TOWN OF UNDERHILL
APPLICATION OF BRIAN AND JANICE CHRISTIE
FOR A 2-LOT SUBDIVISION
FINAL HEARING FINDINGS AND DECISION

In re: Brian and Janice Christie
50 Mullen Road
Underhill, VT 05489

Docket No. DRB-09-01: Christie

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Brian and Janice Christie's final hearing application for a 2-lot subdivision of property located at 50 Mullen Road in Underhill, VT.

1. On August 14, 2009, McCain Consulting filed a final application on behalf of Brian and Janice Christie for subdivision for the project, which included engineering drawings, survey, a copy of the wastewater permit, finalized Proposed Findings of Fact, and a waiver request.

2. On September 3, 2009, a copy of the notice of a final subdivision hearing was provided in person to the applicant, Janice Christie, and mailed via certified mail on September 1, 2009 to the following owners of properties adjoining the property subject to the application:

    a. Clark, P.O. Box 7, Underhill, VT 05489
    b. Weber, P.O. Box 25, Underhill, VT 05489
    c. Tatro, 535 Main St., Dalton, MA 01226
    d. Lang, 238 River Rd., Underhill, VT 05489
    e. Kelliher, 37 Mullen Rd., Underhill, VT 05489
    f. Clark, 31 Clark Rd., Underhill, VT 05489

3. On September 3, 2009, notice of a final hearing was published in the Mountain Gazette.

4. By September 1, 2009, notice of the final hearing on the proposed Christie subdivision were posted at the following places:

    a. The property to be developed, 50 Mullen Road;
    b. The Underhill Town Clerk's office;
    c. The Underhill Center Post Office;
    d. The Underhill Flats Post Office;
    e. The Deborah Rawson Memorial Library;
    f. The Town of Underhill website.

5. The final hearing was scheduled to commence immediately following the preceding hearing scheduled for 6:30 PM on September 21, 2009.

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

   - Chuck Brooks
   - Matt Chapek
   - Penny Miller
   - Stan Hamlet
   - Scott Tobin, Chair

   Kari Papelbon, Zoning Administrator, also attended the hearing.

7. 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:

   - Gunner McCain, McCain Consulting, Inc., 93 South Main Street, Suite 1, Waterbury, VT 05676
   - Brian Christie, 50 Mullen Road, Underhill, VT 05489

8. 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, Brian and Janice Christie, and Gunner McCain of McCain Consulting, Inc.;
   b. Brian and Janice Christie's Application for Subdivision: Final (dated 8-8-09);
   c. A copy of the completed Subdivision Checklist: Final Hearing;
   d. Plans prepared by Gunner McCain of McCain Consulting for Brian and Janice Christie (Sheets 1-2 of 2, revised 8-7-09);
   e. A copy of the survey prepared by Keith Van Iderstine of McCain Consulting for Brian and Janice Christie (dated 8-7-09);
   f. A copy of the State wastewater permit WW-4-2121-2 (dated 8-11-09);
   g. A copy of the bridge design from the Michael Tatro 2-lot Subdivision (Sheet 5 of 5, revised 9-14-05);
   h. A copy of the finalized Proposed Findings of Fact;
   i. A waiver request for the bonding requirement (dated 8-13-09);
   j. A copy of the hearing notice published in the Mountain Gazette (dated 9-3-09)
   k. A copy of the revised site plan (Sheet 1 of 2, revised 9-16-09).

These exhibits are available in the MU050 Christie Subdivision 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 final plat submission requirements as delineated on pages 9-11 of the Underhill Subdivision Regulations, "Final Plat for Subdivisions:"

A. Submission Requirements:

Final Hearing:

1. Survey and Engineering Plan Elements: The Board finds that the engineering drawing and survey show the identifying title, name of the municipality, name and address of the record owner and sub divider, the boundaries of the subdivision, parcel codes, scale, date, north point, and legend. The seal of the registered engineer and surveyor are missing. This is not an error as the plans and survey are stamped after receiving final approval and the Applicants' consultant has indicated that the final plans and survey will be stamped and signed. The seals and signatures shall appear on the Mylars.

2. Road/Pedestrian Ways/ Easements/Reservations: The Board finds that application satisfied the requirement as the lots and proposed easements are shown on the plans.

3. 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.

4. Road Details: The Board finds that this requirement is not applicable as no new road is proposed.

5. Public Space/Reserved Space: The Board finds that this requirement is not applicable as there are no dedicated open spaces in the subdivision.

6. Lot Numbering: The Board finds that the application satisfies the requirement as the lots are numerically numbered on the proposed plan.

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

8. Wastewater System Design: The Board finds that the application satisfies the requirement as the location and results of all test pits and septic system areas are

shown on the plans. A State of Vermont Wastewater System and Potable Water Supply Permit was issued for the project on August 11, 2009.

9. 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. A State of Vermont Wastewater System and Potable Water Supply Permit for the project was issued on August 11, 2009.

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

11. Installation of Infrastructure or Bonding: A waiver request from 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 has been submitted. See (B) below.

12. 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.

13. State Permits: The Board finds that the application satisfies the requirement as a Construction General Permit and Authorization of Notice of Intent, and a Wastewater System and Potable Water Supply Permit have been issued.

14. Curb Cut/Selectboard Approval of Driveway/Underground Utilities: The Selectboard has final jurisdiction over approval of curb cuts, road/driveway designs, and underground utilities.

    The Board recommends to the Selectboard that they approve the proposed curb cut, driveway design, underground utilities, and waiver in (B) below.

B. Waiver: 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 4C, 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." The Board recommends approval of the waiver with the recommended condition to the Selectboard.

C. Planning Standards: Evaluation Considerations

1. Suitability for Development: The Board finds that the land is suitable for development as evidenced by the submitted plans, Sheets 1 and 2 of 2, prepared by McCain Consulting, Inc. The area to be developed does not lie in a flood plain and does not contain steep slopes, 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: A buffer will be preserved along the brook on the site. No development will occur within 100 feet of this feature. There are no mapped deer wintering areas or other critical wildlife habitats in the vicinity of the proposed development as evidenced by the previously submitted GIS map depicting nearby deer wintering areas.

3. Recreation: The undeveloped portions of the lots will provide sufficient open space for recreational use by the lot owners.

4. Runoff and Erosion Control: The total new disturbed area for the project will be approximately 1.48 acres. Coverage under the Construction General Permit (CGP) has been obtained.

5. Compliance with the Town Plan, Ordinances, and By-Laws: As evidenced by the plans submitted, the project conforms to the Zoning Regulations, which indicates compliance with the Town Plan as well.

6. Flood Plain: As shown on the attached Flood Insurance Rate Map (FIRM), Panel 5000420010B, the project parcel does not lie in a flood plain.

7. Compatibility with Surrounding Properties: The neighboring properties along Mullen Road contain existing residences. The proposed subdivision is in keeping with the pattern of development that has taken place in this area.

8. Suitability for Density: The plans which have been submitted with the subdivision application demonstrate that the site is suitable for the proposed density.

9. Pedestrian Traffic: Mullen Road is sufficiently wide enough to accommodate diverse forms or transportation including automobile, pedestrian, and bicycle traffic.

10. Provision of Municipal and Governmental Services: Since the proposed development is within an existing developed portion of the town, governmental services including fire protection and police services do not have to be extended to serve the project. Similarly, school bus service is available without the need to modify or extend bus routes.

11. Water Availability: The new lot will be served by an individual, on-site drilled well. The addition of one new house in the area will not adversely affect water availability.

12. Highway Congestion: Mullen Road currently serves other residences. The new residence is expected to generate 10 vehicle trip ends per day.

13. Visual, Air, Noise, Water Pollution: The proposed residence will be substantially screened from travelers on Mullen Road. Air pollution, including dust from drives and exhaust from heating sources, will not exceed levels generated by typical single-family residences. Similarly, the noise generated by the proposed development will not exceed noise levels generated by single-family residences. Water pollution concerns are addressed by erosion control and wastewater disposal plans.

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 2-lot subdivision as presented at the final hearing. The Development Review Board recommends approval of the driveway design, underground utilities, and the waiver request for the bonding requirement with the suggested condition listed in §II (B) above.

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. State and Federal Permits: All required permits shall be recorded in the Land Records.

3. Driveway and Erosion Control Measures: Prior to issuance of a building permit to Lot 4C, an engineer shall provide a letter to the Zoning Administrator certifying

    a. that the approved curb cut has been installed per the plan; and
    b. 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."

4. Stake-out of Improvements: The building envelope and septic area 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.

5. Septic Certification Letter: A copy of the engineer's letter to the State certifying that the septic system has been installed per the approved plans shall be filed with the Zoning Administrator.

6. Easement Deed Language: Final deed language regarding all easements that are to be included in each deed shall be submitted to the Zoning Administrator prior to filing the final plat.

7. Road Maintenance Agreement: A final right-of-way agreement for maintenance of the shared traveled portion of the driveway shall be submitted to the Zoning Administrator for approval prior to filing the final plat. The shared right-of-way maintenance agreement shall be referenced in the deeds to the lots.

8. 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.

9. 911 Codes: Lot 4C shall post its 911 code (MU053) before issuance of any building permit.

10. Fees: All subdivision fees shall be paid in full to the Zoning Administrator prior to filing of the final plat.

11. Selectboard Approval: Applicant shall obtain approval of the driveway, underground utilities, and waiver request from the Selectboard prior to filing the final plat.

Dated at Underhill, Vermont this 8th day of OCTOBER, 2009.

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 November 7, 2009, when the 30-day appeal period has expired.