



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 6902
Application Date 5/26/2022
Physical Location 126 FRANCIS LN
Map ID 11-250.B06 Tax ID 27064-B06
Project Description MODIFY CLEARING LIMITS
Owner NEAL GORMAN CARLA G DURAN GORMAN
Applicant TEKTONIKA STUDIO ARCHITECTS ERNIE RUSKEY
Applicant Address PO BOX 1191
STOWE VT 05672

APPROVALS ON RECORD

Action Taken	Date	End of Appeal Period	Expiration Date
DRB DECISION	7/19/2022	8/18/2022	8/18/2024

Sarah McShane

Zoning Office

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



PROJECT: 6902

SUBJECT PROPERTIES: 126 Francis Lane (#11-250.B06)

PROPERTY OWNER(S):

Neal & Carla Gorman
2018 Morris Road
Charlottesville, VA 22903

APPLICANT:

Ernie Ruskey
Tektonika Studio Architects
PO Box 1191
Stowe, VT 05672

APPLICATION:

The Applicant, Ernie Ruskey of Tektonika Studio Architects, on behalf of property owner Neal & Carla Gorman (herein referred to as the "Applicant"), requests approval to modify previously approved clearing limits/landscaping plan. The Applicant generally proposes to reduce the amount of clearing surrounding the dwelling resulting in additional screening from Sinclair Drive. No additional modifications are proposed to the previously approved plans. The subject parcel, Lot 1-7, was created in 2013 as part of an eleven (11) lot residential subdivision and is subject to the terms and conditions of Project 4793.

Under the provisions of the Town of Stowe Zoning Regulations (as adopted October 9, 2018 & May 23, 2022- 24 V.S.A. § 4449(d)), the application was reviewed under Section 2.16 (Flexibility and Finality in the Permitting Process). The application also requires review as amendment to a previously approved subdivision under the Town of Stowe Subdivision Regulations (effective July 16, 2012). 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.*)

A development application was filed by Applicant Ernie Ruskey on May 25, 2022. 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 June 21, 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 June 2, 2022. The Applicant provided a certificate of service in accordance with the regulations.

The public hearing to consider the application convened June 21, 2022 with a quorum of the DRB present. The public hearing was held at the Stowe Town Office with remote participation available via Zoom. No *ex parte* communications or conflicts of interests were reported. Members who participated in the review included: D. Clymer, T. Hand, P.Roberts, C.Walton, L. Wasserman, D.Kelly, and M. Black.

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

- Ernie Ruskey, Tektonika Studio Architects, PO Box 1191, Stowe, VT 05672
- Leighton Detora, 1174 Sinclair Drive, 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, dated 5/24/2022;
2. (Proposed) Site Plan, Sheet L1.1, prepared by Tektonika Studio Architects, dated 5/24/2022;
3. (Proposed) Site Plan, Sheet L1.0, prepared by Tektonika Studio Architects, dated 5/17/2022;

4. (Previously approved) Parcel 1- Planting Plan, Sheet C2-03, prepared by Trudell Consulting Engineers, dated 9/16/2010;
5. DRB Decision Project 4793, dated 7/23/2013.

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.

The Applicant's request for amended clearing limits was reviewed by the DRB for conformance with applicable requirements including the following:

Town of Stowe Zoning Regulations (as adopted October 9, 2018 & May 23, 2022- 24 V.S.A. § 4449(d))

- Section 2- Administration and Enforcement
- Section 5- Zoning Districts
- Section 6- Uses, Dimensional Requirements and Density

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

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

FINDINGS OF FACT & CONCLUSIONS OF LAW- During its review of the application, the Board made the following Findings of Fact:

Section 2.16 FLEXIBILITY AND FINALITY IN THE PERMITTING PROCESS (STOWE CLUB TEST):

1. The Applicant requests approval to modify previously approved clearing limits/landscaping plan. The project will reduce the amount of clearing surrounding the dwelling resulting in additional screening from Sinclair Drive. There are no other changes proposed to the approved plans. The subject parcel was created in 2013 and is subject to the terms and conditions of Project 4793.
2. 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.
3. As required under Section 2.16 of the town's adopted Zoning Regulations, three 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.*
4. Section 2.16 requires the DRB to make a determination and evaluate any application that proposes an amendment of a final approval in order to assess the competing policies of flexibility and finality. The critical question before the DRB is whether the changes to the plan sought by the Applicant trigger review

under Section 2.16 and a Stowe Club analysis. In determining whether a Stowe Club analysis is needed, the DRB considered whether the Applicant is seeking to amend a condition that was included to resolve a critical issue.

5. The involved lands under review are subject to the conditions of the DRB's written for Project 4793 and have a lengthy procedural history. The DRB decision for Project 4793 imposed certain conditions, one of which required that "[a]ny change to the plans, or 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." In this case, the general condition imposed under Project 4793 simply requires that any changes to the plans be brought to the Zoning Administrator's attention, prior to its enactment, for a determination if an amendment is required; the condition does not prohibit future changes or amendments.
6. During the hearing the Applicant testified that the clearing surrounding the house will be less than what was previously approved, and the prior clearing limit was not mandatory rather permissive.

Conclusion: In this case, there is no indication that the imposed condition was included to resolve a critical issue in granting final subdivision approval. While some project details may have changed from the originally approved 'Parcel 1- Planting Plan, Sheet C2-03, prepared by Trudell Consulting Engineers, dated 9/16/2010', the proposal is not a dramatic departure from the original approval and will provide additional screening. 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 therefore the amendments sought do not trigger review under Section 2.16 or a Stowe Club analysis and should be considered on the merits. The Board also agreed that even if the Stowe Club Analysis were necessary, the Applicant could satisfy the criteria since the changes sought were not reasonably foreseeable at the time of original subdivision approval and are not a dramatic departure from the original approval.

SUBDIVISION REGULATIONS

SECTION 5.1 – GENERAL PLANNING STANDARDS:

2. Section 5.1(6) – Screening and Landscaping:

- a) The Applicant seeks to modify previously approved clearing limits/landscaping plan approved under Project 4793.
- b) The DRB decision for Project 4973 provides the following findings and conclusions:

15. **Section 5.1(6) – Screening and Landscaping:** A planting plan with street trees is proposed. This area of the Stowe Club Highlands is a high-density development with limited screening between lots. The proposed landscaping is similar to that installed in other parts of the development. A phasing plan has been submitted as part of the final plan package.

Conclusion: The landscaping as proposed is acceptable.

- c) The Applicant proposes to reduce the amount of clearing surrounding the dwelling resulting in additional screening from Sinclair Drive. No other changes are proposed to the approved plans.

Conclusion: Based on the above findings, the DRB concludes the proposed modifications to previously approved clearing areas are in conformance with Section 5.1(6) and will provide additional screening from Sinclair Drive.

DECISION

On a motion by Chris Walton, seconded by Mary Black, the Development Review Board hereby approves the Applicant's request for modified clearing limits as described in the application dated 5/25/2022 and associated supporting materials subject the following conditions of approval:

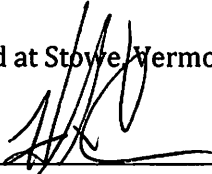
1. The project shall be completed and maintained according to the project plans hereby approved. Any change to the plans or the proposed use of the property shall be brought to the Zoning Administrator's attention, prior to such change being made, for a determination whether an amendment is required. 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. The approved plans include the following:
 - a. Site Plan, Sheet L1.1, prepared by Tektonika Studio Architects, dated 5/24/2022
 - b. Site Plan, Sheet L1.0, prepared by Tektonika Studio Architects, dated 5/17/2022
3. All conditions of prior approvals, except as amended herein, remain in full force and effect.
4. Clearing shall be restricted to the areas shown on the approved plans. Trees within the clearing limit areas shall be left intact except as necessary to remove dead or diseased trees.
5. These conditions of approval shall run with the land and are binding upon and enforceable against the Applicant 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 purposes of ascertaining compliance with the conditions of approval.

Voting in favor: D. Clymer, T. Hand, P.Roberts, C.Walton, L. Wasserman, D.Kelly, and M. Black.

Voting to deny: None

Motion PASSED 7-0

Dated at Stowe, Vermont this the 19 day of July 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.