

**Town of Underhill
Development Review Board Minutes
February 26, 2018**

Board Members Present:

Charles Van Winkle, Chair
Matt Chapek
Mark Green
Daniel Lee
Karen McKnight
Penny Miller
Stacey Turkos

Others Present:

Gunner McCain (93 S. Main St., Waterbury)
Mike Timbers (662 Irish Settlement Road)
Jason Marias (318 Irish Settlement Road)
Paul O'Leary (13 Corporate Dr., Essex Jct.)
Peter Duval (25 Pine Ridge Road)
David E. Baker (646 Irish Settlement Road)
Phil Jacobs (93 English Settlement Road)
Aaron Brillhart (16 Jacobs Hill Road)
Pam Billings (310 Irish Settlement Road)
William Billings (310 Irish Settlement Road)

Staff/Municipal Representatives Present:

Andrew Strniste, Planning Director

6:32 PM – 02/05/2018 DRB Public Meeting

- DRB Members convened at Town Hall at 6:25 PM.
- [6:30] Chair Van Winkle called the meeting to order.
- [6:31] Since no general public attended the meeting, no public comments were provided.

**6:35 PM – Timbers Preliminary/Final Subdivision Review
662 Irish Settlement Road (IS662), Underhill, Vermont**

Docket #: DRB-17-14

- [6:35] Chair Van Winkle began the meeting by providing an overview of a combined preliminary & final subdivision review hearing. He then explained the hearing procedures for the evening's hearing and swore in those who wished to speak. Chair Van Winkle asked if there were any ex parte communications with the applicant or any conflicts of interest. No ex parte communications had been made. One member of the public was present for the evening's hearing. Board Member Lee did advise that he had worked on Mr. Timber's barn in the past; however, he believed that it would not interfere with his ability to render a fair decision. Exhibit P was submitted into the record, which was correspondence provided by the Mount Mansfield Union School District expressing their ability to serve.
- [6:40] Board Member Miller advised that at the site visit, Mr. David Baker, resident at 646 Irish Settlement Road, had attended and expressed concern about his well.
- [6:41] Mr. Gunner McCain, the applicant's engineer, advised that that Lot 1 contained the existing single-family dwellings and accessory structures and that Lot 2 was subdivided over two decades ago. Mr. McCain informed the Board that no new development would occur on Lot 1. He then stated that, as discussed at the site visit, that they were to hit ledge during the construction of the driveway, the Selectboard permitted them to exceed a 10% slope, but not more than 12%. Mr. McCain then advised that there had been miscommunication between him and applicant as to the location of the house, and as a result, updated the engineering plans to reflect the new location (submitted into the record as Exhibit Q). The updated site plan illustrated revised building envelopes with revised topography. The building envelope was adjust so it met the desires of the applicant and remained in a flat area. Clearing in the southern area was likely to occur for more solar exposure. A discussion ensued about Mr. Baker's shallow spring and the potential runoff from the driveway. Mr. McCain advised that he was not concerned that the well would be

impacted by the run off. He then informed the Board that he updated the site plan to reflect the additional ditching along the northside of the driveway, which would be extended and direct flow away from the spring. Mr. McCain advised that Mr. Timber's barn does utilize another spring close by to the driveway, but is not worry about the quality of the water being impacted.

- [6:49] Mr. Baker advised that the well will be approximately 70 feet from the driveway. Board Member Miller confirmed that the ditching would go around the pull-off area for emergency vehicles. Board Member McKnight asked a clarification question about the existing cabin structure. Chair Van Winkle confirmed from Mr. Baker that the spring was his only water source and that it has never ran dry. Mr. McCain advised that he has the water/wastewater permit application prepared, and anticipates submitting the application when approval is obtained. He then advised that the deer wintering area was marginal with not a lot of activity. Staff Member Strniste provided an overview of his comments and concerns contained in the staff report. Discussion ensued about the driveway and building envelope.
- [7:00] Chair Van Winkle inquired about how much clearing would be performed. Mr. McCain advised that the applicant was fine wit limiting clearing, though the information provided states that there is not a lot critical habitat. He also advised that the client would be okay with a less restrictive building envelope. Board Member McKnight inquired about the visibility from Pleasant Valley Road. Mr. Timbers informed the Board that the house will likely not be seen, and that mother nature will be performing the majority of the clearing.
- [7:02] A discussion ensued about the type of information that should be shown on the survey plat. Mr. McCain advised that Underhill's past practice of trying constrain all development and development restrictions (such as well shields and isolation shields) was not permissible, as well as bad planning practices. A discussion ensued about permits obtained from the State of Vermont and the objections of subdivision review. Mr. McCain then informed the Board that the applicant intends on updating the road maintenance agreement. A discussion began about the driveway serving 654 Irish Settlement Road being out of the easement.
- [7:15] Board Member Miller inquired about the absence of an utility easement. Mr. McCain advised that typically the power company will tell the client where the power will go, and therefore, the easement will likely be a reactive task rather than proactive.
- [7:16] Mr. David Baker expressed his concern regarding his water supply, as water is continually coming out of the spring. His concern is whether there will be adequate supply if no water to flow to the spring. Mr. McCain informed the board that springs should not be relying on groundwater, but rather, should be constructed in a way that surface water does not breach the spring. Mr. Gunner then stated that he often advised that concerned neighbors get an advance testing of the water source to get a benchmark, and if there is an issue in the future, there is a point of comparison. Mr. McCain confirmed that he had did not have any concerns in regards to the spring being contaminated or running dry.
- [7:25] Staff Member Strniste inquired if the applicant was anticipating a self-imposed clearing restriction. Board Member Miller asked Mr. McCain about issues that have occurred when clearing areas of steep slope. The Board plans on incorporating a cutting restriction similar to what Mr. McCain advised into the decision.
- [7:27] Chair Van Winkle asked if the Board had enough information to make a decision in regards to the application. The Board answered in the affirmative and Board Member McKnight made a motion to close the evidentiary portion of the hearing. Board member Turkos seconded the motion, which was approved unanimously. Board Member Turkos

made a motion to vote on the application in open session, but formulate the decision in closed deliberative session. The motion was seconded by Board Member Chapek and approved unanimously. Board Member Turkos made a motion to approve the application, which was seconded by Board Member Miller. The motion was approved unanimously. Board Member Miller made a motion to enter into deliberative session, which was seconded by Board Member Turkos. The motion was approved unanimously.

**7:30 PM – Marias Final Subdivision & Conditional Use Review
318 Irish Settlement Road (IS318), Underhill, Vermont**

Docket #: DRB-17-04

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- [7:35] Chair Van Winkle began the meeting by providing an overview of a final subdivision review hearing and a conditional use review hearing. He then explained the hearing procedures for the evening's hearing and swore in those who wished to speak. Chair Van Winkle asked if there were any ex parte communications with the applicant or any conflicts of interest. No ex parte communications had been made. Two members of the public were present for the evening's hearing. Chair Van Winkle advised that he recently hired the applicant to perform some work at his house; however, he believed that it would not interfere with his ability to render a fair decision. Exhibit S was submitted into the record, which was correspondence provided by the Mount Mansfield Union School District expressing their ability to serve. Exhibit T was also submitted into the record, which was correspondence with State employees, Jessanne Wyman and Tina Heath from the water/wastewater permits. Chair Van Winkle then informed the Board that subdivision review applied for Lots 2 and 3 and Conditional Use Review applied to Lot 1.
 - [7:37] Mr. Marias advised that he did not know when the construction of the detached accessory dwelling would be performed. Staff Member Strniste advised that the applicant must substantially commence the project within one year of obtaining the zoning permit, which would be issued when approval was granted. Mr. Marias then explained that the driveway was along the border of Lots 2 and 3, the land perked well, no mound systems are proposed, and the water pressure was not issue. He then informed the Board that the existing well on Lot 3, currently serving the existing house will be rerouted to the proposed house on Lot 3.
 - [7:42] A conversation ensued about the deer wintering yards. While correspondence was submitted stated that there was minimal evidence that a deer wintering yard existed, Board Member McKnight advised that the Chittenden County forested noted that deer are migrating in a north/south pattern in this general location. A discussion ensued about the building envelope, and whether they should include buffers for wetlands since wetlands are re-delineated every 3 to 5 years, thus being variable. Staff Member Strniste explained the process with the wetlands and the ecologist. The Board reviewed the square footage of the proposed detached accessory dwelling and the correspondence between the applicant and State employees regarding the water/wastewater permits. A discussion ensued about wetland delineations and what should be recorded on the plat.
 - [8:03] Board Member Green asked a clarification question about state permits. Chair Van Winkle and Staff Member Strniste provided clarification about the prime agricultural lands that existing on the lot.
 - [8:08] Pam and Will Billings voiced their support of the application and inquired about the survey markers that were placed in the field. The applicant confirmed that the pins were located; however, the Board could not confirm if a survey involving the Billings' property was referenced as part of the applicant's survey.
 - [8:14] No other comments were provided.

- [8:15] The Board advised that they had enough information to make a decision on the application. Board Member Miller made a motion to close the evidentiary portion of the hearing which was seconded by Board Member Chapek. The motion was approved unanimously. Board Member Miller made a motion to vote in open session and craft the decision in closed deliberative session. Board Member Turkos seconded the motion, which was approved unanimously. Board Member Miller made a motion to approve the combined final subdivision review and conditional use review applications, which was seconded by Board Member Turkos. The motion was approved unanimously.

**8:16 PM – Jacobs Sketch Plan Review Hearing
17 Jacobs Hill Road (JB017), Underhill, Vermont**

Docket #: DRB-18-03

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- [8:16] Chair Van Winkle began the meeting by explaining the procedure for a sketch plan review meeting. The applicant's consultant, Paul O'Leary, was before the Board to discuss the application pertaining to a proposed two lot subdivision of land the Phil Jacobs owns at 17 Jacobs Hill Road (JB017) in Underhill, Vermont. A couple of members of the public were present. No conflicts of interest were identified before the commencement of the meeting.
 - [8:19] Mr. Paul O'Leary, the applicant's consultant, advised the parcel to be subdivided was approximately seven acres, and the reason the proposed lots were not included in the previous subdivision application was because the lots did not yet have a septic design. Mr. O'Leary advised that, as currently designed, the septic system for Lot 9 is currently located on Lot 8; however, he hopes to locate the wastewater system on Lot 9. Mr. O'Leary also advised that there is an interested buyer for Lot 9, who anticipates constructing the dwelling on top of the hill. The proposed driveway is not expected to exceed 10%. Mr. O'Leary informed the Board of a seasonal stream that drains into a Class III Wetlands towards the south. Since Mr. Jacobs has exceeded the one acre threshold of impervious surface, the applicant will need to obtain stormwater permits from the State.
 - [8:23] Chair Van Winkle inquired about the stormwater that would not be directed towards the retention pond on Lot 8. Board Member Miller asked for clarification on the infiltration ponds/retention ponds. An inquiry was made as to the functionality of retention ponds on the Min's Lane lots that were previous subdivided Mr. O'Leary responded that that they seemed like overkill at the time. Mr. Phil Jacobs informed the Board that no water had been collected in them to date. Mr. O'Leary advised that the ponds were construction for all five lots, anticipating the two lots to be subdivided. Board Member McKnight asked about Meadow Lane and the seasonal stream. Mr. Jacobs informed the Board that he cleaned the swale and widen it during the previous summer. Board Member Miller inquired about limiting clearing on slopes, as well as the two lots sharing a driveway. Mr. O'Leary responded by stated that there was a difference of 15 to 20 feet in elevation if a proposed shared driveway were to connect to Lot 8, and therefore, they wouldn't meet the grade requirement.
 - [8:31] Mr. O'Leary advised that the applicant is seek for preliminary subdivision review to be waived. Chair Van Winkle advised that there were three ways to proceed with the application: 1) reclassify the application as a subdivision amendment, 2) proceed with preliminary subdivision review, or 3) waive preliminary subdivision review and proceed with combined preliminary/final subdivision review. Mr. O'Leary clarified Board Member Chapek's question that while there will be one more additional lot, there will be two additional building lots. Staff Member Strniste advised that depending if the application is reclassified as a subdivision amendment or remains a separate subdivision application will determine how the application will be warned.

- [8:40] Mr. Duval provided public comment about the field. He reminded the Board that a lot of pedestrians use the field as a means of egress, and as there are more and more residents, there are requests for more park space. The Board should take this time to plan ahead and meet the needs of residents. The Town should work towards acquiring this land rather than muscle it away at a later point in time. The Board clarified that Mr. Duval believes that the Town should buy and reserve the field as open space. Board Member McKnight has advised that the Conservation Commission has look at ways at starting funds to use to conserve land.
- [8:45] Board Member Green advised that he would like to make a site visit prior to the subdivision amendment hearing. The Board agreed. Board Member Chapek confirmed with Mr. O'Leary that the lots to be subdivided were wooded areas. Mr. O'Leary advised that the building envelopes will likely be revisited to see if they should be expanded. The applicant seemed receptive of proposing no cut areas. Mr. O'Leary advised that the lots will look drastically different once everything is installed and constructed. Staff Member Strniste confirmed that Min's Lane is at or greater than 24 feet in width.
- [8:50] Chair Van Winkle informed the applicant that the two new lots will need to join the Homeowner's Association and Road Maintenance Agreement. In addition, the applicant will need to determine if the required lots will need to join any stormwater agreements. Chair Van Winkle confirmed that there will be onsite drilled wells since the lots are too high in elevation for the water district to serve. The drilled wells have great pressure.
- [8:52] Staff Member Strniste advised that a preliminary access permit will still be required. In response to Board Member McKnight's question, Mr. O'Leary advised that the field is not always wet, and that the low parts of the field use to flood. There are sandy soils in the field. The Board determined that they had enough information to make a decision on the application. Chair Van Winkle asked if the Board wanted to classify the subdivision as a minor or major subdivision, and suggested that the application be reclassified to a subdivision amendment to provide more transparency. The Board agree to reclassify the application. Areas of concerns identified by the Board were possible clearing limits and steep slopes. Staff Member Strniste advised that the requirements of Section 3.18 would have to be satisfied. Chair Van Winkle reaffirmed that a mitigation plan for construction the driveway on steep slopes should be provided. The Board agreed that the subdivision application was still a subdivision application.
- [9:05] Staff Member Strniste is to prepare a memorandum outlining that the subdivision was reclassified to a subdivision amendment. Board Member Miller made a motion to accept the sketch plan application; however, to reclassify it from a sketch plan application to a subdivision amendment application, which will be heard at a subsequent hearing. Board Member Turkos seconded the motion, which was approved unanimously.

8:23 PM – Other Business

- [9:05] Board Member Turkos made a motion to approve the minutes of December 4, 2017. The motion was seconded by Board Member Lee and approved unanimously.
- [9:06] Board Member McKnight made a motion to approve the minutes of December 18, 2017. The motion was seconded by Board Member Lee and approved unanimously.
- [9:08] Board Member Turkos made a motion to approve the minutes of January 22, 2018. The motion was seconded by Board Member McKnight and approved unanimously.
- [9:10] Mr. Peter Duval provided feedback pertaining to the February 5, 2018 minutes. He advised that there were some key points that did not come through. The Board postponed approving the minutes of February 5, 2018 until the following week to allow Mr. Duval to

submit comments.

- [9:14] Chair Van Winkle advised that the Potvin Conditional Use Review application would be heard on Monday, March 5, 2018. He also advised that the McLaughlin Appeal letter was ready to be signed.
- [9:15] Board Member Lee made a motion to approve the minutes of January 11, 2018. The motion was seconded by Board Member Green, and was approved unanimously.
- [9:15] The Board entered into closed deliberative session.
- [9:25] The Board adjourn.

Submitted by:

Andrew Strniste, Planning Director & Zoning Administrator

These minutes of the 02/26/2018 meeting of the DRB were accepted
this 9 day of April, 2018.



Charles Van Winkle, Development Review Board Chair