

TOWN OF UNDERHILL  
APPLICATION OF ROBERT NEWMAN  
FOR A CONDITIONAL USE PERMIT  
FINDINGS AND DECISION

In re: Robert Newman  
441 VT Rte. 15 (HR016)  
Underhill, VT 05489

Docket No. DRB-10-05: Newman/Jacobs

**I. INTRODUCTION AND PROCEDURAL HISTORY**

This proceeding involves review of Robert Newman's application for a conditional use permit to operate a seasonal food concession business at property owned by Philip Jacobs and located at 16 Harvest Run in Underhill, VT.

1. On April 2, 2010, Robert Newman met with the Zoning Administrator to discuss his request for a conditional use permit, and filed a complete application for a conditional use hearing to review his request to operate a seasonal food concession business at Philip Jacobs' property at 16 Harvest Run in Underhill, VT. A copy of the application and materials are available at the Underhill Town Hall.
2. On April 2, 2010, copies of the notice of a public site visit and hearing was provided to the applicant, Robert Newman, and via certified mail to the following abutting neighbors:
  - Morse, 18 Meadow Lane, Underhill, VT 05489
  - Jacobs/Hood, 4108 Rockside Hills Dr., Raleigh, NC 27603
  - United Church of Underhill, P.O. Box 265, Underhill, VT 05489
  - Richiede, P.O. Box 278, Underhill, VT 05489
  - Underhill Garage, Inc., P.O. Box 7, Underhill, VT 05489
  - Burghoff, 29 Maple Ridge, Underhill, VT 05489
  - Williamson, P.O. Box 66, Underhill, VT 05489
  - Manning, 421 VT Rte. 15, Underhill, VT 05489
  - 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 April 3, 2010 by the applicant to the following abutting neighbors:

- Phil Jacobs, 73 Upper English Settlement Rd., Underhill, VT 05489
- Tripp, 17 Meadow Lane, Underhill, VT 05489
- McCaulley, 424 VT Rte. 15, Underhill, VT 05489
- Underhill-Jericho Fire Department, P.O. Box 150, Underhill, VT 05489
- Gombrich, 6 Depot St., Underhill, VT 05489
- Covey, 14 Harvest Run, Underhill, VT 05489
- Jurkiewicz/Salzer, 34 Sugar Hill, Underhill, VT 05489
- Nichols, 4 Sugar Hill, Underhill, VT 05489
- Nelson, 2 Sugar Hill, Underhill, VT 05489
- Clough, 18 Jacobs Hill, Underhill, VT 05489

- Ferreira, 22 Jacobs Hill, Underhill, VT 05489
3. On April 2, 2010, notice of the public site visit and hearing on the proposed Newman conditional use application were posted at the following places:
    - a. Phil Jacobs' property at 16 Harvest Run;
    - b. The Underhill Town Clerk's office;
    - c. The Underhill Center Post Office;
    - d. The Underhill Flats Post Office;
    - e. Jacobs IGA;
    - f. The Underhill Country Store;
    - g. Wells Corner Market;
    - h. The Town of Underhill website.
  4. On April 3, 2010, notice of a public site visit and hearing on the proposed Newman conditional use application was published in the *Burlington Free Press*.
  5. The site visit was scheduled for 6:00 PM on April 19, 2010.
  6. Present at the site visit were the following members of the Development Review Board:
    - Stan Hamlet
    - Penny Miller
    - Peter Seybolt
    - Chuck Brooks
    - Matt Chapek

Kari Papelbon, Zoning Administrator, also attended the site visit. Randy Clark, Chief of the Underhill-Jericho Fire Department; Harry Schoppmann, Duty Officer for the Underhill-Jericho Fire Department; Malachai McCaulley, neighbor; Emmett and Paige Manning, neighbors, also attended the site visit. Board Member Deb Shannon was familiar with the property and did not attend the site visit.

7. The hearing was scheduled to begin immediately following the second scheduled for April 19, 2010.
8. Present at the preliminary hearing were the following members of the Development Review Board:
  - Stan Hamlet
  - Penny Miller
  - Chuck Brooks
  - Peter Seybolt
  - Matt Chapek
  - Deb Shannon

Kari Papelbon, Zoning Administrator, also attended the hearing.

9. At the outset of the hearing, Acting Chairperson Chuck Brooks explained the criteria under 24 V.S.A. § 4465 (b) for being considered an "interested party." Interested parties who spoke at the hearing were:
  - Robert Newman, 441 VT Rte. 15, Underhill, VT

- Dori Richiedei, 12 Harvest Run, Underhill, VT 05489
- Malachai and Shannon McCaulley, 424 VT Rte. 15, Underhill, VT 05489
- Emmett and Paige Manning, 421 VT Rte. 15, Underhill, VT 05489
- Randy Clark, Underhill-Jericho Fire Department, 420 VT Rte. 15, Underhill, VT (mailing address in Section 2 above).

Others who spoke at the hearing were:

- Theresa Jennings, 423 VT Rte. 15, Underhill, VT 05489

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 Robert Newman;
2. A copy of Robert Newman's Conditional Use Hearing Request (dated 4-2-10);
3. A copy of the site plan (printed 4-2-10);
4. A copy of the Proposed Findings of Fact;
5. A copy of the tax map for HR016;
6. A copy of the Signs section of the zoning regulations;
7. A copy of the confirmation email for the hearing notice to published in the *Burlington Free Press* (4-2-10).

These exhibits are available in the Newman/Jacobs, HR016 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 applicant, Robert Newman, seeks a conditional use permit to operate a seasonal food concession business as a Conditional Use.
2. The subject property, owned by Philip Jacobs 16 Harvest Run, Underhill, VT is a +/- 38-acre parcel located in the Residential zoning district per §V of the Underhill Zoning Regulations.
3. Conditional Use approval is requested for the project pursuant to review under the following sections of the Town of Underhill Zoning Regulations:
  - a. §III (F): Conditional Use
  - b. §III (U): Signs
  - c. §V (E): Minimum Yard Requirements
  - d. §V (G): Parking Spaces
4. Section III (F) of the Underhill Zoning Regulations applies to this application. The relevant portion states: 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:

- a. The character of the area
  - b. Traffic on roads or highways in the vicinity
  - c. By-Laws then in effect
5. Section III (U) of the Underhill Zoning Regulations applies to this application. The relevant portion states: No sign shall be erected which is not on or reasonably near the premises of the activity served by the sign.

A sign is permanent if it is on display for longer than 45 days in a one-year period. One side of a sign is defined as all areas visible from any one perspective. A sign may bear messages on two sides. Multiple, multi-faced or multi-component signs shall be measured as a single sign if individually they portray no complete message and/or if collectively they portray a more complete message.

Permanent Signs are subject to the following criteria:

A. General Restrictions

- i. Under no circumstances (except as in 2 a-1 below) may a sign exceed sixteen square feet in area on any one side.
- ii. Direct light or reflected glare from all signs shall be shielded from all neighboring buildings, roads and driveways.
- iii. Except for the period from Thanksgiving until New Years Day, no sign or display shall contain string lighting, pennants, moving parts or similar attention-gathering devices nor may they contain or support any device capable of emitting noise. Signs or displays shall be illuminated by neon, flashing, moving or intermittent light only during that period.
- iv. No sign shall be illuminated past 10 o'clock p.m. unless the premises are open for business.
- v. No sign shall prevent a clear and unobstructed view of official signs or approaching or merging traffic.
- vi. No sign shall be erected within or projected into or above any public street or sidewalk right-of-way.
- vii. No sign shall be erected, attached, or maintained upon any utility pole or government signpost.
- viii. No sign shall be erected within 20 feet from the side or rear property lines or within any private or public right-of-ways, with the exception of real estate signs under 1-m below.
- ix. All signs must be located on property owned or controlled by the business.

- x. The top of the freestanding sign shall not be more than fifteen feet high.
  - xi. No sign that is attached to a building shall extend above its roofline.
  - xii. Only one sign per business. Total sign area shall not exceed sixteen square feet on each side.
  - xiii. One commercial real estate 'For Sale' or 'For Rent' sign for each 1,200 feet of real estate frontage or part thereof on a public road, plus one 'For Sale by Owner' sign if applicable. Such signs shall be situated within the intersecting right-of-way of premises which otherwise have no road frontage.
- B. The Board finds that the Applicant has requested one, unlit, sandwich-board style sign for the business.
6. Section V (E) of the Underhill Zoning Regulations applies to this application. The relevant portion states:
- A. Primary dwelling or use
    - i. Front yard – No Minimum
    - ii. Side yard – 20 feet
    - iii. Rear yard – 20 feet
  - B. Accessory uses or buildings, parking areas and driveways shall be constructed not less than 15 feet from side and rear lot lines. Accessory uses or buildings shall not be closer to the front lot line than the distance from the front lot line to the nearest point of the primary dwelling or 75 feet from the front lot line.
  - C. The Board finds that the submitted map did not show setbacks to property lines for the proposed concession stand/bus, nor was the drawing to scale.
7. Section V (E) of the Underhill Zoning Regulations applies to this application. The relevant portion states: Residential properties shall provide at least one off-street parking space for each dwelling unit on the property. For approved conditional uses, the Zoning Board of Adjustment shall designate the number of required parking spaces such that parking is provided for the expected number of employees and customers.
- A. The Board finds that the Applicant has requested a maximum of 20 parking spaces on the site. However, the submission did not include proposed dimensions or setbacks making it impossible to make an affirmative finding.
8. The application will have the following impact on its surrounding area:
- A. Traffic—pedestrian and vehicular.
  - B. Parking
  - C. Safety—ingress/egress to the site for vehicles and pedestrians, surrounding neighbors.
  - D. Odor—cooking odors from fried and prepared foods.
  - E. Trash—refuse bins provided onsite and removed daily.

- F. Visual—a modified school bus will serve as the concession stand, with picnic tables available for patrons.
- 9. The Residential zoning district contains a mix of residences and businesses.
- 10. The application will cause vehicle and pedestrian traffic to the site. The estimated numbers of vehicle trip-ends and pedestrian traffic are unknown. The proposed location for the conditional use is on VT Route 15, a heavily-traveled state highway.
- 11. Neighbors who participated in the final hearing expressed concerns for character of the area, odor, aesthetics, parking, traffic safety, pedestrian safety, trash, nonconformance with the Town Plan, the number of patrons, site conditions post-season, animals, location (not right for the type of business), impacts to recreation opportunities onsite, and overflow parking on neighboring properties and the road.

### **III. DECISION AND CONDITIONS**

Based upon the findings above, the Development Review Board denies the application for the proposed seasonal concession stand as a conditional use. The Board finds that the proposed conditional use is offensive to the neighborhood in terms of aesthetics, character, and safety. Therefore, the Board cannot find that the proposed conditional use would not be offensive to the aesthetics, character, and safety of the neighborhood. See below for details.

#### **Section III (F) of the Underhill Zoning Regulations**

- A. The Board finds that the proposed conditional use has the potential to be injurious to pedestrians and bicyclists on VT Route 15, as well as to vehicles making abrupt turns or stops to enter and exist the site. Therefore, the Board cannot find that the proposed conditional use would not be injurious to pedestrians, bicyclists, and vehicles.
- B. The Board finds that the proposed conditional use has the potential to be noxious to neighboring residences and businesses with odors from the preparation of foods as was expressed by neighbors at the final hearing. Therefore, the Board cannot find that the proposed conditional use would not be noxious to the neighborhood.
- C. The Board finds that the proposed conditional use adversely affects the character of the area as there are no similar temporary food concession stands in the immediate neighborhood, and the proposed location is on a narrow portion of land between the Underhill-Jericho Fire Department and a private residence.
- D. The Board finds that traffic on VT Route 15 may be increased in the area and poses a safety concern for pedestrians, bicyclists, pets, and vehicles attempting to enter and exit the site.
- E. The Board finds that due to the above and additional concerns in the following sections, the proposed conditional use will have an adverse effect on the By-Laws in effect.

#### **Section III (U) of the Underhill Zoning Regulations**

- A. The Board finds that the Applicant has requested one, unlit, sandwich-board style sign to be placed at the site. Such sign must be placed outside of the VT Route 15 right-of-way to comply with local and State regulations. The Board finds that the

setbacks for the proposed sign were not included in the plans, and therefore the Board cannot make an affirmative finding.

**Section V (E) of the Underhill Zoning Regulations**

- A. The Board finds that the proposed concession stand/bus would meet setbacks if properly sited. The submitted map did not show setbacks, nor was the drawing to scale. It was not apparent from the site visit conducted April 19, 2010 whether the location of the proposed concession stand would meet setback requirements.

**Section V (G) of the Underhill Zoning Regulations**

- A. The Board finds that while the Applicant requested a maximum of 20 spaces for parking, the proposed parking location did not include dimensions or setbacks. Due to the lack of data regarding estimated numbers of vehicles to the site, the Board was unable to determine an adequate number of parking spaces for the proposed conditional use.

**Conclusion**

1. The application will have an undue adverse effect on the character of the area affected, as defined by the Underhill Zoning Regulations and Town Plan.
2. The application will have an undue adverse effect on traffic and highways in the vicinity.
3. The application will have an undue adverse effect on the following bylaws currently in effect: Section III (F), Section III (U), Section V (E), and Section V (G) of the Underhill Zoning Regulations.
4. The application will not satisfy the requirements of the bylaw with respect to: setbacks from adjacent property lines and the conditional use criteria.

Dated at Underhill, Vermont this 14<sup>th</sup> day of May, 2010.

Peter J. Sylvers (for Chuck Brooks)  
Chuck Brooks, Acting 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. Appeal period ends 6-13-10.

