



**Notice of DRB Decision**  
**Town of Stowe Zoning Office**  
**PO Box 730**  
**Stowe VT 05672**

You recently received approval for the project listed below from the Development Review Board. Attached is a copy of the DRB decision for your records. Any conditions of approval required to issue a zoning permit have been met and your zoning permit will be issued without any further action required from you.

Please contact the Planning and Zoning Office at 253-6141 if you have any questions.

**APPLICATION INFORMATION**

Project Number	6341		
Application Date	8/6/2020		
Physical Location	4969 MOUNTAIN RD		
Map ID	11-089.000	Tax ID	26011
Project Description	VARIANCE TO INCREASE MAXIMUM BUILDING COVERAGE BY ENCLOSING A 12' X 17' EXISTING DECK		
Owner	CHARLES SHAFFER		
Applicant	CHARLES SHAFFER		
Applicant Address	4969 MOUNTAIN RD STOWE VT 05672		

**APPROVALS ON RECORD**

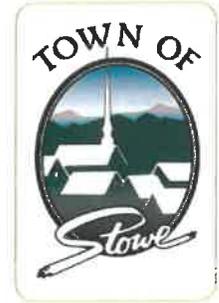
Action Taken	Date	End of Appeal Period	Expiration Date
DRB DECISION	10/2/2020	11/1/2020	11/1/2022

*Sarah McShane*

Zoning Office



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



**PROJECT:** 6341

**SUBJECT PROPERTY:** 4969 Mountain Road #11-089.000

**PROPERTY OWNER/APPLICANT:**

Charles Shaffer  
4969 Mountain Road  
Stowe, VT 05672

**APPLICATION:**

The Applicant, Charles Shaffer (herein referred to as the "Applicant"), request a variance to the maximum building coverage in order to enclose a 12' x 17' (204 sf) portion of an existing uncovered deck. As proposed, the project will exceed the maximum building coverage allowed of 8% in the Upper Mountain Road (UMR) zoning district. The building was constructed in 1958 prior to the adoption of zoning or subdivision regulations and contains the Matterhorn Restaurant. The application has been reviewed by the Development Review Board (DRB) under the dimensional requirements and variance criteria of the Town of Stowe Zoning Regulations (as adopted on 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 variance approval was filed by Applicant Charles Shaffer on August 4, 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 September 15, 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 August 27, 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 September 15, 2020 via virtual meeting hosted by Zoom, with a quorum of the DRB present. At the outset of the hearing Board member Francis Aumand III reported that he had conversation with the Applicant long before it became a project or submission of the application. Both the Applicant and Board members concurred that his participation would not impact his ability to make a fair judgement on the application. No other ex parte communications or conflicts of interests were reported. Members who participated in the review included: F.Aumand III, D.Clymer, P.Roberts, M.Diender, L.Wasserman, T.Hand.

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

- Applicant – Charles Shaffer, 4969 Mountain 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 08/04/2020;
2. Project narrative, no date;
3. Town of Stowe Assessors Card, no date.

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-** *During its review of the application, the Board made the following Findings of Fact.*

The Applicant's request for variance approval was reviewed by the Development Review Board (DRB) for conformance with applicable requirements of the Town of Stowe Zoning Regulations (as adopted on October 9, 2018), including the following:

- Section 2- Administration and Enforcement
    - Section 2.12 Variances
  - Section 3- General Regulations
  - Section 4- Specific Use Standards
  - Section 5- Zoning Districts
  - Section 6- Uses, Dimensional Requirements and Density
1. **Zoning District.** The subject parcel is located within the Upper Mountain Road (UMR) Zoning District as shown on the Official Town of Stowe Zoning Map (as adopted on October 9, 2018).
  2. **Lot Area, Lot Width.** The subject lot consists of ±1.2 acres or approximately 52,272 sf. No changes to lot area or lot width are proposed under this application. The parcel is undersized for the district as the UMR district requires a minimum of 2-acre lot for commercial uses other than lodging.
  3. **Setbacks.** Setbacks in the UMR District are 50 ft front, 50 ft side, and 50 ft rear. The Applicant proposes to enclose portions of an existing deck. No changes to building footprint or setbacks are proposed.
  4. **Maximum Building Coverage.** The maximum building coverage in the UMR district is 8%. Under Section 16.22, building coverage is defined as *"16.22 Building Coverage: 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 existing building coverage totals 8.6% (approximately 4,526 sf). The Applicant proposes to enclose a 12' x 17' existing deck increasing the building coverage by 204 sf. The proposed building coverage is 9.04%, increasing the degree of nonconforming building coverage.

**SECTION 2.12- VARIANCE CRITERIA**

The DRB may grant a variance and render a decision in favor of the appellant only if all the following facts are found, and the findings are specified in its written decision:

- A. **There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions and not the circumstances or conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located;**

- The Applicant testified that the building is constructed on an extremely irregular piece of land with the river being 50% of its border. According to the Applicant, this long, thin, irregular shape creates hardship when trying to utilize critical space while being restricted to maximum building coverage requirements. The parcel is undersized for the district as the UMR district requires a minimum of 2-acre lot for commercial uses other than lodging.

**B. Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these regulations and that the authorization of a variance is necessary to enable the reasonable use of the property;**

- Given the existing improvements on the parcel already exceed the maximum building coverage, the Applicant cannot construct any further improvements (which contribute and add to building coverage) without seeking a variance.
- The Applicant testified that enclosing this portion of the deck will allow for a greater area of the lost seating capacity due to the COVID-19 pandemic and social distancing requirements.

**C. The unnecessary hardship has not been created by the appellant;**

- The Applicant testified that enclosing this portion of the deck will allow for a greater area of the lost seating capacity due to the COVID-19 pandemic in a time where social distancing is required under guidance provided by the State of Vermont.
- The Applicant did not create the COVID-19 pandemic or the operating guidance for restaurants.

**D. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare; and**

- The Applicant is requesting to increase an existing nonconforming building coverage by 206 sf, less than 1%.
- The parcel is located in the Upper Mountain Road (UMR) district. The purpose of this district, as noted in Section 5.12(1) is as follows: *"To control development along the "upper" Mountain Road in a manner that allows for residential, recreation and low-density commercial uses of property while preserving the rural character of the landscape, discouraging strip development and promoting the ongoing viability of existing land uses."*
- This portion of Mountain Road and the UMR district contains a mix of residential, commercial, and lodging uses.
- No changes to building footprint are proposed. The proposed deck is to the rear of the building and is generally not visible from Mountain Road.

**E. The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.**

- The Applicant is requesting to increase an existing nonconforming building coverage by 206 sf, less than 1%.
- The Applicant proposes to enclose an existing deck, no changes to building footprint are proposed.

**DECISION**

On a motion by P.Aumand III, seconded by M. Diender, the Development Review Board hereby approves Project 6341 based upon the foregoing Findings of Fact and concludes the proposal as presented in application dated 8/4/2020 and supporting materials meets the variance criteria set forth in the Stowe Zoning Regulations, as adopted on October 9, 2018, subject to the following conditions of approval:

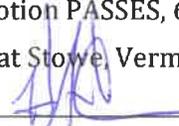
1. This project shall be completed according to the plans hereby approved. Any change to the plans or the proposed use of the property shall be brought to the Zoning Administrator’s attention, prior to its enactment, for a determination if an amendment is required.
2. All relevant prior conditions of approval, unless amended herein, remain in full force and effect.
3. 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.
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 purposes of ascertaining compliance with the conditions of approval.

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

Voting to deny: None

The motion PASSES, 6-0

Dated at Stowe, Vermont this the 2<sup>nd</sup> day of October 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.