

Town of Underhill

Development Review Board

Findings and Decision

FINAL Subdivision Application of John Butler Regarding a 3-Lot Subdivision

In re: John Butler
621 Irish Settlement Road
Underhill, VT 05489

March 4, 2024

Docket No. DRB-23-07

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

INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns the final subdivision review application submitted by the Applicant, John Butler (hereafter Applicant), regarding a 3-lot subdivision of property he owns located at IS621 & IS665 in Underhill, Vermont.

- A. On Friday October 27, 2023 the Applicant filed a Preliminary Subdivision review application for the abovementioned project. Interim Planning & Zoning Administrator Brad Holden, received the application on November 1, 2023. A site visit was scheduled for Saturday, November 18, 2023 at 8:30 A.M. The Preliminary Subdivision hearing date was scheduled to commence at 6:30 PM on Monday, November 20, 2023.
- B. On November 1, 2023 notice regarding the preliminary subdivision review hearing was mailed via certified mail to the following adjoining property owners:
- C. On November 1, 2023, notice of the public hearing for the proposed Butler preliminary subdivision review hearing was posted by the Interim Planning & Zoning Administrator in the following locations:
 - 1. The Underhill Town Clerk's Office
 - 2. The Underhill Food Sharing Shed
 - 3. Jacobs Family Market
 - 4. The Underhill Town website
- D. On Saturday November 3, 2023, the notice of public hearing was published in the *Burlington Free Press*.
- E. A site visit at IS621 & IS665 was performed at 8:30 AM on November 18, 2023. Present at the site visit were the following members of the Development Review Board:
 - 1. Charles Van Winkle, Chairperson

2. Brian Bertsch, Vice Chair
3. Matt Chapek
4. Karen McKnight
5. Shanie Bartlett
6. Meg Armstrong

Also present at the site visit were the following:

1. Interim Zoning Administrator Brad Holden
2. Tristan Butler
3. J. William Butler
4. Kohlton Butler & infant daughter
5. Thomas Perron, Abutting Landowner

- F. The preliminary subdivision review hearing began at 6:35 PM on November 20, 2023 at the Town of Underhill Town Hall, 12 Pleasant Valley Road, Underhill, Vermont; the meeting was recorded. The meeting was also available via the GoToMeeting platform; a link was provided on the notice of public hearing and on the Town's website.
- G. On February 5, 2024 the applicant filed an application for final subdivision review. Interim Planning and Zoning Administrator received the application and determined it was complete shortly thereafter and scheduled a hearing for February 26, 2024.
- H. On February 7, 2024 a copy of the notice of the final subdivision hearing was mailed via certified mail to the following property owners adjoining the property subject to the application:

Recipients and Corresponding addresses:

William Butler

28 Mullen Road
Underhill, VT 05489

John Butler, Life Estate

621 Irish Settlement Road
Underhill, VT 05489

Thomas & Donna Perron

633 Irish Settlement Road
Underhill, VT 05489

Nancy Knapp, Wayne & Erin Morse

641 Irish Settlement Road
Underhill, VT 05489

Joseph & Anne-Marie Tisbert

5901 Pleasant Valley Road
Cambridge, VT 05444

William Timbers

662 Irish Settlement Road
Underhill, VT 05489

David & Sally Baker

6464 Irish Settlement Road
Underhill, VT 05489

William Livingstone

636 Irish Settlement Road
Underhill, VT 05489

Michael & Patricia Weisel Revocable Trust

PO Box 71
Underhill Center, VT 05490

Edward & Jennifer Dinardo

9 Butler Lane
Underhill, VT 05489

William Corbin

19 Butler Road
Underhill, VT 05489

Brian & Jill Bourgeois

23 Bulter Road
Underhill, VT 05489

Timothy Crowell & Patricia Sabalis

609A Irish Settlement Road
Underhill, VT 05489

Town of Cambridge

PO Box 127
Jeffersonville, VT 05464

- I. During the week of February 7, 2024 notice of the public hearing for the proposed Butler Final Subdivision hearing was posted on the following places;

The Underhill Town Clerk's Office;
The Town of Underhill website;
The Underhill Food Sharing Shed;
Jacobs Family Market

- J. Notice of the public hearing was published in the *Burlington Free Press* on February 11, 2024.

- K. The final subdivision hearing began at 6:30 P.M. on February 26 2024 at the Underhill Town Hall, 12 Pleasant Valley Road, Underhill, VT.

- L. Present at the final subdivision hearing were the following members of the Development Review Board:

1. Charlie Van Winkle, Chair
2. Brian Bertsch, Vice Chair
3. Matt Chapek
4. Karen McKnight
5. Shanie Bartlett

Also present at the hearing were the following:

1. Interim Zoning Administrator Brad Holden
2. The Applicant, John Butler (DRB-23-07)
3. J. William Butler
4. Tristan Butler

- M. 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. Board Member, Charles Van Winkle, Chairperson
2. Board Member, Matt Chapek
3. Board Member, Karen McKnight
4. Board Member, Brian Bertsch
5. The Interim Zoning Administrator, Brad Holden
6. Tristan Butler
7. J. William Butler

N. In support of the Final Subdivision application, the following exhibits were submitted to the Development Review Board:

- Exhibit A – Notice of Public Hearing
- Exhibit B – Application for Final Subdivision Review
- Exhibit C – Burlington Free Press Notice of Public Meeting
- Exhibit D – February 7, 2024 Certificate of Service
- Exhibit E – Final Plat, proposed 3-Lot Subdivision, revised 1-19-2024
- Exhibit F – Proposed Covenants regarding the “Wedding Piece”
- Exhibit G – Development Review Board Preliminary Review Findings and Decision

No additional materials were distributed to the Development Review Board prior to the hearing.

The Minutes of the November 18, 2023 DRB meeting, written by Donna Griffiths, are incorporated by reference into this decision. Please refer to the Minutes for a summary of the testimony.

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

The project is subject to review under the Underhill Unified Land Use and Development Regulations as amended and the Underhill Road, Driveway, and Trail Ordinance as amended.

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 Applicant, John Butler, record owner of the property located at 621& 665 Irish Settlement Road in Underhill, VT, is seeking to subdivide the above-mentioned property into three lots with covenants restricting them to no subdivision or development and with the intended uses for agricultural purposes. No new construction has been proposed. The applicant is requesting a frontage waiver for Lot 2. The existing property is located in the Rural Residential Zoning District except for a portion of the property in the northern corner which is located in the Soil and Water Conservation Zoning District as respectively defined in Article II, Table 2.4, and Article II, Table 2.7 of the of the *Underhill Unified Land Use & Development Regulations*. The project is subject to review under the *Underhill Unified Land Use & Development Regulations* as amended and the *Underhill Road, Driveway and Trail Ordinance* as amended.

ARTICLE II – ZONING DISTRICTS

- A. **ARTICLE II, TABLE 2.4 – RURAL RESIDENTIAL DISTRICT AND SOIL AND WATER CONSERVATION DISTRICT ARTICLE II, TABLE 2.7.** The existing property is located in the Rural Residential Zoning District except for a portion of the property in the northern corner which is located in the Soil and Water Conservation Zoning District as respectively defined in Article II, Table 2.4, and Article II, Table 2.7 of the of the *Underhill Unified Land Use & Development Regulations*. The project is subject to review under the *Underhill Unified Land Use & Development Regulations* as amended and the *Underhill Road, Driveway and Trail Ordinance* as amended.

The Board finds that the proposed subdivision involves the division of a 144-acre lot into three lots: Lot 1 will be composed of +/- 11.41 Underhill acres with additional land in Cambridge; Lot 2, the parent lot, will be composed of +/-54.51 Underhill acres with land in Cambridge; and Lot 3 will be composed of +/-78.28 acres, all the remaining land that lies west of Settlement Brook with frontage on Butler Road. A right of way on Lot 2 will be created for the stated purpose of family members to access the field known to the family as "The Wedding Piece".

- B. All three lots conform with the purpose statement.
- C. The Applicant was granted a road frontage waiver for Lot 2 due to existing physical constraints during the Preliminary Subdivision Hearing.

ARTICLE III – GENERAL REGULATIONS

A. SECTION 3.2 – ACCESS

The Board finds that the Applicant's proposal satisfies the requirements of this Section. Lot 1 is currently served by its own existing driveway.

Lot 2 is served by an existing driveway. The board grants a waiver of road frontage for lot 2 due to the existence of a historical road that originally ran through the property. Proposed Lot 3 is served by Butler Road

B. SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS

Waived as no additional structures are proposed as part of this subdivision. The Board finds that the proposed Lot 1 contains the existing single-family dwelling, while the proposed Lot 2, the parent lot, contains an existing single-family dwelling. The existing development on Lot 1 and Lot 2 both conform with the Rural Residential district as well. The proposed subdivision is not anticipated to create any additional adverse impact related to Section 3.7.

C. SECTION 3.13 – PARKING, LOADING & SERVICE AREAS

NOT APPLICABLE

D. SECTION 3.18 – STEEP SLOPES

Not Applicable. The Applicant has not proposed any new construction.

E. SECTION 3.19 – SURFACE WATERS & WETLANDS

Not Applicable. The Applicant has not proposed any new construction.

SECTION 3.23 – WATER SUPPLY & WASTEWATER SYSTEMS

Not Applicable. No new construction has been proposed therefore the subdivision does not trigger any wastewater review.

ARTICLE VI – FLOOD HAZARD AREA REVIEW Not Applicable. The Applicant is requesting a subdivision of acreage; and is not seeking to build dwellings. The subdivision does not trigger a flood hazard review.

ARTICLE VII – SUBDIVISION REVIEW

A. SECTION 7.2 – APPLICABILITY

The Board finds that the Applicant's proposed subdivision is subject to the requirements of the *Underhill Unified Land Use & Development Regulations* per § 7.2 and was classified as a "minor subdivision"

B. SECTION 7.3 – SKETCH PLAN REVIEW

Not Applicable. The Applicant is requesting a subdivision of acreage; and no new construction has been proposed.

C. SECTION 7.5 – PRELIMINARY SUBDIVISION REVIEW

As part of the preliminary subdivision review application, the Applicant addressed many of the comments and concerns. Therefore, the Board finds that the Applicant 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 technical review is not needed to identify any environmental or land use planning strategies beyond adherence to Underhill's Unified Land Use & Development Regulations.

B. SECTION 8.2 – GENERAL STANDARDS

SECTION 8.2(A) – DEVELOPMENT SUITABILITY

The Board finds that there are no additional undue adverse impacts to the public health and safety, neighboring properties, or the character of the area because of the subdivision.

SECTION 8.2.(B) – DEVELOPMENT DENSITY

Not applicable as no new construction has been proposed.

SECTION 8.2I – EXISTING SITE CONDITIONS

Not applicable as no new construction has been proposed.

SECTION 8.2(D) – UNDERHILL TOWN PLAN & DEVELOPMENT REGULATIONS

The Board finds that the proposed subdivision conforms with 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 is consistent with the characteristics of the Rural Residential District described in Section 8.2.E.2, as the subdivision 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.

SECTION 8.2(F) – LOT LAYOUT

The Board finds that Lot 1 conforms with the requirements of this subsection. The Board finds that Lot 2 conforms with the requirements of this subsection. The Board finds that Lot 3 conforms with the requirements of this subsection.

SECTION 8.2.G – BUILDING ENVELOPE

The board finds this section is not applicable Not applicable as no new construction has been proposed.

SECTION 8.2.H – SURVEY MONUMENTS

The Board finds that survey monumentation depicting the proposed boundary between the lots will be required.

SECTION 8.2.I – LANDSCAPING & SCREENING

The board finds this section is not applicable as no new construction has been proposed.

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 finds there are no cultural or natural resources/features that require protection or preservation.

SECTION 8(B) – SURFACE WATERS, WETLANDS & FLOODPLAINS

The Board finds that the subject property contains Class II wetlands, Settlement Brook. The Board finds that the Applicant's plans for the Lot 3 do not impact wetlands on the parcel.

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

Not applicable as no developments are proposed.

SECTION 8.3(D) – NATURAL AREAS & WILDLIFE HABITAT

The Board finds that there is a priority level 4 habitat block spanning the proposed lots. However, since no new construction has been proposed, the board finds there is no impact to the habitat block by this subdivision.

SECTION 8.3.E – HISTORIC & CULTURAL RESOURCES

The Board finds there are no historic or cultural resources that require preservation.

SECTION 8.3.F – FARMLAND

The Board finds that statewide prime agricultural soils are located on the proposed lots.

SECTION 8.3.G – FORESTLAND

The Board finds the lots contain forest lands.

D. SECTION 8.4 – OPEN SPACE & COMMON LAND

SECTION 8.4.A – OPEN SPACE

The board finds no open space is proposed. as no developments are planned.

SECTION 8.4.B – COMMON LAND

The Board finds that there is no "Common Land" proposed, however, the Applicant has submitted proposed covenants on the "Wedding Piece" for designating it as a place for family recreation.

SECTION 8.4.C – LEGAL REQUIREMENTS

The Board finds that the Applicant has designated “The Wedding Piece” field as open space or common land as part of the proposed project. The applicant intends to place covenants on the Wedding Piece for the Butler family to recreate as they please.

E. SECTION 8.5 – STORMWATER MANAGEMENT & EROSION CONTROL

The board finds that no stormwater management or erosion control devices are proposed.

F. SECTION 8.6 – TRANSPORTATION FACILITIES

SECTION 8.6.A – ACCESS & DRIVEWAYS

The Board finds that this subsection does not apply since the Applicant’s proposed three lot subdivision already has existing access points to the three parcels. See findings in 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 existing roads currently provide access to the three lots.

SECTION 8.6.C – PARKING FACILITIES

The Board finds that no parking is proposed and therefore, review under this Section is not required.

SECTION 8.6.D – TRANSIT FACILITIES

The Board finds that no transit facilities are proposed and therefore, review under this Section is not required.

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 this section is Not Applicable

SECTION 8.7.B – FIRE PROTECTION

The Board finds that there are driveways in place serving the 3 lots of the proposed subdivision.

SECTION 8.7.C – WATER SYSTEMS

The board finds this section is Not Applicable.

SECTION 8.7.D – WASTEWATER SYSTEMS

The Board finds that Wastewater review is not applicable.

SECTION 8.7.E – UTILITIES

The Board finds this section is not Applicable.

H. SECTION 8.8 – LEGAL REQUIREMENTS

The Board finds that this subsection does apply.

II. FACTUAL FINDINGS & CONCLUSIONS

The Board finds the application to be complete and closed the evidentiary portion of the hearing on February 26, 2024.

III. FACTUAL FINDINGS & CONCLUSIONS RELATING TO THE UNDERHILL ROAD, DRIVEWAY & TRAIL ORDINANCE, AMENDED 2018

The Board finds that this subsection does not apply since the Applicant's proposed three lot subdivision already has existing access points to the three parcels. The board finds to grant a waiver of road frontage to Lot 2. *Underhill Road, Driveway & Trail Ordinance*.

A. SECTION 4.C – DEVELOPMENT ROAD AND DRIVEWAY STANDARDS

The Board finds that there are no new development roads proposed as part of this subdivision application.

The Board finds that the proposed right of way access for Lot 2 conforms to the general requirements of Section 4.

B. SECTION 5.A – DRIVEWAYS

The board finds this section is Not Applicable since all three lots are currently served by existing driveways.

IV. WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS

The Board finds that the Applicant has requested a frontage waiver for Lot 2.

V. DECISIONS AND CONDITIONS OF APPROVAL

The Board is satisfied with the level of investigation, surveying, 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.

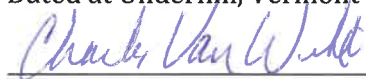
Based upon the findings above and subject to the conditions below, the Development Review Board grants the Final Subdivision Approval for the project presented in the application and at the hearing with the following conditions:

Substantive Land Use & Development Regulations Conditions

1. The board hereby grants the requested frontage waiver for lot #2.
2. The board finds the requested property plat mylar has been prepared for the purpose of creating a 3- Lot subdivision. Property boundary monumentation referenced on the survey plat as a condition of final approval has been installed: The diameter of existing monumentation shown on plan reflect the outside diameter dimensions. Iron pins boundary markers shown thereon as "Set" or "to be Set" and crowned by VT licensed land surveyor at discretion of owner.

3. The E911 numbers are noted already and correctly depicted on the Final Plat.
4. The board finds the legal document, "The Wedding Piece" Covenant, associated with the creation of the new private right-of-way has been submitted.
5. The Final Plat shall be submitted for recording with 180 days of the date of this approval in accordance with Section 7.7 of the Underhill Unified Land Use & Development Regulations.
6. Conditions of approval from previous decisions, unless specifically amended herein, shall remain in effect.
7. Notwithstanding the conditions above, the applicant shall comply with applicable aspects of the Unified Land Use and Development Regulations in effect at the time of the application.

Dated at Underhill, Vermont this 4th day of March, 2024.



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.