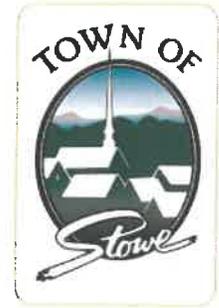


TOWN OF STOWE
DEVELOPMENT REVIEW BOARD
Findings of Fact & Conclusions of Law



PROJECT: 6176

SUBJECT PROPERTY: 4409 Mountain Road; #11-107.000

APPELLANT:

Michael Seaberg
4441 Mountain Road
Stowe, VT 05672

PROPERTY OWNER:

VTRE Investments LLC
PO Box 323
Stowe, VT 05672

INTRODUCTION:

This proceeding concerns a Notice of Appeal request filed by Appellant, Michael Seaberg (herein referred to as the "Appellant"). The Appellant requests the Board overturn the Zoning Administrator's issuance of a zoning permit for Project 6088 located on the adjacent parcel at 4409 Mountain Road [11-107.000]. The approved zoning permit allows for the construction of a retaining wall and filling within the Flood Hazard Overlay District. The Appellant claims the zoning permit should not have been granted given that the application incorrectly notes the number of bedrooms and does not comply with Section 3.12 (stormwater) and Section 7 (Flood Hazard Overlay District) of the Town of Stowe Zoning Regulations. The subject parcel is currently owned by VTRE Investments LLC and consists of ±0.5 acres within the Upper Mountain Road (UMR) zoning district and Flood Hazard & Fluvial Erosion Hazard Overlay Districts. The request requires review under Section 2.11[1] [Appeals of Zoning Administrator Decisions to the DRB] of the Town of Stowe Zoning Regulations (as adopted October 9, 2018).

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 Michael Seaberg on December 20, 2019. A public hearing of the DRB was scheduled for January 21, 2020 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 January 2, 2020 and posted at the Library, Town Office, and Police Station.

The public hearing to consider the application convened on January 21, 2020 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. DRB members in attendance and participating in the review included: Drew Clymer, Paco Aumand, Tom Hand, Chris Walton, John Beecy, Leigh Wasserman, 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:

- Michael Seaberg, 4441 Mountain Road, Stowe, VT 05672
- Shannon Hillpot, 4441 Mountain Road, Stowe, VT 05672
- Gunner & George McCain, McCain Consulting, 93 S Main Street, Suite 1, Waterbury, VT 05676
- Nick Lizotte, PO Box 323, Stowe, VT 05672 (written comments)
- Alexandre & Elaine de Bothuri, PO Box 3989, Stowe, VT 05672 (written comments)
- Jen Burnett, 4515 Mountain Road, Stowe, VT 05672

- Steve Burnett, 4515 Mountain Road, Stowe, VT 05672
- Sarah McShane, Town of Stowe Zoning Administrator

The following materials were submitted and entered into the hearing record:

- Exhibit A: Notice of Appeal (2 pages) from Michael Seaberg, received 12/20/2019;
- Exhibit B: Town of Stowe Zoning Permit (Z-6088); (staff)
- Exhibit C: Development Application (Project 6088), dated 8/14/2019;
- Exhibit D: Email from Nick Lizotte to Sarah McShane & Rebecca Pfeiffer, dated 8/17/2019;
- Exhibit E: Aerial image of project area and immediate surroundings, no date;
- Exhibit F: National Flood Hazard Layer FIRMette, dated 8/19/2019;
- Exhibit G: Development Review Submission Checklist (2 pages), dated 8/19/2019;
- Exhibit H: Email from Sarah McShane to Sacha Pealer, Re: Request for Project Review and Comment, dated 8/19/2019;
- Exhibit I: Email from Sacha Pealer to Sarah McShane, Re: 4409 Mountain Road- Development in the Floodway, dated 9/16/2019;
- Exhibit J: Email from Rebecca Pfeiffer to Sarah McShane, Re: 4409 Mountain Road- Development in the Floodway, dated 7/12/2018;
- Exhibit K: Email from Sarah McShane to Nick Lizotte & Gunner McCain, Re: 4409 Mountain Road- Development in the Floodway, dated 9/16/2019;
- Exhibit L: Email from George McCain to Sarah McShane, Re: Flood Hazard Review- 4409 Mountain Road, dated 11/20/2019;
- Exhibit M: Email from Rebecca Pfeiffer to Sarah McShane, Re: Flood Hazard Review- 4409 Mountain Road, dated 11/22/2019
- Exhibit N: Email from Sarah McShane to George McCain, Re: Flood Hazard Review- 4409 Mountain Road, dated 11/25/2019;
- Exhibit O: Email from George McCain to Sarah McShane, Re: Flood Hazard Review- 4409 Mountain Road, dated 12/5/2019;
- Exhibit P: Original Submitted Site Plan prepared by McCain Consulting;
- Exhibit Q: Approved Site Plan per Project 5853 prepared by McCain Consulting;
- Exhibit R: Final Approved Site Plan for Project 6088: VTRE Investments LLC 'For Fill in Flood Plain', Sheet C-1, prepared by McCain Consulting last revised 11/26/19;
- Exhibit S: Public Comments received by Doctor and Mrs. Alexandre & Elaine de Bothuri, 4407 Mountain Road, dated 1/18/2020;
- Exhibit T: Email comments from Nick Lizotte, Re: our concern, dated 1/21/2020;
- Exhibit U: Staff Comments, no date;
- Packet provided by Michael Seaberg & Shannon Hillpot 'Comments for January 21, 2020 DRB Meeting- Appeal of Project 6176', 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 [Appeals] 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."* The Appellant claims interested party status as an occupant of the abutting property. Within his notice of appeal, the Appellant reports that he resides at 4441 Mountain Road.
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 alleges the Zoning Administrator made an error in approving the application and requests the Board overturn the Zoning Administrator's decision to issue the zoning permit for Project 6088.
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 represented himself. The adjacent property owner, Mr. Lizotte of VTRE Investments LLC did not attend the hearing but provided written comments and was represented by McCain Consulting. Zoning Administrator, Sarah McShane, was present and also testified during the hearing.

Conclusion: Based upon the above findings, the Board concludes the Appellant, Mr. Seaberg resides at 4441 Mountain Road- adjacent to that of the subject property 4409 Mountain Road and therefore can be considered an interested party in accordance with 24 VSA § 4465(b)(3) with rights to appeal. The Board further concludes the Appellant submitted a Notice of Appeal to the DRB Clerk and Zoning Administrator on December 20, 2019- within 15 days of the Zoning Administrator's action in accordance with Section 2.11.

PROCEDURAL HISTORY:

5. On August 19, 2019 property owner Nick Lizotte of VTRE Investments LLC applied for a zoning permit (Project 6088) to construct a retaining wall and fill and grade at 4409 Mountain Road. The parcel contains lands within the Flood Hazard Overlay District, as shown on the official Town of Stowe Zoning Map.
6. Development within the Flood Hazard Overlay District is subject to review under Section 7 of the town's zoning regulations. Section 7.4 requires conditional use review by the Development Review Board for the following projects *"(1) New buildings; (2) Substantial improvement of existing buildings; and (3) Development in a floodway"*; all other development is subject to administrative review under Section 7.
7. Section 7.4 outlines the permit process and requires a permit as follows:

“for all proposed construction or other development, including the placement of manufactured homes, in areas of special flood hazard. Conditional use approval by the DRB is required for:

- (1) New buildings;*
- (2) Substantial improvement of existing buildings; and*
- (3) Development in a floodway.*

prior to being permitted by the Zoning Administrator. All development and subdivisions shall be reviewed to assure that such proposals minimize potential flood damage, public facilities and utilities such as sewer, gas, electrical, and water systems are constructed so as to minimize flood damage, and adequate drainage is provided to reduce exposure to flood hazards.”

8. As defined under Section 7.0, ‘Development’ means *“any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.”*
9. Following multiple consultations with the VT Department of Environmental Conservation Rivers Program, as evidenced in Exhibits H, I, J, and M, the Zoning Administrator issued the zoning permit on 12/6/2019 with an effective date of 12/21/2019.
10. During the hearing the Board took testimony from the Appellant and other involved interested parties. The Appellant alleged that the permit issued on the adjacent parcel was not in conformance with the town’s zoning regulations and requested that the Board revoke the issued permit. 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, Mr. Seaberg, alleges the Zoning Administrator erred in judgement in issuing the permit and requested that the Board overturn her decision. Mr. Seaberg provided a packet on information during the hearing supporting his position. He argued that the approved project includes minor grading in the floodway which requires conditional use review by the Development Review Board under Section 7.4(3). He referred to the notation on the approved site plan states *“minor grading in the floodway is proposed to improve the drainage characteristics of the site and will not result in an increase to the ground elevation in or near the floodway.”*
11. During the hearing Zoning Administrator Sarah McShane reported that this notation was added to the site plan at the request of the town’s State Floodplain Coordinator. She indicated that the grading includes the removal of soils and will not increase the ground elevation or decrease the flood storage capacity.
12. The Engineer representing the property owner, George McCain of McCain Consulting, provided testimony and indicated that the grading involves the removal of several cubic feet and does not result in any additional material.

Conclusion- Based on the above findings, the Board concludes the approved permit included fill within floodway. Under Section 7.4(3), all development (including minor grading) within the floodway requires review by the Development Review Board.

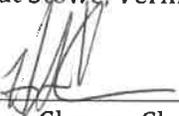
DECISION

Based upon the foregoing findings of fact and conclusions of law, the Development Review Board hereby overturns the Zoning Administrator decision to issue zoning permit for Project #6088 and revokes said permit.

Voting to Overturn: Drew Clymer, Francis Aumand, Chris Walton, John Beecy, Leigh Wasserman, David Kelly, Tom Hand

Voting to Uphold: none

Dated at Stowe, Vermont this the 6 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.