

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

PROJECT: 5843

PROPERTY: 4409 Mountain Road; 11-107.000

**IN RE: VTRE Investment LLC
PO Box 323
Stowe, VT 05672**

APPLICATION:

(Application materials on file at the Stowe Town Office, procedural history attached.)

The Applicant, VTRE Investment LLC (herein referred to as the “Applicant”), request conditional use approval under Sections 3.7 and 7 of the Town of Stowe Zoning Regulations to demolish the single-family dwelling and fill in the crawlspace. The subject parcel (#11-107.000), located at 4409 Mountain Road, is in the Upper Mountain Road (UMR), Flood Hazard District (portions floodway), and Fluvial Erosion Hazard Overlay District. The parcel contains approximately 0.5 acres and includes an existing single family residential dwelling. The property is served by an access and utility easement over the adjacent parcel(s) from the Mountain Road and is bound to the west by the West Branch Little River. The application has been reviewed by the Stowe Development Review Board (DRB) under applicable standards of the Town of Stowe Zoning Regulations (as adopted June 12, 2017), for the purposes of conditional use review and flood hazard area regulation.

The Development Review Board’s procedural history and relevant findings are attached.

REVIEW PROCESS:

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

An application for conditional use review was filed by Applicant VTRE Investment LLC, on June 14, 2018. The application was accepted as complete by Town of Stowe Zoning Director Sarah McShane and referred to the Stowe Development Review Board for a public hearing. A public hearing of the DRB was scheduled for July 17, 2018 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 June 28, 2018. The Applicant provided a completed certificate of service in accordance with Section 2.14(1)(B). A copy of the application was also forwarded for review and comment to Rebecca Pfeifer, Vermont Floodplain Management, as required under Section 7.5(1) of the regulations.

The public hearing to consider the application convened on July 17, 2018 at the Akeley Memorial Building, 67 Main Street, with a quorum of the DRB present. No ex parte communications or conflicts of interests were reported. Gunner McCain of McCain Consulting presented the application to the board on behalf of the Applicant.

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

- Michael Seaberg, 4441 Mountain Road, Stowe, VT 05672
- Shannon Hillpot, 4441 Mountain Road, Stowe, VT 05672
- Gunner McCain, McCain Consulting, 93 S Main Street, Suite 1, Waterbury, VT 05676
- Jen Burnett, 4515 Mountain Road, Stowe, VT 05672

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

- Town of Stowe Development Application (2 pages); dated 6/14/2018;
- Email from Gunner McCain, Re: Site Plan 4409 Mountain Road, dated 6/19/2018;
- Site Plan 'VTRE Investments LLC' 4409 Mountain Road House Removal & Grading prepared by McCain Consulting Inc, Sheet C-1, dated 6/8/2018;
- Comments from Abutter Mike Seaberg, Northern Lights Lodge, dated 6/23/2018;
- ANR Natural Resources Atlas map depicting location of Flood Hazard Area and Floodway, dated 6/25/2018;
- Public comments from Shannon Hillpot, received 7/17/2018;
- Public comments from Mike Seaberg, Northern Lights Lodge [revised], dated 7/11/2018;
- Comments from Rebecca Pfeiffer, State Floodplain Coordinator, dated 7/12/2018;
- Google Earth image provided by abutter Michael Seaberg, dated 5/13/2015.

The DRB adjourned the hearing that evening, following the submission of testimony and evidence, marking the start of the 45-day period for the issuance of written findings and a decision.

FINDINGS OF FACT & CONCLUSIONS OF LAW:

The Applicant's request for conditional use approval was reviewed by the Stowe Development Review Board (DRB) for conformance with applicable requirements of the Town of Stowe Zoning Regulations (as adopted June 12, 2017), including the following:

- Section 2- Administration and Enforcement
- Section 3- General Regulations
- Section 5- Zoning Districts
- Section 6- Uses, Dimensional Requirements and Density
- Section 7- Flood Hazard District

During its review of the application, the Board made the following Findings of Fact:

1. **Zoning District.** The subject parcel contains 0.5 acres with easement access to the Mountain Road in the Upper Mountain Road (UMR), Flood Hazard District (portions floodway), and Fluvial Erosion Hazard Overlay Districts as shown on the Official Town of Stowe Zoning Map (effective July 3, 2017).
2. **Lot Area, Lot Width.** The 0.5 acre parcel is located in the UMR district and does not meet the minimum district lot area of 1 acre. The provided site plan indicates that the lot is 137' in width, which does not meet the minimum lot width of 200'. As such, it is a pre-existing nonconforming lot, as defined under the regulations.

3. **Setbacks.** Required minimum district setbacks are front (50'), side (50') and rear (50'). No new structures are proposed under this application. Since the parcel is a pre-existing nonconforming lot and does not meet the minimum district lot area, Section 3.3(A)(2) allows the Zoning Administrator the authority to reduce setbacks as long as the proposed setbacks comply with those specified for the district nearest in size to the lot (e.g., a 1.1 acre approved lot in RR5 would not require a variance if the construction will meet the set-back requirements of RR1; a lot smaller in area than 20,000 sq. ft. in the VR40 would not require a variance if construction will meet the set-back requirements for VR20). No new structures are proposed under this application. The Board notes future development of the lot will be required to comply with the setback provisions in effect at the time of application.
4. **Maximum Building Coverage.** The maximum building coverage in UMR is 8%. The Applicant did not provide the existing lot coverage, however under this application, the Applicant seeks approval to demolish the existing dwelling, reducing the building lot coverage to 0%. The Board notes future development will be restricted to the maximum building coverage in effect at the time of application.
5. **Use.** The existing residential structure is used as a single-family dwelling. The Applicant proposes to demolish the existing dwelling. Single-family dwellings are a permitted use within the UMR District. No future use of the property has been identified under this application. The Board notes any future proposal to develop the lot will be reviewed under the regulations in effect at the time of application.
6. **Height.** The maximum building height in UMR is 28' feet. The Applicant proposes to demolish the existing dwelling. The Board notes future development will be restricted to the maximum building height in effect at the time of application.

Section 7- Flood Hazard Area

The Applicant proposes to demolish the single-family dwelling and fill in the crawlspace with course sand and gravel. Section 7.4 outlines when a permit is required within the Flood Hazard Area. A permit is required for all proposed construction or other development, including the placement of manufactured homes, in areas of special flood hazard. Prior to the issuance of a zoning permit, conditional use approval by the DRB is required for: (1) New buildings; (2) Substantial improvement of existing buildings; and (3) ***Development in a floodway.***

7. **Review Required.** The regulations require that all development and subdivisions within the Flood Hazard District be reviewed to assure that such proposals minimize potential flood damage, public facilities and utilities such as sewer, gas, electrical, and water systems are constructed so as to minimize flood damage, and adequate drainage is provided to reduce exposure to flood hazards.

Development as defined under the Flood Hazard Area District is “*any man made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, extraction or drilling operations or storage of equipment or materials.*” The Applicant proposes to remove (demolish) the existing single-family dwelling and fill in the crawlspace with approximately 349 cubic yards of fill (portions within the floodway). The crawlspace is proposed to be filled with course sand and gravel with a minimum of 6” of top soil, seeded and mulched. As shown on the provided site plan dated 6/8/18, portions of the existing dwelling are located within the floodway. In accordance with Section 7.4(3), staff referred the

application to the Board for conditional use review since it involves development within the floodway.

8. **Section 7.5 Procedures.** In accordance with Section 7.5(1), a copy of the application and supporting information was submitted by the Zoning Director to the State National Floodplain Insurance Program Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section in accordance with 24 V.S.A. §4424. A permit may be issued only following receipt of comments from the Agency or the expiration of thirty (30) days from the date the application was mailed to the Agency, whichever is sooner. Pursuant to Section 7.5(1), the application was referred to ANR Floodplain Coordinator Rebecca J. Pfeiffer on 6/18/2018 for review and comment in accordance with 24 V.S.A. §4424. ANR Floodplain Coordinator Rebecca J. Pfeiffer provide written comments for the board's consideration dated 7/12/2018.

The regulations require that proposed development be reviewed by the Board to assure that all necessary permits have been received from those government agencies from which approval is required by Federal, State or Municipal law. No other Federal, State or Municipal permits were identified as required in the application or during the hearing.

9. **Section 7.7 Development Standards.** Development within the regulatory floodway is prohibited unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice by a registered professional engineer certifying that the proposed development will result in no increase in flood levels during the occurrence of the base flood. Junkyards and storage facilities for floatable materials, chemicals, explosives, flammable liquids, or other hazardous or toxic materials, are prohibited within the floodway. The Applicant has not provided a hydrologic and hydraulic analyses. Comments received from ANR Floodplain Coordinator Rebecca J. Pfeiffer indicate that the removal of the existing dwelling would not result in increasing flood heights since the encroachment that displaces floodwater is proposed to be removed. Her comments also note that as proposed, the removal of the dwelling appears to meet the minimum National Flood Insurance Program (NFIP) requirements.

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:

10. **Capacity of existing or planned community facilities and services:** 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. No Municipal Department review forms returned indicated that the proposed development would have any adverse impact on existing or planned community facilities and services. The dwelling is connected to municipal water and sewer, prior to demolition the Applicant will be required to obtain approval to disconnect the municipal utilities.

Conclusion: The Board concludes the proposal will not result in an undue adverse effect on the Town's existing or planned facilities or services.

11. **Section 3.7(2)(A)(2) – Traffic on roads and highways in the vicinity:** The Applicant request approval to demolish the existing single-family dwelling. The project is expected to have a minor reduction to the number of vehicle trips in the vicinity.

Conclusion: The Board concludes the proposal will not create an undue adverse impact on traffic on roads and highways in the vicinity.

12. **Section 3.7(2)(A)(3) – The character of the area affected:** The subject parcel is in the UMR zoning district. 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.” The Applicant request approval to demolish the existing single-family dwelling. Adjacent to the subject parcel are other nearby residential and lodging uses. The Applicant’s representative provided testimony that the Applicant would follow all applicable local, state, and federal regulations and adhere to best practices for solid waste management.

Conclusion: The Board concludes the proposal will not adversely affect the character of the area as defined under the Stowe Zoning Regulations (as adopted June 12, 2017).

13. **Section 3.7(2)(A)(4) – Regulations and ordinances in effect:** The application is being reviewed under the Flood Hazard Area provisions and Conditional Use criteria. Applicable bylaws include the Stowe Zoning Regulations, as amended though June 12, 2017. No other municipal bylaws or ordinances apply to this project.

Conclusion: The Board concludes the proposal is in conformance with the Stowe Zoning Regulations, as amended though June 12, 2017. No other municipal bylaws or ordinances apply to this project.

14. **Section 3.7(2)(A)(5) – Utilization of renewable energy sources:** No change is proposed with regard to the use of, or access to, the utilization of renewable energy resources.

Conclusion: The Board concludes the project is not expected to interfere with the sustainable use of renewable energy resources, access to, direct use or future availability of such resources.

Section 3.7(2)(B) – Other Standards of Review:

15. **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.** There are no known or identified scenic or historic sites located on the parcel. The property abutter, Michael Seaberg, provided written comments noting the historic significance of the property and requested that the demolition be reviewed under Section 10. Concerns were also raised during the hearing regarding protecting the riparian buffer and limiting clearing on the parcel.

Conclusion: The Board finds the proposed demolition does not require design review under Section 10 since the property is not considered a historic property as defined under the regulations. The Board notes as a condition of approval, the riparian buffer will be required to be protected by silt fencing. The Board concludes the proposal, if completed as proposed, will not adversely affect the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas.

16. **Section 3.7(2)(B)(2) - Project will not result in undue water, noise or air pollution.** The Applicant proposes to demolish and remove the existing single-family dwelling. The adjacent property owner submitted written comments requesting that construction and demolition hours be

limited to 8am-5pm Monday-Friday non-holiday as to not to disturb nearby residents and hotel guests.

Conclusion: The Board concludes the project will not result in undue water, noise, or air pollution. As a condition of approval, the Board will require that all building materials temporarily be stored outside the regulatory floodway and removed from the parcel within 60 days of the commencement of demolition and demolition hours be limited to a set time.

17. **Section 3.7(2)(B)(3) – Access Management:** The parcel is served by an access and utility easement from Mountain Road. No changes to access are proposed under this application. As a condition of approval, the Applicant will be required to submit a revised site plan showing all existing and known easements related to the parcel.

Conclusion: The Board finds that no changes to the existing access are proposed under this application.

18. **Section 3.7(2)(B)(4) – Shared Access:** The parcel and adjacent parcels are served by a common access and utility easement from Mountain Road. As noted above, no changes to shared access are proposed under this application.

Conclusion: The Board finds that no changes to the existing access are proposed under this application.

19. **Section 3.7(2)(B)(4) – Circulation and Parking:** The regulations require that parking be provided per the requirements of Section 14 and be designed to minimize the visibility of parking areas from off-site through the location, landscaping and screening of such areas. The Applicant is proposing to demolish and remove the existing single-family dwelling. No parking improvements are proposed under this application.

Conclusion: The Board finds the circulation and parking provisions not applicable. Future development of the lot will require conformance with the regulations in effect at the time of application.

20. **Section 3.7(2)(B)(6) – Pedestrian Circulation and Access:** The regulations require pedestrian circulation within the site, and access through the site to adjacent properties along public roads, be provided. The Applicant proposes to demolish and remove the existing single-family dwelling. No pedestrian circulation or access improvements are proposed under this application.

Conclusion: The Board finds the pedestrian circulation and access provisions not applicable. Future development of the lot will require conformance with the regulations in effect at the time of application.

21. **Section 3.7(2)(B)(7) – Landscaping and Screening:** 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. The Applicant is proposing to demolish and remove the existing single-family dwelling. The abutting property owner, Mike Seaberg, provided written comments requesting that trees proposed to be removed be shown on a site plan and incorporated into any possible permit conditions. During the hearing, the Board heard testimony regarding the protection of the riparian buffer and concerns regarding possible

clearing within this protected area. The issue has been brought to the attention of the Zoning Director for proper investigation and possible enforcement as outlined in Section 2.13.

Conclusion: The Board finds the landscaping and screening provisions not applicable. Future development of the lot will require conformance with the landscaping and screening provisions in effect at the time of application. The Board notes as a condition of approval, the 50' riparian buffer will be required to be protected by silt fencing during the demolition.

22. **Section 3.7(2)(B)(8) – Stormwater Management:** The Applicant proposes to demolish and remove the existing single-family dwelling. The provided site plan notes the area will be filled to match the existing grade. A subsequent email from the Applicant's consultant notes the crawlspace will be filled with approximately 349 cubic yards of course sand and gravel fill (portions within the floodway) and seeded and mulched with a minimum of 6" of top soil. No stormwater management improvements or changes to existing storm drainage patterns are noted in the application or on the provided site plans.

Conclusion: The Board finds no additional storm water management is required for the proposal under review.

23. **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.

Conclusion: The Board finds the above provisions not applicable to this application. Future development of the lot will require conformance with the regulations in effect at the time of application.

DECISION

Based upon the foregoing Findings of Fact, in RE: **5843** the Board found (7-0) that the application, if completed as proposed, meets the Stowe Zoning Regulations, as amended through July 3, 2017, the criteria for approval with the following conditions of approval:

1. This project shall be completed according to the plans hereby approved. Any change to the plans or the proposed use of the property shall be brought to the Zoning Administrator's attention, prior to its enactment, for a determination if an amendment is required.
2. Prior to the issuance of the zoning permit, the Applicant shall submit the following information:
 - A revised site plan showing all existing easements and rights-of-way, the location of the shared pump station and related utility lines, and the corrected notation 'Assume 4.5' depth'.
 - Existing (before-demolition) adjacent grade elevations of the four building corners.
3. Prior to commencing demolition, the Applicant shall obtain approval from the Department of Public Works to disconnect municipal water and sewer services.
4. All demolition shall be completed within 60 days of commencement and, at a minimum, completion shall include:
 - (1) All structural materials and debris shall be removed from the site;
 - (2) The site shall be restored to a natural grade; and
 - (3) Groundcover shall be re-established to prevent erosion.
5. All demolished building materials and related equipment shall be stored outside the regulatory floodway and removed from the parcel within 60 days of the commencement of demolition.
6. Demolition activity and noise shall be limited to the hours 8am-5pm Monday-Friday. Demolition shall not take place on federal holidays.
7. Prior to commencing demolition and during construction, the 50 ft riparian setback shall be staked or otherwise marked on the ground by a registered engineer or surveyor as measured from the top of bank and depicted in Section 3.10 and be protected with a line of silt fencing. Within the 50' riparian setback a vegetation buffer shall be left in an undisturbed state with the exception of the activities outlined in Section 3.10(1).

8. Prior to and during construction the Applicant shall have the floodway boundary marked or flagged by a registered professional in order to ensure that the proposed back filling and grading located in the floodway does not result in raising the surrounding grade and matches the existing surrounding ground elevations.
9. Prior to the issuance of a certificate of occupancy, the Applicant shall file a final site plan prepared by a registered engineer or surveyor showing the finished ground elevations adjacent to the removed four building corners and written certification that the completed back filling and grading located within the floodway has not resulted in raising the surrounding grade. The site shall be restored to a natural grade of approximately 892' and 893' as shown on the provided site plan. Any additional fill requires review and approval under the Flood Hazard Regulations.
10. These conditions of approval shall run with the land and are binding upon and enforceable against the permittee and his successors. By acceptance of this permit, the permittee agrees to allow authorized representatives of the Town of Stowe to access the property subject to this approval, at reasonable times, for purposed of ascertaining compliance with the conditions of approval.

Voting favor: D.White, T. Hand, P.Aumand, A. Volansky, D.Clymer, M. Diender, S. McLane

Voting to deny: None

Abstain: None

Dated at Stowe, Vermont this the 27 day of July 2018

By: Douglas White
Douglas White, 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 this permit based on a determination that the permittee violated the terms of the permit or obtained the permit based on misrepresentation of material fact.