



Town of Underhill

Development Review Board

Final Subdivision Findings and Decision

COMBINED PRELIMINARY & FINAL SUBDIVISION REVIEW APPLICATION OF PHILIP JACOBS FOR A 3-LOT SUBDIVISION

In re: Philip Jacobs
73 Upper English Settlement Road
Underhill, VT 05489

Docket No. DRB-22-02

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

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns the combined preliminary & final subdivision review application submitted by Philip Jacobs (the Applicant) regarding a 3-lot subdivision of property he owns located at 16 Harvest Run (HR016) in Underhill, Vermont.

1. On August 19, 2021, the approval of DRB-20-08 (the first iteration of this proposal) expired with no action from the Applicant.
2. On March 7, 2022, a new sketch plan review hearing was held for the abovementioned project. A letter of acceptance was issued on March 21, 2022. Mentioning the “sensitive nature of the parcel” in question, the Development Review Board declined to waive preliminary subdivision review despite its classification of the application as a minor subdivision.
3. On July 27, 2022, the applicants filed a combined preliminary and final subdivision review application for the abovementioned project. Planning & Zoning Administrator Nick Atherton (Staff) received the application and determined that it was complete shortly thereafter. Staff scheduled a Preliminary hearing date, based on the text of the March 21 sketch plan acceptance letter. The hearing was scheduled for August 29, 2022 at the Underhill Town Hall.
4. At the request of the applicant, Staff canceled the Preliminary hearing, and after consulting with the chair of the Development Review Board, allowed the Applicant to reschedule for a combined Preliminary/Final application.
5. On August 24, 2022, the Applicant submitted an Application for Subdivision Amendment Combined Preliminary/Final Hearing. Staff determined the application was complete and scheduled a hearing for September 19, 2022 at 6:35 PM, preceded by a site visit to 16 Harvest Run at 6:00 PM on the same day.

6. On September 2, 2022, notice pertaining to the combined preliminary & final subdivision review hearing was mailed via certified mail to the following property owners adjoining the property subject to the application:
 - a. Theodore & Elena Alexander (5 Mins Lane, Underhill, VT 05489)
 - b. Randall Clark (64 Sugar Hill Rd Underhill, VT 05489)
 - c. Robert & Kathleen Covey (P.O. Box 5, Underhill, VT 05489)
 - d. Brett Decker (408 VT Route 15, Underhill, VT 05489)
 - e. Matthew Gombrich (6 Depot Street, Underhill, VT 05489)
 - f. Carole Magoffin (7 Mins Lane, Underhill, VT 05489)
 - g. Robert & Paige Manning (421 VT Route 15, Underhill, VT 05489)
 - h. Matthew & Alicia Martelle (127 VT Route 15, Jericho, VT 05465)
 - i. Malachi & Shannon McCauley (4411 Old Mill Road, Alexandria, VA 22309)
 - j. Alan Morse (18B Meadow Lane, Underhill, VT 05489)
 - k. Joseph C. & Ruth C. Nelson (2 Sugar Hill Rd, Underhill, VT 05489)
 - l. David & Dorothy Richiedei (P.O. Box 278, Underhill, VT 05489)
 - m. Underhill-Jericho Fire Dept. (P.O. Box 150, Underhill, VT 05489)
 - n. United Church of Underhill (9 Park Street, Underhill, VT 05489)
 - o. William & Christina Widlund (8 Jacobs Hill Road, Underhill, VT 05489)
7. On September 2, 2022, notice of the public hearing for the proposed Jacobs combined preliminary & final subdivision review hearing was posted at the following places:
 - a. The Underhill Town Clerk's office;
 - b. The Underhill Center Post Office; and
 - c. Jacobs & Son Market.
8. On September 4, 2022, the notice of public hearing was published in the *Burlington Free Press*.
9. The scheduled site visit commenced at the property location, 16 Harvest Run (HR016) at 6:00 PM on September 19, 2022.
10. Present at the site visit were the following members of the Development Review Board:
 - a. Board Member, Charles Van Winkle, Chairperson
 - b. Board Member, Mark Green
 - c. Board Member, Karen McKnight
 - d. Board Member, Penny Miller
 - e. Board Member, Matt Chapek
 - f. Board Member, Daniel Lee

Also in attendance was Staff Member Nick Atherton, Planning & Zoning Administrator.

Others present at the site visit were:

- a. Applicant, Philip Jacobs (73 Upper English Settlement, Underhill, VT 05489)

11. The combined preliminary & final subdivision review hearing began at 6:35 PM on September 19, 2022 at the Underhill Town Hall, 12 Pleasant Valley Road, Underhill,

Vermont.

12. Present at the combined preliminary & final subdivision hearing were the following members of the Development Review Board:

- a. Charlie Van Winkle, Chair
- b. Daniel Lee
- c. Mark Green
- d. Penny Miller
- e. Karen McKnight
- f. Shanie Bartlett*
- g. Matt Chapek

* Attended virtually via GoToMeeting platform

Also in attendance was Staff Member Nick Atherton, Planning & Zoning Administrator.

Others present at the hearing were:

- a. Applicant, Philip Jacobs (73 Upper English Settlement, Underhill, VT 05489)
- b. Applicant's engineer, David Burke
- c. Applicant's engineer, Ryan Morse

13. At the outset of the hearing, Chair Van Winkle explained the criteria under 24 V.S.A § 4465(b) for being considered an "interested party." Those interested parties who attended at the hearing were:

- a. Bob Covey (14 Harvest Run)*
- b. Dave Clift*
- c. Dorothy Richiedi (12 Harvest Run)*
- d. Julie Clark (64 Sugar Hill Road)*
- e. Eben Widlund (8 Jacobs Hill Rd.) *
- f. Allen Simard*
- g. Dan Manz (385 Pleasant Valley Road)*
- h. Carol Magoffin (7 Mins Lane)*
- i. Liz Smith (25 Stevensville Road)*

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

- a. Exhibit A - Exhibit A - Cover Letter 8/24/22
- b. Exhibit B- Subdivision App
- c. Exhibit C- Jacobs Sketch Plan Acceptance
- d. Exhibit D - Section 8 Narrative
- e. Exhibit E - SH1 - Site Plan 7-27-22
- f. Exhibit F - SH2 - Water & Wastewater Details (1) 7/14/21
- g. Exhibit G - SH3 - Water & Wastewater Details (2) 7/14/21
- h. Exhibit H - SH4 - Stormwater and Roadway Details 7/26/22
- i. Exhibit I - SH5 - EPSC Plan 7/27/22
- j. Exhibit J - SHPL - Subdivision PLAT 7/27/22

- k. Exhibit K - WW-4-4679-3 Permit
- l. Exhibit L - Certificate of Service
- m. Exhibit M - BFP notice
- n. Exhibit N - Covey Letter, dated August 16, 2022
- o. Exhibit O - DRB Agenda September 19, 2022

The exhibits submitted as part of the sketch plan application are also incorporated into this decision.

All exhibits are available for public review in the HR016 Jacobs Combined Preliminary & Final Subdivision Review file (HR016 / DRB-22-02) at the Underhill zoning files.

II. FACTUAL FINDINGS & CONCLUSIONS

The Minutes of the September 19, 2022 hearing, written by Donna Griffiths, are incorporated by reference into this decision. Please refer to the Minutes for a summary of the testimony.

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

PROJECT SYNOPSIS

The Applicant, Philip Jacobs, record owner of the property located at 16 Harvest Run in Underhill, VT, is seeking a three-lot subdivision. The property is in the Underhill Flats Village Center zoning district as defined in Article II, Tables 2.5 & 2.7 of the *Underhill Unified Land Use & Development Regulations*.

The Applicant and the subject property have been involved in numerous subdivision applications and amendments to subdivisions. As noted above, the Applicant requested but the Board did not approve the request to combine the preliminary & final applications at the sketch plan hearing. Upon reflection of past practices regarding this subdivision, the Board treated previous modifications to the residual land at 16 Harvest Run as “an amendment to the final plat.” The Board views decisions made at sketch plan as non-binding. The Applicant requested the combined hearing, and as outlined above, the public was notified of the combined hearing. At the onset of the hearing the Board agreed to “waive the preliminary hearing.”

ARTICLE II – ZONING DISTRICTS

ARTICLE II, TABLE 2.5 – UNDERHILL FLATS CENTER ZONING DISTRICT

The Board finds that the entirety of all lots proposed in this application are located within the Underhill Flats Village Center zoning district. Lots 13 & 14 are intended for single family dwellings, while the remainder (hereafter referred to as Lot 6) will remain undeveloped as part of this approval. Any proposed development on that lot will require additional review by this Board to determine compliance with the subdivision regulations in effect at the time of application. All three lots conform to the district dimensional requirements and the purpose statement of the Underhill Flats Village Center district.

ARTICLE III – GENERAL REGULATIONS

SECTION 3.2 – ACCESS

The Board finds that the applicants have proposed a shared driveway to serve Lots 13 & 14. This driveway will begin at the northern terminus of Harvest Run.

SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS

The Board finds that Lots 13 & 14 will each contain one single-family dwelling for residential purposes. Lot #6 will remain undeveloped until the Applicant or subsequent landowner(s) amend the subdivision to allow for land development.

With approximately 375 ft of frontage along Jacobs Hill Road, Lot 13 meets the frontage requirements. Lot 14 lacks any road frontage, and the Board finds that the Applicant has requested a frontage waiver for that lot. Lot 6 has frontage on Harvest Run as well as VT Route 15.

The Board finds that the Applicant's proposal satisfies all other dimensional requirements.

SECTION 3.13 – PARKING, LOADING & SERVICE AREAS

The Board finds that the Applicant's proposal satisfies all requirements under this section.

SECTION 3.17 – SOURCE PROTECTION AREAS

The Board finds that the proposed subdivision is not located in any Groundwater Source Protection Area; therefore, review under this section is not required.

SECTION 3.18 – STEEP SLOPES

Steep slopes are present on the subject property. The Board finds that the Applicant's proposal avoids areas of steep slope, and therefore, this proposal meets the Town's standards in this section.

SECTION 3.19 – SURFACE WATERS & WETLANDS

Two unnamed streams converge near the southwestern corner of proposed Lot 13. Both flow through culverts that have already been installed and are used by the Applicant to access the subject property. The Board finds that the proposed development would use the existing culverts, and additionally, that the proposed development will not result in disturbance to the surface waters.

The Board additionally finds that there are no wetland areas on the subject property.

SECTION 3.23 – WATER SUPPLY & WASTEWATER SYSTEMS

The Board finds that lots 13 & 14 will utilize on site wastewater disposal constructed in accordance with the groundwater protection standards in the Vermont Environmental rules. The Applicant has submitted WW-4-4679-3, a Wastewater Permit issued by the State of Vermont's Department of Environmental Conservation.

The Applicant has proposed extending potable water service from an existing water main located on the corner of Harvest Run and Jacob's Hill Rd.

The Board finds that this proposal and the Applicant's Wastewater permit satisfy the requirements of this section.

ARTICLE VI – FLOOD HAZARD AREA REVIEW

The Board finds that the proposed subdivision is not located in a Flood Hazard Area; therefore, review under this section is not required.

ARTICLE VII – SUBDIVISION REVIEW

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" in the decision letter issued on March 21, 2022.

SECTION 7.5 – PRELIMINARY SUBDIVISION REVIEW

The Board finds that it declined to waive preliminary subdivision review in its sketch plan acceptance letter. Upon reflection of past practices regarding this subdivision, the Board treated previous modifications to the residual land at 16 Harvest Run as "an amendment to the final plat." The Board views decisions made at sketch plan as non-binding. The Applicant requested the combined hearing, and as outlined above, the public was notified of the combined hearing. At the onset of the hearing, the Board agreed to "waive the preliminary hearing." This combined application addressed the requirements of preliminary subdivision review.

SECTION 7.6 – FINAL SUBDIVISION REVIEW

As part of the combined preliminary & final subdivision review application, the Applicant addressed the comments and concerns identified in the sketch plan review letter. Therefore, the Board finds that the Applicant satisfied the intent of this section and provided the necessary materials to decide on the final subdivision review application.

ARTICLE VIII – SUBDIVISION STANDARDS

SECTION 8.1 – APPLICABILITY

The Board finds that no technical review was needed for this proposed project.

SECTION 8.2 – GENERAL STANDARDS

SECTION 8.2.A – DEVELOPMENT SUITABILITY

The Board finds that, given its location entirely within the Underhill Flats Village Center zoning district and proximity to existing development, the Applicant's proposal satisfies the requirements under this section. Should the *Underhill Unified Land Use & Development Regulations* be amended, thereby impacting this section, the zoning regulations in effect at the time of application shall apply.

SECTION 8.2.B – DEVELOPMENT DENSITY

The Board finds that the proposed subdivision meets the density requirements per this section.

SECTION 8.2.C – EXISTING CONDITIONS

The Board finds that the existing lot contains areas of prime agricultural soils, surface waters, and areas of steep slope; however, all proposed development is to be situated such that it that will not directly impact these areas.

SECTION 8.2.D – UNDERHILL TOWN PLAN & DEVELOPMENT REGULATIONS

The Board finds that the proposed subdivision conforms to the *Underhill Town Plan* and 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 village zoning districts as described in Section 8.2.E.2.

SECTION 8.2.F – LOT LAYOUT

The Board finds that the proposed subdivision meets the requirements of this subsection.

SECTION 8.2.G – BUILDING ENVELOPE

The Applicant has submitted building envelopes that are co-located with the minimum setbacks for the Underhill Flats Village Center zoning district. The Board finds these setbacks are sufficient. The Applicant has offered, and the Board has accepted reduced building envelope boundary parameters on the northern edge of Lot 14 and the southern edge of Lot 13 to exclude the treeline.

SECTION 8.2.H – SURVEY MONUMENTS

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

SECTION 8.2.I – LANDSCAPING & SCREENING

The Board finds that while the Applicant has not proposed any additional screening or landscaping, the proposal will leave intact the existing tree line on the southern edge of Lot 13.

SECTION 8.2.J – ENERGY CONSERVATION

The Board finds that the proposal allows ample south and western exposure, as well as ample space for residential solar installations.

SECTION 8.3 – NATURAL & CULTURAL RESOURCES

The Board is not aware of, and finds that the Applicant has not supplied, any evidence of significant natural and/or cultural resources on the subject proposal.

SECTION 8.4 – OPEN SPACE & COMMON LAND**SECTION 8.4.A – OPEN SPACE**

The Board finds that the Applicant has not proposed to designate any land as open space.

SECTION 8.4.B – COMMON LAND

The Board finds that the Applicant has 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 Applicant has not designated any land as open space or common land as part of the proposed project.

SECTION 8.5 – STORMWATER MANAGEMENT & EROSION CONTROL

The Applicant has submitted an Erosion Prevention & Sediment Control plan. The Board finds that proper installation and maintenance of the stormwater management as represented on the submitted plans will be sufficient to protect the surface waters present on the property.

SECTION 8.6 – TRANSPORTATION FACILITIES**SECTION 8.6.A – ACCESS & DRIVEWAYS**

See Section 3.2 above pertaining to access.

SECTION 8.6.B – DEVELOPMENT ROADS

The Board finds that there are no new proposed development roads, and the Applicant has proposed access to two homes from the existing Harvest Run private road.

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 Applicant has stated that residents of Jacob's Hill Rd and Min's Lane are known to use the subject property as a means of pedestrian access between their homes and the Underhill Flats village. The Applicant has further stated that he supports continued use of the property for such access. Since the property is in an area with historic pedestrian traffic, the Board finds that it is in the interest of the Town to ensure continued pedestrian access through the subject property.

SECTION 8.7 – PUBLIC FACILITIES & UTILITIES**SECTION 8.7.A – PUBLIC FACILITIES**

The Board finds the proposed subdivision will not create an undue burden on the existing and/or planned public facilities.

SECTION 8.7.B – FIRE PROTECTION

The Board finds that the proposed access satisfies the requirements of this section, the minimum requirements for the Underhill-Jericho Fire Department.

SECTION 8.7.C – WATER SYSTEMS

See Section 3.23.

SECTION 8.7.D – WASTEWATER SYSTEMS

See Section 3.23.

SECTION 8.7.E – UTILITIES

The Applicant's plans include proposed utility locations. The Board finds that these meet the requirements of this section.

SECTION 8.8 – LEGAL REQUIREMENTS

The Board finds that the Applicant shall incorporate, or incorporate by reference, all proposed easements into the deeds.

III. WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS

The Board grants the Applicant's requested frontage waiver for Lot 14, finding that its shared driveway with Lot 13 is sufficient to ensure access.

IV. 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 to ensure its compliance with the 2011 *Underhill*

Land Use & Development Regulations, as amended March 3, 2020 as it pertains to the subdivision of land only and concludes that based on the evidence submitted and the above findings, the proposed subdivision conforms to the 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:

1. The Board accepts the Applicant's proposal to combine preliminary and final hearings.
2. The Board grants the Applicant's requested frontage waiver for Lot 14.
3. Within 150 days of this approval, the Applicant shall provide an ability to serve letter from the Mt Mansfield Union School District.
4. The Board requires the Applicant maintain the existing vegetative screen along the northern edge of Lot 14 and the southern boundary of Lot 13. The Board does not require replenishment of vegetation if it deteriorates.
5. 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 the subdivision plat (final Mylar) has been recorded in the Underhill Land Records per Section 7.2.C.
6. The Board requires the project to be subdivided in accordance with the drawing set submitted as part of the review process and as amended accordingly to address the changes herein and which are to be recorded, listed as follows:
 - a. Subdivision Plat, Lands of Phil Jacobs (Prepared by O'Leary-Burke Civil Associates and dated July 27, 2022), or subsequent revision to the extent required as part of this approval.
7. The Board requires the Applicant to record the abovementioned plans as Mylars in the Underhill Land Records:
 - a. The Survey Plat shall contain the following features:
 - i. Property lines;
 - ii. Any applicable easements;
 - iii. Existing and proposed monumentation;
 - iv. Parcel Codes;
 - v. Building envelopes
8. The Board requires that the abovementioned plans be updated in conformance with this decision, and that to-scale hard copies, in addition to digital copies, be submitted to the Zoning Administrator to be filed in the corresponding zoning file.
9. The E-911 Codes for the lots shall be posted per the Underhill-Jericho Fire Department specifications.
10. The final plat shall be submitted for recording within 180 days of the date of this approval in accordance with Section 7.7 of the *Underhill Unified Land Use & Development Regulations*.
11. All subdivision 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 & Development Regulations*.
12. Prior to the issuance of any building permit, new property boundary monumentation referenced on the survey plat shall be installed.

13. The Board requires the homeowners of Lots 13 & 14 to receive a curb cut permit in accordance with the Underhill Road Driveway and Trail Ordinance. The Board hereby approves the curb cut for vehicular access for Lot 13 and Lot 14 in the location generally depicted on the approved drawings.
14. Prior to the issuance of any permit, the Board requires that Lots 13 and 14 are required to join the existing homeowners' association governing Harvest Run and Jacobs Hill Road, and shall be subject to the covenants, conditions, and fee structure affecting the association.
15. Prior to the issuance of any permit, the Board requires the easement granting Lot 14 access, utility, and stormwater rights over lot 13, be executed and recorded in the town land records.
16. Prior to the issuance of any permit, the Board requires the easement granting Lot 14 a septic access/ maintenance easement over Lot 13 be executed and recorded in the town land records.
17. No development subject to the jurisdiction of this Board is allowed on Lot 6 unless this decision is amended.
18. In accordance with Section 8.6.E, the Applicant shall submit an easement guaranteeing pedestrian access across the culverts located on the subject property, sufficient to allow the public access to Lot 6 and Harvest Run. A copy of the easement shall be recorded in the Town of Underhill Land Records and submitted to the Zoning Administrator for filing in the Town's zoning files.
19. Notwithstanding the conditions above, prior to issuing a building permit, the applicant shall comply with applicable aspects of the Underhill Land Use and Development Regulations in effect at the time of the application. The Zoning Administrator is not empowered to waive all deferred review criteria (Section VIII, Subdivision Standards) listed above.

Dated at Underhill, Vermont this 2nd of November 2022.



Charles Van Winkle, Chair, Development Review Board

NOTICE: This decision may be appealed to the Vermont Environment Court by an interested person who participated in the proceedings before the Development Review Board. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings. Appeal period ends December 2, 2022.