

**STATE OF VERMONT
SUPERIOR COURT – ENVIRONMENTAL DIVISION**

**In re Harrison Conditional Use Permit
(Appeal from Berkshire DRB approval)**

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Docket No. 155-11-12 Vtec

Judgment Order

Amy Harrison d/b/a Phoenix House Restaurant & Bakery (Applicant) obtained Conditional Use Approval from the Town of Berkshire Development Review Board (DRB) for a restaurant, bakery, and rental unit located at 7 Potato Hill Road, West Berkshire, Vermont (the Project). Stacy Silloway (Appellant), the owner of an adjoining parcel at 61 Potato Hill Road, appealed the DRB's November 5, 2012 approval and raised five questions for the Court to review. Both Applicant and Appellant represent themselves in this matter.

The Court convened a site visit on the morning of the merits hearing on May 31, 2013 at the subject property. Immediately following the site visit, the Court convened the merits hearing at the Superior Court, Franklin Civil Division. Appellant and Applicant participated in the site visit and merits hearing. At Applicant's request, the Court recessed the hearing during which the parties devised a resolution of the issues before the Court. Following the recess, the parties reported that they had resolved their concerns. On the record of the May 31 hearing, the parties outlined and further discussed the details of the resolution.

For the reasons detailed on the record during the May 31, 2013 hearing, we ORDER that the DRB's November, 2012 approval is now final, including all findings, conclusions, and conditions, with the following modifications:

1. Applicant will screen the Project to satisfy Section 5.8 of the Berkshire Land Use and Development Regulations as follows:
 - A. A six foot high stockade type fence will be installed on or about the common boundary of the Parties, shown on Exhibit 1. The east end of the fence will start 10 feet west of Potato Hill Road and continue westerly along the common boundary to the west limits or termination of shadows cast by existing mature maple trees. The shadow limit will be determined at the sun's highest point during the month of June. The parties will agree during fence installation whether it is best for installation purposes to install the fence directly on the property line, which will require gaps in the fencing to accommodate the

two existing mature maple trees, or to install the fence slightly off the common boundary to allow for one continuous fence.

- B. Beginning at the west end of the fence required in paragraph A above, screening cedars or evergreens will be planted along the boundary line at regular intervals to the western limit of the Project parking area. The plantings will be a minimum of 5 feet tall at planting time. Each tree will be placed so that the ends of the branches of any two adjacent trees are no greater than approximately 6 feet apart at the time of planting.
 - C. The fence and plantings required in paragraphs A and B above shall be completed by August 1, 2013.
 - D. Applicant will use best efforts to control the western limit of Project parking to ensure that Appellant's residence is screened from Project parking.
2. In all other respects, the DRB's November, 2012 approval remains in effect and is final.

This completes the current proceedings before this Court.

Done at Berlin, Vermont this 3rd day of June, 2013.

Thomas G. Walsh, Environmental Judge