

TOWN OF UNDERHILL
APPLICATION OF DON AND PATRICIA HARMMEYER FOR
APPROVAL OF A PREVIOUSLY-APPROVED REVISION TO
THE DUMOULIN (2004) SUBDIVISION SITE PLAN
FINDINGS AND DECISION

In re: Don and Patricia Harmeyer
301 Irish Settlement Rd.
Underhill, VT 05489

Docket No. DRB-13-05: Harmeyer

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding involves review of Don and Patricia Harmeyer's submission of a previously-approved site plan for subdivision modifications on a lot they own at 310 Irish Settlement Rd. in Underhill, VT.

- A. On April 10, 2013 Patricia Harmeyer filed a Mylar depicting previously-approved changes to the site plan for property she and Don Harmeyer own at 310 Irish Settlement Rd., Underhill, VT. A hearing is required as the site plan was not filed in a timely manner according to statutory requirements. A copy of the submissions and background materials are available at the Underhill Town Hall.
- B. On April 11, 2013, copies of the notice of a public site visit and hearing were mailed via Certified Mail to the landowners, Don and Patricia Harmeyer, 310 Irish Settlement Rd., Underhill, VT 05489, and to the following abutting neighbors:
1. Grage/Murray-Grage, 301 Irish Settlement Rd., Underhill, VT 05489
 2. Burgess, P.O. Box 16, Underhill Center, VT 05490
 3. Mulvihill, 318 Irish Settlement Rd., Underhill, VT 05489
 4. Williamson, 341 Irish Settlement Rd., Underhill, VT 05489
 5. Luce, 293 Irish Settlement Rd., Underhill, VT 05489
 6. Connelly, 62 Evergreen Dr., Exeter, RI 02822

Notice was also provided in person to the Underhill Selectboard, c/o Chairperson Brad Holden.

- C. On April 11, 2013, notice of the public hearing on the Harmeyer site plan review were posted at the following places:
1. The property to be developed, 310 Irish Settlement Rd. (4/13/13);
 2. The Underhill Town Clerk's office;

3. The Underhill Center Post Office;
 4. The Underhill Flats Post Office;
 5. Jacobs IGA;
 6. The Underhill Country Store;
 7. Wells Corner Market;
 8. The Town of Underhill website.
- D. On April 13, 2013, notice of a public site visit and hearing on the site plan review was published in *The Burlington Free Press*.
- E. A site visit was held at the property on April 29, 2013 at 6:00 PM. Present the site visit were:
1. Matt Chapek
 2. Karen McKnight
 3. Shanie Bartlett
- Zoning & Planning Administrator Kari Papelbon, and Don and Patricia Harmeyer also attended the site visit.
- F. The hearing began at 7:55 PM on April 29, 2013.
- G. Present at the hearing were the following members of the Development Review Board:
1. Charles Van Winkle, Chair
 2. Matt Chapek
 3. Karen McKnight
 4. Shanie Bartlett
- Kari Papelbon, Zoning & Planning Administrator; Brad Holden, Selectboard Chair; Zoning & Planning Administrator Kari Papelbon, and Don and Patricia Harmeyer also attended the hearing.
- H. 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:
1. Don and Patricia Harmeyer, 310 Irish Settlement Rd., Underhill, VT 05489.
- I. During the course of the hearing the following exhibits were submitted to the Development Review Board:

1. A staff report sent by Zoning and Planning Administrator Kari Papelbon to the Development Review Board, Don and Patricia Harmeyer, the Underhill Selectboard, the Underhill Conservation Commission Chair, the Underhill-Jericho Fire Department, and the Jericho Underhill Water District;
2. A copy of the site plan for Don and Patricia Harmeyer, prepared by Nicholas Nowlan of McCain Consulting, Inc. (revised 1-25-13);
3. A copy of the letter to Don and Patricia Harmeyer from Christine Murphy (dated 9-27-06);
4. A copy of the approved Application for Access (dated 6-21-05);
5. A copy of the letter to Lyn DuMoulin from Planning Commission Chair Richard Albertini (dated 11-17-04);
6. A copy of the site plan for Lyn DuMoulin, prepared by Nicholas Nowlan of McCain Consulting, Inc. (dated 10-19-04);
7. A copy of the survey for Lyn DuMoulin, prepared by McCain Consulting, Inc. (revised 11-15-04 and signed by the Planning Commission on 11-9-04);
8. A copy of the hearing notice published in *The Burlington Free Press* on April 13, 2013;
9. A copy of the letter to Don and Patricia Harmeyer from former Underhill Zoning and Planning Administrator Christine Murphy (dated 10-12-06).

These exhibits are available in the Harmeyer, IS310, hearing 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 landowners, Don and Patricia Harmeyer, submitted a Mylar of their property for recording after discussing the hearing history with Zoning and Planning Administrator Kari Papelbon.
- B. The subject property, 310 Irish Settlement Rd., Underhill, VT was created through a subdivision by Lyn DuMoulin, approved at a Planning Commission hearing on November 9, 2004.
- C. The subject property is located in the Rural Residential zoning district per Article II, Table 2.3 of the 2012 Unified Land Use and Development Regulations.

- D. The Harmeyers purchased the ±30.4-acre piece in March, 2005.
- E. On September 18, 2006 the DRB held a hearing to approve as-built changes from the original subdivision approval.
- F. In a letter to the Harmeyers dated September 27, 2006, the requirement to file a new Mylar for recording reflecting the approved changes was mentioned. The Mylar was never recorded and there is no official record of the DRB hearing (no decision or minutes have been located).
- G. Based on drawings in the file, it appears that the changes were for the location of the curb cut and driveway, the house, the well, the septic system, and a detached garage. These changes, with the exception of the curb cut, appear to have been contained within the building envelope as approved in the 2004 subdivision.
- H. The revision to the location of the curb cut was permitted by the Underhill Selectboard in an Application for Access dated 6-21-2005.
- I. Upon receipt of the Mylar with a revision date of 1-25-13, Zoning and Planning Administrator Kari Papelbon discovered a recording block on the Site Plan with the following caption: "This plat must be endorsed by the Underhill Planning Commission prior to recording to meet the requirements of 27 VSA 1403. If endorsed, this plat is exempted from the requirements of 27 VSA 1403(6) [see 27 VSA 1404(C)]."
- J. Based on (I) above, Zoning and Planning Administrator Kari Papelbon contacted Town Attorney Chad Bonanni. Attorney Bonanni explained that since the approved Mylar from 2006 had not been filed in a timely manner as required by statute, a new hearing must be held to approve the Mylar. Attorney Bonanni also recommended that the DRB conduct a site visit to verify that the Mylar matches the existing conditions. This was done on April 29, 2013.
- K. No interested parties other than the landowners provided testimony.

III. CONCLUSIONS

Applicable Regulation Standards

General

Due to circumstances and Town Attorney recommendations described in Section III above, the Board finds that the submitted Mylar meets local requirements.

Article II, Table 2.3; §3.19: Surface Waters and Wetlands

The Board finds that the Mylar depicts existing conditions on the property, including the building envelope, all buildings, wetlands and associated buffers, streams and associated buffers, the septic system, the well, and the existing driveway. All required setbacks appear to be met. No further changes are proposed

§3.2: Access

The Board finds that approval of the relocation of the curb cut and driveway were approved by the Selectboard on 6-21-05 in an Application for Access. No further changes are proposed.

IV. DECISION AND CONDITIONS

Based upon the findings above, the Development Review Board approves the site plan Mylar as described, submitted, and signed at the hearing.

Dated at Underhill, Vermont this 10 day of May, 2013.



Charles Van Winkle Chair, Development Review Board

NOTICE: This decision may be appealed to the Vermont Division of Superior Court by an interested person who participated in the proceeding 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. Appeal period ends 6-9-13.

