANGE TO NONCONFORMING USE (REDUCED LOT SIZE)
Owner STOWE RIDGE LLC
Applicant GRENIER ENGINEERING
Applicant Address PO BOX 445
WATERBURY VT 05676

ACTIONS

Action Taken	Date	End of Appeal Period	
OTHER	6/25/2021		REFERRED/SCHEDULED DRB HEARING
DRB DECISION	1/6/2022	2/5/2022	

Sarah McShane

Zoning Office

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



PROJECT: 6596

SUBJECT PROPERTY: 1386 Pucker St; Tax Map #07-074.000

PROPERTY OWNER:

Stowe Ridge, LLC.
283 Landing Blvd.
Weston, FL 33327

APPLICANT:

Grenier Engineering, PE
P.O. Box 445
Waterbury, VT 05676

APPLICATION:

The Applicant, Grenier Engineering, PE, on behalf of the property owner, Stowe Ridge, LLC (herein referred to as the "Applicant"), requests final subdivision review for the parcel of land located at 1386 Pucker Street and shown on Tax Map #07-074.000. The Applicant proposes to subdivide the existing ± 6.4 parcel into two (2) lots, Lot 1 being ± 4.0 acres and containing a pre-existing nonconforming lodging establishment known as the Home Farm. The Home Farm consists of a historic dwelling and associated barn building, and five (5) rental cabins, all of which are used for short term guest lodging. Lot 2 is proposed to contain ± 2.4 acres and is designed to support the development of a future single-family dwelling.

The subject parcel is in the Rural Residential 2 (RR2) zoning district. The parcel contains frontage along Pucker Street, a state highway (VT-100) maintained by the Agency of Transportation, and Westview Heights Drive, a privately owned and maintained road. The application has been reviewed by the Development Review Board (DRB) under applicable standards of the Town of Stowe Subdivision Regulations (as amended through July 16, 2012) for the purpose of final subdivision review and applicable sections of the Town of Stowe Zoning Regulations (adopted October 9, 2018). 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 subdivision review was filed by Applicant Grenier Engineering, PE on June 8, 2021. The application was accepted as administratively complete by Town of Stowe Zoning Administrator Sarah McShane and referred to the DRB for a public hearing. A public hearing of the DRB was scheduled for September 7, 2021 and warned by the Zoning Administrator 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 19, 2021 and posted at the Library, Town Office, 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 September 7, 2021 at the Akeley Memorial Building, 67 Main Street, with a quorum of the DRB present. Mary Black and Francis Aumand III both recused themselves from participation. Otherwise, no *ex parte* communications or conflicts of interests were reported. Remote participation was available via Zoom. The following persons attended and participated in the hearing process:

- Matthew Stabb, 283 Landing Blvd., Weston, FL 33331
- John Grenier, P.O. Box 445, Waterbury, VT 05676
- Ahmad & Melissa Abdel-Mawgood, PO Box 656, Stowe, VT 05672
- Lisa Bernnay and Abe Rosenfeld, PO Box 30, Hopedale, MA 01747
- Lee Hunter, PO Box 1364, Stowe, VT 05672
- Rick Rancourt, 105 Westview Heights Drive, Stowe VT 05672

- AJ Larosa, P.O. Box 4485, Burlington, VT 05406-4485

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

1. Town of Stowe Development Application dated 6/08/2021;
2. Cover letter from Grenier Engineering to Town of Stowe Zoning Administrator, dated 6/07/2021;
3. Warranty Deed, pages 189-190;
4. Warranty Deed, Vol 524 page 224-225;
5. Warranty Deed, Vol 543 page 334-336;
6. Warranty Deed dated 5/03/2019;
7. Site Plan 'Stowe Ridge LLC' prepared by Grenier Engineering dated 6/07/2021;
8. Public comments from Ahmad & Melissa Abdel-Mawgood, dated 8/15/2021;

DRB member Francis Aumand III recused himself during the September 7th hearing leaving four (4) participating members. In accordance with DRB Rules of Procedure [IV(F)(3)], the Applicant requested a recess to allow review by more than four (4) members. The DRB continued the hearing to a time and date certain, October 5, 2021. In advance of the October 5th meeting, the following information was provided:

9. DRB Minutes from 10/07/2003;
10. DRB Decision for BA-07-74, dated 10/21/2003;
11. Letter from AJ LaRosa on behalf of Rosenfelds, dated 9/28/2021;
12. Letter from Matthew T. Staab, dated 10/5/2021;

During the DRB's deliberations, the DRB determined additional information was needed and re-opened a warned public hearing on December 7, 2021. In advance of the December 7th hearing, the following information was provided:

13. Letter from Matthew T. Staab, dated 12/2/2021;
14. Site Plan 'Stowe Ridge LLC' prepared by Grenier Engineering, last revised 12/2/2021;

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

The Applicant's request for subdivision review was reviewed by the DRB for conformance with applicable requirements of the Town of Stowe Subdivision Regulations (as amended through July 16, 2012) including the following:

- Section 2- General Provisions
- Section 3- Administration and Enforcement
- Section 4- Subdivision Requirements
- Section 5- Planning and Design Standards

The DRB also reviewed the application for conformance under the nonconforming use and conditional use standards 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

DRB findings and conclusions under these provisions are presented as follows:

1. The subject parcel is within the Rural Residential 2 (RR2) zoning district, as shown on the Official Town of Stowe Zoning Map (as adopted on October 9, 2018).
2. The Applicant proposes a 2-lot subdivision of parcel #07-074.000 located at 1386 Pucker Street. The Applicant proposes to subdivide the existing ± 6.4 parcel into two (2) lots, Lot 1 being ± 4.0 acres; and Lot 2 being ± 2.4 acres. The RR2 district requires a minimum lot area of 2.0 acres and a minimum lot width of 200 ft. Lot width is defined as *"The width of a lot measured at right angles to its lot depth at the minimum front yard setback."* As proposed, both lots meet the minimum required lot area and lot width.
3. Setback requirements in the RR2 district are 60 feet front and 50 ft sides and rear, as measured from the property line to nearest part of structure on the lot. The required setbacks are labeled on the submitted plans for both Lot 1 and 2. Portions of existing buildings located on proposed Lot 1 are within the setbacks and do not conform to the front and side setback requirements. These structures are pre-existing and were constructed prior to the Town's adoption of zoning regulations.
4. Section 15.6 provides further setback requirements for driveways and parking facilities. In the RR2 District parking and driveways are required to be a minimum of 10 ft as measured from the property line. The submitted subdivision plan shows a proposed access from Westview Heights Drive to Lot 2 with a driveway crossing over Lot 1 within a 50' right of way. The proposed driveway meets the setback requirement.
5. Proposed Lot 1 contains a pre-existing, nonconforming lodging establishment known as the Home Farm. The Home Farm consists of a historic dwelling and associated barn building, and five (5) rental cabins, all of which are used for short term guest lodging.
6. Proposed Lot 2 is designed to support the future development of a single-family dwelling. In the RR2 District single-family dwellings are a permitted use and allowed at a density of one unit per two (2) acres.
7. As proposed, Lot 1 will contain ± 4.0 acres and a historic dwelling and associated barn building, and five (5) rental cabins; all of which are considered to be a pre-existing lodging establishment. Lodging is not an allowed use in the RR2 district. As such, the parcel is considered to contain a nonconforming use, as defined under the Regulations and regulated under Section 3.9.
8. The existing ± 6.4 -acre parcel is nonconforming in at least three (3) ways: First, it is nonconforming because it contains a pre-existing lodging use, as defined in the Stowe Zoning Regulations, which is not an allowed use in the RR2 District; second, it contains nonconforming structures that do not meet the required setbacks; lastly, it is nonconforming as to density. Table 6.3 (density standards) of the regulations establishes a one (1) unit per two (2) acres standard for single family, two family and multi-family uses in the RR2 District. Lodging use is not an allowed use in the district and, thus, has a zero (0) units per acre density standard.

9. The Applicant contends the existing parcel as a whole is a lodging establishment and therefore the five (5) rental cabins should be considered lodging units. The Applicant indicated that the five (5) rental cabins have a maximum capacity of four (4) people and meet the definition of lodging unit. In his 12/2/21 letter, the Applicant argued that the density requirement of the five (5) rental cabins and the Farmhouse is a combined three (3) acres (i.e., 1 acre allocated to the five (5) non-conforming cabins, and two (2) acres for the single-family dwelling unit). His letter concludes the proposed subdivision will leave approximately ±4 acres for the pre-existing lodging structures which is one (1) acre greater than the required density standards under the Regulations.
10. A.J. LaRosa for interested persons Abram Rosenfeld and Lisa Bernat argued in his 9/28/2021 letter that the five (5) rental cabins are dwelling units which already exceed district density requirements. He contends that the application proposes to increase the degree of nonconformity overall by reducing the acreage hosting these dwelling units even further.
11. Section 16.84 defines the term 'Lodging Unit' to mean: *"A rentable accommodation whose maximum design capacity is four (4) people. A room with two (2) double beds equals one (1) unit; a suite with two (2) double beds equals one (1) unit; a suite with two (2) twin or single beds plus sofa bed equals one (1) unit; a suite with two (2) double beds plus sofa bed equals one and one-half (1 ½) units. A lodging unit may include provisions for a kitchen, provided that the facility in which the unit is located is designed for and operated as a short-term facility."*
12. Section 16.175 defines the term 'Unit, Dwelling' to mean: *"One or more rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy or rental or lease, and physically separated from any other rooms or dwelling units which may be in the same building, and containing independent cooking and sleeping facilities and bath facilities. Does not include an accessory apartment to a single-family dwelling for the purpose of density calculations."*
13. Section 3.2(1) [Compliance with Regulations] states the following: *"Except as provided elsewhere in these regulations, any building or structure to be erected, moved, altered, extended and any land, building or structure or part thereof, shall be occupied or used only in conformity with the regulations herein including dimensional requirements for the district in which it is to be located."* Section 3.2(2) further states *"No lot shall be diminished, nor shall any yard, or any other open space be reduced, except in conformity with these regulations."*
14. Section 3.9 of the Zoning Regulations addresses nonconforming uses and nonconforming structures. The regulations include a recognition of the allowances of pre-existing land uses that do not conform with the existing regulations. Section 3.9(1) of the Regulations states *"non-conforming uses which legally existed on the effective date of these regulations may be continued indefinitely but shall be subject to the following provisions:*
 - A. *No nonconforming use may be changed, except to a conforming use or, with the approval of the DRB, to another nonconforming use which is found to meet the conditional use requirements of these regulations.*
 - B. *No nonconforming use shall, if once changed into a conforming use, be changed back again into a nonconforming use.*
 - C. *No nonconforming use shall be extended or expanded, except with the approval of the DRB, provided that the following requirements are met:*
 1. *The extension or expansion shall meet the standards for conditional uses specified in these regulations.*

2. *For a non-conforming use that would be permitted in other zoning districts, and would not be permitted in the district in which it is located, the extension or expansion of such a use shall not cause the use as a whole to exceed the most restrictive dimensional requirements specified in any of those other districts.*
3. *For a non-conforming use that would not be permitted in any zoning district, the extension or expansion of such a use shall require a variance under Section 2.12.*
4. *In no case shall the extension, expansion, reconstruction or relocation of a non-conforming use cause the aggregate area occupied by the non-conforming use to exceed fifty percent (50%) of the space devoted to such use at the time of the adoption of this section.*
5. *The expansion of a nonconforming use shall not result in an increase in the number of dwelling units or lodging units.*
6. *No nonconforming use, which has been discontinued for a period of one (1) year, shall be resumed thereafter except with approval of the DRB.*

None of the standards or provisions set forth in Section 3.9(1)(A-C) apply to the application under review. The Applicant is not proposing to change the nonconforming use, nor is the Applicant seeking to extend or expand the nonconforming use.

15. By subdividing the existing ±6.4-acre parcel into two (2) lots; a ±4.0-acre lot containing the pre-existing nonconforming use and related buildings, and a ±2.4-acre lot potentially containing a new single-family dwelling, the size of the existing parcel will be reduced in a way that increases the degree of density noncompliance.

Conclusion: Under the town's adopted Zoning Regulations, nonconforming uses may be continued indefinitely but are subject to the provisions set forth in Section 3.9. Here, the DRB has an application to subdivide a ±6.4-acre parcel containing a pre-existing nonconforming lodging use with a nonconforming density into a reduced ±4-acre lot containing the existing buildings, and a ±2.4-acre lot potentially containing a new single-family dwelling. By subdividing the existing ±6.4-acre parcel the Applicant will reduce, or diminish, the size of the existing parcel in a way that increases the degree of density noncompliance. While changes to nonconforming uses and extensions and expansions to nonconforming uses are allowed subject to review under Section 3.9, none of the listed provisions in Section 3.9 are applicable to the situation presented here since the Applicant is not seeking to expand, extend, or change the nonconforming use. Rather, the Applicant is seeking to reduce the overall lot area that contains the nonconforming use.

Section 3.2(1) of the Regulations states "*Except as provided elsewhere in these regulations, any building or structure to be erected, moved, altered, extended and any land, building or structure or part thereof, shall be occupied or used only in conformity with the regulations herein including dimensional requirements for the district in which it is to be located.*" In addition, Section 3.2(2) further states that no lot may be "*diminished*" (i.e., reduced in lot area), except in conformity with the Regulations. Therefore, any subdivision of the existing ±6.4-acre lot into two (2) lots must at least conform to the minimum density and dimensional requirements of the Zoning Regulations. Here, the existing parcel already violates the density requirements since lodging is not an allowed use in the RR2 district and therefore has no associated density requirement. By reducing the area of the parcel, the existing nonconforming density will be increased regardless of whether the five (5) rental cabins are classified as dwelling units or lodging units. When calculating density, the Applicant relied on §3.9(C)(2), however that standard is not applicable to this application since the nonconforming use is not proposed to be extended or expanded. Therefore, based on the above findings, it is hereby the majority of the DRB's conclusion that the proposed subdivision will diminish the existing parcel in a way that is not consistent with the Regulations and will increase the

degree of nonconforming density thereby further violating the Zoning Regulations. Given the DRB's conclusion and the fundamental need for sufficient density, the DRB did not conduct a full review of the other applicable sections of the Regulations.

DECISION

The Development Review Board hereby denies the Applicant's request for a 2-lot subdivision as outlined in the application dated 6/08/2021 [Project 6596].

1. The Applicant failed to demonstrate conformance with density requirements and Section 3.2(2).
2. The Applicant failed to obtain four affirmative votes.

Voting to deny: D.Clymer, P.Roberts, L. Wasserman

Voting to approve: T.Hand

Recused: D.Kelly

Dated at Stowe, Vermont this the 6 day of January 2022

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.