TOWN OF UNDERHILL
APPLICATION OF CHRISTOPHER AND BETH NETELKOS
FOR A 2-LOT SUBDIVISION
PRELIMINARY FINDINGS AND DECISION

In re: Christopher and Beth Netelkos
295 Poker Hill Rd.
Underhill, VT 05489

Docket No. DRB-09-11: Netelkos

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Christopher and Beth Netelkos' preliminary hearing application for a 2-lot subdivision of property located at 295 Poker Hill Rd. in Underhill, VT.

1. On April 19, 2010, Gunner McCain of McCain Consulting filed an application for subdivision on behalf of Christopher and Beth Netelkos for the project. A copy of the application and additional information are available at the Underhill Town Hall. A sketch plan meeting was held on October 19, 2009 and accepted.

2. On April 26, 2010, a copy of the notice of a public site visit was mailed to the applicants, Christopher and Beth Netelkos, 295 Poker Hill Rd., Underhill, VT 05489 and to the following owners of properties adjoining the property subject to the application:

    a. Michael and Marty Baslow, Remaindermen, 13 Baslow Ln., Underhill, VT 05489
    b. Coia, P.O. Box 212, Underhill, VT 05489
    c. Tall, 7 Metcalf View, Underhill, VT 05489
    d. Hall/Reed, 253 Poker Hill Rd., Underhill, VT 05489
    e. Gingras, 291 Poker Hill Rd., Underhill, VT 05489
    f. Power, TTEE, 294 Poker Hill Rd., Underhill, VT 05489
    g. Pilo, 298 Poker Hill Rd., Underhill, VT 05489
    h. Francis, 305 Poker Hill Rd., Underhill, VT 05489
    i. Cumming/Petit, 311 Poker Hill Rd., Underhill, VT 05489

    A copy of the notice was also provided to Gunner McCain, McCain Consulting, 93 South Main St., Ste. 1, Waterbury, VT 05676.

3. On April 28, 2010, notice of a public site visit and preliminary hearing was published in *Seven Days*.

4. On April 30, 2010, notice of the site visit and preliminary hearing on the proposed Netelkos subdivision was posted at the following places:

    a. The property to be developed, PH295;
    b. The Underhill Town Clerk's office;
    c. The Underhill Country Store;
    d. Jacobs IGA;

e. Wells Corner Market;
f. The Town of Underhill website.

5. A site visit was held at the property on May 17, 2010 at 6:30 PM. Present the site visit were:

- Will Towle
- Peter Seybolt
- Stan Hamlet
- Penny Miller
- Matt Chapek
- Scott Tobin, Chair

Zoning Administrator Kari Papelbon, Gunner McCain (consultant for Christopher and Beth Netelkos), Christopher Netelkos, and three neighbors also attended the site visit.

6. The preliminary hearing was scheduled to begin at 7:00 PM following the site visit on May 17, 2010.

7. Present at the preliminary hearing were the following members of the Development Review Board:

- Matt Chapek
- Penny Miller
- Peter Seybolt
- Will Towle
- Stan Hamlet
- Charlie Van Winkle
- Scott Tobin, Chair

Kari Papelbon, Zoning Administrator; Gunner McCain; Christopher Netelkos; Justin Willis (consultant for last hearing); Brad Holden (consultant for last hearing); Steven and Wendy Guay (applicants for the next hearing); Gary and Elizabeth Francis; neighbors; and Deb Shannon (DRB member, recused) also attended the hearing.

8. 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." Interested parties who spoke at the hearing were:

- Christopher Netelkos, 295 Poker Hill Rd., Underhill, VT 05489
- Gary Francis, 305 Poker Hill Rd., Underhill, VT 05489

Consultants who spoke on behalf of the applicants:

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

9. 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, Christopher and Beth Netelkos, and Gunner McCain of McCain Consulting;
b. Christopher and Beth Netelkos' Application for Subdivision: Preliminary (dated 4-16-10);
c. A copy of the completed Subdivision Checklist: Preliminary Hearing;
d. A copy of the plans prepared by Gunner McCain of McCain Consulting, Inc. for Christopher and Beth Netelkos (Sheets 1 and 2 dated 4-13-10);
e. A copy of the preliminary survey prepared by Keith Van Iderstine of McCain Consulting, Inc. for Christopher Netelkos and Beth Ann Boquel (dated 4-13-10);
f. A copy of the letter from Nicole Fitch of McCain Consulting, Inc. requesting a variance (dated 4-16-10);
g. A copy of the waiver request for the bonding requirement (dated 4-16-10);
h. A copy of the draft letter to Bill Zabiloski of the Agency of Natural Resources (dated April 2010);
i. A copy of the letter to Randy Clark, Chief of the UJFD (dated 4-13-10);
j. A copy of the letter to James Massingham, Co-Superintendent of Chittenden East Supervisory Union #12 (dated 4-13-10);
k. A copy of the School Impact Questionnaire from James Massingham (dated 4-19-10);
l. A copy of the USGS Map with local well yields;
m. A copy of the FIRMette for the property;
n. A copy of the USGS Map showing contours and natural features;
o. A copy of the draft Findings of Fact;
p. A copy of the letter from Georgia Cumming (dated 4-15-10);
q. A copy of the tax map for PH295;
r. A copy of the minutes from the 10-19-09 Sketch Plan Meeting;
s. A copy of the confirmation email for the hearing notice to published in Seven Days (4-27-10).

These exhibits are available in the Netelkos, PH295, subdivision 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 applicants seek a permit to subdivide land. The subject property is a 24.7-acre parcel located at 295 Poker Hill Rd. in Underhill, VT (PH295).

2. The property is located in the Rural Residential and Soil & Water Conservation zoning districts as defined in §VI and §IX 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:

   - Preliminary Plat Submission Requirements, pages 7-9, "Preliminary Plat for Subdivisions"
   - Planning Standards, pages 11-12, "Evaluation Considerations"

4. Preliminary Application Submission Requirements, "Preliminary Plat for Subdivisions" – The preliminary plat shall be drawn to a scale of not more than two hundred (200) feet to the inch, and shall show or be accompanied by the following information:

   a. Proposed subdivision name or identifying title and the name of the town.

   b. Name and address of record owner, sub divider and designer of Preliminary Plat.

   c. Number of acres within the proposed subdivision, location of property lines, existing easements, buildings, water-courses and other essential existing physical features, natural features and resources.

   d. The location of natural features or site elements to be preserved.

   e. The names of all subdivisions immediately adjacent and the names of owners of record of adjacent acreage, including those directly across any road adjoining proposed subdivision.

   f. The provisions of the zoning Regulations applicable to the area to be subdivided and any zoning district boundaries affecting the tract.

   g. The location and size of any existing sewerage systems and water supplies, culverts and drains or underground cables on the property to be subdivided.

   h. Location, names and present widths of existing and proposed roads, easements, building lines, parks, and other public open spaces as well as similar facts affecting adjacent property.

   i. Contour lines at intervals of ten (10) feet of existing grades and of proposed finished grades where change of existing ground elevation will be five (5) feet or more.

   j. Typical cross sections of the proposed grading and roadways.

   k. Date, true north point, scale, and legend.

   l. Complete survey of subdivision tract by a licensed registered engineer or surveyor.

   m. Means of providing water supply to the proposed subdivision.

   n. Means of on-site disposal of septic wastes including location and results of tests to ascertain subsurface soil, rock and ground water conditions, depth to ground water unless pits are dry at depth of seven (7) feet; location and results of preliminary percolation tests for plat.

   o. Provisions for collecting and discharging storm drainage, in the form of drainage plan.

p. Preliminary designs of any bridges or culverts which may be required.

q. The proposed lot lines with approximate dimensions and suggested locations of buildings.

r. The location of temporary markers adequate to enable the Commission to locate readily and appraise the basic layout in the field. Unless an existing road intersection is shown, the distance along a road from one corner of the property to the nearest existing road intersection shall be shown.

s. All parcels of land proposed to be dedicated to public use and the conditions of such dedication.

t. The sub divider shall coincidentally with submitting the preliminary layout, also furnish a statement signed by him or her to the Commission reciting:

   i. The nature and extent of the proposed road or roads. These must meet Town highway specifications as established by the Selectmen;

   ii. The nature and extent of any recreational features, parks, or playgrounds to be provided, if any, and whether or not and under what conditions they are to be dedicated to the Town;

   iii. The way in which the proposed development relates to the Comprehensive Plan for the Town of Underhill.

u. The sub divider shall indicate if any of the proposed units are to be considered as public buildings.

v. The sub divider shall indicate the location of proposed underground cables.

w. List of waivers, if any, the sub divider desires from the requirements of these regulations, and justification therefore.

x. The preliminary Plat shall be accompanied by a vicinity map drawn to show the relation of the proposed subdivision to the adjacent properties and to the general surrounding area. The vicinity map shall show all the area within two thousand (2,000) feet of any property line of the proposed subdivision. Such vicinity map will be shown on a U.S.G.S. map at a scale of approximately one (1) inch to 24,000.

y. If the preliminary Plat submitted covers only part of the sub divider's entire holding, then the applicant shall submit an outline of the platted area, together with its road system and an indication of the future probable road system of the remaining portion of the tract.

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 applicants have requested the following variance:

   a. Lot 2 – 43' variance building envelope setback to the wetland (the building envelope is proposed to be 57' from the wetland, which is yet to be delineated)

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 requests require 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.

III. DECISION AND ADDITIONAL FINAL HEARING REQUIREMENTS

Based upon the findings above, and subject to any of the additional final hearing requirements and conditions set forth below, the Development Review Board grants provisional preliminary approval for the subdivision as presented at the preliminary hearing.

Application Submission Requirements, "Preliminary Plat for Subdivisions"

a. The Board finds that the preliminary application satisfies the requirement as the proposed subdivision and Town are identified on the plans.

b. The Board finds that the preliminary application satisfies the requirement as the record owner's and designer's information is contained on the plans.

c. The Board finds that the preliminary plans show the acreage, property lines, proposed easements, and existing buildings. The wetland on Lot 2 has not yet been delineated. The boundaries of the wetland shall appear on the final plans.

d. The Board finds that the preliminary plans show the potential location of a Class III wetland on Lot 2. The boundaries of the wetland shall appear on the final plans. The meadow area described in the deeds is not proposed for any new development.

e. The Board finds that the preliminary application satisfies the requirement as the names of adjacent landowners are shown on the plans.

f. The Board finds that the preliminary application satisfies the requirement as the zoning regulation information is contained in the plans.

g. The Board finds that the preliminary plans depict the location and size of septic systems, proposed well, existing spring, overhead utility locations, and culvert details. Based upon discussion at the preliminary hearing, the additional culvert and splash pad(s) for the Lot 2 driveway shall appear on the final plans.

h. The Board finds that the preliminary application satisfies the requirement as the location and widths of the shared driveway and proposed driveway to Lot 2 are shown on the plans. No public parks, public open spaces, or roads are proposed.

i. The Board finds that the preliminary application satisfies the requirement as the contours are depicted on the plans.

j. The Board finds that the preliminary application satisfies the requirement as the cross-section and driveway details are contained in the plans.

k. The Board finds that the preliminary application satisfies the requirement as the date, north point and orientation, scale, and legend are contained on the plans.

l. The Board finds that the preliminary application meets the requirement as a survey by a licensed surveyor has been submitted.

m. The Board finds that the preliminary application satisfies the requirement as drilled wells are contained on the plans. An application for a State Wastewater System and Potable Water Supply Permit has been submitted.

n. The Board finds that the preliminary application satisfies the requirement as septic system locations and details are contained in the plans. An application for a State Wastewater System and Potable Water Supply Permit has been submitted.

o. The Board finds that the preliminary application satisfies the requirement as the erosion control and drainage details are included in the plans. See §III(g) above for the requirement on culvert(s) and splash pad(s) for the Lot 2 driveway.

p. The Board finds that the preliminary application satisfies the requirement as the proposed culverts and details are contained in the plans. No bridges are proposed.

q. The Board finds that the preliminary application satisfies the requirement as the plans contain proposed lot lines, building envelopes, and suggested locations of buildings.

r. The Board finds that the site visit conducted May 17, 2010 satisfied the requirement.

s. The Board finds that this requirement is not applicable as no land is to be dedicated to public use.

t. The Board finds that the proposed shared driveway and details are shown on the plans. There are no proposed public parks or recreation areas, nor are there any areas to be dedicated to the Town, as part of the project.

u. The Board finds that the preliminary application satisfies the requirement as proposed buildings are single-family homes and residential outbuildings. No proposed buildings are dedicated for public use.

v. The Board finds that there are no proposed underground utilities. The plans show overhead power lines and poles.

w. The Board finds that a waiver request has been received for the bonding requirement, and a variance request for the Lot 2 building envelope setback to the potential Class III wetland has been submitted.

x. The Board finds that the preliminary application satisfies the requirement as the plans contain a vicinity map.

y. The Board finds that the preliminary application satisfies the requirement as the plans show the entire property.

Planning Standards, "Evaluation Criteria" – Preliminary Findings

a. The land is suitable for development as evidenced by the submitted plans, Sheets 1 and 2 of 2, prepared by McCain Consulting, Inc. The area to be developed does not contain steep slopes, rock formations, adverse earth formations, or other features that will impair the health, safety, and general welfare of present or future inhabitants of the subdivision or its surrounding areas.

b. A buffer is shown along the possible Class III wetland on the site (formal delineation not yet completed). There are no mapped deer wintering areas, mapped Class II wetlands, or other critical wildlife habitats in the vicinity of the proposed development as evidenced by the attached GIS map depicting nearby deer wintering areas and Class II wetlands.

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 0.94 acres. Coverage under the Construction General Permit is not required. Erosion controls for the Lot 2 house site are depicted on Sheet 1 of the plans.

e. As evidenced by the plans submitted, the project conforms to the Zoning Regulations, which indicates compliance with the Town Plan as well. Where the project does not conform to the Underhill Zoning Regulations, variance and waiver requests have been submitted.

f. As shown on the attached Flood Insurance Rate Map (FIRM), Panel 5000420010B, the project parcel does not lie in a flood plain.

g. The neighboring properties along Poker Hill Road 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 demonstrate that the site is suitable for the proposed density.

i. Poker Hill Road is sufficiently wide enough to accommodate diverse forms or 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 attached GIS map depicting nearby drilled wells and their yields.

1. The new residence is expected to generate 10 vehicle trip ends per day. Site distances at the existing driveway intersection with Poker Hill Road are sufficient in both directions and unsafe conditions do not exist.

m. The proposed residence will be substantially screened from travelers on Poker Hill 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. Water pollution concerns are addressed by erosion control and wastewater disposal plans.

Variance Request– Preliminary Findings

Lot 2 – 43' variance (57' to the potential Class III wetland) for the proposed building envelope

The Board finds that the wet area identified on the plans has not yet been determined to be a Class III wetland. Due to the lack of information, the Board cannot make a finding on this variance request until a formal delineation has been conducted. The results of the formal delineation shall be included in the final application.

The Development Review Board approves the preliminary application and plat subject to the following conditions (in addition to the subdivision requirements for final hearing on Pages 9-11 of the Underhill Subdivision Regulations):

1. New parcel codes will be provided by the Zoning Administrator prior to scheduling the final hearing. The new parcel codes for the lots shall appear on the final plans and survey.

2. All draft easement deeds and deed language referencing the Road Maintenance Agreement shall be submitted to the Zoning Administrator prior to scheduling the final hearing.

3. A wetlands delineation shall be conducted to determine the presence of a Class III wetland in the vicinity of the proposed building envelope.

4. All culverts and splash pads for the driveway to Lot 2 shall be shown on the final plans.

5. Language regarding the prevention of water runoff to neighboring properties from the proposed Lot 2 site shall be included with the final application submission.

Dated at Underhill, Vermont this 28th day of May, 2010.

Scott Tobin, Chair, Development Review Board