

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



PROJECT: 6439

PROPERTY: 942 Mountain Road; #07-020.000

PROPERTY OWNER:

Howard & Howard Inc.
968 Mountain Road
Stowe, VT 05672

APPLICANT:

Chris & Elizabeth Oleks
Ruille Buille LLC
PO Box 879
Stowe, VT 05672

APPLICATION:

The Applicant, Chris & Elizabeth Oleks/Ruille Buille LLC, on behalf of property owner Howard & Howard Inc., requests conditional use review for a change of use from automobile repair/retail to thirty (30) seat restaurant and tavern/bar. Proposed hours of operation are seven (7) days a week from 12:00 pm- 12:00 am. Except for upgrades to existing outdoor lighting, no exterior alterations to the building are proposed. The Applicant proposes to utilize existing vents and heating/cooling systems. Proposed alterations to the site plan include the addition of four (4) parking area light fixtures, installation of two (2) dumpsters, and formalizing the rear parking area which has most recently been used to store unused motor vehicles. The Applicant proposes to remove all of the unused vehicles stored in the rear of the property and formalize the rear parking area to accommodate sixty-three (63) parking spaces.

The subject parcel [#07-020.000] is located at 942 Mountain Road, primarily within the Highway Tourist (HT) zoning district with rear portions within the Flood Hazard Overlay District (FHOD) and the Fluvial Erosion Hazard Overlay District. No development is proposed within the FHOD or the Fluvial Erosion Hazard Overlay District. The property is served by the Mountain Road (VT-108), a state-maintained highway. The parcel contains approximately ±6.6 acres and includes a building containing a convenience retail store with three (3) dwelling units, a separate building previously used for auto service and retail sales, two (2) rear storage buildings, and related improvements. The site plan for this previously developed parcel was approved by the Town of Stowe Planning Commission in 1996/97 when the adjacent mini mart/apartment building was first proposed and approved. 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 Chris & Elizabeth Oleks 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

13, 2021 and posted at the Library, Town Office, and Police Station. The Applicant provided 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, P.Roberts, C.Walton, A.Volansky, L.Wasserman.

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

- Applicant, Chris & Elizabeth Oleks, Ruille Buille LLC, PO Box 879, Stowe, VT 05672

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

- Town of Stowe Development Application (2 pages); dated 12/16/2020;
- Project narrative, no date;
- Hand-drawn parking plan, no date;
- Hand-drawn floor plan, no date;
- Photographs showing the existing conditions (4 pages), no date ;
- Previously approved site plan [942 Mountain Road- Charles Grenier, last revised 7/9/96; (staff)
- Comments from Dave Kresock (Stowe Electric Department), dated 1/15/2021;
- Comments from Harry Shepard (DPW), dated 1/6/2021.

During the February 2nd hearing, the Board requested additional information related to exterior building modifications, pedestrian and vehicular circulation, landscaping and screening, and outdoor lighting and as such continued the hearing to the time and date certain of February 16th.

In advance of the February 16th continued hearing, the Applicant provided the following additional information:

- Updated project narrative;
- Additional information regarding hood venting, trash receptacles, exterior lighting, circulation, parking, noise, etc.

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 a change of use 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 ±6.6 acres with direct access to the Mountain Road. The parcel is primarily located within the Highway Tourist (HT) zoning district with rear portions within the Flood Hazard Overlay District (FHOD) and the Fluvial Erosion Hazard Overlay 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'). The Applicant seeks approval for a change of use. No changes to the building footprint are proposed.
4. **Maximum Building Coverage.** The maximum building coverage in HT is 10%. No change to building coverage is proposed.
5. **Use.** The parcel includes one (1) building containing a convenience retail store with three (3) dwelling units, a separate building formerly used for auto service and retail sales, two (2) rear storage buildings, and related improvements. The Applicant proposes a change of use from automotive repair/retail shop to restaurant/bar (tavern).

As defined under the regulations 'Restaurant' means "A commercial establishment where food and drink are prepared, served and consumed by the general public, primarily within the principal building."

As defined under the regulations 'Bar (Tavern)' means "Premises used primarily for the sale or dispensing of liquor by the drink for on-site consumption and where food may be available for consumption on the premises, or portion thereof, as accessory to the principal use."

Both Restaurants and Bars (Tavern) are allowed as conditional uses in the HT zoning district.

During the February 16th meeting, the Board considered whether the proposed use is better defined as a nightclub.

Section 16.96 defines 'Nightclub' as "Premises, or portion thereof, used primarily for the sale or dispensing of liquor by the drink for on-site consumption and where food may be available for consumption on the premises as accessory to the principal use, and which offers facilities for live entertainment and/or dancing."

The Board agreed that the proposed use of the building is best classified as a nightclub/restaurant/bar(tavern).

6. **Height.** The maximum building height in HT is 28' feet. No changes in height are proposed under this application.
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:** 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.

David Kresock of Stowe Electrical Department provided the following comments:

Project #: 6439 – Owner will need to provide electrical design and load data for all new and existing/remaining electrical equipment for Stowe Electric to confirm transformer and service wire sizes and if any upgrades are required.

Harry Shepard, DPW Director, provided the following comments:

Re: Project #6439, I recommend that a grease trap to the sanitary discharge from the new kitchen be required.

No other Municipal Department review forms returned indicated that the proposed change of use would have any undue adverse impact on existing or planned community facilities and services.

Conclusion: Based on the above findings, the Board concludes the proposed change of use will not result in an undue adverse effect on the Town's existing or planned facilities or services. As a condition of approval, the Applicant will be required to install a grease trap in accordance with DPW standards, obtain any necessary additional municipal water and sewer allocation for the proposed change of use, and work with Stowe Electric Department to determine utility needs.

9. **Section 3.7(2)(A)(2) – Traffic on roads and highways in the vicinity:** The Applicant requests approval for a change of use from automotive repair and retail shop to restaurant/bar (tavern) with thirty (30) seats. Proposed days and hours of operation are seven (7) days a week from 12:00 pm-12:00 am. In the nearby vicinity are other similar commercial uses including an adjacent lodging facility with restaurant facilities and other retail/carry-out establishments within proximity. The requested change of use is not expected to result in any significant increases in traffic on roads and highways in the vicinity.

Conclusion: The Board concludes the proposed change of use will not have an undue adverse impact traffic on the 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 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."* The Applicant requests a change of use from automotive repair and retail shop with a garage to a thirty (30) seat restaurant/bar (tavern). Adjacent to the subject parcel are other nearby commercial and lodging uses. The requested change of use is not expected to impact the character of the area affected.

Conclusion: The Board concludes the requested change of use will not have undue adverse impact to the character of the area affected, rather the proposed use may be more compatible with other nearby uses and the purposes of the HT district.

11. **Section 3.7(2)(A)(4) – Regulations and ordinances in effect:** The application was reviewed under the Conditional Use standards. Applicable bylaws include the Stowe Zoning Regulations, as adopted October 9, 2018. The existing building is connected to municipal sewer and water services under the Town’s Sanitary Sewer Ordinance. No other known or identified municipal bylaws or ordinances apply to this project.

Conclusion: The Board concludes the proposal is in conformance with municipal regulations and ordinances in effect. The Applicant will be required to obtain all necessary municipal water and sewer allocations, approvals, and connections.

12. **Section 3.7(2)(A)(5) – Utilization of renewable energy sources:** The Applicant requests approval for a change of use. No change is proposed with regard to the use of, or access to, the utilization of renewable energy resources.

Conclusion: The Board concludes the requested change of use 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.** The project is within the HT district. The Applicant requests approval for a change of use. The parcel is previously developed and contains existing commercial and mixed-use buildings. The Applicant proposes to utilize the existing parking area to the rear of the building and remove the unused vehicles. The site contains larger trees along the outer perimeter and a landscaped island adjacent to Mountain Road. No changes to the existing mature landscaping are proposed.

Conclusion: The Board concludes the requested change of use 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 requests approval for a change of use to a thirty (30) seat restaurant/bar (tavern). The former use was an auto garage and retail sales. During the hearing, the Applicant testified that it is their intention to have music and entertainment and during the summer months and warmer weather, the existing garage doors are intended to be open. The project narrative states that the Applicant is not proposing any exterior live, amplified music events and that any live, amplified music events will occur indoors. During the hearing, the Applicant testified that no amplified music will be audible beyond the property line at 10:00 pm which is consistent with other noise related conditions of approval at nearby establishments. The change of use will eliminate the noises generated by the automobile service garage. The project narrative states the Applicant will be working with consultants to deploy interior sound deadening installations.

Conclusion: The Board concludes the requested change of use will not result in undue water or noise pollution. As a condition of approval, all music and/or live entertainment must be conducted indoors and must not be audible at the property line beyond 10:00 pm.

15. **Section 3.7(2)(B)(3) – Access Management:** The project is currently served two (2) curb cuts off Mountain Road. No changes to the location or number of accesses are proposed.

Conclusion: The Board concludes the requested change of use will utilize the existing accesses. No changes to the previously approved accesses are proposed.

16. **Section 3.7(2)(B)(4) – Shared Access:** The project is currently served two (2) curb cuts off Mountain Road which provide access to multiple uses on the parcel. No changes to the previously approved shared access are proposed.

Conclusion: The Board concludes the requested change of use will utilize the existing shared accesses. No changes to the previously approved accesses are proposed.

17. **Section 3.7(2)(B)(5) – Circulation and Parking:** The regulations require that parking be provided per the requirements of Section 15 and be designed to minimize the off-site visibility of parking areas through the location, landscaping and screening of such areas. The Applicant proposes a change of use from automotive repair and retail shop with a garage to a thirty (30) seat restaurant/bar (tavern). The site plan for the parcel was approved by the Planning Commission in 1996/97 when the mini mart/apartment building was originally proposed. During that review, the Stowe Auto building contained 1102 sf of retail requiring six (6) parking spaces [5.51] and ten (10) employees for a total of sixteen (16) parking spaces. Unspecified parking for Stowe Auto employee behind the building was shown as 10+ parking spaces.

Section 15 requires the following parking for restaurants and nightclubs- one (1) space for every three (3) seats plus one (1) space for each person employed at peak times. The Applicant proposes a thirty (30) seat restaurant requiring ten (10) parking spaces. The project narrative indicates that regular on-site employment is expected to consist of two (2) bartenders, two (2) kitchen staff, a host, and a table busser, totaling six (6) employees. A total of sixteen (16) parking spaces are required under the regulations for staff and restaurant seats. The Applicant proposes to formalize the rear parking area which has historically been used to store unused motor vehicles. The project narrative states the existing rear parking area can accommodate sixty-three (63) vehicles, the Applicant confirmed this information during the hearing. The regulations also require one (1) parking space for every three (3) participants for nightclubs.

Conclusion: Similar to the Board's recent decision for the nearby Stowe Cider events space, given the parking area accommodates sixty-three (63) parking spaces, the nightclub component of the proposed use must be limited to no more than 141 persons in order to meet the parking regulations. In addition to the 141 persons allotted for the nightclub, the restaurant is approved to accommodate thirty (30) seats and six (6) employees. Based on the above findings, the Board concludes the proposed formalized rear parking area and circulation and parking improvements, as conditioned, represents adequate access and circulation for the proposed use(s).

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. No changes to pedestrian improvements are proposed under this application. Sidewalks exists along Mountain Road at this location. The project narrative indicates that the main building entrance will be located in the rear of the building connecting to the rear parking area. The existing front entrance fronting Mountain Road will provide a secondary means of entering/exiting for patrons using public transportation, ride services, sidewalks, and cyclists.

Conclusion: The Board concludes the existing pedestrian circulation and access improvements are appropriate for the intended use and site location.

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 previously approved landscaping plan are proposed. The previous approved plan included a landscaped island and trees along the property adjacent with Mountain Road. An existing wooden fence is also located along the shared property line with the Town & Country Motel. The existing landscaping is mature and provides screening of the adjacent parcels. The project narrative indicates that two (2) additional dumpsters will be located to the northwest side of the building next to two (2) existing dumpsters used by Alpine Mart which are screened by the existing building. During the hearing, it was requested that the dumpsters be designed to include a bear proof enclosure or fencing, the Applicant agreed.

Conclusion: The Board concludes the existing landscaping and screening improvements are appropriate for the intended use and site location. As a condition of approval, the Applicant is required to secure the proposed dumpsters with a bear proof enclosure or fencing.

20. **Section 3.7(2)(B)(8) – Stormwater Management:** Section 3.12(2) provides stormwater and erosion control standards for construction-related activities associated with any new construction. No changes to existing drainage patterns or increases in impervious surfaces are proposed.

Conclusion: The Board concludes no increases in impervious surfaces or drainage patterns are proposed under this application.

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.

The parcel contains an existing landscaped island proposed to remain.

- 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.

The Applicant proposes to formalize the rear parking area previously used to store unused vehicles. The rear parking area is located to the rear of the building and is almost entirely screened by the existing building and mature landscaping.

- c. Driveway Access: Driveways shall be the minimum width necessary to provide safe vehicular access and promote pedestrian circulation.

The existing driveway access is approximately 25' in width.

- 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.

The Applicant proposes a change of use. Only minor exterior building alterations and minor changes to the previously approved site plan are proposed.

Conclusion: The Board concludes the parcel is previously developed and only minor changes to the previously approved site plan are proposed under this application.

Section 4: Specific Use Standards

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

23. **Section 4.8 Outdoor Lighting.** The Applicant proposes to remove and replace two (2) existing flood light style light fixtures with a downward facing light fixture. Four (4) parking area light fixtures are proposed in the rear parking area to be mounted on a fourteen (14') foot post. Manufacturer information was provided.

Conclusion: The Board concludes the proposed lighting has been designed in accordance with Section 4.8.

DECISION

On a motion by C.Walton, seconded by A.Volansky, the Stowe Development Review Board hereby approves Project 6439 (7-0) 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. All prior conditions of approval remain in full force and effect.
3. All music and/or live entertainment must be conducted indoors and must not be audible at the property line beyond 10:00 pm.
4. The nightclub use is approved to accommodate no more than 141 persons; the restaurant/bar (tavern) use is approved to accommodate no more than thirty (30) seats and six (6) employees. Any changes to these configurations shall require additional review under the regulations in effect at the time of application.
5. The proposed dumpsters shall be secured with a bear proof enclosure or fencing.
6. All outdoor lighting fixtures shall be shielded and aimed so that illumination is directed only to the designated area and does not cast direct illumination or cause glare beyond the boundary lines of a property.
7. The Applicant must provide electrical design and load data for all new and existing/remaining electrical equipment to the Stowe Electric Department to confirm transformer and service wire sizes and if any upgrades are required.
8. The Applicant must install a grease trap to the sanitary discharge from the new kitchen in accordance with DPW standards.
9. The Applicant must obtain any necessary additional municipal water and sewer allocation for the proposed change of use. Final plans, details, and technical specifications for proposed Water and Sewer Connections shall be approved by the Department of Public Works prior to the issuance of Water/Sewer Connection permits.
10. The driveway and parking areas shall be property maintained, including snow removal in winter, to provide emergency vehicle access at all times. No parking is allowed in the front or side of the building. No-parking signage must be clearly displayed in these areas.
11. The Applicant must obtain a zoning permit prior to the installation of any signage.
12. 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.
13. 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: Drew Clymer, Francis 'Paco' Aumand III, Peter Roberts, Andrew Volansky, Leigh Wasserman, Tom Hand, Chris Walton.

Voting to deny: None

Dated at Stowe, Vermont this the 9th day of March 2021

By: 
Drew Clymer, Chair

NOTICES:

1. The foregoing represents the decision of the Development Review Board and is NOT a zoning permit. A zoning permit will not be issued by the Administrative Office until all relevant conditions imposed as part of the approval have been met.
2. 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.
3. 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.
4. 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.
5. 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.