

TOWN OF UNDERHILL
APPLICATION OF ELENA SHAPIRO
FOR A 2-LOT SUBDIVISION
PRELIMINARY 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 preliminary hearing application for a 2-lot subdivision of property located at 647 Poker Hill Rd. in Underhill, VT.

1. On September 3, 2010, Peter Lazorchak of McCain Consulting filed an application for subdivision on behalf of Elena Shapiro for the project. A copy of the application and additional information are available at the Underhill Town Hall. A sketch plan hearing was held on July 19, 2010 and accepted.
2. On September 3, 2010, a copy of the notice of a public site visit was mailed to the applicant, Elena Shapiro, 647 Poker Hill Rd., Underhill, VT 05489 and 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.

3. On September 3, 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.

4. On September 4, 2010, notice of a public site visit and preliminary hearing was published in the *Burlington Free Press*.
5. A site visit was held at the property on September 20, 2010 at 6:15 PM. Present the site visit were:
 - Will Towle
 - Chuck Brooks
 - Penny Miller
 - Matt Chapek
 - Scott Tobin, Chair

Zoning Administrator Kari Papelbon, Peter Lazorchak (consultant for Elena Shapiro), and two neighbors also attended the site visit.

6. The preliminary hearing was scheduled to begin immediately following the site visit scheduled for 6:00 PM on September 20, 2010.
7. Present at the preliminary hearing were the following members of the Development Review Board:
 - Chuck Brooks
 - Matt Chapek
 - Penny Miller
 - Will Towle
 - Charlie Van Winkle
 - Scott Tobin, Chair

Kari Papelbon, Zoning Administrator, and Peter Lazorchak, Consultant, 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.” There were no interested parties present. Those who spoke at the hearing were:
 - Peter Lazorchak, 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, Elena Shapiro, and Peter Lazorchak of McCain Consulting;
 - b. Elena Shapiro’s Application for Subdivision: Preliminary (dated 9-3-10);
 - c. A copy of the completed Subdivision Checklist: Preliminary Hearing;
 - d. A copy of the plans prepared by Peter Lazorchak of McCain Consulting, Inc. for Elena Shapiro (Sheets 1-3 dated 8-31-10);
 - e. A copy of the preliminary survey prepared by Keith Van Iderstine of McCain Consulting, Inc. for Elena Shapiro (dated 9-2-10);

- f. A copy of the letter from Peter Lazorchak of McCain Consulting, Inc. to Mike Adams of the Army Corps of Engineers (dated 9-2-10);
- g. A copy of the letter from Nicole MacHarg to Randy Clark, Chief of the UJFD (dated 9-2-10);
- h. A copy of the letter from Nicole MacHarg to James Massingham, Co-Superintendent of Chittenden East Supervisory Union #12 (dated 9-2-10);
- i. A copy of the letter from Nicole MacHarg of McCain Consulting, Inc. requesting a waiver of the bonding requirement (dated 9-3-10);
- j. A copy of the USGS Map with local well yields;
- k. A copy of the draft Findings of Fact;
- l. A copy of the tax map for PH647;
- m. A copy of the minutes from the 7-19-10 Sketch Plan Meeting;
- n. A copy of the confirmation email for the hearing notice to published in the Burlington Free Press (9-3-10);
- o. A copy of the School Impact Questionnaire completed by John R. Alberghini, Superintendent of Schools (dated 9-8-10).

These exhibits are available in the Shapiro, PH647, 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 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:
 - 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 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 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.
- f. The applicant has submitted a request for a waiver of the 100-foot wetland setback requirement. As the application is not for a Planned Residential Development, waivers are not allowed and a variance request is required. The applicant has not yet submitted a formal request and justification for the variance.

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 application is missing proposed utility easement locations. This is not a material error that would prevent the DRB from granting preliminary approval. Proposed utility easements shall appear on the final site plan. The proposed construction easement noted on the plan shall also be drawn on the final site plan. The acreage, property lines, existing buildings, wetlands, and stream are shown on the plans.
- d. The Board finds that the preliminary application satisfies the requirement as the stream and wetlands are depicted on the plans.
- 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 application satisfies the requirement as the location and size of septic systems, wells, and culvert details are shown on the plans. Proposed utility locations shall appear on the final plans.
- h. The Board finds that the preliminary application satisfies the requirement as the location and widths of the existing and proposed driveways and town roads are shown on the plans. No public parks or public open spaces 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. The legend shall be updated on the final site plan to include the limits of disturbance.
- 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.
- n. The Board finds that the preliminary application satisfies the requirement as septic system locations and details are contained in the plans.
- o. The Board finds that the preliminary application satisfies the requirement as the erosion control and drainage details are included in the plans. A letter to the Army Corps of Engineers regarding the proposed culvert for the stream crossing on Lot 2 has been submitted.
- p. The Board finds that the preliminary application satisfies the requirement as the proposed culverts and details are contained in the plans. A letter to the Army Corps of Engineers regarding the proposed culvert for the stream crossing on Lot 2 has been submitted.
- q. The Board finds that the preliminary application satisfies the requirement as the plans contain proposed lot lines and suggested locations of buildings.
- r. The Board finds that the site visit conducted September 20, 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 preliminary application satisfies the requirement as the proposed driveway and details are contained in 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. Proposed Findings of Fact have been submitted to indicate how the project complies with the Town Plan.

- 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 the proposed utility locations are missing. These shall be contained on the final plans.
- w. The Board finds that a waiver request for the wetland setback requirement for the proposed building envelope has been received, but recognizes that this should be a variance request. A formal variance request with justification shall be submitted with the final application.
- 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 parcel and adjoining property.

Planning Standards, “Evaluation Criteria” – Preliminary Findings

- a. The land is suitable for development as evidenced by the submitted plans, prepared by McCain Consulting, Inc. The areas to be developed do 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. This finding shall be reworded to reflect the variance request and to clarify the statement regarding deer wintering areas.
- 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. This finding shall also be revised to include language regarding the wetlands and Army Corps of Engineers permit guidelines.
- e. As evidenced by the plans submitted, the project conforms to the Zoning Regulations, which indicates compliance with the Town Plan as well. This finding should also include a statement such as “Where the project does not conform to the Underhill Zoning Regulations, variance requests have been submitted.”
- 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 demonstrate that the site is suitable for the proposed density.
- 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 (attached) 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. Water pollution concerns are addressed by erosion control and wastewater disposal plans.

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. A written variance request with justification shall be submitted with the final application and plans.
2. A determination from the State on the class of the wetlands shall be submitted with the final application and plans.
3. Letters from the UJFD and Army Corps of Engineers shall be submitted with the final application and plans.
4. Evidence of submission of applications to the State for all required permits shall be submitted with the final application and plans.
5. The survey shall be revised to clarify the wetland boundary and buffer lines.
6. The legend on the site plan shall be revised to reflect the limits of disturbance.
7. Information on proposed utility locations and easements shall be contained within the final application and shown on the final site plan.

8. A note shall appear on the final site plan to clarify that the 50-foot stream buffer depicted is for State permitting purposes. Also, the setbacks listed on the bottom of the site plan shall contain a note that they are for State septic permitting.
9. The Findings of Fact shall be revised: reword #2 for clarity, change "waiver" to "variance," include information about wetlands and Army Corps of Engineers permitting requirements in #4, and revise #5 to include a statement acknowledging the variance request.
10. Draft easement and shared maintenance agreements shall be submitted with the final application and plans.
11. 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.

Dated at Underhill, Vermont this 5th day of OCTOBER, 2010.



Scott Tobin, Chair, Development Review Board

