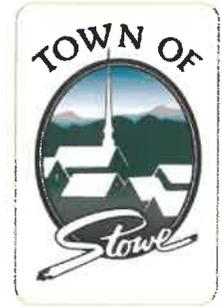


TOWN OF STOWE
DEVELOPMENT REVIEW BOARD
Findings of Fact & Conclusions of Law



PROJECT: 6291

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

APPLICATION:

This application 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 6222 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 in order to obtain a LOMA-F. The Appellant claims the zoning permit notice was not posted in accordance with Section 2.8 and should not have been granted given that the "*Zoning officer erred in determining that this project was in compliance with the Town of Stowe Zoning Regulations section 3.12 regarding stormwater and section 7 regarding Flood Hazard District.*" The Notice of Appeal also states, "*the permit does not reflect all easements on the property as required by the zoning regulations...*" and claims the application materials do not show "*a driveway easement leading to 4407 Mountain Road...*" The request for appeal has been reviewed by the Development Review Board under the Town of Stowe Zoning Regulations (as adopted October 9, 2018), particularly Section 2.11(1)(C), and in light of the relevant findings and conclusions of the Board's prior decision. The Development Review Board's relevant findings are attached.

REVIEW PROCESS:

A Notice of Appeal addressed to former DRB Secretary Barbara Allaire and Zoning Administrator Sarah McShane was filed by Appellant Michael Seaberg on June 22, 2020. Upon receiving the Notice of Appeal, the Zoning Administrator forwarded the Notice of Appeal and a copy of Project #6222 to DRB Chair Drew Clymer and Vice Chair Francis Aumand III on June 22, 2020 and notified the property owner that a Notice of Appeal had been filed regarding Project #6222. The following materials were provided: 1) Notice of Appeal (3 pages) from Michael Seaberg, received 6/22/2020; and 2) Town of Stowe Zoning Permit (Z-6222) including supporting documents from the Zoning Administrator, Sarah McShane.

FINDINGS OF FACT & CONCLUSIONS OF LAW:

1. 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 and issuance of a zoning permit (#6222).
2. On April 14, 2020 property owner Nick Lizotte of VTRE Investments LLC applied for a zoning permit (Project 6222) to 'raise grade & add fill to remove building lot out of SFHA in order to obtain a LOMA-F' at 4409 Mountain Road. The parcel contains lands within the Flood Hazard Overlay District, as shown on the official Town of Stowe Zoning Map.

3. The Zoning Administrator referred the application to the VT Department of Environmental Conservation Rivers Program on 4/14/2020, as evidenced in the supporting materials in the permit record. As stated under Section 7.5(1) "A permit may be issued only following receipt of comments from the Agency or the expiration of thirty (30) days from the date the application was mailed to the Agency, whichever is sooner."
4. The VT Department of Environmental Conservation Rivers Program did not respond or provide comments on the application. Upon expiration of thirty days, the Zoning Administrator issued the zoning permit on 05/19/2020 with an effective date of 06/03/2020.
5. Except for the removal of grading within the floodway, the approved project (#6222) is identical to project (#6088), which was approved by the Zoning Administrator on 12/06/2019 and later appealed to the Development Review Board (#6176). On prior appeal, the Board held a public hearing on January 21, 2020 and heard testimony from the Appellant regarding the same issues raised in the June 22nd Notice for Appeal. In the Board's earlier written decision dated 03/06/2020, the Board revoked permit (#6088) upon concluding that the project included development within the floodway and therefore should have been referred to the Development Review Board.

Conclusion- Based upon its review of the above-referenced materials, the Board finds the issues raised by the Appellant have previously been decided in an earlier appeal. Therefore, in accordance with Section 2.11(1)(C) and 24 V.S.A. §4470(a), the Board rejects the Appellant's appeal and concludes the issues raised by the Appellant are materially the same facts previously raised in an earlier appeal and decided by the Board. The Board therefore has determined that a public hearing is not necessary to resolve the June 22nd Notice for Appeal and concludes that the Zoning Administrator did not err in issuing the zoning permit for Project 6222.

DECISION

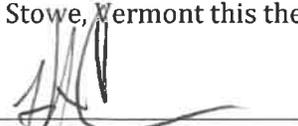
Based upon the foregoing findings of fact and conclusions of law, the Development Review Board hereby concludes the Appellant's June 22, 2020 Notice of Appeal did not provide new evidence or sufficient good cause to hold a hearing and upholds the Zoning Administrator decision to issue zoning permit #6222 pursuant to Section 2.11 of the Town of Stowe Zoning Regulations as amended, effective October 30, 2018 and 24 V.S.A. §4470(a).

Voting in Favor: Drew Clymer, Francis Aumand III, Tom Hand, Chris Walton, ~~John Beery~~, Leigh Wasserman, and David Kelly.

Voting in Opposition: None

Abstain: John Beery

Dated at Stowe, Vermont this the 26 day of June 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.