TOWN OF UNDERHILL
APPLICATION OF JON HOWARD AND ROLAND BOUCHER
FOR SITE PLAN APPROVAL FOR ACCESS AND A DRIVEWAY
TO A NONCONFORMING LOT
FINDINGS AND DECISION

In re: Howard and Boucher
543 Irish Settlement Rd.
Underhill, VT 05489

Docket No. DRB-11-10: Howard/Boucher

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding involves review of Jon Howard's and Roland Boucher's application for a site plan review approval for access and a driveway to a nonconforming lot owned by Roland Boucher at 543 Irish Settlement Rd. in Underhill, VT.

A. On October 20, 2011, Jon Howard filed an application for an access permit to property for sale at 543 Irish Settlement Rd., Underhill, VT owned by Roland Boucher. A site plan review hearing request was submitted for the project by Roland Boucher on October 27, 2011. A copy of the applications and materials are available at the Underhill Town Hall.

B. On October 21, 2011, copies of the notice of a public hearing were mailed via Certified Mail to the Applicants, Jon Howard, P.O. Box 43, Underhill Center, VT 05490 and Roland Boucher, 29 Blueberry Hill Rd., Weston, MA 02493, and to the following abutting neighbors:

1. Elliott/Whitcomb, 560 Irish Settlement Rd., Underhill, VT 05489
2. Abair/Gottstein, 548 Irish Settlement Rd., Underhill, VT 05489
3. Stone-Allard/Allard, 537 Irish Settlement Rd., Underhill, VT 05489
4. Jurasek, 12 Doon Rd., Underhill, VT 05489
5. Hardy, P.O. Box 88, Underhill, VT 05489
6. Davis, 36 Hill Crest Ln., Underhill, VT 05489
7. Yellin, 20 Doon Rd., Underhill, VT 05490
8. Schneider, 569 Irish Settlement Rd., Underhill, VT 05489
9. Wilcox, 152 Weed Rd., Essex, VT 05452
10. Flewelling, 559 Irish Settlement Rd., Underhill, VT 05489
11. Leonard, 4 Doon Rd., Underhill, VT 05489

C. On October 21, 2011 notice of the public hearing on the proposed Howard and Boucher site plan review application were posted at the following places:
1. The property to be developed, 543 Irish Settlement Rd. (10/22/11);

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 October 22, 2011, notice of a public hearing on the proposed site plan review application was published in *The Burlington Free Press.*

E. The hearing began at 6:30 PM on November 7, 2011.

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

1. Penny Miller, Vice Chair
2. Matt Chapek
3. Chuck Brooks
4. Will Towle
5. Peter Seybolt

Kari Papelbon, Zoning & Planning Administrator also attended the hearing.

G. At the outset of the hearing, Vice Chairperson and Acting Chair 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:

1. Jon Howard, P.O. Box 43, Underhill Center, VT 05490 (via telephone).
2. Bridget Stone-Allard, 537 Irish Settlement Rd., Underhill, VT 05489.
3. Lisa Abair, 548 Irish Settlement Rd., Underhill, VT 05489.

H. During the course of the hearing the following exhibits were submitted to the Development Review Board:

1. A staff report sent by Zoning and Planning Administrator Kari Papelbon to the Development Review Board, Jon Howard, Roland Boucher, the Underhill Selectboard, the Underhill Conservation Commission Chair, and the Underhill-Jericho Fire Department;
2. Jon Howard's Access Permit Application (dated 10-17-11);
3. Roland Boucher's Site Plan Review Hearing Request (dated 10-27-11);
4. A copy of the Plan and Profile Drawing for the 543 Irish Settlement Access Drive prepared by JH Stuart Associates (dated October 2011);
5. A copy of the Site Plan Review Standards Findings Checklist;
6. A copy of the email from Chuck and Gerry Hardy (dated 11-2-11);
7. A copy of the tax map for IS543;

8. A copy of the hearing notice (published in *The Burlington Free Press* on 10-22-11);
9. A copy of the letter from Harry Schoppmann of the Underhill Jericho Fire Department (dated 11-7-11);
10. A copy of the draft Warranty Deed with the shared access maintenance agreement language;
11. A copy of the Vermont Agency of Natural Resources-approved water and wastewater plan prepared by JH Stuart Associates for Roland Boucher (revised 8-31-10).

These exhibits are available in the Howard/Boucher, IS543, Site Plan Review 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 Applicants, Jon Howard and Roland Boucher, seek site plan review approval for access and a driveway to a nonconforming lot owned by Roland Boucher.

B. The subject property, 543 Irish Settlement Rd., Underhill, VT is located in the Rural Residential and Water Conservation zoning districts per Article II, Tables 2.3 and 2.4 respectively 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 (D): Rural Residential District
   2. §3.2(A) and (B): Access & Frontage Requirements, Nonconforming Lots
   3. §5.3: Site Plan Review
   4. §5.5(A): Waivers and Variances

D. Bridget Stone-Allard and Paul Allard and Lisa Abair attended the hearing. See the minutes for a summary of their testimony. Chuck and Gerry Hardy provided an email in support of the project.

III. CONCLUSIONS

Applicable Regulation Standards

Article II, Table 2.3 (D): Dimensional Standards

The Board finds that the proposed access is for a lot without the minimum required frontage for the district (250 feet).

§3.2: Access

The Board makes the following findings:

A. The existing lot does not have frontage along Irish Settlement Road, and access is proposed via a right-of-way utilizing the existing curb cut and a portion of the existing driveway for the existing house on the adjoining lot.

B. The lot is an existing nonconforming lot.

C. The existing nonconforming lot was created in accordance with subdivision requirements in place between 1979 and 1984. The lot is landlocked with no access to a public highway, and was legally in existence as of the effective date of the 2011 Unified Land Use and Development Regulations, but does not meet minimum frontage requirements.

D. The right-of-way as depicted on a survey that has yet to be recorded will change according to the submitted proposal.

E. The Applicants have submitted a right-of-way agreement for access to the nonconforming lot over the existing house lot to be included in the deeds.

F. The proposed access is not on a Class IV road.

§5.3: Site Plan Review

The Board makes the following findings:

A. The locations of the proposed access and driveway as identified on the proposed plans will not have undue adverse impacts to significant natural, historic, and scenic resources as the location utilizes the existing curb cut and a portion of the existing driveway, the parcel is not above 1500 feet in elevation, the stream on the property is more than 25 feet from the proposed development, no Special Flood Hazard Areas exist on the property, no delineated source protection areas exist on the property, there are no mapped significant wildlife habitat areas or travel corridors on the property, and existing scenic resources will be unaffected [Section 5.3(B)(1)].

B. The proposed locations of the access and driveway are compatible with the proposed setting and context of the Rural Residential zoning district as it will utilize the existing curb cut and a portion of the existing driveway to access one existing

building lot. The access and driveway will be located solely within the Rural Residential zoning district [Section 5.3(B)(2)].

C. The proposed access will utilize the existing curb cut and a portion of the existing driveway. Existing sight distances have been determined by the Road Foreman to be adequate [Section 5.3(B)(3)].

D. Section 5.3(B)(4) and (5) are not applicable as the parking area will be adjacent to the future dwelling on the property and no service areas are proposed.

E. The application states that the proposed driveway will retain as much vegetation as is feasible to shield the view from neighboring properties. Clearing for the proposed driveway will be minimized as a portion of the existing right-of-way will be utilized [Section 5.3(B)(6)].

F. No exterior lighting is proposed for the driveway [Section 5.3(B)(7)].

G. Silt fence along the downhill side of the proposed driveway will be installed to prevent contamination to the stream. Culverts will be installed per Town requirements [Section 5.3(B)(8)].

Section 5.5, Waivers and Variances

The Board makes the following findings:

A. The Board waives all requirements and standards of Section 5.3 determined to be not applicable [Section 5.5(A)].

B. No waiver requests for dimensional standards or variances have been requested [Sections 5.5(B) and (C)].

IV. DECISION AND CONDITIONS

Based upon the findings above, the Development Review Board (Penny Miller, Chuck Brooks, Matt Chapek, and Peter Seybolt voting in favor; Will Towle did not cast a vote) grants approval for the site plan review application for the access and driveway to the nonconforming lot as described at the hearing subject to the following conditions:

A. The proposed access as shown on the Plan and Profile Drawing for the 543 Irish Settlement Access Drive prepared by JH Stuart Associates (dated October 2011) is approved.

B. The proposed driveway on the nonconforming lot to the house site as shown on the water and wastewater plan (revised 8-31-10) is approved. Any change to the driveway location depicted on the plan will require additional approval of the Development Review Board.

C. Development of the nonconforming lot shall be limited to one principal use or structure and associated accessory structures and uses as allowed for the Rural Residential and Soil & Water Conservation districts per Section 3.2(B)(2).

D. The proposed access and driveway to the house site on the nonconforming lot shall be constructed to the standards of Section 3.2(D)(9).

E. The access and driveway plan shall be updated to include the following:

1. The 18" x 30' culvert in the location required by the Road Foreman.
2. The 10' x 30' pull-off at the intersection of the proposed driveway and the existing "grassy lane" per the recommendation of the Underhill Jericho Fire Department letter and Section 3.2(D)(9).
3. The location of the turnaround at the house site.
4. Silt fence locations along the new access and driveway section to the house site.

F. Certification from a licensed engineer that the permitted access and driveway improvements have been completed in conformance with this decision and approved plans shall be required prior to issuance of a Certificate of Occupancy per Section 10.4(A)(2).

Dated at Underhill, Vermont this 16th day of November, 2011.

Penny Miller

Penny Miller, Vice 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 12-16-11.