

Appeal
Appeal to DRB Application
APL-001-23

Owner: BTMC, LLC 1710 Bovat Road Fairfax, VT 05454	Applicant:
Lawyer: Megan Manahan Bliss, Esq. Cahill, Gawne, Miller, & Manahan 42 North Main Street, St. Albans VT 05478 802-524-5211	Property Tax Parcel & Location: 1149 Ethan Allen Highway Parcel#117470000 Zoning District: SV

BACKGROUND

BTMC, LLC, hereafter referred Applicant, is requesting an appeal of the May 12, 2023 denial of a non-conforming application to the Zoning Office for change of use on the property from an auto repair business to a proposed outdoor building sales business. The parcel is located at 1149 Ethan Allen Highway, within the South Village (SV) zoning district. The parcel (117470000) is ±9.57 acres in size, benefitted by ±90 ft of frontage along Ethan Allen Highway.

Tony McCracken, who is listed as a Member of BTMC, LLC, known as the Applicant, first contacted the Zoning Office on or around March 23, 2023, regarding the use of the property for the business of selling sheds. The Zoning Administrator would address the DRB at the next meeting to informally discuss if this as a Permitted Use in the SV Zoning District, and suggested he reach out to VTrans, as the location is on a State of Vermont Highway and any commercial change of use will require a VTrans application.

The Zoning Administrator received an email from VTrans discussing the requirement of major upgrades to the driveway prior to allowing any new use on the property. Together with Applicant’s information, an informal discussion at the April 4, 2023 DRB meeting during “Other Business” on the Agenda ensued for the proposed use of property as presented by Applicant.

Given the specific use was not listed under Article 2 table 2.2 Land Uses in the SV Zoning District, the DRB opined the business of selling large outdoor sheds was more in line with Motor Vehicle Sales, Heavy Equipment Sales, Rural Retail, and Manufactured Home Sales all of which are not allowed in the SV Zoning District. In keeping with the Georgia Development Regulations Section 3.6 South Village Core Design Standards the proposed business does *not* fit the guidelines of the South Village.

Applicant was informed the following day via phonecall that the proposed sale of sheds in the SV zoning district would not be allowed. There was further discussion about building a retail building or box store should a Conditional Use application be submitted to the DRB.

On May 8, 2023, the Zoning Administrator was contacted by Megan Manahan Bliss, Esq. via email checking on the status of a Permitted Use application on behalf of their client BTMC, LLC

for 1149 Ethan Allen Highway. The Zoning Office had not received any application from Applicant or from Applicant's representation, Cahill, Gawne, Miller & Manahan, P.C.

Over the next week, a series of phone calls and emails were exchanged between the Zoning office Applicant's representation regarding this project. An incomplete application was submitted to the Zoning Office via email, pertinent sections of the application omitted, and no site plan for the project nor fee was included. The Zoning Administrator informed Applicant's representation the application as submitted would not be classified as a Permitted Use in the SV Zoning District and recommended filling out the appropriate Conditional Use Application and going before the DRB Board at a public meeting.

Applicant's representation continued to suggest the proposed business was a Permitted Use and refused a Conditional Use application requesting the Zoning Administrator simply sign off on the project. The Zoning Administrator denied the application based on the proposed use was not an allowed use in the SV Zoning District. The reasoning for allowing this project as a Permitted Use as a Retail Store does not fit with the definition in the Town of Georgia Development Regulations for a Retail Store:

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.

The appeal of the Zoning Administrators decision and fee was received on May 26, 2023. The application and attached letter (Addendum A and B) were missing several abutting property owners from the list. A full list of abutters is included (Addendum C).

APPEAL JUSTIFICATION

The Applicant's representation has submitted a Description of Appeal that is attached (Addendum B). The basis of which is that the project should be permitted use as a retail store less than 3,000 square feet on the property located in the SV Zoning District. Additionally, that the Zoning Administrator had used incorrect terminology in the denial using the phrase "allowed use" instead of "permitted use".

Respectfully submitted,



Douglas Bergstrom
Zoning Administrator
Planning, DRB & 911 Coordinator



Town of Georgia

47 Town Common Road North. • St. Albans, VT 05478
• Phone: 802-524-3524 • Fax: 802-524-3543 • website: townofgeorgia.com

File # APL-001 - 23 Date Rec'd: 5/26/23 Date of DRB Hearing: 6/29/23

Fee Paid: \$200 Check # _____

1:29pm

APPEAL TO DEVELOPMENT REVIEW BOARD TOWN OF GEORGIA, VERMONT

Applicant(s):	<u>BTMC, LLC</u>	Owner(s):	<u>BTMC, LLC</u>
Address:	<u>1710 Bovat Road</u> <u>Fairfax, VT 05454</u>		<u>1710 Bovat Road</u> <u>Fairfax, VT 05454</u>
Telephone:	<u>c/o Cahill Gawne Miller & Manahan</u> <u>802-524-5211</u>		

CERTIFICATION OF APPELLANT

The undersigned appellant(s) hereby certifies that the information submitted on this application is true and accurate and that the information provided is complete.

5.22.23
Date

[Handwritten Signature]
Appellant Signature

Appellant Signature

PROPERTY OWNER'S AUTHORIZATION

The undersigned property owner(s) hereby certifies that the information submitted on this application is true, accurate and complete and that the Appellant has full authority to request the relief herein.

5.22.23
Date

[Handwritten Signature]
Owner Signature

Owner Signature

BTMC, LLC Appeal 1149 Ethan Allen Highway, Georgia, Vermont.

Description of Appeal:

Applicant submitted an application for approval of a permitted use: retail store less than 3,000 square feet, for its property located in the South Village Core (SV) zoning district. Such use is explicitly listed as a permitted use ('P/S') in the SV zoning district in Table 2.2 of Article 2.2 of the Town's Development Review regulations (see page 14 therein).

After initially indicating that "the zoning administrator has no authority to approve this project" and that it was neither approved nor denied because "the application is not on an approved Town of Georgia Zoning application since the Town does not have a permitted use application" (see correspondence dated May 10, 2023)¹ the zoning administrator subsequently issued a denial stating only that "the application submitted is denied based on that this is not an allowed use in the SV zoning district." See correspondence dated May 12, 2023.

The zoning administrator's use of the term "allowed" use is inconsistent with both the application and the regulations and should render the denial void. According to the Town's regulations, a use that is not allowed in a district is one that is "not designated as permitted, conditional or exempt such use is prohibited...". (See Article 2.2 A.3). The application requested approval of a *permitted use*; however, even if one were to assume that the zoning administrator's intention was to state that the use is not a *permitted use*, such a conclusion is also incorrect and inconsistent with the Town's regulations, as Article 2.2 A.1. makes clear that "Permitted uses are marked in Table 2.2 by the letter 'P' or 'P/S'."

Applicable Regulatory Provisions:

Town of Georgia Development Review Regulations:

1. Article 2.2 A.1. "Permitted uses require a zoning permit and may be approved by the zoning administrator subject to the provisions of Article 3.1"
2. Article 2.2, Table 2.2: Retail Store * * "retail uses of less than 3,000 square feet in size SHALL BE (emphasis added) considered a permitted use." (See Page 14.)
3. Article 3.1 specifically omits permitted uses from those uses requiring DRB approval, however the DRB would have jurisdiction over the site plan for the permitted use.

Specific Relief Requested:

Approval of applicant's permitted use application pending site plan review and approval.

¹ Before submitting the subject application, Applicant's counsel called the zoning office to inquire because the Town's website did not include an application for permitted use and was instructed by Colleen that an applicant was to use the conditional use permit application for a permitted use application.

Alleged Grounds for Relief Requested:

Section 8.7, Appeals: interested persons may appeal any decision or act taken by the ZA by filing a notice of appeal with the Secretary of the DRB

24 VSA 4465(c): "In the exercise of its functions under this section, a... development review board shall... hear and decide appeals taken... including where it is alleged that an error has been committed in any... decision... by an administrative officer... in connection with the administration... of a bylaw."

The Zoning administrator's decision is misstated and factually incorrect and inconsistent with the Town's development regulations, including but not limited to Article 2.2, Table 2.2 which explicitly sets forth that the proposed activity (retail sales of less than 3,000 square feet) is a permitted use in the SV district.

Names and Addresses of Abutting Property Owners:

R.L Vallee, Inc: 1207 Ethan Allen Highway, Georgia, Vermont
c/o Registered Agent: Timothy Vallee, 280 So. Main Street, St. Albans, Vermont 05478

Terry Rooney, 1151 Ethan Allen Highway, Georgia, Vermont 05478

Respectfully submitted by:

Meghan Manahan Bliss, Esq.

Cahill, Gawne, Miller & Manahan, P.C.

Attorneys for Appellant

ADDENDUM C

ABUTTERS TO PROPERTY Appeal to DRB Application APL-001-23

Owner: BTMC, LLC 1710 Bovat Road Fairfax, VT 05454	Applicant:
Lawyer: Megan Manahan Bliss, Esq. Cahill, Gawne, Miller, & Manahan 42 North Main Street, St. Albans VT 05478 802-524-5211	Property Tax Parcel & Location: 1149 Ethan Allen Highway Parcel#117470000 Zoning District: SV

1. R.L. Vallee, P.O. Box 192, St. Albans, VT 05478
2. Terry Rooney, 467 Reynolds Road, St. Albans, VT 05478
3. Gage Martin, 1197 Ethan Allen Highway, Fairfax, VT 05454
4. Redeeming Grace Church, c/o Paul Maffin, President. 164 Ballard Road, Milton, VT 05468
5. Flora E. Fairbanks Revocable Living Trust, 1023 Ethan Allen Highway, Fairfax, VT 05454
6. Ann Shepard, 1093 Ethan Allen Highway, Fairfax, VT 05454
7. Brad and Kim Arel, 1091B Ethan Allen Highway, Fairfax, VT 05454
8. People's Trust Co., P.O. Box 320, St. Albans, VT 05478
9. Vermont Electric, Attention Marissa/Beth, 42 Wescom Road, Johnson, VT 05656