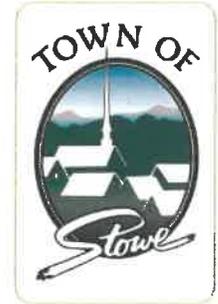


TOWN OF STOWE
DEVELOPMENT REVIEW BOARD
Findings of Fact & Conclusions of Law



PROJECT: 6178

PROPERTY: 942 Mountain Road; #07-020.000

PROPERTY OWNER:

Howard & Howard Inc.
968 Mountain Road
Stowe, VT 05672

APPLICANT:

Paul E. Percy- HP Farms
29 Percy Hill Road
Stowe, VT 05672

APPLICATION:

The Applicant, Paul E. Percy on behalf of HP Farms (herein referred to as the “Applicant”), requests conditional use review for a change of use from automobile repair/retail to light industry/retail. No exterior alterations to the building or changes to the previously approved site plan are proposed. The Applicant proposes to process hemp into marketable products and retail sales of CBD oils and maple products. The proposed processing operation will include drying, bagging, storing and extracting CBD oils.

The subject parcel [#07-020.000] is located at 942 Mountain Road, 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 property is served by the Mountain Road (VT-108), a state-maintained highway. The parcel contains approximately ±6.6 acres and includes a building containing a convenience retail store with three (3) dwelling units, a separate building previously used for Auto Service and retail sales, two (2) rear storage buildings, and related improvements. The site plan for this developed parcel was approved by the Planning Commission in 1996/97 when the adjacent mini mart/apartment building was first proposed and approved. No changes to the previously approved site plan are proposed under this application. The application has been reviewed by the Stowe Development Review Board (DRB) as an amendment to a previously approved conditional use/change of use under applicable standards of the Town of Stowe Zoning Regulations (as adopted October 9, 2018). 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 Paul E. Percy on January 13, 2020. 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 February 4, 2020 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 January 16, 2020 and posted at the Library, Town Office, and Police Station. 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 February 4, 2020 at the Akeley Memorial Building, 67 Main Street, with a quorum of the DRB present. Board members in attendance and

participating in the review included Francis ‘Paco’ Aumand III, Peter Roberts, Chris Walton, Andrew Volansky, Leigh Wasserman, Tom Hand, and David Kelly. Board member Drew Clymer recused himself from the review. No other 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, Paul E. Percy- HP Farms, 29 Percy Hill Road, Stowe, VT 05672
- Mark Hovey, 617 Stagecoach 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 1/13/2020;
- Previously approved site plan; (staff)
- Comments from Dave Kresock (Stowe Electric Company), dated 1/27/2020;

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 a change of use 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 ±6.6 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 a change of use. No changes to the existing approved site plan 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 includes one building containing a convenience retail store with three (3) dwelling units, a separate building previously used for auto service and retail sales, two (2) rear storage buildings, and related improvements. The Applicant proposes a change of use from automotive repair/retail shop to light industry/retail.

As defined under the regulations 'Light Industry' means "*The manufacturing, processing, fabrication, packaging or assembly of goods; technology-based or related research and development facilities, which activities are conducted wholly within an enclosed building; and the indoor storage and warehousing of goods and materials incidental to the principal use. Finished products may be temporarily stored outdoors pending shipment. Light Industry includes, but is not limited to, food processing, the manufacturing of value-added agricultural products, crafts, furniture and clothing, the fermentation or distillation of alcoholic beverages, broadcasting, photographic and motion picture studios, and machine shops. Light industry shall operate in such a manner as to minimize the external effects of the manufacturing process, including smoke, noise, soot, dirt, vibration, odor, chemical wastes, etc., and shall not result in undue adverse impacts on the environment or on other properties.*"

As defined under the regulations 'Retail Sales' means "*The delivery of goods and services by any business concerned with the sale, lease or rental of produce, products, equipment to the general public for personal or household consumption and the rendering of services incidental to the sale, lease or rental of such goods.*"

The Applicant proposes a light industry use involving the processing of hemp into marketable products and selling CBD oils and maple products. Processing is proposed to include drying, bagging, storing, and extracting CBD oils. The building was previously used for retail sales of automobile parts; retail sales will continue as currently allowed.

6. **Height.** The maximum building height in HT is 28' feet. No changes in height are proposed under this application.
7. **Density.** 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 #6178 – Property owner will need to provide Stowe Electric with a load analysis for the proposed equipment to determine if existing transformer and service conductors will need to be upgraded. Applicant will need to complete a line extension application.

No other Municipal Department review forms returned indicated that the proposed change of use would have any undue adverse impact on existing or planned community facilities and services.

Conclusion: The Board concludes the proposed change of use will not result in an undue adverse effect on the Town's existing or planned facilities or services. As a condition of approval, the Applicant will be

required to obtain any necessary additional municipal water and sewer allocation for the proposed change of use and work with Stowe Electric to determine utility needs.

9. **Section 3.7(2)(A)(2) – Traffic on roads and highways in the vicinity:** The Applicant requests approval for a change of use from automotive repair and retail shop to light industry/retail. During the hearing the Applicant testified that hemp is harvested and dried over the course of approximately three (3) weeks in October. During that time, one to two self-unloading farm wagons will deliver the raw product. The Applicant testified that at peak times there will be four (4) employees. The requested change of use is not expected to result in any significant increases in traffic on roads and highways in the vicinity.

Conclusion: The Board concludes the proposed change of use 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 a change of use from automotive repair and retail shop with a garage to light industry/retail. No exterior alterations to the building or changes to the previously approved site plan are proposed. Adjacent to the subject parcel are other nearby commercial and lodging uses. The requested change of use is not expected to impact the character of the area affected.

Conclusion: The Board concludes the requested change of use 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. The existing building is connected to municipal sewer and water services under the Town’s Sanitary Sewer Ordinance. 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. The Applicant will be required to obtain all necessary municipal water and sewer allocations, approvals, and connections.

12. **Section 3.7(2)(A)(5) – Utilization of renewable energy sources:** The Applicant requests approval for a change of use. No exterior alterations to the building or changes to the previously approved site plan are proposed. 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 change of use is 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 a change of use. The parcel is previously developed and contains an existing commercial and mixed-use buildings. No exterior building alterations or changes to the previously approved site plan are proposed.

Conclusion: The Board concludes the requested change of use 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 a change of use to light industry/retail. The requested change of use is not expected to result in undue water, noise, or air pollution; however, during the hearing the Board discussed potential odors generated by the proposed light industry use. The Applicant testified that during harvest season and while drying, the plant produces significant odor, but once the product is dry it is not as odorous. The Applicant reported it takes approximately three (3) to four (4) weeks for the plant to dry. It was noted that during processing there will be a blower that circulates and directs vapor through the center of the building's roof. The Applicant testified that it is an evolving and new industry and that he was unaware of any options for mitigating the odor.

Conclusion: The Board concludes the requested change of use will not result in undue water or noise pollution. As a condition of approval, the Board will require that the zoning permit expire in one-year at which time the Board will re-evaluate odor and air pollution impacts and possible need for mitigation.

15. **Section 3.7(2)(B)(3) –Access Management:** The project is currently served two (2) curb cuts off Mountain Road. No changes to the previously approved site plan are proposed.

Conclusion: The Board concludes the requested change of use will utilize the existing accesses. No changes to the previously approved site plan are proposed.

16. **Section 3.7(2)(B)(4) – Shared Access:** The project is currently served two (2) curb cuts off Mountain Road which provide access to multiple uses on the parcel. No changes to the previously approved site plan are proposed.

Conclusion: The Board concludes the requested change of use will utilize the existing shared accesses. No changes to the previously approved site plan are proposed.

17. **Section 3.7(2)(B)(5) – Circulation and Parking:** The regulations require that parking be provided per the requirements of Section 15 and be designed to minimize the off-site visibility of parking areas through the location, landscaping and screening of such areas. The Applicant proposes a change of use from automotive repair and retail shop with a garage to light industry/retail. No exterior alterations to the building or changes to the previously approved site plan are proposed. The site plan for the parcel was approved by the Planning Commission in 1996/97 when the mini mart/apartment building was originally proposed. During that review, the Stowe Auto building was reserved 1102 sf of retail requiring six (6) parking spaces [5.51] and ten (10) employees for a total of sixteen (16) parking spaces. Unspecified parking for Stowe Auto employee behind the building was shown as 10+ parking spaces.

Section 15 does not list a specific parking requirement for 'Light Industry'. Retail spaces are required to have one (1) parking space per 300 sf of retail space not including storage. The current approved site plan retains sixteen (16) parking space for this building space with additional parking in the rear of the parcel. During the hearing the Applicant testified that there will be a maximum of four (4) employees during peak times.

Conclusion: The Board concludes the existing circulation and parking improvements represents adequate access and circulation for the existing and proposed 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: The Board concludes the existing pedestrian circulation and access improvements are appropriate for the intended use and site location.

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. No changes to the previously approved landscaping plan are proposed.

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

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. No changes to existing drainage patterns or increases in impervious surfaces are proposed.

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 a change of use. No exterior building alterations or changes to the previously approved site plan are proposed.

Conclusion: The Board concludes the parcel is previously developed and no changes to the previously approved site plan are proposed under this application.

Section 4: Specific Use Standards

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

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

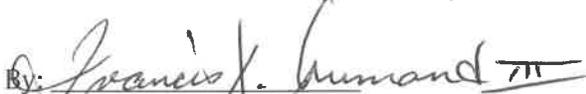
DECISION

On a motion by P.Roberts, seconded by T.Hand, the Stowe Development Review Board hereby approves Project 6178 (6-0) pursuant to the provisions of the Town of Stowe Zoning Regulations, as adopted October 8, 2018, 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 prior conditions of approval remain in full force and effect.
3. The Applicant shall provide the Stowe Electric Department with a load analysis for the proposed equipment to determine if existing transformer and service conductors will need to be upgraded and complete a line extension application.
4. The Applicant must obtain any necessary additional municipal water and sewer allocation for the proposed change of use.
5. The zoning permit for Project 6178 shall expire on February 4, 2021. Should the Applicant seek renewal of the permit, future review shall be limited to potential odor and air pollution impacts as required under Section 3.7(2)(B)(2) and any applicable amendments to the Town of Stowe Zoning Regulations.
6. A certificate of occupancy must be obtained from the Zoning Administrator following the construction but prior to occupancy and use to ensure that is has been constructed as approved by the Development Review Board, as required under Section 2.10 of the zoning regulations.
7. 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: Francis 'Paco' Aumand III, Peter Roberts, Andrew Volansky, Leigh Wasserman, Tom Hand, David Kelly
Voting to deny: None
Abstaining: Chris Walton

Dated at Stowe, Vermont this the ^{18th} day of February 2020

By: 
Francis 'Paco' Aumand III, 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.