

TOWN OF UNDERHILL  
APPLICATION OF THE UNDERHILL TRAILS COMMITTEE  
FOR A CONDITIONAL USE PERMIT AND SITE PLAN APPROVAL  
FINDINGS AND DECISION

In re: Underhill Trails Committee  
77 New Rd.  
Underhill, VT 05489

Docket No. DRB-11-08: Underhill Trails Committee

**I. INTRODUCTION AND PROCEDURAL HISTORY**

This proceeding involves review of the Underhill Trails Committee's application for a conditional use permit and site plan approval to create public trails with associated signage and parking on property owned by the Town of Underhill located at 77 New Rd. in Underhill, VT.

A. On July 25, 2011, Nancy McRae and Carol Butler filed an application on behalf of the Underhill Trails Committee for a conditional use and site plan review hearing for the project. A copy of the application and materials are available at the Underhill Town Hall.

B. On July 29, 2011, copies of the notice of a public site visit and hearing were mailed via Certified Mail to the Applicants, Nancy McRae, 599 Pleasant Valley Rd., Underhill, VT 05489, and Carol Butler, 621 Irish Settlement Rd., Underhill, VT 05489, and to the following abutting neighbors:

1. Gibson, 50 New Rd., Underhill, VT 05489
2. Beckwith, P.O. Box 236, Underhill Center, VT 05490
3. Groschen, P.O. Box 93, Underhill Center, VT 05490
4. Trombino, P.O. Box 119, Underhill Center, VT 05490
5. Slattery, P.O. Box 201, Underhill Center, VT 05490
6. Twin Oaks 9 LLC, 208 Madison Rd., Scarsdale, NY 10583
7. Linde, P.O. Box 231, Underhill Center, VT 05490
8. Snyder, P.O. Box 75, Jericho, VT 05465
9. Oman, P.O. Box 216, Underhill Center, VT 05490

C. On July 29, 2011 notice of the public site visit and hearing on the proposed Underhill Trails Committee conditional use/site plan review application were posted at the following places:

1. The property to be developed, 77 New Rd.;
2. The Underhill Town Clerk's office;
3. The Underhill Center Post Office;
4. The Underhill Flats Post Office;
5. Jacobs IGA;
6. The Underhill Country Store;
7. Wells Corner Market;

8. The Town of Underhill website.
- D. On July 29, 2011, notice of a public site visit and hearing on the proposed Underhill Trails Committee conditional use/site plan review application was submitted to the *Burlington Free Press* for publication. The notice was not published as requested.
- E. On August 2, 2011, copies of the revised notice of a public site visit and hearing were mailed via Certified Mail to the Applicants, and to the abutting neighbors in Section I(B).
- F. On August 10, 2011, notice of the public site visit and hearing on the proposed Underhill Trails Committee conditional use/site plan review application were posted at the locations in I(C).
- G. On August 10, 2011, notice of a public site visit and hearing on the proposed Underhill Trails Committee conditional use/site plan review application was published in *Seven Days*.
- H. The site visit began at 6:30 PM on August 29, 2011.
- I. Present at the site visit were the following members of the Development Review Board:
  1. Penny Miller
  2. Peter Seybolt
  3. Deb Shannon
  4. Chuck Brooks
  5. Charles Van Winkle, Chair

Several members of the Underhill Trails Committee; Kari Papelbon, Zoning & Planning Administrator; Selectboard Members Brad Holden and Steve Owen; Road Foreman Rod Fuller; Underhill Conservation Commission Chair Trevor Squirrell; and several neighbors also attended the site visit.

- J. The hearing was scheduled to begin immediately following the site visit on August 29, 2011.
- K. Present at the hearing were the following members of the Development Review Board:
  1. Penny Miller
  2. Peter Seybolt
  3. Chuck Brooks
  4. Deb Shannon
  5. Charles Van Winkle, Chair

Kari Papelbon, Zoning & Planning Administrator; Carol Butler, Nancy McRae, David Demarest, and Karen McKnight of the Trails Committee, Applicants; Jeff Moulton, neighbor; Steve Owen, Selectboard Member; Trevor Squirrell, Underhill Conservation Commission Chair; and one other interested party also attended the hearing.

- L. 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:
1. Carol Butler, Nancy McRae, Karen McKnight, and Dave Demarest of the Underhill Trails Committee.
  2. Jeff Moulton, 49 Highland Rd., Underhill, VT 05489.
  3. Dave Demarest, 111 Fuller Rd., Underhill, VT 05489 (P.O. Box 191, Underhill Center, VT 05490).
  4. Karen McKnight, Vice Chair of the Underhill Conservation Commission.
- M. 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, Carol Butler and Nancy McRae, the Underhill Selectboard, the Underhill Conservation Commission Chair, and the Underhill-Jericho Fire Department;
  2. The Underhill Trails Committee's Conditional Use Hearing Request (dated 7-25-11);
  3. A copy of the site map and descriptions;
  4. A copy of the proposed crossings and signs;
  5. A copy of the completed Conditional Use Review Standards Findings Checklist;
  6. A copy of the Site Plan Review Standards Findings Checklist;
  7. A copy of the tax map for NR077X;
  8. A copy of the hearing notice (published in *Seven Days* on 8-10-11);
  9. The Underhill, VT Trails Handbook by the Underhill Trails Committee (Adopted 9-22-09).

These exhibits are available in the Underhill Trails Committee, NR077X, 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, The Underhill Trails Committee, seek a conditional use permit and site plan approval to create additional trails with related signage and parking on Town-owned property.
- B. The subject property, 77 New Rd., Underhill, VT is located in the Rural Residential zoning district per Article II, Table 2.3 of the 2011 Unified Land Use and Development Regulations.

C. Approval is requested for the project pursuant to review under the following sections of the 2011 Unified Land Use and Development Regulations:

1. Article II, Table 2.3: Rural Residential District
2. §3.2: Access
3. §3.13: Parking, Loading, and Service Areas
4. §3.16: Signs
5. §3.17: Source Protection Areas
6. §3.19: Surface Waters & Wetlands
7. §5.3: Site Plan Review
8. §5.4: Conditional Use Review
9. §5.5: Waivers and Variances
10. §10.2(A)(6): Exemptions (trails)

D. Mr. Moulton, Mr. Demarest, and Mrs. McKnight provided testimony at the hearing. Specifics may be found in the August 29, 2011 meeting minutes.

### III. CONCLUSIONS

#### **Applicable Regulation Standards**

##### *Article II, Table 2.3: Rural Residential District*

The Board finds that the proposed trails are not required to meet setbacks. The proposed signs and kiosks are addressed in Section 3.16 below.

##### *§3.2: Access*

The Board finds that the proposed trails will be accessed via New Road and on foot via Irish Settlement Road. No new driveways or road improvements are proposed.

##### *§3.13: Parking, Loading, and Service Areas*

A. The Board finds that the proposed use is classified as "unspecified" per Table 3.1. As the proposed parking area is within the New Road right-of-way, the Development Review Board finds that approval of the parking is the jurisdiction of the Selectboard.

##### *§3.16: Signs*

The Board makes the following findings:

- A. The proposed kiosks (2) and directional/informational trail signs will meet the requirements of Sections 3.16(C)(1), (3), (5), (7), (8), and (13). Sections 3.16(C)(2), (6), and (9) through (12) are not applicable as no requests for such have been submitted.
- B. Selectboard approval for location of the New Road kiosk within the New Road right-of-way is required per Section 3.16(C)(4).

- C. The proposed kiosks (2) and directional/informational trail signs qualify for an exemption from permitting requirements per Section 3.16(D)(1) and (2).
- D. All other provisions of Section 3.16 are not applicable.

*§3.17: Source Protection Areas*

The Board makes the following findings:

- A. A source protection area is identified for the area; however, the well is located more than 200 feet from the proposed trails [Section 3.17(A)(1)].
- B. Section 3.17(A)(2) is not applicable as no septic systems are proposed as part of this application.
- C. The proposed trails and their associated signs and crossings do not pose a threat to the public water supply [Section 3.17(B)(1)].
- D. Sections 3.17(B)(2)-(3) and (5)-(7) are not applicable.
- E. Site clearing for the walking trails will be minimal and limited to the clearing of brush and trees. No paving or impervious surfaces are proposed. Roofing is limited to the two proposed kiosks [Section 3.17(B)(4)].
- F. Sections 3.17(C) and (D) are not applicable.

*§3.19: Surface Waters & Wetlands*

The Board makes the following findings:

- A. The proposed trail will cross a small stream in a drainage ditch. [Section 3.19(C)].
- B. The proposed kiosks, in the locations identified at the site visit and on the site plan, will be compliant with the required setback to the Crane Brook. There are no mapped wetlands on the property and a sign will direct trail users away from the vernal pond identified by State Wetlands Ecologists on May 17, 2011 [Section 3.19(D)(1),(2)].
- C. This section is not applicable as no septic systems are proposed [Section 3.19 (D)(4)].
- D. With the exception of the crossing, no other development is proposed in the vicinity of a stream [Section 3.19(D)(5)].
- E. Section 3.19(D)(6) is not applicable as no mapped wetlands are located on the property and a sign directing trail users away from the site-identified vernal pond is proposed.
- F. Unpaved trails are proposed within the riparian buffer area of the unnamed stream. However, the stream is currently constrained in a drainage ditch and the extent of development in the buffer that is included in the proposal is a small

crossing. Limited clearing of brush and small trees will occur to create a walking path in the vicinity (no filling or excavating) and any resulting undue adverse impacts to the small stream will be mitigated through the retention of existing vegetation [Section 3.19(E)(2)(b)].

- G. The proposed parking area for the trails is near the entrance to the existing Town Garage. As the current and proposed parking is within the New Road right-of-way, the Selectboard has jurisdiction for review. The Development Review Board notes that the existing and proposed parking area next to the Town Garage entrance appears to be located outside of the required setback area for the Crane Brook [Section 3.19(E)(2)(f)].
- H. All other portions of Section 3.19 are not applicable or not required for this application.

*§5.3: Site Plan Review*

The Board makes the following findings:

- A. The proposed trails and associated crossings and signage will not have undue adverse impacts to significant natural, historic, and scenic resources as the parcel currently has public walking trails, the parcel is not above 1500 feet in elevation, there are no areas of steep or very steep slopes that will be disturbed, the required setback and buffer area for the Crane Brook will be met and the crossing for the small unnamed stream will have minimal impact, no Special Flood Hazard Areas are located on the parcel, the use will not have an undue adverse impact on the delineated source protection area and is located more than 200 feet from the public well, the location of the proposed trail will be on the perimeter of the mapped deer wintering area, and existing scenic resources will be unaffected. Additionally, the Conservation Commission provided testimony at the hearing regarding their review of the proposal and they concluded that the proposed trails and associated crossings and signage will not have an undue adverse impact to the wildlife in the area [Section 5.3(B)(1)].
- B. The proposed trails and locations of the related signage and crossings are compatible with the proposed setting and context of the Rural Residential zoning district as the parcel has existing public trails. [Section 5.3(B)(2)].
- C. Section 5.3(B)(3)(a)-(e) are not applicable. The existing and proposed parking area is fully within the New Road right-of-way and is the jurisdiction of the Selectboard. No new vehicle access points or curb cuts are proposed [Section 5.3(B)(4)].
- D. Section 5.3(B)(5) is not applicable. Site circulation is limited to trails and the parking area.
- E. The proposed trails will be surrounded by natural vegetation [Section 5.3(B)(6)].
- F. No outdoor lighting is proposed [Section 5.3(B)(7)].
- G. All crossings do not require site excavation or ground disturbance [Section 5.3(B)(8)].

*§5.4: Conditional Use Review*

The Board makes the following findings:

- A. The proposed trails and associated crossings and signage will not result in an undue adverse effect on the capacity of existing or planned community services or facilities as the parcel currently contains public trails. The Underhill-Jericho Fire Department has reviewed the plans for emergency rescue [Section 5.4(B)(1)].
- B. The proposed trails and associated crossings and signage will not result in an undue adverse effect on the character of the area affected as defined by the Rural Residential zoning district purpose statement. Additionally, trails on Town properties are encouraged in the 2010 Underhill Town Plan [Section 5.4(B)(2)].
- C. The proposed trails and associated crossings and signage will not result in an undue adverse effect on traffic in the vicinity as they will be not be accessed via vehicles on Irish Settlement Road, and New Road will be the main point of vehicular access to the proposed parking area [Section 5.4(B)(3)].
- D. The proposed trails will meet all required setbacks with the exception of the buffer for the unnamed stream. The Board finds that this impact is minimal and will not have undue adverse impacts for the stream. A waiver was requested at the hearing to locate the New Road kiosk within the New Road right-of-way. See Section 5.5 below [Section 5.4(B)(4)].
- E. Section 5.4(B)(5) is not applicable.
- F. Site plan review standards are addressed in Section 5.3 above [Section 5.4(C)].
- G. Trails on Town properties are encouraged in the 2010 Underhill Town Plan. A waiver was requested at the hearing to locate the New Road kiosk within the New Road right-of-way. See Section 5.5 below [Section 5.4(D)(1), (2)].
- H. Sections 5.4(D)(3) and (4) are not applicable.

*§5.5: Waivers and Variances*

- A. The Board waives all requirements and standards it has determined to be not applicable [Section 5.5(A)].
- B. The Board finds that the proposed New Road kiosk will be located within the New Road right-of-way for reasons of visibility. As there is not a front lot line setback requirement for signs, the waiver requested at the hearing is not applicable to the Development Review Board's review. Per Section 3.16(C)(4), signs proposed in the Town right-of-way must obtain approval from the Selectboard.

*§10.2(A)(6): Exemptions (trails)*

- A. The Board finds that the proposed trails do not qualify for the exemption as signs and parking areas are proposed.

#### IV. DECISION AND CONDITIONS

Based upon the findings above, the Development Review Board grants approval for the proposed conditional use/site plan review application for trails and associated crossings and signage as described at the hearing subject to the following conditions:

- A. The board approves the two (2) proposed kiosks. Additional kiosks will require an amendment to this permit. The Board defers review and approval of additional kiosk locations to the Zoning Administrator.
- B. Directional/informational signs are exempt from additional zoning permitting and are approved.
- C. Trails shall be managed in accordance with the policy and procedures outlined in the Town of Underhill, VT Trails Handbook published by the Underhill Trails Committee and adopted by the Underhill Selectboard on 9-22-09.
- D. No off-site parking is approved.
- E. The proposed stream crossings, locations and method of crossing are approved as presented. Any changes to the crossing structures shall be implemented in accordance with the Underhill Trails Handbook. Any additional bridge structures required or deemed necessary through good trail management practice can be approved by the Zoning Administrator.
- F. The Development Review Board recommends approval of the proposed on-street parking layout and location of the New Road kiosk to the Underhill Selectboard.

Dated at Underhill, Vermont this 27 day of September, 2011.

Charles Van Winkle  
Charles Van Winkle, Chair, Development Review Board

**NOTICE:** This decision may be appealed to the Vermont Division of Superior 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 10-27-11.