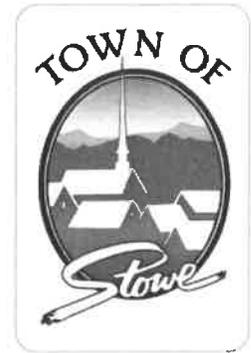


TOWN OF STOWE
DEVELOPMENT REVIEW BOARD
Findings of Fact & Conclusions of Law



PROJECT: 6069

SUBJECT PROPERTY: 3343 Mountain Road; #11-152.000

PROPERTY OWNER:

Anchorage Motor Inn of York Inc.
PO Box 1329
York Beach, ME 03910

APPLICANT:

Brian Cote P.E.
Milone & Macbroom Inc.
1 South Main Street- 2nd floor
Waterbury, VT 05676

APPLICATION:

The Applicant, Brian Cote P.E. of Milone & Macbroom Inc. on behalf of the property owner Anchorage Motor Inn of York Inc. (herein referred to as the "Applicant"), requests conditional use approval for a streambank stabilization project on the West Branch Little River. The project involves the construction of a riprap wall along the northern bank of the West Branch Little River in order to stabilize approximately 180 ft of the streambank. The purpose of the project is to prevent additional erosion and encroachment towards the existing building and infrastructure and stabilize the actively eroding channel bank in its current location. In addition to the streambank stabilization project, the Applicant proposes storm drainage improvements to include the installation of piping to collect water from existing culverts and convey the water across the property to river.

The subject parcel (#11-152.000), located at 3343 Mountain Road, is in the Mountain Road Crossroad (MRC), Flood Hazard District (portions floodway), and Fluvial Erosion Hazard Overlay District. The parcel is approximately ±7.0 acres and contains the Mountaineer Inn- a lodging facility. The property is bound to the north by the Mountain Road (VT-108), to the east by a ±7.75-acre parcel owned by Charles & Janet Perkins, to the west by a ±1.05-acre parcel owned by Katrine & David Wolfgang Living Trust, and to the south by the West Branch Little River. 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 purposes of conditional use review and flood hazard area regulations. 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 and flood hazard area review was filed by Applicant Brian Cote on July 17, 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 August 20, 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 August 1, 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 August 20, 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 person(s) attended and participated in the hearing process, and may be afforded status as interested persons with rights to appeal:

- Applicant - Jessica Louisos, Milone & Macbroom Inc., 1 South Main Street- 2nd floor 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 7/17/2019;
2. West Branch Bank Stabilization Project- Final Plans- prepared by Milone & Macbroom, dated 7/15/2019 (includes 15 drawings);
3. State of VT Stream Alteration Permit, Project No. SA-2012, dated 6/13/2019;
4. Comments from Sacha Pealer, Regional River Scientist & Floodplain Manager, dated 8/9/2019;
5. Letter from Brian Cote, P.E. of Milone & Macbroom, dated 8/15/2019.

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 and flood hazard approval was reviewed by the Development Review Board (DRB) for conformance with applicable requirements of the Town of Stowe Zoning Regulations (as adopted on October 9, 2018), including the following:

- Section 2- Administration and Enforcement
- Section 3- General Regulations
- Section 5- Zoning Districts
- Section 6- Uses, Dimensional Requirements and Density
- Section 7- Flood Hazard District
- Section 11- Fluvial Erosion Hazard Overlay District

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

Dimensional Requirements

1. **Zoning District.** The subject parcel contains ± 7.0 acres and is located within the Mountain Road Crossroad (MRC), Flood Hazard District (portions floodway), and Fluvial Erosion Hazard Overlay Districts as shown on the Official Town of Stowe Zoning Map (as adopted October 9, 2018).
2. **Lot Area, Lot Width.** The ± 7.0 -acre parcel is located in the MRC district and exceeds the minimum district lot area of 20,000 sf. No changes to lot area or lot width are proposed under this application.
3. **Setbacks.** The parcel is bound to the south by the West Branch Little River. Section 3.10 requires a fifty (50') foot setback from all mapped watercourses. 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.
4. **Maximum Building Coverage.** The maximum building coverage in MRC is 20%. No changes to existing building coverage are proposed under this application.

5. **Use.** The parcel contains an existing lodging facility. Lodging facilities are a conditional use within the MRC District. No changes of use are proposed under this application.
6. **Height.** The maximum building height in UMR is 28' feet. No changes to building height are proposed.

Section 7- Flood Hazard Area. The Applicant seeks approval for streambank stabilization project on the West Branch Little River within the regulatory floodway. Section 7.4 outlines when a permit is required within the Flood Hazard Area. A permit is required for all proposed construction or other development, including the placement of manufactured homes, in areas of special flood hazard. Prior to the issuance of a zoning permit, conditional use approval by the DRB is required for: (1) New buildings; (2) Substantial improvement of existing buildings; and (3) ***Development in a floodway.***

7. **Review Required.** The regulations require that all development and subdivisions within the Flood Hazard District be reviewed to assure that such proposals minimize potential flood damage, public facilities and utilities such as sewer, gas, electrical, and water systems are constructed so as to minimize flood damage, and adequate drainage is provided to reduce exposure to flood hazards.

Development as defined under the Flood Hazard Area District is "*any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, extraction or drilling operations or storage of equipment or materials.*" The Applicant seeks approval for streambank stabilization project within the regulatory floodway. In accordance with Section 7.4(3), staff referred the application to the Board for conditional use review since the project involves development within the floodway.

8. **Section 7.5 Procedures.** In accordance with Section 7.5(1), a copy of the application and supporting information was submitted by the Zoning Director to the State National Floodplain Insurance Program Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section in accordance with 24 V.S.A. §4424. A permit may be issued only following receipt of comments from the Agency or the expiration of thirty (30) days from the date the application was mailed to the Agency, whichever is sooner. Pursuant to Section 7.5(1), the application was referred to ANR Floodplain Coordinator Sacha Pealer on 7/17/2019 for review and comment in accordance with 24 V.S.A. §4424. ANR Floodplain Coordinator Sacha Pealer provided written comments for the board's consideration dated 08/09/2019.

The regulations require that proposed development be reviewed by the Board to assure that all necessary permits have been received from those government agencies from which approval is required by Federal, State or Municipal law. The Applicant provided a copy of the State of VT Streams Alteration Permit. During the hearing the Applicant testified that the project does not require an operational stormwater permit from the State of Vermont and the self-reporting requirements for the Army Corps. of Engineers has been completed. No other Federal, State or Municipal permits were identified as required in the application or during the hearing.

9. **Section 7.7 Development Standards.** Development within the regulatory floodway is prohibited unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice by a registered professional engineer certifying that the proposed development will result in no increase in flood levels during the occurrence of the base flood. Junkyards and storage facilities for floatable materials, chemicals, explosives, flammable liquids, or other hazardous or toxic materials, are prohibited within the floodway.

ANR Floodplain Coordinator Sacha Pealer provided the following comments:

Thanks for sending along the application information on 3343 Mountain Road.

I see from the application this project involves bank stabilization by shaping an eroding bank and adding stone armoring (riprap) for about 180 feet along West Branch Little River. I offer the following comments:

The project is within the Special Flood Hazard Area and regulatory Floodway of the West Branch Little River – Zone AE, as shown on the effective Flood Insurance Rate Map (FIRM) for the Town of Stowe dated August 4, 2005. The project is also within the Fluvial Erosion Hazard Overlay District.

Special Flood Hazard Area

Because the project is in the floodway, the development standards that seem most relevant are in Section 7.7(1) A of Stowe Zoning. Stowe's Flood Hazard District prohibits development within the floodway unless a registered professional engineer certifies a floodway encroachment analysis, demonstrating the project will not cause any rise (0.00 feet) in Base Flood Elevation. The purpose of this standard is to keep the floodway open to effectively carry floodwater. When looking at bank stabilizations along the river in a floodway, the primary concern is to make sure the proposal does not create a new obstruction to flood flows or redirect flood water onto nearby property.

Based on the application/ plans from Milone and MacBroom, the proposal does not appear to create a floodway obstruction or encroachment. In the project plan set, Sheets XS-2 through XS-3 show the cross section of the channel and that the stone wall will be constructed within the profile of the current bank line. That is, the project will stabilize the eroding bank in its current location by embedding stone into the bank, rather than building out into the river channel or raising the ground within the floodway. This approach appears to maintain the current bank location (and approximate bank dimensions) and to preserve the river channel and floodway area to move floodwater. However, Stowe should make sure the project plans are certified by a professional engineer as meeting the "no rise" requirement in Zoning Section 7.7(1) A.

For this project, to ensure NFIP compliance, it is recommended the town request the following:

- Signature of professional engineer on project plans or a cover letter, including a statement confirming that hydraulic capacity below Base Flood Elevation will be maintained with this design and that it results in "no rise", prior to permit approval.*
- As-built documentation, certified by a professional engineer or licensed land surveyor, to be submitted to the Zoning Office upon project completion.*
- All temporary stockpile and construction access areas be returned to pre-project grades upon project completion.*

Fluvial Erosion Hazard (FEH) Overlay

Development standards for the FEH District are found in Section 11 of Stowe Zoning. The comments I have for this district are limited because the project does not propose to add greater development encroachment into the FEH. Rather, the project is a channel

management activity that would be unlikely to be undertaken if there weren't already encroachment from the Inn.

Please keep in mind other State, Federal or local permits may be required for this project. The VT DEC Permit Specialist for your area can help to identify other state permits that may be involved.

You may consider this email to be DEC Flood Hazard Review comments per 24 V.S.A. §4424.

In response to ANR Floodplain Coordinator Sacha Pealer's comments, the Applicant provided a memo dated 8/15/2019 from Brian Cote P.E. of Milone & Macbroom. The memo describes the project and provides information in support of the project design. The memo also provides a summary of available channel conveyance area and concludes that by maintaining the conveyance area currently available within the West Branch channel, the stream bank stabilization work proposed will not adversely impact the base flood elevation. The memo was submitted in fulfillment of the requirement that a professional engineer confirm that the hydraulic capacity below Base Flood Elevation will be maintained and that the project results in "no rise".

Conclusion: The Board accepts the comments from the Department of Environmental Conservation, the response information from Milone & Macbroom and concludes the described project, if constructed as conditioned, meets the development standards outlines in Section 7.7 of the Stowe Zoning Regulations and will result in no increase in flood levels during the occurrence of a base flood event. As conditions of approval, the Board will require the following:

- *As-built documentation, certified by a professional engineer or licensed land surveyor, to be submitted to the Zoning Office upon project completion.*
- *All temporary stockpile and construction access areas be returned to pre-project grades upon project completion.*

10. **Section 3.7(2)(A) – Standards of review (Conditional Use Applications):** The Development Review Board must determine that the use will conform to the standards outlined in Section 3.7(2)(A) and will not result in an undue adverse effect on capacity of existing or planned community facilities and services, traffic on roads and highways in the vicinity, the character of the area affected, regulations and ordinances in effect, utilization of renewable energy sources, and the additional standards outlined in Section 3.7(2)(B). In addition to the streambank stabilization project, the Applicant proposes storm drainage improvements to include the installation of piping to collect water from existing culverts under Mountain Road and convey the water across the property to river. Section 3.7(2)(B)(8) provides stormwater and erosion control standards for construction-related activities associated with any new construction as outlined in A-F. During the hearing the Applicant testified that it is their client's intention to monitor the existing stormwater conditions for another year and, if needed, construct and install the stormwater improvements shown on Sheets PR-2 and DE-3. It was reported that the proposed improvements do not require a State of VT operational stormwater permit and that the river outlet pipe will be installed at the same time as the streambank work. Any additional work will be completed at a later date, if needed, after monitoring the existing conditions for another season.

Conclusion: The Board concludes the proposed project will not result in an undue adverse effect on the above conditional use provisions.

11. **Section 11- Fluvial Erosion Hazard Overlay District:** The purpose of the Fluvial Erosion Hazard (FEH) Overlay District is to prevent increases in fluvial erosion resulting from uncontrolled development in identified fluvial erosion hazard areas; minimize property loss and damage due to fluvial erosion; prohibit land uses and development in fluvial erosion hazards areas that pose a danger to health and safety; and discourage the acquisition of property that is unsuited for the intended purposes due to fluvial erosion hazards. The Applicant seeks approval for a streambank stabilization project within the Fluvial Erosion Hazard Overlay District. Section 11.8 outlines development standards within this district.

Conclusion: The Board concludes the proposed project meets the development standards in Section 11.8 and has been designed to decrease and prevent future fluvial erosion hazards.

DECISION

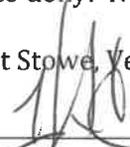
Based upon the foregoing Findings of Fact, in RE: **6069** the Board finds (6-0) the proposal meets the Stowe Zoning Regulations, as adopted on October 9, 2018, subject to the following conditions of approval:

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 temporary stockpile and construction access areas shall be returned to pre-project grades upon project completion.
3. Any future development, as defined under the regulations, within the Flood Hazard District, Floodway, and Fluvial Erosion Hazard Overlay District shall require review under the regulation in effect at the time of application.
4. 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. Prior to the issuance of a Certificate of Occupancy for the streambank stabilization project, the Applicant shall submit as-built documentation, certified by a professional engineer or licensed land surveyor, to the Zoning Administrator. If necessary, the Zoning Administrator may issue separate Certificates of Occupancy for each project component [one for the streambank stabilization project and one for the stormwater improvements.]
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.Clymer, T.Hand, M. Diender, A. Volansky, C.Walton, D.Galdenzi

Voting to deny: None

Dated at Stowe, Vermont this the 3rd day of September 2019

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.

