

**Town of Underhill
Development Review Board Minutes
January 22, 2018**

Board Members Present:

Charles Van Winkle, Chair
Matt Chapek
Mark Green
Daniel Lee
Karen McKnight
Penny Miller
Stacey Turkos

Staff/Municipal Representatives Present:

Andrew Strniste, Planning Director

Others Present:

Brad Holden (60 Covey Road)
Brian McLaughlin (414 Cilley Hill Road)
Lynn McLaughlin (414 Cilley Hill Road)

6:32 PM – 01/22/2018 DRB Public Meeting

- DRB Members convened at Town Hall at 6:25 PM.
- [6:32] Chair Van Winkle called the meeting to order.
- [6:33] Since no general public attended the meet, no public comments were provided.

**6:37 PM – Davis Sketch Plan Review Application
51 Page Road (PG051), Underhill, Vermont**

Docket #: DRB-18-01

- [6:37] Chair Van Winkle began the meeting by explaining the procedure for a sketch plan review meeting. The applicants' consultant, Brad Holden, was before the Board to discuss the application pertaining to a proposed two lot subdivision of land the Davis' own at 51 Page Road (PG051) in Underhill, Vermont. No other parties were in attendance. No conflicts of interest were identified before the commencement of the meeting.
- [6:39] Mr. Holden advised that Mr. Justin Willis was also a consultant with this particular application. Mr. Holden provided an overview of the project, illustrating where the proposed lot was in relation to the parent lot (he also explained that there was a boundary line adjustment between 51 Page Road and 60 Page Road awhile back). The proposed lot will be accessed through Page Road, off of the driveway that currently serves the sugar house. Mr. Holden explained that the Davis' were originally going to be build a single-family dwelling on the 51 Page Road lot, had obtained an easement from the Pages', as well as an access permit, and subsequently built the driveway. He explained that a lot of top soil was removed (two feet in depth) because the lot use to be an old farm. Also, a water/wastewater permit was obtained in anticipation of constructing the single-family dwelling. Lastly, Mr. Holden confirmed that the single-family dwelling location takes into consider the top of bank setback, and will have no problem staying away from the stream.
- [6:49] Chair Van Winkle then confirmed that the single-family dwelling will have on site water via a drilled well and a wastewater system. Board Member Miller inquired about a memorandum from the Underhill-Jericho Fire Department (UJFD) asking for the driveway to contain a "Y" turnaround. Mr. Holden advised that upon completion of the project, the turnaround would satisfy UJFD. He also informed the Board that he was suggesting to the applicants to move the single-family dwelling to the south, which would provide more room for the turnaround. In response to a question about habitat blocks, Mr. Holden advised that some clearing had already been performed. Chair Van Winkle inquired about the sugaring operation on the existing lot.

- [6:54] A discussion then ensued about habitat blocks. Board Member Miller advised that the Board has not put any conditions in previous decisions regarding habitat blocks. In addition, the discussion also included the topic of prime agricultural soils. Mr. Holden advised that prime agricultural soils being located on the proposed lot made sense given the amount of top soil removed.
- [7:04] Chair Van Winkle then advised that a frontage waiver would be required since the lot does not abut a road. In response to Board Member Green's question, Mr. Holden advised that the zoning districts for the Town were developed based on soils. Mr. Holden advised that he only foresees, possibly, one additional lot to be subdivided from the existing lot, and the remainder of the existing lot will continue to be current use with a forest management plan. Mr. Holden advised that there are penalties to remove land from the current use program. A brief discussion ensued about building envelopes, specifically pertaining to how restrictive they should be, as well as the types of features and setbacks that should be incorporated.
- [7:11] Board Member McKnight voted to accept the sketch plan review application, which was seconded by Board Member Chapek. The motion was approved unanimously. Board Member McKnight inquired about what more information could be obtained in regards to habitat blocks. A discussion then ensued about how habitat blocks pertain to the Regulations and obtaining subdivision approval. Chair Van Winkle asked how quick of a turnaround the applicants were expecting. Mr. Holden advised that they would like build in this upcoming season.
- [7:16] Board Member Turkos made a motion to waive preliminary subdivision review, and go straight to final, as well as classifying the subdivision as a minor subdivision. The motion was seconded by Board Member Lee and approved unanimously. Board Member Lee advised that stream corridors are prime areas for habitat, which may be why the area is classified as a critical habitat area. Staff Member Strniste advised that March 5 or March 19 are possible hearing dates for the final subdivision review application. Board Member Miller asked what were to happen if an issue emerged on the day of the site visit & hearing, which Staff Member Strniste advised that the hearing could be continued to another date. Chair Van Winkle asked Mr. Holden how long it would take to remove the proposed subdivided lot from the current use program, to which Mr. Holden answered not very long.

**7:22 PM – McLaughlin Appeal/Variance Request Hearing
414 Cilley Hill Road (CH414), Underhill, Vermont**

Docket #: DRB-18-02

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- [7:22] Chair Van Winkle began the meeting by explaining the procedure for an appeal/variance request hearing. The applicants, Brian and Lynn McLaughlin, were before the Board to discuss the appeal of the Zoning Administrator's decision to deny the after-the-fact temporary structure permit application for the construction of a temporary structure within the floodplain. The subject application pertained to property the McLaughlins own at 414 Cilley Hill Road (CH414) in Underhill, Vermont. Mr. Brad Holden was in attendance to provide testimony about FEMA and FIRM Maps. Board Member Miller advised that she had been in contact with both the McLaughlins and Staff Member Strniste, and advised that she felt she could render a fair and impartial decision. No Board members or other parties objected. Exhibit I, a timeline of events from the perspective of the Zoning Administrator, was entered into the record.
 - [7:25] Staff Member Strniste provided an overview of the timeline that he submitted into the record.
 - [7:40] Mr. Holden informed the Board of how FEMA derived at the current FIRM Maps. He

stated that when he performed the survey for the parcel in 2003/2004, there was no Zone A floodplain (100-year floodplain) located on the lot. He stated that this specific area did not contain a base flood elevation, where in other areas in Town, the base flood elevation was definitively known. Mr. Holden then explained that after the flood events, FEMA hired CDM (a private contractor) to produce the DFIRM maps, which is a digital map that corresponds with the ortho layer. CDM was contracted to perform this analysis for all of Chittenden County. At the time, Zoning Administrator Kari Papelbon had hired Mr. Holden to make sure the maps made sense. Mr. Holden advised that in some locations, there was accurate data to ascertain base flood elevations, such as Browns River, whereas in other places, the data was not as precise, and therefore, caused some issues (e.g. the property at the corner of Cilley Hill and Vermont Route 15 was taken out of the floodplain designation but subsequently flooded). Mr. Holden advised that an applicant could file a Letter of Map Amendment (LOMA) with FEMA to have a structure or parcel of land removed from the DFIRM Map. From his experience, Mr. Holden informed the Board that he did not understand why the floodplain was on the property. However, if a mortgage company were to find that this building was in a floodplain, then the company may require the applicant to obtain flood insurance. Board Member Miller confirmed with Mr. Holden that FEMA does not consider culverts as part of the LOMA process. Mr. Holden informed the Board that FEMA looks at the drainage area and elevation, as well as information submitted the applicant (e.g. site plans containing contour lines) and runs the information through the model. Mr. Holden explained FEMA did not have accurate contour data when producing the initial map.

- [7:53] Board Member Miller inquired about the LOMA process. Mr. Holden advised that the recent LIDAR data could be used and submitted to FEMA to be considered. Mr. Holden then stated that he was not connected to the application in anyway, and had not been commissioned by applicants. He advised that the application process is not easy, has associated expenses, and is a crap shoot. If the applicants were to go the route of filing a LOMA, then Mr. Holden advised that the request should be made for both the house and barn structure to be removed from the designated floodplain area. Staff Member Strniste advised the Board how he arrived at his measurement. He explained that he measured on the ANR website from the edge of Cilley Hill Road to the boundary of the floodplain, which measured 54 feet. He then advised that he conducted the measurement in the field and found that the building was 46 feet from Cilley Hill Road, meaning that the building encroached upon the floodplain by 8 feet. Mr. Holden informed the Board the only way to be completely accurate is with GPS.
- [7:57] Chair Van Winkle asked the applicant why she filed a temporary structure permit application. Ms. McLaughlin advised that she was instructed by Staff. Staff Member Strniste explained that his discussion with Ms. McLaughlin resulted in being informed that they intended on moving the structure in the spring. Board Member McKnight asked about the permanent foundation, which Staff Member Strniste answered that the foundation were quarter slabs. Board Member Turkos asked how far across Cilley Hill Road the flood waters made it during the major flood. Ms. McLaughlin advised half way over the road. Chair Van Winkle inquired about the number of animals, and why the structure did not qualify as an exempted structure under the Accept Agriculture Practices (AAPs), thus not in the Board's jurisdiction. Staff Member Strniste advised the AAPs were superseded, and that exempted structures would still need to conform with setback requirements and floodplain regulations. In addition, the Agency of Agriculture (AOA) would have to approve the farm structure, and would refer the application to the Agency of Natural Resources (ANR) for review. Mr. Holden briefly opined about the LOMA, and that he was skeptical of any engineering firm that states that they have calculated the base flood elevation. Board

Member Miller inquired about the length of the LOMA process, which Mr. Holden responded that the process could take up to 60 days.

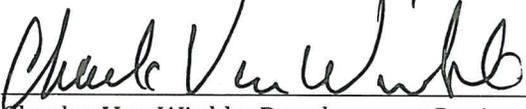
- [8:33] A discussion ensued about the AAPs and the Required Agricultural Practices (RAPs), the document that supersedes the AAPs. Staff Member Strniste explained that under Section 3.1 of the RAPs, the applicants did not qualify, and even if they did, they would be referred to ANR. Since the applicants do not qualify under the RAPs, the building is considered a regular structure, not an agricultural structure.
- [8:33] Ms. McLaughlin provided background on the events that led to the construction of the structure. Due to the events that had transpired, the McLaughlins confirmed that the last thing on their mind was obtaining a building permit. When commencing with construction of the building, Ms. McLaughlin anticipated that it would be temporary because of the unique way it was assembled. Due to some health concerns, the structure needed to be close to the driveway for emergency services and wifi for monitoring purposes. Board Member Miller inquired how the McLaughlins arrived at potentially only being 2.5 feet within the floodplain. Ms. McLaughlin explained that depending on where you measure the building in relation to Cilley Hill, a different measurement may be obtained. Staff Member Strniste explained that the burden is on the applicant to demonstrate that they are not in the floodplain. Mr. Holden offered his services to locate the building.
- [8:47] Staff Member Strniste confirmed that there were no interested parties besides the applicants. Board Member Miller discussed the idea of the burden shifting to the applicant, and inquired if the applicants would still need to apply for a LOMA.
- [8:50] The McLaughlins confirmed that the estimate price was more than \$3,000; more likely between \$6,000 and \$8,000. She then explained that she would like to keep the structure permanently. If the building were to be moved, it would likely be ruined. The McLaughlins explained that though they have gone through the education series to become a small farm operation, they would likely not qualify as an agricultural exemption. The Board asked if the McLaughlins had contacted AOA, which they advised they had not. Staff Member Strniste advised that he had talked to AOA, and they had informed him that the McLaughlins would not likely qualify. Ms. McLaughlin explained that they already meet the standards of the program. Staff Member Strniste advised that even if they did qualify as a small farms operation, they would need approval from ANR. A discussion ensued about how the McLaughlins derived at the 1 foot over based flood elevation (GPS). Ms. McLaughlin explained that there are ways to obtain approval for construction within a Floodplain according to the FEMA website, which references the CFR. Board Member Chapek informed that the mentioned requirements were probably to avoid the walls getting washed out. Board Member Miller asked a clarification question about what the Board's review entails.
- [9:08] Board Member Turkos asked if the McLaughlins had looked into obtaining a LOMA. A discussion ensued about evidence gathering. Staff Member Strniste advised that at some point, the gathering of evidence makes the application look as if it is a conditional use application under Article V, which is not what the hearing was warned for.
- [9:11] Chair Van Winkle asked if the Board had enough information to close the evidentiary portion of the hearing. The Board answered yes. Board Member Turkos made a motion to close the evidentiary portion of the hearing and discuss the application in closed deliberative session. The motion was seconded by Board Member Chapek and approved unanimously. The Board moved into closed deliberative session for the remainder of the hearing, and will continue after other business is concluded.

9:15 PM – Other Business

- [9:15] Staff Member Strniste advised that the minutes from the previous hearings were not ready to sign, and that they can be signed at the next hearing. Board Member McKnight asked about the joint meeting with the Planning Commission held on January 18, 2018.
 - [9:17] Staff Member Strniste asked the Board if they thought they could incorporate Phil Jacobs' two-lot sketch plan application into the evening's meeting prior to the continued Duval conditional use application on February 5, 2018. The Board responded no.
 - [9:25] Staff Member Strniste then provided an overview of the upcoming schedule. A brief discussion ensued about the Road Ordinance rewrite.
 - [9:31] Board Member McKnight made a motion to move into deliberative session, which was seconded by Board Member Turkos. The motion was approved unanimously.
 - [9:42] Board Adjourns.
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Submitted by:
Andrew Strniste, Planning Director & Zoning Administrator

These minutes of the 01/22/2018 meeting of the DRB were accepted
this 26 day of FEBRUARY, 2018.



Charles Van Winkle, Development Review Board Chair