

**Town of Underhill  
Development Review Board Minutes  
April 9, 2018**

**Board Members Present:**

Matt Chapek  
Mark Green  
Daniel Lee  
Stacey Turkos  
Shanie Bartlett

**Staff/Municipal Representatives Present:**

Andrew Strniste, Planning Director

**Others Present:**

Peter Duval (25 Pine Ridge Road)  
Peter Davis (15 Waughbrook Lane)  
Tood MacKenzie (2 Krug Road)  
Michael Diffenderffer (15 Pleasant Valley Road)

**Board Members Present After Hearing:**

Charles Van Winkle, Chair  
Penny Miller

**6:30 PM – 04/09/2018 DRB Public Meeting**

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- DRB Members convened at Town Hall at 6:00 PM in preparation to attend a site visit at 1 Pleasant Valley Road.
- [6:30] Acting Chair Stacey Turkos called the meeting to order.
- [6:31] Acting Chair Turkos asked for public comment. No members of the public were in attendance, and therefore, no public comment was provided.
- [6:31] Acting Chair Turkos and Staff Member Strniste discussed the procedural process regarding the upcoming hearing.

**6:35 PM – Rade Holdings, LLC Conditional Use Review  
1 Pleasant Valley Road (PV001), Underhill, Vermont**

**Docket #: DRB-18-06**

- [6:35] Acting Chair Turkos began the meeting by providing an overview of a conditional use review hearing. She then explained the hearing procedures for the evening's hearing and swore in those who wished to speak. Acting Chair Turkos asked the Board if there were any ex parte communications with the applicant or any conflicts of interest. No ex parte communications had been made. No conflicts of interest were identified. Two members of the public were present for the evening's hearing. No conflicts of interest were identified. One additional exhibit was inserted into the record – an email from Underhill Resident Cynthia Seybolt.
- [6:42] Due to 24 V.S.A. § 4449(d), the Board discussed which set of regulations – either the 2014 *Unified Land Use & Development Regulations* or the 2018 *Unified Land Use & Development Regulations* – applied. Staff Member Strniste explained that he could not decide for the Board which set of regulations applied. After answering some clarification questions, the Board recognized that in order to comply with State law, they had to apply the 2018 *Unified Land Use & Development Regulations*.
- [6:45] Mr. Peter Davis was presenting the application on behalf of Rade Holdings, LLC. He advised in 2017, he was conditionally permitted for three dwellings and commercial space. At that time, he was intending to apply for four dwelling units rather than three dwelling units and commercial space; however, was convinced by others in the community to reserve some of the bottom floor space for commercial space. Mr. Davis then informed the

Board that he had a lease signed and a tenant in place; however, the deal collapsed. He explained that a lot of money was expended in order to fit the area for commercial space, and now, he could not find an alternate tenant. Mr. Davis then advised that in the fall, he felt the best opportunity to rent the commercial space was to repurpose it to residential space. He had contacted Staff Member Strniste in late-November and there was no indication that he would not be able to proceed with the intended conversion. Mr. Davis then stated that he submitted the application in mid-February and did not hear back from Staff Member Strniste until mid-March. In the meantime, the new regulations were approved by the voters. He then stated that he was informed by the Planning Commission Chair that the new regulations would not affect him. Subsequently, everyone was surprised when the emergence of the statute appeared.

- [6:51] Mr. Davis advised that his goal for the property is to optimize the property, as the country store could not sustain itself. He then advised that the property is way below market value, and that he is struggling to make the property sustainable. As a result, Mr. Davis was forced to go back to work part time. He then advised that while a reasonable counterpoint to his situation is to make the entire downstairs one apartment, Mr. Davis advised that prospective tenants are not seeking a three-bedroom apartment and then mentioned the concept of sub-optimization, which is that the revenue stream of a one-bedroom and two-bedroom apartment is not the same as a three-bedroom apartment.
- [6:54] Board Member Green advised that he wanted to walk through the conditional use review criteria. Board Member Chapek asked about the project review sheet, as the document stated that there were 2 one-bedroom apartments upstairs; however, Mr. Davis has portray one of the apartments being a two-bedroom apartment on the site plan. Mr. Davis advised that the “two-bedroom” apartment was technically one-bedroom.
- [6:58] Staff Member Strniste provided an overview of comments included in the Staff Report. Mr. Davis advised that the country store sign would be removed.
- [7:00] Acting Chair Turkos began a discussion about the parking, advising that there were concerns with parking on the east; however, as discussed at the site visit, one of the garage bays could be utilized. Further discussion ensued about closing off the turnaround area on the west side of the building. Board Member Chapek advised that they could condition approval on closing off the turnaround area at the property line. Board Member Bartlett asked a clerical question on why they would close off the turnaround area, which the Board referenced the email from Mr. Patrick Lamphere, the abutting neighbor. Staff Member Strniste advised that while this is a private party dispute, the Board has the ability to condition approval on closing off the turnaround with some latitude – vague to specific. The Board chose to discuss the issue in deliberative session.
- [7:04] Acting Chair Turkos advised for the record that the Board, at the site visit, went to the rear of the property to look at the wastewater system. A discussion ensued about the wastewater system permit. Staff Member Strniste informed the Board that he anticipates there being less demand than what is currently permitted. Board Member Chapek asked a question about setbacks, specifically setbacks on the west side of the building. Staff Member Strniste advised the Board has the ability to consolidate the curb cut, though not recommended.
- [7:10] Board Member Lee asked if snow removal had been an issue in the past and whether any snow falling from the roof infringed upon the parking spaces. Mr. Davis advised that he has not had any issue as the jersey barrier and covered porch create a buffer area for the snow to accumulate. He then informed that snow removal is pushed away from the garage and towards the treeline. In response to Staff Member Strniste’s question about removing snow to off-site locations, Mr. Davis advised that he has not had to yet.

- [7:12] Board Member Green advised that while they did not want to micromanage the applicant, the Town ultimately holds the land owner responsible for trash removal, and asked if it could be made more explicit in the maintenance plan, as there is no recourse with the tenants.
- [7:15] Board Member Chapek asked what permitting or approvals would have to be obtained from the State should the Board approve the application for four dwelling units. Mr. Davis informed the Board that he was not certain, but currently, the front unit, which was supposed to be the commercial space was “over code,” as it is wired for commercial space and has commercial plumbing installed. Board Member Chapek advised that the State may also look at sufficient window space and entry ways.
- [7:16] No comments from the public were provided. Board Member Green advised that since the Board is make a decision under the 2018 *Unified Land Use & Development Regulations*, a variance is required for the fourth unit, and the applicant should make a case for granting the variance; specifically, providing more detail about the unnecessary hardship criteria.
- [7:20] Mr. Davis advised that he was not able to rent the space as developed commercially, as he has been unsuccessful. He is now forced to follow the market, and the best use of that space is residential, as prospective retail space has changed dramatically due to the Jericho Market. Mr. Davis advised that the back part of the first floor has yet to be developed.
- [7:23] Board Member Lee asked how the applicant has been marketing the commercial space. Mr. Davis responded that he has a sign up at the store, posted on *Front Porch Forum* and word of mouth. Board Member Chapek asked a clarification question about what the variance applies too, which Staff Member Strniste advised that it was for the proposed, fourth dwelling unit.
- [7:25] Acting Chair Turkos read Underhill Resident Cynthia Seybolt’s email into the record, as well as an email sent to Staff Member Strniste during the hearing from Nancy Jones & Paul Moran (Exhibit U). A discussion ensued about the property’s boundaries.
- [7:32] Acting Chair Turkos asked if the Board had enough information to make a decision about the application. The Board advised that they did. Board Member Chapek made final remarks in regards to the concerns they discussed that evening. Acting Chair Turkos asked the Board if they wished to discuss the applicant in closed or open session. Board Member Green made a motion to discuss the application in closed deliberative session. The motion was seconded by Board Member Bartlett and approved unanimously. The Board advised Mr. Davis that they had 45 days to issue their decision.

### **7:35 PM – Michael Diffenderffer Inquiry**

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- [7:35] DRB Member Penny Miller and Chairman, Van Winkle rejoined the board after being recused from the Davis hearing.
  - [7:35] Michael Diffenderffer was before the Board to discuss a project proposal and see how receptive the Board would be to the proposed project. He advised that he wanted to create a collaborative space. A discussion ensued about the work that would need to be performed. He advised the Board he did not want to run a restaurant. The Board and Mr. Diffenderffer discussed the wastewater limitations.
  - [7:43] Board Member Miller brought up that parking may be an issue. Mr. Diffenderffer advised that he wants to be creative and do what is best for the town. Board Member Green advised that he felt that the project would fall under the mixed-use category.
  - [7:47] Chair Van Winkle informed Mr. Diffenderffer that the likely issues would be number of seats, sewage flow, wastewater, and hours of operation. Board Member Miller informed

Mr. Diffenderffer that he would need to discuss the project with the Department of Fire and Safety, and make the building ADA accessible. Mr. Diffenderffer informed the Board that the neighbors seemed to be receptive to the idea.

- [7:54] Chair Van Winkle advised that Mr. Diffenderffer would have to submit a formal application. Staff Member Strniste advised that he would work with Mr. Diffenderffer to figure out what to submit. Chair Van Winkle advised that the Board would be looking for specifics and not given a 10-year plan. Board Member Bartlett supported the notion that the project would be a mixed-use building.
- [8:00] The Board advised that any shared parking arrangement would have to be approved by the Selectboard. Mr. Peter Duval advised that given the new issue (24 V.S.A. § 4449(d)) with his application, that conducting his hearing in June would better, and that Mr. Diffenderffer could have his time slot on May 7.

### **7:03 PM – Other Business**

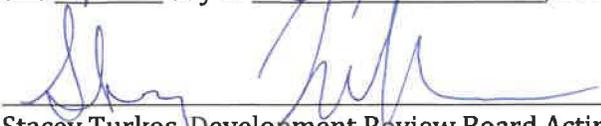
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- [8:10] Board Member Lee made a motion to enter into closed deliberative session to discuss the Rade Holdings, LLC application. Board Member Bartlett seconded the motion. The motion was approved unanimously. The Board entered into closed deliberative session. DRB members Miller & Van Winkle left the room.
- [8:40] Board Member Bartlett made a motion to exit closed deliberative session. The motion was seconded by Board Member Lee and was approved unanimously.
- [8:41] DRB members Miller & VanWinkle rejoined the board, and Board Member Miller made a motion to enter into closed deliberative session to discuss outstanding Development Review Board applications. The motion was seconded by Board Member Chapek and approved unanimously. The Board entered into closed deliberative session.
- [9:37] Board Member Chapek made a motion to exit closed deliberative session, which was seconded by Board Member Green. The motion was approved unanimously.
- [9:38] The Board signed the conflict of interest policies. A discussion then ensued about whether the Board should vote in deliberative session going forward.
- [9:41] No changes to the Rules of Procedure were made.
- [9:41] Board Member Miller advised that she would have to step away from being the Board's clerk for the time being. Commissioner Chapek volunteered to be clerk. Board Member Miller nominated Board Member Chapek to be Clerk, which was seconded by Board Member Turkos. The motion was approved unanimously.
- [9:45] Board Member Miller nominated Board Member Van Winkle to be Chair. The motion was seconded by Board Member Green, and was approved unanimously.
- [9:45] Board Member Chapek nominated Board Member Turkos to be Vice Chair. The motion was seconded by Board Member Green, and was approved unanimously.
- [9:46] Staff Member Strniste advised that a couple members of the Board could attend a Planning Forum if they wished in the spring.
- [9:47] Board Member Turkos made a motion to approve the minutes of February 26, 2018. The motion was seconded by Board Member Chapek and approved unanimously.
- [9:48] After discussion about the minutes of March 19, 2018, and whether the applicant would be working towards accreditation, Board Member Miller made a motion to approve the minutes of March 19, 2018. The motion was seconded by Board Member Turkos and approved unanimously.
- [9:51] A clarification question about 24 V.S.A. § 4449(d) was discussed.
- [9:52] Board Member Chapek made a motion to adjourn, which was seconded by Board Member Turkos. The motion was approved unanimously.

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Submitted by:  
Andrew Strniste, Planning Director & Zoning Administrator

These minutes of the 04/09/2018 meeting of the DRB were accepted  
this 16<sup>th</sup> day of July, 2018.

  
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Stacey Turkos, Development Review Board Acting Chair