

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



PROJECT: 6036

SUBJECT PROPERTY: 1940 Mountain Road; #06-073.000

PROPERTY OWNER & APPLICANT:

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

APPLICATION:

The Applicant, 1940 Mountain Road LLC (herein referred to as the "Applicant"), requests conditional use approval for a change of use from retail to recreational facility with accessory outdoor use. The proposed recreational facility will primarily occupy the basement unit, currently permitted for retail use, with outdoor use in the adjacent rear field. The subject parcel, consisting of ± 0.21 acres and 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 subject parcel is bound to the north and west by parcels currently owned by the Applicant; to the south by Mountain Road (VT-108), and the east by a ± 2.3 -acre parcel currently owned by Andante LLC containing a mix of commercial uses. 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 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 Mila Lonetto on May 23, 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 July 2, 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 June 13, 2019 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 July 2, 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 Mila Lonetto, 846 Cottage Club Rd, Stowe, VT 05672
- Julian Bartlett, 1965 Mountain Road, Stowe, VT 05672

- Noah Labow, 277 Frazier Rd, Morrisville, VT 05661

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

1. Town of Stowe Development Application, dated 5/23/2019;
2. Photographs (3) showing trampoline areas, no date;
3. Project narrative, no date;
4. Proposed site plan prepared by Grenier Engineering- modified to show location of trampoline and storage shed, dated 10/30/2018;
5. Site Plan showing Previously Approved Plan with updated parking table, no date;
6. Email comments from Julian Bartlett, 1965 Mountain Road, Stowe, VT 05672, dated 7/2/2019.

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 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

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 contains ±0.21 acres 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.** The ±0.21-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 a change of use. No changes to the footprint or height of the main building (1940 Mountain Road) are proposed under this application. The Applicant proposes to install a 10' x 17' in-ground trampoline 20' from the eastern property line. An 8.5' x 16' storage shed is shown to be located a minimum of 10' from the eastern property line.
4. **Maximum Building Coverage.** The maximum building coverage in MRV is 8%. The rear adjacent parcel is currently undeveloped. The proposed lot coverage includes 136 sf (accessory shed).
5. **Use.** The parcel contains an existing mixed-use building. The Applicant seeks conditional use approval for a change of use from retail to recreational facility with outdoor use. 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. The building also contains previously approved Retail/Office (1250 sf), Retail (1000 sf), Office (1000 sf), and two lodging units.

6. **Height.** The maximum building height in MRV is 28' feet. No changes in building height are proposed under this application for the existing mixed-use building, however the Applicant should confirm the height of the proposed 8.5' x 16' storage shed.
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 for a change of use. The parcel is served by municipal water and sewer. No changes to existing municipal connections are proposed.

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 a change of use from retail to recreational facility with accessory outdoor use. The proposed recreational facility will primarily occupy the basement unit, currently permitted for retail use, with outdoor use of the adjacent rear field. The Applicant did not provide the estimated number of vehicle trips. The project narrative states the proposed hours of operation to be 7:00 AM to no later than 10:00 PM.

Conclusion: The Board concludes the proposal represents a nominal increase in 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 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 lands have been used for similar purpose in the past including summer camps for children.

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 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: 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 a change of use from retail to recreational facility with accessory outdoor use. The proposed recreational facility will primarily occupy the basement unit, currently permitted for retail use, with outdoor use of the adjacent rear field. 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 seeks approval for a change in use from retail to recreational facility with accessory outdoor use. The proposed recreational facility will primarily occupy the basement unit, currently permitted for retail use, with outdoor use of the adjacent rear field. 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: 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 a change of use from retail to recreational facility with accessory outdoor use. The proposal recreational facility will primarily occupy the basement unit, currently permitted for retail use, with outdoor use of the adjacent rear field. The Applicant proposes to install a 10' x 17' in-ground trampoline 20' from the eastern property line. An 8.5' x 16' storage shed is shown to be located a minimum of 10' from the eastern property line. No other changes to the exterior of the building or site plan are proposed under this application. During the hearing the Applicant testified use of the outdoor facilities would be limited to 8:00 AM-8:00 PM.

Conclusion: 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: 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: 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 for a change of use from retail to recreational facility with accessory outdoor use.

Table 15.2 outlines the minimum parking requirements and requires three (3) parking spaces for every 300 sf (gross- excluding storage) of office and retail uses. The proposed site plan provides parking calculations for the existing uses. Table 15.2 does not include a listed parking requirement for indoor/outdoor recreational facilities. During the hearing the Applicant testified that they intend to create a temporary drop off area utilizing the existing easements.

The existing uses require a total of 12.8 parking spaces. The provided site plan appears to show thirteen (13) parking spaces, four (4) of which are designated for the proposed use. Six (6) additional parking spaces are 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.

Conclusion: 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: 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. No changes to existing landscaping improvements are proposed under this application.

Conclusion: The Board concludes no additional landscaping is proposed.

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 install a 10' x 17' in-ground trampoline 20' from the eastern property line. An 8.5' x 16' storage shed is shown to be located a minimum of 10' from the eastern property line. No changes to storm drainage patterns are proposed.

Conclusion: The Board concludes the proposed change of use will not significantly alter storm 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.

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 a change of use involving an existing building.

Conclusion: The Board finds the proposed change in use and proposed improvements (trampoline and storage shed) have been designed in a manner compatible with, and are 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 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).

No changes to previously approved building mounted lighting or site lighting are proposed.

Conclusion: The Board concludes no changes to previously approved building mounted lighting or site lighting are proposed. Any additional outdoor lighting will require review under the regulations in effect at the time of application.

DECISION

Based upon the foregoing Findings of Fact, in RE: **6021** the Board finds (7-0) 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. Use of outdoor recreational facilities shall be limited to 8:00 AM-8:00 PM.
4. 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.
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.White, D. Clymer, P.Aumand, C.Walton, A. Volansky, T.Mumley, M. Diender

Voting to deny: None

Dated at Stowe, Vermont this the 16 day of July 2019

By: _____

DRB 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.