



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 6533
Application Date 4/8/2021
Physical Location 1128 MOUNTAIN RD
Map ID 07-005.000 **Tax ID** 25012
Project Description REPLACE EXISTING PATIO AREA; INSTALL LIGHTING
Owner KNH OF STOWE ENTERPRISES LLC
Applicant KNH OF STOWE ENTERPRISES LLC HOWARD SMITH
Applicant Address PO BOX 492
KILLINGTON VT 05751

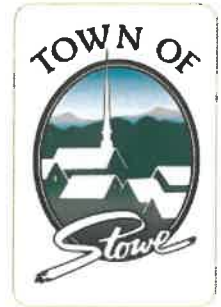
APPROVALS ON RECORD

Action Taken	Date	End of Appeal Period	Expiration Date
DRB DECISION	7/14/2021	8/13/2021	8/13/2023

Sarah McShane

Zoning Office

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



PROJECT: 6533

PROPERTY: 1128 Mountain Road; #07-005.000

PROPERTY OWNER:

KNH of Stowe Enterprises
PO Box 492
Killington, VT 05751

APPLICANT:

KNH of Stowe Enterprises/Howard Smith
PO Box 492
Killington, VT 05751

APPLICATION:

The Applicant, Howard Smith, on behalf of property owner KNH of Stowe Enterprises, requests conditional use review for a project generally described as replacing the existing patio area, installation of outdoor light posts on the patio, and installation of a fire pit with seats. The subject parcel [#07-005.000] is located at 1128 Mountain Road, within the Highway Tourist (HT) zoning district and Source Protection Overlay District. The property is served by the Mountain Road (VT-108), a state-maintained highway. The parcel contains approximately ±4 acres and includes a building containing a restaurant and three (3) dwelling units. In 2014 under Project 4938, the Board approved a 12' x 61' deck on the westerly side of the restaurant with twenty-four (24) seats and a small bar. At the time, the deck proposed on the western side of the building replaced the outdoor seating in the front of the restaurant. 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 Howard Smith on April 8, 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 15, 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 27, 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 June 15, 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: Francis 'Paco' Aumand III, Thomas Hand, Andrew Volansky, Peter Roberts, Leigh Wasserman, Mary Black.

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

- Applicant, KNH of Stowe Enterprises/Howard Smith, PO Box 492, Killington, VT 05751

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;
- Sushi Yoshi- Patio Expansion- Site Plan prepared by TD Thibault Design, dated 4/4/2021;
- Sushi Yoshi- Patio Expansion- Site Plan prepared by TD Thibault Design, dated 4/4/2021;
- Manufacturer cut-sheets for light fixtures.

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 is located within the Highway Tourist (HT) zoning district and the Source Protection 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 to construct a patio and related improvements in the front of the existing restaurant building. The setback line is not shown on the site plan however the patio appears to be constructed more than 80' from the edge of the road. Prior to the hearing, the Applicant confirmed the measured setbacks and that the proposed deck confirmed with district requirements.
4. **Maximum Building Coverage.** The maximum building coverage in HT is 10%. Section 16.22 defines Building Coverage 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.*" No change to building coverage is proposed.
5. **Use.** The parcel contains a restaurant and three (3) dwelling units. No changes of use are proposed under this application.

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. The restaurant is currently allocated 160 seats of municipal water and sewer. Any increase in seats will require additional allocated flow. The Applicant confirm during the hearing that the overall seat count is not increasing; additional outdoor seating in warmer months will utilize the existing total number of allocated seats. No Municipal Department review forms returned indicated that the proposed patio would have any undue adverse impact on existing or planned community facilities and services.

Conclusion: Based on the above findings, 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 seeks approval to construct a patio and related improvements in the front of the building. The Applicant confirmed that additional seats are not proposed.

Conclusion: The Board concludes the proposal 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 approval to construct a patio and related improvements in the front of the building. Adjacent to the subject parcel are other nearby commercial, residential, and lodging uses. The proposal is not expected to impact the character of the area affected.

Conclusion: The Board concludes the proposal will not have undue adverse impact to 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. 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.

12. **Section 3.7(2)(A)(5) – Utilization of renewable energy sources:** The Applicant requests approval to construct an open patio and related improvements. The proposed patio is not expected to impact the use of, or access to, the utilization of renewable energy resources.

Conclusion: The Board concludes the proposal will not 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 parcel is previously developed and contains existing commercial building with three dwelling units. The Applicant proposes to utilize the existing parking area. Smaller existing bushes will be relocated as part of this project. No other changes to the existing mature landscaping 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.

14. **Section 3.7(2)(B)(2) - Project will not result in undue water, noise or air pollution.** The Applicant requests approval to construct a patio area for outdoor seating and install related outdoor light posts on the patio and a fire pit with seats. The Board previously approved a deck for outdoor dining on the west side of the building. The Board's prior decision included a condition requiring that no music be audible at any residential or lodging properties. This condition remains in effect for the western outdoor seating area.

Conclusion: The Board concludes the proposal will not result in undue water, air, or noise pollution.

15. **Section 3.7(2)(B)(3) –Access Management:** The project is currently served an existing curb cut off Mountain Road. No change to the existing access is proposed.

Conclusion: The Board concludes the proposal will utilize the existing accesses. No change to the existing access is proposed.

16. **Section 3.7(2)(B)(4) – Shared Access:** The project is currently served an existing curb cut off Mountain Road. No change to the existing access is proposed.

Conclusion: The Board concludes the proposal will utilize the existing accesses. No change to the existing access is 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 to construct a patio in the front of the restaurant for outdoor dining. The Applicant confirmed the overall seat count is not increasing and therefore no additional parking is required. Section 15 requires the following parking for restaurants - one (1) space for every three (3) seats plus one (1) space for each person employed at peak times. The provided site plan shows the location of approximately fifty-three (53) parking spaces. Additional parking is not shown on the site plan but exists via secondary curb-cut which provides access to additional on-site parking.

Conclusion: Based on the above findings, the Board concludes the existing parking area and circulation and parking improvements, represents adequate access and circulation for the proposal.

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 exist along Mountain Road at this location. The Stowe Rec Path runs through the property.

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. During the hearing, the Applicant confirmed the existing bushes will need to be relocated and it is their intent to reuse the existing landscaping to secure the patio area off where alcohol is consumed.

Conclusion: The Board concludes the proposed landscaping and screening improvements are appropriate for the intended use and site location. As a condition of approval, a final plan must be submitted to include landscaping, vegetation or fencing to enclose the patio area for liquor control requirements.

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 are proposed. The existing patio is approximately 576 sf; the proposed patio is 984 sf, resulting in 410 sf of additional area of impervious surfaces.

Conclusion: The Board concludes the minor increase in impervious surfaces will not significantly change drainage patterns.

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 landscaping 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 existing parking is located to the side of the building.

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

No change to the existing driveway width is proposed.

- 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 to construct a patio and related improvements. Otherwise, no change to the building or site is 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 construct a patio and with outdoor light posts. During the hearing the Applicant confirmed the proposed involves the installation of seven posts every twelve feet. The light post material is 6" x 6" stained pressure treated wood. Lighting cut-sheets with manufacturer information were provided.

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

DECISION

On a motion by T.Hand, seconded by A.Volansky, the Stowe Development Review Board hereby approves Project 6533 (6-0) 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, operated, and maintained in accordance with (a) the conditions of this approval and (b) the permit application, plans, and exhibits on file in the Town of Stowe Zoning Office and other material representations. 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 remain in full force and effect.
3. The Applicant must submit a revised site plan to include setbacks, landscaping, vegetation or fencing to enclose the patio area for liquor control requirements. The landscaping plan must include the location, size, quantity, and species type.
4. The 'SYLVANI vintage sconce' light fixture as submitted with the application is the approved outdoor light fixture to be installed on the light posts on the outer side of the patio.
5. 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.
6. The driveway and parking areas shall be property maintained, including snow removal in winter, to provide emergency vehicle access at all times.
7. 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.
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 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: Francis 'Paco' Aumand III, Thomas Hand, Andrew Volansky, Peter Roberts, Leigh Wasserman, Mary Black.

Voting to deny: None

Dated at Stowe, Vermont this the 14 day of July 2021

By: 
Francis Aumand III, Acting 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.