



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 6501
Application Date 3/15/2021
Physical Location 492 MOUNTAIN RD
Map ID 7A-102.000 **Tax ID** 02102
Project Description CONSTRUCT A 18' X 50' DECK ADDITION ON REAR OF BUILDING
Owner TUSK LLC
Applicant THE BENCH (SPLIT VENTURES LLC) MARK FRIER
Applicant Address PO BOX 667
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: 6501

PROPERTY: 492 Mountain Road; #7A-102.000

PROPERTY OWNER:

TUSK LLC
PO Box 667
Stowe, VT 05672

APPLICANT:

Mark Frier- The Bench (Split Ventures LLC)
PO Box 667
Stowe, VT 05672

APPLICATION:

The Applicant, Mark Frier on behalf of The Bench (Split Ventures LLC) (herein referred to as the "Applicant"), requests conditional use approval to construct an 18' x 50' deck on the rear of the existing building. The subject parcel [#7A-102.000] is located at 492 Mountain Road and contains the existing building and related improvements. The approximately ±1 acre-parcel is located within the Village Commercial 30 (VC30) zoning district and is served by Mountain Road (VT-108), a state-maintained highway. 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 Mark Frier on March 13, 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 and posted at the Library, Town Office, and Police Station.

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, A.Volansky.

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

- Applicant, Mark Frier- The Bench (Split Ventures LLC), PO Box 667, Stowe, VT 05672
- Vincent Buonanno & Vincent Buonanno, PO Box 1287, Stowe, VT

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

- Town of Stowe Development Application (2 pages); dated 03/10/2021;
- Overview Scaled plans of the proposed deck (View B & View B), no date;
- Lighting & Privacy Wall photo/details, no date;
- Site plan- no title- 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- During its review of the application, the Board made the following Findings of Fact and 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

Dimensional Requirements:

1. **Zoning District.** The subject parcel contains ±1 acres with direct access to the Mountain Road. The parcel is located within the Village Commercial 30 (VC30) 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 VC30 are front (10'), side (20') and rear (20'). The Applicant seeks approval to construct an 18' x 50' deck on the rear of the existing building. The distance from the edge of the deck to the property line is shown on the provided site plan. The proposed deck meets the required district setbacks.
4. **Maximum Building Coverage.** The maximum building coverage in VC30 is 30%. Building Coverage is defined as "*That portion of a site, expressed as a percentage, occupied by all buildings or structures, (not including public utility structures), that are roofed or otherwise covered and that extend more than three (3') feet above the surface ground level. The building roof overhang up to 6 feet in length is not included as part of the building coverage area.*" The Applicant seeks approval to construct an 18' x 50' deck on the rear of the existing building. The proposed deck is open and does not contain a roof or cover, therefore does not contribute to maximum building coverage.
5. **Use.** The parcel contains an existing restaurant, The Bench. No changes of use are proposed under this application.
6. **Height.** The maximum building height in HT is 28' feet. Based on the submitted drawings, the proposed deck appears to be between 8-10 ft approximately.
7. **Density.** Does not apply to 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:

No SED Impact

- The Applicant is not proposing an increase in seating and therefore will not need additional municipal water and sewer allocation.
- 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: 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:**

- The Applicant requests approval to construct an 18' x 50' deck on the rear of the existing building. The proposed deck is not expected to generate traffic that would cause undue impacts on traffic on roads and highways in the vicinity.

Conclusion: The Board concludes the proposal will not 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 VC30 zoning district. The general purpose of the VC30 district is *"The purpose of Village Commercial Districts is to promote the sound economic development of Stowe, to carry out the objectives of the Municipal Plan, to maintain Stowe Village as the center of community activity and to encourage the best use of land in central sections for general business."* The specific purpose of the VC30 district is *"adjacent to the central core of the Village, to allow a more uncongested development pattern and, in appropriate areas, to allow for density bonuses to encourage compact settlement patterns."*
- The Applicant request approval to construct n 18' x 50' deck on the rear of the existing building.
- Adjacent to the subject parcel are other nearby commercial and lodging uses.
- The proposed deck is not expected to impact the character of the area affected.

Conclusion: 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:**

- The application was reviewed under the Conditional Use standards.
- Applicable bylaws include the Stowe Zoning Regulations, as adopted October 9, 2018.
- 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.

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

- The Applicant requests approval to construct an 18' x 50' deck on the rear of the existing building. The proposed deck is not expected to restrict the utilization of renewable energy resources.

Conclusion: 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.

- The project is located in the VC30 district. The Applicant requests approval to construct an 18' x 50' deck on the rear of the existing building.
- The parcel is previously developed and contains an existing restaurant and related improvements.

Conclusion: 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.

- The Applicant requests approval to construct an 18' x 50' deck on the rear of the existing building. The deck will allow restaurant guests to dine outdoors.
- The Applicant testified that acoustic music may be played on the deck if the space were rented out for a private event.

Conclusion: The Board concludes the proposal will not result in undue water, noise, or air pollution. As a condition of approval, only non-amplified music will be allowed on the deck and must not be played any later than 10:00 pm.

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

- The project is currently served by a curb cut off Mountain Road. No changes to the existing access are proposed.

Conclusion: The Board concludes no changes to the previously approved access are proposed.

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

- The parcel is served by a single curb cut solely for the uses on the parcel. This provision does not apply.

Conclusion: This provision does not apply.

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

- 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.
- The Applicant proposes to construct an 18' x 50' deck on the rear of the existing building. The deck is proposed to be raised above the ground in order to allow parking beneath.
- The Applicant testified that structural supports for the deck will not interfere with existing parking spaces below.
- The provided site plan shows approximately seventy (70) existing parking spaces.
- According to town allocation records, the restaurant contains 148 seats which requires 49.3 parking spaces, plus parking for staff.
- No additional seats are proposed. Therefore, no additional parking is required under the regulations.

Conclusion: The Board concludes the existing circulation and parking improvements represents adequate access and circulation for the intended use.

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.
- This portion of Mountain Road contains sidewalks.
- During the hearing, the Applicant described the location of building entrances and testified that with the exception of bar staff, all patrons would enter the building using the front entrance doorway.
- Adjacent property owners Vincent Buonanno & Vincent Buonanno testified during the meeting that on occasion restaurant patrons park in their adjacent Stowe Cinema parking area and cut through to the subject restaurant. The Applicant agreed to make sure there is not a pedestrian path between the properties that would encourage patrons parking in the adjacent parking area.

Conclusion: The Board concludes the existing pedestrian improvements represents adequate access and circulation for the intended use. As a condition of approval, the Applicant will be required to maintain a fence or other barrier to restrict pedestrians from cutting through to the parcel from adjacent parking areas.

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.
- The site is previously developed and contains mature trees along the side and rear property lines. No changes to existing landscaping are proposed under this application.
- The proposed deck contains a privacy wall to provide screening of the proposed outdoor dining area.

Conclusion: 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:

- Section 3.12(2) provides stormwater and erosion control standards for construction-related activities associated with any new construction.
- The Applicant proposes to construct deck above an existing impervious surface. No increases in impervious surfaces are proposed.

Conclusion: The Board concludes no additional impervious surfaces 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.

Additional MRV, MRC, *VC*, VR, MC and LVC Standards: Within the MRV, MRC, VC, VR, MC and LVC Districts, site plans shall re-enforce a compact development pattern defined by a pedestrian orientation, the functional and visual integration of neighboring properties, well defined streetscapes and a mix of uses. To help achieve these objectives, the following standards shall apply:

a. Driveways and Road Edge Treatment: The Board shall require curbing or other appropriate treatment along all road frontage(s) and to define driveway entrances. Driveways shall be the minimum width necessary to provide safe vehicular access and promote pedestrian circulation.

No changes proposed.

b. Front Yard Treatment: Required front yards shall be limited to landscaping and yard area, sidewalks and public spaces and shall not be used for parking or outdoor storage. 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 site is previously developed. The front yard area contains an existing grassy strip and an existing mature tree. No changes are proposed.

c. Parking: Parking shall be designed to re-enforce an internal street network by maximizing the use of parallel or diagonal parking on internal driveways and streets.

No changes to existing parking proposed.

d. Pedestrian Circulation and Sidewalks: Adequate provision for pedestrian circulation within the site, and for pedestrian access to adjacent properties, shall be required. In addition to internal pedestrian circulation, all site plans shall be designed in a manner, which allows a minimum five feet (5') wide sidewalk along all frontage roads.

Existing sidewalks run along this portion of Mountain Road.

e. Internal Road Network and Traffic Mitigation: Site plans shall be designed in a manner that facilitates the development of an interconnected network of village streets. In instances where a connector ("side") street is deemed appropriate, internal driveways shall be designed as side streets, shall be separated from parking areas with curbing, sidewalks, landscaping, buildings or other physical features, and shall be configured to provide access to adjacent properties. In instances where driveways will not touch upon adjacent properties, a condition of site plan approval may be the establishment of a right-of-way to provide access to and through adjacent properties; in instances where such access has been provided on adjacent properties as part of a prior permit condition, the DRB may require the applicant to connect to the existing driveway (side street).

Does not apply.

f. Orientation of buildings within the site: Buildings shall define a streetscape through a consistent building line and setbacks. Buildings shall front towards and relate to public streets, both functionally and visually, and shall not be oriented toward a parking lot. The Board may impose a maximum setback to achieve a consistent streetscape. The front elevation shall include a main entryway, pedestrian access and appropriate front-yard landscaping. Drive-thru lanes and drive-up windows, where allowed, shall be located in the rear of buildings. Buildings may be clustered around a common focal point, such as a green or public courtyard, providing that an appropriate visual and functional relationship with public roads is maintained.

No change to building orientation is proposed under this application.

Conclusion: The Board concludes the existing building and site improvements meet applicable standards of Section 3.7(2)(C).

Section 4: Specific Use Standards

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

23. **Section 4.8 Outdoor Lighting.**

- The Applicant testified the only additional outdoor lighting proposed is Edison outdoor bulbs.

Conclusion: The Board concludes the proposal meets the standards outlined in Section 4.8.

DECISION

On a motion by T.Hand, seconded by L.Wasserman, the Development Review Board hereby approves the Applicant's request to construct a rear deck as outlined in the application dated 3/10/21 and supplemental materials, 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 previous conditions of approval remain in full force and effect.
3. Any outdoor music played on the deck is limited to non-amplified music, unless otherwise approved by the Development Review Board. Non-amplified music on the deck must not be played any later than 10:00 pm.
4. The Applicant must maintain a fence or other barrier to restrict pedestrians from cutting through from the adjacent Stowe Cinema parcel.
5. 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.
6. 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: D.Clymer, P.Roberts, L.Wasserman, T.Hand

Voting to deny: None

Abstain: A.Volansky

The motion passes 4-0-1.

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.

