

TOWN OF UNDERHILL
APPLICATION OF ABBI JAFFE, DHARMA DOOR RETREAT, LLC
FOR A CONDITIONAL USE/HOME OCCUPATION PERMIT
FINDINGS AND DECISION

In re: Abbi Jaffe, Dharma Door Retreat, LLC
491 Irish Settlement Rd.
Underhill, VT 05489

Docket No. DRB-09-05: Abbi Jaffe

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Abbi Jaffe's hearing application for a conditional use/home occupation permit at property located at 491 Irish Settlement Road in Underhill, VT.

1. On April 7, 2009, Abbi Jaffe filed an application for a conditional use/home occupation permit to provide yoga, massage, hiking, meeting facilitation, and day retreat services on her property at 491 Irish Settlement Road in Underhill, VT. A copy of the application and materials are available at the Underhill Town Hall.
2. On April 16, 2009, notice of a public site visit and hearing on the proposed Jaffe conditional use/home occupation was published in the Mountain Gazette.
3. On April 16, 2008, a copy of the notice of a public site visit and hearing was via email to the applicant, Abbi Jaffe, and via certified mail to the following abutting neighbors:
 - Thompson, 19 Doon Road, Underhill, VT 05489
 - Berry, 461 Irish Settlement Road, Underhill, VT 05489
 - Fiske, P.O. Box 215, Underhill Center, VT 05490
 - Halligan, 4 Basin Hill Ln., Underhill, VT 05489
 - Randall/Abair, 484 Irish Settlement Road, Underhill, VT 05489
 - Clark, 487 Irish Settlement Road, Underhill, VT 05489
 - Roman Catholic Diocese of Burlington, P.O. Box 3, Underhill Center, VT 05490
 - Midkiff/Duval, 497 Irish Settlement Road, Underhill, VT 05489
 - Stone, 11 Doon Road, Underhill, VT 05489
4. By May 1, 2009, notice of the hearing on the proposed Jaffe conditional use/home occupation were posted at the following places:
 - a. The Applicant's property at 491 Irish Settlement Road;
 - b. The Underhill Town Clerk's office;
 - c. The Underhill Center Post Office;
 - d. The Underhill Flats Post Office;
 - e. The Town of Underhill website;
5. The site visit was scheduled for 6:00 PM on May 18, 2009.
6. Present at the site visit were the following members of the Development Review Board:

- Scott Tobin, Chair
- Chuck Brooks
- Matt Chapek
- Stan Hamlet
- Peter Seybolt

7. The hearing was scheduled to begin after the second site visit scheduled for May 18, 2009.

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

- Scott Tobin, Chair
- Chuck Brooks
- Matt Chapek
- Stan Hamlet
- Peter Seybolt
- Charlie Van Winkle

Kari Papelbon, Zoning Administrator also attended the meeting.

9. At the outset of the hearing, Chairperson Scott Tobin explained the criteria under 24 V.S.A. § 4465 (b) for being considered an “interested party.” Interested parties who spoke at the hearing were:

- Abbi Jaffe, 491 Irish Settlement Road, Underhill, VT
- Lee Thompson, 19 Doon Road, Underhill, VT
- Wally Stone, 11 Doon Road, Underhill, VT
- Bart Johnston, 19 Doon Road, Underhill, VT
- Pat Stone, 11 Doon Road, Underhill, VT

Others who spoke at the hearing were:

- Robert Stone, 734 Lemonfair Rd., Cornwall, VT

10. 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 Abbi Jaffe;
2. Abbi Jaffe’s Conditional Use Hearing Request (dated 4-7-09);
3. A copy of Exhibit A to the Conditional Use Hearing Request (pages 2-3);
4. A copy of the Site Plan and Additional Parking Site Plan (page 4, from Town tax map);
5. A copy of the Division of Fire Safety Permit Application (pages 5-9, dated 4-6-09);
6. A copy of Abbi Jaffe’s Home Occupation Permit Application (pages 10-11, dated 4-7-09);

7. A copy of Exhibit A: Responses to Home Occupation Permit Application (pages 12-15);
8. A copy of the proposed sign design (page 16);
9. A copy of the resume for Abbi Jaffe (page 17);
10. Information regarding Dharma Door Retreat (page 18);
11. A copy of the email from ZA Papelbon to Abbi Jaffe regarding wastewater permitting requirements (dated 4-7-09);
12. A copy of the email correspondence from Bob Stone forwarded to Abbi Jaffe (dated 4-28-09 and 4-29-09);
13. A copy of the Proposed Findings of Fact;
14. A copy of the Signs section of the zoning regulations;
15. A copy of the parcel map for IS491;
16. A copy of the hearing notice published in the Mountain Gazette (dated 4-16-09);
17. Memo from Town Planner Chris Murphy dated 5-18-09 regarding Best Practices for trails;
18. Vermont Landowner Liability Protection statutory reference;
19. Email from Julie Bean, 478 Irish Settlement Road;
20. *Public Recreation on Private Land and Landowner's Guide*.

These exhibits are available in the Jaffe/Dharma Door Retreat, LLC, IS491 Conditional Use/Home Occupation 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, 491 Irish Settlement Road, lies in the Rural Residential zoning district.
2. The Applicant, Abbi Jaffe, is applying for a conditional use/home occupation permit to operate a business providing yoga and meditation classes, massage services, guided and self-guided hiking, meeting facilitation services, and day retreats on her property. Hiking will be on the landowner's property and public parks.
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.

- The Applicant is requesting permission for one additional employee that is not a resident of the property to provide class instruction on an occasional basis. One other resident of the property will also be employed in the proposed business.
- 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.
- Activities other than hiking and eating lunch will be within the existing home. Activities within the home will not occupy more than one-third of the total floor area. Hiking trips have been proposed in public parks. One “interpretative” trail has been proposed near the existing house, which is more than 100 feet from neighboring property lines.
 - The Board recognizes the neighbor concerns raised during the hearing regarding trespassing onto their land. Outdoor activities shall be restricted to the Applicant’s property unless and until written permission is obtained from her neighbors.
- 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 does not use mechanical equipment.
 - The Board recognizes that the proposed hours of operation and days of operation are not clear for all proposed activities. The Board will provide conditions for hours and days of operation to mitigate neighbor concerns regarding noise, activities, number of visitors, and parking.
- 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 and design is included in the application. The sign for the business shall comply with current zoning regulations.
- e. For public display of goods or wares, §III (U)(4) of the Underhill Zoning Regulations states that “No exterior displays shall be permitted except in one area located outside of the road right-of-way, not exceeding 50 square feet in total area, and extending no higher than the height of any sign associated with the occupation or ten feet whichever is less.”
- The Applicant has requested to offer items for sale that are related to the business and bear the logo of the business. Proposed items include t-shirts, yoga mats, mugs, etc.

- The Board recognizes that no request has been submitted for exterior display of items.
- f. No significant increase in traffic shall be generated than would normally be expected in the neighborhood.
- The Applicant has requested approval for a maximum of 20 students per class, a maximum of 2 classes per day. The Applicant has also requested a maximum of 2 days per week for booking massages. Day trips and/or retreats have been proposed for weekend days.
 - The Board recognizes that the proposed number of visitors to the premises has the potential to create up to approximately 9 times the normal number of average daily vehicle trip-ends for a residential neighborhood. The Board shall provide conditions addressing traffic.
- g. Parking shall not exceed what would normally be expected in the neighborhood.
- The Applicant has requested an additional parking area for up to 20 vehicles.
 - The Board recognizes the requested parking area is larger than is typical for the area. Conditions for on-site parking shall be provided by the Board.
- 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.
- The Applicant has requested to offer items for sale that are related to the business and bear the logo of the business. Proposed items include t-shirts, yoga mats, mugs, etc.
 - The Board finds that offering items for sale related to the business is not injurious, noxious, or offensive to the neighborhood, and will not adversely affect the character of the area, traffic in the area, or current by-laws. All items for sale will be inside the home and not visible from the road.
- i. Proper provisions are made for the disposal of any toxic or hazardous waste material.
- No toxic or hazardous waste material will be generated by the proposed home occupation.
- j. The use will not constitute a health or safety risk to adjoining residences.
- The proposed activities do not constitute a health or safety risk to adjoining residences because the proposed uses will be held primarily inside the existing home and are exercise-based. No request has been made for the use of neighboring properties for the proposed home occupation. Applicant shall obtain permission from landowners prior to utilizing adjoining lands for any purpose.

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 proposed home occupation, subject to the conditions below, will not be injurious, noxious or offensive to the neighborhood. Yoga, massage, and related activities inside the existing home will not adversely affect the character of the area as they will be fully contained within the home, on the Applicant's property, or on public lands; traffic on roads or highways in the vicinity will not be seriously affected; and current by-laws will be observed.

III. DECISION

Based upon the findings above, and subject to the conditions below, the Development Review Board grants approval for the proposed business as a conditional use/home occupation.

Conditions:

1. No more than 20 clients, including non-resident instructors, shall be allowed on the property each day of operation.
2. No more than 6 non-resident passenger vehicles belonging to clients and/or non-resident business associates shall be allowed on the premises at any one time. All vehicles shall be parked near the house and so that they are not visible from Irish Settlement Road.
3. The hours of operation shall be no more than 5 days per week between 7:00 AM and 9:00 PM.
4. All outdoor activities shall be held on the premises owned by the Applicant unless written permission is obtained from adjacent landowners to access their land. Such written permission shall be submitted to the Zoning Administrator.
5. The Board approves of the sign design submitted at the hearing. The sign shall conform to all zoning regulations and Applicant shall obtain a building permit from the Zoning Administrator prior to erecting the sign.
6. The Board approves of the sale of items within the existing home as presented at the hearing. No exterior display of items is permitted.
7. Applicant shall provide copies of all required State permits and approvals to the Zoning Administrator prior to operating her home occupation.

Dated at Underhill, Vermont this 15TH day of June, 2009.

Scott Tobin
Scott Tobin, 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 15, 2009, when the 30-day appeal period has expired.

4451
UNDERHILL TOWN CLERK'S OFFICE
Received For Record 7.20 A.D., 20 09
At 11 O'clock 00 minutes A M. & Recorded
In Book 175 Page 151-157 of Underhill Records
Attest [Signature]
Town Clerk