

**Town of Underhill
Development Review Board Minutes
May 7, 2018**

Board Members Present:

Charles Van Winkle, Chair
Matt Chapek
Mark Green
Daniel Lee
Karen McKnight
Penny Miller
Stacey Turkos

John McNamara (7 Pine Ridge Road)
Dianne Terry (34 Pine Ridge Road)
Steve Coddling (34 Pine Ridge Road)
Jamie Duke (16 Pine Ridge Road)
Heidi Duke (16 Pine Ridge Road)
Barbara Koier (15 Pine Ridge Road)
Leslie Dee (28 Pine Ridge Road)
Nancy Hall (31 Pine Ridge Road)
Elizabeth Gembczynski (28 Pine Ridge Road)
Thad Gembczynski (28 Pine Ridge Road)
Kathleen Gembczynski (28 Pine Ridge Road)
Yuri Bitten (13 Bereand Lane, Jericho, VT)

Others Present :

Peter Duval (25 Pine Ridge Road)
Gunner McCain (93 S. Main St., Waterbury, VT)
Cathy McNamara (7 Pine Ridge Road)

6:38 PM – 05/07/2018 DRB Public Meeting

- DRB Members convened at Town Hall at 6:30 PM.
- [6:38] Chair Van Winkle called the meeting to order.

**6:38 PM – Duval Continued Conditional Use Review Hearing
25 Pine Ridge Road (PR025), Underhill, Vermont**

Docket #: DRB-17-16

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- [6:39] Chair Van Winkle began the meeting by providing a brief explanation of the timing of the Duval application and its review by the Board under either the 2014 or 2018 UULU&D Regulations. The March 26 letter to the applicant from Planning Director Andrew Strniste explaining the situation was mentioned.
 - [6:42] Mr. Duval stated that he sent a reply email on May 6 or 7 to Andrew Strniste about the contents of the March 26 letter but had no response (it was explained that the PZA is on vacation) Mr. Duval began the explanation of his project in terms of the site's close proximity to Town Hall.
 - [6:44] Mr. Steve Coddling requested the Board ask Mr. Duval to go through and address the list of 12 items in the February 15 letter to Mr. Duval from PZA Strniste.
 - [6:45] Chair Van Winkle replied that he wanted to let the applicant finish his presentation and submit all information at this meeting as expected by the Board, and if not, then he will have until the May 21 meeting at which time the evidentiary portion of the hearing will be closed. The Board will then make a decision.
 - [6:50] Mr. Duval made further reference to the timing of his application and under which regulations it is to be reviewed. More discussion with Chair Van Winkle followed.
 - [6:55] Mr. Duval continued his presentation explaining the close proximity of his project to the center of Town, soil type and general landscape and orientation of the site. Some discussion ensued pertaining to the trail dedication on site. Board members Miller and McKnight asked for some clarification of the location of the trail and its means for crossing the river. Mr. Duval made mention of his waiver request which will be made to the

Selectboard to reduce the width of the driveway from 20' to 12'. He also made reference to addressing four concerns expressed at earlier meetings pertaining to water supply, dogs, scale and rentals. He stated that engineer Gunner McCain will address waste-water design. Mr. Duval stated he had drawings for review. Board member Miller asked if he had submitted the drawings digitally to the website as she had not yet seen any drawings. Questions from the Board followed regarding submitting the drawings to which Mr. Duval agreed.

- [7:00] Mr. Duval mentioned the lack of communication regarding the project between him and neighbors even after having reached out to them for discussion. He felt that the rule of ex-parte communication was misunderstood to mean no communication is allowed. For this and other reasons he expressed his wish for a continuance of the hearing to a later date. Much brief comment came from several neighbors present who voiced frustration and objection to a continuance.
- [7:03] Chair Van Winkle redirected the discussion toward the public process and additional information the Board was requesting in the February 15 letter to the applicant. Mr. Duval redirected the discussion to the question of which regulations apply to his application. Chair Van Winkle stated that in Mr. Duval's opinion the 2014 UULU&D Regulations apply however in the opinion of PZA Strniste, the 2018 regulations apply. A discussion ensued among the applicant and Board members Turkos and Miller about the application process and what timeline determines an application to be complete.
- [7:05] Much discussion ensued about the application process with Chair Van Winkle, Mr. Duval and Board Member Miller. Mr. Duval recommended that his lawyer and the Town lawyer would need to meet to establish which regulations apply. Chair Van Winkle suggested a vote by Board members might be entertained to make the decision. Board Member Green stated that he understood from the Town's legal counsel that the 2018 regulations apply and that he would not be in favor of a vote by the Board to make a different determination. He would have to read through the statute before forming a differing opinion from the counsel.
- [7:15] Chair Van Winkle openly read through the list of items requested in the February 15 letter to the applicant and added that a majority of the information had not yet been presented. Chair Van Winkle asked of Mr. Duval if he had anything in addition to present to the board at this time. Mr. Duval said there was no point in any more presentation if the review was not to be under the 2014 regulations. After much discussion Board member Miller urged Mr. Duval to present the information he had regardless of which rules apply. Board member Green also asked that the applicant continue with the presentation and wondered if the project had changed substantially. Mr. Duval again requested a stay so that lawyers can discuss and agree on which regulations to apply before continuing. He requested a continuance of the hearing from one month to date. The Board discussed their schedule for possible dates. Neighbor Dianne Terry responded that it wasn't right if they (the neighbors) were to be subjected to continued hearings indefinitely. Neighbor Cathy McNamara expressed the same concern.
- [7:20] More discussion among applicant, Board and neighbors about ex-parte communication definition and public disclosure. Ms. Leslie Dee and Mr. Steve Coddling expressed their frustration with the applicants need for further communication and discussion among the neighbors.
- [7:25] Chair Van Winkle asked Mr. Duval to request a continuance or to close testimony. Mr. Duval responded that he would like a continuance of the hearing and a stay on the issue of the regulations. He saw no point in continuing under the new regulations. Board member Green asked the neighbors if there was anything about the project that if changed, for

instance the reduction in scale, would make it more acceptable. Most audible response from neighbors was no. Neighbor Jaimie Duke responded that he would be open to the project if the need was based on housing a family member or aging parents for instance.

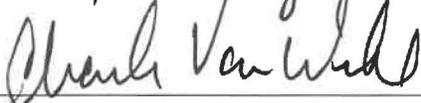
- [7:30] Board Member Miller inquired of the neighbors how many would be willing to meet with the applicant to review the project. Only response was from Ms. Leslie Dee who stated that there is nothing more that needs to be discussed that can't be discussed at these meetings. Neighbor Heidi Duke had a similar response. Board member Miller clarified the Board takes in to account neighbors' opinions but also tries to apply the regulations. She wouldn't want to give the applicant the impression that just because neighbors don't want it that there is no use in a Board review. Ms. Nancy Hall stated that she is not in favor of the project. It seems very tight for an additional 6 plus cars as witnessed by a recent snowstorm when cars were necessarily parked on the street in order for driveways to be cleared. She is concerned that not one of the 15 items asked of the applicant have been submitted. Mr. John McNamara was not in favor of a continuance and felt disrespected by the applicant showing up to meetings unprepared and asking for more time. Mr. Jaimie Duke questioned why the footprint and massing study had been produced but not presented yet to the public. Chair Van Winkle advised that all information received will be posted to the Town website and open to the public. He then called for final public comment.
- [7:35] Chair Van Winkle gave the applicant the opportunity to respond. Mr. Duval said that it was evident that he (Duval) had difficulties communicating with the interested parties to which the Chair responded that he thought it was pretty clear that at the first meeting everyone was against the project. Mr. Duval does not believe there should be any question that the Board should apply the 2014 regulations. Board member Turkos asked the applicant why if all the information was ready, why wasn't it submitted before tonight's meeting. Mr. Duval pointed out that he did request a continuance at an earlier meeting of the Board but the request was denied. Board members Miller and McKnight implored the applicant to submit the information. The applicant requested at this time for engineer Gunar McCain to present the site plan and he could answer technical questions concerning waste-water, water and storm water. Chair Van Winkle responded to Mr. Duval that he had plenty of time to prepare for the presentation and that he (Van Winkle) was pretty much done here. Additionally, if he wants, he can submit the drawings electronically and pointed out that this was redirect portion and not testimony portion. The applicant electronically accessed a drawing of the mass study and briefly presented it to the Board members only. Several comments followed from the Board concerning the changed concept of the project to a single building to which the applicant replied that the barn was removed from the application.
- [7:40] Chair Van Winkle stated that at the February 5 meeting the Board held open the evidentiary portion of the hearing an additional two weeks beyond tonight's meeting for the benefit of those who could not attend. The Board had expected all information prior to tonight but if the applicant wished he could still submit all information to the Board tonight. He concluded that the evidentiary portion would be held open for interested parties to comment until the meeting on May 21 after which no additional testimony would be taken. At that time the evidentiary portion of the meeting would be closed and the Board is to make a decision. Chair requested a motion to his conclusion statement to which Board Member Turkos so moved, member McKnight seconded and all members voted in favor. Discussion followed after questions from Ms. Leslie Dee to clarify the process going forward and the schedule for the May 21 meeting. Chair Van Winkle advised all information would be posted to the Town website. Mr. Duval asked about the request for a stay to which the Chair replied he could submit a written request for stay to the Town website until May 21.
- [7:46] Chair indicates end of redirect portion of Duval hearing.

7:50 PM – Other Business

- [7:51] Board discussion around the agenda for the May 21, 2018 meeting
 - [7:54] Board Members and Chair have discussion around the clarification of the complete application process and the creation of a check list for PZA to use for submittals. Chair and Board briefly discuss and clarify Duval application and meeting.
 - [8:05] Board Member Turkos moved to end meeting seconded by Member Green.
 - All in favor Board Adjourns.
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Submitted by:
Matt Chapek, Clerk and Board Member

These minutes of the 05/07/2018 meeting of the DRB were accepted
this 7 day of June, 2018.



Charles Van Winkle, Development Review Board Chair