

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



PROJECT: 6518

SUBJECT PROPERTY: 1799 Mountain Road; #06-086.000

PROPERTY OWNER:

Concerto, LLC
1800 Mountain Road
Stowe, VT 05672

APPLICANT:

Brian Leven
212 Moulton Lane
Stowe, VT 05672

APPLICATION:

The Applicant, Brian Leven, on behalf of property owner Concerto LLC (herein referred to as the "Applicant"), requests conditional use approval to host up to four (4) food trucks on the lawn adjacent to the Red Barn Shops from June-December during regular business hours. The subject parcel, consisting of ±4.9 acres and located at 1799 Mountain Road [#06-086.000], is in the Mountain Road Village (MRV) Zoning District and Source Protection Overlay District with portions also lying within the Fluvial Erosion Hazard (FEH) and Flood Hazard Overlay Districts (FHOD). No development or storage is proposed within the Fluvial Erosion Hazard (FEH) and Flood Hazard Overlay (FHOD) Districts. The parcel contains an existing commercial building with retail uses. 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 including Section 4.15 (temporary structures). 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 Brian Leven on April 14, 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 June 1, 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 May 13, 2021. 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 June 1, 2021 utilizing the remote meeting service Zoom, with a quorum of the DRB present. There was no physical place to attend the meeting, all participation was via telephone or online. No ex parte communications or conflicts of interests were reported. Members who participated in the review included: Leigh Wasserman, Francis Aumand III, Tom Hand, Andrew Volansky, Chris Walton, and Peter Roberts.

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

- Brian Leven, 212 Moulton Lane, 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 4/14/2021;
2. Site Plan prepared by Grenier Engineering 'Red Barn Shops Commercial Building', dated 10/30/02;

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 4.15 – Temporary Structures

1. **Section 4.15(2)** requires *“All temporary structures including, but not limited to, trailers, tents, trucks and other registered vehicles and carts with an area greater than 32 sq. ft. selling or serving goods or food, and mobile homes used for temporary office or storage space may be permitted as a temporary accessory structure to an existing or proposed approved use. Such structures shall not be used for dwelling purposes.”* The Applicant proposes to host up to four (4) food trucks on the lawn adjacent to the Red Barn Shops from June-December during regular business hours. The location of the adjacent lawn space is shown on the site plan provided with the application.
2. **Section 4.15(3)** states *“A permit for a temporary structure may be issued for a specified period of time not to exceed six (6) months.”* The Applicant proposes to host up to four (4) food trucks on the lawn adjacent to the Red Barn Shops from June-December. Temporary structures may be issued a permit not to exceed six (6) months.
3. **Section 4.15(4)** states *“A temporary structure that is to be used as an extension or expansion of a conditional use will require conditional use approval from the DRB, unless the Zoning Administrator determines that the structure is a minor alteration to a conditional use and can be administratively approved.”* Staff referred the application to the Board for conditional use review upon determining the proposed trucks could not be considered a minor alteration.
4. **Section 4.15(5)** states *“A temporary structure shall be dismantled or removed upon expiration of the permit, unless the applicant applies for a new permit.”* During the hearing the Applicant testified the proposed food trucks would be removed from the property daily and would not be stored on-site during the six-month period.

Conclusion: The Board concludes the proposal is in conformance with the applicable provisions for temporary structures. As conditions of approval, the Board will require that the temporary structures not be used for dwelling purposes and that the zoning permit expire six (6) months from the date effective.

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. **Section 3.7(2)(A)(1) – 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. No Municipal Department review forms returned indicated that the proposed development would have any 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.

6. **Section 3.7(2)(A)(2) – Traffic on roads and highways in the vicinity:** The Applicant proposes to host up to four (4) food trucks on the lawn adjacent to the Red Barn Shops from June-December during regular business hours. The Red Barn Shops contains a variety of retail shops. The Applicant did not provide the number of expected additional vehicle trips, however the proposal is not expected to generate a significant increase in traffic.

Conclusion: The Board concludes the proposed temporary food trucks will have nominal impact on traffic and will not create an undue adverse impact on traffic on roads and highways in the vicinity.

7. **Section 3.7(2)(A)(3) – The character of the area affected:** The subject parcel is in the MRV zoning district. The purpose of the MRV district is *"To foster a development pattern along the Mountain Road (Route 108) corridor comprised of compact, mixed-use settlements separated by rural countryside. The MRC district is intended to serve as a relatively small, concentrated mixed-use settlement with good pedestrian circulation between uses and properties and a village streetscape; the MRV District is intended to serve as a larger commercial village characterized by an integration between land uses, pedestrian accessibility, a mix of uses compatible with a four-season resort community and a village streetscape defined by narrow streets, street-trees, curbing and sidewalks."*

Conclusion: The proposal will not adversely affect the character of the area as defined under the town's zoning regulations.

8. **Section 3.7(2)(A)(4) – Regulations and ordinances in effect:** The application was reviewed under applicable Conditional Use criteria. 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 the Stowe Zoning Regulations, as adopted October 9, 2018.

9. **Section 3.7(2)(A)(5) – Utilization of renewable energy sources:** No change is proposed with regard to the use of, or access to, the utilization of renewable energy resources.

Conclusion: The Board concludes the project is not expected to interfere with the sustainable use of renewable energy resources, access to, direct use or future availability of such resources.

Section 3.7(2)(B) – Other Standards of Review:

10. **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 Applicant

proposes to host up to four (4) food trucks on the lawn adjacent to the Red Barn Shops from June-December during regular business hours. No permanent changes or improvements to the building or site are proposed under this application.

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.

11. **Section 3.7(2)(B)(2) - Project will not result in undue water, noise or air pollution.** The Applicant proposes to host up to four (4) food trucks on the lawn adjacent to the Red Barn Shops from June-December during regular business hours. The Applicant testified that outdoor music is not proposed under this application.

Conclusion: The Board concludes the project, if completed as conditioned, will not result in undue water, noise, or air pollution.

12. **Section 3.7(2)(B)(3) – Access Management:** The parcel is served by Mountain Road (VT-108). No expansions or improvements to the existing curb cut are proposed under this application.

Conclusion: The Board finds that no changes to the existing access are proposed under this application.

13. **Section 3.7(2)(B)(4) – Shared Access:** The parcel is served by Mountain Road and is shared by the existing commercial uses on the property. No changes are proposed to the existing shared access.

Conclusion: The Board finds that no changes to the existing access are proposed under this application.

14. **Section 3.7(2)(B)(5) – Circulation and Parking:** The regulations require 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 proposed food trucks will be located in the adjacent lawn area and will not impact or restrict any of the existing parking spaces. No changes to the number or location of parking spaces or circulation patterns are proposed under this application.

Conclusion: The Board finds that no permanent changes to the existing circulation or parking are proposed under this application.

15. **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 existing pedestrian circulation or access improvements are proposed under this application. The Stowe Rec Path runs along the river to the rear of the parcel.

Conclusion: The Board finds that no changes to the existing pedestrian circulation and access are proposed under this application.

16. **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 existing landscaping or screening are proposed under this application.

Conclusion: The Board finds that no changes to the existing landscaping and screening are proposed under this application.

17. **Section 3.7(2)(B)(8) – Stormwater Management:** No change to drainage patterns or increases in impervious surface are proposed under this application.

Conclusion: This provision does not apply.

18. **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.

No changes proposed. Does not apply.

- 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 proposed. Does not apply.

- 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.

No changes proposed. Does not apply.

- 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).

No changes proposed. 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 changes proposed. Does not apply.

Conclusion: The Applicant proposes to host 4-5 temporary food trucks for a period of no more than six (6) months. The Board finds no permanent changes or improvements to the building or site are proposed under this application. Does not apply.

DECISION

On a motion by Chris Walton, seconded by Andrew Volansky, the Development Review Board hereby approves the Applicant’s request for temporary structures/food trucks as outlined in the application and supplemental materials, subject to the following conditions of approval:

1. The project shall be completed 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 conditions of prior approvals, except as amended herein, remain in full force and effect.
3. At the conclusion of each daily event, trash and recycling shall be collected from the site area and properly disposed.
4. The temporary structures (food trucks) shall not be used for dwelling purposes.
5. The approval for the temporary structures (food trucks) shall expire six (6) months from the date of this decision. At such time, the temporary structures (food trucks) shall either be removed from the premises, or the Applicant shall obtain a new permit in accordance with Section 4.15(5).

6. The approved days and hours of operation for the temporary structures (food trucks) are limited to seven days a week from 10:00 AM- 9:30 PM. The temporary structures (food trucks) shall be removed from the premises at the conclusion of each day.
7. All temporary signage must comply with Section 14 of the town's zoning regulations.
8. 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 purpose of ascertaining compliance with the conditions of approval.

Voting in favor: Leigh Wasserman, Francis Aumand III, Tom Hand, Andrew Volansky, Chris Walton, and Peter Roberts.

Voting to deny: None

Motion PASSED 6-0.

Dated at Stowe, Vermont this the 18 day of June 2021

By: 
Francis Aumand III, Acting 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.