

TOWN OF UNDERHILL  
APPLICATION OF LIZ GIBBONS  
FOR A CONDITIONAL USE PERMIT  
FINDINGS AND DECISION

In re: Liz Gibbons  
241 Pleasant Valley Rd.  
Underhill, VT 05489

Docket No. DRB-10-15: Gibbons

**I. INTRODUCTION AND PROCEDURAL HISTORY**

This proceeding involves review of Liz Gibbons' application for a conditional use permit to place fill on property she owns located at 241 Pleasant Valley Rd. in Underhill, VT.

1. On October 8, 2010, Liz Gibbons filed an application for a conditional use hearing to review the placement of fill on her property at 241 Pleasant Valley Rd. in Underhill, VT. A copy of the application and materials are available at the Underhill Town Hall.
2. On October 8, 2010, copies of the notice of a public site visit and hearing were mailed to the applicant, Liz Gibbons, and via certified mail to the following adjoining neighbors:
  - Otis, 242 Pleasant Valley Rd., Underhill, VT 05489
  - Brown, 236 Pleasant Valley Rd., Underhill, VT 05489
  - Girouard, P.O. Box 227, Underhill Center, VT 05490
  - Demarest, P.O. Box 191, Underhill Center, VT 05490
  - Henry, P.O. Box 159, Underhill Center, VT 05490
  - UVM Campus Planning Services, Attn: Linda Seavey, Director, 109 South Prospect St., Burlington, VT 05405
3. On October 18, 2010, notice of the new date for the public hearing was mailed to the applicant, Liz Gibbons, and via certified mail to the adjoining neighbors listed in Section (I)(2) above.
4. On October 20, 2010, notice of the public hearing on the proposed Gibbons conditional use application was posted at the following places:
  - a. The Applicants' property, 241 Pleasant Valley Rd.;
  - b. The Underhill Town Clerk's office;
  - c. The Underhill Center Post Office;
  - d. The Underhill Flats Post Office;
  - e. Jacobs IGA;
  - f. The Underhill Country Store;
  - g. Wells Corner Market;
  - h. The Town of Underhill website.
5. On October 20, 2010, notice of the public hearing on the proposed Gibbons conditional use application was published in *Seven Days*.

6. The site visit began at 6:00 PM on October 25, 2010.
7. Present at the site visit were the following members of the Development Review Board:
  - Scott Tobin, Chair
  - Penny Miller
  - Matt Chapek
  - Will Towle

Liz Gibbons, Applicant; Jeff Sprout, resident; Michael Henry, adjoining neighbor; Steve Owen, Selectboard Member; and Kari Papelbon, Zoning & Planning Administrator, also attended the site visit.
8. The hearing was scheduled to begin immediately following the second hearing scheduled on November 8, 2010.
9. Present at the hearing were the following members of the Development Review Board:
  - Penny Miller
  - Peter Seybolt
  - Charlie Van Winkle
  - Chuck Brooks
  - Will Towle
  - Matt Chapek
  - Scott Tobin, Chair

Kari Papelbon, Zoning & Planning Administrator; Liz Gibbons, Applicant; Jeff Sprout, resident; and Michael Henry, adjoining neighbor, also attended the hearing.
10. 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.” Those who spoke at the hearing were:
  - Liz Gibbons, 241 Pleasant Valley Rd., Underhill, VT 05489.
  - Jeff Sprout, 241 Pleasant Valley Rd., Underhill, VT 05489.
  - Michael Henry, 253 Pleasant Valley Rd., Underhill, VT (mailing address in Section (I)(2) above).
11. During the course of the hearing the following exhibits were submitted to the Development Review Board:
  1. A staff report sent by Zoning Administrator Kari Papelbon to the Development Review Board and Liz Gibbons;
  2. A copy of Liz Gibbons’ Conditional Use Hearing Request (dated 10-8-10);
  3. A copy of the tax map for PV241;
  4. A copy of the hearing notice published in *Seven Days* (10-20-10).

These exhibits are available in the Gibbons, PV241, Conditional Use file at the Underhill Zoning Office.

## II. FINDINGS

### **Factual Findings**

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:

- A. The Applicant, Liz Gibbons, seeks a conditional use permit for the fill placed on her property.
- B. The subject property, 241 Pleasant Valley Rd., Underhill, VT is located in the Rural Residential and Soil & Water Conservation zoning districts per §VI and §IX of the Underhill Zoning Regulations.
- C. The subject property is not located in a floodplain per the Federal Emergency Management Agency's Flood Insurance Rate Maps.
- D. Approval is requested for the project pursuant to review under the following sections of the Town of Underhill Zoning Regulations:
  1. §III (F): Conditional Use
  2. §III (J): Extraction, Filling, or Removal of Natural Resources
- E. The Applicant has requested approval after the fact for the fill placed on her property during the summer, and for permission to place additional fill as necessary.
- F. The fill is being used to remediate storm-related damage to a large stand of trees on the property. Because of the damage to mature, full-grown trees and the number of trees damaged, it is not possible to repair the site to its previous condition. The Applicant has stated that uprooted tree stumps that cannot be removed will be covered with the fill.
- G. The Applicant has stated that the existing fill on the property will be tapered from the road, following the original slope of the land, to the edge of the area of damage.
- H. The Applicant has stated that rocks will be placed parallel to and 25 feet off of Pleasant Valley Road to prevent vehicle access. The Applicant plans to plant a mix of native trees for a hedge row behind the rocks, and seed the remaining land for a horse pasture or lawn.
- I. The Applicant has stated that portions of the filled area have been seeded where the slope will not change.
- J. The application will have the following impact on its surrounding area:
  1. Traffic—vehicular from the delivery of fill, removal of debris.
  2. Dust—from the delivery and movement of fill, removal of debris during dry periods.
  3. Noise—truck noise from the delivery of fill, removal of debris.
  4. Runoff/erosion—potential.
- K. The property is on a well-traveled road (Pleasant Valley Road).

- L. No mapped Class II wetlands are identified on the property according to the Vermont State Wetlands Inventory.
- M. Mr. Henry, adjoining neighbor, is supportive of the project and believes that the type of fill will not lead to erosion or stormwater runoff problems. No other adjoining neighbors provided written or oral testimony.

### III. CONCLUSIONS

#### Applicable Regulation Standards

- A. Section III (F) of the Underhill Zoning Regulations applies to this application. The relevant portion states: Approval of use by the [Development Review Board] after public notice and public hearing have determined that the proposed Conditional Use complies with standards applicable to it as set forth in the By-Laws, and that the proposed Conditional Use is not injurious, noxious or offensive to the neighborhood and does not adversely affect: the character of the area, traffic on roads or highways in the vicinity, and By-Laws then in effect.
  - 1. The Board finds that the proposed conditional use will not be injurious, noxious or offensive to the neighborhood, with the conditions mentioned below, as a majority of the fill was placed on the property over the summer, the proposed plans will eliminate the unauthorized use of the property as a parking area, and re-vegetation is proposed which will address Board concerns regarding potential runoff or erosion problems. No concerns were raised from neighbors regarding the fill.
  - 2. The Board finds that the proposed conditional use will not adversely affect the character of the area as the proposal includes tapering the fill along the natural pre-fill slope, and re-vegetating the area to address potential runoff or erosion problems.
  - 3. The Board finds that Pleasant Valley Road is a well-traveled town road and that the additional traffic to the location of the proposed conditional use to deliver fill and remove damaged trees will not have an adverse effect on current traffic loads.
  - 4. The Board finds that with the conditions in Section III below the proposed conditional use will not have an adverse effect on the By-Laws in effect.
- B. Section III (J) of the Underhill Zoning Regulations applies to this application. The relevant portion states: Damming or relocation of any watercourse or the removal of or filling with loam, gravel, stone, fill, topsoil, sod, or other similar materials, except when incidental to or in connection with the construction of a building on the same lot, and/or maintenance of an existing property, is permitted only upon approval of the Zoning Board of Adjustment. No permit will be considered until appropriate state and federal approvals have been obtained, unless such approvals are conditional on the local permit.

In issuing a permit, the Zoning Board may consider:

- 1. Depth of excavation, especially in proximity to roads and adjacent properties.
  - a. The Board finds that this is not applicable.

2. Existing grade and proposed grade created by the removal or addition of material.
  - a. The Board finds that there is a difference in grade between the pre-fill condition and the existing, post-fill condition. The Applicant has indicated her intention to taper the fill to follow the pre-fill slope of the land, which will decrease the current grade of the land.
3. Effect upon public health, safety, and welfare.
  - a. The Board finds that no Class II wetlands exist in the vicinity of the fill, that the Applicants will re-vegetate the area once the slope has been corrected, and that the conditional use will not result in adverse effects on public health, safety and welfare with the conditions in Section IV below will.
4. Creation of a nuisance.
  - a. The Board finds that no adjoining neighbors provided written or oral testimony that was not in favor of the conditional use.
  - b. The Board finds that no additional written or oral testimony was received from other interested parties regarding the conditional use.
5. Effect of the use to adjacent property by reason of noise, dust, vibration, or visual impact on the character of the area.
  - a. The Board finds that the proposed plans to re-vegetate the area of fill will decrease the existing negative visual impact, and that no noise, dust, or vibration in excess of that which is normal in the neighborhood would result from the conditional use with the conditions in Section IV below.
6. Erosion potential due to removal of vegetative cover.
  - a. The Board finds that the potential for erosion due to the removal of vegetative cover and the addition of fill will be addressed by the Applicant's plans to seed the area and plant replacement vegetation after the clean-up is complete and the fill has been tapered to the original slope of the land.
7. Effect upon traffic in residential areas or excessive congestion or physical damage on public ways.
  - a. The Board finds that the property is located off of Pleasant Valley Road, a widely-traveled town road. The majority of fill was already delivered to the site during the summer while the road was closed for construction. The truck traffic to deliver additional fill to the property and remove debris will not result in excessive congestion or physical damage to the road.
8. Effect on water table, natural water flow patterns and possibility of flooding.
  - a. The Board finds that the fill, once tapered to follow the original slope of the land, will not have a negative effect on the water table, natural water flow patterns, or the possibility of flooding. The property is not located in a mapped floodplain.

9. Recommendations of USDA Soil Conservation Service.

- a. The Board finds that this is not applicable.

In granting approval, the Zoning Board may impose the following as well as any other appropriate conditions:

1. Duration: Limit the duration of the conditional use permit to any length of time deemed appropriate. At the end of the permit term, an audit of compliance to the permit restrictions and conditions will be made by the Zoning Board before renewal of the permit is granted.
  - a. The Board finds that the amount of work that is required to remediate the site should not be limited by a deadline.
2. Rehabilitation: Require submission of an acceptable plan for the orderly development of the site, and its rehabilitation at the conclusion of all or a portion of the operation, including grading, seeding and planting, screening, fencing, drainage, slopes to be maintained, road maintenance, size of the area to be developed at any given time, and other appropriate measures.
  - a. The Board finds that the Applicant has provided testimony regarding her plans to taper the fill to follow the original slope of the land once the damaged trees have been removed. At such time as the slope is reestablished on the property, seeding and planting a mix of vegetation is proposed. Additionally, the Applicant has proposed to place large rocks 25 feet off of Pleasant Valley Road as landscaping and to prevent unauthorized vehicle access to the property.
3. Hours: Limit the hours of operation, routes of transportation, weight limits of vehicles dependent on local road conditions, or materials removed.
  - a. The Board finds that this is not conducive to the proposed conditional use as presented.
4. Bond: Require a suitable bond or other security to assure compliance with the provisions of this section, for the proper rehabilitation of the site.
  - a. The Board finds that this is not applicable to the proposed conditional use.
5. Topsoil: Require that topsoil be stockpiled on the property to provide at least a 4" cover on the affected area at the time of rehabilitation.
  - a. The Board finds that no topsoil is proposed to be placed or stored on the property.

**IV. DECISION AND CONDITIONS**

Based upon the findings above, the Development Review Board approves the proposed conditional use application as described at the hearing and in the above findings for the placement of fill subject to the following conditions:

- A. The approved area for the fill is the existing boundaries of the damaged area. Additional fill, as required for the completion of the remediation project, is approved. The fill shall be tapered from the road to the end of the existing damage area.
- B. The fill shall not be permitted to run off the approved area. Erosion control and runoff prevention measures—such as seeding, etc.— shall be implemented onsite.
- C. Applicant shall place a border of stone parallel to and 25 feet off of Pleasant Valley Road as described at the final hearing to prevent/hinder vehicle access except at approved curb cuts.
- D. Any changes to the approved conditional use as conditioned above shall require prior review and approval by the Development Review Board.

Dated at Underhill, Vermont this 2nd day of December, 2010.

  
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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 proceeding 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. Appeal period ends JAN. 1, 2011.

