

TOWN OF UNDERHILL
APPLICATION OF ALEX and MONICA JOHN
FOR A REVISION TO AN APPROVED SUBDIVISION
FINAL FINDINGS AND DECISION

In re: Alex and Monica John
419 Irish Settlement Road
Underhill, VT 05489

Docket No. DRB-13-11, John

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns a Final Plan amendment hearing on the application of Alex and Monica John to relocate the building envelope previously approved for Lot 1 of the 2006 4-Lot Northrup Subdivision on property they own at 419 Irish Settlement Road (IS419) in Underhill, VT.

- A. On September 24, 2013, Alex and Monica John filed an application for an amendment to an approved subdivision. A copy of the application and additional information are available at the Underhill Town Hall.
- B. On October 17, 2013, a copy of the notice of the final hearing was mailed via Certified Mail to the following owners of properties adjoining the property subject to the application:

1. Bryn Tyddyn, LLC, 1654 Moore's Hill Road, Syosset, NY 11791 (PC032)
2. Tarrant, 487 Pleasant Valley Road, Underhill, VT 05489
3. Stapleton, 477 Pleasant Valley Road, Underhill, VT 05489
4. Bell, 459 Pleasant Valley Road, Underhill, VT 05489
5. Hess, 443 Pleasant Valley Road, Underhill, VT 05489
6. Salmon, 1750 Brazier Road, Montpelier, VT 05602 (IS417)
7. Flood, 433 Pleasant Valley Road, Underhill, VT 05489
8. Nancy Bradford, P.O. Box 56, Underhill Center, VT 05490 (PV421)
9. Alexander, 348 Irish Settlement Road, Underhill, VT 05489
10. Fuller & Bean, 367 Irish Settlement Road, Underhill, VT 05489
11. Dupre, 368 Irish Settlement Road, Underhill, VT 05489
12. Banks, 396 Irish Settlement Road, Underhill, VT 05489
13. Towle, 391 Irish Settlement Road, Underhill, VT 05489
14. Roberts, 381 Irish Settlement Road, Underhill, VT 05489
15. Lederman, 389 Irish Settlement Road, Underhill, VT 05489
16. Thomas, 65 Tupper Road, Underhill, VT 05489
17. Pendris & Morang, 238 Sherman Hollow Road, Hinesburg VT 05461 (IS493)
18. Berry, 461 Irish Settlement Road, Underhill, VT 05489
19. Goslin, 429 Irish Settlement Road, Underhill, VT 05489
20. Northrup, 414 Irish Settlement Road, Underhill, VT 05489

21. Martin, 416 Irish Settlement Road, Underhill, VT 05489

A copy of the notice was also emailed to Gunner McCain, of McCain Consulting, Inc., at gmccain@mccainconsulting.com.

C. On October 17, 2013, notice of the final hearing on the proposed John subdivision amendment was posted at the following places:

1. The property to be developed, IS419;
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;

D. On October 17, 2013, notice of a final hearing was published in *The Burlington Free Press*.

E. The final hearing, which combined sketch review and final review, began at 6:30 PM on November 4, 2013. This application was the 3rd on the agenda.

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

- Will Towle, who recused himself due to a professional relationship with applicant
- Matt Chapek
- Helen Wagner
- Penny Miller
- Karen McKnight
- Shanie Bartlett
- Mark Hamlin
- Charles Van Winkle, Chairperson

Acting Administrative Officer Brian Bigelow, Applicant Alex John and the Applicant's consultant Gunner McCain and contractor Roy Dunphey also testified at 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." Those who spoke at the hearing were:

- Roy Dunphey, 20 Stevensville Road, Underhill VT 05489

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

- a) Alex & Monica John Application for Subdivision: Final Plan (dated 9-24-13);
- b) A copy of the completed Subdivision Checklist: Final Hearing;

- c) A copy of the Site Plan: entitled Site Plan of Lot 1 Alex & Monica John Building Envelope revision and Amendment to WW-4-2495 prepared by McCain Consulting, Inc. Project #90039B dated September 10, 2013 (Sheets 1 of 2 and 2 of 2);
- d) A copy of the Site Plan;
- e) A copy of the hearing notice published in the Burlington Free Press on October 17, 2013;
- f) A copy of input received from the Chittenden East Supervisory Union dated October 25, 2013;
- g) A copy of input received from the Underhill Jericho Fire Department dated October 29, 2013;
- h) A copy of the procedure checklist for this meeting; and
- i) The Memo dated 10/17/13 and the Draft Final Decision from Acting Administrative Officer Brian Bigelow.

These exhibits are available in the John, IS419, subdivision file (DRB-13-11) at the Underhill Zoning Office.

II. FINDINGS

Factual Findings

Based on the application, testimony, exhibits, and other evidence, the Development Review Board makes the following findings:

- A. The applicants seek a permit to amend the location of the building envelope as approved on Lot 1 in the Northrop Subdivision. The subject property is a ±10-acre parcel located at 419 Irish Settlement Road in Underhill, VT (IS419).
- B. The property is located in the Rural Residential zoning district as defined in Article II, Table 2.3 of the 2012 Unified Land Use and Development Regulations.
- C. Subdivision approval is requested for the project pursuant to review under the following sections of the 2012 Unified Land Use and Development Regulations:
 - Article II, Table 2.3 – Rural Residential District (pg. 12)
 - Article II, Table 2.7, Flood Hazard Overlay District (pg. 24)
 - Section 3.2 – Access (pg. 27)
 - Section 3.7 – Lot, Yard & Setback Requirements (pg. 35)
 - Section 3.13, Parking, Loading & Service Area (pg. 41)
 - Section 3.17 – Source Protection Areas (pg. 52)
 - Section 3.19 – Surface Waters & Wetlands (60)
 - Section 3.22 – Water Supply & Wastewater Systems (pg. 65)
 - Section 4.2 – Accessory Dwellings (pg. 67)
 - Section 7.2, Applicability & Section 7.8, Revisions to an Approved Subdivision (pg. 132)
 - Article VIII – Subdivision Standards (pg. 143)
- D. This application includes an accessory apartment on Lot 1, which was not included in the original 2006 Northrop Subdivision.
- E. No amendment to the driveway access is proposed.

III. CONCLUSIONS

Applicable Regulation Standards

Article II, Table 2.3, Dimensional Standards

The Board finds that the application as proposed meets all of the applicable dimensional standards the Rural Residential zoning district.

Article II, Table 2.7, Flood Hazard Overlay District

The Board finds that no development is proposed within the Special Flood Hazard Area.

Section 3.2, Access

The Board finds that no change to the access is proposed, though this proposal shortens the original length of the driveway.

Section 3.7, Lot, Yard & Setback Requirements

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

- A. Only one principal structure is proposed [Section 3.7(A)].
- B. No lot line amendments are proposed so [Section 3.7(B)].
- C. The subdivision will not be served by a private development road [Section 3.7(C)].
- D. No corner lots are proposed [Section 3.7(D)].
- E. No dimensional requirement waivers are needed [Section 3.7(E)].

Section 3.13, Parking, Loading & Service Areas

The Board finds that the subdivision as presented provides adequate space for off-street parking for the single family dwelling and the accessory dwelling unit on the new proposed lot.

Section 3.17 Source Protection Areas

The Board finds that this proposed development is outside of the groundwater source protection area.

Section 3.19, Surface Waters & Wetlands

The Board finds that the building envelope and proposed structures are 100' from the un-named stream and wetlands as shown on the Plan. While the existing driveway crosses the stream, and

comes within approximately 22' of the wetland (class of the wetland is not specified), no new encroachments are proposed in the application [Section 3.19(E)].

Section 3.22, Water Supply & Wastewater Systems

The Board makes the following findings:

- A. The proposal includes an amendment to the location of the septic system and well. This is being reviewed by the Vermont Department of Environmental Conservation Wastewater Management Division. Submission of an approved Wastewater System and Potable Water Supply Permit will be considered in fulfillment of this section [Section 3.22 (A), (C)(1), and (E)].
- B. The Underhill-Jericho Water District does not provide service to the area of the proposed subdivision. Water will be supplied to Lot 1 via the proposed well.
- C. The proposed septic system area meets all setback requirements from surface waters and wetlands [Section 3.22(C)(4)].
- D. Section 3.22(D) is not applicable as no off-site septic systems are proposed.

Section 4.2 – Accessory Dwellings

The Board makes the following findings:

- A. In accordance with Section 4.2(A)(1) the single family dwelling or the accessory dwelling must be occupied by the owner of the single family dwelling or a member of the owner's family.
- B. The accessory dwelling must be clearly subordinate to the principal dwelling, and shall not exceed 50% of the existing total habitable floor area of the single family dwelling, excluding unfinished attics and basements [Section 4.2(A)(2)]. There is not enough information provided in the application to make this determination. The applicant will need to supply the total habitable floor area of the proposed house, and the proposed accessory structure in order to determine if the accessory dwelling conforms with this section.
- C. The location of the accessory structure conforms to the dimensional requirements [Section 4.2(A)(3)].
- D. Sufficient water supply and wastewater capacity must exist to serve both the principal and accessory structure. This is being reviewed by the Vermont Department of Environmental Conservation Wastewater Management Division. Submission of an approved Wastewater System and Potable Water Supply Permit will be considered in fulfillment of this section [Section 4.2(A)(5)].
- E. The proposed accessory dwelling unit requires Conditional Use approval in accordance with Section 4.2(B)(1). The Development Review Board has thoroughly reviewed this accessory use apartment through the subdivision process. If no subdivision amendment was needed, and no Development Review Board review was conducted, a separate Conditional Use Application would have been required.

Section 7.2, Applicability & Section 7.8, Revisions to an Approved Subdivision

The Board makes the following findings:

- A. This proposal is a revision to an approved subdivision in accordance with Section 7.8. Section 7.8(C) states that the amendment shall be classified by the Zoning Administrator in accordance

with Section 7.2. The Acting Administrative Officer has found this to be a major subdivision in accordance with Section 7.2(E)(b).

- B. Due to the nature of this subdivision amendment, the hearing on November 4, 2013 combines both the sketch and final review. The hearing requirements of Section 7.6(C) were fulfilled.
- C. This decision is written in fulfillment of Section 7.6(D).

Article VIII, Subdivision Standards

The Board makes the following findings:

- A. The Applicants 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 proposed building envelope is within a wildlife habitat block as shown on the Vermont ANR Atlas [Section 8.3 (D)], however, the previous building envelope was as well. The proposal is an improvement as it is now closer to the edge of the habitat block. In addition, the proposed building envelope is now outside of the wooded area, whereas it was within the wooded area previously.
- C. The proposed subdivision amendment plan has not been prepared by a land surveyor. Section 8.2(H) indicates "that the DRB may also require that the corner points of designated building envelopes be marked on the ground with iron pins and identified on the final subdivision plat." The plat from the original subdivision does contain the location of the original building envelope. The DRB will need to decide if this amended building envelope should be recorded on a plat, and if so, whether the plat amendment should be prepared by a certified land surveyor.
- D. 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 2012 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 submitted permit applications and plan layout, has been submitted to justify the waivers.

IV. DECISION AND CONDITIONS

Based upon the findings above, and subject to the conditions below, the Development Review Board grants the subdivision amendment as presented at the final hearing (Board Members Van Winkle, Barlett, Chapek, Hamelin, McKnight, Miller and Wagner voted in favor; Board Member Towle recused himself, and did not cast a vote).

- A. A copy of the Wastewater System and Potable Water Supply Permit shall be submitted with the application for Zoning Permit.
- B. Conditional Use Approval is granted for an accessory dwelling. In accordance with Section 4.2(A)(2) the accessory dwelling must be clearly subordinate to the principal dwelling, and shall not exceed 50% of the existing total habitable floor area of the single family dwelling, excluding unfinished attics and basements. The applicant will need to supply the total habitable floor area of the proposed house, and the proposed accessory structure with the Zoning Permit application in order to determine conformance with this section.

- C. The accessory dwelling is permitted only as accessory to the principal residential use of the property and as such shall be retained in common ownership.
- D. Per Section 7.7 an amended building envelope shall be recorded on a plat prepared by a certified land surveyor within 180 days of this decision.
- E. The final plat and engineering site plan shall be submitted in accordance with Section 7.7.
- F. All subdivision and recording fees must be paid in full prior to recording a subdivision plat in accordance with Section 7.7(B).
- G. All conditions of the previous Northrop Subdivision approval shall remain in effect unless specifically amended through this application.
- H. A Zoning Permit shall be retained prior to construction in accordance with Section 10.3 of the Unified Land Use & Development Regulations.
- I. Nothing in this decision shall be deemed to alter any existing deed restrictions or covenants applicable to the subject property.

Dated at Underhill, Vermont this 21 day of NOVEMBER, 2013.



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. Appeal period ends 20 DEC 2013