

**Town of Underhill**  
Development Review Board Minutes  
Chairperson Charles Van Winkle

March 18, 2013

**Board Members Present:**

Will Towle, Acting Chair  
Penny Miller  
Karen McKnight  
Shanie Bartlett

**Staff/Municipal Representatives Present:**

Kari Papelbon, Zoning & Planning Administrator

**6:35 PM:** Board Member Penny Miller explained that she is feeling ill and preferred if another member would serve as Acting Chairperson. Board Member Miller then made a motion, seconded by Board Member Karen McKnight, to appoint Board Member Will Towle as Acting Chairperson for the hearing. The motion was passed by all Board Members present.

**6:38 PM:** Acting Chairperson Will Towle called the Angelino Conditional Use/Site Plan Review hearing to order at the Underhill Town Hall.

**Applicant(s) Present:**

John and Denise Angelino  
5 Browns Trace Rd.  
Jericho, VT 05465

**Others(s) Present:**

See attached sign-in sheet

**Identifier:      Contents:**

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ZA-1	John and Denise Angelino's Conditional Use/Site Plan Review Hearing Request (dated 2-28-13)
ZA-2	A copy of the email from Dick and Barb Albertini (dated 3-1-13)
ZA-3	A copy of the Conditional Use Review Standards Findings Checklist
ZA-4	A copy of the Site Plan Review Standards Findings Checklist
ZA-5	A copy of the tax map for NR003 (shown as part of PV139)
ZA-6	Five (5) ANR maps depicting public wells, source protection areas, habitats, and soils (dated 3-12-13)

ZA-7	A copy of the hearing notice published in <i>The Burlington Free Press</i> on March 2, 2013
ZA-8	A copy of the Home Business Permit Application (dated 3-13-13)
ZA-9	A copy of the sketch plan (date 2-28-13)
ZA-10	A copy of the small scale tax map depicting the location of the proposed garage/barn (dated 3-13-13)
ZA-11	A copy of the email from Underhill Conservation Chair Trevor Squirrell (dated 3-17-13)
ZA-12	Staff Report

- Acting Chairperson Towle began the meeting by explaining the definitions of a Conditional Use, a home industry, and a contractor's yard. Acting Chairperson Towle then explained the procedure for the hearing, which comes under the 2012 Unified Land Use and Development Regulations. Acting Chairperson Towle also explained how to obtain interested party status, swore in interested parties present, asked if there were conflicts of interest, and entered the above items into record.
- John Angelino, Applicant, provided an overview of his application. Mr. Angelino stated that he is the sole proprietor of a small excavating business. As the sole employee, he leaves in the morning and returns in the evening like anyone else going to and from work. Mr. Angelino explained that his request is to construct a barn to store and maintain vehicles, equipment, and tools.
- Acting Chairperson Towle asked what kind of a business is the sole proprietorship. Mr. Angelino stated that the name of the business is Angelino's Excavating, Inc. Mrs. Angelino stated that she occasionally assists in the business.
- Acting Chairperson Towle asked about the number and type of vehicles and equipment used in the business. Mr. Angelino stated that he provides residential excavating services for driveways, re-grading, septic systems, cellar holes, foundations, etc. Work is typically performed within a 10-mile radius of his home. Mr. Angelino stated that he owns one each of the following (residential-sized): excavator, dump truck, bulldozer, skid steer. He also has several hand tools and two small trailers to move the equipment.
- Acting Chairperson Towle asked Mr. Angelino if he has any employees, to which he replied that his wife occasionally works with him on a part-time basis.
- Acting Chairperson Towle asked where the equipment is currently stored, to which Mr. Angelino stated that it is stored at his home in Jericho.
- Acting Chairperson Towle asked for what purpose the parcel at 3 New Road is currently being used. Mr. Angelino stated it is residential and Mrs. Angelino added that they would be moving to the house at 3 New Road (there is a contract on the property).
- Acting Chairperson Towle asked if there is an equivalent permit in Jericho, to which the Angelinos responded that one is not needed.

- Acting Chairperson Towle asked the Angelinos to explain the size, location, and aesthetic of the proposed building. Mr. Angelino stated that the location of the proposed structure is in the area of the existing dwelling well off the road, which is currently heavily wooded and will be screened by the existing trees from Pleasant Valley Road and New Road. The structure will be a barn-style garage for equipment, hay, and a horse.
- Acting Chairperson Towle asked if Mr. Angelino would be storing material. If so, what kind and how much? Mr. Angelino replied that he purchases all material off-site and never has more than about 15 yards (approximately 1 tandem load) of stone or topsoil at his property at any time. Board Member Penny Miller asked if the purchase is made and then directly taken to the job site. Mr. Angelino stated that he does because otherwise it would be double transportation cost and he does not have equipment to re-load the material.
- Acting Chairperson Towle asked Mr. Angelino if he would be amenable to a permit condition restricting the amount of on-site stored material and what amount of material would be acceptable. Mr. Angelino replied that he would be amenable and that a maximum of 3 loads totaling approximately 42 yards would be sufficient. Mrs. Angelino added that nothing would be seen from the road.
- Acting Chairperson Towle stated that the total area for the contractor's yard 90' x 150' within which the proposed barn would be sited. He asked whether a max of 42 yards of material stored in the area would be acceptable. Mr. Angelino confirmed that it was.
- Board Member Miller asked for confirmation that Mr. Angelino does not have the intention of extracting material from the property, only to store material obtained off-site. Mr. Angelino confirmed that such was the case, and explained that he will be living in the home and just needs a place to store equipment when coming home from a job.
- ZA/PA Papelbon stated that the size of the proposed barn/garage is 32' x 60,' 1.5-stories (total = 1920 square feet), within the proposed 90' x 150' yard.
- Acting Chairperson Towle asked whether Mr. Angelino was firm with the size of the proposed barn. Mr. Angelino stated that it could be smaller, but the proposed size is reasonable to store most of the equipment and materials inside. Acting Chairperson Towle asked if Mr. Angelino would be amenable to a condition limiting the size to 32' x 60.' Mr. Angelino stated that the proposed size allows for storage and some parking room on the sides and rear. Mrs. Angelino added that the proposed space allows for maneuvering of equipment and vehicles.
- Board Member Miller asked whether the Angelinos need room for animals as well. Mr. Angelino stated that they have a horse. Board Member Miller asked if the proposed size was sufficient for the horse, to which Mr. Angelino replied that it was.
- Acting Chairperson Towle asked for confirmation that there would be no visible activity from the road and that it would all be behind existing terrain. Mr. Angelino stated that such was correct, although the peak of the barn might be

just over the top of the treeline. Mr. and Mrs. Angelino clarified that the goal is to make the building blend in with the landscape and that the design would be similar to other structures in the area.

- Acting Chairperson Towle asked how many vehicle trips would be expected. Mr. Angelino explained that he leaves in the morning and comes home at the end of the day, with a potential midday stop. He added that he does not have any employees, so there would not be multiple daily trips by multiple vehicles.
- Acting Chairperson Towle asked whether the heavy equipment was brought back at the end of every day. Mr. Angelino stated that he does not, that the equipment is typically gone for most of the summer and that he may bring it home on a weekend or evening to repair.
- Acting Chairperson Towle asked if the existing curb cut would be sufficient for the equipment, to which Mr. Angelino replied that it would with some landscaping for improved aesthetics.
- Acting Chairperson Towle asked Mr. Angelino if a restriction on the number of employees and parking would be agreeable and, if so, what number would be requested. Mr. Angelino replied that he would ask for two employees.
- Board Member Karen McKnight asked what time of day Mr. Angelino would be leaving and returning. Mr. Angelino replied that it would be during normal commuting hours (6/6:30 AM – 5/6 PM). Board Member Miller asked for confirmation that only a fraction of that commute time would be with heavy equipment. Mr. Angelino replied that such was correct and that most trips are made in a pickup truck.
- Board Member Miller asked if any signs would be requested. Mr. Angelino stated that the permit application included a sign, but that it was not “a deal-breaker.” The sign would be small, landscaped, and say “Angelinos” or “Angelino’s Excavating” outside of the town right-of-way.
- ZA/PA Papelbon provided her staff report, which was included in the hearing information packet. She stated that the DRB did not include a formal site visit as part of the hearing, but that she asked John to flag the site for review. ZA/PA Papelbon explained that the Albertinis are co-applicants as the sale of the property with the Angelinos is pending, and explained that the tax map did not show the 2 pieces that the Angelinos are purchasing as separate. The two pieces would effectively be used as one, to be known as 3 New Road. Mr. Angelino stated that the proposed contractor’s yard is in excess of 200 feet from Pleasant Valley Road. The sign request was revised from 2 signs to 1. The nearest well in the Source Protection Area is more than 200 feet away at Underhill Central School. ZA/PA Papelbon stated that there is a requirement for diverting stormwater runoff away from maintenance areas and asked Mr. Angelino to address the two storage tanks that would be required. Mr. Angelino explained that he has a 300-gallon on-road diesel fuel tank on skids and a 275-gallon off-road fuel tank, similar to home fuel tanks.
- Board Member Miller asked how the tanks are filled. Mr. Angelino stated that fuel is delivered. ZA/PA Papelbon explained that the tanks needed to be either

placed in a building or on an impervious area without drains to prevent groundwater contamination. Mr. Angelino stated that he would build something similar to a foundation with a reservoir so that if the tank had a leak and drained completely the fuel would be contained or placed inside the building. Discussion ensued. ZA/PA Papelbon explained that the two tanks are smaller than those regulated at the state and federal levels. Discussion continued.

- ZA/PA Papelbon asked whether the proposed yard would include parking for employees or just for the vehicles and equipment. Mr. Angelino stated that it would be just for the equipment and vehicles.
- Board Member Miller asked who would see the sign. Mr. Angelino stated that the land has frontage on both Pleasant Valley Road and New Road, but that he was not sure whether he would erect a sign on the corner (outside the right-of-way).

**7:20 PM:** Acting Chairperson Towle asked for public comment.

- Sandy Murphy and Brian Smith:
  - Why here and not in Jericho at the current residence? Chairperson Towle stated that the Applicants are in the process of moving to a new home.
  - How can neighbors be reassured that the business would be limited to the application? Are there regulations that the Applicants will have to adhere to or is there potential for the business to expand?
  - General concerns for noise, environmental impacts, animal habitat.
  - Will the Applicants be entitled to use the property as something more than contractor's yard, such as a gravel pit, in the future?
  - How can neighbors be reassured that the buffer will be maintained? Will cutting be allowed beyond the contractor's yard?
  - Access to the property seems to increase hazards in the area due to steepness. Acting Chairperson Towle asked if Ms. Murphy had an opinion on how many is "too many" additional vehicle trips on New Road. Ms. Murphy stated that such was a difficult question to answer, and asked how she was to be reassured that future traffic will not increase beyond the trips mentioned in the application. Acting Chairperson Towle explained that with conditional use permits the DRB puts reasonable restrictions to ensure that what is approved is what exists.
  - Ms. Murphy asked whether the Applicants could apply for permits for other uses in the future. Acting Chairperson Towle explained that a permit for a contractor's yard is not a gateway for a gravel extraction permit and that any landowner can apply for a conditional use permit. This application does not include a request for a gravel pit – such an operation would require a separate permit.
  - Ms. Murphy stated that she would like to see the application denied because she has seen other similar operations and feels that the character of the area would be changed. Discussion ensued.

- Can a limit be set on the number of horses allowed? Acting Chairperson Towle stated that the application is for a contractor's yard and such is not a consideration for the DRB.
- Ms. Murphy stated that the nature of the land is such that she can hear people talking when they are on New Road. ZA/PA Papelbon asked if she can hear the Town trucks. Ms. Murphy stated that she did.
- Board Member Miller discussed restrictions and enforcement.
- Marcy Gibson:
  - Concern for the existing trail that crosses the property and goes to Underhill Central School. Will it continue?
  - Concern for the school bus stop at the corner. How does that affect large vehicle traffic?
  - Acting Chairperson Towle asked if the trail is a formal recognized trail with easements. Ms. Gibson said it is not, but that the Town Plan states a desire to maintain trails.
  - Board Member Miller asked Ms. Gibson to describe where the trail route is on a map. Ms. Gibson stated that it begins at the driveway, goes past the house at 3 New Road, and over other properties to the school.
- Kevin Gibson:
  - Hoped that the area would become a neighborhood for his son to ride his bike on the road and play. Concern for a contractor's yard as the notice did not mention that there is a homestead. Hoped that the house would be used only as a residence and not a business.
  - Not supportive of the proposed sign on the corner of Pleasant Valley Road and New Road.
  - Board Member McKnight asked where the school bus stops. Ms. Gibson stated that it stops on Pleasant Valley Rd.
- Clifford Peterson:
  - Would the conditional use permit run with the land or would it be personal to the Angelinos? Will the permit expire at some point? Discussion ensued.
  - ZA/PA Papelbon stated that such is addressed in the regulations and read Section 10.3(D)(2)(c). Discussion continued.
  - Acting Chairperson Towle stated that typically conditional use approvals run with the land and provided an example. Discussion of whether an approval would lapse or if the DRB could place a restriction on the timeframe ensued.
  - Mr. Peterson asked whether the Applicants would be willing to waive the approval running with the land and allow the approval to expire if the property was sold or if the house was no longer used as a home.
- Helen Wagner:
  - If approved, recommends clear, specific conditions and limitations for ease of understanding and enforcement.
- Debbie and Mike Hudson:

- Applicants personally known.
- Originally concerned for application, but character of people makes a difference and should be considered. Believe the Applicants have a strong character.
- Not in favor of permit running with land. In favor of permit attached to owners.
- Understand concerns about trail and bus stop, but main concern is for unity.
- Would be helpful to have more clarity on days and hours of operation, when loads are brought home whether they are dumped and reloaded and what noise that makes, what time of day the dumping and reloading would occur.
- Can hear Town trucks when loading, unloading, and traveling on New Road.
- The term “contractor’s yard” is scary and unfriendly.

**7:55 PM:** Acting Chairperson Towle stated that concerns were heard regarding limiting the scope of the business and not leading to a larger operation. He explained that it helps the DRB for the Applicants to offer suggestions for conditions, such as a limit on the amount of materials stored onsite, and asked if there was anything that the Applicants could add to that end. Mr. Angelino stated that there was not, that what he was proposing is what he plans to do, that he is a man of his word, and he said he is not going to have an ongoing dispute with his neighbors.

- Mrs. Angelino stated that she has concerns that there would be calls complaining about their business when what people are actually hearing are the Town trucks. She added that Mr. Angelino has been in business since 1989 and that they are people of integrity.
- Board Member Miller stated that perhaps the issue is not knowing what to expect with the contractor’s yard, and provided a local example (Jim Bedell) versus an example in New York. Mr. Angelino stated that he grew up in Underhill and, with the exception of the last few years, has lived most of his life in Underhill.
- Acting Chairperson Towle asked if the Applicants could address the trail issue. Mr. and Mrs. Angelino stated that people walk up the driveway, cut through the yard past the house, and that they would not be in favor of allowing that or any rights-of-way to continue.
- Acting Chairperson Towle asked whether limiting the permit to the Applicant rather than running with the land would be something the Applicants would be willing to volunteer. Mr. Angelino stated that he is only applying for a permit for

himself. Discussion surrounding whether selling the property and business to a child would occur and be allowed.

- Acting Chairperson Towle asked about working hours and schedules. Mr. Angelino explained that he works the same basic hours as others – he leaves around 6 or 6:30 AM and returns between 5 and 6 PM. He does not work Sundays and typically half-days on Saturdays (7:30 AM – noon). Mrs. Angelino stated that the existing Town activity on the road far exceeds the activity of the business. She added that they avoid school busses for safety and scheduling issues.
- Board Member Miller asked if the Applicants would be amenable to moving the connection to the trail. Mr. Angelino stated that at one time they had discussed rerouting the trail so that it would not cut through the yard. Mrs. Angelino stated that she would not be willing to grant a right-of-way, but individuals could ask permission to walk on the property, potentially on a rerouted trail.
- Sandy Murphy stated that people such as her would be concerned with what neighbors do on their land if it affects their quality of life.
- ZA/PA Papelbon asked what the screening/buffer maintenance would be. Mr. Angelino stated that he would maintain the buffer and existing vegetation, and not take more beyond the area. But the Applicants would like to be able to cut trees as needed. Acting Chairperson Towle asked what the minimum buffer/screen width would be. Mr. Angelino stated that the trees would be right up to the edge of the yard. Discussion ensued as to a minimum width and allowing the removal of damaged and diseased trees. Mr. Angelino stated that 100 feet would be more than enough to maintain a buffer.

**8:08 PM:** Acting Chairperson Towle asked whether the Board felt they had enough information to make a decision on the application. The Board stated that they did. Acting Chairperson Towle stated that he would entertain a motion to close the evidentiary portion of the hearing, subject to a potential site visit. A brief discussion of process ensued. Acting Chairperson Towle explained that a site visit is not considered evidence. Board Member Miller asked about whether the permit would run with the land or if the DRB could limit it to the Applicants. Discussion ensued.

**8:10 PM:** Board Member Shanie Bartlett made a motion, seconded by Board Member Karen McKnight, to close the evidentiary portion of the hearing. The motion was passed by all Board Members present. Acting Chairperson Towle thanked all participants and asked whether the Board would like to deliberate in open or closed session.

**8:13 PM:** Board Member Penny Miller made a motion, seconded by Board Member Shanie Bartlett, to enter a deliberative session. The motion was passed by all Board Members present.

**8:28 PM:** All Board Members departed.

These minutes of the 3-18-13 meeting of the DRB were accepted

This 8<sup>th</sup> day of April, 2013.

  
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Will Towle, Acting 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.*

