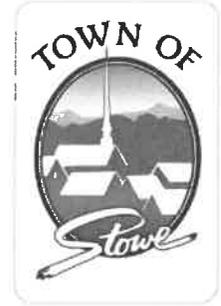


TOWN OF STOWE
DEVELOPMENT REVIEW BOARD
Findings of Fact & Conclusions of Law



PROJECT: 6057

SUBJECT PROPERTY: 4492 Mountain Road; #11-101.000

PROPERTY OWNER:

Very Vermonty Corp.
PMB 130 130 Winston Churchill Ave.
San Juan, PR 00926

APPLICANT:

Brian Benoit
Po Box 956
Stowe, VT 05672

APPLICATION:

The Applicant, Brian Benoit on behalf of property owner Very Vermonty Corp., herein referred to as the "Applicant", requests amended conditional use review for modifications to previously approved Project 5132. In a decision dated June 23, 2015, the Board approved an application to construct two residential buildings and related improvements; a seven-unit building with attached garages and a two-unit building with attached garages. The residential buildings and related improvements are nearing completion of construction. The Applicant seeks to modify the approved plans to allow for an enclosed dumpster near the eastern end of the rear building, reconfigure parking arrangement, add additional screening for external mechanical equipment on the west elevation of the two-unit building, and landscaping modifications as needed to accommodate said changes.

The subject parcel, consisting of ± 4.5 acres and located at 4492 Mountain Road (#11-101.000), 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. The subject parcel is bound to the north a ± 2.0 acre parcel currently owned by Josephine Kytle and a ± 2.3 acre parcel currently owned by Gerald F. & Janice Kandestin, to the west by Lower Sanborn Road and a ± 0.2 -acre parcel owned by Douglas G. Adams, to the east by ± 3.3 -acre parcel owned by Judith M Henderson, and to the south by Mountain Road (VT-108). 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 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 submitted by Applicant Brian Benoit on June 28, 2019 and accepted as administratively complete by Town of Stowe Zoning Director Sarah McShane. The application was referred to the Development Review Board for a public hearing. A public hearing of the DRB was scheduled for August 6, 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 July 18, 2019 and posted at the Town Office, Library, and Police Station.

The public hearing to consider the application convened on August 6, 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 Brian Benoit, PO Box 956, Stowe, VT 05672
- Michael Seaberg, Northern Lights Lodge, 4441 Mountain Road, Stowe, VT 05672
- Steve Doncaster, PO Box 956, Stowe, VT 05672
- Cynthia Knauf, Knauf Landscaping Architecture, 525 Hercules Drive, Suite 2B, Colchester, VT 05446

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

1. Town of Stowe Development Application, dated 6/24/19;
2. Email Comments from Michael Seaberg, dated 7/17/2019;
3. DRB Decision for Project 5132, dated 6/23/2015; (staff)
4. Comments from David Kresock, Stowe Electrical Department, dated 7/17/2019;
5. Previously approved site plan prepared by Wilson Architecture, Sheet SP.1, dated 4/15/2015;
6. Modified- Previously approved Overview Plan of Very Vermonty, Corp., Sheet C-1, prepared by McCain Consulting, dated 11/6/2015;

The DRB continued the hearing to a time and date certain, August 20, 2019, pending the submission of additional information from the Applicant. At the request of the Applicant, the Board again continued the hearing to September 17, 2019. In advance of the September 17th hearing the Applicant provided the following information:

1. Planting Plan for 'Very Vermont Corp', Sheet L1.1, prepared by Knauf Landscape Architecture, dated 9/2/2019;
2. Proposed Plants for 'Very Vermont Corp' prepared by Knauf Landscape Architecture, dated 9/12/2019;

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 review 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 ±4.5 acres with direct access to the Mountain Road in the Upper Mountain Road (UMR) Zoning District as shown on the Official Town of Stowe Zoning Map (as adopted October 9, 2018).
2. **Lot Area, Lot Width.** The ±4.5-acre parcel is located in the UMR district. No changes to lot area or lot width are proposed under this application.
3. **Setbacks.** Required minimum district setbacks in UMR are front (50'), side (50') and rear (50'). The Applicant seeks approval for modifications to a previously approved project. The parcel contains a mapped stream protected under Section 3.10 of the zoning regulations. The 10' x 10' dumpster appears to be in close proximity of the watercourse setback. Within the fifty (50') foot setback, a vegetation buffer shall be left in an undisturbed state with the exception of minimal clearing necessary to accommodate and build public recreation and transportation paths, recreational river accesses, driveways, public or private road and utility crossings, landscaping, permitted impoundments and dams and stream bank stabilization and restoration projects. Private driveways and private and public roads within the buffer, with a width of no greater than sixteen (16') feet may also be allowed when reasonably necessary to permit access to a lot. During the hearing the Applicant testified that the proposed dumpster location is outside of the watercourse buffer. As a condition of approval, the Board will require that the watercourse setback be labeled on the site plan, depicting the distance of the proposed dumpster.
4. **Maximum Building Coverage.** The maximum building coverage in UMR is 8%. No change to the previously approved building coverage is proposed.
5. **Use.** The parcel contains a residential duplex and a seven-unit multi-family dwelling, both of which are currently under construction. Multi-family dwellings are a conditional use in the UMR district. No changes of use are proposed under this application.
6. **Height.** The maximum building height in UMR is 28' feet. No changes in height are proposed under this application.
7. **Density.** In the UMR district, two-family and multi-family dwellings are allowed at a density of three (3) units per acre. 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.

David Kresock of Stowe Electrical Department provided the following comments:

Project #6057 – The proposed overhead primary conductor (highlighted in yellow on drawing C-1, see attached) was actually installed from one pole to the south on VT108. The easement width for this overhead distribution conductor (shown in solid red line) is 50', 25' on each side of the conductor and the easement width for the underground distribution conductor (shown in the dotted red line) going the ground mounted transformer is 25', 12-1/2' on each side of the conductor. SED right of way policy

*does not allow for structures to be built within the electric right of way (see attached easement).
Property owner will need to move the dumpster location.*

No other Municipal Department review forms returned indicated that the proposed revisions would have any undue adverse impact on existing or planned community facilities and services. During the hearing staff noted that Kyle Walker, Town of Stowe Fire Chief requested that the emergency access contain a gravel surface and be maintained throughout the year. The Applicant responded that the emergency access will be grassed, gated, signed, and maintained year-round.

Conclusion: The Board concludes the proposal, if constructed and maintained as approved, 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 modifications to a previously approved project. No changes in use are proposed. The requested changes are not expected to result in any increase in traffic on roads and highways in the vicinity. The Board previously found that the proposal would not adversely affect traffic in the area.

Conclusion: The Board concludes the proposed revisions will not impact traffic on the 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 a previously approved site plan. Adjacent to the subject parcel are other nearby residential and lodging uses. The requested changes are not expected to impact the character of the area affected. The Board previously concluded that the proposal would not adversely affect the character of the area.

Conclusion: The Board concludes the requested revisions will not result in an undue adverse effect of the character of the area affected.

11. **Section 3.7(2)(A)(4) – Regulations and ordinances in effect:** The application was reviewed under the Conditional Use standards. Applicable bylaws include the Stowe Zoning Regulations, as adopted October 9, 2018. The previously approved project involves connection to the municipal sewer under the Town's Sanitary Sewer Ordinance. No other known or identified municipal bylaws or ordinances apply to this project.

Conclusion: The Board concludes the proposal is in conformance with municipal regulations and ordinances in effect.

12. **Section 3.7(2)(A)(5) – Utilization of renewable energy sources:** The Applicant requests approval for modifications to a previously approved site plan including modifying parking, screening and landscaping. No change is proposed with regard to the use of, or access to, the utilization of renewable energy resources.

Conclusion: The Board concludes the requested revisions are 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 project is located in the UMR district. The Applicant requests approval for modifications to a previously approved site plan including modifying parking, screening and landscaping. The parcel is previously developed and contains two residential buildings currently under construction.

Conclusion: The Board concludes the requested revisions 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 modifications to a previously approved site plan including reconfiguration of parking, screening and landscaping. See discussion above regarding watercourse setback.

Conclusion: The Board concludes the requested revisions 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 (under construction) off Mountain Road. No changes in access are proposed under this application. This provision does not apply.

Conclusion: This provision does not apply.

16. **Section 3.7(2)(B)(4) – Shared Access:** No changes proposed under this application. This provision does not apply.

Conclusion: This provision does not apply.

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 modify the previously approved parking configuration. A total of eleven (11) garage spaces and seven (7) surface parking spaces were originally approved. No changes to the garage spaces are proposed. The Applicant proposes to reconfigure the surface parking resulting in an additional two (2) surface parking spaces for a total of nine (9) unobstructed surface parking spaces. The ADA parking space along the eastern side of the two-bay garage is proposed to be removed given its proximity to the access drive. An additional three (3) parking spaces are proposed along the southern portion of the parcel.

Conclusion: The Board concludes the proposed circulation and parking improvements represents adequate access and circulation for the intended 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 pedestrian improvements are proposed under this application.

Conclusion: This provision does not apply.

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 seeks approval for site plan modifications

including amendments to previously approved landscaping and screening. As proposed, an enclosed dumpster will be positioned near the eastern end of the rear multi-family-unit building. The proposed reconfigured parking appears to impact previously approved landscaping- primarily in the area proposed to contain three (3) parking spaces. The Applicant provided a revised Planting Plan and photographs of proposed plants prepared by Knauf Landscape Architecture. During the hearing the Landscape Architect testified that salt tolerant plantings were selected, and the plan was designed to screen the parking area and integrate into the wooded hillside. A number of various trees and shrubs are proposed as indicated on the provided plant schedule.

The Applicant also seeks approval for additional screening of external mechanical equipment on the west elevation of the two-unit building fronting Mountain Road. During construction exterior mechanical equipment was installed on the western elevation of the attached two-bay garage. The previously approved architectural drawings do not show the location of any exterior mechanical equipment. The Applicant proposes to construct a 9' (L) x 5' (H) solid fence with vertical siding to match the building and screen the mechanical equipment. Proposed landscaping will also screen this area. During the hearing the Applicant testified that the proposed dumpster will also be enclosed with vertical siding to match the building.

Conclusion: The Board concludes the proposed landscaping and screening revisions are appropriate for the intended use and site location.

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. No changes to previously approved stormwater are proposed under this application.

Conclusion: The Board concludes no changes to previously approved stormwater are proposed under this application.

20. **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.

1. **Additional HT, RR, MOD, UMR Standards:** Within the Highway Tourist (HT), (Rural Residential (RR), Meadowland Overlay (MOD)) and ***Upper Mountain Road (UMR)*** Districts, site plans shall re-enforce efficient traffic circulation, preserve such important landscape features as open fields, scenic vistas, natural and cultural focal points and a well landscaped highway corridor.

To help achieve these objectives, the following standards shall apply:

- a. **Front Yard Treatment:** A continuous strip not less than twenty (20') feet deep, measured from the edge of the highway right of-way, shall be maintained between the street line and the balance of the lot, which strip shall be suitably landscaped. Only driveways and pedestrian walks may traverse the required strip. In addition, no portion of the front yard may be used for storage or for any purpose except as provided herein.

- b. **Parking:** Parking shall be located in the rear and/or side of all commercial and multi-family residential properties, except as provided under Section 14.3 of the regulations. 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. **Driveway Access:** Driveways shall be the minimum width necessary to provide safe vehicular access and promote pedestrian circulation.
- d. **Additional UMR Standards:** In addition to the conditional use criteria of the regulations, the Board shall find that proposed development is designed in a manner compatible with area's rural character. At a minimum the Board will consider:
 - Adequacy and appropriateness architectural design and visual context of the project. Generally, architectural designs shall reinforce the rural landscape of the district through contextual scale and orientation of the buildings within the site and should reflect vernacular Vermont residential and agricultural building styles and incorporate, where appropriate, traditional materials; and
 - Buildings should generally be designed with a pitched roof and be of a mass and scale compatible with neighboring properties and the site.

The Applicant seeks to reconfigure the parking arrangement, add additional screening of external mechanical equipment on the west elevation of the two-unit building, and landscaping modifications as needed to accommodate said changes. During the hearing the Applicant testified that there is approximately 31' of greenspace and landscaping as measured from the edge of roadway.

Conclusion: The Board concludes the proposed modifications have been designed in a manner compatible with the areas rural character and are consistent with the defined purpose of the UMR district.

Section 4: Specific Use Standards

21. **Section 4.6 Landscaping Standards.** See discussion above.
22. **Section 4.8 Outdoor Lighting.** No changes proposed.

Conclusion: This provision does not apply.

DECISION

Based upon the foregoing Findings of Fact, in RE: **6057** 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

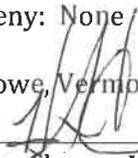
not have affected the decision made or any conditions if had been included in the plans as approved.

2. All 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. A revised site plan labeling the dumpster setback in relation to the mapped watercourse;
 - B. A fence and enclosure detail for the proposed mechanical and dumpster screening.
4. The emergency access shall contain a gravel or grassed surface reinforced to support an emergency vehicle and be maintained year-round. Vehicular parking is prohibited at all times within this area.
5. A Certificate of Occupancy must be obtained from the Zoning Administrator following the construction but prior to occupancy and use to ensure that is 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, P.Roberts, M. Diender, C.Walton

Voting to deny: None

Dated at Stowe, Vermont this the 26 day of September 2019

By: 
Drew Clymer, Vice 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.