



Town of Georgia

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NOTICE of DECISION

In re: BTMC, LLC, Applicant
Appeal to DRB Application: APL-001-23

Decision and Findings of Fact for Appeal

Dear Butch McCracken and Tony McCracken, BTMC, LLC:

After a duly warned hearing of the DRB on June 20, 2023, the following action was taken with regard to your request:

APPEAL REQUEST DENIED

Note: The application, any and all relevant evidence presented to the Board, and the minutes of the Board at the hearing conducted by the Town of Georgia DRB on June 20, 2023, and relevant information from public records and sources, shall be considered part of the Finding of Fact and kept as part of the permanent record of the applicant/owner. All cites to Development Regulations are according to the currently warned Town of Georgia Development Regulations dated February 27, 2023.

This official record shall provide additional basis for the Board's decision.

Background:

This matter came before the Town of Georgia DRB on the application of Megan Manahan Bliss, Attorney for Butch McCracken and Tony McCracken, BTMC, LLC, hereinafter referred to as Applicant, requesting Appeal to the denial of permitted use application to operate a retail store at 1149 Ethan Allen Highway in the South Village zoning district. A Notice of Public Hearing was duly published in the St. Albans Messenger on June 6, 2023, and all abutting property owners were notified.

The DRB conducted a public hearing on this application on June 20, 2023, Applicant and Applicant's attorney were present at the meeting. There were no interested parties. Applicant submitted Appeal paperwork and the Zoning Administrator presented a DRB report.

Finding of Facts:

1. Applicant submitted a modified conditional use application for the permitted use of a retail store in the South Village, given the Town of Georgia did not have an application for permitted use at that time.
2. Applicant did not provide complete information for the Zoning Administrator to make a decision.
3. The operation of a retail store under 3000 sq ft is a Permitted Use in the South Village zoning district.
4. As defined by the Town of Georgia Development Regulations, **Retail Store-Establishment** *appropriately open to adults and minors selling products such as, **but not limited to**, food, dry goods, novelties, flowers, gifts, books, music, stationery, hardware, household furnishings or appliances, jewelry, sporting goods, luggage, wearing apparel, photographic supplies, hobby, toy and game shops, art supplies, newspapers and magazines, tobacco products, and drug stores, and excluding motor vehicle sales, recreational vehicle sales, and mobile home sales and service.*
5. Applicant's modified conditional use application was unclear as to how the sheds would fill the allowed space, if there would be a physical retail store built for the sales, and which parcel of property would be used for sales.
6. The named exclusions for Retail Store were listed as motor vehicle sales, recreational vehicles sales and mobile home services and sales. Following the legal principal *ejusdem generis*-when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include items of the same kinds, class or nature- the sheds are more in line with the exclusions for Retail Store than examples of allowed products for sale.
7. In accordance with Article 8, Section 1 (A)(2), Administration and Enforcement, Zoning Administrator in the Town of Georgia Development Regulations, *the Zoning Administrator shall administer the Regulations literally, and strictly, according to the plain meaning of its terms, and shall have no authority to permit land development that is not in conformance with these Regulations. In addition, the Zoning Administrator shall administer these Regulations uniformly.*
8. Attorney for Applicant requested a very narrow definition of the deliberation of the issue.

Conclusion:

The Board concludes as follows:

1. Applicant has submitted all relevant information for appeal of Zoning Administrator decision as required by the Town of Georgia Development Regulations.
2. This application was reviewed under Article 8, Section 7, Appeals in the Town of Georgia Development Regulations.
3. While Retail Store is a Permitted Use in the SV Zoning District, based on the information provided by the Applicant to the Zoning Administrator, the Zoning Administrator could not approve the application for a permitted use based on the literal interpretation of the Town of Georgia Development Regulations.

4. The DRB agrees with Zoning Administrator decision to deny application. Zoning Administrator's denial is consistent with the Town of Georgia Development Regulations approved as information provided.

Decision:

Applicant's request for Appeal to the denial of permitted use application to operate a retail store at 1149 Ethan Allen Highway in the South Village zoning district is **DENIED**.

NOTICE: This decision may be appealed to the Vermont Environmental Court by an 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. Section 4471. Notice of the appeal shall be filed by certified mailing, with fees, to the environmental court and by mailing a copy to the Zoning Administrator who shall supply a list of interested persons to the appellant within five working days. Upon receipt of the list of interested persons, the appellant shall, by certified mail, provide a copy of the notice of appeal to every interested person.

Members present and voting for approval: Suzanna Brown, Gilles Rainville, Greg Drew, Charles Cross, Glenn Sjoblom, and Lisa Faure. Members absent: James Powell. Members present and voting against approval: None.

Signature of Chair: _____ Date: _____

Suzanna Brown, DRB Chair