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

A. On August 25, 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.

B. On August 29, 2011, a copy of the notice of the final hearing was mailed via Certified Mail 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. By September 1, 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 August 31, 2011, notice of a public site visit and preliminary hearing was published in *Seven Days.*

E. The final hearing began at 7:11 PM on September 19, 2011.

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

- Chuck Brooks
- Will Towle
- Deb Shannon
- Peter Seybolt
- Charles Van Winkle, Chairperson

Kari Papelbon, Zoning Administrator, and Peter Lazorchak, Consultant, also attended the hearing.

G. 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." No interested parties attended.

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

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

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

1. Elena Shapiro's Application for Subdivision: Final (dated 8-25-11);
2. A copy of the Subdivision Checklist: Preliminary Hearing;
3. A copy of the plans prepared by Peter Lazorchak of McCain Consulting, Inc. for Elena Shapiro (Sheet 1 revised 8-22-11, Sheet 2 revised 8-22-11, and Sheet 3 revised 8-10-11);
4. A copy of the survey prepared by Keith Van Iderstine of McCain Consulting, Inc. for Elena Shapiro (dated August 16, 2011);
5. A copy of the completed Conditional Use Review Standards Findings Checklist;
6. A copy of the completed Site Plan Review Standards Findings Checklist;
7. A copy of the Subdivision Standards Findings Checklist;
8. A copy of the Vermont Agency of Natural Resources Department of Environmental Conservation Individual Wetland Permit (issued 7-18-11);
9. A copy of the application and letter to Bill Zabiloski of the Vermont Wastewater Management Division for a minor amendment (dated 8-22-11);
10. A copy of the waiver request from Peter Lazorchak of McCain Consulting, Inc. (dated 8-23-11);

11. A copy of the letter from Ernestine Chevrier of the Vermont Wastewater Management Division (dated 8-24-11);
12. A copy of the Wastewater System and Potable Water Supply permit #WW-4-3614 (issued 12-6-10);
13. A copy of the Stream Alteration General Permit;
14. A copy of the tax map for PH647;
15. A copy of the Preliminary Decision (dated 7-18-11);
16. A copy of the minutes from the 6-20-11 Preliminary hearing;
17. A copy of the hearing notice (published in *Seven Days* on 8-31-11);
18. A copy of the procedure checklist for this hearing;
19. A copy of Maple Leaf Farm Associates, Inc.'s Conditional Use Hearing Request (dated 8-16-11);
20. A copy of the site plan prepared by Summit Engineering, Inc. (dated 6-20-07);
21. A copy of the proposed building and details (dated July 25, 2011);
22. A copy of the completed Conditional Use Review Standards Findings Checklist;
23. A copy of the completed Site Plan Review Standards Findings Checklist;
24. A copy of the tax map for the Maple Leaf Farm Property;
25. A copy of the hearing notice (published in *Seven Days* on 8-31-11):
26. A copy of the email from Harry Schoppmann of the Underhill-Jericho Fire Department (dated 9-15-11).

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 5.3 – Site Plan Review
- Section 5.4 – Conditional Use Review
- Section 5.5 – Waivers and Variances
- Section 7.6 – Subdivision Review, Final 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. An Access Permit was issued by the Selectboard on September 15, 2011.

E. No interested parties attended the hearing.

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 and was issued on September 15, 2011. [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 meets the minimum requirements per the Vermont Agency of Transportation B-71 standard for residential and commercial drives, and was issued an Access Permit by the Selectboard on September 15, 2011. 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. A State Wetlands Permit has been issued for the driveway impacts to the wetland buffer. 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. Sections 3.2(D)(10) and (11) are not applicable.

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. A waiver has been requested for the wetland encroachment into the buffer and setback for the Lot 2 driveway. [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. 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)].

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. [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.

§5.3: Site Plan Review

The Board makes the following findings:

A. The location of the proposed driveway to Lot 2 as identified on the proposed plan will not have undue adverse impacts to significant natural, historic, and scenic resources as the stream crossing and Class II wetland impacts have been reviewed and permitted by the State Wetlands Office, the State Stream Alteration Engineer, and the Army Corps of Engineers; the parcel is not above 1500 feet in elevation; there are no areas of steep or very steep slopes in the vicinity of the development; the stream on the property will only be affected with the driveway crossing and a waiver request has been submitted for buffer and setback encroachments; there are no Special Flood Hazard Areas on the property; no source protection areas exist in the vicinity of the proposed development; no deer wintering areas or critical habitat areas have been mapped on the property; and existing scenic resources will be unaffected [Section 5.3(B)(1)].
B. The proposed subdivision is compatible with the proposed setting and context of the Rural Residential zoning district as only one new residential lot will be created and the open meadow will not be developed [Section 5.3(B)(2)].
C. The proposed access and stream crossing for Lot 2 have been designed in accordance with local and State standards. An Access Permit was approved by the Selectboard on September 15, 2011 [Section 5.3(B)(3)].
D. On-site parking for Lot 2 has been proposed to the side of the proposed house. As the development proposal is for one new residence, Sections 5.3(B)(4) and (5) are not applicable.
E. As the proposal is for the subdivision of one new residential lot and, with the exception of the driveway crossing, all wetland and riparian setback and buffer areas will be met, Section 5.3(B)(6) is not applicable.
F. No exterior lighting is proposed; however, the Applicant has agreed that all lighting will be downcast and shielded [Section 5.3(B)(7)].
G. Erosion prevention and sediment control plans have been submitted for the proposed development. The Board accepts the plans in conformance with Section 5.3(B)(8).

§5.4: Conditional Use Review

The Board makes the following findings:

A. The proposed encroachment and buffer impacts for the Lot 2 driveway will not result in an undue adverse effect on the capacity of existing or planned community services or facilities as the driveway is private [Section 5.4(B)(1)].
B. The proposed encroachment and buffer impacts for the Lot 2 driveway will not result in an undue adverse effect on the character of the area affected as defined by the Rural Residential zoning district purpose statement as the impacts have been reviewed and permitted by all applicable State and Federal permitting authorities [Section 5.4(B)(2)].
C. The proposed encroachment and buffer impacts for the Lot 2 driveway will not result in an undue adverse effect on traffic in the vicinity the proposed stream crossing is located outside of the Bill Cook right-of-way, and only one new residential lot (10 vehicle trip ends/day) is proposed for the development [Section 5.4(B)(3)].
D. A waiver request for the encroachment and buffer impacts for the Lot 2 driveway has been submitted. See Section 5.5 below. A State Wetlands Permit has been submitted in fulfillment of Section 3.19 (D)(6) [Section 5.4(B)(4)].
E. Section 5.4(B)(5) is not applicable.
F. Site plan review standards are addressed in Section 5.3 above [Section 5.4(C)].
G. A waiver request for the encroachment and buffer impacts for the Lot 2 driveway has been submitted. See Section 5.5 below [Section 5.4(D)(1),(2)].
H. Section 5.4(D)(3) and (4) are not applicable for the encroachment and buffer impacts for the Lot 2 driveway. Draft legal documents were previously submitted in fulfillment of Section 8.8.

Section 5.5, Waivers and Variances

The Board makes the following findings:

A. The Board waives all requirements and standards of Sections 5.3 and 5.4 determined to be not applicable [Section 5.5(A)].
B. A waiver request and justification for the encroachment and buffer impacts for the Lot 2 driveway have been submitted [Section 5.5 (B)(1)].
C. Per Sections 3.19(D)(5) and (6) and Section 3.19(E)(2)(d), a waiver under Section 5.5 is not applicable as Conditional Use Review and Site Plan Review were part of the final subdivision review.

Section 7.6, Subdivision Review, Final Subdivision Review

The Board makes the following findings:

A. The submission requirements of Section 7.6(B) and the hearing requirements of Section 7.6(C) were fulfilled.
B. This decision is written in fulfillment of Section 7.6(D).

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. The Board accepts these responses and makes supplemental findings where applicable [Section 8.1(C)].

B. The land, as evidenced by the submission of all required State and Federal permits, is suitable for the intended use and proposed density of development, and will not result in undue adverse impacts to public health and safety, the natural environment, neighboring properties and uses, or the character of the area. With the exception of the encroachment into the buffers and setbacks for the driveway on Lot 2, riparian and wetland buffers and setbacks will be followed [Section 8.2(A)].

C. The proposed subdivision meets the requirements of Sections 8.2 (B) through (I). A State Wetlands Permit, approval by the Army Corps of Engineers for the stream crossing and wetland impacts, and qualification under the State Stream Alteration General Permit have been obtained for the Lot 2 driveway encroachments. Required stream and wetland buffers, with the exception of the Lot 2 driveway encroachments, will be observed. The Lot 2 building envelope is small and located outside of the required buffers and setbacks for the Class II wetland and stream. With the exception of clearing for adequate sight distances for the Lot 2 driveway, the existing treeline will also be retained. No pedestrian access is proposed for the private development.

D. Section 8.2(J) is not applicable as the orientation of the house within the proposed building envelope will be at the discretion of the owner.

E. No comments have been received from the Underhill Conservation Commission regarding the proposed subdivision. No mapped floodplains, designated source protection areas, deer wintering areas, or animal corridors are located on the parcel.

F. The proposed subdivision meets the requirements of Sections 8.3(B), (D), and (F). While prime agricultural soils have been identified on the parcel, it is already developed with the existing house. Additionally, areas outside of the proposed development on Lot 2 are wetlands not suitable for agricultural practices.

G. Sections 8.3(C), (E), and (G) are not applicable.

H. Wetland and stream buffers are shown on the plans and designated as open space in fulfillment of Section 8.4(A). Section 8.4(B) is not applicable as no common land is proposed. Language requiring compliance with setbacks and buffers will be incorporated into deeds to the lots and will be a condition of final approval.

I. Erosion prevention and sediment control plans have been submitted with the final application in fulfillment of Section 8.5.

J. The application meets the requirements of Sections 8.6(A) and (C) as only one curb cut onto Bill Cook Road was proposed, and the proposed parking area for Lot 2 is contained within the building envelope. An Access Permit was issued by the Selectboard for the curb cut.

K. Sections 8.6(B), (D), and (E) are not applicable.

L. The application meets the requirements of Section 8.7 as letters from the Chittenden East Supervisory Union and Underhill Jericho Fire Department indicate their ability to provide services to the proposed subdivision, a State Wastewater System and Potable Water Supply Permit was issued (minor revisions in process), and utilities will be underground in the easement location shown on the plans.

M. Proposed deeds were submitted with the previous application for subdivision. Submission and recording of revised deeds incorporating buffer and setback requirements to the wetland and stream on the property, as well as the utility easement, will be a condition of final approval.

N. Per Section 8.1(D), all Sections above considered not applicable are waived. The Board finds that waiving such requirements will not nullify the intent and purpose of the 2011 Unified Land Use and Development Regulations or the Underhill Town Plan, and such waivers are not requisite in the interest of the public health, safety and general welfare. Sufficient evidence, in the form of approved permits and plan layout, has been submitted to justify the waivers.

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

A. The Board finds that the proposed driveway to Lot 2 has been modified to meet all applicable standards and that an Access Permit was issued by the Selectboard on September 15, 2011.

IV. DECISION AND CONDITIONS

Based upon the findings above, and subject to the conditions below, the Development Review Board grants approval for the 2-lot subdivision, including conditional use and site plan review approval, as presented at the final hearing.

A. Per Section 3.2(D)(3), no additional access rights to a public highway shall automatically result from the subdivision or re-subdivision of Lots 1 and 2. Changes to the approved curb cuts are the jurisdiction of and shall be reviewed by the Selectboard.
B. Per Sections 3.19(D)(5) and (6), at minimum, one-half (50%) of the required setback distance as measured horizontally from the top of a stream bank or top of slope, whichever is applicable, shall be maintained as an undisturbed, naturally vegetated riparian buffer. Wetland buffers shall be maintained as an undisturbed, naturally-vegetated buffer and in accordance with the Vermont Individual Wetland Permit issued 7-18-11 (as amended). Per Section 3.19(E)(3), the creation of new lawn areas within buffers is not permitted. Excepted from this requirement are limited clearing and site development associated with the Lot 2 driveway installation.
C. Deeds shall incorporate the provisions of (B) and (C) above as well as the utility easement over Lot 1.
D. The final plat and engineering site plan shall be submitted in accordance with Section 7.7. As-built plans will be required with the submission of an application for a Certificate of Compliance [see (I) below].
E. All subdivision and recording fees must be paid in full prior to recording a subdivision plat in accordance with Section 7.7(B).
F. The E-911 code for Lot 2, BC084, shall be posted per the Underhill Jericho Fire Department specifications prior to issuance of a building permit.
G. A copy of the revised Wastewater System and Potable Water Supply Permit and engineer's certification letter shall be submitted prior to issuance of a Certificate of Occupancy for any structure on Lot 2.
H. Final subdivision approval shall not be construed to constitute acceptance by the Town of Underhill of any street, easement, utility, park, recreation area, or other open space shown on the final plat.
I. Amendments to the approved subdivision shall be made in accordance with Section 7.8.

J. A certificate of compliance, to be issued by the Zoning Administrator under Section 10.4, based on the submission of as-built plans and certifications that improvements (the access and stream crossing) have been installed as approved by the Board. No zoning permit shall be issued for the development of a subdivided lot until the certificate has been issued and recorded in the land records of the town.

Dated at Underhill, Vermont this 24 day of OCTOBER, 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.