

TOWN OF UNDERHILL  
APPLICATION OF TRISTAN BUTLER AND CAROL BUTLER  
FOR CONDITIONAL USE APPROVAL  
TO OPERATE A WEDDING & EVENTS CENTER AS A HOME INDUSTRY  
FINDINGS AND DECISION

In re:

Tristan Butler (Co-applicant)  
28 Mullen Road  
Underhill, VT 05489

Carol Butler (Co-applicant)  
621 Irish Settlement Rd  
Underhill, VT 05489

Docket No. DRB-14-08: Butler

**I. INTRODUCTION**

The Butlers, the applicant, cause the Development Review Board to balance two central but opposite poles of the Vermont land use spectrum of laws and regulation. On one pole is Vermont's historic and central value that a landowner should be able to earn a living on his or her own land. On the other, and more modern pole, is the communal and sometimes contrary recognition that uses by any one person, even on their own land can, and does often adversely affect both neighbors and the community as a whole.

Our land regulations are a constant struggle between those two poles – balancing the individual land owner's needs and desires with the needs and desires of the community. This application, although a facially limited request, asks us to again probe this perpetual and somewhat quintessentially Vermont question.

Our land use regulations try to strike a balance between the landowner's right to work on his own land and the needs of the community subject to regulation of the "undue adverse impact" of the industry on the neighborhood. Section 4.12.A. When successful, our regulatory scheme and decisions promote both home industry and good neighborhoods. Our regulation section 4.12.D. permits home industries within certain distinct parameters designed to protect the community.

We recognize and find that under the circumstances of this case the application is an imperfect fit with our regulations. The proposed wedding and events center is not the home industry as contemplated by the drafters of the regulations who were undoubtedly more focused on traditional trades of the craftsmen and the classic professions. However, the Development Review Board must interpret the regulation in the context which we find them. In this case, and in this moment of Vermont's history, Vermont has become a destination of choice for weddings and similar celebrations. Old-time Vermonters might no doubt be surprised to learn that hillside farms are sought out by wedding parties with increasing regularity and are now

supplanting the sheep, cows and sugar maples which used to be the only industry on those hills.

Part of the challenge of this application is that “wedding venue” is not to be found anywhere in our regulations. However, just because an industry is new is not necessarily a reason for it to be prohibited by the existent regulations. Part of our job is to interpret new industries within the regulations and the proper context of historically recognized industries.

The proposed use as a wedding venue has challenges for the regulations beyond it simply being a relatively new industry. It is qualitatively different from most of our prior recognized home industries. The sheer number of persons, vehicles and the hours of operation of the proposed activities strains the scope of permitted home industries, especially criteria 4.12.D.5. We therefore cannot wholly ignore the dictates of section 4.12.D which require us to closely examine the hours, traffic, noise and light pollution likely to be attendant with the proposed activities. Most home industries do not have 100 vehicles, 250 customers, loud music, and operate until 10 PM. Under many circumstances, this would be fatal to the application.

We look to resolve the tension within the regulation by looking to controlling guidance and the specific and unique facts of the case. Ultimately, we turn to 24 V.S.A. § 4412(4) to resolve the tension between the regulation and the proposed home industry in this case. This statute prohibits municipal regulations which “infringe upon the right of any resident to use a minor portion of a dwelling unit for an occupation that is customary in residential areas and that does not have an undue adverse effect upon the character of the residential area in which the dwelling is located.” We read this statute as a strong statement of the Vermont policy favoring home industry and we therefore interpret our regulations consistent with this policy laid down by the General Assembly. We also find that the application is in conformance with the goals established in Section 7.2 of the Town Plan which encourage “increased local economic activity (home-based employment as well as local businesses)” and “to maintain and increase the working landscape.”

Mindful of the policy favoring home industry, we determine the balance tilts in favor of the applicant. Although the proposed activities would potentially exceed the scope of many proposed home industries, we find under the specific facts of this case that the proposed activities are within the limits that both the spirit and the letter of our regulations restrict.

## **II. FINDINGS:**

This location is remote and far from any adjoining neighbors and any village centers. The applicants’ parcel is over 100 acres of rolling farm land and currently run as a dairy farm. In this era, many traditional dairy farms are turning to non-traditional revenue sources to stay profitable and we support this trend. The proposed site of the home industry is not adjacent to any adjoining property boundaries. The adjoining neighbors, ordinarily our most important source of reasonable statements in opposition, are largely all direct family relations of the applicant and are all supportive of the plan. There were no objections from any Underhill residents. The proposed activities do not involve large scale infrastructure improvements. The

applicant impressed the Board with his sincerity in being a good neighbor and running the operation in a way designed to minimize impact on adjoining or nearby parcels.

### **III. DECISION AND CONDITIONS**

Based upon the above information, the Development Review Board grants approval for the application to operate a wedding and events center as a home industry as described at the hearing and in the submitted application documents, with the following conditions and restrictions:

- A. Approval is granted through calendar year 2015. This probationary period is to assess whether or not neighbors are comfortable with the operation. Approval will expire on January 1, 2016, at which time the applicant must re-apply for a new permit in order to continue operating.
- B. Events shall only be held on Friday, Saturday, and/or Sunday.
- C. The total number of events shall not exceed 16 events per calendar year.
- D. The total number of vehicles per event shall not exceed 125.
- E. Noise generating activities, including amplified music, shall not occur after the hour of 10:00 PM.
- F. All events shall be invitation only. Ticketed events are not permitted.
- G. Activities must comply with the Underhill Noise Ordinance. At no time, can noise at the property line exceed 60 decibels.
- H. A temporary structures permit, issued by the Planning & Zoning Administrator is required for any temporary reception tents. A separate tent permit is required for tents over 1200 square feet. Tent permits may be obtained from the State of Vermont Division of Fire Safety.
- I. Fireworks are not permitted.
- J. Overnight camping is not permitted.
- K. All outdoor lighting, including flood lights, shall be directed away from the valley.
- L. Prior to any events, the permittee shall obtain any applicable State of Vermont permits as required by the VT Department of Labor and Industry or correspondence indicating there are no permitting requirements.

- M. The event schedule, including proposed start and end times and total number of invited guests, is to be provided to the Planning & Zoning Administrator prior to the event.
- N. The applicant may erect temporary directional signs to direct traffic to the event. Temporary directional signs must be removed at the conclusion of each event.
- O. At the end of the permit year, the applicant shall submit a summary traffic impact report
- P. One sign for the business is approved. The sign shall meet the requirements of Section 3.16 and be issued a permit from the Planning & Zoning Administrator.
- Q. This approval and related home industry permit is personal to the applicant(s). The permit will not run with the land and shall be reapplied by any future owner/operator.

Dated at Underhill, Vermont this 15<sup>th</sup> day of September, 2014.

*Charles Van Winkle*

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 10/15/14.