

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



**PROJECT:** 6183

**PROPERTY:** 3391 Mountain Road; #11-151.000

**APPLICANT:**

KJVT LLC/ David Wolfgang  
PO Box 1507  
Stowe, VT 05672

**PROPERTY OWNER:**

KJVT LLC  
PO Box 1507  
Stowe, VT 05676

**APPLICATION:**

The Applicant and property owner, KJVT LLC/ David Wolfgang (herein referred to as the "Applicant"), requests conditional use review for changes of use and exterior alterations to the existing building at 3391 Mountain Road, formerly occupied by Pinnacle Sporting Goods Store. The Applicant requests review and approval of the following modifications:

- Change of use on first floor (portions) from retail to office; area designed to support 6-8 office spaces totaling approximately 1260 sf of office area;
- Change of use on first floor (portions) from retail to one-bedroom dwelling unit;
- Change of use of 1790 sf basement floor area from retail to a brew pub;
- Exterior alterations including removing bay windows, adding and reconfiguring exterior doorways, installing ADA ramps, and modifying roof form from a flat roof to a five-pitch gable roof.

The subject parcel (#11-151.000), located at 3391 Mountain Road, is in the Mountain Road Crossroad (MRC) zoning district and Flood Hazard Overlay District. No development is proposed within the Flood Hazard Overlay District. The parcel contains approximately ±1.05 acres and includes a mixed-use building comprised of commercial and residential uses and related appurtenances. The property is served by the Mountain Road (VT-108), a state-maintained highway, and partially borders to the south the West Branch Little River. The application was referred to the Board by staff since it was determined not to be eligible as a minor alteration as defined under Section 2.7 given the proposals *potential* to create an undue adverse effect under the review criteria of Section 3.7(2)(C)(2). The application has been reviewed by the Stowe Development Review Board (DRB) as an amendment to a previously approved conditional 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 amended conditional use review was filed by Applicant David Wolfgang on January 17, 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 18, 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 23, 2020. 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 18, 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. Members who participated in the review include: D.Clymer, F.Aumand III, L.Wasserman, T. Hand, M. Diender, and A.Volansky.

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

- Applicant, David Wolfgang, PO Box 1507, Stowe, VT 05672
- Christian LeBerge, PO Box 1263, 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 01/17/2020;
- Project Narrative (Us & Them Brewing), no date;
- Vermont Agency of Transportation jurisdictional opinion that a §1111 permit is not required; dated 1/31/2020;
- First Floor Plan, Sheet A-2, prepared by Kim Brown Projects, dated 1/20/2020;
- First Floor Plan (6 office option), Sheet A-3, prepared by Kim Brown Projects, dated 1/20/2020;
- Second Floor Plan, Sheet A-4, prepared by Kim Brown Projects, dated 1/20/2020;
- Basement Plan, Sheet A-5, prepared by Kim Brown Projects, dated 1/20/2020;
- Revised Front & Rear Elevations, Sheet A-6, prepared by Kim Brown Projects, dated 1/20/2020;
- Revised Right & Left Elevations, Sheet A-7, prepared by Kim Brown Projects, dated 1/20/2020;
- Proposed Parking Plan-Parking Key, Sheet A-8, prepared by Kim Brown Projects, dated 1/20/2020;
- Previously approved site plan (staff);
- Revised Front Elevations, Sheet A-1, prepared by Kim Brown Projects, dated 2/12/2020;

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 amended 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 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

During its review of the application, the Board made the following Findings of Fact:

1. **Zoning District.** The subject parcel contains ±1.05 acres owned by KJVT LLC. The parcel is in the Mountain Road Crossroad (MRC) and Flood Hazard Overlay District as shown on the Official Town of Stowe Zoning Map (as adopted October 9, 2018).

2. **Lot Area, Lot Width.** The parcel is located in the MRC district. No changes to lot width or lot area are proposed under this application.
3. **Setbacks.** Required minimum district setbacks for the MRC district are front (20'), side (10') and rear (20'). With the exception of installing an ADA ramp on the western side of the building, no changes to the building's footprint are proposed under this application. Per Section 2.5(G), "handicap access ramps" do not require a zoning permit and are exempt from review.
4. **Maximum Building Coverage.** The maximum building coverage in the MRC district is 20%. 'Building Coverage' as defined under the regulations means *"That portion of a site, expressed as a percentage, occupied by all buildings or structures, (not including public utility structures), that are roofed or otherwise covered and that extend more than three (3') feet above the surface ground level. The building roof overhang up to 6 feet in length is not included as part of the building coverage area."* The only change proposed to the building's footprint or building coverage is installing an ADA ramp on the western side of the building. The ADA ramp is proposed to remain uncovered and therefore does not contribute to the total maximum building coverage as defined under the regulations.
5. **Use.** The property contains an existing mixed-use building of commercial and residential uses. The Applicant proposes a change of use on first floor from retail to office and a change of use of basement floor area from retail to a brew pub.

*Office as defined under the regulations means "Office, Professional and Business: Office of any bank or financial institution, real estate, insurance, architectural, engineering, legal, medical or other recognized professions."*

The Applicant proposes an establishment which brews beer, serves food, with accessory retail sales.

*The regulations define 'Restaurant' as 'A commercial establishment where food and drink are prepared, served and consumed by the general public, primarily within the principal building'*

*The regulations define 'Light Industry' as '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.'*

*The regulations define 'Retail Sales' as '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.'*

Following the proposed changes of use the building will contain a mix of commercial and residential uses including multi-family dwelling units, office, accessory retail, light industry, and

restaurant; all of which are conditional uses in the MRC district. During the hearing the Board discussed the proposed brew pub and agreed that it should be classified as a restaurant that produces and brews beer.

6. **Density.** The existing building contains five (5) dwelling units. The Applicant proposes one (1) additional dwelling unit in the area formerly used as retail. In the MRC district, multi-family dwelling units are allowed at a density of one (1) unit per 7,000 sf. The subject parcel contains ±1.05 acres, or approximately 45,738 sf, allowing for no more than 6.53 dwelling units. The Applicant proposes a total of six (6) dwelling units, both existing and proposed, satisfying the density allowances in the MRC zoning district.
7. **Height.** The maximum building height in MRV 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 proposes to change the existing roof form from a flat-roof to a 5/12 pitched roof. The increased building height measures approximately 24' 4" (as shown on Sheet A-7). No other changes to the existing roof-line or height 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.

The Applicant requests approval for the following modifications:

- Change of use on first floor (portions) from retail to office; area designed to support 6-8 office spaces totaling approximately 1260 sf of office area;
- Change of use on first floor (portions) from retail to one-bedroom dwelling unit;
- Change of use of 1790 sf basement floor area from retail to a brew pub;
- Exterior alterations including removing bay windows, adding and reconfiguring exterior doorways, installing ADA ramps, and modifying roof form from a flat roof to a five-pitch gable roof.

David Kresock of Stowe Electrical Department provided the following comments:

*'Project #6183: Property owner will need to provide SED with load data for the entire project, including the new brewery, for SED to determine if the existing transformer will need to be upgraded.'*

No additional municipal comments were received for this application.

**Conclusion:** The Board concludes the proposed modifications 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 work with the Stowe Electrical Department and Department of Public Works to secure proper utilities to the building.

9. **Section 3.7(2)(A)(2) – Traffic on roads and highways in the vicinity:** The Applicant requests approval for a series of changes of use and exterior alterations to the existing building. The Applicant that the proposed uses are not expected to result in an undue adverse impact on traffic on roads and highways in the vicinity. VTrans provided documentation that an §1111 permit is not required for this project.

**Conclusion:** The Board concludes the proposed alterations and changes of use 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 MRC district. The general purpose of the MRC districts is as follows:

*To foster a development pattern along the Mountain Road (Route 108) corridor comprised of compact, mixed-use settlements separated by rural countryside. The MRC district is intended to serve as a relatively small, concentrated mixed-use settlement with good pedestrian circulation between uses and properties and a village streetscape;*

Existing uses within the general area include a mix of commercial, resort, recreation, and residential uses. The Applicant requests approval for a series of changes of use and exterior modifications to the existing building. The proposed uses of residential, office, light industry/restaurant/retail are all located in the nearby vicinity and are compatible with other existing nearby uses. During the hearing the Applicant testified that there are no external venting or hoods will be needed for the brew pub.

**Conclusion:** The proposal will not adversely affect the character of the area as defined under the town's zoning regulations.

11. **Section 3.7(2)(A)(4) – Regulations and ordinances in effect:** The application is being reviewed under the Conditional Use standards. Applicable bylaws include the Stowe Zoning Regulations, as adopted October 9, 2018. The property is connected to municipal water and sewer services under the Town's Sanitary Sewer Ordinance. The proposed brew pub requires a High Strength Waste Agreement with the Town and additional water and sewer allocations. The other changes of use will also require proper water and sewer allocation. No other known 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. As a condition of approval, the Applicant will be required to obtain and secure proper municipal water and sewer for the proposed uses.

12. **Section 3.7(2)(A)(5) – Utilization of renewable energy sources:** The Applicant requests approval series of changes of use and exterior modifications to the existing building. The proposed modifications are not expected to impact 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.** The property is

previously developed and is located in the MRC district. The Applicant requests approval series of changes of use and exterior modifications to the existing building. The site is previously developed. The proposed modifications are not expected to cause an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas.

**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 requests approval series of changes of use and exterior modifications to the existing building. The proposed modifications are not expected to result in undue water, noise, or air pollution. During the hearing the Applicant testified that the brew pub will be open seven (7) days a week from noon to 8:00 pm.

**Conclusion:** The Board concludes the project, if constructed as approved, will not result in undue water, noise, or air pollution.

15. **Section 3.7(2)(B)(3) –Access Management:** The project is served by the existing curb cut off Mountain Road- a state-maintained highway. No changes to the existing curb cut are proposed. 24 VSA §4416 requires proposals involving access to a state highway provide a letter of intent from the Agency of Transportation confirming that the Agency has reviewed the proposed site plan and is prepared to issue an access permit under 19 VSA §1111. Staff referred the application to VT Agency of Transportation (VTrans) on January 24, 2020 to inquire whether an §1111 permit is required. Ed Pierce, Permit Coordinator with the Vermont Agency of Transportation, responded on January 31, 2020 providing a jurisdictional opinion that a §1111 permit is not required for this project.

**Conclusion:** The Board concludes that the existing access provides adequate service for the existing and proposed uses.

16. **Section 3.7(2)(B)(4) – Shared Access:** The parcel is served by an existing access/driveway and is not shared by other parcels or uses. Does not apply.

**Conclusion:** The Board concludes that the property is served by an existing access/driveway serving the property. No changes to this access are proposed under this application. See discussion above.

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 provided an updated parking plan, Sheet A-8, illustrating the existing building footprint and the surrounding parking improvements. The parking plan shows the location of forty-five (45) parking spaces surrounding the building. According to aerial photographs, the parking area is gravel. Under the regulations as noted in Table 15.2, the proposed reconfigured uses require a total of thirty-two (32) parking spaces. The Applicant provided documentation that forty-five (45) parking spaces exist.

With the exception of formalizing two (2) parking spaces on the western end of the building, no changes to the existing circulation or parking are proposed under this application. The site plan for this property was approved in 2001 when the Applicant received approval for a 32' x 48' two-story

addition. According to the parking plan, four (4) parking spaces are sized to accommodate ADA parking and provide an accessible route to the building entrances.

**Conclusion:** The Board concludes the proposed and existing circulation and parking improvements represents safe and adequate access and circulation for the existing and proposed uses.

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. The Applicant proposes to add an ADA ramp on the western end of the building and reconfigure the location of door entrances on the front of the building. No additional changes to the existing pedestrian improvements are proposed under this application.

**Conclusion:** The Board concludes the proposed site layout, including pedestrian circulation and access, represents safe and adequate pedestrian access and circulation for the existing and proposed uses.

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 additional landscaping is proposed under this application. The provided parking plan shows the location of existing landscaping. During the hearing the Applicant testified that the dumpsters are presently located to the rear of the building and are thus screened by the building.

**Conclusion:** The Board concludes there are no changes to existing landscaping or screening proposed under this application.

20. **Section 3.7(2)(B)(8) – Stormwater Management:** Section 3.12 outlines the requirements for Stormwater and Erosion Control. No changes to existing drainage patterns or increase in impervious surfaces are proposed under this application. During the hearing the Applicant testified that no ground disturbance activities are proposed under this application.

**Conclusion:** The Board concludes the proposed building alterations and changes of use are not expected to result in changes in storm drainage patterns or cause an undue adverse impact on neighboring properties, town highways or surface waters.

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.

Additional MRV, **MRC**, VC, VR, MC and LVC Standards: Within the MRV, **MRC**, VC, VR, MC and LVC Districts, site plans shall re-enforce a compact development pattern defined by a pedestrian orientation, the functional and visual integration of neighboring properties, well defined streetscapes and a mix of uses. To help achieve these objectives, the following standards shall apply:

a. Driveways and Road Edge Treatment: The Board shall require curbing or other appropriate treatment along all road frontage(s) and to define driveway entrances. Driveways shall be the minimum width necessary to provide safe vehicular access and promote pedestrian circulation.

b. Front Yard Treatment: Required front yards shall be limited to landscaping and yard area, sidewalks and public spaces and shall not be used for parking or outdoor storage. 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. Parking: Parking shall be designed to re-enforce an internal street network by maximizing the use of parallel or diagonal parking on internal driveways and streets.

d. Pedestrian Circulation and Sidewalks: Adequate provision for pedestrian circulation within the site, and for pedestrian access to adjacent properties, shall be required. In addition to internal pedestrian circulation, all site plans shall be designed in a manner, which allows a minimum five feet (5') wide sidewalk along all frontage roads.

e. Internal Road Network and Traffic Mitigation: Site plans shall be designed in a manner that facilitates the development of an interconnected network of village streets. In instances where a connector ("side") street is deemed appropriate, internal driveways shall be designed as side streets, shall be separated from parking areas with curbing, sidewalks, landscaping, buildings or other physical features, and shall be configured to provide access to adjacent properties. In instances where driveways will not touch upon adjacent properties, a condition of site plan approval may be the establishment of a right-of-way to provide access to and through adjacent properties; in instances where such access has been provided on adjacent properties as part of a prior permit condition, the DRB may require the applicant to connect to the existing driveway (side street).

f. Orientation of buildings within the site: Buildings shall define a streetscape through a consistent building line and setbacks. Buildings shall front towards and relate to public streets, both functionally and visually, and shall not be oriented toward a parking lot. The Board may impose a maximum setback to achieve a consistent streetscape. The front elevation shall include a main entryway, pedestrian access and appropriate front-yard landscaping. Drive-thru lanes and drive-up windows, where allowed, shall be located in the rear of buildings. Buildings may be clustered around a common focal point, such as a green or public courtyard, providing that an appropriate visual and functional relationship with public roads is maintained.

i. Additional MRV and **MRC** standards: In addition to the conditional review criteria of the regulations, the DRB shall find that the proposed development is designed to achieve a scale and pattern of development characteristic of traditional village settlements. At a minimum, the Board will consider the adequacy and appropriateness of building materials, architectural design, and visual context of the project. To this end:

(i) Buildings should be multi-story;

(ii) Buildings generally shall include a prominent entrance(s) oriented to all public roads, and be designed to maximize pedestrian accessibility and presentation to the

streetscape. Buildings may be clustered around a common focal point, such as a green or public courtyard, providing that an appropriate visual and functional relationship with public roads is maintained;

(iii) Buildings should reflect an overall diversity in size and style, with no single building being out of scale or incompatible with neighboring properties. The visual mass and scale of buildings deemed to be excessively large should be reduced through appropriate design changes, such as a reduction of building's height or width; separation into two or more structures and/or designing a building's façade to interrupt the over-all mass;

(iv) Expansion of existing uses should emphasize infill development (i.e. the construction of new buildings on existing lots) in a manner, which reinforces pedestrian access and a compact village-scale development pattern.

The Applicant requests approval for exterior modifications to the existing building and interior changes of use.

**Conclusion:** The Board concludes the proposed building alterations have been designed in a manner compatible with, and are consistent with, the defined purpose of the MRC district.

#### **DECISION**

On a motion by F.Aumand III, seconded by L.Wasserman, the Stowe Development Review Board hereby approves **Project 6183 (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 must provide Stowe Electrical Department with load data for the entire project, including the new brew pub, in order for the Department to determine if the existing transformer needs to be upgraded.
4. The Applicant must obtain any necessary additional municipal water and sewer allocation for the proposed change of use.
5. The Applicant must obtain a zoning permit for any new signage.
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

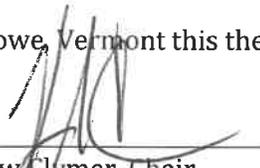
representatives of the Town of Stowe to access the property subject to this approval, at reasonable times, for purpose of ascertaining compliance with the conditions of approval.

Voting favor: D.Clymer, F.Aumand III, L.Wasserman, T. Hand, M. Diender, A.Volansky

Voting to deny: None

Abstain: None

Dated at Stowe, Vermont this the 3 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.