



Town of Underhill

Development Review Board

Appeal Request Findings & Decision

APPEAL REQUEST APPLICATION BY JARED & DANA LEBLANC PERTAINING TO THE APPEAL OF THE ZONING ADMINISTRATOR'S DECISION TO CATEGORIZE THE BASEMENT AREA OF THEIR PRINCIPAL DWELLING AS AN ACCESSORY DWELLING

In re: Jared & Dana LeBlanc
407 Poker Hill Road (PH407)
Underhill, VT 05489

Docket No. DRB-19-02

Decision: Appeal Upheld (see Section III, Conclusion & Decision for More Details)

I. INTRODUCTION, FACTUAL AND PROCEDURAL HISTORY

This proceeding concerns the appeal request application by the Appellants Jared & Dana LeBlanc. The Appellants are appealing the Zoning Administrator's (Andrew Strniste) decision to categorize the basement area of their principal dwelling at 407 Poker Hill Road (PH407) as an accessory dwelling. The Appellant is requesting that the Development Review Board reverse the Zoning Administrator's decision, thereby categorizing the basement area of the principal dwelling as traditional living space. A reversal of the Zoning Administrator's decision would effectively result in the issuance of the Certificate of Occupancy Permit, which has been tabled until the Development Review Board issues its decision.

- A. On Thursday, October 11, 2018, the Zoning Administrator issued a zoning violation (Exhibit B) to the Appellants for, among other issues, the placement of a tiny house without the proper permitting (Exhibit G).
- B. On Monday, October 15, 2018, the Appellants visited with the Zoning Administrator regarding the zoning violation. At that time, the Appellants inquired about their plan to renovate the basement area (Exhibit G).
- C. On Wednesday, October 24, 2018, the Appellants submitted a Conversion of Use Permit application (Exhibit C) to convert unfinished basement space to finished basement area, as well as convert finished basement space to a bath (Exhibit G). A Certificate of Occupancy Permit was required upon completion of the basement renovations (Exhibit G).
- D. The Conversion of Use Permit application was approved on December 10, 2018 (Exhibit G).
- E. On Wednesday, January 16, 2019, the Zoning Administrator performed a site visit, as required per Section 10.4.A of the *Underhill Unified Land Use & Development Regulations*. The Zoning Administrator discovered during the site visit that a kitchen had been installed, thereby alerting the Zoning Administrator that the basement area may have been converted to an accessory

dwelling (Exhibit G). The Zoning Administrator advised that he would obtain guidance from the Planning Commission on interpreting the definition of “Dwelling Unit,” as defined in Article XI of the *Underhill Unified Land Use & Development Regulations* (Exhibit G). The Planning Commission informed the Zoning Administrator that the described situation appeared to be a separate dwelling unit (Exhibit G). The Zoning Administrator informed the Appellants that his decision, with guidance from the Planning Commission, was that the basement area qualifies as a separate dwelling (Exhibit G). Should the Appellants disagree, they had the option to appeal that decision within fifteen days to the Development Review Board (Exhibit A & G).

- F. On Thursday, January 31, 2019, the Appellants submitted their application and application fee to Town Staff requesting that the Development Review Board overturn the Zoning Administrator’s decision to categorize the basement area as a separate dwelling unit (Exhibits A & G). Should the Board find in favor of the Appellant, the Zoning Administrator’s decision to categorize the basement area as a separate dwelling will be reversed, and the basement area will be viewed as added living space to the principal dwelling unit. Should the Board find in favor of the appellee (the Zoning Administrator), the Zoning Administrator’s decision to categorize the basement area will be upheld, and the basement area will be viewed as a separate dwelling unit to the principal dwelling unit.
- G. Upon receipt of the appeal request application, a site visit was scheduled to commence at the property’s location (PH407 - 407 Poker Hill Road) for Monday, March 18, 2019 at 6:00 PM, while the hearing was scheduled to start at Underhill Town Hall (PV012X - 12 Pleasant Valley Road) for Monday, March 18, 2019 at 7:25 PM.
- H. On February 20, 2019, notice of the appeal request hearing was mailed via Certified Mail to the following property owners adjoining the property subject to the application:
 - 1. Appellants: PH407 – Jared & Dana LeBlanc, 407 Poker Hill Road, Underhill, VT 05489
 - 2. Appellee: Town of Underhill, Planning & Zoning, P.O. Box 120, Underhill, VT [*Hand Delivered*]
 - 3. NU077 – Gerard Deforge, 77 North Underhill Station Road, Underhill, VT 05489
 - 4. NU090 – Sherman F. Sr. & Reba S. Paig, 90 North Underhill Station Road, Underhill, VT 05489
 - 5. PG017 – Richard L. & Elizabeth A. Page, 17 Page Road, Underhill, VT 05489
 - 6. PH394 – Andrew & Elizabeth Patterson, 394 Poker Hill Road, Underhill, VT 05489
 - 7. PH410 – Robert Bolio, 410 Poker Hill Road, Underhill, VT 05489
 - 8. PH416 – Grover B. & Marcia E. Prescott, 416 Poker Hill Road, Underhill, VT 05489
 - 9. PH420 – Charles E. Drake, P.O. Box 21, Underhill, VT 05489
 - 10. PH425 – Michael S. & Kathleen A Simanskas, 425 Poker Hill Road, Underhill, VT 05489
- I. During the week February 24, 2019, notice of the public hearing for the appeal request hearing was posted at the following locations:
 - 1. The Underhill Town Clerk’s office;
 - 2. The Underhill Center Post Office; and
 - 3. Jacobs & Son Market.
- J. On March 2, 2019, notice of public hearing was published in the *Burlington Free Press*.

K. The scheduled site visit at the property's location (PH407 – 407 Poker Hill Road, Underhill, Vermont) commenced at 6:00 PM on Monday, March 18, 2019.

L. Present at the site visit were the following members of the Development Review Board:

1. Board Chairperson, Charlie Van Winkle
2. Board Member, Matt Chapek
3. Board Member, Mark Green
4. Board Member, Daniel Lee
5. Board Member, Karen McKnight,
6. Board Member, Penny Miller
7. Board Member, Stacey Turkos

M. The appeal request hearing commenced at 7:25 PM on Monday, March 18, 2019 at the Town of Underhill Town Hall, 12 Pleasant Valley Road, Underhill, VT.

N. Present at the appeal hearing were the following members of the Development Review Board:

1. Board Member, Charles Van Winkle, Chair
2. Board Member, Matt Chapek
3. Board Member, Mark Green
4. Board Member Daniel Lee
5. Board Member, Karen McKnight
6. Board Member, Penny Miller
7. Board Member, Stacey Turkos

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

Others present at the hearing were:

1. Appellant, Jared LeBlanc (407 Poker Hill Road, Underhill, VT)
2. Appellant, Dana LeBlanc (407 Poker Hill Road, Underhill, VT)
3. Abutting Neighbor, Kathleen A Simanskas (425 Poker Hill Road, Underhill, VT)
4. Abutting Neighbor, Michael S. Simanskas (425 Poker Hill Road, Underhill, VT)

O. 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:

1. Appellant, Jared LeBlanc
2. Appellant, Dana LeBlanc
3. Abutting Neighbor, Kathleen Simanskas

P. In support of the appeal request application, the following exhibits were submitted to the Development Review Board:

1. Exhibit A - Appeal Request Application

2. Exhibit B - Zoning Violation
3. Exhibit C - CL-18-12 Conversion of Use Application
4. Exhibit D - Certificate of Service
5. Exhibit E - Existing Floor Plan
6. Exhibit F - BFP Notice
7. Exhibit G - Zoning Administrator's Timeline
8. Exhibit H - Appeal Request Hearing Procedures

No additional exhibits were distributed to the Board prior to the Monday, March 18, 2019 hearing, nor were any exhibits submitted into the record during the hearing:

All exhibits are available for public review in the LeBlanc Appeal Request file (PH407/DRB 19-02) at the Underhill Zoning & Planning office.

II. **FACTUAL FINDINGS**

The Minutes of the March 18, 2018 meeting, written by Andrew Strniste, are incorporated by reference into this decision. Please refer to the Minutes for a summary of the testimony.

The appellants, Jared and Dana LeBlanc, record owner of the property located at 407 Poker Hill Road (PH407) in Underhill, Vermont, request an appeal of the Zoning Administrator's decision to categorize the basement level conversion to living space as an accessory dwelling to the primary dwelling located on the upper two floors.

Based on the submitted application, testimony, exhibits, and evidence, the Development Review Board makes the following findings under the requirements of the 2011 *Underhill Unified Land Use and Development Regulations* (ULUDR) as amended through March 6, 2018:

1. The property is located within the Rural Residential zoning district as defined under Article II, Table 2.4 of the ULUDR. Attached accessory dwelling units are a permitted use in this zoning district as defined in Article IV, Section 4.15.
2. The converted, finished basement space does not appear to be greater than 30% of the total habitable floor area of the single-family dwelling occupying the upper two floors.
3. The Board finds that there are at least two means of access/egress to the separate lower basement level. One is an exterior entry door directly into the living room area and the other via an interior stairway from the upper level main dwelling. Although no door exists at the stairway, the board finds it to be enough of a separation defining two dwelling areas.
4. The Board finds that there exists a full-size operating kitchen facility, a furnished living room, one separate spare room with sliding doors (current office space) and a full bathroom facility.

III. CONCLUSION AND DECISION

The Board is satisfied with the level of investigation and evaluation conducted by the Zoning Administrator with guidance from the Planning Commission. The Board thoroughly reviewed the *Underhill Land Use & Development Regulations* and upholds his decision to categorize the converted finished basement level as an accessory dwelling unit within and separate from the main family dwelling.

Dated at Underhill, Vermont this 16th day of April, 2019.

Charles Van Winkle, Chairperson, 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 May 16th, 2019.