

**Town of Underhill
Development Review Board Minutes
March 18, 2019**

Board Members Present:

Charles Van Winkle, Chair
Stacey Turkos, Vice Chair
Matt Chapek
Mark Green
Daniel Lee
Karen McKnight
Penny Miller

David Wright, Resident (11 Pinnacle Ridge)
Brad Holden, Surveyor (60 Covey Road)
Seth Friedman, Applicant (144 Pleasant Valley Road)
Linda Lewellen, Resident (13 Jackson Hill Road)
Philip Lewellen, Resident (13 Jackson Hill Road)
Misak Weaver, Resident (47 Jackson Hill Road)
David Weaver, Resident (47 Jackson Hill Road)
Jared LeBlanc, Appellant (407 Poker Hill Road)
Dana LeBlanc, Appellant (407 Poker Hill Road)
Mike Simanskas, Resident (425 Poker Hill Road)
Kathy Simanskas, Resident (425 Poker Hill Road)

Staff/Municipal Representatives Present:

Andrew Strniste, Zoning Administrator

Others Present:

Mary Wright, Resident (11 Pinnacle Ridge)

6:35 PM – 03/18/2019 DRB Public Meeting

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- DRB Members convened at Town Hall around 6:30 PM.
 - [6:35] No general public was in attendance, and therefore, no public comment was offered.

**6:37 PM – Friedman Trustee Sketch Plan Review Meeting
144 Pleasant Valley Road (PV144), Underhill, Vermont**

Docket #: DRB-19-01

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- [6:35] Chair Van Winkle began the meeting by explaining the meeting procedures for a sketch plan review hearing. The applicant, Seth Friedman Trustee, and his surveyor, Brad Holden, were before the Board to discuss the application, which pertains to a 2-Lot subdivision of property located at 144 Pleasant Valley Road in Underhill, Vermont, which is owned by Alison & Seth Friedman Trustees. A few members of the general public were in attendance. No ex parte communications between the Board and the applicant were identified, nor were any conflicts of interest identified. No additional exhibits were submitted into the record.
 - [6:40] Surveyor, Brad Holden, advised that the subject lot to be subdivided was part of the old Munson Farm Subdivision. Lot 1 in the Munson Farm Subdivision, which is the subject lot, contained the existing the house. Mr. Holden then reviewed the Munson Farm covenants, advising that the subject lot did not have the benefit to the right-of-way unless it petitioned the homeowners association. In addition, Mr. Holden advised that Lots 2-8, Munson Farm proper, were responsible for maintaining the road & drainage easements. Subsequently, Mr. Holden advised that the proposed Friedman Trust subdivision would need Act 250 review since the Munson Farm Subdivision was initially part of an Act 250 review. Mr. Holden then informed the Board that the subject lot was bisected by a zoning line boundary, with the proposed Lot 2 entirely within the Water Conservation District. He then explained that a drainage easement that was depicted on the proposed Lot 2 should have captured the two retention ponds that exist on the lot. The retention ponds currently extend outside the easement area; however in the proposed plan, the easement location would be modified to capture the location of the retention ponds. Mr. Holden did note that

the easement did state "as-built," as well as answered Board Member Chapek's questions that the ponds were manmade and meant for stormwater runoff for Lots 2-8. As a token of good will, Mr. Holden advised that the applicant was willing to allow the Jackson Hill Road homeowners association to utilize the driveway to maintain the drainage areas. Mr. Holden stated that Mr. Justin Willis performed testing for the wastewater systems and found conventional soils. He then informed the Board that the proposed design respected the 75 ft. sideline setback as required by one of the Munson Farm covenants. Chair Van Winkle informed Board Member McKnight that the 75 ft. buffer was a no-cut buffer. Mr. Holden advised that the proposed access to serve Lot 2 was at an existing farm access, which crosses a manmade berm between the two retention ponds. Mr. Holden then informed the Board that Munson had intended to subdivide the subject lot; however, Munson ultimately sold the entire lot to the applicant rather than subdivide and retain a parcel. Mr. Holden informed the Board that the wetlands were delineated, and that the driveway continued deeper into the lot to have the least impact on the wetland buffer. Mr. Holden reiterated that they plan to work with Act 250 to move the easement to reflect the existing retention ponds. Board Member Miller inquired whether stormwater runoff from the proposed subdivision utilized the subject retention ponds. Mr. Holden opined that he did not think so, as Act 250 was initially triggered because of the roadway/roadway drainage. Chair Van Winkle advised that he initially designed the Munson Farm Subdivision, and that the retention ponds were constructed to mitigate runoff from the road and development, and that the designer did not have to account for existing development at the time. He also advised that he had wanted to run the stormwater to Mountain Road, but the Selectboard and Planning Commission at the time said no. Mr. Friedman advised that the spring inquired about was abandoned.

- [6:58] Board Member McKnight inquired about the slopes if the driveway were to come from Jackson Hill rather than Pleasant Valley Road. Mr. Holden informed the Board that they did not have access from Jackson Hill, only a stormwater easement. He then informed that the bottom of Jackson Hill is higher elevation than the proposed lot. Mr. Holden confirmed that the slope from Pleasant Valley Road to the house site is less than 10%. Staff Member Strniste informed the Board that he flagged slope as a potential issue because the ANR Website illustrated slopes, though that source is not always precise. Mr. Holden confirmed that there were good sight distances.
- [7:00] Staff Member Strniste reviewed his comments provided in the Staff Report. A discussion ensued about the existing habitat block & wildlife corridor. Board Member Miller stated that the Board has never addressed issues pertaining to wildlife corridors during subdivision review before. Staff Member Strniste advised that the Board should ensure that the applicant is minimizing the impact as feasibly possible; however, the Board cannot prevent the applicant from developing the property.
- [7:07] Chair Van Winkle opened the meeting up for public comment. David Wright, from Pinnacle Ridge, inquired about the building envelope, especially in regards to logging. Mr. Holden advised that the 75 ft. no-cut buffer, as well as the wetlands buffer would inhibit a lot of cutting. He then stated that he and Mr. Justin Willis prefer constraining the building envelope. Mr. Friedman also informed that there was a large opening that he envisions is extensive enough to build a house and maintain a private lot.
- [7:11] Mr. Phil Lewellen then inquired about the Munson Hill covenants, specifically if the Lot 1 covenant allowing access to Jackson Hill would carry over to the newly proposed lot. He wanted to know if the covenant would be preserved in regards to that property owner needing to request access to Jackson Hill Road from the homeowners association. Mr. Holden advised that the lot would be subject to the same covenants. He also advised that Lot 1 could not be further subdivided. A discussion ensued about the accessway and the

drainage/access easement.

- [7:16] Mr. Holden advised that the application will spend a lot of time in the Act 250 review process, and at that stage, habitat will be reviewed. To follow-up, since the application will be going through the Act 250 process which will require a wastewater permit and adequate driveway design, Mr. Holden asked the Board if they would waive preliminary subdivision review.
- [7:19] Chair Van Winkle asked if the Board had enough information to make a decision about the application. A consensus confirmed that they did. Board Member Miller made a motion to classify the proposed subdivision as a minor subdivision. The motion was seconded by Board Member Turkos and approved unanimously. Board Member Chapek made a motion to deliberate in closed deliberative session. The motion was seconded by Board Member Turkos and approved unanimously. Mr. Holden advised that he would forward the Munson Subdivision covenants and plan to the Board.

**7:25 PM – LeBlanc Appeal Request
407 Poker Hill Road (PH407), Underhill, Vermont**

Docket #: DRB-19-02

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- [7:25] Chair Van Winkle began the meeting by explaining the hearing procedures for an appeal request hearing. The appellants, Jared and Dana LeBlanc, were before the Board to discuss the appeal request, which pertains to an appeal of the Zoning Administrators decision to categorize the downstairs basement area as a separate dwelling unit. The property at issue is located at 407 Poker Hill Road in Underhill, Vermont which is owned by the aforementioned appellants. A few members of the general public were in attendance. No ex parte communications between the Board and the appellants were identified, nor were any conflicts of interest identified. No additional exhibits were submitted into the record.
 - [7:28] Staff Member Strniste provided an overview of the timeline of events, which are more specifically provided in Exhibit G. Board Member Green inquired about the wastewater system capacity. Appellant Jared LeBlanc advised that the current capacity of the wastewater system was 490 gallons per day, and if the basement area were to be considered an accessory dwelling, they would have to reduce the principal dwelling by two bedroom in order to accommodate the accessory dwelling. Board Member Miller inquired about the intent of the space to be used – was the space to be rented. She then advised that while the appellants may have no intention of renting out the basement space that does not speak to what future homeowners will intend or do.
 - [7:41] Mr. LeBlanc advised that they had no intention of renting out the basement area, but rather that they just wanted more space (though not entirely separate). Board Member Chapek inquired how the area would be viewed by the listers. Staff Member Strniste advised that he recalled the lister categorizing the area a dwelling unit; however, the zoning department and the Listers do not always define features the same. Board Member Turkos inquired about the separate entrance and stone walls and walkway along the back of the dwelling. Mr. LeBlanc advised that they did not envision the area being an exit anymore since it will be screened-in.
 - [7:48] Mr. LeBlanc advised that the tiny house is no longer an issue, as they plan on removing the Tiny House. In addition, he informed the Board the shed fell through the cracks, and that issue would be resolved. Mr. LeBlanc then advised the Board that he and his significant other had intended to redo the basement space, but did not mention the kitchen, and took ownership for not mentioning it to Staff Member Strniste. He then advised that when Staff Member Strniste visited the household, the stairs and drywall were

unfinished, and that the area seemed more as if they were separate dwelling units. In addition, Mr. LeBlanc advised that there was no intention to rent the area, as the upstairs area is small, and that the newly renovated basement space would provide them more room to entertain.

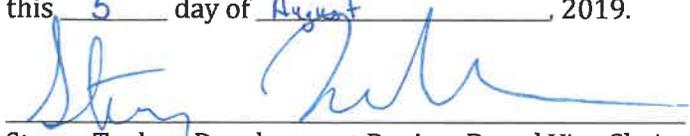
- [7:50] Chair Van Winkle advised that he grew up in New Jersey, and having multiple kitchens was not unheard of, especially in the Italian community. Board Member Chapek advised that he saw the area as an expansion of existing house space until the area became separated by doors and someone living in the area. He advised that when no one was living there, then it is not much of an issue. Ms. Dana LeBlanc advised that the living area upstairs could not be made large due to a bearing wall in-between the kitchen and living area.
- [7:53] Kathy Simanskas, from 425 Poker Hill Road, advised that her concern was the sufficiency of the wastewater capacity, as she was worried about wastewater effluent running downhill near her residence. She also advised that she spent time in mortgage lending, and if the household was discovered to have an accessory dwelling, the owners would be made to get a permit. She then reiterated that she wanted to ensure that there was sufficient wastewater for whoever is living there.
- [7:55] Chair Van Winkle asked if there were anymore questions. No other questions were asked. He then asked if the Board had enough information to make a decision on the application. Board Member Miller advised that she thought so, but would need to talk through it with the Board. Board Member Chapek opined that if the doors were to be put back on the hinges, then there would be two living spaces. Board Member Green opined that he was considering future use.
- [7:57] Staff Member Strniste recommended that the Board provide sufficient background regarding their decision. For example, if the Board upholds the Zoning Administrator's decision, then to explicitly state the reasons for issuing the denial. Should the Board reverse the decision, then the Board should provide what the parameters are, specifically when the area would be considered two units. Staff Member Strniste then opined that while intent is important, the Board needs to weigh what their findings against the regulations. Chair Van Winkle then inquired about the wastewater system. Mr. LeBlanc advised that if the area were to be considered an accessory dwelling unit, they be required to rebuild the mound, which would cost between \$15,000 and \$20,000. They would need to obtain variances as well as a wetlands delineation. Chair Van Winkle confirmed that they do not plan to rent the area.
- [8:05] Chair Van Winkle asked for a motion to close the evidentiary portion of the hearing and move into closed deliberative session to discuss the application. Board Member Turkos made a motion to close the evidentiary portion of the hearing, which was seconded by Board Member McKnight. The motion was approved unanimously.
- [8:06] Board Member Chapek made a motion to enter into closed deliberative session, which was seconded by Board Member Turkos. The motion was approved unanimously.

9:08 PM – Other Business

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- [9:08] A discussion ensued about less restrictive building envelopes.
 - [9:13] Board Member McKnight made a motion to adjourn, which was seconded by Board Member Miller. The motion was approved unanimously.
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Submitted by:
Andrew Strniste, Planning Director & Zoning Administrator

These minutes of the 03/18/2019 meeting of the DRB were accepted
this 5 day of August, 2019.

A handwritten signature in blue ink, appearing to read "Stacey Turkos", written over a horizontal line.

Stacey Turkos, Development Review Board Vice Chair