TOWN OF UNDERHILL
APPLICATION OF LAMPHERE
FOR A 2-LOT SUBDIVISION
FINAL FINDINGS AND DECISION

TOWN CLERK'S OFFICE
Received Nov 18,2014 03:30P
Recorded in VOL: 211 PG: 215- 219
Of Underhill Land Records
ATTEST: Sherri Morin, Town Clerk

In re: Luella Lamphere Estate
c/o Patrick Lamphere
176 Beartown Road
Underhill, VT 05489

Docket No. DRB-14-05 Lamphere

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns the Estate of Luella Lamphere c/o Patrick Lamphere final hearing application for a 2-lot subdivision of property located at 108 Beartown Road in Underhill, VT.

A. On September 4, 2014, Patrick Lamphere filed an application for final subdivision approval. A copy of the application materials and additional information are available at the Underhill Town Hall. A sketch plan meeting was held on June 2, 2014.

B. The Development Review Board waived preliminary subdivision review at the request of the Applicant.

C. On September 18, 2014, a copy of the notice of the final hearing was mailed via Certified Mail to the Applicant, 176 Beartown Road, Underhill, VT 05489 and to the following owners of properties adjoining the property subject to the application:

1. Michael & Karen McKnight, PO Box 15, Underhill Center, VT 05490
2. Marcel Fortin, 154 Beartown Rd., Underhill, VT 05489
3. Thomas Hartswick & Deborah Shuma-Hartswick, 130 Beartown Rd., Underhill, VT 05489
4. Jeffery & Nancy Alexander, 123 Beartown Rd., Underhill, VT 05490
5. Attn: Training Site Manager Palermo, 90 Ethan Allen Road, Jericho, VT 05465
6. State of VT Military Dept., Attn: Bldg. 5- Col. Gingras, 789 VT Army National Guard Rd., Colchester, VT 05446
7. Town of Underhill Selectboard

D. Notice of the final hearing on the Lamphere subdivision was posted at the following places:

1. The property to be developed, BE108;
2. The Underhill Town Clerk's Office;
3. The Underhill Center Post Office;
4. The Underhill Flats Post Office.

DOC: 00010861 VOL: 211 PG: 216

E. On September 17, 2014, notice of a final hearing was published in the *Burlington Free Press Newspaper*.

F. A site visit was held on Monday October 6, 2014 at 6:00 PM at 108 Beartown Road. Those present at the site visit included Board members Charles Van Winkle, Will Towle, Matt Chapek, and Mark Hamelin. Applicant Patrick Lamphere, Michael & Karen McKnight (Abutters- 164 Beartown Road) and PZA Sarah McShane also attended the site visit.

G. The final hearing was held on Monday October 6, 2014 at 6:35 PM.

H. Present at the final hearing on Monday October 6, 2014 were the following members of the Development Review Board:

- Charles Van Winkle, Chairperson
- Will Towle
- Matt Chapek
- Mark Hamelin
- Karen McKnight (Recused)

Planning & Zoning Administrator Sarah McShane also attended the hearing.

I. At the outset of the hearing, Chairperson 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:

- Patrick Lamphere, 176 Beartown Road, Underhill, VT (Applicant)
- Karen McKnight, 164 Beartown Road, Underhill, VT (Abutter)
- Major Jacob Roy, Bldg. 5 Camp Johnson, 789 VT Nat'l Guard Rd., Colchester, VT 05446 (Representing Ethan Allen Firing Range-Abutter)
- Col. Robert Gingras, Bldg. 5 Camp Johnson, 789 VT Nat'l Guard Rd., Colchester, VT 05446 (Representing Ethan Allen Firing Range-Abutter)

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

a. A staff report sent by Planning & Zoning Administrator to the Development Review Board, Applicants, Selectboard, Underhill Jericho Fire Department, and Conservation Commission Chair;
b. Application for Final Subdivision & Final Subdivision Checklist (submitted on 9/4/14);
c. Copy of the Subdivision Standards Findings Checklist;
d. Copy of the Wastewater System and Potable Water Supply Permit (dated 6/13/2014);
e. Copy of written project description (2 pages) (no date);
f. 8.5" x 11" copy of the Two Lot Subdivision Survey Prepared for Luella Lamphere Estate- 108 Beartown Road, Peatman Surveying Inc., (dated 9/2/2014);
g. Copy of the tax map for BE108 indicating streams and wetlands (dated 5/12/2014);

DOC: 00010861 VOL: 211 PG: 217

h. Copy of two ANR Natural Resources Atlas Maps (Habitat Blocks & Slopes);
i. Copy of the State of Vermont Land Subdivision Fact Sheet (last revised 3/14);
j. Copy of hearing notice as published in the Burlington Free Press and posted in three public places;
k. Copy of the notice sent certified mail to abutting property owners (dated 9-18-2014);
l. Copy of the plans prepared by JH Stuart Associates Inc., Water and Wastewater System (Drawing 2 of 2) (dated 4/2/14);
m. 11" x 17" copy of the Plat for Luella Lamphere Estate 108 Beartown Road prepared by Peatman Surveying Inc., Eden, VT (dated 9/2/2014);
n. Copy of the minutes from the 6/2/2014 Sketch Plan meeting;
o. Copy of the procedure checklist for the meeting and a memo;
p. Copy of Certificate of Appointment (dated May 10, 2010).

These exhibits are available in the Lamphere, BE108, DRB 14-05 subdivision file at the Underhill Town Hall.

II. FINDINGS

Factual Findings

The Minutes of the 10/6/2014 meeting written by Sarah McShane are incorporated by reference into this decision. Please refer to these Minutes for additional detail.

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. Lot 1 of the subject property is 5.0 acres and Lot 2 is 10.0 acres. The parcels are located at 108 Beartown Road in Underhill, VT (BE108).

B. The properties are located in the Water Conservation zoning district as defined in Article II, Table 2.4 of the 2012 Unified Land Use and Development Regulations.

C. Subdivision approval is requested for the project pursuant to review under the 2012 Unified Land Use and Development Regulations.

D. During the hearing the Board heard testimony regarding a possible property line discrepancy in the south-eastern corner. Property boundary disputes are beyond the jurisdiction of the DRB. The dispute in this instance is not material to this determination.

E. Col. Gingras provided testimony that a 65 dB noise contour encompasses the property as he testified was determined by the VT Army National Guard Statewide Operational Noise Management Plan (May 2013). A copy of this document was not provided at the time of the hearing.

III. CONCLUSIONS

The Board finds the application is in conformance with the following sections of the Town of Underhill Unified Land Use & Development Regulations:

DOC: 00010861 VOL: 211 PG: 218

Article II, Table 2.4 – Water Conservation District
Article III, Section 3.2 – Access
Article III, Section 3.7 – Lot, Yard & Setback Requirements
Article III, Section 3.17 – Source Protection Areas
Article III, Section 3.19 – Surface Waters & Wetlands
Article III, Section 3.22 – Water Supply & Wastewater Systems
Article VII, Section 7.6 – Subdivision Review, Final Subdivision Review
Article VIII – Subdivision Standards

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 2102 Unified Land Use and Development Regulations and the Underhill Town Plan, and such waivers are not requisite in the interest of public health, safety and general welfare. Sufficient evidence, in the form of submitted testimony and plan layout, has been submitted to justify the waiver.

IV. DECISION AND CONDITIONS

Based upon the findings above, the Development Review Board grants approval (4 in favor, 1 recused) for the 2-lot subdivision as described at the hearing and in the submitted application documents, with the following conditions:

A. The property line separating the two lots shall be redrawn or the driveway allocated so the existing driveway on Lot 1 is in conformance with § 3.2(D)(9)(a) requiring a minimum of 12 ft from side lot lines.

B. The parcel codes for both Lots shall appear on the final Mylars. Prior to submitting the Mylars, please contact the Zoning Administrator for the parcel code for Lot 2.

C. As a condition of approval, the Applicant shall include the language "notice of permit requirements" in the deed for Lot 2. New lots that are and will remain undeveloped that will not be transferred still need the "notice of permit requirements" filed in the town land records. Failure to do so shall void this Board's approval.

D. A Wastewater System and Potable Water Supply permit will be required in order to develop Lot 2 with a building that requires a septic system.

E. A building permit will be required to develop Lot 2. A Zoning Permit shall be retained prior to construction in accordance with Section 10.3 of the Unified Land Use & Development Regulations.

F. The applicant shall obtain a curb cut permit for Lot 2 from the Underhill Board of Selectmen.

DOC: 00010861 VOL: 211 PG: 219

G. Per Section 7.2(B), no land shall be subdivided until final subdivision approval has been obtained from the DRB and the approved subdivision plat is recorded in the Underhill Land Records.

H. No transfer, sale or long-term lease of title to property as defined under 32 VSA §9601 of any portion of an existing lot; predevelopment site work; or issuance of zoning permits to develop a subdivided lot shall occur until final subdivision approval has been obtained from the DRB and the final Mylars have been recorded in the Underhill Land Records [Section 7.2(C)].

I. The final plat shall be submitted for recording within 180 days of the date of final subdivision in accordance with Section 7.7.

J. All subdivision and recording fees must be paid in full prior to recording a subdivision plat in accordance with Section 7.7(B).

K. The E-911 codes for Lot 2 shall be posted per the Underhill Jericho Fire Department specifications prior to issuance of a building permit.

Dated at Underhill, Vermont this 17 day of November, 2014.

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. Appeal period ends 12/18/14.

END OF DOCUMENT