

Town of Underhill
Development Review Board Minutes
Chairperson Scott Tobin

June 9, 2008

Board Members Present:

Scott Tobin, Chair
Charlie Van Winkle
Penny Miller
Matt Chapek
Peter Seybolt
Chuck Brooks

Also Present:

Kari Papelbon, Zoning Administrator

6:30 PM: Meeting called to order. Chairperson Scott Tobin began the meeting by explaining the procedure for the conditional use hearing.

6:32 PM: Laura DiPietro variance hearing commenced.

Laura DiPietro
30 Cloverdale

Applicant Present:

Laura DiPietro
30 Cloverdale
Underhill, VT 05489

Other Parties Present:

Sally Martin
4 Beaverbrook
Underhill, VT 05489

Identifier: Contents:

ZA-1	Laura DiPietro's Variance Hearing Request
ZA-2	A copy of Laura DiPietro's building permit application for the addition of a chicken coop onto a pre-existing non-complying building
ZA-3	A copy of Laura DiPietro's variance request justification
ZA-4	A copy of the site plan
ZA-5	A copy of the parcel map for CD030

- Chairperson Tobin read the final subdivision hearing checklist and swore in all interested parties. Chairperson Tobin then entered into record documents ZA-1 through ZA-5.
- Laura DiPietro explained that she has chickens and would like to give them restricted access to the outside.
- Chairperson Tobin asked what the enclosure would be. Mrs. DiPietro explained that it would be an open-air enclosure.
- Board Member Charlie Van Winkle asked how many chickens she has. Mrs. DiPietro replied that she currently has 15, with 5 that will be year-round.
- Chairperson Tobin asked if the chicken coop would be added onto an existing structure, to which Mrs. DiPietro replied that it would.
- Board Member Peter Seybolt asked if neighbors had chickens. Mrs. DiPietro replied that they do. Board Member Seybolt asked if she had been able to talk to the neighbors. Mrs. DiPietro stated that one neighbor gave her a chicken waterer as a housewarming gift and other neighbors have indicated that they have no issues. Board Member Seybolt asked if she has a rooster, to which she replied that she does not.
- Chairperson Tobin asked if there was another area on the property where the chicken coop could be placed that would not require a variance. Mrs. DiPietro explained that the land slopes, there is a floodplain at the back of the house, and the proposed location makes the most sense. ZA Papelbon added that the tax map shows the flood plain, however the house is just outside of the floodplain. The site plan provided was the only plan available that has a scale and location of the preexisting, non-complying structure to determine setbacks.
- Chairperson Tobin asked what the exact variance amount was requested. A discussion of the variance distance ensued.
- ZA Papelbon added that the lot has topography and floodplain that inhibits locating the chicken coop. The northern part of the property also has undulating topography that would prevent siting the chicken coop on that portion of the lot, and there is only a small distance between the existing structure and the house. The preexisting structure does not meet the setback requirements.
- Sally Martin, 4 Beaverbrook, stated that her questions were already answered. ZA Papelbon added there are Accepted Agricultural Practices in place from the State and that Laura works for the Vermont Department of Agriculture, so she is aware of the regulations.
- Chairperson Tobin then read the submitted variance justification. ZA Papelbon explained that the Board should determine the exact variance distance prior to making a motion to accept or deny the variance request.

6:47 PM: Board Member Charlie Van Winkle made a motion, seconded by Board Member Chuck Brooks, to accept the variance justification as submitted. The motion was passed by all Board Members present.

A brief discussion of the exact variance distance ensued.

6:48 PM: Chairperson Scott Tobin asked whether the Board felt they had enough information to make a decision on whether the hearing fulfills the requirements for a variance. Board Member Charlie Van Winkle made a motion, seconded by Board Member Chuck Brooks, to grant a 23-foot variance for the proposed chicken coop. The motion was passed by all Board Members present.

6:50 PM: Hearing adjourned.

7:00 PM: Site visit, 225 River Road.

7:39 PM: Meeting called to order. Chairperson Scott Tobin began the meeting by explaining the procedure for the conditional use hearing.

7:44 PM: Patricia Nowlan final planned residential development hearing commenced.

**Patricia Nowlan
225 River Road**

Applicant Present:

Patricia Nowlan
225 River Road
Underhill, VT 05489

Consultant Present:

Dean Grover
Grover Engineering
2044 Main Road
Huntington, VT 05462

Other Parties Present:

Carl Ettlinger
9 Sand Hill Road / P.O. Box 85
Underhill, VT 05489 / Underhill Center, VT 05490

Gerald Lagrow
239 River Road
Underhill, VT 05489

Andrea and Richard Phillips
211 River Road
Underhill, VT 05489

Chris Murphy, Underhill Town Planner

Steve Walkerman, Underhill Selectboard Chair
Dan Steinbauer, Underhill Selectboard Member
Steve Owen, Underhill Selectboard Member

Identifier:	Contents:
ZA-1	Plans prepared by Dean Grover of Grover Engineering for Patricia Nowlan (dated 4-30-08)
ZA-2	A copy of the survey prepared by Peatman Surveying, Inc. for Patricia Nowlan (dated 4-30-08)
ZA-3	A copy of the letter from Dean Grover with information regarding the waiver requests and justification (dated 5-1-08)
ZA-4	A copy of the Application for Subdivision: Preliminary Hearing and completed Subdivision Checklist: Preliminary Hearing (dated 5-2-08)
ZA-5	A copy of the letter to James Massingham, Superintendent of the Chittenden East Supervisory Union (dated 5-2-08)
ZA-6	A copy of the letter to Kurk Flynn of the Underhill-Jericho Fire Department (dated 5-7-08)
ZA-7	A copy of the letter from James Massingham of the Chittenden East Supervisory Union (dated 5-9-08)
ZA-8	A copy of the letter to the Wastewater Management Division and Permit Application (dated 5-13-08)
ZA-9	A copy of the letter from Kurk Flynn of the Underhill-Jericho Fire Department (dated 5-14-08)
ZA-10	A copy of the letter from Mary Baril of the Wastewater Management Division (dated 5-20-08)
ZA-11	A copy of the newspaper warning (published 5-21-08)
ZA-12	A copy of the memo from Mike Weisel (dated 5-21-08)
ZA-13	A copy of the draft Warranty Deed
ZA-14	A copy of the waiver requests
ZA-15	A copy of the Proposed Findings of Fact (dated 5-31-08)

- Chairperson Tobin read the final subdivision hearing checklist and swore in all interested parties. Chairperson Tobin then entered into record documents ZA-1 through ZA-15.
- Dean Grover, Grover Engineering, provided an overview of proposed the 3-lot planned residential development of an approximately 11-acre parcel in the Water Conservation district. A waiver for the driveway grade has been submitted to the Selectboard for approval. Suggestions for the erosion control measures and the driveway per Town Engineer Mike Weisel's memo will be incorporated into the plans. The project will disturb slightly more than 1 acre and will therefore require a Construction General Permit from the State, a Notice of Intent to the State, and will need to comply with the Low-Risk Site Handbook. The existing Phillips spring on the property will be avoided during construction and silt fencing will be installed uphill of the proposed house site. No filling will occur beyond the

- silt fence. Trees are being preserved as much as possible and additional trees are proposed along the boundary with the Ettinger property. Mr. Grover then explained the requested waivers. The proposed accessory apartment in the garage will not be a stand-alone apartment, but rather a guest room and bathroom without a kitchen in one bay of the garage.
- Board Member Chuck Brooks asked why the plans showed the property lines to the centerline of the road. Mr. Grover explained that based on discussions with Ms. Nowlan's attorney Michael Russell and Dave Peatman of Peatman Surveying Ms. Nowlan owns that portion of River Road and a right-of-way is granted through her property for the road.
 - Board Member Chuck Brooks then asked if the note on the engineering drawing which states that it is not a legal survey means that a legal survey has not been conducted. Mr. Grover and ZA Papelbon explained that the engineering drawing is not a legal survey, but a survey was conducted by Peatman Surveying. Board Member Brooks then asked if a copy of the stamped, certified survey had been submitted. Mr. Grover stated that the survey is ready for finalization and recording upon DRB approval of the planned residential development. A discussion of the property boundaries to the centerline of the road ensued. The acreage is split to the highway limits on the plans as well. Ms. Nowlan added that Attorney Michael Russell provided the opinion and drafted the proposed warranty language.
 - Board Member Penny Miller asked if the construction notes for the silt fencing could be amended to include maintenance. Mr. Grover stated that he would not have a problem revising that note. Board Member Miller then asked how an engineer determines that erosion control matting is necessary. Mr. Grover responded that the driveway would be staked and some inspections during construction would take place to check on the erosion control measures. Board Member Miller then asked if there was any need for retention or infiltration areas beyond the drainage swale along the driveway. Mr. Grover stated that less than 1 acre of impervious surface would be added to the site, so a State stormwater permit would not be necessary. Based on the test pits, the soils are very permeable. With the swale and stone check dams along the driveway, he does not anticipate any stormwater leaving the property. Board Member Miller asked how many bedrooms the septic system was designed for, to which Mr. Grover answered 4.
 - Chairperson Tobin read the items on the Preliminary Hearing Checklist that were marked with an asterisk, including the State Wastewater Permit (a copy of the application has been submitted), letters from the fire department and school district, and approval of the driveway by the Selectboard. ZA Papelbon stated that the Selectboard would be present at the hearing to grant necessary waivers.
 - Board Member Peter Seybolt asked Mr. Grover why a waiver was requested for the bonding / engineer certification requirement. Mr. Grover stated that his understanding was that if he did not request the waiver the driveway and improvements would have to be constructed within 180 days

- from the date of DRB approval. Board Member Seybolt asked if Mr. Grover foresaw any delays beyond 180 days. Mr. Grover stated that he did not think so. Chairperson Tobin asked if certification would be provided when the driveway is completed, to which Mr. Grover responded that it would be provided prior to issuance of a building permit. Board Member Seybolt asked for clarification on the 180-day time frame. ZA Papelbon explained that the zoning regulations require that the certification or bond be provided at the time of filing the final plat. Per statute, the applicant has 180 days from the date of approval to record the final plat. Chairperson Tobin clarified that the waiver request was for the time frame, not the certification. Mr. Grover responded in the affirmative. Chairperson Tobin asked if Mr. Grover had an alternate time frame in mind. Mr. Grover responded that the possibility exists that the project would not start until next year.
- Board Member Charlie Van Winkle asked what a loafing shed is. Mr. Grover responded that the wording is from Mr. Russell and is a shed strictly for agricultural use to house animals at night and during inclement weather. Board Member Van Winkle then asked if there were plans to drill a well on Lot C. Mr. Grover stated that water brought to Lot C for the loafing shed would be a consideration.
 - Chairperson Tobin asked if the Board would like to discuss the Proposed Findings of Fact. Board Member Charlie Van Winkle stated that they should be discussed after other persons in the room spoke. Chairperson Tobin then reviewed the requested waiver requests.
 - ZA Papelbon stated that the location of the easements, location of the driveway, signature blocks, and a vicinity map should be shown on the final plat. She then asked Mr. Grover how long the proposed grade in excess of 10% was proposed to extend. Mr. Grover replied that the grade above 10% would extend for approximately 435 feet. ZA Papelbon requested that the floodplain limits be depicted on the plans. Mr. Grover agreed to include that.
 - Board Member Matt Chapek asked if Ms. Nowlan's intent was to build a 3-bedroom home with a 1-bedroom accessory apartment as called for in the plans. Ms. Nowlan stated that she planned to build a smaller home and possibly add the accessory apartment for a guest room. Chairperson Tobin added that accessory apartments up to 1000 square feet are permitted in the regulations and asked how large the accessory apartment in the garage would be. Mr. Grover replied it would be approximately 500 square feet.
 - Carl Ettlinger, 9 Sand Hill Road, asked about the property line setback requirement for the house and the driveway. Mr. Grover responded that the side and rear setbacks are 50 feet and ZA Papelbon added that the side lot line setback for the driveway is 20 feet. Mr. Ettlinger stated that he thought the house site was beautiful, but he would prefer if the garage was located closer to the house. He recognized that he may not have grounds for asking that the garage be moved closer to the house. Mr. Grover

- stated that the curve radius required by the Town makes it difficult to move the garage closer to the house. Mr. Ettlinger then stated that he thought cedars would be better trees to plant than the pines called for in the plans.
- Gerald Lagrow, 239 River Road, asked who has control of Lot C. Mr. Grover responded that the owner of Lot A would control Lot C. He asked if it would someday become its own lot. Chairperson Tobin explained that as part of a PRD, no further development is allowed on Lot C with the exception of the loafing shed, if granted. Mr. Lagrow asked if the proposed apartment could be expanded to include a kitchen in the future. Chairperson Tobin explained that the current regulations allow an accessory apartment up to 1000 square feet and could include a kitchen and bathroom. There could not be more bathrooms than the septic permitted for. ZA Papelbon and Mr. Grover stated that septic capacity is actually based on bedrooms. ZA Papelbon added that the lot could not be subdivided in the future and the apartment could never become a stand-alone house. Mr. Lagrow stated that his biggest concern is for his spring.
 - Board Member Miller asked Mr. Grover if the proposed driveway were to be paved in the future and salted in the winter, would a downhill spring be affected. Mr. Grover responded that the sodium chloride from applying salt to the driveway would be substantially diluted and he did not think that there would be significant increases in the sodium chloride levels in the spring.
 - Board Member Seybolt asked if the concrete spring box was the existing water source for the current home. Mr. Grover replied that it was. Board Member Seybolt asked how far from Mr. Lagrow's spring the spring serving Ms. Nowlan's current house was sited. Ms. Nowlan stated that it was approximately 50 yards. Board Member Seybolt asked if the proposed drilled well would affect the water flow or quality of the existing springs. Mr. Grover responded that the well would reach deeper aquifers and would not affect the springs.
 - Andrea Phillips, 211 River Road, expressed her concerns for the protection of her spring and the existing vegetation. She then asked if Lot C would be jointly owned by the owners of Lots A and B. It was stated that Lots A and B would not jointly control Lot C. Lot C is designated open space and could not be developed in the future. Chairperson Tobin explained that a condition of PRD is that open space must be designated and cannot be developed. Mrs. Phillips stated that her understanding of the original plan was that Ms. Nowlan would be building a smaller home and that it looks like two big buildings with an accessory apartment would be built. Board Member Matt Chapek clarified that what is shown on the plans is actually two building envelopes which are far larger than what the buildings would be. Mr. Grover then explained what a building envelope is.
 - Richard Phillips, 211 River Road, stated that a building could encompass the whole building envelope. Mr. Grover explained that while a building could theoretically cover the entire envelope, the envelope is just a

- designated area inside of which building can occur. Mr. Phillips asked if the applicant was asking for a set size for the house. Ms. Nowlan explained that she does not have any house plans yet, but that the building envelope has to include any future development such as decks.
- Andrea Phillips then asked if Ms. Nowlan would have to come back before the Board if she would be unable to build this year. It was stated that the approved plans, once finalized and recorded, create the lots and that Ms. Nowlan would not have to come back before the Board. Any future owner of Lots A, B, and C would be bound by the terms of the approved subdivision plans and conditions. Building permits would be required, but a new hearing before the Board would not be required.
 - Mr. Grover explained the setbacks and shields for the wells and springs as per State regulations. He added that there is no proposal to disturb ground within the Phillips watershed.
 - Chairperson Tobin stated that the proposed frontage for Lot B is 50 feet and asked if the Selectboard would be providing their input on the waiver request. ZA Papelbon asked Town Planner Chris Murphy about the lot lines extending to the centerline of the road. She replied that she believed it is stated in the subdivision regulations that lot lines are measured to the edge of the right-of-way. Mr. Grover replied that measurements to the highway limits are included on the plans. It was stated that dimensional requirements may be waived by the Board.
 - Board Member Van Winkle asked Mr. Grover if he was aware that all utilities in a PRD must be underground. He replied that he thought they would be underground but he wasn't aware that it was a requirement.
 - Town Planner Chris Murphy provided additional evidence in the form of signed Selectboard minutes from May 29, 2008 in which the curb cut and driveway design was approved conditioned upon Town Engineer Mike Weisel's suggestions for compaction, topsoil, and erosion control matting. She then stated that the Selectboard was present for granting waivers and explained the driveway construction requirement as a condition. Board Member Peter Seybolt stated that he thought that those matters should be discussed in deliberative session. A brief discussion of the bond/engineer certification for improvements requirement and timeframe ensued. Town Planner Murphy then explained the waiver procedure and a discussion of the procedure ensued.
 - Chairperson Tobin then read the submitted Proposed Findings of Fact. Board Member Chuck Brooks stated that the highway right-of-way could not be included in the acreage. Board Member Peter Seybolt suggested using the acreage to the highway limits. A discussion of the acreage and final map ensued. ZA Papelbon explained that the reason the project qualified as a PRD was because the zoning regulations for PRD specify an area of land to be developed, not a lot of land. The regulations also state that the road does not divide the land.
 - Chairperson Tobin then read the proposed conditions for subdivision. Board Member Seybolt asked about a time frame for certification of the

driveway. ZA Papelbon explained the applicant has 180 days from the date of approval per statute to file the final plat. Town regulations state that at the time of filing the final plat, an engineer's certification for the installation of the required improvements or a performance bond approved by the Selectboard must be furnished. A discussion of the loafing shed ensued. Town Planner Murphy asked why Lot C would not have a separate road code. ZA Papelbon stated that she wasn't sure and would research it.

9:14 PM: Board Member Charlie Van Winkle made a motion to approve the dimensional waivers. A discussion of the procedure ensued. The waivers would be granted after a discussion in deliberative session.

9:17 PM: Chairperson Scott Tobin asked if there were any further questions and if the Board felt they had enough information to make a decision on the final subdivision application. Board Member Charlie Van Winkle stated that he felt the Board had enough information. Chairperson Tobin asked for a vote as to whether there was enough information. All Board Members present voted that there was enough information. Board Member Peter Seybolt made a motion, seconded by Board Member Matt Chapek, to close the evidentiary portion of the hearing and move into deliberative session. The motion was passed by all Board Members present.

Ms. Nowlan asked for a timeframe for a decision. Chairperson Tobin explained that the Board had 45 days to issue a written decision after coming out of deliberative session, but stated that the Board would expedite the process and that there is a 30-day appeal period once the decision is signed.

9:17 PM: Hearing adjourned.

9:30 PM: Meeting called to order. The applicant, Mr. Anthony Cipri, was present at the previous hearing but had to leave.

9:31 PM: Board Member Chuck Brooks made a motion, seconded by Board Member Penny Miller, to continue the hearing to September 15 at 6:30 PM. The motion was passed by all Board Members present.

9:32 PM: Hearing adjourned.

These minutes of the 6-9-08 meeting of the DRB were

Accepted

This _____ day of _____, 2008

Chairperson Scott Tobin

These minutes are subject to correction by the Underhill Developmental Review Board. Changes, if any, will be recorded in the minutes of the meeting of the DRB.