

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



PROJECT: 6144

SUBJECT PROPERTY: 3800 Mountain Road; #11-138.000
[e911 address- 199 Topnotch Drive]

PROPERTY OWNER: AWH Stowe Resort Hotel, LLC.
4000 Mountain Road
Stowe, VT 05672

APPLICANT: Paul Martin, Topnotch Resort, 3800 Mountain Road, Stowe, VT 05672

APPLICATION:

The Applicant, Paul Martin (herein referred to as the "Applicant") on behalf of property owner AWH Stowe Resort Hotel, LLC, requests conditional use approval to extend the temporary events permit previously approved on the Topnotch Resort property located on the western side of Mountain Road. This area is commonly referred to as the Mountain View Pavilion or Topnotch Event Field. Most recently, on December 28, 2018, the Board approved with conditions (Project 5922) the extension of the temporary event permit to November 23, 2020. The Board's decision specifically required that the Applicant apply for any further extensions by November 1, 2019. The Applicant now seeks reapproval to extend the permit through November 23, 2021.

The subject parcel, consisting of ±110.4 acres (including condominium lands) and located at 199 Topnotch Drive (#11-138.000), is in the Upper Mountain Road (UMR) and Rural Residential 2 (RR2) Zoning District. The property is accessed via Route 108, a state-maintained highway and includes lands on both the eastern and western sides of Mountain Road (VT Rt. 108). The application has been reviewed by the Development Review Board (DRB) under applicable standards of the Town of Stowe Zoning Regulations (as adopted on October 9, 2018) for the purpose of 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 conditional use approval was filed by Applicant Paul Martin on October 21, 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 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. 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 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:

- Paul Martin, Topnotch Resort, 3800 Mountain Road, Stowe, VT 05672
- Elizabeth Teffine, 4310 Mountain Road, Stowe, VT 05672
- Nancy Lavanway, 88 Brook 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 10/11/2019;
2. DRB Decision Project 5922, dated 12/28/2018; (staff)

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.

PROCEDURAL HISTORY

In 1999 the Town of Stowe granted T.N. Associates the designation as a Resort Planned Unit Development (Resort PUD) comprised of approximately ±110.4 acres, divided by Mountain Road (VT Rt. 108). Approximately ±73.2 acres of land are on the western side of Mountain Road (commonly referred to as the 'Lower Meadow' or the 'Meadows') and include the resort's indoor tennis facility, event field, and the nordic barn. The lands on the eastern side of Mountain Road, approximately ±37.2 acres, include the majority of the resort's buildings comprised of guest rooms, business center, meeting rooms, resort homes, spas, dining areas, recreational facilities, and related appurtenances.

The Applicant received original approval on March 22, 2006 to erect and use a 50' x 110' temporary events tent to the rear of the resort's indoor tennis facility on the western side of Mountain Road. Said approval was valid from May 1, 2006 to October 31, 2006. Additional approvals followed including:

- Project 4259 approved on July 27, 2010 for use from May 1, 2010 to November 30, 2013;
- Project 4557 approved on March 27, 2012 to extend the temporary tent to October 31, 2014;
- Project 4681 approved on December 11, 2012 to extend the temporary tent to October 31, 2015;
- Project 5152 approved on June 9, 2015 to extend the temporary tent to October 31, 2017;
- Project 5684 approved on October 27, 2017 to extend the temporary tent to October 31, 2019;
- Project 5922 approved on December 28, 2018 to extend the temporary tent to November 23, 2020;

Most recently Project 5922 was approved on 12/28/2018 with the following conditions:

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.*
2. *All previous conditions of approvals, except as amended herein, remain in full force and effect.*
3. *The Applicant shall provide adjoining property owners with the contact information of the Events Manager or appropriate representative.*
4. *Amplified music shall cease by 10:00 p.m.*
5. *The event tent is permitted to be erected from May 1st to October 31st each year.*
6. *All events shall cease by midnight.*
7. *All events are limited to a maximum of 300 persons except when a special event permit is issued by the Town of Stowe Select Board.*
8. *This approval shall expire on November 23, 2020.*
9. *Any further extensions shall be applied for by November 1, 2019.*
10. *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 permit, the permittee agrees to allow*

authorized representatives of the Town of Stowe to access the property subject to this approval, at reasonable times, for purposes of ascertaining compliance with the conditions of approval.

In accordance with Condition #9 of the Board's most recent approval, the Applicant has submitted an application and now seeks approval to extend the temporary events permit. As stated in the application, the Applicant seeks approval to extend the permit through November 23, 2021.

FINDINGS OF FACT & CONCLUSIONS OF LAW:

The Applicant's request for conditional use 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 (including Section 3.9 Nonconforming Uses)
- 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:

1. **Zoning District.** The parcel is located in the Upper Mountain Road (UMR) and Rural Residential 2 (RR2) Zoning Districts as shown on the Official Town of Stowe Zoning Map (as adopted on October 9, 2018).
2. **Lot Area, Lot Width.** The ±110.4 -acre parcel (including condominium lands) is located in the Upper Mountain Road (UMR) and Rural Residential 2 (RR2) Zoning Districts which requires a minimum lot area of five (5) and two (2) acres respectively and 200 ft minimum lot width. 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 to extend previously approved temporary event/tent permit. As previously approved, the tent/event site is located outside of the required 50' setback.
4. **Maximum Building Coverage.** The maximum building coverage in UMR is 8%. The Applicant seeks approval to extend previously approved temporary event/tent permit. No permanent structures are proposed under this application. Does not apply.
5. **Use.** The subject parcel was designated a Resort PUD in 1999 and contains a lodging facility and related resort amenities including privately owned condominiums. No changes of use are proposed under this application.
6. **Density.** Table 6.3 outlines the density for the RR2 and UMR districts. No changes of density are proposed under this application.
7. **Height.** The maximum building height in UMR district is 28' feet. The regulations define building height as the "*Vertical distance measured from the average elevation of the proposed finished grade at the front or rear of the building to the highest point of the roof for flat and mansard roofs, and to the average height between the highest ridge and its contiguous eave for other types of roofs. On sloping sites the height will be measured on the uphill side.*" The Applicant seeks approval to extend

previously approved temporary event/tent permit. No permanent structures 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. No Municipal Department review forms were received.

Conclusion: The Board concludes the proposal 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 seeks approval to extend previously approved temporary events/tent permit. No permanent structures are proposed under this application. The estimated number of vehicle trips generated by the events was not provided. The Board's previous decision states: "*The event tent area has direct access onto Route 108. The project is not expected to result in a significant amount of additional traffic. There are no known traffic problems from the previous event tent use.*"

Conclusion: The Board concludes the proposal will not create an undue adverse impact on traffic on 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 RR2 and Upper Mountain Road (UMR) zoning districts with direct access to Vermont Route 108. The proposed event tent is located within the UMR 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."

Conclusion: The Board concludes the proposal will not adversely affect the character of the area as defined under the Stowe Zoning Regulations (as adopted on October 9, 2018).

- 11. Section 3.7(2)(A)(4) – Regulations and ordinances in effect:** Applicable bylaws include the Stowe Zoning Regulations as adopted on October 9, 2018. No other municipal bylaws or ordinances apply to this project.

Conclusion: The Board concludes the proposal is in conformance with the Stowe Zoning Regulations, as adopted October 9, 2018. No other municipal bylaws or ordinances apply to this project.

- 12. Section 3.7(2)(A)(5) – Utilization of renewable energy sources:** No change is proposed with regard to the use of, or access to, the utilization of renewable energy resources.

Conclusion: The Board concludes the project is not expected to interfere with the sustainable use of renewable energy resources, access to, direct use or future availability of such resources.

Section 3.7(2)(B) – Other Standards of Review:

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.** This portion of Mountain Road is often characterized by its scenic qualities including the open meadow area and adjacent river. The proposed tent area is located behind the Indoor Tennis Center.

Conclusion: The Board concludes the proposal 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 seeks approval to extend previously approved temporary event/tent permit. A prior decision of the Board states the following: *“The event tent is not anticipated to result in additional water or air pollution. When considering the undue impact of noise, the Board shall consider the existing noise levels in the area of the development, the impact on other (or off-site) properties, and the level of noise customarily generated from uses permitted within the zoning district. The noise from guests is not anticipated to impact off-site properties expect for associated vehicular traffic. Based upon past tent event use, noise from amplified music has sometimes adversely affected off-site properties. The adverse effect of amplified music relates to loudness, the length and time of the music, and the frequency that the music occurs throughout the year. The area outside of the resort is primarily residential. Loud amplified music would not customarily be generated from the residential uses. The Stowe Police require offensive noise to cease after 10 p.m. under Vermont Statutes Section 1022 of Title 13, Noise in the Nighttime. Other resorts with outside events have traditionally stopped loud amplified music at 10 p.m. The applicant is proposing the use of an event tent as a temporary site and has testified that long term plans for hosting events is still being developed. The Board received oral testimony from neighbors that the noise has occasionally impacted neighboring properties and the music has occasionally extended past 10 pm. The Board would like to be able to monitor the noise impact during the 2018 season before granting further tent use extensions. Since weddings are booked up to two years in advanced, the applicant would need to apply for future extensions at an early date. The applicant agreed to apply for any future extensions by the end of 2018.”*

Previous conditions of approval (Project 5922), the Board required the following:

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.*
2. *All previous conditions of approvals, except as amended herein, remain in full force and effect.*
3. *The Applicant shall provide adjoining property owners with the contact information of the Events Manager or appropriate representative.*
4. *Amplified music shall cease by 10:00 p.m.*
5. *The event tent is permitted to be erected from May 1st to October 31st each year.*
6. *All events shall cease by midnight.*
7. *All events are limited to a maximum of 300 persons except when a special event permit is issued by the Town of Stowe Select Board.*
8. *This approval shall expire on November 23, 2020.*
9. *Any further extensions shall be applied for by November 1, 2019.*
10. *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 permit, the permittee agrees to allow authorized representatives of the Town of Stowe to access the property*

subject to this approval, at reasonable times, for purposes of ascertaining compliance with the conditions of approval.

The Applicant submitted an application to extend the temporary event permit through 11/23/2021. The application was received by the Zoning Office on October 21, 2019 and referred to the Board for a public hearing. During the hearing two adjoining property owners reported noise concerns from wedding events held during the summer. The abutters testified that although loud at times, the music never exceeded the 10:00 PM curfew. Board members inquired about long-term plans to construct a more permanent structure and if the Applicant has considered other opportunities to mitigate the noise. The Applicant testified that they have reconfigured the layout within the tent to mitigate noise and when possible have kept the tent flaps down to reduce overall noise impacts. The Applicant reported that the resort has transferred through several property owners over the years and each have had long-term plans to construct a more permanent wedding/event barn. The Applicant noted that even with a permanent structure, noise will likely be an ongoing concern on warm summer evenings when doors are open.

Conclusion: The Board concludes the project, if operated as conditioned, will not result in undue water, noise, or air pollution. As conditions of approval, the Board will require the Applicant provide adjoining property owners and the Zoning Administrator with an annual schedule of events and the contact information of the Events Manager or appropriate representative including all phone numbers necessary to contact during an event; amplified music shall cease by 10:00 p.m; and all events shall cease by midnight.

15. **Section 3.7(2)(B)(3) – Access Management:** The parcel is served by Vermont Route 108. No changes to the existing access are proposed under this application.

Conclusion: The Board finds that the existing access provides adequate access management in accordance with Section 3.1.

16. **Section 3.7(2)(B)(4) – Shared Access:** The parcel is served by an existing access, shared by other resort uses including the Indoor Tennis Center. No changes are proposed to the existing shared access.

Conclusion: The Board finds that the existing access provides adequate access management in accordance with Section 3.1.

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 visibility of parking areas from off-site through the location, landscaping and screening of such areas. As noted above, the Applicant seeks approval to extend a previously approved permit for an event tent area. The tent area is served by an adjacent existing parking area. The previous Board decision notes that many of the event guest will be staying at the resort. There are no known parking or circulation issues with the previously approved event tent area.

Conclusion: The Board finds the existing circulation and parking improvements represents safe and adequate access and circulation for the intended temporary 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. A prior decision of the Board dated 10/27/2017 states that many of the event guest will

be staying at the resort and that an existing path connects the resort to Route 108. The Stowe Recreation Path also runs adjacent to the site.

Conclusion: The Board finds the existing site layout, including pedestrian circulation and access, represents safe and adequate pedestrian access and circulation for the intended temporary use.

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. A prior decision of the Board dated 10/27/2017 states that the event tent area is landscaped, and that adequate landscaping is provided. No additional landscaping is noted in the application.

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

20. **Section 3.7(2)(B)(8) – Stormwater Management:** No changes proposed. The Board did not request a stormwater management plan.

Conclusion: The Board concludes no additional stormwater management improvements are needed for this project.

21. **Section 3.7(2)(C).** In addition to other provisions of Section 3.7, the DRB 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 DRB 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.

Conclusion: The Board finds the site is previously developed containing a Resort PUD and related improvements. The Board concludes the proposed temporary event tent area is designed in a manner compatible with the area's rural character. Where appropriate, the Board waived the specific requirements when it was found that mitigation through design, screening or other mitigation has accomplished the objectives of the UMR district.

22. **Section 4.8 Outdoor Lighting.** The regulations require that all outdoor lighting shall be installed in accordance with the following standards:

- A. Sodium vapor lights are prohibited.
- B. All lighting fixtures shall be shielded and aimed so that illumination is directed only to the designated area and does not cast direct illumination or cause glare beyond the boundary lines of a property.
- C. The mounting height of a lighting fixture shall be defined as the vertical distance from the grade elevation directly below the fixture to the bottom of the lighting fixture. The height shall be the minimum necessary to illuminate the project area, and in no case shall exceed sixteen (16') feet for parking lot lighting.

When reviewing lighting plans the DRB shall consider appropriate levels and distribution of illumination as provided for and outlined in Section 4.8. The Board's prior decision indicated that no changes to the existing outdoor lighting or additional outdoor lighting is proposed.

Conclusion: The Board concludes no new or additional lighting is proposed under this application.

23. **Section 15 Parking Regulations.** – See discussion above.

DECISION

On a motion by F.Aumand, seconded by D.Kelly, the Stowe Development Review Board hereby approves the Applicant's request for conditional use approval to extend the temporary event tent permit located at 3800 Mountain Road as indicated in the application dated 10/11/2019 and related submittals, subject to 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 approvals, except as amended herein, remain in full force and effect.
3. The Applicant shall provide adjoining property owners and the Zoning Administrator with an annual schedule of events and the contact information of the Events Manager or appropriate representative including all telephone numbers necessary to contact during an event.

4. Amplified music shall cease by 10:00 p.m.
5. The event tent is permitted to be erected from May 1st to October 31st each year.
6. All events shall cease by midnight.
7. All events are limited to a maximum of 300 persons except when a special event permit is issued by the Town of Stowe Select Board.
8. This approval shall expire on November 23, 2021. Any request for an extension will include review of on-going noise concerns and proposed mitigation measures.
9. 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 purposes of ascertaining compliance with the conditions of approval.

Motion PASSED 5-2

Voting favor: F.Aumand, D. Clymer, L. Wasserman, D.Kelly, P.Roberts

Voting to deny: T. Hand, A. Volansky

Dated at Stowe Vermont this the 17^m day of December 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.