TOWN OF UNDERHILL
APPLICATION OF JONATHAN DREW & MIRIAM PENDLETON AND
THE UNIVERSITY OF VERMONT FOR A BOUNDARY LINE ADJUSTMENT
FINAL FINDINGS AND DECISION

In re: Jonathan Drew
Miriam Pendleton
27 Harvey Road
Underhill, VT 05489

The University of Vermont
Campus Planning Services
Attn: Linda Seavey, Director
109 South Prospect St. (HA058X)
Burlington, VT 05405

Docket No. DRB-10-12: Drew/Pendleton & UVM

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Jonathan Drew's, Miriam Pendleton's, and the University of Vermont's final hearing application for a boundary line adjustment between properties located at 27 Harvey Road and 58 Harvey Road in Underhill, VT. Part of the application included a request for a variance of the frontage requirement for 27 Harvey Road.

1. On September 20, 2010, Jonathan Drew and Miriam Pendleton filed an application for a boundary line adjustment and a variance for the project. A copy of the completed application and supporting materials are available at the Underhill Town Hall.

2. On September 30, 2010, a copy of the notice of final hearing was mailed to the applicants, Jonathan Drew and Miriam Pendleton, P.O. Box 158, Underhill Center, VT 05490 and UVM Campus Planning Services, Attn: Linda Seavey, Director, 109 South Prospect St., Burlington, VT 05405, and via certified mail to the following owners of properties adjoining the property subject to the application:

   a. Baron, 261 Pleasant Valley Rd., Underhill, VT 05489
   b. Suhadolc, P.O. Box 192, Underhill Center, VT 05490
   c. Wyman, 16 Pomeroy, Burlington, VT 05401
   d. Potvin, P.O. Box 135, Underhill Center, VT 05490
   e. State of VT-ANR, 103 S. Main St., Waterbury, VT 05676
   f. Gibbs/Schaberg, 59 Harvey Rd., Underhill, VT 05489
   g. Wood, 63 Harvey Rd., Underhill, VT 05489
   h. Strek, 73 Harvey Rd., Underhill, VT 05489,
   i. Morando, 73 Stevensville Rd., Underhill, VT 05489
   j. Poetzsch, 356 Meadowrun Rd., Williston, VT 05495
   k. Pincus, P.O. Box 87, Underhill Center, VT 05490
   l. Riley, P.O. Box 188, Underhill Center, VT 05490
   m. Bennett, P.O. Box 95, Underhill Center, VT 05490
   n. Clark, P.O. Box 117, Underhill Center, VT 05490

o. Archibald, P.O. Box 156, Underhill Center, VT 05490
p. Miller/Nickerson, 37 Harvey Rd., Underhill, VT 05489
q. Hamlet, P.O. Box 209, Underhill Center, VT 05490
r. Otis, 242 Pleasant Valley Rd., Underhill, VT 05489
s. Gibbons, 241 Pleasant Valley Rd., Underhill, VT 05489
t. Henry, P.O. Box 159, Underhill Center, VT 05490

3. By October 18, 2010, notice of the final hearing on the proposed Drew/Pendleton and UVM boundary line adjustment and variance was posted at the following places:

   a. The properties under review, HA027 and HA058X;
   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 October 20, 2010, notice of a public hearing was published in *Seven Days*

5. The final hearing was scheduled to begin at 6:30 PM on November 8, 2010.

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

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

   Kari Papelbon, Zoning Administrator; Jonathan Drew and Miriam Pendleton, applicants; Michael Miller, neighbor; Brian Stowe, UVM Proctor Maple Research Center representative; Julie Barrett, UVM Campus Planning Services representative; John Collins, Counsel for UVM; Kevin Perline, applicant for the next hearing; Liz Gibbons, neighbor and applicant for the last hearing; Jeff Sprout, resident for the last hearing; and Michael Henry, neighbor for the last hearing also attended the hearing.

7. 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:

   - Jonathan Drew and Miriam Pendleton, 27 Corbett Rd., Underhill, VT 05489 (mailing address in Section I (2) above).
   - Brian Stowe, Proctor Maple Research Center, 58 Harvey Rd., Underhill, VT 05489
   - Michael Miller, 37 Harvey Rd., Underhill, VT 05489
   - John Collins, Counsel for UVM, Law Offices of Collins, McMahon & Harris P.L.L.C, 308 Main St., Burlington, VT 05401

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, Jonathan Drew and Miriam Pendleton, and Linda Seavey;
   b. Jonathan Drew, Miriam Pendleton, and UVM's Boundary Line Adjustment application (dated 9-20-10)
   c. Jonathan Drew and Miriam Pendleton's Variance Hearing Request (dated 9-20-10)
   d. A copy of the preliminary Boundary Line Adjustment survey prepared by Ian Jewkes of Krebs & Lansing Consulting Engineers, Inc. for The University of Vermont and State Agricultural College and Jonathan Drew and Miriam Pendleton (dated 8-6-08)
   e. A copy of the letter from Miriam Pendleton and Jonathan Drew addressing the five variance criteria (dated 9-3-10)
   f. A copy of the tax map for HA027 and HA058X
   g. A copy of the exemption language from the VT Wastewater Rules
   h. A copy of the hearing notice published in *Seven Days* (10-20-10).

These exhibits are available in the Drew/Pendleton & UVM, HA027 & HA058X, Boundary Line Adjustment 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:

A. The applicants seek a permit to adjust a common boundary line between their properties. The subject properties are a ±9.37-acre parcel located at 27 Harvey Road and a ±79.88-acre parcel located at 58 Harvey Road in the Town of Underhill.

B. The property at 27 Harvey Road is located exclusively in the Scenic Preservation zoning district as depicted on the town tax map and as defined in §VIII of the Underhill Zoning Regulations. The property at 58 Harvey Road is located in the Scenic Preservation and Soil & Water Conservation zoning districts as depicted on the town tax map and as defined in §VIII and §IX of the Underhill Zoning Regulations respectively; however, the portion of the property affected by the proposed boundary line adjustment is located exclusively in the Scenic Preservation zoning district.

C. Approval is requested for the project pursuant to review under the following section of the Town of Underhill Zoning Regulations:

   1. §VIII (D): Lot Area, Dimensions and Coverage (Scenic Preservation)

D. The Town of Underhill Zoning Regulations define frontage as "[a] continuous lot line along a public road or a private road."

E. The property at 27 Harvey Road is an irregularly-shaped preexisting, nonconforming lot in existence for more than 15 years.

F. The property at 58 Harvey Road currently exceeds all minimum zoning requirements and is a conforming lot.

G. The proposed survey is missing the revision date, a recording block, and a signature block for Development Review Board approval. The proposed survey also contains errors in adjoining landowner names.

H. Jonathan Drew, applicant, provided testimony at the final hearing that he considers the portion of his property subject to the boundary line adjustment to be unusable due to lack of access from the rear portion of his property resulting from the presence of streams in that area. Mr. Drew stated that the proposed portion of the UVM property to be conveyed is more useful as it is easily accessible from the rear portion of his property. Mr. Drew also stated that he believes the land adjustment proposed will regularize his irregular lot.

I. The Proctor Maple Research Center, a part of the University of Vermont, currently utilizes a sap house on the portion of the property at 27 Harvey Road subject to the boundary line adjustment application.

J. Michael Miller, adjoining neighbor at 37 Harvey Road, provided testimony at the final hearing which expressed his concern for the discrepancy in the property line descriptions in his deed and the proposed survey.

K. Brian Stowe, Woodlands & Sugaring Operations Manager for the Proctor Maple Research Center at 58 Harvey Road, provided testimony at the final hearing which expressed the need for the boundary line adjustment. Mr. Stowe stated that all of the data utilized by maple producers in the State and some areas of Wisconsin, Minnesota, Maine, Missouri, and parts of Canada is gathered at the sap house. Mr. Stowe also stated that the lines on the upper portions of the property at 58 Harvey Road run downhill to the sap house and moving the sap house would result in a loss of data.

L. John Collins, Counsel for UVM, provided testimony at the final hearing which offered the services of Krebs and Lansing Consulting Engineers, Inc., surveying consultants for the project, to work with Mr. Miller in addressing his boundary concerns.

III. CONCLUSIONS

Applicable Regulation Standards

M. Section VIII (D) of the Underhill Zoning Regulations applies to this application. The relevant portion states:

1. No lot shall be less than 10 acres.

    i. The Board finds that the boundary line adjustment as proposed will make the nonconforming lot at 27 Harvey Road a conforming lot of ±10.15 acres.

ii. The Board finds that the boundary line adjustment as proposed will cause the lot at 58 Harvey Road to lose 0.77 acres.

iii. The Board finds that the post-boundary line adjustment acreage of the lot at 58 Harvey Road will be ±79.11 acres.

2. Each lot shall have a frontage of at least 400 feet.

i. The Board finds that the lot at 27 Harvey Road currently has two non-continuous frontage sections of 290 feet and 271.93 feet, a combined total of 561.23 feet. The frontage is bisected by a property owned by Michael Miller at 37 Harvey Road. After the proposed adjustment, the frontage for 27 Harvey Road will be 290 feet.

ii. The Board finds that the lot at 58 Harvey Road currently has frontage on Harvey Road that exceeds the district minimum, and will be increased by 271.23 feet.

N. The Board finds that the definition of frontage renders a variance unnecessary for this application as the lot at 27 Harvey Road in its current non-conforming state does not meet the criterion for having continuous lot frontage. The Board also finds that the proposed boundary line adjustment will not increase the frontage non-conformity of the lot at 27 Harvey Road.

O. Wastewater permits are regulated by the State of Vermont. Section 1-304(a)(11)A of the Wastewater System and Potable Water Supply Rules states that "boundary line adjustments that affect either improved or unimproved lots [are exempt from permit requirements] provided that:

1. each lot being adjusted meets one or more of the following standards:

i. A lot being reduced in size is being reduced by no more than two percent;

ii. A lot is increased in size;

iii. The boundary line being adjusted is located, after adjustment, at least 500 feet from the footprint of the building or structure on an improved lot; or

iv. The Secretary, on a case by case basis, makes a written determination that the proposed adjustment will not have an adverse effect on any potable water supply or wastewater system on the affected lots.

2. a diagram is submitted to the Secretary that shows the existing and revised lot boundaries; and

3. a copy of the diagram and, if applicable the Secretary's written determination, is recorded and indexed in the land records for the municipality where the lots are located by the landowner."

4. The Board finds that the application meets at least one of the State's criteria for exemptions under § 1-304(a)(11)A of the Wastewater System and Potable Water Supply Rules.

IV. DECISION AND CONDITIONS

Based upon the findings above, the Development Review Board approves the proposed boundary line adjustment application as described at the hearing and in the above findings for the properties at 27 Harvey Road and 58 Harvey Road subject to the following conditions:

1. The survey shall be updated with current landowners, revision date, and recording and signature blocks.

2. As was offered by UVM Counsel Mike Collins, Krebs and Lansing shall work with neighbor Mike Miller to address his concerns with property boundaries.

3. Deeds for the lots and a survey shall be recorded in the Underhill Land Records to reflect the boundary line adjustment and the exemption from the Wastewater System and Potable Water Supply Rules.

4. No transfer or sale of property may occur prior to recording the plat and decision in the Town of Underhill Land Records.

Dated at Underhill, Vermont this 2nd day of December, 2010.

Scott Tobin

Scott Tobin, Chairperson, Development Review Board

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceedings 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. No local permits shall be issued until January 1, 2011, when the 30-day appeal period has expired.