TOWN OF UNDERHILL
APPLICATION OF LISA TIMBERS, DAKINI STUDIO,
FOR A CONDITIONAL USE/HOME OCCUPATION PERMIT
FINDINGS AND DECISION

In re: Lisa Timbers, Dakini Studio
662 Irish Settlement Rd.
Underhill, VT 05489

Docket No. DRB-09-08: Lisa Timbers

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Lisa Timbers' hearing application for a conditional use/home occupation permit to operate a home Pilates studio at her property located at 662 Irish Settlement Road in Underhill, VT.

1. On July 1, 2009, Lisa Timbers filed an application for a conditional use/home occupation permit to operate a Pilates studio in her home at 662 Irish Settlement Road in Underhill, VT. A copy of the application and materials are available at the Underhill Town Hall.

2. On July 10, 2009, a copy of the notice of a public site visit and hearing was mailed to the applicant, Lisa Timbers, and via certified mail to the following abutting neighbors:

   - Butler, 621 Irish Settlement Road, Underhill, VT 05489
   - Tisbert, 5901 Pleasant Valley Road, Cambridge, VT 05444
   - Frost, 654 Irish Settlement Road, Underhill, VT 05489
   - Baizley, 623 Pleasant Valley Road, Underhill, VT 05489
   - Weisel, P.O. Box 71, Underhill Center, VT 05490
   - Baker, 646 Irish Settlement Road, Underhill, VT 05489

3. On July 15, 2009, notice of a public site visit and hearing on the proposed Timbers conditional use/home occupation was published in Seven Days.

4. By July 15, 2009, notice of the hearing on the proposed Timbers conditional use/home occupation were posted at the following places:

   a. The Applicant's property at 662 Irish Settlement Road;
   b. The Underhill Town Clerk's office;
   c. The Underhill Center Post Office;
   d. The Underhill Flats Post Office;
   e. Deborah Rawson Memorial Library;
   f. The Town of Underhill website.

5. The site visit was scheduled for 6:00 PM on August 3, 2009.

6. Present at the site visit were the following members of the Development Review Board:

   - Stan Hamlet
   - Penny Miller
   - Will Towle

Kari Papelbon, Zoning Administrator, and John Butler also attended the site visit. Vice Chair Charlie Van Winkle was familiar with the property, having conducted a site visit previously.

7. The hearing was scheduled to begin immediately following the site visit scheduled for August 3, 2009.

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

   - Charles Van Winkle, Vice Chair
   - Stan Hamlet
   - Penny Miller
   - Will Towle

   Kari Papelbon, Zoning Administrator, also attended the meeting.

9. At the outset of the hearing, Vice Chair 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:

   - Lisa and Mike Timbers, 662 Irish Settlement Road, Underhill, 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 Lisa Timbers;
    2. Lisa Timbers' Conditional Use Hearing Request (dated 6-30-09)
    3. Lisa Timbers' Home Occupation Permit Application (dated 6-30-09);
    4. A copy of the house site plan;
    5. A copy of the proposed Findings of Fact;
    6. A copy of the letter to Lisa Timbers from ZA Papelbon (dated 7-1-09);
    7. A copy of the email to Lisa Timbers from ZA Papelbon (dated 7-10-09);
    8. A copy of the email from Ernie Christianson to Mike and Lisa Timbers regarding their septic systems (dated 7-17-09);
    9. A copy of the Notice of Decision from the Zoning Board of Adjustment to the Timbers approving a Bed and Breakfast and occasional wedding receptions at 662 Irish Settlement Road (dated 5-23-03);
    10. A copy of the Signs section of the zoning regulations;
    11. A copy of the parcel map for IS662;
    12. A copy of the hearing notice published in Seven Days (dated 7-15-09).

These exhibits are available in the Timbers, IS662 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, 662 Irish Settlement Road, lies in the Rural Residential and Scenic Preservation zoning districts.

2. The Applicant, Lisa Timbers, is applying for a conditional use/home occupation permit to operate a Pilates studio in her home.

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 will be the only employee of the home studio.

   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 Pilates classes will be conducted entirely within the former family room of the existing house.

   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.

   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. 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."

      - No items are proposed for sale.

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

- The Applicant has stated that only a few classes per week will be offered and that the proposed Studio has room for a maximum of 5-6 students per class. Approximately 5 additional cars per class are expected on the premises.

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

- The property currently has a designated parking area that is in between the existing home and outbuildings. No additional parking areas are requested.

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 items are proposed for sale.

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.

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. Pilates classes inside the existing home will not adversely affect the character of the area as they will be fully contained within the home; traffic on roads or highways in the vicinity will not be seriously affected as only 5 additional cars per class are expected due to the small capacity of the Pilates studio; 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. The hours of operation shall be no more than 5 days per week between 6:00 AM and 8:00 PM.

2. Approval of the Conditional Use permit is subject to the Applicant obtaining any required State permits and approvals. Applicant shall provide copies of any required State permits and approvals to the Zoning Administrator.

Dated at Underhill, Vermont this 17 day of August, 2009.

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 Sept. 16, 2009, when the 30-day appeal period has expired.