

**UNDERHILL DEVELOPMENT REVIEW BOARD**

CONDITIONAL USE REVIEW
HEARING PROCEDURES
Monday, August 3, 2020

Applicant(s): Michael Diffenderffer
Docket #: DRB-19-12

1. **State the following (Intro):** "This is a conditional use review hearing on the application of Michael Diffenderffer for the conversion of a multi-family dwelling to a mixed-use structure containing: three dwelling units (multi-family dwelling), office space, and restaurant space, as well as to construct a covered porch within a riparian buffer on land he co-owns at 15 Pleasant Valley Road (PV015) in Underhill, Vermont."

The aforementioned application was originally submitted for review in the fall of 2019. A hearing was scheduled for October 21, 2019, and subsequently continued to January 6, 2020, March 16, 2020, June 2, 2020 and to today, August 3, 2020. Prior to the June 2, 2020 hearing, Staff discovered an administrative error, specifically that the hearing was not warned in the *Burlington Free Press* as originally thought. Therefore, tonight's hearing was re-warned in order to comply with the requirements under 24 V.S.A. Chapter 117. Therefore, prior to this evening's hearing, the Applicant was administered a new public notice sign, abutting neighbors were notified via certified mail, and the hearing was warned in the *Burlington Free Press*. The Board is also going to reintroduce all of the evidence provided in the previous defective hearings by reference, including the audio recordings from October 21, 2019 and January 6, 2020 meetings, and the video recordings from the March 13, 2020 and June 2, 2020 meetings. For the record, following the outlining of procedures, Staff and Applicant will provide an overview of the original project, including the associates updates from the continued "hearings." A summary of events can be found in the Supplemental Staff Report (Exhibit N).

This application is subject to review under the 2011 *Unified Land Use & Development Regulations*, as amended thru March 6, 2018 and the 2015 *Road, Driveway and Trail Ordinance*, as amended December 18, 2018.

Conditional use review is intended to ensure compliance with standards addressing the potential impacts of development on adjoining properties, the neighborhood, and/or zoning district in which the development is located, and the community at large. Typically, land uses are subject to conditional use review because their scale, intensity and potential for off-site impacts warrant more careful scrutiny by the Development Review Board (DRB). Standards and conditions to be impose relate to the identification, avoidance and/or mitigation of potential impacts. Should additional information be required, the Board reserves the option to continue the hearing to a time and date certain in order for that information to be submitted and reviewed by this Board.

2. **Identify those DRB Members who are present on the Go-To-Meeting hearing.**

3. **Ask the following (Public in Attendance):** “Are there any members of the public in attendance to comment about the application, and if so, can you please identify yourself and state your address for the record? If your mailing address differs from your physical address and wish to receive a copy of the decision, please provide that address as well.”
4. **Ask the following (Officials in Attendance):** “Are there any state or municipal representatives present, other than the Planning & Zoning Administrator, and acting in their representative capacities.”
5. **State the following (Rules of Procedure & Interested Parties Info Sheet):** “Copies of the Rules of Procedure that the Board follows, as well as an Interested Parties Info Sheet are available to all attendees for review on the Town’s website, and can also be obtained from the Planning & Zoning Administrator.”
6. **State the following (Interested Parties/Oath):** “Only these interested persons who have participated, either orally or through written statements in a DRB proceeding may appeal a decision rendered in that proceeding to the Environmental Division of Superior Court.

If you are an applicant, representative of the applicant(s), or an interested party who wants to participate in the hearing, we ask that you clearly state your name prior to speaking.

We will now swear in all those present who wish to speak tonight regarding the application. All individuals who plan to test must take the following oath by responding ‘I do’ at the end of the following statement: “Do you hereby swear that the evidence you give in the cause under consideration shall be the whole truth and nothing but the truth under the pains and penalties of perjury?”

7. **Ask the following (Ex Parte Communications and Conflicts of Interest):** “Are there any conflicts of interest, or have there been any ex parte communications on part of any of the Board Members?”
8. **State the following (Process):** “In regards to tonight’s hearing process, to help alleviate interruptions and allow for an efficient meeting over the remote teleconferencing platform, the Board will hearing from the following parties in the following order:
 - a. The applicant(s) and his or her/their representative(s);
 - b. The Planning & Zoning Administrator, Andrew Strniste;
 - c. Members of the Board in the following order:
 - (1) Shanie Bartlett (if in attendance)
 - (2) Matt Chapek
 - (3) Mark Green
 - (4) Mark Hamelin (if in Attendance)
 - (5) Daniel Lee
 - (6) Karen McKnight
 - (7) Penny Miller
 - (8) Will Towle (if in Attendance)
 - (9) Stacey Turkos
 - (10) Chares Van Winkle

- d. Members of the public;
 - e. The applicant(s) and his or her/their representative(s) will then have an opportunity to respond;
 - f. Final comments will be solicited from the Planning & Zoning Administrator, members of the public and the applicant(s) and his or her/their representative(s);
 - g. Members of the Board will then have an opportunity to ask final questions or make any final comments.”
9. **State the following (Comment & Question Procedures):** “All speakers should address their comments to the Board, and not to other parties present at the hearing. Members of the public are afforded five minute unless by request and a majority of the Board consents to extending the time. The Board may ask questions of anyone in attendance to relating to the application.”
10. **State the following (the Record):** “At this point, the information package (the staff report with associated exhibits) that was distributed by the Planning & Zoning Administrator prior to the original hearing, October 21, 2020, and tonight’s hearing will be entered into the record. The materials accompanying the original staff report included the following exhibits:

- Exhibit A - Diffenderffer Conditional Use Review Staff Report
- Exhibit B - Diffenderffer (PV015) Conditional Use Review Hearing Procedures
- Exhibit C - Development Review Application
- Exhibit D - Project Narrative & Information
- Exhibit E - Zoning Permit Application # B-19-18
- Exhibit F - Zoning Permit Application # CL-19-05
- Exhibit G - Certificate of Service
- Exhibit H - BFP Notice
- Exhibit I - § 3.17 Source Protection Areas (ULUDR)
- Exhibit J - Existing & Proposed Upper Level Floor Plan
- Exhibit K - Existing & Proposed Lower Level Floor Plan
- Exhibit L - Existing & Proposed Elevations
- Exhibit M - Wastewater System Site Plan

The materials accompanying the supplemental staff report include the following exhibits:

- Exhibit N – PV015 Supplemental Staff Report
- Exhibit O – PV015 Conditional Use Hearing Procedures
- Exhibit P – Diffenderffer 08032020 Conditional Use Continuance Request Materials
- Exhibit Q - Email Correspondence from Diffenderffer
- Exhibit R - Wastewater System & Potable Water Supply Design
- Exhibit S - Proposed Site Plan

11. **State the following (the Record):** “Were any additional exhibits submitted after the dissemination of the supplemental staff report, but before tonight’s hearing?
- a. *If yes, then state the exhibit(s) letter and title of the exhibit(s).*
 - b. *If no, then proceed directly below.*

These exhibits are available in the Diffenderffer conditional use review file DRB-19-12 / PV015 at the Underhill Planning & Zoning Office by request, and for the time being, are also available on the Town's website."

12. **State the following (Project Overview):** "To resolve potential issues relating to the warning oversight described earlier, we'll begin with an overview of the project, as originally presented and subsequently updated at the continued 'hearings,' by Staff and the Applicant for the record."
13. **State the following (Applicants'/Representatives' Turn):** "Next, we will ask for additional testimony by first hearing from applicant(s) and/or his or her/their representative(s) regarding any new updates relating to the project from what was originally presented during the previous DRB meeting dates."
14. **State the following (PZA's Turn):** "Next, we will hear from the Planning & Zoning Administrator."
15. **State the following (Boards' Turn):** "Next, we will hear from Board Members:
 - a. Shanie Bartlett (if in attendance)
 - b. Matt Chapek
 - c. Mark Green
 - d. Mark Hamelin (if in Attendance)
 - e. Daniel Lee
 - f. Karen McKnight
 - g. Penny Miller
 - h. Will Towle (if in Attendance)
 - i. Stacey Turkos
 - j. Chares Van Winkle"
16. **Ask the following (Publics' Turn):** "We will now take comments from the public who wish speak about the application. Is there anyone who wishes to speak?"
17. **State the following (Applicants'/Representatives' Turn):** "The applicants and/or their representatives are now afforded the opportunity to respond to anything they heard in tonight's hearing."
18. **Ask the following (Last Call from Comments/Questions):** "Are there any final comments or questions from the applicants and/or their representatives, members of the public, the Planning & Zoning Administrator, or any other attendees?"
19. **Ask the following (Final Comments from the Board):** "Are there any final comments or questions from the Board?"
20. **Ask the following (Final Comments from the Board):** "Does the Board feel that they have enough information at this time to make a decision on the application?"
 - a. *[If more information is needed to make a decision on the application, continue the hearing to a date and time certain, and outline for the Applicant(s) what is required at that continued hearing; or*

- b. *If, by consensus, enough information has been presented to make a decision on the application, ask for a motion to close the evidentiary portion of the hearing.]*

21. If the Board has enough information, ask the following (Motions):

- a. *Ask for a motion to close the evidentiary portion of the hearing.*
- b. *Inquire if the Board wishes to vote to approve or deny the application in open session, and if so, ask for a motion to approve the application.*
- c. *Inquired if the Board wishes to deliberation in open or closed deliberation. Once chosen, ask for a motion to enter into [insert "open" or "closed" here] deliberation.*

22. State the following (Boards' Turn): "Within 45 days from this hearing, the Planning & Zoning Administrator, on behalf of the Board, will send a copy of the decision to the Applicant(s), their representative(s), and those who have participated in tonight's hearing. A 30-day appeal period will begin on the date the decision is signed. The letter will outline the next steps in the process. If there are no other comments or questions we will close this portion of the meeting."