



# Town of Underhill

## Development Review Board

### Site Plan Review Findings & Decision

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#### APPEAL REQUEST APPLICATION BY ReTRIBE TRANSFORMATIONS PERTAINING TO A ZONING VIOLATION ISSUED FOR THE OCCUPANCY OF A STRUCTURE WITHOUT A CERTIFICATE OF OCCUPANCY PERMIT

In re: ReTribe Transformations  
8 Maple Leaf Road (ML008)  
Underhill, VT 05489

Docket No. DRB-18-15

**Decision:** Appeal Upheld (see Section III. for More Details)

#### **I. INTRODUCTION AND PROCEDURAL HISTORY**

This proceeding concerns the appeal request application by ReTribe Transformations. The appellant, ReTribe Transformation is appealing a zoning violation issued by the appellee, Zoning Administrator, Andrew Strniste, for the occupancy of a structure, formerly the Maple Leaf Farm men's dormitory, on their property, 8 Maple Leaf Road, without a Certificate of Occupancy Permit. The appellant is requesting that the Development Review Board affirm its appeal request and nullify the zoning violation. The nullification of the zoning violation would effectively result in the issuance of a Certificate of Occupancy Permit.

- A. On July 20, 2018, Planning & Zoning Administrator, Andrew Strniste, sent a letter (Exhibit B) to the applicant, ReTribe Transformations, inquiring about the occupancy of a building (formerly the Maple Leaf Farm men's dormitory) without a Certificate of Occupancy Permit. As expressed in the July 20, 2018 letter, Mr. Strniste explained that by your own admission, you were intending on using the former Maple Leaf Farm men's dormitory for long term housing. Mr. Strniste continued to advise that after reviewing this Board's previous decision (DRB-18-05), that he opined that this Board did not approve long term housing, other than that associated with the Boarding School, to be located in the former Maple Leaf Farm men's dormitory.
- B. On August 16, 2018, the Planning & Zoning Administrator determined that the appellant had continued using the former Maple Leaf Farm men's dormitory for long term housing purposes, and as a result, issued a zoning violation (Exhibit C) for the reasons stated above. Subsequently, the zoning violation was delivered to the Town Clerk, and recorded in the Town's land records that same day – August 16, 2018.
- C. On August 30, 2018, the appellant submitted an appeal request application to the Town Clerk, requesting that the Development Review Board overturn the zoning violation (Exhibit A & D). Should the Board find in favor of the appellant, the zoning violation will be nullified, and as a result effectively result in the issuance of a Certificate of Occupancy. Should the Board find in favor of the appellee, the zoning violation will be upheld, and the appellant would have to take corrective action.

Upon receipt of the appeal request application, a hearing was scheduled for Monday, October 29, 2018 at 6:35 PM.

- D. On October 3, 2018, notice of the appeal request hearing was mailed via Certified Mail to the following property owners adjoining the property subject to the application:
1. Appellant: ML008 – Northern Shire, LLC, 663 Guyette Road, Plainfield, VT 05667
  2. Appellant: ML008 – ReTribe Transformations, 8 Maple Leaf Road, Underhill, VT 05489
  3. Appellee: Town of Underhill, Planning & Zoning, P.O. Box 120, Underhill, VT [via-Hand]
  4. LH021 – Stephen W. Mahin, 21 Ledge Hill Road, Underhill, VT 05489
  5. ML026 – James & Mary Leddy Estate, 14 Elsom Parkway, South Burlington, VT 05403
  6. ML031 – Stephen M. & Tamara V. Pitmon, 31 Maple Leaf Road, Underhill, VT 05489
  7. ML042 – Michael Luck Trustee & Barbara C. Wilson Trustee of the Wilson-Luck Living Trust, 42 Maple Leaf Road, Underhill, VT 05489
  8. ML055 – Frank Tyler Whitcomb, 55 Maple Leaf Road, Underhill, VT 05489
  9. ST157 – John F. & Carole R. Doherty, 157 Stevensville Road, Underhill, VT 05489
  10. ST168 – Christine McArthur David & Frances Dube, Anna Leigh Horton, 266 Old Stage Road, Essex Junction, VT 05452
  11. ST204 – Jeffrey L. & Karen C. Davis, P.O. Box 229, Underhill Center, VT 05490
  12. ST217 – Elaine Herman Trustee, P.O. Box 116, Underhill Center, VT 05490
  13. ST219 – Jon Howard, P.O. Box 43, Underhill Center, VT 05490
  14. ST221 – Infields, LLC, Livingston Howard, 199 Bayberry Lane, Westport, CT 06880
  15. WH006 – Ryan & Julie A. Ochs, 6 Wheeler Road, Underhill, VT 05489
  16. WH014 – Richard J. & Margaret E. Rushlow, P.O. Box 86, Underhill, VT 05490
  17. WH026 – John & Angela M. Hermoian, 5184 Carlton Ridge Circle, Hahira, GA 31632
- E. During the week of September 30, 2018, notice of the public hearing for the appeal request was posted at the following locations:
1. The Underhill Town Clerk's office;
  2. The Underhill Center Post Office; and
  3. Jacobs & Son Market.
- F. On October 6, 2018, notice of public hearing was published in the *Burlington Free Press*.
- G. The appeal request hearing commenced at 6:35 PM on Monday, October 29, 2018 at the Town of Underhill Town Hall, 12 Pleasant Valley Road, Underhill, VT.
1. Present at the site plan review hearing were the following members of the Development Review Board:  
Board Member, Charles Van Winkle, Chair
  2. Board Member, Matt Chapek
  3. Board Member, Mark Green
  4. Board Member Daniel Lee
  5. Board Member, Karen McKnight
  6. Board Member, Penny Miller
  7. Board Member, Stacey Turkos

Also, in attendance was appellee and Staff Member Andrew Strniste, Planning Director & Zoning Administrator.

Others present at the hearing were:

1. Appellant, Julia Martin (10 Maple Leaf Road, Underhill, VT)
2. Appellant, John Hunt (10 Maple Leaf Road, Underhill, VT)
3. Appellant, Jane Martin (12 Maple Leaf Road, Underhill, VT)

H. At the outset of the hearing, Chairperson 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. Appellant, Jane Martin
2. Appellant, Julia Martin
3. Appellant, John Hunt

While not present at the evening’s hearing, abutting neighbor, Elaine Herman submitted email correspondence to the Development Review Board, thus qualifying for as an interested party.

I. In support of the appeal request application, the following exhibits were submitted to the Development Review Board:

1. Exhibit A - Appeal Application
2. Exhibit B - Potential Zoning Violation Inquiry
3. Exhibit C - Zoning Violation
4. Exhibit D - Letter Requesting Zoning Violation Reversal
5. Exhibit E - Certificate of Service
6. Exhibit F - DRB-18-05 Conditional Use Review Decision

No additional exhibits were distributed to the Board prior to the Monday, July 16, 2018 hearing; however, the following exhibits were submitted into the record during the hearing:

7. Exhibit G – *Burlington Free Press* Notice
8. Exhibit H – Email Correspondence from Elaine Herman

All exhibits are available for public review in the ReTribe Transformations Appeal Request file (ML008/DRB 18-15) at the Underhill Zoning & Planning office.

## II. **FACTUAL FINDINGS**

The Minutes of the October 29, 2018 meeting, written by Andrew Strniste, are incorporated by reference into this decision. Please refer to the Minutes for a summary of the testimony.

Based on the submitted application, testimony, exhibits, and evidence, the Development Review Board makes the following findings under the requirements of the 2011 *Underhill Unified Land Use and Development Regulations* (ULUDR) as amended through March 6, 2018:

- A. ReTribe Transformations provides various programs for children, teens, young adults and adults. An earlier decision by the Development review Board approved ReTribe co-owners Julia Martin and John Hunt, to convert for their use the former Maple Leaf Farm campus to a mixed-use facility.

- B. The Development Review Board allowed conditional-use of various buildings and infrastructure based on the information supplied by the applicants to operate the business of ReTribe Transformations, including specific numbers of occupants and the nature of their use such as hostel, therapeutic health clinic, school/boarding school dormitory and program area as well as two single-family houses.
- C. Since crafting and issuing its decision, the Development Review Board finds that the approved conditional-use of the Boarding School dormitory (former Maple Leaf men's dormitory) is being utilized instead for long term residence on a rental basis and to house individuals in return for labor to renovate and maintain campus facilities. The appellants' change and unapproved use of the building and occupancy prior to issuance of a Certificate of Occupancy lead planning Director and Zoning Administrator Andrew Strniste to issue a Zoning Violation.
- D. The Board understands the appellants' programming needs are complex as it transitions to its new location and plans for future growth to include a boarding school. However, the Board finds the change in use by ReTribe Transformations to house staff in a building without a Certificate of Occupancy is in violation of the Board's signed April 30<sup>th</sup>, 2018 decision.

### **DECISION AND CONDITIONS**

The Board is satisfied with the level of investigation and evaluation conducted in the appeal process concerning the above-mentioned project.

Based upon the findings above, and subject to the conditions below, the Development Review Board upholds the decision of the appellee, Zoning Administrator Andrew Striniste, to issue violation of conditional-use to the appellant, ReTribe Transformation for occupancy of a building prior to the issuance of a Certificate of Occupancy. Included in the Board's decision are conditions as follows:

1. The Board requests the appellant continue the conditional-use hearing and more clearly define the Men's Dormitory building intended occupancy, along with conditional-use change requests for the existing Barn and Office building.
2. The Board advises that ReTribe may continue to operate the facility while in the process of curing the violation.
3. The Board rules in favor of the appellant's request to waive fines due to this violation.

Dated at Underhill, Vermont this 10<sup>th</sup> day of December 2018.

*Charles Van Winkle*

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Charles Van Winkle, Chairperson, Development Review Board

NOTICE: This decision may be appealed to the Vermont Environment Court by 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. Appeal period ends January 10<sup>th</sup> 2019.