TOWN OF UNDERHILL
APPLICATION OF SUZANNE KUSSEROW AND WILLIAM LEWIS
FOR A 3-LOT PLANNED RESIDENTIAL DEVELOPMENT AND
BOUNDARY LINE ADJUSTMENT
PRELIMINARY FINDINGS AND DECISION

In re: Suzanne Kusserow and William Lewis
37 Beartown Rd.
Underhill, VT 05489

Docket No. DRB-10-17: Kusserow and Lewis

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Suzanne Kusserow's and William Lewis' preliminary hearing application for a 3-lot planned residential development and boundary line adjustment of property located at 37 Beartown Rd. in Underhill, VT.

A. On May 23, 2011, Suzanne Kusserow filed an application for subdivision for the project. A copy of the application and additional information are available at the Underhill Town Hall. A sketch plan hearing was held on December 6, 2010 and accepted.

B. On July 19, 2011, a copy of the notice of a public site visit and preliminary hearing was mailed to the applicants, Suzanne Kusserow and William Lewis, P.O. Box 125, Underhill Center, VT 05490 and to the following owners of properties adjoining the property subject to the application:

1. Shuma, 28 Stevensville Rd., Underhill, VT 05489
2. Burroughs, P.O. Box 84, Underhill Center, VT 05490
3. Fetters, 49 Beartown Rd., Underhill, VT 05489
4. Litchfield/Caputo, 16 Beartown Rd., Underhill, VT 05489
5. Scheffert, 13 Beartown Rd., Underhill, VT 05489
6. Tedford, P.O. Box 26, Underhill Center, VT 05490
7. Kusserow/Lair, 39 Beartown Rd., Underhill, VT 05489

A copy of the notice was also emailed to Brad Holden at bholdenvt@gmail.com and Justin Willis, Willis Design Assoc., Inc. at willisdesignvt@comcast.net.

C. On July 19, 2011, notice of the public site visit and preliminary hearing on the proposed Kusserow and Lewis subdivision was posted at the following places:

1. The property to be developed, BE037;
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 21, 2011, notice of a public site visit and preliminary hearing was published in the *Burlington Free Press*.

E. A site visit was held at the property on August 8, 2011 at 7:00 PM. Present the site visit were:

- Will Towle
- Chuck Brooks
- Penny Miller, Vice Chair
- Matt Chapek
- Deb Shannon
- Peter Seybolt

Zoning and Planning Administrator Kari Papelbon, Consultant Brad Holden, and Consultant Justin Willis were also present.

F. The preliminary hearing was scheduled to begin immediately following the preceding hearing on August 8, 2011.

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

- Chuck Brooks
- Matt Chapek
- Penny Miller, Vice Chair
- Will Towle
- Peter Seybolt
- Deb Shannon

Kari Papelbon, Zoning and Planning Administrator, Consultant Brad Holden, Consultant Justin Willis, and Applicant Suzanne Kusserow also attended the hearing.

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

- Suzanne Kusserow, P.O. Box 125 (37 Beartown Rd.), Underhill Center, VT 05490

Consultants who spoke on behalf of the Applicants:

- Brad Holden, 60 Covey Rd., Underhill, VT 05489
- Justin Willis, Willis Design Assoc., Inc., P.O. Box 98, Richmond, VT 05477

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, Suzanne Kusserow and William Lewis, Brad Holden, Justin Willis, the Underhill Selectboard, the Underhill Conservation Commission Chair, and the Underhill-Jericho Fire Department;
2. Suzanne Kusserow's and William Lewis' Application for Subdivision: Preliminary;
3. A copy of the Subdivision Checklist: Preliminary Hearing;
4. A copy of the plans prepared by Justin Willis of Willis Design Assoc., Inc. for Suzanne Kusserow and William Lewis (Sheet S1, D1, and D2 dated 5-11);
5. A copy of the survey prepared by Brad Holden for Suzanne Kusserow and William Lewis (dated May 2011);
6. A copy of the letter from Superintendent of Schools John R. Alberghini (dated 6-7-10);
7. A copy of the letter from UJFD Duty Officer Harry Schoppmann (dated 7-7-11);
8. A copy of the minutes from the 12-6-11 Sketch Plan meeting;
9. A copy of the hearing notice (published in the Burlington Free Press on 7-21-11);
10. A copy of the Waiver Request List (dated 8-8-11);
11. A copy of the Sample Warranty Deed;
12. A copy of the Sample Road Maintenance Agreement.

These exhibits are available in the Kusserow/Lewis, BE037, 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:

A. The applicants seek a permit to subdivide land and to adjust a common boundary line. The subject properties are a ±16-acre parcel and a ±5.4-acre parcel located at 37 Beartown Road in Underhill, VT (BE037).

B. The properties are located in the Water Conservation zoning district as defined in §VII of the 2003 Underhill Zoning Regulations.

C. Subdivision approval is requested for the project pursuant to review under the following sections of the 2002 Town of Underhill Subdivision Regulations:

- Preliminary Plat Submission Requirements, pages 7-9, "Preliminary Plat for Subdivisions"

- Planning Standards, pages 11-12, "Evaluation Considerations"

D. Planned Residential Development approval is requested for the project pursuant to review under the following section of the 2003 Town of Underhill Zoning Regulations:

- §III(R), "Planned Residential Development"

E. Road and driveway approvals are requested for the project pursuant to review under the 2002 Underhill Road Policy. The Board recognizes that final approval of the road and any waivers of the Road Policy will be made by the Selectboard, and that DRB recommendations will be submitted for consideration.

F. Preliminary Application Submission Requirements, "Preliminary Plat for Subdivisions" – The preliminary plat shall be drawn to a scale of not more than two hundred (200) feet to the inch, and shall show or be accompanied by the following information:

1. Proposed subdivision name or identifying title and the name of the town.

2. Name and address of record owner, sub divider and designer of Preliminary Plat.

3. Number of acres within the proposed subdivision, location of property lines, existing easements, buildings, water-courses and other essential existing physical features, natural features and resources.

4. The location of natural features or site elements to be preserved.

5. The names of all subdivisions immediately adjacent and the names of owners of record of adjacent acreage, including those directly across any road adjoining proposed subdivision.

6. The provisions of the zoning Regulations applicable to the area to be subdivided and any zoning district boundaries affecting the tract.

7. The location and size of any existing sewerage systems and water supplies, culverts and drains or underground cables on the property to be subdivided.

8. Location, names and present widths of existing and proposed roads, easements, building lines, parks, and other public open spaces as well as similar facts affecting adjacent property.

9. Contour lines at intervals of ten (10) feet of existing grades and of proposed finished grades where change of existing ground elevation will be five (5) feet or more.

10. Typical cross sections of the proposed grading and roadways.

11. Date, true north point, scale, and legend.

12. Complete survey of subdivision tract by a licensed registered engineer or surveyor.

13. Means of providing water supply to the proposed subdivision.

14. Means of on-site disposal of septic wastes including location and results of tests to ascertain subsurface soil, rock and ground water conditions, depth to ground water unless pits are dry at depth of seven (7) feet; location and results of preliminary percolation tests for plat.

15. Provisions for collecting and discharging storm drainage, in the form of drainage plan.

16. Preliminary designs of any bridges or culverts which may be required.

17. The proposed lot lines with approximate dimensions and suggested locations of buildings.

18. The location of temporary markers adequate to enable the Commission to locate readily and appraise the basic layout in the field. Unless an existing road intersection is shown, the distance along a road from one corner of the property to the nearest existing road intersection shall be shown.

19. All parcels of land proposed to be dedicated to public use and the conditions of such dedication.

20. The sub divider shall coincidentally with submitting the preliminary layout, also furnish a statement signed by him or her to the Commission reciting:

    a. The nature and extent of the proposed road or roads. These must meet Town highway specifications as established by the Selectmen;

    b. The nature and extent of any recreational features, parks, or playgrounds to be provided, if any, and whether or not and under what conditions they are to be dedicated to the Town;

    c. The way in which the proposed development relates to the Comprehensive Plan for the Town of Underhill.

21. The sub divider shall indicate if any of the proposed units are to be considered as public buildings.

22. The sub divider shall indicate the location of proposed underground cables.

23. List of waivers, if any, the sub divider desires from the requirements of these regulations, and justification therefore.

24. The preliminary Plat shall be accompanied by a vicinity map drawn to show the relation of the proposed subdivision to the adjacent properties and to the

general surrounding area. The vicinity map shall show all the area within two thousand (2,000) feet of any property line of the proposed subdivision. Such vicinity map will be shown on a U.S.G.S. map at a scale of approximately one (1) inch to 24,000.

25. If the preliminary Plat submitted covers only part of the sub divider's entire holding, then the applicant shall submit an outline of the platted area, together with its road system and an indication of the future probable road system of the remaining portion of the tract.

G. Planning Standards, "Evaluation Considerations"

1. Whether land is unsuitable for subdivision or development due to flooding, improper drainage, steep slopes, rock formations, adverse earth formations or topography, utility easements or other features which will reasonably be harmful to the safety, health, and general welfare of the present or future inhabitants of the subdivision and/or its surrounding areas.

2. Whether the proposal includes due regard for the preservation and protection of existing features, trees, scenic points, brooks, streams, wetlands, rock outcroppings, water bodies, deer yards and other wildlife habitat, and other natural and historical resources.

3. Whether the proposal includes sufficient open space for active and passive recreation.

4. Whether the proposal includes adequate provision for the control of runoff and erosion during and after construction.

5. Whether the proposed development is in compliance with the Comprehensive Plan, Zoning Ordinance and any other By-Laws then in effect.

6. Whether any portion of the proposed development is located in a flood plain.

7. Whether the proposed development is compatible with surrounding properties.

8. Whether the site is suitable for the proposed density.

9. Whether the proposal contains adequate provision for pedestrian traffic in terms of safety, convenience, access to points of destination and attractiveness.

10. Whether the proposed development when viewed in the context of other developments in the town, will place an unreasonable burden on the ability of local governmental units to provide municipal or governmental services and facilities.

11. Whether there is sufficient water available for the reasonably foreseeable needs of the proposed development.

12. Whether the proposed development will cause unreasonable highway congestion or unsafe conditions with respect to the use of roads and highways in the Town.

13. Whether the proposed development will cause a significant increase in visual, air, noise or water pollution.

H. Section III (R) of the 2003 Underhill Zoning Regulations applies to this application. This section states: In accordance with the provisions of 24 VSA, Planned Residential Development may be permitted. The purpose is to enable and encourage flexibility of design and development of land based on the unique characteristics of a particular site. The advantage to the community is that the goal of promoting the most appropriate use of land consistent with the Underhill Town Plan and the Underhill Capital plan can better be met. It will help to preserve and maintain agricultural and forest land, wetlands or scenic views and to facilitate the adequate and the economical provision of roads and utility. Accordingly, the [DRB] may modify the area and dimensional requirements of the applicable zoning regulations simultaneously with the approval of a subdivision plat. Planned Residential Development proposals will be reviewed as subdivisions under the Underhill Subdivision Regulations.

1. Application requirements – An application for a planned residential development approval shall include a site plan showing the location, height and spacing of buildings, open spaces and their landscaping, roads, driveways and off-road parking, and all other physical features of the proposed design. In addition, the application shall be accompanied by a statement setting forth the nature of all proposed modifications, changes or supplementation of the area and dimensional requirements of the existing zoning regulations.

2. Design standards – All planned residential development proposals shall be evaluated according to the following standards:

   a. The permitted number of dwellings shall in no case exceed the number which would be permitted, in the [DRB]'s judgment, if the land were subdivided into lots in conformance with the zoning regulations applicable to the designated district. One-family, two-family, three-family or four-family construction may be permitted in the area serviced by the Underhill Jericho water district and located in the residential district at the discretion of the [DRB], while one family construction is permitted in the other districts.

   b. The proposed Planned Residential Development must be an effective and unified treatment of the development possibilities on the project site, and the proposed development plan must make appropriate provisions for the preservation of streams and streambanks, steep slopes, wet areas, soils unsuitable for development, forested areas and unique natural and man-made features.

c. The proposed Planned Residential Development must be consistent with the Town's Comprehensive Plan and all applicable by-laws.

d. The proposed Planned Residential Development must be consistent with all of the evaluation standards set forth in the Town's Subdivision Regulations.

e. The proposed Planned Residential Development must provide for the preservation of open space.

f. Undeveloped land will be in a location or locations, size and shape approved by the [DRB], and will be protected by appropriate legal devices to insure the continued use of such lands for the purposes of agriculture, forestry, recreation, park or conservation. Such mechanisms may include, but will not be limited to, dedication of restrictive covenants or other appropriate grants or restrictions approved by the [DRB] after consultation with the Town Attorney.

g. The proposed Residential Development will provide for safe and efficient pedestrian and vehicular circulation, parking and service areas.

h. The proposed Planned Residential Development will safeguard the value and appropriate use of adjacent properties.

i. The proposed Planned Residential Development will include access from existing public highways and will not cause undue congestion or interference with normal traffic flow.

j. The applicant must submit to the legislative body a complete list of all waivers from the Zoning and Subdivision Regulations for review and comment before a final plat approval is granted. Waivers shall include any modifications to the requirements of any by-law, regulation or town policy, excluding modifications made to lot area or dimensional requirements.

k. All lots created under these rules may not be subdivided further in the future. This restriction will be attached to the deed and filed in the town records.

I. The Upgrade of Driveway or Road section of the 2002 Underhill Road Policy applies to this application. The relevant portion states: "When a driveway or existing road is extended to accommodate a second or third dwelling on a lot formed after 2002, the shared traveled way must be constructed or upgraded to the standards of this Road Policy."

J. The following waivers have been requested:

1. Lot 3

a. Front setback – 25 feet from building envelope to front lot line.
b. Rear setback – 20 feet from building envelope to rear lot line.

K. A waiver for the side setback on Lot 3 to the proposed building envelope was withdrawn at the hearing. Consultants Willis and Holden stated that the boundary line would be adjusted in compliance with the side setback requirement.

III. CONCLUSIONS

Applicable Regulation Standards

Application Submission Requirements, "Preliminary Plat for Subdivisions" [as noted above in Section II (C)] – The Board finds that the application fulfills requirements (1) through (3), (5), (6), (9), (11) through (15), (17), (18), (22), and (24). The Board also finds that requirements (4), (19), (21), and (25) are not applicable to the proposed plan.

A. Requirements #7 & 16 - The Board finds that the application does not include culverts on the plans (see Section IV).
B. Requirement #8 – The Board finds that a proposed name for the private road has not yet been submitted (see Section IV).
C. Requirement #10 – The Board finds that the plans do not include details for the proposed road or driveways (see Section IV).
D. Requirement #20 – The Board finds that the plans do not contain road details, there are no public spaces or lands dedicated to the Town proposed, and Findings of Fact have not been submitted to address compliance with the Town Plan (see Section IV).
E. Requirement #23 - The Board finds that a list of waivers has been submitted; however, a waiver request was withdrawn during the preliminary hearing [see Section II(K) and Section IV].

Planning Standards, "Evaluation Considerations"

A. The Board finds that proposed Findings of Fact addressing these requirements have not been submitted (see Section IV).

Section III (R), "Planned Residential Development" – Preliminary Conclusions

A. Application requirements – The Board finds that the application includes a site plan showing the location, spacing of buildings, open spaces, the location of the proposed private road, and driveway locations. The Board finds that a list of waiver requests has also been submitted [see Section II(K) and Section IV].

B. Design standards – The Board makes the following findings:

1. The permitted number of dwellings does not exceed the number which would be permitted, in the Board's judgment, if the land were subdivided into lots in conformance with the zoning regulations applicable to the Water Conservation zoning district.

2. The proposed Planned Residential Development, as discussed at the preliminary hearing, is an effective and unified treatment of the development possibilities on

the project site. There are no streams, wetlands, flood hazard areas, forested areas, or steep slopes on the property to be developed.

3. Additional information is needed to assess the proposed Planned Residential Development's relation to the goals of the 2010 Town Plan.

4. Additional information is needed to assess the proposed Planned Residential Development's relation to the applicable evaluation standards set forth in the Town's Subdivision Regulations as stated in the *Application Submission Requirements, "Preliminary Plat for Subdivisions."*

5. The proposed Planned Residential Development provides for the preservation of open space (+/-4.0 acres of Lot 1).

6. The proposed shape and location of the open space are a sensible treatment of the land. A sample Warranty Deed has been submitted which prohibits development of the open space identified on the plat.

7. The proposed Residential Development provides for safe and efficient pedestrian and vehicular circulation.

8. The proposed Planned Residential Development will safeguard the value and appropriate use of adjacent properties.

9. The proposed Planned Residential Development will utilize an existing curb cut access on Beartown Road and will not cause undue congestion or interference with normal traffic flow as 2 additional single-family house sites are proposed. The revised location for the curb cut on the Lewis lot appears to have better sight distances than the previously-approved curb cut location.

10. Waiver requests have been submitted [see Sections II(J),(K) and Section IV].

11. This requirement will be a condition of final approval for the development.

Underhill Road Policy, "Upgrade of Driveway or Road"

A. The Board finds that the preliminary plans did not include designs for the private road and driveways. While the Board recognizes that approval of roads and driveways are the jurisdiction of the Selectboard, typical cross-sections and details for the proposed road upgrade and driveways shall be required with the final application (see Section IV).

IV. DECISION AND FINAL HEARING REQUIREMENTS

Based upon the findings above, and subject to the final hearing requirements below, the Development Review Board grants preliminary approval for the Planned Residential Development as presented at the preliminary hearing.

Additional Final Hearing Application Requirements

1. All culverts shall be shown on the final plans.
2. The proposed road name shall be submitted for review by the Selectboard prior to submission of a final hearing application. Parcel codes will be provided by the Zoning Administrator and shall appear on the final plans.
3. Typical cross-sections and details for the proposed road upgrade and driveways shall be required with the submission of final plans.
4. Findings of Fact addressing the Planning Standards, Evaluation Criteria shall be submitted with the final application.
5. An updated list of waiver requests shall be submitted with the application for final hearing, including a waiver for frontage requirements for Lot 2.
6. Evidence of submission to the State for all required permits shall be submitted with the application for final hearing.
7. Well data for properties in the area.
8. A conventional subdivision layout of 3 houses, complying with dimensional requirements and showing building envelopes.

Dated at Underhill, Vermont this 19 day of SEPTEMBER, 2011.

Charles Van Wirth for

for

Penny Miller, Vice Chair, Development Review Board

NOTICE: This decision may be appealed to the Vermont Environmental Division of Superior 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.