

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



**PROJECT:** 6252

**SUBJECT PROPERTY:** 1799 Mountain Road; #06-086.000

**PROPERTY OWNER:**

EDC Holdings  
1799 Mountain Road Suite 6  
Stowe, VT 05672

**APPLICANT:**

Bud Wilson, Wilson Architects AIA  
83 South Main Street, Suite 1  
Waterbury, VT 05676

**APPLICATION:**

The Applicant, Bud Wilson- Wilson Architects AIA, on behalf of property owner EDC Holdings (herein referred to as the "Applicant"), requests conditional use review for exterior alterations to the existing retail store. The Applicant proposes to install a carry-out walk-up service window, stairs, deck, and retractable awning over the deck to accommodate a new business [ice cream store/retail]. The proposed improvements will be located on the side of the existing building. The use of the space will continue to be retail, as previously approved.

The subject parcel, consisting of  $\pm 4.9$  acres and located at 1799 Mountain Road [#06-086.000], is in the Mountain Road Village (MRV) Zoning District and Source Protection Overlay District with portions also lying within the Fluvial Erosion Hazard (FEH) and Flood Hazard Overlay Districts (FHOD). No development is proposed within the FEH or FHOD areas. The parcel contains an existing commercial building with retail uses and is generally bound to the north by Mountain Road (VT-108), to the east by a  $\pm 1.35$ -acre parcel currently owned by Donkey Barn LLC containing a restaurant, to the south by the West Branch of the Little River, and to the west by property currently owned by Gold Hill LLC (1813 Mountain Road). The application has been reviewed by the Stowe Development Review Board (DRB) under applicable standards of the Town of Stowe Zoning Regulations (as adopted 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 review was filed by Applicant Bud Wilson on May 15, 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 June 16, 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 May 28, 2020. 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 June 16, 2020 utilizing the remote meeting platform Zoom, 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, C.Walton, L.Wasserman, T. Hand, F.Aumand III, and M. Diender.

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

- Brian Leven, 212 Moulton Lane, Stowe, VT 05672
- Bud Wilson, 83 South Main Street, Suite 1, Waterbury, VT 05676

The following materials were submitted in support of the application and entered into the hearing record:

1. Town of Stowe Development Application, dated 5/15/2020;
2. Service Window Lighting Cut-Sheet [Incon Lighting], no date;
3. Partial East Elevation & North Elevation prepared by Wilson Architects AIA, Sheet A2.1, dated 05/15/2020;
4. First Floor Plan prepared by Wilson Architects AIA, Sheet A1.1, dated 05/15/2020;
5. Site Plan prepared by Wilson Architects AIA, Sheet SP.1, dated 05/15/2020;

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 conditional use review 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 12- Source Protection Overlay District
- Section 15- Parking Regulations

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

1. **Zoning District.** The subject parcel is located in the Mountain Road Village (MRV), Flood Hazard District (portions floodway), Fluvial Erosion Hazard Overlay District, and Source Protection Overlay District (SPOD) as shown on the Official Town of Stowe Zoning Map (as adopted October 9, 2018).
2. **Lot Area, Lot Width.** The parcel is ±4.9 acres. No changes to lot width or lot area are proposed under this application.
3. **Setbacks.** Required minimum district setbacks for the MRV district are front (20'), side (10') and rear (20'). The setbacks are not labeled on the site plan however the proposed alterations are clearly located more than 10' from the side property line.
4. **Maximum Building Coverage.** The maximum building coverage in the MRV district is 20%. The regulations define building coverage as *"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."* No changes to the building coverage are proposed under this application.
5. **Use.** The space is currently considered a retail use. No changes of use or expansions of use are proposed under this application.

6. **Density.** Does not apply to this application.
7. **Height.** The maximum building height in MRV is 28' feet. The proposed awning will be installed below the existing roofline.

**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. **Section 3.7(2)(A)(1) – 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 returned indicated that the proposal would have any adverse impact on existing or planned community facilities and services.

**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 proposes to install a carry-out walk-up service window, stairs, deck, and retractable awning over the deck to accommodate a new business [ice cream store]. No change of use [retail] is proposed. The proposed alterations are not expected to generate additional traffic on roads and highways in the vicinity.

**Conclusion:** The Board concludes proposed alterations 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 MRV zoning district. The purpose of the MRV district is *"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; the MRV District is intended to serve as a larger commercial village characterized by an integration between land uses, pedestrian accessibility, a mix of uses compatible with a four-season resort community and a village streetscape defined by narrow streets, street-trees, curbing and sidewalks."*

**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 was reviewed under applicable Conditional Use criteria. Applicable bylaws include the Stowe Zoning Regulations, as adopted October 9, 2018. No other known or identified 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.

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.** The Applicant proposes to install a carry-out walk-up service window, stairs, deck, and retractable awning over the deck to accommodate a new business [ice cream store]. The parcel is previously developed-only minor impacts/disturbances are proposed.

**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 proposes to install a carry-out walk-up service window, stairs, deck, and retractable awning over the deck to accommodate a new business [ice cream store]. The proposal is not expected to create any impacts on water, noise, or air pollution.

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

15. **Section 3.7(2)(B)(3) – Access Management:** The parcel is served by Mountain Road (VT-108). No expansions or improvements to the existing curb cut are proposed under this application.

**Conclusion:** The Board concludes that no changes to the existing access are proposed under this application.

16. **Section 3.7(2)(B)(4) – Shared Access:** The parcel is served by Mountain Road and is shared by the existing commercial uses on the property. No changes are proposed to the existing shared access.

**Conclusion:** The Board finds that no changes to the existing access are proposed under this application.

17. **Section 3.7(2)(B)(5) – Circulation and Parking:** The regulations require parking be provided per the requirements of Section 15 and be designed to minimize the visibility of parking areas from off-site through the location, landscaping and screening of such areas. The use of the space continues to be retail. No changes to the number of parking spaces or circulation are proposed under this application. The provided site plan indicates forty-one (41) spaces are required and sixty-four (64) spaces are provided.

**Conclusion:** The Board concludes the proposed alterations will not impact the circulation patterns or require additional parking.

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 a deck and install a carry-out window on the side of the existing building to support a new ice cream business (retail). An ADA ramp will provide pedestrian access from the front of the store fronting Mountain Road. Rear steps will provide pedestrian access from the rear parking area. During the hearing, the Board received testimony

that the only access to the store will via carry-out window and customers will not have access through the front doors.

**Conclusion:** The Board concludes the proposed alterations will provide adequate pedestrian circulation and access as regulated under Section 3.7(2)(B)(6).

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 existing landscaping or screening are proposed under this application.

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

20. **Section 3.7(2)(B)(8) – Stormwater Management:** The Applicant proposes to install a carry-out walk-up service window, stairs, deck, and retractable awning over the deck to accommodate a new business [ice cream store]. The proposed improvements are not expected to change drainage patterns or add to impervious surface cover.

**Conclusion:** This provision does not apply.

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.

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.

**Conclusion:** The Board concludes the parcel is previously developed and the proposed alterations are in keeping with the MRV district

## **DECISION**

On a motion by C.Walton, seconded by M.Diender, the Development Review Board hereby approves the Applicant's request to install a carry-out walk-up service window, stairs, deck, and retractable awning over the deck to accommodate a new business [ice cream store] on parcel #06-086.000 as described in the application dated 5/15/2020 and associated supporting materials subject the following conditions of approval:

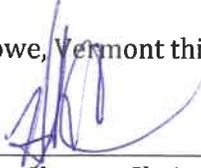
1. The project shall be completed according to the plans hereby approved. Any change to the plans or the proposed use of the property shall be brought to the Zoning Administrator's attention, prior to its enactment, for a determination if an amendment is required. The Zoning Administrator is granted 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 conditions of prior approvals, except as amended herein, remain in full force and effect.
3. A Certificate of Occupancy must be obtained from the Zoning Administrator prior to occupancy and use to ensure that the project has been completed as approved by the Development Review Board, as required under Section 2.10 of the zoning regulations.
4. These conditions of approval shall run with the land and are binding upon and enforceable against the permittee and his successors. By acceptance of a 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 purpose of ascertaining compliance with the conditions of approval.

Voting favor: D.Clymer, P.Aumand III, L.Wasserman, T. Hand, M. Diender, C.Walton.

Voting to deny: None

Motion PASSED 6-0

Dated at Stowe, Vermont this the 10 day of July 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.

