TOWN OF UNDERHILL
APPLICATION OF DAVID ROGERS
FOR A CONDITIONAL USE/HOME OCCUPATION PERMIT
FINDINGS AND DECISION

In re: David Rogers
133 River Road
Underhill, VT 05489

Docket No. DRB-08-04: David Rogers

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns David Rogers' hearing application for a conditional use/home occupation permit at property located at 133 River Road in Underhill, VT.

1. On March 11, 2008, David Rogers filed an application for a conditional use/home occupation permit to operate a machine shop on his property at 133 River Road in Underhill, VT. A copy of the application and site plan are available at the Underhill Town Hall.

2. On April 17, 2008, notice of a public hearing was published in the Mountain Gazette.

3. On April 18, 2008, a copy of the notice of a public hearing was via certified mail to the applicant, David Rogers, 133 River Road, Underhill, VT 05489 and to the following abutting neighbors:

    a. Chamberlin, 98 River Road, Underhill, VT 05489
    b. Niles, 137 River Road, Underhill, VT 05489
    c. Dougherty, 142 River Road, Underhill, VT 05489
    d. Reyome, 130 River Road, Underhill, VT 05489
    e. LaRue, 128 River Road, Underhill, VT 05489
    f. Demag, 113 River Road, Underhill, VT 05489

4. By April 21, 2008, notice of the hearing on the proposed Rogers home occupation were posted at the following places:

    a. The Underhill Town Clerk's office;
    b. The Underhill Center Post Office;
    c. The Underhill Flats Post Office;
    d. The Town of Underhill website;

5. The hearing was scheduled for 6:15 PM on May 3, 2008.

6. Present at the preliminary hearing were the following members of the Development Review Board:

    - Charles Van Winkle, Vice Chairperson
    - Matt Chapek

- Penny Miller
- Peter Seybolt
- Roy Dunphey
- Stan Hamlet

Kari Papelbon, Zoning Administrator also attended the meeting. Chairperson Scott Tobin recused himself from the hearing.

7. At the outset of the hearing, Vice Chairperson Charles Van Winkle explained the criteria under 24 V.S.A. § 4465 (b) for being considered an "interested party." Interested parties who spoke at the hearing were:

   - David Rogers, 133 River Road, Underhill, VT
   - Paul Chamberlin, 97 River Road, Underhill, VT
   - Nate Sullivan, 91 River Road, Underhill, VT

   Others who spoke at the hearing were:

   - Ed Dougherty, 44 Orchard Road, Underhill, VT
   - Scott Tobin, 6 Orchard Road, Underhill, VT

8. During the course of the hearing the following exhibits were submitted to the Development Review Board:

   1. A staff report sent by Zoning Administrator Kari Papelbon to the Development Review Board and David Rogers;
   2. A copy of David Rogers' Conditional Use Hearing Request dated 2-8-08;
   3. A copy of David Rogers' building permit application as supplemental information for his hearing request dated 2-8-08;
   4. A copy of the Proposed Findings of Fact;
   5. A copy of the site plan;
   6. A copy of the parcel map for RV133;
   7. A copy of the Home Occupation Hearing Checklist;
   8. A copy of the Signs section of the zoning regulations;

These exhibits are available in the David Rogers, RV133 Home Occupation (Conditional Use) file at the Underhill Zoning Office.

II. FINDINGS

Background

The Minutes of the meetings written by Kari Papelbon are incorporated by reference into this decision. Please refer to these Minutes for a summary of the testimony.

Based on the application, testimony, exhibits, and other evidence the Development Review Board makes the following findings:

1. The subject property, 133 River Road, lies in the Water Conservation zoning district.

2. The Applicant, David Rogers, is applying for a conditional use/home occupation permit to operate a year-round machine shop on the first floor of the existing barn on his property.

3. Per §III (M) of the Underhill Zoning Regulations, home occupations are permitted when the following conditions are met (if they are not met or if the Zoning Administrator is in doubt about customary use, a home occupation shall be permitted only as a conditional use, and only upon review and approval by the Board):

   a. The home occupation is conducted by the residents of the premises. No additional employees or fellow entrepreneurs shall be active on the premises.

      - No requests for additional employees have been submitted. All employees of the machine shop shall be residents of the premises.

   b. In most cases the use shall be conducted entirely within a dwelling, occupying not more than one-third of its floor area, or within all or a portion of any accessory building, shall be clearly incidental and secondary to the use of the dwelling as a residence and does not change the residential character thereof. In other cases, the outside premises may be used for the permitted occupation.

      - The machining work and storage shall be entirely within the existing barn.

   c. No materials or mechanical equipment shall be used which will be detrimental to the character of that area of Town because of hours of operation, vibration, noise, dust, smoke, odor, heat, glare, interference with radio or television reception, alteration of surface or groundwater(s), or other undesirable factors.

      - The type of work proposed for the home occupation is computerized machining of prototype research and development materials to include non-hazardous metals and plastics within the existing barn.

      - The machine is able to accommodate cubes of materials up to 12" x 12" in size and is a closed-loop system. The first floor of the barn is open and will provide adequate ventilation for the machine.

      - Electricity has been installed to service the barn. No generators shall be used to supply electricity for the machine shop.

      - The machine shop will not produce vibration, dust, smoke, odor, heat, glare, interference with radio or television reception, or alter the surface or groundwater as all machinery and materials shall be contained within the barn.

      - The applicant has requested permission to work seven days per week as needed. The Board finds that since noise shall be contained within the insulated barn, and that no vibration, dust, smoke, odor, heat, glare, radio or television interference shall occur, this is a reasonable request.

   d. There is no exterior sign except one non-illuminated and not to exceed 600 square inches, bearing only the name and occupation of the resident/applicant.

- A request for a sign is included in the application. Should the applicant erect a sign for the business it shall comply with current zoning regulations and a copy of the sign details shall be sent to the Zoning Administrator prior to installing the sign.

e. For public display of goods or wares, §III (U) of the Underhill Zoning Regulations states that signs must be erected "on or reasonably near the premises of the activity served by the sign" and is permanent "if it is on display for longer than 45 days in a one-year period."

- No goods or wares shall be on display for sale at the property. The applicant has indicated that he does not plan to erect a sign in the immediate future; however, a request for a sign was included in the application should the applicant wish to erect a sign at a later date. A permit for a compliant sign shall be required.

f. No significant increase in traffic shall be generated than would normally be expected in the neighborhood.

- Most of the customers' orders for the proposed machine shop will be e-mail based. UPS, FedEx, and materials trucks will deliver supplies and constitute most of the traffic to the location. Other traffic generated by the machine shop would be equipment repair or replacement.

g. Parking shall not exceed what would normally be expected in the neighborhood.

- Additional parking areas are not required as most of the customer orders will be e-mail based.

h. The home occupation shall not include the sale of goods, other than craft items or items that are assembled, mixed together or created on the premises.

- No products or parts machined onsite will be sold by the applicant.

i. Proper provisions are made for the disposal of any toxic or hazardous waste material.

- The cutting fluid used by the machine is synthetic, water soluble, regulated by the State, and must be disposed of using a third-party environmental company. The cutting fluid will be replaced when metal shavings contaminate the oil. The fluid is estimated to last approximately three years before needing replacement. The barn does not contain drain holes.

- Shavings produced by the machine fall to the bottom, then the shavings fall into a hopper where the excess fluid is drained, and the resulting shavings are placed into a container for recycling. Scrap metal and shavings generated by the machining work shall be stored within the barn until retrieved onsite by a recycling company.

- No State permits are required for the disposal of waste cutting fluid or materials. State regulations are in place regarding the disposal of waste cutting fluid and materials.

j. The use will not constitute a health or safety risk to adjoining residences.

- All materials and machinery shall be contained within the existing barn. Proper provisions for and compliance with State and/or Federal regulations regarding the delivery and disposal of materials will protect against environmental effects as well as the safety for adjoining residences. No dust, smoke, odor, heat, glare, or pollution will be generated by the machine shop.

4. Per §III (F) of the Underhill Zoning Regulations, "Approval of use by the [Development Review Board] after public notice and public hearing have determined that the proposed Conditional Use complies with standards applicable to it as set forth in the By-Laws, and that the proposed Conditional Use is not injurious, noxious or offensive to the neighborhood and does not adversely affect:

- The character of the area
- Traffic on roads or highways in the vicinity
- By-Laws then in effect

5. Based on the above findings, the Board finds that the machine shop will not be injurious, noxious or offensive to the neighborhood. The Board also finds that the machine shop inside the existing barn will not adversely affect the character of the area as all work will be fully contained within the barn, will not adversely affect traffic on roads or highways in the vicinity as the only traffic generated will be delivery trucks, and complies with the current by-laws.

III. DECISION

Based upon the findings above, the Development Review Board grants approval for the machine shop as a conditional use/home occupation as presented at the hearing.

Dated at Underhill, Vermont this 16 day of June, 2008.

Charles Van Winkle

Charles Van Winkle, Vice Chair, Development Review Board

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding before the Development Review Board. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. §4471 and Rule 5 (b) of the Vermont Rules for Environmental Court Proceedings. No documents shall be recorded until July 16, 2008, when the 30-day appeal period has expired.