

Town of Underhill

Development Review Board

Conditional Use Review Findings & Decision

CONDITIONAL USE REVIEW APPLICATION OF LIAM FARRELL TO OPERATE A SNACK BAR

In re: Liam Farrell
79 Pleasant Valley Road (PV079)
Underhill, VT 05489

Docket No. DRB-23-05

Decision: Approved with Conditions (see Section III for More Details)

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns the Conditional Use Review application of Liam Farrell (hereafter the Applicant) pertaining to the operation of a Snack Bar on property owned by Robin Lauzon Farrell located at 79 Pleasant Valley Road (PV079) in Underhill, Vermont.

- A. On or before February 21, 2023, the Applicant submitted a Conditional Use Review application for the above referenced project. Zoning Administrator, Nick Atherton, received the application and determined the application to be complete shortly thereafter. After considering procedural errors, on the Town's part, Liam Farrell was issued a Home Business Permit, for sales by appointment only. Zoning Administrator, Nick Atherton, issued the Home Business Permit on March 6, 2023. A Conditional Use Review hearing was scheduled for Monday, May 15, 2023. The May 15th hearing never took place. A Conditional Use Review hearing was rescheduled by Interim Zoning Administrator, Brad Holden, scheduled to take place on Monday, July 17, 2023 at 6:35 pm. A site visit was scheduled for 6:00 pm, prior the hearing.
- B. On June 27, 2023, notice of the Conditional Use Review hearing was mailed via Certified Mail/Hand Delivery to the following property owners adjoining the property subject to the application. A copy was also mailed to the Applicant and Landowner at 79 Pleasant Valley Road, Underhill, VT 05489:
 1. **Old Maple, LLC.**, 286 Ponus Ridge Road New Canaan, CT 06840;
 2. **Keith Lane Zucker & Martha M.T. Lane**, 286 Ponus Ridge Road New Canaan, CT 06840;
 3. **Town of Underhill Selectboard**, PO Box 120 Underhill VT 05489 (Hand Delivered)
- C. On June 27, 2023, notice of the public hearing for the proposed Conditional Use Review application was posted at the following locations:
 1. The Underhill Town Clerk's office;
 2. The Underhill Food Sharing Shed; and
 3. Jacobs & Son Market.
- D. On June 30, 2023, notice of public hearing was published in the *Burlington Free Press*.
- E. Board members present at the site visit were:

1. Board Member, Charles Van Winkle, Chairperson
2. Board Member, Mark Green
3. Board Member, Karen McKnight

Also in attendance were Brad Holden, Interim Zoning Administrator and Liam Farrell & Robin Lauzon Farrell, Applicant/Landowner

F. Board members present at the hearing were:

1. Board Member, Charles Van Winkle, Chairperson
2. Board Member, Brian Bertsch, Vice Chairperson
3. Board Member, Mark Green
4. Board Member, Karen McKnight

Others present at the hearing were:

1. Applicant, Liam Farrell
2. Landowner, Robin Lauzon Farrell
3. Keith Lane-Zucker, interested party
4. Martha M.T. Lane, interested party
5. Interim Zoning Administrator, Brad Holden

All attending parties were physically in attendance.

G. At the outset of the hearing, Chairperson Charles Van Winkle explained the criteria under 24 V.S.A § 4465(b) for being considered an “interested party.” Those who spoke at the hearing were:

1. Applicant, Liam Farrell
2. Landowner, Robin Lauzon Farrell
3. Interested party, Keith Lane-Zucker
4. Interested party, Martha M.T. Lane

H. In support of the Conditional Use Review application, the following exhibits were submitted to the Development Review Board:

- a. Exhibit A - July 17, 2023 Underhill Development Review Board Agenda
- b. Exhibit B - Development Review (Art. V) Application
- c. Exhibit C - HB-23-01 (PV079) Home Business Application & Permit approved March 6, 2023
- d. Exhibit D - Home Business Supplemental Form
- e. Exhibit E - Certificate of Service
- f. Exhibit F - Burlington Free Press notice of June 30, 2023

No additional exhibits were distributed to the Board prior to the Monday, July 17, 2023 hearing nor were any additional exhibits submitted into the record during the hearing.

All exhibits are available for public review in the Farrell Conditional Use Review file (PV079/DRB-23-05) at the Underhill Zoning & Planning office and on the Town’s website, www.underhillvt.gov

II. FACTUAL FINDINGS & CONCLUSIONS RELATING TO THE UNDERHILL UNIFIED LAND USE & DEVELOPMENT REGULATIONS

The Approved Minutes of the July 17, 2023 hearing are incorporated for reference into this decision. Please refer to those minutes for a summary of the testimony.

Based on the submitted application, testimony, exhibits, and evidence, the Development Review Board makes the following findings under the requirements of the 2011 *Underhill Unified Land Use and Development Regulations* (ULUDR), as amended through March 3, 2020:

PROJECT SYNOPSIS

The Applicant, Liam Farrell, seeks Conditional Use approval to operate a Snack Bar out of a motor vehicle. The subject property is located at 79 Pleasant Valley Road (PV079) in Underhill, Vermont and is owned by Robin Lauzon Farrell. A Snack Bar is subject to Conditional Use Review in accordance with Table 2.5(C) (31) of the ULUDR. The property is located within the Water Conservation zoning district as defined under Article II, Table 2.5 of the ULUDR.

ARTICLE II, ZONING DISTRICTS

A. ARTICLE II, TABLE 2.5 – WATER CONSERVATION

The Board finds that the subject property is located in the Water Conservation Zoning District and that the proposed use, a Snack Bar, is consistent with other uses within the district and in the surrounding neighborhood, thus conforming to the traditional development patterns of the zoning district. The proposed Snack Bar will satisfy the front, side, and rear setback requirements.

The Board notes that a Snack Bar is a Conditional Use within the district.

ARTICLE III, GENERAL REGULATIONS

A. SECTION 3.2 – ACCESS

The Board finds that the subject property is served by an existing residential access located at 79 Pleasant Valley Road, a Class 2 Town Highway. The existing speed limit on Pleasant Valley Road is 30 MPH, in that location. During the site visit and based upon field measurements it was found that minor tree limb pruning, east of the access, will be necessary to achieve the proper site distance.

B. SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS

The Board finds that the subject property, located in the Water Conservation Zoning District, is a conforming lot. The proposed Snack Bar will be operated out of a motorized vehicle (Van) which is mobile. Food will be prepared within the existing residence and served out of the Snack Bar. The proposed placement of the Snack Bar and the portable seating is found to meet the front, side and rear setbacks for the district.

C. SECTION 3.11 – OUTDOOR LIGHTING

The Snack Bar will not have evening hours; the Board finds the applicant has not proposed outdoor lighting.

D. SECTION 3.11 – OUTDOOR STORAGE

The board finds based on statements made by the Applicant that there is minimal waste/trash associated with the Snack Bar and the waste/trash will be screened and contained on site in a screened secure area and is disposed of after the weekend, their busiest time, on Mondays.

E. SECTION 3.13 – PARKING, LOADING & SERVICE AREA

The board finds based on statements made by the Applicant that he doesn't have anymore than 2 to 3 cars at any given time while operating. The owners sated that their personal vehicles will be out of the way of traffic flow during business hours. The Snack Bar itself and the customer's vehicles are well

screened from Pleasant Valley Road because of the existing mature pine trees that line the frontage, west of the access. The Applicant does receive occasional food deliveries and the truck has had no issues with access. The Board finds that there appears to be adequate parking, loading & service areas.

ARTICLE V, DEVELOPMENT REVIEW

A. SECTION 5.1 – APPLICABILITY

The Board finds that Conditional Use Review is required per Table 2.5(C). As required under Section 5.4(C) of the *Unified Land Use & Development Regulations*, when considering Conditional Use Review applications, the Board shall apply Site Plan Review Standards under Section 5.3.

B. SECTION 5.3 – SITE PLAN REVIEW

Section 5.3(A) – Purpose: The Board finds that site plan review is required as part of Conditional Use Review per Section 5.4(C).

Section 5.3(B) – Standards: The Board has considered this section’s standards and issues the following comments and/or imposes the following safeguards, modifications, and conditions:

SECTION 5.3.B(1) – Existing Site Features: The Board finds that the Applicant submitted a satisfactory sketch depicting the proposed project and was able to ascertain enough information based upon the site visit and testimony at the hearing.

Section 5.3(B)(2) – Site Layout & Design: The Board finds that the proposed Snack Bar is not contrary to the purpose and stated goals under Subsection (b), Water Conservation District.

Section 5.3(B)(3) – Vehicle Access: The Board finds the subject lot is accessed by one curb-cut via Pleasant Valley Road. The Applicant does not propose to modify or relocate the existing curb-cut, driveway, or parking area.

Section 5.3(B)(4) – Parking, Loading & Service Areas: The Board finds that the existing parking area contains sufficient parking for the proposed Snack Bar, and therefore, the Board does not require any modification to the existing parking area.

Section 5.3(B)(5) – Site Circulation: The Board finds that the proposed Snack Bar does not significantly alter the site circulation.

Section 5.3(B)(6) – Landscaping and Screening: The Board finds that the Applicant does not propose any landscaping or screening relative to the project. The site where the Snack Bar will be located has adequate existing screening. No additional screening and landscaping are required by the Board.

Section 5.3(B)(7) – Outdoor Lighting: The Board finds that the Applicant will be operating during daytime hours. Outdoor lighting is found to be not applicable.

Section 5.3(B)(8) – Stormwater Management and Erosion Control: The Board finds that no exterior sitework is proposed.

C. SECTION 5.4 – CONDITIONAL USE REVIEW

Section 5.4(A) – Purpose: The Board finds that Conditional Use Review is required per Table 2.5(C) of the *Unified Land Use & Development Regulations* which require Conditional Use approval for a Snack Bar. The Board finds that the conditions imposed herein address the identified potential impacts, as well as help reduce, avoid, or mitigate those impacts.

Section 5.4(B) – General Standards: The Board finds that the conditions imposed herein will likely mitigate any potential undue adverse effects.

Section 5.4(B)(1) – The Capacity of Existing or Planned Community Services or Facilities: The Board finds that the proposed Snack Bar does not result in an increase in demand on community services and facilities.

Section 5.4(B)(2) – The Character of the Area Affected: The Board finds that the proposed Snack Bar does not affect the character of the area, as the area consists of a mix of single-family dwellings, and recreational areas. Furthermore, the Board makes the following findings pertaining to the location, scale, type, density, and intensity of the use (Snack Bar) as it relates to other buildings and uses in the area:

- **Location:** the property is located in the Water Conservation Zoning District, which largely contains low density development and recreational areas.
- **Scale:** the scale of this proposal is found to be consistent with the development that currently exists on the property and the neighboring properties.
- **Type:** the proposed Snack Bar is a Conditional Use within the Water Conservation Zoning District.
- **Density:** the proposed Snack Bar results in no change to the density of the area.
- **Intensity:** the proposed Snack Bar negligibly changes the intensity of the area.

Section 5.4(B)(3) – Traffic on Roads and Highways in the Vicinity: The Board finds that the proposed Snack Bar will not result in an increase in traffic on roads and highways in the vicinity.

Section 5.4(B)(4) – Bylaws in Effect: The Board finds that the proposed Snack Bar, as a result of this approval, complies with the 2020 *Unified Land Use & Development Regulations*.

Section 5.4(B)(5) – The Utilization of Renewable Energy Resources: The Board finds that the proposed Snack Bar does not interfere with any sustainable use of renewable energy resources.

Section 5.4(C) – Site Plan Review Standards: The Board finds that the applicant has satisfied all applicable Site Plan Review Standards set forth in Section 5.3 as required by Conditional Use Review.

Section 5.4(D) – Specific Standards: The Board finds that it may consider Subsections 5.4(D)(1) through 5.4(D)(4) and impose conditions as necessary to reduce or mitigate any identified adverse impacts of the proposed development.

Section 5.4(D)(1) – Conformance with the Town Plan: The Board finds that the proposed Snack Bar is not contrary to the Town Plan.

Section 5.4(D)(2) – Zoning District & Use Standards: The Board finds that the proposed Snack Bar conforms with the zoning district and use standards, as outlined above.

Section 5.4(D)(3) – Performance Standards: The Board finds that the project complies with the performance standards set forth in Section 3.14.

Section 5.4(D)(4) – Legal Documentation: The Board finds that this Section does not apply.

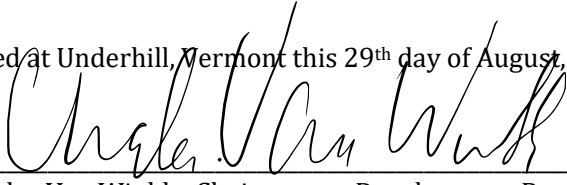
III. DECISIONS AND CONDITIONS OF APPROVAL

The Board is satisfied with the level of investigation, and evaluation conducted in the application submittal and review process concerning the above-mentioned project. The Board reviewed all aspects of the proposal under the evaluation of the *Underhill Land Use & Development Regulations* and concludes that based on the evidence submitted and the above findings, the proposed Snack Bar conforms to the aforementioned Regulations.

Based upon the findings above, and subject to the conditions below, the Development Review Board Grants Conditional Use approval for the project presented in the application and at the hearing with the following conditions:

1. **Hours of Operation.** The Board finds that the Snack Bar shall not operate for sales outside the hours of 7:30 AM to 11:30 AM. The Snack Bar can be open up to 4 days a week from 1 May through October 31st.
2. **Access.** The Board requires that minor tree limb pruning be carried out in order to improve the site line distance, east of the existing access, and to comply with the B-71 VTRANS Driveway Standards.
3. **Parking.** All customer parking shall be on site. No parking shall be allowed on Pleasant Valley Road.
4. **Additional Permits.** The applicant shall ensure that any necessary permits that may be required by the State of Vermont have been obtained, and shall be maintained for the lifetime of the business.
5. **Sign.** The Board approves the use of the sign advertising the business. The sign shall maintain conformance with the provisions of exterior outlined in the Underhill Unified Land Use and Development Regulations in effect at the time of this approval. The board expressly prohibits any kind of illumination for the sign.
6. **Zoning Permits/DRB Approvals.** The Home Business Permit (HB-23-01) issued March 6, 2023 shall become null and void 30 days after the issuance of this Decision. Due to the mobile nature of this Conditional Use approval combined with the fact that no new structures are being proposed in conjunction with this application, this approval shall run with the Applicant/Landowner and not with the land.

Dated at Underhill, Vermont this 29th day of August, 2023.



Charles Van Winkle, Chairperson, Development Review Board

NOTICE/APPEAL (ZONING): This decision may be appealed to the Vermont Environment Court by an interested person who participated in the proceedings before the Development Review Board. Such appeal must be taken within 30 days.

NOTICE/APPEAL (ACCESS): This permit covers only the Selectboard's (or its designee's) jurisdiction and authority over town highways under 19 V.S.A. § 1111. It does not release the applicant from the requirements of other applicable federal, state or local statutes, ordinances, rules or regulations, including the Underhill Unified Land Use & Development Regulations. This permit addresses issues including access to, work within, and drainage affecting the town highway and its right-of-way, as described in Section 1111 and the Town's Road Ordinance. It does not address all other possible transportation, access (including the use of private access ways) or development issues which, if relevant to a proposed project, must be addressed separately. This permit may be reviewed pursuant to the procedures and time limits set forth in V.R.C.P. 75.