TOWN OF UNDERHILL
APPLICATION OF ELENA SHAPIRO
FOR A 2-LOT SUBDIVISION
FINAL FINDINGS AND DECISION

In re: Elena Shapiro
647 Poker Hill Rd.
Underhill, VT 05489

Docket No. DRB-10-09: Shapiro

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Elena Shapiro's final hearing application for a 2-lot subdivision of property located at 295 Poker Hill Rd. in Underhill, VT.

1. On November 10, 2010, Peter Lazorchak of McCain Consulting filed an application for subdivision on behalf of Elena Shapiro for the project. Additional information was filed on December 2, 2010. A copy of the application and additional information are available at the Underhill Town Hall.

2. By November 12, 2010, notice of the public site visit and preliminary hearing on the proposed Shapiro subdivision was posted at the following places:

    a. The property to be developed, PH647;
    b. The Underhill Town Clerk's office;
    c. The Underhill Country Store;
    d. Wells Corner Market;
    e. The Underhill Center Post Office;
    f. The Underhill Flats Post Office;
    g. Jacobs IGA;
    h. The Deborah Rawson Memorial Library;
    i. The Town of Underhill website.

3. On November 12, 2010, a copy of the notice of a final hearing was mailed to the applicant, Elena Shapiro, 647 Poker Hill Rd., Underhill, VT 05489, and via Certified Mail to the following owners of properties adjoining the property subject to the application:

    a. Bosley, 73 Bill Cook Road, Underhill, VT 05489
    b. Parent/Leblanc, 83 Bill Cook Road, Underhill, VT 05489
    c. Desroches/Thomas, 10 Covey Road, Underhill, VT 05489
    d. Benway/Provost, 638 Poker Hill Road, Underhill, VT 05489
    e. Magnuson, 635 Poker Hill Road, Underhill, VT 05489
    f. McPeters, 70 Bill Cook Road, Underhill, VT 05489

    A copy of the notice was also emailed to Peter Lazorchak, McCain Consulting at plazorchak@mccainconsulting.com.

4. On November 18, 2010, notice of the final hearing was published in the *Mountain Gazette*.

5. The final hearing was held on December 6, 2010 immediately following the preceding hearing scheduled for 6:30 PM.

6. Present at the final hearing were the following members of the Development Review Board:

   - Chuck Brooks
   - Matt Chapek
   - Penny Miller
   - Will Towle
   - Charles Van Winkle, Vice Chair
   - Peter Seybolt

   Kari Papelbon, Zoning Administrator; Peter Lazorchak, Consultant; Regis Parent, neighbor; and 3 other parties also attended the hearing.

7. At the outset of the hearing, Vice Chairperson Charles 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:

   - Regis Parent, 83 Bill Cook Rd., Underhill, VT 05489

   Consultant who spoke on behalf of the applicant:

   - Peter Lazorchak, McCain Consulting, 93 South Main Street, Ste. 1, Waterbury, VT 05676

8. During the course of the hearing the following exhibits were submitted to the Development Review Board:

   a. A staff report sent by Zoning Administrator Kari Papelbon to the Development Review Board, Elena Shapiro, and Peter Lazorchak of McCain Consulting;
   b. Elena Shapiro's Application for Subdivision: Final (dated 11-7-10);
   c. A copy of the Subdivision Checklist: Final Hearing;
   d. A copy of the plans prepared by Peter Lazorchak of McCain Consulting, Inc. for Elena Shapiro (Sheet S-1 revised 12-2-10, Sheets 2-3 revised 10-28-10);
   e. A copy of the preliminary survey prepared by Keith Van Iderstine of McCain Consulting, Inc. for Elena Shapiro (revised 12-2-10);
   f. A copy of the letter from Harry Schoppmann of the Underhill-Jericho Fire Department (dated 9-20-10);
   g. A copy of the letter from Frank DelGiudice of the Army Corps of Engineers (dated 10-1-10);
   h. A copy of the letter from Nicole MacHarg of McCain Consulting, Inc. to Ernie Christianson of the Agency of Natural Resources (dated 11-11-10);
   i. A copy of the letter from Nicole MacHarg of McCain Consulting, Inc. to Julie Foley of the Vermont Wetlands Office (dated 11-11-10);
   j. A copy of the VELCO Easement Deed (dated 11-16-10);

k. A copy of the proposed easement for access and easement for septic (undated);
l. A copy of the Variance request and justification;
m. A copy of the Proposed Findings of Fact (dated 10-29-10);
n. A copy of the preliminary decision (dated 10-5-10);
o. A copy of the minutes from the 9-20-10 preliminary hearing (approved 10-5-10);
p. A copy of the tax map for PH647;
q. A copy of the hearing notice published in the *Mountain Gazette* (11-18-10).

These exhibits are available in the Shapiro, PH647, subdivision file at the Underhill Zoning Office.

II. FINDINGS

Factual Findings

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 seeks a permit to subdivide land. The subject property is a ±10.9-acre parcel located at 647 Poker Hill Road in Underhill, VT (PH647).

2. The property is located in the Rural Residential zoning district as defined in §VI of the Underhill Zoning Regulations.

3. Subdivision approval is requested for the project pursuant to review under the following sections of the Town of Underhill Subdivision Regulations:

   - Application Submission Requirements, pages 9-11, "Final Plat for Subdivisions"
   - Planning Standards, pages 11-12, "Evaluation Considerations"

5. Application Submission Requirements, "Final Plat for Subdivisions" – The final Subdivision Plat shall consist of one or more sheets of drawings which conform to the following requirements: One copy shall be on mylar clearly and legibly drawn, and the size of the sheets shall be either 18" X 24" or a multiple thereof. Four paper copies shall complete the submission. Such sheets shall have a margin of 2" outside of the borderlines on the left side for binding and a 1" margin outside the border along the remaining sides. Space shall be reserved thereon for endorsement by all appropriate agencies. The final plat for a subdivision shall conform in all respects to the preliminary plat as approved by the [DRB]. One such drawing shall be a survey of the affected property, drawn to meet the requirement for plat plans filed with the Town Clerk (Title 27, V.S.A., Chapter 117). The final plat shall be drawn to a scale of not more than two hundred (200) feet to the inch, and shall show:

   a. Proposed subdivision name or identifying title, the parcel code of the original lot, the name of the municipality, the name and address of the record owner and sub divider, the name, license number and seal of the licensed land surveyor and/or professional

engineer, the boundaries of the subdivision and its general location in relation to existing roads or other landmarks and scale, date, true north point, and legend.

b. Road names and lines, pedestrian ways, lots, reservations, easements and areas to be dedicated to public use.

c. Sufficient data acceptable to the [DRB] to determine readily the location, bearing and length of every road line, lot line, boundary line and to reproduce such lines upon the ground. When practicable these should be tied to reference points previously established by a public authority.

d. The length of all straight lines, the deflection angles, radii, length of curves, tangent distances and bearings for each road.

e. By proper designation on such Plat, all public open space for which offers of dedication are made by the sub divider and those spaces title to which is reserved by the sub divider.

f. Lots within the subdivision numbered in numerical order within blocks, and blocks lettered in alphabetical order.

g. The location of all of the improvements referred to in Article VIII and in addition thereto the location of all utility poles, sewage disposal systems, and rough grading and other devices and methods of draining the area within the subdivision.

h. The location and results of all percolation tests for each lot of the subdivision, the location of all proposed sanitary sewage systems, and a statement that all such systems will be designed and constructed in conformance with the Sewage Ordinance for the Town of Underhill, as well as to applicable state regulations and standards.

i. The location of all existing and proposed sources of potable water, along with evidence that such will not contaminated by the proposed sewage systems.

j. Monuments - Monuments shall be set at all R.O.W. intersections, and at all points of curvance (P.C.), points of tangency (P.T.), on both sides of the right-of-way and any other critical points in the road lines as will enable a land surveyor to correctly stake out any lot in the subdivision. In addition, monuments will be set on all corners of the boundary. Each monument shall have identification on the top, so that the marked center shall be the point of reference. The tops of such monuments shall project above the surrounding ground surface at least four (4) inches. The monuments shall be set in place after all other road improvements are completed.

k. There shall be submitted to the [DRB] with the final plat the following supporting documents:

   i. A certificate from an engineer or other consultant approved by the Town as to the satisfactory completion of all improvements required by the [DRB], or, in lieu thereof, a performance bond to secure completion of such improvements and their maintenance for a period of two years, with a certificate from the Board of Selectmen that it is satisfied either with the bonding or surety company, or with security furnished by the sub divider.

ii. The sub divider shall provide letters from the Chittenden East School District Superintendent and the Underhill-Jericho Fire Department, addressing the impact of the proposed subdivision under criterion (10) of Section 600.

iii. For lots less than 10 acres in size, the applicant must provide a subdivision permit from the Vermont Agency of Environmental Conservation, Department of Water Resources.

iv. The sub divider shall provide written acknowledgement from the Selectmen that all plans for road construction have been reviewed by the Selectmen and are in compliance with the road policy for the Town of Underhill.

v. Any other documents required by the [DRB] as a result of preliminary plat approval.

5. Planning Standards, "Evaluation Considerations"

a. Whether land is unsuitable for subdivision or development due to flooding, improper drainage, steep slopes, rock formations, adverse earth formations or topography, utility easements or other features which will reasonably be harmful to the safety, health, and general welfare of the present or future inhabitants of the subdivision and/or its surrounding areas.

b. Whether the proposal includes due regard for the preservation and protection of existing features, trees, scenic points, brooks, streams, wetlands, rock outcroppings, water bodies, deer yards and other wildlife habitat, and other natural and historical resources.

c. Whether the proposal includes sufficient open space for active and passive recreation.

d. Whether the proposal includes adequate provision for the control of runoff and erosion during and after construction.

e. Whether the proposed development is in compliance with the Comprehensive Plan, Zoning Ordinance and any other By-Laws then in effect.

f. Whether any portion of the proposed development is located in a flood plain.

g. Whether the proposed development is compatible with surrounding properties.

h. Whether the site is suitable for the proposed density.

i. Whether the proposal contains adequate provision for pedestrian traffic in terms of safety, convenience, access to points of destination and attractiveness.

j. Whether the proposed development when viewed in the context of other developments in the town, will place an unreasonable burden on the ability of local governmental units to provide municipal or governmental services and facilities.

k. Whether there is sufficient water available for the reasonably foreseeable needs of the proposed development.

l. Whether the proposed development will cause unreasonable highway congestion or unsafe conditions with respect to the use of roads and highways in the Town.

m. Whether the proposed development will cause a significant increase in visual, air, noise or water pollution.

6. The building envelope requires the following variance:

   a. Lot 2 – 50' variance for the building envelope setback to the wetland (the building envelope is proposed to be 50' from the wetland on the northern, eastern, and western sides)

7. The variance request is submitted for §III(V) of the Underhill Zoning Regulations: "No structure for human habitation…will be permitted within 100 feet of the streambank or any watercourse."

8. The variance request requires review under 24 V.S.A. §4469:

   a. There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions, and not the circumstances or conditions generally created by the provisions of the bylaw in the neighborhood or district in which the property is located.

   b. Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the bylaw, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

   c. Unnecessary hardship has not been created by the appellant.

   d. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.

   e. The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan.

9. Mr. Parent, adjoinng neighbor, requested the curb cut to be relocated if possible.

III. CONCLUSIONS

Applicable Regulation Standards

Application Submission Requirements, "Final Plat for Subdivisions"

a. The Board finds that the final application satisfies the requirement as the title, parcel codes, Town name, name and address of the owner, the name and license number of the engineer and surveyor, the boundaries of the subdivision, scale, date, north arrow, and legend are identified on the plans and survey.

b. The Board finds that the final application satisfies the requirement as the road names and lines, lots, and easements are shown on the plans and survey.

c. The Board finds that the final application satisfies the requirement as the bearings and distances of the lot lines are depicted on the survey.

d. The Board finds that this requirement is not applicable as there are no proposed roads.

e. The Board finds that this requirement is not applicable as there are no proposed open spaces to be dedicated for public use.

f. The Board finds that the final application satisfies the requirement as the utilities, septic systems, drainage, and erosion control details are contained in the plans.

g. The Board finds that the final application satisfies the requirement as the percolation test results and locations of septic systems are contained in the plans. A Wastewater System and Potable Water Supply Permit has been issued by the State.

h. The Board finds that the final application satisfies the requirement as the wells are depicted on the plans. A Wastewater System and Potable Water Supply Permit has been issued by the State.

i. The Board finds that the final application satisfies the requirement as monumentation locations and notes are contained on the survey. The Board recognizes that the requirement for concrete monuments is obsolete and accepts the proposal for iron rebar.

j. The Board finds that the applicants have submitted a request for a waiver of the bonding requirement, and letters from the school district and fire department have been received and indicate their ability to provide services to the subdivision. The Selectboard will review the plans and waiver request for the bonding requirement. The Board recognizes that the State no longer requires subdivision permits for the creation of lots less than 10 acres in size.

Planning Standards, "Evaluation Considerations" – Final Findings

a. The land is not suitable for development because of the topography. It is too close to the wetlands and does not contain enough usable space for basic utilities and septic. The Board finds that the extensive easements proposed would impair the general welfare of present and future inhabitants of the subdivision by unduly burdening the

existing home, which is likely to affect both the value and utility of the existing home and the proposed lot.

b. A 50-foot variance for the building envelope setback to the Class II wetland has been submitted. See the *Variance Criteria – Final Findings* below.

c. The undeveloped portions of the lots will provide sufficient open space for recreational use by the lot owners.

d. The total new disturbed area for the project will be approximately 0.66 acres. Coverage under the Construction General Permit is not required. An application for a State Wetlands Permit has been submitted. The Army Corps of Engineers General Permit guidelines indicate that the project is non-reporting. Proposed runoff and erosion control measures are depicted on the plans.

e. Where the project does not conform to the Underhill Zoning Regulations, a variance request has been submitted. See the *Variance Criteria – Final Findings* below.

f. The Flood Insurance Rate Maps for Underhill do not include the area this project is in; therefore it is inferred that no portion of the project lies in a floodplain.

g. The neighboring properties along Poker Hill and Bill Cook Roads contain existing residences. The proposed subdivision is in keeping with the pattern of development that has taken place in this area.

h. The plans which have been submitted with the subdivision application depict a subdivision in conformance with the minimum lot sizes required by the Rural Residential Zoning district. See the *Variance Criteria – Final Findings* below.

i. Poker Hill Road and Bill Cook Road are sufficiently wide enough to accommodate diverse forms of transportation including automobile, pedestrian, and bicycle traffic.

j. Since the proposed development is within an existing developed portion of the town, governmental services including fire protection and police services do not have to be extended to serve the project. Similarly, school bus service is available without the need to modify or extend bus routes.

k. The new lot will be served by an individual, on-site drilled well. Drilled wells in the area have proven sufficient to serve single-family homes. Please refer to the GIS map depicting nearby drilled wells and their yields.

l. The new residence is expected to generate 10 vehicle trip ends per day and will not cause unreasonable highway congestion or unsafe conditions.

m. The proposed residence will be substantially screened from travelers on Bill Cook Road. Air pollution, including dust from drives and exhaust from heating sources, will not exceed levels generated by typical single-family residences. Similarly, the noise generated by the proposed development will not exceed noise levels generated by

single-family residences. Erosion control and wastewater disposal plans have been submitted.

Variance Criteria – Final Findings

a. The proposed building envelope on Lot 2 is too close to the existing Class II wetland by 50 feet. The Board finds that there are no unique physical circumstances or conditions, irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to this particular property as wetlands are prevalent in Underhill, and the shape and size of these wetlands are ordinary and unexceptional.

b. The Board finds that there has not been definitive evidence submitted that demonstrates that the remainder of the lot could not be developed in strict conformity with the Underhill Zoning and Subdivision Regulations.

c. It has not been convincingly demonstrated that unnecessary hardship is due to the presence of wetlands on the property, and not due to the setback requirements of the Underhill Zoning Regulations. The Board finds that the current configuration of the proposed subdivision creates the hardship.

d. Though the variance would likely not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare, criteria a-c above have not been met.

e. Due to the findings in a-c above, the Board finds that the request will not represent the minimum variance that will afford relief and will not represent the least deviation possible from the bylaw and from the plan.

IV. DECISION

Based upon the findings above, the Development Review Board does not grant approval for the subdivision as presented at the final hearing.

Dated at Underhill, Vermont this 17 day of January, 2011.

Charles Van Winkle

Charles Van Winkle, Vice 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 2-16-11.