

TOWN OF UNDERHILL  
APPLICATION OF PHIL JACOBS FOR SUBDIVISION  
PRELIMINARY FINDINGS AND DECISION

In re: Phil Jacobs  
16 Harvest Run  
Underhill, VT 05489

Docket No. DRB-07-6: Phil Jacobs

**I. INTRODUCTION AND PROCEDURAL HISTORY**

This proceeding concerns Phil Jacobs' preliminary hearing application for a 6-Lot subdivision permit for property located at 16 Harvest Run in Underhill, VT.

1. On February 27, 2007, Phil Jacobs filed an application for subdivision for the project. A copy of the application and site plan are available at the Underhill Town Hall. A sketch plan hearing was held on March 19, 2007. The Sketch plan was approved.
2. On August 16, 2007, notice of a preliminary hearing and site visit was published in the Mountain Gazette.
3. On August 28, 2007, a copy of the notice of a preliminary hearing and site visit was mailed to the applicant, Phil Jacobs, 16 Park Street, Underhill, VT, 05489. A copy of the notice of preliminary hearing and site visit was mailed to the following owners of properties adjoining the property subject to the application:
  1. Covey, 14 Harvest Run, Underhill, VT 05489
  2. Burghoff, 29 Maple Ridge, Underhill, VT 05489
  3. McDevitt, 35 Maple Ridge, Underhill, VT 05489
  4. O'Brien, 41 Maple Ridge, Underhill, VT 05489
  5. Landerl, 43 Maple Ridge, Underhill, VT 05489
  6. Jacobs/Hood, 4108 Rockside Hills Dr., Raleigh, NC 27603
  7. Jurkiewicz/Salzer, 34 Sugar Hill, Underhill, VT 05489
  8. Williamson, P.O. Box 66, Underhill, VT 05489
  9. Nichols, 4 Sugar Hill, Underhill, VT 05489
  10. Nelson, 2 Sugar Hill, Underhill, VT 05489
  11. Cavanagh, 25 Meadow Lane, Underhill, VT 05489
  12. Tripp, 17 Meadow Lane, Underhill, VT 05489
  13. Morse, 18 Meadow Lane, Underhill, VT 05489
  14. Smith, 424 VT Rte. 15, Underhill, VT 05489
  15. Manning, 421 VT Rte. 15, Underhill, VT 05489
  16. Underhill-Jericho Fire Department, P.O. Box 150, Underhill, VT 05489
  17. Underhill Garage, Inc., P.O. Box 7, Underhill, VT 05489

18. Georgia Mead, TTEE, c/o Deg Campanelli, 149 Montgiven Ave., Fairhaven, VT 05743
  19. United Church of Underhill, P.O. Box 265, Underhill, VT 05489
  20. Gombrich, 6 Depot St., Underhill, VT 05489
  21. Richiede, 12 Harvest Run, Underhill, VT 05489
  22. Village Service, c/o J&T Alexander, P.O. Box 111, Underhill, VT 05489
4. A properly noticed site visit and preliminary hearing on the proposed Jacobs subdivision were conducted September 17, 2007. The hearing was continued to October 15, 2007. For details, please see the Jacobs subdivision zoning file HR016.
  5. On September 20, 2007, notice of a final hearing was published in the Mountain Gazette. This notice was sent to the Mountain Gazette for publication prior to knowledge of the continuation of the preliminary hearing. The applicant and interested parties were notified of the correction via first class mail notice.
  6. On September 25, 2007, a copy of the notice of a continued preliminary hearing was mailed to the applicant, Phil Jacobs, 16 Park Street, Underhill, VT, 05489. A copy of the notice of preliminary hearing and site visit was mailed to the owners of properties adjoining the property subject to the application listed in (3) above and to Rohrer, 4 Harvest Run, Underhill, VT 05489.
  7. A continued preliminary site plan, dated 10-2-07 was reviewed under the Town of Underhill Zoning Bylaw by the Development Review Board at a public hearing on October 15, 2007. The request for a 60-foot variance for the building envelope on Lot 1 from the Town's 100-foot setback requirement to the wetland was denied as the plan, dated 10-2-07, as presented did not meet the variance criteria. Since the set-back was denied, Lot 1 as presented was not accepted. The Board found that they could not approve the 6-lot subdivision as presented, and denied the application.
  8. On October 16, 2007, the applicant, Phil Jacobs, requested a preliminary hearing on revised plans for a 5-lot subdivision at 16 Harvest Run in Underhill, Vermont. On November 2, 2007, the applicant requested a new preliminary hearing on revised plans, dated 11-12-07, for a 6-lot subdivision at 16 Harvest Run in Underhill, Vermont.
  9. On November 5, 2007, a copy of the notice of a preliminary hearing was mailed to the applicant, Phil Jacobs, 16 Park Street, Underhill, VT, 05489. A copy of the notice of preliminary hearing and site visit was mailed to the owners of properties adjoining the property subject to the application listed in (3) above and to
    - a. Rohrer, 4 Harvest Run, Underhill, VT 05489
    - b. Bogaczyk, P.O. Box 416, Underhill, VT 05489
    - c. Viau, 6 Harvest Run, Underhill, VT 05489

- d. Bolio, 74 VT Rte. 15, Jericho, VT 05465
10. By November 5, 2007, notice of the preliminary hearing on the proposed Jacobs subdivision was posted at the following places:
    - a. The Underhill Town Clerk's office;
    - b. The Underhill Center Post Office;
    - c. The Underhill Flats Post Office;
  11. A preliminary site plan, dated 11-12-07, was reviewed under the Town of Underhill Zoning Bylaw by the Development Review Board at a public hearing on November 19, 2007.
  12. Present at the preliminary hearing were the following members of the Development Review Board:
    - Scott Tobin, Chair
    - Chuck Brooks
    - Matt Chapek
    - Charlie Van Winkle
    - Penny Miller
    - Peter Seybolt
    - Deb Shannon

Chris Murphy, Zoning Administrator, and Zoning Assistant Kari Papelbon also attended the meeting.
  13. At the outset of the hearing, Chairperson Scott Tobin explained the criteria under 24 V.S.A. § 4465 (b) for being considered an "interested party." Interested parties who spoke at the hearing were:
    - Phil Jacobs, 16 Park Street, Underhill, VT 05489
    - Paul O'Leary, O'Leary-Burke Civil Associates, 1 Corporate Drive, Suite 1, Essex Junction, VT 05452
    - Bob Covey, 14 Harvest Run, Underhill, VT 05489
    - Shelly Jurkiewicz, 34 Sugar Hill, Underhill, VT 05489
    - Dori Richeidei, 12 Harvest Run, Underhill, VT 05489
    - Ruth Nelson, 2 Sugar Hill, Underhill, VT 05489
    - Chris Murphy
    - Kari Papelbon
  14. During the course of the hearing the following exhibits were submitted to the Development Review Board:
    - a. A staff report sent by Zoning Assistant Papelbon to the Development Review Board;

- b. Revised preliminary plans dated 11-12-07 prepared by Paul O'Leary and Howard Snider of O'Leary-Burke for Phil Jacobs;
- c. A copy of the letter dated 10-19-07 from the Richiedeis;
- d. A copy of the letter sent to Phil Jacobs dated 10-22-07;
- e. A copy of the letter from Howard Snider dated 11-13-07;
- f. A copy of the letter from Jeffrey Severson of Oakledge Environmental Services, Inc. dated 11-14-07;
- g. A copy of the revised justification for the variance request for the building envelope setback requirement from the wetland on Lot 1 dated 11-12-07.

These exhibits are available in the Phil Jacobs, HR016 Subdivision files at the Underhill Zoning Office.

## II. FINDINGS

### **Background**

The Minutes of the meetings written by Kari Papelbon are incorporated by reference into this decision. Please refer to these Minutes for a summary of the testimony.

Based on the application, testimony, exhibits, and other evidence the Development Review Board makes the following findings:

1. The subject property, 16 Harvest Run, lies in the Residential District.
2. The Applicant, Phil Jacobs, is applying for a 6-lot subdivision of property at 16 Harvest Run. The proposed new lots will be approximately 1 to 2 acres each.
3. Potable water will be supplied to each lot by the Water District.
4. This project requires state permits including, but not limited to, State of Vermont Potable Water/Wastewater Permit and Stormwater Permit.
5. A variance of 24 feet for the building envelope on Lot 1 setback requirement to the wetland has been requested by the applicant, Phil Jacobs.
6. Jeffrey Severson, Principal/Ecologist for Oakledge Environmental Services, Inc., has submitted an evaluation of the wetland on Lot 1, which states that the proposed subdivision and the location of the building envelope on Lot 1 will not cause any direct or indirect impacts to the wetland.
7. The criteria for variance approval as stated in § 4469 (a) of the Vermont Municipal and Regional Planning and Development Act are:

- There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions, and not the circumstances or conditions generally created by the provisions of the bylaw in the neighborhood or district in which the property is located.
- Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the bylaw, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- Unnecessary hardship has not been created by the appellant.
- The variance will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.
- The variance will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan.

8. **Analysis of Variance Criteria:** When applying the statutory variance criteria to the requested variance the Board must, by statute, strictly apply the criteria.
- a. § III (V) (1) of the Underhill Zoning Regulations states “no structure for human habitation...will be permitted within 100 feet of the streambank or any watercourse.” § III (V)(1) *Underhill Zoning Regulations*.
  - b. Lot 1 is encumbered by portions of two Class Three wetlands on the western and southeastern portions of the proposed lot. The proposed building envelope on Lot 1 is 76 feet from the existing Class Three wetland on the southwestern portion of the lot.
  - c. The Board finds that due to the existence of an additional 34 acres for Lot 6 (the retained lot), the proposed development could be reconfigured to allow a building envelope on Lot 1 which would not require a variance. Therefore, it is possible to develop the land in conformance with the existing Town of Underhill Zoning Regulations without a variance for Lot 1.
  - d. The Board finds that since the Applicant is creating the lot lines he is creating the hardship.

- e. The neighborhood consists of single-family residential homes. The plans, dated 11-12-07, show the addition of residential homes that are consistent with the existing character of the neighborhood. Adjacent lots will also be residential in nature, and the applicant has proposed natural buffers to maintain the character of the neighborhood while protecting wildlife. The homes will not reduce access to renewable energy resources as all homes will utilize water hookups from the Water District and the land currently is open and wooded space. The Board finds that this project will not be detrimental to public welfare as it is residential development in an existing residential neighborhood.
  - f. Due to the finding that the lots could be reconfigured so that a variance would not be required for the building envelope setback to the wetland on Lot 1, this variance request does not represent the least deviation possible from the bylaw and from the plan.
  - g. The Board finds that the variance criteria for the proposed building envelope on Lot 1 are not met as the Applicant can reconfigure the lots and the applicant has created the hardship when he drew the proposed lot lines.
6. A 75-foot undisturbed buffer has been extended along the southern portions of Lots 1 and 2. A letter dated September 15, 2007 from Certified Wildlife Biologist Jeffrey Wallin stated that wildlife will adapt to housing development if sufficient wooded cover between houses and rear lot lines is maintained.
  7. The southern portion of Lot 2 is encumbered by a Class Three wetland. This wetland extends onto a small portion at the southwestern end of Lot 3.
  8. Lot 1 shall have a storm pond located on the northwestern corner of the lot, above a Class Three wetland.
  9. A stream runs along the southern portions of Lots 1 through 5. Another stream runs north of the proposed Harvest Run extension north of Lots 1 through 5. This stream is in a ravine.
  10. There is a gravel bank at the approximate location of Lot 2, which will provide the 12 inches of bank run gravel for the proposed road extension and driveways. Any remaining stockpile at the end of the proposed development shall be stored onsite, and topsoil, seed and mulch shall be applied to stabilize the gravel pile.
  11. Access
    - a. Although it is not the current policy of the Town of Underhill to accept new roads, in recognition of the fact that every road in Town may be

potentially accepted as a town road, the Town requires that all roads and driveways meet certain specifications.

- b. Harvest Run shall be extended to serve Lots 1 through 5.
  - c. The proposed Harvest Run extension shall be 20 feet wide with 1-foot shoulders.
  - d. The proposed Harvest Run extension exceeds 10% grade for two portions of the road. This will require a waiver from the Town Road Policy from the Underhill Selectboard.
  - e. Driveways will be constructed at 3% grade from the proposed Harvest Run extension and increase to 10% to the house sites.
  - f. Construction materials for the proposed Harvest Run extension as proposed include 12 inches of bank run gravel and 4 to 6 inches of crushed gravel from a State-approved off-site vendor. The Board recommends that the materials, road specifications, and construction of the road be approved by Town Road Foreman. All culverts shall be 18 inches wide.
  - g. The existing Harvest Run shall be widened to a 20-foot traveled way with 1-foot shoulders.
  - h. The Underhill Town Road Foreman has requested the right to inspect the construction of the road extension for conformance to the approved specifications and plans.
12. Property codes and building locations are missing from the survey. Property codes, setbacks, and pertinent Town of Underhill Zoning Regulations are missing from the engineering drawing.
13. A request by Dave and Dori Richeidei to reduce truck traffic hours has been submitted. After discussion with the Applicant, The Board finds that heavy equipment truck traffic shall only occur Monday through Friday between the hours of 7 AM and 4 PM. No heavy equipment truck traffic shall occur on Saturday or Sunday. This does not preclude contractors from working on the site outside of these hours; it only prohibits heavy equipment traffic outside of the designated hours.

### **III. DECISION AND ADDITIONAL FINAL HEARING REQUIREMENTS**

1. Based upon the findings and variance criteria above, the Development Review Board denies the variance request from the building envelope setback requirement to the wetland on Lot 1.
2. Subject to final hearing requirements set forth in Underhill regulations, and also subject to any additional requirements below, the Board grants preliminary approval to four (4) building lots, Lots 2-5 on the submitted plans (dated 11-12-07). The Board also grants preliminary approval to Lot 1 as a lot, but has not granted approval for Lot 1 as a building lot.

3. The Development Review Board recommends to the Underhill Selectboard to approve the road and driveway designs as presented conditioned upon: Town Highway Foreman acceptance of specifications and materials; Town Highway Foreman inspection of road construction for conformance with the plans; and with the requirement that should the Town agree to accept Harvest Run and/or Harvest Run extension as a Town Road, the owner of the road at that time shall pave the road.

**Additional Final Hearing Requirements and Information:**

1. A letter from the Water District affirming that they shall provide service to the four building lots shall be submitted to the Zoning Administrator prior to scheduling the final subdivision hearing.
2. The proposed setbacks for building envelopes, property codes with the names of abutting neighbors, and pertinent zoning regulations shall be shown on the engineering drawing.
3. Property codes and building locations shall be shown on the final survey.
4. A 75-foot undisturbed buffer zone will be created, and depicted on the site plan, along the rear border of lots 1 through 5.
5. Evidence of submission of applications for all required state permits including but not limited to potable water supply and wastewater permit and stormwater permit to the State of Vermont shall be submitted to the Zoning Administrator prior to scheduling the final subdivision hearing.
6. Selectboard approval of the proposed road and driveway designs shall be obtained before the date of final hearing.

Dated at Underhill, Vermont this 5th day of December, 2007.



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Underhill Development Review Board  
By Kari Papelbon Zoning Administrator