TOWN OF UNDERHILL
APPLICATION OF MARCY GIBSON
FOR A SUBDIVISION REVISION
FINDINGS AND DECISION

In re: Marcy Gibson
50 New Rd.
Underhill, VT 05489

UNDERHILL TOWN CLERK'S OFFICE
Received For Record 08-16 A.D., 2011
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Docket No. DRB-11-03: Gibson

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Marcy Gibson's combined sketch plan review and preliminary hearing application for a revision to the 2008 approval of the subdivision of property she owns located at 50 New Rd. in Underhill, VT.

A. On July 5, 2011 Marcy Gibson filed a formal application for subdivision for the project. A request for review of the project was received on May 16, 2011. A copy of the formal application and additional information are available at the Underhill Town Hall.

B. On June 29, 2011 a copy of the notice of a public site visit and combined sketch plan review and preliminary hearing was mailed via Certified Mail to the applicant, Marcy Gibson, 50 New Rd., Underhill, VT 05489, and to the following owners of properties adjoining the property subject to the application:

1. Abare, 175 Pleasant Valley Rd., Underhill, VT 05489
2. McClellan, P.O. Box 152, Underhill Center, VT 05490
3. Oman, P.O. Box 216, Underhill Center, VT 05490
4. Albertini, P.O. Box 168, Underhill Center, VT 05490

A copy of the notice was also emailed on June 28, 2011 to Larry Young, Summit Engineering at lyoung@summitengvt.com.

C. On July 1, 2011 notice of the public site visit and combined sketch plan review and preliminary hearing on the proposed Gibson subdivision revision was posted at the following places:

1. The property under review, NR050;
2. The Underhill Town Clerk's office;
3. The Underhill Country Store;
4. Wells Corner Market;
5. The Underhill Center Post Office;
6. The Underhill Flats Post Office;
7. Jacobs IGA;
8. The Town of Underhill website.

D. On July 1, 2011, notice of a public site visit and combined sketch plan review and preliminary hearing was published in the *Burlington Free Press.*

E. A site visit was held at the property on July 18, 2011 at 6:30 PM. Present at the site visit were:

- Chuck Brooks
- Peter Seybolt
- Matt Chapek
- Penny Miller
- Charles Van Winkle, Chairperson

Zoning Administrator Kari Papelbon and Marcy Gibson also attended the site visit.

F. The hearing began immediately following the preceding sketch plan meeting on July 18, 2011.

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

- Chuck Brooks
- Peter Seybolt
- Matt Chapek
- Penny Miller
- Charles Van Winkle, Chairperson

Kari Papelbon, Zoning Administrator, and Marcy Gibson, Applicant, also attended the hearing.

H. At the outset of the hearing, Chairperson Charles Van Winkle explained the criteria under 24 V.S.A. § 4465 (b) for being considered an "interested party." Those who spoke at the hearing were:

- Marcy Gibson, 50 New Rd., Underhill, VT 05489

I. 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, Marcy Gibson, and Larry Young of Summit Engineering.
2. Marcy Gibson's Application for Subdivision: Preliminary (dated 7-4-11).
3. A copy of the completed Subdivision Checklist: Preliminary Hearing.
4. A copy of relevant sections of the Subdivision Standards Findings Checklist.
5. A copy of the driveway design prepared by Larry Young of Summit Engineering, Inc. (Drawing No. S1 and P1 dated 6-27-11).
6. A copy of the 2008-approved site plan prepared by Peter Lazorchak of McCain Consulting, Inc. (Sheet 1 of 2 revised 12-6-07).
7. A copy of the 2008-approved survey prepared by Carroll A. Peters (revised 12-3-07).
8. A copy of the Subdivision Permit (effective date 3-1-08).
9. A copy of the tax map for NR050.
10. A copy of the hearing notice (published in the Burlington Free Press on 7-1-11).

These exhibits are available in the Gibson, NR050, subdivision revision 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 seeks a permit amendment to subdivided land. The subject property is a ±12.75-acre parcel (Lot 1: ±8.98 acres, Lot 2: ±3.77 acres) located at 50 New Road in Underhill, VT (NR050).

B. The property is located in the Rural Residential zoning district as defined in Section 2.3, Table 2.3 of the 2011 Unified Land Use and Development Regulations.

C. Subdivision approval was obtained in 2008 for 2 lots utilizing the existing driveway and curb cut for access.

D. Approval for a revision to the subdivision, specifically to change the curb cut and shared portion of the driveway, is requested for the project pursuant to review under the following sections of the 2011 Unified Land Use and Development Regulations:

- Section 3.2 - Access
- Section 3.17 – Source Protection Areas
- Article VII – Section 7.8(C)
- Article VIII – Subdivision Standards

E. Driveway approval is requested for the project pursuant to review under the 2002 Underhill Road Policy and the 2011 Unified Land Use and Development Regulations. Final review of the driveway and any requests for waivers of the Road Policy will be made by the Selectboard. DRB recommendations will be submitted to the Selectboard for their consideration and review of the Access Permit.

III. CONCLUSIONS

Applicable Regulation Standards

Section 3.2, Access

The Board makes the following findings on the application as proposed:

A. Access is proposed on New Road with no changes to frontage for either lot. [Section 3.2(A)].

B. Section 3.2(B) is not applicable to the application as the proposed revision does not involve a nonconforming lot.

C. As the revised access is proposed on a town highway (New Road), an access permit from the Selectboard is required. A copy of this application was submitted to the Selectboard

along with a request to attend the site visit and hearing to expedite the process. [Section 3.2(C)].

D. Only one access point is proposed as a shared driveway, local official input has been solicited, proposed width of the curb cut does not extend along the length of the road frontage, the access is to serve allowed uses on the land, the lots are not corner or through lots, and the proposed driveway meets driveway standards. [Section 3.2(D)(2),(4)-(9)].

E. Section 3.2(D)(3) will be reviewed for approval by the Selectboard.

F. No private development roads are proposed with the subdivision revision. [Section 3.2(D)(10)].

G. No Class IV road accesses are proposed with the subdivision revision. [Section 3.2(D)(11)].

Section 3.17 – Source Protection Areas

The Board makes the following findings on the application as proposed:

A. The revised location of the curb cut and shared driveway is not within a 200-foot radius of a well or spring that serves a public water supply, although it is within a source protection area. Previously approved aspects of the subdivision, aside from the curb cut and shared driveway relocation, are not subject to this review. [Section 3.17(A)].

B. As the approved subdivision was for the addition of one new single-family dwelling and the revision includes the relocation of the shared curb cut and driveway, Section 3.17(B) through (D) are not applicable to this review.

Section 7.8(C), Revisions to an Approved Subdivision

The Board makes the following findings:

A. Per recommendations by the Town Attorney, the application must be considered a revision to an approved subdivision due to language in the 2008 decision and subdivision permit.

B. The Zoning Administrator has classified the revision application as a minor subdivision and referred it to the DRB for review.

Article VIII, Subdivision Standards

The Board makes the following findings:

A. None of the additional information under Section 8.1(B) is requested or required for the proposed revision.

B. The Applicant has submitted proposed findings of fact for relevant standards. The Board accepts these responses. [Section 8.1(C)].

C. Per Section 8.1(D), the Board waives the following subdivision standards as they do not apply to the application; are not requisite in the interest of the public health, safety and

general welfare for this particular application; and the waivers will not nullify the intent and purpose of the 2011 Unified Land Use and Development Bylaws, the Underhill Town Plan, or other local ordinances as the application only includes the revision of a curb cut and shared driveway location to serve two previously-approved subdivided lots:

a. Section 8.2(B), (C), and (E) through (J).
b. Section 8.3(B) through (G).
c. Section 8.4.
d. Section 8.6(B) through (E).
e. Section 8.7.

IV. DECISION AND CONDITIONS

Based upon the findings above, the Development Review Board voted 4-1 (Board Member Will Towle – nay) to grant approval for the amended subdivision as presented at the hearing, with the following conditions:

1. No further review of the driveway relocation is necessary by the Development Review Board.
2. All conditions of the 2008 approval shall remain in effect unless specifically amended herein.
3. The DRB recommends approval for the relocation of the driveway as presented. The applicant shall obtain an Access Permit from the Underhill Selectboard. Subsequent conditions of the Selectboard approval are incorporated by reference herein.

Dated at Underhill, Vermont this 11 day of August, 2011.

Charles Van Winkle, 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.

END OF DOCUMENT