

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



PROJECT: 6231

SUBJECT PROPERTY: 11 Moss Glen Falls Road; #09-016.000

PROPERTY OWNER & APPLICANT:

Tyler Mumley
11 Moss Glen Falls Road
Stowe, VT 05672

APPLICATION:

The property owner, Tyler Mumley (herein referred to as the "Applicant"), requests design review approval to demolish the historic blacksmith shop outbuilding located at 11 Moss Glen Falls Road [#09-016.000]. The subject parcel, consisting of ±1.07 acres, is in the Rural Residential II (RR2) Zoning District and contains a complex of historic buildings commonly known as the Stan Marc Wright Art School. The property is triangular in shape and is located on the corner of Randolph Road (TH-2), a Class 2 Town Highway and Moss Glen Falls Road, a Class 3 town highway. The application has been reviewed by the Development Review Board (DRB) under applicable standards of the Town of Stowe Zoning Regulations (as adopted October 9, 2018) for the purpose of design review approval. 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 design review was filed by Applicant Charles & Deirdre Sanzone on April 27, 2020. In accordance with the DRB Rules of Procedure, the application was referred to the Historic Preservation Commission for review and recommendations. Upon receiving recommendations from the Historic Preservation Commission, the application was referred to the Stowe Development Review Board for a public hearing. A public hearing of the DRB was scheduled for July 07, 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 June 18, 2020 and publicly posted at the Town Office, Police Station, and Library.

The public hearing to consider the application convened on July 07, 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. Given the Applicant was not present at the July 7th hearing, the Board continued the application to a time and date certain, August 4, 2020 at 5:00 pm. The Applicant again did not attend the hearing on 8/4. Per the Board's Rules of Procedure (Failure to Attend) the Board opened the hearing on 8/4 and began the review process. During the review, the Board agreed they did not have sufficient information and continued the hearing to September 15th at 5:00 pm. During the September 15th hearing, the Board again confirmed that the Applicant had not provided sufficient information and, at the requests of the Applicant, agreed to continue the hearing to October 20th.

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

- Charles & Deirdre Sanzone, 11 Moss Glen Falls Road, Stowe, VT 05672
- Tyler Mumley, 11 Moss Glen Falls 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 4/2/2020;
2. Project narrative from Deirdre Sanzone (email), dated 4/24/2020;
3. Series of photographs (5) of exterior and interior of the building, no date;
4. State of VT Historic Sites & Structures Survey Form, 0808-64.
5. HPC Recommendation form, dated 5/13/2020;
6. Comments from DPW Director Harry Shepard, dated 9/15/2020;
7. Project narrative from Mumley Engineering, dated 10/13/2020;
8. Beacon Hill Builders cost proposal, dated 10/13/2020.

The DRB adjourned the hearing October 20th, 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 design review approval 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 10- Stowe Historic Overlay District and Historic Buildings
 - §10.8 Demolition and Partial Demolition of Structures

Section 10.8 Demolition and Partial Demolition of Structures

(1) Within the overlay district and for Historic Buildings outside the district, the SHPC first shall review each application for the demolition or partial demolition of a building or structure and make a written recommendation to the DRB within fifteen (15) days of the completed presentation except when demolition is requested under items C, D and E. below, which go directly to the DRB. Demolition shall mean the act of deliberately destroying all or a portion of a building. The DRB then will conduct a public hearing to review the application and may approve the demolition if they find:

- A. *The SHPC has determined that the structure does not have historical or architectural significance or does not make a positive contribution to the district's streetscape; or*
- B. *The condition of the structure has deteriorated to such a degree that rehabilitation and use of the building is not feasible due to structural or building code issues. The structural or building code issues shall be significant enough to make rehabilitation not possible. For example, a building foundation cannot be repaired because it is not possible to jack up the building or interior ceiling heights are too low to meet code requirements and cannot be modified. It is the responsibility of the property owner to demonstrate to the SHPC and DRB's satisfaction that rehabilitation is not feasible; or*
- C. *The condition of the structure has deteriorated to such a degree that it poses a threat to the public safety as determined by town or state officials and cannot be restored or repaired without causing undue financial hardship to the owner. The burden of proving this hardship is on the owner; or*
- D. *The structure is determined to be a deterrent to a major improvement that will be a clear and substantial benefit to the community. This determination of substantial benefit will be made by the DRB.*
- E. *The cost of rehabilitation is significant enough that it would be an undue financial hardship to the property owner. A determination of undue financial hardship may be granted only if the project complies with one of the following requirements of §10.8(E)(1-2).*

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

1. The subject parcel contains a complex of historic buildings regulated under Section 10 of the Town of Stowe Zoning Regulations. As defined under the regulations, Historic Building means “*Any building or structure that is either a contributing structure in the Stowe Village National Register District, Moscow Village State Historic District or Lower Village State Historic District, or individually listed in the Vermont Historic Sites Survey.*”
2. The parcel contains an inventoried historic property (0808-64), commonly known as the Stan Mark Wright Art School. According to the historic structures inventory form, the Stan Mark Wright Art School is a unique complex in Stowe and is most significant due to the Brownsville School and Blacksmith shop that are located on the property. The Blacksmith Shop (circa 1870) is described as a 1-story, gable roofed, approximately 20' x 30' structure with a 1-story addition on three sides which was built in the 20th century prior to 1940 (according to the prior owner).
3. The Applicant requests demolition review under Section 10.8(1)(B,C,E). On May 13, 2020 the Applicant met with Historic Preservation Commission. The Commission unanimously voted to recommended demolition approval to the Development Review Board with the following condition:

Photographs and exterior as-built drawings shall be submitted for the record prior to demolition.

A copy of the HPC's recommendation was provided by staff.

4. The Applicant provided photographs showing the existing condition of the building and claimed the structure is in disrepair and is both a public safety concern and an insurance liability. The building appears to be located within or in near proximity of the highway right-of-way.
5. DPW Director Harry Shepard provided written comments dated 9/15/2020:

Project #6131, 11 Moss Glen Falls Road; The subject building proposed to be demolished is located immediately at the NE corner of Moss Glen Falls Road and Randolph Road. The structure is a sightline obstruction for vehicles exiting Moss Glenn Falls onto Randolph Road. Removal of the structure as proposed by this application will be a significant improvement to the sightline and traffic safety.
6. During the October 20th hearing the Applicant provided testimony on the existing condition of the building, the structural defects, and the improvements needed to secure and rehabilitate the building. The structural assessment includes conclusions that the noted structural deficiencies are beyond repair and the building would require complete reconstruction.
7. The provided cost estimates from Beacon Hill Builder estimated a project costs of \$480,266.00 to rehabilitate the building. Estimated costs to construct the building anew were \$250,000.

Conclusion: Based upon the above findings, the Board concludes the hearing record contains sufficient evidence to demonstrate the proposal meets the demolition criteria as outlined in Section 10.8(1)(B,C,E). In drawing its conclusion, the Board relied on the provided pictorial evidence, the structural assessment prepared by a licensed engineer, written testimony from the Department of Public Works, and costs estimates provided by a local builder and tradesman.

DECISION

On a motion by F.Aumand III, seconded by T.Hand, the Development Review Board hereby approves (7-0) the Applicant’s request to demolish the historic building as outlined in the application dated 4/2/2020 and supplemental materials, 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 relevant prior conditions of approval, unless amended herein, remain in full force and effect.
3. The Board accepts the recommendation of the Historic Preservation Commission and requires that prior to demolition, the Applicant shall provide to the Zoning Administrator photographs of the interior and exterior of the building and exterior as-built drawings of all four sides of the building any character defining and/or unique architectural features.
4. All demolition shall be completed with thirty (30) days of commencement and, at a minimum, completion shall include:
 - (1) All structural materials and debris shall be removed from the site; and
 - (2) The site shall be restored to a natural grade.
5. A certificate of occupancy must be obtained from the Zoning Administrator following the demolition to ensure that is has been completed as approved by the Development Review Board, as required under Section 2.10 of the zoning regulations.
6. 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 purpose of ascertaining compliance with the conditions of approval.

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

Voting to deny: None

Dated at Stowe, Vermont this the 9 day of November 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.

