

Town of Underhill
Development Review Board Minutes
Chairperson Charles Van Winkle

January 9, 2012

Board Members Present:

Charles Van Winkle, Chairman
Chuck Brooks
Matt Chapek
Peter Seybolt
Penny Miller
Will Towle

Also Present:

Kari Papelbon, Zoning & Planning Administrator

7:02 PM: Chairman Charles Van Winkle called the Thomas Morse (Green Mountain Foam Products) appeal hearing to order at the Underhill Town Hall.

Appellant(s) Present:

Thomas Morse
413 VT Rte 15
Underhill, VT 05489

Others(s) Present:

Dennis Warren
74 N. Underhill Station Rd.
Underhill, VT 05489

Doug Richmond
27 Maple Ridge Rd.
Underhill, VT 05489

Vincent Arpey
417 VT Rte 15
Underhill, VT 05489

Moses Daley
414 VT Rte 15
Underhill, VT 05489

| Identifier: | Contents: |
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| ZA-1 | A copy of Notice of Violation to Green Mountain Foam Products (dated 11-16-11) |
| ZA-2 | A copy of the letter to Zoning Administrator from Thomas Morse (dated 11-23-11) |
| ZA-3 | A copy of the letter For Immediate Release from Thomas Morse (dated 11-23-11) |
| ZA-4 | A copy of the letter to DRB Chairman from Thomas Morse (dated 12-08-11) |
| ZA-5 | A copy of photos attached to above letter with views of structure |
| ZA-6 | A copy of the tax map for Parcel ID |
| ZA-7 | A copy of pages 180-182 of the Town of Underhill Unified Land Use & Development Regulations (dated March 1, 2011) |
| ZA-8 | A copy of Legal Ad for Public Notice (dated 12-08-11) |
| ZA-9 | A copy of Notice to Applicant and Abutters of Appeal with list of abutters attached |
| ZA-10 | A copy of the procedure checklist and Memo/Agenda for this meeting |
| S-1 | A copy of email from Thomas Morse dated 1/8/12 sent 1:23 p.m. |
| S-2 | A copy of email from Thomas Morse dated 1/8/12 sent 12:53 p.m. |
| S-3 | A copy of email from Thomas Morse dated 1/9/12 sent 9:58 a.m. |
| S-4 | A copy of Testimony for Underhill Zoning Board Hearing from Thomas Morse pages 1-7 |
| S-5 | A copy of Testimony for Underhill Zoning Board Hearing from Thomas Morse page 1 |

- Chairman Van Winkle began the meeting by explaining the procedure for the appeal hearing, which comes under the 2011 Unified Land Use and Development Regulations.
- Mr. Morse, the appellant, presented an overview of the Notice of Violation sent to him by ZA noting the setbacks were not mentioned in the citation. He stated the material to build the cases was purchased in Dec. of 2010 (he presented receipts which he said showed the date of the purchase of the materials) and that they were originally intended to be used at the rest areas along the interstate highway.
- Chairman Van Winkle and Board Member Peter Seybolt asked Mr. Morse when the display cases were placed where they are now to which Mr. Morse replied they were put outside Green Mountain Foam Products 2-3 years ago but not sure when they were placed out by Route 15, maybe in the spring of the year. Discussion of history and timeline of the construction of display cases ensued.
- Board Member Will Towle asked Mr. Morse if his argument is that the display cases were in place prior to the adoption of the current 2011 zoning regulations. Mr. Morse said he did not know. Further discussion ensued about the history of Planning and

Zoning in the State and problems Mr. Morse had with previous Underhill Zoning Boards.

- Board member Peter Seybolt asked Thomas Morse if he realizes the serious charges made against the Town and members of the DRB. Mr. Morse discussed further the un-constitutionality of the non-elected officials generating regulations and of the whole approval process.
- Board member Will Towle asked Mr. Morse if the structures are display cases or signs. Mr. Morse replied they are not signs because there is no wording. Further discussion continued to define characteristics of signs and display cases. In order to ascertain if Mr. Morse was legally the right person to have been issued the Notice of Violation, Will Towle asked if GMFP was organized as a DBA or LLC to which Mr. Morse replied it is a Sole Proprietorship.
- Will Towle asked Mr. Morse how far back the structures are from the road to which Mr. Morse said to read the citation. Board member Penny Miller reviewed the Notice of Violation noting setbacks were mentioned and referred to 2011 zoning regulations defining accessory structures.
- Further discussion about Town Boards and the Constitution ensued. Mr. Morse requested to close the meeting and referenced a class action suit to be brought against the town.
- Board Member Peter Seybolt asked how many Underhill people work at GMFP to which Mr. Morse replied presently only one or two people.
- Board Chairman Charlie Van Winkle asked Mr. Morse the size of the structures to which after some discussion it was decided they were each 4'x4'x8' long with a Plexiglas window in one face each structure and they were about 8' high. Charlie noted they were each (2) under 100 sf.
- Will Towle noted they appear to be signs and asked Mr. Morse if he would consider applying for a sign permit. Mr. Morse replied they had no words and couldn't be considered signs and if they were signs he would have to deal with the State of VT. Thomas Morse stated he was going to move the structures anyway once the snow came and reference was made to Title 10 Billboard Committee. Mr. Morse stated that he could make the display cases historic or put them on a telephone pole or a flat-bed trailer to make them legal.
- Penny Miller had no more questions. Mr. Morse said he will remove the structures if the DRB decides they are in violation but he will also file in Superior Court. Mr. Morse further discussed his perceived anti-business sentiment in the State of Vermont.

- Will Towle explained he really wanted to understand what Mr. Morse is saying and that he would re-read and consider all the material submitted to the Board. Mr. Morse addressed the board, "The other thing is I want you all to know that businesses are moving into sanctions. You're going to be boycotted and banned and banished and shunned. You're going to be served notices against trespass. I don't think business is going to put up with it anymore. Look at the problems IBM has had and they're creating jobs".
- Will mentioned to Mr. Morse that he bought a bunch of foam material from him about a year ago to which Mr. Morse responded "well you'll be banned, and I can use pepper spray or mace or brandish a firearm, and it's a \$500 fine and 1 year in jail if you trespass. So sorry folks but you're not my friends anymore".
- Zoning and Planning Administrator Kari Papelbon was sworn-in and asked to present her overview of the Notice of Violation. The structures at GMFP were brought to her attention by way of a complaint she received November 8th. She consulted with Town Counsel Vince Paradis to determine if they were structures or signs because she had a problem making the distinction herself. With the Counsel's advice they were defined as "accessory structures" and she proceeded to apply those regulations that refer to setback distances from front property lines in the Underhill Flats Village Center Zoning District.
- Board Member Chuck Brooks noted that the appellant referred to the structures as display cases and asked the ZA if there was a definition for display cases in the current regulations to which she replied there were not, only definitions for structures. Chuck referred to Article II (2.3)(C) and asked if they would fall under this definition of accessory structures to which she agreed. Board member Penny Miller referred to Article III (3.16) and Article XI (11.2) and felt that the display cases may better meet the definition of signs. Further discussion of sign definition and regulations continued.
- Board member Penny Milller questioned if the display cases are in the RTE 15 ROW. ZA Papelbon stated that VTAOT has jurisdiction over ROW issues along RTE 15. Board member Chuck Brooks stated RTE 15 is a 4 rod road and the ROW extends 33 ft. from the center of the road in which case the signs are outside the ROW. Mr. Morse added that the display cases are 5' on to the paved parking lot.
- ZA Papelbon referred to Article X (10.2)(7) stating possible exemption of signs and accessory structures from permit and approval process.
- Will Towle referred to Article XI (11.2) definition of sign. More sign discussion followed. Penny Miller made reference to the similar nature of the George Scatchard Pottery sign on RTE 15. Will asked ZA Papelbon if she could explain the logic the Town Counsel used to direct her toward designating the display cases as structures and not display cases. ZA Papelbon agreed that they maybe more closely resemble display

cases rather than structures as defined. ZA Papelbon then made reference to Article III (3.16)(F) specific to signs on RTE 15.

- Chairperson Van Winkle invited interested parties to speak.
- Dennis Warren stated he clearly sees the structures meeting the definition of signs and it is out of line to allow exception for the Green Mountain Foam Products display. He feels that other signs in the town conform and so should these.
- Doug Richmond spoke stating he was a member of Citizens for Property Rights and president of Property Owners Standing Together. He feels the new regulations are too complicated and were not approved by a majority of the town voters. He spoke in support of Thomas Morse and his right to have the signs as there are many and all types of non-conforming signs in town.
- Vincent Arpey as a small business owner supports neighbor Thomas Morse's right to keep the signs in place. He feels property rights are getting smaller.
- Moses Daley, also a small business owner, lives across the street from Green Mountain Foam Products and is not at issue with the signs. He is opposed to billboards and would oppose a large ugly sign however. He opposes the fine being levied against Mr. Morse.
- Chairperson Van Winkle clarified the fine levied for the Violation as stated in the regulations and asked if there were any final comments.
- Thomas Morse noted that the Village Flats was originally zoned for commercial use. He provided further information about the vote on the Land Use Regulations, 27 VT Towns without zoning and Towns that are striking down zoning. He spoke of cooperation between the State and entrepreneurs in 1965 when he started GMFP and feels that Planning and Zoning has destroyed that process.
- ZA Papelbon explained that the Notice of Violation states that the \$100 per day fine is directly from the State statute but she does not know of any case in the 5 years she has been here when it has actually been instituted. She agrees with Penny Miller's statement that the display cases/signs are an example of creative advertising and is all ears to clarification and direction for definition of signs vs. structures. She also made the clarification that the State of Vermont operates under the "Dillon Rule" system which states "unless specifically allowed then prohibited".
- Vincent Arpey asked if signs on wheels were OK to which Will Towle referenced Article III (3.16)(E)(6) which states they are prohibited.

8:40 PM: Chairman Van Winkle asked if the Board had enough evidence to proceed with a decision on the appeal and confirmed with all board members that they had at some point driven by the GMFP site. All members confirmed yes.

8:42 PM: Board member Chuck Brooks made a motion to close the evidentiary portion of the meeting and to move into deliberative session. Will Towle seconded the motion. The motion was passed by all Board Members present.

8:44 PM: End of evidentiary portion of hearing.

These minutes of the 01-09-12 meetings of the DRB were accepted

This 14th day of February, 2012.



Charles Van Winkle, Chair

*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.*