

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



**PROJECT:** 6436

**SUBJECT PROPERTY:** 3343 Mountain Road; #11-152.000

**PROPERTY OWNER/APPLICANT:**

Little River Holdings LLC  
Jed Harris  
PO Box 514  
Stowe, VT 05672

**APPLICATION:**

The Applicant and property owner, Little River Holdings LLC (herein referred to as the "Applicant"), requests conditional use review for a substantial improvement to an existing structure, the Mountaineer Inn, within the Fluvial Erosion Hazard Area (FEH). The project involves the interior renovation of all guest rooms and bathrooms; updates to the lobby and lower level lounge, and converting a storage room into a ski boot room. Exterior work involves replacing the roof where needed, installation of solar on backside of roof facing the river, exterior painting, and installation of windows where the current through wall A/C units are located. The only proposed change to building footprint includes reconfiguring a few of the back decks reducing them in size. Given the project is located within the FEH and construction costs exceed 50% of the market value of the structure it is deemed a substantial improvement and requires conditional use review by the Board under Section 11.

The subject parcel (#11-152.000), located at 3343 Mountain Road, is in the Mountain Road Crossroad (MRC), Flood Hazard District (portions floodway), and Fluvial Erosion Hazard Overlay District. The parcel is approximately ±6.802 acres and contains the Mountaineer Inn- a lodging facility. The property is bounded to the north by the Mountain Road (VT-108), to the east by a ±7.75-acre parcel owned by Charles & Janet Perkins, to the west by a ±1.05-acre parcel owned by Katrine & David Wolfgang Living Trust, and to the south by the West Branch Little River. 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 purposes of conditional use review and under Section 11-Fluvial Erosion Hazard regulations. 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 and FEH review was filed by Applicant Jed Harris on December 21, 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 February 2, 2021 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 January 14, 2021 and posted at the Town Office, Library, and Police Station. 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 February 2, 2021 using a virtual meeting platform 'Zoom', with a quorum of the DRB present. No ex parte communications or conflicts of interests were reported. Members who participated include: D. Clymer, F. Aumand III, T. Hand, C.Walton, A.Volansky, L.Wasserman.

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

- Applicant – Jed Harris, PO Box 514, 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 12/17/2020;
2. Estimated construction costs, dated 12/16/2020;
3. Estimated value calculations, no date;
4. Architectural drawings prepared by Hamor Architecture (floor plans and elevation drawings);
5. Boundary survey prepared by Gilson Land Surveying PLLC, dated 12/14/2020;
6. Town of Stowe Parcel & Zoning Map showing FEH area, 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:**

The Applicant's request for conditional use and FEH 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 3- General Regulations
- Section 5- Zoning Districts
- Section 6- Uses, Dimensional Requirements and Density
- Section 11- Fluvial Erosion Hazard Overlay District

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

#### **Dimensional Requirements**

1. **Zoning District.** The subject parcel is located within the Mountain Road Crossroad (MRC), Flood Hazard District (portions floodway), and Fluvial Erosion Hazard Overlay Districts as shown on the Official Town of Stowe Zoning Map (as adopted October 9, 2018).
2. **Lot Area, Lot Width.** The parcel contains ±6.802 acres and exceeds the minimum district lot area of 20,000 sf. No changes to lot area or lot width are proposed under this application.
3. **Setbacks.** The parcel is bounded to the south by the West Branch Little River. Section 3.10 requires a fifty (50') foot setback from all mapped watercourses. Within the fifty (50') foot setback, a vegetation buffer shall be left in an undisturbed state with the exception of minimal clearing necessary to accommodate and build public recreation and transportation paths, recreational river accesses, driveways, public or private road and utility crossings, landscaping, permitted impoundments and dams and stream bank stabilization and restoration projects. The only change to building footprint is reconfiguring the rear decks reducing them in size. This alteration is shown on the floor plans prepared by Hamor Architecture.

4. **Maximum Building Coverage.** The maximum building coverage in MRC is 20%. No change to existing building coverage is proposed under this application.
5. **Use.** The parcel contains an existing lodging facility. Lodging facilities are a conditional use within the MRC District. The Applicant is not proposing a change of use under this application.
6. **Height.** The maximum building height in UMR is 28' feet. No changes to building height are proposed.

**Section 11 Fluvial Erosion Hazard Overlay District.** The purpose of the Fluvial Erosion Hazard (FEH) Overlay District is to prevent increases in fluvial erosion resulting from uncontrolled development in identified fluvial erosion hazard areas; minimize property loss and damage due to fluvial erosion; prohibit land uses and development in fluvial erosion hazards areas that pose a danger to health and safety; and discourage the acquisition of property that is unsuited for the intended purposes due to fluvial erosion hazards.

7. Section 11.6 outlines the activities that are allowed within the FEH subject to review as a conditional use including the following:

***(1) Substantial improvements to existing structures located within a FEH Area that do not result in a decrease of the existing primary structure setback from any stream.***

Substantial Improvement is defined as "Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty (50%) percent of the market value of the structure either: (a) before the improvement or repair is started; or (b) if the structure has been damaged and restored, before the damage occurred. For the purpose of administering flood hazard area regulations, this definition excludes the improvement of a structure to comply with existing municipal or state health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions."

8. The Applicant proposes primarily interior renovations to the guest rooms, lobby, and lower-level lounge along with minor exterior improvements as described in the application. The provided estimated project costs are projected to be \$1,389, 550 (plus \$20,000 for exterior painting). The net building is valued at \$1,119,000- estimated market value of the structure. As the estimated project cost exceeds 50% of the market value of the structure, the project is considered a *substantial improvement*, as defined under the regulations.
9. Section 11.8(2)(A) sets forth the application review procedures and requires referral to Vermont Department of Environmental Conservation (DEC). The Zoning Administrator referred the application to ANR River Management Program (RMP) on 1/5/2021. No comments were received.
10. The current State of VT model bylaws pertaining to river corridors exempt interior renovations that do not increase the building footprint from review under FEH provisions. The Town of Stowe Planning Commission is currently considering revising the FEH standards to exempt interior renovations from FEH review.
11. Section 11.8(2)(B) sets forth the development standards for projects within the FEH and state the following:

The Development Review Board will consider the application and any comments provided by the RMP to ensure that all development within the FEH Overlay District meets the following standards:

- 1. No reasonable alternative location for the proposed development outside of the FEH area is available on the site.*
- 2. The proposed development will not increase the susceptibility of the property, including existing and proposed, to fluvial erosion damage.*
- 3. The proposed development will not increase the potential for damage to other properties due to fluvial erosion.*
- 4. The proposed development will not increase the potential of materials being swept onto other lands or into the stream and causing damage to others from fluvial erosion.*
- 5. The proposed development will not cause an undue burden on public services and facilities including roads, bridges, culverts, and emergency service providers during and after fluvial erosion events.*
- 6. New development may be allowed within the FEH District if based on a review by the RMP it is determined that the proposed development is not located or should not be located within the FEH area and that the new development complies with all other standards in i. through v. above.*

**Conclusion:** During the hearing, the Board reviewed the development standards and found that the proposed project satisfied all of the applicable standards. The Board concludes the proposed substantial improvement has been designed in accordance with the development standards as set forth in Section 11.8(2)(B).

7. **Section 3.7(2)(A) – Standards of review (Conditional Use Applications):** The Development Review Board must determine that the use will conform to the standards outlined in Section 3.7(2)(A) and will not result in an undue adverse effect on capacity of existing or planned community facilities and services, traffic on roads and highways in the vicinity, the character of the area affected, regulations and ordinances in effect, utilization of renewable energy sources, and the additional standards outlined in Section 3.7(2)(B).

The Applicant proposes a substantial improvement to an existing lodging facility. Majority of the project entails cosmetic improvements to the interior of the structure. Exterior alterations include replacing the roof where needed, installation of solar on backside of roof facing the river (exempt from municipal review), exterior painting, and installation of windows where the current through wall A/C units are located. The use of the building is not changing, nor are any changes proposed to the previously approved site plan.

Upon review of the application the Board found that the following standards do not apply:

- Section 3.7(2)(A)(1) –Capacity of existing or planned community facilities and services;
- Section 3.7(2)(A)(2) – Traffic on roads and highways in the vicinity;
- Section 3.7(2)(A)(3) – The character of the area affected;
- Section 3.7(2)(A)(4) – Regulations and ordinances in effect;

- Section 3.7(2)(A)(5) – Utilization of renewable energy sources;
- 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;
- Section 3.7(2)(B)(2) - Project will not result in undue water, noise or air pollution;
- Section 3.7(2)(B)(3) – Access Management;
- Section 3.7(2)(B)(4) – Shared Access;
- Section 3.7(2)(B)(5) – Circulation and Parking;
- Section 3.7(2)(B)(6) – Pedestrian Circulation and Access;
- Section 3.7(2)(B)(7) – Landscaping and Screening;
- Section 3.7(2)(B)(8) – Stormwater Management;
- Section 3.7(2)(C)(1) – Additional MRV, MRC, VC, VR, MC and LVC Standards.

**Conclusion:** The Board concludes the proposed substantial improvement will not result in an undue adverse effect on the above conditional use provisions.

**DECISION**

On a motion by C.Walton, seconded by F.Aumand III, the Stowe Development Review Board hereby approves Project 6436 (6-0) pursuant to the provisions of the Town of Stowe Zoning Regulations, as adopted October 8, 2018, with the following conditions of approval:


1. The project shall be completed and maintained according to the project 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 such change being made, for a determination whether 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 it had been included in the plans as approved.
2. Any future development, as defined under the regulations, within the Flood Hazard District, Floodway, and Fluvial Erosion Hazard Overlay District shall require review under the regulation in effect at the time of application.
3. 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.
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 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, A. Volansky, C.Walton, L.Wasserman, F.Aumand III

Voting to deny: None

The motion passes 6-0.

Dated at Stowe, Vermont this the 10 day of February 2021

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.