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-11-03: 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.

A. On May 16, 2011, 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 review of the project was held on April 4, 2011and was accepted.

B. On May 20, 2011, a copy of the notice of a public site visit and preliminary hearing 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:

1. McPeters, 70 Bill Cook Rd., Underhill, VT 05489
2. Bosley, 73 Bill Cook Rd., Underhill Center, VT 05490
3. Parent/Leblanc, 83 Bill Cook Rd., Underhill, VT 05489
4. Desroches/Thomas, 10 Covey Rd., Underhill, VT 05489
5. Benway/Provost, 638 Poker Hill Rd., Underhill, VT 05489
6. Magnuson, 635 Poker Hill Rd., Underhill, VT 05489

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

C. On May 20, 2011 notice of the public site visit and preliminary hearing on the proposed Shapiro subdivision was posted at the following places:

1. The property to be developed, PH647;
2. The Underhill Town Clerk's office;
3. The Underhill Country Store;
4. Wells Corner Market;
5. The Underhill Center Post Office;
6. The Underhill Flats Post Office;
7. Jacobs IGA;
8. The Town of Underhill website.

D. On May 21, 2011, notice of a public site visit and preliminary hearing was published in the *Burlington Free Press.*

E. Due to a conflict in the 2011 Unified Land Use and Development Regulations, the public site visit and preliminary hearing were rescheduled. A copy of the notice was mailed to the applicant and to the adjoining property owners in (B) above via Certified Mail on June 1, 2011.

F. On June 1, 2011 notice of the public site visit and preliminary hearing on the proposed Shapiro subdivision was posted at the locations in (C) above. The notice was posted at the property to be developed, PH647, on June 3, 2011.

G. On June 3, 2011, notice of the rescheduled public site visit and preliminary hearing was published in the *Burlington Free Press.*

H. A site visit was held at the property on June 20, 2011 at 6:45 PM. Present the site visit were:

- Chuck Brooks
- Charles Van Winkle, Chairperson
- Penny Miller
- Matt Chapek

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

I. The preliminary hearing began immediately following the site visit on June 20, 2011.

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

- Chuck Brooks
- Matt Chapek
- Penny Miller
- Charles Van Winkle, Chairperson

Kari Papelbon, Zoning Administrator; Peter Lazorchak, Consultant; Elena Shapiro, Applicant; Regis Parent and Cynthia Leblanc, neighbors also attended the hearing.

K. At the outset of the hearing, 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:

- Elena Shapiro, 647 Poker Hill Rd., Underhill, VT 05489
- Regis Parent, 83 Bill Cook Rd., Underhill, VT 05489

Consultant(s) who spoke on behalf of the Applicant(s):

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

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

1. A staff report sent by Zoning Administrator Kari Papelbon to the Development Review Board, Elena Shapiro, and Peter Lazorchak of McCain Consulting.
2. Elena Shapiro's Application for Subdivision: Preliminary (dated 5-16-11).
3. A copy of the completed Subdivision Checklist: Preliminary Hearing.
4. A copy of the site plan and driveway plan prepared by Peter Lazorchak of McCain Consulting, Inc. (Sheet 1 of 3 revised 5-16-11, Sheet 3 of 3 dated 3-10-11).
5. A copy of the survey prepared by Keith Van Iderstine of McCain Consulting, Inc. (dated 5-16-11).
6. A copy of the Subdivision Standards Findings Checklist.
7. A copy of the well yield logs.
8. A copy of the letter from UJFD Duty Officer Harry Schoppmann (dated 9-20-11).
9. A copy of the completed School Impact Questionnaire from Superintendent of Schools John R. Alberghini (dated 9-8-10).
10. A copy of the letter from Frank J. DelGiudice of the Army Corps of Engineers (dated 10-1-10).
11. A copy of the VELCO easement deed (dated 11-16-10).
12. A copy of the Wastewater System and Potable Water Supply Permit WW-4-3614 (dated 12-6-10).
13. A copy of the ANR Project Review Sheet (dated 12-20-10).
14. A copy of the Notice of Application for Individual Wetland Permit #2010-129.
15. A copy of the tax map for PH647.
16. A copy of the minutes from the 4-4-11 Sketch Plan meeting.
17. A copy of the letter to Elena Shapiro from ZA/PA Kari Papelbon (dated 4-14-11).
18. A copy of the hearing notice (published in the Burlington Free Press on 6-3-11).

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:

A. 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).

B. The property is located in the Rural Residential zoning district as defined in Section 2.3, Table 2.3 of the 2011 Unified Land Use and Development Regulations.

C. Subdivision approval is requested for the project pursuant to review under the following sections of the 2011 Unified Land Use and Development Regulations:

- Section 2.3, Table 2.3(D) – Dimensional Standards
- Section 3.2 - Access
- Section 3.7 – Lot, Yard & Setback Requirements

- Section 3.19 – Surface Waters & Wetlands
- Section 3.22 – Water Supply & Wastewater Systems
- Section 7.2 – Subdivision Review, Applicability
- Section 7.5 – Subdivision Review, Preliminary Subdivision Review
- Article VIII – Subdivision Standards

D. Driveway approval for Lot 2 is requested pursuant to review under the 2002 Underhill Road Policy and the 2011 Unified Land Use and Development Regulations. As structured, the Board may grant with Final Plat Approval, "Access Approval" as outlined in Sections 3.2 and 8.6(A)(3), (9) of the 2011 Unified Land Use and Development Regulations. Final review of the driveway will be made by the Selectboard. DRB recommendations will be submitted to the Selectboard for their consideration and review of the Access Permit. Submission of a driveway design will reasonably assure the DRB that there is sufficient access to the proposed parcel. Any future amendments to the driveway design shall be governed by the Selectboard

E. Mr. Parent, neighbor, provided testimony at the hearing. Specifics may be found in the minutes.

III. CONCLUSIONS

Applicable Regulation Standards

Section 2.3, Table 2.3, Dimensional Standards

The Board finds that the application as proposed meets all of the applicable dimensional standards, with the exception of the Minimum Setback to the Class II wetland for the driveway. See Conclusions for *Section 3.19* below.

Section 3.2, Access

The Board makes the following findings on the application as proposed:

A. Access for Lot 2 is proposed with adequate frontage on Bill Cook Road. The existing access for Lot 1 meets frontage requirements on Poker Hill Road. [Section 3.2(A)].

B. Section 3.2(B) is not applicable to the subdivision as it does not involve a nonconforming lot.

C. As the access for Lot 2 is proposed on a town highway (Bill Cook Road), an access permit from the Select board is required. [Section 3.2(C)].

D. Only one access point per lot, with the exception of a utility easement, is proposed. This meets the requirement of Section 3.2(D)(2).

E. Section 3.2(D)(3) will be a condition of final approval.

F. The proposed width of the access to Lot 2 does not extend along the length of the road frontage. [Section 3.2(D)(5)]

G. The subdivision is an allowed development in the Rural Residential zoning district. [Section 3.2(D)(6)].

H. Neither of the proposed lots will be corner/through lots after subdivision. [Section 3.2(D)(7)].

I. No shared driveways are proposed as only two lots will result from the subdivision. [Section 3.2(D)(8)].

J. The Lot 2 access as proposed at the preliminary hearing does not meet minimum requirements per the Vermont Agency of Transportation B-71 standard for residential and commercial drives. Specifically, the driveway profile does not conform to the recommendations outlined in VAOT B-71 standard Detail I. The driveway design should be revised to conform to these recommendations. A Stream Alteration General Permit from the VT Agency of Natural Resources is required as the proposed access crosses a stream. The Army Corps of Engineers has reviewed the proposed crossing and wetland impacts of the driveway; they have authorized the work as a Category 2 activity under the Vermont General Permit. The average finished grade of the driveway as proposed will be less than 12% as measured over any 50-foot section. The proposed Lot 2 driveway does not exceed 500 feet in length. [Section 3.2(D)(9)].

K. No private development roads are proposed with the subdivision. [Section 3.2(D)(10)].

L. No Class IV road accesses are proposed with the subdivision. [Section 3.2(D)(11)].

Section 3.7, Lot, Yard & Setback Requirements

The Board makes the following findings on the application as proposed:

A. The application as proposed meets the requirements of (A) and (B). Sections (C) and (D) are not applicable.

B. Waivers have not been requested. [Section 3.7 (E)].

Section 3.19, Surface Waters & Wetlands

The Board makes the following findings:

A. A Stream Alteration General Permit from the VT Agency of Natural Resources is required for the proposed Lot 2 access as it requires crossing a stream. The Applicant's consultant has indicated that such permit application will be submitted. Additionally, the Army Corps of Engineers has reviewed the proposed stream crossing and wetlands impacts resulting from the driveway. Compliance with the Vermont General Permit as a Category 2 project has been required. [Section 3.19(C)]. The Board will consider the issuance of the VT Agency of Natural Resources Stream Alteration General Permit as evidence to meet this criteria obligation.

B. The building envelope meets all required setbacks. The proposed driveway will cross a portion of the Class II wetland on the property. Total direct wetland impact is

approximately 490 square feet and total buffer impact is approximately 2400 square feet. See (E) below.

C. The proposed septic system meets the required setbacks. [Section 3.19(D)(4)].

D. The riparian buffer and wetland buffer requirements will be incorporated into conditions of approval. [Section 3.19(D)(5),(6)].

E. The encroachment into the buffers for the driveway requires final conditional use review as part of the final subdivision review. No erosion control plan has been submitted for the preliminary hearing. This shall be required with the application for final subdivision review. [Section 3.19(E)(2)(d)].

F. The prohibition of new lawn areas within buffers will be incorporated into conditions of approval. [Section 3.19(E)(3)].

Section 3.22, Water Supply & Wastewater Systems

The Board makes the following findings:

A. The proposed septic system design for Lot 2 and a replacement system for Lot 1 have been reviewed by the Vermont Department of Environmental Conservation Wastewater Management Division. A State wastewater permit has been issued; however, a revision to the location of the proposed force main on Lot 2 will require a permit revision. Submission of an approved Wastewater System and Potable Water Supply Permit will be considered in fulfillment of this section. [Section 3.22 (A) and (C)(1), (2)].

B. The Underhill-Jericho Water District does not provide service to the area of the proposed subdivision. Water will be supplied to Lot 2 via the proposed well and to Lot 1 via the existing well. [Section 3.22(B)(1)].

C. Section 3.22(C)(2) is not applicable as there are no mapped Special Flood Hazard Areas in the vicinity of the proposed subdivision.

D. The proposed septic system on Lot 2 and the replacement septic area on Lot 1 meet all setback requirements from surface waters and wetlands. [Section 3.22(C)(4)].

E. Section 3.22(D) is not applicable as no off-site septic systems are proposed.

Section 7.2, Subdivision Review, Applicability

The Board makes the following findings:

A. The proposal qualifies as a subdivision per Section 7.2(A)-(C).

B. The proposed subdivision does not qualify for an exemption under Section 7.2(D).

C. The proposed subdivision was classified as a minor subdivision during the sketch plan review on April 4, 2011 per Section 7.4(E).

D. Final subdivision review will be concurrent with a conditional use review of the encroachment of the proposed driveway into the wetland buffer. [Section 7.2(F). See also Section 3.19(E)(2)(d)].

Section 7.5, Subdivision Review, Preliminary Subdivision Review

The Board makes the following findings:

A. A waiver of the preliminary subdivision review was not requested by the Applicant during the sketch plan review on April 4, 2011. Therefore, Section 7.5(B) is not applicable.

B. The submission requirements of Section 7.5(C) and the hearing requirements of Section 7.5(D) were fulfilled.

C. This decision is written in fulfillment of Section 7.5(E).

Article VIII, Subdivision Standards

The Board makes the following findings:

A. The Applicant's consultant provided responses to applicable sections of Article VIII on the Findings Checklist. This document will be reviewed at the final subdivision hearing. [Section 8.1(C), Sections 8.2 through 8.8].

B. The Board finds that no modifications or waivers have been requested by the Applicant. [Section 8.1(D)].

Underhill Road Policy, Vermont Agency of Transportation B-71 standard

A. The Board finds that the proposed driveway to Lot 2 does not meet the Vermont Agency of Transportation B-71 standard for residential driveways. Specifically, the driveway profile does not conform to the recommendations outlined in VAOT B-71 standard Detail I. The driveway design should be revised to conform to these recommendations in order for the Board to reach a positive finding under this criterion.

IV. DECISION AND FINAL HEARING REQUIREMENTS

Based upon the findings above, and subject to the supplemental final hearing conditions below, the Development Review Board grants preliminary approval for the subdivision as presented at the preliminary hearing.

A. The Board requires submission of an erosion control plan which includes silt fencing around the proposed Lot 2 driveway and the depiction of the clearing limits adequate for the minimum safe stopping distance for the proposed driveway.

B. Surface waters, wetlands, and buffers shall be designated as open space on the final plat and site plan in accordance with Section 8.3(B)(5) and Section 8.4.

C. Isolation distances shall appear on the final plat in accordance with Section 8.7(C)(2).

D. With the exception of the temporary disturbance for the installation of the driveway on Lot 2, as permitted by the State Wetlands Office, the 50-foot wetland buffer shall be maintained as an undisturbed, naturally-vegetated buffer in accordance with Section 3.19(D)(6). Conditional use review shall be required as part of the final subdivision review for this encroachment.

E. A minimum of one-half (50%) of the required setback distance to the stream on Lot 2 shall be maintained as undisturbed, naturally vegetated riparian buffer in accordance with Section 3.19(D)(5).

F. New lawn areas within the riparian buffer (one-half of the setback distance to the stream) and wetland buffers are not permitted per Section 3.19(E)(3). This restriction shall appear on the final site plan and plat.

G. The proposed driveway to Lot 2 is required to meet all provisions of the 2002 Underhill Road Policy, or subsequent revisions in place at the time of application for a local Access Permit. This recommendation shall be made by the DRB to the Selectboard. An Access Permit shall be obtained from the Selectboard prior to filing an application for final subdivision review in accordance with Section 8.6(A)(3).

H. A copy of the VT Agency of Natural Resources Stream Alteration General Permit shall be submitted with the application for final subdivision review.

I. A copy of the revised Wastewater System and Potable Water Supply Permit shall be submitted with the application for final subdivision review.

J. A copy of the Vermont Wetlands Permit shall be submitted with the application for final subdivision review.

K. All waiver requests (e.g., for the driveway wetland buffer encroachment) shall be submitted with the application for final subdivision review.

L. A copy of the finalized Findings Checklist shall be submitted with an application for final subdivision review.

Dated at Underhill, Vermont this 18th day of July, 2011.

Charles Van Winkle

Charles Van Winkle, Chair, 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.