



Town of Underhill

Development Review Board

Findings and Decision

APPLICATION OF S.B. COLLINS, INC. & WELLS FOR A CONDITIONAL USE REVIEW - WAIVER/VARIANCE REQUEST FOR THE AFTER-THE-FACT APPROVAL FOR MODIFICATIONS MADE TO A NONCONFORMING SIGN

In re: S.B. Collins, Inc. & Wells
278 River Road (RV278)
Underhill, VT 05489

Docket No. DRB-20-09

Decision: *Dismissed* (see Decision for More Details)

Part I. INTRODUCTION AND PROCEDURAL HISTORY

The subject of this proceeding concerns a conditional use review application for a waiver/variance request for the after-the-fact approval for modifications made to a nonconforming sign on property located at 278 River Road (RV278) in Underhill, Vermont, which is owned by Cedric & Laura Wells and Wells Corner Market. The subject property is located in the Underhill Center Village zoning district.

- A. On Thursday, August 20, 2020, S.B. Collins, Inc. (the Applicant), filed an application on behalf of Cedric & Laura Wells and Wells Corner Market for conditional use review for a waiver/variance request hearing for the aforementioned project. The application was accepted and determined to be complete by the Planning & Zoning Administrator, Andrew Strniste, on December 16, 2020. A site visit was scheduled for Saturday, December 19, 2020 at 8:30 AM, while the hearing was scheduled for 6:35 PM on January 4, 2021, and was to be held remotely via the Go-To-Meeting platform due to the COVID-19 pandemic.
1. *Due to the COVID-19 pandemic, the Vermont legislature enacted Act 92 that permits public hearings to be held remotely (without a public gathering place) as long as the remote meeting can be accessed by the public. As a public hearing, the meeting was recorded.*
 2. The Monday, January 4, 2021, meeting agenda contained both a hyperlink to attend the meeting by computer, table or smartphone, as well as contained a dial-in phone number and access code allowing a participant to attend via phone.
- B. During week of December 13, 2020, notice of the conditional use review – waiver/variance request hearing was mailed via Certified Mail to the following property owners adjoining the property subject to the application:
1. **KR008** – Aldolph W. Wells Revocable Trust, Aldolph W. & Travis Wells Trustees, 8 Krug

- Road, Underhill, VT 05489
2. **RA002** – Joseph A. Leuchter Mindel & Meghan E. Conroy, 2 Range Road, Underhill, VT 05489
 3. **RA005** – Alden & Florence Oliver, 5 Range Road, Underhill, VT 05489
 4. **RA006** – Cedric P. & Laura L. Wells, P.O. Box 165, Underhill Center, VT 05490
 5. **RA007** – Robert J. & Rinda S. Gordon Life Estate, P.O. Box 194, Underhill Center, VT 05490
 6. **RV275** – Douglas & Sarah Miller, 275 River Road, Underhill, VT 05489
 7. **RV277** – Wesley & Malgorzata Carr, 277 Road, Underhill, VT 05489
 8. **RV279** – Marie Sawyer, 279 River Road, Underhill, VT 05489
 9. **RV281** – Kari Brennen Life Estate, c/o Karen Rangel, 362 Musket Circle, Milton, VT 05468
 10. **RV284** – Laura Allen, 284 River Road, Underhill, VT 05489
 11. **RV288** – Catherine Gillespie & John M. Romanoff, P.O. Box 166, Underhill Center, VT 05490
 12. **[Applicant] RV278** – Cedric P. & Laura L. Wells, Wells Corner Market, P.O. Box 165, Underhill Center, VT 05490
 13. **[Applicant's Representative] RV278** – S.B. Collins, Inc. P.O. Box 671, St. Albans, VT 05478
- C. During the week of December 6, 2020, notice of the public hearing for the proposed conditional use review – waiver/variance request hearing was posted at the following locations:
1. The Underhill Town Clerk's office;
 2. The Underhill Center Post Office; and
 3. Jacobs & Son Market
- D. On December 12, 2020, notice of public hearing was published in the *Burlington Free Press*.
- E. The scheduled site visit at the property's location (278 River Road, Underhill, Vermont) commenced at 8:30 AM on December 19, 2020.
- F. Present at the site visit were the following members of the Development Review Board:
1. Board Member, Charles Van Winkle, Chairperson
 2. Board Member, Penny Miller, Clerk
 3. Board Member, Matt Chapek
 4. Board Member, Daniel Lee
 5. Board Member, Karen McKnight

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

There were no municipal representatives or members from the public present at the site visit.

- G. In accordance with Act 92, the conditional use review – waiver/variance request hearing commenced at 6:35 PM on Monday, January 4, 2021 via the Go-To-Meeting platform. A public gathering place was not established; the meeting was recorded.
- H. Present at the conditional use review – waiver/variance request hearing were the following members of the Development Review Board:
1. Board Member, Charles Van Winkle, Chairperson

2. Board Member, Stacey Turkos, Vice Chairperson
3. Board Member, Penny Miller, Clerk
4. Board Member, Matt Chapek
5. Board Member, Mark Green
6. Board Member, Daniel Lee
7. Board Member, Karen McKnight

Also in attendance was Staff Member Andrew Strniste, Planning Director & Zoning Administrator.

Others present at the hearing were:

1. Applicants' Representative, John Olson III on behalf of Cedric & Laura Wells (278 River Road, Underhill, VT 05489)

Due to the COVID-19 pandemic, all attending parties (the Board Members, Staff and the Applicant) attended the meeting remotely via the Go-To-Meeting platform.

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

1. Applicants' Representative, John Olson III

- J. In support of the conditional use review – waiver/variance request application, the following exhibits were submitted to the Development Review Board:

Exhibit A – Wells & S.B. Collins Inc Conditional Use Review Staff Report
Exhibit B – Wells & S.B. Collins Inc (RV278) Conditional Use Review Hearing Procedures
Exhibit C – Development Review Application
Exhibit D – BFP Notice
Exhibit E – Certificate of Service
Exhibit F – Zoning Permit Application (S-20-01)
Exhibit G – Zoning Permit Supplemental Form (S-20-01)
Exhibit H – RV278 Deeds
Exhibit I – RV278 Site Plan
Exhibit J – 1997-33 Zoning Permit
Exhibit K – 1995 Underhill Zoning Bylaw Excerpt
Exhibit L – Previous Nonconforming Sign
Exhibit M – As-Modified Sign

No additional exhibits were distributed prior to the Board's hearing, nor were any additional exhibits submitted into the record during the hearing.

All exhibits are available for public review in the RV278 Conditional Use Review – Waiver/Variance Request file (DRB-20-09) at the Underhill Zoning & Planning office.

Part II. FINDINGS

The Minutes of the January 4, 2021 meeting, written by Andrew Strniste, are incorporated by reference into this decision. Please refer to those minutes for a summary of the testimony. The

recording of the January 4, 2021 Development Review Board meeting can be viewed on the Mt. Mansfield Community Television's website: <https://archive.org/details/underhill-drb-01042021>.

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

FACTUAL FINDINGS

The Applicant, S.B. Collins, Inc., on behalf of the landowners, Cedric & Laura Wells and Wells Corner Market, who are the record owner of the property located at 278 River Road (RV278) in Underhill, Vermont, is seeking after-the-fact conditional use review – waiver/variance request approval under Sections 5.5.B & 5.5.C from the Development Review Board to make modifications to a nonconforming sign on the aforementioned property. Specifically, the Zoning Administrator had advised the Applicant a permit would be necessary prior to changing the face of the sign. The Applicant subsequently changed the face of the nonconforming sign, which previously depicted the brand name-emblem "Gulf" to a new face, which depicts a generic, custom-designed "Gasoline" emblem. The property is located in the Underhill Center Village zoning district as defined in Article II, Table 2.3 of the 2020 *Underhill Unified Land Use & Development Regulations*.

The Application was referred to the Board by Planning Director & Zoning Administrator, Andrew Strniste (Staff). As outlined under Section 3.16 in the staff report (Exhibit A), Staff opined that changing the emblem depicted on the face of the sign was a change in the design of the sign, thus constituting a modification to a nonconforming sign, which conflicts with the regulations under Section 3.16.I. For additional context, the subject sign is ±18 ft., exceeding the 15 ft. height requirement for freestanding signs, which is outlined under Section 3.16.C.9. The Board disagrees with Staff's analysis, and has provided its rationale directly below.

GENERAL REGULATIONS, ARTICLE III

A. SECTION 3.16 – SIGNS

As provided above, Staff referred the subject application to the Board with the opinion that changing the face of the sign conflicts with Section 3.16.I, thus constituting a "change in design," effectively resulting in a modification to a nonconforming sign. The subject sign is ±18 ft., exceeding the 15 ft. height requirement for freestanding signs (see Section 3.16.C.9).

Section 3.16.I of the 2020 *Under Unified Land Use & Development Regulations* states the following:

Nonconforming Signs. Any sign lawfully in place prior to the effective date of these regulations that does not conform to these regulations with respect to area, height, setback, location, number or lighting, shall be considered a nonconforming sign. Such signs may receive normal maintenance and repair; however, no nonconforming sign shall be enlarged, extended, changed in design or altered to advertise a different business or product, unless it is brought into conformance with these standards. *[Emphasis Added]*

Under Staff's interpretation of the aforementioned regulations, since the sign's height is nonconforming, any change to the face of the sign constitutes a change of design and thus, is a modification to a nonconforming sign. Since the Applicant is opposed to bringing the sign into conformance with the 15 ft. height requirement (and potentially other signage on the property),

Staff opines that approval from the Development Review Board is required, most likely via the variance standards.

The Board agrees that the subject sign is nonconforming, as it exceeds the 15 ft. height requirement; however, the Board disagrees with Staff that changing the face of the sign to a new emblem constitutes a change in design. The Board finds that a “change in a design” to a nonconforming sign pertains to a physical change to the sign, such as the dimensions of the sign itself. The Board also finds that should a “change in design” apply to the emblem or face of the sign, that rises to the level of regulating the content of the sign, which the Board does not have the authority to do. Since the Board finds that the changing of the sign’s face does not constitute a change in design, approval from this Board is not required for the desired modifications.

Part III. FACTUAL FINDINGS & CONCLUSIONS RELATING TO THE UNDERHILL ROAD, DRIVEWAY & TRAIL ORDINANCE

The Board concludes the existing sign is a pre-existing non-conforming use and is sheltered from compliance with current regulations by being “grandfathered.” The Board concludes that the protections of being grandfathered include the size, shape, height, location, and illumination characteristics. The Board views the face of the sign and the modification of the sign face as content and concludes they have no jurisdiction over content, nor do they choose to attempt to regulate content as it applies in this situation.

The Board finds that its approval for the subject application is not required. Had Board approval been required, the *Underhill Road, Driveway & Trail Ordinance* would not have applied since no modifications to the existing driveway and existing curb cut were proposed. Since Board review under the *Underhill Road, Driveway & Trail Ordinance* would have been unnecessary, an access permit would not have been required. Whatever access permit is in place (if at all), that approval and any associated conditions of approval remain in place.

Part IV. WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS

Since the Board finds that its approval is not required, the Board finds that no waivers, modifications or supplementations are warranted as part of this decision.

Part V. DECISIONS AND CONDITIONS OF APPROVAL

Based upon the findings above, the Development Review Board dismisses the conditional use application for the project presented herein and at the hearing.

Conditions: No conditions provided or warranted.

Dated at Underhill, Vermont this 25th of January 2021.

Charles Van Winkle

Charles Van Winkle, Development Review Board Chair

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

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

No Access Permit Issued