

TOWN OF UNDERHILL
APPLICATION OF EMILY GARRETT AND CHRIS CHARUK
FOR A CONDITIONAL USE/HOME OCCUPATION PERMIT
FINDINGS AND DECISION

In re: Emily Garrett and Chris Charuk
409 VT Rte. 15
Underhill, VT 05489

Docket No. DRB-09-14: Garrett/Charuk

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding involves review of Emily Garrett and Chris Charuk's application for a conditional use/home occupation permit to operate a home yoga studio at their property located at 409 VT Rte. 15 in Underhill, VT.

1. On October 21, 2009, Emily Garrett and Chris Charuk met with the Zoning Administrator to discuss their request for a Home Occupation. On November 4, 2009, Emily Garrett filed a complete application for a conditional use hearing to review a home occupation permit request to operate a yoga studio in her home at 409 VT Rte. 15 in Underhill, VT. A copy of the application and materials are available at the Underhill Town Hall.
2. On October 21, 2009, copies of the notice of a public site visit and hearing was provided to the applicants, Emily Garrett and Chris Charuk, and via certified mail to the following abutting neighbor:
 - Georgia Mead, TTEE, c/o Deb Campanelli, 149 Montgiven Ave., Fairhaven, VT 05743

Copies of the notice of a public site visit and hearing were hand-delivered by November 2, 2009 by the applicants to the following abutting neighbors:

- Peterson, 429 VT Rte. 15, Underhill, VT 05489
 - Riemer, 411 VT Rte. 15, Underhill, VT 05489
 - Metcalf, 412 VT Rte. 15, Underhill, VT 05489
 - Henault/Lemay, 410 VT Rte. 15, Underhill, VT 05489
 - Miller, 406 VT Rte. 15, Underhill, VT 05489
 - Fiore, 407 VT Rte. 15, Underhill, VT 05489
3. On October 29, 2009, notice of a public site visit and hearing on the proposed Garrett/Charuk conditional use/home occupation was published in the *Burlington Free Press*.
 4. On October 21, 2009, notice of the public site visit and hearing on the proposed Garrett/Charuk conditional use/home occupation were posted at the following places:
 - a. The Applicants' property at 409 VT Rte. 15;
 - 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 6:30 PM on November 16, 2009.
 6. Present at the site visit were the following members of the Development Review Board:
 - Stan Hamlet
 - Penny Miller
 - Will Towle
 - Charlie Van Winkle
 - Matt Chapek
 - Scott Tobin, Chair

Kari Papelbon, Zoning Administrator, also attended the site visit. No interested parties were present.

7. The hearing was scheduled to begin immediately following the site visit scheduled for November 16, 2009.
8. Present at the preliminary hearing were the following members of the Development Review Board:
 - Stan Hamlet
 - Penny Miller
 - Will Towle
 - Charlie Van Winkle
 - Matt Chapek
 - Scott Tobin, Chair

Kari Papelbon, Zoning Administrator, also attended the hearing. Gunner McCain, consultant for the next hearing, also arrived during the hearing.

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:
 - Emily Garrett and Chris Charuk, 409 VT Rte. 15, 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, Emily Garrett and Chris Charuk;
 2. Emily Garrett’s Conditional Use Hearing Request (dated 11-4-09)
 3. Emily Garrett’s Home Occupation Permit Application;
 4. A copy of the proposed Findings of Fact;
 5. A copy of the tax map for VT409;
 6. A copy of the Signs section of the zoning regulations;
 7. A copy of the hearing notice published in the *Burlington Free Press* (dated 10-29-09)
 8. A copy of the Sketch/Area Table Addendum from the Lister file for VT409.

These exhibits are available in the Garrett/Charuk, VT409 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 applicants, Emily Garrett and Chris Charuk, seek a conditional use/home occupation permit to operate a yoga studio as a home occupation.
2. The subject property, 409 VT Rte. 15, Underhill, VT is a 1-acre parcel located in the Residential zoning district.
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.
 - Emily Garrett will be the only resident employee of the home studio. Permission to have occasional guest instructors for classes has been requested.
 - As the instructors will be guests and Emily Garrett will be the principal instructor, the Board finds this to be a reasonable request.
 - 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 home occupation will be conducted entirely within the former 2nd-floor apartment of the existing house.
 - The proposed studio occupies less than 1/3 of the total floor area of the existing house.
 - The applicants use the house primarily as their residence.
 - No additional buildings have been proposed.
 - 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 or other equipment that would result in vibration, noise, dust, smoke, odor, heat, glare, interference with radio or television reception, the alteration of surface or groundwater(s), or other undesirable factors.
 - The proposed hours of operation are Monday through Friday from 6:00 AM to 7:30 PM, and from 8:00 AM to 7:30 PM Saturday and Sunday.
 - Approximately two (2) one- to one-and-a-half hour classes per day, with a maximum of 15 classes per week, have been proposed.
- 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. A draft design with a logo and the name "Underhill Yoga" was presented at the hearing. The sign for the business will 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 exterior display has been requested. Any items proposed for sale will be related to the business and sold to clients inside the home yoga studio.
- f. No significant increase in traffic shall be generated than would normally be expected in the neighborhood.
- The Applicant has stated that the proposed studio has room for a maximum of 20 students per class. Approximately 12 additional cars per class are expected on the premises for each class.
 - The proposed home occupation will cause up to 48 vehicle trips per day assuming 12 vehicles per class and two classes per day.
 - The house is on a major State highway where frequent traffic is customary.
- g. Parking shall not exceed what would normally be expected in the neighborhood.
- Large parking areas for businesses are customary in this zoning district and neighborhood.
 - The property currently has a designated parking area with a U-shaped driveway. No additional parking areas on the premises are requested.
 - Eleven vehicles parked on the site during the site visit with few other available parking areas.
 - Obtaining permission for overflow parking in the United Church of Underhill parking lot across the street has been proposed.

- 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.
 - Items related to yoga (yoga mats, t-shirts, yoga equipment, etc.) are proposed for sale to clients inside the yoga studio.
 - As the materials are proposed for sale inside the home without promotion as a store, the Board finds this to be a reasonable request.
 - 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 use will be contained inside the existing home and is 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. The site of the proposed home occupation is the former site of another home-based business.
6. The proposed home occupation promotes health and exercise.
7. The location of the proposed home occupation is in an area of town where a mix of residences and businesses is customary.
8. Vermont Route 15 is a State highway currently utilized as a through-way between metropolitan Burlington and the eastern portion of the state.

III. DECISION AND CONDITIONS

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.

As conditioned, the proposed development meets the requirements of §III (M) with modifications approved by the Development Review Board as allowed in the regulations, §III (U), §III (F), and §V (B)(10) of the Underhill Zoning Regulations.

1. The proposed home occupation meets the criteria of §III (F) because yoga classes are not injurious, noxious, or offensive to the neighborhood since the classes will be conducted inside; will not adversely affect the character of the area because the area is a mix of residential and commercial uses; will not adversely affect traffic on roads or highways in the vicinity as the house is on VT Route 15, a major state highway;

and will not adversely affect the current by-laws, with exceptions granted by the Development Review Board as allowed under §III (M), as demonstrated in the Findings above.

2. The proposed home occupation will not have an undue adverse impact on the character of the area affected as the area is currently a mix of residences and commercial businesses.
3. The proposed home occupation will not have an undue adverse effect on traffic and roads and highways in the vicinity as the existing house is on a major state highway.
4. The proposed home occupation will not have an undue adverse effect on the zoning bylaws in effect as home occupations are allowed as conditional uses per §III (M) and §V (B)(10) of the Underhill Zoning Regulations, the Development Review Board may grant approvals to requests beyond the requirements in §III (M) of the Underhill Zoning Regulations, and the proposed sign will conform to §III (U) of the Underhill Zoning Regulations.

The Development Review Board approves the application as presented at the public site visit and hearing subject to the following conditions:

1. No more than 12 cars shall be parked in the outside parking area at 409 VT Route 15.
2. The hours of operation for the yoga studio shall be between 6:00 AM and 7:30 PM Monday through Friday and between 8:00 AM and 7:30 PM Saturday and Sunday.
3. There shall be no more than 15 classes per week conducted at 409 VT Route 15.
4. Guest instructors, the sale to clients of related promotional materials within the proposed yoga studio, and using the existing signpost at 409 VT Route 15 are approved.
5. Applicant should be aware that other State and/or Federal approvals and/or permits may be required in addition to local approvals and permits. Examples of such approvals/permits include, but are not limited to: wastewater from the Vermont Department of Environmental Conservation, a Public Building Permit from the Vermont Department of Public Safety, and the Vermont Agency of Transportation—District 5 for structures potentially in the right-of-way (existing signpost).

Dated at Underhill, Vermont this 7th day of December, 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 Jan. 6, 2010, when the 30-day appeal period has expired.