



Browns no longer used the property as a residence. It was first constructed in 1903 as a private residence. When it was converted to a nursing home or assisted living facility 30 or more years ago (i.e.: prior to the adoption of the current Zoning Bylaws), it was known as The Old English Inn.

3. The property is located in the Village Rural Residential Zoning District (RR District). See Village of Manchester Zoning Bylaws (Bylaws) at §§ 5.11 through 5.15.

4. The residential structure is the only structure on the subject property. It is a large, twenty-two room structure surrounded by trees and not clearly visible from River Road.

5. By the date of the merits hearing, Appellee-Applicants had completed substantial interior renovations and improvements to the structure on the subject property. Their son, Oliver, and daughter-in-law, Bonnie, assisted in much of the renovations and improvements. At some time prior to the merits hearing, Bonnie, Oliver and their infant son, Gavriel, began residing at the subject property.

6. The Levises intend to operate a not-for-profit family business venture from the subject property, to be known as “Teleion Holon,” which is loosely translated from the teachings of Aristotle to refer to “a perfect universe.” This family business venture would provide overnight accommodations and meals for their houseguests.

7. Oliver and Bonnie Levis currently serve as the primary staff and on-site management for the facility. The Levises also intend to hire two full-time employees for housekeeping, grounds-keeping and kitchen work. These employees will live off-site and will commute to the subject premises. Dr. Levis will provide much of the seminar presentation, teaching and training offered to Teleion Holon guests, but also plans to hire other faculty and professional staff on a part-time and as-needed basis.

8. The renovated facility includes 10 guest rooms, a multi-purpose ball room and yoga studio, a large living room, grand dining room, classrooms, offices and a teaching kitchen in which meals are prepared and served on a communal basis.

9. The maximum capacity for the facility will be 18 overnight guests and an undisclosed number of daytime attendees for seminars and other sessions proposed to be offered at Teleion Holon. The existing improved parking area around the building can accommodate 20 vehicles. Another 30 vehicles could be accommodated on an occasional overflow basis in a field that adjoins the Teleion Holon structure.

10. The Levises maintain advertisement materials for Teleion Holon on a web site and in paper format. Their advertisements advise that room rates “start at \$100 per night double

occupancy for a luxurious guestroom with a private bath. Several of the rooms have Whirlpool spas and others have fireplaces. All of the rooms are newly renovated, charming and unique. Rates include nourishing breakfasts and morning yoga practice. Additional meals and programming costs vary by event.” Exhibit A-3. The testimony at trial, including references to observations made during the site visit, proved the accuracy of the Levises’ representations of their renovated accommodations.

11. The Levises’ advertisements and testimony at trial also represented that they would offer yoga sessions, massages, Shiatsu, and “creativity and power management” sessions at the subject property. The Levises also propose to conduct nature walks and guided tours of area art exhibits and museums for their Teleion Holon guests, including tours of art exhibits and the museum on a neighboring property also owned by Dr. & Mrs. Levis and known as the Wilburton Inn. Dr. Levis also testified extensively to the trainings, seminars, psychiatric services and prescribed medications that would be offered at Teleion Holon. However, neither Dr. Levis’s testimony nor the Levises’ advertisements restrict their overnight houseguests to those who would avail themselves of such services.

12. Other than the Wilburton Inn, the neighborhood that surrounds the subject property consists primarily of residences on larger tracts of land, with one exception: a several hundred-acre tract of land abutting the subject property to the southeast, known as Hildene Meadows, is owned and operated by a not-for-profit entity that occasionally lets out the open field for a wide variety of community cultural, educational and recreational activities.

13. The subject property is abutted to the north by the common land and access road of a large residential subdivision known as Riverbend. The next property to the north is owned and occupied as a residence by Interested Person Margie M. Wilbur, whose residence is about 200 yards from the Teleion Holon facility. Appellant Ross resides with his wife and children on the 23± acre property to the north of Ms. Wilbur’s property.

14. The Levises presented their application to the Village Zoning Board of Adjustment (ZBA) on April 26, 2004, seeking a conditional use permit to change the use of the subject property. Their initial application did not specify the proposed use of the property, but the Levises later advised the ZBA that they intended to operate Teleion Holon as a “clinic,” as that term is used within the list of permitted conditional uses within the RR District. The Levises presented that same request to this Court at its merits hearing.

## Discussion

This de novo appeal requires the Court to conduct a two-step analysis of the evidence presented at trial. We must first determine whether Appellee-Applicants have fulfilled their burden of showing that their intended use can be interpreted as one of the conditional uses allowed in the RR District. If we determine that it can, we must then decide whether Appellee-Applicants have fulfilled the criteria within the Bylaws that allow for the approval of proposed conditional uses. Based upon the evidence presented at trial, we make the following determinations on each of the pending questions.

### **1. Is the proposed use a permitted conditional use?**

The primary, and perhaps sole issue<sup>†</sup> raised by this appeal is whether the Levises' proposed change of use for the subject property comports with the conditional uses allowed in the RR District. Those uses which are conditionally allowed are itemized in § 5.12 of the Village of Manchester Zoning Bylaws (Bylaws). Appellee-Applicants contend that their proposed use can be defined as a "clinic," as that term is used in Bylaws § 5.12(1). That provision allows the following to be permitted as conditional uses in the RR District:

A public park or playground, a community recreation building or center, a library, museum, art center, clinic or similar philanthropic use, operated by a governmental unit or non-profit corporation, or a community association.

Bylaws § 5.12(1).

This Court devoted a good portion of its interim Decision of November 1, 2005 to the central question of what may qualify as a "clinic," as that term is used in Bylaws § 5.12(1). In that Decision, we concluded that we could not grant summary judgment to Appellant, because we could not conclude that there were no circumstances under which the Levises' proposed use could be described as a clinic. But now that the merits hearing evidence has been received, our analysis shifts to whether the Levises have fulfilled their burden of showing that their planned use is a clinic. Based upon the evidence admitted at trial, we conclude that the Levises' planned use of the property may have some components that could be described as clinical in nature, but that their planned use is more in keeping with a country inn or bed and breakfast, albeit with a holistic theme. Such uses are not allowed in the RR District, either as a permitted use or a conditional use. We therefore conclude that Appellee-Applicants have not met their burden of showing that what they intend for the property is allowed in this zoning district.

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<sup>†</sup> Appellant Ross listed six questions in his Statement of Questions, but a challenge to the appropriateness of the Levises' proposed use for the subject property is a consistent theme in each of Appellant's six Questions.

The Levises' advertisements provide for nightly room rates and include the comforting enticements often found in country inn advertisements. The Court was duly impressed with Dr. Levis's credentials as a Vermont-licensed retired clinical psychiatrist who specializes in the study of the creative process and the study of creativity as it relates to self-discovery and growth, his pledge to operate Teleion Holon on a philanthropic basis and his desire to share his knowledge about our creative process. But the Levises' presentation on their intended use of the property was often less than clear, and often relied upon activities that appeared similar to the activities offered at the nearby Wilburton Inn. In fact, the Levises intend to make available some of the facilities at the Wilburton Inn for their Teleion Holon guests.

References to the Wilburton Inn in this proceeding are problematic for the Levises, since the Wilburton Inn is operated as a lawful pre-existing, but non-conforming use in the RR District. As such, its expansion is restricted. See In re LaBounty Enterprises, Docket No. 18-2-06 Vtec (Vt. Env'tl. Ct., July 14, 2006), slip op. at 5 (citing Dewitt v. Town of Brattleboro, 128 Vt. 313, 319 (1970), for the proposition that the "expansion of a nonconforming use offends the spirit of zoning regulation"). More to the point, to the extent that a planned use in the RR District resembles the actual use of the Wilburton Inn, an adjudicating body is more inclined to characterize the planned use as not permitted in the RR District.

But we note that Teleion Holon is not a mirror image of the Wilburton Inn. Teleion Holon is much smaller in size and is not clearly advertised as a country inn or bed and breakfast. The definition offered by the Levises of what Teleion Holon will be is confusing and unclear, at best. The Court is therefore uncertain of how to precisely define the intended use presented by the Levises, but concludes that Teleion Holon will more closely resemble a country inn or bed and breakfast than a clinic, as that term is used in the ordinance. We therefore conclude that Appellee-Applicants have not met their burden of showing that their intended use of the subject property is allowable under the zoning regulations.

## **2. Does the proposed use satisfy the conditional use criteria?**

Because of the lack of clarity in the proposed use as presented by Appellee-Applicants, we could avoid an analysis of whether their planned use fulfills the conditional use criteria. It is, after all, an applicant's burden to show that their planned use fits within the applicable list of permitted or conditional uses in the zoning ordinance. See In re Appeal of Theresa McLaughlin, Docket No. 42-2-05 Vtec (Vt. Env'tl. Ct., March 13, 2006), slip op. at 8 ("Appellant-Applicant must fulfill the burden of proving that her application complies with the applicable zoning

ordinance provisions”). But we none-the-less will review the applicable conditional use criteria, given that those issues were preserved by Appellant for review in this appeal.

Any conditional use proposed within the Village RR District must fulfill the criteria listed in Bylaws § 3.4.3, which provides as follows:

A conditional use may only be approved after a Public Hearing, at which the burden of proof shall be upon the Applicant, and the Zoning Board of Adjustment [and, on appeal, the Environmental Court] finds the proposed use will not unduly adversely affect:

- a. the capacity of existing or planned community facilities including public schools in the Town of Manchester;
- b. the character of the area;
- c. on the residential uses in the vicinity or elsewhere in the Village;
- d. the traffic on roads and highways in the vicinity including private roads;
- e. significant natural resources on the site; [or]
- f. the Village of Manchester or Town of Manchester if the property is removed from the Grand List.

Bylaws § 3.4.3.

In his Statement of Questions, Appellant preserved for review in this appeal the criteria listed in subsections (b), (c) and (d). Based upon the admitted evidence, we conclude that Appellee-Applicant failed to fulfill their burden of establishing that there will not be an undue adverse impact on these important neighborhood criteria.

As stated above, the evidence presented indicated an intended use of the Teleion Holon facility that was more like a country inn than a clinic, as the latter term is used in § 5.12(1). Such a use is not in keeping with and will contradict both the permitted and actual character of the area in general and the residential uses in the area in particular. The area has the character of a traditional rural residential setting, not far removed from a village center. The large open area of Hildene Meadows, with its occasional community cultural, educational and recreational activities, fosters the rural residential character of the area. Appellant Ross testified at trial that if the proposed use were allowed, he and his nearby residential neighbors would have commercial enterprises on either side of them. These bookends of commercial activity<sup>‡</sup> would not be in keeping with the character of the area or the intended uses for the area, as reflected in Bylaws § 5.12.

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<sup>‡</sup> We recognize that the Levises intend to operate Teleion Holon as a not-for-profit enterprise, but its operation would none-the-less be commercial in nature.

As for the final criteria we are charged with reviewing, the evidence at trial was sparse. Either Dr. Levis or his son testified that their operation of Teleion Holon would generate no more traffic than if the property was used as a private residence. Other witnesses challenged this assertion. While there was no traffic study authored by an expert offered into evidence, the Levises testified that the facility could accommodate up to 50 vehicles in its parking area and field. While no specific events were suggested that would generate that many vehicle visits in a given day, the specific number of overnight guests and daytime participants was not estimated. Thus, Appellee-Applicants have left the Court to wonder whether such a large number of vehicle trips would be generated by their future operation of Teleion Holon, if the Court were to grant the conditional use. Since we are left to speculate on whether such a large number of vehicle visits could be generated, we must conclude that Appellee-Applicants have failed to meet their burden of proving that an undue adverse impact on neighborhood traffic would not occur.

Accordingly, for all the reasons previously stated here, we conclude that Appellee-Applicants have failed to meet their multiple burdens of proof in this proceeding and therefore **DENY** their request for conditional use approval for the subject property. The proceedings in this appeal are now concluded, subject to the right of appeal. A Judgment Order accompanies this decision.

Done at Berlin, Vermont, this 13<sup>th</sup> day of September, 2006.

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Thomas S. Durkin, Environmental Judge