

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



PROJECT: 6046

SUBJECT PROPERTY: 3576 Mountain Road; #11-146.000

PROPERTY OWNER:

Mt. Mansfield Winter Academy, Inc.
PO Box 3269
Stowe, VT 05672

APPLICANT:

Brian Leven
212 Moulton Lane
Stowe, VT 05672

APPLICATION:

The Applicant, Brian Leven on behalf of Mt. Mansfield Winter Academy, Inc. (herein referred to as the "Applicant"), requests approval to modify previously approved Project 6000 recently approved by the Board in a decision dated 06/17/2019. The Applicant seeks amended conditional use approval to modify previously approved access, circulation, and landscaping as shown on the provided drawings prepared by Grenier Engineering. No changes are proposed to the previously approved classroom building.

The subject parcel, consisting of ±3.5 acres and located at 3576 Mountain Road (#11-146.000), is in the Upper Mountain Road (UMR) Zoning District. The property is served by Mountain Road, a state highway maintained by the Vermont Agency of Transportation (VTTrans). The parcel is bound to the north by a ±18.56-acre parcel owned by Mountain House LLC, to the east by a ±1.1-acre parcel owned by Edward Rovetto, to the south by Mountain Road and the Topnotch Resort event fields, and to the west by a ±1.75 acre parcel and dwelling owned by George Hutchinson. 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 amended conditional use review. The subject parcel contains a private school certified by the Agency of Education and therefore may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use [24 VSA 4413].

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 amended conditional use review was filed by Applicant Brian Leven on June 16, 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 public hearing of the DRB was scheduled for July 16, 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 27, 2019 and posted at the Town Office, Library, and Police Station. The Applicant submitted a completed certificate of service in accordance with Section 2.14(1)(B).

The public hearing to consider the application convened on July 16, 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 participated in the hearing process, and may be afforded status as interested persons with rights to appeal:

- Brian Leven, 212 Moulton Lane, Stowe, VT 05672
- John Grenier, Grenier Engineering, P.O. Box 445, Waterbury, VT 05676

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

1. Town of Stowe Development Application, dated 6/16/2019;
2. Access Easement Agreement, as recorded in Volume 1006 Pages 137-143;
3. Site Grading Plan prepared by Grenier Engineering, Sheet 1 of 2, dated 4/30/2019 [last revised 6/17/2019];
4. Site Grading Plan prepared by Grenier Engineering, Sheet 1 of 2, dated 4/30/2019 [last revised 7/12/2019];

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 amended 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:

1. The subject ±3.5-acre parcel is located at 3576 Mountain Road (#11-146.000). The parcel contains a private school certified by the Agency of Education. 24 VSA §4413 establishes limitations on municipal bylaws and states the following:

"The following uses may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use:

- A. State- or community-owned and operated institutions and facilities.*
- B. Public and private schools and other educational institutions certified by the Agency of Education.*
- C. Churches and other places of worship, convents, and parish houses.*
- D. Public and private hospitals.*
- E. Regional solid waste management facilities certified under 10 V.S.A. chapter 159.*

F. Hazardous waste management facilities for which a notice of intent to construct has been received under 10 V.S.A. § 6606a.”

Given the existing use being a private school certified by the Agency of Education, the Board’s review is limited to the items listed above and only to the extent that regulations do not have the effect of interfering with the intended functional use.

Dimensional Requirements:

2. **Zoning District.** The subject parcel contains ±3.5 acres and is located within the Upper Mountain Road (UMR) Zoning District as shown on the Official Town of Stowe Zoning Map (as adopted October 9, 2018).
3. **Lot Area, Lot Width.** The provided site plan depicts the existing frontage and width of the parcel. No changes to lot area or lot width are proposed under this application.
4. **Setbacks.** Required minimum district setbacks in UMR are front (50’), side (50’) and rear (50’). The Applicant seeks amended conditional use approval to modify previously approved access, circulation, and landscaping as shown on the provided drawings. Section 15.6 outline setbacks for driveways and parking facilities to include a 10’ required setback in the UMR district. During the hearing the Applicant provided a revised site plan relocating the three (3) parking spaces previously located within the 10’ side setback.
5. **Maximum Building Coverage.** No changes proposed. Under prior approval, the Board agreed to waive the maximum building coverage, as allowed under Section 3.4(9) to provide for the reasonable expansion of the school.
6. **Use.** The existing parcel contains a private school. No changes of use or increase in intensity are proposed under this application.
7. **Height.** The maximum building height in UMR is 28’ feet. No changes in building height 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. No Municipal Department review forms returned indicated that the requested modifications would have any adverse impact on existing or planned community facilities and services.

Conclusion: 24 VSA §4413 establishes limits municipal bylaws. The Board concludes the capacity of existing or planned community facilities and services cannot be considered or reviewed under 24 VSA §4413.

9. **Section 3.7(2)(A)(2) – Traffic on roads and highways in the vicinity:** The modifications are not expected to impact traffic on roads and highways in the vicinity.

Conclusion: 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 UMR zoning district. The purpose of the UMR district is *“To control development along the “upper” Mountain Road in a manner that allows for residential, recreation and low-density commercial uses of property while preserving the rural character of the landscape, discouraging strip development and promoting the ongoing viability of existing land uses.”* The Applicant requests modifications to the previously approved project. Adjacent to the subject parcel are other nearby residential, commercial and lodging uses.

Conclusion: The Board concludes 24 VSA §4413 establishes limits municipal bylaws. The character of area affected cannot be considered or reviewed under 24 VSA §4413.

11. **Section 3.7(2)(A)(4) – Regulations and ordinances in effect:** The application was reviewed under applicable conditional use criteria. Applicable bylaws include the Stowe Zoning Regulations, as adopted October 9, 2018. No other municipal bylaws or ordinances apply to this project.

Conclusion: The Board concludes the proposal is in conformance with the applicable Stowe Zoning Regulations, as adopted October 9, 2018. No other identified municipal bylaws or ordinances apply to this project. The project was reviewed under the limitations of 24 VSA 4413.

12. **Section 3.7(2)(A)(5) – Utilization of renewable energy sources:** 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 site is previously developed. The requested modifications are not expected to impact the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas.

Conclusion: The Board concludes 24 VSA §4413 establishes limits municipal bylaws. The scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas cannot be considered or reviewed under 24 VSA §4413.

14. **Section 3.7(2)(B)(2) - Project will not result in undue water, noise or air pollution.** Under the provisions of Section 3.7(2)(B)(2) and 24 VSA §4413, the Board’s authority to limited to the review of noise. Under prior approvals, the Board limited construction activity to Monday-Friday from 7:00 AM to 5:00 PM.

Conclusion: 24 VSA §4413 establishes limits municipal bylaws. The Board concludes the requested modifications will not result in undue noise pollution.

15. **Section 3.7(2)(B)(3) –Access Management:** The parcel is served by direct access to Mountain Road. Under prior approval, the Applicant proposed to remove the existing access drive in the center of the parcel connecting directly to Mountain Road and construct a new 24’ wide entrance off the existing Mountain Haus Drive. The Applicant seeks to amend the prior approval to utilize

the existing single curb cut on Mountain Haus Drive- as such an amended easement is no longer necessary as previously required under Project 6000. As proposed, vehicles will enter the site using the existing curb cut off Mountain Haus Drive. A new access driveway will run parallel with Mountain Haus Drive leading to the gravel parking lot. No other access modifications are requested under this application. During the hearing the Applicant testified that the proposed access amendments will utilize the existing access easement.

Conclusion: 24 VSA §4413 establishes limits municipal bylaws. The Board concludes the modified access improvements, as conditioned, provide safe and adequate access for the existing and proposed improvements.

16. **Section 3.7(2)(B)(4) – Shared Access:** The Applicant proposes to remove the existing access connecting to Mountain Road and provide improved access via Mountain Haus Drive, a privately owned and maintained road. Mountain Haus Drive is shared by other users including a rear multi-family residential building and a single-family dwelling.

Conclusion: 24 VSA §4413 establishes limits municipal bylaws. The Board concludes the proposed shared access improvements provide safe and adequate access.

17. **Section 3.7(2)(B)(5) – Circulation and Parking:** The regulations require parking be provided per the requirements of Section 14 and be designed to minimize the visibility of parking areas from off-site through the location, landscaping and screening of such areas. The Applicant seeks to amend the prior approval to include a single curb cut on Mountain Haus Drive. As proposed, vehicles will enter the site using the existing curb cut. A new access driveway will run parallel with Mountain Haus Drive leading to the gravel parking lot consisting of twenty-six (26) spaces. The provided site plan depicts a total of forty (40) parking spaces which include three (3) ADA accessible spaces. Under prior approval (September 6, 2005) the Board established a requirement of forty (40) parking spaces for the school. The parking area is proposed to contain forty (40) parking spaces satisfying prior Board decisions.

Conclusion: The Board concludes the proposed 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 previously approved pedestrian circulation or access improvements are proposed under this application.

Conclusion: The Board concludes the previously approved site layout, including pedestrian circulation and access, represents safe and adequate pedestrian access and circulation for the intended and 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. The lot contains existing mature trees and landscaping as depicted on the provided site plan. The Applicant proposes to add a cedar hedge along the northern property line. The revised circulation plan avoids impacts to previously required landscaping along the eastern side of Mountain Haus Drive intended to provide screening of the rear apartment building.

Conclusion: The Board concludes the additional landscaping and proposed site layout provides adequate screening in accordance with Section 4.6.

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 provided the existing and proposed impervious surface calculation as follows: existing impervious cover on the site is 0.91 acre. The updated impervious is to 0.90 acres (39,150 sf) which accommodates for the modified access and circulation.

Conclusion: 24 VSA §4413 establishes limits municipal bylaws. The Board concludes stormwater management cannot be reviewed under the provisions of §4413.


DECISION

Based upon the foregoing Findings of Fact, in RE: **6046** 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 file the following documents with the Zoning Administrator:
 - A §1111 Letter of Intent from the VT Agency of Transportation for the removal of the existing curb cut.
 - A revised site plan with a landscaping schedule outlining the number, species, and size of the planting as required under Section 4.6.
4. Landscaping shall be installed as shown in provided plans prepared by Grenier Engineering. Any dead and dying plants and trees as shown on said plans shall be replaced within one (1) year of death.
5. 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.
6. 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, A. Volansky, M. Diender, T. Hand, P. Roberts. Voting to deny: None

Dated at Stowe, Vermont this the 24 day of July 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.

