

TOWN OF UNDERHILL
APPLICATION OF MAPLE LEAF FARMS FOR CONDITIONAL USE AND
VARIANCE PERMITS: FINDINGS AND DECISION

In re: Maple Leaf Farm Associates, Inc.
10 Maple Leaf Farm Road
Underhill, VT 05489

UNDERHILL TOWN CLERK'S OFFICE
Received For Record 9-27 A.D., 2007
At 8 O'clock - minutes A.M. & Recorded
In Book 162, Page 342-349 of Underhill Records
Attest Shelley Ann
Town Clerk

Docket No. DRB-07-9: Maple Leaf Farm, Inc.

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Maple Leaf Farm Associates, Inc.'s (MLF's) application for a conditional use/variance permit to construct a baseball backstop, a basketball half-court, and a dumpster enclosure.

1. On June 14, 2007 MLF filed a conditional use/variance hearing request for the project. A site plan and further explanation of the project was sent to ZA Murphy on July 16, 2007.
2. On July 12, 2007, notice of a public hearing was published in the Mountain Gazette.
3. By July 19, 2007, notice of a public hearing was posted at the following places:
 - a. The Underhill Town Clerk's office;
 - b. The Underhill Center Post Office;
 - c. The Underhill Flats Post Office;
 - d. The Underhill/Jericho Deborah Rawson Memorial Library;
 - e. The MLF property at 10 Maple Leaf Farm Road.
4. On July 20, 2007 a copy of the notice of a public hearing was mailed to the applicant, Bill Young, Executive Director of MLF, 10 Maple Leaf Road, Underhill, VT, 05489. On July 20, 2007 a copy of the notice of public hearing was mailed to the following owners of properties adjoining the property subject to the application:
 - a. Montgomery, 18 Maple Leaf Road, Underhill, VT 05489
 - b. Davis, P.O. Box 229, Underhill, VT, 05490;
 - c. Panner, 55 Maple Leaf Rd. Underhill, VT, 05489;
 - d. Luck/Wilson, 163 Riverview Ave., Little Silver, NJ, 07739;
 - e. Martha Montgomery Trust, c/o Sheldon Barker, P.O. Box 655, Albion, CA, 95410;
 - f. Infields, LLC, 1438 Ridge Rd., Laurel Hollow, NY, 11791;
 - g. Blackmer, 219 Stevensville Rd, Underhill, VT, 05489;
 - h. Grady, 106 Park St., Essex Junction, VT, 05452;
 - i. Mahin, 21 Ledge Hill Rd., Underhill, VT, 05489;

- j. Doherty, P.O. Box 89, Underhill Center, VT, 05490;
 - k. Herman, P.O. Box 116, Underhill Ctr., VT, 05490;
 - l. Wheeler Association, c/o E. Wheeler, 909 Wake Robin Drive, Shelburne, VT, 05482;
 - m. Pitmon, 3 Maple Leaf Rd. Underhill, VT, 05489;
 - n. Herbert McArthur Trust, c/o Wheatley, 1 Towne Marketplace, Essex Junction, VT, 05452;
 - o. Leddy, 14 Elsom Pkwy., South Burlington, VT, 05403.
5. A site visit was conducted prior to the hearing. The Selectboard, Steve Walkerman, Dan Steinbauer, and Steve Owen, was also in attendance to determine accurate setbacks from the town right-of-way for Stevensville Road and Maple Leaf Farm Road.
 6. The conditional use/variance request was considered by the development review board at a public hearing on Monday, August 6, 2007. The development review board reviewed the conditional use/variance request under the Town of Underhill Zoning Bylaw, as amended March 2003.
 7. Present at the hearing were the following members of the Development Review Board:
 - Scott Tobin, Chair
 - Chuck Brooks
 - Stan Hamlet
 - Peter Seybolt
 - Matt Chapek
 - Charlie Van Winkle
 - Penny Miller

Roy Dunphey and Deb Shannon, alternate DRB members, also attended the meeting. They did not cast votes for decisions. Zoning assistant Kari Papelbon also attended the meeting.

8. At the outset of the hearing, Scott Tobin (Chair) explained the criteria under 24 V.S.A. § 4465 (b) for being considered an "interested party." Interested parties who spoke at the hearing were:
 - Bill Young, Executive Director of Maple Leaf Farm (Appellant), 10 Maple Leaf Farm, Underhill, VT.
 - Chris Murphy, Zoning Administrator
 - Susan Turkos, 151 Stevensville Road, Underhill
 - Tom Turkos, 151 Stevensville Road, Underhill
 - Carole Doherty, 157 Stevensville Road, Underhill
 - Doug Riley (attorney for John and Jean Panner), Lisman & Webster, P.O. Box 728, Burlington 05402
 - Jean Panner, 55 Maple Leaf Road, Underhill
 - Barbara Wilson, 42 Maple Leaf Road

- John Doherty, 157 Stevensville Road, Underhill
 - Betty Moore, 118 Stevensville Road, Underhill
9. During the course of the hearing the following exhibits were submitted to the Development Review Board:
1. A staff report sent by ZA Murphy to the Development Review Board
 2. A copy of the Mountain Gazette notice for the Maple Leaf Farm Assoc., Inc. (MLF) hearing that was published on July 19, 2007;
 3. A copy of the Conditional Use and Variance Hearing Request submitted by Bill Young on June 14, 2007;
 4. A copy of a site plan showing the layout and setbacks for all proposed projects;
 5. A copy of proposed findings of fact submitted by Bill Young to ZA Murphy on July 16, 2007;
 6. A copy of a letter requesting a Conditional Use permit submitted by Bill Young to ZA Murphy on June 12, 2007;
 7. A copy of an email submission from Rick Wood of CVPS to Bill Young regarding clearances for structures next to power lines;
 8. A copy of an email letter dated July 26, 2007 submitted by Elaine Herman, P.O. Box 116, Underhill Center stating no objections to the MLF proposed projects;
 9. A letter dated July 31, 2007 submitted by Kathleen Rupright, 2 Ledge Hill Road, Underhill expressing objections to and concerns about the proposed MLF projects;
 10. A copy of a notification letter dated July 23, 2007 to ZA Murphy indicating no objection to the MLF proposed projects submitted by Donald and Bernice Grady, 106 Park St., Essex Junction;
 11. A letter submitted and read by Betty Moore, 118 Stevensville Rd., Underhill Center at the hearing stating concern and objection to the proposed MLF projects;
 12. A letter and site plan submitted by Jeannie and John Panner, 55 Maple Leaf Farm Road, Underhill stating concerns and opposition to the proposed MLF projects, read at the hearing by Jeannie Panner;
 13. An email submitted by Michael Luck, P.O. Box 237 (42 Maple Leaf Rd.), Underhill expressing concerns and objections to the proposed MLF projects.

These exhibits are available in the Maple Leaf Farm Development Review Board file at the Underhill Zoning Office.

II. FINDINGS

A. Background

The Minutes of the meeting 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. In a June 12, 2007 letter, William Young, Executive Director of MLF, wrote a letter to Zoning Administrator Christine Murphy (ZA Murphy) discussing MLF's desire to install

a paved, juvenile basketball half-court on the upper edge of the field on the corner of Stevensville Road and Maple Leaf Farm Road to replace the existing basketball hoop in the parking lot, construct a backstop in the softball field, and to construct an enclosure for the dumpsters in the parking lot. A June 18, 2007 email to Mr. Young from CVPS stated the required clearances for structures next to power lines.

2. The subject property, 10 Maple Leaf Farm Road lies in the Water Conservation District.
3. A hearing for the proposed conditional uses is required by § VII (B) (4) of the Underhill Zoning Regulations ("the Regulations"). A variance is required under § 4469 (a) of the Vermont Municipal and Regional Planning and Development Act.
4. The Applicant, Maple Leaf Farm (MLF) represented by Bill Young, Executive Director, is applying for a conditional use permit to construct a basketball half-court measuring 37' x 42' (1,554 sq. ft.) at the northeastern portion of the field along Stevensville and Maple Leaf Farm Roads; for a conditional use permit and variance to erect a 10' tall chain link and metal pole baseball/softball backstop with 6' extensions at the current softball field site; and for a conditional use permit and variance to construct a 24' x 14' x 6' wooden dumpster enclosure, with two (2) 12' wide doors and no roof, on a 15' x 25' slab at their current location in the parking lot. MLF is replacing the current basketball hoop and backboard in the parking lot.

The criteria for conditional use approval as stated in § III (F) of the Underhill Zoning Regulations is: a determination by the Board 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:

- The character of the area
- Traffic on roads or highways in the vicinity
- By-Laws then in effect."

The criteria for variance approval as stated in § 4469 (a) of the Vermont Municipal and Regional Planning and Development Act are:

- 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.

B. Proposed Basketball Half-Court:

1. Currently, MLF has a basketball hoop/backboard in the parking area. The proposed basketball half-court will replace the current basketball hoop and backboard and move the area of play to a field on the main campus. The location of the half-court ("the court") is such that it does not require any variances from the Underhill zoning regulations.
2. The court will not be injurious to the neighborhood. Maple Leaf Farm will acquire the necessary ACT 250 permit before paving the court.
3. The court will not be offensive to the neighborhood. Currently, basketball is an activity that takes place in the parking lot. Moving the court to the proposed location on the main campus will afford greater ease of supervision for Maple Leaf Farm staff and remove the activity further away from abutting neighbors, thus improving the neighborhood.
4. The character of the area is not adversely affected by the court. Basketball is a current activity, and the proposed location will blend in with the other main campus activities.
5. Traffic in the area will not be adversely affected by moving the court to the proposed location. On the contrary, traffic in the area will be improved by moving the activity onto the main campus and away from the parking lot and road.
6. The court does not adversely affect any other town by-laws.

C. Proposed Baseball Backstop:

1. At the hearing, the Selectboard determined the centerline and edge of rights-of-way on Maple Leaf Road and Stevensville Road. They are both 3 rod roads.
2. The baseball backstop would be an accessory structure. The playing field would not be lit.
3. §VII (E) (2) states that accessory structures must be behind the nearest point of the primary dwelling.
4. Primary dwelling is not defined in the regulations, but "primary building" is defined as the main or principle building on the lot.

5. The regulations do not address on point a situation such as Maple Leaf Farm, where there is a commercial activity without a traditional residence. The use at Maple Leaf Farm well precedes the inception of zoning in the town. When there is not a clear direction in the regulations for the Board to follow, the Board must interpret the regulations.
6. For the sake of determining front-yard set-backs at Maple Leaf Farm, the Board finds that the "primary dwelling" or "primary building" as defined in the zoning regulations is the Barn.
7. Abutters, through counsel, made the argument that since Maple Leaf Farm is on a corner lot, that there should be two front-lot lines.
8. The zoning regulations define frontage as "a continuous lot line along a public road or a private road." Underhill regulations do not address corner lots.
9. Underhill has determined in the past that the front lot line to be that part of the property where access is granted. Since the access to MLF is off Maple Leaf Road, the Board has used Maple Leaf Road to determine set-backs in the past.
10. The Board disagrees with neighbor counsel that the definition of frontage must be interpreted to mean that both Stevensville and Maple Leaf Roads are the front lot lines. Rather, the Board interprets the definition to mean that frontage is determined to be a continuous lot line along a public road, not two public roads. (Emphasis added) In the instance of corner lots, the front lot line is determined to be that which has access.
11. The Board determined at the site visit that the required front-yard set-back for the baseball backstop from Maple Leaf Road is 66' to meet the requirements of §VII (E)(2).
12. The location that the Applicant had proposed would require a variance.
13. Based on the variance criteria, the Board does not find that a variance for the location of the backstop can be granted. There are other locations on the property that the backstop could be moved to so that a variance is not required.
14. The Board finds that the backstop would not be injurious, noxious, or offensive to the neighborhood. Despite being characterized as an urban structure by the neighbors, the Board finds that baseball backstops are ubiquitous structures found in urban, suburban, and rural settings.
15. A backstop would not affect the character of the area. As stated before, baseball backstops are found in every environment, even in residential rural settings.
16. A backstop could only have a positive effect on traffic in the area as it would keep balls from rolling into local rights-of-way.

17. A backstop would not have an adverse impact on town by-laws currently in effect if a variance was not required, and if it was located so that it did not have an impact on any current or replacement wastewater disposal fields.
18. The criteria for a conditional use permit for a baseball backstop are met if a variance is not required.
19. The Board has determined that the baseball backstop is an approved use at Maple Leaf Farm if no variances are required and it does not have an impact on any current or replacement wastewater disposal field. If the Applicant submits an application for the backstop that does not require a variance and meets all conditions as set forth herein, the Applicant does not have to come back to the Board for another hearing on this use.

D. Dumpster Enclosure:

1. The enclosure would not be injurious, obnoxious, or offensive to the area. Enclosing a dumpster could only benefit a local area. Enclosing the dumpsters would help deter wildlife and dogs in the area from getting into the dumpsters.
2. The enclosure would not have an adverse effect on the character of the area; in fact it would improve the area.
3. The enclosure would not have an adverse effect on the traffic in the area as the dumpsters would be moved a few feet away from the road from their current location.
4. The enclosure would not have an adverse impact on town by-laws currently in effect if a variance was not required.
5. The dumpster would require a variance from the front-yard set-back.
6. The dumpster enclosure does not meet the variance criteria as the dumpsters could be relocated to an area that does not require a variance.
7. The dumpster enclosure as presented meets the conditional use criteria if a variance is not required.
8. The Board has determined that the dumpster enclosure is an approved use at Maple Leaf Farm if no variances are required. If the Applicant submits an application for the enclosure that does not require a variance and meets all conditions as set forth herein, the Applicant does not have to come back to the Board for another hearing on this use.

III. DECISION AND CONDITIONS

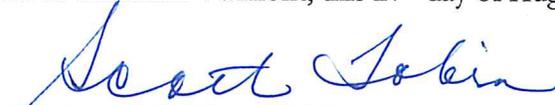
Based upon these findings, and subject to any of the conditions set forth below, the Development Review Board approves the following:

1. A conditional use permit for the proposed basketball half-court without conditions;
2. A conditional use permit for the proposed baseball backstop as depicted in the application provided:
 - a. That no variances are required. For the purpose of the front-yard set-back, this means that the backstop must be 66' from the centerline of Maple Leaf Road; and
 - b. That the backstop does not have any impact on current or replacement wastewater disposal fields.
3. A conditional use permit for the dumpster enclosure as depicted on the plans so long as no variances are required for the location of the structure.

If a condition is not met, the conditional use permit for that structure herein granted shall be rescinded.

Requests for variances for the proposed baseball backstop and the dumpster enclosure are denied.

Dated at Underhill Vermont, this 27th day of August, 2007.



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(s) 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.