

TOWN OF UNDERHILL
APPLICATION OF JAMIE EISENBERG, POORHOUSE PIES
FOR A CONDITIONAL USE/HOME OCCUPATION PERMIT
FINDINGS AND DECISION

In re: Jamie Eisenberg
23 Park Street
Underhill, VT 05489

Docket No. DRB-09-07: Jamie Eisenberg

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Jamie Eisenberg's application for a conditional use/home occupation permit at property located at 23 Park Street in Underhill, VT.

1. On June 3, 2009, Jamie Eisenberg filed an application for a home occupation permit to operate a home bakery on her property at 23 Park Street in Underhill, VT. A copy of the application and materials are available at the Underhill Town Hall.
2. On June 8, 2009, a copy of the notice of a public site visit and hearing was sent via email to the applicant, Jamie Eisenberg, and via certified mail on June 9, 2009 to the following abutting neighbors:
 - Dreibelbis/Angolano, 20 Park Street, Underhill, VT 05489
 - Martelle/Davaris, P.O. Box 311, Underhill, VT 05489
 - Telephone Operating Co. of VT, LLC, P.O. Box 1509, Bangor, ME 04402
 - Bolio, 40 Orr Rd., Jericho, VT 05465
 - Viau, 6 Harvest Run, Underhill, VT 05489
 - Hunt, 159 Orr Rd., Jericho, VT 05465
 - Rohrer, P.O. Box 152, Underhill, VT 05489
3. On June 10, 2009, notice of a public site visit and hearing on the proposed Eisenberg conditional use/home occupation was published in Seven Days.
4. By June 9, 2009, notice of the hearing on the proposed Eisenberg conditional use/home occupation were posted at the following places:
 - a. The Applicant's property at 23 Park Street;
 - 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 June 29, 2009. The hearing was scheduled to begin immediately following the site visit.
6. Present at the site visit and hearing were the following members of the Development Review Board:

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

Kari Papelbon, Zoning Administrator, and William Towle, prospective DRB Member, also attended the site visit and hearing.

7. 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:

- Jamie Eisenberg, 23 Park Street, Underhill, VT 05489

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 Jamie Eisenberg;
2. Jamie Eisenberg’s Home Occupation Permit Application (dated 6-3-09);
3. A copy of the site plan;
4. A copy of the proposed sign design;
5. A copy of the email to Jamie Eisenberg from ZA Papelbon (dated 6-8-09);
6. A copy of the State of Vermont Small Business Fact Sheet for Home Bakery, Food Prep or Catering Service;
7. A copy of the Signs section of the zoning regulations;
8. A copy of the parcel map for PA023;
9. Jamie Eisenberg’s proposed Findings of Fact.

These exhibits are available in the Eisenberg, PA023, Conditional Use/Home Occupation file at the Underhill Zoning Office.

II. FINDINGS

Background

The Minutes of the meeting 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, 23 Park Street, lies in the Residential zoning district.
2. The Applicant, Jamie Eisenberg, is applying for a conditional use/home occupation permit to operate a home bakery with sales on her property. Pies and baked goods will be self-

serve in the existing shed on the property, similar to a farmstand operation, as well as offsite.

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 proposed bakery will be operated by the residents of the property.
 - 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.
 - All baking and preparation will be conducted in the kitchen of the existing home. The existing shed will be used for the storage and sale of baked goods.
 - 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 proposed hours of operation are 9:00 AM to 9:00 PM, seven days per week, with primary sales occurring during the weekends. Sales in the shed would be seasonal from May through Thanksgiving.
 - 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 baked goods for sale in the existing shed.
 - f. No significant increase in traffic shall be generated than would normally be expected in the neighborhood.

- The Applicant has indicated a desire to bake approximately 30-35 pies per weekend and anticipates no more than 30-35 cars per week as most visitors to the property are expected to be pedestrians and bicyclists.
 - Offsite wholesale items will be delivered by the residents of the property using personal vehicles. No deliveries will be made to the home.
 - The Board recognizes that Park Street is currently heavily-used as it serves as a main connecting road between VT Route 15, the Underhill Flats area, and River Road.
- g. Parking shall not exceed what would normally be expected in the neighborhood.
- The Applicant has indicated that the existing parking area will be used as well as the grassed area between the driveway and the existing shed. Parking is expected to be short-term, lasting only as long as a sale transaction.
- 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 baked goods for sale that are baked on the premises.
- 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 all of the baking and preparation will be conducted inside the existing home. Sales of baked goods will be inside the existing shed on the property. Applicant has also applied for a bakery license from the VT Department of Health.
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. The

proposed home bakery will not adversely affect the character of the area as the preparation of baked goods will be contained within the home, traffic on roads or highways in the vicinity will not be seriously affected as Park Street is a main artery between Underhill Flats and River Road, 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 bakery as a conditional use/home occupation.

Conditions:

1. The hours of operation shall be between 9:00 AM and 9:00 PM (no restriction on days).
2. 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.

Dated at Underhill, Vermont this 6th day of July, 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 Aug. 5, 2009, when the 30-day appeal period has expired.

UNDERHILL TOWN CLERK'S OFFICE
Received For Record 8:10 A.D., 20 09
At 11 O'clock 30 minutes A M. & Recorded
In Book 175 Page 472-476 of Underhill Records
Attest [Signature]
4526 Town Clerk