

TOWN OF UNDERHILL  
APPLICATION OF PETER RICHARDSON, HOUSING STRATEGIES, INC.  
AND STEVE HALLEY, CHAMPLAIN CAPITAL MANAGEMENT ASSOCIATES  
FOR CONDITIONAL USE / SITE PLAN REVIEW APPROVAL  
FOR AN ADDITIONAL DWELLING UNIT IN A MULTIFAMILY DWELLING  
FINDINGS AND DECISION

In re: Peter Richardson  
Housing Strategies, Inc.  
601 South Beach Road  
South Burlington, VT 05403  
(5 Park St., Underhill, VT 05489)

Docket No. DRB-13-04: Richardson

**I. INTRODUCTION AND PROCEDURAL HISTORY**

This proceeding involves review of the application of Peter Richardson, Housing Strategies, Inc., and Steve Halley, Champlain Capital Management Associates (CCMA) for conditional use/site plan review approval to convert an attached storage structure to a fifth apartment unit in an existing multifamily dwelling on property currently owned by CCMA located at 5 Park St. in Underhill, VT.

- A. On March 18, 2013, Peter Richardson filed a conditional use/site plan review application for approval to convert an attached storage structure to a fifth apartment unit in an existing multifamily dwelling on property currently owned by CCMA (co-applicants) at 5 Park Street Underhill, VT. Copies of the application and materials are available at the Underhill Town Hall.
  
- B. On April 4, 2013, copies of the notice of a public site visit and hearing were mailed via Certified Mail to the Applicants, Peter Richardson, Housing Strategies, Inc., 601 South Beach Rd., South Burlington, VT 05403, and to the following abutting neighbors:
  - 1. Steve Halley, CCMA c/o Rotella Property Management & Maintenance, 11 Thorton, Winooski, VT 05404 (co-applicants/owners)
  - 2. Town of Jericho, P.O. Box 39, Jericho, VT 05465
  - 3. Weber, 10 Park St., Underhill, VT 05489
  - 4. Doll/Stanger, 6 Park St., Underhill, VT 05489
  - 5. United Church of Underhill, 3 Park St., Underhill, VT 05489

Notice was also provided in person to the Underhill Selectboard, c/o Chairperson Brad Holden.

C. On April 4 and 5, 2013 notice of the public site visit and hearing on the proposed Richardson conditional use/site plan review application was posted at the following places:

1. The property where the use is proposed, 5 Park Street;
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 April 10, 2013, notice of a public site visit and hearing on the proposed conditional use/site plan review application was published in *Seven Days*.

E. A site visit was held at the property on April 29, 2013 at 6:35 PM. Present the site visit were:

1. Matt Chapek
2. Karen McKnight
3. Shanie Bartlett

Zoning & Planning Administrator Kari Papelbon; Applicant Peter Richardson; Selectboard Chair Brad Holden; Trustees for the United Church of Underhill and Jacqueline Weber, neighbors, also attended the site visit.

F. The hearing began at 7:08 PM on April 29, 2013 at the Underhill Town Hall.

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

1. Charles Van Winkle, Chairperson
2. Matt Chapek
3. Karen McKnight
4. Shanie Bartlett

Kari Papelbon, Zoning & Planning Administrator; Peter Richardson, Applicant; Brad Holden, Selectboard Chair; and Trustees of the United Church of Underhill (3) and Jacqueline Weber, neighbors, also attended the hearing.

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

1. Peter Richardson, Housing Strategies, Inc., 601 South Beach Rd., South Burlington, VT 05403.
  2. Paul Sisson and Dave Clift, Trustees of the United Church of Underhill, P.O. Box 265, Underhill, VT 05489.
  3. Brad Holden, Selectboard Chair, P.O. Box 32, Underhill Center, VT 05490.
  4. Jacqueline Weber, 10 Park St., Underhill, VT 05489.
- I. 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, the Applicants, the Underhill Selectboard, the Underhill Town Administrator; the Underhill Conservation Commission Chair, the Underhill-Jericho Fire Department; and the Jericho Underhill Water District;
  2. Peter Richardson's Conditional Use/Site Plan Review Hearing Request (dated 3-15-13);
  3. A copy of the signed document from Steve Halley, Champlain Capital Management Associates, consenting to the application (dated 3-21-13);
  4. A copy of the Site Plan (dated 3-22-13);
  5. A copy of the Boundary Line Agreement plat (dated August 2004);
  6. A copy of the Conditional Use Review Standards Findings Checklist;
  7. A copy of the Site Plan Review Standards Findings Checklist;
  8. A copy of the letter from Peter Richardson (dated 3-22-13);
  9. A copy of the VT-15 Sidewalk Feasibility Study Update alignment sheets (Sheets 1-5 dated 12-28-12);
  10. A copy of the tax map for PA005;
  11. A copy of the hearing notice published in *Seven Days* on April 10, 2013.

These exhibits are available in the Richardson, PA005, 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, Peter Richardson, Housing Strategies, Inc., and Steve Halley, CCMA, seek conditional use and site plan review approval to convert an attached

storage structure to a fifth apartment unit in an existing multifamily dwelling on property owned by CCMA at 5 Park St.

- B. The subject property, 5 Park St., Underhill, VT is located in the Underhill Flats Village Center zoning district per Article II, Table 2.2 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 2.2 – Underhill Flats Village Center District
  - 2. Section 3.2 – Access
  - 3. Section 3.3 – Conversion or Change of Use
  - 4. Section 3.7 – Lot, Yard & Setback Requirements
  - 5. Section 3.8 – Nonconforming Lots
  - 6. Section 3.9 – Nonconforming Structures
  - 7. Section 3.12 – Outdoor Storage
  - 8. Section 3.13 – Parking, Loading & Service Areas
  - 9. Section 3.14 – Performance Standards
  - 10. Section 3.22 – Water Supply & Wastewater Systems
  - 11. Section 5.3 – Site Plan Review
  - 12. Section 5.4 – Conditional Use Review
  - 13. Section 5.5 – Waivers & Variances
- D. Testimony was received during the hearing from Peter Richardson, Paul Sisson, Dave Clift, and Brad Holden. See the meeting minutes for details.

### **III. CONCLUSIONS**

#### **Applicable Regulation Standards**

##### *Article II, Table 2.2*

The Board makes the following findings:

- A. Multifamily dwellings containing more than 4 dwelling units require Conditional Use review and approval per Table 2.2(C)(6).
- B. The parcel at 5 Park Street is a pre-existing, nonconforming lot as it does not meet minimum lot size and frontage requirements [Table 2.2(D)].
- C. There is no minimum front setback requirement in the Underhill Flats Village Center District. It appears that the existing attached storage structure meets

side and rear setback requirements [Table 2.2(D)]. See Conclusions for Section 3.9 below.

- D. Maximum building and lot coverage calculations have not been definitively established [Table 2.2(D)]. See Decision and Conditions below.

*§3.2: Access*

The Board finds that no changes to the existing access have been proposed.

*§3.3: Conversion or Change of Use*

The Board makes the following findings:

- A. The proposed conversion of the existing storage structure to a fifth dwelling unit in an existing multifamily dwelling meets the requirements for the use with conditions and waivers [Section 3.3(A)(1)]. See Conclusions for Section 3.9 below.
- B. The proposed conversion does not qualify for an administrative zoning permit [Section 3.3(A)(2)].
- C. The proposed conversion requires conditional use and review approval by the Development Review Board per Table 2.2(C)(6) [Section 3.3(A)(3)].
- D. See the Conclusions for Sections 3.8 and 3.9 below [Section 3.3(A)(4)].
- E. The proposed conversion does not require subdivision approval [Section 3.3(A)(5)].
- F. Section 3.3(B) will be a condition of approval.

*§3.7: Lot, Yard & Setback Requirements*

The Board makes the following findings:

- A. Only one principal structure exists and is proposed on the property and the proposal does not include adaptive reuse, mixed use, or planned residential or planned unit developments [Section 3.7(A)].
- B. Section 3.7(B) is not applicable as the lot and structures are preexisting.
- C. Section 3.7(C) is not applicable as the proposal does not include the creation of a private development road.

- D. Section 3.7(D) is not applicable as the lot, access, and frontage are preexisting and no changes are proposed.
- E. No waivers to lot, yard, and setback requirements have been requested [Section 3.7(E)]. See Conclusions for Section 3.9 below.

*§3.8: Nonconforming Lots*

The Board makes the following findings:

- A. The property is of sufficient size to be developed and is currently developed [Section 3.8(A)].
- B. Section 3.8(B) is not applicable as only one lot is owned by the Applicants; therefore, no merger has occurred.
- C. No waivers or variances to minimum district, surface water and wetland setback requirements have been submitted as part of the proposal [Section 3.8(C)]. See Conclusions for Section 3.9 below.
- D. The lot was not created as part of an approved planned residential or planned unit development [Section 3.8 (D)].

*§3.9: Nonconforming Structures*

The Board finds that there are questions regarding the boundaries of the parcel. It appears that the structure meets the required setbacks and the existing structure may continue to be used in conformance with Section 3.9(A). As the proposal does not include the enlargement, expansion, extension, or relocation of the preexisting attached structure and the lot is not located within a Special Flood Hazard Area, no variances are required to convert the structure to a fifth dwelling unit.

*§3.12: Outdoor Storage*

The Board finds that the Applicant provided testimony that there exists a dumpster onsite for the proper disposal of household trash, and additional receptacles exist onsite for the proper disposal of household recyclables. See Decision and Conditions below.

*§3.13: Parking, Loading & Service Areas*

The Board makes the following findings:

- A. There currently exist multiple off-street parking spaces serving the multifamily dwelling.
- B. A minimum of three 9' x 18' parking spaces for every two dwelling units is required per Table 3.1. A multifamily dwelling with five apartments is required to have a minimum of 8 parking spaces [Section 3.13(A)(1),(2)]. See Decision and Conditions below.
- C. The existing parking area is located on the north side of the principal building. The existing parking area is not screened. Handicapped parking spaces shall be required. See Decision and Conditions below. [Section 3.13(A)(3)].
- D. Section 3.13(A)(4) shall be a condition of approval.
- E. Section 3.13(B) is not applicable to the application.
- F. The Board waives the requirement to place a bicycle rack on the property as the existing layout of the parcel does not have a reasonable location for a bicycle rack. The Board also waives the requirement for screening of the current parking area as it is preexisting. These waivers are approved as the layout and size of the site do not allow for the strict application of these particular requirements in a way that allows for the continued efficient and safe use. Additionally, there is a location on the site that is currently occupied by a storage building that the Applicant has stated could be utilized or removed to provide additional parking if necessary [Section 3.13(C)].
- G. The Board recognizes that the existing parking area is partially located on the United Church of Underhill property. There has been no determination as to the length of time the existing parking has been located over the common property boundary. Testimony was provided at the hearing that discussions between the Applicant and the Church regarding the parking area are ongoing. See Decision and Conditions below.

*§3.14: Performance Standards*

The Board makes the following findings:

- A. The proposed conversion of the existing attached storage structure to a fifth dwelling unit, 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 conversion of the existing attached storage shed to a fifth dwelling unit will not result in a significant increase in noise levels in the vicinity so as to be incompatible with the surrounding area [Section 3.14(B)(1)].
- C. Any vibration due to the proposed conversion will be from the maintenance and/or replacement of the septic and water systems as well as for the renovation of the structures. No additional vibration is anticipated [Section 3.14(B)(2)].
- D. The proposal for the conversion of the existing attached storage shed to a fifth dwelling unit does not include uses that will generate smoke, dust, 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. Asbestos abatement, if required, shall follow State and Federal guidelines [Section 3.14(B)(3)].
- E. The proposal for the conversion of the existing attached storage shed to a fifth dwelling unit 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 for the conversion of the existing attached storage shed to a fifth dwelling unit does not include activities that would interfere with any electronic transmissions or signals [Section 3.14(B)(5)].
- G. No outdoor lighting or other reflective surfaces have been proposed in association with the conversion of the existing attached storage shed to a fifth dwelling unit [Section 3.14(B)(6)].
- H. No storage of liquid or solid waste has been proposed. See Conclusions for Section 3.12 above and Decisions and Conditions below [Section 3.14(B)(7)].
- I. The proposal for the conversion of the existing attached storage shed to a fifth dwelling unit 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 as the proposal does not include agricultural or forestry operations.

### *§3.22: Water Supply & Wastewater Systems*

The Board finds that a State of Vermont Wastewater System and Potable Water Supply will be required for the additional dwelling unit. Additionally, the lot is

served by the Jericho Underhill Water District and any District requirements shall apply for the conversion.

*§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 proposal for the conversion of the existing attached storage shed to a fifth dwelling unit will not have undue adverse impacts to significant natural, historic, and scenic resources as the conversion will occur in an existing attached structure; existing drainage patterns will be maintained as no new structures or changes to the topography of the lot are proposed; the property is not above 1500 feet in elevation; no areas of steep slope exist on the property; there are no surface waters or wetlands are within 100 feet of the property; there are no mapped Special Flood Hazard Areas on the property; the property is not in a Source Protection Area; there are no identified significant wildlife habitat areas or corridors on or near the property; and existing scenic resources will be unaffected as the proposal is to convert an existing structure to a fifth dwelling unit [Section 5.3(B)(1)].
- C. The proposal, with Conditional Use approval, is compatible with the provisions of the Underhill Flats Village Center zoning district as it will increase the density through reuse of an existing structure within the traditional village center, the historic development pattern of which includes higher densities and compact development [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. See Decision and Conditions below [Section 5.3(B)(4)].
- F. As discussed in the Conclusions for Section 3.13 above, there is an outstanding discussion with the Church regarding the location of the existing parking. The outcome of this discussion will determine whether the existing conditions will remain or whether the parking area will be moved for better internal circulation and adequate spaces. The Board recognizes that there are plans in place for upgrades to existing municipal sidewalks in the area. The proposal does not negatively affect those plans. See Decision and Conditions below [Section 5.3(B)(5)].

- G. The proposal does not include additional landscaping or screening. The Board has waived additional screening requirements for the parking area (See the Conclusions for Section 3.13 above); however, the Board recognizes that the existing dumpster is not screened [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. No stormwater management and erosion control measures have been proposed as the request is for the conversion of an existing building for a fifth dwelling unit with no changes to the existing grade and no new structures. Additionally, there are no surface waters or wetlands within 100 feet of the property [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 the Applicant recognizes the Town's plans for upgrades to the municipal sidewalks in the area. Those plans will require crossing the existing curb cut for the property and will incorporate visual cues for pedestrians and motorists of that crossing. Conversations with property owners in the area are planned as part of the process [Section 5.4(B)(1)].
- C. No undue adverse impacts are perceived on the character of the area, with conditions of approval, as the proposal for the conversion of the existing attached storage shed to a fifth dwelling unit is in an area where there are similar multifamily dwellings, and the Applicant has provided testimony that renovations to the interior and exterior of the structure will result in an aesthetic 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 existing use is a multifamily dwelling, and the proposed conversion will result in an additional 6.6 daily vehicle trips for low-rise apartments according to the ITE Trip Generation Manual, 6<sup>th</sup> Edition. Existing traffic in the area includes that for residential, commercial delivery, and commuter vehicles on Park Street. Sight distances on Park Street appear to be adequate. 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 formally requested waivers or variances for the project; however, the Board has waived requirements for screening for the parking area and for a bicycle rack. See Conclusions for Section 3.13 above [Section 5.4(B)(4)].
- F. No undue adverse impacts are perceived on the utilization of renewable energy resources as the proposal is for the conversion of an existing attached structure to a fifth dwelling unit [Section 5.4(B)(5)].
- G. Site Plan Review Standards have been addressed above [Section 5.4(C)].
- H. The proposed conversion of the existing attached storage shed to a fifth dwelling unit conforms to the policies and objectives of the 2010 Town Plan, specifically with regard to the Underhill Flats Village Center district. This district supports the continued development of a traditional village center, and encourages denser development in the area according to Sections 2.2 and 2.3 [Section 5.4(D)(1)].
- I. The proposed development appears to meet all dimensional and setback requirements for the Underhill Flats Village Center zoning district with the possible exception of the side setback for the existing attached storage structure. See Conclusions for Section 3.9 above [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 waiver or variance requests were submitted by the Applicants; however, the Board waives the requirements for a bicycle rack and screening of the existing parking area as listed above. The Board waives all requirements and standards of Section 5.3 determined to be not applicable [Section 5.5(A)]. See Decision and Conditions below.

#### **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 conversion of the existing attached storage shed to a fifth dwelling unit as described at the hearing and in the submitted application documents, with the following conditions:

- A. The Board grants the following waivers

- a. Screening of the existing parking area, as required by Section 3.13(A)(3)(a).
  - b. A bicycle rack, as required by Section 3.13(A)(3)(b).
  - c. All standards under Sections 5.3 and 5.4 deemed not applicable as stated in the Conclusions sections above [Section 5.5(A)].
- B. A Site Plan, to include the parking layout, dumpster location with screening (see D below), and areas reserved for future parking, shall be submitted on Mylar for recording in the Land Records prior to issuance of a Certificate of Occupancy for the fifth dwelling unit. See Section 7.7 for recording requirements.
- C. Maximum building and lot coverage calculations shall be submitted to the Zoning and Planning Administrator prior to submission of the Site Plan for recording.
- D. A certificate of occupancy shall not be issued until a VT Wastewater System and Potable Water Supply Permit and approval from the Jericho Underhill Water District for water supply improvements have been submitted in accordance with Sections 3.3(B) and 3.22.
- E. The dumpster on the property shall be screened on all sides and/or located within an enclosure.
- F. Parking areas shall be located completely on the property unless an agreement with the United Church of Underhill is reached, signed, and recorded in the Underhill Land Records.
- G. A minimum of eight (8) off-street parking spaces shall be maintained for the multifamily dwelling. A minimum of one (1) of the required 8 parking spaces shall be a handicapped parking space. Parking areas in excess of eight (8) parking spaces, if provided, shall incorporate landscaped areas which at minimum equal 10% of the total parking area per Section 3.13(A)(4).

Dated at Underhill, Vermont this 29<sup>th</sup> day of May, 2013.

*Charles Van Winkle*

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Charles Van Winkle, 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 28 June 2013.