

**Town of Underhill
Development Review Board Minutes
October 3, 2016**

Board Members Present:

Charles Van Winkle, Chairperson
Will Towle
Mark Hamelin
Shanie Bartlett
Karen McKnight
Matt Chapek

Others Present:

William Widland (8 Jacobs Hill Road)
Harland Blodgett (22 Poker Hill Road)
Paul O'Leary (13 Corporate Drive, Essex Jct.)
Phil Jacobs (13 Upper English Settlement Rd.)
Greg Bogaczyk (10 Harvest Run)
David Richiede (12 Harvest Run)
Aaron Brillhart (16 Jacobs Hill Road)
Bob Covey (14 Harvest Run)
Deb Shannon (4 Harvest Run)
Chuck Bolton (9 Country Ter., South Burlington)
Armand Morel (287 Vermont Route 15, Jericho)
Stephen McClellan (126 Stevensville Road)
Laura Wells (278 River Road)

Staff/Municipal Representatives Present:

Andrew Strniste, Planning Director

6:30 PM – 10/03/2016 DRB Public Hearing

- DRB Members convened at Town Hall at 6:30 PM. Chair Van Winkle called the meeting to order.
- Chair Van Winkle asked for public comment. No public comments were provided.

6:35 PM – Jacobs – Final Subdivision Review HR016 (16 Harvest Run)

Docket# DRB 16-01

- [6:35] Chair Van Winkle began the hearing by explaining the procedure for final subdivision review. The applicant's engineer Paul O'Leary was before the Board on behalf of Phil Jacobs, the applicant, for the subdivision of his land located at 16 Harvest Run into five parcels. The applicant and his engineer were in attendance. Also in attendance were members of the public who wished to provide comment.
- [6:37] Chair Van Winkle swore in the hearing participants. No conflicts of interest were present, and therefore, no recusals occurred.
- [6:39] Staff Member Strniste added Exhibit S - Mr. O'Leary provided an overview of the project, stating that a five lot subdivision was proposed on 45 acres. Two of the lots were not subject to development. Mr. O'Leary continued to explain that wastewater permits have been issued, and that the stormwater system was designed to handle a 25-year storm event. He continued on to address Staff's comments/questions that were provided in the staff report. In regards to slopes, the Board had walked the land earlier and permits had already been obtained. Mr. O'Leary then explained that State officials have determined that a wetland did not exist in one of the areas in question, and therefore, the Army Corps of Engineers does not have to be involved. Mr. O'Leary then stated that he would provide a letter from ACOE to be submitted into evidence. Mr. O'Leary explained that a stream alteration permit is not required because the stream is not a perennial stream.
- [6:45] A discussion ensued about the proposed maintenance plan/stormwater plan. Mr. O'Leary explained that he and the applicant provided the proposed maintenance plan at the

request of the Development Review Board, and that the document functioned as an advisory document rather than a binding document for the Harvest Run Residents. Mr. O'Leary continued to explain that the homeowner's association would have to act on collecting the fees, and further explained that there is a State law stating that residents should pay their fair share of road maintenance costs.

- [6:47] A discussion ensued about the improvement recommendations, and determining that they are advisory rather than obligatory. Board Member Towle clarified that the DRB has a duty to require improvements, and expressed his concern about not "locking in" stormwater improvements. He continued by identifying an apparent contradiction in testimony on whether the existing stormwater system can handle the existing and additional stormwater runoff. A similar observation was made in regards to the roadway infrastructure and traffic.
- [6:53] Board Member Towle and Mr. O'Leary clarified that the amendments to the bylaws as submitted were to be proposed, and adopted as written. Board Member Towle then stated that the Board has the power to require improvements as part of the approval.
- [6:55] A discussion ensued about the stormwater plan. Mr. O'Leary stated that he did not run the model on the newly developed 25-year stormwater plan. Chair Van Winkle clarified that per the conditions in the preliminary findings and decision, the DRB did not require the applicant to run the model. Mr. O'Leary stated that if he had to guess, the new retention area would capture all of the runoff. Further discussion occurred about potential runoff from the newly formed lots to the bottom of the hill. Mr. O'Leary clarified that any additional flow from the three lots will not make the situation below any worse; however, the conditions would not be any better.
- [7:05] Board Member Chapek identified that the additional storage was made for the additional three lots, while Board Member Hamelin identified that there is no overflow in a 10-year event. Chair Van Winkle observed that the preliminary findings and decision does not address making the conditions better. A discussion then ensued about the stormwater permits obtained from the State, and that the State only requires a stormwater plan to be designed for a 10-year event.
- [7:11] Staff Member Strniste briefly gave an overview of the staff report, stating that the comments/questions he provided within the report were addressed. No questions were asked to Staff Member Strniste.
- [7:12] Chair Van Winkle opened up the hearing for public comment.
- [7:12] Mr. Bogaczyk provided testimony, stating that the views of the neighboring residents should be heard. He wanted to echo the concerns of the neighbors provided in Exhibit HH. Board Member Towle inquired about the members of Harvest Run providing "their fair share" for road maintenance, as provided under Vermont Common Law. Mr. Bogaczyk stated that he has provided limit support, mainly in plowing fees. Board Member Towle followed up by asking if the residents of Harvest Run, and he in particular, would join the homeowner's association. Mr. Bogaczyk stated that he could not speak for the residents of Harvest Run; however, he would consider possibly joining, though not to the level proposed by the applicant. He continued to state that he was against contributing to costs necessary to improve the east and west side swales. Chair Van Winkle stated that the proposed subdivision is in a key development area of Town, and that the Development Review Board needs to set the stage for infrastructure that can support the expansion of Harvest Run.
- [7:20] Next, Mr. Covey provided testimony, first by stating that his comments mirrored Mr. Bogaczyk's. He stated that the conditions on the east side of Harvest Run do not need to be addressed, as the conditions are manageable. He also echoed the sentiment that he does not

wish to join a homeowner's association, as there has been a gentlemen's agreement between the residents on Harvest Run not to join. Mr. Covey then stated that the residents of Harvest Run contribute to summer maintenance costs. He then continued to state that his objection is for bearing the cost due to the traffic increase, and according to a dissertation that references the Vermont law, maintenance cost shall not include the expansion of a road. Board Member Towle clarified to the public that the Board does not have the authority to require the existing residents to pay for the upgrade to the road or pay maintenance costs. He continued by stating that the Board is considering how residents feel about a proposed maintenance plan, and then stated that the homeowner's association for Jacob's Hill, and soon to be Min's Lane/Way may have to force the residents of Harvest Run to pay through a civil lawsuit. Mr. Covey ended his public comment part of the hearing by stating that the Board should step back and consider only the Min's Lane/Way development road.

- [7:26] Ms. Shannon followed Mr. Covey, and provided her testimony. She stated that maintenance fees should be apportioned based on the frontage of each landowner's property rather than being evenly split among the residents on Harvest Run. Ms. Shannon continued by asking the following questions in regards to the stormwater plan: 1) where the areas of overflow are, 2) whether there has been a new determination regarding an existing wetland, 3) if an existing stream had recently been reclassified to not be considered as a perennial stream, and 4) how often a 10-year, 25-year, and 200-year storm event has occurred in the past few years. Chair Van Winkle stated that all of the members of the public will be asked to speak prior to the applicant answering the questions.
- [7:37] The last member of the public to the speak was Aaron Brillhart, who expressed his concerns about the proposed maintenance plans not being mailed to the residents on Jacobs Hill. He next informed the Board to consider that the conditions were dry due to a draught when the Board visited the site this past year. Next, Mr. Brillhart stated that he believed the proposed maintenance costs represented development costs rather than maintenance costs. He next informed the Board that the engineer advised residents that the recommendations were substandard, and that the elevation of the road should be raised in addition to a better drainage plan on the east side.
- [7:41] Chair Van Winkle reiterated that the Board is not requesting or requiring residents to join the homeowner's association, nor is the Board requiring any residents to pay the development costs for the road upgrades, and that the costs for the upgrade would have to be paid for by the applicant. Mr. Brillhart stated that there is a possible misunderstanding as the proposed maintenance plans seem to identify upgrading costs. He reiterated that he wished that the cost to develop the road not be assigned to the homeowners, and what was submitted went above and beyond just a maintenance plan. Lastly, Mr. Brillhart stated that residents would likely be more willing to help maintain the road if it was upgraded, and also proposed the idea of it being considered a Town road.
- [7:44] Chair Van Winkle invited Mr. O'Leary back to answer outstanding questions. Mr. O'Leary stated that the pond at Min's Lane/Way was to catch a lot of the runoff from above and along Min's Lane/way, and a storm event greater than a 25-year event will go into a seasonal pond below. He next stated that the alleged wetland was never delineated as such. Afterward, he clarified that the stream at issue was never designated as perennial stream, and that perennial streams have to contain water year-round unless there is an extreme draught. Lastly, Mr. O'Leary stated that the National Weather Service or University of Cornell would contain information regarding the frequency of more intense storm events.
- [7:53] Staff Member Strniste entered an email submitted by Dori Richiedei prior to the evening's meeting into the record.

- [7:54] A discussion ensued regarding the ownership of Harvest Run and the Harvest Run right-of-way. The applicant was able to clarify that the swales on the east side of Harvest Run are within the right-of-way/owned area. Mr. O'Leary also clarified that he never indicated the roads were substandard. Mr. O'Leary went on to state that the submitted application was in response to the preliminary findings and decision conditions.
- [7:57] Board member Towle inquired about the existing runoff being handled adequately, and in response, Mr. O'Leary stated that the current swale is performing well, and that any back up is due to an abundance of stormwater.
- [8:01] Ms. Shannon inquired about whose responsible for identifying when the swales fail, and in response, Mr. O'Leary stated that the homeowner's association is responsible. Chair Van Winkle also clarified that if there is no reporting of the maintenance, then the title to the property will be clout.
- [8:04] A discussion ensued about the stormwater runoff and the culvert near the post office, as this culvert appears to back up frequently. Chair Van Winkle informed the commenter that this was discussed at length at the preliminary subdivision hearing. Mr. Brillhart reiterated that on behalf of the homeowner's association, elevating the road would help solve some of the issues, and that he is in favor of upgrading the road, but opposed to the cost assignments proposed in the road maintenance plan. Mr. Covey expressed his concern with the elevation of the road, as an increase in elevation could create a dam effect. Mr. Jacobs stated that unless Mr. Brillhart has been granted authority by the homeowner's association to speak on their behalf, that he does not have the authority to do so.
- [8:15] Chair Van Winkle asked for a motion to close the evidentiary part of the hearing. Board Member Hamelin made the motion to close the evidentiary part of the hearing, which was seconded by Board Member Towle. Motion passed unanimously. Chair Van Winkle asked for a motion to deliberate in closed session. Board Member Towle moved to deliberate in closed session, which was seconded by Board Member Chapek. Motion passed unanimously.

8:17 PM – McClellan – Appeal/Variance Hearing RV284 (284 River Road) Docket# DRB 16-09

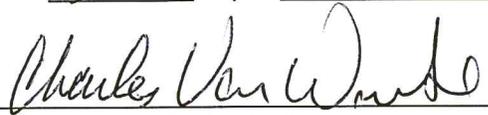
- [8:17] Chair Van Winkle began the hearing by explaining the procedure for final subdivision review. The applicant's perspective buyer Armand Morel was before the Board for an appeal/variance request to increase the height/volume of a nonconforming building on a nonconforming lot. The applicant, real estate agent, and perspective buyer were in attendance. Also in attendance was an abutting neighbor.
- [8:21] Chair Van Winkle swore in the hearing participants. Board Member Towle asked the applicants if they would be uncomfortable with him being a part of the decision as there was the possible perception of a conflict of interest. Mr. McClellan and Mr. Morel indicated that they were comfortable with Board Member Towle issuing a decision.
- [8:23] Mr. Morel provided an overview of his proposed project. He informed the Board that he intended to tear down the existing building and construct a new residence within the same footprint, as required by the State of Vermont. A discussion ensued about distances to the property lines. Board Member Towle asked the Board if there was any way a waiver could apply rather than a variance. Chair Van Winkle responded by stating that waivers only allow the Development Review Board to decrease the setback by up to 50%.

- [8:29] Board Member Towle asked Mr. Morel if he submitted anything in evidence indicating that he has no other option than to ask for the variance, which Mr. Morel responded stated yes, evidenced by the State requiring him to remain on the same footprint.
- [8:31] Chair Van Winkle asked for a copy of the permit that states that the structure must remain in the same footprint as the existing building. Board Member Towle asked the Board if any additional limitations should be indicated upon approval, as the granting of a variance should be the only reasonable option allowed on the property. A brief discussion ensued on whether a variance was the only option for the applicant. Chair Van Winkle discovered that the State permit claimed jurisdiction over all non-exempt buildings on the lot.
- [8:40] Mr. McClellan stated that he wished to see the lot cleaned up, as this is the first building seen while driving into Underhill Center.
- [8:41] Mr. Bolton stated that he has been trying to sell the property for the last four years, and if a variance is not granted, years could pass before another opportunity arises to redevelop the property.
- [8:43] As an adjacent property owner, Ms. Wells stated that she would like to see the house replaced in order to increase the attraction to the village. She also wishes to see more houses in the center.
- [8:44] Chair Van Winkle stated that he thought the “hardship not created by the applicant” element of the variance test was identified in the State permit.
- [8:45] Board Member Towle asked the Board if considering the house being rebuilt as a single-family house would be considered not increasing the degree of nonconformance since the house was already a single-family house. A brief discussion ensued about the definition of degree of nonconformance, which includes “increase in height or volume.” The Board asked Mr. Morel if the design proposed in the submitted exhibits was what he intended to build. Mr. Morel stated that he planned to stick with the design submitted.
- [8:49] A discussion ensued about including height and volume in the definition of degree of nonconformance. Board Member Chapek informed the Board of the benefits of having those terms in the definition. Board Member Towle believed the definition should state that the criteria should be evidence of an increase in the degree of nonconformance to allow more flexibility in interpreting the bylaws.
- [8:51] Chair Van Winkle asked for a motion to close the evidentiary part of the hearing. Board Member Chapek made a motion to close the evidentiary part of the hearing, which was seconded by Board Member McKnight. Motion Passed unanimously. Chair Van Winkle asked for a motion to deliberate in open session. Board Member Hamelin made the motion to deliberate in open session, which was second by Board Member Chapek. Motion passed unanimously.
- [8:52] A discussion ensued about conditioning approval on the submitted exhibits. A discussion ensued about crafting the decision in a way that would assist in future permitting.
- [9:00] Chair Van Winkle asked for a motion to approve the variance request. Board Member Hamelin moved to approve the variance conditioned on being built to the information provided in the exhibits. Board Member Chapek seconded the motion to approve. The motion passed unanimously.
- [9:02] A discussion ensued about when the permit will be issued.
- [9:04] Chair Van Winkle asked for a motion to deliberate in closed session. Board Member Towle made the motion to deliberate in closed session, which was second by Board Member Chapek. Motion passed unanimously.

These meeting minutes reflect a summary of the topics discussed at the Monday, October 3, 2016 hearings. An audio recording of the hearing is available to the public.

Submitted by:
Andrew Strniste, Planning Director

These minutes of the 10/03/2016 meeting of the DRB were accepted
this 31 day of OCTOBER, 2016.



Charles Van Winkle, Chairperson