



Notice of DRB Decision
Town of Stowe Planning and Zoning Department
PO Box 730
Stowe VT 05672

You recently received approval for the project listed below from the Development Review Board. Attached is a copy of the DRB decision for your records.

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

APPLICATION INFORMATION

Project Number	7604		
Application Date	4/29/2025		
Physical Location	2438 MOUNTAIN RD		
Map ID	06-039.000	Tax ID	25025
Project Description	SITE PLAN AND LANDSCAPING REVISIONS TO PREVIOUSLY APPROVED 9-UNIT PRD		
Owner	MOUNTAIN ROAD TOWN HOMES LLC		
Applicant	MOUNTAIN ROAD TOWN HOMES LLC		
Applicant Address	732 E. BROADWAY SOUTH BOSTON MA 02127		

APPROVALS ON RECORD

Action Taken	Date	Effective Date	Expiration Date
INCOMPLETE APP	5/13/2025		
DRB DECISION	10/3/2025	11/2/2025	11/2/2027

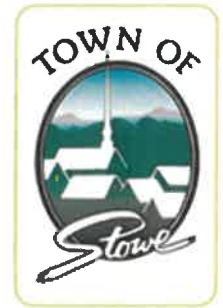
EMAILED APPLICANT - NEED STOWE CLUB TEST ANALYSIS

Sarah McShane

Dept. of Planning and Zoning

**TOWN OF STOWE
DEVELOPMENT REVIEW BOARD**

Findings of Fact & Conclusions of Law



PROJECT# 7604

SUBJECT PROPERTY 2438 Mountain Road (#06-039.000)

PROPERTY OWNER & APPLICANT

Mountain Road Townhomes LLC
732 East Broadway
South Boston, MA 02127

APPLICATION

The Applicant/Property Owner, Mountain Road Townhomes LLC (herein referred to as the “Applicant”) requests approval to modify the previously approved landscaping plans and to amend the established clearing limits for the previously approved Project #7271 – a nine (9) unit Planned Residential Development (PRD) approved by the Development Review Board (DRB) on November 21, 2023. The subject property is located at 2438 Mountain Road (Tax Map# 06-039.000) in the Upper Mountain Road (UMR) zoning district. The application has been reviewed by the DRB under applicable standards of the Town of Stowe Zoning Regulations (the “Regulations”) (effective January 31, 2024) and under the Town of Stowe Subdivision Regulations (effective July 16, 2012). The DRB’s procedural history and relevant findings are attached.

REVIEW PROCESS

(Application materials, hearing notices, meeting minutes on file at the Stowe Town Office.)

A Town of Stowe development application was filed and received on April 29, 2025. The application was accepted as administratively complete by Town of Stowe Zoning Administrator Sarah McShane and referred to the DRB for a public hearing. A public hearing of the DRB was scheduled for August 5, 2025 and warned by the Zoning Administrator in accordance with §2.14 of the Regulations and 24 V.S.A. §4464. The hearing notice was published in the Stowe Reporter on July 17, 2025. The hearing was held at the Stowe Town Office, with remote participation available via Zoom. No *ex parte* communications or conflicts of interests were reported. Members participating in the August 5th review included: Drew Clymer, Tom Hand, Mary Black, Peter Roberts, Andrew Volansky, Scot Baraw, and Patricia Gabel. The DRB decided a site visit was warranted and continued the hearing to a time and date certain of September 2nd and scheduled a site visit at 4:00 PM, immediately prior to the continued hearing. Attending the site visit were Tammie Masse, Kyle Gambone, Tyler Mumley, Cythia Silvey, Drew Clymer, Mary Black, Andrew Volansky, Scot Baraw, and municipal staff Sarah McShane. Following the site visit, the DRB resumed and re-opened the public hearing at the Stowe Town Office. Members participating in the August 5th review included: Drew Clymer, Tom Hand, Mary Black, Andrew Volansky, Scot Baraw, and Patricia Gabel. Peter Roberts could not attend the September 5th site visit or hearing however, reviewed the materials and hearing recording to allow his ongoing participation. The DRB adjourned the hearing that evening, following the submission of testimony and evidence, marking the start of the 45-day period for the issuance of written findings and a decision.

PROCEDURAL HISTORY

A Town of Stowe development application for a nine (9) unit PRD was originally filed and received by the Department of Planning & Zoning on December 19, 2022. The application was accepted as partially complete by municipal staff and referred to the DRB for a public hearing. A DRB public hearing was held on February 21, 2023. The Applicant initially sought partial review for a double setback waiver as allowed under §13.4(5)(B), prior to developing full engineer and architectural drawings. The submission of partial applications is allowed in certain circumstances pursuant to Section III(A) of the DRB Rules of Procedure. Following partial review on February 21st the DRB then continued the hearing to a time and date certain of May 16, 2023, to afford the Applicant time to prepare a full and complete application.

The continued public hearing to consider the application convened on May 16, 2023, with a quorum of the DRB present. The DRB held a continued hearing on the matter on June 20, 2023, and adjourned the hearing that evening, following the submission of testimony and evidence. Following deliberations, the DRB rendered a written decision on August 2, 2023, denying the application for lack of a majority of affirmative votes. Three (3) members voted in the affirmative and three (3) members voted in opposition. The Applicant timely appealed the DRB's decision to the Environmental Division of the Vermont Superior Court. The Court assigned Docket Number No. 23-ENV-00089 to the case. The DRB subsequently requested the Court remand the application back to the DRB to provide the Applicant with an opportunity to make modifications to its project to address the DRB's concerns and to provide the DRB with an opportunity to reconsider the application with a fully constituted board of seven (7) voting members. The Environmental Court subsequently granted the Town and DRB's motion for remand. The DRB then warned a public hearing to consider additional information submitted by the Applicant and (re)consider the materials with a fully constituted board of seven (7) members. A public hearing of the DRB was held on November 7, 2023. The DRB accepted additional testimony and evidence and adjourned the hearing that evening, marking the start of the 45-day period for the issuance of written findings and a decision. The DRB rendered a written decision on November 21, 2023 approving the remanded application with conditions. The Applicant fulfilled the applicable conditions of approval, and the associated zoning permit was issued on July 25, 2024. The Applicant now seeks to amend the previously approved landscaping plans and minor amendments to previously established clearing limits.

INTERESTED PERSONS & PARTICIPANTS

In accordance with 24 VSA §4471, an interested person who has participated in a DRB proceeding may appeal a DRB decision rendered in that proceeding to the Vermont Superior Court Environmental Division. The following persons attended and participated in the hearing process, and may be afforded status as interested persons with rights to appeal:

1. Tyler Mumley, Mumley Engineering, PO Box 68, Morrisville, VT 05661
2. Kyle Gambone, Platt Development Group, 732 East Broadway, South Boston, MA 02127
3. Cynthia Silvey, Wagner & Hodgson, 7 Marble Avenue, Burlington, VT 05401
4. Bond Worthington (Architect) / bond@bondworthington.com
5. Tammy Massi, 2518 Mountain Road, Stowe, VT 05672

THE RECORD

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

1. Town of Stowe Development Application, received 4/29/25
2. Revised Narrative, prepared by Mumley Engineering, Inc., dated 5/21/25
3. Site Plan, C-1, prepared by Mumley Engineering, Inc., revised 10/26/23
4. Site Plan, C-1, prepared by Mumley Engineering, Inc., revised 4/29/25
5. Revised Planting Plan, prepared by Wagner, Hodgson Landscape Architecture, dated 9/22/23 (color)
6. Planting Plan, prepared by Wagner, Hodgson Landscape Architecture, dated 9/22/23 (black and white)
7. Plant Schedule and Images, prepared by Wagner, Hodgson Landscape Architecture, dated 4/10/25
8. Revised Planting Plan, prepared by Wagner, Hodgson Landscape Architecture, dated 4/9/25 (color)
9. Revised Planting Plan, prepared by Wagner, Hodgson Landscape Architecture, dated 4/9/25 (black and white)
10. Plant Schedule and Images, prepared by Wagner, Hodgson Landscape Architecture, dated 9/22/23
11. Site Plan, original vs. proposed, prepared by Mumley Engineering Inc., dated 4/29/25
12. View renderings, resubmitted for 8/5/25 DRB Hearing
13. Site Plan, updated landscaping plans, C-1, prepared by Mumley Engineering, Inc., revised 8/25/25
14. Original Site Plan, C-1, prepared by Mumley Engineering, Inc., 10/26/23
15. Revised Landscaping Plan, prepared by Wagner, Hodgson Landscape Architecture, dated 8/25/25
16. Revised Planting Plan, prepared by Wagner, Hodgson Landscape Architecture, dated 8/25/25

17. Plant Schedule and Images, prepared by Wagner, Hodgson Landscape Architecture, dated 4/10/25
18. Originally approved Planting Plan, prepared by Wagner, Hodgson Landscape Architecture, dated 9/22/23
19. Originally approved Planting Plan, prepared by Wagner, Hodgson Landscape Architecture, dated 9/22/23
20. Original Rendering, view analysis, prepared by Bond Worthington Architecture dated 5/24/23 and resubmitted for 9/2/25
21. Views from Mountain Rd-July 2025 (2 pages)
22. Original rendering, view from Mountain Rd., Bond Worthington Architecture dated 5/24/23 and resubmitted for 9/2/25
23. Driveway view during construction, prepared by Wagner, Hodgson Landscape Architecture, image from July 2025
24. Driveway view with final planting, prepared by Wagner, Hodgson Landscape Architecture, revised 8/26/25
25. Utility corridor view during construction, prepared by Wagner, Hodgson Landscape Architecture, image from July 2025
26. Utility corridor view with final planting, prepared by Wagner, Hodgson Landscape Architecture
27. DRB Decision for Project 7271.

FINDINGS OF FACT & CONCLUSIONS OF LAW

During its review of the application, the DRB made the following Findings of Fact

The application was reviewed by the DRB for conformance with applicable requirements including the following:

Town of Stowe Zoning Regulations (effective January 31, 2024)

- Section 2- Administration and Enforcement
- Section 3 – Conditional Use & Site Plan Review
- Section 4- Specific Use Standards (Landscaping Standards)

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

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

Section 2.16 Flexibility and Finality in the Permitting Process (Stowe Club Test)

1. The Applicant seeks minor modifications to the clearing limits previously approved under Project# 7271 to accommodate as-built utility installation. These changes affect a small area along the interior access road and a portion parallel to Mountain Road (VT-108). While the interior modifications are not anticipated to significantly affect offsite visibility, the adjustments near Mountain Road (VT-108) are likely to result in increased visibility from the state highway right-of-way.
2. The underlying PRD approval of the property, Project# 7271, established specific clearing limits for the subject property. These approved clearing limits were identified on the plat approved by the DRB, as recorded in the Town of Stowe Land Records under Map Book 24, Page 138-139. The changes sought by the Applicant propose minor modifications to these previously approved clearing limits. The DRB therefore finds the Applicant is seeking an amendment to a final approval.
3. The Applicant's project narrative describes the construction process and explains that revisions to the location of utilities (i.e., municipal water, sewer, electrical, and communication lines) were necessary due to site constraints - primarily shallow bedrock - and specific design and construction requirements from the Department of Public Works and Stowe Electric Department. These conditions and requirements were not

known, identified, or confirmed at the time of the original application to the DRB and now require minor amendments to the approved clearing limits. As the final utility locations were not established during the original review, and now with a clearer understanding of these needs, the Applicant is seeking to revise the approved clearing limits and incorporate additional proposed landscaping for mitigation.

4. Section 2.16(2) lists three (3) kinds of changes that justify altering a condition of a permit or approval.
5. Section 2.16(2)(A) allows an amendment when the Applicant can demonstrate '*Changes in factual or regulatory circumstances beyond the control of a permittee*'. The Applicant is not seeking review under this criterion.
6. Section 2.16(2)(B) allows an amendment when the Applicant can demonstrate '*Changes in the construction or operation of the permittee's project not reasonably foreseeable at the time the permit was issued*'. The Applicant asserts that this provision applies to the requested project amendments.
7. At the time of original DRB approval, the Applicant had not secured final approval from the Department of Public Works for the municipal water and sewer utilities, however they had obtained a State of Vermont Wastewater Permit.
8. According to the Applicant's testimony, the clearing on the property took place in 2023/2024. Project construction began in late 2024. In the summer of 2024, the Applicant went back and forth with DPW and the Stowe Electric Department to fully design the utilities.
9. The Applicant testified that, upon excavation of the existing sewer manhole, an existing service stub was located and required to be used for connection. The waterline connection was relocated to avoid conflict with the fire hydrant. Due to shallow bedrock and at the direction of the Department of Public Works, the waterline was installed in its current alignment. No blasting was required at this location; however, rock hammering was utilized.
10. The Applicant testified that unforeseen conditions, specifically the presence of shallow bedrock, prevented construction in accordance with the approved plans. The Applicant further stated that the final design of the electric and water/sewer utilities was not known at the time of the original DRB approval.
11. Section 2.16(2)(C) allows an amendment when the Applicant can demonstrate '*Changes in technology*'. The Applicant is not seeking review under this criterion.
12. The DRB's decision approving the project included the following two (2) conditions of approval:

The electrical and other utilities shall be installed below ground, unless otherwise approved by the DRB.

The Applicant shall obtain all necessary municipal water and sewer allocation and connection permits for the project. Final Plans, Details, Technical Specification and for proposed Water and Sewer Connections shall be approved by the Department of Public Works.

13. At the zoning application stage, Applicants must demonstrate that there is capacity to serve the project and utilities to serve the project are feasible. Applicants often provide the general utility layout, however final design drawings are not approved until later in the permitting process with the Department of Public Works. The DRB often acknowledges this standard practice with a typical condition of approval, noting that final plans for water and sewer must be approved by the Department of Public Works. The DRB also often requires the electrical and other utilities be installed below ground but otherwise does not grant final approval of the

location or design of these utilities. These are the jurisdiction of others and must be approved by other governing bodies.

14. Except for the requested amendments to the clearing limits and landscaping plans, the approved plans have been adhered to.
15. The originally approved plans relied on the existing tree line along the Mountain Road/VT-108 and did not include any supplemental plantings along this right-of-way. The Applicant now seeks to supplement this area with plantings.
16. The Applicant testified that all landscaping will be purchased and installed in locations best suited to fulfill the intent of the landscaping plan. The Applicant further stated that grading along the access roadway is less substantial than originally anticipated, which will allow for installation of the proposed landscaping along the roadway.

Conclusion: Section 2.16 requires the DRB to balance the need for flexibility with the importance of finality when reviewing any proposed amendment to a final approval. The central question is whether the amendment involves modification of a final condition that was originally imposed to address a critical issue. If so, the DRB must apply the Stowe Club Highlands analysis. If not, the DRB may review the application solely on its merits. An amendment is defined as a request to modify project plans, exhibits, and/or representations by the applicant that were incorporated into a prior approval through a specific or general condition. In this case, the Applicant seeks minor modifications to the previously approved clearing limits shown on a recorded plat/plan and incorporated as Condition #4 of Project #7271. The DRB therefore concludes the Applicant is requesting an amendment to a final approval.

A preliminary step in applying the Stowe Club analysis requires the DRB to distinguish between conditions addressing “critical” issues and those that are not. In making this determination, the DRB must consider whether the proposed change is of a type that would have been denied, modified, or otherwise considered significant if presented in the original application, and whether it would have influenced the original decision. In reviewing Project #7271, the DRB finds that the approved clearing limits were clearly defined and played a central role in the original decision. The Findings of Fact and Conclusions of Law for Project #7271 include multiple findings related to landscaping and screening. The approved landscaping plan was intended to supplement existing treeline areas that were to remain, and the DRB relied on both the preservation of existing vegetation and the installation of new plantings to satisfy landscaping and screening requirements. Based on this procedural history and the approved plans, the DRB concludes that the clearing limits established under Project #7271 addressed a critical issue—screening and visibility from public vantage points. Accordingly, the DRB must evaluate the requested amendment under the Stowe Club test.

The Applicant testified that the proposed changes were necessary to accommodate final engineering requirements for electrical, water, and sewer utilities. The Applicant contends that the proposed modification is justified under §2.16(2)(B), which allows amendments based on changes in the construction or operation of a project that were not reasonably foreseeable at the time the original permit was issued. Based on the evidence and testimony presented, the DRB finds that the presence of shallow bedrock and the absence of final utility designs at the time of the development review approval support the Applicant’s position. The DRB concludes that the Applicant has demonstrated a change in construction or operation that was not reasonably foreseeable and has satisfied the standards of the Stowe Club Test. Accordingly, the DRB finds that an amendment to the previously approved clearing limits is justified and proceeds to review the application on its merits.

Dimensional Requirements

17. **Zoning District.** The subject parcel is located within the Upper Mountain Road (UMR) zoning district, as shown on the Official Town of Stowe Zoning Map (effective January 31, 2024).
18. **Lot Area, Lot Width.** The parcel contains ±3.74 acres. No change to lot area or lot width are proposed under this application.
19. **Setbacks.** No change to previously approved setbacks are proposed under this application.
20. **Use.** The approved project involves a nine (9) unit PRD consisting of one (1) multi-family dwelling with five (5) dwelling units and two (2) duplexes/two-family dwellings. Two-family dwellings are a permitted use in the UMR district. Multi-family dwellings are a conditional use in the UMR district.

Conclusion: Based upon the above findings, the DRB concludes there are no changes to dimensional requirements or use proposed under this application.

Landscaping & Screening Standards

[Guiding regulatory provisions: Section 5.1(6) – [Screening and Landscaping] of the Subdivision Regulations and Section 3.16(C)(5) & Section 4.6 of the Zoning Regulations]

21. The Applicant seeks modifications to previously approved landscaping and screening plans under Project # 7271. The conceptual landscaping and screening plan remains generally the same, however the species and quantity throughout the project area is changed and in all but one case, significantly increased.
22. The hearing record contains both the previously approved and revised landscape plan, planting schedule, and details. Much like the original approval, a variety of plantings are proposed in areas surrounding the buildings and along the drive access entering the site.
23. An additional earthen mound is proposed along the frontage of VT-108, planted with a mix of native trees and plants.
24. The water and sewer line are now installed. The proposed plantings can be installed up until November but preferred to be planted in October. The Applicant testified it is their intent to install all of the plantings this season.
25. The Landscape Architect testified that the proposed landscaping within the utility cut will consist of dense plantings situated on terraces or tiers to reduce visibility from passing vehicles and provide effective screening. All plantings within the utility cut are proposed as deciduous species, while evergreen species, including hemlock, are proposed at other locations on the site. The overall landscaping plan is intended to restore native forest species, supplement plantings with additional native vegetation where feasible, and incorporate shrubs across the cut to enhance screening.
26. The plantings located behind Units 1–5 have been installed in accordance with the previously approved plans. The proposed revisions are limited to areas impacted by the installation of utilities and the roadway.

Conclusion: Based on the above findings, the DRB concludes the project has been designed in conformance with Section 5.1(6) Screening and Landscaping (Subdivision Regulations) and Sections 3.16(C)(5) & §4.6 (Zoning Regulations).

DECISION

Based upon the foregoing findings of fact and conclusions of law, the DRB hereby approves the Applicant's request for amended clearing limits and revised landscaping plans as described in application #7604 and associated supporting materials, subject 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 Planning & Zoning Office and other material representations. Any change to the plans or the proposed use of the property shall be brought to the Zoning Administrator's attention, prior to its enactment, for a determination if an amendment is required. The Zoning Administrator is granted the authority to review and administratively approve non-material modifications to the approved plans upon finding that the proposed change or alteration would not have affected the decision made or any conditions if had been included in the plans as approved.

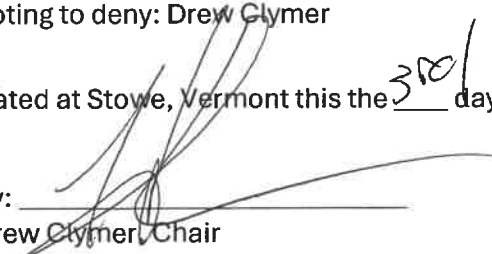
The approved plans include:

- a) Revised Landscaping Plan, prepared by Wagner, Hodgson Landscape Architecture, dated 8/25/25
 - b) Revised Planting Plan, prepared by Wagner, Hodgson Landscape Architecture, dated 8/25/25
 - c) Site Plan, updated landscaping plans, C-1, prepared by Mumley Engineering, Inc., revised 8/25/25
2. All conditions of prior approvals, except as amended herein, remain in full force and effect.
 3. Clearing and removal of trees shall be restricted to the areas shown on the approved amended plan(s). Lands outside of the approved clearing limits shall be left undisturbed except as necessary to remove dead or diseased trees, recreational trail(s), and to promote the health of the forest.
 4. Landscaping shall be installed and properly maintained in accordance with the approved plans. Any dead and dying plants and trees shall be replaced within one (1) year of death.
 5. These conditions of approval shall run with the land and are binding upon and enforceable against the Applicant and his successors. By acceptance of this approval, the Applicant and his successors agrees to allow authorized representatives of the Town of Stowe to access the property subject to this approval, at reasonable times, for purposes of ascertaining compliance with the conditions of approval.

Voting in favor: Tom Hand, Mary Black, Andrew Volansky, Scot Baraw, Patricia Gabel, Peter Roberts

Voting to deny: Drew Clymer

Dated at Stowe, Vermont this the 30th day of October 2025

By: 
Drew Clymer, Chair

NOTICES:

1. In accordance with 24 V.S.A. § 4449(e), applicants are hereby notified that state permits also may be required prior to land subdivision or construction. The applicant should contact the DEC Permit Specialist for District #5 (802-505-5367) to determine whether state permits are required.
2. The applicant or another interested person may request reconsideration of this decision by the Development Review Board, including associated findings and conditions, within 30 days of the date of this decision by filing a request for reconsideration that specifies the basis for the request with the Secretary of the Development Review Board. Pursuant to 24 V.S.A. § 4470, the board may reject the request within 10 days of the date of filing if it determines that the issues raised have already been decided or involve substantially or materially the same facts by or on behalf of the appellant.
3. This decision may also be appealed to the Environmental Division of the Vermont Superior Court by the applicant or another interested person who participated in the proceeding before the Development Review Board. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Division Court Proceedings.
4. In accordance with 24 V.S.A. § 4455, on petition by the municipality and after notice and opportunity for hearing, the Environmental Division may revoke a permit based on a determination that the permittee violated the terms of the permit or obtained the permit based on misrepresentation of material fact.