



**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. Please note that there are conditions of approval required to be met before your Zoning Permit can be issued. Once you fulfill these conditions your zoning permit will be sent to you

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

**APPLICATION INFORMATION**

Project Number 6756  
Application Date 12/6/2021  
Physical Location 116 LIFTLINE DRIVE  
Map ID 14-011.000 Tax ID 25080  
Project Description MODIFY CONDITIONS OF PROJECT 5930  
Owner SPRUCE PEAK REALTY LLC  
Applicant SAM GAINES  
Applicant Address STOWE VT 05672

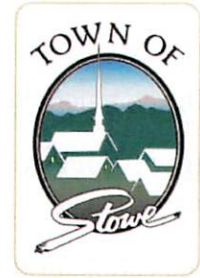
**APPROVALS ON RECORD**

Action Taken	Date	End of Appeal Period	Expiration Date
DRB DECISION	1/18/2022	2/17/2022	2/17/2024
ZONING	2/2/2022	2/17/2022	2/17/2027

*Sarah McShane*

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Zoning Office

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



**PROJECT:** 6756

**SUBJECT PROPERTY:** 116 Liftline Drive; #14-011.000 (Lots 23 & 24)

**PROPERTY OWNER:**  
Spruce Peak Realty LLC  
7320 Mountain Road  
Stowe, VT 05672

**APPLICANT:**  
Sam Gaines, Spruce Peak  
Realty LLC  
7320 Mountain Road  
Stowe, VT 05672

**APPLICATION:**

The property owner, Spruce Peak Realty LLC., (herein referred to as the “Applicant”), requests to amend a prior condition of approval involving a previously approved project #5930, commonly referred to as One Spruce Peak. One Spruce Peak is a multi-family dwelling consisting of twenty-seven (27) dwelling units which was approved with conditions by the Development Review Board (DRB) in a written decision dated January 29, 2019. The Applicant requests to amend Condition #5 of the DRB’s written decision which required the following:

5. *The final project design and plans shall incorporate the following elements:*

- *Three standpipes shall be located within the parking garage. The standpipes shall be located in an open area and not in the staircase.*
- *The mechanical room shall be located to the right of the garage door and contain an exterior door. The mechanical room shall provide servicing for the entire building.*
- *The mechanical room shall contain exhaust fan controls for the Fire Department to control use.*
- *The exterior balconies shall contain dry sprinkler heads on the exterior.*
- *The east side of the building shall include stabilized fire truck access. A signed fire lane shall be located on slope side of the building.*
- *Interior standpipes shall be located on main landing of each floor within all three stairwells*
- *The parking garage shall contain a dry sprinkler system.*

The Stowe Fire Chief and Applicant provided a written narrative outlining the requested amendments.

The subject parcels, Lots 23 & 24, are part of a designated SKI-PUD approved by the Stowe Planning Commission on May 5, 2003 under S-03-05 recorded in Map Book 14 pages 2-17. The roadways, utilities, infrastructure, and related items were later approved by the Planning Commission as part of the SKI-PUD amendment (S-03-05). Most recently, the SKI-PUD was amended under Project 5757 to include an additional 2.87 acres for a total of ±3188 acres. The application has been reviewed by the DRB under applicable standards of the Town of Stowe Zoning Regulations (as adopted October 9, 2018) as well as prior DRB decisions<sup>1</sup> and applicable conditions of approval including the following:

- Project BA-14-002-25 (i.e. SMR 2000 Spruce Peak Master Plan); dated 3/10/2004
- Project 3328; DRB Decision dated 3/29/2007
- Project 3680; Amendments to Project 3328 [Zoning Permit dated 2/7/2008]
- Project 4707 (i.e. approval to extend Phase I construction to 3/10/2024); DRB Decision dated 12/26/2012.

<sup>1</sup> The above list contains the identified applicable prior approvals; there may be additional prior approvals not identified above.

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 the requested condition modifications was filed by Sam Gaines of Spruce Peak Realty Inc., on December 6, 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 January 4, 2022 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 December 16, 2021.

The public hearing to consider the application convened on January 4, 2022 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 participating included: D.Clymer, F. Aumand III, T. Hand, P.Roberts, L. Wasserman, C.Walton, and M.Black.

The following persons attended and participated in the hearing process:

- Sam Gaines, Spruce Peak Realty LLC, 7320 Mountain Road, 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, received 12/6/2021;
2. Project narrative from Sam Gaines, no date;
3. Letter from Kyle Walker/Stowe Fire Department, dated 11/23/2021;
4. DRB written decision for Project 5930 dated 1/29/2019.

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 DRB made the following Findings of Fact and Conclusions of Law:*

On January 29, 2019, the DRB issued a written decision approving with conditions project 5930. The application proposed a revised design of One Spruce Peak-a residential addition to the existing Spruce Camp Base Lodge. The building was proposed to be ±111,718 sf and contain twenty-seven (27) residential dwelling units along with related improvements (i.e. landscaping, outdoor swimming area, and a mix of indoor and outdoor parking.) At the request of the former Stowe Fire Chief Mark Sgantus, Condition #5 of the DRB's decision included the following specific building code/fire suppression conditions:

*"The final project design and plans shall incorporate the following elements:*

- a) Three standpipes shall be located within the parking garage. The standpipes shall be located in an open area and not in the staircase.*
- b) The mechanical room shall be located to the right of the garage door and contain an exterior door. The mechanical room shall provide servicing for the entire building.*
- c) The mechanical room shall contain exhaust fan controls for the Fire Department to control use.*
- d) The exterior balconies shall contain dry sprinkler heads on the exterior.*

- e) *The east side of the building shall include stabilized fire truck access. A signed fire lane shall be located on slope side of the building.*
- f) *Interior standpipes shall be located on main landing of each floor within all three stairwells*
- g) *The parking garage shall contain a dry sprinkler system."*

Stowe Fire Chief Kyle Walker provided a written letter dated 11/23/2021 summarizing the status of each of the required elements. Chief Walker noted that some of the elements had been completed, some were outstanding, and some should be amended. Chief Walker suggested that the first noted element should be amended to require the three (3) standpipes be located in each elevator lobby, a protected space, rather than in an unprotected open area. Chief Walker also recommended that the Stowe Fire Department no longer requires the following condition "*The east side of the building shall include stabilized fire truck access. A signed fire lane shall be located on slope side of the building*" since the property owner has designed a year-round pedestrian access that contains snow melt for winter access. Chief Walker's letter noted that the Stowe Fire Department does require that this pedestrian access remain clear and accessible at all times in order to provide fire department access to the stairwells and fire hydrant.

Section 2.16 requires that the DRB evaluate any application that proposes an amendment of a final approval and assess the competing policies of flexibility and finality in the permitting process. As stated under the regulations, an amendment is considered a request to modify the project plans, exhibits, and /or representations by the Applicant that lead to the decision, and which have been incorporated into the approval through a specific or general condition. For the purpose of Section 2.16, conditions include all stated conditions in a decision and elements of a recorded plat or plan.

Section 2.16(1) states: "*In order to determine if it is appropriate under the circumstances to allow an amendment of a permit or approval, the DRB shall evaluate any application that proposes an amendment of a final approval and assess the competing policies of flexibility and finality in the permitting process. An amendment is considered a request to modify the project plans, exhibits, and /or representations by the applicant that lead to the decision and which have been incorporated into the approval through a specific or general condition. For the purpose of this section, conditions include all stated conditions in a decision and elements of a recorded plat or plan.*" As required under Section 2.16 of the town's adopted Zoning Regulations, three (3) kinds of changes justify altering a condition of a permit or approval:

*A. Changes in factual or regulatory circumstances beyond the control of a permittee; or*

*B. Changes in the construction or operation of the permittee's project, not reasonably foreseeable at the time the permit was issued; or*

*C. Changes in technology*

**Conclusion:** Section 2.16 requires the DRB to evaluate any application that proposes an amendment of a final approval and assess the competing policies of flexibility and finality. The question before the DRB is whether the modifications to the conditions sought by the Applicant trigger review under Section 2.16 and a Stowe Club analysis. In determining whether a Stowe Club analysis is required, the DRB considered whether the Applicant is seeking to amend a condition that was included to resolve a critical issue. If the answer is yes, the DRB reviews the proposed amendments under Section 2.16 and applies the Stowe Club analysis. If the answer is no, the DRB reviews the application on its merits.

When reviewing the application for One Spruce Peak (#5930), the DRB received written comments from former Fire Chief Mark Sgantus with recommended fire suppression related improvements for the DRB to consider when reviewing the conditional use criteria, most notably under the '*capacity of existing or*

*planned community facilities and services.*' The DRB concluded in its written decision that the project, if constructed and maintained as conditioned, would not result in an undue adverse effect on the Town's existing or planned facilities or services.

In this case, the hearing record provides no indication that the imposed conditions were included to resolve a critical issue in granting approval. Thus, based on the record before the DRB, the DRB concludes the Applicant is not seeking to amend a condition that was included to resolve a critical issue and therefore the amendments sought do not trigger review under Section 2.16 or a Stowe Club analysis and should be considered on the merits.

Given the original condition was not included to resolve a critical issue, the DRB concludes an amendment is appropriate and agrees to strike and amend the prior condition of project 5930 to read as follows:

*"The final project design and plans shall incorporate the following elements:*

- h) Three standpipes shall be located within the parking garage. ~~The standpipes shall be located in an open area and not in the staircase.~~ The standpipes shall be located within each elevator lobby, a protected fire rated space.*
- i) The mechanical room shall be located to the right of the garage door and contain an exterior door. The mechanical room shall provide servicing for the entire building.*
- j) The mechanical room shall contain exhaust fan controls for the Fire Department to control use.*
- k) The exterior balconies shall contain dry sprinkler heads on the exterior.*
- l) ~~The east side of the building shall include stabilized fire truck access. A signed fire lane shall be located on slope side of the building.~~ The year-round pedestrian access shall contain snowmelt for winter access and remain clear and accessible at all times to allow for fire department access to the stairwells and fire hydrant.*
- m) Interior standpipes shall be located on main landing of each floor within all three stairwells*
- n) The parking garage shall contain a dry sprinkler system."*

## **DECISION**

On a motion by F.Aumand III, seconded by M.Black, the DRB hereby approves the Applicant's request as outlined in the application dated 12/3/2021 and supplemental materials, subject to the following amended 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. Condition #5 of the DRB's written decision approving project 5930 shall be amended as follows:

*The final project design and plans shall incorporate the following elements:*

- a) Three standpipes shall be located within the parking garage. The standpipes shall be located within each elevator lobby, a protected fire rated space.*

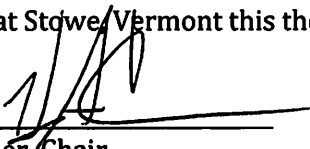
- b) *The mechanical room shall be located to the right of the garage door and contain an exterior door. The mechanical room shall provide servicing for the entire building.*
- c) *The mechanical room shall contain exhaust fan controls for the Fire Department to control use.*
- d) *The exterior balconies shall contain dry sprinkler heads on the exterior.*
- e) *The year-round pedestrian access shall contain snowmelt for winter access and remain clear and accessible at all times to allow for fire department access to the stairwells and fire hydrant.*
- f) *Interior standpipes shall be located on main landing of each floor within all three stairwells*
- g) *The parking garage shall contain a dry sprinkler system.*

3. 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, P.Roberts, L. Wasserman, C.Walton, and M.Black.  
 Voting to deny: None  
 Recused: T. Hand

The motion PASSED, 6-0-1

Dated at Stowe, Vermont this the 15 day of January 2022

By:   
 D.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.