

DRB CASE LAW

This document is a collection of Milton DRB “case law” as it pertains to development review cases held in front of the DRB under the newly adopted 2017 Unified Development Regulations. The purpose of this document is not to serve as an authority on DRB decisions and interpretations of regulations. Each case is unique and should be analyzed on its own merits. Still, this document will provide the DRB with case history so it can remain consistent in interpreting and applying regulations in order to better ensure equality and fairness for all applicants going through the DRB process. Further, such a document will also prove beneficial to applicants who want to better understand how the DRB makes its decisions. *However, for a full understanding of how the DRB came to a decision on a particular case, please consult the DRB staff packet, DRB minutes and DRB decision on file at the Town of Milton’s Planning & Economic Development office.*

The format of this document is fairly straightforward. Each DRB case that appeared under the newly adopted UDR will be one (1) page in length and contain four (4) main elements:

1. **Issues.** This section describes the issue of the case; otherwise known as why the applicant appeared before the DRB.
2. **Basic Facts.** This section includes location, type of review, zoning district, relevant dimensional standards, and proposed improvements and/or uses.
3. **Applicable Regulations.** This section will highlight the critically relevant UDR sections involved in reviewing the application.
4. **Legal Interpretation.** This section will stress how the DRB interpreted and applied the law, including the final decision and any relevant conditions.

The cases are arranged chronologically by hearing date and there are **four separate indexes** in order to facilitate research, arranged as follows:

1. Zoning District
2. Type of Review
3. Property Address
4. Specific Issue

This is a living document and subject to change at any time. The goal is to update it after every issued DRB decision. It is to only be used as a reference guide and *not* as binding law.

August 24, 2017_Case 2017-29

Issue

Applicant sought to establish a Repair Service use in an existing accessory storage building.

Basic Facts

Address: 414 Route 7 South

Zoning District: Checkerberry Commercial (M4C)

Review Type: Conditional Use/Site Plan Amendment/PUD Amendment

Proposed Use: Addition of motor repair service

Proposed Improvements: Addition of 4 parking spaces, including 1 ADA space, and relocation of dumpster pad.

Applicable Regulations

UDR Section 2107: M4C District Standards

UDR Section 3108.A: Motor Vehicle Repair or Service

UDR Chapter 320: Site Plan Standards

UDR Chapter 330: Conditional Use Standards

Legal Interpretation

PUD Amendment: DRB determined that the proposed amendment did not impact the substance of the 2010 PUD approval and that the proposed changes could be reviewed as a Site Plan and Conditional Use application.

UDR 3303, Traffic: DRB determined that having 3 employees with about 6-10 customers per day would not be substantially greater than nearby uses or unreasonably contribute to traffic congestion.

UDR 3304, Character of the Area: DRB determined that the use was compatible with the area.

UDR 3208.B, Noise: DRB put two conditions in order to mitigate any impacts from noise. First, they limited the hours of operation to weekdays from 8 a.m. until 6 p.m. and from 8 a.m. until 1 p.m. on Saturday. Second, they required that vehicle and engine testing be conducted inside the building.

UDR 3203.A, Bicycle Parking: The applicant did not include bicycle parking on his site plan. The UDR says that the number of bicycle parking spaces on a site plan must equal 5% of the total number of off-street vehicle parking. Because there were 47 parking spaces, 5% amounted to 2.35 bicycle spaces. The DRB rounded up to 3.

UDR 3209.D(3), Refuse: DRB required Final Plans to show a dumpster enclosure.

UDR 3204, Landscaping: The DRB allowed the applicant to submit a revised landscaping plan within 1 year of the finalized decision, requiring the plantings to be planted within 6 months of that submission.

UDR 3204.E, Street Trees: DRB required 7 trees in the front yard to comply with street tree requirements.

UDR 3204.G, Parking Lot Shade: DRB required that the applicant plant trees so that 40% of the parking lot would be shaded.

UDR 3204.H, Screening: The adjoining property is a single family residence. The applicant did not propose screening between the auto repair shop and the homestead. The DRB required final plans that showed the screening. However, the DRB did not specify how many plants; only that the screening shall consist of a mix of evergreen and deciduous.

DECISION: Approved with conditions.

September 14, 2017_Case 2017-31

Issue

Applicant sought to reconstruct restaurant with no footprint changes and change site parking and circulation.

Basic Facts

Address: 5 Haydenberry Dr.

Zoning District: Downtown Business (DB1)

Review Type: Site Plan Amendment

Proposed Improvements: Add second drive-through lane, decrease parking and add landscaping

Applicable Regulations

UDR Section 2120: DB1 District Standards

UDR Chapter 320: Site Plan Standards

Legal Interpretation

UDR 3202, Parking: DRB determined that the reduction in parking spaces from 45 to 38 is a site improvement.

UDR 3202.D, Loading: Applicant's plans did not indicate loading areas. DRB required final plans to show loading areas.

UDR 3230.F, Large Vehicle Parking: Applicant's plans did not indicate where large vehicles, such as buses and trucks, would park. DRB required Final Plans to indicate such parking.

UDR 2101.D(3)(c), Front Setback Trees: DB1 standards require one tree in the front setback per 30 feet of road frontage. The applicant's restaurant is a corner lot and has 421 feet of frontage. The applicant is thus required to have 14 trees within the front yard setback. The applicant showed 14 trees total in both the front and side setbacks (corner lots have two front yard setbacks and two side yard setbacks). Only 10 of those trees were in the front yard setback. The DRB required the applicant to add 4 more trees to the front setback to meet this requirement.

DECISION: **Approved** with conditions.

September 28, 2017_Case 2017-37

Issue

Applicant sought to increase impervious surface on the lot to expand the parking area.

Basic Facts

Address: 26 River St.

Zoning District: Historic Neighborhood Center (NC2)

Review Type: Site Plan Amendment

Proposed Improvements: Increase parking

Other: The applicant received approval for the Site Plan in April of 2017, when his district was zoned as M5. With the zoning changes, his property became part of NC2. NC2's maximum lot coverage is 75%, whereas M5's lot coverage is 50%.

Applicable Regulations

UDR Section 2103: NC2 District Standards

UDR Chapter 320: Site Plan Standards

Legal Interpretation

UDR 3202, Parking: The applicant's use was considered a service use with limited customer traffic and was thus required to have at least 9 parking spaces. The applicant sought to increase parking from 18 spaces to 28 spaces. The DRB allowed.

UDR 3203.G(5)(a), Marking and Edging: Any parking area with more than 10 spaces and a paintable surface must demarcate spaces with painted lines. The applicant stated that he had to repave the parking lot and would not be able to reline the lot until after paving is complete. The DRB allowed the applicant to complete repaving and relining by the end of the summer of 2018 (approximately 1 year).

DECISION: **Approved** with conditions.

September 28, 2017_Case 2017-35

Issue

Applicant sought to subdivide property to create a lot for a historic home (the General Stannard House) and to change the use of the house/property to a public/community use.

Basic Facts

Address: 947 & 951 Route 7 South

Zoning District: General Industrial (I2)

Review Type: Minor Subdivision/Conditional Use/Site Plan

Proposed Use: Historic site and museum

Proposed Improvements: Increase parking, add outdoor lighting and add landscaping

Applicable Regulations

UDR Section 1108: Community Facilities

UDR Section 2113: I2 District Standards

UDR Chapter 320: Site Plan Standards

UDR Chapter 330: Conditional Use Standards

UDR Chapter 340: Subdivision Standards

Legal Interpretation

UDR 3404.B, Lot Dimensions: Lot #2 did not meet dimensional requirements, but the DRB granted a variance from such standards in a previous approval.

UDR 3405.E, Water and Wastewater: The applicant proposed a 1,000 gallon wastewater holding tank, which would be pumped and brought to the Town waste water disposal area. DRB had no issues with this.

UDR 3202, Parking: The applicant's property was classified as a public place with regular visitor traffic and required a minimum of 2 parking spaces. The applicant proposed 6 parking spaces and the DRB agreed.

UDR 3202.E(2), Location of Parking: The site plan showed 3 parking spaces within the front yard setback and 3202.E restricts parking in setbacks. The site constraints (size of lot) made it difficult to add parking elsewhere, and the applicant agreed to make the front three spaces pervious parking spaces.

UDR 1108, Community Facilities: The applicant's intended uses (museum/historic sites) are not permitted or conditional uses on the property. In order for the property to be granted conditional use approval, it must be classified as a community facility. The DRB agreed that the applicant's property met the definition of a community facility because it would be owned and operated by the Town of Milton.

DECISION: Approved with conditions.

November 9, 2017_Case 2017-41

Issue

Applicant sought to amend his Site Plan to construct three new mini-storage buildings and a small salt shed.

Basic Facts

Address: 76 Gonyeau Road

Zoning District: General Industrial (I2)

Review Type: Site Plan Amendment

Proposed Improvements: Three mini-storage units, salt shed and outdoor lighting

Applicable Regulations

UDR Section 2113: I2 District Standards

UDR Section 3112: Mini-Warehouse or Self-Storage Facility

UDR Chapter 320: Site Plan Standards

Legal Interpretation

UDR 3112.A(2), Unit Orientation: This section requires all mini-storage buildings on a parcel to be compatible in scale, orientation, design, materials and color. While the applicant proposed to use the same materials, design and color as the existing buildings, the proposed buildings were much smaller and perpendicularly orientated to the existing buildings. The DRB did not decide on whether compatible meant similar, but they did determine that there would be issues with site circulation if the new units were oriented in the same direction as the existing units. The DRB agreed with the proposed orientation.

UDR 3202.B(1), Parking Spaces: The UDR requires 1 space per 600 sf of building area for self-storage uses with customer traffic and 1 space per 1,500 sf with no customer traffic. The site already had 12 parking spaces that are never all used. The DRB determined that requiring additional parking spaces was an unreasonable burden for the use at this site.

UDR 3204.F(1), Site Landscaping: The UDR requires 1 shrub per 5 feet of building perimeter and 1 tree per 30 feet of building perimeter. The applicant's project amounted to a total of 924 feet of building perimeter for all three buildings, resulting in a requirement of an additional 172 shrubs and 29 trees. The DRB found this requirement to be an oversight in drafting the regulations and an unreasonable burden on the applicant. However, the applicant did not initially propose any landscaping. The DRB continued the hearing so that the applicant could come back with more details on site landscaping. At the second hearing, the applicant proposed 12 Austin pine trees along the side setback where the new buildings were to be located. The DRB instead required 15 trees to be evenly spaced and planted along the side setback. The DRB also required 30 shrubs to be planted anywhere on the property.

DECISION: Approved with conditions.

November 9, 2017_Case 2017-43

Issue

Applicants sought to repair existing retaining walls and construct new retaining walls along Lake Champlain.

Basic Facts

Address: 239, 241 & 246 Eagle Mountain Harbor Road

Zoning District: Shoreline Residential (R6)

Review Type: Conditional Use / Site Plan Amendment

Proposed Improvements: Repair and construct retaining walls

Applicable Regulations

UDR Section 2201.L: Development Standards in the Floodway

UDR Section 3009.D: Erosion Control Practices

UDR Chapter 320: Site Plan Standards

UDR Chapter 330: Conditional Use Standards

Legal Interpretation

UDR 3201.A, Site Plan Standards: The DRB determined that there are no changes to site plan standards that needed further review.

UDR 330, Conditional Use Standards: The DRB determined that the proposed project was in conformance with all conditional use standards.

UDR 3009.D(4), Exposed Soil: One of the applicant's property was going to have excavation, potentially exposing about 100 square feet of soil. The DRB required, per the UDR, that the soil would be stabilized with seed, mulch or erosion control matting. The DRB further conditioned that if construction were to commence in the winter, the applicant shall use erosion control matting until the arrival of spring.

DECISION: **Approved** with conditions.

November 9, 2017_Case 2017-46

Issue

Applicant sought a waiver from dimensional requirements regarding lot size before he pursued subdividing his approximately 18,370 square-foot lot into two separate lots. Both newly created lots would be just over 9,000 square feet each, nearly 1,000 square feet (10%) less than that district dimensional requirements.

Basic Facts

Address: 967 Barnum St.

Zoning District: Old Towne Residential (R1)

Review Type: Waiver

Proposed Improvements: Subdivide existing lot to create two, single-family home lots

Applicable Regulations

UDR Section 4604: Waiver

Legal Interpretation

UDR 4604.D, Criterion 1: The DRB determined that the waiver of up to 10% of the lot size dimensions would not alter the essential character of the area.

UDR 4604.D, Criterion 2: The DRB found that no harm would result to neighboring properties as a result of this waiver.

UDR 4604.D, Criterion 3: The DRB took neighboring comments into consideration regarding potential safety hazards of building houses so close together and proposed conditions discussed in Criterion 5.

UDR 4604.D, Criterion 4: The DRB determined that the proposed land development could be beneficial to enjoying reasonable use of the property.

UDR 4604.D, Criterion 5: The DRB found that the applicant needed to mitigate dimensional encroachments. The DRB asked the Applicant to provide screening and the Applicant stated a fence had already been built. The Applicant proposed, and the DRB accepted, extending the side setback from the eastern neighbor's property line from 10 feet to 20 feet. The DRB also required street trees to be planted in accordance with UDR Section 3204.E.

DECISION: **Approved** with conditions.

December 14, 2017_Case 2017-47

Issue

Applicant sought to amend Site Plan to divide existing commercial space into two separate commercial units.

Basic Facts

Address: 12 River St.

Zoning District: Historic Neighborhood Center (NC2)

Review Type: Site Plan Amendment

Proposed Improvements: Divide commercial space into two units

Applicable Regulations

UDR Chapter 320: Site Plan Standards

Legal Interpretation

UDR 3202, Parking Spaces: The applicant was approved for 15 parking spaces in August of 2012 and the applicants are not proposing additional parking spaces. The DRB finds that the parking is sufficient for the property's current approved uses. However, should the applicant need a conditional use review in the future, the DRB will then re-examine the total number of parking spaces.

UDR 3203A, Bicycle Access and Storage: For commercial uses in the NC2 Zoning District with more than 10 parking spaces, bicycle parking spaces must be provided at 5% of the total number of off-street vehicle parking spaces. The applicant agreed to provide at least 1 bicycle parking space located not more than 200 feet from a building entrance ($5\% \times 10 = 0.5$, and rounded up to 1).

UDR 3204.E, Street Trees: If feasible, the applicant is required to provide 1 large tree for every 50 feet of frontage or 1 medium or small tree for every 30 feet of frontage. The applicant has about 97 feet of frontage. The DRB determined that it would not be feasible or practical for the applicant to dig up the concrete in their front setback in order to plant street trees. The DRB and applicant instead discussed installing a planter encompassing the outdoor freestanding sign as a best fix for the lack of street landscaping. The applicant agreed that they could install a planter. In deliberative session, the DRB decided that the planter should be at minimum 24 square feet, shaped and arranged according to the applicant's wishes, which must include a mix of a perennials and shrubs.

DECISION: **Approved** with conditions.

December 14, 2017_Case 2017-48

Issue

Applicant sought a variance from the Historic Neighborhood Center use standards only allowing new residential uses on the upper floors or in the rear of a first floor that has a commercial use nearest to the frontage. Applicant desired to turn the first floor into a residential accessory apartment.

Basic Facts

Address: 2-4 River St.

Zoning District: Historic Neighborhood Center (NC2)

Review Type: Variance

Proposed Use: Convert first floor commercial use into residential accessory apartment

Applicable Regulations

UDR Section 2103.B: NC2 Use Standards

UDR Section 4605: Variance Criteria

Legal Interpretation

UDR 4605.D, Criterion 1: The DRB determined that because the area has a mix of residential and commercial uses, the essential existing character would not be altered.

UDR 4605.D, Criterion 2: The DRB finds that adjacent landowners' lawful use of their land would not be impaired.

UDR 4605.D, Criterion 3: The DRB finds that the proposed land development would not be detrimental to public health, safety or welfare.

UDR 4605.D, Criterion 4: The DRB finds that the applicant did not create the hardship.

UDR 4605.D, Criterion 5: The applicant stated that income provided from renting out the accessory apartment would allow the owner to preserve the historic building, and that an accessory apartment does not constitute the addition of a residential use to the property, thus minimizing the deviation from the regulations. The DRB finds that the applicant can still earn an income from renting out the first floor to a commercial use. The DRB further finds that there are commercial uses less intense than the current permitted use (restaurant / tavern) that may not be allowed in the district that would constitute less of a deviation from these regulations than an accessory apartment in the lower floor. The DRB determined the applicant did not meet this criterion.

UDR 4605.D, Criterion 6: The applicant stated that steep slopes and property boundaries would limit the parking potential of the property, making commercial undesirable or unsafe. The DRB found that previous commercial enterprises have safely and effectively utilized parking on the property, and that commercial uses are allowed in the district that require very limited parking or customer traffic. The DRB further found that the site conditions are not much different than other site conditions in the area. Finally, the DRB found that it is the newly adopted regulations, which prevent first floor residential, and not the site conditions that has created the hardship.

DECISION: Denied.

December 28, 2017_Case 2017-33

Issue

Applicant sought to separate out previously merged lots, subdivide another lot, and create a two-family home footprint on a final lot.

Basic Facts

Address: North Gardens Lane

Zoning District: Old Towne Residential (R1)

Review Type: Final Minor Subdivision

Proposed Development: Separating out previously merged Lot #s 4 and 5; subdividing Lot #3 into two lots; and creating a two-family home footprint lot on Lot #2

Applicable Regulations

UDR Section 2115.C: R1 Dimensional Standards

UDR Chapter 300: Subdivision Standards

Legal Interpretation

UDR 3405, Design and Layout of Necessary Improvements: The DRB determined that the applicant shall meet with Public Works to discuss removal/relocation of the hammerhead.

UDR 3404.B(5), Irregular Shaped Lots: The regulations state that the applicant must avoid irregularly shaped lots except when desirable to respond to the site's topography and natural features. Lot #3A was shown as a somewhat U-shaped lot with multiple sides. The applicant did this in order to attach the septic area in the northeast of the entire development to a lot, instead of making it part of common land. The septic area could not become its own lot (for it is not developable). Further, making it common land would increase the costs for all the other lots. Finally, the natural features on Lot 3A made one end of the U-shaped lot undevelopable. The DRB accepted these reasons and agreed to the lot design.

DECISION: **Approved** with conditions.

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