

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



**PROJECT:** 5946

**PROPERTY:** 1669 Mountain Road; #06-087.000

**APPLICANT:**  
K2 Realty- Steven Foster  
PO Box 3383  
Stowe, VT 05672

**PROPERTY OWNER:**  
Donkey Barn LLC  
PO Box 3383  
Stowe, VT 05672

**APPLICATION:**

The Applicant, K2 Realty- Steven Foster on behalf of property owner Donkey Barn LLC (herein referred to as the "Applicant"), requests conditional use review for exterior alterations to the existing building at 1669 Mountain Road commonly known as the Blue Donkey Restaurant. The Applicant requests review and approval of the following alterations:

- Remove and replace two (2) existing windows on the north façade with four (4) pella awning windows measuring approximately 3' 11" x 2' 11";
- Install one (1) pella large awning window on the north façade measuring approximately 5' 11" x 2' 11";
- Install one (1) pella fixed awning window on the north façade measuring approximately 5' 11" x 11";
- Remove and replace existing gable roof vent on the north façade with a 4' x 4' roof mounted cupola style vent;
- Remove and replace two (2) existing windows and existing garage door on the west façade with two (2) pella awning windows measuring approximately 2' 11" x 3' 11", one (1) fixed sidelight glass panel measuring approximately 6'10" x 2'2", and four (4) ganged pella double hung windows measuring approximately 6' 2" x 4' 11";
- On the west and north facades, remove and replace existing cedar siding with vertical siding board.

The subject parcel (#06-087.000), located at 1669 Mountain Road, is in the Mountain Road Village (MRV) zoning district, Flood Hazard District (portions floodway), Fluvial Erosion Hazard Overlay District, and Source Protection Overlay District (SPOD). The parcel contains approximately ±1.35 acres and includes a commercial building (Blue Donkey Restaurant) and related appurtenances. The property is served by the Mountain Road and is bound to the south by the West Branch Little River.

In accordance with Section 2.5(2)(F) of the regulations, façade changes to conditional uses are not an exempted activity and therefore require review and a zoning permit. Section 2.7(1-3) allows for the administrative review of minor alterations to conditional uses when the proposal has no potential to create an undue adverse effect under the review criteria of Section 3.7. The application was referred to the Board by staff since it was determined not to be eligible as a minor alteration as defined under Section 2.7 given the proposals *potential* to create an undue adverse effect under the review criteria of Section 3.7(2)(C)(2)(e). The application has been reviewed by the Stowe Development Review Board (DRB) as an

amendment to a previously approved conditional use under applicable standards of the Town of Stowe Zoning Regulations (as adopted October 9, 2018).

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 Steven Foster of K2 Realty on December 31, 2018. The application was accepted as administratively complete by Town of Stowe Zoning Director Sarah McShane and referred to the Development Review Board for a public hearing. A public hearing of the DRB was scheduled for February 5, 2019 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 January 17, 2019. The Applicant provided a completed certificate of service in accordance with Section 2.14(1)(B).

The public hearing to consider the application convened on February 5, 2019 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.

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

- Applicant, K2 Realty- Steven Foster, PO Box 3383, 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 12/31/2018;
- Photograph showing the existing west façade, dated 12/31/2018;
- Photograph showing the existing north façade, no date;
- Manufacturer [Pella] cut sheets for the proposed windows and doors (6 pages), various dates;
- The Blue Donkey 'Interior and Exterior Renovations' prepared by Wilson Architects, Sheet A1.1, dated 12/6/2018;
- Previously approved DRB Decision, dated February 27, 2018 (staff).

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 Development Review Board (DRB) for conformance with applicable requirements of the Town of Stowe Zoning Regulations (as adopted October 9, 2018), including the following:

- Section 2- Administration and Enforcement
- Section 3- General Regulations
- Section 4- Specific Use Standards

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

9. **Section 3.7(2)(A)(2) – Traffic on roads and highways in the vicinity:** The Applicant requests approval for exterior alterations to the existing building at 1669 Mountain Road- commonly known as the Blue Donkey Restaurant. Proposed exterior alterations on the north and west elevations involve the installation of additional windows, reconfiguration of existing windows and entrances, and replacing the existing gable roof vent on the north façade with a roof mounted cupola style vent. The parcel contains an existing restaurant. No changes of use or expansions of the current use are proposed under this application. The proposed exterior alterations will not result in an undue adverse impact on traffic on roads and highways in the vicinity.

**Conclusion:** The Board concludes the proposed alterations 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:** The subject parcel is in the MRV district. The general purpose of the MRV districts is as follows:

*To foster a development pattern along the Mountain Road (Route 108) corridor comprised of compact, mixed-use settlements separated by rural countryside. ...the MRV District is intended to serve as a larger commercial village characterized by an integration between land uses, pedestrian accessibility, a mix of uses compatible with a four-season resort community and a village streetscape defined by narrow streets, street-trees, curbing and sidewalks.*

Existing uses within the general area include a mix of commercial, resort, recreation, and residential. The Applicant requests approval for exterior alterations to the existing building at 1669 Mountain Road commonly known as the Blue Donkey Restaurant. Proposed exterior alterations on the north and west elevations involve the installation of additional windows, reconfiguration of existing windows and entrances, and replacing the existing gable roof vent on the north façade with a roof mounted cupola style vent.

**Conclusion:** The proposal will not adversely affect the character of the area as defined under the town's zoning regulations.

11. **Section 3.7(2)(A)(4) – Regulations and ordinances in effect:** The application is being reviewed under the Conditional Use standards. Applicable bylaws include the Stowe Zoning Regulations, as adopted October 9, 2018. The property is connected to municipal water and sewer services under the Town's Sanitary Sewer Ordinance. No changes of use or expansions to existing use are proposed under this application. No other known municipal bylaws or ordinances apply to this project.

**Conclusion:** The Board concludes the proposal is in conformance with the Stowe Zoning Regulations, as adopted October 9, 2018.

12. **Section 3.7(2)(A)(5) – Utilization of renewable energy sources:** The Applicant requests approval for exterior alterations to the existing building at 1669 Mountain Road- commonly known as the Blue Donkey Restaurant. Proposed exterior alterations on the north and west elevations involve the installation of additional windows, reconfiguration of existing windows and entrances, and replacing the existing gable roof vent on the north façade with a roof mounted cupola style

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

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

1. **Zoning District.** The subject parcel contains ±1.35 acres owned by Donkey Barn LLC. The parcel has direct access to Mountain Road in the Mountain Road Village (MRV), Flood Hazard District (portions floodway), Fluvial Erosion Hazard Overlay District, and Source Protection Overlay District (SPOD) as shown on the Official Town of Stowe Zoning Map (as adopted October 9, 2018).
2. **Lot Area, Lot Width.** The parcel is located in the MRV district. No changes to lot width or lot area are proposed under this application.
3. **Setbacks.** Required minimum district setbacks for the MRV district are front (20'), side (10') and rear (20'). No changes to the building's footprint are proposed under this application.
4. **Maximum Building Coverage.** The maximum building coverage in the MRV district is 20%. No changes to the buildings footprint or building coverage are proposed under this application.
5. **Use.** The property contains an existing restaurant use approved by the Board in 2009. No changes of use or expansions of use are proposed under this application.
6. **Density.** Does not apply to this application.
7. **Height.** The maximum building height in MRV is 28' feet. The regulations define building height as the *"Vertical distance measured from the average elevation of the proposed finished grade at the front or rear of the building to the highest point of the roof for flat and mansard roofs, and to the average height between the highest ridge and its contiguous eave for other types of roofs. On sloping sites the height will be measured on the uphill side."* The Applicant provided elevation drawing of the proposed alterations including replacing the existing gable roof vent on the north façade with a roof mounted cupola style vent. According to staff's calculations the top of the cupola style vent will be approximately 17' from the ground surface to the peak. No other changes to the existing roof-line are proposed under this application.

**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:** 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.

The Applicant requests approval for exterior alterations to the existing building at 1669 Mountain Road- commonly known as the Blue Donkey Restaurant. Proposed exterior alterations on the north and west building elevations involve the installation of additional windows, reconfiguration of existing windows and entrances, and replacing the existing gable roof vent on the north façade with a roof mounted cupola style vent.

No municipal comments were received for this application.

greenbelts were provided. The Applicant requests approval for exterior alterations to the existing building at 1669 Mountain Road- commonly known as the Blue Donkey Restaurant. Proposed exterior alterations on the north and west elevations involve the installation of additional windows, reconfiguration of existing windows and entrances, and replacing the existing gable roof vent on the north façade with a roof mounted cupola style vent. No changes of use or expansion of use that warrant additional parking are proposed under this application. No changes to the existing circulation or parking are proposed under this application.

**Conclusion:** The Board finds the existing circulation and parking improvements represents safe and adequate access and circulation for the existing use.

18. **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. No changes to the existing pedestrian improvements are proposed under this application.

**Conclusion:** The Board finds the existing site layout, including pedestrian circulation and access, represents safe and adequate pedestrian access and circulation for the existing use.

19. **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. No changes to previously approved landscaping are noted in the application. As noted above, in 2009 the Board approved the conversion of an existing vacant building into a restaurant with twelve (12) internal seats and up to twenty-four (24) outdoor seats (Project 3934). The Board’s decision noted that three (3) maple trees and a mixed perennial bed are proposed and concluded that the proposed landscaping was adequate. No changes to the previously approved landscaping or screening is proposed under this application.

**Conclusion:** The Board concludes there are no proposed changes to the previously approved landscaping.

20. **Section 3.7(2)(B)(8) – Stormwater Management:** Section 3.12 outlines the requirements for Stormwater and Erosion Control. No changes to existing drainage patterns or increase in impervious surfaces are proposed under this application. The Board previously concluded adequate storm drainage was proposed.

**Conclusion:** The Board finds the proposed building alterations are not expected to result in changes in storm drainage patterns or cause an undue adverse impact on neighboring properties, town highways or surface waters.

21. **Section 3.7(2)(C).** In addition to other provisions of Section 3.7, the DRB 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 DRB 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.

vent. 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:**

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.** The property is previously developed and is located in the MRV district. The Applicant requests approval for exterior alterations to the existing building at 1669 Mountain Road- commonly known as the Blue Donkey Restaurant. Proposed exterior alterations on the north and west elevations involve the installation of additional windows, reconfiguration of existing windows and entrances, and replacing the existing gable roof vent on the north façade with a roof mounted cupola style vent. The proposed building alterations are not expected to cause an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas.

**Conclusion:** The Board concludes the proposal 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.** The Applicant requests approval for exterior alterations to the existing building at 1669 Mountain Road- commonly known as the Blue Donkey Restaurant. Proposed exterior alterations on the north and west elevations involve the installation of additional windows, reconfiguration of existing windows and entrances, and replacing the existing gable roof vent on the north façade with a roof mounted cupola style vent. The proposed modifications are not expected to result in undue water, noise, or air pollution.

**Conclusion:** The Board concludes the project, if constructed as approved, will not result in undue water, noise, or air pollution.

15. **Section 3.7(2)(B)(3) – Access Management:** The project is served by the existing curb cut off Mountain Road. No changes to the existing curb cut are proposed.

**Conclusion:** The Board finds that the existing access provides adequate service for the existing use. No changes of use or expansions of use are proposed under this application.

16. **Section 3.7(2)(B)(4) – Shared Access:** The parcel is served by an existing access/driveway and is not shared by other parcels or uses. Does not apply.

**Conclusion:** The Board finds that the property is served by an existing access/driveway serving the property. No changes to this access are proposed under this application.

17. **Section 3.7(2)(B)(5) – Circulation and Parking:** The regulations require that parking be provided per the requirements of Section 14 and be designed to minimize the off-site visibility of parking areas through the location, landscaping and screening of such areas. In 2009 the Board approved the conversion of an existing vacant building into a restaurant with twelve (12) internal seats and up to twenty-four (24) outdoor seats (Project 3934). The Board’s decision notes that a total of fifteen (15) parking spaces were required for the proposed use and the existing parking area includes forty (40) parking spaces. The Board concluded that adequate parking and

Additional **MRV**, MRC, VC, VR, MC and LVC Standards: Within the MRV, MRC, VC, VR, MC and LVC Districts, site plans shall re-enforce a compact development pattern defined by a pedestrian orientation, the functional and visual integration of neighboring properties, well defined streetscapes and a mix of uses. To help achieve these objectives, the following standards shall apply:

a. Driveways and Road Edge Treatment: The Board shall require curbing or other appropriate treatment along all road frontage(s) and to define driveway entrances. Driveways shall be the minimum width necessary to provide safe vehicular access and promote pedestrian circulation.

b. Front Yard Treatment: Required front yards shall be limited to landscaping and yard area, sidewalks and public spaces and shall not be used for parking or outdoor storage. 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. Parking: Parking shall be designed to re-enforce an internal street network by maximizing the use of parallel or diagonal parking on internal driveways and streets.

d. Pedestrian Circulation and Sidewalks: Adequate provision for pedestrian circulation within the site, and for pedestrian access to adjacent properties, shall be required. In addition to internal pedestrian circulation, all site plans shall be designed in a manner, which allows a minimum five feet (5') wide sidewalk along all frontage roads.

e. Internal Road Network and Traffic Mitigation: Site plans shall be designed in a manner that facilitates the development of an interconnected network of village streets. In instances where a connector ("side") street is deemed appropriate, internal driveways shall be designed as side streets, shall be separated from parking areas with curbing, sidewalks, landscaping, buildings or other physical features, and shall be configured to provide access to adjacent properties. In instances where driveways will not touch upon adjacent properties, a condition of site plan approval may be the establishment of a right-of-way to provide access to and through adjacent properties; in instances where such access has been provided on adjacent properties as part of a prior permit condition, the DRB may require the applicant to connect to the existing driveway (side street).

f. Orientation of buildings within the site: Buildings shall define a streetscape through a consistent building line and setbacks. Buildings shall front towards and relate to public streets, both functionally and visually, and shall not be oriented toward a parking lot. The Board may impose a maximum setback to achieve a consistent streetscape. The front elevation shall include a main entryway, pedestrian access and appropriate front-yard landscaping. Drive-thru lanes and drive-up windows, where allowed, shall be located in the rear of buildings. Buildings may be clustered around a common focal point, such as a green or public courtyard, providing that an appropriate visual and functional relationship with public roads is maintained.

i. Additional **MRV** and MRC standards: In addition to the conditional review criteria of the regulations, the DRB shall find that the proposed development is designed to achieve a scale and pattern of development characteristic of traditional village settlements. At a minimum,

the Board will consider the adequacy and appropriateness of building materials, architectural design, and visual context of the project. To this end:

(i) Buildings should be multi-story;

(ii) Buildings generally shall include a prominent entrance(s) oriented to all public roads, and be designed to maximize pedestrian accessibility and presentation to the streetscape. Buildings may be clustered around a common focal point, such as a green or public courtyard, providing that an appropriate visual and functional relationship with public roads is maintained;

(iii) Buildings should reflect an overall diversity in size and style, with no single building being out of scale or incompatible with neighboring properties. The visual mass and scale of buildings deemed to be excessively large should be reduced through appropriate design changes, such as a reduction of building's height or width; separation into two or more structures and/or designing a building's façade to interrupt the over-all mass;

(iv) Expansion of existing uses should emphasize infill development (i.e. the construction of new buildings on existing lots) in a manner, which reinforces pedestrian access and a compact village-scale development pattern.

The Applicant requests approval for exterior alterations to the existing building at 1669 Mountain Road- commonly known as the Blue Donkey Restaurant. Proposed exterior alterations on the north and west elevations involve the installation of additional windows, reconfiguration of existing windows and entrances, and replacing the existing gable roof vent on the north façade with a roof mounted cupola style vent. The property is previously developed and contains an existing approved restaurant.

**Conclusion:** Based on the above findings, the Board finds the proposed building alterations have been designed in a manner compatible with, and are consistent with, the defined purpose of the MRV district.

## **DECISION**

Based upon the foregoing Findings of Fact, in RE: **5946** the Board finds (7-0) that the application meets the Stowe Zoning Regulations, as adopted October 8, 2018, 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. All previous conditions of approval remain in full force and effect.
3. 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, as required under Section 2.10 of the zoning regulations.
4. 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 permittee agrees to allow authorized representatives of the Town of Stowe to access the property subject to this

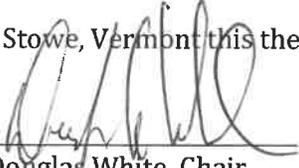
approval, at reasonable times, for purpose of ascertaining compliance with the conditions of approval.

Voting favor: D.White, P.Aumand, T.Mumley, D.Clymer, T. Hand, C. Walton, A.Volansky

Voting to deny: None

Abstain: None

Dated at Stowe, Vermont this the 11 day of February 2019

By: 

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 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.

