

TOWN OF UNDERHILL
APPLICATION OF JAMES DURBROW
FOR CONDITIONAL USE REVIEW
FINAL FINDINGS AND DECISION

In re: James Durbrow
523 Vermont RT 15
Underhill VT, 05489

Docket No. DRB 15-07: Durbrow, 523 Vermont RT 15, Underhill, VT

I. INTRODUCTION AND PROCEDURAL HISTORY:

This proceeding concerns James Durbrow's conditional use review hearing for a Home Industry on the property he owns at 523 Vermont Route 15 (VT523) in Underhill, Vermont.

- A. On August 12th, 2015, James Durbrow filed an application for conditional use review. A copy of the application and additional information are available at the Underhill Town Hall.
- B. On August 14, 2015, a copy of the notice of a public hearing was mailed via Certified Mail to the Applicant, James Durbrow, at 523 Vermont Route 15, and to the following owners of properties adjoining the property subject to the application:
 - 1. James Durbrow 523 Vermont RT 15, Underhill, VT 05489
 - 2. Robert & Lisa Hill P.O Box 292 Underhill, VT 05489
 - 3. Patrick Crowley 505 VT Rt 15 Underhill, VT 05489
 - 4. Brian Martin, 507 Cilley Hill Rd, Underhill VT 05489
 - 5. Frederick D. Nelson P.O. Box 293 Underhill, VT 05489
 - 6. Clifford & Nancy Hill Life Estate P.O Box 65 Underhill, VT 05489
 - 7. Andrew Johnson 497 VT Rt 15 Underhill, VT 05489
 - 8. Frederick D. Nelson P.O. Box 293 Underhill, VT 05489
- C. Notice of the public hearing was posted at the following places:
 - 1. The property to be developed (VT523)
 - 2. The Underhill Town Hall;
 - 3. The Underhill Center Post Office;
 - 4. The Underhill Flats Post Office
- D. On August 8, 2015, notice of public hearing was published in Burlington Free Press Newspaper.
- E. The Conditional Use Review Hearing began after a Site Visit at 6:00 pm with a meeting at 6:30 pm on August 31, 2015.

F. Present at the hearing were the following members of the Development Review Board:

- Charles Van Winkle, Chairperson
- Will Towle
- Penny Miller
- Matt Chapek
- Mark Hamelin
- Mark Green

Applicant James Durbrow and his daughter Melissa Lawson, owner of the proposed business, Rachel Fifield (Planning and Zoning administrator) also attended 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 were:

- James Durbrow (Applicant/property owner—VT523)
- Melissa Lawson (business owner/property renter—VT523)

H. During the course of the hearing the following exhibits were submitted to the Development Review Board:

- a) A copy of the procedure checklist for this hearing
- b) A copy of the Site Plan
- c) James Durbrow’s Conditional Use Hearing Request
- d) A copy of the completed Conditional Use Review Standards Findings Checklist;
- e) A copy of the tax map for VT523;
- f) A copy of the hearing notice (published in the Burlington Free Press)
- g) A copy of the letter sent to abutters

These exhibits are available in the Durbrow, VT523, Conditional Use file at the Underhill Town Hall.

II. FINDINGS:

Factual Findings

The minutes of the meeting written by Rachel Fifield (Planning and Zoning administrator) are incorporated by reference into this decision. Please refer to these minutes for a summary of the testimony.

Based on the application, testimony, exhibits, and other evidence, the Development Review Board makes the following findings:

A. The Applicant seeks Conditional Use Review approval for a Home Industry in the form of a mobile food truck at an existing parking lot on the property located at 523 Vermont Route 15 (VT523) in

Underhill, VT.

- B. The property is located within the Rural Residential zoning district as defined in Article II, Table 2.2 of the Unified Land Use and Development Regulations, last amended March 4, 2014.
- C. No testimony was received from any interested parties other than the applicant.
- D. Based on the information contained in the application, and the testimony from the applicant heard at the hearing the board finds the use is consistent with criteria outlined in Section 4.12 D Home Industry, of the ULUDR as amended.
 - a. Based on the information contained in the application, and the testimony from the applicant heard at the hearing, the board finds the application meets the following Standards for Conditional Use Review of the ULUDR as amended: Section 5.4 B – General Standards
 - b. Section 5.4 C – Site Plan review Standards
 - c. Section 5.4 D – Specific Standards

III. CONCLUSIONS:

The Board reviewed the application for conformance with the following sections of the Unified Land Use and Development Regulations.

- Article II, Table 2.3 – Rural Residential District (pg. 12)
- Section 3.13 – Parking, Loading and Service Areas (pg. 41)
- Section 3.16 – Signage (pg. 47)
- Section 3.2 – Access (pg. 27)
- Section 3.7 – Lot, Yard & Setback Requirements (pg. 35)
- Section 3.19 – Surface Waters & Wetlands (pg. 60)
- Section 4.12 – Home Business (pg. 82)
- Section 5.3 – Site Plan Review (pg. 108)
- Section 5.4 – Conditional Use Review (pg. 113)

IV. DECISION AND CONDITIONS:

Based upon the findings above, and subject to the conditions below, the Development Review Board grants conditional use approval as described at the hearing and in the submitted application documents with the following conditions.

Proposed approval conditions:

- A. The applicant shall maintain screening on the proposed site through minimal clearing on the Route 15 side of the property. Specifically, trees with a diameter breast height, DBH of 10 inches or greater shall not be cleared unless dead or diseased.
- B. Electricity for the food truck may be provided by a direct utility connection or an onsite portable generator, noise output of the portable generator shall not exceed town noise standards at the property line.
- C. No flood or area lighting shall be permitted in association with the proposed Home Industry.
- D. Hours of activity at the site shall be allowed from one hour after dawn until one hour after dusk.

- E. Portable toilets and picnic tables shall be allowed up to a 50 foot radius from the edge of the parking lot as shown on the site plan.
- F. As a condition of this approval, the applicant must maintain a valid Vermont State Caterer's License.
- G. Trash is to be removed and stored securely.
- H. The 5 parking spaces shown on the site plan shall be provided at a minimum, although more parking is allowable so long as it is limited to the parking lot shown on the site plan. No parking shall be permitted on the driveway or within the VT Route 15 right-of-way, or VT Route 15 itself.
- I. This permit shall run with the applicant or his immediate family, as long as they reside on the parcel.

Dated at Underhill, Vermont this 14 day of September 2015.

Charles Van Winkle

Charles Van Winkle, Chair, Development Review Board

NOTICE: This decision may be appealed to the Vermont Environmental 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 October 14, 2015.