



Town of Underhill

Development Review Board

Findings and Decision

SUBDIVISION AMENDMENT APPLICATION OF JOHN & CHRISTINA PEPI TO AMEND APPROVED SUBDIVISION PLANS TO MODIFY THE EXISTING BUILDING ENVELOPE

In re: John & Christina Pepi
24 Jacobs Hill Road (JB024)
Underhill, VT 05489

Docket No. DRB-17-10

Decision: Approved with conditions (see Section V – Decisions and Conditions of Approval)

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns a subdivision amendment application submitted by John & Christina Pepi regarding proposed building envelope modifications to approved subdivision plans for property they own located at 24 Jacobs Hill Road in Underhill, Vermont.

- A. On May 30, 2017, John & Christina Pepi filed a subdivision amendment review application for the abovementioned project. Planning Director & Zoning Administrator, Andrew Strniste, received the application, and determined that it was more or less complete shortly thereafter. A hearing date was scheduled for 7:05 PM at Underhill Town Hall on June 19, 2017.
- B. On June 2, 2017, a copy of the notice of the subdivision amendment review hearing was mailed via certified mail to the following property owners adjoining the property subject to the application:
 1. JB017 – Philip Jacobs, 73 Upper English Settlement Road, Underhill, VT 05489
 2. JB022 – Jason R. Ferreira, P.O. Box 386, Underhill, VT 05489
 3. SU004 – Robert J. & Louise L. Nichols, 4 Sugar Hill, Underhill, VT 05489
 4. SU026 – David B. & Kathy E. Williamson, P.O. Box 66, Underhill, VT 05489
 5. SU034 – Rachel Farrelly, 34 Sugar Hill, Underhill, VT 05489
 6. SU040 – Christopher S. & Bridget C. Dorman, 40 Sugar Hill, Underhill, VT 05489
 7. [Applicant] JB024 – John C. & Christina M. Pepi, 24 Jacobs Hill Road, Underhill, VT 05489
- C. During the week of May 28, 2017, notice of the public hearing for the proposed Pepi subdivision amendment was posted at the following places:
 1. The Underhill Town Clerk's office;
 2. The Underhill Center Post Office; and
 3. The Underhill Flats Post Office.

- D. On Saturday, June 3, 2017, the notice of public hearing was published in the *Burlington Free Press*.
- E. The subdivision amendment review hearing began at 7:20 pm on June 3, 2017 at the Town of Underhill Town Hall.
- F. Present at the subdivision amendment hearing were the following members of the Development Review Board:
 - 1. Board Member, Charles Van Winkle, Chairperson
 - 2. Board Member, Matt Chapek
 - 3. Board Member, Karen McKnight
 - 4. Board Member, Penny Miller
 - 5. Board Member, Stacey Turkos

Also in attendance was Staff Member, Andrew Strniste, Planning Director & Zoning Administrator.

Others present at the hearing were:

- 1. *[Applicant]* John Pepi, 24 Jacobs Hill Road, Underhill, VT 05489
- G. At the outset of the hearing, Chair 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. John Pepi
- H. In support of the subdivision amendment application, and as part of the staff report, the following exhibits were submitted to the Development Review Board:

- Exhibit A – JB024 Pepi Staff Report - Subdivision Amendment Review
- Exhibit B – Application for Subdivision Amendment
- Exhibit C – Certificate of Service
- Exhibit D – Burlington Free Press Notice
- Exhibit E – DRB-13-02 Findings & Decision
- Exhibit F – Pictures of Proposed In-Ground Pool Location
- Exhibit G – Approximate Distances to Building Envelope Boundary
- Exhibit H – Approximate Location of In-Ground Pool
- Exhibit I – As-Built Site Plan
- Exhibit J – DRB-13-02 Subdivision Plat
- Exhibit K – DRB-13-02 Site Plan
- Exhibit L – ANR Slopes Map
- Exhibit M – JB024 Pepi Subdivision Amendment Rules of Procedure
- Exhibit N – Alternate Building Envelope Proposal

No exhibits were subsequently submitted and distributed prior to the start of the hearing, nor were there any exhibits submitted during the hearing.

All exhibits are available for public review in the JB024 Subdivision Amendment Review file (DRB 17-10) at the Underhill Zoning & Planning office.

II. FINDINGS

The Minutes of the June 19, 2017 meeting, written by Andrew Strniste, are incorporated by reference into this decision. Please refer to the Minutes for a summary of the testimony.

Based on the submitted application, testimony, exhibits, and evidence, the Development Review Board makes the following findings under the requirements of the Underhill Unified Land Use and Development Regulations (ULUDR):

FACTUAL FINDINGS

The applicants, John & Christina Pepi, record owner of the property located at 24 Jacobs Hill Road in Underhill, VT, are seeking a subdivision amendment to modify the existing building envelope to better accommodate accessory structures, specifically an in-ground pool that they recently filed a building permit application for (B-17-11). The property is located in the Underhill Flats Village Center and Rural Residential zoning districts as defined in Article II, Table 2.2 and Table 2.3 of the 2014 Underhill Unified Land Use & Development Regulations.

The Board finds that all structures must be within the building envelope, and that an in-ground pool qualifies as a structure, as evidenced by the following definitions in Article XI:

Building Envelope: Designated area(s) on a lot within which structures, parking and loading areas shall be located; and outside of which structures, parking or loading areas shall not be located. At minimum the building envelope shall be defined by required district setbacks and height limits; but may be also defined, as specified under these regulations to, exclude other portions of the lot (e.g. steep slopes, surface waters, wetlands, required buffer areas, designated open space). [Emphasis Added]

Structure: An assembly of materials on the land for occupancy or use, including a building mobile home or trailer, sign, wall or fence. For purposes of these regulations “structure” also includes but may not be limited to: additions to buildings, tennis courts, in-ground swimming pools, telecommunications facilities, gas station canopies, and tanks for the outdoor storage of gas or oil. Infrastructure, such as sidewalks, driveways, roads, parking areas, signs, service lines, and the subsurface components of potable water and sewage disposal systems is specifically excluded from this definition. Structures are exempted from these regulations only in accordance with the Act [§4446] and these regulations (see Section 10.2). See also Accessory Structure, Building, Improvement, Infrastructure. Also see “Structure” as defined for purposes of flood hazard area management and regulation under Section 11.3. [Emphasis Added]

ARTICLE II – ZONING DISTRICTS

A. ARTICLE II, TABLE 2.2 – UNDERHILL FLATS VILLAGE CENTER DISTRICT

The Board finds that the existing lot was created as part of Development Review Board decision DRB-13-02, and was found to have meet the requirements of this district.

B. ARTICLE II, TABLE 2.3 – RURAL RESIDENTIAL DISTRICT

The Board finds that the existing lot was created as part of Development Review Board decision

DRB-13-02, and was found to have meet the requirements of this district.

ARTICLE III – GENERAL REGULATIONS

A. SECTION 3.2 – ACCESS

The Board did not find that an access permit was granted; however, does not restrict the review of, or decision on this application. The Board notes that the applicant did receive a certification letter from O’Leary & Burke Associates, PLC, which was issued during the Certificate of Occupancy process, that the driveway constructed to at least 12 feet wide with an average slope of 11.9%, with an approved 10’ by 30’ emergency vehicle turnaround.

B. SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS

The Board finds that the lot at issue was approved as part of the Development Review Board decision DRB-13-02 application process. There is one principal structure on the lot, which is centrally located on the lot, thus meeting the setback requirements for both districts. While the lot fails to meet the frontage requirement, that issue was address as part of the 2013 decision.

C. SECTION 3.13 – PARKING, LOADING & SERVICE AREAS

The Board finds that the applicants have provided the minimum number of parking spaces (two per dwelling) as required under Table 3.1.

D. SECTION 3.17 – SOURCE PROTECTION AREAS

The Board finds that the existing lot is not located within any known Source Protection Areas, and therefore, finds that this section does not apply.

E. SECTION 3.18 – STEEP SLOPES

The Board finds that the existing lot contains areas of steep slopes (15-25%) and very steep slopes (>25%). Since the applicant is proposing to modify the building envelope, the Board notes that the applicant will have the burden of proving to the Zoning Administrator that any future construction is an area with a slope less than 15%. If the applicants propose construction in an area greater than 15%, then they will need to obtain a conditional use permit under Section 3.18 of the Underhill Unified Land Use & Development Regulations.

F. SECTION 3.19 – SURFACE WATERS & WETLANDS

The Board did not identify any surface waters or wetlands on the lot, and therefore, review under this Section is not required.

G. SECTION 3.22 – WATER SUPPLY & WASTEWATER SYSTEMS

The Board finds that no review under this section is required for this application.

ARTICLE VI – FLOOD HAZARD AREA REVIEW

The Board did not identify any Flood Hazard Areas on the lot, and therefore, review under this Article is not required.

ARTICLE VII – SUBDIVISION REVIEW, ARTICLE VII

A. SECTION 7.8 – REVISIONS TO AN APPROVED SUBDIVISION

The Board finds that the Zoning Administrator has not been granted the authority to issue an administrative amendment for the proposed building envelope modification under Section 7.8.B. Therefore, the modification to the building envelope must be approved by the Board. The Underhill Unified Land Use & Development Regulations does not specifically require the applicants record an updated Mylar, although it is somewhat implied under Section 7.7. The

Board finds that the applicant is not required to record another Mylar as a result of this decision. Therefore, although the Subdivision Plan (recorded as Map Slide 287B) depicts a building envelope, this decision effectively supersedes the depiction of that building envelope.

SUBDIVISION STANDARDS, ARTICLE VIII

A. GENERAL STANDARDS, SECTION 8.2

SECTION 8.2.G – BUILDING ENVELOPE

The Board finds that the existing building envelope on the existing is far more restrictive than what the Underhill Flats Village Center and Rural Residential zoning districts permit. The Board was unable to find a justification in its previous decision on why the building envelope was this restrictive, nor could find any policy reasons to keep the building envelope this restrictive.

Therefore, the Board finds that the building envelope shall be modified to be the least restrictive as permitted under the current Underhill Unified Land Use & Development Regulations, and any subsequent amendments to those Regulations. The applicants shall conform to any setback requirements and other applicable constraints.

III. CONCLUSION

The Board is satisfied with the level of investigation, engineering and evaluation conducted in the application submittal and review process concerning the above-mentioned project. The Board thoroughly reviewed all aspects of the proposal under the evaluation criteria in the ULUDR.

The Board concludes that based on the evidence submitted and the above findings, the proposed building envelope modification generally conforms to the Underhill Unified Land Use & Development Regulations.

IV. WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS

The Board grants the following waivers/modifications:

1. The existing building envelope shall be modified to be the least restrictive as permitted under the current Underhill Unified Land Use & Development Regulations, and any subsequent amendments to those Regulations, except as conditioned below.

V. DECISIONS AND CONDITIONS OF APPROVAL

Based upon the findings above, and subject to the conditions below, the Development Review Board grants approval for the subdivision amendment as presented at the hearing with the following conditions:

1. The existing building envelope shall be modified to be the least restrictive as permitted under the current Underhill Unified Land Use & Development Regulations, and any subsequent amendments to those Regulations.
2. The applicants shall conform to any setback requirements and other applicable constraints, and delegates interpretation authority to the Zoning Administrator.
3. The applicant will have the burden of proving to the Zoning Administrator that any future construction is an area with a slope less than 15%. If the applicants propose construction in

an area greater than 15%, then they will need to obtain a conditional use permit under Section 3.18 of the Underhill Unified Land Use & Development Regulations.

4. A final Mylar is not required and notes that the recorded Mylar (Map Slide 287B) is still the controlling subdivision plan, noting that the depictable building envelope no longer applies.
5. All other conditions of the Development Review Board decision#: DRB-13-02, unless specifically amended herein remain in effect.

Dated at Underhill, Vermont this 29th day of JUNE, 2017.

**Charles
Van Winkle**
Digitally signed by Charles Van Winkle
DN: cn=Charles Van Winkle,
o=Northern Reliability, Inc, ou=Chief
Operations Officer,
email=charlievanwinkle@outlook.com
, c=US
Date: 2017.06.29 11:43:44 -0400

Charles Van Winkle, Chair, Development Review Board

NOTICE: This decision may be appealed to the Vermont Environment 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 29 July 2017.