



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 7138
Application Date 5/5/2023
Physical Location 433 MOUNTAIN RD
Map ID 7A-108.000 Tax ID 02108
Project Description PERMIT OUTDOOR MUSIC ON THE DECK/PATIO
Owner 433 MOUNTAIN ROAD HOLDINGS LLC
Applicant BRIAN LEVEN
Applicant Address 212 MOULTON LANE
 STOWE VT 05672

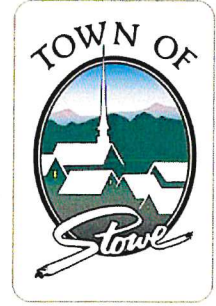
APPROVALS ON RECORD

Action Taken	Date	End of Appeal Period	Expiration Date
DRB DECISION	6/28/2023		APPROVED

Sarah McShane

Dept. of Planning Zoning

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



PROJECT: 7138

SUBJECT PROPERTY: 433 Mountain Road, Stowe, VT; Tax Map 7A-108.000

PROPERTY OWNER(s):
433 Mountain Road Holdings, LLC
29 Main Street
Amesbury, MA 01913

APPLICANT:
Brian Leven
212 Moulton Lane
Stowe, VT 05672

APPLICATION:

The Applicant, Brian Leven on behalf of property owners 433 Mountain Road Holdings, LLC (herein referred to as the "Applicant"), requests approval to permit seasonal outdoor music at the Field Guide Lodge/Apres Only Restaurant. The subject parcel, consisting of ±2.25 acres and located at 433 Mountain Road, Stowe, VT (7A-108.000), is within the Village Commercial 30 (VC-30) Zoning District. The application requests live outdoor music on Fridays, Saturdays, and Sundays with an ending time of 10:00 PM. Musical guests will be located on the end of the deck/patio and project back towards the lodge. The application was reviewed by the Development Review Board (DRB) under 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.)

An application for conditional use review was filed by the Applicant on May 5, 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 June 6, 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 May 18, 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 June 6, 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, S. Henshaw, M. Diender, W. Ardolino, and A. Volansky. 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:

- 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 05/05/2023;
2. Proposed Ground Floor Plan, sheet A-1, dated 12/17/2014.

FINDINGS OF FACT & CONCLUSIONS OF LAW

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

DIMENSIONAL REQUIREMENTS:

1. **Zoning District.** The subject parcel is within the Village Commercial 30 (VC-30) 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 ±2.25 acres. No changes to lot width or lot area are proposed under this application.
3. **Setbacks.** Required minimum district setbacks for the VC-30 district are front (10'), side (20') and rear (20'). No changes to the site are proposed that would affect the existing setbacks.
4. **Maximum Building Coverage.** Required maximum district building coverage for the VC-30 district is 30%. No change to existing building coverage is proposed.
5. **Use.** The Applicant proposes to add outdoor music to the existing lodge/restaurant use. Outdoor music is considered an accessory use under the Regulations.
6. **Density.** Does not apply.
7. **Height.** Does not apply.

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

ZONING REGULATIONS - CONDITIONAL USE STANDARDS:

8. 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

9. **Section 3.7(2)(B)(2) – Will not result in undue water, noise, or air pollution:**

A. Nothing within the application 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 outdoor music will be located at the end of an attached deck/patio and will face the lodge/restaurant.
- D. As proposed, outdoor music will end at 10:00 PM, Friday through Sunday.
- E. The anticipated noise impacts will not unduly impact guests of the hotel and restaurant or neighboring properties.

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

10. Section 4.17(2) Performance Standards

- A. All new development and all existing land uses, except for agricultural and forestry, whether permitted by the Regulations or otherwise, including non-conforming uses and uses approved by the DRB as conditional uses, must at all times comply with the performance standards and requirements set forth in Section 4.17.
- C. Unless otherwise approved by the DRB, noise emanating off site must not be distinct from the background sound level beyond the property line, and must not interfere with the reasonable use and enjoyment of other properties. The outdoor music will be located at the end of an attached deck/patio and will face the lodge/restaurant.
- D. As proposed, outdoor music will end at 10:00 PM, Friday through Sunday.
- E. The Applicant proposes to utilize clear plastic "curtains" that will reduce noise. The "curtains" will be rolled down at 9:00 pm each night that outdoor music is being played.

Conclusion: Based upon the above findings, the Board concludes the proposal conforms to Section 4.17(2)(A) – Noise. Given the outdoor music location on the deck/patio, the limited days and hours of music performances, and the adjacent uses, the DRB does not require acoustic analyses or specific site design strategies for the proposal.

DECISION

On a motion by M. Diender, seconded by D. Kelly, the DRB hereby approves the Applicant's request for outdoor music as outlined in the application for Project #7138, 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 05/05/2023;
- 2) Proposed Ground Floor Plan, sheet A-1, dated 12/17/2014.

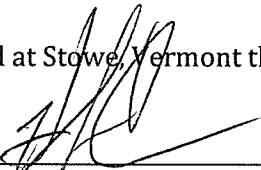
2. Musical use of the outdoor deck/patio shall be limited to Fridays, Saturdays, and Sundays, between the hours 11:00 AM and 10:00 PM, unless otherwise approved by the DRB.
3. At all times, the outdoor deck/patio must operate in such a manner as to not create noise disturbances to neighboring properties. 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 within the buildings on the adjacent properties when the adjacent building windows and doors are closed.
4. All conditions of prior approvals, except as amended herein, remain in full force and effect.
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 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, D. Kelly, S. Henshaw, W. Ardolino, M. Diender, and A. Volansky

Voting to deny: None

The motion PASSES, 6-0.

Dated at Stowe, Vermont this the 28 day of June 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.