

TOWN OF UNDERHILL  
APPLICATION OF STEVEN AND WENDY GUAY  
FOR A PLANNED RESIDENTIAL DEVELOPMENT AND CONDITIONAL  
USE/HOME OCCUPATION  
FINAL HEARING FINDINGS AND DECISION

In re: Steven and Wendy Guay  
63 River Road  
Underhill, VT 05489

Docket No. DRB-08-09: Steven and Wendy Guay

**I. INTRODUCTION AND PROCEDURAL HISTORY**

This proceeding concerns Steven and Wendy Guay's final hearing application for a 2-Lot Planned Residential Development (PRD) of, and Conditional Use/Home Occupation at, property they own located at 63 River Road in Underhill, VT.

1. On July 10, 2009, Steven and Wendy Guay filed an application for a final subdivision hearing for the project. A copy of the application is available at the Underhill Town Hall. The information for the home occupation was submitted on August 14, 2009.
2. By July 15, 2009, notice of the final hearing on the proposed Guay PRD and conditional use/home occupation were posted at the following places:
  - a. The property to be developed, 63 River Road;
  - b. The Underhill Town Clerk's office;
  - c. The Underhill Center Post Office;
  - d. The Underhill Flats Post Office;
  - e. The Deborah Rawson Memorial Library;
  - f. The Town of Underhill website.
3. On July 15, 2009, a copy of the notice of a final hearing was mailed to the applicants, Steven and Wendy Guay, 63 River Road, Underhill, VT 05489, and via certified mail to the following owners of properties adjoining the property subject to the application:
  - a. Jericho-Underhill Park District, P.O. Box 164, Underhill, VT 05489
  - b. Sullivan, 91 River Road, Underhill, VT 05489
  - c. Tower, 73 River Road, Underhill, VT 05489
  - d. Derouchie, 12 Maple Ridge, Underhill, VT 05489
  - e. Quinn/Mundy, P.O. Box 92, Underhill Center, VT 05490
  - f. Jericho-Underhill Water District, P.O. Box 174, Underhill, VT 05489
  - g. Underhill Cemetery Association, P.O. Box 81, Jericho, VT 05465
4. On July 29, 2009, notice of the final hearing was published in Seven Days.

5. The hearing was scheduled to begin at 6:30 PM on August 17, 2009.
6. Present at the hearing were the following members of the Development Review Board:
  - Stan Hamlet
  - Chuck Brooks
  - Matt Chapek
  - Charlie Van Winkle
  - Scott Tobin, Chair

Kari Papelbon, Zoning Administrator, also attended the hearing.

7. At the outset of the hearing, Chairperson Scott Tobin explained the criteria under 24 V.S.A. § 4465 (b) for being considered an “interested party.” Interested parties who spoke at the hearing were:
  - Steven and Wendy Guay, 63 River Road, Underhill, VT 05489
8. During the course of the hearing the following exhibits were submitted to the Development Review Board:
  - a. A staff report sent by Zoning Administrator Kari Papelbon to the Development Review Board and to Steven and Wendy Guay;
  - b. Steven and Wendy Guay’s Application for Subdivision: Final (dated 7-10-09);
  - c. A copy of the completed Subdivision Checklist: Final Hearing;
  - d. Plans prepared by David Fuqua of Ridge Consulting Engineers for Steven and Wendy Guay (Sheets 1-3 of 3, revised 7-9-09);
  - e. A copy of the survey by Mark Ward of Vermont Land Surveyors for Steven and Wendy Guay (revised 7-9-09);
  - f. A copy of the Wastewater System and Potable Water Supply permit application;
  - g. A copy of the letter from Ernestine Chevrier (dated 8-12-09);
  - h. A copy of the easement deed for Lot 2;
  - i. A copy of the site plan showing the proposed location of the pergola;
  - j. A copy of the Home Occupation Permit Application and site plan (dated 8-14-09);
  - k. A copy of the Proposed Findings of Fact for the Home Occupation;
  - l. A copy of the hearing notice published in Seven Days (dated 7-29-09).

These exhibits are available in the Guay, RV063T, PRD file at the Underhill Zoning Office.

## **II. FINDINGS**

### **Background**

The Minutes of the meetings written by Kari Papelbon are incorporated by reference into this decision. Please refer to these Minutes for a summary of the testimony.

Based on the application, testimony, exhibits, and other evidence, the Development Review Board makes the following findings on the final plat submission requirements as delineated on pages 9-11 of the Underhill Subdivision Regulations, "Final Plat for Subdivisions:"

A. Submission Requirements

Final Hearing Requirements:

1. Survey and Engineering Plan Elements: The Board finds that the engineering drawings and survey show the identifying title, parcel codes, name of the municipality, name and address of the record owner and sub divider, the seal of the licensed designer, the seal of the registered land surveyor, the boundaries of the subdivision, scale, date, north point, and legend.
2. Road/Pedestrian Ways/ Easements/Reservations: The Board finds that the application satisfies the requirement as there are no proposed roads, and the lots, open space, and easements are shown on the plans.
3. Lot Lines/Bearings/Distances: The Board finds that the application satisfies the requirement as the lot lines, bearings, and distances are shown on the plans.
4. Road Details: The Board finds that this requirement is not applicable as there are no proposed roads.
5. Public Space/Reserved Space: The Board finds that the application satisfies the requirement as the open land is shown on the plans outside of the building envelope on Lot 1, and that such land will remain agricultural land.
6. Lot Numbering: The Board finds that the application satisfies the requirement as the lots are numerically numbered on the proposed plan.
7. Infrastructure: The Board finds that the application satisfies the requirement as utility poles, septic systems, and stormwater details are contained in the plans. The Board also recognizes that the land to be developed is relatively flat.
8. Wastewater System Design: The Board finds that the application satisfies the requirement as the location and results of all test pits and septic systems are shown on the plans. An application to the State for a Wastewater System and Potable Water Supply Permit has been submitted.
9. Existing and Proposed Water Supplies: The Board finds that the application satisfies the requirement as the Jericho Underhill Water District has approved water allocations for both lots. The State of Vermont has jurisdiction over isolation distances between potable water supplies and wastewater disposal systems.
10. Monumentation: The Board finds that the application satisfies the requirement as monumentation locations and details are contained in the plans.

11. Installation of Infrastructure or Bonding: A waiver request has been submitted for the requirement that an engineer provide a letter certifying that all required improvements have been satisfactorily completed or, in lieu thereof, supply a Selectboard-approved 2-year performance bond for the improvements at the time of filing the final plat. See (B) (2) below.
12. UJFD/CESU Letters: The Board finds that the application satisfies the requirement as letters from the Underhill-Jericho Fire Department and Chittenden East Supervisory Union have been submitted.
13. State Permits: The Board finds that the applicant has submitted applications to the State for all necessary permits.
14. Curb Cut/Selectboard Approval of Driveways and Road: The Selectboard has final jurisdiction over approval of curb cuts, road/driveway designs, and improvements on existing Town roads.

The Board recommends to the Selectboard that they approve the proposed curb cut, driveway designs, and waiver in B (2) below.

- B. Waivers: Waivers of the dimensional requirements for the development, subject to appropriate conditions, may be granted by the Board per Planned Residential Development regulations. The Board grants approval to the following waivers as allowed under the planned residential development scheme as they will not adversely affect public health, safety, or general welfare:

1. Dimensional Requirements

- a. Lot 1: Waiver for the front lot line setback for the proposed pergola (in the location of the current temporary canopy).  
The pergola will be at least at least 2 feet off of the River Road right-of-way.

All waivers previously granted in the preliminary decision remain valid.

2. Engineer's Certification or Bond for Improvements with the Final Mylar: The Board approves of the waiver with the condition that prior to issuance of a building permit to the lots, an engineer shall provide a letter to the Zoning Administrator certifying

- a. that the approved curb cut has been installed per the plan; and
- b. that the driveway has been "roughed in" per the approved plan.

Driveway top treatment may be installed at the end of the construction period.

C. Planning Standards: Evaluation Considerations

The Board finds that the Planning Standards: Evaluation Considerations in the preliminary decision remain valid.

D. Based on the fulfillment of the above subdivision requirements subject to final conditions, granted conditional waivers, findings, and evaluation considerations, the Board finds that the application satisfies the requirements for a planned residential development.

#### Conditional Use/Home Occupation

Based on the application, testimony, exhibits, and other evidence the Development Review Board makes the following findings:

1. Steven and Wendy Guay, Applicants, are applying for a conditional use/home occupation permit to sell homemade furniture and outdoor garden structures on their property at 63 River Road (to be 58 River Road after the finalized PRD).
2. Per §III (M) of the Underhill Zoning Regulations, home occupations are permitted when the following conditions are met (if they are not met or if the Zoning Administrator is in doubt about customary use, a home occupation shall be permitted only as a conditional use, and only upon review and approval by the Board):
  - a. The home occupation is conducted by the residents of the premises. No additional employees or fellow entrepreneurs shall be active on the premises.
    - No requests for additional employees have been submitted. All employees shall be residents of the premises.
  - b. In most cases the use shall be conducted entirely within a dwelling, occupying not more than one-third of its floor area, or within all or a portion of any accessory building, shall be clearly incidental and secondary to the use of the dwelling as a residence and does not change the residential character thereof. In other cases, the outside premises may be used for the permitted occupation.
    - Furniture will be constructed inside the upper floor of the barn using approximately half the square footage and displayed outside.
    - A request for exterior display areas has been submitted.
  - c. No materials or mechanical equipment shall be used which will be detrimental to the character of that area of Town because of hours of operation, vibration, noise, dust, smoke, odor, heat, glare, interference with radio or television reception, alteration of surface or groundwater(s), or other undesirable factors.
    - The type of work proposed for the home occupation is woodworking including the construction of chairs, gazebos, small garden sheds, and similar items.

- All tools used are standard shop tools. All construction will be inside the barns.
  - The woodworking activities will not produce vibration, dust, smoke, odor, heat, glare, interference with radio or television reception, or alter the surface or groundwater as all tools and materials shall be contained within the barns.
  - The applicants have stated that woodworking is done between the hours of 8:00 AM and 10:00 PM. The Board finds that since noise shall be contained within the barns, and that no vibration, dust, smoke, odor, heat, glare, radio or television interference shall occur, these hours of operation are reasonable.
- d. There is no exterior sign except one non-illuminated and not to exceed 600 square inches, bearing only the name and occupation of the resident/applicant.
- A request for a sign is included in the application. Should the Applicants erect a sign for the business it shall comply with current zoning regulations and a copy of the sign details shall be sent to the Zoning Administrator prior to installing the sign.
  - The signs currently used to advertise agricultural food products are considered exempt under the Vermont Agency of Agriculture's Accepted Agricultural Practice Regulations.
- e. For public display of goods or wares, §III (U) of the Underhill Zoning Regulations states that signs must be erected "on or reasonably near the premises of the activity served by the sign" and is permanent "if it is on display for longer than 45 days in a one-year period."
- Two display areas are proposed: the existing display area to the east of the barns and a 60' x 70' display area behind the barn closest to River Road (Lot 1, RV058). At such time the Applicants wish to erect a sign it shall comply with the current zoning regulations.
- f. No significant increase in traffic shall be generated than would normally be expected in the neighborhood.
- Typically 1-2 people per day visit the property to view the products for sale.
  - The Board recognizes that River Road is currently heavily-used as it serves as a main connecting road between VT Route 15 and the Underhill Flats area, and is just off of the intersection with Park Street.
- g. Parking shall not exceed what would normally be expected in the neighborhood.

- No new parking areas are proposed. The existing parking is located in the driveway next to the barns.
- h. The home occupation shall not include the sale of goods, other than craft items or items that are assembled, mixed together or created on the premises.
- All products sold on the premises shall be constructed or created onsite.
- i. Proper provisions are made for the disposal of any toxic or hazardous waste material.
- No hazardous materials are proposed to be used. All furniture and outdoor garden structures are made with wood.
- j. The use will not constitute a health or safety risk to adjoining residences.
- All materials and tools shall be contained within the existing barn until such time as they are ready for sale. No dust, smoke, odor, heat, glare, or pollution will be generated by the home occupation.
3. Per §III (F) of the Underhill Zoning Regulations, “Approval of use by the [Development Review Board] after public notice and public hearing have determined that the proposed Conditional Use complies with standards applicable to it as set forth in the By-Laws, and that the proposed Conditional Use is not injurious, noxious or offensive to the neighborhood and does not adversely affect:
- The character of the area
  - Traffic on roads or highways in the vicinity
  - By-Laws then in effect
4. Based on the above findings, the Board finds that the home occupation will not be injurious, noxious or offensive to the neighborhood. The Board also finds that the woodworking activities inside the existing barn will not adversely affect the character of the area as all work will be fully contained within the barn, will not adversely affect traffic on roads or highways in the vicinity as River Road is a main artery between Underhill Flats and Underhill Center, and current by-laws will be observed.

### **III. DECISION AND CONDITIONS**

Based upon the findings above, and subject to the conditions set forth below, the Development Review Board grants approval for the planned residential development and conditional use/home occupation as presented at the final hearing. The Development Review Board recommends approval of the curb cut/driveways and waivers with the recommended conditions to the Selectboard.

#### **A. Conditions for Subdivision**

1. Recording Requirement: Per the Underhill Subdivision Regulations, final approval of the subdivision is granted upon filing of the final subdivision plat in the Underhill Land Records. No transfer or sale of property may occur prior to recording the final plat and all applicable permits in the Town of Underhill Land Records.
2. State and Federal Permits: Copies of all required permits shall be submitted to the Zoning Administrator.
3. Driveways: Prior to issuance of a building permit to any lot out of this subdivision, an engineer shall provide a letter to the Zoning Administrator certifying
  - a. that the approved curb cut has been installed per the plan (Lot 1 only); and
  - b. that the driveway has been “roughed in” per the approved plan (both lots).

Driveway top treatment may be installed at the end of the construction period.

4. Stake-out of Improvements: All building envelopes and septic areas shall be staked out by the surveyor/engineer prior to any construction, and off-set stakes shall be held in place until completion of construction.
5. Septic System Certification: A copy of the engineer’s letter to the State certifying that the septic system for any lot out of this subdivision has been installed per the approved plans shall be filed with the Zoning Administrator.
6. Easement Deeds: Final deed language regarding the easement over Lot 1 for the Lot 2 septic system, to be included in each deed, shall be submitted to the Zoning Administrator prior to filing the final plat. The easement deed between Lot 2 and the Jericho-Underhill Water District shall include the correct revised date for the survey, shall be recorded in the Land Records, and a copy shall be filed with the Zoning Administrator prior to filing the final plat.
7. Re-subdivision: No lot in this subdivision shall be further subdivided. This language shall appear in any deed to the lots in this subdivision.
8. Boundary Line Adjustment: The deeds to Lot 1 and the Jericho-Underhill Water District land shall reflect the boundary line adjustment approved in this decision. The adjustment shall not create a new building lot and the adjusted land shall merge with the lands of the Jericho-Underhill Water District.
9. Digital Submission of Plat and Plans: Prior to recording the final Mylars, the applicant shall submit a copy of the final plat and site plan Sheet S-1 in digital format to the Zoning Administrator.
10. 911 Codes: Both shall post their 911 codes prior to issuance of any building permit (Lot 1: RV058, Lot 2: RV050).

11. Fees: All subdivision fees shall be paid in full to the Zoning Administrator prior to filing the final plat with the Town Clerk.
12. Selectboard Approval: Applicant shall obtain approval of the curb cut, driveways, and waiver requests from the Selectboard prior to filing the final plat (see 8-20-09 Selectboard minutes).

**B. Conditions for the Conditional Use/Home Occupation**

1. The proposed 60' x 70' display area within the proposed building envelope for Lot 1 (RV058) as depicted on the submitted site plan is approved. The existing display area is also approved.
2. The existing parking area (Lot 1, RV058) is approved. No more than 4 non-resident vehicles shall be parked in the area at one time.
3. The hours of operation shall be between 8:00 AM and 10:00 PM as stated in the application.
4. All goods for sale shall be produced on the premises.

Dated at Underhill, Vermont this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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Scott Tobin, Chair, Development Review Board

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceedings 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 Court Proceedings. No documents shall be recorded until \_\_\_\_\_, when the 30-day appeal period has expired.