



Notice of DRB Decision
Town of Stowe Planning and Zoning Department
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 Department at 253-6141 if you have any questions.

APPLICATION INFORMATION

Project Number 7136
Application Date 5/4/2023
Physical Location 1190 MOUNTAIN RD
Map ID 07-004.010 Tax ID 25014-010
Project Description AMEND EXISTING ZONING PERMIT TO ALLOW SEASONAL OUTDOOR MUSIC
Owner ROB DOWNEY
Applicant AMERICAN FLATBREAD (BEN HAMILTON)
Applicant Address 1190 MOUNTAIN ROAD
 STOWE VT 05672

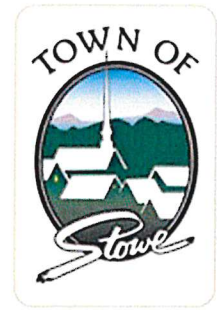
APPROVALS ON RECORD

Action Taken	Date	End of Appeal Period	Expiration Date
DRB DECISION	8/1/2023	8/31/2023	8/31/2025

Sarah McShane

Dept. of Planning Zoning

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



PROJECT# 7136

SUBJECT PROPERTY: 1190 Mountain Road, Stowe, VT; Tax Map 07-004.010

PROPERTY OWNER

Rob Downey
101 Henry Street
Burlington, VT 05401

APPLICANT

American Flatbread (Ben Hamilton)
1190 Mountain Road
Stowe, VT 05672

OVERVIEW

The Applicant, Ben Hamilton (herein referred to as the "Applicant"), requests approval to permit seasonal outdoor music at American Flatbread. The subject parcel, consisting of ±3.6 acres and located at 1190 Mountain Road, Stowe, VT (07-004.010), is in the Highway Tourist (HT) Zoning District. A portion of the parcel lies within the Flood Hazard Overlay and Fluvial Erosion Districts; however, no development is proposed within those areas. The Applicant states that the music provided will be acoustic singer/songwriters and jazz performances on the back patio during lunch and dinner service. Expected noise will be minimal and low, and performances will be limited to solo and duo acts performing for restaurant guests. The application requires review by the DRB under the Town of Stowe Zoning Regulations (effective June 13, 2022). 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.)

An application for conditional use review was filed by the Applicant on April 27, 2023. 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 July 18, 2023, and warned by the Zoning Administrator in accordance with Section 2.14 of the Town of Stowe Zoning Regulations and 24 V.S.A. §4464. The hearing notice was published in the Stowe Reporter on June 29, 2023. The Applicant provided a completed certificate of service in accordance with Section 2.14(1)(B).

The public hearing to consider the application convened July 18, 2023, 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, D. Kelly, M. Black, M. Diender, W. Ardolino, and T.Hand. 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.

INTERESTED PARTIES/PARTICIPANTS

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

- Chelsea Walsh, 1190 Mountain Road, Stowe, VT 05672

THE RECORD

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

1. Town of Stowe Development Application, dated 04/27/2023;
2. Photographs showing specific outdoor music location (no date).

FINDINGS OF FACT & CONCLUSIONS OF LAW

During its review of the application, the DRB made the following Findings of Fact

The Applicant's request for outdoor music is referred to the DRB for conformance with applicable requirements including the following:

Town of Stowe Zoning Regulations (effective June 13, 2022)

- Section 2- Administration and Enforcement
- Section 3- General Regulations
- Section 5- Zoning Districts
- Section 6- Uses, Dimensional Requirements and Density

DIMENSIONAL REQUIREMENTS:

1. **Zoning District.** The subject parcel is within the Highway Tourist (HT) Zoning District, as shown on the Official Town of Stowe Zoning Map (effective June 13, 2022).
2. **Lot Area, Lot Width.** The subject parcel is ±3.6 acres. No changes to lot width or lot area are proposed under this application.
3. **Setbacks.** Required minimum district setbacks for the HT district are front (50'), side (50') and rear (50'). No changes to the site are proposed that would affect the existing setbacks.
4. **Maximum Building Coverage.** Required maximum district building coverage for the HT district is 10%. No new building coverage is proposed.
5. **Use.** The Applicant proposes to add outdoor music to the existing restaurant use.

Conclusion: Based upon the above findings, the DRB concludes the proposed outdoor music conforms to the applicable dimensional requirements.

CONDITIONAL USE CRITERIA SECTION 3.7(2)(A):

6. Following review, the DRB concludes the proposal will have no impact on the following standards:

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

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.

Section 4.6 Landscaping Standards.

Section 4.8 Outdoor Lighting.

Section 3.7(2)(B)(2) & Section 4.17(2)

- A. Nothing within the application or hearing record indicates that the project would create undue water or air pollution.
- B. The regulations state: *"When considering the undue impact of noise, the Board shall consider the existing noise levels in the area of the development, the impact on other (or off-site) properties, and the level of noise customarily generated from uses permitted within the zoning district."*
- C. The Applicant proposal involves 1-2 acoustic musicians playing one day a week during lunch and/or dinner service. The anticipated noise levels are not expected to be adverse or undue. Lunch service begins at or around 11:30 AM and dinner service ends at 8:00 PM.
- D. Noise generated by the proposal is not anticipated to be distinct from the background sound level beyond the property line and is not anticipated to interfere with the reasonable use and enjoyment of other properties.
- E. Given the limited days and hours of music performances, and the adjacent uses, the DRB does not require acoustic analyses or specific site design strategies.

Conclusion: Based upon the above findings, the DRB concludes the proposal, as conditioned, conforms to Section 3.7(2)(B)(2) and Section 4.17(2)(A).

DECISION

On a motion by T.Hand, seconded by W.Ardolino, the DRB hereby approves the Applicant's request for outdoor music as outlined in the application for Project #7130, and associated supplemental materials, 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 Planning & 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:

- 1) Town of Stowe Development Application; dated 04/27/2023;
 - 2) Photographs showing specific outdoor music location (no date).
2. All conditions of prior approvals, except as amended herein, remain in full force and effect.
 3. Musical use of the outdoor patio shall be limited to one day a week between the hours 11:30 AM and 8:00 PM.
 4. At all times, the outdoor patio must operate in such a manner as to not create noise disturbances across a property line. Any noise emanating from the area, including, but not limited to, music, voices or other sounds caused or emanated by humans, instruments, machines, or equipment, shall not be distinctly audible beyond the property line.
 5. 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 and his successors agree to

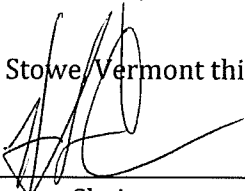
allow authorized representatives of the Town of Stowe to access the property subject to this approval, at reasonable times, for purpose of ascertaining compliance with the conditions of approval.

Voting in favor: D. Clymer, D. Kelly, M. Black, M. Diender, W. Ardolino, and T.Hand.

Voting to deny: None

The motion PASSES, 6-0.

Dated at Stowe, Vermont this the 1 day of August 2023

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 request for reconsideration that specifies the basis for the request with the Secretary of the Development Review 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 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.