



**Notice of DRB Decision**  
**Town of Stowe Planning and Zoning Department**  
**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 Department at 253-6141 if you have any questions.

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**APPLICATION INFORMATION**

Project Number            7257  
Application Date         7/24/2023  
Physical Location        0 LOWER SANBORN RD  
Map ID                    11-122.000                    Tax ID                    25061  
Project Description      AMEND THE CLEARING LIMITS APPROVED UNDER PROJECT #6798.  
Owner                    CHRIS KERR MEREDITH J HUNTER  
Applicant                CHRIS KERR  
Applicant Address       PO BOX 30  
                                  HINGHAM MA 02043

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**APPROVALS ON RECORD**

Action Taken	Date	End of Appeal Period	Expiration Date	
DRB DECISION	11/21/2023	12/21/2023	12/21/2025	APPROVED

*Sarah McShane*

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Dept. of Planning Zoning

**TOWN OF STOWE**  
**DEVELOPMENT REVIEW BOARD**

Findings of Fact & Conclusions of Law



**PROJECT# 7257**

**SUBJECT PROPERTY** 0 Lower Sanborn Road, Stowe, VT (#11-122.000)

**PROPERTY OWNER**

Chris & Meredith Kerr  
PO Box 30  
Hingham, MA 02043

**APPLICANT**

Chris Kerr  
PO Box 30  
Hingham, MA 02043

**APPLICATION**

The Applicant / Property Owner, Chris Kerr (herein referred to as the "Applicant"), requests approval to amend the clearing limits on Lots 9A & 9B as previously approved on the Chris Kerr & Meredith J. Hunter subdivision. The subject parcels, consisting of ±5.76 acres (Lot 9A) and ±2.49 acres (Lot 9B) are located in the Upper Mountain Road (UMR) Zoning District. A small portion in the southeast corner of Lot 9B crosses into the Rural Residential 2 (RR2) Zoning District. The parcels are accessed via thirty (30') foot right-of-way through an adjacent property (149 Hartson Road). An approved lot line adjustment (Project #7204 - Minimal Alteration) was recently recorded in the Town of Stowe on (list recording date). The approved boundary line adjustment resulted in Lot 9A becoming ±5.29 acres and Lot 9B becoming ±2.96 acres in size. The application has been reviewed by the Development Review Board (DRB) under applicable standards of the Town of Stowe Subdivision Regulations (effective July 16, 2012) and the Town of Stowe Zoning Regulations (effective June 13, 2022) for the purpose of a subdivision amendment review. The DRB'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 amendment review was filed by Applicant Chris Kerr on July 24, 2023. 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 October 17, 2023 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 September 28, 2023.

The public hearing to consider the application convened on October 17, 2023 at the Akeley Memorial Building, 67 Main Street, with remote participation available through Zoom. A quorum of the DRB was present. No *ex parte* communications or conflicts of interests were reported. Members who participated in the review included: Drew Clymer, Tom Hand, David Kelly, Mary Black, Peter Roberts, Patricia Gabel, and Will Ardolino. The DRB unanimously voted to continue the hearing to the time and date certain of November 7, 2023 so the Applicant could provide additional information and supplement the hearing record. Members that participated in the November 7, 2023 review included: Drew Clymer, Tom Hand, Mary Black, David Kelly, Peter Roberts, Patricia Gabel, and Michael Diender. 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.

**INTERESTED PERSONS**

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

1. Chris & Meredith Kerr, PO Box 30, Hingham, MA 02043

### THE RECORD

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

1. Town of Stowe Development Application, dated 07/24/2023;
2. Original Subdivision 'Chris Kerr & Meredith J. Hunter, Sheet S1-02, prepared by Trudell Consulting Engineers, recorded 09/01/2022;
3. Boundary Line Adjustment 'Chris Kerr & Meredith J. Hunter, Sheet S1-03, prepared by Trudell Consulting Engineers, recorded 09/29/23;
4. Overall Site Plan (amended clearing limits), Sheet C2-01, prepared by Trudell Consulting Engineers, dated 01/26/2023 (last revision);
5. Email Correspondence between Shannon Morrison & Andrea Dotolo, dates 1/5/2023 & 1/12/2023;
6. Wetland Delineation Map, Prepared by Trudell Consulting Engineers, dated 8/27/2021
7. Sanitary Plan/Clearing Limits/Overlay Plan, Sheet C3-01, prepared by Trudell Consulting Engineers, last revised 8/3/2023.

### FINDINGS OF FACT & CONCLUSIONS OF LAW

*During its review of the application, the DRB made the following Findings of Fact and Conclusions of Law*

The Applicant's request to amend previously approved clearing limits was reviewed by the DRB for conformance with the applicable requirements, including the following:

Town of Stowe Zoning Regulations (effective June 13, 2022)

- 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

### ***Dimensional Requirements***

1. **Zoning District.** The subject parcels are within the Upper Mountain Road (UMR) Zoning District as shown on the Official Town of Stowe Zoning Map (as adopted June 13, 2022). A small area in the southeast corner of Lot 9B crosses into the Rural Residential 2 (RR2) Zoning District. No changes within this RR2 zoned section are proposed.
2. **Lot Area, Lot Width.** No changes to lot width or lot area are proposed under this application.
3. **Setbacks.** Required minimum district setbacks for the UMR district are front (50'), side (50') and rear (50'). The provided site plan shows the location of the setbacks and proposed clearing. While no buildings are proposed under this application, a conceptual house footprint and driveway are included on the plan.
4. **Maximum Building Coverage.** The UMR zoning district sets a maximum building coverage allowance of 8%. Future development on each lot will be subject to this limitation.

5. **Use.** The Applicant proposes clearing. No uses are proposed under this application.
6. **Density.** Does not apply.
7. **Height.** Does not apply.

**Conclusion:** Based upon the above findings, the DRB concludes the proposal meets applicable dimensional requirements for the RR5 district.

**Section 2.16 Flexibility and Finality in the Permitting Process (Stowe Club Test):** The DRB must apply the provisions of Section 2.16 to determine if requested amendment meets the Stowe Club Test and is eligible for review.

8. The previously approved subdivision (Project 6798) was approved by the DRB on April 15, 2022 and reached finality on November 11, 2022. The approved plat was recorded on September 1, 2022.
9. Condition #9 of the DRB approval required the following:

*Clearing shall be restricted to the areas shown on the approved plans (proposed tree line/clearing limits). Lands outside of the approved clearing limits shall be left undisturbed except as necessary to remove dead or diseased trees, to promote the health of the forest, and to establish or maintain recreational paths or trails.*
10. The Applicant is requesting an amendment of a final approval. The previously approved clearing limits were shown on the final approved plan and included as a specific condition in the DRB's decision. The requirements of Section 2.16 therefore apply to the application under review.
11. The Applicant requested review under the following provision [§2.16(2)(A)]: *Changes in factual or regulatory circumstances beyond the control of a permittee; or*
12. The Applicant testified that one of the wetlands was incorrectly classified at the time of original subdivision review (as shown on the approved subdivision plan) which resulted in a more limited clearing limit.
13. The ±0.03 acre wetland shown on the Wetland Delineation Map was originally classified as a regulated Class II wetland.
14. Email correspondence between Shannon Morrison, Vermont ANR District Wetlands Ecologist and Andrea Dotolo confirmed that this wetland is actually a Class III wetland. Class III wetlands are not regulated by the State of Vermont, whereas Class II wetlands are.
15. The Applicant testified that had they been aware of this during the original subdivision review, the clearing limits would not have excluded this small Class III wetland.
16. The Applicant did not apply for review under the additional provisions §2.16(2)(B) & (C)].

**Conclusion:** Based upon the above findings, the DRB concludes that a factual circumstance beyond the control of the permittee justifies altering the clearing limits as proposed. On the original subdivision there were two (2) Class II wetlands that were later determined to be Class III wetlands. Since impacts to Class

III wetlands are not regulated, the DRB concludes that the requested amendments meet the Stowe Club Test requirements and therefore the DRB may review the application on its merits .

**SUBDIVISION REGULATIONS -SECTION 3.1 GENERAL SUBDIVISION APPLICATION PROCEDURES:**

17. Since more than 10% of the clearing limits are proposed to be modified, the application is not considered a minimal alteration, and thus requires DRB review and approval.

**Conclusion:** Based upon the above findings, the DRB concludes that the project exceeds the ten (10%) percent allowance to be considered a minimal alteration and therefore requires DRB approval.

**SUBDIVISION REGULATIONS -SECTION 5.1 - GENERAL PLANNING STANDARDS:**

The DRB finds the following standards are not applicable to the review since no changes are proposed that will impact the previously approved plans or below criteria:

- Section 5.1(1) – Character of Land for Subdivision
- Section 5.1(4) – Historic Resources and Community Character
- Section 5.1(5) – Reserved Strips
- Section 5.1(7) – Pedestrian Access
- Section 5.1(8) – Traffic
- Section 5.1(9) – Municipal Facilities
- Section 5.1(10) – Lot Configuration
- Section 5.1(12) – Fire Protection Facilities
- Section 5.2 – Prominent Hillside and Ridgelines

**18. Section 5.3 – Open Space and Cluster Development: Section 5.1(2) – Natural and Scenic Features:**

- A. The subject lots were created as part of the Chris Kerr & Meredith J. Hunter Subdivision, approved on 4/15/22. The Applicant now seeks to amend the clearing limits approved under the subdivision. As noted above, a lot line adjustment was recently approved that shifted the boundary between Lots 9A & 9B slightly, to accommodate future building footprints.
- B. On Lot 9A there is a mapped stream along the west property line and identified wetlands in the northern half of the property. The proposed clearing limits avoid these natural features and their respective buffers.
- C. No other natural features are documented on the property.

**Conclusion:** Based upon the above findings, the Board concludes the proposal conforms to Section 5.1(2) – Natural and Scenic Features.

**19. Section 5.1(3) – Protection of Significant Wildlife Habitat and Natural Communities:**

- A. According to the ANR Natural Resources Atlas, a lower priority habitat block exists across the lots. No rare, threatened or endangered species, deer wintering areas, or significant natural communities were identified on the parcels.

- B. As part of the 2022 subdivision, clearing limits were established for future residential development. The Applicant requests to amend those clearing limits to serve the same future residential purpose.

**Conclusion:** Based on the above finding, the Board concludes the proposal, as conditioned, will not impact any identified significant Wildlife Habitat and Natural Communities.

**20. Section 5.1(6) – Screening and Landscaping:**

- A. The amended clearing limits still maintain a forested swath between the subject properties and neighboring properties.

**Conclusion:** Based upon the above findings, the Board concludes the proposal conforms to applicable requirements of Section 5.1(6) – Screening and Landscaping.

**21. Section 5.1(11) – Building Zone:**

- A. The Applicant provided site plan shows building envelopes and future building footprints for each lot.

**Conclusion:** Based on the above finding, the Board concludes the proposed subdivision provides adequate building sites for the proposed subdivision.

**22. Section 5.1(13) – Disclosure of Subsequent Development Plans: .**

- A. The Applicant has already submitted zoning permit applications to develop single-family dwellings on each lot which are on hold pending this clearing-limits amendment. Building footprints and related improvements are shown on Sheet C2-01.
- B. The amended clearing limits shown on Sheet C2-01 are consistent with residential development.

**Conclusion:** Based on the above findings, the Board concludes the proposal conforms to Section 5.1(13).

**DECISION**

On a motion by Tom Hand, seconded by Mary Black, the DRB hereby approves the Applicant’s request to amend the previously approved clearing limits of the Chris Kerr & Meredith J. Hunter subdivision as outlined in the application dated July 24, 2023 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. The approved plans, amended herein, include:

1. Town of Stowe Development Application, dated 07/24/2023;

2. Original Subdivision 'Chris Kerr & Meredith J. Hunter, Sheet S1-02, prepared by Trudell Consulting Engineers, recorded 09/01/2022;
3. Boundary Line Adjustment 'Chris Kerr & Meredith J. Hunter, Sheet S1-03, prepared by Trudell Consulting Engineers, recorded 09/29/23;
4. Overall Site Plan (amended clearing limits), Sheet C2-01, prepared by Trudell Consulting Engineers, dated 01/26/2023 (last revision);
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7. Sanitary Plan/Clearing Limits/Overlay Plan, Sheet C3-01, prepared by Trudell Consulting Engineers, last revised 8/3/2023.

2. All conditions of prior approvals, except as amended herein, remain in full force and effect.
3. The 'Overall Site Plan (amended clearing limits), Sheet C2-01, prepared by Trudell Consulting Engineers, dated 01/26/2023', 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.
4. The Applicant shall file the Mylar plat, signed by the Chair or other authorized representative of the DRB, with the Stowe Town Clerk in accordance with the requirements of 27 V.S.A. Chapter 17 and 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.
5. The final survey plat as recorded shall carry 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".*

6. Clearing shall be restricted to the areas shown on the approved site plan entitled 'Overall Site Plan' prepared by Trudell Consulting Engineers, Sheet C2-01, dated 01/26/2023 (last revision). Lands outside of the approved clearing areas shall be left undisturbed except as necessary to remove dead or diseased trees and to promote the health of the forest. Any additional clearing shall require review and approval by the Development Review Board.
7. Prior to commencing land development on Lots 9A & 9B, the Class II wetlands and associated buffers shall be flagged or otherwise marked on the ground. These areas must be left undisturbed except for projects receiving an approved State of VT Wetlands Permit.
8. Any future development, including but not limited to installation of a driveway, dwelling, and related accessory structures, shall be reviewed under the regulations in effect at the time of application.
9. Site construction shall adhere to the standards outlined in Section 3.12(2)(A-E) including:
  - a) The amount of soil exposed at any one time must be kept to a minimum.
  - b) Areas of exposed soil that are not being actively worked, including soil that has been stockpiled, must be stabilized.
  - c) Stormwater shall be controlled during construction to minimize soil erosion and transport of sediment to surface waters.
  - d) 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.
  - e) Existing drainage patterns must not be altered in a manner to cause an undue adverse impact on neighboring properties, town highways or surface waters.
10. 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 and his successors agree to

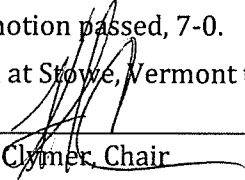
allow authorized representatives of the Town of Stowe to access the property subject to this approval, at reasonable times, for purpose of ascertaining compliance with the conditions of approval.

Voting in favor: Drew Clymer, Tom Hand, David Kelly, Mary Black, Peter Roberts, Patricia Gabel, and Michael Diender

Voting to deny: None

The motion passed, 7-0.

Dated at Stowe, Vermont this the 21 day of November 2023

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 request for reconsideration that specifies the basis for the request with the Secretary of the Development Review 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 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.