



Town of Underhill

Development Review Board

Findings and Decision

SUBDIVISION AMENDMENT REVIEW

APPLICATION OF DENNIS PATRICK & MARJORY ANN CURRAN FOR A 2-LOT SUBDIVISION

In re: Dennis Patrick & Marjory Ann Curran
97 Maple Leaf Road (ML097)
Underhill, VT 05489

Docket No. DRB-22-28

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

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns the subdivision amendment review application submitted by the applicants Dennis Patrick & Marjory Ann Curran regarding a previous application for a proposed 2-lot subdivision on land they own located at 97 Maple Leaf Road (ML097) in Underhill, Vermont.

- A. On December 28, 2021 the applicants filed a sketch plan review application for the abovementioned project. A site visit was scheduled to commence on Saturday, February 26, 2022 at 8:00 AM while a Special meeting for the hearing was scheduled for 6:35 PM on Monday February 28, 2022 at the Town Hall.
- B. On February 10, 2022, notice of the Special meeting regarding the subdivision amendment review hearing was delivered via US Postal Service certified mail to the following property owners adjoining the property subject to the application:
 - 1. ML031 – Stephen M. & Tamara V. Pitmon, 31 Maple Leaf Road, Underhill, VT 05489
 - 2. ML055 – Frank Tyler Whitcomb, 55 Maple Leaf Road, Underhill, VT 05489
 - 3. ML070 – David & Frances Hardy, 70 Maple Leaf Road, Underhill, VT 05489
 - 4. ML081 – Jennifer & Dayna Silpe-Katz, 81 Maple Leaf Road, Underhill, VT 05489
 - 5. ML104 – Linda D. Turner, 104 Maple Leaf Road, Underhill, VT 05489
 - 6. ST065 – Underhill Farm, LLC, P.O. Box 2, Underhill Center, VT 05490
 - 7. MT104 – Gary & Angelica Taylor, 104 Mountain Road, Underhill, VT 05489
 - 8. MT122 – John O & Amberly R Lesure, 122 Mountain Road, Underhill, VT 05489
 - 9. MG003 – Thomas R Montgomery, 3 Montgomery Road, Underhill, VT 05489
 - 10. Applicant: ML081 – Dennis Patrick & Marjory Ann Curran, 3761 River Point Drive, Fort Myers, FL 33905

- C. On February 15th, due to a small typo, the corrected notice of the Special meeting regarding the subdivision amendment review hearing was sent to the adjoining the property owners.
- D. During the week of February 15, 2022, notice of the Special meeting for the public hearing for the Curran final subdivision amendment review hearing was posted at the following places:
1. The Underhill Town Clerk's office;
 2. The Underhill Center Post Office; and
 3. Jacobs & Son Market.
- E. On February 12, 2022 the notice of Special public hearing meeting was published in the *Burlington Free Press*.
- F. The scheduled site visit commenced at the property location, 97 Maple Leaf Road (ML081) at 8:00 AM on February 26, 2022.
- G. Present at the site visit were the following members of the Development Review Board:
1. Board Member, Penny Miller, Vice Chairperson
 2. Board Member, Matt Chapek
 3. Board Member, Karen McKnight
- Others present at the site visit were:
1. Applicant, Dennis Curran, 3761 River Point Drive, Fort Myers, FL 33905
- H. The subdivision amendment review hearing began at 6:35 PM on February 28, 2022 at the Town of Underhill Town Hall, 12 Pleasant Valley Road, Underhill, Vermont.
- I. Present at the amended final subdivision hearing were the following members of the Development Review Board:
1. Board Member, Charles Van Winkle, Chairperson
 2. Board Member, Shanie Bartlett
 3. Board Member, Matt Chapek
 4. Board Member, Mark Green
 5. Board Member, Daniel Lee
 6. Board Member, Karen McKnight
 7. Board Member, Penny Miller
- Others present at the hearing were:
2. Applicant, Dennis Curran 3761 River Point Drive, Fort Myers, FL 33905
 3. O'Leary-Burke Civil Associates, David Burke
 4. David Hardy, 70 Maple Leaf Road, Underhill, VT 05489
- J. 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 who spoke at the hearing were:
1. Applicant, Dennis Curran
 2. David Burke, O'Leary-Burke Civil Associates

K. Next Chair Charlie Van Winkle detailed the criteria where the review for Lot 2 of the subdivision was deferred:

1. This application is subject to review under the 2011 Unified Land Use & Development Regulations (ULUDR), as amended March 3, 2020, as well as the 2015 Road, Driveway and Trail Ordinance, as amended December 18, 2018.

The purpose of final subdivision review is to determine final project conformance with the municipal plan, the regulations, and other municipal ordinances in effect at the time of application. The Board reviewed and approved the creation of this lot, identified as lot #2, beginning with an application filed on 26 June 2018, a site visit and hearing on 16 July 2018, and a written decision issued on 15 August 2018. At the time the board could not make any findings under several of the subdivision review criteria, retained jurisdiction and “deferred” the review and findings under these criteria until a time when further development on the lot was proposed.

The criteria where the review for Lot 2 of the subdivision were deferred include the following:

Article III General Regulations

- Section 3.2 Access,
- Section 3.13 Parking Loading & Service Areas,
- Section 3.17 Source Protection Areas,
- Section 3.18 Steep Slopes,
- Section 3.19 Surface Waters and Wetlands,
- Section 3.23 Water Supply & Wastewater Systems.

Article VIII -Subdivision Standards

- Section 8.2 A Development Suitability,
- Section 8.2 C Existing Conditions
- Section 8.2 D Underhill Town Plan and Development Regulations
- Section 8.2 E District Settlement Patterns
- Section 8.2 G Building Envelope
- Section 8.2 I Landscaping & Screening
- Section 8.2 J Energy Conservation
- Section 8.3 Natural and Cultural Resources
- Section 8.5 Stormwater Management & Erosion Control
- Section 8.7 Fire Protection
- Section 8.7 C Water Systems
- Section 8.7 D Wastewater Systems
- Section 8.7 E Utilities

L. In support of the subdivision amendment application, the following exhibits were submitted to the Development Review Board:

Lot #2 now 97 Maple Leaf Road - Curran - Subdivision Amendment

1. Exhibit A February 28, 2022 DRB Agenda and Hearing Procedures with Exhibits

2. Exhibit B_2022 Subdivision Amendment Application.pdf
3. Exhibit C_ 2022 Certificate of Service.pdf
4. Exhibit D_2018 Final Plat.pdf
5. Exhibit E_Site_Plan_Sewage_Disposal_and_Water_Erosion_Details.pdf
6. Exhibit F_2018 Preliminary & Final Staff Report.pdf
7. Exhibit G_8-15-2018 Preliminary & Final Subdivision Findings and Decision.pdf
8. Exhibit H_7-16-2018 Final Hearing Minutes.pdf
9. Exhibit I_ 2018 Subdivision Permit.pdf
10. Exhibit J_ 2018 Access Permit.pdf
11. Exhibit K_ 2018 Land Use Permit Amendment.pdf
12. File Exhibit L_WW-4-5097 Water & Wastewater Permit.pdf
13. Exhibit M_BFP Notice.pdf

The following exhibits were submitted and distributed to the Board prior to the start of the hearing:

14. Exhibit N – SH.1 - FINAL PLAN
15. Exhibit O – SH.2 - LOT 2 SEWAGE DISPOSAL DETAILS
16. Exhibit P – SH.3 - WATER AND EROSION DETAILS

No exhibits were submitted into the record during the hearing.

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

All exhibits are available for public review in the ML097 Curran Combined Preliminary & Final Subdivision Review file (ML097 / DRB 22-01) at the Underhill Zoning & Planning office.

II. FACTUAL FINDINGS & CONCLUSIONS

The Minutes of the February 28, 2022 meeting, 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 *Underhill Unified Land Use and Development Regulations* (ULUDR) as amended March 3, 2020:

PROJECT BACKGROUND SYNOPSIS

The applicants, Dennis Patrick and Marjory Ann Curran, are record owners of the property located at 97 Maple Leaf Road in Underhill, VT. As outlined above, the parcel was created in a written decision issued on 15 August 2018. The applicants created the subject parcel (lot #2) as a so-called “wood lot.” As a condition of the 2018 approval, the DRB precluded any further development of the parcel until review was performed by this board for compliance with the development and subdivision regulations in effect at the time of the application. The property is located in the Water Conservation district as defined in Article II, Tables 2.5 of the 2020 *Underhill ULUDR*.

ARTICLE II – ZONING DISTRICTS

A. ARTICLE II, TABLE 2.5 – WATER CONSERVATION DISTRICT

The Board finds that the existing lot #2, 97 Maple Leaf Road is entirely within the Water Conservation District.

ARTICLE III – GENERAL REGULATIONS

SECTION 3.2 – ACCESS

The Board finds that the applicants obtained an access permit from the Selectboard for the curb cut only on June 19, 2018 (Access Permit #: A-18-15). The driveway on Lot 2 comes in at the approved access point

SECTION 3.13 – PARKING, LOADING & SERVICE AREAS

The board finds the driveway on lot #2 comes in at the approved access point, and will access only lot #2. The applicant obtained the town required curb cut permit and installed the driveway in accordance with the specifications. The board finds parking within the lot will be typical of parking required for a single-family home.

SECTION 3.17 – SOURCE PROTECTION AREAS

The board finds that lot #2 is not within a designated public water supply. The applicant has planted winter rye and conservation mix as well as placed hay bales to mitigate runoff and erosion from site clearing and disturbance. Efforts to mitigate erosion will continue during construction.

SECTION 3.18 – STEEP SLOPES

The Board finds lot #2 contains steep slopes to the west and south. The cleared areas have been seeded with winter rye and conservation mix. Bales of hay have been put down to restrict water flow and minimize runoff.

SECTION 3.19 – SURFACE WATERS & WETLANDS

The board finds lot #2 does not have wetlands in the proposed area of development. The applicant has seeded cleared areas and used hay bales to minimize runoff. Once construction is completed, the applicant intends to spread top soil and mitigate runoff to prevent water from flowing downhill

SECTION 3.23 – WATER SUPPLY & WASTEWATER SYSTEMS

The Board finds that the applicants have obtained a Wastewater System & Potable Water Supply Permit (Permit # WW-4-5097) from the State of Vermont, Department of Environmental Conservation.

ARTICLE VIII – SUBDIVISION STANDARDS

SECTION 8.2.A – DEVELOPMENT SUITABILITY

The board finds the recorded subdivision plat and supporting documentation conforms with the municipal plan, the regulations and other municipal ordinances in effect at this time.

SECTION 8.2.C – EXISTING CONDITIONS

The Board finds lot #2, 97 Maple Leaf Road contains areas of prime agricultural soils, forest land and areas of steep slope; however, development can be situated in areas 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 ULUDR amended March 3, 2020*.

SECTION 8.2.E – DISTRICT SETTLEMENT PATTERNS

The Board finds the proposed subdivision is consistent with the characteristics of the rural zoning districts as described in Section 8.2.E.2.

SECTION 8.2.G – BUILDING ENVELOPE

The Board finds the building envelope and any clear cutting must be restricted to an area away from the steep slopes on the West and South areas on of the Lot.

SECTION 8.2.I – LANDSCAPING & SCREENING

The applicant has retained a buffer zone by preserving the existing trees and wooded area along Maple Leaf Road. There is also a buffer of natural landscaping, a wooded area and trees between the driveway and neighboring lot # 1 to the East. Furthermore, the applicant does not intend to cut additional trees except for removal of dead trees and drops. The existing trees within the areas of steep slopes will be preserved.

SECTION 8.2.J – ENERGY CONSERVATION

The building lot and the building envelope have been oriented to maximize southern exposure.

SECTION 8.3 – NATURAL & CULTURAL RESOURCES

The lot# 2 is located in a highest priority wildlife corridor and contains steep slopes of >25%. While a section of forest land was cut, a portion of it remains within the areas identified as areas with steep slopes. As a condition of approval of the amended subdivision, the further cutting of additional forest land within the boundaries of steep slopes is prohibited.

SECTION 8.5 – STORMWATER MANAGEMENT & EROSION CONTROL

The driveway has been positioned to minimally effect runoff. The applicant has seeded areas he has cleared and placed bales of hay to minimize water runoff to mitigate potential erosion.

SECTION 8.7.B – FIRE PROTECTION

The applicant shall apply to the Jericho Underhill Fire Department for an “ability to serve” letter.

SECTION 8.7.C – WATER SYSTEMS

The applicant has proposed a drilled wellsite to the south of the proposed house. The proposed well isolation shield is 100 feet downslope, 100 feet side slope and 200 feet upslope. The board finds the isolation shield is entirely contained within the lot.

SECTION 8.7.D – WASTEWATER SYSTEMS

The Board finds that the applicants have received a Wastewater System & Potable Water Supply Permit (Permit # WW-4-5097) from the State of Vermont, Department of Environmental Conservation.

SECTION 8.7.E – UTILITIES

The board finds that an existing overhead utility service is located within the parcel, extension of the service encompassing all utilities including but not limited to electric, telephone, and cable television utilities shall be located underground.

III. WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS

The Board does not grant any waivers, modifications, nor make any supplementations.

IV. DECISIONS AND CONDITIONS OF AMMENDMENT 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 2020 *Underhill ULUDR* as it pertains to the removal of limitation conditions imposed in the 2018 decision and concludes that based on the evidence submitted and the above findings, the proposed subdivision generally conforms to the aforementioned Regulations.

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

The Development Review Board requires the following prior to the issuance of a building permit:

1. All conditions of the original approval from 15 August 2018 shall remain in effect unless specifically amended herein.
2. Under this decision the board allows for the development of a housing site on lot #2, 97 Maple Leaf Road.
3. Development shall be excluded on areas of steep slopes greater than 25%.
4. Areas with steep slopes shall be excluded from clear cutting, this includes extending the clearing to the south and west of the clearing limits proposed on the drawing entitled "CURRAN – Maple Leaf Drive, Underhill VT FINAL PLAN" prepared by O'Leary & Burke dated 6/25/2018, and last revised on 12/23/2021. Prior to the issuance of an Occupancy Permit, the drawings shall be updated to depict areas of steep slopes and a revised building envelope shown that excludes those areas of steep slopes.
5. The Drawings shall be updated to depict areas of steep slopes and a revised building envelope shown that excludes those areas of steep slopes
6. Areas outside the building envelope shall be excluded from clear cutting.
7. No outbuildings shall be located on steep slopes
8. Unless already on file the applicant shall provide a copy of the Act 250 Permit affecting the parcel.

9. Applicant shall provide ability-to-serve letters indicating no adverse impact will be created by the proposed building on lot (ML097) from:
 - a. The Jericho Underhill Fire Department
 - b. Mount Mansfield Unified Union School District to provide educational services

Dated at Underhill, Vermont this 24th day of March 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 April 23, 2022.