



Town of Underhill

Development Review Board

Conditional Use Review Findings & Decision

CONDITIONAL USE REVIEW APPLICATION OF MARY & JAMES FULLER TO CONDUCT A HOME INDUSTRY AS WEDDING BARN

In re: Mary & James Fuller
14 LAP Run (LR014)
Underhill, VT 05489

Mailing Address:
PO Box 135
Underhill, VT 05490

Docket No. DRB-21-13

DECISION: APPROVED with Conditions (see Part VII – Decision and Conditions of Approval)

PART I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns the conditional use review application of Mary & James Fuller pertaining to the request to operate a home industry as a wedding barn located at 14 LAP Run (LR014) in Underhill, Vermont. The subject property is located on the east side of LAP Run and is in the Mt. Mansfield Scenic Preservation zoning district.

A. APPLICATION

On July 10, 2021, the Applicants, Mary & James Fuller, submitted a conditional use review application for the abovementioned project. The application was accepted and determined to be sufficiently complete on July 13, 2021. A site visit was scheduled for Monday August 16, 2021, at 5:45 PM, while a hearing was scheduled to commence on Monday August 16, 2021, at 6:35 PM.

B. NOTICE OF PUBLIC HEARING – FOR THE AUGUST 16, 2021, SITE VISIT & HEARING

On July 30, 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:

1. **HA058** – University of Vermont, c/o Linda Seavey – Director, Campus Planning Services, Burlington, VT 05405
2. **MO137** – Philip Potvin, PO Box 28, Underhill, VT 05489
3. **MO145** – Timothy A. & Theresa P. Potvin Family Trust, Timothy A. & Theresa P. Potvin, Trustees, PO Box 135, Underhill Center, VT 05490
4. **MO151** – Paul & Julie Dragon, PO Box 104, Underhill Center, VT 05490
5. **MO229** – David B. & Janet R. Ely, PO Box 235, Underhill Center, VT 05490
6. **MO293** – Jason L. Wyman, 413 Pleasant Valley Road, Underhill, VT 05489
7. **MT352X** – Vermont Agency of Natural Resources, 103 South Main St., Waterbury, VT 05676
8. **PV268** – Shane W. & Maria K. McCormack, 268 Pleasant Valley Road, Underhill, VT 05489
9. **PV270** – William E. & Karla A. Russell, 270 Pleasant Valley Road, Underhill, VT 05489
10. **PV285** – Reginald Potvin, 285 Pleasant Valley Road, Underhill, VT 05490
11. **PV295** – David J. Hathaway & Carolyn Green, PO Box 211, Underhill Center, VT 05490
12. **PV309** – Becker Revocable Real Estate Trust, Richard W. Becker, Trustee, 309 Pleasant Valley Road, Underhill, VT 05489
13. **PV318** – John & Tammy Boudah, 318 Pleasant Valley Road, Underhill Center, VT 05490

- 14. **PV334** – John and Lise Wursthorn, 334 Pleasant Valley Road, Underhill, VT 05489
- 15. **PV354** – Kirbie Lee, 354 Pleasant Valley Road, Underhill, VT 05489
- 16. **PV366** – Eric Howard & Regina Macarelli, 366 Pleasant Valley Road, Underhill, VT 05490
- 17. **LR014** – Applicant, Mary & James Fuller, PO Box 135, Underhill, VT 05489

On July 30, 2021, notice of the public hearing for the proposed conditional use review application was posted at the following locations:

The Underhill Town Clerk’s office; The Underhill Center Post Office; and Jacobs & Son Market.

On August 1, 2021, notice of public hearing was published in the *Burlington Free Press*.

C. SITE VISIT – AUGUST 16, 2021

The scheduled site visit at the property’s location, 14 LAP Run, Underhill, Vermont, commenced at 5:45 PM on August 16, 2021.

The following members of the Development Review Board were present for the site visit:

- 1. Vice Chairperson, Penny Miller
- 2. Board Member, Shanie Bartlett
- 3. Board Member, Matt Chapek
- 4. Board Member, Mark Green
- 5. Board Member, Dan Lee
- 6. Board Member, Karen McKnight
- 7. Alternate Board Member, Brian Bertsch

Municipal representatives and members of the public present during the site visit were:

- 8. J. Kail Romanoff, Interim Zoning Administrator
- 9. Applicant: Mary Fuller (14 LAP Run)
- 10. Timothy Potvin (145 Moose Run)
- 11. Bill Russell (270 Pleasant Valley Road)
- 12. Tammy Boudah (318 Pleasant Valley Road)
- 13. John Boudah (318 Pleasant Valley Road)
- 14. John Wursthorn (334 Pleasant Valley Road)

D. CONDITIONAL USE REVIEW HEARING #1 – AUGUST 16, 2021

The Conditional Use Review hearing began at 6:35 PM on August 16, 2021, at the Underhill Town Hall, 12 Pleasant Valley Road, Underhill, Vermont; and was recorded. The meeting was also available via the GoToMeeting platform; a link was provided on the notice of public hearing and on the Town’s website.

The following members of the Development Review Board were present for the hearing:

- 1. Vice Chairperson, Penny Miller
- 2. Board Member, Shanie Bartlett
- 3. Board Member, Matt Chapek
- 4. Board Member, Mark Green
- 5. Board Member, Dan Lee
- 6. Board Member, Karen McKnight
- 7. Alternate Board Member, Brian Bertsch

Municipal representatives and members of the public present during the hearing were:

- 8. J. Kail Romanoff, Interim Zoning Administrator
- 9. Applicant: Mary Fuller (14 LAP Run)
- 10. Applicant: James Fuller (14 LAP Run)
- 11. Timothy Potvin (145 Moose Run)
- 12. Tom Gosselin (31 Pleasant Valley Road)
- 13. Shane McCormack (268 Pleasant Valley Road)
- 14. Bill Russell (270 Pleasant Valley Road)
- 15. Tammy Boudah (318 Pleasant Valley Road)
- 16. John Boudah (318 Pleasant Valley Road)
- 17. John Wursthorn (334 Pleasant Valley Road)

Applicant James Fuller attended remotely via the GoToMeeting platform; all other attending parties were physically in attendance.

At the outset of the hearing, Vice Chairperson Penny Miller 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, Mary Fuller
- 2. Timothy Potvin
- 3. Tom Gosselin
- 4. Shane McCormack
- 5. Bill Russell
- 6. Tammy Boudah
- 7. John Boudah
- 8. John Wursthorn

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

- Exhibit A – Fuller Conditional Use Review Staff Report
- Exhibit B – Fuller (LR014) Conditional Use Review Hearing Procedures
- Exhibit C – Development Review Application & Home Business Application
- Exhibit D – Home Business Supplement
- Exhibit E – Applicant Attachments
- Exhibit F – BFP Notice
- Exhibit G – Certificate of Service
- Exhibit H – Timbers Decision, dated 05/23/03 (IS662)
- Exhibit I – Butler Decision, dated 05/15/14 (IS621)
- Exhibit J – Potvin Decision, dated 06/14/16 (LR014)
- Exhibit K – McLane Permit Exemption Letter, dated 10/21/16 (DE165)
- Exhibit L – Boundary Line Adjustment Plat, dated 04/13/17 (LR014)

No additional exhibits were distributed to the Board prior to the Monday, August 16, 2021, hearing nor were any additional exhibits submitted into the record during the hearing.

All exhibits are available for public review in the Fuller Conditional Use Review file (LR014/DRB-21-13) at the Underhill Zoning & Planning office and at underhillvt.gov.

Due to the length of the Applicant’s presentation and the unique nature of the issues identified, the Board determined that they needed to consider further whether additional information would be needed before making a decision on the application. The Board voted to continue the hearing to a date and time certain in accordance with Section 5.2(B)(3) of Underhill’s *Unified Land Use & Development Regulations*—Monday, August 30, 2021, at 6:35 PM.

E. NOTICE OF PUBLIC HEARING – FOR THE AUGUST 30, 2021, CONTINUED HEARING

On or before Friday August 27, 2021, notice of the continued public hearing for the proposed conditional use review application was posted at the following locations:

The Underhill Town Clerk’s office; The Underhill Center Post Office; and Jacobs & Son Market.

F. CONDITIONAL USE REVIEW HEARING #2 – AUGUST 30, 2021

The continued Conditional Use Review hearing began at 6:35 PM on August 30, 2021 and was recorded.

The following members of the Development Review Board were present for the hearing:

1. Vice Chairperson, Penny Miller
2. Board Member, Shanie Bartlett
3. Board Member, Matt Chapek
4. Board Member, Mark Green
5. Board Member, Dan Lee
6. Board Member, Karen McKnight
7. Alternate Board Member, Brian Bertsch

Municipal representatives and members of the public present during the hearing were:

8. J. Kail Romanoff, Interim Zoning Administrator
9. Applicant: Mary Fuller (14 LAP Run)
10. Timothy Potvin (145 Moose Run)
11. Shane McCormack (268 Pleasant Valley Road)
12. Tammy Boudah (318 Pleasant Valley Road)

At the outset of the hearing, Vice Chairperson Penny Miller 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, Mary Fuller
2. Timothy Potvin
3. Shane McCormack
4. Tammy Boudah

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

Exhibit M – Traffic Impact Analysis

Exhibit N – DRB Continuance Letter to Applicant, dated 08/30/21

Exhibit O – Stormwater Discharge Permit #6766-9015, dated 10/30/12

Exhibit P – *[Unintended repeat of Exhibit N]*

Due to the unique nature of the Applicant's proposal, the issues involved, and incomplete design of aspects of the proposed project, the Board determined that they needed additional information to make a decision on this application. The Board voted to continue the evening's hearing to a date and time certain in accordance with Section 5.2(B)(3) of Underhill's *Unified Land Use & Development Regulations*—Monday, November 1, 2021, at 6:35 PM.

G. CONDITIONAL USE REVIEW HEARING #3 – NOVEMBER 1, 2021

The continued Conditional Use Review hearing began at 6:35 PM on November 1, 2021; the meeting was recorded.

The following members of the Development Review Board were present for the hearing:

1. Vice Chairperson, Penny Miller
2. Board Member, Shanie Bartlett
3. Board Member, Matt Chapek
4. Board Member, Mark Green
5. Board Member, Dan Lee
6. Board Member, Karen McKnight
7. Alternate Board Member, Brian Bertsch

Municipal representatives and members of the public present during the hearing were:

8. J. Kail Romanoff, Zoning Administrator
9. Applicant: Mary Fuller (14 LAP Run)
10. Timothy Potvin (145 Moose Run)
11. Theresa Potvin (145 Moose Run)

At the outset of the hearing, Vice Chairperson Penny Miller 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, Mary Fuller
2. Timothy Potvin
3. Theresa Potvin

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

Exhibit Q – DRB Clarification of Requested Information, dated 08/31/21

Exhibit R – Response to DRB Request for Additional Information

- o Markup by Applicant of DRB Request Letter, dated 08/30/21
- o 60% Progress Overall Site Plan DRAFT, Green Mountain Engineering, dated 10/2021
- o Email re: Stormwater Discharge Permit from M. Sadler, dated 10/08/21
- o Mary Fuller, Drawing 3 – Wastewater Details, Green Mountain Engineering, dated 09/10/18
- o Mary Fuller, Drawing 4 – Misc. Details, Green Mountain Engineering, dated 09/10/18
- o Letter from Fran Sladyk, Professional Forester, dated 09/03/21
- o Letter from Toni Mikula, Fish and Wildlife Specialist, dated 09/07/21
- o Email from Jan Moreau, Smugglers Notch Transportation, dated 10/25/21
- o Declaration of Covenants for Lap Run, dated 10/1/21

- o Letter Granting Request for Reconsideration of Sprinkler System, Division of Fire Safety, dated 03/29/18
- o Product Literature – SL22 Sound Level Limiter by Drawmer

Due to the incomplete design of aspects of the proposed project, the Board determined that they would need additional information to make a decision on this application. The Board voted to continue the evening's hearing to a date and time certain in accordance with Section 5.2(B)(3) of Underhill's *Unified Land Use & Development Regulations*—Monday, December 6, 2021, at 6:35 PM.

H. CONDITIONAL USE REVIEW HEARING #4 – DECEMBER 6, 2021

The continued Conditional Use Review hearing began at 6:35 PM on December 6, 2021; the meeting was recorded.

Present at the continued Conditional Use Review hearing were the following members of the Development Review Board:

1. Vice Chairperson, Penny Miller
2. Board Member, Matt Chapek
3. Board Member, Shanie Bartlett
4. Board Member, Mark Green
5. Board Member, Karen McKnight

Also in attendance was Staff Member J. Kail Romanoff, Zoning Administrator. No others were present at the hearing

Due to the Applicants not having the requested information prepared for the evening's hearing, the Board opened the evening's hearing merely to continue the hearing to a later time and date. The hearing was continued and scheduled to a date and time certain in accordance with Section 5.2(B)(3) of Underhill's *Unified Land Use & Development Regulations*—Monday, January 3, 2022, at 6:35 PM.

I. CONDITIONAL USE REVIEW HEARING #5 – JANUARY 3, 2022

The continued Conditional Use Review hearing began at 6:35 PM on January 3, 2022; the meeting was recorded.

Present at the continued Conditional Use Review hearing were the following members of the Development Review Board:

1. Vice Chairperson, Penny Miller
2. Board Member, Matt Chapek
3. Board Member, Mark Green
4. Board Member, Karen McKnight
5. Alternate Board Member, Brian Bertsch

Also in attendance was Staff Member J. Kail Romanoff, Zoning Administrator. No others were present at the hearing

Due to the Applicants not having the requested information prepared for the evening's hearing, the Board opened the evening's hearing merely to continue the hearing to a later time and date. The hearing was continued and scheduled to a date and time certain in accordance with Section 5.2(B)(3) of Underhill's *Unified Land Use & Development Regulations*—Monday, January 31, 2022, at 6:35 PM.

J. CONDITIONAL USE REVIEW HEARING #6 – JANUARY 31, 2022

The continued Conditional Use Review hearing began at 6:35 PM on January 31, 2022; the meeting was recorded.

The following members of the Development Review Board were present for the hearing:

1. Vice Chairperson, Penny Miller
2. Board Member, Shanie Bartlett
3. Board Member, Mark Green
4. Board Member, Dan Lee
5. Board Member, Karen McKnight
6. Alternate Board Member, Brian Bertsch

Municipal representatives and members of the public present during the hearing were:

7. J. Kail Romanoff, Zoning Administrator
8. Applicant: Mary Fuller (14 LAP Run)
9. Applicant: James Fuller (14 LAP Run)
10. Applicant's Engineer: Mark Bannon, Bannon Engineering (PO Box 171, Randolph, VT 05060)

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

- Exhibit S – Fuller Event Barn, Cover Sheet, Bannon Engineering, dated 12/30/21
- Exhibit T – Fuller Event Barn, Wetland Delineation, Bannon Engineering, dated 12/30/21
- Exhibit U – Fuller Event Barn, Existing Conditions, Bannon Engineering, dated 12/30/21
- Exhibit V – Fuller Event Barn, Proposed Site Plan, Bannon Engineering, dated 12/30/21
- Exhibit W – Fuller Event Barn, Parking and Access Plan, Bannon Engineering, dated 12/30/21
- Exhibit X – Letter from Natural Resources Consulting Services, dated 01/03/22

Due to the Applicant's submission of incomplete plans for the evening's hearing, the Board determined that they need additional information to make a decision on this application. The Board voted to continue to the evening's hearing to a date and time certain in accordance with Section 5.2(B)(3) of *Underhill's Unified Land Use & Development Regulations*—Monday, February 21, 2022, at 7:30 PM.

K. CONDITIONAL USE REVIEW HEARING #7 – FEBRUARY 21, 2022

The continued Conditional Use Review hearing began at 7:30 PM on February 21, 2022; the meeting was recorded.

The following members of the Development Review Board were present for the hearing:

1. Vice Chairperson, Penny Miller
2. Board Member, Shanie Bartlett
3. Board Member, Matt Chapek
4. Board Member, Dan Lee
5. Board Member, Charlie Van Winkle

Municipal representatives and members of the public present during the hearing were:

6. Brad Holden, Interim Zoning Administrator

In relation to the Conditional Use Review application, the following exhibits generated by the Development Review Board were submitted into the record:

- Exhibit Y – DRB Continuance Letter to Applicant, clarifying requested information, dated 02/11/22
- Exhibit Z – Information Acknowledged as Complete by the DRB, dated rev. 02/07/22

Due to the inadvertent scheduling of the continued hearing on a Holiday (President's Day) and the Applicant's request for additional time to prepare the requested information, the Board opened the evening's hearing merely to continue the hearing to a later time and date. The hearing was continued and scheduled to a date and time certain in accordance with Section 5.2(B)(3) of the *Unified Land Use & Development Regulations*—Monday, April 4, 2022, at 6:35 PM.

L. CONDITIONAL USE REVIEW HEARING #8 – APRIL 4, 2022

The continued Conditional Use Review hearing began at 6:35 PM on April 4, 2022; the meeting was recorded.

The following members of the Development Review Board were present for the hearing:

1. Vice Chairperson, Brian Bertsch
2. Board Member, Matt Chapek
3. Board Member, Mark Green
4. Board Member, Dan Lee
5. Board Member, Karen McKnight
6. Board Member, Penny Miller

Municipal representatives and members of the public present during the hearing were:

7. Brad Holden, Interim Zoning Administrator
8. Applicant: Mary Fuller (14 LAP Run)

Due to the Applicant’s submission of incomplete plans for the evening’s hearing, the Board determined that they need additional information to make a decision on this application. The Board voted to continue to the evening’s hearing to a date and time certain in accordance with Section 5.2(B)(3) of Underhill’s *Unified Land Use & Development Regulations*—Monday, May 16, 2022, at 6:30 PM.

M. NOTICE OF PUBLIC HEARING – FOR THE MAY 16, 2022, CONTINUED HEARING WITH BOUNDARY LINE ADJUSTMENT

On April 29, 2022, notice of a Boundary Line Adjustment relative to the Conditional Use Review hearing was mailed via Certified Mail to the following property owners adjoining the properties subject to the Boundary Line Adjustment application:

1. **HA058** – University of Vermont, c/o Paula Carlaccini – Director, UVM Planning Design & Construction, 31 Spear Street – Marsh Hall, Burlington, VT 05405
2. **MO137** – Philip Potvin, PO Box 29, Underhill Center, VT 05490
3. **MO151** – Paul & Julie Dragon, PO Box 104, Underhill Center, VT 05490
4. **MO229** – David B. & Janet R. Ely, PO Box 235, Underhill Center, VT 05490
5. **MO293** – Jason L. Wyman, 413 Pleasant Valley Road, Underhill, VT 05489
6. **MT352X** – Vermont Agency of Natural Resources, 1 National Life Drive, Davis 2, Montpelier, VT 05620
7. **PV268** – Shane W. & Maria K. McCormack, 268 Pleasant Valley Road, Underhill, VT 05489
8. **PV270** – William E. & Karla A. Russell, PO Box 218, Jericho, VT 05465
9. **PV285** – Reginald Potvin, 285 Pleasant Valley Road, Underhill, VT 05489
10. **PV295** – David J. Hathaway & Carolyn Green, PO Box 211, Underhill Center, VT 05490
11. **PV309** – Becker Revocable Real Estate Trust, Richard W. Becker, Trustee, 309 Pleasant Valley Road, Underhill, VT 05489
12. **PV318** – John & Tammy Boudah, 316 Pleasant Valley Road, Underhill Center, VT 05489
13. **PV334** – John and Lise Wursthorn, 334 Pleasant Valley Road, Underhill, VT 05489
14. **PV354** – Kirbie Lee, 354 Pleasant Valley Road, Underhill, VT 05489
15. **PV366** – Eric Howard & Regina Macarelli, 366 Pleasant Valley Road, Underhill, VT 05489
16. **LR014** – Co-Applicants, Mary & James Fuller, PO Box 135, Underhill Center, VT 05490
17. **MO145** – Co-Applicants, Timothy A. & Theresa P. Potvin Family Trust, Timothy A. & Theresa P. Potvin, Trustees, PO Box 135, Underhill Center, VT 05490

N. CONDITIONAL USE REVIEW HEARING #9 (FINAL) – MAY 16, 2022

The continued Conditional Use Review with Boundary Line Adjustment hearing began at 6:30 PM on May 16, 2022; the meeting was recorded.

The following members of the Development Review Board were present for the hearing:

1. Vice Chairperson, Brian Bertsch
2. Board Member, Matt Chapek
3. Board Member, Mark Green
4. Board Member, Dan Lee
5. Board Member, Karen McKnight
6. Board Member, Penny Miller

Municipal representatives and members of the public present during the hearing were:

7. Nick Atherton, Zoning Administrator
8. Brad Holden, Town Administrator
9. Applicant: Mary Fuller (14 LAP Run)
10. Applicant's Engineer: Mark Bannon, Bannon Engineering (PO Box 171, Randolph, VT 05060)
11. Theresa Potvin (145 Moose Run)
12. Timothy Potvin (145 Moose Run)
13. Tammy Boudah (318 Pleasant Valley Road)
14. John Wursthorn (334 Pleasant Valley Road)

In support of the Conditional Use Review application and the Boundary Line Adjustment, the following exhibits were submitted to the Development Review Board:

Exhibit AA – Development Review Board Agenda for May 16, 2022

Exhibit BB – Certificate of Service, dated 04/29/22

Exhibit CC – Boundary Line Adjustment Application—14 LAP Run, dated 02/04/22

Exhibit DD – DRAFT Plat—14 LAP Run, dated 03/15/22

Exhibit EE – Boundary Line Adjustment Map—14 LAP Run, dated

Exhibit FF – Stormwater, Water, and Wastewater Permit Applications

Exhibit GG – Revised Lap Run Covenants, dated 04/12/22 (revised Exhibit R)

Exhibit HH – Revised Home Business Project Description, rev. 1 dated 03/01/22 (revised Exhibit D)

Exhibit II – Underhill Jericho Fire Department Ability-to-Serve Letter, dated 04/28/23[sic]

Exhibit JJ – Fuller Stormwater Management Plan, dated 04/28/22

Exhibit KK – Fuller Wedding Barn – Home Industry Procedural History, dated 05/16/22

Exhibit LL – Fuller Stormwater Management Plan, dated 04/28/22 and received 05/16/22, revised to show the building envelope

Exhibit MM – Email from Shane McCormack, dated 05/16/22

PART II. PROJECT SYNOPSIS

The Applicants, Mary and James Fuller, seek conditional use approval for a home industry to conduct weddings and events in a proposed “wedding barn” structure. The subject property, 14 LAP Run, is located on a private development road off Pleasant Valley Road and within the Mt. Mansfield Scenic Preservation zoning district. Mary Fuller is the owner of record for the property, also referred to as Lot 2 from a previously approved subdivision. The barn structure will be new construction along with supporting infrastructure—drilled well, septic system, stormwater system, curb cut, driveway, and parking area. The barn will be used for a minimum of 6 months of the year as a farm structure per 24 V.S.A. § 4413 and the remaining months of the year will support wedding events at a maximum of one (1) event per week occurring on the weekend (Friday, Saturday, or Sunday). A number of times, the applicant Mary Fuller has expressed her intent to be a good neighbor by operating the business in only a limited way that minimizes the impact on the neighborhood and local community. In addition to the Home Industry Conditional Use review, the project requires a Boundary Line Adjustment to conform to required setbacks within its zoning district and a Building Envelope modification to add a secondary envelope to the west of the previously approved envelope for the single-family residence in the original subdivision.

PART III. WEDDING BARN AS HOME INDUSTRY

In 2014, the Underhill Development Review Board was tasked with a Conditional Use review of an application for another Wedding & Events Center as a Home Industry (Exhibit I - DRB-14-09 Butler Decision). The Board carefully examined the application and was mindful that a wedding venue did not fit within the anticipated conditional uses of the zoning regulations as a Home Industry. The justification for the decision to approve that application is relevant to the current Fuller application before us, and so the Board restates passages from its past decision in the Butler Home Industry/Wedding Center application:

This application for a Wedding & Events Center as a Home Industry challenges the Development Review Board to balance two central but opposite poles of the Vermont land use spectrum of laws and regulation. On one pole is Vermont's historic and central value that a landowner should be able to earn a living on his or her own land. On the other, and more modern pole, is the communal and sometimes contrary recognition that uses by any one person, even on their own land can, and does often adversely affect both neighbors and the community as a whole.

Our land regulations are a constant struggle between those two poles and try to strike a balance between the landowner's right to work on his own land and the needs of the community subject to the "undue adverse impact" of the industry on the neighborhood (ULUDR Section 4.11.A). When successful, our regulatory scheme and decisions promote both home industry and good neighborhoods. Our regulation (ULUDR) Section 4.11.D. permits home industries within certain distinct parameters designed to protect the community.

We recognize and find that under the circumstances of this case the application is an imperfect fit with our regulations. The proposed wedding and events center is not the home industry as contemplated by the drafters of the regulations who were undoubtedly more focused on traditional trades of the craftsmen and the classic professions. However, the Development Review Board must interpret the regulations in the context which we find them. In this case, and in this moment of Vermont's history, Vermont has become a destination of choice for weddings and similar celebrations.

Part of the challenge of this application is that "wedding venue" is not to be found anywhere in our regulations. However, just because an industry is new is not necessarily a reason for it to be prohibited by the existent regulations. Part of our job is to interpret new industries within the regulations and the proper context of historically recognized industries.

We determine the balance tilts in favor of the applicant. Although the proposed activities would potentially exceed the scope of many proposed home industries, we find under the specific facts of this case that the proposed activities are within the limits that both the spirit and the letter of our regulations restrict.

The Board acknowledges that a wedding barn business is an imperfect fit with our town land use regulations, as described above. The "tilt in favor of the applicant" is achievable in the current Fuller decision only because the home industry, as presented and testified to, will operate on a clearly limited scale—as a very part-time, low impact, side venture.

PART IV. FACTUAL FINDINGS & CONCLUSIONS RELATING TO THE TOWN OF UNDERHILL, VT UNIFIED LAND USE & DEVELOPMENT REGULATIONS

The minutes of the August 16, 2021 meeting which includes the initial Fuller Conditional Use Hearing, along with the minutes of the following eight continued hearings relative to the Fuller application, are incorporated by reference into this decision. See Part I - Introduction and Procedural History (above) for a list of the hearing dates and refer to the minutes from those dates on the Town's website for a summary of the testimony: <https://www.underhillvt.gov/>. The recordings of the Development Review Board meetings can be viewed on the Mt. Mansfield Community Television's website: <http://mtmansfieldctv.org/underhillmeetings/>.

Per Underhill's *Unified Land Use and Development Regulations* (hereafter *ULUDR*) under Section 5.4 Conditional Use Review, a CUR application is required to be reviewed specifically under Article II Zoning District requirements, Section 3.14 Performance Standards, Section 5.3 Site Plan Review, Section 5.4(B) General Standards, Section 5.4(D) Specific Standards, and Section 10.7 Administrative Requirements and Procedures—in addition to applicable municipal Bylaws and Ordinances in effect.

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

ARTICLE II, ZONING DISTRICTS

A. ARTICLE II, TABLE 2.6 – MT. MANSFIELD SCENIC PRESERVATION DISTRICT

The subject property, Lot 2 of a previous subdivision, is in the Mt. Mansfield Scenic Preservation District, and the proposed project, a Home Industry, is a Conditional Use which requires Conditional Use review (*ULUDR*, Section 5.4). The Board concludes that the proposed development on Lot 2 satisfies, and is not contrary to, the purpose and stated goals for the Mt. Mansfield Scenic Preservation District:

- a. The new structure to house the Home Industry will be a barn, a familiar rural aesthetic in Vermont and in the district, an area of low home density.
- b. With the inclusion of a Boundary Line Adjustment with Lot 1, the intended wedding barn and its location will conform to the dimensional standards of the district, including the required setbacks and the height and lot coverage restrictions.
- c. The proposed new barn structure will be served by the private development road LAP Run and, as such, will be set back from Pleasant Valley Road.

ARTICLE III, GENERAL REGULATIONS

A. SECTION 3.2 – ACCESS

The existing driveway serving the single-family dwelling was approved by Access Permit A-12-05R. The Board recognizes that the proposed additional curb cut will improve traffic circulation and safety relative to the intended wedding barn and requires the Applicants to submit an amended Access Permit application and receive approval prior to the issuance of a Zoning Permit. (Exhibit LL)

B. SECTION 3.6 – HEIGHT REQUIREMENTS

The Board finds that the proposed barn will be approximately 20 feet high per the Zoning Permit Application (Exhibit C), which complies with the district maximum height requirement of 35 feet per Section 2.6(D).

C. SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS

The Board finds that the proposed barn as an Accessory Structure complies with the setback requirements in its zoning district per Section 2.6(D). Additionally, the Board finds that the parking areas are located outside the side setbacks. (Exhibit LL)

D. SECTION 3.11 – OUTDOOR LIGHTING

The Applicants propose permanent lighting on the exterior of the building at the 4 main exits and have testified that there will be no permanent landscape lighting (Exhibit V). Per Section 3.11(B), the exterior building lighting shall be downcast or shielded and include timers or sensors as needed to switch off exterior lighting when the building is unoccupied.

E. SECTION 3.13 – PARKING, LOADING & SERVICE AREAS

The Board finds that:

Section 3.13(A)(1) – Parking: The individual parking spaces are noted as gravel and 9' wide x 19' long. (Exhibit LL)

Section 3.13(A)(2) – Parking: The Applicants propose a maximum capacity of 150 people (Exhibit HH). Table 3.1 Minimum Off-Street Parking Requirements indicates Public Assembly use requires 1 parking space per 5 seats of capacity which translates to 30 parking spaces for the wedding barn. Thirty-three (33) parking spaces have been shown on the Applicants’ site plan (Exhibit LL). The Applicants have submitted evidence that Smugglers’ Notch Resort has committed to transport guests staying with them to the LAP Run wedding venue and consequently, the demand for parking spaces should be reduced (Exhibit R).

Section 3.13(A)(3) – Parking: The Applicants propose to locate the parking area directly off the travel way of the development road (LAP Run), on the subject property, and within the LAP Run right-of-way. (Exhibits W, LL) The Board acknowledges that the regulations reference off-street parking requirements and the proposed location could be considered “on-street” parking because it is within the road right-of-way (*ULUDR*, Article XI, Section 11.2, Road). However, the Board maintains that a large standalone parking lot behind the front building line would be a less desirable location aesthetically and would be on a slope, significantly increasing the rate of stormwater runoff from the project. The Board invokes its ability to waive the requirement for “off-street” parking under Section 5.5 below.

All parking associated with the Home Industry shall be in the designated parking areas as shown on the approved plans. (Exhibit LL)

The Covenants for LAP Run shall be revised to remove the repair and maintenance of the project’s parking area and associated stormwater infrastructure from the responsibility of any of the other properties on LAP Run. (Exhibit GG)

The Applicants propose to delineate the individual parking spaces with railroad ties and provide clearly marked handicapped spaces per Vermont state requirements. (Exhibit HH)

The Board invokes its ability to waive the requirement for a bicycle rack under Section 5.5 below.

Section 3.13(B)(1) – Loading & Service Areas: The Applicants have testified there will not be frequent unloading that warrants a designated unloading area but that event vendors can park in the 3 additional parking spaces provided beyond the required minimum. (Exhibit LL)

Section 3.13(B)(2) – Loading & Service Areas: The Applicants have provided a one-way circular driveway with a radius as required for emergency services per an ability-to-serve letter from the local fire department. (Exhibits LL & II)

Section 3.13(B)(4) – Loading & Service Areas: The Applicants have testified that there will be no waste or recycling storage or collection associated with the project.

F. SECTION 3.14 – PERFORMANCE STANDARDS

Testimony from neighbors during the hearing was mostly concerned with the anticipated level of noise, duration of noise, and quality of noise from the proposed Home Industry. The Applicants presented testimony and evidence that they offer the following restrictions to their business to mitigate noise issues beyond their property line and in their neighborhood (Exhibits Z & HH):

1. Event Timing— The event season will be limited to 6 months, beginning in May and ending in November. The frequency will be one day/week maximum—either Friday, Saturday, or Sunday. Any event will end by 10pm or earlier.
2. Dance Music—The hours of amplified dance music will be a maximum of 3 hours and between the hours of 7pm-10pm. All dance music will be played inside the proposed building with the doors and windows closed.
3. Proposed Barn Structure—The new building will be constructed to comply with 2020 VT Commercial Energy Standards, including insulated walls with an STC-40 rating and insulated windows, doors, and roof. The exterior swing doors will be fitted with door closers. The barn will be air-conditioned and heated.

4. Additional Acoustical Controls—A sound limiter will be used to limit speaker and amplifier outputs to 95 dB (SPL) within the building. Doors and windows will remain closed during events. In the initial business season, decibel levels during events will be documented at the closest property line with a precision sound meter and that information will be available to the public.

The Board finds that the Performance Standards state that noise in excess of 60 dBspl at the nearest property line is not permitted nor is noise allowed that represents a significant increase in noise levels in the vicinity of the use. The Applicants have testified that the calculated decibel level during an event at the closest property line (their parents' Lot 1 property at 45 feet from the proposed event structure) will be approximately 30 dB(SPL) at the loudest period in a wedding event—during indoor amplified dance music using a sound limiter set at 95 decibels. The Applicants have submitted evidence that the calculated sound level during dance music at the closest non-relation neighbor's house will be 0 dB (SPL).

The Board references Exhibit HH (page 18) and the chart "Decibel Levels of Every Day Sounds," which notes that 10-20dB is equivalent to a gentle breeze through trees and 40-60dB is equivalent to background music in a café. To maintain the character of the rural neighborhood, the Board requires that the recorded decibel level at the closest property line to the wedding barn is monitored and shall not exceed 35Db(SPL) during any part of the event. Additionally, the Board requires that a professional, acoustical consultant shall corroborate the Applicants' readings during one of the initial summer events.

G. SECTION 3.16 – SIGNS

The Applicants propose one (1) freestanding sign that will be installed near the intersection of LAP Run and Pleasant Valley Road on the property of Timothy A. & Theresa P. Potvin Family Trust (MO027) (Exhibit HH, page 29). The sign will be 2 ft. x 3 ft. on a 6 ft. high post. The Applicants have testified that the sign will not be internally or externally illuminated.

H. SECTION 3.17 – SOURCE PROTECTION AREAS

The Applicants have submitted evidence that the proposed wedding barn is not within a public source protection area (Exhibit FF).

I. SECTION 3.18 – STEEP SLOPES

Since the Applicants have submitted evidence that the proposed construction of the wedding barn and accessway are on slopes less than 15% and do not appear to impact steep slopes elsewhere on the property, this Section is not applicable (Exhibit LL).

J. SECTION 3.19 – SURFACE WATERS & WETLANDS

The Applicants have submitted evidence that indicates a Class 2 wetland exists in the NW corner of the subject lot, but otherwise no vernal pools or Class 3 wetlands currently exist (Exhibits U & X). The site plan indicates the proposed building and parking areas will be constructed outside the 50 ft. buffer of the Class 2 wetland and the 25 ft. buffer of the unnamed streams that have been mapped.

Additionally, the Board requires that:

Section 3.19(D)(5) – Riparian Buffer: A minimum of 12 ft. on each side of the stream to the east of the proposed building shall remain undisturbed as a riparian buffer.

Section 3.19(D)(6) – Wetlands Buffer: The required 50 ft. buffer from the Class 2 wetland shall remain an undisturbed, naturally vegetated buffer—unless a Vermont State wetland permit indicates a larger buffer is required.

K. SECTION 3.23 – WATER SUPPLY & WASTEWATER SYSTEMS

The Applicants' site plan indicates a new drilled well relative to this application (Exhibit LL).

The subject property has an existing Wastewater System and Potable Water Supply Permit and will require an amendment to incorporate the design of new potable water and wastewater systems for the

proposed construction (Exhibit A).

Additionally, the Board finds:

Section 3.23©(1) – Standards: The Applicants have submitted as evidence Sewage Disposal System drawings, Well and Sewage Disposal System details, and an application for a Wastewater System and Potable Water Supply permit from the State of Vermont. (Exhibit FF)

Section 3.23(G)(1) – Zoning Administrator Duties: A certificate of occupancy from the Town of Underhill will not be issued until the Zoning Administrator has received 1) copies of state permits along with State-approved, permitted plans and 2) a copy of the Certificate of Compliance that has been submitted to the State of Vermont indicating an engineer or designer has certified that the installed water supply and wastewater systems were installed according to the State-approved, permitted plans.

ARTICLE IV, SPECIFIC USE STANDARDS

A. SECTION 4.11 – HOME BUSINESS (HOME OCCUPATION, HOME INDUSTRY)

The Board recognizes the concern of neighbors that the designation of a wedding barn business as a Home Industry could create an undesirable precedent for commercial businesses to locate in Underhill's rural neighborhoods, irreparably damaging our community's invaluable natural resources. However, as a control for that, the application for a business operation in any zoning district requires Development Review Board scrutiny and approval—other than for a group home, home childcare, or a small home occupation (*ULUDR*, Article II).

The Board acknowledges this application for a Home Industry is an imperfect fit with our regulations (See III-Wedding Barn as Home Industry above). However, the Board recognizes that the proposed wedding barn business, which presupposes a rural setting, is anticipated to be a low-impact, peripheral operation—functioning for a 6-month season (maximum) with the barn structure used for agricultural purposes during the remainder of the year and in use as a business for only 1 day per week during that 6-month business season.

Section 4.11(D)(1) – Employees: The Board recognizes that the zoning regulations, by referencing five non-resident, routinely on-site employees, do not anticipate the context of an event venue. The Board concludes that 8-12 consultants or sub-contractors on one day/week is of no greater overall intensity than the regulations intend.

The Board finds that the business owner and property owner, Mary Fuller, lives in a single-family dwelling on the same property where the proposed wedding barn will be located.

Section 4.11(D)(2) – Outdoor Storage: The Applicants have testified that there will be no outdoor storage associated with the home industry.

Section 4.11(D)(3) – Hazardous Materials: Not applicable.

Section 4.11(D)(4) – Character: The Board acknowledges the zoning regulations require that a proposed home industry does not have an undue adverse effect on the character of the neighborhood, and the Board recognizes that the definition of “adverse effect” is subjective.

The Board concludes that the proposed barn structure on the 10-acre Fuller property with an existing single-family residence is appropriate in scale, type, and density with the remote and rural character of the area and is a familiar aesthetic in Vermont. The design of the graveled parking areas within the right-of-way of the development road rather than a single, large parking lot has less of a visual and stormwater impact.

The Board finds that the general neighborhood is rural, forested, and the closest neighbors' houses have been shown in the Applicants' documentation at a considerable distance away from the proposed project (Exhibit HH). The Applicants have testified that the buffer of trees that exists between the public road and the proposed barn structure will shield Pleasant Valley Road, one of the main Town road arteries, from the new development. The Board

acknowledges, however, that foliage does not necessarily offer a visual buffer year-round.

The Board recognizes that the proposed use of the wedding barn is for half of the year at a maximum of one day/week and finds it is not contrary to the rural character of the area—with the addition of mitigation measures. The Board concludes that the most significant impact the event venue will have on the character of the area is noise generation and, therefore, finds that mitigation will be required. See also Section 3.14 and III-Wedding Barn as Home Industry above.

Section 4.11(D)(5) – Traffic: The proposed home industry will create a maximum of one event/week from the month of May through November when traveling weather is less hazardous and that the events will be on the weekend (Friday, Saturday, or Sunday) when there is less commuter traffic on the roadways. The Board concludes that the traffic volume will increase on the day of the event, but there will be no change in volume from the Home Industry during the remaining 6 days of the week—tempering the overall intensity. (Exhibits R & HH)

If activities related to the wedding barn create safety issues at the intersection of LAP Run, the development road, with Pleasant Valley Road, the Applicants will be required to use traffic control personnel and signage on event days at the discretion of the Zoning Administrator.

The Board finds that the Applicants have received a commitment from a nearby resort lodge to bus their guests to-and-from the event venue to reduce traffic.

Section 4.11(D)(6) – Parking: See Section 3.13 above.

Section 4.11(D)(7) – Utilities: The Board finds that all utilities shall be placed underground to preserve the scenic character of the area. See also Section 3.23 above.

Section 4.11(D)(8) – Performance Standards: See Section 3.14 above.

Section 4.11(D)(9) – Signs: See Section 3.16 above.

Section 4.11(D)(10) – Sales & Service: The Board recognizes that the zoning regulations, by referencing the on-site production of retail sales and services, do not anticipate the context of an event venue. The Board concludes that the intent of the regulations is to minimize the retail size of a home industry. The Board acknowledges that the goods consumed at the event venue will be supplied by off-site contractors and will be distributed and consumed on-site.

Table 4.2 – Summary of Home Occupation & Home Industry Standards: The Board finds that an Accessory Structure may be used for a Home Industry—with no limit to the amount of floor area that can be dedicated to the business.

The Board finds that the *ULUDR* Article XI defines an Accessory Structure as a structure:
...that is clearly incidental, customary, and subordinate in size and overall appearance (except for barns) to the principal structure or use of the land on the same lot.

The Board recognizes that the proposed development to house the business is not subordinate in size to the principal structure (single-family dwelling) on the lot and as such, would not be considered an Accessory Structure for use as a Home Industry—unless it is a farm structure or barn. The Applicants have testified that the proposed development will comply with the *ULUDR* Article XI definition of Farm Structure for a minimum of 6 months each year:

In accordance with the Act [§ 4413(d)], a building, enclosure or fence for housing livestock, raising horticultural or agronomic plants, or carrying out other practices associated with accepted agricultural or farming practices, including a silo; but excludes a dwelling for human habitation. (2) As defined by the Vermont Secretary of Agriculture under accepted agricultural practices, a farm structure includes a structure used for agricultural production, which meets one or more of the following: (a) is used in connection with the sale of \$1000 or more of agricultural products in a normal year; (b) is used in connection with the raising, feeding and management of the minimum specified number of adult animals:

four (4) equines, five (5) cattle or bison, 15 swine, 15 goats, 15 sheep, 15 fallow or red deer, 50 turkeys or geese, 100 laying hens or ducks, 250 broilers, pheasant, Chukar partridge or Coturnix quail, three (3) camelids, four (4) ratites, 30 rabbits, or 1000 pounds of cultured trout; (c) is used by a farmer filing with the Internal Revenue Service a 1040(F) income tax statement in at least one of the past two years; (d) is on a farm with a business and farm management plan approved by the Secretary.

With the requirement that the dedicated use of the building adheres to the definition (above) of a farm structure for a minimum of 6 months each year, the Board accepts the definition of the proposed wedding barn as a Farm Structure—exempt from the requirements of an Accessory Structure under *ULUDR* Article XI.

ARTICLE V, DEVELOPMENT REVIEW

A. SECTION 5.3 – SITE PLAN REVIEW

The Board finds that the Applicants have submitted stamped drawings prepared by a licensed engineer:

- a) Proposed Site Plan (Exhibits V, FF, LL)
- b) Parking and Access plan (Exhibits W, FF, LL)
- c) Proposed Stormwater Management Plan (Exhibit JJ)

Section 5.3(B)(1) – Existing Site Features: The Board finds that:

- a) The proposed driveway layout, the building, and the water, wastewater, and stormwater infrastructure are located outside wetland and stream setbacks and outside steep slopes. (Exhibits V, LL) See also Section 3.19 above.
- b) Evidence submitted by the Applicants from their consultants and specialists in natural resources indicates that the proposed construction, being close to Pleasant Valley Road, avoids adverse impacts to wildlife habitat and travel corridors. (Exhibit R)

Section 5.3(B)(2) – Site Layout & Design: See Section 5.3(B)(1) and Article II-Table 2.6 above.

Section 5.3(B)(3) – Vehicle Access: See Sections 3.2 and 3.13 above.

Section 5.3(B)(4) – Parking, Loading & Service Areas: See Section 3.13 above.

Section 5.3(B)(5) – Site Circulation: The Board finds that the Applicants propose an accessible route from the parking to the proposed building and gravel paths leading from each exit of the building to a development road (LAP Run).

Section 5.3(B)(6) – Landscaping and Screening: The Applicants do not propose any landscaping or screening relative to the project. Because the Applicants have sited the development in an open area on Lot 2 surrounded by forest, the Board waives the requirement for additional landscaping and screening per Section 5.5(A).

Section 5.3(B)(7) – Outdoor Lighting: See Section 3.11 above.

Section 5.3(B)(8) – Stormwater Management and Erosion Control: The Board requires the Applicants to follow Vermont DEC's *The Low Risk Site Handbook for Erosion Prevention and Sediment Control* for sitework pertaining to the proposed development on Lot 2.

B. SECTION 5.4 – CONDITIONAL USE REVIEW

Section 5.4 (B)(1) – The Capacity of Existing or Planned Community Services or Facilities: Because the wedding barn will operate seasonally and on a very limited basis, the Board concludes that it will not unduly burden community services and facilities. See also Section 3.13(B)(2) above.

Section 5.4(B)(2) – The Character of the Area Affected: See Section 4.11(D)(4), Section 3.14, and III-Wedding Barn as Home Industry above.

Section 5.4 (B)(3) – Traffic on Roads and Highways in the Vicinity: See Section 4.11(D)(5) above.

Section 5.4(B)(4) – Bylaws in Effect: The Board finds that the proposed project shall conform to all

municipal bylaws and ordinances and shall not be issued a Certificate of Occupancy from the Underhill Zoning Administrator until the Applicants have obtained all the required municipal and state permits.

Section 5.4(B)(5) – The Utilization of Renewable Energy Resources: The Board makes no finding on this Section.

Section 5.4(D)(1) – Conformance with the Town Plan: The Applicants have offered testimony and documentation supporting the Town Plan’s encouragement of local economic activity (Exhibit HH), and the Board concludes the proposed development and use is not contrary to the town Plan.

Section 5.4(D)(2) – Zoning District & Use Standards: See Article II, Table 2.6 – Mt. Mansfield Scenic Preservation District above.

Section 5.4(D)(3) – Performance Standards: See Section 3.14 above.

Section 5.4(D)(4) – Legal Documentation: The Board requires the Applicants to depict all applicable easements on the required Plat and Site Plan. Additionally, the Board requires the Applicants to revise the Covenants for LAP Run to:

1. Remove the maintenance and repair of the parking and infrastructure of Lot 2’s Home Industry from the responsibility of the other homeowners in the subdivision.
2. Reapportion the maintenance and repair of the development road to Lot 2 to acknowledge the increase in use by Lot 2’s Home Industry.

C. SECTION 5.5 – WAIVERS & VARIANCES

Section 5.5(A) – Applications & Review Standards: The Board finds that it has the authority to waive application requirements and site plan or conditional use review standards under Sections 5.3 and 5.4 that it determines are not relevant to a particular application.

The Applicants have not requested any dimensional waivers.

Any other conditions that have been waived have been noted in this decision. The Board makes no finding on any provision that was not explicitly waived and has not been explicitly addressed.

ARTICLE VI, FLOOD HAZARD AREA REVIEW

The Board finds that since the Agency of Natural Resources’ Atlas does not depict Special Flood Hazard Areas on the property, this Article is not applicable (Exhibit A).

ARTICLE X, ADMINISTRATION & ENFORCEMENT

A. SECTION 10.1 – PERMITS & APPROVALS

Section 10.1(A) – Permit Requirements: The Board finds the following municipal permits or approvals are required relative to the Fuller application for Home Industry as a Wedding Barn:

1. Zoning permits issued by the Zoning Administrator for the proposed development, the proposed sign, and the Boundary Line Adjustment.
2. Access approval by the Development Review Board for the additional curb cut on LAP Run, resulting in an Access Permit amendment issued by the Zoning Administrator.
3. Conditional use approval (Conditional Use Review Findings & Decision) issued by the Development Review Board for the Home Industry application.
4. Certificate of occupancy issued by the Zoning Administrator prior to occupancy or use.

Section 10.1(B) – Additional Permits & Approvals:

1. Boundary Line Adjustment (BLA): For the proposed Lot 2 development to comply with the dimensional requirements of the zoning district, it will necessitate a boundary line

adjustment with Lot 1 (Exhibit EE). The Board recognizes that boundary line adjustments are typically issued administratively; however, since the BLA is necessary for compliance, the Board finds that it may review and approve a BLA as part of this decision. The Board preliminarily approves the Boundary Line Adjustment as presented during the hearing. The Board requires a Boundary Line Adjustment application, including a revised plat, to be submitted to the Zoning Administrator for final review prior to issuance of a zoning permit.

2. Building Envelope Modification: The Applicants have presented evidence from a consulting forester, wildlife specialist, and a wetlands consultant that the location for the proposed development on Lot 2 will not create adverse impacts to the natural resources on the lot or in the general area (Exhibit X, R). The Board, therefore, concludes that a modification to the approved Lot 2 building envelope as depicted on the original subdivision plat (Exhibit L – Timothy & Theresa Potvin, Drawing B1, Summit Engineering, dated 4/12/17) to add a secondary building envelope for siting the Accessory Structure, the proposed wedding barn, is acceptable, and the Board approves the building envelope modification. The Board requires that the revised BLA plat document building envelopes, including the additional building envelope for Lot 2.

Section 10.1(B)(3) – Additional Permits & Approvals: The Boards finds that it is authorized to require an applicant to submit a state project review sheet that identifies state permits to be obtained for the project.

B. SECTION 10.2 – EXEMPTIONS

Section 10.2(B)(1) – Exemptions from Land Use Regulations: The Boards finds that farm structures as defined under 24 V.S.A. § 4413 are exempt from land use regulations and no permit shall be required. See also Article IV-Specific Use Standards, Table 4.2 above.

C. SECTION 10.3 – ZONING PERMIT

Section 10.3(D)(1) – Zoning Permits: The Board finds no zoning permit may take effect until the 30-day appeal period has passed. The permit issued as part of this decision will remain in effect for one year from the date of issuance. The Applicants must substantially commence construction within one year or the permit will become invalid—unless an extension is obtained.

“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 *ULUDR* Article XI for the 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 of the Home Industry as a Wedding Barn will remain in effect.

D. SECTION 10.7 – ADMINISTRATIVE REQUIREMENTS & PROCEDURES

Section 10.7(F) – Decisions: The Board finds that in rendering a decision in favor of an applicant, it may attach reasonable conditions and safeguards as it deems necessary to implement the purposes of the law, these regulations, and the town plan currently in effect. The Board finds that within specific guidelines, it may authorize subsequent changes to an approved project subject to review by the Zoning Administrator in lieu of the Development Review Board.

E. SECTION 10.6 – VIOLATIONS & ENFORCEMENT

Section 10.6(A) – Violations: The Board finds that the commencement or continuation of any land development, subdivision or use that is not in conformance with the provisions of these regulations shall constitute a violation. All violations shall be pursued. The Zoning Administrator shall institute in the name of the Town of Underhill, any appropriate action, injunction or other proceeding to enforce the provisions of these regulations.

PART V. FACTUAL FINDINGS & CONCLUSIONS RELATING TO APPENDIX A: THE UNDERHILL ROAD, DRIVEWAY & TRAIL ORDINANCE

The Board finds that the Applicants shall comply with all the requirements of the 2015 *Underhill Road, Driveway & Trail Ordinance* (hereafter *Road Ordinance*), as amended on December 18, 2018, relative to the proposed Wedding Barn driveway, parking and curb cut—unless noted otherwise below. Based on the submitted application, testimony, exhibits, and evidence, the Development Review Board makes the following findings under the requirements of Underhill’s *Road Ordinance*:

SECTION 4, GENERAL PROVISIONS RELATING TO ACCESSWAYS

A. SECTION 4(B) – REASONABLE ACCESS

The Board concludes that the proposed development on Lot 2 will have reasonable access from LAP Run, a 24 ft. wide, graveled private development road that directly connects to Pleasant Valley Road, a Town road. (Exhibit LL)

B. SECTION 4(C) – DEVELOPMENT ROAD & DRIVEWAY STANDARDS

Section 4.(C)(1) – Grades: The Applicants submitted evidence that the grades relating to the wedding barn driveway will not exceed a grade of 10%, and therefore, the development satisfies the requirements of this subsection. (Exhibit LL)

Section 4(C)(2) – Topography: The proposed driveway has been sited to avoid impact to the features enumerated under the section.

Section 4(C)(3) – Radii: The Board acknowledges that a 35 ft. turning radius at the curb cut and driveway is excessive and accepts the turning radii as presented—30 ft. (Exhibit LL)

Section 4(C)(4) – Curbs: Not applicable.

Section 4(C)(5) – Geotextiles: The Board requires the Applicants to comply with this subsection upon constructing the proposed driveway, curb cut, and parking areas.

Section 4(C)(6) – Drainage: The proposed development on Lot 2 is accessed from a private development road and is not proximate to a Town right-of-way. The Board requires that any change in drainage patterns resulting from the driveway or parking area construction must not adversely affect the existing development road (LAP Run) or adjacent properties. The Applicants are responsible to remediate any problems that occur because of construction.

Section 4(C)(7) – Slopes, Banks & Ditches: The Board finds that the existing conditions are not problematic, and the proposed improvements shall not exacerbate concerns relative to slopes, banks, and ditches. The Board requires the Applicants to comply with this subsection upon constructing the driveway, curb cut, and parking areas.

Section 4(C)(8) – Wet Areas: The Applicants submitted evidence that the proposed driveway and parking areas do not impact any wet areas on the site. (Exhibit LL) The construction of the proposed driveway, curb cut, and parking areas shall conform to the requirements of this subsection.

Section 4(C)(9) – Culverts: The Applicants submitted evidence that new culverts are required—under LAP Run, the development road, and under the new driveway to the proposed wedding barn. (Exhibit LL) The culverts shall be designed and installed in accordance with this section.

Section 4(C)(10) – Stream Crossings: Not applicable.

Section 4(C)(11) – Bridge: Not applicable.

Section 4(C)(12) – Design: The Applicants submitted evidence of a driveway design that appears to comply with the section. The Board finds that the proposed driveway to the wedding barn facility is circular and meets the approval of the Underhill-Jericho Fire Department. (Exhibits LL, II)

SECTION 5, SPECIFIC PROVISIONS: DRIVEWAYS & DEVELOPMENT ROADS

A. SECTION 5(A) – DRIVEWAYS

Section 5(A)(1) – Construction & Design Requirements: The Board directs the Applicants to construct the new driveway in conformance with the AOT B-71 Standards (as amended), the *ULUDR*, and the *Road Ordinance*.

Section 5(A)(2) – Location: The Board finds the proposed driveway is accessed from the private development road LAP Run, not a Town highway. The Board finds that the addition of a curb cut from LAP Run to the proposed development on Lot 2 is not contrary to the *Road Ordinance* (Exhibits W, LL)

Section 5(A)(3) – Widths: The Applicants submitted evidence that the proposed driveway to the wedding barn is gravel and is 15 ft. in width. The Board finds the one-way, circular design of the proposed driveway appears to improve vehicular circulation and safety. (Exhibits W, LL)

Section 5(A)(4) – Non-conforming Lots: Not applicable.

B. SECTION 5(B) – DEVELOPMENT ROADS

Section 5(B)(1) – Construction & Design Requirements: LAP Run, the private, graveled development road, is existing, and the Applicants have provided evidence its travel way is 24 ft. wide and no changes will be made to the travel way except for the installation of a culvert under the road. (Exhibit LL) The Board requires the Applicants to repair any disturbance to LAP Run by complying with the AOT Standard A-76 construction requirements.

Section 5(B)(2) – System Capacity: The Board concludes the current proposal to use the wedding barn one day/weekend (Friday, Saturday, or Sunday) between May and November at a maximum capacity of 150 guests is an intensity that is unlikely to create undue adverse impacts to the existing level of Town road service or safety.

If activities related to the wedding barn create safety issues at the intersection of LAP Run, the development road, with Pleasant Valley Road, the Applicants will be required to use traffic control personnel and signage on event days at the discretion of the Zoning Administrator.

Section 5(B)(3) – Location: Not applicable.

Section 5(B)(4) – Widths: Not applicable.

Section 5(B)(5) –Travel Lanes: Not applicable.

Section 5(B)(6) –Necessary Additional Access: Not applicable.

Section 5(B)(7) –Road Names: Not applicable.

SECTION 8, ADMINISTRATION & PERMITTING

A. SECTION 8(A) – APPLICABILITY

Section 8(A)(1) – New Access Point: The Board finds that an Access Permit is required for a driveway accessed from a right-of-way.

B. SECTION 8(B) – COORDINATION OF REVIEW

Section 8(B)(2) – Development Review Board: The Board finds that 1) Lot 2 has an existing Access Permit A-12-05R to the existing single-family dwelling and 2) an access permit amendment for Lot 2 is required, adding a curb cut at the intersection of the development road LAP Run and the location of the proposed development on Lot 2. (Exhibits W, LL)

PART VI. EXEMPTIONS, WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS

The Applicants have not requested any dimensional waivers.

Any other conditions that have been waived have been noted in this decision. The Board makes no finding on any provision that was not explicitly waived and has not been explicitly addressed.

PART VII. DECISION 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 appreciates the applicant Mary Fuller expressing her intention throughout the hearings to be a good neighbor and to operate the business in only a limited way that minimizes the impact on the neighborhood and local community.

The Fuller application for a Home Industry as a Wedding Barn is **APPROVED**. Based upon the findings above and subject to the conditions below, the Development Review Board, by a vote of 5-2, approves the project presented in the application and at the hearing with the following conditions.

Procedural Conditions

1. **Fees.** All fees associated with the application, warnings, and document recordation must be paid in full prior to recording the revised plat.
2. **Boundary Line Adjustment.** The Board approves the proposed Boundary Line Adjustment as depicted on submitted documents (Exhibits CC, DD, EE). Prior to the issuance of a Zoning Permit, the Applicants shall submit final Boundary Line Adjustment documents to the Zoning Administrator for review. The Board hereby delegates authority to the Zoning Administrator to issue the final BLA if the application documents do not materially differ from what was presented during the hearings.
3. **Recording.** Prior to the issuance of a Zoning Permit, the Boundary Line Adjustment plat (Mylar) shall be submitted for recording in the Underhill Land Records. The plat shall include building envelopes (existing and new), easements, rights-of-way, wetlands, buffers, and existing parcel codes and shall be submitted for recording within 180 days of the date of this approval (June 21, 2022).
4. **Project Drawings – Revisions & Submission.** Prior to receiving a Zoning Permit, the Applicants shall submit two full-size and two 11-inch by 17-inch hardcopies of the stamped drawing set, in addition to digital pdf copies, to the Zoning Administrator to be filed in the corresponding zoning file. The Applicants are responsible for submitting the following stamped drawings as prepared by Bannon Engineering for the “Mary Fuller-Event Barn.” The drawings shall be revised and given a new revision date—as required to be in conformance with our review and this approval and be consistent across all drawings.
 1. Cover Sheet, dated 12/30/21 (Exhibit S)
 2. Wetland Delineation, dated 12/30/21 (Exhibit T)
 3. Existing Conditions, dated 12/30/21 (Exhibit U)
 4. Proposed Site Plan, dated 12/30/21, rev. 02/16/22 (Exhibits V & FF)
 5. Parking and Access, dated 12/30/21, rev. 02/16/22 (Exhibits W & FF)
 6. Proposed Stormwater Management Plan, dated 4/28/22 (Exhibit LL)

Revisions to the Proposed Site Plan shall include the following, along with other requirements set forth in the body of this Decision:

- The addition of water, wastewater, and stormwater components and notes, including isolation zones for the wastewater systems (both systems on Lot 2) and for the drilled well.
 - Correct number of parking spaces and correct dimension from the front property line to the 1st parking space.
 - Existing tree line north of the parking lot and proposed limits of clearing.
 - Class 2 wetland buffer line and nearby stream buffer line extended to the north in the area of the parking.
 - Location of anticipated underground utilities.
5. **Approved Plans & Construction.** The Project shall be constructed in accordance with the drawing set submitted as part of the Conditional Use Review process, revised in conformance with this

Decision. Any changes to the approved project prior to or during construction shall be immediately brought to the attention of the Zoning Administrator. Any material changes to the building design, site plan, or Home Industry use or operation shall require approval by the Development Review Board or the Zoning Administrator.

6. **State Permits.** Prior to the issuance of a Zoning Permit, the Applicants shall provide the Zoning Administrator with copies of State permits along with State-approved, permitted plans.
7. **Monumentation.** Prior to the issuance of the Certificate of Occupancy, the Applicants shall ensure that property monumentation relative to the boundary line adjustment is installed as defined on the recordable Mylar.
8. **Infrastructure Certification.** Prior to the issuance of the Certificate of Occupancy Permit, the Applicants shall provide a certification letter from a Vermont Licensed Professional Engineer or qualified consultant indicating that all infrastructure improvements identified in the plans under Condition 4 above (site plan, septic system, water supply, stormwater system, parking, driveway, and any other critical infrastructure) have been constructed according to what was proposed as part of this review.
9. **Covenants—Lap Run.** Prior to the issuance of the Certificate of Occupancy Permit, the Applicants shall revise the LAP Run Covenants to:
 - Remove the maintenance and repair of the parking and infrastructure of Lot 2’s Home Industry from the responsibility of the other homeowners in the association
 - Reapportion the maintenance and repair of the development road to Lot 2 to acknowledge the increase in use by Lot 2’s Home Industry
10. **Business Sign.** The Board approves the sign design as submitted by the Applicants (Exhibit HH, page 29) as long as its location does not materially interfere with sight lines and authorizes the Zoning Administrator to issue a sign permit. If the sign design materially changes, the Applicants shall submit an application for a sign permit to the Zoning Administrator for approval.
11. **Conditions & Home Industry Use.** Once the approved uses or structures are established, the Conditions for the Home Industry as a Wedding Barn will remain in effect.

Substantive Land Use & Development Regulations Conditions

12. **Home Industry Occupancy.** Maximum 150 guests.
13. **Home Industry Operations.** The Board restricts the Home Industry to the following operations:
 - Event Season: Between May and November (6 months total).
 - Event Frequency: Not more than 1 wedding event per weekend.
 - Event Day: only on Friday, Saturday, or Sunday.
 - Event Hours:
 - 10am – approximate time event prep begins.
 - 3pm – approximate time event begins.
 - 10pm – event ends no later than this time.**
 - 11pm – approximate event cleanup ends.
 - Dance Music Hours:
 - 7pm – approximate time dance music begins.
 - 10pm – **dance music ends no later than this time.**
 - No gatherings outside except for the wedding ceremony and wedding photos.
 - No tables and chairs outside the building except as may be required for the wedding ceremony.
 - All dining inside the building.
 - All dancing inside the building.

- All amplified music inside the building.
- Doors and windows shall remain closed during events.
- A sound limiter shall limit speaker and amplifier outputs to 95 Db.
- No trash or recycling will be generated for storage on site.
- No fireworks, bonfires, or tents outside.
- Exterior building lights shall remain off when an event is not in progress.
- All parking associated with the Home Industry shall be in the designated parking areas.
- If activities related to the Home Industry create safety issues on Pleasant Valley Road that are brought to the attention of the Zoning Administrator and the Zoning Administrator confirms such issues exist, the Owners shall be required to use traffic control personnel and signage on event days at the discretion of the Zoning Administrator.
- The Owner shall be on site during events and be available by phone.
- The Owner shall maintain a publicly available event schedule.

14. **Building Design & Construction.** The Applicants have represented the wedding barn as below. Any material changes should immediately be brought to the attention of the Zoning Administrator and may require review by the Development Review Board.

- A new barn constructed to the 2020 VT Commercial Energy Standards.
- Insulated walls with an STC-40 rating.
- Insulated windows, doors & roof.
- Exterior swing doors with door closers.
- Exterior building lighting downcast or shielded.
- Approximate dimensions: 36' x 96' footprint, height 20'.
- No speakers mounted on the exterior of the building.
- No additional storage or outbuildings associated with the wedding barn

15. **Building Use.** The proposed wedding barn building shall be used as a:

- Farm structure- minimum of 6 months each year (see Underhill's *ULUDR*, Section 11.2, definition of Farm Structure).
- Event facility- maximum of 6 months each year between the months of May-November.

16. **Additional Acoustical Requirements.** The Owner shall conduct a noise monitoring study within 3 months after operations commence (including at least one summer month). The study shall include the use of a precision sound level meter and measurements taken at the closest property line at several periods during each of five (5) events, including while dance music is played. The Owner shall make the results of the noise monitoring study available to the Zoning Administrator immediately following each of the five events. Additionally, during one of the five events, a professional acoustical consultant shall take simultaneous measurements on-site alongside the Owner, and the results shall be reported from both parties.

The *ULUDR* specifies under Section 3.14.B.1 that no use, under normal conditions, shall cause, create or result in noise that represents a significant increase in noise levels in the vicinity of the use so as to be incompatible with the surrounding area. In consideration of this, the Board requires that noise levels during any part of an event shall not exceed 35dB (SPL) at the closest property line.

17. **Buffers.** Per Part IV-Section 3.19 above:

- Riparian Buffer: A minimum of 12 ft. on each side of the stream to the east of the proposed building shall remain undisturbed as a riparian buffer.
- Wetlands Buffer: The required 50 ft. buffer from the Class 2 wetland shall remain an undisturbed, naturally vegetated buffer—unless a VT State wetland permit indicates a larger buffer is required.

18. **Utilities.** Utilities shall be installed underground.

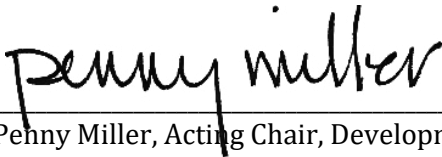
19. **Erosion Prevention & Sediment Control.** Sitework must comply with Vermont DEC's *The Low Risk Site Handbook for Erosion Prevention and Sediment Control*.
20. **Conformance With Regulations.** Notwithstanding the conditions above, prior to being issued a zoning permit, the Applicants shall comply with applicable aspects of the *Underhill Unified Land Use and Development Regulations* in effect at the time of the application for a zoning permit.

Prior to construction, the Applicant(s) bear(s) the responsibility and obligation for contacting the State Permit Specialist with the Vermont Agency of Natural Resources (802-828-1294) regarding any necessary permits and/or requirements, which includes, but is not limited to: water/wastewater, stormwater, Act 250, and General Construction Permits.

Substantive Road, Driveway & Trail Ordinance Conditions

1. **Access Permit Amendment.** The Board approves the additional Lot 2 curb cut with 30 ft. radii specific to the proposed wedding barn and as shown on submitted drawings (Exhibits W & LL). Prior to the issuance of a Zoning Permit, the Applicants shall submit an amended Access Permit application to the Zoning Administrator for review. The Board hereby delegates authority to the Zoning Administrator to issue the final amended Access Permit if the application documents do not materially differ from what was presented during the hearings.

Dated at Underhill, Vermont this 21st day of June 2022.



Penny Miller, Acting Chair, 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 privileged 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.