

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



PROJECT: 5983

SUBJECT PROPERTY: 638 South Main Street; #07-145.000

PROPERTY OWNER:
Stoware Common LLC
Steve Berson
Po Box 969
Stowe, VT 05672

APPLICANT:
Robert Flemings
CMD, LLC
Po Box 8
Williston, VT 05495

APPLICATION:

The Applicant, Robert Flemings of CMD, LLC on behalf of the property owner Stoware Common LLC (herein referred to as the "Applicant"), requests approval to demolish the building located at 638 South Main Street which was heavily damaged by fire on March 30, 2019. The Applicant proposes to demolish the building, remove all building materials, and install a barrier fence. The parcel also contains an undamaged commercial building located at 618 South Main Street containing a mix of commercial uses.

The subject parcel, consisting of ±3.15 acres and located at 638 & 618 South Main Street (#07-145.000), is in the Lower Village Commercial (LVC) Zoning District, the Stowe Historic Overlay District (SHOD), and portions lying within the Flood Hazard Overlay District including the regulatory floodway. The property is served by South Main Street (VT-100), a state highway maintained by the Vermont Agency of Transportation. The subject parcel is bound to the north by a ±0.14-acre parcel currently owned by 600 South Main Street LLC and a ±0.65 acre parcel currently owned by Timothy Meehan, to the west by the Little River, to the south by a ±2-acre parcel currently owned by Intrepid Spirits LLC, and to the east by South Main Street (VT-100). The application has been reviewed by the Stowe Development Review Board (DRB) under applicable standards of the Town of Stowe Zoning Regulations (as adopted October 9, 2018) for the purpose of demolition review.

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 demolition review was filed by Robert Flemings of CMD, LLC on April 8, 2019. 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 special public hearing of the DRB was scheduled for April 18, 2019 and warned by the Zoning Director in accordance with 24 V.S.A. §4464. The hearing notice was published in the Stowe Reporter on April 11, 2019. The Zoning Director provided written notice of the hearing to the adjoining landowners in accordance with Section 2.14(1)(B). The Applicant posted the hearing notice on the property within view from the public right-of-way.

The public hearing to consider the application convened on April 18, 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 Robert Flemings of CMD, LLC PO Box 8, Williston, VT 05495
- Mike Goldfield, Goldfield Construction, 41 IDX Drive, South Burlington, VT 05403

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

1. Town of Stowe Development Application, dated 4/8/19;
2. Email from Thomas Benson, re: 683 South Main, Stowe (Steve Bergson), dated 4/8/2019 at 4:03 PM;
3. Lower Level Plan, Sheet R1, Stoware Building, prepared by Cushman Design Group, dated 4/5/2019;
4. Main Level Plan, Sheet R2, Stoware Building, prepared by Cushman Design Group, dated 4/5/2019;
5. Upper Level Plan, Sheet R3, Stoware Building, prepared by Cushman Design Group, dated 4/5/2019;
6. Email from Harry Sheppard, re: 638 South Main Street, dated 4/8/2019 at 9:45 AM; (staff)
7. Email from Mark Sgantasm, re: Stoware Common South Building, dated 4/6/2019 at 10:32 AM;
8. Google Earth Photographs, dated 10/2018; (staff)
9. E911 Overview Location Map dated 4/9/2019. (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 demolition review was reviewed by the Stowe 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 10- Stowe Historic Overlay District and Historic Buildings
 - §10.8 Demolition and Partial Demolition of Structures

Section 10.8 Demolition and Partial Demolition of Structures

(1) Within the overlay district and for Historic Buildings outside the district, the SHPC first shall review each application for the demolition or partial demolition of a building or structure and make a written recommendation to the DRB within fifteen (15) days of the completed presentation except when demolition is requested under items C, D and E. below, which go directly to the DRB. Demolition shall mean the act of deliberately destroying all or a portion of a building. The DRB then will conduct a public hearing to review the application and may approve the demolition if they find:

- A. The SHPC has determined that the structure does not have historical or architectural significance or does not make a positive contribution to the district's streetscape; or*
- B. The condition of the structure has deteriorated to such a degree that rehabilitation and use of the building is not feasible due to structural or building code issues. The structural or building code issues*

shall be significant enough to make rehabilitation not possible. For example, a building foundation cannot be repaired because it is not possible to jack up the building or interior ceiling heights are too low to meet code requirements and cannot be modified. It is the responsibility of the property owner to demonstrate to the SHPC and DRB's satisfaction that rehabilitation is not feasible; or

- C. The condition of the structure has deteriorated to such a degree that it poses a threat to the public safety as determined by town or state officials and cannot be restored or repaired without causing undue financial hardship to the owner. The burden of proving this hardship is on the owner; or*
- D. The structure is determined to be a deterrent to a major improvement that will be a clear and substantial benefit to the community. This determination of substantial benefit will be made by the DRB.*
- E. The cost of rehabilitation is significant enough that it would be an undue financial hardship to the property owner. A determination of undue financial hardship may be granted only if the project complies with one of the following requirements of §10.8(E) (1-2).*

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

1. The subject parcel is located within the Stowe Historic Overlay District (SHOD) as shown on the Official Town of Stowe Zoning Map (effective October 30, 2018).
2. The subject parcel contains two existing structures, 618 & 638 South Main Street, commonly referred to as the Stoware Common Buildings- each with a mix of commercial uses.
3. The Applicant requests demolition review under Section 10.8(1)(C). Pursuant to Section 10.8, when an seeks demolition approval under Section 10.8(1)(C), the application is referred directly to the Development Review Board.
4. On Saturday March 30, 2019 the building located at 638 South Main Street was heavily damaged by fire.
5. The Applicant and staff provided written documentation from MMG Insurance Company, DPW Director/Town Engineer Harry Sheppard, and Stowe Fire Chief Mark Sgantasm all concluding that the building is damaged beyond repair and should be secured and removed as soon as possible to prevent any public safety hazards.

Conclusion: The Board concludes the condition of the building is damaged to such a degree that it poses a threat to the public safety as indicated by the Stowe Fire Chief and Town Engineer and cannot be restored or repaired without causing undue financial hardship to the owner.

DECISION

Based upon the foregoing Findings of Fact, in RE: **5983** the Board finds (4-0) the proposal meets the Stowe Zoning Regulations, effective October 30, 2018, subject to the following conditions of approval:

1. The project shall be completed according to the plans hereby approved. Any change to the plans shall be brought to the Zoning Administrator's attention, prior to its enactment, for a determination if an amendment is required.

2. Prior to demolition, the Applicant shall submit to the Zoning Administrator current photographs showing all four (4) sides of the damaged building.
3. All demolition shall be completed with 30 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; (3) Any remaining foundation opening(s) shall be fenced or otherwise secured.
4. Future development of the parcel shall require review and approval under the regulations in effect at the time of application.
5. 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: D. Clymer, P. Aumand, T. Hand, P. Roberts
Voting to deny: None

Dated at Stowe, Vermont this the 19 day of April 2019

By: _____

Drew Clymer, Acting 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.