



Town of Underhill

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Memorandum

To: Development Review Board
From: Andrew Strniste, Planning Director & Zoning Administrator
Date: May 21, 2018
Re: 25 Pine Ridge Road (PR025) Conditional Use Review Application

At the request of the applicant (Mr. Peter Duval), and in response to his email submitted to Staff on Thursday, May 17, 2018, Staff is submitting this memorandum to provide clarification on various issues that emerged during his third continued hearing on May 7, 2018.

ASSERTION I – OMISSIONS OF MATERIAL FACT

The applicant contends that there are important facts that were omitted in the letter Staff issued on March 26, 2018. Specifically, Mr. Duval asserts that he formally submitted a substantially complete application on November 2, 2017. Staff notes that Mr. Duval did submit hard copies of his application on November 2, 2017; however, Staff does not recall the extent of those materials that were submitted. Staff used the date of November 4, 2017 because that is the date the applicant submitted all of the materials electronically. Regardless of which day is considered the formal date of submission of those initial materials, both dates are prior to November 11, 2017, the date of the Selectboard's first public warning.

Mr. Duval also asserts that 24 V.S.A. § 4449(d) clearly states that the application must be *filed* before the Selectboard's first public notice is posted. In the March 26, 2018 letter, in the third paragraph (following the text of 24 V.S.A. § 4449(d)), Staff emphasized the word "completed," which as correctly stated by Mr. Duval, is not in the text of the statute. Staff notes that he (Staff) emphasized the word "completed" because the Town's attorneys had advised accordingly. In other words, Staff notes the emphasizing of the word "completed" was himself emphasizing an assertion provided to him by the Town attorneys.

Additionally, Staff acknowledges that the March 26, 2018 letter excludes various emails between him and the applicant; however, the emails selected to be in the letter pertained to (in Staff's opinion) the completeness of the application. Staff was planning to submit the email correspondence in its entirety to the Board for consideration; however, the applicant advised that not all of that information was intended to be in the record, and therefore, Staff defers to the applicant's wishes, and is not submitting that correspondence.

Staff is unaware of, nor does he recall, any other omissions of material fact alleged by the applicant.

ASSERTION II – NECESSARY CLARIFICATION OF THE MARCH 26, 2018 LETTER

The applicant also asked Staff to provide clarification about the intent of the March 26, 2018 letter. Staff notes that the content of the letter was to advise the applicant that 24 V.S.A. § 4449(d) could impact his application. Furthermore, the applicant felt that the letter was misconstrued by the Board during the May 7, 2018 hearing as to Staff making a definitive conclusion about the applicability of § 4449(d). Staff

maintains that the Board is the body that determines which set of regulations (2014 or 2018) applies, and that no definitive answer or recommendation pertaining to the applicability of either set of regulations was provided by Staff in the letter, and that a decision regarding this issue will need to be made prior to making a determination on the application.

ASSERTION III – DECISION BY DRB IN PRIVATE FORUM (RATHER THAN PUBLIC FORUM)

The applicant has asserted that during the hearing, a member from the Board advised that the Board had previously made a decision in regards to the 24 V.S.A. § 4449(d) issue. The applicant alleges that this decision was made outside of the public hearing process. Staff has informed the applicant that he is unaware of any decision being made about the issue.

ASSERTION IV – LACK OF A WRITTEN ATTORNEY OPINION

Next, the applicant has expressed some displeasure about Town representatives (specifically Planning & Zoning Staff) receiving legal advice on a matter pertaining to his application with no supporting written opinion. Staff has no comment on the matter and would have to consult with the Town’s attorney to determine what topics can be discussed in a public manner and what topics may be privileged information, which could potentially render the topic of requiring a written opinion moot.

CONCLUSION

While the applicant has informed Staff of other issues that emerged during the May 7, 2018 continued hearing, Staff opines that the assertions are more related with being frustrated with the process and not so much related to substantive material of the application. In addition, the applicant has asked for the May 17, 2018 email to be excluded from of the Development Review Board’s record.

Should any questions arise, please do not hesitate to contact me.



Andrew Strniste
Planning Director & Zoning Administrator

5/21/2018

Date