

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



PROJECT: 6047

SUBJECT PROPERTY: 638 South Main Street (#07-145.000)

PROPERTY OWNER:

Stoweware Common Condominium Owners
Association
638 South Main Street #8
Stowe, VT 05672

APPLICANT

Steve Berson
PO Box 969
Stowe, VT 05672

APPLICATION:

The Applicant, Steve Berson (herein referred to as the "Applicant"), requests design review approval for the replacement of the building damaged by fire on March 31, 2019. The building is located at 638 South Main Street. In a written decision dated 4/19/2019, the Board approved the demolition of the building upon finding the condition of the building was damaged to such a degree that it posed a threat to the public safety and could not be restored or repaired without causing undue financial hardship to the owner. The proposed replacement building will be constructed on the existing footprint with no planned changes to the prior uses. The building will continue to be a mixed-use building comprised of service establishment, office, and retail uses. Minor amendments to the prior site plan include the addition of a handicap access ramp, new HVAC units to the rear of the building, and new wooden stairs to provide access to the rear of the building. The parcel is located within the Lower Village Commercial zoning district, Stowe Historic Overlay District (SHOD), and is served by South Main Street (VT-100), a state-maintained highway. 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 design review. The Development Review Board's procedural history and relevant findings are attached.

REVIEW PROCESS:

(Application materials, hearing notices, meeting minutes on file at the Stowe Town Office.)

An application for design review was filed by Applicant Steve Berson on June 17, 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 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 in three public places (library, town office, 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 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 attended and participated in the hearing process, and may be afforded status as interested persons with rights to appeal:

- Steve Berson, Po Box 969, Stowe, VT 05672
- Architect, Michael Perpall, P.O. Box 655, Stowe, Vermont 05672

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

- Town of Stowe Development Application, dated 6/17/2019;

- Proposed Exterior Elevations ‘Stoweware South Building’ prepared by Cushman Design Group, Sheet A3.1, Project 1984, dated 6/17/2019;
- Proposed Exterior Elevations ‘Stoweware South Building’ prepared by Cushman Design Group, Sheet A3.2, Project 1984, dated 6/17/2019;
- Lower Level Floor Plan ‘Stoweware South Building’ prepared by Cushman Design Group, Sheet A2.1, Project 1984, dated 6/17/2019;
- Main Level Floor Plan ‘Stoweware South Building’ prepared by Cushman Design Group, Sheet A2.2, Project 1984, dated 6/17/2019;
- Mezzanine & Attic Floor Plan ‘Stoweware South Building’ prepared by Cushman Design Group, Sheet A2.3, Project 1984, dated 6/17/2019;
- Roof Floor Plan ‘Stoweware South Building’ prepared by Cushman Design Group, Sheet A2.4, Project 1984, dated 6/17/2019;
- HPC recommendation form, dated 6/18/2019;
- Site Plan prepared by Cushman Design Group, Sheet A1.1, Project 1984, dated 7/8/2019;
- Record Drawing- Foundation Plan prepared by Cushman Design Group, Sheet RD2.1, Project 1984, dated 7/2/2019;
- Lower Level Floor Plan prepared by Cushman Design Group, Sheet A2.1, Project 1984, dated 7/2/2019;
- Main Level Floor Plan prepared by Cushman Design Group, Sheet A2.2, Project 1984, dated 7/2/2019;
- Mezzanine and Attic Floor Plan prepared by Cushman Design Group, Sheet A2.3, Project 1984, dated 7/2/2019;
- Roof Floor Plan prepared by Cushman Design Group, Sheet A2.4, Project 1984, dated 7/2/2019;
- Proposed Exterior Elevations ‘Stoweware South Building’ prepared by Cushman Design Group, Sheet A3.1, Project 1984, dated 7/2/2019;
- Proposed Exterior Elevations ‘Stoweware South Building’ prepared by Cushman Design Group, Sheet A3.2, Project 1984, dated 7/2/2019;
- Window Elevations ‘Stoweware South Building’ prepared by Cushman Design Group, Sheet A6.1, Project 1984, dated 7/8/2019;
- Lower Level Electrical Plan ‘Stoweware South Building’ prepared by Cushman Design Group, Sheet E2.1, Project 1984, dated 7/8/2019;
- Main Level Electrical Plan ‘Stoweware South Building’ prepared by Cushman Design Group, Sheet E2.2, Project 1984, dated 7/8/2019;
- Mezzanine Electrical Plan ‘Stoweware South Building’ prepared by Cushman Design Group, Sheet E2.3, Project 1984, dated 7/8/2019.

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 design review approval was reviewed by the Stowe Development Review Board (DRB) for conformance with applicable requirements including the following:

Town of Stowe Zoning Regulations (as adopted October 9, 2018)

- 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

Dimensional Requirements:

1. **Zoning District.** The subject parcel contains ±3.15 acres and is located within the Lower Village Commercial (LVC) Zoning District 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 setbacks in the LVC district are 10 feet from the front, sides, and rear property lines. Section 3.9(3) states "*Reconstruction After Damage. Nothing in these regulations shall prevent the issuance of a permit for restoration or reconstruction within two (2) years of a nonconforming structure damaged or destroyed by fire, explosion, accident, or any other means, subsequent to the adoption of these regulations, to its condition prior to such damage or destruction, nor prevent the restoration of an unsafe wall or structural member.*" The proposed building will be constructed on the existing footprint. The Applicant proposes two handicap access ramps and staymat walkways on the east elevation which encroach into the required 10 ft setback. Handicap access ramps and walkways are exempt under Section 2.5(2)(G), as such are not required to meet setbacks.
4. **Maximum Building Coverage.** The maximum building coverage in LVC is 20%. No change in building coverage is proposed.
5. **Use.** As proposed, the building will continue to serve a mix of commercial uses. Prior to damage, the building contained five (5) condo units with a total of six (6) businesses- a mix of office, retail, and service establishment [Unit 1A Service Establishment; Unit 1B Office; Units 2, 3, and 4 Retail]. No changes of use are proposed under this application, however future tenants have not been secured. Any future change in use will require additional review under the regulations in effect at the time of application.
6. **Height.** The maximum building height in LVC is 28' feet. The proposed building will be approximately 23' as measured to the peak of the gable roof, thus in conformance with the district height requirement.
7. **Design Review.** The parcel is located within the Stowe Historic Overlay District. The construction of new buildings or structures within the district is regulated under Section 10 of the Regulations. The Applicant met with the Historic Preservation Commission on June 26, 2019 to review the proposed design of the replacement building. The Commission voted in favor of the design of the proposed building.

SECTION 10-STOWE HISTORIC OVERLAY DISTRICT AND HISTORIC BUILDINGS: Within the Stowe Historic Overlay District and for Historic Buildings outside the district, no structure may be erected, reconstructed, substantially altered as indicated in Section 10.5, moved, or demolished without review of the plans by the Stowe Historic Preservation Commission (SHPC) and approval of the application by the DRB (or the Zoning Administrator in accordance with Section 10.6).

Section 10.13(1)(A-C) New buildings should:

Have a principal façade that is compatible with the precedence of nearby historic structures in terms of scale, massing, and alignments. New buildings requiring design review outside the SHOD should be of a style similar to historic buildings found in Stowe.

Use architectural types appropriate to the scale and intended use of the building, rather than super-sizing or downsizing a building type for an inappropriate use.

Place ancillary structures in less visible locations to the side and rear of the primary building.

New buildings should not borrow from multiple historic styles and combine those into one design.

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

1. The Applicant proposes to construct a mixed-use building on an existing building footprint. The building will replace the the fire damaged building demolished in April. The property is located within the Stowe Historic Overlay District, as regulated under Section 10 of the Stowe Zoning Regulations, as adopted October 9, 2018.
2. The Stowe Historic Preservation Commission (HPC) reviewed the application on June 26, 2019 and unanimously voted (3-0) to recommend approval of the project as presented. A copy of the HPC recommendation was provided by staff.
3. The proposal includes minor modifications to the site plan including the addition of a handicap access ramp, new HVAC units to the rear of the building, and new wooden stairs to provide access to the rear of the building.
4. During the hearing the Applicant testified that the proposed building is comprised of all wood products with the exception of fiberglass windows and metal handrails.

Conclusion: Based upon the above findings, the Board concludes the proposed building design meets the relevant criteria for new construction within the Stowe Historic Overlay District and has received positive recommendations from the Stowe Historic Preservation Commission in accordance with Section 10 of the regulations. The proposed design is similar in style, scale, and roofline of the prior building and is compatible with the historic character of the lower village.

DECISION.

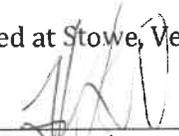
Based upon the foregoing findings of fact, in re: 6047 the Board finds (6-0) the proposal meets the Stowe Zoning regulations, as adopted October 9, 2018, subject to the following conditions of approval:

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. A copy of the approved building elevations shall be provided to the Stowe Historic Preservation Commission depicting the approved minor façade modifications.
4. Any change in use(s) shall require additional review under the regulations in effect at the time of application.
5. The Applicant shall obtain additional municipal water and sewer, if necessary, for any changes or reconfiguration of uses.
6. 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.
7. 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, T. Hand, M. Diender, P. Roberts. Voting to deny: None

Dated at Stowe, Vermont this the 29 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.

