TOWN OF UNDERHILL
APPLICATION OF KEVIN AND KELLY PERLINE
FOR A CONDITIONAL USE/HOME OCCUPATION PERMIT
FINDINGS AND DECISION

In re: Kevin and Kelly Perline
75 Irish Settlement Rd.
Underhill, VT 05489

Docket No. DRB-10-14: Perline

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding involves review of Kevin and Kelly Perline's application for a conditional use/home occupation permit to offer small martial arts classes at property they own located at 75 Irish Settlement Rd. in Underhill, VT.

1. On October 1, 2010, Kevin and Kelly Perline filed an application for a home occupation and conditional use hearing to review their request to offer small martial arts classes at their property at 75 Irish Settlement Rd. in Underhill, VT. A copy of the application and materials are available at the Underhill Town Hall.

2. On October 18, 2010, copies of the notice of a public site visit and hearing were mailed to the applicants, Kevin and Kelly Perline, and via certified mail to the following abutting neighbors:

   - Peckham, 83 Irish Settlement Rd., Underhill, VT 05489
   - Jackson, P.O. Box 75, Underhill Center, VT 05490
   - Jobst, 76 Irish Settlement Rd., Underhill, VT 05489
   - Boardman, P.O. Box 25, Underhill Center, VT 05490
   - Moore, 36 Evergreen Ln., Underhill, VT 05489

3. On October 18, 2010, notice of the public site visit and hearing on the proposed Perline conditional use application were posted at the following places:

   a. The Applicants' property, 75 Irish Settlement 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 October 20, 2010, notice of a public site visit and hearing on the proposed Perline conditional use/home occupation application was published in *Seven Days*.

5. The site visit began at 9:00 AM on November 6, 2010.

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

- Scott Tobin, Chair
- Penny Miller
- Matt Chapek

Kevin Perline, Applicant, and Kari Papelbon, Zoning & Planning Administrator, also attended the site visit.

7. The hearing was scheduled to begin immediately following the first hearing scheduled for 6:30 PM on November 8, 2010.

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

- Penny Miller
- Peter Seybolt
- Charlie Van Winkle
- 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:

- Kevin Perline 75 Irish Settlement Rd., 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 Kevin and Kelly Perline;
2. A copy of Kevin and Kelly Perline's Conditional Use Hearing Request (dated 10-1-10);
3. A copy of Kevin and Kelly Perline's Home Occupation Permit Application (dated 10-5-10);
4. A copy of the site plan (undated);
5. A copy of the email from Kevin Perline to ZA Kari Papelbon addressing the Conditional Use Criteria (dated 10-19-10);
6. A copy of the tax map for IS075;
7. A copy of the hearing notice published in *Seven Days* (10-20-10).

These exhibits are available in the Perline, IS075, 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, Kevin and Kelly Perline, seek a conditional use and home occupation permit to offer small martial arts classes at their property.

B. The subject property, 75 Irish Settlement Rd., Underhill, VT is located in the Water Conservation zoning district per §VII of the Underhill Zoning Regulations.

C. 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 (M): Home Occupations

D. The Applicants have requested permission to hold up to two adult martial arts classes per day Monday through Friday between the hours of 4 and 8 PM, and on Saturday between the hours of 9 AM and 12 PM.

E. The Applicants have requested permission for maximum of 8 students per class.

F. The classes will be held in the converted hay loft of the existing barn.

G. The type of martial arts is non-combative in nature.

H. An exterior portable restroom is located adjacent to the existing barn for use in conjunction with the proposed home occupation.

I. The Water Conservation zoning district contains a mix of residences, home-based businesses, and a school.

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

   1. Traffic—vehicular.
   2. Parking.

K. The application will cause increased vehicle traffic to the site. The maximum estimated number of vehicles on the property per class is 12. Sufficient space for up to 20 vehicles exists on the property.

L. The proposed location for the conditional use is on Irish Settlement Road, a populated town road.

M. No written or oral testimony was provided by neighbors.

III. <u>CONCLUSIONS</u>

Applicable Regulation Standards

A. 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 as the proposed classes will be held within the existing barn, the nature of the proposed conditional use is instructional and exercise-based, no signs are proposed, no noise will be emitted from the proposed conditional use, and all traffic will be contained onsite.

2. The Board finds that the proposed conditional use will not adversely affect the character of the area as the use will be fully contained in an existing building, and no sign or alteration of the building or lot is proposed.

3. The Board finds that Irish Settlement 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. The Applicants currently have permission to operate a therapeutic business as a home occupation, which is being scaled down. The property has sufficient parking area for 15-20 vehicles.

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.

B. 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 finds that the proposed home occupation will be conducted entirely within the converted hay loft in the existing barn.

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 proposed home occupation is exercise-based and does not include the use of mechanical equipment.

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 Applicants have not requested a sign for the proposed home occupation at this time.

5. For public display of goods or wares, see U.4. Signs: Exterior Displays.

    a. The Board finds that the Applicants have not requested or proposed any public display of goods or wares.

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 as Irish Settlement Road is a well-traveled town road.

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. Parking will be fully contained on the Applicants' property.

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 finds that the proposed home occupation is instructional and exercise-based, and does not include the sale of goods.

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

    a. The Board finds that the proposed home occupation is instructional and exercise-based, and does not include the use, production, or require the disposal of toxic or hazardous waste materials.

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 as the proposed home occupation is instructional, exercise-based, and will be fully contained within the existing barn.

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 there is sufficient space on the property for additional parking.

IV. 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 martial arts classes subject to the following conditions:

A. All classes shall be conducted inside the existing barn as proposed.

B. The approved hours of operation are Monday through Friday 4-8 PM and Saturdays from 9 AM to 12 PM.

C. A maximum of 2 classes per day with 8 students per class is approved.

D. Any changes to the approved home occupation as conditioned above shall require prior review and approval by the Development Review Board.

Dated at Underhill, Vermont this 2nd day of December, 2010.

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. Appeal period ends Jan. 1, 2011.