

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



PROJECT: 6137

SUBJECT PROPERTY: 1976 Mountain Road; #06-071.000

PROPERTY OWNER & APPLICANT:

1976 Mountain Road LLC
846 Cottage Club Road
Stowe, VT 05672

APPLICATION:

The Applicant, Mila Lonetto of 1976 Mountain Road LLC (herein referred to as the "Applicant"), requests approval to demolish the historic building located at 1976 Mountain Road (#06-071.000). The building is commonly known as the Rocky River Lodge. The subject parcel, consisting of ±2.75 acres, is in the Mountain Road Village (MRV) Zoning District and contains a historic building, as defined under the regulations. The property is served by Mountain Road, a state-maintained highway. The application has been reviewed by the 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/demolition approval. 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/demolition approval was filed by Applicant Mila Lonetto on October 18, 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 December 3, 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 November 14, 2019 and publicly posted at the Town Office, Police Station, and Library. 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 December 3, 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 Mila Lonetto, 846 Cottage Club Rd, Stowe, VT 05672
- Clifford Borden via email (Clifford.borden@scotiawealth.com)
- Barbara Allaire, 175 Moulton Lane, Stowe, VT 05672
- Jen Kimmich, 100 Cottage Club Rd, Stowe, VT 05672
- John Kimmich, 100 Cottage Club Rd, Stowe, VT 05672
- Julian Bartlett, 1965 Mountain Road, Stowe, VT 05672
- Hal Morrow, 33 Luce Hill Road, Stowe, VT 05672

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

1. Town of Stowe Development Application, dated 10/18/19;
2. Written Project Narrative (to HPC), dated 10/14/19;
3. Photographs (4) depicting the existing condition of the building exterior; no date;
4. Structural Assessment (2 pages) prepared by Artisan Engineering- John P. Higgins P.E., dated 8/16/2019;
5. Photographs (5) depicting the existing condition of the building interior; no date;
6. Letter from Harry Shepard III, Town of Stowe Public Works Director/Town Engineer, dated 10/3/2019;
7. VT Department of Public Safety- Division of Fire Safety- Fire, Electrical, & Plumbing Inspection Results (3 pages), dated 3/9/2018 & 4/24/2018;
8. VT Division for Historic Preservation Determination of Eligibility Form (4 pages), dated 10/10/2019;
9. State of VT Historic Resources Inventory Survey Information (6 pages), #808-130, no date;
10. Email comments to Clifford Borden via email, dated 11/22/2019.

During the December 3rd hearing, the Board indicated that they did not have sufficient information and, following request by the Applicant, voted in favor of continuing the application to February 2, 2020. In advance of the February 2nd hearing, the Applicant requested an additional continuance to March 3, 2020. In advance of the March 3rd meeting the Applicant provided the following supplemental information:

11. Project narrative, dated 2/21/2020;
12. Photograph '1976 Mountain Road', no date;
13. Site Plan 1976 & 1940 Mountain Road, no date;
14. Route 108 Master Plan- approved by the Selectboard (aerial image), no date;
15. Letter from Harry Shepard III, dated 10/3/2019; [#1]
16. Email from Harry Shepard III, dated 1/31/2020; [#2]
17. Memorandum from Artisan Engineering, dated 8/16/2019; [#3]
18. Determination of Eligibility from Devin Colman State Architectural Historian, dated 10/10/2019; [#4]
19. Estimate from Messier House Moving & Construction, no date; [#5]
20. Plumbing Inspection Results, Division of Fire Safety, dated 4/24/2018; [#6]
21. Fire Inspection Results, Division of Fire Safety, dated 3/14/2018; [#7]
22. Electrical Inspection Results, Division of Fire Safety, dated 3/14/2018; [#8]
23. Public comments received from Julian Bartlett (no date), received 3/3/2020.

Members participating in the March 3rd review included D. Clymer, T. Hand, P.Aumand III, A. Volansky, L.Wasserman, C.Walton. 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 demolition 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 10- Stowe Historic Overlay District and Historic Buildings
 - §10.8 Demolition and Partial Demolition of Structures

1. Section 10.8 Demolition and Partial Demolition of Structures states the following:

(1) Within the overlay district and for Historic Buildings outside the district, the SHPC first shall review each application for the demolition or partial demolition of a building or structure and make a written recommendation to the DRB within fifteen (15) days of the completed presentation except when demolition is requested under items C, D and E. below, which go directly to the DRB. Demolition shall mean the act of deliberately destroying all or a portion of a building. The DRB then will conduct a public hearing to review the application and may approve the demolition if they find:

- A. The SHPC has determined that the structure does not have historical or architectural significance or does not make a positive contribution to the district's streetscape; or*
 - B. The condition of the structure has deteriorated to such a degree that rehabilitation and use of the building is not feasible due to structural or building code issues. The structural or building code issues shall be significant enough to make rehabilitation not possible. For example, a building foundation cannot be repaired because it is not possible to jack up the building or interior ceiling heights are too low to meet code requirements and cannot be modified. It is the responsibility of the property owner to demonstrate to the SHPC and DRB's satisfaction that rehabilitation is not feasible; or*
 - C. The condition of the structure has deteriorated to such a degree that it poses a threat to the public safety as determined by town or state officials and cannot be restored or repaired without causing undue financial hardship to the owner. The burden of proving this hardship is on the owner; or*
 - D. The structure is determined to be a deterrent to a major improvement that will be a clear and substantial benefit to the community. This determination of substantial benefit will be made by the DRB.***
 - E. The cost of rehabilitation is significant enough that it would be an undue financial hardship to the property owner. A determination of undue financial hardship may be granted only if the project complies with one of the following requirements....*
2. The Applicant requests demolition review under Section 10.8(1)(D) which states the following:
The structure is determined to be a deterrent to a major improvement that will be a clear and substantial benefit to the community. This determination of substantial benefit will be made by the DRB.
 3. The subject parcel contains a historic building, as defined under the regulations and regulated under Section 10 of the Town of Stowe Zoning Regulations. 'Historic Building' is defined as... "Any building or structure that is either a contributing structure in the Stowe Village National Register District, Moscow Village State Historic District or Lower Village State Historic District, or individually listed in the Vermont Historic Sites Survey."
 4. The parcel contains an inventoried historic building (#0808-130), the West Branch Meeting House (c. 1840). The building was significantly altered in 1949-52 when it became the Rocky River Lodge. The State of Vermont Historic Sites Survey states "The Rocky River Lodge should be listed on the survey as a locally significant example of the context developed as part of this survey; conversions of existing buildings to meet the needs of the ski industry in Stowe after c. 1936. It is unique in this respect since this is the only church renovated as a ski lodge in the survey." During the 12/3 hearing, Board members noted the local significance of this building as an early example of adaptive reuse.
 5. On October 23, 2019 the Applicant met with Historic Preservation Commission. Given the Applicant requests demolition approval under Section 10.8(1)(D), the Commission refrained from review and recommended that the application be directly referred to the Development Review Board as required under Section 10.8(1).
 6. The Applicant provided a structural assessment from a licensed structural engineer [John Patrick Higgins No. 07238] concluding that the "existing structure cannot meet the current structural design live loads, energy and building codes required for modern buildings, without incurring substantial costs to bring it up to the current building codes."
 7. The Applicant provided a letter from Harry Shepard III, P.E., Town of Stowe Public Works Director and Town Engineer confirming that "the Selectboard chose a signalized intersection with turning lanes as the preferred alternative for a possible future Luce Hill/Rt. 108 Intersection Improvement

Project. If advanced, the Rocky River Lodge in its current location is likely encroach within the project limits."

8. The Applicant provided a series of photographs depicting the existing condition of the interior and exterior of the building.
9. The Applicant's project narrative states *"if the building remains in its current location, I will be unable to put any investment into this building knowing that it stands in the way of a future project at the intersection, so it will remain in this unrentable state of blight."*
10. The Applicant provided VT Division for Historic Preservation Determination of Eligibility Form prepared by Devin Colman, State Architectural Historian and dated 10/10/2019. The preparer concludes that the *"building no longer retains integrity of design, materials, workmanship, feeling or association and is not eligible for listing in the State Register."*
11. The Applicant provided copies of VT Department of Public Safety- Division of Fire Safety- Fire, Electrical, & Plumbing Inspection Results. The Fire Inspection Results identified five (5) violations or upgrades that would be required to bring the building up to current code requirements. The Electrical and Plumbing identified the electrical system and plumbing systems components that would need to be replaced to bring the building up to code.
12. During the 3/3 hearing the Applicant provided a thorough presentation regarding the existing condition of the building including the application of non-historic building materials, proposed intersection improvements in the Route 108 Master Plan, challenges and cost of relocating the building, and her future vision for the parcel.

Conclusion: During the hearing the Board heard testimony from the Applicant and abutting property owners. The Applicant argued that the location of the building is a *"deterrent to a major improvement that will be a clear and substantial benefit to the community."* The Applicant reported that the existing placement and location of the building interferes with future improvements proposed for the Luce Hill & Mountain Road intersection, as noted in the Rt. 108 Master Plan. In a memo provided by Harry Shepard, Town Engineer/Department of Public Works Director confirms that the Town Selectboard *"chose a signalized intersection with turning lanes as the preferred alternative for a possible future Luce Hill/Rt. 108 Intersection Improvement project."* The memo goes on to state *"if advanced, Rocky Ridge Lodge in its current location is likely within the project limits."*

As authorized under the regulations, it is the Board's responsibility to determine if a proposal is a 'substantial benefit to the community'. The Applicant has the burden of proving the proposal meets this standard. In determining what constitutes a 'major improvement' that will be a 'clear and substantial benefit to the community' the Board looks to the purpose of Section 10 and the goals and policies outlined in the Stowe Town Plan. As noted in Section 10, the purpose of the regulations is to *"promote development... that is aesthetically compatible with the existing historic character... while allowing for flexibility in design and evolution of architectural styles."* The Stowe Town Plan reiterates this in its goal to *"preserve Stowe's historic settlement pattern"* and further through adopted policies including *"Support and encourage efforts to maintain and renovate historic structures, as defined by the Stowe Zoning Regulations"* and *"Stowe's cultural resources, including its historic sites, buildings, monuments, and resources, should be preserved and maintained for present and future Stowe residents; adaptive reuse of historic structures will be encouraged as appropriate under local regulations."*

The Board acknowledges that the subject building has been altered over time and as noted by the State Architectural Historian Devin Coleman *"the building no longer retains integrity of design, materials, workmanship..."* and in its current condition *"is not eligible for listing the State Register."* Although the building has notably lost its integrity of materials and design, the overall location, placement, and building form remain intact. The building's prominent location at the intersection of Luce Hill and Mountain Roads is a significant character defining element of this historic crossroads area and the

greater Mountain Road Village district. The building is also a unique example of an early adaptive re-use project when its historic use as a church was converted to meet the needs of the ski industry. While the Board recognizes that the building's current location is in *possible* [emphasis added] conflict with intersection improvements proposed in the Route 108 Master Plan and that these intersection improvements would clearly be a substantial benefit to the community, they are not currently planned, funded, or proposed at this time and it is not visibly evident from the materials provided that the building's location would prevent the recommended improvements. Given that the intersection improvements are not actively being pursued and may or may not ever be constructed, it is impossible for the Board to conclude that the building's existing location is *detrimental to a major improvement that will be a clear and substantial benefit to the community*. Although new buildings can be designed or rebuilt to be compatible and compliment the area, historic buildings are irreplaceable and once lost cannot ever be truly replicated. The Board encourages the Applicant to integrate the historic building into future land development and site design plans in a manner which preserves Stowe's historic settlement pattern and honors Stowe's rich and unique history. Based on the above findings, the Board cannot conclude that the subject building is a deterrent to a major improvement that will be a clear and substantial benefit to the community.

DECISION

On a motion by F.Aumand III, seconded by L.Wasserman, the Stowe Development Review Board hereby denies the Applicant's request to demolish the historic building commonly known as the Rocky River Lodge located at 1976 Mountain Road as indicated in the application dated 10/18/2019 and related submittals.

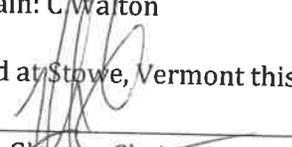
Motion PASSED 5-0-1

Voting to Deny Demolition: D. Clymer, T. Hand, P.Aumand III, A. Volansky, L.Wasserman

Voting to Approve Demolition: None

Abstain: C.Walton

Dated at Stowe, Vermont this the 17 day of March 2020.

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.

