

TOWN OF UNDERHILL  
APPLICATION OF MAPLE LEAF FARM  
FOR A CONDITIONAL USE PERMIT  
FINDINGS AND DECISION

In re: Maple Leaf Farm  
20 Maple Leaf Rd. (ML020)  
Underhill, VT 05489

Docket No. DRB-10-13: Maple Leaf Rd.

**I. INTRODUCTION AND PROCEDURAL HISTORY**

This proceeding involves review of Maple Leaf Farm's application for a conditional use permit to demolish a camp and small outbuildings, enlarge the pond, and construct a garage at their property located at 20 Maple Leaf Road in Underhill, VT.

1. On September 20, 2010, Bill Young, Executive Director for Maple Leaf Farm, filed a complete application for a conditional use hearing to demolish a camp and outbuildings, enlarge the pond, and construct a garage on their property at 20 Maple Leaf Road in Underhill, VT. A copy of the application and materials are available at the Underhill Town Hall.
2. On September 28, 2010, copies of the notice of a public site visit and hearing was provided to the applicant, Bill Young, Executive Director for Maple Leaf Farm, and via certified mail to the following abutting neighbors:
  - Grady Life Estate, 106 Park St., Essex Junction, VT 05452
  - Leddy Estate, 14 Elsom Parkway, South Burlington, VT 05403
  - Doherty, P.O. Box 89, Underhill Center, VT 05490
  - Pitmon, 31 Maple Leaf Rd., Underhill, VT 05489
  - Panner, 55 Maple Leaf Rd., Underhill, VT 05489
  - Luck/Wilson, TTEEs, 42 Maple Leaf Rd., Underhill, VT 05489
  - Barker, TTEE, P.O. Box 655, Albion, CA 95410
  - Mahin, 21 Ledge Hill Rd., Underhill, VT 05489
  - McArthur, 266 Old Stage Rd., Essex Junction, VT 05452
  - Davis, P.O. Box 229, Underhill Center, VT 05490
  - Herman, P.O. Box 116, Underhill Center, VT 05490
  - Blakmer, P.O. Box 133, Underhill, VT 05489
  - Infields, LLC, 1448 Ridge Rd., Laurel Hollow, NY 11791
3. On September 28, 2010, notice of the public site visit and hearing on the proposed Maple Leaf Farm conditional use application were posted at the following places:
  - a. Maple Leaf Farm's property at 20 Maple Leaf Rd.;
  - b. The Underhill Town Clerk's office;
  - c. The Underhill Center Post Office;
  - d. The Underhill Flats Post Office;
  - e. Jacobs IGA;
  - f. The Underhill Country Store;
  - g. Wells Corner Market;

- h. The Town of Underhill website.
4. On September 29, 2010, notice of a public site visit and hearing on the proposed Maple Leaf Farm conditional use application was published in *Seven Days*.
5. The site visit was conducted at 6:15 PM on October 18, 2010.
6. Present at the site visit were the following members of the Development Review Board:
  - Scott Tobin
  - Penny Miller
  - Will Towle
  - Matt Chapek

Kari Papelbon, Zoning & Planning Administrator; Bill Young, Executive Director of Maple Leaf Farm; Joanne Davis, Business Manager for Maple Leaf Farm; Scott Ovitt, Maintenance Supervisor for Maple Leaf Farm; Barbara Wilson and Michael Luck, neighbors; Jeannie Panner, neighbor; Tom Montgomery, neighbor; Alan Quackenbush, VT Wetlands Section Chief also attended the site visit.

7. The hearing was scheduled to begin immediately following the site visit scheduled for 6:15 PM on October 18, 2010.
8. Present at the hearing were the following members of the Development Review Board:
  - Penny Miller
  - Chuck Brooks
  - Scott Tobin
  - Matt Chapek
  - Will Towle

Kari Papelbon, Zoning Administrator, also attended the hearing.

9. At the outset of the hearing, Chairperson Scott Tobin explained the criteria under 24 V.S.A. § 4465 (b) for being considered an “interested party.” Those who spoke at the hearing were:
  - Bill Young, Executive Director for Maple Leaf Farm, 20 Maple Leaf Road, Underhill, VT
  - Jeannie Panner, 55 Maple Leaf Road, Underhill, VT 05489
  - John Doherty, 157 Stevensville Rd (P.O. Box 89), Underhill, VT 05489
  - Barbara Wilson, 42 Maple Leaf Rd., Underhill, VT 05489
10. During the course of the hearing the following exhibits were submitted to the Development Review Board:
  1. A staff report sent by Zoning Administrator Kari Papelbon to the Development Review Board and Robert Newman;
  2. A copy of Maple Leaf Farm’s Conditional Use Hearing Request (dated 9-17-10);
  3. A copy of Maple Leaf Farm’s Building Permit Application for the projects (dated 9-17-10);

4. A copy of the site plan (undated);
5. A copy of the drawings for the proposed garage;
6. A copy of the proposed Findings of Fact letter from Bill Young, Executive Director of Maple Leaf Farm, to Kari Papelbon (dated 9-24-10);
7. A copy of the tax map for ML020;
8. A copy of the hearing notice published in *Seven Days* (9-29-10);
9. A copy of the Testimony for Development Review Board from Bill Young, Executive Director of Maple Leaf Farm (dated 10-18-10).

These exhibits are available in the Maple Leaf Farm, ML020, Conditional Use file at the Underhill Zoning Office.

## II. FINDINGS

### Background

The Minutes of the meetings written by Kari Papelbon are incorporated by reference into this decision. Please refer to these Minutes for a summary of the testimony.

Based on the application, testimony, exhibits, and other evidence the Development Review Board makes the following findings:

1. The applicant, Maple Leaf Farm, seeks a conditional use permit to demolish a camp and associated outbuildings, enlarge the existing pond, and construct a garage on their property.
2. The subject property at 20 Maple Leaf Road, Underhill, VT is a +/- 66-acre parcel located in the Water Conservation and Soil & Water Conservation zoning districts per §VII and §IX of the Underhill Zoning Regulations.
3. All proposed activities will occur in the Water Conservation zoning district.
4. Conditional Use approval is requested for the project pursuant to review under the following sections of the Town of Underhill Zoning Regulations:
  - a. §III (F): Conditional Use
  - b. §III (S): Ponds
  - c. §III (V)(2): Streambank Development
  - d. §III (P): Outdoor Lights
  - e. §VII (E)(2): Minimum Yard Requirements
4. Section III (F) of the Underhill Zoning Regulations applies to this application. The relevant portion states: Approval of use by the [Development Review Board] after public notice and public hearing have determined that the proposed Conditional Use complies with standards applicable to it as set forth in the By-Laws, and that the proposed Conditional Use is not injurious, noxious or offensive to the neighborhood and does not adversely affect:
  - a. The character of the area
  - b. Traffic on roads or highways in the vicinity
  - c. By-Laws then in effect
5. Section III (S) of the Underhill Zoning Regulations applies to this application. The relevant portion states: Construction of a pond requires a permit from the Town. State and Federal

permits may also be necessary. Discontinuance or deconstruction of a pond requires notification to and review by the town.

- The Army Corps of Engineers must be contacted. After discussing the specifics with the applicant, they will determine whether or not an Army Corps of Engineers permit is required.
- If the pond will impound or be capable of impounding 500,000 cubic feet or more of water, a permit from the VT Department of Environmental Conservation (VT DEC) will be required.
- No instream pond may be constructed without the approval of the VT Department of Fish and Wildlife.
- If the project necessitates work in a stream that drains an area of ten square miles or more, a Stream Alterations Permit may be required.
- The Vermont Wetland Rules regulates dredging, draining, filling, grading, removal of vegetation, the alteration of the flow of water into or out of a wetland and other similar activities within significant wetlands or their buffer zones. A Conditional Use Determination or a Water Quality Certification may be required.

Before any construction of any pond all abutting neighbors shall be notified by a sign-off letter or by Certified mail, Return Receipt Requested.

The following setbacks are required for all ponds:

- Property line: 25 feet
- Leach field: 100 feet
- Drilled Well: 25 feet
- Shallow Well: 100 feet

A Conditional Use permit from the Zoning Board of Adjustment is required for excavated ponds larger than 20,000 cubic feet or embankment ponds larger than 10,000 cubic feet. A pond professional shall design such ponds. For some smaller ponds the Zoning Administrator may require a design by a pond professional.

The following must be submitted with the application:

1. A sketch of the pond location should be provided by the property owner on a copy of the survey of their property (if available) or other reasonable representation showing:

Setbacks from property lines, leach field, dwelling and well.

- The existing slope of the site
  - The water source and method of discharge
  - The location and size of emergency spillway.
  - The route of flow of outlet and/or spillway
2. A cross section drawing
  3. An estimate of the approximate volume of water to be contained
  4. A description of the vegetative cover that is planned to prevent erosion
  5. A description and typical cross section for any dam or form of retention

6. Section III (V)(2) of the Underhill Zoning Regulations applies to this application. The relevant portion states: Dumping, filling, excavation or grading of land within 100 feet of any streambank or any watercourse shall be permitted only if doing so does not affect the water table or natural water flow patterns, cause erosion due to removal of vegetation cover, or increase the possibility of flooding. Documentation addressing these standards shall be presented to the Zoning Administrator when a permit is sought. The Zoning Administrator will refer the request to the Zoning Board of Adjustment if any of the standards are in question.
7. Section III (P) of the Underhill Zoning Regulations applies to this application. The relevant portion states: Mercury vapor or similar type outdoor lights shall be used only if they are placed no higher than twenty-five (25) feet above ground level, and if they are shielded or hooded so that only the premises to be illuminated are lighted directly. Municipal lighting is exempt from these provisions.
8. Section VII (E)(2) of the Underhill Zoning Regulations applies to this application. The relevant portion states: Accessory uses or buildings, parking areas and driveways shall be constructed not less than 20 feet from side and rear lot lines. Accessory uses or buildings shall not be closer to the front lot line than the distance from the front lot line to the nearest point of the primary dwelling or shall not be closer to the front lot line than 75 feet.
9. The application will have the following impact on its surrounding area:
  - A. Safety—increased pond capacity for potential use by the Underhill-Jericho Fire Department in the event of a local fire.
  - B. Lighting—exterior lighting on the proposed garage.
10. The exterior lighting is limited to the garage.
11. Neighbors who participated in the final hearing expressed concerns for impervious surface, fill, erosion, runoff, safety, setbacks, conformance to the zoning regulations, exterior lighting.

### **III. DECISION AND CONDITIONS**

Based upon the findings above, the Development Review Board grants two separate, appealable approvals, with conditions, for the application: 1) for the proposed garage and 2) for the pond enlargement. The Board finds that the proposed camp and associated outbuilding demolition does not require a permit as there is no permit requirement for demolition in the zoning regulations. Any pond construction that does not change the current footprint of the pond is considered maintenance that will not require a separate permit. If the current footprint of the pond is expanded, see conditional use permit conditions below.

#### **Section III (F) of the Underhill Zoning Regulations**

- A. The Board finds that the pond enlargement will not be injurious to the neighborhood may provide an additional benefit for use by the Underhill Jericho Fire Department in the event of a fire.

- B. The Board finds that the proposed pond enlargement and garage will not be noxious to neighboring residences as no odors will result from the activities and no chemicals are proposed to be used.
- C. The Board finds that the proposed pond enlargement and garage will not adversely affect the character of the area as the pond enlargement will allow the pond to retain more water that will be beneficial for use as a fire pond and aesthetics, and the garage will be sited to meet setbacks and lighting requirements so that impacts to neighboring properties are minimal. Other properties in the area also have ponds and garages.
- D. The Board finds that none of the proposed activities will increase traffic on Maple Leaf Road as the pond is existing and swimming is not allowed now nor is it proposed to be allowed in the future, and the garage will house only two Maple Leaf Farm vehicles, which are currently parked in the parking lot, and facility maintenance equipment.
- E. The Board finds that, due to the above, the proposed conditional use will not have an adverse effect on the By-Laws in effect as all requirements in the By-Laws will be met.

**Section III (S) of the Underhill Zoning Regulations**

- A. The Board finds that the Applicant has requested permission to enlarge the existing pond. The zoning regulations require a design by a pond professional for ponds capable of holding 20,000 cubic feet or more of water. Therefore, a plan by a pond professional as stated in Section III (S) of the zoning regulations will be required prior to issuance of a permit.

**Section III (V)(2) of the Underhill Zoning Regulations**

- A. The Board finds that the proposed garage can meet the required setbacks to the stream and wetland areas on the property. It will be a requirement that the garage meet the required 100-foot setback. Any work done to the pond within 100 feet of the stream on the property will require proper erosion control and sediment protection provisions to be in place to prevent contamination to the stream.

**Section III (P) of the Underhill Zoning Regulations**

- A. The Board finds that the Applicant has indicated that the garage will have interior lighting as well as exterior lighting. The exterior lighting will be limited to the front of the garage, and shall comply with Section III (P) of the zoning regulations with regard to placement, shielding, and the conditions stated below.

**Section VII (E) of the Underhill Zoning Regulations**

- A. The Board finds that the Applicant has indicated that the garage will comply with required setbacks. The garage shall be set back at least 75 feet from the edge of the Maple Leaf Road right-of-way (100 feet from the centerline of Maple Leaf Road), and at least 20 feet from the side and rear lot lines. The existing pond currently meets all setback requirements.

## Conditions of Approval

### Garage

1. The garage shall meet all setbacks (75 feet from the lot line/edge of the Maple Leaf Road right-of-way, which is 100 feet from the centerline of Maple Leaf Road; 100 feet from all watercourses; 20 feet from side and rear lot lines).
2. There shall be no net gain in parking spaces in the existing parking lot.
3. New lighting for the garage shall be shielded and directed away from neighboring properties/toward the Maple Leaf Farm property.
4. No lighting shall be placed on the sides or rear of the garage.

### Pond

1. Any work done to the existing pond that does not change the dimensions of the pond shall be considered maintenance that will not require a separate permit.
2. The inlet for the pond shall be from the current source (i.e. no new stream diversions).
3. If technically feasible to install a hydrant near or easily accessible from Maple Leaf Road, such that there is no ongoing maintenance cost burden for the applicant to provide access, the applicant shall install the connection pipe to the proposed dry fire hydrant located near Maple Leaf Road.
4. All requirements from Section III(S) and Section III (V)(2) of the zoning regulations to expand the pond to the dimensions and capacity proposed shall be submitted to the Zoning Administrator prior to issuance of a permit for the pond expansion.

Dated at Underhill, Vermont this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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Scott Tobin, Chair, Development Review Board

**NOTICE:** This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding 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\_\_\_\_\_.