TOWN OF UNDERHILL
APPLICATION OF PATRICIA NOWLAN
FOR A PLANNED RESIDENTIAL DEVELOPMENT
FINAL HEARING FINDINGS AND DECISION

In re: Patricia Nowlan
225 River Road
Underhill, VT 05489

Docket No. DRB-07-21: Patricia Nowlan

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Patricia Nowlan's final hearing application for a 3-Lot Planned Residential Development (PRD) for property located at 225 River Road in Underhill, VT.

1. On May 2, 2008, Dean Grover filed an application for a combined preliminary and final subdivision hearing on behalf of Patricia Nowlan 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 December 17, 2007. The sketch plan was accepted.

2. On April 17, 2008, notice of a public site visit was published in the Mountain Gazette.

3. On April 18, 2007, a copy of the notice of a public site visit was mailed to the applicant, Patricia Nowlan, 225 River Road, Underhill, VT 05489. A copy of the notice of public site visit was mailed to the following owners of properties adjoining the property subject to the application:

   a. Almy, P.O. Box 128, Underhill Center, VT 05490
   b. Tobin, TTEE, c/o M. Frederick, P.O. Box 820, Burlington, VT 05402
   c. Phillips, 211 River Road, Underhill, VT 05489
   d. Shattuck, P.O. Box 31, Underhill Center, VT 05490
   e. Cummings, 21 Sand Hill Road, Underhill, VT 05489
   f. Ettlinger, P.O. Box 85, Underhill, VT 05490
   g. Lagrow, 239 River Road, Underhill, VT 05489
   h. Lang, 238 River Road, Underhill, VT 05489

   Notice was also mailed to:

   i. Dean Grover, Grover Engineering, 2044 Main Road, Huntington, VT 05462
   j. Michael Russell, Hoff Curtis, 100 Main Street, Burlington, VT 05401

4. A site visit was held at the property on Saturday, May 3, 2008. Present the site visit were:

   - Matt Chapek
   - Penny Miller
   - Peter Seybolt
   - Charlie Van Winkle, Vice Chair

   Kari Papelbon, Zoning Administrator, and Michael Weisel, Town Engineer also attended the site visit.

5. By April 28, 2008, notice of the site visit and combined preliminary and final hearing on the proposed Nowlan PRD were posted at the following places:

   a. The Underhill Town Clerk's office;
   b. The Underhill Center Post Office;
   c. The Underhill Flats Post Office;
   d. The Town of Underhill website.

6. On May 3, 2008, notice of a combined preliminary and final hearing was published in the Burlington Free Press.

7. On May 8, 2008, a copy of the notice of a combined preliminary and final hearing was mailed via certified mail to the applicant, Patricia Nowlan, 225 River Road, Underhill, VT 05489 and to those listed above in (3).

8. As the notice of the combined preliminary and final hearing did not meet the statutory notice requirement, the hearing scheduled for May 19 was cancelled and rescheduled for June 9, 2008. On May 19, 2008, a copy of the notice of a public site visit and combined preliminary and final hearing was mailed via certified mail to the applicant, Patricia Nowlan, 225 River Road, Underhill, VT 05489, those listed above in (3).

9. By May 20, 2008, notice of the site visit and combined preliminary and final hearing on the proposed Nowlan PRD were posted at the following places:

   a. The property to be developed, 225 River Road;
   b. The Underhill Town Clerk's office;
   c. The Underhill Center Post Office;
   d. The Underhill Flats Post Office;
   e. The Town of Underhill website.

10. On May 21, 2008, notice of a public site visit and combined preliminary and final hearing was published in the Burlington Free Press.

11. The site visit and combined preliminary and final hearing ("the combined hearing") was scheduled to commence immediately following the preceding hearing scheduled for 6:30 PM on June 9, 2008.

12. Present at the combined hearing were the following members of the Development Review Board:

    - Chuck Brooks
    - Peter Seybolt
    - Penny Miller
    - Matt Chapek
    - Charlie Van Winkle
    - Scott Tobin, Chair

    Kari Papelbon, Zoning Administrator, and Chris Murphy, Town Planner, 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:

    - Dean Grover, Grover Engineering, 2044 Main Road, Huntington, VT 05462
    - Patricia Nowlan, 225 River Road, Underhill, VT 05489
    - Carl Ettlinger, 9 Sand Hill Road, Underhill, VT (mailing address in 3 above)
    - Gerald Lagrow, 239 River Road, Underhill, VT 05489
    - Andrea and Richard Phillips, 211 River Road, Underhill, VT 05489

14. During the course of the hearing the following exhibits were submitted to the Development Review Board:

    a. A staff report sent by Zoning Administrator Kari Papelbon to the Development Review Board, Patricia Nowlan, Dean Grover of Grover Engineering, Michael Russell of Hoff Curtis;
    b. Plans prepared by Dean Grover of Grover Engineering for Patricia Nowlan, (dated 4-30-08);
    c. A copy of the survey prepared by Peatman Surveying, Inc. for Patricia Nowlan (dated 4-30-08);
    d. A copy of the letter from Dean Grover with information regarding the waiver requests and justification (dated 5-1-08);
    e. A copy of the Application for Subdivision: Preliminary Hearing and completed Subdivision Checklist: Preliminary Hearing (dated 5-2-08);
    f. A copy of the letter to James Massingham, Superintendent of the Chittenden East Supervisory Union (dated 5-9-08);
    g. A copy of the letter to Kurk Flynn of the Underhill-Jericho Fire Department (dated 5-7-08);

h. A copy of the letter from James Massingham of the Chittenden East Supervisory Union (dated 5-9-08);
i. A copy of the letter to the Wastewater Management Division and Permit Application (dated 5-13-08);
j. A copy of the letter from Kurk Flynn of the Underhill-Jericho Fire Department (dated 5-14-08);
k. A copy of the letter from Mary Baril of the Wastewater Management Division (dated 5-20-08);
l. A copy of the newspaper warning (published 5-21-08);
m. A copy of the memo from Mike Weisel (dated 5-21-08);
n. A copy of the draft Warranty Deed;
o. A copy of the waiver requests;
p. A copy of the Proposed Findings of Fact (dated 5-31-08);
q. A copy of the Subdivision Checklist: Final Hearing.

These exhibits are available in the RV 225 Planned Residential Development file 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 on the combined preliminary and final plat submission requirements as delineated on pages 7-11 of the Underhill Subdivision Regulations, "Preliminary Plat for Subdivisions" and "Final Plat for Subdivisions:"

A. Submission Requirements:

Preliminary Hearing:

1. Identifying information for subdivision: The Board finds that the application satisfies the requirement as the proposed subdivision and Town are identified on the plans.

2. Names of owner and designer: The Board finds that the application satisfies the requirement as the record owner's and designer's information is contained on the plans.

3. Existing Conditions: The Board finds that the application satisfies the requirement as the total number of acres, property lines, existing buildings, and spring locations are located on the plans.

4. Preservation of Natural Conditions: The Board finds that the application satisfies the requirement as the open space and existing hedgerow to be preserved are depicted on the plans.

5. Adjacent Subdivisions and Property Owners: The Board finds that the application satisfies the requirement as the names of all owners of record of adjoining acreage are shown on the plans.

6. Zoning district requirements: The Board finds that the application satisfies the requirement as the applicable zoning regulations are contained on the plans.

7. Existing Infrastructure: The Board finds that the application satisfies the requirement as the existing septic systems, springs, and wells are shown on the plans.

8. Existing and Proposed Improvements: The Board finds that the plans do not depict the proposed location of utility easements. This is not a material error that would prevent the application from receiving approval from the Board. The proposed locations of all underground utility easements shall appear on the final plans. The plans do show the location of the proposed open land.

9. Contour Lines: The Board finds that the application satisfies the requirement as the contours are depicted on the plans.

10. Driveway cross sections: The Board finds that the application satisfies the requirement as cross-sections for the driveway are contained in the plans.

11. Date/True North/Scale/Legend: The Board finds that the application satisfies the requirement as the information is contained on the plans.

12. Survey: The Board finds that the application satisfies the requirement as a survey has been submitted. The final survey Mylar shall contain the seal from the licensed surveyor.

13. Proposed Water Supply: The Board finds that the application satisfies the requirement as the proposed drilled well is contained on the plans.

14. Proposed Wastewater System: The Board finds that the application satisfies the requirement as septic system locations and details are contained in the plans.

15. Stormwater Discharge: The Board finds that the application satisfies the requirement as stormwater details have been submitted.

16. Bridges/Culverts: The Board finds that the application satisfies the requirement as culvert details are shown on the plans.

17. Lot Lines and Building Envelopes: The Board finds that the application satisfies the requirement as the plans contain proposed lot lines and building envelopes.

18. Field Marking: The Board finds that the site visit conducted June 9, 2008 satisfied the requirement.

19. Dedication to Public Use: The Board finds that this requirement is not applicable to this application as there are no dedicated public lands.

20. Proposed Roads/Town Dedication of Public Recreation/Relation to Town Plan: The Board finds that a road is not created by this subdivision; that there is not a dedicated public recreation space although there is open land; the proposed development complies with the planned residential development regulations found in the Town of Underhill Zoning Regulations; and the submitted planned residential development plans achieve the goals of the Town Plan by providing recreational opportunities, encouraging forestry, protecting the environment, and preserving local natural resources.

21. Buildings Dedicated to Public Use: The Board finds that this requirement is not applicable as no buildings are proposed for public use.

22. Location of Underground Utilities: The Board finds that the plans do not show the proposed locations for underground utilities. This is not a material error that would prevent the application from receiving approval from the Board. All proposed locations for underground utilities shall be shown on the final Mylars.

23. Waivers: The Board finds that the application satisfies the requirement as a list of waivers and justification has been submitted.

24. Vicinity Map: The Board finds that the engineering drawing contains a vicinity map. The survey does not contain a vicinity map. This is not a material error that would prevent the application from receiving approval from the Board. A vicinity map shall be included on the final survey Mylar.

25. Entire Parcel Shown: The Board finds that the application satisfies the requirement as the plans show the entire parcel.

Final Hearing Requirements:

26. Survey and Engineering Plan Elements: The Board finds that the engineering drawing shows the identifying title, parcel codes, name of the municipality, name and address of the record owner and sub divider, the seal of the registered engineer, the boundaries of the subdivision, scale, date, north point, and legend. The survey does not contain the seal of the licensed surveyor. The seal shall be on the final survey Mylar.

27. Road/Pedestrian Ways/ Easements/Reservations: The Board finds that the lots and open space are shown on the plans. The proposed utility easements are not shown on the plans. All proposed utility easements shall be shown on the final Mylars.

28. Lot Lines/Bearings/Distances: The Board finds that the application satisfies the requirement as the lot lines, bearings, and distances are shown on the plans.

29. Road Details: The Board finds that this requirement is not applicable as there are no new roads are proposed for the development.

30. Public Space/Reserved Space: The Board finds that this requirement is not applicable as there are no dedicated open spaces or reserved space, although we do note that the privately owned open space is shown on the plans and the proposed Warranty Deed contains provisions for its ownership, management, and restrictions.

31. Lot Numbering: The Board finds that the application satisfies the requirement as the lots are numerically numbered on the proposed plan and in addition that the final plat shall include 911 codes.

32. Infrastructure: The Board finds that the application satisfies the requirement as septic systems, grading, and stormwater details are contained in the plans.

33. Wastewater System Design: The Board finds that the application satisfies the requirement as the location and results of all test pits and septic systems are shown on the plans. An application to the State for a Wastewater System and Potable Water Supply Permit has been submitted.

34. Existing and Proposed Water Supplies: The Board finds that the application satisfies the requirement as the locations of existing and proposed water sources are contained on the plans. The State of Vermont has jurisdiction over isolation distances between potable water supplies and wastewater disposal systems.

35. Monumentation: The Board finds that the application satisfies the requirement as monumentation locations and details are contained in the plans.

36. Installation of Infrastructure or Bonding: A waiver request has been submitted for the requirement that an engineer provide a letter certifying that all required improvements have been satisfactorily completed or, in lieu thereof, supply a Selectboard-approved 2-year performance bond for the improvements at the time of filing the final plat. See (B) (2) below.

37. UJFD/CESU Letters: The Board finds that the application satisfies the requirement as letters from the Underhill-Jericho Fire Department and Chittenden East Supervisory Union have been submitted.

38. State Permits: The Board finds that the applicant's consultant has submitted applications to the State for all necessary permits.

39. Curb Cut/Selectboard Approval of Driveway: The Board finds that the Underhill Selectboard has granted approval of the driveway design and curb cut subject to conditions, see §III (A)(3) below.

B. Waivers: Waivers of the dimensional requirements for the development, subject to appropriate conditions, may be granted by the Board per Planned Residential Development regulations. The Board grants approval to the following waivers as allowed under the planned residential development scheme as they will not adversely affect public health, safety, or general welfare:

1. Dimensional Requirements

   a. Lot A: 2.58-acre waiver of lot size

   b. Lot B: 0.22-acre waiver of lot size
      11.5-foot waiver for the side lot line setback for the driveway
      250-foot waiver for the road frontage requirement

   c. Lot C: 1.72-acre waiver of lot size

2. Engineer's Certification or Bond for Improvements with the Final Mylar: The Board grants the waiver with the condition that before a building permit would issue to Lot B, an engineer shall provide a letter to the Zoning Administrator certifying that the approved curb cut has been installed per the plan, and that the driveway has been "roughed in" per the approved plan. Driveway top treatment may be installed at the end of the construction period. The Board recommends approval of the waiver to the Selectboard. The Selectboard granted approval of the waiver with the Development Review Board's proposed condition on June 10, 2008.

C. Planning Standards: Evaluation Considerations

1. Suitability for Development: The land is suitable for development according to the submitted plans dated 4-30-08 and prepared by Dean Grover of Grover Engineering. The land to be developed does not lie in a flood plain, and with the implementation of the erosion control plans on the submitted plans, there are no rock formations, adverse earth formations, or other features that will impair the health, safety, and general welfare of present or future inhabitants of the subdivision or its surrounding areas.

2. Preservation and Protection of Existing Features: One new home is proposed for the development, with a ±3.28 acre (to the highway limits) parcel dedicated for open space. To protect an existing spring on the property, no earth disturbance

will occur beyond the silt fence around the proposed house site. Existing trees, shrubs, and natural features will be protected as much as possible in their current locations. There are no mapped deer yards on the property. There are no wetlands, or rock outcroppings within the proposed limits of disturbance for the development on the property.

3. Recreation: The undeveloped land will provide sufficient open space for recreation.

4. Runoff and Erosion Control: The plans submitted indicate limits of disturbance, silt fencing around construction areas, drainage swales, and details for earth stabilization. Silt fencing will be installed down slope of the proposed house site, the proposed garage, and the proposed driveway. The silt fencing will be inspected and maintained routinely during construction. A drainage swale between the house site and the garage will divert upland runoff and will be installed prior to construction. Two stone check dams have been proposed at the lower portion of the driveway where the drive transitions from a steeper to a milder grade. Disturbed areas will be mulched and stabilized as soon as possible during and after construction. The Vermont Low-Risk Site Handbook will be utilized on-site by the contractor.

5. Compliance with the Town Plan, Ordinances, and By-Laws: The proposed development complies with the planned residential development regulations found in the Town of Underhill Zoning Regulations, and the submitted planned residential development plans achieve the goals of the Town Plan by providing recreational opportunities, encouraging forestry, protecting the environment, and preserving local natural resources.

6. Flood Plain: The proposed development area does not lie in a mapped flood plain per the Federal Emergency Management Agency's Flood Insurance Rate Maps. Portions of the parcel designated for open space do lie in a mapped flood plain; however this lot may not be developed.

7. Compatibility with Surrounding Properties: The neighborhood consists of single-family homes and small farms. As the proposed development will add one single-family home to an existing residential area, the development is in keeping with the nature of the surrounding area.

8. Suitability for Density: This development is in the Water Conservation zoning district, which limits the density of homes to one single-family home with an accessory apartment per 5 acre-parcel. Planned Residential Developments allow for flexibility in the size of acres proposed, however the density requirements remain constant for the zoning district. The development as a whole contains ±11 acres and therefore complies with density requirements.

9. Pedestrian Traffic: Currently, pedestrians utilize River Road for biking, walking, and running. The addition of one lot to the area will not significantly increase automobile traffic nor adversely affect pedestrian safety, access, or convenience.

10. Provision of Municipal and Governmental Services: The proposed development is in a developed area of town where fire and police services already exist. The addition of one lot will not require those services to be extended to serve the development. School bus services will also not need to be extended as a route along River Road currently exists. Letters from the Underhill-Jericho Fire Department and Chittenden East Supervisory Union indicate their abilities to provide services for the subdivision.

11. Water Availability: The proposed new lot will be served by an on-site drilled well. Drilled wells in the area have shown adequate water exists to serve single-family homes. A potable water permit application has been submitted to the State for review and approval.

12. Highway Congestion: River Road currently serves residences in the area and functions as a major artery through Town. The new lot will not significantly increase traffic on the road or in the neighborhood as it will contain one new home.

13. Visual, Air, Noise, Water Pollution: The proposed house site is situated well off of River Road, behind the existing home, and will be amongst existing trees at the top of a hill. Trees for screening purposes have been proposed along the eastern lot line for privacy between neighbors and the existing hedgerow along the western edge of the property line will be preserved. Air pollution resulting from such areas as driveway dust and exhaust from heating sources will not exceed levels currently generated by typical single-family homes. Noise will also not exceed levels generated by typical single-family homes. Provisions are in place on the plans for the protection of the existing springs on the property, and the wastewater plans show significant isolation distances to adequately protect existing and proposed domestic water sources and surface water from contamination. These plans have been submitted to the State for review and approval of a wastewater permit.

D. Based on the fulfillment of the above subdivision requirements subject to final conditions, granted conditional waivers, and evaluation considerations, the Board finds that the application satisfies the design standards for a planned residential development.

III. DECISION AND CONDITIONS

Based upon the findings above, and subject to any of the conditions set forth below, the Development Review Board grants approval for the planned residential development as presented at the combined preliminary and final hearing. The

Selectboard has approved of the curb cut, driveway design, and the waiver of the bond requirement per the Development Review Board's recommendation and subject to the recommended conditions.

A. Conditions for Subdivision:

1. Recording Requirement: Per the Underhill Subdivision Regulations, final approval of the subdivision is granted upon filing of the final subdivision plat in the Underhill Land Records. No transfer or sale of property may occur prior to recording the final plat and all applicable permits in the Town of Underhill Land Records.

2. Compliance with State Permits: Applicant shall comply with all conditions of required State permits.

3. Driveway Design Conditions: Per the report of Mike Weisel, PE, all fills shall be thoroughly compacted in shallow layers (lifts) to at least 90% of maximum density (90% Proctor). Once completed, all cut and fill slopes shall receive a minimum of 4" of topsoil for the establishment of good vegetative cover. Once seeded, all slopes shall be mulched with erosion control matting.

4. Certification of Driveway Installation: Before a building permit would issue to Lot B, an engineer shall provide a letter to the Zoning Administrator certifying that the approved curb cut has been installed per the plan, and that the driveway has been "roughed in" per the approved plan. Driveway top treatment may be installed at the end of the construction period. All erosion control and stormwater measures shall be installed during the driveway "rough-in."

5. Engineering Drawing: The final engineering drawing shall be tied to the final survey.

6. Additional Plat Requirements: The driveway to Lot B, a vicinity map, and signature blocks for DRB approval and Town Clerk recording shall be shown on the final certified plat. The certified plat shall state that the lots shall not be further subdivided per conditions of P.R.D. and shall include the open land requirement of P.R.D. that Lot C shall not be developed beyond the 150 square-foot loafing shed.

7. Loafing Shed, Lot C: A 150 square-foot loafing shed on Lot C shall be located outside of the mapped floodplain.

8. Depiction of Utility Easements: A proposed location for the utility easement on Lot B shall be shown on the final engineering drawing and certified plat.

9. Property Codes: The engineering drawing and certified plat shall include the new property codes for Lot B, RV221, and Lot C, RV226. The property code for Lot A, RV225, will not change.
10. Stake-out of Improvements: All building envelopes, the driveway, and septic areas shall be staked out by the surveyor/engineer prior to any construction, and off-set stakes shall be held in place until completion of construction.

11. WW Certification of Compliance: A copy of the engineer's certification of compliance for the wastewater system submitted to the State shall be filed with the Zoning Administrator.

12. Additional Deed Language: Final deed language for Lots A and C shall be submitted to the Administrator before filing of the final plat. Deeds for Lots A, B, and C shall include a provision that they shall not be further subdivided.

13. Digital Submission of Plat and Plans: Prior to recording the final Mylars, the applicant shall submit a copy of the certified plat and site plan in digital format. The format of the digital information shall require approval of the Zoning Administrator.

14. 911 Codes: Lot B shall post its 911 code (RV221) before issuance of any building permit.

Dated at Underhill, Vermont this 13th day of June, 2008.

Scott Tobin

Scott Tobin, Chair, Development Review Board

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceedings before the Development Review Board. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. §4471 and Rule 5 (b) of the Vermont Rules for Environmental Court Proceedings. No documents shall be recorded until July 13, 2008, when the 30-day appeal period has expired.