

**Town of Underhill
Development Review Board Minutes
May 19, 2014**

Board Members Present:

Charles Van Winkle, Chairperson
Penny Miller
Will Towle
Jim Gilmartin
Shanie Bartlett (Alternate)

Others Present:

Laure Torkler (Applicant-1st Hearing)
Rita St. Germain (Resident- 1st Hearing)
Wayne Russin (Applicant- 2nd Hearing)
Walter Tedford (Resident- 2nd Hearing)
AJ Sumner (Resident/Applicant- 2nd Hearing)
Marty Baslow (Abutter- 2nd Hearing)
Andy Houle (Abutter- 2nd Hearing)

Staff/ Municipal Representatives Present:

Sarah McShane, PZA

33 Tupper Road- Site Plan Review for a proposed Bed & Breakfast

Contents:

- a) L. Torkler's Site Plan Review Hearing Request (dated 4-23-2014);
- b) A copy of the Site Plan Review Standards Findings Checklist;
- c) A copy of the tax map for TU033;
- d) A copy of the Natural Resources Map indicating slope on property;
- e) A copy of the hearing notice published in the Burlington Free Press on May 1, 2014;
- f) A copy of the State of Vermont Small Business Fact Sheet for Bed & Breakfast;
- g) A copy of the septic permit for TU033 (permit # WW-4-3345);
- h) A copy of the procedure checklist for the meeting;
- i) A copy of the VT Dept. of Health application to operate a food and lodging establishment;
- j) A copy of the lab report from Endyne Inc. (date reported: 4-29-2014);
- k) A copy of the residential testing application for Endyne Inc. (dated 4-28-2014);
- l) VT Dept. of Health inspection report for lodging establishment (dated 5-6-2014).

****Note:** A site visit at 33 Tupper Road took place at 6:00 PM; those present included Sarah McShane (staff), Laure Torkler (Applicant), and Board Members: Penny Miller, Shanie Bartlett, Will Towle, and Jim Gilmartin.**

- Chairperson Van Winkle called the meeting to order at 7:30 PM.
- Chairperson Van Winkle began the hearing by explaining the procedure for site plan review, which comes under the 2012 Unified Land Use and Development Regulations.
 - Laure Torkler, Applicant, provided an overview of the proposal, which includes creating a 3 guestroom Bed & Breakfast at her existing home. Each room would accommodate two guests. She intends on serving a hot breakfast.
 - S. McShane, PZA, provided her staff report, which was included in the information pack, and reviewed recommended conditions of approval. She stated that Table 3.1 of the Unified Land Use and Development Regulations require a minimum of two off-street parking spaces per dwelling and one per each guest room. This proposal would need to accommodate a minimum

of five parking spaces with a minimum width of nine feet and a minimum length of 18 feet. S.McShane also reviewed the requirements of Section 4.6-Commercial Lodging, and Section 3.16-Signs.

- Chairperson Van Winkle asked for public comment.
- Rita St. Germain, 18 Tupper Road, spoke in support of the proposal.
- Board Member Will Towle asked the Applicant if she had a plan or drawing that demonstrated there is adequate space for the five required parking spaces.
- Board Member Penny Miller stated it would be helpful to have a simple drawing indicating the location and size of the required parking spaces.

8:08 PM: Board Member Will Towle made a motion, seconded by Board Member Jim Gilmartin, to approve the site plan review application for a Bed and Breakfast with the condition the Applicant provide a plan that indicates the location of the five required parking spaces. The motion was passed by all Board Members present.

Board Members told the Applicant that she will receive a written decision in the mail. The decision has a 30 day appeal period. The hearing ended at 8:10 PM.

810 VT Route 15- Appeal of ZA's Decision. Request to continue automobile repair business.

Contents:

- a) A copy of the application for Appeal of ZA's Decision (dated 4-28-14);
- b) Letter from W.Russin requesting an appeal hearing (no date listed);
- c) Email correspondence from PZA to W.Russin (dated 3-19-2014);
- d) Letter from PZA to W.Russin (dated 4-10-2014);
- e) Letter from PZA to W.Russin (dated 4-18-2014);
- f) A copy of the hearing notice published in the Burlington Free Press on May 1, 2014;
- g) A copy of the tax map for VT810;
- h) A copy of Zoning Permit (October 1987) for a 36' x 50' garage on VT810;
- i) A copy of the zoning regulations at the time of permit application for the Rural Residential Agricultural zoning district (adopted in March 1973, amended in March 1987);
- j) A copy of *Article II. Zoning Districts- Table 2.1 District Summary Table* from 2012 Unified Land Use & Development Regulations;
- k) A copy of the Mountain Gazette Newspaper- Letter to the Editor 'Underhill Automotive Closed' (dated 4-3-2014);
- l) A copy of the Mountain Gazette Newspaper Article 'Changes Along Route 15' (dated 4-17-2014);
- m) A copy of the State of VT Small Business Fact Sheet- 'Auto Body Shop or Automotive Repair Facility';
- n) A copy of the State of VT Permit & License Information- Wastewater System & Potable Water Supply Permit;
- o) A copy of the VT Waste Oil Regulations- A Quick Guide for Auto Repair Shops;
- p) A copy of the procedure checklist for the meeting;
- q) A copy of email correspondence from Lori Preiss (property abutter-dated 5-19-2014);
- r) A copy of a handwritten note from Betty Morel (undated).

****Note:** A site visit at 810 Vermont Route 15 took place at 6:45 PM; those present include Sarah McShane (staff), Wayne Russin (Applicant), Marty Baslow (abutter), AJ Sumner (resident/applicant) and Board Members: Charlie Van Winkle, Penny Miller, Shanie Bartlett, Will Towle, and Jim Gilmartin. ******

- Chairperson Van Winkle began the hearing at 8:15 PM.
- Chairperson Van Winkle began by explaining the procedure for appeal hearings, which comes under the 2012 Unified Land Use and Development Regulations.
- Board Members decided to table discussion until 8:30 PM since additional community members were expected. The hearing was reinitiated at 8:30 PM.
- When Chairperson Van Winkle asked the standard question of Board Members whether or not they had any conflict of interest or ex parte communications, Board Member Penny Miller stated that she is a neighbor to Wayne Russin. P. Miller confirmed that this will not impact her ability to make a fair decision.
- Chairperson Van Winkle read aloud the written comments provided by abutter Lori Preiss that were received earlier in the day of the hearing and not included in the information packet provided prior to the hearing. L. Preiss was not present during the meeting.
- Wayne Russin, Applicant, began by providing an overview of the past, current and future status of his property at 810 VT Rte 15. He requested to continue auto repair on his property. He stated that he estimated the hours of operation would be Monday-Friday 8:00-5:00 and Saturday from 8:00-12:00. He is not proposing any new outdoor lighting and would like to hang signs on the building for the current businesses located on the property including auto repair and contractors yard. He would serve as the landlord for the auto repair business, and AJ Sumner would operate the auto repair business.
- Board Member Penny Miller asked whether or not the Applicant intends on continuing the current contractor's yard. Wayne Russin indicated that he does intend on continuing the contractor's yard.
- Board Member Will Towle asked whether or not the Applicant owned the property and how long has the property served as an excavating business and/or contractor's yard.
- Wayne Russin, Applicant, indicated that he is the owner of the property and has been continuously repairing vehicles for money on the property since 1987. He stated that additionally he has used the property as a contractor's yard continuously since 1987.
- Board Member Will Towle interpreted Vermont Statute to allow an apparent non-permitted use on a property if either of the following conditions exist:
 - the current use of a property has been ongoing for more than 15 years without a citation to cease activity and without an interruption of more than 18 months - regardless if not a permitted use or conditional use at the time the activity or use was established. The use would be considered "grandfathered."
 - the current use of a property was established prior to the adoption of town zoning regulations. The use would be considered "non-conforming."
- Board Member Shanie Bartlett departed at 8:50 PM.
- Sarah McShane, PZA, provided an overview of the situation. She stated that AJ Sumner had stopped by the office to inquire about opening up an automobile repair shop at 810 VT Route 15. She researched the zoning regulations and determined that automobile repair is neither a permitted use nor a conditional use in the Rural Residential zoning district. She subsequently met with Wayne Russin, Applicant/Property Owner and was asked whether or not

the property could be grandfathered. She stated that his permit from 1987 did not include automobile repair.

- Chairperson Van Winkle stated that the Applicant had likely been operating in violation of zoning regulations for more than thirty years, but met the statutory requirements for grandfathering.
- Wayne Russin, Applicant, testified that he had been performing automobile repair continuously for more than 15 years without an 18 month lapse.
- Wayne Russin, Applicant, asked PZA Sarah McShane whether or not she had received any subsequent complaints. PZA stated that she had not received any additional complaints.
- Chairperson Van Winkle asked for public comment.
- Marty Baslow (Abutter- mailing address 65 Colonel Page Rd. Essex), offered testimony in support of Wayne Russin and stated that the business is an asset to the community. He feels the use of automotive repair on the property should be grandfathered.
- Andy Houle (Abutter-805 Route 15) stated that he lives adjacent to the property and supports Wayne Russin.
- AJ Sumner (84 Bill Cook Road) stated that he would like to operate an automobile repair shop out of the garage on the property. He stated that he would like to be able to perform Vermont State Inspections and to hang a sign advertising the automobile repair business.
- Board Member Penny Miller stated that the hearing is regarding whether or not PZA made an appropriate decision. She stated that she was also concerned with oil and fuel in such close proximity to the wetlands.
- Chairperson Van Winkle stated that Board Members needed to determine whether automobile repair should be grandfathered on the property. He stated that he views VT State Inspections as part of the normal operation of a mechanical shop and that should be included as part of the grandfathered use.
- AJ Sumner provided an overview of some environmental safety precautions that he has taken in effort to prevent any possible environmental contamination.
- Walter Tedford (20 Beartown Road) testified that he supported AJ Sumner's efforts to open the automobile repair business.
- Board Member Will Towle stated that automotive repair appears to be a grandfathered use and possibly a nonconforming use on the Russin property.

9:47 PM: Chairperson Van Winkle asked Board Members if they had enough information to make a decision. Board Member Will Towle, seconded Penny Miller, made a motion to close the evidentiary hearing and deliberate in closed session. Brief discussion ensued. The motion was passed by all Board Members present.

The evidentiary portion of the hearing closed at 9:50 PM. PZA, the Applicant, and members of the public exited the hearing.

Board Members continued deliberation in closed session and exited closed session with a decision at 10:40pm. Board member Will Towle made a motion, seconded by Penny Miller, to accept the DRB's decision that the zoning officer's enforcement decision was not valid and that no enforcement action is warranted. Meeting adjourned at 10:45 PM.

DRB Meeting Minutes
May 19, 2014

Submitted by:

Sarah McShane, PZA
Penny Miller, DRB Clerk

These minutes of the 5-19-2014 meeting of the DRB were accepted

This 9th day of June, 2014.

Charles Van Winkle

Charles Van Winkle, Chairperson

These minutes are subject to correction by the Underhill Development Review Board. Changes, if any, will be recorded in the minutes of the meeting of the DRB.