



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

Your DRB project listed below was recently denied by the Development Review Board. Attached is a copy of the DRB decision for your records.

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

APPLICATION INFORMATION

Project Number 6492
Application Date 3/9/2021
Physical Location 454 MOUNTAIN RD #01
Map ID 7A-106.000 **Tax ID** 57001
Project Description APPEAL OF ZONING ADMINISTRATOR'S ISSUANCE OF PERMIT #6476
Owner JOHN LUPIEN
Applicant SARGENT LAW OFFICE
Applicant Address PO BOX 696
MORRISVILLE VT 05661

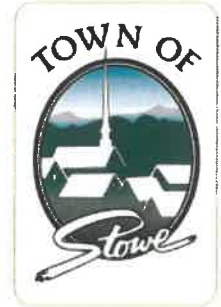
ACTIONS

Action Taken	Date	End of Appeal Period
DRB DECISION	5/10/2021	6/9/2021

Sarah McShane

Zoning Office

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



PROJECT: 6492

SUBJECT PROPERTY: 454 Mountain Road; #7A-106.000

APPELLANT:
Julia Compagna, Esq. on behalf of
Le Chateaubriand Enterprises
454 Mountain Road
Stowe, VT 05672

APPELLEE:
Zoning Administrator, Sarah McShane &
John Lupien
454 Mountain Road Unit 1
Stowe, VT 05672

INTRODUCTION:

This proceeding concerns a Notice of Appeal request filed by Appellant, Julia Compagna, Esq. on behalf of Le Chateaubriand Enterprises (herein referred to as the "Appellant"). The Appellant requests the Board overturn the Zoning Administrator's issuance of a zoning permit for Project 6476 located on the parcel at 454 Mountain Road [7A-106.000]. The approved zoning permit allows for the installation of an outdoor metal storage shed approximately 48 square feet in area and 6' 5" feet in height. The Appellant alleges the zoning permit should not have been granted for two reasons:

1. The development application incorrectly lists John Lupien as the property owner;
2. The development application was not signed by the landowner, Le Chateaubriand Enterprises, nor an authorized agent for owner as noted on the Town of Stowe development application.

The subject parcel consists of ±1.42 acres within the Village Commercial 30 (VC30) zoning district. The application requires review under Section 2.11[1] [Appeals of Zoning Administrator Decisions to the DRB] of the Town of Stowe Zoning Regulations (as adopted October 9, 2018). The Development Review Board's relevant findings are attached.

REVIEW PROCESS:

(Application materials, hearing notices, meeting minutes on file at the Stowe Town Office.)

A Notice of Appeal was filed by Appellant Le Chateaubriand Enterprises on March 5, 2021. A public hearing of the DRB was scheduled for April 20, 2021 and warned 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 April 1, 2021 and posted at the Library, Town Office, and Police Station.

The public hearing to consider the application convened on April 20, 2021 using remote meeting service Zoom, with a quorum of the DRB present. No ex parte communications or conflicts of interests were reported. DRB members in attendance and participating in the review included: Drew Clymer, Francis Aumand, Tom Hand, Peter Roberts, Andrew Volansky, Michael Diender, and Leigh Wasserman.

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

- Julia Compagna, Esq. on behalf of Le Chateaubriand Enterprises, 454 Mountain Road, Stowe, VT 05672
- Vincent Buonanno, PO Box 1287, Stowe, VT
- Sarah McShane, Town of Stowe Zoning Administrator

The following materials were submitted and entered into the hearing record:

- Notice of Appeal (2 pages) from Julia J. Compagna on behalf of Le Chateaubriand Enterprises, dated 3/5/2021;
- Memo 'Notice of Appeal to Stowe Development Review Board of Zoning Permit #Z-6476 Dated February 24, 2021', dated 3/5/2021;
- Copy of Zoning Permit #6476;
- Email from Town Attorney Joseph McLean, dated 3/30/2021;
- Written comments from the Zoning Administrator.

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 and Conclusions of Law:*

NOTICE OF APPEAL: The Appellant's notice of appeal was reviewed by the Development Review Board (DRB) under Section 2.11 [Appeals] of the Town of Stowe Zoning Regulations (as adopted October 9, 2018) and 24 VSA §4465.

1. In accordance with 24 VSA § 4465 an interested person may appeal any decision or act taken by the Administrative Officer in any municipality by filing a notice of appeal with the secretary of the Development Review Board of that municipality. The notice of appeal must be filed within 15 days of the date of that decision or act, and a copy of the notice of appeal shall be filed with the Administrative Officer. The Appellant submitted the notice of appeal on March 5, 2021, within the 15-day statutory appeal period.
2. In accordance with 24 VSA § 4465(b)(3) an interested party means (as it relates to this proceeding) *"A person owning or occupying property in the immediate neighborhood of a property that is the subject of any decision or act taken under this chapter, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality."* The Appellant claims interested party status as the property owner.
3. In the exercise of its functions, the Development Review Board shall have the following powers, in addition to those specifically provided for elsewhere in this chapter:
 - (1) *To hear and decide appeals taken under this section, including, without limitation, where it is alleged that an error has been committed in any order, requirement, decision, or determination made by an administrative officer under this chapter in connection with the administration or enforcement of a bylaw.*

The Appellant alleges the Zoning Administrator made an error in approving the application and requests the Board overturn the zoning permit for Project 6476.

4. In accordance with 24 VSA § 4468, any person or body empowered by 24 VSA § 4465 to take an appeal with respect to that property at issue may appear and be heard in person or be represented by an agent or attorney at the hearing. During the hearing, the Appellant Le Chateaubriand Enterprises was represented by Julia J. Compagna of Sargent Law Office PLLC. Zoning

Administrator, Sarah McShane, was present at the hearing. She provided written comments from the Town Attorney. Condo owner John Lupien and Applicant Ryann Schofield did not attend the public hearing.

5. On February 12, 2021, Ryann Schofield, applied for a zoning permit (Project 6476) for after-the-fact approval to install a small accessory storage shed at 454 Mountain Road.
6. The subject parcel contains lands within the Village Commercial 30 (VC30) District, as shown on the official Town of Stowe Zoning Map.
7. The prefabricated outdoor metal storage shed is approximately 48 square feet in area and 6' 5" feet in height.
8. The form titled 'Development Application' is the standard form used by the Town of Stowe for individuals to apply for a zoning permit. The form requests name and contact information for the property owner, contact name, and relationship to the owner. The signature line includes options to sign as the property owner or agent for owner.
9. On the submitted Town of Stowe development application, John Lupien, is listed as the property owner. Ryann Schofield of World-Famous Monkey House Customs is listed as the Applicant/Contact and a lessee.
10. The development application is dated February 4, 2021 and appears to be signed by Ryann Schofield who is marked as an Agent for Owner.
11. The development application includes the following signature clause: *"For All Approvals: The below signed hereby agrees that the proposed work shall be done in accordance with the application, plan, specifications, and other associated documentation and that the work shall conform to all applicable town ordinances and regulations. Signing as an "Agent for Owner" indicates that the person signing has the permission of the owner to act on the owner's behalf. Additional permits may be needed from the State of Vermont and/or the Town of Stowe for development."*
12. The Town of Stowe Zoning Regulations (as adopted October 9, 2018) does not define the term property owner, agent for owner, or otherwise require that an application for a zoning permit be signed by the property owner.
13. Upon review of the application, the Zoning Administrator, Sarah McShane, approved the application as allowed under Section 2.7(2) (the construction of accessory buildings up to four hundred (400) sq. ft. for the storage of maintenance equipment) and issued zoning permit 6476 on February 24, 2021. Under state statute, without appeal, zoning permits become effective fifteen (15) days following the date of issuance. The zoning permit for project 6476 was set to become effective on March 11, 2021.
14. On March 5th the Appellant, Le Chateaubriand Enterprises, submitted a notice of appeal.
15. The Appellant, Le Chateaubriand Enterprises, alleges that the application was not signed by the landowner, Le Chateaubriand Enterprises, nor by an authorized agent for owner, which they argued renders the permit invalid.

16. The Appellant, Le Chateaubriand Enterprises, requests that the Board deny the development application on appeal, revoke permit 6476, and require that any resubmitted development application for this project include the signature of Le Chateaubriand Enterprises.
17. Town Attorney Joseph McLean provided the following information to the Zoning Administrator, Sarah McShane, dated 3/30/2021:

Dear Sarah: Following up on our conversation last week, it is our opinion that neither the DRB or the Environmental Division has authority to resolve issues involving private property rights, beyond confirming that the applicant has produced some evidence of title or an interest in the property. Indeed, the Environmental Division has stated on numerous occasions that it “does not have jurisdiction to determine the extent of ... [a party’s] property rights.” Instead, the Vermont Superior Court, Civil Division, in the County where the property lies is the forum vested with exclusive jurisdiction to determine property rights. In a zoning context, the DRB and Court have the authority and duty to determine whether an applicant has made a sufficient threshold showing of a lawful interest and right to develop the subject property as proposed, and that is all. This standard allows the DRB and Court to decide whether the proposed use or development is in accord with the applicable municipal regulations.

In In re Leiter Subdivision Permit, No. 85-4-07 Vtec, slip op. at 4–5 (Vt. Env’tl. Ct. Jan. 2, 2008) (Durkin, J.), a case where a dispute over boundaries impacted a proposed subdivision, the Environmental Division stated that:

ownership issues are sometimes intertwined with issues within this Court’s jurisdiction. In municipal zoning application appeals, this Court has repeatedly stated that an applicant has the initial burden to produce some evidence of title or an interest in the property to be developed. Clermont Terrace Site Plan and Zoning Permit Approvals (Appeal of Curtis), Docket Nos. 46-2-05 Vtec and 72-4-05 Vtec, slip op. at 6 (Vt. Env’tl. Ct. Mar. 22, 2006); Appeal of Monty, Docket Nos. 7-1-04 Vtec and 47-3-04 Vtec (Vt. Env’tl. Ct. Jan. 24, 2006); Appeal of Van Nostrand, Docket Nos. 209-11-04 Vtec and 101-5-05 Vtec (Vt. Env’tl. Ct. Jan. 13, 2006); Appeal of Cole, Docket Nos. 174-10-01 Vtec and 47-3-04 Vtec (Vt. Env’tl. Ct. May 2, 2003); and Appeal of Bowman, Docket No. 70-5-96 Vtec (Vt. Env’tl. Ct. June. 21, 2005). There is a delicate balance between the evaluation of this initial threshold burden and the Court’s jurisdictional limitations. Once some evidence has been put forth on an applicant’s interests and right to develop the property, “further claims to title, or claims attacking the same must go to the appropriate Superior Court.” See Monty, Docket Nos. 7-1-04 Vtec and 47-3-04 Vtec slip op. at 6-7 (Vt. Env’tl. Ct. Jan. 24, 2006) (quoting Van Nostrand, Docket Nos. 209-11-04 Vtec and 101-5-05 Vtec slip op. at 9 (Vt. Env’tl. Ct. Jan. 13, 2006)). The threshold burden an applicant must meet is relatively low; we know of no requirement in the applicable state statutes or municipal regulations that an applicant submit affidavits to meet this burden, as Appellant suggests.

<https://www.vermontjudiciary.org/sites/default/files/documents/Leiter%20Subdivision%2085-4-07%20Vtec.pdf>

Given the foregoing, the DRB should avoid efforts by applicants or interested parties to draw it into addressing issues related to property rights. Such issues must be brought before the Lamoille Superior Court, Civil Division, for resolution, after which the DRB can take up any relevant zoning or subdivision matters.

18. During the hearing, the Appellant Le Chateaubriand Enterprises argued that the Applicant, Ryann Schofield, applied for the zoning permit without the knowledge or permission of the property owner and they are a tenant not an authorized agent.
19. Vincent Buonanno, member of the condominium association, testified that each condo unit from "studs in" is in private separate ownership and from "studs out" is owned in common by the association. He testified that John Lupien owns from "studs in" and from "studs out" is owned by the association. Development that impacts from "studs out" requires review by the condominium association.
20. Zoning Administrator, Sarah McShane, testified that the town's adopted Zoning Regulations do not define the term property owner, nor do the regulations require that an application be signed by the property owner. She testified that she felt it was not her responsibility to determine property ownership or determine who has the right to sign a document as an agent for owner.

Conclusion- Based on the above findings, the Board concludes that the Zoning Administrator did not act in error when accepting and approving the application for project 6476. The town's zoning regulations do not define the term property owner, agent for owner, nor do the regulations require that an application for a zoning permit be signed by the property owner. The Applicant, Ryann Schofield, submitted a signed application identifying herself as the lessee and correctly listed the owner of the condo unit which they occupy. The Board finds the Applicant provided a sufficient threshold showing a lawful interest in the property and that it is not the Zoning Administrator's, nor the Development Review Board's, duty, or responsibility to determine property ownership, property rights, or who is (or is not) a lawful agent for owner; such issues must be brought before the Lamoille Superior Court, Civil Division, for resolution.


DECISION

Based upon the foregoing findings of fact and conclusions of law, the Development Review Board hereby upholds the Zoning Administrator decision to issue zoning permit for Project #6476 and denies Le Chateaubriand Enterprises request for appeal.

Voting in Favor to Uphold: Drew Clymer, Francis Aumand, ~~Tom Hand~~, Michael Diender, and Leigh Wasserman.

Opposed: Peter Roberts, Andrew Volansky, *Tom Hand*

Dated at Stowe, Vermont this the 10 day of ~~April~~ *May* 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.