



Town of Underhill

Development Review Board

Conditional Use Review Findings & Decision

CONDITIONAL USE REVIEW APPLICATION OF SUZANNE TOMLINSON TO CONVERT THE EXISTING OFFICE BUILDING TO A BAKERY

In re: Suzanne Tomlinson
419 VT Route 15 (VT419)
Underhill, VT 05489

Docket No. DRB-21-14

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

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns the Conditional Use review application of Suzanne Tomlinson (hereafter the Applicant) pertaining to the conversion of an office building to a bakery on property owned by Marc & Jane Maheux located at 419 Vermont Route 15 (VT419) in Underhill, Vermont.

- A. On or before August 15, 2021, the Applicant submitted a conditional use review application for the above referenced project. Interim Zoning Administrator, J. Kail Romanoff, received the application and determined the application to be complete shortly thereafter. A hearing was scheduled to commence on Monday September 20, 2021 at 6:35 PM.
- B. On September 3, 2021, notice of the conditional use review hearing was mailed via Certified Mail to the following property owners adjoining the property subject to the application and the landowner (a copy was also mailed to the applicant at 64 Cowie Road, Underhill, VT 05489 – Underhill mailing address, Westford, VT physical address):
 - 1. **VT417** – Vincent J. & Cheryl M. Arpey, 417 VT Route 15, Underhill, VT 05489
 - 2. **VT419** – Marc R. & Jane Maheux, PO Box 236, Underhill, VT 05490
 - 3. **VT420** – Underhill-Jericho Fire Department, PO Box 150, Underhill, VT 05489
 - 4. **VT421** – Robert & Paige Manning, 421 VT Route 15, Underhill, VT 05489
 - 5. **VT429** – Robert F. & Judith L. Peterson, 429 VT Route 15, Underhill, VT 05489
- C. On September 3, 2021, 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 Center Post Office; and
 - 3. Jacobs & Son Market.
- D. On September 4, 2021, notice of public hearing was published in the *Burlington Free Press*.
- E. Present at the conditional use review hearing were the following members of the Development Review Board:

1. Board Member, Charles Van Winkle, Chairperson
2. Board Member, Penny Miller, Vice Chairperson
3. Board Member, Mark Green
4. Board Member, Karen McKnight
5. Board Member, Dan Lee
6. Board Member, Mark Hamelin, Alternate
7. Board Member, Brian Bertsch, Alternate

Also in attendance was Staff Member J. Kail Romanoff, Interim Zoning Administrator.

Others present at the hearing were:

8. Applicant, Suzanne Tomlinson (64 Cowie Road, Underhill, VT)
9. Jon LeBlanc (64 Cowie Road, Underhill, VT)
10. Fernando Cresta (747 Pine Street, South Burlington, VT)
11. Amanda Raab (947 Mountain View Road, Williston, VT)
12. Marc Maheux (38 Poker Hill Road, Underhill, VT)
13. Esther Lotz (92 Grant Street, Burlington, VT)

All attending parties were physically in attendance.

- F. 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, Suzanne Tomlinson
2. Jon Leblanc

- G. In support of the conditional use review application, the following exhibits were submitted to the Development Review Board:

- a. Exhibit A –Tomlinson (VT419) Conditional Use Review Staff Report
- b. Exhibit B – Tomlinson (VT419) Conditional Use Review Hearing Procedures
- c. Exhibit C – Development Review Application
- d. Exhibit D – BFP Notice
- e. Exhibit E – Certificate of Service
- f. Exhibit F – Findings & Decision, DRB-13-08, dated June 21, 2013
- g. Exhibit G – Notice of Decision, Zoning Board of Adjustment, dated October 12, 2004
- h. Exhibit H – Wastewater Permit #: WW-4-2311
- i. Exhibit I – VTRANS Jurisdictional Opinion, dated August 17, 2021

No additional exhibits were distributed to the Board prior to the Monday, September 20, 2021 hearing nor were any additional exhibits submitted into the record during the hearing.

All exhibits are available for public review in the Tomlinson Conditional Use Review file (VT419/DRB-21-14) at the Underhill Zoning & Planning office.

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

The Minutes of the September 20, 2021 meeting, written by J. Kail Romanoff, are incorporated by 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, Suzanne Tomlinson, seeks conditional use approval to convert an existing office building to a bakery. The subject property is located at 419 VT Route 15 (VT419) in Underhill, Vermont and is owned by Marc & Jane Maheux. A bakery is subject to conditional use review in accordance with Table 2.2(C) & Section 3.3(A)(3) of the ULUDR. The property is located within the Underhill Flats Village Center zoning district as defined under Article II, Table 2.2 of the ULUDR.

ARTICLE II, ZONING DISTRICTS

A. ARTICLE II, TABLE 2.2 – UNDERHILL FLATS VILLAGE CENTER

The Board finds that the subject property is located in the Underhill Flats Village Center district and that the proposed use, a bakery, 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 bakery will satisfy the front, side, and rear setback requirements.

The Board notes that a proposed bakery 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 ~~has~~ access off of Vermont Route 15, a State Highway. The Board notes that the existing access point to Vermont Route 15 is approximately 74 ft. wide and nonconforming. However, the applicant has not proposed any modifications which would increase the degree of nonconformance and has submitted a review letter from the State of Vermont Agency of Transportation which states the proposed project does not require a modifications to the existing access way. Therefore, the Board finds that an access permit is not required, and that review under subsection 3.2(D) is unnecessary.

B. SECTION 3.3 – CONVERSION, OR CHANGE OF USE

The Applicant is proposing to convert the subject structure from an office building to a bakery. A bakery is not an enumerated nor a defined use in the ULUDR. The Board finds, however, that a bakery most resembles a restaurant when compared with enumerated and defined uses in ULUDR. A restaurant, and thus a bakery as well, requires conditional use review in the Underhill Flats Village Center Zoning district. The Applicant has submitted a State of Vermont Wastewater and Potable Water Supply Permit for the property demonstrating that sufficient wastewater can be provided to the proposed project. (Exhibit H).

C. SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS

The Board finds that the subject property, located in the Underhill Center Village zoning district, is a nonconforming lot, as it is ± 0.39 acres in a district where the minimum lot size is 1 acre, and the frontage is ± 109 ft. in a district that requires a frontage length of 150 ft. The proposed bakery, however, satisfies the underlying zoning district's setback requirements (0 ft. front and 20 ft. side and rear).

D. SECTION 3.8 – NONCONFORMING LOTS

The Board finds that the subject lot was legally in existence on the effective date of the current version of the *Unified Land Use & Development Regulations* (March 1, 2011; amended thru March 6, 2018). The lot is being developed for a purpose that is allowed in the Underhill Flats Village Center district so long

as the Board grants conditional use approval.

The Board notes that while the existing lot is nonconforming, the dimensions of the lot are not prohibitive in relation to the proposed project.

E. SECTION 3.11 – OUTDOOR LIGHTING

The Board finds that the Applicant proposes no outdoor lighting. Should the Applicant add additional outdoor lighting relating to the project at a later date, it shall be downward facing and shielded and conform with the requirements the *Unified Land Use and Development Regulations in effect at that time*.

F. SECTION 3.13 – PARKING, LOADING, & SERVICE AREAS

PARKING SPACES: The Board finds the *Unified Land Use & Development Regulations* requires for the proposed project 3 parking spaces, and one handicapped parking space, as outlined directly below:

Proposed Use	Requirement	# of Spaces Required
Restaurant Space (0 Proposed Seats & 3 Proposed Employees)	1 Parking Space per 5 Seats + 1 Parking Space Per Employee	3 Spaces
Handicap Parking (less than 25 spaces proposed)	1 Handicapped Parking Space for parking area of 25 spaces or less	1 Handicapped Space
Total		4 Spaces

The Board finds the ± 28 ft. x 70 ft. parking area is sufficiently sized for the minimum requirement of 4 parking space (3 standard parking spaces and one handicapped parking space). As provided above, the Applicant shall better delineate the parking areas and travel lane areas, to the satisfaction of the zoning administrator prior to opening the bakery.

In addition, the Board finds that, although the *Unified Land Use & Development Regulations* requires that parking for new development be located to the rear and side of the principal, the preexisting nonconforming status of the parking in the front of the building and the physical constraint posed by the wastewater system located behind the building justifies the parking area in front of the building. While off-street parking areas that contain more than eight (8) parking spaces require 10% of the parking area to be landscaped, since no outdoor modifications are proposed, the Board waives this requirement due to the preexisting nonconforming status of the existing parking area.

The Board finds that the Applicant has not depicted areas for loading & service; however, the Board finds that the identification of these areas is not required, as the proposed development will not require the frequent or regular loading or unloading of goods or passengers.

At the public hearing the Applicant testified that the outdoor storage of trash would be in a screened dumpster enclosure, covered with a lid, and located behind the building. The Board finds that the final location can be approved by the zoning administrator prior to obtaining a certificate of occupancy permit.

G. SECTION 3.14 – PERFORMANCE STANDARDS

The Board finds that the conversion of the office space to a bakery will not create dangerous, injurious, noxious, or otherwise objectional conditions that adversely affect or interfere with the reasonable use of adjoining or nearby properties.

At the public hearing there was discussion over how exhaust fumes from the commercial kitchen would be vented based on concerns from an abutting property owner. The Applicant testified that the hood vent could be installed so that it was not directed toward the property to the south which the Board found to be a satisfactory solution.

H. SECTION 3.16 – SIGNS

The Board finds that that the Applicant proposes no signage. Should the Applicant add signage relating to the project at a later date, it shall be installed in conformance with sign standards for signs on VT Route 15, as outlined in § 3.16(D), and a sign permit shall be obtained from the Zoning Administrator.

ARTICLE V, DEVELOPMENT REVIEW

A. SECTION 5.1 – APPLICABILITY

The Board finds that conditional use review is required per Table 2.2(C) and 3.3(A)(3). 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 aerial plan depicting the proposed project and was able to ascertain enough information through the submitted aerial plan, and other sources, such as the ANR website, that the proposed bakery does not adversely affect or impact the enumerated resources in this subsection.

Section 5.3(B)(2) – Site Layout & Design: The Board finds that the proposed bakery is not contrary to the purpose and stated goals under Subsection (a), Underhill Flats Village Center and Underhill Center Village Districts, noting that the proposed bakery is not contrary to the traditional, compact village settlement pattern.

Section 5.3(B)(3) – Vehicle Access: The Board finds the subject lot is accessed by one curb-cut via VT Route 15. 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 bakery, 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 bakery does not significantly alter the site circulation, which is expected to remain largely consistent with site circulation patterns of an office building.

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. While the proposed bakery will be visible from VT Route 15, the structure and parking will be shielded from neighboring properties by existing vegetation and is otherwise consistent with other structures in the district and surrounding neighborhood. Therefore, no additional screening and landscaping is required by the Board.

Section 5.3(B)(7) – Outdoor Lighting: The Board finds that the Applicant proposes no outdoor lighting.

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

C. SECTION 5.4 – CONDITIONAL USE REVIEW

Section 5.4(A) – Purpose: The Board finds that conditional use review is required per Table 2.2(C) and 3.3(A)(3) of the *Unified Land Use & Development Regulations* which require conditional use approval for the construction of or use of a structure as a bakery. 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 bakery 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 bakery does not affect the character of the area, as the area consists of a mix of single-family dwellings, businesses, and public facilities. Furthermore, the Board makes the following findings pertaining to the location, scale, type, density, and intensity of the use (bakery) as it relates to other buildings and uses in the area:

- **Location:** the property is located in the Underhill Flats Village Center zoning district, which largely contains medium density development, including businesses.
- **Scale:** the scale of this proposal to be consistent with the development that currently exists on the property and the neighboring properties.
- **Type:** the proposed bakery is a conditional use within the Underhill Flats Village Center zoning district.
- **Density:** the proposed bakery results in no change to the density of the area.
- **Intensity:** the proposed bakery 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 bakery may result in an increase in traffic on roads and highways in the vicinity, however, the project is not expected to create significant congestion nor create unsafe conditions for motorists or pedestrians.

Section 5.4(B)(4) – Bylaws in Effect: The Board finds that the proposed bakery, 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 bakery does not interfere with any sustainable use of renewable energy resources.

Section 5.4(C) – Site Plan Review Standards: The Board finds that site plan review is required as a part of conditional use review. Analysis can be found under Section 5.3 above.

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 bakery is not contrary to the Town Plan.

Section 5.4(D)(2) – Zoning District & Use Standards: The Board finds that the proposed bakery 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 above.

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

ARTICLE VI, FLOOD HAZARD AREA REVIEW

The Board finds that there are no Special Flood Hazard Areas, as illustrated on the requisite Flood Insurance Rate Maps, present on the lot, and therefore, review under Article VI is not required.

ARTICLE X, SPECIFIC USE STANDARDS

A. SECTION 10.3 – ZONING PERMITS

Section 10.3(D) – Effective Dates and Permit Renewals:

SECTION 10.3(D)(1) – ZONING PERMITS: The Board finds that the permit issued as part of this decision will remain in effect for two years from the date of issuance. The Applicant must substantially commence construction within one year or the permit will become null and void. “Substantially commence” entails “initial site preparation; the installation of an access; and the installation of a foundation, water and/or wastewater system on-site.” (See Article XI for definition of “Substantially Commenced”)

SECTION 10.3(D)(2) – DRB APPROVALS: The Board finds that conditional use approvals expire with the expiration of the zoning permit and may only be extended as provided under Section 10.3.D.1. Once the approved uses or structures are established, the conditional use approval will remain in effect and run with the land. The Board finds that the Applicant shall establish the use within 24 months of the effective date of the issuance of the zoning permit – to be issued by the Zoning Administrator as a result of this approval.

III. DECISIONS AND CONDITIONS OF APPROVAL

The Board is satisfied with the level of investigation, engineering and evaluation conducted in the application submittal and review process concerning the above-mentioned project. The Board thoroughly 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 bakery generally 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:

GENERAL CONDITIONS OF APPROVAL

1. ***Change of Use.*** The Board finds that any use reclassification, change of use, or change of business type pertaining to this application requires additional review by this Board. Further review by this Board is not required should a subsequent business reside in the structure that is of the same

nature as the proposed business in this application so long as the business functions within the parameters of this decision.

CONDITIONS RELATING TO THE *UNIFIED LAND USE & DEVELOPMENT REGULATIONS*

2. **Kitchen Exhaust** -As represented during the hearing, the kitchen exhaust emanating from the use shall not be directed towards the property to the south.
3. **Hours of Operation.** The Board finds that the bakery shall not operate for retail sales outside the hours of 8:00 AM to 8:00 PM.
 - a. Should the hours of operation require minor alteration, the Zoning Administrator is empowered to act on behalf of the Board to alter the hours through a change in use permit. Any change in hours of operation will be considered minor so long as opening is proposed to occur no earlier than 7:00 AM and closing is proposed for no later than 9:00 PM. Any proposal to open prior to 7:00 AM or close after 9:00 PM will require further review by the Board.
4. The Board requires that any outdoor lighting that is added as part of this proposed project shall be downward facing and shielded.
5. No on street parking for this building is allowed on Route 15, and the Applicant is responsible for enforcement.

Dated at Underhill, Vermont this 18th day of October, 2021.

Charles Van Winkle

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.