



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 6655
Application Date 8/3/2021
Physical Location 383 MOSCOW RD
Map ID 03-056.000 Tax ID 05003
Project Description APPEAL OF ZONING ADMINISTRATOR'S DETERMINATION REGARDING APPLICATION 6538
Owner APPEALLANTS- GAMEROFF/ADAMS/MCNULTY/BERSETH/NUTT/PATLIS/LARSON
Applicant APPEALLANTS- GAMEROFF/ADAMS/MCNULTY/BERSETH/NUTT/PATLIS/LARSON
Applicant Address

ACTIONS

Action Taken	Date	End of Appeal Period
DRB DECISION	9/21/2021	10/21/2021

Sarah McShane

Zoning Office

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



PROJECT: 6655

SUBJECT PROPERTY: 383 Moscow Road; #03-056.000

APPELLANTS:

Barbara Gameroff [67 Smith Falls Lane]
Donna & John Adams [456 Moscow Rd]
Steven McNulty & Kate Berseth [147 Rudys Lane]
Elizabeth & William Nutt [81 Smith Falls Lane]
Lisa Patlis [214 Barnes Hill Road]
Shauna Larson [674 Moscow Road]

PROPERTY OWNER:

Lin Chunchao
393 Mountain Road #9
Stowe, VT 05672

INTRODUCTION:

This proceeding concerns a Notice of Appeal filed by Attorney Craig Weatherly, Esq. on behalf of Appellants, Barbara Gameroff, Donna & John Adams, Steven McNulty & Kate Berseth, Elizabeth & William Nutt, Lisa Patlis, and Shauna Larson. The Appellants appeal the written determination of the Zoning Administrator dated July 6, 2021, regarding various aspects of a previously approved application involving the building located at 383 Moscow Road and the classified use of the building. The Notice of Appeal states the Appellants specifically appeal the Zoning Administrator's determination *"that approval of the change in use of the subject property from pottery studio to store and deli was unconditional and that a valid zoning permit for it, also unconditional, was issued, her conjecture that a further change in use to pizza take-out business was approved in the absence of any record of application therefor or permit issued, and that the referenced applicants need only to satisfy the sound-testing requirements of the Board's 2008 Decision to continue with their planned operations."*

The subject parcel [#03-056.000] is located at 383 Moscow Road, within the Rural Residential II District (RR2) and Flood Hazard Overlay District (FHOD). The property is served by the Moscow Road, a Class 2 town-maintained highway. The parcel contains approximately ± 1 acre and includes three (3) buildings containing a total of four (4) dwelling units and a nonconforming store/deli use. The property is part of a common interest community; property owners of record are Lin Chunchao and Sarah Sterner. The Appellants request 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 Attorney Craig Weatherly, Esq. on behalf of Appellants on July 19, 2021. A public hearing of the DRB was scheduled for September 7, 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 August 19, 2021 and posted at the Library, Town Office, and Police Station. The public hearing to consider the application convened on September 7, 2021 at the Akeley Memorial Building, 67 Main Street, with a quorum of the DRB present. No ex parte communications or conflicts of interests were reported. Remote participation was available via Zoom. DRB members in attendance and participating in the review

included: Drew Clymer, Francis [Paco] Aumand III, Tom Hand, Mary Black, Leigh Wasserman, and David Kelly.

The following persons attended and participated in the hearing process:

- Sarah McShane, Town of Stowe Zoning Administrator
- Craig Weatherly, 11 Southwind Drive, Burlington, VT 05401
- Barbara Gameroff, PO Box 293, Stowe, VT 05672
- Maura Mancini, Po Box 454, Stowe, VT 05672
- Tes Rawson, 127 Moscow Road, Stowe, VT 05672
- Valerie Sodano, 452 Cottage Club Road, Stowe, VT 05672
- Troy Lin, 393 Mountain Road #9, Stowe, VT 05672
- Steven -----, PO Box 3539, Stowe, VT 05672

Written comments were received from the following individuals:

- Mary Chadzik, 1437 River Road, Stowe, VT05672
- Theresa Griffin, 3456 West Hill Road, Stowe, VT 05672
- Gerry Griffin, PO Box 238, Stowe, VT 05672

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

1. Notice of Appeal request filed by Attorney Craig Weatherly, Esq., dated 7/19/2021 [including exhibits A-H
2. Town of Stowe Zoning Permit 3685, dated 5/7/2008;
3. Town of Stowe Zoning Permit 4156; dated 12/28/2009;
4. Zoning Certificate of Occupancy (temporary), dated 7/28/2008;
5. Stowe Historic Preservation Commission Recommendations (3685);
6. DRB Meeting Minutes from 4/1/2008;
7. Memo from RSG 'Sound Monitoring at 383 Moscow Road, dated 7/13/2021;
8. Letter to Craig Weatherly from Sarah McShane, dated 7/6/2021;
9. Letter from Craig Weatherly to Sarah McShane, dated 6/22/2021;
10. Response to Notice of Appeal for Project 6538 submitted by Sanfo owners Troy and Lin, dated 8/26/2021.
11. Various written letters of community support.

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: 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.

2. The Appellants filed an appeal of a letter from the Zoning Administrator dated July 6, 2021. The Appellants filed their appeal on July 20, 2021.
3. 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 Appellants claim interested party status under Section 2.11(2)(C).

4. The Notice of Appeal identifies the following as Appellants: Barbara Gameroff [67 Smith Falls Lane]; Donna & John Adams [456 Moscow Rd]; Steven McNulty & Kate Berseth [147 Rudys Lane]; Elizabeth & William Nutt [81 Smith Falls Lane]; Lisa Patlis [214 Barnes Hill Road]; and Shauna Larson [674 Moscow Road].
5. Appellants Donna & John Adams [456 Moscow Rd]; Steven McNulty & Kate Berseth [147 Rudys Lane]; and Barbara Gameroff [67 Smith Falls Lane] attended the public hearing in person. Elizabeth & William Nutt [81 Smith Falls Lane] attended the hearing via Zoom. Lisa Patlis [214 Barnes Hill Road] and Shauna Larson [674 Moscow Road] did not attend the hearing.
6. The Notice of Appeal does not indicate or demonstrate any physical or environmental impact on the Appellants or their properties. During the hearing Attorney Weatherly testified that the proposal impacts the character of the neighborhood, is a fundamental change to a nonconforming use, and the equipment needed to operate such an establishment is different than the prior business. Barbara Gameroff testified that the delivery trucks on Adams Mill Road will conflict with the school bus pick-up/drop-off and thus create a physical impact which qualifies her as an interested person.
7. 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.*
8. 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. The Appellants were represented by Craig Weatherly, Esq. Town of Stowe Zoning Administrator, Sarah McShane, was also present and answered questions during the hearing.
9. The Zoning Administrator provided an aerial image highlighting the location of the Appellants properties in relation to the subject property, 383 Moscow Road. Two of the Appellants share a common property boundary with the subject building; Donna & John Adams and Steven McNulty & Kate Berseth. The other listed Appellants live further away but within the general vicinity; their properties are located on Smith Falls Lane, Barnes Hill Road, and Moscow Road.

Conclusion: Based upon the above findings, the Board concludes although the notice of appeal was submitted timely and some of the Appellants live within the immediate neighborhood, none of the Appellants met their burden of providing sufficient evidence in the record to document that the new business occupying the building at 383 Moscow Road will create a physical or environmental impact on the Appellants or their properties. The Appellants therefore cannot be considered an interested party in accordance with 24 VSA § 4465(b)(3) with rights to appeal.

PROCEDURAL HISTORY:

10. In 2008, the Development Review Board approved a change of use from pottery studio/sales to a store and deli [#3685] at 383 Moscow Road. The Board approved the application subject to the following conditions:

1. *The Board will require, as a condition of approval, that sound levels from the compressors and air conditioning unit shall be measured to verify that the noise level is below 45 dBA at the property line. Said test shall be submitted to the Zoning Administrator before a Certificate of Occupancy is issued.*
2. *The walkway lighting shall be modified to a fixture that directs light downward. A cut sheet for the revised lighting shall be submitted to the Zoning Administrator before a zoning permit is issued.*
3. *The letters from the SHPC dated March 13, 2008 and April 10, 2008 recommending approval as presented are incorporated into the conditions.*
4. *This 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 associated zoning permit was issued on May 7, 2008. Without appeal, the zoning permit became effective on May 22, 2008.

11. The DRB meeting minutes from March 18, 2008 contain the following description of the approved project:

are to add 2 parking lot lights, 14' high poles for shoe box fixtures with 100-400 watt bulbs. Sec. 4.7 review: this is a non-conforming use in the RR 2 zoning district, which does not allow for a store/deli. Sec. 5.1(1) & 5.1(3) discussed. **The Board agreed this could go from one non-conforming use to another.** There will be no seating, only take out items and no change in the dimensional requirements. **Plans are for 1800 square feet of retail space.** Exterior changes include: changing a window to a double-wide door on the

The DRB minutes clearly indicate that the proposed use of the building as a store/deli was classified as retail use.

12. Section 16.130 defines Retail Sales to mean "The delivery of goods and services by any business concerned with the sale, lease or rental of produce, products, equipment to the general public for

personal or household consumption and the rendering of services incidental to the sale, lease or rental of such goods."

13. On July 28, 2008 a temporary Certificate of Occupancy was issued indicating that the sound test and landscaping needed to be completed. The temporary Certificate of Occupancy expired on September 15, 2008.
14. On December 28, 2009 the Zoning Administrator issued a zoning permit for a 18.6 sf sign for Pizza Joint and School House Store. Without appeal, the sign permit became effective on January 12, 2010. The zoning record does not contain any approved permit for a change of use of the building at this time; only a new business sign. It is presumed that the Zoning Administrator at the time did not require a zoning permit for the change of businesses given the use of the building was not changing.
15. Section 16.30 of the Town's adopted Zoning Regulations define Change of Use as "*Any use that substantially differs from the previous use of a building or land, as determined by Table 6.1 – Permitted and Conditional Uses.*"
16. For approximately ten (10) years the building was occupied by the Pizza Joint and School House Store. The Pizza Joint & School House Store closed for business in the Fall 2020.
17. On April 13, 2021, a development application was filed by Applicant Harold B. Stevens Esq. on behalf of property owner Graham Mink/SANFO, requesting conditional use review for modifications to the nonconforming use at 383 Moscow Road. The Applicant proposed to convert the former Pizza Joint store & deli to a Chinese delicatessen restaurant with twenty-five (25) seats and take-out service. No alterations to the exterior of the building or site improvements were proposed.
18. The DRB held a warned hearing on June 15, 2021. During the hearing, the Applicant withdrew the application, removing the proposed restaurant seats, electing to act on the existing approved zoning permit which allows the building to be used as a store and deli; the use that it has continuously served since obtaining approval in 2008.
19. In a letter dated June 22, 2008, Craig Weatherly Esq., on behalf of client Barbara Gameroff, expressed his client's concern that use of the building was "*without a valid permit in violation of the Zoning Regulations, and to request that you take enforcement action if the applicants go forward with their plans*" for a take-out food establishment. Mr. Weatherly raised concerns regarding the validity of the permit, whether the applicants can meet the required sound testing listed as a condition in the 2008 DRB decision, whether take-out food should be classified as retail, and general concerns regarding compliance with the 2008 decision.
20. The Zoning Administrator, Sarah McShane, provided a written response dated July 6, 2021 responding to the allegations raised by Mr. Weatherly and his client Ms. Gameroff. Ms. McShane summarized Ms. Gameroff's concerns generally as follows:
 - *Until certain conditions required by the Development Review Board in 2008 are met, the proposed take-out food operation cannot be allowed.*
 - *The business change to a pizza operation does not have a valid zoning permit.*
 - *The required noise testing has not been completed which constitutes a violation.*
 - *Whether it is possible for the Applicant to meet the sound testing requirements.*

- *Take-out food operation is a different use than 'retail sales'.*
- *The conditions of the DRB approval [project 3685] have not been satisfied.*

In summary, Ms. McShane concluded that it was her position that a zoning permit was not required at the time, nor is now, for a new business owner to utilize the space as a 'store and deli' and that the zoning regulations do not differentiate, limit, or prohibit the type/ethnicity of food that is prepared, nor do the regulations regulate odor. She agreed to work with the property owner of record to see that the outstanding noise testing is completed, which she agreed was an outstanding condition.

21. Following responding to Ms. Gameroff, the Zoning Administrator, contacted the property owner on July 6, 2021 to remind them of the outstanding requirements in order to issue a permanent Certificate of Occupancy. Section 2.10(4) allows the following: *"(4) The Zoning Administrator may issue a Certificate of Occupancy for an expired permit as long as the project is substantially complete as defined in Section 2.10(1) above."*
 22. On July 20, 2021, Michael Hickey on behalf of the current property owner submitted a memo prepared by RSG regarding 'Sound Monitoring at 383 Moscow Road'. The sound study collected sound levels from two locations; one along the Adams Mill Road right-of-way (location 1); the other at the closest property line to an adjacent residence (location 2). The study results included the following:
 - At Location 1, the background corrected sound level was 53 dBA L_{eq} . Note that this location is on the Adams Mill Road right-of-way boundary with the subject property.
 - At Location 2, the background corrected sound level was 30 dBA L_{eq} . This location is the closest property line to an adjacent residence.
- The Board's prior decision included a condition requiring that sound levels from the compressors and air conditioning unit be measured to verify that the noise level is below 45 dBA at the property line.
23. On August 13, 2021, property owners Troy and Lin notified the Zoning Administrator that two (2) Autumn blaze maple trees had been planted on the property along the frontage of Moscow Road.
 24. On July 20, 2021, Ms. Gameroff submitted to the Zoning Administrator and Clerk of the DRB, a notice of appeal requesting a hearing before the DRB. The Notice of Appeal concluded and asked the Board the following:
 - *"The Appellants submit that the file record of permitted uses of the Property demonstrates that the change of use from pottery studio to store and deli was only conditionally permitted and that the conditions were never met, that no application for or permit to allow a change from store and deli to on-site preparation of food for take-out sale was never made or granted for the Pizza Joint, and that the Applicants' proposal to continue to use the property made by the previous owner would constitute the continued zoning violation. The Board should direct the Zoning Administrator to order the Applicants to cease activities at the property until and unless a proper zoning permit is applied for and granted."*
 - *"The Applicants should be required to submit a conditional use application prepared by a licensed surveyor and/or civil engineer, drawn to scale, that accurately depicts existing conditions, property boundaries, location of water and waste-water systems, and locates*

- facilities for the Applicants' proposed uses, including required parking, trash and grease storage, screening, snow storage areas, mechanical systems, gas tanks and all shared common elements of any common interest communities."*
- *"In the alternative, they submit that the file record demonstrates that the conditions for approval of the change in use from pottery studio to store and deli must be satisfied before any more activity in furtherance of the Applicants' plans be permitted. The Board should direct the Zoning Administrator to so advise the Applicants and order them to cease current operations until all required conditions have been satisfied."*

25. The Zoning Administrator's written position was that once the items noted in the temporary Certificate of Occupancy were fully addressed and determined to meet the required conditions of approval, a permanent Certificate of Occupancy could be issued and Troy and Lin could operate a 'store and deli' within the building. She also noted that should the property owner decide to change the use or make exterior improvements to the site or building, additional review and a zoning permit would be required under current regulations in effect.
26. During the hearing, business owners Troy and Lin testified that they propose to use the building for retail and prepared take-out food.

Conclusion- There is no evidence in the record that indicates that the use proposed by business owners Troy and Lin, retail store and prepared Chinese take-out food, is different than the use approved by the Board in 2008. The Town's adopted Zoning Regulations classify prepared take-out food, regardless of type or ethnicity, a retail use. All of the evidence in the hearing record indicates that the use of the building will continue to be retail, as it has been since 2008. The Board recognizes that while there may be outstanding requirements that need to be fulfilled prior to the issuance of a permanent Certificate of Occupancy, property owners Troy and Lin are actively working on completing the noted outstanding requirements that they inherited from a previous property owner and they are not currently operating. The record supports this in the form of submission of a professionally completed sound test and photographs of recently installed landscaping. Based upon the above findings, the Board concludes the Appellants did not meet their burden of providing sufficient evidence in the record to overturn the determinations of the Zoning Administrator made in her written letter dated July 6, 2021. There is no evidence in the record which leads the Board to conclude that the existing permit is invalid or that Troy and Lin's proposal constitutes a change in use as defined under the regulations.

DECISION

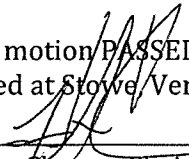
On a motion by Francis Aumand III, seconded by Tom Hand, the Development Review Board hereby upholds the determinations made by the Zoning Administrator in her letter dated July 6, 2021.

Voting to Uphold: Drew Clymer, Francis [Paco] Aumand III, Tom Hand, Mary Black, Leigh Wasserman, and David Kelly

Voting to Overturn: none

The motion PASSED, 6-0.

Dated at Stowe, Vermont this the 21 day of September 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.