



Town of Underhill

Development Review Board

Findings and Decision

COMBINED PRELIMINARY & FINAL SUBDIVISION REVIEW APPLICATION OF TIMOTHY & THERESA POTVIN FOR A 2-LOT SUBDIVISION

In re: Timothy & Theresa Potvin
145 Moose Run (M0145)
Underhill, VT 05489

Docket No. DRB-20-01

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

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns the combined preliminary & final subdivision review application submitted by the applicants, Timothy & Theresa Potvin (hereafter Applicants), regarding a 2-lot subdivision of property they own located at 145 Moose Run (M0145) in Underhill, Vermont.

- A. On Tuesday, December 31, 2019, the Applicants filed a sketch plan review application for the abovementioned project. A meeting pertaining to the application was scheduled for and held on Monday, January 20, 2020. The Board issued a letter of acceptance relating to the project on February 4, 2020. As outlined in the sketch plan review letter, the Applicants requested, and the Development Review Board voted, to waive preliminary subdivision review.
- B. On April 21, 2020, the Applicants filed a combined preliminary and final subdivision review application for the abovementioned project. Planning Director & Zoning Administrator, Andrew Strniste, received the application. The application was determined to be complete on Thursday, May 28, 2020. A site visit was scheduled to commence on Saturday, June 27, 2020 at 9:30 AM, while the hearing date was scheduled remotely via the Go-To-Meeting platform to commence at Monday, 7:00 PM on July 6, 2020. No public gathering place was provided for the hearing.
 1. *Due to the COVID-19 pandemic, the Vermont legislature enacted Act 92 that permits public hearings to be held remotely (without a public gathering place) as long as the remote meeting can be accessed by the public. As a public hearing, the meeting was recorded.*
 2. The Monday, July 6, 2020 meeting agenda contained both a hyperlink to attend the meeting by computer, table or smartphone, as well as a dial-in phone number and access code allowing participation via telephone.
- C. On June 10, 2020, notice regarding the combined preliminary & final subdivision review hearing was mailed via certified mail to the following property owners adjoining the property

subject to the application:

1. *Applicants: MO145 [formerly 27 Moose Run (MO027)]* – Timothy & Theresa Potvin Trustees, P.O. Box 135, Underhill Center, VT 05490
 2. HA058 – University of Vermont, Linda Seavey, Director, Campus Planning Services, Burlington, VT 05405
 3. MO151 *[formerly 14 Moose Run (MO014)]* – Paul & Julie Dragon, P.O. Box 104, Underhill Center, VT 05490
 4. MO229 *[formerly 12 Moose Run (MO012)]* – David B. & Janet R. Ely, P.O. Box 235, Underhill Center, VT 05490
 5. MO293 *[formerly 10 Moose Run (MO010)]* – Jason L. Wyman, 413 Pleasant Valley Road, Underhill, VT 05489
 6. MT352X – State of Vermont, Agency of Natural Resources, 103 South Main Street, Waterbury, VT 05676
 7. PV270 – William E. & Karla A. Russell, P.O. Box 218, Jericho, VT 05465
 8. PV270 - William E. & Karla A Russell, 270 Pleasant Valley Road, Underhill, VT 05489
 9. PV285 – Reginald Potvin, 285 Pleasant Valley Road, Underhill, VT 05489
 10. PV295 – David J. Hathaway & Carolyn J. Greene, P.O. Box 211, Underhill Center, VT 05490
 11. PV309 – Becker Revocable Real Estate Trust, Richard W. Becker Trustee, 309 Pleasant Valley Road, Underhill, VT 05489
 12. PV318 – John & Tammy Boudah, 316 Pleasant Valley Road, Underhill, VT 05489
 13. PV334 – John M. & Lise Wursthorn, 334 Pleasant Valley Road, Underhill, VT 05489
 14. PV354 – Lee Kirby, 354 Pleasant Valley Road, Underhill, VT 05489
 15. PV366 – Erich Howard & Regina Macarelli, 366 Pleasant Valley Road, Underhill, VT 05489
 16. LR014 – Mary Fuller, P.O. Box 135, Underhill Center, VT 05490
- D. During the week of June 7, 2020, notice of the public hearing for the proposed Potvin combined preliminary & final subdivision review hearing was posted by the Planning & Zoning Administrator at the following places:
1. The Underhill Town Clerk's office;
 2. The Underhill Center Post Office; and
 3. Jacobs & Son Market.
- E. On Saturday, June 13, 2020 the notice of public hearing was published in the *Burlington Free Press*.
- F. A site visit at the property's located at 145 Moose Run, Underhill, Vermont, commenced at 9:30 AM on Saturday, June 27, 2020.
- G. Present at the site visit were the following members of the Development Review Board:
1. Board Member, Charles Van Winkle, Chair
 2. Board Member, Stacey Turkos, Vice Chair
 3. Board Member, Penny Miller, Clerk
 4. Board Member, Matt Chapek
 5. Board Member, Mark Green
 6. Board Member, Daniel Lee

7. Board Member, Karen McKnight

No municipal representatives were present at the meeting. Members of the public that were present during the site visit were:

8. Applicant, Timothy Potvin
9. Applicant, Theresa Potvin

H. In accordance with Act 92, the combined preliminary subdivision and final subdivision review hearing began at 7:00 PM on Monday, July 6, 2020 via the Go-To-Meeting platform. A public gathering place was not established; the meeting was recorded.

I. Attending the remote meeting and 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, Stacey Turkos, Vice Chairperson
3. Board Member, Penny Miller, Clerk
4. Board Member, Matt Chapek
5. Board Member, Mark Green
6. Board Member, Daniel Lee
7. Board Member Karen McKnight

No municipal representatives were present at the meeting.

Others present at the hearing were:

1. Applicant, Timothy Potvin (145 Moose Run, Underhill, VT 05489)
2. Applicant, Theresa Potvin (145 Moose Run, Underhill, VT 05489)

J. At the outset of the hearing, Chair Charles Van Winkle explained the criteria under 24 V.S.A § 4465(b) for being considered an “interested party.” Those who spoke during the hearing were:

1. Applicant, Timothy Potvin (145 Moose Run, Underhill, VT 05489)
2. Applicant, Theresa Potvin (145 Moose Run, Underhill, VT 05489)

K. In support of the combined preliminary & final subdivision application, the following exhibits were submitted to the Development Review Board:

1. Exhibit A - Potvin Preliminary & Final Subdivision Review Staff Report
2. Exhibit B - MO145 Preliminary & Final Subdivision Review Hearing Procedures
3. Exhibit C - Application for Subdivision
4. Exhibit D - Project Narrative
5. Exhibit E - Narrative Regarding Shape of Parent Lot
6. Exhibit F - BFP Notice
7. Exhibit G - MO145 Certificate of Service
8. Exhibit H - MO145 Sketch Plan Acceptance Letter (Dated 02.04.20)
9. Exhibit I - DRB Decision DRB-18-04
10. Exhibit J - Access Permit A-18-12
11. Exhibit K - Wastewater Permit WW-4-3810-01

12. Exhibit L - Road Maintenance Agreement
13. Exhibit M - Proposed Survey of MO137
14. Exhibit N - Proposed Survey of Subdivision
15. Exhibit O - Site Plan

No additional materials were distributed to the Development Review Board prior to the hearing, nor were any additional exhibits submitted into the record during the hearing.

All exhibits are available for public review in the MO145 Potvin Combined Preliminary & Final Subdivision Review file (DRB-20-01) at the Underhill Zoning & Planning office.

II. FACTUAL FINDINGS & CONCLUSIONS RELATING TO THE UNDERHILL UNIFIED LAND USE & DEVELOPMENT REGULATIONS

The Minutes of the July 6, 2020 meeting, written by Board Member Penny Miller, are incorporated by reference into this decision. Please refer to the minutes for a summary of the testimony. The recording of the July 6, 2020 Development Review Board meeting can be viewed on the Mt. Mansfield Community Television's website: <https://archive.org/details/underhill-drb-07072020>.

Based on the submitted application, testimony, exhibits, and evidence, the Development Review Board (hereafter Board) makes the following findings under the requirements of the 2011 *Underhill Unified Land Use and Development Regulations* (also known as ULUDR or the "Regulations"), as amended March 3, 2020:

PROJECT SYNOPSIS

The Applicants, Timothy & Theresa Potvin, record owners of the property located at 145 Moose Run (MO145) in Underhill, VT, are seeking a subdivision permit to subdivide the abovementioned land into two lots. The existing property is located in the Mt. Mansfield Scenic Preservation and Soil & Water Conservation zoning districts as defined in Article II, Tables 2.6 and 2.7, respectively, of the *Underhill Unified Land Use & Development Regulations*.

ARTICLE II – ZONING DISTRICTS

A. ARTICLE II, TABLE 2.6 – MT. MANSFIELD SCENIC PRESERVATION DISTRICT

The Board finds that the proposed subdivision involves the division of a ±105.6 acre lot into two lots: a ±10.0-acre lot and a ±95.6-acre lot, which will both contain single-family dwellings. The parent parcel contains the existing single-family dwelling, depicted as a "Portion of Lot 1" (hereafter Lot 1) on the submitted site plan (see Exhibit M). The proposed Lot 5 will retain the existing accessory dwelling, which will revert to a single-family dwelling upon subdividing, as it will become the principal structure and principal use of the lot (the accessory dwelling unit was approved by this Board under DRB Docket #: DRB-18-04, Exhibit I). At this time, no new development is proposed for either of the two lots.

The two proposed lots and the existing development conform with the purpose statement, the setback requirements, building coverage requirements and lot coverage requirements of the Mt. Mansfield Scenic Preservation District. The Board finds that proposed Lot 5 is considered a corner lot since it has frontage along both Moose Run and Pleasant Valley Road. Therefore, the Lot needs to satisfy the frontage requirement of the District (400 ft.) for both roads. The proposed Lot 5 satisfies the 400 ft. frontage requirement, as the Lot has more than 602 ft. of frontage along the Moose Run right-of-way, and has approximately 743.65 ft. of frontage along the Pleasant Valley Road right-of-way.

Lot 1 does not satisfy the frontage requirement of the Mt. Mansfield Scenic Preservation District relating to Pleasant Valley Road right-of-way. The Board finds that Lot 1 qualifies for a waiver in accordance with Sections 3.7.F.3.c and 8.6.A.2.c, as Lot 1 is accessed at the end of Moose Run, an existing dead-end road. In conformance with Sections 3.B.8, 5.A.3.a, 5.B.4.a and 5.B.7 of the *Underhill Road, Driveway & Trail Ordinance*, the private roadway technically terminates where the driveway serving 145 Moose Run and the shared driveway serving 151 & 229 Moose Run commence. The Board notes that Moose Run is intended to navigate south along the existing shared driveway serving 151 & 229 Moose Run once 293 Moose Run is developed.

Nevertheless, regarding the Road's current status, it terminates shortly after the driveway serving the proposed Lot 5. The Board finds that since Moose Run is contained in its entirety on Lot 1, thereby meaning that Lot 1 retains title to the land the road traverses, there is no conflict relating to frontage pertaining to Moose Run.

B. ARTICLE II, TABLE 2.7 – SOIL & WATER CONSERVATION DISTRICT

The Board finds that the proposed subdivision involves the division of a ± 105.6 acre lot into two lots: Lot 5, which will retain ± 10.0 acres and Lot 1, the remaining land, which will retain ± 95.6 -acres. Only Lot 1 will retain land that is in the Soil & Water Conservation District and it satisfies the purpose statement, dimensional setback requirements, building coverage requirement and the lot coverage requirement of that district. No new development is anticipated to occur on the land within the Soil & Water Conservation District, and therefore, no immediate review pertaining to this provision of the Regulations is required. To note, the area of land designated as the Soil & Water Conservation District is unlikely to be developed due to the steep slope nature of that area.

Since Lot 1 is in both the Mt. Mansfield Scenic Preservation and Soil & Water Conservation Districts, the lot satisfies the requirements of both districts. Identical to the rationale explained under Table 2.7 above, Lot 1 fails to satisfy the frontage requirements, at the very minimum, of Pleasant Valley Road.

ARTICLE III – GENERAL REGULATIONS

A. SECTION 3.2 – ACCESS

The Board finds that the Applicants satisfy the requirements of this Section. Specifically, both lots are served by existing driveways, which access Pleasant Valley Road, a Class II Town Highway, via Moose Run, a private road. The existing driveway serving the accessory dwelling at 137 Moose Run (Lot 5) is permitted (Access Permit #: A-18-12, Exhibit J), whereas the existing driveway serving the single-family dwelling at 145 Moose Run (Lot 1) was at the very least implicitly approved during the subdivision review process for Moose Run. Both lots will continue to utilize the existing driveways with no modifications expected. Since there are no additional dwellings/residences being added as part of this subdivision approval, no modifications to Moose Run or the existing driveways are required. With no modifications expected, no further impact is anticipated.

The Board notes that the Selectboard has delegated authority to approve access permits to this Board when reviewing applications involving access components. The Board notes that an access permit is not required as part of this subdivision review application since the driveways serving the proposed lots already exist. Therefore, should modifications relating to the driveways or Moose Run be required, the Applicants or their successors are only required to seek permitting from the Zoning Administrator or the Selectboard in accordance with the *Underhill Road, Driveway & Trail Ordinance*.

SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS

The Board finds that the proposed Lot 1 will contain the existing single-family dwelling, while the proposed Lot 5 will contain the existing accessory dwelling (which will revert to a single-family dwelling upon subdividing the property), thus conforming to the requirement of one principal use/structure per lot. The existing development on both lots conform with the dimensional standards of the underlying zoning district – the Mt. Mansfield Scenic Preservation District, and for Lot 1, conforms with the Soil & Water Conservation District as well. The proposed subdivision will not create any additional adverse impact to the lots.

As outlined above under Table 2.6, Lot 5 is considered a corner lot and satisfies the frontage requirements of both Moose Run and Pleasant Valley Road. The Board finds that a frontage waiver in accordance with Sections 3.7.F.3.c and 8.6.A.2.c is warranted for Lot 1, as it is accessed at the end of an existing private road – Moose Run (analysis provided above).

In addition, Lot 1 will be irregularly shaped, thus not conforming with Section 8.2.F.5. The irregular shape is due, in part, to the aforementioned strips of land retained for Moose Run and Lap Run that will remain with Lot 1. These two narrow strips of land create an arch-like shape around Lot 5, abutting Pleasant Valley Road. The Board finds however that Lot 1 is encumbered by its pre-existing irregular shape that resulted from the Lap Run subdivision in the early 2010s, as well as containing a strip of land, effectively a cross-section, of Lot 2 (LR014 – 14 Lap Run), that was approved as part of a Boundary Line Adjustment application submitted in 2017 (see Permit #: BLA-17-02). These events contributed to the current scenario where a subsequent subdivision of Lot 1 would result in further irregularity regardless of where the lot was proposed.

The Board acknowledges that the rationale for approving Lot 1 as irregularly shaped is NOT explicitly supported by these Regulations. However, the Board found the Applicants' circumstances and argument for the shape of the proposed lot compelling and distinguishable from other applicants. In this particular case, the Applicants are the owner of 137 Moose Run and are the sole maintainer of both Moose Run and Lap Run roads, different from other shared private roads where maintenance is shared amongst those who reside on the road. Additionally, by no means does the approval of the frontage waiver and irregularly shaped lot mean to be precedent-setting and justification for allowing future irregular shaped lots outside the normal exceptions provided directly above.

B. SECTION 3.13 – PARKING, LOADING & SERVICE AREAS

The Board finds that both lots will contain single-family dwellings, as Lot 1 already contains an existing single-family dwelling and Lot 5 already contains an existing accessory dwelling, which will revert to a single-family dwelling once subdivided. Both lots already satisfy the parking requirements outlined in Table 3.1, which are two parking spaces per dwelling unit.

C. SECTION 3.17 – SOURCE PROTECTION AREAS

The Board finds that the both proposed lots will contain a Groundwater Source Protection Area; however, since the development already exists, and none is being proposed as a result of this subdivision application, review under this section is not required at this time. Also note, that there are no public water sources in the immediate vicinity of the existing properties.

D. SECTION 3.18 – STEEP SLOPES

The Board finds that the proposed Lot 5 (145 Moose Run) does not contain any areas of steep

slopes (15%-25%), nor areas of very steep slopes (>25%). However, the proposed Lot 1 contains a large amount of steep slopes and very steep slopes, though those areas are largely towards the northern part of the property, away from where existing development is currently located. At this time, there are no anticipated impacts to any steep slopes or very steep slopes.

E. SECTION 3.19 – SURFACE WATERS & WETLANDS

The Board finds that an unnamed stream exists on the proposed Lot 5, and is depicted on the 2017 Survey (Exhibit N) submitted as part of a boundary line adjustment application (BLA-17-02). The Applicants resubmitted their site plan (Exhibit O) from their previous Board application (DRB-18-04) with some modifications, though that plan does not depict the unnamed stream. Since the water body is an unnamed stream with no associated floodplains, a 25 ft. buffer is required, which has been satisfied.

In addition to the unnamed stream, Class II and Class III Wetlands were identified on the engineering plans (Exhibit N), as well as the resubmitted site plan (Exhibit O). The resubmitted site plan (Exhibit O) now depicts the identified wetlands and associated buffer. The development depicted on the site plan is located out of the wetlands and their associated buffers. Since no additional development is anticipated as a result of this subdivision, further review under this section is not required at this time.

F. SECTION 3.23 – WATER SUPPLY & WASTEWATER SYSTEMS

Each proposed lot will contain a single-family dwelling, each of which has been permitted under Wastewater System & Potable Water Supply Permit #: WW-4-3810-1, dated March 27, 2018. Lot 5, which will retain the existing accessory dwelling (and which will revert to a single-family dwelling upon subdividing), is approved for two-bedrooms, a drilled well and a mound system. Lot 1, which will retain the existing single-family dwelling, is approved for four bedrooms, a drilled well and on-site wastewater. No new development is anticipated as a direct result of this subdivision, and therefore, additional permitting from the State of Vermont does not appear to be required at this time. The Applicants are responsible for ensuring that the properly approved permitting is in place for both Lots 1 and Lot 5.

ARTICLE VI – FLOOD HAZARD AREA REVIEW

The Board finds that a Special Flood Hazard Area does not exist on the subject property, and therefore, review under this Article of the regulations is not required.

ARTICLE VII – SUBDIVISION REVIEW

A. SECTION 7.2 – APPLICABILITY

The Board finds that the Applicants' proposed subdivision is subject to the requirements of the 2020 *Underhill Unified Land Use & Development Regulations* per § 7.2, and was classified as a "minor subdivision" during the sketch plan review meeting and in the decision letter issued on February 4, 2020 (Exhibit H).

B. SECTION 7.3 – SKETCH PLAN REVIEW

The Board finds that the Applicants adequately satisfied the conditions of acceptance provided in the Sketch Plan Review Letter issued on February 4, 2020 (Exhibit H).

C. SECTION 7.5 – PRELIMINARY SUBDIVISION REVIEW

The Board finds that, having previously waived a separate preliminary subdivision review hearing (see Exhibit H), the Applicants are permitted to combine preliminary and final subdivision review. As a result, the Applicants submitted an application that addressed many of

the requirements that are typically part of a preliminary subdivision review hearing.

D. SECTION 7.6 – FINAL SUBDIVISION REVIEW

As part of the combined preliminary & final subdivision review application, the Applicants generally addressed many of the comments and concerns identified in the sketch plan review decision. Therefore, the Board finds that the Applicants satisfied the intent of this section and provided the necessary materials to make a determination on the final subdivision review application.

ARTICLE VIII – SUBDIVISION STANDARDS

A. SECTION 8.1 – APPLICABILITY

The Board finds that no technical review is needed for this proposed project. The Board also finds that the Applicants have explicitly requested one waiver: a waiver of the frontage requirement for the proposed Lot 1, and have implicitly requested one waiver: a waiver permitting an irregular shaped lot.

B. SECTION 8.2 – GENERAL STANDARDS

SECTION 8.2.A – DEVELOPMENT SUITABILITY

Since the development already exists on both lots relating to this application, the Board finds that there are no additional unforeseen undue adverse impacts to the public health and safety or the character of the area as a result of the subdivision. The Applicants have not expressed any intention of setting aside land as open space that would exclude periodic flooding, poor drainage, very steep slopes (>25%), or other known hazards, or that is otherwise not suitable to support structures or infrastructure.

SECTION 8.2.B – DEVELOPMENT DENSITY

The Board finds that the proposed subdivision meets the density requirements of the Mt. Mansfield Scenic Preservation zoning district.

SECTION 8.2.C – EXISTING SITE CONDITIONS

Since the development already exists, and no new development is being proposed as a direct result of this subdivision application, none of the existing site features or natural resources listed in this subsection are expected to be adversely affected any more than they may already have been.

For record-keeping purposes, however, the Board notes that both proposed lots contain areas of prime agricultural soils and a habitat level 10 forest block (see Page 13, Exhibit A). Future development may occur in these areas as the Regulations have no specific standards prohibiting development on prime agricultural soils or habitat level 10 forest blocks. In addition, as discussed under Section 3.18 and 3.19 above, the subject property contains areas of steep slopes and very steep slopes, as well as contains an unnamed stream and wetlands. While there is no new development anticipated as a result of this subdivision, the layout including the existing development appears to integrate and conserve other existing site features and natural amenities listed in this subsection.

SECTION 8.2.D – UNDERHILL TOWN PLAN & DEVELOPMENT REGULATIONS

The Board finds that the proposed subdivision & development conform to the *Underhill Town Plan* & the *Underhill Unified Land Use and Development Regulations*.

SECTION 8.2.E – DISTRICT SETTLEMENT PATTERNS

The Board finds that the proposed subdivision & development are consistent with the characteristics of the rural zoning districts as described in Section 8.2.E.2, as the subdivision and existing development are to be configured in a way that reinforces the rural character and historic working landscape, as well as reinforcing low densities of residential development interspersed with large contiguous tracts of undeveloped land.

The Board makes no finding regarding Section 8.2.E.3 relating to the Soil & Water Conservation District since the area located in that district is in an area of very steep slopes and unlikely to be developed for that reason.

SECTION 8.2.F – LOT LAYOUT

The Board finds that Lot 5 conforms with the requirements of this subsection; however, Lot 1 only conforms to the requirements provided in 8.2.F.1 thru 8.2.F.3 of this subsection. The Board finds that Lot 1 conforms with Sections 8.2.F.4 & 8.2.F.5 of this subsection with the issuance of the frontage and lot layout waivers. For notation purposes, the configuration of Lot 1 will not satisfy the frontage requirement of 400 ft. along Pleasant Valley Road and is oddly shaped, as the lot creates an arch-like shape around the proposed Lot 5. Additionally, Lot 1 was already irregularly shaped prior to the current subdivision application due to the Lap Run Subdivision approved in the early 2010s, and therefore, any subsequent subdivision of Lot would unlikely resolve the irregularity issue. See Section 3.7.E. for more analysis relating to this subsection.

SECTION 8.2.G – BUILDING ENVELOPE

The Applicants have chosen not to illustrate a building envelope for either proposed lot, and therefore, the building envelope will be the least restrictive allowed, which shall be the setback requirements at the time any future development is proposed.

SECTION 8.2.H – SURVEY MONUMENTS

The Board finds that proposed property monumentation shall be installed as defined on the recordable Mylar.

SECTION 8.2.I – LANDSCAPING & SCREENING

The Board finds that dense vegetation exists between the existing dwelling units on both proposed lots and Moose Run & Pleasant Valley Road, which is consistent with other residential development in the area. No additional development is expected as a direct result of this subdivision application, and therefore, no adverse impact to the existing landscaping and vegetation is expected to occur.

SECTION 8.2.J – ENERGY CONSERVATION

The Board makes no finding regarding this subsection.

C. SECTION 8.3 – NATURAL & CULTURAL RESOURCES

SECTION 8.3.A – RESOURCE IDENTIFICATION & PROTECTION

The Board is not aware of, nor have they or the Applicants identified, any cultural or natural resources/features that require protection or preservation.

SECTION 8.3.B – SURFACE WATERS, WETLANDS & FLOODPLAINS

The Board finds that the proposed subdivision/development contains an unnamed stream that bisects the narrow strips of land that contain Moose Run and Lap Run, as well as the proposed

Lot 5. In addition, areas of Class II Wetlands have been identified on the proposed Lot 5 (implied from Exhibit O), towards the western portion of the property. No special flood hazard areas are located on the property. No existing development is in, nor is any anticipated development expected to be in, the vicinity of these features or their associated buffers, as explained under Section 3.19 above.

SECTION 8.3.C – ROCK OUTCROPS, STEEP SLOPES, HILLSIDES & RIDGELINES

The Board finds that areas of steep slopes (15-25%) and very steep slopes (>25%) exist towards the eastern and northern portion of Lot 1 (see Page 7, Exhibit A). No proposed development is anticipated as a result of this subdivision application, and therefore, there is no foreseen impact to these areas. See Section 3.18 above for more information.

SECTION 8.3.D – NATURAL AREAS & WILDLIFE HABITAT

The Board finds that there is a priority level 10 habit level located on both lots – Lot 1 and Lot 5 (see Page 13, Exhibit A). The habitat block has already been impacted with the existing development; however, since the development already exists, and no new development is being proposed as a direct result of this subdivision application, additional impact to the habitat block is not expected to happen as a result of this application.

No wintering deer yards have been identified on the existing lot; however, the 2016 Vermont Agency of Natural Resources BioFinder has identified the following features that are located generally on the property:

- Highest Priority Community & Species (located along Pleasant Valley Road),
- Highest Priority Landscape (located in a similar area as the identified habitat block),
- Wetlands (see Exhibits N & O),
- Highest Priority Wildlife Crossing (along Pleasant Valley Road),
- Riparian Wildlife Connectivity (along the unnamed stream and identified pond),
- Highest Priority Surface Water and Riparian Areas (along the unnamed stream and identified pond),
- Highest Priority Interior Forest Blocks (located in a similar area as the identified habitat block),
- Highest Priority Connectivity Blocks (located in a similar area as the identified habitat block), and
- Representative and Responsibility Physical Landscapes (located in a similar area as the identified habitat block).

Though some or all of these areas may be located on the proposed lots, since no additional development is anticipated to occur as a result of this subdivision application, no additional adverse impact to these areas is expected at this time.

SECTION 8.3.E – HISTORIC & CULTURAL RESOURCES

The Board is unaware of any historic or cultural resources that require preservation, and therefore, makes no finding regarding this Section.

SECTION 8.3.F – FARMLAND

The Board finds that the subject property contains an area of statewide agricultural soils, which is largely contained on Lot 5 and in the vicinity of the existing development on Lot 1 (Page 13, Exhibit A). While future impact to these areas is feasible, there is no immediate proposal for development in these areas at this time.

SECTION 8.3.G – FORESTLAND

The Board finds, according to aerial photography and their site visit, that both proposed lots contain swaths of forestland. Both lots contain existing development, and upon subdividing, no additional impact to forestland is anticipated.

D. SECTION 8.4 – OPEN SPACE & COMMON LAND

SECTION 8.4.A – OPEN SPACE

The Board finds that the Applicants have not proposed to designate any land as open space.

SECTION 8.4.B – COMMON LAND

The Board finds that the Applicants have not proposed to designate any land as common land.

SECTION 8.4.C – LEGAL REQUIREMENTS

The Board finds that this subsection does not apply since the Applicants have not designated any land as open space or common land as part of the proposed project.

E. SECTION 8.5 – STORMWATER MANAGEMENT & EROSION CONTROL

The Board finds since the development already exists, and no new development is being proposed as a direct result of this subdivision application, conforming with these standards has already occurred. However, should any new development occur, the Applicants shall conform to the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control, published by the Watershed Management Division of the Vermont Department of Environmental Conservation when performing excavation and site work. The Board also finds that the proposed development shall have a minimal impact on stormwater runoff and does not require an additional treatment plan.

F. SECTION 8.6 – TRANSPORTATION FACILITIES

SECTION 8.6.A – ACCESS & DRIVEWAYS

Both lots are served by their own driveways, which access Pleasant Valley Road, a Class II Highway, via Moose Run, a private road. Since each proposed access way will serve two or less lots, only the requirements under Sections 3.2 & 8.6.A apply. See Section 3.2 above for more information as it relates to the *Unified Land Use & Development Regulations*. See Section III of this decision for more information as it relates to the *Underhill Driveway, Road & Trail Ordinance*.

SECTION 8.6.B – DEVELOPMENT ROADS

The Board finds that this subsection does not apply since the subject access ways already serve less than three (3) lots.

SECTION 8.6.C – PARKING FACILITIES

The Board finds that no parking facilities, other than those to be expected with single-family residences, are proposed.

SECTION 8.6.D – TRANSIT FACILITIES

The Board finds that no transit facilities are proposed.

SECTION 8.6.E – PEDESTRIAN ACCESS

The Board finds that this section does not apply, and therefore, review under this Section is not required.

G. SECTION 8.7 – PUBLIC FACILITIES & UTILITIES

SECTION 8.7.A – PUBLIC FACILITIES

The Board finds the proposed subdivision and development will not create an undue burden on the existing and/or planned public facilities. The Board finds that since both lots that are a part of this application already contain existing dwelling units, no new impact on the school district will occur. Comments were not solicited from the Underhill Road Foreman or Mount Mansfield Unified School District for these reasons.

SECTION 8.7.B – FIRE PROTECTION

The Board finds the proposed subdivision and development is not expected to create an undue burden on the ability of the Underhill-Jericho Fire Department to provide fire protection services. The Board finds that the driveway serving the residence on Lot 1 existed long before the subject subdivision application, and that the lot containing accessory dwelling (which will revert to a single-family dwelling) received access approval in 2018 (see Access Permit #: A-18-12, Exhibit J). Since both lots that are a part of this application already contain existing driveways and no modifications are expected to occur, no new impact necessitating input from the Underhill-Jericho Fire Department was anticipated.

SECTION 8.7.C – WATER SYSTEMS

The Board finds that the Applicants have obtained a Wastewater System & Potable Water Supply Permit (Permit #: WW-4-3810-1) (see Exhibit K) from the Agency of Natural Resources, Department of Environmental Conservation, on March 27, 2018. The permit allows for a drilled well for the existing two-bedroom, accessory dwelling (acknowledged as a single-family dwelling in the permit) on the proposed Lot 5; and a drilled well for a four-bedroom, existing single-family dwelling on the proposed Lot 1.

SECTION 8.7.D – WASTEWATER SYSTEMS

The Board finds that the Applicants have obtained a Wastewater System & Potable Water Supply Permit (Permit #: WW-4-3810-1) (see Exhibit K) from the Agency of Natural Resources, Department of Environmental Conservation, on March 27, 2018. The permit allows for a mound system for the existing two-bedroom, accessory dwelling (acknowledged as a single-family dwelling in the permit) on the proposed Lot 5; and an on-site wastewater system for a four-bedroom, existing single-family dwelling on the proposed Lot 1.

SECTION 8.7.E – UTILITIES

The Board finds that both lots subject to this application contain existing residences, and therefore, utilities have already been placed. Consequently, no additional review regarding this subsection is required. Should utilities be placed in the future, the Board encourages the Applicants or their successors, to the best of their ability, to locate the electrical, communications, and media utilities underground in accordance with Section 8.7.E.

H. SECTION 8.8 – LEGAL REQUIREMENTS

The Board finds that the Applicants shall submit a Road Maintenance Agreement for recordation within 180 days of this decision.

III. FACTUAL FINDINGS & CONCLUSIONS RELATING TO THE UNDERHILL ROAD, DRIVEWAY & TRAIL ORDINANCE

The Board finds that additional access permitting is not required at this time since both lots subject to this application contain existing driveways, and that no modifications to those driveways are proposed at this time. Therefore, further review of the *Underhill Road, Driveway & Trail Ordinance* is not required at this time. Since Board review is unnecessary, an access permit is not required as a part of this decision. In addition, whatever access permits are in place, those approvals and any associated conditions of approval are to remain in place.

IV. WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS

The Board grants the following waivers/modifications:

1. The Board waives the frontage requirement along Pleasant Valley Road for the proposed Lot 1 for the reasons stated under Section 3.7 above.
2. The Board waives the irregular lot standard provided in Section 8.2.F.5 for the reasons stated under Section 3.7 above.

V. DECISIONS AND CONDITIONS OF APPROVAL

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 of the *Underhill Land Use & Development Regulations* and concludes that based on the evidence submitted and the above findings, the proposed subdivision and development generally conform to the aforementioned Regulations.

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

Procedural Conditionals

1. No transfer, sale or long-term lease, of title to property as defined under 32 V.S.A. § 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 has been approved from this Board, and the final Mylar (the subdivision plat) has been recorded in the Underhill Land Records per Section 7.2.C
2. Per Section 7.2.B, no land shall be subdivided until final subdivision approval has been obtained from this Board, and the approved subdivision plat is recorded in the Town of Underhill Land Records.
3. The Board requires the Applicants to only record the subdivision plat (Exhibit M), titled "A Portion of Lands Belington to Timothy A. Potvin & Theresa P. Potvin Living Trust, as a Mylar in the Underhill Land Records."
 - a. The survey shall be updated to better define the boundaries of Lot 5, in addition to defining the boundaries of 145 Moose Run (A Portion of Lot #1) where Lap Run traverses, specifically the northern boundary.

4. The E-911 Codes for the lots shall be posted per the Underhill-Jericho Fire Department specifications.
5. The final plat shall include parcel codes and shall be submitted for recording within 180 days of the date of this approval (August 20, 2020) in accordance with Section 7.7 of the *Underhill Unified Land Use & Development Regulations*. One-hundred eighty (180) days from the date of this approval is February 16, 2021.
6. All subdivision and recording fees must be paid in full prior to recording a subdivision plat in accordance with Section 7.7.B of the *Underhill Unified Land Use and Development Regulations*.

Substantive Land Use & Development Regulations Conditions

1. The Board finds that the Applicants shall submit a Road Maintenance Agreement for Moose Run encumbering Lots 1 & lot 5 within the agreement. This agreement shall be recorded within 180 days of this decision.
2. The Applicants shall conform to the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control, published by the Watershed Management Division of the Vermont Department of Environmental Conservation, when performing future excavation and site work for any proposed projects.
3. New property boundary monumentation referenced on the survey plat shall be installed as a condition of approval.
4. Notwithstanding the conditions above, prior to being issued a zoning permit, the Applicants shall comply with applicable aspects of the *Underhill Unified Land Use and Development Regulations* in effect at the time of the application for a zoning permit.

Substantive Road, Driveway & Trail Ordinance Conditions

The Board provides no conditions of approval relating to the *Underhill Road, Driveway & Trail Ordinance* for the reasons stated under Section III of this decision above.

Dated at Underhill, Vermont this 20th day of August 2020.

Charles Van Winkle, Chairman,
Underhill Development Review Board

On: 08/20/2020, at: 4:16:37 PM

Charles Van Winkle, Chair, Development Review Board

NOTICE/APPEAL (ZONING): 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.

NOTICE/APPEAL (ACCESS): This permit covers only the Selectboard's (or its designee's) jurisdiction and authority over town highways under 19 V.S.A. § 1111. It does not release the applicant from the requirements of other applicable federal, state or local statutes, ordinances, rules or regulations, including the Underhill Unified Land Use & Development Regulations. This permit addresses issues including access to, work within, and drainage affecting the town highway and its right-of-way, as described in Section 1111 and the Town's Road Ordinance. It does not address all other possible transportation, access (including the use of private access ways) or development issues which, if relevant to a proposed project, must be addressed separately. This permit may be reviewed pursuant to the procedures and time limits set forth in V.R.C.P. 75.