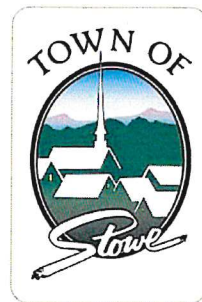


**TOWN OF STOWE  
DEVELOPMENT REVIEW BOARD**

PO Box 730, Stowe, VT 05676



January 3, 2023

Castine Mountain Road LLC  
26 Union Street  
Waterbury, VT 05676

Dear Property Owner:

The Development Review Board (DRB) has received two remanded decisions involving your property located at 4527 Mountain Road in Stowe, Vermont. The DRB is prepared to re-open warned public hearings on the matters as soon as you have submitted the additional information requested and discussed below.

**#5999 [Case No. 22-AP-028 & NO. 21-ENV-00013]- Construct an attached dwelling unit**

Please submit the following information:

- A revised landscaping plan(s) consistent with Section 4.6(3)(D) or a narrative explaining why the DRB should waive this requirement and the DRB's authority to do so.
- Any supplemental information you would like the DRB to consider regarding the time schedule for completion of buildings, parking spaces, and landscaping.

**#5768 & 6521 [21-ENV-00098] – Construct a Duplex**

Please submit the following information:

- Additional evidence regarding the effectiveness of the proposed stormwater improvements to demonstrate conformance with Section 3.12(2)(e).
- A revised landscaping plan(s) consistent with Section 4.6(3)(D).
- A revised site plan that no longer depicts the duplex connecting to town sewer system.

Once the DRB receives the requested information, the DRB will schedule and warn two separate public hearings to receive additional testimony and evidence on the matters and provide the parties an opportunity to be heard. Should you have any questions, please direct them to Sarah McShane, Planning & Zoning Director, at 802-253-2705 or by email at [smcshane@stowevt.gov](mailto:smcshane@stowevt.gov).

Sincerely,

  
Drew Clymer, Chair  
Stowe Development Review Board

CC: Interested Parties

## Sarah McShane

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**From:** Nick Lizotte <nick@vermontrealty.com>  
**Sent:** Wednesday, June 21, 2023 10:43 AM  
**To:** Sarah McShane  
**Cc:** gunner@mccainconsulting.com; Ryan Morrison  
**Subject:** Re: [EXTERNAL] Re: Castine remand

Sarah -

That is correct. Based on the Supreme Court Entry Order regarding the remand, the court is asking for legal conclusions based on the findings of facts. The 3 items the neighbor contested in the case were:

1) The lower court tried to infer (drawing on other sections of the decision) and therefore make a reasonable conclusion that the DRB did waive the landscaping requirement. The Supreme Court rejected this. The Supreme Court said a well-written legal conclusion restating the finding of facts that justify the DRB waiving the requirement is what the court asked for. The court can't infer that the DRB waived the landscape requirement. The Court needs to uphold the legal conclusion whereby the DRB state in the finding of facts and conclusions of law it has waived the requirement and why.

2) The court found in favor of the permit on the stormwater runoff. We don't need to address that as the issue is done. The neighbor only contested the conclusion as written, not the merits. Regardless, the Court upheld is part of the DRB decision as written.

3) The final issue of the phasing of the project can't be left as a condition to be worked out later. Mike only challenged the DRB decision as written that it can't be left to a later date. The DRB can use my testimony and write up that in the finding of facts to make a conclusion regarding the phasing. The court wants the decision to state the actual phasing in the decision. The DRB can't leave it up to me to work it out with the Zoning Office later - it can't be left as a condition precedent. The phasing needs to be stated in the decision.

Lastly, if you would, please send the DRB members a copy of the Supreme Court's Entry Order on the remand where they discuss and limit the open issues. The court limited it to 2 open issues that need a written legal conclusion based on the finding of facts.

Thank you,

Nick

On Wed, Jun 21, 2023 at 8:44 AM Sarah McShane <[smcshane@stowevt.gov](mailto:smcshane@stowevt.gov)> wrote:

Hi Gunner & Nick,

Thanks for your messages and written letters. I provided copies to the DRB but given the late receipt we did not have sufficient time to review so the DRB took no action on last night's agenda item. I will confer with the Town Attorney and follow-up with you. To ensure I am properly understanding your request, you're requesting the DRB consider your letters and the previously submitted hearing records and re-issue two amended decisions, rather than re-opening the hearings- is that correct? Please confirm.

Thanks,  
Sarah

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**From:** Nick Lizotte <[nick@vermontrealty.com](mailto:nick@vermontrealty.com)>  
**Sent:** Tuesday, June 20, 2023 4:26 PM  
**To:** [gunner@mccainconsulting.com](mailto:gunner@mccainconsulting.com)  
**Cc:** Sarah McShane <[smcshane@stowevt.gov](mailto:smcshane@stowevt.gov)>  
**Subject:** [EXTERNAL] Re: Castine remand

Sarah -

As a follow on, I would like to send the attached letter to the DRB in advance of tonight's meeting.

Thank you,

Nick

On Tue, Jun 20, 2023 at 2:46 PM <[gunner@mccainconsulting.com](mailto:gunner@mccainconsulting.com)> wrote:

Hi Sarah,

Attached is a narrative providing our take on what the court order asked for. We're aware that the DRB will be discussing the scheduling for this tonight, we're sending this in hopes that it allows them to issue a new decision without the need to re-open the hearing.

Best,

Gunner

**\*\* WARNING \*\***

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6/20/2023

Sarah McShane, Zoning Director  
Town of Stowe  
PO Box 730  
Stowe, VT 05672

Re: Castine Mountain Rd, LLC, 4527 Mountain Rd  
Stowe Application #5999, 5768, and 6521

Dear Sarah –

In advance to the meeting by the Development Review Board this evening to discuss the Vermont Supreme Court's remand of and appeal to the Superior Court, Environmental Division regarding the project at 4527 Mountain Rd I would like to offer the following.

When the front unit, noted as building #4 on McCains Plans, was first presented and approved by the Development Review Board, it was appealed to the Supreme Court, Environmental Division. In the ruling by that Court, it found that the Development Review Board has sufficient evidence and testimony; however, the Court lamented that the decision as written was deficient. Specifically, the decision used the criteria in the Zoning Regulation as the justification for the finding of fact and conclusions of law. The Environmental Court stated that was not a finding of fact and conclusion of law. It's like answering the question with the question. The remanded the project to have the Development Review Board decision re-written to include the appropriate and required reciting of the finding of fact to support the conclusions of law.

The DRB found in support of the project again and sent a re-written decision. Again, the neighbor appealed to the Superior Court Environmental decision. This time around the court again lamented while the final decision included a finding of facts, the legal conclusion was not written as required per the regulations. The court noted the decision as written "was not a model of clarity". The Superior Court supported the project stating that while the decision was absent a legal conclusion, the court relied on a reasonable person court to infer what the Development Review Board concluded.

The neighbor appealed this decision to the Supreme Court. In the Entry Order the Supreme Court wrote “the Environmental Division conducted an on-the-record review of the 2021 DRB decision. It determined that DRB’s findings were supported by substantial evidence in the record and, with one exception, the DRB made the necessary legal conclusion as to the issues neighbor raised on appeal. The Superior Court found the DRB’s conclusions supported by its findings and, as to the missing legal conclusion, it determined that the facts supported only one result.”

Thus, the DRB decisions, the evidence in support and the findings of facts all met the merits required. The only thing missing was a correctly written legal conclusion.

The Supreme Court noted the follow:

“In its 2019 decision, the DRB did not adequately address whether the twenty-foot-deep strip was present and appropriately planted and, if not, whether it waived the requirement. The neighbor argued that the the DRB’s 2021 decisions suffered these same infirmities.”

This wasn’t a case of needing more facts and evidence, just that the findings of facts and conclusions of law state the specific facts and use them as the basis for the final conclusion. He Supreme court noted the neighbor noted the DRB did not reach a conclusion on the tress and that it was improper for the Environmental Division to do so in this on the record appeal. The Supreme Court agreed that the DRB’s conclusion as to the tree requirement is not sufficiently clear and enable review on appeal.

Regarding the storm water run off again the Superior Court noted that the DRB did not make the legal conclusion as to the need for an erosion and sediment control plan for the project. However, the Court rejected the challenge as the was only one outcome. The Supreme Court agreed, and rejected the neighbors appeal.

On the last challenge, as to phasing of the project, the Superior Court again noted that the DRB did not include in the findings of fact and conclusions of law. The Supreme Court states on remand “the DRB mist make the necessary legal conclusion and identify the facts to support its decision on remand.”

In conclusion, the Courts are asking for the written findings of facts an conclusions on law be more clearly written that draw on and recite the substantial evidence for the project. For example, the Bannon Report that was provided to the DRB has not once been recited in the findings of facts. We have asked for this to be included both times we have been in front of the board.

It isn't that the Courts are asking for more testimony, its that they need a more clearly written decision to support.

Thank you,

A handwritten signature in blue ink, appearing to read 'N. Lizotte', with a stylized flourish at the end.

Nicholas Lizotte

Castine Mountain Rd, LLC

June 20, 2023

Sarah McShane, ZA  
PO Box 216  
Stowe, VT 05672

RE: Submission of Requested Materials  
Castine Mountain Road LLC, 4527 Mountain Road  
Stowe application #5999, 5768 and 6521  
McCain Project No. 38031

Dear Sarah,

We have reviewed the Supreme Court decision Case No. 22-AP-028, and find the court agreed with the DRB approval of the project, excepting they require more facts to support the decision. To that end, please consider the following:

- Concerning the landscaping plan, The DRB approved the project without the street trees required by 4.6(3)(D), however the court found that the DRB decision lacked sufficient evidence to support that decision. We note that §3.7(2)(C) provides the DRB with the authority to waive the landscaping requirements. As we understand it, the DRB's decision was based on the following conclusions:
  - a. That the design of building #4 sufficiently screened the old motel building.
  - b. That the plan includes a green strip a minimum of 20' wide along Route 108.
  - c. That trees along that frontage would be inappropriate due to the presence of an overhead power line, the surface drainage ditch that requires routine cleaning of the sediment and winter sand and salt from the runoff from Lower Sanborn Road, and a municipal underground sewer line.
  - d. That the previously submitted report relating to the Lower Sanborn Road runoff and sediment from engineer Bannon supports this conclusion.
  - e. That the road salt would likely kill trees planted in that strip.
  - f. The architecture of building #4 further screens the "strip development" of the old 1950s style hotel per section 5.12 – Upper Mountain Road District. This building also serves to screen building #3.
- The construction timeline for the phasing of the project is as follows: Once approvals are granted, building #4 will be constructed first. The first step will be installation of erosion control measures and grading, then construction of the driveway followed by the construction of building #4, with landscaping for both buildings 3 and 4 being installed once the site grading has been completed. Upon issuance of the Certificate of Occupancy for building #4, construction of building #3 will commence. Building #3 will follow the same sequence as building #4, excepting the driveway, landscaping and parking for #3 will already exist.

For 5768 & 6521, please consider:

- Stormwater from building #4 will flow into the existing drainage swale on the front of property. The impervious surface created by that building and parking area is less than 3000 sq. ft., which is a de minimis contribution to that ditch, which currently accepts runoff from approximately 350 acres, including well over one mile of gravel roads and multiple houses and driveways. The building #4 construction area is located over 300-feet from any surface waters. The State of VT Low Risk Handbook for Erosion Prevention and Sediment Control will be followed during construction of the project. The requirements of the Low Risk Handbook, which provide the techniques and structures necessary for erosion prevention and sediment control are essentially the same as the requirements of §3.12 of the Stowe Zoning Ordinance, which relates to stormwater management.
- The swale proposed to convey runoff from the duplex (building #3) is approximately 50' from the adjoining property line, and will run parallel with that line, so that all runoff will flow in a southerly direction and will remain on the subject lot until it reaches the channel and then the river. There is over 100' of gently sloping vegetated terrain between where that swale will end and old river overflow channels, and an additional 100+' to the current river channel. That terrain will filter the runoff prior to it entering the river. None of the stormwater will flow towards Route 108 or toward any neighboring properties prior to entering the river channel.
- The additional impervious surface created by buildings 3 and 4 is approximately 0.16 acres, well below the 0.5 acre threshold of §3.12(F) which requires additional stormwater management techniques.
- The duplex will not be connected to the town sewer system; it will be connected to the existing mound system. The existing wastewater systems have the capacity to accept wastewater from the duplex. As specified in Wastewater Permit WW-5-0504-2, there is reserve capacity in both the mound and in-ground systems that will accommodate the duplex.

We respectfully ask that the facts stated in this letter be included in the Development Review Boards write up of the Finding of Fact and Conclusions of Law. The Court stated there is significant evidence and material regarding these proposed projects. However, they noted that the decisions for building #3 and building #4 did not carry these facts into consideration in the final write up and use them as the basis for the conclusions of law. Doing so would close the circle and offer a bullet proof decision from the Development Review Board. Please feel free to call with any questions you may have or if you need any additional information.

Sincerely,  
McCain Consulting, Inc.



Gunner McCain  
Enc.





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4527 Mountain Road Permit 6521

Docket No. 21-ENV-00098

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### **Decision in On-the-Record Appeal**

In this proceeding, Michael Seaberg (“Mr. Seaberg” or “Appellant”) appeals a September 1, 2021 decision of the Town of Stowe Development Review Board (“DRB”). That decision approved with conditions a conditional use application originally submitted by VTRE Investments, LLC (“VTRE”). Castine Mountain Road, LLC (“Castine” or “Applicant”), is the successor-in-interest to VTRE and now serves as Applicant in these proceedings. Its principal is Nicholas Lizotte (“Mr. Lizotte”). The proposed project is a duplex residential development situated on a parcel with six existing units of housing and several other pending proposals to build further housing on the site. Those other proposals are not before us in this appeal, except that new landscaping proposed as part of them might also be considered for purposes of satisfying the relevant review criteria as to this duplex development.

The Town of Stowe has elected to have decisions of its municipal zoning bodies reviewed “on the record,” according to the requirements of the Vermont Municipal Administrative Procedures Act. *See* 24 V.S.A. chapter 36; 24 V.S.A. § 4471(b). In reviewing the merits of this on-the-record appeal, the Court has considered the parties' briefs and the record, which consists of the DRB's decision, any exhibits considered by the DRB, and the transcript of the proceedings below, as set forth in Rule 5(h)(1)(A) of the Vermont Rules for Environmental Court Proceedings (V.R.E.C.P.).

### **Background**

The September 1, 2021, DRB decision followed a remand from our Court of an earlier appeal by Mr. Seaberg of the same application, to which we assigned docket no. 62-6-18 Vtec. We determined that the DRB, in its initial decision on this application, had imposed an unlawful condition subsequent as to front yard landscaping. *See VTRE Inv. LLC CU Duplex*, no. 62-6-18 Vtec, slip op. at 6–7 (Vt. Super. Ct. Env'tl. Div. June 30, 2020) (Durkin, J.) (Hereinafter “*VTRE Duplex I.*”). We also determined that the DRB's findings of fact and/or conclusions of law on front yard landscaping, side yard landscaping, garbage screening, stormwater impacts to neighbors, the need for a stormwater

management plan, compatibility with surrounding uses, and lack of an undue adverse impact on character of the area all lacked necessary specificity. *Id.* at 7–14. We vacated the condition on front yard landscaping and remanded to the DRB with instructions to make more specific findings of fact, separately delineated from conclusions of law, on each of these issues. We further directed the DRB to reopen the taking of evidence if necessary to do so. *Id.* at 7–15.

Following our remand, the DRB called a public hearing on May 18, 2021, to receive further evidence on front and side yard landscaping. In response to an email from Mr. Lizotte indicating that he wished to amend the application so that the proposed duplex would no longer connect to the municipal sewer utility but would instead rely on an existing on-site wastewater treatment system, the DRB also included the proposed amendment in the notice of the hearing. At the hearing, the DRB received testimony from Mr. Lizotte, Mr. Seaberg, and another neighbor to the project, Jen Burnett. To allow additional time to review the submitted materials, the DRB continued the hearing to July 20, 2021. Following that hearing, the DRB entered into deliberative session, and issued its decision on September 1. *See In re 4527 Mountain Road, No. 6521*, Findings of Fact & Conclusions of Law (Town of Stowe Dev. Review Bd. Sept. 1, 2021) [hereinafter, “Remand Decision”].

The Remand Decision states as condition number 2 that “[a]ll conditions of prior approvals . . . remain in full force and effect,” except as specifically modified by the Decision. Among the further conditions imposed by the decision are the following conditions, relevant to this appeal:

3. Prior to the issuance of the zoning permit the Applicant shall file the following additional information:

...

b. An updated Erosion Control Plan showing the revised improvements and notations as shown on the Erosion Control Plan prepared by Grenier Engineering, last revised 3/21/18.

c. A revised landscape plan with a planting schedule listing the quantity, species, caliper, etc. of the proposed trees. The proposed red maples shall be no smaller than 2.5" - 3.0" caliper (trunk diameter), measured at a height of five (5') feet. The proposed coniferous trees must be a minimum of 8' - 10' in height.

d. An updated site utility plan that depicts the proposed utility connections.

...

h. An approved State of VT Wastewater & Potable Water (WW Permit) must be recorded in the Town Land Records.

4. The Applicant shall install and maintain a minimum of eight additional street trees at 30' increments along the edge of the road right-of-way in accordance with [§4.6(3)(D)(1-2, 4-5)].

5. The installation of exterior light fixtures is limited to those described and depicted within the application.

6. All outdoor light fixtures shall be installed, shielded, and aimed so that illumination is directed only to the designated area and does not cast direct illumination or cause glare beyond the boundary lines of a property. Outdoor light fixtures shall be on photocells or timers.

7. Exterior lighting fixtures shall not exceed 2,000 lumens (equivalent to an ISO-watt incandescent bulb).

...

12. Landscaping shall be installed and maintained as shown in the provided project plans prepared by McCain Consulting and amended herein. Any dead and dying plants and trees as shown on said plans shall be replaced within one (1) year of death.

...

15. Site construction shall adhere to the standards outlined in Section 3.12(2)(A-E) including:

...

- 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.

Remand Decision at 21–22.<sup>1</sup>

### **Standard of Review**

In an on-the-record appeal from a decision by a municipal panel, our role as the reviewing tribunal is similar to that of the Vermont Supreme Court when it hears appeals from administrative bodies. That is, we consider only the decision below, the record made before the municipal panel, and the briefs submitted by the parties. In re Saman ROW Approval, No. 176-10-10 Vtec, slip op. at 1 (Vt. Super. Ct. Envtl. Div. Sept. 2, 2011) (Durkin, J.). We do not take new evidence or complete our own determination of the facts. Instead, we review the municipal panel’s factual findings to determine whether the decision below “explicitly and concisely restate[s] the underlying facts that support the decision.” *See* 24 V.S.A. § 1209(a)–(b).

We will uphold the municipal panel’s findings of fact if substantial evidence in the record supports them. In re Stowe Highlands Resort PUD to PRD Application, 2009 VT 76, ¶ 7, 186 Vt. 568. In examining whether there is substantial evidence in the record, we are not permitted to make our own assessment of the credibility of a witness’s testimony or reweigh conflicting evidence in the record. *See In re Appeal of Leikert*, No. 2004-213, 2004 WL 5582097 (Vt. Nov. 2004 term) (unpublished mem.); Devers-Scott v. Office of Professional Regulation, 2007 VT 4, ¶ 6, 181 Vt. 248. We are simply to inquire whether the record includes relevant evidence that a “reasonable person could accept . . . as adequate” support for the findings rendered. Devers-Scott, 2007 VT 4, ¶ 6 (quoting Braun v. Bd. of Dental Exam’rs, 167 Vt. 110, 114 (1997)). Lastly, we review the municipal panel’s

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<sup>1</sup> The DRB’s decision is not paginated. We impose page numbers, omitting the cover sheet to the Decision.

legal conclusions without deference unless such conclusions are within their area of expertise. Stowe Highlands, 2009 VT 76, ¶ 7.

The scope of our review in an on-the-record hearing, as when we sit in de novo review, is limited to answering issues raised by the appellant’s statement of questions. *See* V.R.E.C.P. 5(f) (“The appellant may not raise any question on the appeal not presented in the statement as filed, unless otherwise ordered by the court . . .”); In re RACDC Retention Pond, no. 62-5-12 Vtec, slip op. at 3 (Vt. Super. Ct. Envtl. Div. Jan. 29, 2013) (Walsh, J.) (“Additionally, our review on appeal is limited to issues raised by Appellant in his Statement of Questions.”).

Furthermore, when we remand a matter to a municipal panel as we did in VTRE Duplex I, that panel is limited to considering the issues that we specifically referred back to it for its review. *See State v. Higgins*, 156 Vt. 192, 193 (1991) (“It is axiomatic that on remand the trial court is constrained to follow our specific directions as interpreted in light of the opinion.”) (quotations omitted).

Having failed to raise an issue in its initial appeal to our court, an appellant may not subsequently raise that issue for the first time in an appeal from the panel’s decision on remand absent other compelling circumstances. *Cf. Parker v. Gorczyk*, 173 Vt. 477, 478 (2001) (finding, in a case on appeal to the Vermont Supreme Court for the second time following remand, that a party *did not* waive an issue that was not raised in the first appeal, because that issue did not form part of the basis for the trial court’s initial opinion and because the party *had* included the issue in its complaint).<sup>2</sup> In this case, however, following our remand, the DRB reopened the taking of evidence in response to a proposed project amendment by the Applicant. Appellant may therefore raise issues related to that proposed amendment in this appeal, regardless of whether Appellant raised them in his first appeal.

### Discussion

A number of the issues raised by Appellant in his Statement of Questions and his brief turn on the distinction between lawful conditions that may be imposed as part of a land use permit and impermissible or unlawful “conditions subsequent.”

As we explained at length the first time we considered this application, a municipal panel reviewing an application for a permit has an obligation to assure itself *at the time of approval* that the

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<sup>2</sup> In contrast to when the Supreme Court hears appeals from a trial court decision, when we hear appeals from a municipal panel decision, there is no complaint below. Instead, an appellant may formally express its legal arguments for the first time on appeal to our Court through the statement of questions, which, as we have stated many times, “performs a similar function to a civil complaint.” Hinesburg Hannaford Wetland Determination, No. 73-5-14 Vtec, slip op. at 7 (Vt. Super. Ct. Envtl. Div. Mar. 4, 2015) (Walsh, J.). Therefore, it is an appellant’s statement of questions in their initial appeal that affects whether an issue is waived when an application appears before us for a second time on appeal with the same appellant.

project described by the application meets all relevant regulatory criteria. VTRE Duplex I at 5–6; *cf.* Norman R. Smith, Inc. and Killington, Ltd., #1R0593-1-EB at 18 (Envtl. Bd. Sept. 21, 1990), available at <https://nrb.vermont.gov/sites/nrb/files/documents/1r0593-1-eb-fco-part2.pdf> (“[Act 250] requires the [Environmental] Board to make positive findings *prior to* issuing a permit, and does not authorize the issuance of a permit based upon incomplete information that is conditional upon future efforts to comply with the law.”) (emphasis original).

Yet this need to pre-review the merits of an application is balanced against the ability to impose prospective conditions on approval of a land use permit. The enabling statute for zoning empowers a municipal panel to “attach additional reasonable conditions and safeguards as it deems necessary to implement the purposes of this chapter and the pertinent bylaws and the municipal plan then in effect.” 24 V.S.A. § 4464(b)(2). This authority parallels district commissions’ authority to attach conditions in the Act 250 context. *See* 10 V.S.A. § 6086(c). Acceptable conditions in either context “can include post-development actions or requirements to ensure that certain standards are met.” VTRE Duplex I at 6 (citing In re Hinesburg Hannaford Act 250 Permit, 2017 VT 106, ¶¶ 83–84, 206 Vt. 118). To be more specific, “[p]ermissible conditions include those with prospective application that are intended to alleviate adverse impacts that either are or would otherwise be caused or created by a project, or those necessary to ensure that the development is completed as approved, such as those requiring permittees to take specific action when triggered by certain events, incorporating a schedule of actions necessary for continued compliance with [relevant] criteria, and requiring future compliance related filings, including affidavits of compliance with respect to certain permit conditions.” In re Treetop Dev. Co. Act 250 Dev., 2016 VT 20, ¶ 12, 201 Vt. 532.

In contrast to these sorts of lawful conditions, a “permit condition that qualifies permit approval on future proof of compliance after the permit takes effect, or allows the permitting authority to alter an approved permit pending some future event, is regarded as an impermissible condition subsequent.” VTRE Duplex I at 6 (citing Treetop Dev Co., 2016 VT 20, ¶ 14). Such conditions are impermissible because they “allow the reviewer to circumvent the requirement” that the reviewer validate *at the time of approval* “that projects which have been permitted satisfy the . . . [relevant] criteria.” Id. A quintessential example of such a condition subsequent is one that approves a project “under a set of parameters and reserve[s] the authority to alter these parameters at any time,” rendering the approval “illusory.” Treetop Dev. Co., 2016 VT 20, ¶ 14.

Although such illusory approvals are obviously conditions subsequent, there are categories of conditions that are harder to classify as lawful conditions or unlawful conditions subsequent. Such

conditions do not explicitly reserve to the DRB the jurisdiction to continue to review revised plans. Instead, one class of such conditions requires the applicant to submit a revised map or plan in accordance with changes that were agreed upon during hearings on the application. In such cases, if the changes are clear, agreed upon, and easily understood, we would ordinarily consider that a lawful condition. *Cf. In re Willowell Found. Conditional Use Certificate of Occupancy*, 2016 VT 12, ¶ 29, 201 Vt. 242 (2016) (holding that “the Environmental Division did not err in directing the zoning administrator to issue a zoning permit on receipt of a revised site plan” to reflect changes ordered by our court during an appeal of a municipal zoning permit), *overruled on other grounds by In re Confluence Behav. Health, LLC*, 2017 VT 112, ¶ 17, 206 Vt. 302.

A more difficult still category of conditions is one where the permitting authority simply requires the applicant to meet a standard contained in the applicable regulations, without information before it demonstrating that the applicant’s plans meet that standard, but also without explicitly reserving authority to revisit the issue later. Where the standard is quantitative, where it is in the nature of a technical detail and unlikely to have an impact on public health, safety, or welfare, where the applicant’s necessary steps for compliance are understood by all interested parties, and where there is nothing in the application materials that suggests the applicant would not meet the standard, such a condition *might* be valid. *Cf. Tebo v. Bd. of Appeals of Shrewsbury*, 22 Mass. App. Ct. 618, 624, 495 N.E.2d 892, 896 (1986) (summarizing the Massachusetts rule against conditions subsequent as follows: “[A] permit granting authority in a zoning case . . . may not delegate to another board, or reserve to itself for future decision, the determination of an issue of substance, i.e., one central to the matter before the permit granting authority” (emphasis added) and giving the illustrative example of water supply for a proposed hotel as an issue of substance and “design details of street lamps for a garden apartment” as a “comparatively, peripheral” issue).

Where, however, there is disagreement or an element of reasoned judgment necessary to determine whether a standard is met, the DRB must not abdicate its responsibility to exercise that reasoned judgment. In such cases, the DRB may not simply require the applicant to comply with the standard in question, for that defeats the entire purpose of reviewing projects before development begins. *See In re Hinesburg Hannaford Act 250 Permit*, 2017 VT 106, ¶ 53, 206 Vt. 118 (“[R]eliance on [conditions and] enforcement proceedings . . . would shift to those proceedings questions that should be addressed at the permitting stage.”); *see also In re Town of Stowe*, # 100035-9-EB at 47 (Envtl. Bd. May 22, 1998), available at <https://nrb.vermont.gov/sites/nrb/files/documents/100035-9-eb-fco.pdf> (finding, in the Act 250 context, a proposed condition that would

require an applicant to operate a project in a manner that avoided causing public health risks to be an “impermissible condition subsequent which cannot substitute for the affirmative finding required” under the relevant criterion).

In summation, conditions subsequent may be identified by the DRB’s abdication of responsibility for reviewing an application against the relevant criteria in the present, and/or by the DRB reserving authority to revisit elements of its approval in the future. With the distinction between lawful conditions and unlawful conditions subsequent in mind, we turn to Appellant’s Questions.

1. Did the DRB err in determining that existing or planned community facilities had the capacity for the proposed buildings?

The Town of Stowe Zoning Regulations (“Regulations”)<sup>3</sup> require that “[a]s part of its conditional use review, the DRB must determine that the proposed development will not result in an undue adverse effect on the capacity of existing or planned community facilities and services.” Regulations § 3.7(2)(A). Mr. Seaberg challenges the DRB’s conclusion that this criterion is satisfied.

As an initial matter, Castine contends that Mr. Seaberg may not raise this question in this appeal because the topic of impact on existing or planned community facilities was not one of the issues on which we remanded the application to the DRB to make further findings. However, that argument is too simplistic. If the DRB could only take new evidence and issue new findings on the issues which we remanded, then it could not have considered the proposed amendment to switch to on-site wastewater treatment at its remand hearing, and its conclusions on issues affected by the switch would need to be vacated entirely. We conclude that the DRB could consider the proposed amendment in its remand hearings, so long as the public notice of the hearings informed interested parties that the amendment would be considered. We further conclude that Appellant may raise legal issues related to that amendment for the first time in this appeal. We reach this conclusion mindful that some flexibility is required in the land use permitting process to avoid a “procedural ping pong match” every time a minor amendment to an application is put forward. In re Sisters & Bros. Inv. Grp., LLP, 2009 VT 58, ¶ 21, 186 Vt. 103.

The uncontradicted evidence is that the DRB did include the proposed amendments in its notice of the public hearing. The impact of the project on the capacity of municipal services, specifically town sewers, is arguably changed by the proposed amendment. Because utilizing on-site septic was a change to the project from when it was previously appealed to our court, we conclude

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<sup>3</sup> All references are to the edition of the Zoning Regulations effective as of July 3, 2017, submitted to our Court by the Town and undisputed as the version of the Regulations that govern this application.

that Appellant is not barred from raising the issue of the capacity of municipal services, specifically town sewer.

The DRB concluded that “the project, as conditioned, will not adversely impact the Town’s existing or planned community facilities or services.” Remand Decision at 6. Among its factual findings in support of this conclusion, the DRB noted that Castine now proposed to utilize existing on-site septic. Id. at 5. Among the relevant conditions noted by the DRB next to this conclusion are that “[t]he Applicant must submit an updated site utility plan that depict [sic] the proposed utility connections” and “[t]he Applicant must obtain an approved State [wastewater] permit for the wastewater system(s) and record said permit in the town land records.” Id. at 6.

We are only analyzing the DRB’s conclusion as it relates to the project’s impacts on municipal sewer service since that is the only service impacted by the proposed amendment to the project. There has not been a suggestion that other municipal services are affected by the change to on-site septic and so the issue of impacts on other municipal services was not preserved through Mr. Seaberg’s initial appeal.

Analyzing that impact, the project now proposes *not* to connect the duplex to municipal sewer, where pre-remand it did propose to do so. Instead, Applicant proposes to connect to an existing on-site septic system. The DRB imposed a condition in its Remand Decision that Castine must receive an amended state wastewater permit approving of that connection before the zoning permit will issue. As we have frequently stated, “the Agency of Natural Resources (“ANR”) is responsible for ensuring compliance with [the provisions of 10 V.S.A. chapter 64 governing on-site septic systems], including by issuing wastewater and water supply permits.” Confluence Behavioral Health LLC CU, No. 15-2-16 Vtec, slip op. at 23 (Vt. Super. Ct. Env’tl. Div. Jan. 23, 2017) (Durkin, J.). As a result, unless ANR delegates permitting authority to a town, that town “is without authority to permit a wastewater system design.” Duval CU Denial, No. 93-8-18 Vtec, slip op. at 2 (Vt. Super. Ct. Env’tl. Div. May 21, 2019) (Walsh, J.).

Conditioning issuance of a municipal permit on the applicant’s receipt of a wastewater system permit from ANR is therefore not an impermissible condition subsequent. In fact, the enabling statute for municipal zoning specifically allows as much. *See* 24 V.S.A. § 4414(13)(A)(ii) (“[T]he municipality may condition issuance of a final permit upon issuance of a wastewater and potable water supply permit . . .”). When it imposed such a condition, the Stowe DRB was not “reserv[ing] continuing jurisdiction” to substantively review the wastewater aspects of the project, *cf.* In re Treetop Dev. Co.



Act 250 Dev., 2016 VT 20, ¶ 14, given that ANR has sole jurisdiction over the substantive review of on-site wastewater systems.

The DRB reasonably found that the use of on-site septic meant that the project would not have an adverse impact on municipal sewer service. We therefore answer Question 1 in the negative: The DRB **DID NOT** err in determining that existing or planned community facilities have the capacity for the proposed buildings.

We next turn to Appellant’s argument that the DRB decision to approve the project, while requiring Castine to submit a revised site plan before issuance of the zoning permit, represented an unlawful condition subsequent.

2. Did the DRB err in conditioning the approval of permit on the applicant submitting an updated site plan to the zoning administrator showing proposed utility connections?

As a corollary to the need to avoid impermissible conditions subsequent, municipal panels generally must have the most current version of plans for a project before them when approving that project. *See VTRE Duplex I* at 5–7 (faulting the DRB for conditioning approval on Applicant subsequently submitting a revised landscaping plan that would sufficiently demonstrate to the DRB that the project met the Regulations’ landscaping requirements). As we indicated in our decision in the first appeal, we shared Appellant’s concern “that the DRB postponed its review of the front yard landscaping such that the review would occur after the permit was granted.” *Id.* at 6. Core to our concern was the idea that the DRB deprived interested parties of the chance to understand and comment on the final landscaping plans. *Cf. Hinesburg Hannaford Act 250 Permit*, 2017 VT 106, ¶ 53 (indicating a concern for “[n]eighbors’ rights” impacted by the imposition of an impermissible condition subsequent).

The record reveals that the most recent version of the site plan considered by the DRB in reaching its remand decision was dated June 21, 2019. That version of the site plan did not depict proposed utilities; the most recent version depicting proposed utilities was dated January 25, 2019. Our understanding is that the only inaccuracy in the depiction of utilities on the January 2019 site plan is that it shows the duplex connecting to the municipal sewer, which is no longer Applicant’s proposal. The transcripts of the remand hearing reveal that Appellant understood that this depiction on the site plan was no longer accurate given the proposed switch to on-site septic. *See, e.g.* Transcript of May 18, 2021 Stowe DRB Hearing at 21-22, 28, filed Feb. 22, 2022. In other words, revisions to the site plan in accordance with the DRB’s directive would not present the DRB or interested parties with any *new* information that they did not have when the DRB took evidence and reached its Decision. The

necessary update to the site plan simply reflects the project as approved by the DRB (i.e. with no municipal sewer connection to the Property) and may therefore be completed administratively prior to issuance of the permit. We therefore answer Question 2 in the negative: The DRB **DID NOT** err in conditioning the approval of the permit on Applicant submitting an updated site plan to the zoning administrator showing proposed utility connections.

However, given our finding below that the DRB’s cursory treatment of other issues requires a second remand of this application, we strongly encourage the DRB to require Castine to submit its final revised site plan prior to reaching its second decision on remand, as a matter of good housekeeping and avoiding any potential for confusion.

3. Did the DRB err in determining that the proposed side yard landscaping complied with the Town of Stowe Zoning Regulations?

Mr. Seaberg argues that the DRB still has not reached the necessary conclusions under the Regulations as to side yard landscaping. *See* Regulations § 3.7(2)(B)(7) (requiring applicants to submit landscaping plans “designed to conform to the terms and conditions of Section 4.6”) and § 4.6(3)(A)-(C) (requiring “the use of both deciduous and coniferous shade trees in available yard area, especially front and side yards . . . Shade trees shall be placed to interrupt the facades of buildings, to visually reduce the scale and bulk of large buildings, and to enhance environmental quality.”).

We disagree. In its remand decision, the DRB remedied its earlier inadequate findings of fact and conclusions of law regarding side yard landscaping. It found, based on the revised landscaping plans dated January 25, 2019, that there would be five new maple trees planted as part of this project: three along the eastern edge of the driveway and two on the eastern edge of the property, between the proposed duplex and Mr. Seaberg’s property. It also found, based on the landscaping plan, testimony, and renderings, that existing coniferous trees would remain along the eastern edge of the property. Remand Decision at 14. It drew the necessary legal conclusion that the new maple trees, along with the existing coniferous trees, would “interrupt and filter the proposed building façade,” including as seen from the Seaberg property. Id. at 15. These are much more specific conclusions than the DRB reached in its original decision. *See In re VTRE Invs. LLC, Findings of Fact & Conclusions of Law*, at 4–5 (Town of Stowe Dev. Review Bd. May 22, 2018) [hereinafter, “DRB 2018 Decision”]. The revised findings and conclusions indicate that the relevant criteria on side yard landscaping have been met.

In his brief, Mr. Seaberg mischaracterizes the evidence when he says “The Applicant’s plans clearly show that the only landscaping in the side yard will be deciduous maple trees. There are no

coniferous trees, no deciduous or evergreen shrubs, and no ground cover.” In fact, the DRB found that numerous existing coniferous trees will remain in the side yard, as shown on the landscaping plan. Nothing in the Regulations requires that new trees be a mix of coniferous and deciduous, as long as the resulting aggregate of new and existing trees evidence such a mix.

In a previous decision concerning a different project on this same parcel, we determined that the Stowe side yard landscaping requirements do not require that an existing building which is presently hidden by landscaping must remain hidden by such landscaping when the building is redeveloped. VTRE Invs. CU, No. 36-3-18 Vtec, slip op. at 8–9 (Vt. Super. Ct. Envtl. Div. Dec. 28, 2018) (Durkin, J.). Similarly, we conclude now that the side yard landscaping requirements do not require a new building to be completely hidden from neighbors by trees and bushes, but only for the visual bulk of the building to be adequately interrupted. The DRB’s legal conclusion flows from its findings of fact, and those findings were reasonably supported by the evidence. Thus, we answer Question 3 in the negative: the DRB **DID NOT** err in determining that the proposed side yard landscaping complied with the Town of Stowe Zoning Regulations.

4. Did the DRB err in determining that proposed front yard landscaping complied with the Town of Stowe Zoning Regulations?
5. Did the DRB err in requiring applicant to plant eight additional trees in the front yard at 30’ increments while failing to specify tree types or sizes or allowing the public to review the proposed revised landscaping plan at a warned meeting?

We treat these Questions together, as the infirmity in the DRB’s previous decision on front yard landscaping was that it deferred consideration of whether Applicant had met the requirements of § 3.7(2)(C)(2)(a). That provision requires development to maintain a “suitably landscaped” twenty-foot strip of land between the street line and the balance of the lot in the Upper Mountain Road (“UMR”) District. The specific standards along Route 108 (also known as Mountain Road) require one street tree for every thirty feet of landscaping strip. § 4.6(3)(D). This specific requirement helps define what it means for the front yard strip to be “suitably landscaped” along Mountain Road. We previously held that the Regulations required the DRB to determine either that this application satisfied § 3.7(2)(C)(2)(a) or that “design, screening, or other mitigation” measures could accomplish the objectives established for the UMR District, per § 3.7(2)(C). VTRE Duplex I at 7. By choosing initially to require Applicant to resubmit landscaping plans that would convince the DRB the requirements of 3.7(2)(C) were met, even while it purported to approve of the application, the DRB imposed an impermissible condition subsequent. Id. We vacated that condition and remanded to the DRB to make the necessary findings and conclusions before approving the application.

The DRB has corrected this infirmity in the remand decision. It imposed a condition requiring Castine to plant eight additional trees in the front yard buffer at 30' intervals, in accordance with the specific requirements for those trees contained at § 4.6(3)(D). Remand Decision at 21 (condition 4). With that requirement in place, it determined that landscaping for the duplex project had been designed in a manner consistent with the defined purposes of the UMR District under § 3.7(2)(C). Id. at 20. We note that while Applicant's landscaping plan initially designated some of the proposed landscaping to occur under other projects whose final approval is pending, Mr. Lizotte committed during the remand hearings to creating those landscaping improvements regardless of whether those other projects are ultimately permitted. Transcript of May 18, 2021 Stowe DRB Hearing at 17, filed Feb. 22, 2022. The DRB appears to have accepted Mr. Lizotte's word on this; bullet point S under its conclusions on landscaping indicates as much. Remand Decision at 14. Among such improvements are a berm with two blue spruce trees planted in front of it near the front of the Property.

Section 4.6(3)(D)(1)-(2) require that street trees shall "1. Be a minimum of 2.5" - 3.0" caliper (trunk diameter), measured at a height of five (5') feet, unless otherwise specified by the DRB upon consideration of site conditions; 2. Be an appropriate species of nursery stock *deciduous* shade tree - *not* flowering ornamental *or conifers*" (emphasis added). Via condition 4, the DRB required Applicant to follow the above conditions in its choice of street trees and to submit revised plans depicting those trees before a permit issued. Mr. Seaberg contends that because the DRB did not have in front of it the precise species or sizes of trees that would be planted in the buffer strip, this condition remains an impermissible condition subsequent.

Ordinarily, we would be inclined to disagree. This is the sort of condition we described earlier as among the most difficult to classify, but which under the theory we espoused would likely be valid. It does not reflect the DRB attempting to circumvent its responsibility to make a reasoned legal judgment about a plan's compatibility with criteria based on a review of the evidence. Instead, the DRB required Applicant to follow quantitative, technical, easily understood standards where there was nothing in the submitted plans contrary to the idea that Applicant would meet those standards. We would therefore ordinarily view this as the sort of administrative detail the DRB could impose via a condition.

Castine's brief in this appeal makes clear, however, that in this case, the DRB really must review the landscaping at a granular level of detail. The brief states, "Castine infers the condition [that it must plant eight additional street trees] to require eight *evergreen* trees in additional [sic] to the two proposed." Appellee's Brief at 8 (emphasis added). Most, if not all, evergreen trees are conifers. *See*

Webster's II New College Dictionary, conifer (3rd ed. 2005): "A predominantly evergreen cone-bearing tree, as a pine, spruce, hemlock, or fir." Applicant's assertion reveals it does not intend to comply with the specific requirement of § 4.6(3)(D)(2), which forbids the use of conifers as street trees.

Since other factors discussed below require a remand, we conclude that upon remand, Castine must submit a revised landscaping plan and the DRB must ensure that the application complies with the landscaping regulations in their totality. The DRB must confirm that the species and size of street trees to be planted in the thirty-foot street buffer, as well as the caliper of new trees throughout the property, match the Regulations' specifications.

6. Did the DRB err in determining that the proposed development will not create undue adverse stormwater impacts on abutting properties?

Section 3.12 of the Regulations imposes a number of requirements for stormwater control and drainage. For example, § 3.12(2)(C) requires applicants to submit an erosion and sediment control plan if construction will disturb more than half an acre of land. § 3.12(2)(F) requires applicants to submit a stormwater management plan if their development will create more than half an acre of new impervious surfaces.<sup>4</sup> As we discussed in our previous decision on this application, however, even if neither an erosion and sediment control plan nor a stormwater management plan is required under §§ 3.12(2)(C),(F), § 3.12(2)(E) still applies to land development involving new construction. This section states that "*All development must provide for an adequate stormwater drainage system 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.*" (emphasis added).

Throughout these proceedings, Mr. Seaberg has indicated his concern that the duplex, which creates new impervious surface relatively close to the septic field on the western edge of his property, will direct stormwater onto that septic field, potentially leading to its failure. To respond to this concern, Applicant has included a proposed swale behind the duplex on its site plans. Those plans and Applicant's engineer's testimony during the DRB's pre-remand hearings indicate that the swale is intended to redirect water so that it does not adversely impact Mr. Seaberg's septic field but instead flows south towards the floodplain and river. Unfortunately, the DRB, in its initial decision, did not even mention section 3.12 (much less section 3.12(2)(E)) in discussing its decision not to require a stormwater management plan under § 3.7(2)(B)(8). DRB 2018 Decision at 5. And, while the DRB

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<sup>4</sup> Regulations § 3.7(2)(B)(8) also indicates that "[t]he applicant shall, at the request of the DRB, submit a plan for the management of stormwater generated by the proposed development."

mentioned the swale and its purpose during its remand proceedings, it did not make any findings about whether the swale would work as intended. Remand Decision at 17–18.

In our previous decision, we stated that one of the infirmities of the DRB’s treatment of stormwater issues in this application was that the DRB “did not make findings on the *effectiveness* of the proposed drainage system or the impact on neighboring properties.” VTRE Duplex I at 11 (emphasis added).

Unfortunately, the DRB’s remand decision suffers from the same infirmities. The DRB still has not included § 3.12(2)(E) among the applicable standards listed under its discussion of Stormwater Management. Remand Decision at 16–18. Similarly, the DRB still has not made any factual findings about the efficacy of the proposed swale behind the duplex and whether it will effectively divert stormwater away from the neighbor’s septic system. In the conclusion to this section of its decision, the DRB merely describes how Castine’s engineer explained the swale was intended to work during the original hearing. Remand Decision at 18; *see also* Transcript of May 15, 2018 Stowe DRB Hearing at 13–14, filed as part of the record Oct. 20, 2021 (engineer’s testimony on which the DRB findings appear to be based). Instead of verifying that the application satisfies the relevant criteria, the DRB has imposed as part of condition 15 a requirement that “[s]ite construction shall adhere to the standards outlined in Section 3.12(2)(A-E) including . . . an adequate stormwater drainage system must be continuously maintained to ensure . . . [no] undue adverse impact on neighboring properties . . .” Remand Decision at 22.

The applicant carries the burden of proof on all applicable standards, including § 3.12(2)(E), and, as discussed at the beginning of this decision, it is the DRB’s responsibility to ensure that those standards will be met when it permits a project. It was clear error for the DRB not to take *any* evidence that would enable it to conclude that a swale will work as intended and to instead impose a condition requiring compliance with the applicable regulatory provision. In this instance, the DRB did abdicate its responsibility to exercise its reasoned judgment to ensure that the relevant standards are met before approving an application, instead relying on enforcement of its condition. *See In re Hinesburg Hannaford Act 250 Permit*, 2017 VT 106, ¶ 53, 206 Vt. 118 (“In the absence of evidence that the proposed swale would likely work as intended, the court’s reliance on enforcement proceedings to assure the functionality of the swale would shift to those proceedings questions that should be addressed at the permitting stage. That would significantly impact Neighbors’ rights.”). The portion of Condition 15 quoted above is an unlawful condition subsequent and must be vacated, such that the DRB may solicit the evidence it needs to ensure these provisions of the regulations will be met.

7. Did the DRB err in determining that proposed outdoor lighting was in compliance with the Stowe Zoning Regulations?

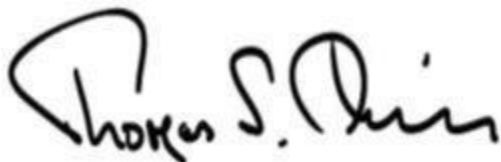
Mr. Seaberg did not raise the issue of outdoor lighting in his initial appeal. See VTRE Duplex I at 4 (describing the issues raised in the original statement of questions). Outdoor lighting was therefore not part of the scope of issues on remand. Nor did Applicant propose an amendment to its outdoor lighting plans that might otherwise give us jurisdiction to review the DRB's conclusions in this regard. See discussion *supra* on Question 1. Mr. Seaberg points out that the DRB imposed new conditions on lighting in its remand decision that were not a part of its original approval and argues that he could not have raised his concerns with those conditions in his initial appeal. However, those conditions were in furtherance of the DRB's initial conclusions on outdoor lighting detailed in its 2018 decision. Given that Mr. Seaberg did not challenge those conclusions in his initial appeal, we conclude that he has waived his right to challenge the conclusions and associated conditions in this continuation of the matter following remand. We therefore **DISMISS** Question 7.

**Conclusion**

In light of our conclusions above, we hereby vacate the part of Condition 15 requiring Applicant to maintain “an adequate stormwater drainage system . . . to ensure . . . [no] undue adverse impact on neighboring properties.” We remand this matter to the DRB to make the necessary findings of fact and conclusions of law regarding undue adverse stormwater impacts on neighboring properties under § 3.12(2)(E). We further direct the DRB to review Applicant's revised landscaping plans to ensure that § 4.6(3)(D) is satisfied. Further, we suggest that it would be wise for the DRB to require Applicant to submit a revised site plan that no longer depicts the duplex connecting to town sewer before a public hearing, if the DRB calls one, and before beginning its deliberations if it does not.

This completes our on-the-record review of this appealed DRB decision on remand. A Judgment Order accompanies this decision.

Electronically signed at Brattleboro, Vermont on Sunday, July 31, 2022, , pursuant to V.R.E.F. 9(d).



Thomas S. Durkin, Superior Judge  
Superior Court, Environmental Division



**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 6521  
Application Date 3/30/2021  
Physical Location 4527 MOUNTAIN RD  
Map ID 11-103.000 Tax ID 26018  
Project Description REOPEN HEARING ON PROJECT 5768-TO RECEIVE EVIDENCE AND TESTIMONY UNDER SECTION 3.7(2)(C)(2)(A) (FRONT YARD TREATMENT) AND SECTION 3.7(2)(B)(7) (LANDSCAPING AND SCREENING); AMEND PROPOSED UTILITIES TO CONNECT TO EXISTING ON-SITE SEPTIC SYSTEM.  
Owner CASTINE MOUNTAIN ROAD LLC  
Applicant VERMONT REALTY SERVICES LLC NICK LIZOTTE  
Applicant Address 26 UNION STREET  
WATERBURY VT 05676

**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*

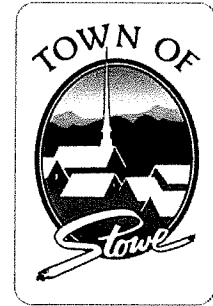
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Zoning Office



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

**Findings of Fact & Conclusions of Law**

*On Remand from Vermont Superior Court Environmental Division; No. 62-6-18*



**APPLICATION:** 6521 [Remand of Project 5768]

**SUBJECT PROPERTY:** 4527 Mountain Road; #11-103.000

**PROPERTY OWNER & APPLICANT:**

Castine Mountain Road LLC  
26 Union Street  
Waterbury, VT 05676

**APPLICATION:**

This proceeding involves a remand of application #5768 originally submitted by VTRE Investment LLC. Castine Mountain Road LLC (herein referred to as the "Applicant") is the successor-in-interest to VTRE Investment LLC and now serves as the Applicant in this proceeding. The Applicant proposes to construct a residential duplex, a two-family dwelling as defined under the regulations, and related improvements. The proposed two-family dwelling is located along the eastern side of the parcel and is oriented parallel with the existing single-story linear multi-family dwelling, a former motel.

The subject parcel, consisting of  $\pm 4.2$  acres and located at 4527 Mountain Road (#11-103.000), is in the Upper Mountain Road (UMR) Zoning District, the Fluvial Erosion Hazard Overlay, and Flood Hazard Districts. The property is served by Mountain Road [VT-108], a state highway maintained by the Vermont Agency of Transportation. The subject parcel is bounded to the north by Mountain Road (VT-108), to the west by a  $\pm 4.6$ -acre parcel also owned by Castine Mountain Road LLC, to the east by  $\pm 4.75$ -acre parcel owned by Montchilly Inc. (Northern Lights Lodge), and to the south by the West Branch of the Little River. On remand, the originally submitted application and hearing record, along with additional materials submitted by the Applicant and interested parties, have been reviewed by the Development Review Board (DRB) under applicable standards of the Town of Stowe Zoning Regulations (amended through July 3, 2017) for the purpose of conditional use review. The Development Review Board's procedural history and relevant findings are attached- see discussion below.

**PROCEDURAL HISTORY:**

The Development Review Board originally received this application on March 2, 2018. The application was warned in the Stowe Reporter on March 15, 2018. A public hearing was held on April 3, 2018. The Board continued the hearing to May 15, 2018, pending additional information from the Applicant. The continued public hearing was re-opened on May 15, 2018. The Board closed the hearing that evening initiating the 45-day period for the issuance of a written decision. The property owner and Applicant were represented by Nick Lizotte and John Grenier P.E. of Grenier Engineering. Adjacent property owner, Michael A. Seaberg, also attended and participated in the hearing process. The DRB issued its original written decision on May 22, 2018, approving the project with conditions.

Interested party Michael Seaberg appealed the Board's decision to the Environmental Division of the Vermont Superior Court on June 20, 2018. The Court assigned Docket Number No. 62-6-18 to the case. On January 4, 2019, the Environmental Division of the Vermont Superior Court granted VTRE's motion to dismiss the appeal for lack of standing. Mr. Seaberg subsequently appealed to the Vermont Supreme Court. The Supreme Court reversed, finding that Mr. Seaberg had standing to pursue his appeal, and remanded to the Environmental Division of the Vermont Superior Court for further proceedings.

On remand Judge Thomas S. Durkin remanded the application to the DRB so the Board may render adequate findings of fact and conclusions of law with respect to the standards established in the Town of Stowe Zoning Regulations. Judge Durkin vacated condition 7 as an invalid condition subsequent and remanded issues outlined in Mr. Seaberg's questions 2 through 9 related to side yard landscaping, screening, stormwater impacts, stormwater management, compatibility with the existing site and neighboring properties, and character of the area, so that the Board could incorporate more specific and sufficient findings and conclusions and may more fully address the deficiencies identified in the Court's analysis of Mr. Seaberg's Questions 2 through 9.

Following review of the original hearing record, the Board re-opened a warned public hearing on May 18, 2021 to receive evidence and testimony under Section 3.7(2)(c)(2)(a) (front yard treatment) and Section 3.7(2)(b)(7) (landscaping and screening). The Applicant also requested that the Board consider an amendment to the project involving connecting the proposed building to the existing on-site septic system, rather than the original proposal of connecting to the municipal sewer system. A public hearing of the Development Review Board was scheduled for May 18, 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 April 29, 2021.

The public hearing to consider the application convened on May 18, 2021 utilizing the remote meeting platform Zoom, with a quorum of the DRB present. There was no physical place to attend the meeting, all participation was via telephone or online. No ex parte communications or conflicts of interests were reported. Members who participated in the review included: Drew Clymer, Paco Aumand, Chris Walton, Andrew Volansky, Thomas Hand, Peter Roberts, and Michael Diender.

The following persons attended and participated in the hearing process:

- Nick Lizotte, PO Box 445, Waterbury, VT 05676
- Michael Seaberg and Shannon Hillpot, 4441 Mountain Road, Stowe, VT 05672
- Jen Burnett, 4515 Mountain Road, Stowe, VT 05672

To allow additional time to review the submitted materials, the Board continued the hearing to a time and date certain, July 20, 2021. No additional materials were provided for review during the July 20<sup>th</sup> meeting. Members who participated in the review included: Drew Clymer, Paco Aumand, Chris Walton; Andrew Volansky; Thomas Hand; Peter Roberts; and Michael Diender. 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.

On remand, the Board provides the following revised findings of fact and conclusions of law to more fully address the standards related to the above remanded issues. The purpose of this remanded decision is to provide additional detail to the findings of fact and conclusions of law in order to clarify what was decided and how the Board reached its decision. This amended decision supersedes and replaces the Board's original written decision dated May 22, 2018.

#### **HEARING RECORD/EXHIBITS:**

In addition to the application form, dated March 2, 2018, the following materials were originally submitted in support of the application:

1. Site Plan 'Duplex Site Plan', Sheet 1 of 1, File No. 808-1274, prepared by Grenier Engineering, last revised 3/21/18;

2. Erosion Control Plan 'VTRE Investments, LLC', Sheet 1 of 1, File No. 808-1274, prepared by Grenier Engineering, last revised 3/21/18;
3. Exterior Elevations 'Honeywell Lodge', Sheet A-3.0 prepared by G4 Design Studio, dated 10/4/17;
4. Exterior Elevations 'Honeywell Lodge', Sheet A-4.0 prepared by G4 Design Studio, dated 10/4/17;
5. Schematic Site Plan 'Honeywell Lodge', Sheet A-3.1 prepared by G4 Design Studio, dated 10/4/17;
6. Second Floor Plan 'Honeywell Lodge', Sheet A-2.1 prepared by G4 Design Studio, dated 10/4/17;
7. Basement Plan 'Honeywell Lodge', Sheet A-1.0 prepared by G4 Design Studio, dated 10/4/17;
8. Second Floor Plan 'Honeywell Lodge', Sheet A-2.1 prepared by G4 Design Studio, dated 10/4/17;
9. Email correspondence from Nick Lizotte including lighting cut sheets, dated 3/28/18;
10. Green Electrical Supply Outdoor Lighting Details, no date;
11. Build.com Outdoor Lighting Details – Outdoor Wall Sconce, no date;
12. Build.com Outdoor Lighting Details – Tech Lighting Outdoor Wall Sconce, no date;
13. Beacon Outdoor Lighting Details- Palm Beach bollard, no date;
14. Email correspondence from John Grenier, Subject: Lizotte 4527 Mountain Road, dated 3/27/18;
15. Email correspondence from Harry Shepard, Town of Stowe Public Works Director, Subject: Duplex Site Plan – 4527 Mountain Road, dated 3/28/18 (staff);
16. Written comments from Mike Seaberg- Northern Lights Lodge, adjacent property owner, dated 4/2/2018;
17. Email correspondence from Nick Lizotte, Re: Griffin Rd Signs, dated 5/5/18;
18. Photographs (2) of basement/crawlspace area, no date;
19. Correspondence from Bannon Engineering, Subject: 4527 Mountain Road-Lower Sanborne Rd./VT 108 Culvert Sediment Transport, dated 5/4/18 (including ten pages of photographs, maps, and other exhibits)
20. Basement Plan, Sheet A0, drafted by Justin Bourne, dated 5/4/2018;
21. Proposed Floor Plan, Sheet A1, drafted by Justin Bourne, dated 5/4/2018;
22. Front and Rear Elevations, Sheet A2, drafted by Justin Bourne, dated 5/4/2018;
23. Side Elevations, Sheet A3, drafted by Justin Bourne, dated 5/4/2018;
24. Site Cross Section Site Plan, Sheet A4, drafted by Justin Bourne, dated 5/4/2018;
25. Site and Building Renderings, Sheet A5, drafted by Justin Bourne, dated 5/4/2018;
26. Site Plan 'Duplex Site Plan', Sheet 1 of 1, File No. 808-1274, prepared by Grenier Engineering, last revised 5/4/2018;
27. Landscape Plan, Sheet 1 of 1, File No. 808-1274, prepared by Grenier Engineering, last revised 5/4/2018.

On remand, the following additional materials were submitted and entered into the hearing record:

28. Email from Nick Lizotte, Re: 4527 Mountain Rd. Duplex, dated 3/8/2021;
29. Color renderings illustrating existing and proposed buildings as viewed from Mountain Road (6 pages), no date;
30. Proposed Site 3D renderings, Sheet A2, prepared by Justin Bourne, dated 3/5/2021;
31. Basement Plan, Sheet A0, prepared by Justin Bourne, dated 5/4/2018;
32. Proposed Floor Plans, Sheet A1, prepared by Justin Bourne, dated 5/4/2018;
33. Front & Rear Elevations, Sheets A2, prepared by Justin Bourne, dated 5/4/2018;
34. Side Elevations, Sheet A3, prepared by Justin Bourne, dated 5/4/2018;
35. Site Cross Section Site Plan, Sheet A4, prepared by Justin Bourne, dated 5/4/2018;
36. Site and Building Renderings, Sheet A5, prepared by Justin Bourne, dated 5/4/2018;
37. Site Layout Plan, Castine Mountain Road LLC, prepared by McCain Consulting Inc., Sheet C-1, dated 6/21/2019;
38. Build Out Plan, Castine Mountain Road LLC, prepared by McCain Consulting Inc., Sheet C-2, dated 6/21/2019;

39. Site Layout Plan- Addition of Building 4, Castine Mountain Road LLC, prepared by McCain Consulting Inc., Sheet C-2, last revised 1/25/2019;
40. Landscaping Plan VTRE Investments Addition of Building 4, prepared by McCain Consulting Inc., Sheet L-1, last revised 1/25/2019;
41. North & West Elevations Honeywell Lodge Chalet Unit prepared by Justin Bourne, Sheet A2, dated 1/24/2019;
42. South & East Elevations Honeywell Lodge Chalet Unit prepared by Justin Bourne, Sheet A3, dated 1/24/2019;
43. Letter from Mark Bannon PE (3 pages), dated 5/4/2018; [with 10 page report regarding Lower Sanborn Rd & Culvert Sediment Transport.
44. Public comments from Michael Seaberg and Shannon Hillpot, dated 5/18/2021;
45. Comments from Harry Shepard [email] dated 4/22/2021 & 5/14/2021;
46. DRB prior decision (5768) dated 5/22/2018.

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

On remand, the Applicant's request for conditional use was reviewed by the Development Review Board (DRB) for conformance with applicable requirements of the Town of Stowe Zoning Regulations (amended through July 3, 2017) 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
- Section 15- Parking Regulations

**Dimensional Requirements:**

1. **Zoning District.** The subject parcel is located in the Upper Mountain Road (UMR) Zoning District as shown on the Official Town of Stowe Zoning Map (amended through July 3, 2017). Portions of the parcel are also within the Flood Hazard Overlay District. No development is proposed within the Flood Hazard District (FHD).
2. **Lot Area, Lot Width.** The parcel contains ±4.2-acres. No changes to lot area or lot width are proposed under this application.
3. **Setbacks.** Required minimum district setbacks in UMR are front (50'), side (50') and rear (50'). The Applicant seeks approval to construct a two-family dwelling. The provided site plan labels the required 50' setbacks. The proposed building is located outside of the required setbacks.
4. **Maximum Building Coverage.** The maximum building coverage in UMR is 8%. The Applicant provided the proposed lot coverage. The total proposed lot coverage equals approximately 11,746 sf or 6.4%, thus in conformance with the maximum building coverage requirements [Sheet C-2-Build-Out Plan].
5. **Height.** The maximum building height in UMR is 28' feet. The Applicant provided scaled elevation drawings of the proposed duplex and testified that the building will not exceed the maximum height of 28', as defined under the regulations.

6. **Density.** In the UMR district, two-family and multi-family dwellings are allowed at a density of three (3) units per acre. The subject parcel contains ±4.2 acres which allows 12.6 two-family and/or multi-family dwelling units. The parcel contains six (6) existing dwelling units in the former motel and owner's quarter's building. Two (2) additional dwelling units are within the proposed duplex. The Applicant proposes a total of eight (8) dwelling units which include six (6) existing and two (2) proposed, under this application.
7. **Project Sequencing.** The submitted plans include a notation stating: "*All construction, grading, and landscaping as required by the plans and permits will be completed when duplex is constructed.*" In accordance with Section 2.9(3)(b) "*Once the zoning permit is issued, all activities authorized by its issuance shall be substantially completed within five (5) years of its effective date, or, if applicable, within the construction schedule granted under the applicant's DRB approval.*" The Applicant has not requested an increased construction schedule and will be required to complete the project within five years.

**Section 3.7(2)(A) – Standards of review (Conditional Use Applications):** The Development Review Board must determine that the use will conform to the following set of standards and will not result in an undue adverse effect on the following:

**8. Capacity of existing or planned community facilities and services.**

- a) Staff requested comments on the proposal from respective Town departments including the Department of Public Works, Fire Department, Stowe Electric, Police Department, EMS, and Parks and Recreation.
- b) The parcel is served by Mountain Road (VT-108); a state-maintained highway.
- c) The Applicant proposes to connect the duplex building to the municipal water system and utilize the existing on-site septic system.
- d) The Department of Public Works [Harry Shepard] provided the following comments on 4/22/2021:

*Re: Project #6521-4527 Mountain Rd, I advise that there are challenges and capacity issues associated with the existing private water supply and wastewater systems relative to this proposed development and being in the UMR, we cannot allocate more than 5 additional bedrooms total of sewer and/or water capacity for development on this property. The floor plans submitted for the duplex alone has more than 5 bedrooms. This building also conflicts with the existing water supply well currently serving the site. If the applicant now proposes to not connect to the municipal water and sewer systems, I recommend that revised site utility plans that depict this be required and, if the DRB is inclined to approve the application, that a condition be incorporated into the approval requiring an approved State WW permit for the private water and wastewater systems be recorded in the land records prior to issuance of the zoning permit (not prior to issuance of CO).*

....and the following additional comments on 5/14/2021:

1. *In addition to the items remanded to the DRB by the Court, the applicant requests consideration of alternative water and sewer service for the development whereby all buildings would be connected to the municipal water but not the municipal sewer, using*

*the existing on-site septic system for the wastewater requirements for the entire development. I note that the utilities shown on the submitted drawings do not reflect this proposal. Drawing C1 still indicates that both proposed buildings are to connect to the municipal sewer. I affirm that our sewer ordinance will not allow more than 17 bedrooms of sewer allocation for this property and, we are prohibited from making partial connections – i.e. all buildings must be connected if any are connected. The existing buildings Units 1 thru 6 have at least 12 bedrooms so we could allocate not more than 5 additional bedrooms. I also note that the existing on-site septic system is approved for a maximum of 2250 GPD under WW-5-0504 (copy attached) and, under the 2019 WW Rules, the design flow for a total of 9 residential units is 2565 GPD (copy attached). Accordingly, the existing septic system would appear to be inadequate for connecting all of the proposed buildings. If the DRB is inclined to support the request of the Applicant to include revised water and sewer utilities for the project under the court remand, I recommend updated site utility drawings to reflect the requested intent be required.*

2. *Some of the remanded items have to do with stormwater and make reference to prior applications by Grenier Engineering, who is not the Engineer of Record for the remanded application. I recommend that the stormwater issues be addressed with the current Engineer of Record and this include an affirmation by the current Engineer of Record, including signed and sealed drawings, that the proposed development will not create undue adverse stormwater impacts on abutting property.*

- e) No additional Municipal Department review forms were returned.

**Conclusion:** Based on the above findings, the Board concludes the project, as conditioned, will not adversely impact the Town's existing or planned community facilities or services. The Board will require, as a condition of approval, that the following be completed prior to the zoning permit being issued:

- The Applicant must submit an updated site utility plan that depict the proposed utility connections.
- The Applicant must obtain an approved State WW permit for the wastewater system(s) and record said permit in the town land records.
- Water allocations must be approved by the Stowe Water Commission.
- Water connection details and specifications must be approved by the Department of Public Works;
- The property owner must enter into an approved executed Consecutive Water System Agreement.

**9. Section 3.7(2)(A)(2) – Traffic on roads and highways in the vicinity.**

- a) The Applicant requests approval for the construction of a duplex containing two (2) residential dwelling units.
- b) The parcel has direct access onto Route 108 (Mountain Road), a state highway.
- c) The Applicant did not provide an estimated number of vehicle trips generated by the proposed duplex, however during the original hearing the Board agreed that an additional two (2) dwelling units is not anticipated to generate a significant increase in additional traffic.

**Conclusion:** Based on the above findings, the Board concludes the construction of the duplex containing two (2) dwelling units will not create an undue adverse impact on traffic on roads and highways in the vicinity.

**10. Section 3.7(2)(A)(3) – The character of the area affected.**

- a) Pursuant to Section 3.7(2)(A)(3), the Board must determine that the use will not result in an undue adverse effect on the character of the area affected as defined by the purpose of the zoning district within which the project is located and specifically stated policies and standards of the Stowe Town Plan.
- b) The subject parcel is in the UMR zoning district. As defined in the Town of Stowe Zoning Regulations, the purpose of the UMR district is *“To control development along the “upper” Mountain Road in a manner that allows for residential, recreation and low-density commercial uses of property while preserving the rural character of the landscape, discouraging strip development and promoting the ongoing viability of existing land uses.”*
- c) Predominant land uses in the vicinity include lodging facilities, multi-family dwellings, and single-family dwellings.
- d) The Applicant proposes to construct a two-family dwelling (duplex) on a ±4.2-acre parcel located on Mountain Road (VT-108), a state-maintained highway.
- e) The Town of Stowe Town Plan includes the following policy applicable to the UMR District:  
*The rural character of the Upper Mountain Road zoning district will be maintained by:*
  - a. *Allowing residential development and limited commercial uses along the majority of the corridor;*
  - b. *Discouraging new development from being sited in remaining open fields and meadowlands within the corridor; and;*
  - c. *Preventing site design characteristic of strip development;*
- f) The subject parcel contains an existing multi-family dwelling, formerly a lodging facility (motel). The Board approved a change of use from lodging facility to multi-family dwelling under Project 5489 on November 22, 2016. Also located on the parcel is a rear attached dwelling unit and residential garage.
- g) The rear property line is formed by the West Branch of the Little River. Lands adjacent to the river are located within the Flood Hazard Overlay District. No development within the Flood Hazard Overlay District is proposed under this application.
- h) The adjacent parcel to the east contains the Northern Lights Lodge, an existing lodging facility for transient guests.
- i) This portion of Mountain Road is known to contain a mix of residential, commercial, and lodging uses.

- j) The Applicant provided scaled elevation drawings of the proposed duplex and testified that the building will not exceed the maximum height of 28', as defined under the regulations. The proposed duplex has various heights and rooflines.
- k) The elevation drawings depict a variety of building materials including white cement board, corrugated siding, grey siding, shingles- all being neutral colors.
- l) The Applicant provided a site cross section [site cross section site plan; Sheet A4] and rendering of the proposed duplex as is relates to the existing buildings on the parcel along with proposed views from Mountain Road and the neighboring Northern Lights property.

**Conclusion:** Based on the above findings, the Board concludes the project will not result in an undue adverse effect of the character of the area affected. In making this conclusion, the Board relies on the described purpose of the UMR district *"To control development along the "upper" Mountain Road in a manner that allows for residential, recreation and low-density commercial uses of property while preserving the rural character of the landscape, discouraging strip development and promoting the ongoing viability of existing land uses."* The Applicant proposes a residential duplex containing two (2) dwelling units. The proposed building is designed with varying roof heights and a mix of building materials to provide variation and reduce the linear massing of the existing single-story former motel building. The architectural design, building orientation, and location of the duplex will reduce the appearance of strip development along Mountain Road and provide for a compatible building centered on a shared parking area with additional landscaping. The Applicant provided a cross sectional drawing and renderings depicting the relationship of buildings on the site and the visibility from Mountain Road and neighboring properties. The proposed building will be visible from Mountain Road and neighboring properties, however, will be partially filtered by the existing building and proposed landscaping. The properties in the immediate vicinity contain other compatible lodging and residential uses. The proposed duplex will provide additional residential development on an existing developed parcel which is consistent with the purpose of the UMR district, while its architectural design will also contribute to the rural character of the district by reducing the appearance of strip development and the linear mass of the existing single-story former motel building.

**11. Section 3.7(2)(A)(4) – Regulations and ordinances in effect.**

- a) The application was reviewed by the Development Review Board as a conditional use.
- b) Applicable bylaws include the Town of Stowe Zoning Regulations, as amended though July 3, 2017.
- c) No other known or identified municipal bylaws or ordinances apply to this project.

**Conclusion:** Based on the above findings, the Board concludes residential uses are allowed in the UMR District. The proposed use is in conformance with the bylaws in effect at the time of application.

**12. Section 3.7(2)(A)(5) – Utilization of renewable energy sources.**

- a) The Applicant requests approval for the construction a duplex containing two (2) dwelling units.



- b) The parcel is approximately 4.2 ±-acres and contains an existing multi-family dwelling, formerly a lodging facility. Also located on the parcel is a rear attached dwelling unit and residential garage.
- c) The proposed duplex is located along the eastern property line oriented perpendicular to the Mountain Road.
- d) During the hearing, the Applicant testified that the proposed building is designed to be less than the district height requirement of 28'.

**Conclusion:** Based on the above findings, the Board concludes the project will not interfere with the sustainable use of renewable energy resources, access to, direct use or future availability of such resources.

**13. Section 3.7(2)(B)(1) – Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas.**

- a) No scenic or natural areas or historic buildings are known to exist or were identified on the parcel.
- b) The project is located in the Upper Mountain Road (UMR), Fluvial Erosion Hazard, and Flood Hazard Overlay districts.
- c) No development is proposed within the Fluvial Erosion Hazard or Flood Hazard Overlay districts.
- d) The parcel is previously developed containing a linear single-story former motel building and attached owners' quarters. The existing building(s) have been converted to multi-family residential use.
- e) The Applicant provided architectural drawings of the proposed duplex. The proposed duplex building has been designed with various roof forms and heights and utilizes a variety of building materials including white cement board, corrugated siding, grey siding, shingles- all being neutral in color.

**Conclusion:** Based on the above findings, the Board concludes the parcel contains existing buildings and site improvements; the Applicant's proposal involves no development within sensitive riparian areas including the Fluvial Erosion Hazard or Flood Hazard Overlay districts, nor will it impact any documented historic sites, or rare and irreplaceable natural areas. The proposed building has been designed to incorporate design elements to maintain a consistent architectural style and be compatible with existing buildings on the parcel and its surroundings. Given the parcel is previously developed, does not contain any known historic sites or rare or irreplaceable natural areas, and has been designed to be compatible with its surroundings, the Board concludes the project will not adversely affect the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas.

**14. Section 3.7(2)(B)(2) - Project will not result in undue water, noise or air pollution.**

- a) The Applicant requests approval to construct a two-family dwelling (duplex).

- b) The parcel is previously developed containing a linear single-story former motel building and attached owners' quarters. The existing building(s) have been converted to multi-family residential use.
- c) An erosion control plan was submitted outlining management practices to be followed during construction. The EPSC plan shows the location of stone check dams, limits of disturbance, and silt fencing.
- d) No development is proposed within the Flood Hazard District (FHD).
- e) During the original hearing, an adjoining property owner raised concerns regarding construction noise and requested that the Board consider a condition limiting construction activity in order to prevent noise impacts to the adjoining properties.
- f) The provided site plan includes a notation "no construction noise allowed at the property boundaries outside the work hours of Monday -Friday from 8:00 AM- 5:00 PM."
- g) The Applicant proposes to connect the proposed building to the municipal water system while utilizing the existing on-site septic system to serve the proposed duplex building.
- h) The Department of Public Works [Harry Shepard] provided the following comments on 4/22/2021:

*Re: Project #6521-4527 Mountain Rd, I advise that there are challenges and capacity issues associated with the existing private water supply and wastewater systems relative to this proposed development and being in the UMR, we cannot allocate more than 5 additional bedrooms total of sewer and/or water capacity for development on this property. The floor plans submitted for the duplex alone has more than 5 bedrooms. This building also conflicts with the existing water supply well currently serving the site. If the applicant now proposes to not connect to the municipal water and sewer systems, I recommend that revised site utility plans that depict this be required and, if the DRB is inclined to approve the application, that a condition be incorporated into the approval requiring an approved State WW permit for the private water and wastewater systems be recorded in the land records prior to issuance of the zoning permit (not prior to issuance of CO).*

....and the following additional comments on 5/14/2021:

1. *In addition to the items remanded to the DRB by the Court, the applicant requests consideration of alternative water and sewer service for the development whereby all buildings would be connected to the municipal water but not the municipal sewer, using the existing on-site septic system for the wastewater requirements for the entire development. I note that the utilities shown on the submitted drawings do not reflect this proposal. Drawing C1 still indicates that both proposed buildings are to connect to the municipal sewer. I affirm that our sewer ordinance will not allow more than 17 bedrooms of sewer allocation for this property and, we are prohibited from making partial connections – i.e. all buildings must be connected if any are connected. The existing buildings Units 1 thru 6 have at least 12 bedrooms so we could allocate not more than 5 additional bedrooms. I also note that the existing on-site septic system is approved for a maximum of 2250 GPD under WW-5-0504 (copy attached) and, under the 2019 WW Rules, the design flow for a total of 9 residential units is 2565 GPD (copy*

*attached). Accordingly, the existing septic system would appear to be inadequate for connecting all of the proposed buildings. If the DRB is inclined to support the request of the Applicant to include revised water and sewer utilities for the project under the court remand, I recommend updated site utility drawings to reflect the requested intent be required.*

- i) Mr. Seaberg raised concerns regarding the adequacy and capacity of the existing septic system and concerns with drainage impacting the neighboring septic system/leachfield on his adjacent property.

**Conclusion:** Based on the above findings, the Board concludes the Applicant proposes a residential duplex building on a previously developed parcel. As proposed, the building will be connected to the municipal water systems and utilize the existing on-site septic system. Recognizing the State of VT regulates on-site septic, the Board will require as a condition of approval that an approved WW permit issued by the State of Vermont be recorded in the land records before a zoning permit be issued. A professionally prepared erosion prevention sediment control plan was submitted. During construction appropriate erosion control measures will be in place to avoid potential impacts to surface waters. In effort to reduce noise impacts to nearby properties, the Applicant proposes to limit construction related activity and noises to Monday -Friday from 8:00 AM- 5:00 PM. Nothing within the application or presented within the hearing record raises concerns that the project would cause undue air pollution, the Board therefore affirms and concludes the project, as maintained and conditioned, will not result in undue water, noise or air pollution.

#### 15. Section 3.7(2)(B)(3) –Access Management.

- a) The project is served by the existing private access off Mountain Road (VT-108), a state-maintained highway.
- b) 24 VSA §4416 requires proposals involving access to a state highway provide a letter of intent from the Agency of Transportation confirming that the Agency has reviewed the proposed site plan and is prepared to issue an access permit under 19 VSA §1111.
- c) The Applicant proposes to utilize the existing curb cut on Mountain Road.
- d) A letter of intent was previously submitted from Vermont Agency of Transportation approving a curb cut onto Route 100. Some minor changes to the driveway width were required by the Agency.
- e) During the original hearing, the Applicant testified that except for paving the curtain apron, all necessary improvements required by the VT Agency of Transportation have been completed.

**Conclusion:** Based on the above findings, the Board concludes that the existing access and improvements required by VT Agency of Transportation will provide adequate access for the intended and existing use(s).

#### 16. Section 3.7(2)(B)(4) – Shared Access.

- a) The parcel is served by an existing private access shared by the other buildings on the property. The existing access is not shared with adjacent parcels.

- b) Except as noted above and required by VT Agency of Transportation, no changes to the existing access are proposed under this application.

**Conclusion:** Based on the above findings, the Board concludes that the existing access and improvements required by VT Agency of Transportation will provide adequate access for the intended and existing use(s).

**17. Section 3.7(2)(B)(5) – Circulation and Parking.**

- a) The regulations require that parking be provided per the requirements of Section 15 and be designed to minimize the off-site visibility of parking areas through the location, landscaping, and screening of such areas.
- b) The parcel contains an existing five (5) unit multi-family dwelling and an owner's quarters containing one (1) dwelling unit.
- c) Table 15.2 outlines the minimum parking requirements and requires two (2) parking spaces for multi-family dwelling units.
- d) No significant alterations or improvements are proposed to the existing gravel parking area.
- e) The site plan includes a parking table showing sixteen (16) spaces are required and twenty-four (24) spaces are provided.
- f) During the 4/3/2018 hearing the Board raised concerns related to turning radius and circulation into and out of the proposed duplex garages. In response, the Applicant provided a turning movement plan detail of the revised site plan (dated 5/4/2018) documenting the circulation pattern and turning movements. The Applicant's engineer testified that the access aisle is 24' in width allowing for two-way circulation.

**Conclusion:** Based on the above findings, the Board concludes the existing and proposed circulation and parking improvements represents adequate access and circulation for the intended and existing use(s) and are in conformance with the required parking per Table 15.2 and applicable requirements of Section 3.7(2)(B)(5).

**18. Section 3.7(2)(B)(6) – Pedestrian Circulation and Access.**

- a) The regulations require pedestrian circulation within the site, and access through the site to adjacent properties along public roads, be provided.
- b) This portion of Mountain Road (VT Route 108) does not contain sidewalks. This portion of Mountain Road and the UMR district contains larger lots in areas where pedestrians generally access properties via automobile.
- c) Each duplex unit will contain a two-car garage, each with an internal doorway connecting to the living area.
- d) No additional pedestrian improvements are proposed under this application.

**Conclusion:** Based on the above findings, the Board concludes the site layout, including pedestrian circulation and access, and proposed internal connection from the garage to the dwelling units represents safe and adequate pedestrian access and circulation for the intended use.

**19. Section 3.7(2)(B)(7) – Landscaping and Screening.**

- a) The regulations require landscaping details and screening of garbage collection areas, outdoor storage, commercial ventilation systems over two square feet; loading and unloading areas and other outdoor utilities, including solar installations, be provided as part of proposed site development plans.
- b) Landscaping shall be designed to achieve the purposes of the landscaping regulations, strengthen the features and conditions unique to each site, and should include a combination of shade trees (deciduous and/or coniferous), deciduous and evergreen shrubs, well-kept grasses and ground covers. Landscaping may be required in front and side yards, adjacent to parking areas and where rear yards abut residential properties or public roads [Section 4.6(3)(A)].
- c) The Applicant provided a landscaping plan (Sheet L-1) prepared by McCain Consulting Inc.
- d) The Applicant proposes a 4' landscaping mound located parallel to Mountain Road with two (2) blue spruce trees planted in front of the landscaping mound. Unlabeled trees shown in light green on the Landscape Plan are existing and are proposed to remain. Trees to be removed are symbolized in orange and include two (2) existing white pines; a pine clump shown within the duplex building footprint; and a small group of trees shown in the north-east corner of the proposed duplex building.
- e) The proposed two (2) blue spruce (*Picea Pungens*) are proposed to be 8'- 10' in height when planted, as noted on the Landscape Plan, and will be planted in front of the 4' landscaping mound.
- f) Three (3) new red maples are proposed on the eastern edge of the existing driveway. Two (2) new red maples are proposed on the eastern side of the proposed duplex, in between the proposed building and the property line of Montchilly Inc.
- g) The existing treeline is generally symbolized on the Landscape Plan and is shown primarily to border the rear of the parcel near the river.
- h) The Landscaping Plan also depicts the existing trees to remain and the trees to be removed.
- i) The site plan contains a note "*all trees to be protected during construction of building and swale with orange construction fence or tape.*" The plan also contains a notation "*no additional cutting of standing trees is permitted without the review and approval by the DRB.*"
- j) Section 3.7(2)(C)(2)(a) provides the following requirement: "*Front Yard Treatment: A continuous strip not less than twenty (20') feet deep, measured from the edge of the highway right of-way, shall be maintained between the street line and the balance of the lot, which strip shall be suitably landscaped.*" (See further discussion below)

- k) Section 4.6(3)(C)(1) provides the following general requirements: *"Shade trees shall be of sufficient size to achieve the desired effect, but in no event shall they be smaller than 2.5" - 3.0" caliper (trunk diameter), measured at a height of five (5') feet, or, in the case of coniferous trees, a minimum of 8' - 10' in height. The DRB may require the planting of larger diameter trees upon consideration of the site conditions."*
- l) No exterior mechanical equipment is shown on the building elevation drawings or the site plan.
- m) Between the existing driveway and the eastern property line, the landscape plan shows a group of existing trees in the northeastern corner of the lot, approximately seven (7) mature pine trees, and other symbolized existing and proposed trees and bushes. All of these noted existing trees are proposed to remain.
- n) The existing trees to be removed are shown on the plan and symbolized in orange. Two existing white pines near the front of the parcel are proposed to be removed, as one pine clump located within the proposed building footprint, and a clump near the northeastern corner of the proposed duplex building.
- o) The Applicant provided colored renderings showing the proposed building along with the existing and proposed landscaping, as viewed from Mountain Road (VT-108) and the neighboring property to the east.
- p) As shown in the colored renderings, the backside of the duplex will be partially shielded by the proposed maple trees and the existing mature evergreen trees.
- q) As shown in the colored renderings and on the provided site plan, the proposed duplex building will be set back from Mountain Road over 160' from the roadway.
- r) Three (3) proposed red maple trees are shown to line the eastern side of the existing driveway. Two (2) additional red maple trees are proposed along the eastern property line positioned to the rear of the proposed duplex building.
- s) During the remanded hearing, the Applicant, Nick Lizotte, described the proposed landscaping as red maples alongside of the driveway, two evergreens, and a landscaped berm along the front of the property. He reported the berm and evergreen trees were part of a separate previously approved application, however, is proposing to include the additional landscaping as part of the duplex application.
- t) Property adjoiner Michael Seaberg raised concerns with the proposed side yard landscaping. He testified that the regulations call for a mix of deciduous and evergreens; he reported the proposal includes three trees to provide screening between the building and his property. During the hearing he requested additional coniferous trees and claimed the maple trees would lose leaves and not provide year-round screening.
- u) The existing mature treeline to the rear of the property and adjacent to the river is proposed to remain. This existing treeline provides a vegetative backdrop as shown in the provided renderings.

v) Section 4.6(3)(5) requires sufficient screening be provided if the DRB determines that topographical or other barriers do not provide adequate screening. As stated in the regulations, screening *may* be required in the following cases:

1. *Where more intensive land uses are proposed to abut less intensive uses.*
2. *Adjacent to garbage collection and utility areas, satellite antennas, commercial ventilation systems over 2 square feet, outdoor storage, and loading and unloading areas and other outdoor utilities and facilities.*
3. *When the project adversely impacts adjacent properties (i.e. lighting, outdoor storage, etc.) and when contiguous land uses and activities will adversely impact on the development (i.e. roads or incompatible uses).*

w) The proposed site plan does not show the location of any dumpsters. During the hearing, the Applicant testified trash/recycling containers would be stored inside each garage and brought outside for collection.

x) Section 3.7(2)(C)(2)(a) provides the following requirement: "*Front Yard Treatment: A continuous strip not less than twenty (20') feet deep, measured from the edge of the highway right of-way, shall be maintained between the street line and the balance of the lot, which strip shall be suitably landscaped.*" (See further discussion under Section 3.7(2)(C)).

**Conclusion:** The Town's adopted zoning regulations provides the Board broad authority in reviewing proposed landscaping and screening under this section. Section 3.7(2)(B)(7) requires that the Applicant provide landscaping details and screening of garbage collection areas, outdoor storage, commercial ventilation systems over two square feet; loading and unloading areas and other outdoor utilities. None of the listed items are proposed under this application.

The Applicant provided a landscape plan showing the existing and proposed landscaping to be planted as part of this application. The proposed landscaping includes a 4' landscaping mound flanked with two (2) blue spruce trees (8'-10' in height) planted along the front of the property, two proposed red maples located along the eastern side of the duplex between the adjacent 4441 Mountain Road property, and three new red maples along the eastern side of the entrance drive.

The proposed landscaping is coupled with the existing landscaping and mature bushes/trees that are located throughout the parcel. The landscaping plan also clearly shows the existing trees/bushes to remain or be removed as part of the application. The Applicant proposes to incorporate an additional five (5) deciduous red maple trees positioned along the existing driveway and to the rear of the proposed building; the proposed trees are positioned to interrupt and filter the proposed building façade as shown and documented in the provided plans and renderings. While the proposed maple trees located on the east side of the building between 4441 Mountain Road may not provide year-round screening, the existing mature coniferous tree will provide visual screening in winter months and collectively, the existing and proposed trees will interrupt the façade of the building.

The proposed placement and design of the duplex will also break-up and reduce the linear mass of the existing one-story former motel building and will provide visual variation in building height and form. The Applicant proposes to visually screen the garbage collection bins by storing them in each garage; the Board concludes this will provide the necessary visual screening required under the regulations. Given the above findings, the Board concludes the existing and proposed landscaping and screening, together with the design and placement of the proposed building, has been designed

to better integrate the proposed duplex building into its natural surroundings, provide adequate screening for adjacent properties, and be compatibility with neighboring properties [see additional discussion below.]

**20. Section 3.7(2)(B)(8) – Stormwater Management.**

- a) Per Section 3.7(2)(B)(8), the Applicant shall, at the request of the DRB, submit a plan for the management of stormwater generated by the proposed development. All stormwater management plans shall meet the applicable State of Vermont Stormwater Discharge Regulations.
- b) Section 3.12 provides stormwater management and erosion prevention and sediment control requirements for all new construction.
- c) Per 3.12(2)(f), all development that creates more than 1/2 (one-half) acre of additional impervious surface must provide for an adequate stormwater drainage system to ensure that stormwater runoff is not increased beyond the boundaries of the project as determined by the standards used for the State of Vermont stormwater management permits. Such development shall submit a stormwater management plan prepared and sealed by a registered engineer before a zoning permit is issued.
- d) The property is previously developed containing a linear single-story building, a former motel converted to a multi-family dwelling, attached dwelling unit on the southern end of the single-story building, as well as an existing parking area, related site improvements, landscaping, swimming pool, etc.
- e) The parcel is generally flat with a gentle slope in the southerly direction toward the West Branch of the Little River which forms the southerly property line. The elevation of the northern side of the parcel is approximately 910'. The first-floor elevation of the proposed duplex is designed to be 912'; the base floor elevation is proposed to be 903'.
- f) The Applicant provided an erosion control plan prepared by John Grenier, a licensed professional engineer (No. 9018, State of Vermont).
- g) The erosion control plan shows the location of a proposed drainage swale located along the rear of the proposed duplex building designed to direct water away from the neighboring septic system.
- h) During the original hearing, the adjoining property, Mr. Seaberg, owner raised concerns regarding the location of the swale and potential adverse impacts to the adjoining property. The adjoining property owner also raised concerns regarding the adequacy of the proposed stormwater improvements and additional stormwater generate by the proposed project.
- i) The submitted plan includes a notation: *"Drainage swale behind building discharge to flood plain and river. Owner to remove fallen trees to reduce existing and future ponding."*
- j) The erosion control plan shows the location of silt fencing to be located along the rear and eastern side of the project site. The plan includes a notation that *"silt fencing shall be placed as shown on the plans to retain sediment. The silt fence can be removed when excavation is complete. The slopes are mulched and good grass cover is started."* The plan also includes



the following notation: *"The State Erosion Control Handbook shall be followed during all site construction."*

- k) Check dam and silt fence details are illustrated on the provided erosion control plan.
- l) The erosion control plan shows the limits of disturbance running along the rear of the proposed duplex building near the eastern property line. Approximately  $\pm 0.25$  acres are proposed to be disturbed as noted on the provided plan.
- m) The Applicant's engineer provided the calculations for areas of disturbance and impervious surfaces. The proposed duplex creates  $\pm 0.11$  acres of impervious surfaces. The total impervious surfaces added to the site will be  $\pm 0.12$  acres, which includes the previously approved garage. The area of disturbance was estimated to be  $\pm 0.25$  acres.
- n) During the hearing, the Applicant provided testimony regarding existing drainage concerns along the front of the parcel bordering Mountain Road. He testified the existing drainage issues related to stormwater generated from the upper watershed and Lower Sanborn Road. He testified that the State of VT and the Town of Stowe recognize this area as having larger drainage issues and multiple authorities are involved since it involves both town and state highways.
- o) The Applicant, Nick Lizotte, testified on the existing drainage and stormwater issues and the runoff from the state highway kills everything in this area.
- p) Adjoining property owner Michael Seaberg provided an email from DPW Director Harry Shepard (dated 7/20/21) indicating that *"the town has no plans for stormwater mitigation efforts associated with the drainage off of Lower Sanborn Road."*
- q) The Applicant provided a report prepared by Bannon Engineering which discusses the small unnamed stream that flows under Mountain Road and discharges on the subject property. The report provided recommendations for maintenance and prevention which involves lands on the subject property outside the public right-of-way.
- r) The report prepared by Bannon Engineering provided the following suggestions and recommendations:

*Given site conditions, site constraint, and competing town priorities, good maintenance and prevention appear to be the interim course of action. The maintenance and prevention should consist of:*

- 1. Inspecting the ditches and structures periodically in the spring and after heavy precipitation events.*
- 2. Removing sediment as it is observed in the ditching.*
- 3. Grading the roads to maintain crown and reducing rilling. Grading should be scheduled to avoid fresh grading before heavy precipitation forecast.*
- 4. Removing sediment from the concrete arch under Mountain Road periodically to maintain flows.*

- s) Harry Shepard of the Department of Public Works provided the following additional comments on 5/14/2021:

*Some of the remanded items have to do with stormwater and make reference to prior applications by Grenier Engineering, who is not the Engineer of Record for the remanded application. I recommend that the stormwater issues be addressed with the current Engineer of Record and this include an affirmation by the current Engineer of Record, including signed and sealed drawings, that the proposed development will not create undue adverse stormwater impacts on abutting property.*

**Conclusion:** Given the proposed project involves less than ½ acre of impervious surfaces, the Board concludes no additional stormwater management improvements are required under Section 3.7(B)(2)(8). The Applicant provided an erosion control plan prepared by a professional licensed engineer showing the proposed stormwater improvements, including a drainage swale, stone check dams, as well as silt fencing to ensure sediment is retained during construction. As testified during the hearing, stormwater will drain off the building roof into the center of the proposed swale and be carried in the southerly direction to discharge to the floodplain and portions carried towards Route 108 to drain into an existing ditch. The Applicant's engineer also provided evidence that less than ½ acre of soils will be disturbed as part of this project and documented the proposed erosion control measures to be followed during construction. Given the site is previously developed, is generally flat with a gentle slope downward in the southerly direction, and the Applicant is not proposing more than ½ of impervious surfaces or grading/disturbance, the Board concludes the proposed improvements provide for adequate stormwater and erosion control measures and the project will not have an undue adverse impact on neighboring properties, town highways or surface waters. Based on the above findings, the Board concludes the proposed project conforms to the requirements of Section 3.12.

21. **Section 3.7(2)(C).** In addition to other provisions of Section 3.7, the Board shall be guided by the following standards when reviewing all site development plans in the designated zoning district. These standards apply to all site development plans, including those involving new construction, expansion, alteration or change of use. The Board may waive the specific requirements of this section when it is found that mitigation through design, screening or other mitigation will accomplish the objectives outlined for the designated districts.

1. *Additional HT, RR, MOD, UMR Standards: Within the Highway Tourist (HT), (Rural Residential (RR), Meadowland Overlay (MOD) and **Upper Mountain Road (UMR)** Districts, site plans shall re-enforce efficient traffic circulation, preserve such important landscape features as open fields, scenic vistas, natural and cultural focal points and a well landscaped highway corridor.*

*To help achieve these objectives, the following standards shall apply:*

- a. *Front Yard Treatment: A continuous strip not less than twenty (20') feet deep, measured from the edge of the highway right of- way, shall be maintained between the street line and the balance of the lot, which strip shall be suitably landscaped. Only driveways and pedestrian walks may traverse the required strip. In addition, no portion of the front yard may be used for storage or for any purpose except as provided herein.*
- b. *Parking: Parking shall be located in the rear and/or side of all commercial and multi-family residential properties, except as provided under Section 14.3 of the regulations. Projects involving the upgrade and expansion of motels and lodges built prior to*

*January 1, 1997, and designed with outside access to individual rooms fronting on parking areas, may continue locating parking within front yards.*

- c. *Driveway Access:* *Driveways shall be the minimum width necessary to provide safe vehicular access and promote pedestrian circulation.*
- d. *Additional UMR Standards:* *In addition to the conditional use criteria of the regulations, the Board shall find that proposed development is designed in a manner compatible with area's rural character. At a minimum, the Board will consider:*
- *Adequacy and appropriateness architectural design and visual context of the project. Generally, architectural designs shall reinforce the rural landscape of the district through contextual scale and orientation of the buildings within the site and should reflect vernacular Vermont residential and agricultural building styles and incorporate, where appropriate, traditional materials; and*
  - *Buildings should generally be designed with a pitched roof and be of a mass and scale compatible with neighboring properties and the site.*
- a) The Applicant proposes a residential duplex containing two (2) dwelling units. The proposed building is designed with changing roof heights and a mix of building materials.
- b) The Applicant provided scaled elevation drawings of the proposed duplex and testified that the building will not exceed the maximum height of 28', as defined under the regulations.
- c) The proposed duplex has various heights and rooflines.
- d) The elevation drawings depict a variety of building materials including white cement board, corrugated siding, grey siding, shingles- all being neutral tones and color.
- e) The Applicant provided a site cross section and rendering of the duplex as it relates to the existing buildings on the parcel along with proposed views from Mountain Road and the neighboring Northern Lights property.
- f) The proposed building is positioned parallel with the existing linear single-story former motel building. These two (2) buildings are oriented on the existing shared parking area located in the middle of the two (2) buildings providing for an open court like appearance.
- g) No significant alterations are proposed to the existing gravel parking area. The proposed duplex will be served by the existing access.
- h) The parcel contains approximately 302.57' of frontage along Mountain Road (VT-108).
- i) Each duplex unit is proposed to contain a two-car garage. Proposed parking for the duplex is within the garages.
- j) The Applicant proposes a 4' landscaping mound located parallel to Mountain Road with two (2) blue spruce trees planted in front of the landscaping mound. Two (2) existing white pines are labeled to be removed.

- k) The Applicant provided color renderings showing the existing and proposed improvements as seen from Mountain Road and the neighboring property. An attached building at the front of the parcel approved under a separate application is illustrated and is shown to partially shield or screen the proposed duplex from the public right-of-way.
- l) During the hearing, the Board heard testimony from the Applicant regarding the existing drainage issues from the Mountain Road and Lower Sanborn Road. The Applicant testified that due to the existing drainage and maintenance issues, the area of the parcel parallel to Mountain Road cannot support thriving landscaping until the drainage issues are resolved and soils can properly drain.

**Conclusion:** Based on the above findings, the Board concludes the proposed duplex has been designed in a manner compatible with the areas rural character and is consistent with the defined purpose of the UMR district. The dwelling unit is designed in a similar architectural style and with a low-pitch roof similar to that of the existing building and those in the vicinity; the dwelling unit will break-up the linear massing of the former single-story motel building. No changes are proposed to the existing width of the access drive and proposed parking is within the garage; both in conformance with Section 3.7(2)(c)(1)(b & c). In reviewing the requirements of Section 3.7(2)(c)(1)(a) regarding front yard treatment, the Board concludes the submitted plans do not conform to the requirement that a continuous strip not less than twenty (20') feet deep, measured from the edge of the highway right of-way, be suitably landscaped. Although the proposed plans contain a grassy strip area along the frontage containing a 4' landscape mound with evergreen trees, the Board concludes this area is not suitably landscaped and does not conform to the requirement that at least one (1) street tree shall be planted for each thirty linear feet (30') of landscaping strip [§4.6(3)(D)(1-5)]. While the Board has the discretion to waive this requirement when it finds that mitigation through design, screening or other mitigation will accomplish the objectives outlined for the UMR District, it does not have the authority to waive the requirement due to existing drainage conditions. As such, the Board will require in addition to the two proposed evergreen trees, that the Applicant plant eight additional trees at 30' increments, in accordance with [§4.6(3)(D)(1-2, 4-5)].

#### **Section 4: Specific Use Standards:**

22. **Section 4.6 Landscaping Standards.** See discussion above.

23. **Section 4.8 Outdoor Lighting.**

- a) The regulations require that all outdoor lighting shall be installed in accordance with the Section 4.8(A-C). When reviewing lighting plans pursuant to Section 4.8, including proposed gas station canopy or apron lighting, proposed illumination of building façades or parking area lighting, the DRB shall consider appropriate levels and distribution of illumination. In determining appropriate levels of illumination, the Board considers the guidelines outlined in Section 4.8(2)(A-F).
- b) The Applicant submitted lighting cut sheets for the proposed outdoor lighting. During the original hearing, the Applicant testified that the lighting will be recessed under the cantilever portion of the building, down-casted light fixtures will be installed over each garage to provide site lighting. The elevation drawings do not show the location of light fixtures.

**Conclusion:** Based on the above findings, the Board concludes that the proposed outdoor lighting is in conformance with Section 4.8 and that the lighting has been designed to minimize spill into the night sky and is appropriate for the intended use and site location.

### **DECISION**

The Development Review Board hereby approves the Applicant's request as outlined in the application dated 3/2/2018 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. Prior to the issuance of the zoning permit the Applicant shall file the following additional information:
  - a. Revised architectural elevations which match the building renderings;
    - o The revised architectural elevation drawings shall depict the location of the front deck, exterior lighting, as well as note the building elevation and height, as defined by the Town of Stowe Zoning Regulations.
    - o The revised rear architectural elevation drawing shall accurately depict the rear elevation in relation to proposed ground elevations.
  - b. An updated Erosion Control Plan showing the revised improvements and notations as shown on the Erosion Control Plan prepared by Grenier Engineering, last revised 3/21/18.
  - c. A revised landscape plan with a planting schedule listing the quantity, species, caliper, etc. of the proposed trees. The proposed red maples shall be no smaller than 2.5" - 3.0" caliper (trunk diameter), measured at a height of five (5') feet. The proposed coniferous trees must be a minimum of 8' - 10' in height.
  - d. An updated site utility plan that depicts the proposed utility connections.
  - e. An executed consecutive water system agreement between the Town and the property owner.
  - f. Water allocation must be approved by the Stowe Water Commission.
  - g. Submit water systems plans, details, and specifications for review and approval by the Department of Public Works.
  - h. An approved State of VT Wastewater & Potable Water (WW Permit) must be recorded in the Town Land Records.
4. The Applicant shall install and maintain a minimum of eight additional street trees at 30' increments along the edge of the road right-of-way in accordance with [§4.6(3)(D)(1-2, 4-5)].
5. The installation of exterior light fixtures is limited to those described and depicted within the application.
6. All outdoor light fixtures shall be installed, shielded, and aimed so that illumination is directed only to the designated area and does not cast direct illumination or cause glare beyond the boundary lines of a property. Outdoor light fixtures shall be on photocells or timers.

7. Exterior lighting fixtures shall not exceed 2,000 lumens (equivalent to a 150-watt incandescent bulb).
8. All mechanical systems shall be located or screened in a manner that they are not visible from the public right-of-way or adjacent properties.
9. Construction noise is prohibited at the property boundaries outside the approved work hours of Monday through Friday 8:00AM-5:00PM.
10. All trash and recycling receptacles shall be stored inside of the garage(s) or in a screened structure approved by the Zoning Administrator.
11. The color scheme of the duplex shall be as portrayed in the provided building renderings.
12. Landscaping shall be installed and maintained as shown in the provided project plans prepared by McCain Consulting and amended herein. Any dead and dying plants and trees as shown on said plans shall be replaced within one (1) year of death.
13. The 50 ft buffer along the river shall be left in an undisturbed state with the exceptions outlined in Section 3.10.
14. During construction, the Applicant must follow best management practices outlined in the State of VT Low Risk Site Handbook for Erosion Prevention and Sediment Control.
15. 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.
16. 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. Prior to the issuance of a Certificate of Occupancy, a register engineer licensed in the state of VT must provide written confirmation that the project has been completed in accordance with the approved plans.
17. 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, Chris Walton, Andrew Volansky, Thomas Hand, Peter Roberts, and Michael Diender.

Voting to deny: None

Dated at Stowe, Vermont this the 1 day of September 2021

By:   
D. Clymer, DRB 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.