TOWN OF UNDERHILL
APPLICATION OF MARK AND BECKY BEAUCAGE
FOR A CONDITIONAL USE/HOME OCCUPATION PERMIT
FINDINGS AND DECISION

In re: Mark and Becky Beaucage
79 Poker Hill Rd.
Underhill, VT 05489

Docket No. DRB-10-08: Beaucage

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding involves review of Mark and Becky Beaucage's application for a conditional use/home occupation permit to operate a small engine repair and sales business at property they own located at 79 Poker Hill Rd. in Underhill, VT.

1. On May 24, 2010, Mark and Becky Beaucage filed an application for a home occupation and conditional use hearing to review their request to operate a small engine repair and sales business at their property at 79 Poker Hill in Underhill, VT. A copy of the application and materials are available at the Underhill Town Hall.

2. On June 4, 2010, copies of the notice of a public site visit and hearing were mailed to the applicants, Mark and Becky Beaucage, and via certified mail to the following abutting neighbors:

   - Hood/Kapusta, 3 Blakey Rd., Underhill, VT 05489
   - Schmidt, 81Hanley Ln., Jericho, VT 05465
   - Hall, 4 Blakey Rd., Underhill, VT 05489
   - Miguez/Towne, 75 Poker Hill Rd., Underhill, VT 05489

3. On June 4, 2010, notice of the public site visit and hearing on the proposed Newman conditional use application were posted at the following places:

   a. The Applicants' property, 79 Poker Hill Rd.;
   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 June 5, 2010, notice of a public site visit and hearing on the proposed Beaucage conditional use/home occupation application was published in the *Burlington Free Press*.

5. The site visit was scheduled for 6:45 PM on June 21, 2010.

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

   - Scott Tobin, Chair
   - Stan Hamlet
   - Will Towle

- Chuck Brooks
- Matt Chapek

Mark and Becky Beaucage, Applicants; Kari Papelbon, Zoning & Planning Administrator; Penny Miller (recused), neighbor; and three neighbors also attended the site visit.

7. The hearing was scheduled to begin immediately following the second scheduled for 7:15 PM on June 21, 2010.

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

   - Stan Hamlet
   - Chuck Brooks
   - Will Towle
   - Matt Chapek
   - Scott Tobin, Chair

   Kari Papelbon, Zoning & Planning Administrator, also attended 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." Those who spoke at the hearing were:

   - Mark and Becky Beaucage, 79 Poker Hill Rd., Underhill, VT 05489
   - Ken Hall, 4 Blakey, Underhill, VT 05489
   - Deborah Towne, 75 Poker Hill Rd., Underhill, VT 05489
   - Penny Miller, 18 Bridle Trail, 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 Mark and Becky Beaucage;
    2. A copy of Mark and Becky Beaucage's Conditional Use Hearing Request (dated 5-20-10);
    3. A copy of Mark and Becky Beaucage's Home Occupation Permit Application (dated 5-20-10);
    4. A copy of the site plan (printed 4-1-10);
    5. A copy of the drawing for the proposed garage;
    6. A copy of the tax map for PH079;
    7. A copy of the Signs section of the zoning regulations;
    8. A copy of the confirmation email for the hearing notice to published in the *Burlington Free Press* (4-2-10);
    9. Findings of Fact and sign information (dated 6-21-10).

These exhibits are available in the Beaucage, PH079 Conditional Use/Home Occupation file at the Underhill Zoning Office.

II. FINDINGS

Factual Findings

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:

A. The applicants, Mark and Becky Beaucage, seek a conditional use and home occupation permit to operate a small engine repair and sales business.

B. The subject property, 79 Poker Hill Rd., Underhill, VT is a +/- 1-acre parcel located in the Rural Residential zoning district per §VI of the Underhill Zoning Regulations.

C. The application will have the following impact on its surrounding area:

1. Traffic—pedestrian and vehicular.
2. Parking
3. Safety—ingress/egress to the site for vehicles.
4. Pollution—storage and removal of gasoline, oil, and other hazardous liquids.
5. Visual—storage of scrap items and salvaged equipment, display of sale items on the front lawn.

D. The Rural Residential zoning district contains a mix of residences, home-based businesses, and a school.

E. The application will cause increased vehicle 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 Poker Hill Road, a populated town road.

F. Neighbors who participated in the final hearing expressed concerns for character of the area, aesthetics and screening, the limit and timeframe for removing salvage items, parking, traffic safety, pedestrian safety, reflectors on and the location of the existing sign, adding a sales business to the neighborhood (new), potential leaking of parts, and potential pollution to neighboring wells and septic systems. A neighbor also provided testimony as to the noise from the small engine repair business, stating that no increase in noise is heard and is of the character of the area (i.e. mowing lawns).

Applicable Regulation Standards

A. Conditional Use approval is requested for the project pursuant to review under the following sections of the Town of Underhill Zoning Regulations:

1. §III (F): Conditional Use
2. §III (U): Signs
3. §VI (E): Minimum Yard Requirements

B. 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: the character of the area, traffic on roads or highways in the vicinity, and By-Laws then in effect.

1. The Board finds that the proposed conditional use will not be injurious, noxious or offensive to the neighborhood with the conditions in Section III below.
2. The Board finds that the proposed conditional use will not adversely affect the character of the area as the use has been in existence for several years and the conditions in Section III below will provide added protections for neighbor concerns raised at the hearing.

3. The Board finds that Poker Hill Road is a well-traveled town road and that the additional traffic to the location of the proposed conditional use will not have an adverse effect on current traffic loads.

4. The Board finds that with the conditions in Section III below the proposed conditional use will not have an adverse effect on the By-Laws in effect.

C. 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:

1. General Restrictions

   a. Under no circumstances (except as in 2 a-1 below) may a sign exceed sixteen square feet in area on any one side.

   b. Direct light or reflected glare from all signs shall be shielded from all neighboring buildings, roads and driveways.

   c. 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.

   d. No sign shall be illuminated past 10 o'clock p.m. unless the premises are open for business.

   e. No sign shall prevent a clear and unobstructed view of official signs or approaching or merging traffic.

   f. No sign shall be erected within or projected into or above any public street or sidewalk right-of-way.

   g. No sign shall be erected, attached, or maintained upon any utility pole or government signpost.

h. 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.

i. All signs must be located on property owned or controlled by the business.

j. The top of the freestanding sign shall not be more than fifteen feet high.

k. No sign that is attached to a building shall extend above its roofline.

l. Only one sign per business. Total sign area shall not exceed sixteen square feet on each side.

m. 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.

i. The Board finds that the Applicants have requested one unlit freestanding sign for the business to be displayed outside, and one lit "open" sign to be displayed inside the garage. The freestanding sign shall be placed outside of the Poker Hill Road right-of-way to comply with local regulations. The Board finds that the Applicants have indicated that the sign will comply with required setbacks for the proposed sign.

D. Section VI (E) of the Underhill Zoning Regulations applies to this application. The relevant portion states:

1. Accessory uses or buildings, parking areas and driveways shall be constructed not less than 20 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.

a. The Board finds that the Applicants provided testimony that a new garage might be built on the property for the business, but the Applicants have not submitted a complete application for that building; therefore the Board cannot make a finding on the proposed garage. A separate complete application for the garage is required and may require a separate hearing.

E. Approval for a Home Occupation permit in connection with the Conditional Use approval is requested for the project pursuant to review under the following sections of the Town of Underhill Zoning Regulations:

1. §III (M): Home Occupations
2. §III (U)(4): Signs, "Exterior Displays"

F. Section III (M) of the Underhill Zoning Regulations applies to this application. The relevant portion states: The intention of this section is to allow as home occupations commercial uses that are not detrimental to the surrounding properties and which are customary in that area of Town.. Any resident is permitted to use a minor portion of a property for any occupation if all of the following standards are met. A zoning permit shall be obtained for all Home Business occupations and shall be issued by the Zoning Administrator when the following standards

have been met: (The Zoning Administrator may, if in doubt about customary use, refer the request to the [DRB].)

1. The home occupation is conducted by the residents of the premises. No additional employees or fellow entrepreneurs shall be active on the premises.

    a. The Board finds that the proposed home occupation will be conducted by the residents of the premises. No additional employees or fellow entrepreneurs shall be active on the premises.

2. 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.

    a. The Board has provided conditions for this requirement. Please see Section III below.

3. 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.

    a. The Board finds that the Applicants have requested hours of operation to be Monday through Friday 6:00 PM – 8:00 PM and Saturdays from 8:00 AM – 5:00 PM. Neighbor testimony has been provided indicating that noise resulting from the home occupation is not in excess of that normally heard in the neighborhood. Please see Section III below for conditions.

4. 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. The Board finds that the proposed sign meets the requirement for size. Please see Section III below for conditions.

5. For public display of goods or wares, see U.4. Signs: Exterior Displays (see Section II (G) below).

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

    a. The Board finds that no significant increase in traffic will be generated than would normally be expected in the neighborhood.

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

    a. The Board finds that parking will not exceed what would normally be expected in the neighborhood. Please see Section III below for conditions.

8. 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.

    a. The Board has provided conditions for this requirement. Please see Section III below.

9. Proper provisions are made for the disposal of any toxic or hazardous waste material.

    a. The Board finds that important pollution prevention challenges faced by the Applicants include preventing the release of liquid hazardous materials such as fuels, oils and battery contents into the soils, groundwater, and surface waters. The Board finds that there is a risk that contamination can occur at many stages of small engine repair operations. Soil, groundwater and air contamination can occur during disassembly and fluid drainage operations. Contamination can also result from improper parts, fluids and oil storage. The Applicants provided testimony that their current practice for disposal of waste liquids is through the Chittenden Solid Waste District. Please see Section III below for conditions.

10. The use will not constitute a health or safety risk to adjoining residences.

    a. The Board finds that the use will not constitute a health or safety risk to adjoining residences with the conditions in Section III below.

If more than six parking spaces are called for in any application for a home occupation, site plan approval by the [DRB] shall be required prior to the issuance of a Zoning Permit.

The Board finds that no request has been made for additional parking spaces.

Examples of acceptable home occupations include, but are not limited to: dressmaking, preserving or home cooking, repair of portable equipment, small engines or appliances, handicrafts, cabinet making, antiques, photography or art studio, teaching or tutoring of not more than six (6) students simultaneously, day care for up to six (6), the offices of a recognized profession, such as medicine, dentistry, law, architecture, accounting, surveying, or engineering or the office of a business service, such as real estate or insurance.

G. Section III (M) of the Underhill Zoning Regulations applies to this application. The relevant portion states: 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 which ever is less.

    1. The Board finds that the limit of 50 square feet for the display of items for sale is not adequate for the home occupation. Please see Section III below for conditions.

III. DECISION AND CONDITIONS

Based upon the findings above, the Development Review Board approves the proposed conditional use/home occupation application as described at the hearing and in the above findings for a small engine repair and sales business subject to the following conditions:

A. All repairs shall be conducted inside the existing and/or proposed garage.

B. The approved hours of operation are Monday through Friday 6-8 PM and Saturdays from 8 AM to 5 PM. No materials or mechanical equipment shall be used which will be detrimental to the character of that area of Town because of vibration, noise, dust, smoke, odor, heat, glare, interference with radio or television reception alteration of surface or groundwater/s, or other undesirable factors.

C. The proposed sign shall comply with setbacks and §III (U) of the zoning regulations. The sign shall be located outside of the Poker Hill right-of-way and

shall not be illuminated. The "open" sign on the garage shall be turned off except during hours of operation.

D. Parking shall comply with all local and State requirements.

E. The home occupation shall offer for sale only those items that have been repaired on the premises.

F. The Board has determined that the limit of 50 square feet for the display of items for sale is not adequate for the home occupation. Therefore, the Board approves of a 100 square-foot area for display of refurbished items for resale on the property. No items for storage shall be allowed in this area. The display area shall be marked by a boundary line using rope or similar marking material.

G. Scrap materials and salvage items shall be screened on all sides from public view by a 6-foot tall, 4-sided, 12' x 12' solid fence setback at least 20 feet from the side and rear property lines, and no closer to the front property line than the front plane of the existing house. No items shall be visible above or outside of the fence from any property line.

H. The storage of salvage equipment shall be out of sight of neighboring residences and shall not be visible from Poker Hill Road.

I. Per the Underhill Road Foreman, the planks in the drainage ditch shall be removed. Items for sale, salvage items, and signs shall be located outside of the ditches.

J. Applicants shall comply with all applicable federal, state and local environmental and hazardous waste laws and regulations. In addition to such laws and regulations, as a requirement of this conditional use application, Applicants shall comply with the following provisions related to the oil, fuels, and oily wastes created by the business:

1. Vermont Hazardous Waste Management Regulations, Subchapter 8: Used Oil Management Standards (attached). Waste oil, fuels, and oily wastes shall be stored in accordance with State regulations and disposed of at sanctioned facilities such as the Chittenden Solid Waste District.

2. Vermont Hazardous Waste Management Regulations, Subchapter 9; 7-902 Applicability to Batteries (attached).

3. Vermont Hazardous Waste Management Regulations, Subchapter 2; § 7-211 Vermont Listed Hazardous Wastes, Code VT02 (attached).

In order to facilitate compliance with the fuels, oils and battery provisions of the Vermont Hazardous Waste Management Regulations, the Development Review Board finds that compliance with the following attached fact sheets and practice guides relevant to fuels, oils and batteries, as amended from time to time, will be considered evidence of compliance:

- Environmental Fact Sheet, Vermont Department of Environmental Conservation:
    - Used Oil
    - Burning Used Oil
    - Oil Filters

- Oily Wastes
- Waste Motor Vehicle Fuel and System Components
- Managing Waste Fuel and Fuel/Water Mixtures

- Vermont's BMPs for the Auto Salvage Outreach Program 1, Best Management Practices (BMP) handbook.

K. Any changes to the approved business as conditioned above shall require prior review and approval by the Development Review Board.

Dated at Underhill, Vermont this 19th day of July, 2010.

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. Appeal period ends 8/18/10.