



Town of Underhill

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Memorandum

To: Underhill Development Review Board
From: Andrew Strniste, Planning Director & Zoning Administrator
Date: March 8, 2019
Re: 407 Poker Hill Road (PH407)

Please find a timeline of events pertaining to the 407 Poker Hill Road, LeBlanc, appeal hearing directly below:

- **Thursday, October 11, 2018:** Planning & Zoning Staff issued a zoning violation (see Exhibit _) to the landowners of 407 Poker Hill Road, Jared & Dana LeBlanc (the Appellants), for the placement of a tiny house without the proper permitting, the construction of a shed without the proper permitting, as well as the extension of a driveway without the proper permitting.

In addition, Planning & Zoning Staff advised that the placement of the tiny house, shed and driveway, could potentially be within various wetlands and associated buffers; however, a new delineation would be required since the previous wetlands delineation took place in 2005. Staff also advised that the Tiny House could potentially be in the front setback. The last issue that Planning & Zoning Staff advised of was the requirement of obtaining an updated Wastewater System & Potable Water Supply Permit for the Tiny House.

- **Monday, October 15, 2018:** The Appellants visited Planning & Zoning Staff at Underhill Town Hall to review the zoning violation that was issued. Staff informed the Appellants of their potential options going forward. In addition, the Appellants asked about other potential projects they were contemplating, including basement renovations, and Staff advised them accordingly.
- **Wednesday, October 24, 2018:** The Appellants submitted a building permit application (Permit#: B-18-50) to enlarge the rear deck, as well as screening in the area under the deck. The Appellants also submitted a conversion/change of use permit application (Permit # CL-18-12) to convert unfinished basement space to finished basement area, as well as converting finished basement space to a bathroom. As typically required, a condition of approval regarding the conversion of use permit involved obtaining a Certificate of Occupancy Permit prior to utilizing the space. *Note:* subsequently, when reviewing the conversion/change of use permit application materials, no references to the installation of a kitchen were made.

- **Monday, December 10, 2018:** Planning & Zoning Staff approved both the Building Permit (Permit #: B-18-50) and the Conversion/Change of Use Permit (Permit #: CL-18-12).
- **Monday, January 14, 2019:** The Appellants scheduled a Certificate of Occupancy Permit site visit with Planning & Zoning Staff.
- **Wednesday, January 16, 2019:** Staff performed a site visit and discovered that a kitchen had been installed as part of the basement renovation, thereby creating a *separate* area containing “food preparation, sleeping and sanitary facilities” – i.e. a dwelling unit. After further discussion, the Appellants were informed that with the basement qualifying as an accessory dwelling unit, they would have two accessory dwelling units on their lot – the basement unit and the tiny house, which would qualify as a detached accessory dwelling – noting that two accessory dwelling units is prohibited per the *Underhill Unified Land Use & Development Regulations*. Staff further discussed options on how to exclude the basement dwelling unit from being considered a dwelling unit. Staff opined that they, the Appellants, would have to create a situation where the basement dwelling unit and single-family dwelling (principal dwelling unit) were not separate, which could potentially be done by removing the doors from the principal dwelling unit to the basement accessory dwelling unit. By doing so, Staff opined that the two areas could conceivably be considered one unit; however, he advised that he wanted to obtain direction from the Underhill Planning Commission, who is the governing body in interpreting the Regulations.
- **Thursday, January 17, 2019:** The Planning Commission DID NOT agree with Staff’s opinion that removing the doors between the principal dwelling unit and the basement accessory dwelling unit maintained the designation as one unit. The Planning Commission advised that the basement area was described as still being a separate area, thereby qualifying as a separate dwelling unit.
- **Friday, January 18, 2019:** Staff advised the Appellants by email of the Planning Commission’s interpretation of the Regulations as it related to their described situation. Staff also informed the Appellants that he reviewed the permit applications with no success to see if a kitchen component was overlooked when processing the application. As a result, the Appellants were informed that their options were limited, which included appealing the decision to call the renovated basement area an accessory dwelling unit to the Development Review Board, as the Board has the ability to assess a real-life situation as it relates to the *Underhill Unified Land Use & Development Regulations*. The deadline to submit an appeal request hearing application and payment by was set for Saturday, February 2, 2019. The Appellants advised that they would take the weekend to consider their options.
- **Monday, January 21, 2019:** The appellants inquired with Staff about whether the removal of certain aspects of the kitchen, or the toilet from the bathroom, would alleviate the issue of the two areas being considered separate.
- **Friday, January 25, 2019:** Staff informed the Appellants that after further research, and given the guidance from the Planning Commission, that his decisions remained unchanged.
- **Monday, January 28, 2019:** After a couple of follow-up questions pertaining to the potential of needing an updated Wastewater System & Potable Water Supply Permit should the basement area be considered an accessory dwelling, the Appellants advised that they

were going to appeal Staff's decision to call the basement area an accessory dwelling. Staff opined that the main issue that will be reviewed pertains to the two areas being "separate," and that they (the appellants) should consider what actions have been taken to illustrate that the downstairs area is not a separate accessory dwelling unit to the principal dwelling unit.

- **Tuesday, January 29, 2019:** Staff advised the Appellants of the actions required to secure an appeal request hearing with the Development Review Board.
- **Thursday, January 31, 2019:** The Appellants submitted their application and payment to Town Staff.

** Note, the aforementioned shed has not been properly permitted, as Staff was previously anticipating a site plan accurately depicting the structure. Regardless of the outcome, the shed will still need to be permitted after-the-fact.*