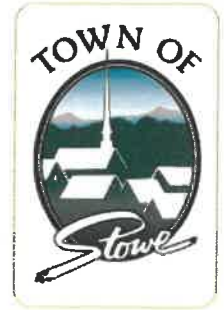


TOWN OF STOWE
DEVELOPMENT REVIEW BOARD
Findings of Fact & Conclusions of Law



PROJECT: 6388

PROPERTY: 1031 Mountain Road; #07-118.000

APPLICANT/PROPERTY OWNER:

Larry Williams; Dedalus Real Estate Stowe LLC
47 Maple Street
Burlington, VT 05401

APPLICATION:

The Applicant, Larry Williams on behalf of Dedalus Real Estate Stowe LLC (herein referred to as the "Applicant"), requests approval to operate a wine bar and coffee service and to increase seating to include twenty-six (26) indoor seats and sixteen (16) outdoor seats. The proposed wine bar and coffee service will operate in addition to the existing previously approved retail use. The subject parcel [#07-118.000] is located at 1031 Mountain Road and contains the former Harvest Market. No changes to the previously approved site plan, landscaping, or building footprint are proposed.

The parcel, consisting of ±1.05 acres, is located within the Highway Tourist (HT) zoning district. The property is served by Mountain Road (VT-108), a state-maintained highway. The parcel contains the former Harvest Market, a retail store previously approved to sell prepared and specialty items, as approved by the Planning Commission and Zoning Board of Adjustment in 1994. In 1997 the property owner received approval, BA-7-118-1, for the construction of an 840-sf kitchen and bakery space. The Applicant most recently received approval under Section 2.7 (minor alterations to conditional uses) for changes in façade design, approved under Project 6345. The application has been reviewed by the Stowe Development Review Board (DRB) for the purposes of conditional use review 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 conditional use review was filed by Applicant Larry Williams on October 8, 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 November 3, 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 October 15, 2020 and posted at the Library, Town Office, and Police Station. The Applicant submitted a completed certificate of service in accordance with Section 2.14(1)(B), providing notice of the hearing to the property abutters.

The virtual public hearing to consider the application convened on November 3rd at 5:00 PM with a quorum of the DRB present. The remote hearing was held utilizing 'Zoom' with no physical meeting space provided. No ex parte communications or conflicts of interests were reported. Board members in attendance and participating in the review included Francis Aumand III, Drew Clymer, Chris Walton, Andrew Volansky, Leigh Wasserman, and Tom Hand.

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

- Larry Williams; Dedalus Real Estate Stowe LLC, 47 Maple Street, Burlington, VT 05401

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

- Town of Stowe Development Application (2 pages); dated 10/8/2020;
- Recorded Easement Deed, dated 10/5/2020;
- Site Grading Plan prepared by Grenier Engineering, dated 10/07/2020;

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 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 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 15- Parking Regulations

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

Dimensional Requirements:

1. **Zoning District.** The subject parcel contains ±1.05 acres with direct access to the Mountain Road. The parcel is located within the Highway Tourist (HT) zoning district as shown on the Official Town of Stowe Zoning Map (as adopted October 9, 2018).
2. **Lot Area, Lot Width.** No changes to lot area or lot width are proposed under this application.
3. **Setbacks.** Required minimum district setbacks in HT are front (50'), side (50') and rear (50'). No changes in building footprint are proposed under this application.
4. **Maximum Building Coverage.** The maximum building coverage in HT is 10%. No change in building coverage is proposed under this application.
5. **Use.** The parcel contains a retail store previously approved to sell prepared and specialty items. In addition to the previously approved retail use, the Applicant seeks approval to operate a wine bar, provide coffee service, and to increase both indoor and outdoor seating.

The regulations define Retail Sales as "16.130 Retail Sales: 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."

The regulations define restaurant as "16.126 Restaurant: A commercial establishment where food and drink are prepared, served and consumed by the general public, primarily within the principal building."

The regulations define accessory restaurant as “16.127 Restaurant, Accessory: A restaurant that is clearly subordinate to a primary conditional use located within the same building.”

During the hearing, the Board heard testimony regarding the proposed use. The Applicant testified that there will be no bar to sit at, rather counter service with a designated seating area. The Applicant testified that the primary use of the building will continue to be retail wine and specialty food sales with the ancillary option to purchase and consume goods on premise. The Board agreed that the proposed use did not meet the definition of ‘Bar (Tavern)’ and rather is classified as a retail/accessory restaurant consisting of twenty-six (26) indoor seats and sixteen (16) outdoor seats.

6. **Height.** The maximum building height in HT is 28’ feet. No changes in building height are proposed.
7. **Density.** No changes in density 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:**

- a. 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.
- b. David Kresock of Stowe Electrical Department provided the following comments:
Project #6388 – No SED Impact
- c. The Applicant submitted a request for municipal water and sewer allocation to support the proposed additional seating. The Water & Sewer Commissioners granted preliminary approval of the additional water and sewer allocation at their 10/26/2020 meeting.
- d. No other Municipal Department review forms returned indicated that the proposal would have any undue adverse impact on existing or planned community facilities and services.

Conclusion: Based on the above findings, 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:**

- a. The Applicant requests approval to operate a wine bar and coffee service and to increase seating from eight (8) to twenty-six (26) indoor seats and sixteen (16) outdoor seats.
- b. During the hearing, the Applicant provided testimony regarding expected impacts on traffic on roads and highways in the vicinity. The Applicant estimates the proposed 600 sf seating area will generate between 4-8 additional vehicle trips, resulting in a modest impact to traffic in the vicinity.
- c. VT Agency of Transportation guidelines specify that a traffic study should be considered if the proposed development will generate seventy-five (75) or more peak hour trips.

- d. The parcel is located within the Highway Tourist District with direct access to Mountain Road (VT-108). This portion of Mountain Road is maintained by the State of Vermont Agency of Transportation.
- e. Adjacent and nearby uses include a mix of commercial uses including lodging, banking, office, service establishment, etc.

Conclusion: Based on the above findings, the Board concludes the proposal will not have an undue impact traffic on the roads and highways in the vicinity.

10. Section 3.7(2)(A)(3) – The character of the area affected:

- a. The subject parcel is in the HT zoning district. The purpose of the HT district is *“To control development along the portion of the “lower” Mountain Road between designated growths centers in a manner that encourages continued moderate-density commercial and residential land uses while maintaining high quality development and site design.”*
- b. The Applicant requests approval to operate a wine bar and coffee service and to increase seating from eight (8) to twenty-six (26) indoor seats and sixteen (16) outdoor seats.
- c. Adjacent and nearby uses include a mix of commercial uses including lodging, banking, office, service establishment, etc.
- d. No changes to the previously approved site plan, landscaping, or building footprint are proposed.

Conclusion: Based on the above findings, the Board concludes the proposal will not result in an undue adverse effect of the character of the area affected.

11. Section 3.7(2)(A)(4) – Regulations and ordinances in effect:

- a. The application was reviewed under the Conditional Use standards. Applicable bylaws include the Stowe Zoning Regulations, as adopted October 9, 2018.
- b. The Applicant proposes additional seating and associated municipal sewer and water services under the Town’s Sanitary Sewer Ordinance. The Water & Sewer Commissioners granted preliminary approval of the additional water and sewer allocation at their 10/26/2020 meeting.
- c. During the hearing, the Applicant testified that they have received a liquor license from the Town.
- d. No other known or identified municipal bylaws or ordinances apply to this project.

Conclusion: Based on the above findings, the Board concludes the proposal is in conformance with municipal regulations and ordinances in effect.

12. Section 3.7(2)(A)(5) – Utilization of renewable energy sources:

- a. No changes to the previously approved site plan, landscaping, or building footprint are proposed.

- b. No change is proposed with regard to the use of, or access to, the utilization of renewable energy resources.

Conclusion: Based on the above findings, the Board concludes the proposal is not expected to interfere with the sustainable use of renewable energy resources, access to, direct use or future availability of such resources.

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.

- a. The project is located in the HT district.
- b. The Applicant requests approval to operate a wine bar and coffee service and to increase seating from eight (8) to twenty-six (26) indoor seats and sixteen (16) outdoor seats.
- c. The parcel is previously developed and contains an existing retail store and related improvements.
- d. No changes to the previously approved site plan, landscaping, or building footprint are proposed.

Conclusion: Based on the above findings, 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.

- a. The parcel is previously developed and contains an existing retail store and related improvements.
- b. No changes to the previously approved site plan, landscaping, or building footprint are proposed.
- c. The proposed project is not expected to result in undue water, noise, or air pollution.
- d. Previous approved hours of operation were 7:00 am -8:00 pm, 7 days a week. Proposed hours of operation were confirmed during the hearing to be 7:00 am – 8:00 pm for the retail store and 7:00 am -10:00 pm for the accessory restaurant, 7 days a week.
- e. The Applicant proposes sixteen (16) outdoor seats located on an existing patio. During the hearing, the Board discussed noise related to outdoor use of the property and decided to place conditions on outdoor hours and music, etc. to prevent undue noise impacts to adjacent and surrounding properties.

Conclusion: Based on the above findings, the Board concludes the proposal, as conditioned, will not result in undue water, noise, or air pollution.

15. Section 3.7(2)(B)(3) –Access Management:

- a. The project is currently served by an existing curb cut and access off VT-108 (Mountain Road).

- b. No changes in access are proposed under this application.
- c. Staff referred the application to VT Agency of Transportation (VTTrans) to inquire whether an §1111 permit is required. Ed Pierce, Permit Coordinator with the Vermont Agency of Transportation, provided indicated that the project does not require a §1111 permit.

Conclusion: Based on the above findings, the Board concludes no changes to the existing access are proposed.

16. Section 3.7(2)(B)(4) – Shared Access:

- a. The parcel is served by an existing access located partially on the adjacent parcel.
- b. The Applicant provided a copy of the easement deed for parking and access over the adjacent parcel. The easement allows the Applicant to park vehicles, for pedestrian and vehicular ingress and egress, to install, maintain, repair, and to replace improvements related to such uses as described in the easement.
- c. No changes to existing shared access are proposed under this application. The Applicant proposes to utilize the existing shared access.

Conclusion: Based on the above findings, the Board concludes no changes to existing shared access are proposed.

17. Section 3.7(2)(B)(5) – Circulation and Parking:

- a. The regulations require that parking be provided per the requirements of Section 14 and be designed to minimize the off-site visibility of parking areas through the location, landscaping and screening of such areas.
- b. The Applicant requests approval to operate a wine bar and coffee service and to increase seating from eight (8) to twenty-six (26) indoor seats and sixteen (16) outdoor seats.
- c. The parcel is previously developed and contains an existing retail store and related improvements. No changes to the previously approved site plan, landscaping, or building footprint are proposed.
- d. The Applicant provided an existing parking plan showing a total of thirty (30) existing parking spaces; eight (8) of which are on the adjacent People’s United parcel at 1069 Mountain Road.
- e. The Applicant provided an easement deed allowing shared use of these eight (8) parking spaces located within the 48’ x 102’ easement area so long as they are not used during the Applicant’s peak hour use, which during the hearing the Applicant testified is generally between the hours of 5:00-6:00 pm.
- f. Table 15.2 outlines parking requirements for allowed uses. The parking requirements are calculated to be:

Six (6) employees

Six (6) parking spaces

Retail Area (2,000 SF/300)	Seven (7) parking spaces
Seating (42 seats/3)	Fourteen (14) parking spaces
Total	27 parking spaces required
	30 existing parking spaces

- g. The existing parking lot contains thirty (30) parking spaces. Although not labeled the parking spaces appear to be sized to be 9' x 18'.
- h. Two (2) existing parking spaces are shown to be ADA accessible, as required under Section 15.5(5). An accessible pedestrian route is shown from the parking spaces to a ramp on the western side of the building.

Conclusion: Based on the above findings, the Board concludes the existing circulation and parking improvements represents adequate access, parking, and circulation for the intended use.

18. Section 3.7(2)(B)(6) – Pedestrian Circulation and Access:

- a. The regulations require pedestrian circulation within the site, and access through the site to adjacent properties along public roads, be provided.
- b. The parcel is previously developed and contains an existing retail store and related improvements. No changes to the previously approved site plan, landscaping, or building footprint are proposed.
- c. The provided site plan shows the location of parking and its relationship to the building entrances.
- d. Public sidewalks run along the opposite side of Mountain Road providing pedestrian connectivity to nearby businesses.

Conclusion: Based on the above findings, the Board concludes the existing pedestrian improvements represents adequate access and circulation for the intended use.

19. Section 3.7(2)(B)(7) – Landscaping and Screening:

- a. 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.
- b. No changes to the previously approved landscaping are proposed.
- c. The site contains existing mature landscaping along frontage of Mountain Road, near building entrances, and throughout the parking area.

Conclusion: Based on the above findings, the Board concludes the existing landscaping improvements are appropriate for the intended use and site location.

20. Section 3.7(2)(B)(8) – Stormwater Management:

- a. Section 3.12(2) provides stormwater and erosion control standards for construction-related activities associated with any new construction.
- b. The site is previously developed. No increases in impervious surfaces are proposed.
- c. During the hearing the Applicant testified that they recently made site improvements to improve the existing drainage problems and ponding of water on the parking area.

Conclusion: Based on the above findings, the Board concludes no increases in impervious surfaces or earth disturbing activities are proposed.

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.

1. Additional **HT**, RR, MOD, UMR Standards: Within the Highway Tourist (HT), (Rural Residential (RR), Meadowland Overlay (MOD)) and Upper Mountain Road (UMR) Districts, site plans shall re-enforce efficient traffic circulation, preserve such important landscape features as open fields, scenic vistas, natural and cultural focal points and a well landscaped highway corridor.

To help achieve these objectives, the following standards shall apply:

- a. **Front Yard Treatment:** A continuous strip not less than twenty (20') feet deep, measured from the edge of the highway right of way, shall be maintained between the street line and the balance of the lot, which strip shall be suitably landscaped. Only driveways and pedestrian walks may traverse the required strip. In addition, no portion of the front yard may be used for storage or for any purpose except as provided herein.
- b. **Parking:** Parking shall be located in the rear and/or side of all commercial and multi-family residential properties, except as provided under Section 14.3 of the regulations. 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. **Driveway Access:** Driveways shall be the minimum width necessary to provide safe vehicular access and promote pedestrian circulation.
- d. **Additional HT Standards:** In addition to the conditional use criteria of these regulations, the DRB shall find that proposed development is designed in a manner

that promotes an overall high quality of design and construction and, where appropriate, incorporates traditional building materials.

- a. The parcel is previously developed and contains an existing retail store and related improvements. No changes to the previously approved site plan, landscaping, or building footprint are proposed. The existing landscaping fronting Mountain Road appears to meet the requirements for a continuous strip not less than twenty (20') feet of suitable landscaping. The building itself was constructed in 1973 and predates the adoption of town zoning regulations. Prior to the Harvest Market, the building contained the Boots N Board shop, a ski and sport retail shop.

Conclusion: Based on the above findings, the Board concludes no changes to the existing site plan or building footprint are proposed.

Section 4: Specific Use Standards

22. **Section 4.6 Landscaping Standards.** See discussion above.

23. **Section 4.8 Outdoor Lighting.**

- b. No changes in outdoor lighting are proposed.

Conclusion: Does not apply.

DECISION

On a motion by C.Walton, seconded by F.Aumand III, the Development Review Board hereby approves (6-0) the Applicant's request to operate a wine bar, add additional seating, etc. as outlined in the application dated 10/08/2020 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. Unless amended herein, all previous conditions of approval remain in full force and effect.
3. The Applicant shall obtain all necessary municipal water and sewer allocations and approvals.
4. Approved hours of operation are 7:00 am – 8:00 pm for the retail store and 7:00 am -10:00 pm for the accessory restaurant, 7 days a week.
5. Outdoor music is limited to non-amplified music and shall not be audible at the property line beyond 10:00 pm.
6. No parking space shall be used for any purpose that interferes with its availability for required parking, including but not limited to the location of trash or recycling dumpsters.
7. The driveway access and parking areas shall be properly maintained, including snow removal in winter, to provide emergency vehicle access at all times.
8. A certificate of occupancy must be obtained from the Zoning Administrator following the construction but prior to occupancy and use to ensure that it has been constructed as approved by the Development Review Board, as required under Section 2.10 of the zoning regulations.

9. 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: F.Aumand, D.Clymer, P.Roberts, C. Walton, A.Volansky, L.Wasserman, T.Hand
Voting to deny: None

Dated at Stowe, Vermont this the 03 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.