

**TOWN OF CASTLETON
DEVELOPMENT REVIEW BOARD**

AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Re: Applicant, Dousevich, Inc.
Co-Applicant, Town of Castleton
Sand Hill Road, Castleton, VT
Parcel 09-01-11

Description: Applicant seeks approval for construction of new 23,500 sq. ft., four-story, 99-unit senior living facility and associated parking on Sand Hill Road in Castleton, Vermont, in the Rural Residential 2 Acres District (“Project”). The Project is proposed as a Planned Unit Development (“PUD”). Section of the Castleton Zoning Ordinance applicable Article III Table of Uses, Sections 401, 402, 417, 601, 602, Article VIII.

Hearing Dates: August 17, 2021; September 21, 2021, October 5, 2021, May 17, 2022, June 7, 2022, June 21, 2022

Reconsideration Hearing on October 25, 2022

Members: Patrick Keller, Chair
Don Wood
Laura Sargent
Michael Holden
Daniel Forcier

Findings of Fact

1. The property is located in the Rural Residential 2 Acres District (“RR-2A District”). The property is owned by the Town of Castleton, and currently undeveloped. The Applicant will acquire title to the property prior to construction.
2. As stated in the Town of Castleton Zoning Ordinance (“Ordinance” or “Bylaws”), the purpose of the RR-2A District is to provide residential opportunities in the major portions of the community to the extent there are not substantial conflicts with natural resources.
3. The Applicant’s proposed use is a senior housing facility that includes an independent living facility, an assisted living facility, and a memory-care unit. The Applicant applied for a permit for the proposed use as a PUD.
4. A PUD is a Conditional Use in the RR-2A District, and therefore requires approval by the Development Review Board (“DRB” or “Board”). See Article III, Table of Uses.
5. The parcel of land upon which the Project is proposed to be sited is ± 18.3 acres.
6. The Applicant seeks to connect the Project to municipal water and sewer facilities.

7. A traffic study was conducted with respect to the Project, which assessed Project-Generated Traffic, Background Traffic Volumes, Traffic Congestion, Traffic Safety, and Transportation Impact Fees.
8. In support of the Project, the Applicant submitted the materials listed under A through E as “Items Submitted for the Record and Considered by the DRB.” Project Opponents submitted the materials listed under F through L in the list below. The DRB relies upon those materials in making its determination, and incorporates by reference information reflected on such materials where appropriate.
9. On August 4, 2022, the DRB issued Findings of Fact, Conclusions of Law, and Decision (“Decision”), granting the permit application subject to certain conditions under the Bylaws. On August 31, 2022, the applicant submitted a written request for reconsideration with respect to various aspects of the DRB’s Decision. At its regular meeting on September 20, 2022, the DRB granted the request for reconsideration. A public hearing was scheduled and noticed for October, 25, 2022. A public hearing was held on that date. Items Q through BB were submitted for the DRB’s consideration at the October 25, 2022 hearing. The DRB modified findings 14 and 24, and condition 36 as a result of its reconsideration of the Decision, and now issues these Amended Findings of Fact, Conclusions of Law, and Decision.

Items Submitted for the Record and Considered by the DRB

- A. Application signed by the applicant
- B. Letter dated September 13, 2021, from Green Mountain Power
- C. Letter dated April 15, 2022 from O’Leary-Burke Civil Associates, PLC
- D. Traffic Assessment dated April 12, 2022, prepared by Lamoureau & Dickson
- E. Drawings/Plans
 - i. Rendering of Facility dated June 17, 2022
 - ii. Overall Parcel Plan dated June 15, 2022 (Sheet 1)
 - iii. Site Plan dated June 15, 2022 (Sheet 2)
 - iv. Utilities Plan dated June 15, 2022 (Sheet 3)
 - v. Stormwater Management Plan dated June 15, 2022 (Sheet 4)
 - vi. Erosion Prevention & Sediment Control Plan dated June 15, 2022 (Sheet 5)
 - vii. Lighting Plan dated June 15, 2022 (Sheet 7)
 - viii. Water & Sewer Details dated April 8, 2022 (Sheet 8)
 - ix. Roadway and General Construction Details dated June 1, 2022 (Sheet 9)
 - x. Landscape Plan dated June 14, 2022 (Sheet L1)
 - xi. Planting Details dated April 7, 2022 (Sheet L2)
- F. Letter regarding reasons to deny permit for senior living facility submitted June 7, 2022, by Wayne Pickett, John teRiele, John Guillan, Brenda Flemming et al, with 40 signatures.
- G. Slide show presentation regarding Sand Hill Project and Misalignment with Town Plan, submitted by Cathy Culpo dated June 7, 2022.
- H. Letter regarding putting Town’s resident property owners first submitted by Bryce Taylor dated June 7, 2022.
- I. Letter regarding Re-evaluating Town Support for Zoning Ordinance Changes and Sand Hill Project submitted by Wayne Pickett dated May 23, 2022.
- J. Letter regarding Reconsidering Support for Sand Hill Project #8177, Alignment with Town Plan and Alma Gibbs Douchian Foundation submitted by John teRiele dated May 23, 2022.

- K. Reconsider 7-21-22 Letter of Support to DRB for Sand Hill Project Permit # 8177 dated May 23, 2022.
- L. Letter regarding Contract Amendment Sale of Sand Hill Road Property Hale & Hale submitted by Cathy Culpo dated April 25, 2022.
- M. Letter re Support for Senior Living Facility. Senior Living project in alignment with use envisioned by University when parcel donated to town, submitted by Francesca Catalano, Dean of Health and Science Castleton University, dated April 25, 2022.
- N. Letter re Zoning, Traffic, and Biking/Walking/Running Route submitted by Mary Lee Harris dated October 5, 2021.
- O. Letter re Concerns for Senior Living Facility Project: Increased Traffic, Water, and Water Pipes, Need for Project? Dated August 9, 2021.
- P. Letter re Support for Permit Application #8177 submitted by Castleton Select Board, dated July 21, 2021.
- Q. August 31, 2022 Reconsideration Request of Findings of Fact, Conclusions of Law, and Decision.
- R. Testimony by Wayne Elliott.
- S. Testimony by Bryan Currier.
- T. Testimony of Zack Hale.
- U. Reasons why Residents of Sand Hill Road, Suncrest Terrace, Blue Cat Lane Oppose Senior Living Facility October 25, 2022, with 46 signatures.
- V. Power point slide show exhibited by Kary Culpo at October 25, 2022 hearing.
- W. Affordable Housing Cost Analysis Memory Unit, Assisted Living, Independent Living submitted by Mary Lee Harris October 25, 2022.
- X. Decreased Property Values Sand Hill Road submitted by Katy Culpo, October 25, 2022.
- Y. Conflict of Interest Pressures Put on DRB Members, Katy Culpo, October 25, 2022.
- Z. Chestnut Place Residential Care. Memory Care Neighborhood, submitted by Hale Associates October 25, 2022.
- AA. Assisted Living Residence Licensing Regulations. Agency of Human Services. February 15, 2003.
- BB. Licensing and Operating Rules for Nursing Homes. Agency of Human Services. June 1, 2018.

Conclusions and Decision

- 10. The DRB concludes that the Applicant submitted a complete application, with all required materials pursuant to Section 401 of the Bylaws, and that all application fees have been paid.
- 11. As stated in the Bylaws, “the purpose of the PUD is to enable and encourage flexibility and development of land in such manner as to promote the most efficient and appropriate use of the site while preserving the rural character of the town and avoiding fragmentation of important resources such as farmland, wildlife habitat, wetlands and other natural features.”
- 12. The DRB concludes that the proposed Project, as modified by the conditions herein, satisfies this standard. The DRB addresses “avoiding fragmentation of important resources such as wildlife habitat, other natural features” by requiring Applicant to maintain an existing wildlife corridor and forested area on the property, as set forth in Paragraph 48.

13. The parcel upon which the proposed Project is sited exceeds the five acre threshold for a PUD.
14. Under the Bylaws, allowed uses as a PUD are “single family, two family and multiple-family dwelling units.” The Applicant has identified this Project as a multiple-family dwelling unit. The definition of multiple-family residential use is “[a] building or portion thereof used for occupancy by three (3) or more families living independently of each other, and doing their own cooking in the building, including but not limited to apartments, group houses, and row houses.” The independent living and assisted living aspects of the proposed use satisfy this standard, because those uses contemplate that the residents will do their own cooking in the building. However, as represented at the hearings, the Applicant does not contemplate that the residents of the memory-care unit would do their own cooking in the building. The Board concludes that the memory-care unit as proposed does not qualify as a multiple family residential use for that reason. The Board therefore approves the Applicant’s proposal for a senior care facility of up to 99 units, so long as each unit is equipped with a kitchen, and excluding any memory-care unit because residents would not do their own cooking in the building. The Board determined that the use proposed with respect to the memory-care unit is akin to a nursing home as defined in the Bylaws, particularly given the level of medical need of persons qualified for the care provided in those units. Under the Bylaws, a nursing home is a non-residential use, and it is not an allowed use within a PUD. A nursing home is a conditional use in the RR-2A Zoning District, subject to the provisions of Section 408 of the Bylaws. Section 408(D) states that “the maximum number of persons permitted on any one lot shall not exceed thirty (30).” Because the maximum number of persons proposed to be housed on the lot exceeds thirty, the proposed nursing home use cannot be approved under Section 408. The DRB expressly finds that the memory care units are not similar in character to a single-family residence or multi-family dwelling units as those terms are defined and used in the Bylaws. The DRB finds that 24 V.S.A. § 4412(1)(G) has no application to the memory care units as proposed.
15. Having heard testimony and considered and received evidence from area residents, the DRB concludes that the proposed development may affect the character of the adjacent properties, and imposes conditions accordingly, as set forth herein.
16. The DRB makes the following findings with respect to Performance Standards applicable to PUDs under Section 417:
 - i. *Lighting*: The lighting as proposed on the site plans submitted by the Applicant satisfies the applicable performance standard.
 - ii. *Parking and Access*: The parking and access as proposed on the site plans as modified by the conditions herein satisfies the applicable performance standard. The DRB is permitted under this provision to waive requirements of Article VI: Parking and Loading. The DRB orders a partial waiver of those requirements, as set forth in the discussion of Article XI.
 - iii. *Noise*: The noise levels contemplated by the proposed use as reflected on the site plans herein satisfy the applicable performance standard.

- iv. *Vibration*: The vibration levels contemplated by the proposed use as reflected on the site plans satisfy the applicable performance standard.
 - v. *Dust, Fumes, Vapors, Gases, and Odors*: Dust, fumes, vapors, gases, and odors contemplated by the proposed use as reflected on the site plans satisfy the applicable performance standard.
 - vi. *Screening and Landscaping*: The screening and landscaping as proposed on the site plans as modified by the conditions herein satisfies the applicable performance standard.
17. The DRB concludes that the Project as reflected on the site plans satisfies applicable lot size, setbacks, frontage, lot depth, and max coverage requirements. The Applicant requested a waiver pursuant to Bylaws Section 417 with respect to the maximum building height, which the Board granted on October 5, 2021, having found all requirements of the waiver provision to be satisfied. Pursuant to the waiver previously granted by the Board, the building shall not exceed 48 feet in height.
18. The DRB concludes that the site plans as modified by the conditions herein satisfy Section 601.
19. The DRB finds that the Project as approved is a “Multi-family dwelling” and as such must satisfy the standards set forth for multi-family dwellings in Section 602. The number of parking spaces required for a multi-family dwelling is “One (1) per dwelling unit plus one half (1/2) per bedroom.” For a 99-unit project, at least 149 parking spots are required under the Bylaws. The site plan proposes 62 parking spaces, which does not satisfy this standard. The DRB may waive this requirement as set forth in the performance standards applicable to a PUD. The DRB does partially waive the requirement, but nonetheless concludes that the proposed 62 spaces are not sufficient to meet the demands of the proposed use. The DRB will therefore require that an additional 20 paved parking spaces be added, to be located on the north side of the facility and to the rear of the building. The developer shall also implement such other stormwater management measures as may be required under State law to accommodate the additional impervious surface, if any. The retention pond shall be designed for a 15-year event.
20. The DRB is required to simultaneously review the Project under the requirements of Article VIII of the Bylaws.
21. The DRB concludes that the Applicant submitted a complete application, with all required materials pursuant to Section 802 of the Bylaws, and that all application fees have been paid.
22. The DRB finds that the landscaping plan for the Project as modified by the conditions herein satisfy the requirements of Section 803. Specifically, the Board concludes that to ensure effective screening of parking areas, all evergreen and deciduous trees planted pursuant to the landscaping plan must be a minimum of 12 feet high at first planting. To reduce light pollution from vehicles parking at night, there shall be a continuous shrub hedge planted to screen all parking spaces facing Sand Hill Road, and such shrubs shall be a minimum of three feet at first planting. Further, to ensure compatibility and protection of adjoining properties, all trees and shrubs used for landscaping shall be

species that are native to Vermont. Trees to be planted on the southern property boundary must be placed prior to the commencement of construction. Plantings shall otherwise be as set forth on the landscaping plan submitted by the Applicant, and shall meet the requirements of Section 803 of the Bylaws at all times. If any tree or shrub planted pursuant to the Applicant's landscaping plan should fail for any reason, it shall be replaced with a plant of the same minimum height within six months of such failure.

23. The DRB finds that Sand Hill Road is not an ideal location for recreational walking and therefore the DRB concludes that, pursuant to its authority under Section 805 of the Bylaws, the Applicant shall be required to create a pedestrian trail or walkway on the property for recreation by facility residents.
24. The DRB finds that the scale of the facility may pose a risk of overtaxing the Town water and sewer systems, and therefore pursuant to Section 1210(B)(2) of the Bylaws the Board shall require the Applicant to furnish a bond in the amount of \$50,000.00 to assure protection of public facilities that may be affected by the Project, as further set forth in Condition 36.
25. The DRB finds that the proposed conditional use, as modified by the conditions stated herein, shall not result in an undue adverse effect on any of the following:
 - A. The capacity of existing or planned community facilities;
 - B. The character of the area affected, as defined by the purpose or purposes of the zoning district within which the project is located and specifically stated policies and standards of the municipal plan;
 - C. Traffic on roads and highways;
 - D. Use of renewable energy resources; and
 - E. Bylaws and ordinances in effect.

Conditions

In granting conditional use approval, the DRB may attach such reasonable conditions and safeguards as it deems necessary to implement the purposes of this chapter and the pertinent bylaws and the municipal plan then in effect.

i. General Conditions

26. The Project shall comply with these Findings of Fact, Conclusions of Law, Decision and Order, and in accordance with the application and approved plans submitted by the Applicant dated on and around June 15, 2022, on file with the Town of Castleton Zoning Office, and listed above. Except as indicated or modified herein, all other conditions of approvals or permits granted for the subject property remain in full force and effect.
27. Unless specifically noted to the contrary in this Decision, the Project shall comply, at all times, with the standards, restrictions, regulations, etc., set forth in Castleton's Zoning Bylaws.
28. This approval is conditional upon receipt of any other required permits from state and federal agencies. Copies of all required permits must be submitted to the Town of Castleton Zoning Office. If changes to the Project are made per other permits, then approval for such changes must be granted by the Development Review Board or Zoning Administrator, as applicable. Any conditions of other permits shall be included as

conditions of any subsequent land use and development permit by the Town of Castleton.

29. The Applicant shall post new E911 numbers on the property prior to commencement of construction, and shall post permanent E911 numbers before a certificate of compliance may be issued.
30. Prior to use and/or occupancy of the Project, all improvements required by the conditions below, and all improvements depicted on the site development plans and the other documents and evidence submitted to and approved by the Board, shall be completed as determined by the Town's Zoning Administrator.
31. The Town of Castleton maintains continuing jurisdiction during the lifetime of this approval and subsequent permit, and may periodically require that the Applicant file an affidavit certifying that the Project is being completed and continues to operate in accordance with the terms of this approval. If unforeseen problems arise, the Board maintains the authority to require the Applicant to construct appropriate devices to contain, control, and rectify such problems.
32. The Town of Castleton shall have the right to access the subject property to ensure compliance with the conditions of this approval and with the Zoning Bylaws.
33. This approval and its conditions shall run with the land and shall be binding and enforceable against the Applicant, and all assigns and successors in interest.

i. *Specific Conditions*

34. The senior housing facility approved pursuant to this Decision shall not have a memory-care unit, and each residential unit shall be equipped with a kitchen.
35. The Applicant shall install a Permanent ground-mounted traffic control system to be located on the East side of Sand Hill Road. The exact type of system and its placement shall be determined by Castleton Police Department.
36.
 - A. The Applicant shall provide a bond for connection to the municipal water and sewer system in the amount of \$50,000.00 which may be applied toward the cost of repair and/or replacement of the town water and/or sewer system in the event of damage resulting from the construction or use by the facility within the first 3 years from the commencement of construction.
 - B. The Applicant shall install a new precast sewer manhole with a perforated screen opening designed and installed by an engineer for the purpose of preventing material from entering the main sewer line; it shall be the responsibility of the applicant to routinely check the screen and remove material as needed. The Applicant shall grant the Town a right of way permitting the Town to access the manhole for purposes of inspection.


37.

- A. Landscaping must be installed and maintained as approved herein. All evergreen and deciduous trees shall be a minimum of 12 feet in height upon first planting, and shall only be species native to Vermont. They must otherwise conform to the landscaping plan as set forth in Sheets L1 and L2.
 - B. There shall be a continuous shrub hedge planted to screen all parking spaces facing Sand Hill Road; all shrubs shall be a minimum of three feet at first planting.
 - C. Trees to be planted on the southern property boundary must be placed prior to the commencement of construction.
 - D. If any tree or shrub planted pursuant to the Applicant's landscaping plan should fail for any reason, it shall be replaced with a plant of the same minimum height within six months of failing.
 - E. Erosion control measures shall follow the Vermont Handbook for Erosion and Sedimentation Control on Construction Sites, and other best practices as necessary and appropriate. All disturbed previous areas not covered with established growth shall be seeded and mulched immediately following placement of fill or end of disturbance.
- 38.
- A. The color of the front façade shall be as depicted in an un-numbered street view rendering presented at the June 21st, 2022 DRB meeting. Texture of the dark sections of the façade shall have the appearance of cedar shake. The other sections should appear as a clapboard style. The stone work on the front of the first floor shall be as described in the ensuing discussion by the Applicant at the same June 21st 2022 DRB meeting.
 - B. The total building height shall not exceed 48ft, as approved by the DRB at its October 5th, 2021 meeting.
39. The HVAC system shall not be located on the 4-story portion of the building nor otherwise visible from Sand Hill Road.
40. There shall be no further development on the property located on Sand Hill Road including any addition to the proposed building as depicted on site plans, Sheet #2 dated 6/15/2022. There shall be no subdivision of the property. There shall be no additional primary structures or uses of the property. Any future stand-alone accessory structure that is over 120 sq. feet shall require a permit and shall be sited to the rear of the currently proposed building and not be in line with the front of the building and shall be completely screened by evergreens when viewed from Sand Hill Road.
41. The dumpster location must be set back as to not be in line with the front of the building and shall be enclosed with a wooden fence at least as high as the dumpster, and no less than six feet in height.
42. The stormwater retention pond shall be designed for the 15 year event as defined on site plan Sheet 4 dated 06/15/2022 entitled Stormwater Management, except as may be modified if necessary to accommodate additional paved parking spaces in accordance with the condition set forth in Paragraph 51, below.

43. The hours of operation during the construction period shall follow the requirements stated in Vermont Act 250.
44. The Applicant shall establish a tenants association (or similar entity) governed by an agreement with conditions, covenants, and regulations” as required under Section 417 of the Zoning Bylaws.
45. The Applicant shall construct the building as depicted in the on the street-view rendering presented at the June 21st, 2022 DRB meeting (Item E(i) as set forth in the section entitled “Items Submitted for the Record and Considered by the DRB”).
46. Any above-ground or below-ground fuel storage tanks will be adequately screened so as to not be visible from Sand Hill Road.
47. Applicants shall supply the Zoning Administrator within 30 days of receiving all permits from state and local entities a schedule outlining the construction sequence and anticipated time frame for each phase of the project.
48. To ensure that the proposed conditional use does not substantially conflict with natural resources, the Applicant shall maintain the currently existing wildlife corridor, which is defined as the area from the northern-most pin to the edge of the northerly curb cut and continuing at that width parallel to and the length of the northern property line. No structures will be built in this area. No vegetation or trees may be cut in this area. The forested area on the eastern side of the property shall be maintained in its current forested state. No clearcutting or removal of trees or vegetation in the wooded area on the eastern portion of the Property shall be permitted, except the least amount necessary for the health and maintenance of the forest and/or public safety.
49. The Applicant will construct a sidewalk from the facility entrance to Sand Hill Road. All sidewalks will be handicapped accessible.
50. The Applicant shall create a pedestrian trail or walkway on the property for recreation by facility residents.
51. The Applicant shall add an additional 20 paved parking spaces to be located on the northeast side of the facility, beyond the frontline and parallel to the side of the building. The size of the retention pond shall be adjusted so as to ensure that is designed for a 15 year event with such change in parking design, and the developer shall also implement such other stormwater management measures as may be required under State law.

The Development Review Board, therefore grants site plan and conditional use approval for the Project described above, subject to the conditions and restrictions set forth in this Decision.

Board Member	Approve	Disapprove	Abstain
<i>Michael Holden</i>	X		
<i>Daniel Forcier</i>		X	
<i>Patrick Keller</i>	X		
<i>Laura Sargent</i>	X		
<i>Donald Wood</i>		X	

/s/ Patrick Keller 
 For the Development Review Board
 Patrick Keller, Chair

November 11, 2022