



Town of Underhill

Development Review Board

Findings and Decision

SUBDIVISION AMENDMENT REVIEW APPLICATION OF THE TIJAN 2019 FAMILY TRUST RELATING TO PROPOSED REVISIONS TO THE BUILDING ENVELOPE

In re: Tijan 2019 Family Trust
26 Westman Road (WS026)
Underhill, VT 05489

Docket No. DRB-20-05

Decision: Approved with conditions (see Section V for More Details)

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns the subdivision amendment review application submitted by the Applicant, the Tijan 2019 Family Trust, regarding proposed revisions to the building envelope relating to property the Applicant owns at 26 Westman Road (WS026) in Underhill, Vermont.

- A. On Thursday, May 28, 2020, the Applicant filed a subdivision amendment review application for the abovementioned project. Planning Director & Zoning Administrator, Andrew Strniste, received the application and determined that it was complete shortly thereafter. A site visit was scheduled to commence on Saturday, June 27, 2020 at 9:00 AM, while the hearing date was scheduled remotely via the Go-To-Meeting platform to commence at Monday, 6:35 PM on July 6, 2020. No public gathering place was provided for the hearing.
1. *Due to the COVID-19 pandemic, the Vermont legislature enacted Act 92 that permits public hearings to be held remotely (without a public gathering place) as long as the remote meeting can be accessed by the public and the meeting is recorded.*
 2. The Monday, July 6, 2020 meeting agenda contained both a hyperlink to attend the meeting by computer, table or smartphone, as well as contained a dial-in phone number and access code allowing a participant to attend via phone.
- B. On June 10, 2020, notice regarding the subdivision amendment review hearing was mailed via certified mail to the following property owners adjoining the property subject to the application:
1. Applicant: WS026 – Tijan 2019 Family Living Trust, Brian J. & Tina M. Tijan Trustees, 26 Westman Road, Underhill VT 05489
 2. DE001 – Suzanne Stewart & Ellen K. Pritting, 1 Deane Road, Underhill, VT 05489
 3. DE019 – John C. & Margaret B. Ferguson, 19 Deane Road, Underhill, VT 05489
 4. DE025T – Christian Hunt & Samantha Bissonette, 1301 Westman Road, Cambridge, VT 05444

5. PV633T – Joseph M. & Anne Marie Tisbert, 5901 Pleasant Valley Road, Cambridge, VT 05444
 6. Town of Cambridge – Town of Cambridge, Attn: Mark Schilling, P.O. Box 127, Jeffersonville, VT 05464
- C. During the week of June 7, 2020, notice of the public hearing for the proposed Tijan subdivision amendment review hearing was posted at the following places:
1. The Underhill Town Clerk's office;
 2. The Underhill Center Post Office; and
 3. Jacobs & Son Market.
- D. On Saturday, June 13, 2020 the notice of public hearing was published in the *Burlington Free Press*.
- E. A site visit at the property located at 26 Westman Road, Underhill, Vermont, commenced at 9:00 AM on Saturday, June 27, 2020.
- F. Present at the site visit were the following members of the Development Review Board:
1. Board Member, Charles Van Winkle, Chairperson
 2. Board Member, Stacey Turkos, Vice Chairperson
 3. Board Member, Matt Chapek
 4. Board Member, Daniel Lee
 5. Board Member, Karen McKnight
 6. Board Member, Penny Miller

No municipal representatives were present during the site visit. Members of the public present during the site visit were:

7. Applicant, Brian Tijan
- G. In accordance with Act 92, the subdivision amendment review hearing began at 6:35 PM on Monday, July 6, 2020 via the Go-To-Meeting platform. A public gathering place was not established; the meeting was recorded.
- H. Attending the remote meeting and present at the subdivision amendment hearing were the following members of the Development Review Board:
1. Board Member, Charles Van Winkle, Chairperson
 2. Board Member, Stacey Turkos, Vice Chairperson
 3. Board Member, Matt Chapek
 4. Board Member, Mark Green
 5. Board Member, Daniel Lee
 6. Board Member, Karen McKnight
 7. Board Member, Penny Miller

No municipal representatives were present at the meeting.

Others present at the hearing were:

1. Applicant, Brian Tijan (26 Westman Road, Underhill, VT 05489)
2. Resident, Timothy Potvin (145 Moose Run, Underhill, VT 05489)*
3. Resident, Theresa Potvin (145 Moose Run, Underhill, VT 05489)*

*While residents Timothy & Theresa Potvin were in attendance, they did not participate in the hearing, as they were the Applicants in the second hearing of the evening.

- I. At the outset of the hearing, Chairperson Van Winkle explained the criteria under 24 V.S.A § 4465(b) for being considered an “interested party.” Those who spoke at the hearing were:

1. Applicant, Brian Tijan

- J. In support of the subdivision amendment review application, the following exhibits were submitted to the Development Review Board:

1. Exhibit A – Tijan Subdivision Amendment Staff Report
2. Exhibit B – WS026 Subdivision Amendment Review Hearing Procedures
3. Exhibit C – Application for Subdivision Amendment
4. Exhibit D – Project Narrative
5. Exhibit E – BFP Notice
6. Exhibit F – WS026 Certificate of Service
7. Exhibit G – Selectboard Minutes Re Access (06.06.2005)
8. Exhibit H – Selectboard Affirmation of Curb Cut (08.02.2015)
9. Exhibit I – Planning Commission Subdivision Approval (06.28.2005)
10. Exhibit J – DRB Decision DRB-16-02 Re Building Envelope
11. Exhibit K – Wastewater System Certification Letter
12. Exhibit L – Town Attorney Opinion Re Building Envelope
13. Exhibit M – Proposed Building Envelope
14. Exhibit N – Survey Plat Depicting Current Building Envelope
15. Exhibit O – Water-Wastewater System Site Plan
16. Exhibit P – Driveway Plan

No additional exhibits were distributed to the Board prior to the Monday, July 6, 2020 hearing, nor were any additional exhibits submitted into the record during the hearing.

All exhibits are available for public review in the Tijan 2019 Family Trust Subdivision Amendment Review file (WS026/DRB-20-05) at the Underhill Zoning & Planning office.

II. FACTUAL FINDINGS & CONCLUSIONS RELATING TO THE UNDERHILL UNIFIED LAND USE & DEVELOPMENT REGULATIONS

The Minutes of the July 6, 2020 meeting, written by Board Member Penny Miller, are incorporated by reference into this decision. Please refer to the minutes for a summary of the testimony. The recording of the July 6, 2020 Development Review Board meeting can be viewed on the Mt. Mansfield Community Television’s website: <https://archive.org/details/underhill-drb-07072020>.

Based on the submitted application, testimony, exhibits, and evidence, the Development Review Board (hereafter Board) makes the following findings under the requirements of the 2011 *Underhill Unified Land Use and Development Regulations* (ULUDR), as amended March 3, 2020:

PROJECT BACKGROUND

The Applicant, the Tijan 2019 Family Trust, is seeking a subdivision amendment for the purposes of modifying and expanding the building envelope relating to the lot it owns at 26 Westman Road (WS026). The subject building envelope was previously approved by the Planning Commission (from their 2005 review) and subsequently approved by the Development Review Board in 2016 (see DRB Docket #: DRB-16-02). Specifically, the Applicant requested that the building envelope be expanded to the western portion of the property, as depicted in Exhibit M.

The existing property is located in the Mt. Mansfield Scenic Preservation District zoning district as defined in Article II, Table 2.6 of the 2011 *Underhill Unified Land Use & Development Regulations*, amended March 3, 2020.

ARTICLE II – ZONING DISTRICTS

A. ARTICLE II, TABLE 2.6 – MT. MANSFIELD SCENIC PRESERVATION DISTRICT

The Board finds that the proposed building envelope is consistent with the purpose statement and standards of the Mt. Mansfield Scenic Preservation District, as the proposed amendment will allow for the construction of an intended accessory structure. Accessory structures are permitted uses within the District.

ARTICLE III – GENERAL REGULATIONS

A. SECTION 3.2 – ACCESS

The Board finds that the existing driveway accesses Westman Road, a Class III Town Highway. The property subject to this application received access approval from the Selectboard during their June 6, 2005 meeting (Exhibit G), and subsequently reconfirmed the access approval on August 2, 2015 (Exhibit H). No modifications to the existing driveway are proposed, and therefore, review and analysis under this Section is not required. For the same reasons, review and analysis under Appendix A (Section III below of this decision – *Factual Findings & Conclusions Relating to the Underhill Road, Driveway & Trail Ordinance*), relating the *Underhill Road, Driveway & Trail Ordinance*, is not required.

To note, the constructed driveway bisects a Class II Wetlands; however, an individual Wetland Permit (#2014-217) from the Vermont Department of Environmental Conservation, as well as a wetlands permit from the US Army Corps of Engineers (#NAE-2016-0130) has been obtained.

B. SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS

The lot subject to this application contains one principal use and structure, a single-family dwelling, and satisfies the standards of the Mt. Mansfield Scenic Preservation District. The lot itself satisfies the other dimensional requirements of the aforementioned zoning district. The proposed building envelope depicted in Exhibit M will satisfy the District's requirements for ancillary structures/out-buildings. The Applicant has not requested any waivers.

Since the Selectboard has delegated authority to the Board to review the standards of the *Road, Driveway & Trail Ordinance*, in conjunction with the various references to the highway standards in the ULUDR, the Board finds that it has the authority to make determinations as they relate to the *Underhill Road, Driveway & Trail Ordinance* (Road Ordinance). The Board finds that the subject application does not require review under the Road Ordinance.

C. SECTION 3.17 – SOURCE PROTECTION AREAS

The Board finds that the subject property is not located in any known source protection area

(as identified by the Vermont Agency of Natural Resource's Atlas), nor is the property within the vicinity of any known public water sources. Therefore, review and analysis under this Section is not required.

D. SECTION 3.18 – STEEP SLOPES

The Vermont Agency of Natural Resource's Atlas depicts areas of steep slope (15-25%) and very steep slope (>25%) on the subject property (see Page 4, Exhibit A), specifically along the western and southern portion of the lot. The proposed building envelope subject to this application will include areas of steep slope. The Board notes that, unless the Applicant or their successor can show that the area is excluded from the steep slope definition, further review by this Board is required should the Applicant wish to construct a structure within the steep slope area.

E. SECTION 3.19 – SURFACE WATERS & WETLANDS

The Board finds that an unnamed stream is located adjacent to the rear property line (south) of the subject lot. Development is required to be 25 ft. from unnamed streams (as measured horizontally from the top of the bank or channel centerline where no bank is discernable). The Applicant is proposing that the rear boundary of the proposed building envelope be approximately 260 ft. from the unnamed stream, thereby satisfying the 25 ft. setback requirement.

The subject lot also contains two areas of Class II Wetlands, which were identified as part of the previous application with the Board in 2016 (DRB Docket #: DRB-16-02, Exhibit J). The site plan and survey plans from that application were submitted into the record for this application (Exhibits N, O & P). The Applicant has proposed a building envelope that does not contain any of the identified wetlands, and largely excludes the identified associated wetland buffers.

ARTICLE VI – FLOOD HAZARD AREA REVIEW

The Board finds that a Special Flood Hazard Area is not located on the subject property, and therefore, review under this Article of the regulations is not required.

ARTICLE VII – SUBDIVISION REVIEW

A. SECTION 7.2 – APPLICABILITY

The Board finds that the Applicant's proposed subdivision amendment is subject to the requirements of the *Underhill Unified Land Use & Development Regulations* per § 7.2. The original subdivision was approved under the Town's 2002 Subdivision Regulations during the Planning Commission's June 28, 2005 meeting (Exhibit I) and was classified as a "Planned Residential Development" during that meeting.

1. *Note: subdivision applications were approved by the Underhill Planning Commission prior to the creation of the Town's Development Review Board in 2007.*

B. SECTION 7.8 – REVISIONS TO AN APPROVED SUBDIVISION

The Board finds that the Applicant is proposing to amend the previously approved building envelope as depicted in Exhibit M. The proposed building envelope will be expanded towards the western portion of the property. While the Zoning Administrator has the authority to administratively modify building envelopes under Section 7.8.B.1.b, because the subject lot is associated with a Planned Residential Development, and since this Board specifically reviewed the building envelope in 2016, the Zoning Administrator found the modification to be beyond

his authority and referred the application to this Board.

ARTICLE VIII – SUBDIVISION STANDARDS

A. SECTION 8.1 – APPLICABILITY

The Board finds that no technical review was needed for this proposed project. The Board also finds that the Applicant has not requested any modifications of, or waivers from, the currently adopted zoning regulations.

B. SECTION 8.2 – GENERAL STANDARDS

SECTION 8.2.G – BUILDING ENVELOPES

The Board finds that the proposed building envelope conforms to the Town’s zoning regulations, as it avoids identified constraints (e.g. wetlands and associated buffers, surface waters and associated buffers, etc.). The Board continues to implement a building envelope that is more restrictive than what is allowed by the regulations, which is generally the underlying zoning district’s dimensional standards. Specifically, the subject property is part of a Planned Residential Development and includes site constraints such as wetlands. The Board continues to view these characteristics as significant policy reasons to implement a more restrictive building envelope. Any future proposed modification of the building envelope will require further review by this Board.

ARTICLE VIII – PLANNED UNIT DEVELOPMENT

A. SECTION 9.1 – PURPOSE

The Board finds that the subject property was part of the Vaughn Planned Residential Development, which was reviewed and approved by the Planning Commission during their June 28, 2005 meeting (Exhibit I). While the Applicant is proposing to enlarge the building envelope, the proposed envelope will continue to be more restrictive than what is allowed by the underlying zoning district, and therefore, will continue to conform with the policies enumerated under Section 9.1.A. The Board notes that since the principal structure is already built (a single-family dwelling), the benefit of the larger envelope will only be extended to accessory structures.

B. SECTION 9.2 – APPLICABILITY

The Board finds that the subject lot under review is part of a Planned Residential Development that was approved by the Planning Commission during their June 28, 2005 meeting (see Exhibit I).

C. SECTION 9.3 – APPLICATION REQUIREMENTS

The Applicant has submitted a site plan depicting the desired building envelope (Exhibit M) and a written statement outlining their request (Exhibit D). The Applicant has satisfied the requirements of this Section.

D. SECTION 9.4 – REVIEW PROCESS

The proposed waiver request does not substantially alter any of the previous findings made under this Section, the Planning Commission approval from June 28, 2005 (Exhibit I), or the Board’s previous decision: DRB-16-02 (Exhibit J).

E. SECTION 9.5 – GENERAL STANDARDS

The Board finds that the proposed building envelope modification continues to be consistent with the goals and policies of the *Underhill Town Plan* currently in effect, as well as the purpose

statement of the Mt. Mansfield Scenic Preservation District zoning district. While the proposed envelope will be larger than what was previously approved, the envelope will continue to be more restrictive than what is allowed by the underlying zoning district. Therefore, the expanded building envelope will not result in the impact of site constraints or the clearing of forested areas. The Applicant's proposed amendment will not affect the current density of the property of the surrounding area.

III. FACTUAL FINDINGS & CONCLUSIONS RELATING TO THE UNDERHILL ROAD, DRIVEWAY & TRAIL ORDINANCE

The Board finds that the *Underhill Road, Driveway & Trail Ordinance* does not apply since no modifications to the existing driveway and existing curb cut are proposed. Since Board review is unnecessary, an access permit is not required as a part of this decision. Therefore, the currently approved access permit, and any associated conditions of approval, are to remain in place.

IV. WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS

The Board does not grant any waivers or modifications, nor makes any supplementations.

V. DECISIONS AND CONDITIONS OF APPROVAL

The Board is satisfied with the level of investigation, engineering and evaluation conducted in the application submittal and review process concerning the above-mentioned project. The Board thoroughly reviewed all aspects of the proposal under the evaluation of the *Underhill Land Use & Development Regulations & Underhill Road, Driveway and Trail Ordinance* and concludes that based on the evidence submitted and the above findings, the proposed) building envelope modification generally conforms to the aforementioned standards and regulations.

Based upon the findings above, and subject to the conditions below, the Development Review Board grants subdivision amendment approval for the project presented in the application and at the hearing with the following conditions:

Procedural Conditions

1. The Board finds that **NO** subdivision plans are required to be submitted and recorded as part of this subdivision amendment application; however, a full size, to-scale plan shall be submitted to the Zoning Administrator for documentation purposes.
2. All subdivision and recording fees must be paid in full prior to commencing with construction of any additional buildings.
3. The conditions of approval from the previous permits (see directly below) that have not been superseded by this decision are to remain in effect:
 - a. Access Permit Approvals Identified in Exhibits G & H
 - b. Building Permit #: B-18-10
 - c. Certificate of Occupancy Permit #: CO-19-12
 - d. Planning Commission Decision from June 28, 2005 (Exhibit I)
 - e. Development Review Board Decision #: DRB-16-02

Substantive Land Use & Development Regulations Conditions

- The proposed building envelope as requested by the applicant will be approximately 260 ft. from the unnamed stream, thereby satisfying the 100 ft. setback requirement.
- The board places no limitations on the applicant regarding site plan other than those required by zoning or other regulatory setback. This decision should not be considered "Site Plan Approval".

Dated at Underhill, Vermont this 27th day of JULY 2020.

*Approved By
the Underhill Development Review Board,
Charles Van Winkle, Chairman,*

Charles Van Winkle, Chair, Development Review Board

NOTICE: This decision may be appealed to the Vermont Environment Court by an interested person who participated in the proceedings before the Development Review Board. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings. Appeal period ends 27 August 2020.