
TOWN OF UNDERHILL
APPLICATION OF MARY POTVIN
FOR CONDITIONAL USE APPROVAL
TO OPERATE A WEDDING AND EVENTS CENTER AS A HOME INDUSTRY
FINDINGS AND DECISION

In re: Mary Potvin
14 Lap Run
Underhill, VT 05489

Docket No. DRB-16-04

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Mary Potvin's application to operate a Wedding and Events Center as a Home Industry on property located at 14 LAP Run in Underhill, VT.

- A. On 2/1/2016, Mary Potvin filed an application to operate a wedding/events center as a home industry, subject to conditional use review. A hearing was scheduled for the application on 4/18/2016.
- B. On 30 March 2016, a copy of the hearing notice was mailed via Certified Mail to the following owners of properties adjoining the property subject to the application:
- Timothy and Theresa Potvin
 - John and Tammy Boudah
 - John and Lise Wursthorn
 - Ronald Reynolds and Melanie Bryant
 - Eric Howard and Regina Macrelli
 - Vermont Agency of Natural Resources
 - University of Vermont
 - Janet and David Ely
 - Paul and Julie Dragon
 - Jason Wyman
 - Karla and William M Russell
 - Reginald Potvin
 - David Hathaway and Carolyn Green
 - Gretchen and Richard Becker
- C. On 3/30/2016, notice of the public hearing for the proposed home industry was posted at the following places:
- The Underhill Town Clerk's office;
 - The Underhill Center Post Office;
 - The Underhill Flats Post Office
- D. On 4/2/2016, the notice of the public hearing was published in *The Burlington Free Press*.

- E. A site walk was conducted on 4/18/16, and the conditional use hearing convened at 7:00 PM on 4/18/2016 at the Underhill Town Hall.
- F. Present at the hearing were the following voting members of the Development Review Board: Charles Van Winkle, Chairman, Matt Chapek, Karen McKnight, Penny Miller, Will Towle, and Mark Green.
- Acting Planning and Zoning Administrator Brian Bigelow and Applicant Mary Potvin also testified at the hearing.
- G. 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 on 4/18/2016 were:
1. Shane McCormack (268 Pleasant Valley Road)
 2. Jan Peyser (25 Evergreen Lane)
 3. David Ely (PO Box 235)
- H. Additionally, written comment was received from two neighbors:
1. Bill Russell (270 Pleasant Valley Road), dated 4/14/2016 and received via email.
 2. Shane McCormack (268 Pleasant Valley Road), dated 5/2/2016 and received via email.
- I. Board member attendance at the hearing on 4/18/16 included the following voting members of the Development Review Board: Charles Van Winkle, Chairman, Will Towle, Karen McKnight, Penny Miller, Matt Chapek, and Mark Green.
- J. Board member attendance at the hearing on 5/2/16 included the following voting members of the Development Review Board: Charles Van Winkle, Chairman, Mark Hamelin, Karen McKnight, Penny Miller, and Mark Green.
- K. Board member attendance at the hearing on 5/18/16 included the following voting members of the Development Review Board: Charles Van Winkle, Chairman, Mark Hamelin, Matt Chapek, Karen McKnight, Penny Miller, and Mark Green.
- L. Due to the fact that the hearing on this application spanned multiple meetings of the DRB, exhibits in support of the conditional use application were submitted to the DRB over the course of several weeks:
- M. The board closed the evidentiary portion of the hearing on 5/18/16 and went into deliberative session.

The exhibits/contents from the 4/18/2016 hearing packet:

- A. Mary Potvin's Conditional Use Hearing Request and Home Business Permit Application (dated 2/1/2016);
- B. A copy of the tax map for MO027 indicating proposed event location;
- C. A copy of the 2014 Butler decision (DRB-14-08), which has an introduction that outlines the Board's opinions on farms as wedding venues;

- D. Mary Potvin email of April 8, 2016;
- E. A copy of the procedure checklist for this meeting; and
- F. A memorandum from Underhill Planning and Zoning, "Agenda and Information for 4/18/16 Hearing," dated 4/18/2016.

Documents reviewed at or resulting from April 18, 2016 DRB Meeting

- G. April 11, 2016 Letter from Bauer Gravel Farnham Attorneys at Law;
- H. Bill Russell email of April 14, 2016;
- I. Undated Mary Potvin 2 page handout, items 1-14;
- J. Notice of continuation from the DRB (dated 4/21/2016); and
- K. Draft minutes of April 18, 2016 DRB Meeting.

Additional exhibits provided by Applicant on April 28, 2016

- L. Mary Potvin's modified Home Business Permit Application (dated 2/1/2016);
- M. A sketch of the pavilion design as discussed with the Vermont Division of Fire Safety (dated 4/29/2016);
- N. Typical Schedule for 4pm Wedding (dated 4/29/2016);
- O. Wedding Pavilion and Cabin Narrative (dated 4/29/2016);
- P. Authorization to Discharge (Stormwater) Permit #6766-9015 (dated 10/30/2012);
- Q. Individual Wetland Permit #2011-985 (dated 10/16/2012); and
- R. Wastewater System and Potable Water Supply Permit #WW-4-3810 (dated 4/4/2012);

Staff review of April 28, 2016 submittal

- S. Staff Memorandum Dated April 29, 2016.

Additional exhibits provided by Applicant on May 2, 2016. All Date Stamped received May 2, 2016

- T. Site Plan;
- U. Site Plan Legend;
- V. Pavilion Design Back View (J&N Structures, Plan #16058, 36'x72'x14' Monitor, Front Elevation);
- W. Pavilion Design Side View (J&N Structures, Plan #16058, 36'x72'x14' Monitor, Left Elevation);
- X. Updated Project Plan Details;
- Y. Updated Home Business Permit, pg 1, Non-resident employees; and
- Z. Updated Typical Wedding Day Schedule.

Additional exhibits provided at the May 2, 2016 DRB Meeting

- AA. Shane McCormack email and attachment of May 2, 2015; and
- BB. Mark Green updated handout (re: noise levels, with corrections necessary due to scaling error).

Additional exhibits provided after the May 2, 2016 DRB Meeting

- CC. Mary Potvin Email of May 3, 2016 and 18 page attachment; and
- DD. Mark Green response to question within Exhibit CC email.

All exhibits are available for public review in the Potvin LR014 Conditional Use file (DRB 16-04) at the Underhill Zoning & Planning Office.

II. FINDINGS

Based on the application, testimony, exhibits, and evidence submitted relative to this proceeding, the Development Review Board makes the following findings under the requirements of the Underhill Unified Land Use and Development Regulations (ULUDR):

Article II, Table 2.5 – Mt. Mansfield Scenic Preservation District (pg. 18)

The parcel is within the Mt. Mansfield Scenic Preservation Zoning District. The parcel is part of a subdivision that was approved by the DRB on 14 May 2012 (SUB-12-02). The board finds, per applicant testimony, the proposed event center is limited to lot #2 of the previously approved subdivision.

Article III, Section 3.2—Access (pg. 27)

The subdivision was granted an access permit by the Underhill Selectboard in 2012 (A-12-05), at which point the planned use was a single family home. The board finds that the parcel access onto Lap Run has not changed from the original approval. The board finds that the Underhill Board of Selectmen retain jurisdiction over the curb cut. The board finds that a 12 foot wide drive way is insufficient in width for the amount of traffic proposed with this application.

Article III, Section 3.6 – Height Requirements (pg. 33)

The board finds the proposed accessory structure and home meet the height requirements for this zone.

Section 3.7—Lot, Yard and Setback Requirements (pg. 35)

This parcel is part of a subdivision that was approved by the DRB on 14 May 2012 (SUB-12-02). The subdivision defined a building envelope on this parcel and the applicant has submitted a site plan. The board finds the proposed development conforms to the yard and setback requirements applicable to the zone, and the applicant has not requested a waiver.

Section 3.11 – Outdoor Lighting (pg. 38)

Section 3.11(C)(1) of the UULUDR (page 38) states that “the applicant shall provide information regarding exterior lighting fixtures including fixture type, mounting locations and heights, illumination levels and distribution and color, to be submitted as part of the of subdivision or development review application.” Further, Section 3.11(C)(1)(a) states that the DRB may require a lighting plan for a project that includes parking lighting. The applicant has proposed limited outdoor lighting (Narrative Paragraph #6). The board finds specific details of exterior lighting were not provided, however, the board understood the lighting concepts. The board finds that a site specific lighting plan is not warranted.

Section 3.13 – Parking, Loading & Service Areas (pg. 41)

Section 3.13 provides parking, loading, and service area requirements. Section 3.13(A)(5) states “For development subject to site plan or conditional use review, shared parking and/or

landscaping, screening, lighting, snow removal, pedestrian or transit facilities may be required as a condition of approval as necessary to meet the requirements of this section and applicable development review criteria."

The DRB's Continuation Memo (dated 4/21/2016) stated that the applicant's plan to use a shuttle to transport guests was "unrealistic, un-workable and un-enforceable," especially if there was no staging/parking area nearby. The latest project narrative from the applicant continues to propose a shuttle for guests, but no details are given about a staging area. Section 3.13(B)(1) states that "where a proposed development will require the frequent or regular loading or unloading of goods or passengers, on-site loading or transit areas shall be provided."

The board finds that an un-titled, un-named, un-dimensioned, not to scale site plan and parking layout was submitted depicting 50 parking spaces, vehicle circulation routes, loading and unloading areas. The board finds the proposed site plan does not provide sufficient detail regarding physical infrastructure such as dimensions, material composition, driveway curve geometry, width, site stabilization, drainage and erosion containment.

Section 3.14 (B) – Performance Standards (pg. 43)

The Unified Land Use and Development Regulations restrict activity that, under normal conditions, shall cause, create or result in, noise in excess of 60 decibels (dBA) that is not the result of occasional, customary activities associated with an allowed use (e.g., lawn mowing), or as otherwise specified for a particular use; or noise that represents a significant increase in noise levels in the vicinity of the use so as to be incompatible with the surrounding area.

The applicant has provided information on the noise that will likely be produced by the proposed use in Narrative Paragraph #11. The board finds that the proposed use is not agricultural or forestry in nature. The board finds the applicant, or those who testified on behalf of the project did not present any evidence indicating that they had received education, specialty training or are an active practitioner of noise evaluation or acoustics. The board received significant testimony and evidence related to noise, noise propagation, and sound attenuation. The board recognizes the noise calculations presented to be empirical in nature and not the result of specific study at the project site.

The board finds no evidence was submitted that noise would be limited to < 60dBA at the north or south property lines of lot 2.

Section 3.16 – Signs (pg. 47)

Section 3.16(G) (6) Exempts "One unlit sign advertising a home-based business (e.g., home child care, home occupation, home industry or bed & breakfast), that does not exceed eight square feet in area."

The board finds the applicant requested 2'x3' sign to be located at the intersection of Pleasant Valley Road (35 feet to the east of the center line) and Lap Run (about 20 feet north of the edge of Lap Run). The board finds the proposed sign location is located on lot #1 of the original subdivision or parent parcel. The board finds the sign dimensions are consistent with that allowed under the Unified Land Use and Development Regulations.

Section 3.22 –Water Supply & Wastewater Systems (pg. 65)

A Wastewater System and Potable Water Supply Permit was received for the 3 lot subdivision, (#WW-4-3810, dated 4/4/2012). Condition 1.7 of the permit states: "Construction of additional nonexempt buildings, including commercial and residential buildings, is not allowed without prior review and approval by the Drinking Water and Groundwater Protection Division and such approval will not be granted unless the proposal confirms to the applicable laws and regulations."

The board finds lot #2 was approved for an onsite wastewater disposal system under the above referenced wastewater permit. The applicant has proposed amending the permit to allow for a reduced size single family home and public building that would accommodate public restrooms. The wastewater allocation proposed for lot #2 shall not exceed that which was approved under #WW-4-3810, dated 4/4/2012.

The board finds the applicant has not amended the wastewater disposal permit.

Section 4.12 – Home Business (Home Occupation, Home Industry) (pg. 82)

The board finds the proposal is classified as a Home Industry as defined in the Underhill Unified Land Use and Development Regulations. The Home industry is /may be allowed as an accessory to a single family dwelling and is subject to conditional use review under Section 5.4, and the following provisions:

4.12(D) 1- Employees: The applicant has indicated there will be two resident employees and no non-resident employees. However, the applicant indicates there may be up to 5 vendors hired by the client. Caterers, bartenders, DJ's, photographers are not employed by the applicant but are instead hired by clients. While some vendors may be considered as guests, others are directly related to the support and operation of the function. This board is not going to contemplate the multiple scenarios of musicians vs. DJ's vs. caterers vs. photographers, vs. bartenders. It is reasonable to assume that the number of people acting in a support role to the function may at times be less than five and may at times be more than five. Based on the evidence submitted and testimony received, the board finds that the client's vendors are akin to employees. The board finds the residents of the dwelling to be exempt from the employee count, however the vendors working in support of the function could exceed the maximum number of employees.

4.12(D) 2- Outdoor Storage: Based on the evidence submitted and testimony received, the board finds that there will be no outdoor storage of materials.

4.12(D) 3- Hazardous Materials: Based on the evidence submitted and testimony received, the board finds that there will be no Hazardous Materials generated by the site.

4.12(D) 4- Character: The regulations require that home industry shall not have an undue adverse effect on the character of the neighborhood, nor result in a change in the outward appearance of the dwelling or the accessory structure. The board struggles with these criteria as it attempts to balance landowners' rights against the existing usage patterns in the

neighborhood. Since there is no “Lap Run” neighborhood constructed, any activity on the land would be a change in the character of the neighborhood, however the board approved the creation of the subdivision in 2012. The board therefore must decide if the impact is undue or adverse. The lack of an existing neighborhood on Lap Run creates no tangible attributes to define character, leaving the board to extrapolate some unknowns. In reviewing the project against this criterion, the board expanded the “neighborhood” in order to determine character. The board finds the areas in the vicinity of the project on Pleasant Valley Road and Moose Run to constitute the neighborhood.

The board finds the existing neighborhood to be comprised of single family residential homes. Pleasant Valley Road is a major collector travel corridor, and a connector road between Cambridge, Jeffersonville and Underhill center. The roadway has higher traffic volumes, and is subject to AM and PM peak hour traffic patterns. Moose Run is a dead end residential road serving a limited number of single family residences and vacant land. Home density is considered very rural, and development patterns are spread out rather than concentrated. A home occupation is based on lot #1. With no set criteria determining the “Character of the Neighborhood” and no readily defined “Queechee Decision¹” framework as a decision guideline, the board is relying on the nine other review components under 4.12(D) of the Unified Land Use and Development Regulations as a guideline.

The board interprets the regulations as envisioned, intend to allow for the conversion of existing infrastructure for a home industry use. The board finds the restriction on altering the outward appearance of the structure intends that the Home Industry should be the subordinate use on the property. Unlike previous decisions regarding event centers issued by this board, the current proposal incorporates building infrastructure specific to the use.

Considering the fact that there is no infrastructure constructed and in place, the board is utilizing available information, and testimony to formulate its decisions.

Based on the available wastewater capacity of the site allowed under the Water Supply and Waste Water disposal permit issued by the ANR, the board finds, based on testimony, that the applicant is proposing to re-allocate 1/3rd of the available capacity to the single family residence. The board finds that the remaining 2/3rd s of the waste water disposal capacity will be dedicated to the proposed venue. Under this proposed wastewater allocation scenario, the board finds that the proposed event venue is the principal use of the site.

The board finds the event venue to be the primary use of the property. The board finds there are no other comparable land uses in the neighborhood where a number of people come together at a specific time, stay for an approximate duration and depart at once or almost at once. The board finds the commercial nature of the proposal to be out of character with the neighborhood.

¹ The Queechee Decision framework was the result of a case review under the Vermont Act 250 Land Use and development process. The specifics of the case concerned the evaluation criteria to determining the “aesthetic impact” of development, and set forth precedent to measure aesthetic impact against. The Queechee test has become the de-facto standard in evaluating aesthetic impact of development.

4.12(D) 5- Traffic – The applicant presented evidence that the average weekday daily traffic volume in 2015 was 1400 vehicles per day along Pleasant Valley Road followed up by a statement that the weekend traffic was on average 215 vehicles per day less than weekday traffic. The board finds that the existing traffic volume numbers suggested by the applicant are reasonable. The board finds that the traffic generated by the project is understated and neglects to account for vehicles both entering and exiting the project. The board finds the nature of traffic at this type of event has a greater impact on roadway capacity rather than volume. The board finds no intersection capacity analysis information was given for the intersection of Lap Run and Pleasant Valley Road and cannot make a finding regarding the ability of the road to handle the capacity and anticipated turning movements of vehicles at the intersection.

Based on the evidence submitted and testimony received, the board finds that there is insufficient evidence submitted to make a positive finding regarding traffic impact, safety and circulation.

4.12(D) 6- Parking - Based on the evidence submitted and testimony received, the board finds the plan submitted depicting the parking layout conceptually could be workable but there is insufficient evidence to make a positive finding that the physical layout and ancillary impacts from the proposed parking layout (grading, drainage, site stabilization and wetland impact) will not create an undue adverse impact.

4.12(D) 7- Utilities - Adequate provisions shall be made for water, wastewater and the disposal of solid waste, in accordance with applicable municipal and state regulations. Based on the existence of the Water Supply and Wastewater Disposal permit and the continuing jurisdiction of the Vermont Agency of Natural Resources, the board finds that the water supply and wastewater disposal systems to be in conformance with state regulations.

Based on the evidence submitted and testimony received regarding solid waste generation and removal, the board finds solid waste generated by the proposed project will be disposed of in accordance with applicable state regulations.

4.12(D) 8- Performance Standards - The home occupation shall meet all performance standards set forth in Section 3.14. Based on the evidence submitted and testimony received, the board finds that the proposed use is not forestry or agricultural in nature.

The board finds that largest reviewable impact under performance criteria is related to noise and noise generation.

4.12(D) 9- Signs - Based on the evidence submitted and testimony received, the board finds that the sign proposed for the project to be located on lot #1 is in conformance with the Unified Land Use and Development Regulations.

4.12(D) 10- Sales & Service - Based on the evidence submitted and testimony received, the board finds that there will be no retail sales on the premises.

Section 5.4 – Conditional Use Review (pg. 113)

The proposed home industry requires a Conditional Use Review. Section 5.4 (pg. 113) of the ULUDR governs Conditional Use Review.

5.4(B) - General Standards - Conditional use approval shall be granted by the DRB only upon finding that the proposed development shall not result in an undue adverse effect on any of the following:

5.4(B) 1 - The board received no letters of impact or ability to serve, only verbal statements from the applicant indicating they had “talked to” the Underhill Jericho Fire Department, and the Vermont Department of Fire Safety. The board cannot therefore make positive finding that the capacity of existing or planned community services will not be affected.

5.4(B) 2 - The board finds that any activity on the site, even the construction of the approved single family homes will result in an impact to the character of the area. However, the key issue to determine is whether the impact is undue and adverse. Without existing physical infrastructure on site, the board will err on the side of caution and determine that the construction of the event center will create an undue adverse impact and the character of the area will be negatively affected.

5.4(B) 3 - Based on the evidence submitted and testimony received, the board finds that there is insufficient evidence to make a positive finding regarding traffic impact, safety and circulation.

5.4(B) 4 - Bylaws in effect – The board finds that the proposed use is not expressly prohibited by the unified land use and development regulations nor is it expressly allowed.

5.4(B) 5 - The board finds that the proposed application does not incorporate the utilization of renewable energy resources.

5.4(C) Site Plan Review Standards – The board finds that there was insufficient evidence submitted and credible testimony received to make a positive finding that the proposal conforms to the site plan review standards.

5.4(D) 1 – The board finds the proposed development conforms with the economic development incentives outlined in the Town Plan.

5.4(D) 2 – The board finds home industry is an allowable use in this area of the town, as detailed in the Zoning District & Use Standards

Section 10.7 – Administration and Enforcement (pg. 183)

10.7 (D) Public Notice – The board acknowledges the applicant’s objection to the notice sent to adjacent landowners expressed through a letter dated 11 April 2016 from his attorney Nicole A. Killorian, Esq. from the law firm Bauer Gravel & Farnum. The board finds that the letter, as stated in the context, is a registered objection and not an appeal of the actions of the Zoning Administrator. The board therefore took no action on this letter.

III. CONCLUSION

The board concludes that the proposed event venue does not meet the criteria for a home industry. Predominately, the board concludes that the proposed home industry will have an undue adverse effect on adjoining properties and is not in compliance with the character of the area.

IV. DECISION

Based upon the findings above the Development Review Board denies the Conditional Use Application for a home industry.

DRB members voting in favor of the conditional use home industry application:

- Mark Hamelin

DRB members voting against the conditional use home industry application:

- Matt Chapek, Mark Green, Karen McKnight, Penny Miller, Charles Van Winkle

DRB members not participating in the decision:

- Will Towle

This decision may be appealed to the Vermont Environmental Court by the applicant or an interested person who participated in the proceedings 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.

Dated at Underhill, Vermont this 14 day of June, 2016.

Charles
Van Winkle

Digitally signed by Charles Van Winkle
DN: cn=Charles Van Winkle,
o=Northern Reliability, Inc.,
ou=Chief Operations Officer,
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Charles Van Winkle, Chair, Development Review Board

