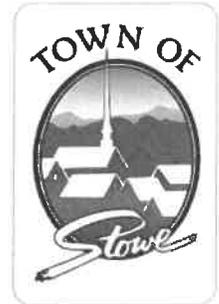


TOWN OF STOWE
DEVELOPMENT REVIEW BOARD
Findings of Fact & Conclusions of Law



PROJECT: 6117

PROPERTY: 876 Mountain Road; #07-021.000

APPLICANT / PROPERTY OWNER:

Hotel Sportiva Stowe dba Town & Country
876 Mountain Road
Stowe, VT 05672

APPLICATION:

The Applicant, Edwin Bitter on behalf of Hotel Sportiva Stowe (herein referred to as the "Applicant"), requests landscaping and access modifications to a previously approved site plan. The Applicant proposes to reconfigure the existing two-way commercial entrance to provide a more defined access and circulation route, construct field stone walls and split fences, reconfigure parking layout, and amend a prior condition requiring the secondary access be closed. The Applicant proposes to close off the secondary access with removable planters for use by emergency vehicles only. The subject parcel [#07-021.000] is located at 876 Mountain Road and commonly known as the Town & Country Inn. The parcel is located primarily within the Highway Tourist (HT) zoning district with rear portions within the Flood Hazard Overlay District (FHOD) and the Fluvial Erosion Hazard Overlay District. No development is proposed within the FHOD or the Fluvial Erosion Hazard Overlay District. The parcel contains approximately ±9 acres and includes a lodging facility and related accessory uses and structures. The property is served by the Mountain Road (VT-108), a state-maintained highway. The application has been reviewed by the Stowe Development Review Board (DRB) as an amendment to a previously approved conditional use under applicable standards of the Town of Stowe Zoning Regulations (as adopted October 9, 2018). It is noted that fences and walls less than 8' in height are exempt under Section 2.5(G) and do not require a zoning permit, however the other proposed access and landscaping improvements are subject to review under the conditional use criteria. 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 review was filed by Applicant E.W. Bitter on September 19, 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 October 15, 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 September 26, 2019 and posted at the Library, Town Office, and Police Station.

The public hearing to consider the application convened on October 15, 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. Board members in attendance and participating in the review included Paco Aumand, Drew Clymer, Peter Roberts, Chris Walton, Andrew Volansky, John Beecy, and Edward Frey.

The following persons attended and participated in the hearing process, and may be afforded status as interested persons with rights to appeal:

- Applicant, Edwin Bitter, 876 Mountain Road, Stowe, VT 05672

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

- Town of Stowe Development Application (2 pages); dated 09/19/2019;
- Preliminary Circulation & Landscaping Improvements prepared by Josephs Architects, Sheet SP-100, dated 10/9/2019;
- Previously approved site plan; (staff)
- Comments from Harry Sheppard, Re: Municipal Impact of DRB Projects, dated 10/7/2019;
- David Kresock of Stowe Electrical Department Re: Municipal Impact of DRB Projects, dated 10/1/2019;
- Comments from Kyle Walker, Re: Municipal Impact of DRB Projects, dated 9/21/2019;
- Comments from Kyle Walker, Re: Municipal Impact of DRB Projects, dated 10/10/2019;
- Comments from Kyle Walker, Re: Municipal Impact of DRB Projects, dated 10/15/2019.

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 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 ±9 acres with direct access to the Mountain Road. The parcel is primarily located within the Highway Tourist (HT) zoning district with rear portions within the Flood Hazard Overlay District (FHOD) and the Fluvial Erosion Hazard Overlay 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 district setbacks in HT are front (50'), side (50') and rear (50'). The Applicant seeks approval for access and landscaping modifications. No encroachments on setbacks are proposed.
4. **Maximum Building Coverage.** The maximum building coverage in HT is 10%. No change to building coverage is proposed.
5. **Use.** The parcel contains an existing lodging facility with related accessory uses (restaurant/banquet room). No changes of use are proposed under this application.

6. **Height.** The maximum building height in HT is 28' feet. No changes in height are proposed under this application.
7. **Density.** Staff noted a discrepancy in the number of lodging units, as approved under prior permits. The prior zoning permit allows for fifty-three (53) lodging units. The provided site plan notes fifty-six (56) lodging units. The Applicant confirmed during the hearing that the site plan contains a typo and that 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 #6117 – Refer to previous comments made by SED on 8/28/19 for Project #6091 RE: landscaping. Otherwise no further comments.

DPW Director Harry Sheppard provided the following comments:

Re: project 6117-Sportiva, Bitter proposes to eliminate the western driveway entrance which DPW supports and I suspect VTrans would also support and maybe require. However, doing so will require work associated with the sidewalk and curbing across with width of the existing driveway entrance to be removed not shown. See attached. I recommend this work be incorporated as a Condition to any approval the DRB might issue for this project.

Fire Chief Kyle Walker provided the following comments:

[9/21/2019] Project # 6117: I would like more information with regard to the turning radius and width of the new parking area he is proposing in front of the hotel. It also appears there might be an exit and entrance now, but the plan is not clear.

[10/10/2019] I did meet with E.W. this week at his property. I am ok with the proposed changes to the entrance. My biggest concern is the closure of the northern parking lot entrance/exit. E. W. informed me that VTRANS has requested a removal of that curb cut by the end of this year. I strongly oppose that. Based on the rear access to this building and the tight quarters in that area of the parking lot, that access to Mountain Road is crucial.

[10/15/2019] "...My biggest concern is the closure of the northern parking lot entrance/exit. E. W. informed me that VTRANS has requested a removal of that curb cut by the end of this year. I strongly oppose that. Based on the rear access to this building and the tight quarters in that area of the parking lot, that access to Mountain Road is crucial." In addition to that, it should be noted that with this proposed parking plan, snow removal must be taken seriously. If not, the driving lanes will become quite narrow and the access to the rear could become limited.

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.

Conclusion: During the hearing the Board discussed the conflicting comments from the Department of Public Works and the Fire Department, as well as the State's authority to regulate use of and activities within the state highway right-of-way. The secondary curb cut was previously required to be removed by the VT Agency of Transportation during the review of Project 5814 approved by the Board in June 2018. Given the recent comments from the Stowe Fire Chief, the Applicant seeks to modify a prior approval by closing the existing secondary curb cut to regular daily vehicular traffic however, allowing for emergency access (see access discussion below). The Applicant proposes to install removable planters to prevent regular and daily traffic but allow for emergency vehicles in the event of a fire or accident. The Board agrees that proper emergency access is of the utmost importance, however, recognizes that the authority to allow such emergency access lies with the Vermont Agency of Transportation which, under the existing §1111 permit and accompanied Board approval (Project 5814), requires the removal and closure of the secondary curb cut. The Board concludes the secondary curb cut was previously required to be removed by the VT Agency of Transportation during the review of Project 5814 approved by the Board in June 2018. The Board approves the Applicant's request for a modified layout consisting of removable planters (or similar feature/structure intended to serve the same purpose) in the area of the secondary curb cut to allow for temporary access in the event of an emergency. Prior to the issuance of the zoning permit, the Applicant must obtain approval from the Vermont Agency of Transportation for the requested modifications. The Board concludes the proposal, as conditioned, 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 HT zoning district. The purpose of the HT district is *"To control development along the portion of the "lower" Mountain Road between designated growths centers in a manner that encourages continued moderate-density commercial and residential land uses while maintaining high quality development and site design."* The Applicant requests modifications to a previously approved site plan. Adjacent to the subject parcel are other nearby commercial and lodging uses. The requested changes are not expected to impact the character of the area affected.

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. 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, access, 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 HT district. The Applicant requests approval for modifications to a previously approved site plan including modifying parking, access, screening and landscaping. The parcel is previously developed and contains an existing lodging facility and related accessory uses.

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, access, screening and landscaping. The requested revisions are not expected to result in undue water, noise, or air pollution.

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 currently served two (2) curb cuts off Mountain Road. As noted above, DPW Director Harry Sheppard provided the following comments:

Re: project 6117-Sportiva, Bitter proposes to eliminate the western driveway entrance which DPW supports and I suspect VTrans would also support and maybe require. However, doing so will require work associated with the sidewalk and curbing across with width of the existing driveway entrance to be removed not shown. See attached. I recommend this work be incorporated as a Condition to any approval the DRB might issue for this project.

The secondary curb cut was previously required to be removed [no later than December 1, 2019] by the VT Agency of Transportation during the review of Project 5814 approved by the Board in June 2018. Following review and comment from the Stowe Fire Chief, the Applicant seeks to modify the previous approval by closing the existing secondary curb cut to regular daily vehicular traffic however, allowing for temporary emergency access. The Applicant proposes to install removable planters to prevent regular and daily traffic but allow for emergency vehicles in the event of a fire or emergency event. During the hearing the Board agreed that proper emergency access is of the utmost importance, however, recognized that the authority to allow such emergency access lies with the Vermont Agency of Transportation which, under the existing §1111 permit and accompanied Board approval (Project 5814), requires the removal and closure of the secondary curb cut.

Conclusion: The Board concludes the secondary curb cut was previously required to be removed by the VT Agency of Transportation during the review of Project 5814 approved by the Board in June 2018. The Board approves the Applicant's request for a modified layout consisting of removable planters (or similar feature/structure intended to serve the same purpose) in the area of the secondary curb cut to allow for temporary access in the event of an emergency. Prior to the issuance of the zoning permit, the Applicant must obtain approval from the Vermont Agency of Transportation for the

requested modifications. The Board concludes the proposal, as conditioned, will provide proper access for both daily vehicular traffic through the improved main entrance and as-needed temporary access for emergency vehicles.

16. **Section 3.7(2)(B)(4) – Shared Access:** As previously proposed, the parcel will be served by a single curb cut solely for the uses on the parcel. 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 proposes to reconfigure the existing two-way commercial entrance to provide a more defined access and circulation route, construct field stone walls and split fences, and reconfigure the parking layout. Under the previously approved site plan, fifty-three (53) parking spaces were assigned to the lodging rooms; four (4) for the twenty-four (24) night club seats; fifteen (15) for the ninety (90) restaurant seats; thirteen (13) for the seventy-six (76) banquet seats; eight (8) for staff; ten (10) for bar; and two (2) for bar staff. A total of 105 parking spaces were required including five (5) accessible spaces. The proposed parking reconfiguration depicts the location of 109 parking spaces with a noted additional three (3) for guest lodging parking. The provided site plan appears to add and reconfigure parking in the vicinity of the rear tennis court building. The Applicant testified that the reconfigured parking is in an area previously improved with gravel, pea-stone, and stay mat. Other parking areas of the site include asphalt surface. It was noted that the tennis court area can support an additional twenty-six (26) parking spaces during special events.

Conclusion: The Board concludes the existing and 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 proposes to reconfigure the existing two-way commercial entrance to provide a more defined access and circulation route, construct field stone walls and split fences, and reconfigure parking layout. A variety of trees appear to be proposed along the front of the property. The species, size, and quantity are not indicated. The Applicant testified the plans include proposed landscaping along the parking island area which will be comparable and compatible with existing landscaping on the site.

Conclusion: The Board concludes the proposed landscaping and screening revisions are appropriate for the intended use and site location. As a condition of approval, the Applicant must submit a revised site plan including a landscaping schedule noting the size, species, and quantity of plants/trees.

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. During the

hearing the Applicant testified that stormwater currently drains toward the rear of the property and no changes to existing drainage patterns are expected.

Conclusion: The Board concludes no changes are proposed under this application.

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.

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 HT Standards:** In addition to the conditional use criteria of these regulations, the DRB shall find that proposed development is designed in a manner that promotes an overall high quality of design and construction and, where appropriate, incorporates traditional building materials.

The Applicant proposes to reconfigure the existing two-way commercial entrance to provide a more defined access and circulation route, construct field stone walls and split fences, and reconfigure parking layout.

Conclusion: The Board concludes the proposed modifications have been designed in a manner that promotes an overall high quality of design and construction.

Section 4: Specific Use Standards

22. **Section 4.6 Landscaping Standards.** See discussion above.

23. **Section 4.8 Outdoor Lighting.** No changes proposed.

Conclusion: This provision does not apply.

DECISION

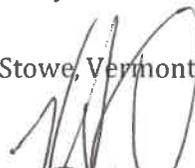
Based upon the foregoing Findings of Fact, in RE: **6117** the Board finds (7-0) that the application meets the Stowe Zoning Regulations, as adopted October 8, 2018, criteria for approval with the following conditions of approval:

1. This 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 previous conditions of approval remain in full force and effect.
3. Prior to the issuance of the zoning permit, the Applicant shall provide the following:
 - o A revised site plan including the corrected density of fifty-three (53) lodging units and a landscaping schedule containing, at minimum, the following information species, size, and quantity. All proposed trees shall be a minimum of 2.5" - 3.0" caliper (trunk diameter), measured at a height of five (5') feet and be appropriately maintained. Any dead and/or dying plants and trees shall be replaced within one (1) year of death.
 - o An amended §1111 permit or written confirmation from the VT Agency of Transportation allowing for the secondary access to remain open to emergency vehicles only.
4. The secondary access must be closed to regular vehicular traffic and utilized by emergency vehicles only. The manner in which the access is closed shall be determined by the VT Agency of Transportation, the Fire Department, and the Applicant. The Board approves the use of removable planters or similar feature/structure intended to serve the same purpose.
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 permittee 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: P.Aumand, D.Clymer, P.Roberts, C. Walton, A.Volansky, J. Beecy, E. Frey

Voting to deny: None

Dated at Stowe, Vermont this the 5 day of ~~October~~ ^{November} 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.

