



Town of Underhill

Development Review Board

Findings and Decision

COMBINED PRELIMINARY & FINAL SUBDIVISION REVIEW APPLICATION OF MARTY BASLOW FOR A 2-LOT SUBDIVISION

In re: Marty Baslow
37 Warner Creek (WC037)
Underhill, VT 05489

Docket No. DRB-19-10

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

PART I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns the combined preliminary & final subdivision review application submitted by the Applicant, Marty Baslow (hereafter Applicant), regarding a 2-lot subdivision of property he owns located at 37 Warner Creek (WC037) in Underhill, Vermont.

- A. On Tuesday, July 23, 2019, the Applicant filed a sketch plan review application for the abovementioned project. A meeting pertaining to the application was scheduled for and held on Monday, September 16, 2019. The Board issued a letter of acceptance relating to the project on October 7, 2019. As outlined in the sketch plan review letter, the Applicant requested, and the Development Review Board voted, to waive preliminary subdivision review. Also outlined in the letter, the Board encouraged the Applicant to research the feasibility of developing the identified Lot 5B rather than deferring that research to ensure that the Applicant was not creating a lot that could not be developed.
- B. On Thursday, August 20, 2020, the Applicant 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 Monday, September 2, 2020. A site visit was scheduled to commence on Saturday, September 19, 2020 at 8:30 AM, while the hearing date was scheduled remotely via the Go-To-Meeting platform to commence at 7:15 PM on Monday, September 21, 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, September 21, 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 September 2, 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. *Applicant*: WC037 – Marty Baslow, 65 Colonel Page Road, Essex, VT 05452
2. BS004 – Thomas R. & Sally Ann Bosley, 4 Baslow Lane, Underhill, VT 05489
3. BS013 – Russell C. & Elise M. Baslow, 13 Baslow Lane, Underhill, VT 05489
4. BS019 – Francis T. & Evelyn Comstock, 19 Baslow Lane, Underhill, VT 05489
5. GK028 – Claude A. & Judith A. Raineault, 28 Gert's Knob Road, Underhill, VT 05489
6. GK035 – Steven Coia, P.O. Box 212, Underhill, VT 05489
7. GK038 – Mary Clark Miller & Cameron N. Giezendanner, 38 Gert's Knob Road, Underhill, VT 05489
8. PH295 – Robt. D. & Alisson L. Richards, 295 Poker Hill Road, Underhill, VT 05489
9. VT743 – Morris J. Root, 16 Maple Ridge Drive, West Chazy, NY 12992
10. VT769 – Cory L. Wilson & Veronique Langlois, 769 Vermont Route 15, Underhill, VT 05489
11. VT772 – Shawn & Michele Pecor, 772 Vermont Route 15, Underhill, VT 05489
12. VT773 – Michael J. & Cara T. Cook, 773 Vermont Route 15, Underhill, VT 05489
13. WC014 – Allen A. Bugbee, P.O. Box 221, Underhill, VT 05489
14. WC018 – Pamela M. & Thomas J. Cota, 18 Warner Creek, Underhill, VT 05489
15. WC024 – Nathan S. & Reynolds & Lindsay W. Reid, 24 Warner Creek, Underhill, VT 05489

D. During the week of August 30, 2020, notice of the public hearing for the proposed Baslow 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, September 5, 2020 the notice of public hearing was published in the *Burlington Free Press*.

F. A site visit at the property located at 37 Warner Creek, Underhill, Vermont, commenced at 8:30 AM on Saturday, September 19, 2020.

G. Present at the site visit were the following members of the Development Review Board:

1. Board Member, Stacey Turkos, Vice Chair
2. Board Member, Penny Miller, Clerk
3. Board Member, Karen McKnight
4. Board Member, Shanie Bartlett, Alternate

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

5. Applicant, Marty Baslow
6. Applicant's Representative, Richard Hamlin
7. Allen Bugbee, Adjoining Neighbor

8. Thomas Cota, Adjoining Neighbor
9. Albert Abdinoor, Neighbor
10. Diana Abdinoor, Neighbor
11. Lindsay Reid, Adjoining Neighbor
12. Nathan Reynolds, Adjoining Neighbor

H. In accordance with Act 92, the combined preliminary subdivision and final subdivision review hearing began at 7:48 PM on Monday, September 21, 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, Stacey Turkos, Vice Chairperson
2. Board Member, Penny Miller, Clerk
3. Board Member, Shanie Bartlett, Alternate
4. Board Member, Mark Green
5. Board Member, Daniel Lee
6. Board Member Karen McKnight

Also in attendance was Staff Member Andrew Strniste, Planning Director & Zoning Administrator.

Others present at the hearing were:

1. Applicant, Marty Baslow (37 Warner Creek, Underhill, VT 05489)
2. Applicant's Representative, Richard Hamlin (37 Warner Creek, Underhill, VT 05489)
3. Adjoining Neighbor, Allen Bugbee (14 Warner Creek, Underhill, VT 05489)
4. Adjoining Neighbor, Thomas Cota (18 Warner Creek, Underhill, VT 05489)
5. Adjoining Neighbor, Lindsay Reid (24 Warner Creek, Underhill, VT 05489)
6. Adjoining Neighbor, Nathan Reynolds (24 Warner Creek)
7. Neighbor, Nate Perham (13 Warner Creek, Underhill, VT 05489)
8. Neighbor, Albert Abdinoor (22 Warner Creek, Underhill, VT 05489)
9. Neighbor, Diana Abdinoor (22 Warner Creek, Underhill, VT 05489)
10. Attendee, Pete Grenier (Address Unknown)

J. At the outset of the hearing, Vice Chair Stacey Turkos explained the criteria under 24 V.S.A § 4465(b) for being considered an "interested party." Due to the length of the initial presentation, only the Applicant and the Applicant's Representative spoke during the initial hearing:

1. Applicant, Marty Baslow
2. Applicant's Representative, Richard Hamlin

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

1. Exhibit A – Baslow Preliminary & Final Subdivision Review Staff Report
2. Exhibit B – WC037 Preliminary & Final Subdivision Review Hearing Procedures
3. Exhibit C – Application for Subdivision
4. Exhibit D – Access Permit Application (A-20-04)

5. Exhibit E – Project Narrative
6. Exhibit F – BFP Notice
7. Exhibit G – WC037 Certificate of Service
8. Exhibit H – Baslow Sketch Plan Review Letter
9. Exhibit I – Draft Lot 5A Deed
10. Exhibit J- Subdivision Plan
11. Exhibit K – Overall Site Plan
12. Exhibit L – Lot 5A Site Plan
13. Exhibit M – Lot 5B Site Plan
14. Exhibit N – Lot 5A Wastewater Design
15. Exhibit O – Lot 5B Wastewater Design
16. Exhibit P – Lot 5B Driveway Profile

No additional materials were distributed to the Development Review Board prior to the hearing. The following exhibits were entered into the record at the beginning of the evening's hearing:

17. Exhibit Q – MMU Ability to Serve Letter
 18. Exhibit R – Access Permit (A-18-16)
 19. Exhibit S – UJFD Memorandum
- L. Due to the length of the Applicant's presentation, the Applicant and attending public acquiesced, and the Board voted, to continue to the evening's hearing to October 5, 2020. The hearing was continued and scheduled to a date and time certain in accordance with Section 5.2.B.3 of the *Unified Land Use & Development Regulations* – Monday, October 5, 2020 at 7:00 PM.
- M. In accordance with Act 92, the continued combined preliminary & final subdivision review hearing began at 7:05 PM on October 5, 2020 via the Go-To-Meeting Platform. A public gathering place was not established; the meeting was recorded.
1. The October 5, 2020 meeting agenda contained both a hyperlink to attend by computer, tablet or smartphone, as well as a dial-in phone number and access code allowing participation via telephone.
- N. Present at the remote continued combined preliminary & final subdivision review hearing were the following members of the Development Review Board:
1. Board Member, Stacey Turkos, Vice Chairperson
 2. Board Member, Penny Miller, Clerk
 3. Board Member, Shanie Bartlett, Alternate
 4. Board Member, Matt Chapek
 5. Board Member, Mark Green
 6. Board Member, Daniel Lee
 7. Board Member Karen McKnight

Also in attendance was Staff Member Andrew Strniste, Planning Director & Zoning Administrator. No other municipal or state representatives were in attendance.

Others present at the hearing were:

1. Applicant, Marty Baslow (37 Warner Creek, Underhill, VT 05489)
 2. Applicant's Representative, Richard Hamlin (37 Warner Creek, Underhill, VT 05489)
 3. Adjoining Neighbor, Thomas Cota (18 Warner Creek, Underhill, VT 05489)
 4. Adjoining Neighbor, Lindsay Reid (24 Warner Creek, Underhill, VT 05489)
 5. Adjoining Neighbor, Nathan Reynolds (24 Warner Creek)
 6. Neighbor, Albert Abdinoor (22 Warner Creek, Underhill, VT 05489)
 7. Neighbor, Diana Abdinoor (22 Warner Creek, Underhill, VT 05489)
- O. At the outset of the hearing, Vice Chair Stacey Turkos explained the criteria under 24 V.S.A § 4465(b) for being considered an "interested party." Those who spoke at the continued hearing were:
1. Applicant, Marty Baslow
 2. Applicant's Representative, Richard Hamlin
 3. Adjoining Neighbor, Thomas Cota
 4. Adjoining Neighbor, Lindsay Reid
 5. Adjoining Neighbor, Nathan Reynolds
 6. Neighbor, Diana Abdinoor
- P. Prior to the evening's hearing the following additional exhibits were submitted to the Development Review Board:
1. Exhibit T – Comments from Abdinoor
 2. Exhibit U – Response to Request for Information
 3. Exhibit V – Warner Creek Violation Documents (Nov 2016)
 4. Exhibit W – Warner Creek Decision DRB-17-01
 5. Exhibit X – Comments from Reid & Reynolds
- Q. During the hearing, the Board decided that more information and an additional site visit was required in order to make a determination about the application. As a result, a site visit at the subject property – 37 Warner Creek – was scheduled for Saturday, October 17, 2020 @ 9:00 AM. Additionally, the Board voted to continue to the evening's hearing to October 19, 2020. The hearing was continued and scheduled to a date and time certain in accordance with Section 5.2.B.3 of the *Unified Land Use & Development Regulations* – Monday, October 19, 2020 at 6:35 PM.
- R. The second site visit at the property's location (37 Warner Creek, Underhill, Vermont) commenced at 9:00 AM on Saturday, October 17, 2020.
- S. Present at the site visit were the following members of the Development Review Board:
1. Board Member, Stacey Turkos, Vice Chair
 2. Board Member, Penny Miller, Clerk
 3. Board Member, Matt Chapek
 4. Board Member, Mark Green
 5. Board Member, Daniel Lee
 6. Board Member, Karen McKnight

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

7. Applicant, Marty Baslow
 8. Landowner, Elizabeth Baslow
 9. Applicant's Representative, Richard Hamlin
- T. In accordance with Act 92, the continued combined preliminary & final subdivision review hearing began at 6:35 PM on October 19, 2020 via the Go-To-Meeting Platform. A public gathering place was not established; the meeting was recorded.
1. The October 19, 2020 meeting agenda contained both a hyperlink to attend by computer, tablet or smartphone, as well as a dial-in phone number and access code allowing participation via telephone.
- U. Present at the remote continued combined preliminary & final subdivision review hearing were the following members of the Development Review Board:
1. Board Member, Stacey Turkos, Vice Chairperson
 2. Board Member, Penny Miller, Clerk
 3. Board Member, Shanie Bartlett, Alternate
 4. Board Member, Matt Chapek
 5. Board Member, Mark Green
 6. Board Member, Daniel Lee
 7. Board Member Karen McKnight

Also in attendance were Staff Member Andrew Strniste, Planning Director & Zoning Administrator and Development Review Board Chair Person Charles Van Winkle. Since Chair Van Winkle had not participated in the previous hearings, and that the Board was full, he participated in the hearing as an observer/resident. No other municipal or state representatives were in attendance.

Others present at the hearing were:

8. Applicant, Marty Baslow (37 Warner Creek, Underhill, VT 05489)
 9. Applicant's Representative, Richard Hamlin (37 Warner Creek, Underhill, VT 05489)
 10. Neighbor, Albert Abdinoor (22 Warner Creek, Underhill, VT 05489)
 11. Neighbor, Diana Abdinoor (22 Warner Creek, Underhill, VT 05489)
- V. At the outset of the hearing, Vice Chair Stacey Turkos explained the criteria under 24 V.S.A § 4465(b) for being considered an "interested party." Those who spoke at the continued hearing were:
1. Applicant, Marty Baslow
 2. Applicant's Representative, Richard Hamlin
- W. Prior to the evening's hearing the following additional exhibits were submitted to the Development Review Board:
1. Exhibit K.1 – O-1 (Overall Site Plan)
 2. Exhibit L.1 – S-1 (Lot 5A Site Plan)
 3. Exhibit M.1 – S-2 (Lot 5B Site Plan)

4. Exhibit N.1 – D-1 DETAILS (Lot 5A Wastewater Design)
5. Exhibit O.1 – D-2 DETAILS (Lot 5B Wastewater Design)
6. Exhibit P.1 – DP-1 (Lot 5B Driveway Profile)
7. Exhibit X – SL-1 (Slope Plan)

Note: Exhibits titles that contain “.1” is an update to the original exhibit. For example Exhibit K.1 is an update to Exhibit K and is meant to supersede Exhibit K. Additionally, Exhibit X was mistakenly assigned to two exhibits: 1) Comments from Reid & Reynolds and 2) SL-1 (Slope Plan)

- X. During the hearing, the Board determined that additional information relating to Warner Creek Extension South was required prior to making a decision about the application. As a result, the Board voted to continue to the evening’s hearing to October 26, 2020 – a special meeting. The hearing was continued and scheduled to a date and time certain in accordance with Section 5.2.B.3 of the *Unified Land Use & Development Regulations* – Monday, October 26, 2020 at 6:00 PM.
- Y. In accordance with Act 92, the continued remote combined preliminary & final subdivision review hearing began at 6:00 PM on October 26, 2020 via the Go-To-Meeting Platform. A public gathering place was not established; the meeting was recorded.
 1. The October 26, 2020 special meeting agenda contained both a hyperlink to attend by computer, tablet or smartphone, as well as a dial-in phone number and access code allowing participation via telephone.
- Z. Present at the continued combined preliminary & final subdivision review hearing were the following members of the Development Review Board:
 1. Board Member, Stacey Turkos, Vice Chairperson
 2. Board Member, Penny Miller, Clerk
 3. Board Member, Shanie Bartlett, Alternate
 4. Board Member, Matt Chapek
 5. Board Member, Mark Green
 6. Board Member, Daniel Lee
 7. Board Member Karen McKnight

AA. Also in attendance was Staff Member Andrew Strniste, Planning Director & Zoning Administrator. No other municipal or state representatives were in attendance.

Others present at the hearing were:

1. Applicant, Marty Baslow (37 Warner Creek, Underhill, VT 05489)
2. Applicant’s Representative, Richard Hamlin (37 Warner Creek, Underhill, VT 05489)
3. Neighbor, Albert Abdinoor (22 Warner Creek, Underhill, VT 05489)
4. Neighbor, Diana Abdinoor (22 Warner Creek, Underhill, VT 05489)

BB. At the outset of the hearing, Vice Chair Stacey Turkos explained the criteria under 24 V.S.A § 4465(b) for being considered an “interested party.” Those who spoke at the continued hearing were:

1. Applicant, Marty Baslow

2. Applicant's Representative, Richard Hamlin
3. Neighbor, Diana Abdinoor

CC. Prior to the evening's hearing the following additional exhibits were submitted to the Development Review Board:

1. Exhibit Y – WW Permit (WW-4-5450)
2. Exhibit Z – Correspondence from Abdinoors

DD. All exhibits are available for public review in the WC037 Baslow Combined Preliminary & Final Subdivision Review file (DRB-19-10) at the Underhill Zoning & Planning office.

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

The Minutes of the September 21, 2020, October 5, 2020, October 19, 2020 and October 26, 2020 meetings, written by Staff Member Strniste, are incorporated by reference into this decision. Please refer to the minutes for a summary of the testimony. The recordings of the aforementioned Development Review Board meetings can also be viewed on the Mt. Mansfield Community Television's website:

September 21, 2020: <https://archive.org/details/underhill-drb-09212020> ,
October 5, 2020: <https://archive.org/details/underhill-drb-10052020>,
October 19, 2020: <https://archive.org/details/underhill-drb-10192020>,
October 26, 2020 (Special Meeting): <https://archive.org/details/underhill-drb-10262020>.

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, Marty Baslow, record owner of the property located at 37 Warner Creek (WC037) in Underhill, VT, is seeking a subdivision permit to subdivide the abovementioned land into two lots. The existing property is located on both the west and east sides of Vermont Route 15, and therefore, all references to the "subject property" shall refer to the land east of Vermont Route 15 unless otherwise stated. Additionally, the Board notes that the land east of Vermont Route 15 can be accessed from both Warner Creek Extension (the south branch) and Baslow Lane, which connects to Gert's Knob Road. The subject property was found to be entirely located in the Rural Residential zoning district as defined in Article II, Table 2.4. The Board notes that the land west of Vermont Route 15 is located in both the Rural Residential and Soil & Water Conservation zoning districts as defined in Article II, Tables 2.4 and 2.7, respectively, of the *Underhill Unified Land Use & Development Regulations*.

ARTICLE II – ZONING DISTRICTS

A. ARTICLE II, TABLE 2.4 – RURAL RESIDENTIAL

The Board finds that the proposed subdivision involves the division of a ±30.63 acre parcel of land into two lots: Lot 5A (a ±17.77-acre lot) and Lot 5B (a ±12.86-acre lot). Lot 5A is accessed via Warner Creek Extension and is anticipated to contain a single-family dwelling. Lot 5B is accessed via Baslow Lane and is anticipated to contain a seasonal dwelling. The two proposed

lots (Lots 5A & 5B) and anticipated development (a single-family dwelling and seasonal dwelling) are expected to conform with the purpose statement, the setback requirements, building coverage requirements and lot coverage requirements of the Rural Residential District.

The Board finds that the proposed Lot 5A is considered a lot at the end of a dead-end private road, and therefore, in accordance with Sections 3.7.F.3.c and 8.6.A.2.c, the Board is allowed to waive the required frontage along a right-of-way or road way.

In regards to the Lot 5B frontage requirement, the subject property has ±878 ft. of frontage along the Baslow Lane right-of-way. Baslow Lane, by definition, is considered a shared driveway with a legal right-of-way to access the other Baslow Lane properties, and, therefore, per Section 3.7.E.2 can be used to meet the frontage requirement for Lot 5B. This assertion is supported by the property numbering system on the Vermont State E-911 website, though not a Town source of information.

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

When reviewing the Town's digital zoning map, which is the best interpretation of the Town's 1985 hand-drawn zoning map, the subject lot is bisected by the Soil & Water Conservation District towards the east part of the lot. The Board finds that the Applicant has submitted supporting documentation (see Exhibit K.1) illustrating that the Lot is not within the Soil & Water Conservation District. As a result, the Board finds that review under this section, and the standards relating to the Soil & Water Conservation District, do not apply.

As noted in the project synopsis above, the land west of Vermont Route 15 is located in both the Rural Residential and Soil & Water Conservation zoning districts; however, since the proposed project does not involve that land, the Board continues to find that review under this section, and the standards relating to the Soil & Water Conservation District, do not apply.

ARTICLE III – GENERAL REGULATIONS

A. SECTION 3.2 – ACCESS

The Board finds that the Applicant has satisfied the requirements of this section, noting that there are specific exemptions and circumstances warranting only modest improvements to existing access way infrastructure. Additionally, both driveways meet the setback requirements of 12 ft., as required under Section 3.2.B.7.

Lot 5A is expected to be accessed from the south branch of the Warner Creek Extension, a private road, which connects to Vermont Route 15, a State Highway. There are currently four (4) residences being served by Warner Creek Extension; however, there are only two residences being served by the southern branch of the extension. The anticipated single-family dwelling on Lot 5A will be the third dwelling unit being served by the southern branch of Warner Creek Extension and will be the last curb cut on the branch. Normally, the creation of a new lot would require the widening of the existing shared driveway and/or development Road as outlined under Section 5 of the *Underhill Road, Driveway and Trail Ordinance*. The Board agrees with the Applicant's assertion and finds that the Selectboard had the opportunity to require the Applicant to widen Warner Creek Extension South at the time it issued Access Permit #: A-18-16 (Exhibit R) in the summer of 2018, but did not impose that requirement and so, by inference, accepted the existing roadway width. In addition, the Applicant testified that the width of the Warner Creek Extension South averages 18 ft. for the length of road where Warner Creek Extension splits to the north and south to where the residents' driveway at 22 Warner Creek is located. The Board finds that the Applicant is substantially in conformance

with the width requirement, and further widening would likely result in significant disturbance to current drainage measures..

Lot 5B will be accessed via Baslow Lane, a private road, which connects to Gert's Knob, a Class III Town Highway, that connects to Vermont Route 15, a State Highway. There are currently three (3) residences being served by Baslow Lane. The proposed lot and anticipated seasonal dwelling will serve as the fourth residence along Baslow Lane, which will be the second curb cut along the private road. The Board finds the Applicant's testimony relating to the Section 3.18.D.3 exemption persuasive, and adopts the rationale with limitations. Section 3.18.D.3 states:

An existing farm or logging road with a gradient of 25% or less may be converted and upgraded for recreational use or to access development if it meets all applicable requirements of these regulations. However, if an alternative route exists that results in less slope or site disturbance, the DRB may require the installation of a new driveway or access road and the stabilization, re-vegetation and abandonment of the farm or logging road.

The Applicant produced information illustrating that the existing logging road was less than a 25% gradient, and therefore, finds that the road can be converted to a driveway to serve the proposed seasonal dwelling. However, the Board only permits this exemption to be used in the context of serving a seasonal dwelling. As testified during the hearing, the Applicant is proposing to retain the natural environment in the vicinity, and as a seasonal dwelling, this identified exemption will help achieve that objective.

Should the seasonal dwelling at any point be converted to a year-round single-family dwelling, the Applicant will be required to upgrade the driveway to meet the requirements of the Road Ordinance. In addition, a review of the conversion of use (seasonal dwelling to a year-round single-family dwelling), as well as reviews of the driveway design and impact to steep slopes will be required by this Board.

The Board notes that the Applicant submitted an Access Permit Application (Access Permit #: A-20-04; Exhibit D), which the Board approves. Specifically, the approval of that permit includes the following:

- Access approval for the proposed single-family dwelling at Lot 5A – 37 Warner Creek (WC037);
 - *(The driveway serving Lot 5A shall be upgraded to B-71 Standards if not already done)*
- Acknowledgement that no modifications or upgrades to Warner Creek are required;
- Access approval for the proposed seasonal dwelling at Lot 5B – to be assigned as 8 Baslow Lane (BS008);
 - *(The access way shall be constructed/upgraded as presented during the hearing, which includes the parking area at the terminus of the driveway)*
- Due to environmental concerns, and the fact that the Applicant is proposing a seasonal dwelling, upgrades to Baslow Lane are not required, as those modifications and improvements are found to be too intensive, intrusive and invasive to the environment. This is not meant to be precedent-setting for subdivisions involving year-round single-family dwellings. The Board finds seasonal dwellings present unique circumstances

that MAY not require the same driveway and road standards that would apply to year-round-use dwellings.

The Board notes that the Selectboard has delegated authority to approve access permits to this Board when reviewing applications involving access components. See Part III of this decision for more information relating to the access permit and access requirements.

SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS

The Board finds that one principal use/structure is anticipated for each lot: Lot 5A (37 Warner Creek) is proposed to be a single-family dwelling, while Lot 5B (8 Baslow Lane) is proposed to be a seasonal dwelling unit. With one principal use/structure per lot proposed, the project will conform to the requirements under this section. During the Board's review, the Applicant, at the recommendation of the Board, reduced the size of the building envelopes for reasons stated under Section 8.2.G of this decision. With the reduction in the size of the building envelopes, the Board finds that any proposed development will easily satisfy the setback requirements of the Rural Residential District. Regarding the lot sizes of each proposed lot, both lots easily satisfy the 3.0 acreage requirement of the Rural Residential District (Lot 5A: ±17.77 acres; Lot 5B ±12.86 acres). Lastly, for the reasons outlined above, under the heading Article II Table 2.4, both lots satisfy the frontage requirement (specifically noting that the frontage requirement for Lot 5A has been waived in accordance with Sections 3.7.F.3.c and 8.6.A.2.c). Therefore, the Board finds that both lots satisfy the dimensional standards of the Rural Residential District.

Additionally, the Board finds that both proposed lots will be irregularly shaped, thus not conforming with Section 8.2.F.5. However, for the reasons discussed under Section 8.2.F.5, the Board finds that the Applicant is not exacerbating the irregularity with the proposed subdivision, as the parent lot and entirety of Lot 5 is encumbered by its pre-existing irregular shaped that resulted from the creation of 19 Baslow Lane. These events contributed to the current circumstances; however, in this case, the Board agrees with the Applicant's analysis that the proposed subdivision of Lot 5 will make two lots that are less irregular than what currently exists.

B. SECTION 3.13 – PARKING, LOADING & SERVICE AREAS

The Board finds that Lot 5A is proposed to be developed with a single-family dwelling, while Lot 5B is proposed to be developed with a seasonal dwelling. Single-family dwellings are required to have two parking spaces. While not explicitly illustrated on the proposed site plan, the Board finds that the ability to provide for these spaces is achievable and confirmed during the zoning permitting process. In regards to Lot 5B, this Section does not contain a parking requirement for seasonal dwellings. However, the Applicant has provided four parking spaces (see Exhibit P.1). The Board finds the Applicant has satisfied the parking requirement, and this will be confirmed by the Zoning Administrator during the zoning permitting process.

C. SECTION 3.17 – SOURCE PROTECTION AREAS

The Board finds that the subject lot is not located in a Groundwater Source Protection Area, nor is the subject lot located in the vicinity of a public water source. As a result, review and analysis under this Section is not necessary.

D. SECTION 3.18 – STEEP SLOPES

The Board finds that both proposed lots will contain areas of steep slopes (15%-25%) and very steep slopes (>25%). The Applicant has identified a building envelope on Lot 5A that is largely out of the steep slopes areas (see Exhibit X). Regarding Lot 5B, the identified building envelope

is largely outside of very steep slope areas, although areas of steep slope exist within the building envelope; however, where the Applicant is proposing to construct the seasonal dwelling within the building envelope is in an area that is identified to have slopes under 15%.

Furthermore, the Board has performed an extensive review regarding the impact to steep slopes, specifically in regards to the driveway and the septic line from the proposed seasonal dwelling and the septic system. In regards to the septic line, the Board finds that the impact to the steep slopes and very steep slopes to be minimal, if any. The Applicant testified, and is proposing, to navigate the septic line through the forest with minimal removal of existing vegetation, burying the line under the ground, and then mitigating the disturbance by replacing the earth-materials that were removed during construction of the septic line (see Exhibits M.1 & O.1). The area of disturbance is to be approximately six feet wide centered on the septic line; however, is expected to be restored to its natural state once installed.

Regarding the driveway to serve Lot 5B, as outlined under Section 3.2 above, the Road Ordinance typically requires upgrades to a driveway associated with a dwelling unit; however, there is an exemption under Section 3.18.D.3 for existing logging roads with a gradient of 25% or less. Therefore, upgrades to the driveway itself are not required, meaning there will be little to no impact to the existing steep slopes. While no upgrades to the driveway itself are required due to the exemption, the Board finds that the Applicant is proposing to install a parking area containing four parking spaces in an area containing some steep slopes. This impact is relatively minimal and not expected to have a substantial impact to the immediate and surrounding areas. As proposed, the driveway serving Lot 5B is expected to end immediately after the parking area, leaving a sizeable distance from the parking area to the proposed site of the seasonal dwelling unit. No upgrades to this area are expected, and the Board finds that the exemption under Section 3.18.B.1.h applies, which states:

Unpaved paths or trails incidental a residential use that are maintained for use only by residents of the property and guests (see Section 10.2).

Therefore, after a thorough review to the impacts to steep slopes, the Board finds that the impact to steep slopes and very steep slopes is minimal, and those areas that will be impacted will be mitigated. As a result, the Board finds that the Applicant has met the requirements of this Section.

E. SECTION 3.19 – SURFACE WATERS & WETLANDS

The Creek is located in the western portion of the subject property and runs in a south to north direction, and is located only on the proposed Lot 5A. Since the Creek is a “named” surface water with an associated floodplain, the setback requirement from the Creek is 100 ft. from the “top of bank.” The Board finds that the proposed building envelope on the western plateau of Lot 5A may not satisfy the 100 ft. setback requirement (see Exhibit K.1) and shall be updated, if necessary, to comply with the required setback. The Board finds that the anticipated location of the proposed single-family dwelling on Lot 5A satisfies the setback requirement from the surface water and associated floodplain. Lot 5B does not contain any surface waters and comfortably satisfies the setback requirement from the Creek.

Additionally, a significant Class II Wetlands exists on the subject lot, more specifically, on the proposed Lot 5A (see Exhibit K.1). The identified wetlands encompass the Creek, on the western edge of Lot 5A, running in a south to north direction. Class II Wetlands have a 50 ft. setback requirement, which the Applicant has allowed for by depicting the building envelope on

the western plateau to be at least 50 ft. from the wetlands. No wetlands have been identified on Lot 5B, and therefore, proposed development is expected to satisfy the setback requirements under this subsection.

The Board notes that the Applicant has offered to subsequently subdivide the land containing the Creek and associated wetlands and transfer that area to the Town of Underhill. However, the Applicant explicitly stated that subdividing would need to be at the expense of the Town. The Board appreciates this gesture and encourages the Applicant to approach the Selectboard about the potential transfer, as the Selectboard is the public body that handles the acquisition of land.

F. SECTION 3.23 – WATER SUPPLY & WASTEWATER SYSTEMS

The Board finds that the Applicant submitted and obtained a Wastewater System & Potable Water Supply Permit from the Vermont Agency of Natural Resources, Department of Environmental Conservation (see Exhibit Y; Permit #: WW-4-5450, dated October 12, 2020). The permit allows for a system that will serve a four-bedroom single-family dwelling on Lot 5A and a two-bedroom single-family residence on Lot 5B. Both lots are to be served by their own individual on-site drilled wells and on-site wastewater disposal systems.

ARTICLE VI – FLOOD HAZARD AREA REVIEW

- A. The Board finds that a Special Flood Hazard Area – Zone A is located on the subject lot, specifically on the proposed Lot 5A. The Special Flood Hazard Area is in the same vicinity as the Creek and Class II Wetlands, on the western edge of the subject property, running in a north to south direction. The Board finds that development in this area is extremely unlikely due to the Creek and Class II Wetlands, and that the proposed building envelope for Lot 5A is outside the identified flood hazard area. 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 Applicant’s 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 September 16, 2019 (Exhibit H).

B. SECTION 7.3 – SKETCH PLAN REVIEW

The Board finds that the Applicant adequately satisfied the conditions of acceptance provided in the Sketch Plan Review Letter issued on September 16, 2019 (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 Applicant was permitted to combine preliminary and final subdivision review. As a result, the Applicant 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 Applicant generally addressed many of the comments and concerns identified in the sketch plan review decision. 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 no technical review is needed for this proposed project. The Board also finds that the Applicant has explicitly requested one waiver: 1) to waive the requirement to upgrade the driveway that is to serve Lot 5B; and have implicitly requested two waivers: 1) to waive the frontage requirement for both lots should the Board find that the lot frontage is not satisfied and 2) a waiver permitting an irregular shaped lot.

B. SECTION 8.2 – GENERAL STANDARDS

SECTION 8.2.A – DEVELOPMENT SUITABILITY

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 or where the anticipated development is to be located. The Applicant has 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 Rural Residential zoning district.

SECTION 8.2.C – EXISTING SITE CONDITIONS

The Applicant has proposed a subdivision layout and design that considered many of the existing site features and natural amenities listed in this Section. Specifically, the following features appear to have been avoided: naturally occurring surface waters, wetlands and vernal pools (§ 8.2.C.2); mapped flood plains, also known as Special Flood Hazard Areas (§ 8.2.C.3); unique topographic or geologic features (§ 8.2.C.5); primary agricultural soils (§ 8.2.C.6); and historic sites and structures (§ 8.2.C.7).

Natural topography and drainage patterns (§ 8.2.C.1) do not appear to have been significantly impacted, as testified to during the hearing and outlined in Section 3.18 above. While there will be some impact to the natural vegetative cover (§ 8.2.C.4) as a result of clearing for the construction of the dwellings, the impact appears to be minimal and consistent with other residential projects of this nature. Natural topography and drainage patterns (§ 8.2.C.1) do not appear to have been significantly impacted, as testified to during the hearing and outlined in Section 3.18 above. While there will be some impact to the natural vegetative cover (§ 8.2.C.4) as a result of clearing for the construction of the dwellings, the impact appears to be minimal and consistent with other residential projects of this nature.

For Lot 5A, the Board finds that the two building envelopes define the limits of clearing; however, at the primary residence building envelope's south boundary where Lot 5A abuts Lot 5B, clearing can occur within the 50 ft. setback. Note that, critically, the 75 ft. undisturbed vegetative buffer between Lot 4 (24 Warner Creek) and the north boundary of the primary building envelope must be maintained as discussed at the hearing and agreed to by the Applicant.

For Lot 5B, the Board finds that the building envelope defines the limits of clearing, and, further, clearing within the building envelope is limited to slopes less than 15%. In addition, Lot 5B may have a cleared 6 ft. width centered on the septic line.

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 proposed 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 Applicant was able to submit supporting documentation that the subject property is not located in that zoning district. While the parent lot also contains land west of Vermont Route 15 that are located within the Soil & Water Conservation District, the Board finds that that land is not impacted by the subject of this application, and therefore, review under this subsection is not required.

SECTION 8.2.F – LOT LAYOUT

The Board finds that the proposed subdivision conforms with Subsections 8.2.F.1 – 8.2.F.3. Regarding frontage, which pertains to Subsection 8.2.F.4, see further information above, under the headings Article II Table 2.4 and Section 3.7. In regards to Subsection 8.2.F.5, the Board finds that Lots 5A and 5B will be irregularly shaped; however, the Board notes that the subject lot was irregularly shaped prior to the current subdivision application due to the creation of 19 Baslow Lane. The Board agrees with the Applicant's assessment that the creation of Lots 5A and 5B results in properties that are less irregularly shaped than what currently exists.

SECTION 8.2.G – BUILDING ENVELOPE

The Applicant has illustrated building envelopes on both Lots 5A and 5B, which are significantly more restrictive than what the minimum standards allow – the minimum standards being the setback requirements of the Rural Residential District. The Board finds that the established building envelopes depicted in Exhibits K.1, L.1 and M.1 shall not be altered or modified unless done so by this Board. In other words, the Development Review Board has not delegated administrative authority to amend the depicted building envelopes.

For clarification purposes, the Lot 5A building envelope was reduced in size to take into consideration the Creek, wetlands and floodplains to the west; to create a greater buffer between the proposed development site and Lot 4 (24 Warner Creek) to the north; and to avoid development on steep slopes to the east. In regards to Lot 5B, the building envelope was reduced in size in order to avoid steep slopes and very steep slopes that are prominent on the lot. For notation purposes, both lots contain two separate areas to site development.

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 both development sites are surrounded by vegetation, thus creating a natural screening buffer from the adjacent neighbors. The Board finds that all clearing shall be contained to the identified building envelopes in Exhibits K.1, L.1 and M.1, with the restrictions noted in Section 8.2.C above, and finds that the area between the Lot 5A building envelope and property boundary with Lot 4 shall remain undisturbed, though routine maintenance of woodlands is allowed - clearing dead vegetation, etc. Therefore, no adverse impact to the existing landscaping and vegetation is expected to occur.

SECTION 8.2.J – ENERGY CONSERVATION

The Board finds that the Applicant is proposing that the seasonal dwelling Lot 5B utilize various renewable resources and therefore, presumes that the lot is situated in a manner to promote energy conservation.

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 Applicant 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 the Creek, Class II Wetlands and a Special Flood Hazard Area on Lot 5A, immediately adjacent to Vermont Route 15. The Applicant has identified a building envelope that will not encroach on these environmental features, and therefore, no adverse impacts to these areas are expected. For more information relating to surface waters and wetlands, see Section 3.19 above; for more information relating to floodplains, see Article VI 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 on both proposed Lots (see Exhibit X). The Applicant has depicted a building envelope that minimizes impacts in these areas, and therefore, there is no foreseen adverse impact. 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 5 habitat located on both lots – Lots 5A & 5B (see Page 14, Exhibit A). The proposed development on both Lots will further impact the habitat block, most likely causing a reduction in size of the habitat block.

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 (along the Creek; in a similar area as the identified Class II Wetland);
- Highest Priority Landscape Scale (in a similar area as the priority 5 habitat block);
- Class II Wetlands (see Exhibit K.1);
- Highest Priority Wildlife Crossing (along Vermont Route 15);
- Riparian Wildlife Connectivity (in a similar area as the identified Class II Wetlands);
- Priority Surface Waters & Riparian Areas (along Vermont Route 15);

- Highest Priority Interior Forest Block (on the portion of the lot west of Vermont Route 15)
- Priority Interior Forest Block (in a similar area as the identified priority level 5 habitat block);
- Highest Priority Connectivity Block (in a similar area as the identified habitat blocks);
- Highest Priority Surface Water and Riparian Areas (in a similar area as the identified Class II Wetlands);
- Representative and Responsibility Physical Landscapes (in a similar areas as the identified habitat blocks).

Though some or all of these areas may be located on the proposed lots, there are no regulations that specifically prohibit development in these areas. Nevertheless, the Applicant has continuously testified throughout the various hearings that he would like to minimize the impact to the environment.

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 local agricultural soils, which is largely contained on Lot 5A along the Creek, overlapping the Class II Wetlands. The Board finds that development in this area is very unlikely. While future impact to these areas is feasible, there is no 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 vast swaths of forestland. The Board finds that that the Applicant is proposing building envelopes that are significantly reduced, which will help minimize the impact to forestlands. In addition, the Board finds that clearing is restricted to areas of less than 15% slope within the building envelopes and shall not occur outside of these areas.

D. SECTION 8.4 – OPEN SPACE & COMMON LAND

SECTION 8.4.A – OPEN SPACE

The Board finds that the Applicant has offered to transfer the land containing the Creek and Class II Wetlands to the Town for conservation purposes, but has explicitly stated that the Town would have to cover the expenses of a subsequent subdivision application. The Board encourages the Applicant to engage with the Selectboard since they are the public body that oversees the acquisition of land. However, for purposes of this application, 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.

E. SECTION 8.5 – STORMWATER MANAGEMENT & EROSION CONTROL

The Board finds that the Applicant shall adhere 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, as testified to by the Applicant's engineer, 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 will be served by their own driveways which are accessed from different private development roads. Lot 5A driveway, which bisects 24 Warner Creek (WC024), will access Warner Creek Extension, a private road, which connects directly to Vermont Route 15, a State highway. Lot 5B driveway will access Baslow Lane, a private road, which connects directly to Gert's Knob Road, a Class III Town Highway, which also connects to Vermont Route 15. For the reasons stated under Section 3.2, the Board finds that minimum upgrades and improvements are required as a result of this application. Nevertheless, since each proposed access way will serve its own individual lot, 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 Part III of this decision for more information as it relates to the *Underhill Driveway, Road & Trail Ordinance*.

SECTION 8.6.B – DEVELOPMENT ROADS

For the reasons stated under Section 3.2 above, no modifications to Warner Creek and Warner Creek Extension are required. In addition, the Board finds that the only improvements required for Baslow Lane are outlined under Section 3.2. Since no new development roads (an access way serving four or more lots) are being proposed as a part of this application, the Board finds that this subsection does not apply and review is not required.

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. Mount Mansfield Unified School District confirmed that there will not be an adverse impact on the school district. The Road Foreman did not provide any comments indicating that the proposed development would create an adverse impact on the Town's roadway network.

SECTION 8.7.B – FIRE PROTECTION

The Board finds that the proposed Lot 5A is not expected to create an undue burden on the ability of the Underhill-Jericho Fire Department to provide fire protection services. However, the Applicant and/or their successors shall not expect fire protection services for any development on Lot 5B, nor is the fire department likely to provide those services. The Underhill-Jericho Fire Department has explicitly advised that they will not be able to serve the property, mainly due to the unfinished nature of the driveway and the existing slopes that exceed 10%. Furthermore, the Board notes that since the Applicant is seeking to utilize the exemption under Section 3.18.D.3, the Underhill-Jericho Fire Department is unlikely to attempt fire protection services on any portion of the driveway to serve Lot 5B –due to the Applicant’s intention to preserve the primitive nature of the majority of the woods road. In addition, the proposed “driveway” serving Lot 5B is not expected to extend to the location of the proposed seasonal dwelling. While there is no known requirement that a driveway extend to its respective dwelling unit, the Board acknowledges the obstacle that significant distance between the two creates in providing fire protection services – as presented in this application.

SECTION 8.7.C – WATER SYSTEMS

The Board finds that the Applicant has obtained a Wastewater System & Potable Water Supply Permit (Exhibit Y; Permit #: WW-4-5450) from the Agency of Natural Resources, Department of Environmental Conservation, on October 12, 2020. The permit allows for an on-site drilled well for each lot, specifically for a four-bedroom, single-family dwelling on Lot 5A and a two-bedroom, single-family dwelling on Lot 5B.

SECTION 8.7.D – WASTEWATER SYSTEMS

The Board finds that the Applicant has obtained a Wastewater System & Potable Water Supply Permit (Exhibit Y; Permit #: WW-4-5450) from the Agency of Natural Resources, Department of Environmental Conservation, on October 12, 2020. The permit allows for on-site wastewater disposal systems for each lot, specifically an in-ground system for each dwelling.

SECTION 8.7.E – UTILITIES

The Board finds that the Applicant only expects utilities to be required for Lot 5A, as the Applicant is proposing the dwelling unit on Lot 5B to be self-sufficient. Specifically, the Applicant testified to extending the existing utilities on Lot 4 (24 Warner Creek) to Lot 5A, while the Applicant is expecting to use renewable energy for the dwelling unit on Lot 5B. Where possible, the Board encourages the Applicant or his 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 Applicant has submitted a draft deed for Lot 5A (see Exhibit I) referencing the Warner Creek Homeowners’ Association and Road Maintenance Agreement. The Board encourages the Warner Creek Homeowners’ Association to accept the new lot, Lot 5A, into the Homeowners’ Association and participate in the existing Road Maintenance Agreement. Similarly, the Board encourages the Baslow Lane residents to accept Lot 5B into whatever arrangement exists, if any, as it relates to Road Maintenance Agreement, as the Board recognizes that they cannot force private parties to amend an agreement to involve another private party.

Unrelatedly, the Board finds that the Applicant was amenable to a deed restriction on Lot 5A that would prohibit subsequent subdividing. The Board accepts and appreciates the Applicant’s willingness to add this as a deed restriction, and therefore, finds that Lot 5A shall not be

subsequently subdivided.

While not required to be a deed restriction, as outlined above, should the Applicant or their successors wish to utilize Lot 5B for another use besides a seasonal dwelling, they are required to come before this Board for additional review, especially in regards to upgrading the driveway to whatever requirements are adopted by the Town of Underhill at that time.

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

The Board finds that the Applicant has submitted an access permit application (Exhibit D; A-20-04) at the direction of Staff. The Board agrees that an access permit is required, but not to the extent as originally anticipated. The Board approves Access Permit #: A-20-04, and finds that the permit specifically applies to the following:

- Access approval for the proposed single-family dwelling at Lot 5A – 37 Warner Creek (WC037);
 - *(The driveway serving Lot 5A shall be upgraded to B-71 Standards if not already done)*
- Acknowledgement that no modifications or upgrades to Warner Creek are required;
- Access approval for the proposed seasonal dwelling at Lot 5B – to be assigned as 8 Baslow Lane (BS008);
 - *(The access way shall be constructed/upgraded as presented during the hearing, which includes the parking area at the terminus of the driveway)*
- Due to environmental concerns, and the fact that the Applicant is proposing a seasonal dwelling, upgrades to Baslow Lane are not required, as those modifications and improvements are found to be too intensive, intrusive and invasive to the environment. This is not meant to be precedent-setting for subdivisions involving year-round single-family dwellings. The Board finds seasonal dwellings present unique circumstances that MAY not require the same driveway and road standards that would apply to year-round-use dwellings.

Review relating to the *Underhill Road, Driveway & Trail Ordinance* is provided directly below.

A. SECTION 4 – GENERAL PROVISIONS RELATING TO ACCESSWAYS

SECTION 4.B – REASONABLE ACCESS

The Board finds that Lot 5A will be accessed from Warner Creek, a private road that directly connects to Vermont Route 15, a State highway. Lot 5B will access Baslow Lane, also a private road, which connects to Vermont Route 15, a State highway, via Gert's Knob, a Class III Town highway. Therefore, the Board finds that both lots will have reasonable access.

SECTION 4.C – DEVELOPMENT ROAD & DRIVEWAY STANDARDS

In reviewing standards for development roads and driveways, the Board shall review the following subsections:

SECTION 4.C.1 – GRADES

The Board finds that the grades relating to the Lot 5A driveway will not exceed a grade of 10%, and therefore, satisfies the requirements of this subsection. On the other hand, Lot 5B will contain grades greater than 10%; however, the Board finds that Applicant qualifies for an exemption under Section 3.18.D.3 of the *Unified Land Use & Development Regulations*,

and therefore, this section is not applicable at this time. Should the Applicant or his successors use the property (Lot 5B) for anything other than a seasonal dwelling, then further Board review is required with emphasis on upgrading the driveway to B-71 standards and grades.

SECTION 4.C.2 – TOPOGRAPHY

The Board finds that the driveway serving Lot 5A satisfies the requirements of this section. The driveway serving Lot 5A is largely existing and was more or less approved by the Selectboard in 2018 (see Exhibit R; Access Permit #: A-18-16). Regarding the driveway serving Lot 5B, since the exemption under Section 3.18.D.3 of the *Unified Land Use & Development Regulations* was invoked, thereby allowing the Applicant to forgo making improvements, the Applicant is not required to adhere to the standards under this section at this time. As provided above, should the Applicant or his successors use the property (Lot 5B) for anything other than a seasonal dwelling, then further review is required with this section in mind.

SECTION 4.C.3 – RADII

The Board finds that a 35 ft. turning radii at the curb cut is excessive, and therefore, does not require the turning radii to meet the 35 ft. radii requirement. Additionally, the Board finds that the only sections of the driveways needing to adhere to the turning radii standards are the turnaround area for Lot 5A. The Applicant shall continue to assure that emergency vehicles can turnaround safely at the terminus of the driveway. In regards to Lot 5B, as stated above in Part II, Section 8.7.B – Fire Protection Services, the Board finds that emergency services are unlikely to provide assistance due to the unfinished nature of the driveway. Additionally, since the exemption under Section 3.18.D.3 of the *Unified Land Use & Development Regulations* was invoked, and no modifications or upgrades are required, further review under this section is not required.

SECTION 4.C.4 – CURBS

The Board finds that the Applicant is not proposing any curbing, and therefore, is consistent with this subsection, as curbing is only permitted within the Underhill Flats Village Center District.

SECTION 4.C.5 – GEOTEXTILES

The Board finds that the Applicant shall adhere to the requirements of this subsection upon constructing and modifying the driveways.

SECTION 4.C.6 – DRAINAGE

The Board finds that the Applicant shall avoid drainage onto adjacent properties and into the private roadways and Town Highway. In the event that drainage issues occur, the Board reserves the right to review the project for corrective measures as it relates to drainage.

SECTION 4.C.7 – SLOPES, BANKS & DITCHES

The Board finds that the Applicant has not provided information relating to banks or ditches, but testified to not requiring any improvements, especially in regards to stormwater. Nevertheless, the Board finds that upgrades and modifications to the proposed driveways and existing roadway infrastructure to be minimal, and thus review and analysis under this Section are not required.

SECTION 4.C.8 – WET AREAS

The Board finds that the proposed and existing infrastructure does not impact any wet areas or impact existing wetlands, as provided in this section, and therefore, additional review and analysis under this section are not required.

SECTION 4.C.9 – CULVERTS

The Board finds that the Applicant testified to not requiring any additional culverts. Nevertheless, the Board finds that upgrades and modifications to the proposed driveways and existing roadway infrastructure to be minimal, and given the testimony of the Applicant, review and analysis under this Section are not required.

SECTION 4.C.10 – STREAM CROSSINGS

The Board finds that this subsection does not apply as the proposed project does not involve any stream crossings.

SECTION 4.C.11 – BRIDGE

The Board finds that this subsection does not apply as the proposed project does not involve bridges.

SECTION 4.C.12 – DESIGN

The Board finds that the parking area and the curb cuts shall have a clear unobstructed height of at least 13 ft., 6 inches. The Board finds the Applicant is proposing a turnaround area for emergency services at the end of the driveway for Lot 5A. For the reasons stated above, a turnaround area has not been provided for Lot 5B. Since the Board finds that upgrades and modifications to the proposed driveways and existing roadway infrastructure to be minimal due to the invoked exemption and reasons stated above, the requirements relating to the length of the driveway do not apply.

B. SECTION 5 – SPECIFIC PROVISIONS: DRIVEWAYS & DEVELOPMENT ROADS

SECTION 5.A – DRIVEWAYS

Regarding the standards for driveways, the Board reviews the following subsections:

SECTION 5.A.1 – CONSTRUCTION & DESIGN REQUIREMENTS

For the reasons outlined above, the Board finds that upgrades and modifications to the proposed driveways and existing roadway infrastructure to be minimal. The Board requires the Applicant to ensure that the driveway serving 37 Warner Creek (from 24 Warner Creek onward) to conform with the AOT B-71 standards. Since the exemption under Section 3.18.D.3 of the *Unified Land Use & Development Regulations*, is invoked, the Board finds that additional improvements and modifications for the Lot 5B driveway are not required.

SECTION 5.A.2 – LOCATION

The Board finds that the each lot will be served by one curb cut: Lot 5A will be accessed from Warner Creek Extension South while Lot 5B will be accessed from Baslow Lane.

SECTION 5.A.3 – WIDTHS

The Board finds that the Applicant has demonstrated that each lot will be served by a driveway that satisfies the width requirements – 12 ft.

Regarding Lot 5A access, as outlined above, the part of Warner Creek Extension that diverges to the south serves three (3) dwelling units/lots. Normally, the Applicant would be required to widen the road to, or ensure that the road is, 20 ft. from the location where Warner Creek Extension splits into two different branches to the driveway serving 22 Warner Creek (Lot 2); however, for the reasons outlined in Part II, Section 3.2 above, the Board finds that the Applicant can forgo this requirement.

Regarding Lot 5B access, as currently proposed as a seasonal dwelling, upgrading and improving Baslow Lane is not required for the reasons outlined in Part II, Section 3.2 and the introductory paragraph to Part III of this decision. Should the Applicant or his successors convert or propose something other than a seasonal dwelling for Lot 5B, then the requirements relating to road widths will be applied to Baslow Lane at that time, meeting the requirements of the *Underhill Road, Driveway and Trail Ordinance*.

SECTION 5.A.4 – NONCONFORMING LOTS:

The Board finds that this section does not apply, as both proposed lots are conforming with the requirements of the Rural Residential District.

SECTION 5.B – DEVELOPMENT ROADS

The Board finds that both Baslow Lane and Warner Creek Extension are already existing. Regarding Lot 5A access, for the reasons outlined above, additional upgrades and improvements to Warner Creek Extension and Baslow Lane not required at this time.

PART IV. EXEMPTIONS, WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS

The Board finds the following exemptions apply or grants the following waivers/modifications:

1. The Board waives the requirement of upgrading the driveway serving Lot 5B in accordance with Section 3.18.D.3, as the Board agrees with the Applicant's rationale regarding the existing logging road to access development – a proposed seasonal dwelling. In addition, the Board finds that Section 3.18.B.1.h applies, permitting the Applicant to utilize the unpaved path to access the seasonal dwelling.
 - a. The Board notes that the Applicant shall not expect emergency services to serve Lot 5B, as the Underhill-Jericho Fire Department has indicated that they would not be able to provide service due to steep slopes. The Board further notes the unfinished nature of the driveway and the lack of a turnaround area at the terminus of the driveway.
2. The Board finds that the installation of the septic line serving Lot 5B that will traverse steep slopes (15%-25%) and very steep slopes (>25%) is exempt from steep slopes review under Section 3.18.B.3.b, as the Board agrees and finds the proposed septic line construction will involve minimal site disturbance and poses a negligible threat to water quality, public roads and facilities, and to adjoining properties.
3. The Board waives the frontage requirement for Lot 5A (37 Warner Creek) in accordance with Section 3.7.F.3.c, as the lot is located at the end of a dead-end road.
4. The Board waives the irregular lot standard provided in Section 8.2.F.5 for the reasons stated under Section 3.7 above.

PART 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. Similarly, the Board appreciates the Applicant's willingness to evaluate the feasibility of developing Lot 5B at this time rather than deferring review to a later time, thus ensuring that an undevelopable lot will not be created. The Board thoroughly reviewed all aspects of the proposal under the evaluation of the *Underhill Land Use & Development Regulations* and *Underhill Road, Driveway & Trail Ordinance* 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. **Application Fees.** 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*.
2. **Recording.** Only the subdivision plat "SP-1 Subdivision Plat" shall be submitted for recordation in the Underhill Land Records. The plat shall include parcel codes (see below) and shall be submitted for recording within 180 days of the date of this approval (**December 10, 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 **June 8th, 2020**.
3. **Monumentation.** The Applicant shall ensure that the proposed property monumentation for that lot shall be installed as defined on the recordable Mylar.
4. **Transfer of Land.** 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
5. **Subdivision of Land.** 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.**Subdivision Drawings – Revisions & Submission.** The Applicant shall submit two full-size and two 11 inch by 17 inch hardcopies of the drawing set, in addition to digital pdf copies, to the Zoning Administrator to be filed in the corresponding zoning file. The Applicant is responsible for submitting the following drawings as prepared by Donald L. Hamlin Consulting Engineers, Inc. and as relate to Project # 19-245 Baslow Subdivision for Parcel WC037. The drawings shall be revised in conformance with this Decision and shall be consistent across all of the submitted drawings.
 - a. SP-1 Subdivision Plat (dated 02/26/2020 rev. 08/04/2020), to be revised and given a new revision date, as required to be in conformance with this approval;
 - b. O-1 Overall Site Plan (dated 06/25/2020 rev. 10/13/2020), to be revised and given a new revision date, as required to be in conformance with this approval;
 - c. S-1 Lot 5A Site Plan (dated 06/25/2020 rev. 10/13/2020), to be revised and given a new revision date, as required to be in conformance with this approval;
 - d. S-2 Lot 5B Site Plan (dated 06/25/2020 rev. 10/13/2020), to be revised and given

- a new revision date, as required to be in conformance with this approval;
- e. D-1 Lot 5A Water and Wastewater Details (dated 06/25/2020 rev. 10/13/2020), to be revised and given a new revision date, as required to be in conformance with this approval;
- f. D-2 Lot 5B Water and Wastewater Details (dated 06/25/2020 rev. 10/13/2020), to be revised and given a new revision date, as required to be in conformance with this approval;
- g. DP-1 Lot 5B Lot 5B Driveway Profile (dated 06/25/2020 rev. 10/13/2020), to be revised and given a new revision date, as required to be in conformance with this approval;
- h. SL-1 Slope Plan (dated 10/13/2020), to be revised and given a new revision date, as required to be in conformance with this approval.

Revisions to the drawing set shall include the following, along with other requirements set forth in the body of this Decision:

- a. All drawings shall have a graphic scale.
 - b. The survey shall include E-911 parcel codes: Lot 5A parcel code – WC037 (37 Warner Creek); Lot 5B – BS008 (8 Baslow Lane).
 - c. The plat and site plan(s) should be upgraded to indicate the vegetative buffer at the north boundary of Lot 5A eastern-most building envelope, along with a dimension to represent the depth of the buffer from adjacent Lot 4 – as outlined in Condition 17 below.
 - d. A tree-line bounding line to represent the extent of approved clearing at the building envelopes on Lots 5A and 5B, including a description of the new line-type in the Legend.
 - e. A representation of the Creek relative to Lot 5A and a 100 ft. dimensioned setback to the western-most building envelope.
 - f. Location of anticipated underground utilities.
6. **Approved Plans & Construction.** The Project shall be constructed in accordance with the drawing set submitted as part of the review process - revised in conformance with this Decision. Any deviations to the approved project prior to or during construction should be immediately brought to the attention of the Zoning Administrator.
 7. **Infrastructure Certification.** Prior to the issuance of the Certificates of Occupancy Permit, the respective applicants shall provide a certification letter from a Vermont Licensed Professional Engineer or qualified consultant indicating that all infrastructure improvements identified in the subdivision plans under Condition 6 above, and what is required by this Decision, have been constructed according to what was proposed as part of this review.
 - a. **As-Built Drawing For Lot 5B.** Prior to the issuance of the Certificate of Occupancy Permit for the anticipated seasonal dwelling on Lot 5B, the respective applicant shall submit an as-built “S-2 Lot 5B Site Plan,” which shall depict the as-built septic line location.
 8. **E-911 Codes.** Prior to the issuance of the Certificates of Occupancy, the E-911 signage for the respective lot shall be posted per the Underhill-Jericho Fire Department specifications.

9. **Delegation of authority.** The Board hereby delegates authority to the Zoning Administrator regarding the fulfillment of the proposed project. The Board empowers the Zoning Administrator to act on behalf of the Board regarding any proposed changes in the approval or proposed design. These changes are not limited in scope, but are left to the discretion of the Zoning Administrator when to defer changes or modifications to the Board. Exception: See item # 13 & 14 below.
10. **Renewal.** The Board hereby delegates authority to the Zoning Administrator to renew this approval should the project not begin substantial construction within the initial permit year.

Substantive Land Use & Development Regulations Conditions

11. **Conversion of Use.** Should Lot 5B be used for a use other than a seasonal dwelling (i.e. a year-round single-family dwelling) at any point, including any subsequent conversion of use, the project is required to receive this Board's approval. The Applicant will be required to upgrade the driveway to meet the requirements of the Road Ordinance enacted at time, as well as to submit an analysis relating to the impact to steep slopes (15% to 25%) and very steep slopes (>25%). The Board at a minimum will review those aspects of the proposed conversion, as well as anything they may find relevant at the time of review.
12. **Future Modification of Building Envelopes.** The Board finds the building envelopes depicted in Exhibits K.1, L.1 and M.1 as controlling, and does NOT delegate authority to the Zoning Administrator to subsequently alter or modify the building envelopes. Only the Board reserves the authority to amend the depicted building envelopes.
13. **Lot 5A Building Envelope.** The Board finds that Applicant shall ensure that the building envelope for Lot 5 compliances with the 100 ft. setback requirement from the Creek.
14. **Clearing Restriction.** The Board finds that, in order to control excessive clearing and minimize disturbance to steep slopes required by Section 3.18 of the *Underhill Unified Land Use & Development Regulations*, the Applicant shall limit clearing for both lots to areas of slope less than 15% within their respective building envelopes, as well as to the six (6)-foot wide area centered on the septic line for Lot 5B.
15. **Construction on Steep Slopes.** In accordance with Section 3.18.D.2.g, the installation of the septic line on Lot 5B, and any modifications made to the woods road serving the seasonal dwelling on Lot 5B, shall only occur between April 15 and October 15.
16. **Vegetative Buffer.** The Board finds that the plat shall depict a vegetative buffer between the Lot 5A building envelope and the boundary line with Lot 4 (24 Warner Creek). The width of that vegetative buffer shall only span the length of the building envelope (in a west to east direction).
 - a. **Maintenance.** Normal maintenance is permitted, which includes the clearing of dead vegetation, etc.
17. **Lot 5A Deed Restriction.** The Board finds that Lot 5A shall not be subsequently subdivided for development purposes.
18. **Road Maintenance Agreement & Homeowner's Association.** The Board encourages the Applicant to work with whatever applicable Homeowners' Associations and neighbors to become a member of those applicable Homeowners' Association and/or Road Maintenance Agreement. Should either lot (Lot 5A or Lot 5B) become a participating member of its respective Homeowner's Association, documentation shall be recorded in the Town's land

records. Should an updated Road Maintenance Agreement be executed, that document shall be recorded as well.

19. **Erosion Prevention & Sediment Control.** The Applicant and his successors 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.
20. **Conformance With Regulations.** Notwithstanding the conditions above, prior to being issued a zoning permit, the Applicant 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.
21. **Conformance with State Permits.** The conditions of the ANR Wastewater System and Potable Water Supply Permit shall be incorporated herein.

Substantive Road, Driveway & Trail Ordinance Conditions

22. **Access Permit Approval.** The Board approves the submitted access permit application (Exhibit D; Access Permit #: B-20-04). The parameters of the approved Access Permit are outlined under Part II, Section 3.2 and Part III, Introduction.
 - a. **Conditions Relating to the Access Permit.** The Board provides no conditions of approval relating to the Access Permit in association with the *Underhill Road, Driveway & Trail Ordinance* for the reasons stated under Part III of this decision.
23. **Drainage.** In the event that drainage issues occur, the Board reserves the right to review the project for corrective measures as it relates to drainage.

Dated at Underhill, Vermont this 11 day of Dec, 2020.



Stacey Turkos, Vice 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.