

**VERMONT ENVIRONMENTAL BOARD**  
**10 V.S.A. §§ 6001-6092**

Re: Larkin Tarrant Hoehl Partnership and John Larkin  
Land Use Permit Amendment #4C1057-1-EB

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

The Larkin Tarrant Hoehl Partnership and John Larkin (LTH) filed this appeal concerning building-mounted signage on the University Inn hotel at the corner of Dorset Street and Williston Road (Route 2) in South Burlington, Vermont.

**I. PROCEDURAL SUMMARY**

On February 24, 2000, the District #4 Environmental Commission (Commission) issued Land Use Permit #4C1057 (Original Permit) and supporting Findings of Fact, Conclusions of Law, and Order (Original Decision) to LTH for the construction of a 71-room hotel on 5.61 acres of land at the corner of Dorset Street and Route 2 in South Burlington, Vermont (the University Inn), a central utility building, and parking and traffic circulation improvements to an existing 89-room Howard Johnson's hotel and 275-seat Friendly's restaurant, (Original Project).

On July 27, 2000, LTH filed a permit amendment application, for the demolition of part of the existing Howard Johnson's hotel building that is connected to the Friendly's restaurant, and the construction of a 24-foot wide driveway between the two buildings with walkways and other landscape improvements, among other things (together with the University Inn changes described below, referred to herein as the Project).

On August 18, 2000, LTH amended its permit amendment application to seek retroactive approval for changes that LTH had made to the University Inn, including changing from a brick veneer facade, to a stucco facade on the top three stories with a real brick facade on the first story, and changing the building-mounted signage from cast aluminum letters backlit with white neon, to green, internally illuminated letters.

On January 25, 2001, the Commission issued Land Use Permit Amendment #4C1057-1 (Amended Permit) and supporting Findings of Fact, Conclusions of Law, and Order (Decision) to LTH. The Commission denied the amendment application insofar as it sought retroactive approval for University Inn signage that differed from that authorized by the Original Permit.

On February 26, 2001, LTH filed an appeal with the Environmental Board (Board) from the Amended Permit and Decision alleging that the Commission erred in its conclusions under 10 V.S.A. § 6086(a)(8)(Criterion 8), concerning the signage.

On March 30, 2001, Board Chair Marcy Harding convened a Prehearing Conference. LTH, represented by Carl Lisman, Esq., was the sole participant. On April

2, 2001, Chair Harding issued a Prehearing Conference Report and Order (PHCRO). Among other things, the PHCRO identified preliminary and merits issues and set a schedule for prehearing filings.

On April 10, 2001, LTH filed a Motion to Continue the appeal for sixty days. On April 13, 2001, Chair Harding issued a Chair's Preliminary Ruling granting LTH's Motion and ordering that LTH file a status report on or before June 13, 2001. LTH did not file any objection to the Chair's Preliminary Ruling.

On July 16, 2001, over one month after the deadline for filing a status report had passed, the Chair issued a Chair's Proposed Dismissal Order. The Chair's Proposed Dismissal Order proposed dismissal of the case, subject to an opportunity for any party to object or to make oral argument to the Board, or both.

On July 18, 2001, LTH filed an objection to the Chair's Proposed Dismissal Order. In the objection, LTH stated that it did not wish to make oral argument to the Board. LTH requested that the case be continued for another 60 days.

The Board deliberated on LTH's objections on August 15, 2001 and August 29, 2001. On August 30, 2001, the Board issued a Memorandum of Decision granting LTH's request for a continuance, and requiring that LTH file a status report and request for further action on or before September 18, 2001, or the case would be dismissed.

On September 18, 2001, LTH filed a status report and motion to continue the appeal for another 45 days. On October 2, 2001, the Chair proposed to grant this motion in a Chair's Proposed Continuance Order. No objection was filed and the continuance went into effect through November 2, 2001.

On November 5, 2001, LTH filed a status report and a motion to continue the appeal for another 45 days.

On November 6, 2001, the Chair denied LTH's request for a continuance and ordered LTH to brief preliminary issues on or before December 26, 2001. The Order also provided that the matter would be scheduled for hearing after preliminary issues were resolved. LTH filed a brief on December 26, 2001. The Board deliberated on January 16, 2002.

On January 22, 2002, the Board issued a Memorandum of Decision on preliminary issues, and the Chair issued a Scheduling Order setting this matter for hearing. Among other things, the Scheduling Order set a deadline of February 13, 2002 for prefiled evidence on the two merits issues. No objection to the Scheduling Order was filed.

On February 26, 2002, Chair Harding issued a Chair's Proposed Dismissal Order, proposing dismissal of the case for LTH's failure to file any evidence by the February 13, 2002 deadline.

On March 6, 2002, LTH filed an objection to the proposed dismissal. On March 20, 2002, the Board deliberated on the objection. On March 21, 2002, the Board issued a Memorandum of Decision ordering the matter set for hearing.

The hearing was held on May 1, 2002, during which the Board admitted exhibits, heard testimony, and conducted a site visit. The Board deliberated on May 1 and 15, 2002 and June 19, 2002. Based on a thorough review of the record, related argument, and proposed findings of fact and conclusions of law, the Board declared the record complete and adjourned. The matter is now ready for final decision.

## II. ISSUES

1. Whether, based on the competing policy considerations of flexibility and finality articulated in *Stowe Club Highlands*, the Board will consider amendment of Land Use Permit #4C1057, and proceed to review the building-mounted signage under Criterion 8.
2. If the answer to Issue #1 is in the affirmative, whether, pursuant to 10 V.S.A. § 6086(a)(8), the building-mounted signage has and will have an undue adverse effect on the scenic or natural beauty of the area and aesthetics.

## III. FINDINGS OF FACT<sup>1</sup>

1. On February 4, 2000, the Commission issued the Original Permit to the Larkin Tarrant Hoehl Partnership and John Larkin to construct a 71-room hotel, with central utility building, and traffic circulation improvements (total of 260 parking spaces) on the site of an existing 89-room Howard Johnson's hotel and 275-seat Friendly's restaurant.
2. Condition 22 of the Original Permit provides:

---

1

To the extent that any proposed findings of fact are included within, they are granted; otherwise, they are denied. See *Secretary, Agency of Natural Resources v. Upper Valley Regional Landfill Corp.*, 167 Vt. 228, 241-242 (1997); *Petition of Village of Hardwick Electric Department*, 143 Vt. 437, 445 (1983).

The building mounted signs shall conform to the plan notes and dimensions shown on Sheets A-5 and A-6. The Permittee shall not erect any other exterior signs, including building-mounted or free-standing signs, without first obtaining approval from the District Commission.

3. For purposes of this appeal, the Sheets A-5 and A-6 marked as Exhibits L-2 and L-3, respectively, are substantially the same as Sheets A-5 and A-6 from Original Permit application referenced in Condition 22. Sheets A-5 and A-6 are architectural drawings depicting the south (rear) and west (side) elevations of the University Inn, and the north (front) and east (side) elevations of the University Inn, respectively. The drawings show a sign reading, "UNIVERSITY INN" on each face of the building, as follows:
  - a. On the west face of the building, the sign is centered on the wall just below the roof eaves, and is approximately 24 feet long by two feet high. The drawing also indicates that a design element, such as a small crest or emblem, would be placed on either side of the lettered sign. Without the design element, the sign would be approximately 20 feet long by two feet high. **(L-2)**
  - b. On the south face of the building, the sign is on the left of the southernmost wall, just below the roof eaves, and is approximately 14 feet long by one foot high. **(L-2)**
  - c. On the east face of the building, the sign is centered on the wall just below the roof eaves, and is approximately 24 feet long by two feet high. The drawing also indicates that a design element, such as a small crest or emblem, might be placed on either side of the lettered sign. Without the design element, the sign would be approximately 20 feet long by two feet high. **(L-3)**
  - d. On the north face of the building, the sign is centered on the north face of a portico or canopy which appears to extend over the north entrance of the hotel, and is approximately 14 feet long by one foot high. **(L-3)**
4. The plan notes on Sheets A-5 and A-6 read, in relevant part:

BUILDING MOUNTED SIGNS:

1. ALL SIGNS TO BE CAST ALUMINUM CHANNEL LETTERS INDIVIDUALLY MOUNTED AND BACK LIT WITH WHITE NEON TUBING.
  2. AGGREGATEW [sic] AREA OF SIGNS SHALL NOT EXCEED 5 PERCENT OF THE AREA OF THE FACADE ON WHICH THE SIGN IS LOCATED.
  3. LIMIT ONE SIGN PER ELEVATION. SUBJECT TO REVIEW AND COMMENT OF THE SOUTH BURLINGTON PLANNING DEPARTMENT
  4. NO SITE MOUNTED SIGNS ARE PROPOSED.
5. The Original Permit was issued as a result of a minor application proceeding, pursuant to Environmental Board Rule (EBR) 51. There was no hearing, and no findings were issued.
6. The application for the Original Permit was submitted with an elevation drawing with no signage (Commission Exhibit #26). The Commission marked this exhibit as "replaced." The replacement exhibits, with the signage details that were ultimately incorporated into the Original Permit, were filed with a letter from architect Greg Rabideau to the District 4 Environmental Commission Coordinator, which states in part that:

In response to our phone conversation on January 20, 2000, I am transmitting the following information :

1. Revised Exterior elevations of the proposed structure showing all proposed building mounted signs and building mounted lighting.

. . .

We trust that this additional information will enable you to process this application. . . .

Commission Exhibit #34.

7. LTH made several changes to the Original Project during construction, including changing from the approved dark-brick exterior to light-colored siding on the upper three stories, changing from the approved metal, standing-seam roof, to an asphalt shingle roof, and changes to the building-mounted signage.

8. On July 27, 2000, LTH filed a permit amendment application for the demolition of part of the existing Howard Johnson's hotel building connected to the Friendly's restaurant, and the construction of a 24-foot wide driveway between the two buildings with walkways and other landscape improvements, among other things. The permit amendment application did not include the changes LTH had made during construction of the Original Project.
9. On August 18, 2000, LTH amended its permit amendment application to seek retroactive approval for changes that LTH had made to the University Inn during construction.
10. On January 25, 2001, the Commission issued the Amended Permit and Decision to LTH. The Commission granted a permit amendment for most of the as-built changes, but denied the amendment application the changes to the University Inn signage.
11. During construction of the Original Project, LTH learned that the soil on the Project site could not support the weight of four stories of brick facade. For this reason, LTH installed a lighter weight, stucco-like facade on the upper three stories.
12. The new facade is cream-colored, whereas the facade as proposed and approved by the Commission was dark red.
13. LTH installed building-mounted signage on the north and west faces of the building only. The signage is internally illuminated channel lettering with green faces and yellow trim cap made of lexan or plastic. Each sign says "UNIVERSITY INN & SUITES," and there are no design elements on the sign as had been originally permitted. Each sign is described further as follows:
  1. The sign on the north face of the building is located just below the roof eaves of the University Inn (not on the portico, as originally permitted). It is approximately 28 feet long by two feet high.
  2. The sign on the west face of the building is located just below the roof eaves of the University Inn, and is approximately 34 feet long by two feet high.
14. The City of South Burlington Development Review Board (DRB) approved this building-mounted signage in September 2000. The DRB

will not allow LTH to install more than two building-mounted signs on the University Inn, whereas four signs had been approved by the Commission in the Original Permit.

15. Rod Pickering, the chief operating officer of the University Inn, was involved in the design and construction of the hotel, including the design and placement of the building-mounted signage.
16. Mr. Pickering decided to place the two signs on the north and west faces of the building, where they would be more visible from Route 2 eastbound, because much of the University Inn's business comes from people traveling in that direction.
17. At the time Mr. Pickering chose the signage, he thought that an internally illuminated sign was a type of backlit sign. He thought that the signage installed by LTH satisfied Condition 22 of the Original Permit.
18. The area surrounding the Project includes densely developed commercial properties, most of which have signage similar to the as-built signage at issue in this proceeding. For instance, the Holiday Inn across Route 2 from the Project has an internally lit, building-mounted sign with the "Holiday Inn" letters in green and starburst logo in yellow and orange. The most visually prominent signs in the area are free-standing, internally lit signs for Staples, across I-89 from the Project, and another for the Sheraton, across Route 2 and I-89 from the Project.
19. Additional land uses in the area include other hotels, restaurants, retail stores, gas stations, high traffic roads such as Route 2, Dorset Street, and Interstate 89.
20. The building-mounted signage may be viewed from Interstate 89, Route 2, Dorset Street and neighboring commercial properties.
21. Large evergreen trees obscure much of the view of the signage and building from I-89 northbound, consistent with Condition 13 of the Amended Permit. The Original Permit and unchallenged portions of the Amended Permit require that these trees and other plantings be maintained.

#### **IV. CONCLUSIONS OF LAW**

##### **A. *Stowe Club Highlands***

Whether *Stowe Club Highlands* should apply in this appeal was a preliminary issue in this case. By Memorandum of Decision dated January 22, 2002, the Board ruled that *Stowe Club Highlands* should apply.

Pursuant to *In re Stowe Club Highlands*, 166 Vt. 33 (1996), the Board must determine whether considerations of flexibility outweigh considerations of finality before it can examine the aesthetic effects of the signage under Criterion 8. To do this, the Board first considers whether any change has occurred since the permit or prior amendment was issued which would justify amending the permit, such as:

1. Changes in factual or regulatory circumstances beyond the control of the permittee;
2. Changes in the construction or operation of the project which were not reasonably foreseeable at the time the permit was issued; or
3. Changes in technology.

*In re Stowe Club Highlands*, 166 Vt. at 38. If any such change has occurred, then the Board looks to considerations of finality. *Re: Town and Country Honda*, Findings, Conclusions and Order at 13 (Feb.15, 2001)(citing *Re: Richard Bouffard*, #4C0647-6-EB, Findings of Fact, Conclusions of Law, and Order at 15 (Oct. 23, 2000)).

### **1. Changes Favoring Flexibility**

In *Stowe Club Highlands*, the Vermont Supreme Court recognized the importance of maintaining reasonable flexibility in the permitting process: "If existing permit conditions are no longer the most useful or cost-effective way to lessen the impact of development, the permitting process should be flexible enough to respond to changed conditions." *Stowe Club Highlands*, 166 Vt. at 38.

On the other hand, the Court noted that it is not appropriate to allow a permit amendment for extreme changes which were foreseeable during the original permitting proceeding:

[W]hile small or moderate changes are expected and even common, extreme changes will likely come as a surprise to all involved. Permit applicants should consider foreseeable changes in the project during the permitting process, and not suggest conditions that they would consider unacceptable should the project change slightly. Otherwise, the initial permitting process would be merely a prologue to continued applications for permit amendments.



*Id.* at 39. The Board notes that the signage changes, though significant, are in no way extreme.

LTH obtained a permit for certain signage to be mounted on each side of a dark brick building. What it discovered during construction was that the soils on the Project site would not support the proposed brick facade. This unforeseeable change in construction weighs in favor of flexibility. However, before the Board can reach the merits of the amendment request, it must determine whether and to what degree parties or the Commission relied on LTH's original representations regarding signage, and weigh this against this unforeseen change in construction.

## 2. Finality

To determine whether and to what degree circumstances weigh in favor of finality under *Stowe Club Highlands*, the Board examines whether and to what degree there has been reliance on the prior permit and the applicant's related representations. For instance, in *Stowe Club Highlands*, the applicant had promised to keep part of the Project site known as the "Meadow Lot" undeveloped, and purchasers of neighboring residential property had bought their property in reliance upon a permit condition which restricted development the Meadow Lot. *Stowe Club Highlands*, 166 Vt. at 139. In this case, by contrast, there is no evidence of any such reliance by neighbors or other parties. In fact, no other party requested a hearing before the Commission, and no other party has opted to participate in this proceeding.

Another consideration is whether the district commission has relied on the applicant's representations. "[R]easonable reliance by a party or decision-maker on the condition which is the subject of the proposed amendment weighs heavily in favor of finality." *Town and Country Honda*, Findings, Conclusions and Order at 17-18 (citations omitted). Ordinarily the Board would look to the district commission's findings and the permit to determine whether such reliance had occurred. In this case, however, the Original Permit was processed as a minor permit application, pursuant to EBR 51, with no hearing and no findings by the Commission. As such, the Commission necessarily found that there was a "demonstrable likelihood that the project will not present significant adverse impact under any of the 10 criteria of 10 V.S.A. § 6086(a)." EBR 51(A). This finding must be based upon the permit application. EBR 51(B). However, the fact that the application was processed as a minor, without findings, means that there is relatively little evidence of reliance by the Commission.

The application originally contained no information on signage. At the Coordinator's request, LTH submitted architectural drawings showing signage layout and details. Through these drawings, LTH made representations about how its

proposed building-mounted signage would appear, and the Commission incorporated LTH's representations, verbatim, into the Original Permit. While this is some evidence of reliance, it does not weigh heavily in favor of finality without supporting findings.

### **3. Balancing of Flexibility and Finality**

"[O]nce a permit has been issued it is reasonable to expect the permittee to conform to those representations unless circumstances or some intervening factor justify an amendment." *Re: Nehemiah Associates, Inc., #1R0672-1-EB* (Remand), Findings of Fact, Conclusions of Law, and Order, at 21 (Apr. 11, 1997)(quoting *Re: Department of Forests and Parks, Knight Point State Park, Declaratory Ruling #77, at 3* (Sept. 6, 1976)). In this case, there has been an unforeseeable change in construction, which justifies reexamination of various aspects of the original permit, including the building-mounted signage. The Board therefore concludes that the amendment application satisfies *Stowe Club Highlands*, and accordingly, the Board will review the merits of the amendment application.

#### **B. Criterion 8 (aesthetics)**

The Board must determine whether the changes to the building-mounted signage, will have an undue adverse effect on the aesthetics of the area. 10 V.S.A. § 6086(a)(8)(aesthetics). Criterion 8 "was not intended to prevent all change to the landscape of Vermont or to guarantee that the view a person sees from her property will remain the same forever." *Re: Okemo Mountain, Inc., #2S0351-8-EB*, Findings of Fact, Conclusions of Law, and Order at 9 (Dec. 18, 1986). Criterion 8 was intended to ensure that as development occurs, reasonable consideration will be given to the visual impacts on neighboring landowners, the local community, and on the special scenic resources of Vermont. *Horizon Development Corp., #4C0841-EB*, Findings of Fact, Conclusions of Law, and Order (Aug. 21, 1992).

The Board uses a two-part test to determine whether a project satisfies Criterion 8 (aesthetics). First, it must determine whether the project will have an adverse effect under Criterion 8. *Id.*; see also *Re: James E. Hand and John R. Hand, d/b/a Hand Motors and East Dorset Partnership, #8B0444-6-EB* (Revised), Findings of Fact, Conclusions of Law, and Order at 24-25 (Aug. 19, 1996); *Re: Quechee Lakes Corp., #3W0411-EB and #3W0439-EB*, Findings of Fact, Conclusions of Law, and Order (Nov. 4, 1985). Second, it determines whether the adverse effect, if any, is undue. *Hand, supra*, at 24; *Quechee Lakes, supra*, at 17-20.

#### **1. Adverse Effect**

In determining whether a project will have an adverse effect,

[T]he Board looks to whether the proposed project will be in harmony with its surroundings or, in other words, whether it will "fit" the context within which it will be located. In making this evaluation, the Board examines a number of specific factors including the nature of the project's surroundings, the compatibility of the project's design with those surroundings, the suitability for the project's context of the colors and materials selected for the project, the locations from which the project can be viewed, and the potential impact of the project on open space.

*Hand, supra* at 25. In other words, if a project "fits" its context, it will not have an adverse effect. *Re: Talon Hill Gun Club and John Swinington, #9A0192-2-EB, Findings of Fact, Conclusions of Law, and Order* at 9 (June 7, 1995).

LTH installed building-mounted signage on the north and west faces of the building only. The signage is internally illuminated channel lettering with dark green faces and yellow trim cap made of lexan or plastic. Each sign says "UNIVERSITY INN & SUITES." There are no design elements in addition to the letters. The sign on the north face of the building is located just below the roof eaves of the University Inn. It is approximately 28 feet long by two feet high. The sign on the west face of the building is located just below the roof eaves of the University Inn, and is approximately 34 feet long by two feet high.

The area surrounding the Project includes densely developed commercial properties. Additional land uses in the area include high traffic roads and an interstate highway, I-89. The signage for the Project is visible from I-89, Williston Road (Route 2), Dorset Street, and neighboring commercial properties.

The changed signage is not a significant departure from the signage found on land uses existing in the area. In fact, it is consistent with signage on nearby commercial projects.

However, the Board has previously noted that "an overabundance of signs clutters the view of an area and produces a chaotic effect associated with heavily developed commercial areas," and that "internally lit signs are particularly distracting." *Re: Town and Country Honda and Robert Aughey, #5W0773-2-EB, Findings of Fact, Conclusions of Law, and Order* at 18 (Feb. 15, 2001)(quoting prior Board decision in #5W0773-1-EB). Thus, the fact that the surrounding area already has many internally illuminated signs similar to those proposed by an applicant does not necessarily mean that the proposed signs (or, as here, signs installed without a permit) will not have an adverse effect on aesthetics.

In another recent case, the Board analyzed proposed internally illuminated signage as follows:

... while the Route 7 corridor is replete with internally illuminated signs, if approved as requested, the Project's signage will illuminate an area to the west of Route 7 which is presently not illuminated. The Board concludes that the illumination of this Project's signage on the present landscape would have an adverse effect on the aesthetics of the area.

Re: *Hannaford Brothers Co. and Southland Enterprises, Inc.*, #4C0238-5-EB, Findings of Fact, Conclusions of Law and Order at 16 (Apr. 9, 2002). The project site in *Hannaford* was more removed from Route 7 than the Project site in the instant case is removed from Williston Road, but the same principle applies. Like the internally illuminated signs proposed in *Hannaford*, LTH's signage illuminates an area which was not previously illuminated. Also, the amendment application in question not only concerns a change to internal illumination, but a change to somewhat larger signs, with one in a much more visually prominent position than originally proposed.

Accordingly, the Board concludes that the changed signage will cause at least some adverse aesthetic impact. The next step in the analysis is to determine whether this adverse aesthetic impact is undue.

## 2. Undue

An adverse aesthetic effect is undue if the Board reaches any of the following conclusions:

- a. The project violates a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area;
- b. The applicants failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the project with its surroundings; or
- c. The project offends the sensibilities of the average person, is offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area.

*Home Depot*, Findings, Conclusions and Order at 31 (citing *Black River, supra* at 19-20; *Hand, supra* at 25-29; *Quechee Lakes, supra* at 19-20). Each of these will be considered in turn.

- a. *Clear, Written Community Standard*

Under this first factor, the Board must determine whether the proposed Project violates a clear, written community standard intended to preserve the aesthetics or scenic beauty applicable to the area in which the project would be located. "In evaluating whether a project violates a clear written community standard, the Board routinely looks to town and regional plans, open land studies, and other municipal-generated documents to discern whether a clear, written community standard exists and should be applied in the review of the aesthetic impacts of a project." *Re: McDonald's Corporation*, No. 100012-2B-EB, Findings of Fact, Conclusions of Law, and Order at 14 (Mar. 22, 2001)(citing *Re: Herbert and Patricia Clark*, #1R0785-EB, Findings of Fact, Conclusions of Law, and Order at 35- 37 (Apr. 3, 1997); *Re: Thomas W. Bryant and John P. Skinner d/b/a J.O.T.O. Associates*, #4C0795-EB, Findings of Fact, Conclusions of Law, and Order at 22 (June 26, 1991); *see also, Re: Nile and Julie Duppsadt*, #4C1013 (corrected)-EB, Findings of Fact, Conclusions of Law, and Order at 23 (Apr. 30, 1999)). However, statements in town plans or zoning ordinances that express broad policy goals are not "clear, written community standards." *See, e.g., Re: McDonald's Corporation*, No. 100012-2B-EB, Findings, Conclusions and Order at 14 (Mar. 22, 2001)(citing *Re: Town of Barre*, #5W1167-EB, Findings, Conclusions and Order). In *Barre*, the Board held that a "broad statement of policy that applies generally to the community at large is not a clear, written community standard." *Barre*, Findings, Conclusions and Order at 21; *cf Re: The Mirkwood Group and Barry Randall*, #1R0780-EB, Findings of Fact, Conclusions of Law, and Order at 22-23 (Aug. 19, 1996) (Pittsford zoning ordinance constituted clear, written community standard where proposed radio tower was located within conservation district and the ordinance contained a clear statement of the community policy against use of conservation district lands for anything other than dwellings, forestry, and agriculture).

In this case, there is no clear, written community standard which would be violated by the building-mounted signage.

*b. Generally Available Mitigating Steps*

To determine whether there has been sufficient mitigation, "the Board looks to the steps that the applicant has taken to reduce the aesthetic impacts of a project on the character of the area where it is proposed; the Board asks whether the applicant has taken generally available mitigating steps to improve the harmony of the project with its surroundings." *Re: McDonald's Corp. and Murphy Realty Company, Inc.*, #100012-2B-EB, Findings, Conclusions, and Order at 22 (Mar. 22, 2001)(citing *Re: Thomas W. Bryant and John P. Skinner d/b/a J.O.T.O. Associates*, #4C0795-EB, Findings of Fact, Conclusions of Law, and Order at 21-22 (June 26, 1991)(sufficient mitigation found where an applicant placed height restrictions on homes and trees, proposed plantings to screen the development, proposed covenants to govern future

construction and activities on the site, placed limits on exterior house colors, and retained open space to alleviate the adverse effects of the subdivision on the surrounding area)). This is a fact-specific inquiry. See, *McDonald's*, Findings, Conclusions and Order at 22 ("what may be required to aesthetically mitigate a project is a highly case and context-specific inquiry").

When compared to the signage authorized in the Original Permit, the as-built signage is now internally illuminated, somewhat larger and more prominent visually, and contains the extra letters: "& SUITES." However, it is mounted on only two, rather than four, sides of the building, and does not contain the design elements authorized on the east and west faces of the building. Also, no site-mounted or freestanding signage has been proposed or approved, so signage for the University Inn is limited to the two building-mounted signs. In addition, large evergreen trees already obscure much of the view of the signage and Project site from I-89 northbound, consistent with Condition 13 of the Amended Permit. The Original Permit and unchallenged portions of the Amended Permit require that these trees and other plantings be maintained. This landscaping, coupled with the absence of additional signage, constitutes reasonable mitigation of the relatively minor adverse aesthetic effect of the building-mounted signage.

c. *Shocking or Offensive*

Finally, the Board must determine whether the Project "would be so out of character with its surroundings or so significantly diminish the scenic qualities of the area as to be offensive or shocking to the average person." *Re: McDonald's Corp. and Murphy Realty*, #100012-2B-EB, Findings, Conclusions, and Order at 22 (Mar. 22, 2001)(citing *Re: Pike Industries, Inc. and William E. Dailey, Inc.*, #1R0807-EB, Findings of Fact, Conclusions of Law, and Order at 18-19 (June 25, 1998)). While there is an adverse aesthetic effect, as discussed above, the aesthetic impact of the signage, as conditioned, will not be substantial or significant enough to be shocking and offensive to the average person. See, e.g., *Re: Pike Industries*, #1R0807-EB (Jun. 25, 1998)(noise, including that from back-up alarms on vehicles and equipment, would be adverse, but not so out of context with its surroundings as to be offensive or shocking to the ordinary person); *Re: Raymond F. Duff*, #5W0952-2-EB (Jan. 29, 1998)(residential subdivision not offensive or shocking); *Re: Mirkwood Group*, #1R0780-EB (Aug. 19, 1996)(radio tower is an aesthetic intrusion, but is not shocking or offensive); *Re: John Gross Sand and Gravel*, #5W1198-EB (Apr. 27, 1995)(noise from earth extraction project not offensive or shocking, as limited by permit conditions). As set forth above, the building-mounted signage is consistent with other signage in the area, and its impacts are minimized by the mitigation efforts described above.

Therefore, the Board holds that the adverse aesthetic impact is not undue, and concludes that the building-mounted signage complies with Criterion 8 (aesthetics).

**V. ORDER**

1. The amendment application satisfies *Stowe Club Highlands*.
2. The building-mounted signage complies with Criterion 8 (aesthetics).
3. Land Use Permit Amendment #4C1057-1-EB is issued herewith.
4. Jurisdiction is returned to the District 4 Environmental Commission.

DATED at Montpelier, Vermont, this 27th day of June, 2002.

ENVIRONMENTAL BOARD

\_\_\_\_\_/s/Marcy Harding\_\_\_\_\_  
Marcy Harding, Chair  
John Drake\*\*  
George Holland\*  
Samuel Lloyd  
Alice Olenick  
Jean Richardson  
Donald Sargent

\* DISSENT: Board member George Holland. I would hold that the aesthetic impact of the signage is not adverse.

\*\* Board Member John Drake was not present for the June 19, 2002 Board deliberation, but he has reviewed and joins in this decision.