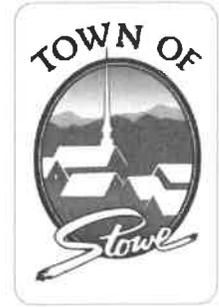


TOWN OF STOWE
DEVELOPMENT REVIEW BOARD
Findings of Fact & Conclusions of Law



PROJECT: 6142

PROPERTY: 1186 Pucker Street; #07-079.000

APPELLANT:
Heath Eiden
1152 Pucker Street
Stowe, VT 05672

PROPERTY OWNER(s):
Matthew & Mara Karlin
585 Westview Heights
Stowe, VT 05676

INTRODUCTION:

This proceeding concerns a Notice of Appeal request filed by Appellant, Heath Eiden (herein referred to as the "Appellant"). The Appellant requests the Board overturn the Zoning Administrator's decision to not issue a Notice of Violation for the project currently under construction and located on the adjacent parcel at 1186 Pucker Street. The Appellant alleges the project on the adjacent property is not being completed in accordance with the approved zoning permit.

- A. On September 27, 2019 Brice C. Simon Esq. of Breton & Simon Attorneys at Law PLC submitted a letter on behalf of Mr. Eiden requesting that the Zoning Administrator issue a Notice of Violation to Project 5894 located on the adjacent parcel at 1186 Pucker Street. The Appellant claimed the adjacent property owner appeared to be operating a landscape business from the approved storage barn and further that the Appellant believes *"the scope of the original project did not appear to include office space, for example, and Mr. Eiden believes the roofing material is not as permitted (and is out of conformance with historic preservation requirements), that the driveway access is being utilized or will be utilized for ingress and egress of business equipment on a regular basis, and the watershed management is not adequate resulting in water infiltration on Mr. Eiden's neighboring property."*
- B. On October 8, 2019 Zoning Administrator Sarah McShane provided a written response to Mr. Eiden's request to issue a Notice of Violation. Upon investigation and finding that the adjacent property owner was actively seeking approval for components of the project that were not included in his original permit and that Mr. Eiden provided no factual evidence that the building was being used for commercial purposes, the Zoning Administrator determined that no known or identified zoning violations exist on the subject parcel and provided Mr. Eiden the opportunity to appeal the decision, within 15 days, to the Development Review Board.
- C. In accordance with Section 2.11, on October 17, 2019 the Appellant submitted a Notice of Appeal to the DRB Clerk and Zoning Administrator, requesting that the Development Review Board overturn the Zoning Administrator's decision not to issue a Notice of Zoning Violation. Upon receipt of the Notice of Appeal a hearing was scheduled for November 19, 2019. The Appellant requests that a Notice of Violation be issued in accordance with Section 2.13 for failing to comply with the terms and conditions of Project 5894 and failing to obtain a permit for the construction of the development being constructed and operated on the site.

The Development Review Board's relevant findings are attached.

REVIEW PROCESS:

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

A Notice of Appeal was filed by Appellant Heath Eiden on October 17, 2019. A public hearing of the DRB was scheduled for November 19, 2019 and warned 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 October 31, 2019 and posted at the Library, Town Office, and Police Station.

The public hearing to consider the application convened on November 19, 2019 at the Akeley Memorial Building, 67 Main Street, with a quorum of the DRB present. Chair Drew Clymer recused himself. No other ex parte communications or conflicts of interests were reported. DRB members in attendance and participating in the review included: Paco Aumand, Tom Hand, Chris Walton, Peter Roberts, Leigh Wasserman, Andrew Volansky, and David Kelly.

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

- Heath Eiden, 1152 Pucker Street, Stowe, VT 05672
- Brice Simon, Brice C. Simon, Esq. Breton & Simon, PLC, PO Box 240, Stowe, VT 05672
- Matthew Karlin, 585 Westview Heights, Stowe, VT 05676
- Tyler Mumley, 454 Mountain Road, Suite 4, Stowe, Vermont 05672
- Sarah McShane, Town of Stowe Zoning Administrator

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

- Letter from Breton & Simon Attorneys at Law, dated 10/17/2019;
- Letter from Brice C. Simon of Breton & Simon Attorneys at Law (Notice of Appeal), dated 10/17/2019;
- Letter from Sarah McShane, Zoning Director, dated 10/8/2019;
- Letter from Brice C. Simon of Breton & Simon Attorneys at Law, dated 9/27/2019;
- Copy of permit and application Project 5894;
- Copy of permit and application Project 6100;
- Letter from property owner Matt Karlin, no date;
- Four photographs showing subject property, no date;
- Staff comments from Zoning Administrator, no date;

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:

NOTICE OF APPEAL: The Appellant's notice of appeal was reviewed by the Development Review Board (DRB) under Section 2.11 [Administration and Enforcement] of the Town of Stowe Zoning Regulations (as adopted October 9, 2018) and 24 VSA §4465.

1. In accordance with 24 VSA § 4465 an interested person may appeal any decision or act taken by the administrative officer in any municipality by filing a notice of appeal with the secretary of the Development Review Board of that municipality. The notice of appeal must be filed within 15 days of the date of that decision or act, and a copy of the notice of appeal shall be filed with the administrative officer.

2. In accordance with 24 VSA § 4465(b)(3) an interested party means (as it relates to this proceeding) *“A person owning or occupying property in the immediate neighborhood of a property that is the subject of any decision or act taken under this chapter, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality.”*
3. In the exercise of its functions, the Development Review Board shall have the following powers, in addition to those specifically provided for elsewhere in this chapter:
 - (1) *To hear and decide appeals taken under this section, including, without limitation, where it is alleged that an error has been committed in any order, requirement, decision, or determination made by an administrative officer under this chapter in connection with the administration or enforcement of a bylaw.* The Appellant, Mr. Eiden, alleges the Zoning Administrator made an error in determining that no zoning violation(s) exist on the adjacent property and requests the Board overturn the Zoning Administrator's decision to not issue a zoning violation effectively resulting in a Notice of Violation to the adjacent property owner Mr. Karlin.
4. In accordance with 24 VSA § 4468, any person or body empowered by 24 VSA § 4465 to take an appeal with respect to that property at issue may appear and be heard in person or be represented by an agent or attorney at the hearing. During the hearing the Appellant was represented by Brice C. Simon of Breton & Simon Attorneys at Law. The property owner, Matt Karlin, and Zoning Administrator, Sarah McShane, were present and testified during the hearing.

Conclusion: Based upon the above findings, the Board concludes the Appellant, Mr. Eiden, is the property owner of record of 1152 Pucker Street- adjacent to that of the subject property 1186 Pucker Street currently owned by Matthew & Mara Karlin and therefore can be considered an interested party in accordance with 24 VSA § 4465(b)(3) with rights to appeal. The Board concludes the Appellant submitted a Notice of Appeal to the DRB Clerk and Zoning Administrator on October 17, 2019- within 15 days of the Zoning Administrator's determination in accordance with Section 2.11.

PROCEDURAL HISTORY:

5. In October 2018 the adjacent property owner, Matthew Karlin, applied for a zoning permit (Project 5894) for the construction of a '40' x 48' 2-Story Storage Barn'. Given the property contains a historic building, as defined under the Town of Stowe Zoning Regulations, and the proposed construction was within 200 ft of the historic building [§10.5(8)] the application was referred to the Stowe Historic Preservation Commission (HPC) for review under Section 10 of the Town of Stowe Zoning Regulations. The HPC reviewed the application during a public meeting held on 10/10/18 and provided positive recommendations on the project. The zoning permit was subsequently issued on 10/11/2018 and became effective on 10/26/18. No notice of appeal was ever received or submitted. The Appellant did not participate or provide comments during the review process or appeal the issued permit.
6. The Appellant, Mr. Eiden, visited the zoning office in July 2019 and inquired whether Project 5894 was being constructed in accordance with the approved plans. On Tuesday July 23rd the Zoning Administrator met with the Appellant and a representative of Mr. Karlin's to view the property and construction site. Upon observation of the project area and reviewing the approved plans, the Zoning Administrator identified several items that were not included in the original zoning permit (i.e. drainage work, additional curb cut/relocated driveway, grading, retaining wall, and minor exterior modifications to the building design.) On July 26th the Zoning Administrator notified Mr. Karlin of the items that were not covered under his original zoning permit and requested he seek

voluntary compliance by submitting an application and obtaining after-the-fact approval for the noted items.

7. On August 30th Mr. Karlin submitted a zoning permit application (Project 6100) for the noted improvements not covered under his original zoning permit, as well as requested approval for the creation of an accessory dwelling unit on the second floor of the subject building. Upon deeming the application complete, the application was scheduled for review by the HPC on September 25, 2019. During the duly noticed public meeting, the HPC reviewed the requested modifications to the exterior of the barn and voted in favor of recommending approval. During the meeting the property owner Mr. Karlin reported that the existing retaining wall will be reduced in overall height to be no more than 8-feet, thereby eliminating the need for additional conditional use review by the Development Review Board. Upon Mr. Karlin submitting a manufacturer cut sheet for the retaining wall material the Zoning Administrator issued the zoning permit for the requested modifications to the original permit, as well as for the creation of an accessory dwelling unit on the second floor of the subject building. The zoning permit for Project 6100 became effective on 10/24/19. No notice of appeal was received or submitted.
8. As previously noted, on September 27, 2019 Brice C. Simon Esq. of Breton & Simon Attorneys at Law PLC submitted a letter on behalf of Mr. Eiden requesting that the Zoning Administrator issue a Notice of Violation to Project 5894 located on the adjacent parcel at 1186 Pucker Street. The Appellant claimed the adjacent property owner appeared to be operating a landscape business from the approved storage barn and further that the Appellant believes *"the scope of the original project did not appear to include office space, for example, and Mr. Eiden believes the roofing material is not as permitted (and is out of conformance with historic preservation requirements), that the driveway access is being utilized or will be utilized for ingress and egress of business equipment on a regular basis, and the watershed management is not adequate resulting in water infiltration on Mr. Eiden's neighboring property."*
9. On October 8, 2019 Zoning Administrator Sarah McShane provided a written response to Mr. Eiden's request to issue a Notice of Violation. Upon investigation and finding that the property owner was actively seeking approval for components of the project not included in the original permit and that Mr. Eiden provided no factual evidence that the use of the building was being used for commercial purposes, the Zoning Administrator determined that no known or identified zoning violations exist on the subject parcel and provided Mr. Eiden the opportunity to appeal the decision, within 15 days, to the Development Review Board.
10. In accordance with Section 2.11, on October 17, 2019 the Appellant submitted a Notice of Appeal to the DRB Clerk and Zoning Administrator, requesting that the Development Review Board (DRB) overturn the Zoning Administrator's decision not to issue a zoning violation.
11. The Board held a warned hearing on November 19, 2019. During the hearing the Appellant presented four photographs from various vantage points showing the subject property and the as-built improvements in question. The Appellant and his counsel alleged that the as-built building height exceeds what is allowed under the regulations, the barn is being used for commercial purposes including as office space, a landscaping business, and for short-term rentals (i.e. Air B & B), the as-built watershed management is inadequate and contrary to the approved permit, and that the installed roofing material is not in keeping with historic preservation standards.
12. The Board also heard testimony from the Zoning Administrator. During the hearing the Zoning Administrator testified that it was her opinion that obtaining the approved zoning permit for Project 6100 resolved all noted zoning compliance issues. Project 6100 included a number of items including: relocate driveway; drainage improvements, convert portions of 2nd story barn to accessory dwelling unit; retaining wall; alterations to exterior design of previously approved storage barn under project 5894. The zoning permit for Project 6100 became effective on 10/24/19. No notice of appeal was received or submitted.

13. The Board also received written and oral testimony from property owner Matt Karlin. Mr. Karlin testified that the building is currently and actively under construction which explains the delivery traffic and storage of equipment the Appellant claims is indicative of a commercial use. He also testified that it was always in his plans to finish the second story of the building as an accessory dwelling unit and he has no plans for the barn other than utilizing it for personal storage. He testified that the building does not have an office, nor does he have any plans to add an office.

Conclusion- During the hearing the Board heard testimony from the Appellant and other involved parties. The Appellant alleged that the project on the adjacent parcel was not being constructed in accordance with the approved zoning permit and requested that the Board overturn the Zoning Administrator's decision not to issue a Notice of Violation. The Appellant outlined his concerns and the alleged violations including the building height, use of the building, stormwater management, and building materials. The Board reviewed his concerns and heard testimony from the property owner and Zoning Administrator offering contrary information. The Zoning Administrator testified that the property owner has obtained two zoning permits for the project under question and that neither permit was appealed. Project 5894 allows for the construction of a 40' x 48' two-story storage barn and Project 6100 allows for the relocation of the driveway; drainage improvements; conversion of portions of the 2nd story barn to accessory dwelling unit; construction of a retaining wall; and for alterations to exterior design of previously approved storage barn.

The Board notes that in accordance with 24 VSA 4465(c)(1), it is the Board's responsibility to hear and decide appeals where it is alleged that an error has been committed in any order, requirement, decision, or determination made by the Zoning Administrator in connection with the administration or enforcement of the town's zoning regulations. The Appellant alleges the Zoning Administrator erred in judgement in determining that no zoning violations exist on the subject parcel and requested that the Board overturn her decision but provided no factual evidence that leads the Board to conclude that any zoning violation(s) exist on the adjacent parcel. The allegations testified by the Appellant and noted in Mr. Simon's September 27th letter were speculative and not substantiated or supported by proof or evidence. Given the lack of proof or evidence presented by the Appellant along with the additional testimony received, the Board concludes no error was made by the Zoning Administrator in determining that no known or identified zoning violations exist on the subject property. Should the property owner, or any property owner, commence any land development that does not meet the requirements of the town's zoning regulations at any time in the future, the regulations require that it be investigated and enforced per Section 2.13 of the regulations.

DECISION

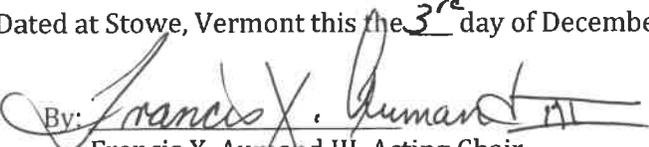
On a motion by C.Walton, seconded by P.Roberts, the Stowe Development Review Board hereby upholds the decision of the Zoning Administrator not to issue a notice of violation as requested in the Notice of Appeal filed by Appellant H.Eiden dated 10/17/2019 and related submittals.

Motion PASSED 7-0

Voting favor: F.Aumand, T. Hand, C.Walton, P.Roberts, A.Volansky, D. Kelly, L. Wasserman

Voting to deny: None

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

By: 
Francis X. Aumand III, Acting Chair

NOTICES:

1. In accordance with 24 V.S.A. § 4449(e), applicants are hereby notified that state permits also may be required prior to land subdivision or construction. The applicant should contact the DEC Permit Specialist for District #5 (802-505-5367) to determine whether state permits are required.
2. The applicant or another interested person may request reconsideration of this decision by the Development Review Board, including associated findings and conditions, within 30 days of the date of this decision by filing a notice of appeal that specifies the basis for the request with the Secretary of the Development Board. Pursuant to 24 V.S.A. § 4470, the board may reject the request within 10 days of the date of filing if it determines that the issues raised on appeal have already been decided or involve substantially or materially the same facts by or on behalf of the appellant.
3. This decision may also be appealed to the Environmental Division of the Vermont Superior Court by the applicant or another interested person who participated in the proceeding before the Development Review Board. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Division Court Proceedings.
4. In accordance with 24 V.S.A. § 4455, on petition by the municipality and after notice and opportunity for hearing, the Environmental Division may revoke a permit based on a determination that the permittee violated the terms of the permit or obtained the permit based on misrepresentation of material fact.