

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



**PROJECT:** 6022

**SUBJECT PROPERTY:** 2160 Mountain Road; #06-051.000

**PROPERTY OWNER & APPLICANT:**

K2 Realty, Steven Foster  
PO Box 3383  
Stowe, VT 05672

**APPLICATION:**

The Applicant, K2 Realty (herein referred to as the "Applicant"), requests conditional use and design review approval for exterior alterations to a protected historic building, landscaping improvements, and installation of outdoor building mounted lighting. The parcel contains two commercial buildings containing a combination of restaurant, office, retail, and residential uses. No changes of use are proposed under this application. Approvals sought under this application involve alterations to the building and surrounding lands located at 2160 Mountain Road.

The subject parcel, consisting of ±2.89 acres and located at 2160 Mountain Road (#06-051.000), is in the Mountain Road Village (MRV) Zoning District and Source Protection Overlay District. The property is served by Mountain Road (VT 108), a state highway maintained by the Vermont Agency of Transportation. The subject parcel is bound to the north and west by the Mountainside Resort Condos, to the east by the West Branch Cemetery, and to the south by Mountain Road. 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 conditional use and design review approval.

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 and design review approval was filed by Applicant Steven Foster on May 20, 2019. The application was accepted as administratively 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 June 18, 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 May 30, 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 June 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 Steven Foster- K2 Realty PO Box 3383, Stowe, VT 05672

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

1. Town of Stowe Development Application, dated 5/20/19;
2. As-Built Drawings of the East, South, and North Elevation, Sheet A.2.2, prepared by Wilson Architects dated 4/1/2019;
3. Landscape Plan at Rear Terrace, Sheet L1.2, prepared by Wilson Architects dated 5/9/2019;
4. Landscape Plan at Entry Terrace, Sheet L1.1, prepared by Wilson Architects dated 5/9/2019;
5. Over the Wall-2160 Mountain Road Landscape Submittal, no date;
6. SHPC Recommendation, dated 6/2/2019;

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 and design review approval 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 2- Administration and Enforcement
- Section 3- General Regulations
- Section 4- Specific Use Standards
- Section 5- Zoning Districts
- Section 6- Uses, Dimensional Requirements and Density
- Section 10- Stowe Historic Overlay District and Historic Buildings
- Section 15- Parking Regulations

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

**Dimensional Requirements:**

1. **Zoning District.** The subject parcel is located in the Mountain Road Village (MRV) Zoning District and the Source Protection Overlay District as shown on the Official Town of Stowe Zoning Map (as adopted October 9, 2018).
2. **Lot Area, Lot Width.** The ±2.89-acre parcel is located in the MRV district. No changes to lot area or lot width are proposed under this application.
3. **Setbacks.** Required minimum district setbacks in MRV are front (20'), side (10') and rear (20'). The Applicant seeks approval for exterior alterations and landscaping improvements. Section 3.4(2) states "*2) Dimensional requirements and property setbacks are not applicable to: public utility structures no more than 100 sq. ft. in area, bus shelters, handicap access ramps, lampposts, patios or terraces at grade level, swing sets and similar playground equipment, flag poles, barbecue pits, decorations such as statues or similar items, playhouses, signs and fences that are not part of a structure.*" The Applicant is not proposing any improvements that encroach on any required setback.

4. **Maximum Building Coverage.** The maximum building coverage in MRV is 20%. The regulations define building coverage as: *"That portion of a site, expressed as a percentage, occupied by all buildings or structures, (not including public utility structures), that are roofed or otherwise covered and that extend more than three (3') feet above the surface ground level. The building roof overhang up to 6 feet in length is not included as part of the building coverage area."* No change in building coverage is proposed under this application.
5. **Use.** The parcel contains two commercial buildings containing a combination of restaurant, office, retail, and residential uses. No changes of use are proposed under this application.
6. **Height.** The maximum building height in MRV is 28'/35' feet. No change in building height is proposed under this application.
7. **Density.** No changes in density 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 a protected historic building, landscaping improvements, and installation of outdoor building mounted lighting. No changes or increases in use are proposed under this application.

No Municipal Department review forms returned indicated that the proposed development would have any undue adverse impact on existing or planned community facilities and services.

**Conclusion:** The Board concludes the proposal 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 a protected historic building, landscaping improvements, and installation of outdoor building mounted lighting. No changes or increases in use are proposed under this application.

**Conclusion:** The Board concludes the proposal will not increase traffic on roads and 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 zoning district. The purpose of the MRV district is *"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."* The Applicant requests approval for exterior alterations to a protected historic building, landscaping improvements, and installation of outdoor building mounted lighting. Adjacent to the subject parcel are other nearby residential, commercial, and lodging uses.

**Conclusion:** The Board concludes 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 subject to review under the Conditional Use standards. Applicable bylaws include the Stowe Zoning Regulations, as adopted October 9, 2018. No other known or identified 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 a protected historic building, landscaping improvements, and installation of outdoor building mounted lighting. 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.

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 Applicant requests approval for exterior alterations to a protected historic building, landscaping improvements, and installation of outdoor building mounted lighting. The parcel contains a historic building protected under Section 10 of the zoning regulations. No additional known or identified historic sites are located on the parcel. The parcel is previously developed.

**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 a protected historic building, landscaping improvements, and installation of outdoor building mounted lighting. The proposed modifications are not expected to result in undue water, noise, or air pollution.

**Conclusion:** The Board concludes the project, if completed 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 private driveway off Mountain Road. The Applicant requests approval for exterior alterations to a protected historic building, landscaping improvements, and installation of outdoor building mounted lighting. No changes in access are proposed under this application.

**Conclusion:** The Board concludes that the existing access is adequate for the existing use(s).

16. **Section 3.7(2)(B)(4) – Shared Access:** The parcel is served by an existing private driveway shared by the other buildings on the property. No changes to the existing access are proposed under this application.

**Conclusion:** The Board finds that the existing access is sufficient for the existing use(s).

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. The Applicant requests approval for exterior alterations to a protected historic building, landscaping improvements, and installation of outdoor building mounted lighting. The parcel contains two commercial buildings containing a combination of restaurant, office, retail, and residential uses. No changes of use are proposed under this application. No changes to parking or circulation are proposed under this application.

**Conclusion:** The Board concludes no changes to parking or circulation are proposed under this application.

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. This portion of Mountain Road (VT Route 108) does not contain sidewalks. The Applicant proposes a variety of landscaping which better defines pedestrian circulation from the parking area to building entrances.

**Conclusion:** The Board concludes the site layout, including proposed improvements to pedestrian circulation and access, represents safe and adequate pedestrian access and circulation for the existing use(s).

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. The Applicant provided landscaping plans (Sheet L-1.2 and Sheet L1.1) prepared Wilson Architects PC AIA depicting front and rear yard landscaping improvement. The provided landscaping plan shows existing trees, proposed trees, walkways, accent lighting, and general improvements.

Two wall mounted compressors are shown on the elevation drawings, as well as a 6' high privacy fence.

**Conclusion:** The Board concludes the proposed landscaping and screening plan meets the standards outlined in Section 4.8

20. **Section 3.7(2)(B)(8) – Stormwater Management:** Section 3.12(2) provides stormwater and erosion control standards for construction-related activities associated with any new construction as outlined in A-F. The proposal is not expected to significantly alter existing drainage patterns.

**Conclusion:** The Board concludes the proposed improvements will not create more than ½ acre of impervious surfaces or significantly alter existing drainage patterns.

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

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.

The Applicant requests approval for exterior alterations to the building, as well as lighting and landscaping improvements.

**Conclusion:** The Board concludes the proposal is consistent with the defined purpose of the MRV district.

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

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

23. **Section 4.8 Outdoor Lighting.** The regulations require that all outdoor lighting shall be installed in accordance with the Section 4.8(A-C). When reviewing lighting plans pursuant to Section 4.8, including proposed gas station canopy or apron lighting, proposed illumination of building façades or parking area lighting, the DRB considers appropriate levels and distribution of illumination. In determining appropriate levels of illumination, the Board considers the guidelines outlined in Section 4.8(2)(A-F). The Applicant proposes to install three (3) outdoor light fixtures on the rear of the building and accent landscaping lighting along the pedestrian paths. The manufacturer cut sheet and specifications were provided for the lighting.

**Conclusion:** The Board concludes the proposed outdoor light fixtures will provide safe and adequate lighting for the intended use.

### **Section 10: Stowe Historic Overlay District and Historic Buildings**

24. The parcel contains an inventoried historic building protected under Section 10 of the zoning regulations. The Applicant met with the Stowe Historic Preservation Commission on May 29, 2019 and received positive recommendations. The Commission unanimously approved the requested landscaping and building alterations allowing the Applicant the flexibility to use an alternative material – Corten, if desired.

### **DECISION**

Based upon the foregoing Findings of Fact, in RE: **6022** the Board finds (6-0) the proposal meets the Stowe Zoning Regulations, as adopted on October 9, 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 or the proposed use of the property shall be brought to the Zoning Administrator's attention, prior to its enactment, for a determination if an amendment is required. The Zoning Administrator is granted the authority to review and administratively approve non-material modifications to the approved plans upon finding that the proposed change or alteration would not have affected the decision made or any conditions if had been included in the plans as approved.
2. All relevant prior conditions of approval, unless amended herein, remain in full force and effect.
3. Prior to the issuance of a zoning permit, the Applicant shall submit a landscaping schedule outlining the name of the plant, quantity, and size at planting.
4. The Board accepts the recommendations of the Historic Preservation Commission and grants the Applicant flexibility to use an alternative material- Corten, if so desired.
5. All outdoor lighting fixtures shall be shielded and aimed so that illumination is directed only to the designated area and does not cast direct illumination or cause glare beyond the boundary lines of a property.
6. Exterior lighting fixtures shall not exceed 2,000 lumens (equivalent to a 150-watt incandescent bulb).
7. All mechanical systems shall be located or screened in a manner that they are not visible from the public right-of-way.
8. Landscaping shall be installed as shown in provided plans prepared by Wilson Architects, last revised 5/9/19. Any dead and dying plants and trees as shown on said plans shall be replaced within one (1) year of death.
9. 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.

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 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.White, M. Diender, C.Walton, A. Volansky, T.Mumley, T. Hand

Voting to deny: None

Dated at Stowe, Vermont this the 2 day of July 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.