



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 6499
Application Date 3/17/2021
Physical Location 4969 MOUNTAIN RD
Map ID 11-089.000 **Tax ID** 26011
Project Description INSTALL 10' X 6' OVERHEAD GARAGE DOOR TO ALLOW ACCESS TO OUTSIDE DINING
Owner CHARLES SHAFFER
Applicant CHARLES SHAFFER
Applicant Address 4969 MOUNTAIN RD
STOWE VT 05672

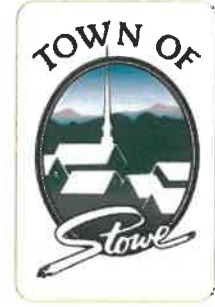
APPROVALS ON RECORD

Action Taken	Date	End of Appeal Period	Expiration Date
DRB DECISION	6/7/2021	7/7/2021	7/7/2023

Sarah McShane

Zoning Office

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



PROJECT: 6499

SUBJECT PROPERTY: 4969 Mountain Road #11-089.000

PROPERTY OWNER/APPLICANT:

Charles Shaffer
4969 Mountain Road
Stowe, VT 05672

APPLICATION:

The property owner and Applicant, Charles Shaffer (herein referred to as the "Applicant"), requests conditional use approval to install a 10 ft x 6 ft overhead garage door on the western building wall facing the western mountainside parking area. When open during warmer weather months, the proposed door/wall opening will allow for easier access to outside dining tables and provide for a five (5)-seat bar service. There are no proposed changes to the building footprint or increases in building height or roofline.

The building was constructed in 1958 prior to the adoption of zoning or subdivision regulations and currently contains the Matterhorn Restaurant. The application has been reviewed by the Development Review Board (DRB) under the conditional use 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 conditional use review was filed by Applicant Charles Shaffer on March 15, 2021. 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 May 4, 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 April 15, 2021.

The public hearing to consider the application convened on May 4, 2021 via virtual meeting hosted by Zoom, with a quorum of the DRB present. No ex parte communications or conflicts of interests were reported. Members who participated in the review included: D.Clymer, P.Roberts, 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 & Todd Krueger, 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 03/15/2021;
2. Project narrative, no date;
3. Manufacturer cut-sheet for proposed door, no date;
4. Hand-drawn plan showing location of seats/tables/etc., no date;
5. Photograph showing proposed location of door, dated 3/5/2021;

6. Google Earth Image from Mountain Road, no date;
7. Site Plan prepared by Grenier Engineering, dated 2/12/13;

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.*

Per Section 2.5(2)(f), changes in building facades on buildings containing a conditional use, require conditional use review by the Development Review Board (DRB) unless determined by the Zoning Administrator to be a minor alteration under Section 2.7(2). The Zoning Administrator referred the application to the Board given the proposals possible impacts on pedestrian circulation, parking, screening and landscaping, and the character of the area.

The Applicant's request for conditional use 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 4- Specific Use Standards
- Section 5- Zoning Districts
- Section 6- Uses, Dimensional Requirements and Density
- Section 15- Parking Regulations

Dimensional Requirements:

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). Portions of the parcel are also within the Flood Hazard Overlay District and Fluvial Erosion Hazard District.
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 install a 10 ft x 6 ft overhead garage door on the western building wall facing the western mountainside parking area. No changes to building footprint or setbacks are proposed.
4. **Maximum Building Coverage.** The maximum building coverage in the UMR district is 8%. No increases in building coverage 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:

5. The Board reviewed the application and found the following conditional use standards not to be applicable this application:

- 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)(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)(3) – Access Management
- Section 3.7(2)(B)(4) – Shared Access
- Section 3.7(2)(B)(8) – Stormwater Management
- Section 3.7(2)(C) – Additional Standards UMR District

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

- The Applicant proposes to install a 10 ft x 6 ft overhead garage door on the western building wall facing the western mountainside parking area.
- The façade alteration will not change the building footprint, massing, or roofline.
- The subject parcel is in the Upper Mountain Road (UMR) zoning district with direct access to Vermont Route 108.
- The purpose of the UMR district is *“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.”*
- Uses in the vicinity include a mix of commercial and residential uses.

Conclusion: Based upon the above findings, the Board concludes the proposal will not adversely affect the character of the area as defined under the Stowe Zoning Regulations (as adopted on October 9, 2018).

7. **Section 3.7(2)(B)(2) - Project will not result in undue water, noise or air pollution.**

- The Applicant proposes to install a 10 ft x 6 ft overhead garage door on the western building wall facing the western mountainside parking area. When open during warmer weather months, this door/wall opening will allow for easier access to outside dining tables and provide for a five (5)-seat bar service.
- When considering the undue impact of noise, the Board shall consider the existing noise levels in the area of the development, the impact on other (or off-site) properties, and the level of noise customarily generated from uses permitted within the zoning district.
- During the hearing, the Applicant testified that music within the building is played on a house system and the proposed door will be closed around 9:30 pm.

- The Applicant also testified that a few speakers are located outside, but they do not play music loud in order to allow better river ambience.

Conclusion: Based upon the above findings, the Board concludes the project, if completed as conditioned, will not result in undue water, noise, or air pollution. As a condition of approval, the proposed door will be required to be closed no later than 10:00 pm.

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

- The Applicant proposes to install a 10 ft x 6 ft overhead garage door on the western building wall facing the western mountainside parking area.
- When open during warmer weather months, the proposed door/wall opening will allow for easier access to outside dining tables and provide for a five (5)-seat bar service.
- The regulations require that parking be provided per the requirements of Section 14 and be designed to minimize the visibility of parking areas from off-site through the location, landscaping and screening of such areas.
- The building was constructed in 1958 prior to the adoption of zoning or subdivision regulations and contains the Matterhorn Restaurant. According to municipal water/sewer allocation records, the restaurant is allocated for 116 seats.
- The site is previously developed and contains existing parking areas on both the east and western sides of the building.
- In the aerial image the proposed door and associated alterations appear to possibly impact the use of one (1) or more existing parking spaces.
- Table 15.2 requires the following minimum parking spaces. According to the regulations, a 116-seat restaurant requires 38.6 parking spaces plus additional spaces for staff.

COMMERCIAL	
Nightclubs, Restaurants, Theaters	1 space for every 3 seats or participants plus 1 space for each person employed at peak times ¹

- According to zoning records on file in the Zoning Office, the parcel contains sixty-three (63) parking spaces which allows for 189 seats or participants (minus staff parking needs).

Conclusion: Based upon the above findings, the Board concludes the proposed overhead door will not impact existing circulation and parking improvements.

9. 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.
- The Applicant seeks approval to install a 10 ft x 6 ft overhead garage door on the western building wall facing the western mountainside parking area.

- The application materials state, “*new bar allows for quicker service to tables*” and “*easier access to our outside dining tables.*”
- No sidewalks exist along this portion of Mountain Road.
- The site is previously developed and contains parking on both sides of the building. Individuals visiting the restaurant generally park on-site and walk from the parking areas to the building entrance.
- The application materials indicate “*we will continue to encourage our guests to check in outside rather than inside.*” The proposed overhead door area will also serve as a host area.

Conclusion: Based upon the above findings, the Board concludes the proposed site layout, including pedestrian circulation and access, represents safe and adequate pedestrian access and circulation for the intended use.

10. 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.
- Based on review of the aerial image, an overgrown bush will need to be removed in order to install the proposed overhead door. No other landscaping or screening changes are proposed.

Conclusion: Based upon the above findings, the Board concludes, with the exception of removal of one existing bush, no changes to existing landscaping are proposed under this application.

11. Section 15 Parking Regulations. – See discussion above.

12. Flood Hazard District/FEH District. Lower portions of the building are located within the Flood Hazard Overlay District and Fluvial Erosion Hazard District. The proposed door will not impact these flood areas and is estimated to cost approximately \$3,000, which does not meet the definition of substantial improvement. Cumulative substantial improvement means “*any reconstruction, rehabilitation, addition, or other improvement of a structure, during any five (5) year period, the cumulative cost of which equals or exceeds fifty (50%) percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures that have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include either: (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specification which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.*” In accordance with Section 7.5(1), on March 17th the Zoning Administrator submitted the application to the State National Floodplain Insurance Program Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section in accordance with 24 V.S.A. §4424. A permit may be issued only following receipt of comments from the Agency or the expiration of thirty (30) days from the date the application was mailed to the Agency, whichever is sooner. No comments from the Rivers Program were received.

DECISION

On a motion by P.Roberts, seconded by L.Wasserman, the Development Review Board hereby approves Project 6499 based upon the foregoing Findings of Fact and concludes the proposal as presented in application dated 3/9/2021 and supporting materials meets the conditional use standards set forth in the Stowe Zoning Regulations, as adopted on October 9, 2018, subject to the following conditions of approval:

1. The project shall be completed and maintained 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. All prior conditions of approval, unless amended herein, remain in full force and effect.
3. The proposed door shall remain closed after 10:00 pm and remain closed during all live music events.
4. 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.
5. 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: D.Clymer, P.Roberts, L.Wasserman, T.Hand

Voting to deny: None

The motion PASSES, 4-0

Dated at Stowe, Vermont this the 7 day of June 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.