



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 6966
Application Date 8/8/2022
Physical Location 4-6 SUNSET ST
Map ID 7A-191.000 Tax ID 02191
Project Description OUTDOOR SEATING ON GRENSPACE FOR NEIGHBORING RETAIL/COFFEE SHOP
Owner RUSSELL F FOREGGER REVOCABLE TRUST GREG ZLEVOR
Applicant BLACK CAP COFFEE/ 55 CONSULTING & ENTERPRISES LLC LAURA VILALTA
Applicant Address 144 MAIN STREET
 STOWE VT 05672

APPROVALS ON RECORD

Action Taken	Date	End of Appeal Period	Expiration Date
DRB DECISION	10/18/2022	11/17/2022	11/17/2024

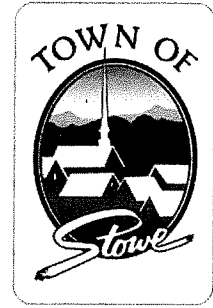
Sarah McShane

Zoning Office



**TOWN OF STOWE
DEVELOPMENT REVIEW BOARD**

Findings of Fact & Conclusions of Law



PROJECT: 6966

SUBJECT PROPERTY: 4-6 Sunset Street & 144 Main Street;
7A-191.000 & 7A-050.000

PROPERTY OWNER:

Russell Francis Foregger Revocable Trust
& Greg Zlevor
4-6 Sunset Street
Stowe, VT 05672

APPLICANT:

Laura Vilalvta
Fifty-Five Consulting & Enterprises LLC
D/B/A Black Cap Coffee
144 Main Street
Stowe, VT 05672

APPLICATION

The Applicant, Laura Vilalvta, on behalf of property owner Russell Francis Foregger Revocable Trust & Greg Zlevor (herein referred to as the "Applicant"), requests conditional use review to create an outdoor seating area for the service and consumption of food and beverages prepared by the adjoining coffee shop/café. The outdoor seating area is proposed to be located on the adjoining property 4-6 Sunset Street. Additional proposed seating consists of five (5) tables surrounded by a total of sixteen (16) chairs. Black Cap Coffee was classified and approved as a retail coffee shop with twenty-one (21) seats under Project 4174. During the COVID-19 State of Emergency interim Zoning Regulations were in effect and provided temporary relief to businesses to provide services outdoors. Black Cap Coffee provided outdoor seating during the pandemic under the interim Zoning Regulations, however interim Zoning Regulations have since expired and as such, the Applicant now seeks permanent conditional use approval.

The subject parcel is located at 4-6 Sunset Street (#7A-191.000) in the Village Commercial 10 (VC-10) Zoning District and Stowe Historic Overlay District (SHOD). The application has been reviewed by the Development Review Board (DRB) under applicable standards of the Town of Stowe Zoning Regulations (effective June 13, 2022) for the purpose of conditional use review. The DRB's procedural history and relevant findings are attached.

REVIEW PROCESS

(Application materials, hearing notices, meeting minutes on file at the Stowe Town Office.)

A development application was filed by Applicant Laura Vilalta on August 5, 2022. The application was accepted as administratively complete by Town of Stowe Zoning Administrator Sarah McShane and referred to the DRB for a public hearing. A public hearing of the DRB was scheduled for October 4, 2022 and warned by the Zoning Administrator 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 September 8, 2022.

The public hearing to consider the application convened October 4, 2022 with a quorum of the DRB present. The public hearing was held at the Stowe Town Office with remote participation available via Zoom. No *ex parte* communications or conflicts of interests were reported. Members who participated in the review included: D. Clymer, T. Hand, C. Walton, A. Volansky, D. Kelly, and M. Black.

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

- Laura Vilalvta, Fifty-Five Consulting & Enterprises LLC, D/B/A Black Cap Coffee, 144 Main Street, Stowe, VT 05672

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

- a) Town of Stowe Development Application, received 8/5/2022;
- b) Project narrative;
- c) Overview Plan of Proposed Outdoor Seating Area.

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 DRB made the following Findings of Fact and Conclusions of Law:

The Applicant's request for conditional use approval was reviewed by the DRB for conformance with applicable requirements of the Town of Stowe Zoning Regulations (effective June 13, 2022) 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 in the Village Commercial 10 (VC-10) Zoning District and Stowe Historic Overlay District (SHOD) as shown on the Official Town of Stowe Zoning Map (effective June 13, 2022).
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 the VC-10 district are front (10'), side (10') and rear (10'). No changes to the building footprint are proposed under this application. Current Zoning Regulations do not require outdoor seating areas to meet setbacks, unless situated under a temporary tent/structure.
4. **Maximum Building Coverage.** The maximum building coverage in VC-10 is 50%. No changes in building coverage are proposed under this application.
5. **Use.** Black Cap Coffee was classified and approved as a retail coffee shop under Project 4174; the business is located at 144 Main Street. The proposed outdoor seating area will be located on the adjacent parcel which contains a mix of residential and commercial uses (office, retail). No changes of use are proposed.

Section 3.7(2)(A) – Standards of review (Conditional Use Applications): The DRB 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:

6. Upon review, the DRB concluded the following standards are not applicable to the application:

- Section 3.7(2)(A)(2) – Traffic on roads and highways in the vicinity
- Section 3.7(2)(A)(3) – The character of the area affected
- 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)(5) – Circulation and Parking
- Section 3.7(2)(B)(6) – Pedestrian Circulation and Access
- Section 3.7(2)(B)(7) – Landscaping and Screening
- Section 3.7(2)(B)(8) – Stormwater Management

7. Section 3.7(2)(A)(1) – Capacity of existing or planned community facilities and services:

- a) 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.
- b) No Municipal Department review forms returned indicated that the proposed development would have any adverse impact on existing or planned community facilities and services. The additional seats are expected to require additional municipal water and sewer allocation.

Conclusion: Based upon the above findings, the Board concludes the proposal, as conditioned, will not result in an undue adverse effect on the Town’s existing or planned facilities or services.

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

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

- a) The Applicant requests conditional use review to create an outdoor seating area on the lawn on the adjacent parcel. Additional seating includes five (5) tables surrounded by sixteen (16) chairs.
- b) Nothing within the application indicates the proposal will result in undue water or air pollution. Staff is unaware of any related noise complaints when Black Cap Coffee created a temporary outdoor seating under temporary interim Zoning Regulations.
- c) According to the project narrative hours of operation 7 AM - 7 PM. The outdoor seating area is proposed to be installed each year from April to November.
- d) No outdoor music or other forms of outdoor entertainment are proposed under this application.

Conclusion: Based upon the above findings, the Board concludes the project, as conditioned, will not result in undue water, noise, or air pollution.

SECTION 4- SPECIFIC USE STANDARDS

9. **Section 4.19 Outdoor Seating for Restaurants-** The Regulations set forth the following requirements for outdoor restaurant seating:

- (1) *Any new proposal for outdoor seating for a restaurant, or expansion of existing outdoor seating, will require conditional use approval from the DRB.*
- (2) *Outdoor seating is exempt from minimum parking requirements.*
- (3) *Restaurants may provide outdoor seating on another commercial property other than their own, including mixed-use properties.*
- (4) *Outdoor seating may be permitted within the town highway ROW or on public sidewalks with permission from the Selectboard.*
- (5) *Outdoor seating shall not interfere with pedestrian travel by maintaining a 5-foot-wide continuous pathway.*
- (6) *Outdoor seating shall not interfere with vehicular or emergency access.*
- (7) *Outdoor seating shall not reduce the number of on-site parking spaces.*
- (8) *Temporary tents used for outdoor seating may be erected without obtaining a zoning permit provided they comply with the following provisions:*
 - a. *Any tent erected shall not interfere with pedestrian or emergency access and shall not reduce the number of on-site parking spaces.*
 - b. *Tents shall adhere to the setback and building height requirements of the underlying zoning district.*

The Applicant proposes to utilize the existing lawn/green space east of the Black Cap Coffee building for an outdoor seating area for patrons of the cafe. The proposal meets all the above applicable provisions.

DECISION

On a motion by M.Black, seconded by C.Walton, the Development Review Board hereby approves the Applicant's request for conditional use, as outlined in the development application dated 8/5/2022 and supporting plans and drawings, subject to 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.

The approved plans are:

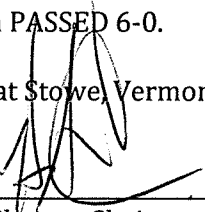
- a) Town of Stowe Development Application, received 8/5/2022;
 - b) Project narrative;
 - c) Overview Plan of Proposed Outdoor Seating Area.
2. All conditions of prior approvals, except as amended herein, remain in full force and effect.
 3. Use of the outdoor seating area is limited to business hours of 7 AM - 7 PM, seven days a week.
 4. No outdoor music or entertainment events are allowed without further review by the Development Review Board.

5. The installation of any fencing shall require review under the regulations in effect at the time of application.
6. The property owner must secure adequate municipal water and sewer to support the additional outdoor seating.
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 Applicant 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: D. Clymer, T. Hand, C. Walton, A. Volansky, D. Kelly, and M. Black
Voting to deny: None

Motion PASSED 6-0.

Dated at Stowe, Vermont this the 18 day of October 2022

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.

