TOWN OF UNDERHILL
APPLICATION OF JOHN AND DENISE ANGELINO
FOR CONDITIONAL USE APPROVAL
TO OPERATE A CONTRACTOR'S YARD AS A HOME INDUSTRY
FINDINGS AND DECISION

In re: John and Denise Angelino
3 New Rd.
Underhill, VT 05489

Docket No. DRB-13-03: Angelino

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding involves review of John and Denise Angelino's application for a conditional use/site plan review approval to operate a contractor's yard as a home industry on property currently owned by Richard and Barbara Albertini (co-applicants) at 3 New Road in Underhill, VT.

A. On March 1, 2013, John Angelino filed a conditional use/site plan review application for a contractor's yard as a home industry on property currently owned by Richard and Barbara Albertini (co-applicants) at 3 New Rd. and 16 Harvest Run in Underhill, VT. This property is currently under contract for sale to the Angelinos. Copies of the application and materials are available at the Underhill Town Hall.

B. On March 2, 2013, copies of the notice of a public hearing were mailed via Certified Mail to the Applicants, John and Denise Angelino, 5 Browns Trace, Jericho, VT 05465, and to the following abutting neighbors:

1. Albertini, P.O. Box 168, Underhill Center, VT 05490 (co-applicants/owners)
2. Murphy, 94 Irish Settlement Rd., Underhill, VT 05489
3. Gibson, 50 New Rd., Underhill, VT 05489
4. Friedman, P.O. Box 155, Underhill, VT 05489
5. Fitzgerald, 1397 Spear St., South Burlington, VT 05403
6. Tomasi, TTEE, c/o Martha Tomasi, 286 Ponus Ridge Rd., New Canaan, CT 06840
7. Albertini, P.O. Box 168, Underhill Center, VT 05490

Notice was also provided in person to the Underhill Selectboard, c/o Town Administrator Dawna Brisson.

C. On March 1 and 2, 2013 notice of the public hearing on the proposed Angelino conditional use/site plan review application was posted at the following places:
1. The property where the use is proposed, 3 New Road;
2. The Underhill Town Clerk's office;

3. The Underhill Center Post Office;
4. The Underhill Flats Post Office;
5. Jacobs IGA;
6. The Underhill Country Store;
7. Wells Corner Market;
8. The Town of Underhill website.

D. On March 2, 2013, notice of a public hearing on the proposed conditional use/site plan review application was published in *The Burlington Free Press.*

E. The hearing began at 6:38 PM on March 18, 2013.

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

1. Will Towle, Acting Chairperson
2. Penny Miller
3. Karen McKnight
4. Shanie Bartlett

Kari Papelbon, Zoning & Planning Administrator; John and Denise Angelino, Applicants; and Sandy Murphy, Brian Smith, Marcy and Kevin Gibson (with son), Peter Bennett, Cynthia Seybolt, Mike and Debbie Hudson, Michelle and Frank Jackson, Helen Wagner, Clifford Peterson, Bernadette Howard, and Joanne and Keith Johnson also attended the hearing.

G. At the outset of the hearing, Acting Chairperson Will Towle explained the criteria under 24 V.S.A. § 4465(b) for being considered an "interested party." Those who spoke at the hearing were:

1. John and Denise Angelino, 5 Browns Trace, Jericho, VT 05465 (under contract with the Albertinis for 3 New Road).
2. Sandy Murphy, 94 Irish Settlement Rd., Underhill, VT 05489.
3. Brian Smith, 20 Lindenwood Dr., South Burlington, VT 05403.
4. Marcy and Kevin Gibson, 50 New Road, Underhill, VT 05489.
5. Mike and Debbie Hudson, 114 Irish Settlement Rd., Underhill, VT 05489.
6. Clifford Peterson and Helen Wagner, 22 Hedgehog Hill, Underhill, VT 05489.

H. During the course of the hearing the following exhibits were submitted to the Development Review Board:

1. A staff report sent by Zoning and Planning Administrator Kari Papelbon to the Development Review Board, John and Denise Angelino, Richard and Barbara Albertini, the Underhill Selectboard, the Underhill Conservation Commission Chair, and the Underhill-Jericho Fire Department;

2. John and Denise Angelino's Conditional Use/Site Plan Review Hearing Request (dated 2-28-13);
3. A copy of the email from Dick and Barb Albertini (dated 3-1-13);
4. A copy of the Conditional Use Review Standards Findings Checklist;
5. A copy of the Site Plan Review Standards Findings Checklist;
6. A copy of the tax map for NR003 (shown as part of PV139);
7. Five (5) ANR maps depicting public wells, source protection areas, habitats, and soils (dated 3-12-13);
8. A copy of the hearing notice published in *The Burlington Free Press* on March 2, 2013;
9. A copy of the Home Business Permit Application (dated 3-13-13);
10. A copy of the sketch plan (date 2-28-13);
11. A copy of the small scale tax map depicting the location of the proposed garage/barn (dated 3-13-13);
12. A copy of the email from Underhill Conservation Chair Trevor Squirrell (dated 3-17-13).

These exhibits are available in the Angelino, NR003, Conditional Use/Site Plan Review 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, John and Denise Angelino, seek conditional use and site plan review approval to operate a contractor's yard on property they are purchasing at 3 New Road.

B. The subject property, 3 New Rd., Underhill, VT is located in the Rural Residential and Water Conservation zoning districts per Article II, Tables 2.3 and 2.4 respectively of the 2012 Unified Land Use and Development Regulations.

C. Approval is requested for the project pursuant to review under the following sections of the 2012 Unified Land Use and Development Regulations:

1. Article II, Table 2.3: Rural Residential District
2. Article II, Table 2.4: Water Conservation District
3. Section 3.2: Access
4. Section 3.11: Outdoor Lighting

5. Section 3.12: Outdoor Storage
6. Section 3.13: Parking, Loading & Service Areas
7. Section 3.14: Performance Standards
8. Section 3.16: Signs
9. Section 3.17: Source Protection Areas
10. Section 3.19: Surface Waters & Wetlands
11. Section 4.7: Contractor's Yard
12. Section 4.9: Extraction & Quarrying
13. Section 4.12: Home Business
14. Section 5.3: Site Plan Review
15. Section 5.4: Conditional Use Review
16. Section 5.5: Waivers and Variances

D. Testimony was received during the hearing from Sandy Murphy, Brian Smith, Marcy Gibson, Kevin Gibson, Mike Hudson, Debbie Hudson, Clifford Peterson, and Helen Wagner. See the meeting minutes for details.

III. CONCLUSIONS

Applicable Regulation Standards

Article II, Tables 2.3 and 2.4

The Board finds that the proposed contractor's yard, located within the Water Conservation district, is a Conditional Use in both the Rural Residential and Water Conservation districts. Maximum building coverage and maximum lot coverage requirements will be met with the proposed use.

§3.2: Access

The existing driveway will be used for access to the proposed location of the contractor's yard. An extension on the property to the proposed garage will be constructed.

§3.11: Outdoor Lighting

No outdoor lighting for the proposed contractor's yard has been requested.

§3.12: Outdoor Storage

The Board makes the following findings:

A. Storage related to the proposed contractor's yard includes that for gravel or topsoil, and will be within the designated 90' x 150' area. No hazardous waste storage was included in the proposal [Section 3.12(A)].

B. The proposed 90' x 150' contractor's yard area includes a 32' x 60' garage/barn for storage of equipment, vehicles, and some materials [Section 3.12(A)].

C. The proposed 90' x 150' contractor's yard will be screened from Pleasant Valley Road, New Road, and abutting properties by natural forest cover [Section 3.12(A)].

D. No request was made to store more than 3 unregistered or uninspected junk motor vehicles [Section 3.12(B)].

E. Two fuel storage tanks were included as part of the proposal: a 300-gallon on-road diesel fuel tank on skids and a 275-gallon off-road fuel tank. Although the size of the tanks is under the threshold for regulation under Section 3.12(C) as well as state and federal standards, the Applicants have expressed willingness to comply with additional safety requirements if required [Section 3.12(C)].

§3.13: Parking, Loading & Service Areas

The Board makes the following findings:

A. The property is of sufficient size to accommodate all required off-street parking [Section 3.13(A)].

B. The Applicants have requested a maximum of two nonresident employees, which would require two additional parking spaces [Section 3.13(A)].

C. The proposed home industry does not include onsite customer visitation [Section 3.13(A), (B)].

D. Loading and service areas, including parking for the vehicles and equipment associated with the home industry, will be located within the 90' x 150' contractor's yard. This area will be screened using existing forest cover from Pleasant Valley Road, New Road, and abutting properties [Section 3.13(B)].

E. No waivers have been requested [Section 3.13(C)].

§3.14: Performance Standards

The Board makes the following findings:

A. The proposed contractor's yard, with conditions, will not create dangerous, injurious, noxious, or otherwise objectionable conditions that would adversely affect or interfere with the reasonable use of adjoining or nearby properties [Section 3.14(A)].

B. The proposed contractor's yard will not result in a significant increase in noise levels in the vicinity so as to be incompatible with the surrounding area. The Town Garage

is located on the same road and the subject property is a corner lot off of a major transportation route (Pleasant Valley Road). Access to the property, which contains a single-family dwelling, is via the first driveway on New Road. The Applicants provided testimony that loading and unloading of material will be limited as they do not possess loading equipment. The Applicants also provided testimony that Mr. Angelino primarily uses his pickup truck and leaves between the hours of 6:00 AM and 6:30 AM and returns between 5:00 PM and 6:00 PM Monday through Friday. Saturday hours are typically between 9:00 AM and noon, with no Sunday hours. As there are no additional employees, except Mrs. Angelino who works on an as-needed part-time basis, only one occasional mid-day trip is typical. The Applicants provided testimony that most of the equipment is off-site a majority of the summer months, and that occasionally equipment would be brought back in the evenings or on the weekend for maintenance [Section 3.14(B)(1)].

C. Any vibration due to the contractor's yard will be from the movement of residential-grade equipment and vehicles to and from the site. No additional vibration is anticipated. In order to minimize vibration, it will be a condition of approval for limited hours of operation [Section 3.14(B)(2)].

D. Other than dust resulting from vehicles traveling on a gravel road, the Applicants have indicated in the submitted application materials that no additional dust will result from the home industry. The proposal does not include uses that will generate smoke, noxious gases, or other forms of air pollution that will constitute a nuisance; endanger human or environmental health; or cause damage to property or vegetation. Conditions of approval will require screening to minimize effects on surrounding properties [Section 3.14(B)(3)].

E. The proposal does not include activities that would result in the release of heat, cold, moisture, mist, fog, or condensation [Section 3.14(B)(4)].

F. The proposal does not include activities that would interfere with any electronic transmissions or signals [Section 3.14(B)(5)].

G. No outdoor lighting has been proposed [Section 3.14(B)(6)].

H. No storage of liquid or solid waste has been proposed [Section 3.14(B)(7)]. See Conclusions for Section 3.12 above.

I. The proposal does not include undue fire, safety, explosive, radioactive emission or other hazard that would negatively affect surrounding properties or municipal facilities and services. Comments were solicited from the Underhill Jericho Fire Department; however, no comments were received [Section 3.14(B)(8)].

J. Section 3.14(B)(9)-(10) are not applicable to the proposed conditional use.

§3.16: Signs

The Board makes the following findings:

A. The Applicants requested two signs in their original application. However, that request was modified to one sign during the hearing.

B. Any sign for the proposed home industry will require prior review and approval from the Zoning Administrator per Section 3.16(B).

C. The Applicants have indicated their ability and desire to comply with the siting requirements of Section 3.16(C).

D. Section 3.16(D) is not applicable as the location of the proposed contractor's yard is not located in the specified areas.

E. The Applicants have requested one 2-sided sign not to exceed 36" x 24," or a total of 6 square feet [Section 3.16(E),(F)].

F. The requested sign may qualify for an exemption per Section 3.16(G)(6).

G. Signs must not contain the prohibited items in Section 3.16(H).

H. The property does not currently contain a nonconforming sign [Section 3.16(I)].

§3.17: Source Protection Areas

The Board makes the following findings:

A. The property is located within a designated source protection area.

B. No public water supply exists within 200 feet of the proposed contractor's yard.

C. The property is located outside of Zones 1, 2, and 3 in the Jericho Underhill Water District (JUWD) Source Protection Plan 2011 Update. Zone 4 is identified as the drainage basin for the two JUWD wells.

D. The Applicant provided testimony that two residential-sized (300 gallons and 275 gallons) fuel storage tanks will be sited on impervious surfaces within the proposed contractor's yard. These are neither prohibited by the Source Protection Plan nor by Section 3.17(D). No floor drains or sumps have been proposed in the barn or contractor's yard. See Decision and Conditions below.

§3.19: Surface Waters & Wetlands

The Board finds that Crane Brook crosses the western portion of the property. The contractor's yard, proposed on the eastern side of the property, will be located outside of riparian buffer and setback areas.

§4.7: Contractor's Yard

The Board makes the following findings:

A. The Board finds that the location of the 90' x 150' contractor's yard is acceptable. See Decision and Conditions below.

B. The Board finds that the Applicants provided testimony that the proposed yard would be screened from Pleasant Valley Road, New Road, and surrounding properties using existing natural forest cover. See Decision and Conditions below.

C. Performance standards are addressed under Conclusions for Section 3.14 above. See Decision and Conditions.

D. The existing single-family dwelling will continue to be a single-family dwelling. The Applicants have requested a 32' x 60' garage structure to store vehicles, equipment, and related materials within the 90'x 150' contractor's yard area. See Decision and Conditions below.

E. On-site storage of hazardous materials for the contractor's yard has been requested in the form of two fuel storage tanks for the equipment and vehicles. See Conclusions for Section 3.12 above and Decisions and Conditions below.

§4.9: Extraction & Quarrying

The Board finds that no request has been made for extraction or quarrying in association with the proposed contractor's yard.

§4.12: Home Business

The Board makes the following findings:

A. The proposed contractor's yard is classified as a home industry per Section 4.12(D).

B. The Applicants provided testimony that the proposed contractor's yard will operated by them as residents of the property. Up to two nonresident employees were requested at the hearing [Section 4.12(D)(1)].

C. Outdoor storage provisions are addressed in the Conclusions for Section 3.12 above [Section 4.12(D)(2)].

D. Hazardous materials are addressed in the Conclusions for Section 3.12 above [Section 4.12(D)(3)].

E. The proposed use will not have an undue adverse effect on the character of the neighborhood as a contractor's yard is an allowed use in the district, the Town Garage is in the area on New Road, screening will be required, and conditions of approval will limit activities. The proposed garage will be designed to resemble a barn similar to other structures in the area [Section 4.12(D)(4)]. See Decision and Conditions below.

F. Testimony was received during the hearing as to the amount of traffic in the vicinity. The Applicants stated that with the exception of moving the equipment off-site and returning them for repairs or winter storage, no additional traffic will be generated. Truck and equipment traffic currently exists on New Road as the Town Garage is located in the neighborhood [Section 4.12(D)(5)].

G. Off-street parking is addressed in the Conclusions for Section 3.13 above [Section 4.12(D)(6)].

H. Section 4.12(D)(7) is not applicable.

I. Performance Standards are addressed in the Conclusions for Section 3.14 above [Section 4.12(D)(8)].

J. Signs are addressed in the Conclusions for Section 3.16 above [Section 4.12(D)(9)].

K. No sales and service are included in the request to operate a contractor's yard as a home industry [Section 4.12(D)(10)].

§5.3: Site Plan Review

The Board makes the following findings:

A. The Applicant has submitted responses to the standards of this section.

B. The proposed plans will not have undue adverse impacts to significant natural, historic, and scenic resources as the project will occur on a portion of the property the Applicants are in the process of purchasing; existing drainage patterns will be maintained as the location of the proposed contractor's yard is adjacent to the existing dwelling and will be surrounded by the existing forest cover; the property is not above 1500 feet in elevation; no areas of steep slope will be affected as the proposed location for the contractor's yard is in the vicinity of the existing dwelling; the proposed contractor's yard is in excess of 100 feet from the Crane Brook; there are no mapped Special Flood Hazard Areas on the property; the property is in a Source Protection Area but not within 200 feet of a public well (See Conclusions for Section 3.17 above); the proposed location of the contractor's yard is well outside of

the mapped deer wintering area on the property and comments from the Underhill Conservation Commission indicate that this proposed development will not have significant impacts to the environment as the location is away from sensitive habitat areas; and existing scenic resources will be unaffected as clearing on the property will be limited to the proposed area of the contractor's yard [Section 5.3(B)(1)].

C. The proposal, with Conditional Use approval, is compatible with the provisions of the Rural Residential and Water Conservation zoning districts. The proposed structure will be designed as a barn to blend in with similar structures in the area. Natural forest buffers surrounding the proposed contractor's yard will reinforce the rural character of the area while allowing for the continued use of the property as compatible with traditional working landscapes [Section 5.3(B)(2)].

D. Vehicular access is addressed in the Conclusions for Section 3.2 above [Section 5.3(B)(3)].

E. Parking, loading, and service areas are addressed in the Conclusions for Section 3.13 above [Section 5.3(B)(4)].

F. Section 5.3(B)(5) is not applicable as the proposal does not include plans for public visitation. Clients will not be served onsite. While the Board recognizes that a well-used trail exists on the property, the trail is not maintained by the Town of Underhill and it will be left to the property owners as to its future use. The Board encourages the relocation of the trail for continued use.

G. The proposed contractor's yard includes maintaining the existing forest area for screening [Section 5.3(B)(6)]. See Decision and Conditions below.

H. Section 5.3(B)(7) is not applicable to this application as no outdoor lighting is proposed for the project.

I. Stormwater management, addressing runoff from the proposed building and contractor's yard site, will be required to prevent the infiltration of contaminants from vehicles, equipment, and fuel storage tanks [Section 5.3(B)(8)].

§5.4: Conditional Use Review

The Board makes the following findings:

A. The Applicant has submitted responses to the standards of this section.

B. No undue adverse impacts are perceived on the capacity of existing or planned community services and facilities as there are no immediate municipal projects planned in the area [Section 5.4(B)(1)].

C. No undue adverse impacts are perceived on the character of the area, with conditions of approval, as the contractor's yard will be limited to a specified size and location; the contractor's yard will be permanently screened from all neighboring properties and roads; the hours of operation will be limited; the scope of activities will be limited; and the proposed structure will be designed as a barn, comparable to similar structures in the neighborhood [Section 5.4(B)(2)]. See Decisions and Conditions below.

D. No undue adverse impacts are perceived on traffic on the roads in the vicinity as the Applicants provided testimony that, on average, there are only 2-3 vehicle trips per day, and the number of employees will be limited. Existing traffic in the area includes that for residential, Town Highway vehicles, and commuter vehicles on Pleasant Valley Road. Sight distances on New Road are adequate, and the Applicants provided testimony that sight distance at the existing driveway will be improved with minor landscaping work. The proposal will not result in a Level of Service C or below, and will not generate 75 or more peak hour trips [Section 5.4(B)(3)].

E. No undue adverse impacts are perceived on bylaws in effect. The Applicants have not requested waivers or variances for the project [Section 5.4(B)(4)].

F. No undue adverse impacts are perceived on the utilization of renewable energy resources as the proposal is for an onsite contractor's yard affecting only a portion of the landowner's property at 3 New Road. No extraction of materials has been requested beyond that allowed in the exemptions in Section 4.9(B)(1) [Section 5.4(B)(5)]. See Decision and Conditions below.

G. Site Plan Review Standards have been addressed above [Section 5.4(C)].

H. The proposed contractor's yard as a home industry conforms to the policies and objectives of the 2010 Town Plan, specifically Section 7.2, with regard to increasing local economic activity through home-based employment and maintaining the working landscape. Additionally, the proposal respects the goals and strategies for groundwater and natural habitat protection by siting the contractor's yard outside of all identified buffers and protection areas, retaining natural landscaping and buffering for the yard, and locating the fuel storage tanks on impervious surfaces [Section 5.4(D)(1)]. See Decision and Conditions below.

I. The proposed development meets all dimensional, setback, and buffer requirements for the Rural Residential and Water Conservation zoning districts [Section 5.4(D)(2)]. See Decision and Conditions below.

J. Performance Standards have been addressed above [Section 5.4(D)(3)].

§5.5: Waivers and Variances

No waivers or variances were submitted by the Applicants. The Board waives all requirements and standards of Section 5.3 determined to be not applicable [Section 5.5(A)].

IV. DECISION AND CONDITIONS

Based upon the findings above, the Development Review Board unanimously grants approval for the Conditional Use/Site Plan Review application for the operation of a contractor's yard as a home industry as described at the hearing and in the submitted application documents, with the following conditions:

A. The proposed 90' x 150' area in the location identified in the submitted application for the contractor's yard is approved. The corners of the yard shall be permanently marked. The proposed 32' x 60' garage/barn, storage, parking and loading areas, and all activities associated with the contractor's yard shall be located within this designated area.

B. No outdoor lighting for the contractor's yard is approved.

C. Fuel tanks, regardless of size, shall be sited and retained per Section 3.12(C) and Section 3.17(B).

D. A maximum of 42 yards of gravel, sand or similar fill material is approved for onsite storage within the approved contractor's yard at any time.

E. Noise generating activities, such as loading/unloading of equipment/material, shall not occur between the hours of 7 PM and 6 AM Monday through Friday.

F. Noise generating activities such as loading/unloading of equipment/material shall not occur before 9 AM or after 5 PM Saturday through Sunday and on federal holidays.

G. One sign for the business, to be within 50 feet of the existing driveway, is approved. The sign shall meet the requirements of Section 3.16 and be issued a zoning permit from the Zoning Administrator.

H. A minimum 100-foot buffer of natural tree cover shall be maintained to screen the contractor's yard from Pleasant Valley Road, New Road, and abutting properties. Damaged and diseased trees may be removed from the buffer as necessary.

I. Extraction of fill or gravel beyond the exemptions specified in Section 4.9(B)(1) is prohibited. Additional review and approval by the Development Review Board shall be required prior to any extraction or quarrying that does not meet the exemptions in Section 4.9(B)(1).

J. A maximum of two nonresident employees onsite at any one time is approved.

K. This approval and related home industry permit is personal to John and Denise Angelino, and any company in which they own a majority interest, for as long as they own and reside on this parcel. The permit will not run with the land and shall be reapplied by any future owner/operator.

L. It is recommended that the Applicants contact the Underhill Jericho Fire Department and the Jericho Underhill Water District to comply with requirements for emergency access and compliance.

Dated at Underhill, Vermont this 8th day of April, 2013.

Will Towle, Acting Chairperson, Development Review Board

NOTICE: This decision may be appealed to the Vermont Division of Superior 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 **May 8, 2013**.