

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



PROJECT: 6036

SUBJECT PROPERTY: 1940 Mountain Road; #06-073.000

PROPERTY OWNER:

1940 Mountain Road LLC
Mila Lonetto
846 Cottage Club Rd
Stowe, VT 05672

APPLICANT:

Noah Labow, Elevate Movement Collective
1940 B Mountain Road
Stowe, VT 05672

APPLICATION:

The Applicant, Noah Labow of Elevate Movement Collective (herein referred to as the "Applicant"), requests conditional use approval to erect a 42' x 56' recreation barn structure. The "sports barn" will provide a covered training space protected from the outside elements during summer/fall seasons and will be closed in before winter to serve as a meeting spot and training space during cold and inclement weather. The Board approved the change of use from retail to recreational facility with accessory outdoor use under Project 6036 in July 2019. The main recreational facility primarily occupies the basement unit with outdoor use in the adjacent rear field. The subject parcel, located at 1940 Mountain Road (#06-073.000), is in the Mountain Road Village (MRV) Zoning District and the Source Protection Overlay District (SPOD). The property is served by Mountain Road (VT-108), maintained by the State of Vermont Agency of Transportation. The application has been reviewed by the 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 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 approval was filed by Applicant Noah Labow on August 14, 2020. 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 October 6, 2020 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 September 17th and publicly posted at the Town Office, Library, and Police Station. 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 October 6, 2020 via virtual meeting hosted by Zoom, with a quorum of the DRB present. No ex parte communications or conflicts of interests were reported. Property abutter Andante LLC provided a written request to continue the October 6th hearing since he did not receive timely notice of the hearing. Applicant Noah Labow indicated that he did not provide timely notification to the property abutters. The Board continued the hearing to a time and date certain, October 20th to allow proper notification to the adjoining property owners.

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

- Mila Lonetto, 846 Cottage Club Rd, Stowe, VT 05672
- Julian Bartlett, 1965 Mountain Road, Stowe, VT 05672
- Noah Labow, 1940B Mountain Road, Stowe, VT 05672
- George Coultas, 1940B Mountain Road, Stowe, VT 05672
- Andante LLC , 1880 Mountain Road, Stowe, VT 05672 [gums46a@aol.com]
- Brian Leven, 212 Moulton Lane, Stowe, VT 05672 [representing Andante LLC, Grand View Farms, and Pall Spera]

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

1. Town of Stowe Development Application, dated 8/10/20;
2. Project narrative, no date;
3. Hand drawn site plan showing proposed location, no date;
4. Photograph showing similar barn structure, no date;
5. Profile showing building height, no date;
6. Aerial photograph showing location of proposed structure;
7. Public comments from Julian Bartlett dated 10/6/2020;
8. Public comments from Andante LLC dated 10/5/2020;
9. Outdoor Light Fixture Spec Sheet, no date.

The DRB adjourned the hearing on October 20th, 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 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 15- Parking Regulations

Dimensional Requirements:

1. **Zoning District.** The subject parcel is in the Mountain Road Village (MRV) Zoning District and the 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.** 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 to erect a 42' x 56' recreation barn. The setback line is shown on the provided site plan- the proposed structure has been sited outside of the required setback.

4. **Maximum Building Coverage.** The maximum building coverage in MRV is 20%. The Applicant did not provide the proposed lot coverage however did indicate that the lot is currently undeveloped, and the recreation barn will be the only structure on the lot at this time. As a condition of approval, the Applicant will be required to provide the proposed building coverage.
5. **Use.** The Board approved the change of use from retail to recreational facility with accessory outdoor use under Project 6036 in July 2019.

Recreation Facility, Indoor is defined as 'A building or portion thereof used for recreational purposes, including, but not limited to a bowling alley, theater, skating rink, billiards, video games, gymnasium, swimming pool, etc.' Recreation Facility, Outdoor is defined as 'Fields, trails, bodies of water or other land used for recreational purposes including, but not limited to a golf course, golf driving range, miniature golf, shooting/archery range, swimming pool, skating rink, tennis court, riding stable, park, trails, etc.' Both indoor and outdoor recreational facilities are conditional uses in the MRV district.

No changes of use are proposed; the Applicant seeks approval to erect a barn to be used for recreation.

6. **Height.** The maximum building height in MRV is 28' feet. The building height is noted as approximately 21' 10".
7. **Density.** No increases in density are proposed.

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 to erect a 42' x 56' temporary recreation barn structure. The parcel is served by municipal water and sewer. 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: Based on the above findings, 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 to erect a 42' x 56' temporary recreation barn structure. The Board approved the change of use from retail to recreational facility with accessory outdoor use under Project 6036 in July 2019. The recreation barn will provide a covered activity space. During the hearing the Applicant testified that the project is not expected to increase traffic on roads and highway in the vicinity and that the proposal includes using the existing apparatus and site.

Conclusion: Based on the above findings, the Board concludes the proposal 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 general purpose of the MRV district 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.

The property is located along Rt. 108 in the MRV district. Other nearby uses include both commercial and residential. During the hearing the Applicant testified that the structure will contain barn board walls with a white tarp canvas roof. The main entrance will be a regular sized door not the garage door as shown the provided example photograph.

Conclusion: Based on the above findings, 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 being reviewed 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: Based on the above findings, 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 to erect a 42' x 56' recreation barn structure. The parcel is undeveloped, flat, and open. The Applicant testified that the barn structure is temporary in the sense that it can be installed within 48 hours and dismantled within 48 hours but otherwise will be a permanent structure. The proposed building is not expected to reduce the use of, or access to, the utilization of renewable energy resources.

Conclusion: Based on the above findings, the Board concludes the project will not 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 seeks approval to erect a 42' x 56' recreation barn structure. The Board previously approved accessory outdoor recreational use of the field area. The rear field is undeveloped but is within a developed area containing both residential and commercial uses. No known or identified historic sites are located on the parcel. The historic Rocky River Lodge is on the adjacent parcel and is not involved with this project. According to the ANR Natural Resources Atlas there are no rare or endangered species, deer wintering areas, or inventoried wetlands located in the vicinity of the proposed trampoline and storage shed. This entire area and parcels in the vicinity contain hydric soils.

Conclusion: Based on the above findings, 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 to erect a 42' x 56' recreation barn structure. The barn will provide a

covered area for recreational activities currently taking place and approved on the property. Under the prior approval, the Board conditioned its approval restricting the use of outdoor recreational facilities be limited to 8:00 AM-8:00 PM. The Applicant testified the proposed barn will likely reduce noise impacts and is not expected to result in undue water or air pollution. During the hearing Brian Leven, representing adjoining property owners, raised potential noise concerns. The Applicant agreed to relocate the secondary egress door to the south side of the building to reduce potential noise.

Conclusion: Based on the above findings, the Board concludes the project 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 access connecting to VT Route 108. No changes to existing access are proposed under this application

Conclusion: Based on the above findings, the Board concludes that the existing access and improvements are adequate for the intended and existing use(s).

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

Conclusion: Based on the above findings, the Board finds that the existing access is sufficient for the intended and 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 to erect a 42' x 56' recreation barn structure. The barn will provide a covered area for recreational activities currently taking place and approved on the property. No changes to the existing access and parking are proposed under this application. Under the prior approval, the Board confirmed a total of thirteen (13) parking spaces, four (4) of which are designated for Elevate with six (6) additional parking spaces available on the adjacent lot which is currently under common ownership. No changes are proposed to the width of the existing driveway, parking spaces or parking area. During the hearing the Applicant testified that the proposed recreation barn is not expected to create an additional need for parking.

Conclusion: Based on the above findings, the Board concludes the existing circulation and parking improvements represents safe and adequate access and circulation for the intended and existing use(s).

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 existing pedestrian improvements are proposed under this application.

Conclusion: Based on the above findings, the Board concludes the existing site layout, including pedestrian circulation and access, represents safe and adequate pedestrian access and circulation for the intended and 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. During the hearing, the Applicant testified that no landscaping is proposed under this application and the existing landscaping improvements will remain in place.

Conclusion: Based on the above findings, the Board concludes no additional landscaping is proposed, nor are any changes to the existing landscaping proposed under this application.

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. The Applicant proposes to erect a 42' x 56' temporary recreation barn structure resulting in ±2,352 sf of additional impervious surfaces. During the hearing, the Applicant provided an overview of existing stormwater drainage patterns and testified that stormwater discharging off the proposed building will be diverted to the existing ditch and will follow existing stormwater drainage patterns.

Conclusion: Based on the above findings, the Board concludes the proposed building and increase in impervious surfaces will not alter existing storm drainage patterns.

21. **Section 3.7(2)(C).** Additional *MRV*, MRC, VC, VR, MC and LVC Standards. The Applicant requests approval for to erect a 42' x 56' recreation barn structure. The proposed building is sited to the rear of the existing building at 1940 Mountain Road and will be screened by the existing building and an existing tall hedge of landscaping running east/west along the property line. The Applicant testified that the barn structure is temporary in the sense that it can be installed within 48 hours and dismantled within 48 hours but otherwise is a permanent structure. Example photographs showing the building design and a description of building materials were provided.

Conclusion: Based on the above findings, the Board finds the proposed building is consistent with the defined purpose of the MRV district. Where appropriate, the Board waived the specific requirements when it was found that mitigation through design, screening or other mitigation has accomplished the objectives 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 shall consider appropriate levels and distribution of illumination. In determining appropriate levels of illumination, the Board should consider the guidelines outlined in Section 4.8(2)(A-F). The Applicant provided a manufacturer cut-sheet for one building mounted fixture. During the hearing he testified that one light fixture will be installed near the primary entrance door. The cut-sheet shows a fully cut-off and shielded fixture.

Conclusion: Based upon the above findings, the Board concludes the proposed outdoor lighting is in conformance with Section 4.8 and has been designed to minimize spill into the night sky and is appropriate for the intended use and site location.

DECISION

On a motion by C.Walton, seconded by A.Volansky, the Development Review Board hereby approves the Applicant's request for conditional use approval as outlined in the application dated 8/10/2020 and supplemental materials, 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 the zoning permit, the Applicant must provide to the Zoning Administrator the proposed building coverages, as calculated and defined under the regulations.
4. The secondary egress door shall be installed on the south side of the building to reduce noise.
5. Any noise generated within the recreation barn shall be kept to a minimum and not be audible by the adjacent buildings when the windows and doors are closed.
6. The exterior lighting fixture shall not exceed 2,000 lumens (equivalent to a 150-watt incandescent bulb) and be 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 the property.
7. Site construction shall adhere to the standards outlined in Section 3.12(2)(A-E) including:
 - o The amount of soil exposed at any one time must be kept to a minimum.
 - o Areas of exposed soil that are not being actively worked, including soil that has been stockpiled, must be stabilized.
 - o Stormwater shall be controlled during construction to minimize soil erosion and transport of sediment to surface waters.
 - o Soil disturbance shall not be allowed between the period of October 15 to April 15 unless adequate erosion control measures are provided as outlined in Section 3.12(2)(A-C) taking into consideration winter and spring conditions.
 - o An adequate stormwater drainage system must be continuously maintained to ensure that existing drainage patterns are not altered in a manner to cause an undue adverse impact on neighboring properties, town highways or surface waters.
8. A Certificate of Occupancy must be obtained from the Zoning Administrator prior to occupancy and use to ensure that the project has been completed as approved by the Development Review Board, as required under Section 2.10 of the zoning regulations.
9. 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, F. Aumand III, T. Hand, P.Roberts, L. Wasserman, C.Walton, A.Volansky

Voting to deny: None

The motion PASSES, 7-0.

Dated at Stowe, Vermont this the 9 day of November 2020

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 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.