TOWN OF UNDERHILL

Development Review Board

Appeal of Administrative Officer Decision
Findings and Decision

In re: Green Mountain Foam Products

Docket No. DRB-11-13

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves a notice of appeal submitted by Green Mountain Foam Products for an appeal of an administrative officer decision under the Town of Underhill Zoning Bylaw.

2. The notice of appeal was received by the secretary of the development review board on 28 November 2011. A copy of the notice of appeal was filed with the administrative officer on 28 November 2011.

A copy of the notice of appeal is available at Underhill Town Hall.

3. On December 21, 2011, notice of a public hearing was published in the Seven Days Newspaper.

4. On December 12, 2011, notice of a public hearing was posted at the following places:

   a. Underhill Town Hall
   b. Underhill Country Store
   c. Underhill Center Post Office
   e. Underhill Flats Post Office
   f. Deborah Rawson Memorial Library
   g. Jacobs IGA
   h. Wells Corner Market

5. On December 12, 2011, a copy of the notice of a public hearing was mailed to the appellant. On December 12, 2011, a copy of the notice of public hearing was mailed to the following owners of properties adjoining the property:

   - Vincent Arpey
   - Burton and Janice Robinson Life Estate
   - Moses and Gretchen Daley
   - Karl Riemer

6. The appeal was considered by the development review board at a public hearing on 9 January, 2012, which was held within 60 days of the filing of the notice of appeal. The development review board reviewed the appeal under the Town of Underhill Unified Land Use & Development Regulations, dated March 1, 2011.

7. Present at the hearing were the following members of the development review board:

- Charles Van Winkle, Chairman
- Penny Miller, Vice Chairman
- Matt Chapek, Clerk
- Will Towle
- Chuck Brooks
- Peter Seybolt

8. At the outset of the hearing, the development review board afforded those persons wishing to achieve status as an interested person an opportunity under 24 V.S.A. § 4465(b) to demonstrate that the criteria set forth in that statute could be met. A record of the name and address of persons wishing status as an interested person, a summary of their evidence with regard to the criteria, and a record of their participation at the hearing is attached hereto.

Interested Parties

- Thomas Morse, Green Mountain Foam Products, Appellant
- Kari Papelbon, Zoning and Planning Administrator
- Dennis Warren
- Doug Richmond
- Vincent Arpey
- Moses Daley

9. During the course of the hearing the following exhibits were submitted to the development review board:

a. A copy of Notice of Violation to Green Mountain Foam Products (dated 11-16-11);
b. A copy of the letter to Zoning Administrator from Thomas Morse (dated 11-23-11);
c. A copy of the letter For Immediate Release from Thomas Morse (dated 11-23-11);
d. A copy of the letter to DRB Chairman from Thomas Morse (dated 12-08-11);
e. A copy of photos attached to above letter with views of structures
f. A copy of the tax map for Parcel ID;
g. A copy of pages 180-182 of the Town of Underhill Unified Land Use & Development Regulations (dated March 1, 2011);
h. A copy of Legal Ad for Public Notice (dated 12-08-11);
i. A copy of Notice to Applicant and Abutters of Appeal with list of abutters attached.
j. A copy of email from Thomas Morse dated 1/8/12 sent 1:23 p.m.
k. A copy of email from Thomas Morse Dated 1/8/12 sent 12:53 p.m.
l. A copy of email from Thomas Morse dated 1/9/12 sent 9:58 a.m.

m. A copy of Testimony for UZBH from Thomas Morse pages 1-7
n. A copy of Testimony for UZBH from Thomas Morse page 1

These exhibits are available at The Underhill Town Hall.

FINDINGS

Based on the application, testimony, exhibits, and other evidence the development review board makes the following findings:

1. The applicant appeals a decision of the zoning administrator dated 16 November 2011. In that decision the zoning cited Thomas Morse for violation to a setback issue at 413 VT Rte. 15 (Green Mountain Foam Products) in Underhill, VT. This property is located in the Underhill Flats Village Center zoning district.

2. Notice of appeal was filed on 28 November 2011, which is within the 15 day period required under 24 V.S.A. § 4465(a).

3. In accordance with 24 V.S.A. § 4466, the notice of appeal was in writing and included the name and address of the appellant, a brief description of the property with respect to which the appeal was taken, a reference to the regulatory provisions applicable to the appeal, the relief requested by the applicant, and the alleged grounds why the relief requested was believed proper under the circumstances.

4. The appellant is an interested person as defined at 24 V.S.A. § 4465(b).

5. The subject property is a +/- 0.25 acre parcel located at 413 VT Route 15 in the Town of Underhill (tax map parcel no. VT413).

6. The property is located in the Underhill Flats Village Center District as described on the Town of Underhill Zoning Map on record at the Town of Underhill municipal office and Article II, Table 2.2 of the Town of Underhill Unified Land Use & Development Regulations.

7. The appeal requires review under the following sections of the Town of Underhill Unified Land Use & Development Regulations: Article II, Table 2.2(E)(4) which states "Accessory Structures shall be constructed not less than 15 feet from side and rear lot lines. An accessory shall also be located at or to the rear of the front building line of the principal buildings(s) on the lot."

8. There is no record of a permit or approval from the Development Review Board for locating the structure in front of the principal building.

FINDINGS (continued)

9. The testimony and evidence established that the items at issue are 4'x4'x8' "display cases" with a window on one side and displayed exemplars of items or wares being sold by Mr. Morse.

10. Based on the testimony of Mr. Morse and others, the Board finds that Mr. Morse is using the display cases to generate sales and that the cases are designed to attract the eye of potential customers as they drive or walk down Route 15.

11. The Board finds that the "display cases" are structures or displays used to advertise, direct or call attention to Mr. Morse's property, establishment, business, enterprise, profession, product, or service or other matter from any public right of way (Route 15).

12. The Board finds that the "display cases" are an outdoor advertising displayed on man-made structures, which are visible from a road right of way (Route 15).

DECISION

Based upon these findings, the development review board concludes the following:

1. The Development Review Board finds that the evidence does not establish that the display cases are an "accessory structure" within the meaning contained within Section 11.2.

2. Instead, the Development Review Board finds by a preponderance of the evidence that the display cases are "signs" within the meaning contained within Section 11.2.

3. Due to these determinations, the decision of the zoning administrator is reversed.

4. This decision of the Development Review Board does not reach the issue of whether the display cases are in compliance with Section 3.16, Signs, as that issue is not presented by this appeal.

5. This decision of the Development Review Board does not reach the Constitutional or other legal issues raised by appellant as those determinations are unnecessary to this decision.

Dated at Underhill, Vermont, this 14 day of February, 2012.

Charles Van Winkle, Chairman

"Yay" votes in favor of this decision

- Charles Van Winkle, Chairman
- Penny Miller, Vice Chairman
- Matt Chapek, Clerk
- Will Towle
- Peter Seybolt

"Nay" votes of dissent for this decision

- Chuck Brooks

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) 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.