TOWN OF UNDERHILL
APPLICATION OF SUZANNE KUSSEROW AND WILLIAM LEWIS
FOR A 3-LOT PLANNED RESIDENTIAL DEVELOPMENT AND
BOUNDARY LINE ADJUSTMENT
FINAL 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' final 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 January 24, 2012, Suzanne Kusserow filed a final hearing application for subdivision for the project. A copy of the application and additional information are available at the Underhill Town Hall.

B. On February 21, 2012, a copy of the notice of a final hearing was mailed via certified mail 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. February 23, 2012, notice of the final hearing on the proposed Kusserow and Lewis subdivision and boundary line adjustment 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 February 29, 2012, notice of a final hearing was published in *Seven Days*.

E. The final hearing was scheduled to begin immediately following the preceding hearing on March 19, 2012.

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

- Chuck Brooks
- Matt Chapek
- Penny Miller
- Will Towle
- Charles Van Winkle, Chair

Kari Papelbon, Zoning and Planning Administrator; Consultants Brad Holden and Justin Willis; Applicant Suzanne Kusserow; and Tom Fetters, neighbor, also attended the hearing.

G. At the outset of the hearing, Chairman 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:

- Suzanne Kusserow, P.O. Box 125 (37 Beartown Rd.), Underhill Center, VT 05490
- Tom Fetters, 49 Beartown Rd., Underhill, VT 05489

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

H. 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: Final (dated 1-24-12);
3. A copy of the completed Subdivision Checklist: Final;
4. A copy of the plans prepared by Justin Willis of Willis Design Associates, Inc. (Sheets S-1, D1, and D2 dated 2-10-12);

5. A copy of the road plans prepared by Civil Engineering Associates, Inc. (Sheets C1.0, C2.0, and C2.1 dated Feb. 2012);
6. A copy of the survey prepared by Brad Holden (dated Feb. 2012);
7. A copy of the waiver request list;
8. A copy of the Sample Warranty Deed;
9. A copy of the Sample Road Maintenance Agreement;
10. A copy of the letter from Justin Willis with responses to the Evaluation Considerations (dated 2-10-12);
11. A copy of Preliminary Decision (dated 9-11-11);
12. A copy of the minutes from the 9-11-11 Preliminary Hearing;
13. A copy of the hearing notice (published in *Seven Days* on 2-29-12)
14. A copy of the email from Brigid Scheffert (dated March 18, 2012);
15. A copy of the subdivision survey by Walter L. Urie for Suzanne Kusserow showing the Fetters lot (Sheet 1 of 3 revised February 2001).

These exhibits are available in the Kusserow/Lewis, BE037, subdivision/boundary line adjustment 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:

- Final Plat Submission Requirements, pages 9-10, "Final 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. Final Application Submission Requirements, "Final Plat for Subdivisions" – The final plat for a subdivision shall conform in all respects to the preliminary plat as approved by the [DRB]...The final plat shall be drawn to a scale of not more than two hundred (200) feet to the inch, and shall show:

1. Proposed subdivision name or identifying title, the parcel code of the original lot, the name of the municipality, the name and address of the record owner and subdivider, the name, license number and seal of the licensed land surveyor and/or professional engineer, the boundaries of the subdivision and its general location in relation to existing roads or other landmarks and scale, date, true north point, and legend.

2. Road names and lines, pedestrian ways, lots, reservations, easements and areas to be dedicated to public use.

3. Sufficient data acceptable to the [DRB] to determine readily the location, bearing and length of every road line, lot line, boundary line and to reproduce such lines upon the ground. When practicable these should be tied to reference points previously established by a public authority.

4. The length of all straight lines, the deflection angles, radii, length of curves, tangent distances and bearings for each road.

5. By proper designation on such Plat, all public open space for which offers of dedication are made by the subdivider and those spaces title to which is reserved by the subdivider.

6. Lots within the subdivision numbered in numerical order within blocks, and blocks lettered in alphabetical order.

7. The location of all of the improvements...and in addition thereto the location of all utility poles, sewage disposal systems, and rough grading and other devices and methods of draining the area within the subdivision.

8. The location and results of all percolation tests for each lot of the subdivision, the location of all proposed sanitary sewage systems, and a statement that all such systems will be designed and constructed in conformance with the Sewage Ordinance for the Town of Underhill, as well as to applicable state regulations and standards.

9. The location of all existing and proposed sources of potable water, along with evidence that such will not be contaminated by the proposed sewage systems.

10. Monuments – Reinforced concrete monuments of 3,000 p.s.i. concrete containing four (4) number three reinforcing rods set one (1) in each corner. The monuments shall be four (4) inches square at the top, and three (3) feet long or any approved equal. Monuments shall be set at all R.O.W. intersections, and at all points of curvance (P.C.), points of tangency (P.T.), on both sides of the right-of-way and any other critical points in the road lines as will enable a land surveyor to correctly stake out any lot in the subdivision. In addition, monuments will be set on all corners of the boundary. Each monument shall have identification on the top, so that the marked center shall be the point of reference. The tops of such monuments shall project above the surrounding ground surface at least four (4) inches. The monuments shall be set in place after all other road improvements are completed.

11. There shall be submitted to the [DRB] with the final plat the following supporting documents:

    a. A certificate from an engineer or other consultant approved by the Town as to the satisfactory completion of all improvements required by the [DRB], or, in lieu thereof, a performance bond to secure completion of such improvements and their maintenance for a period of two years, with a certificate from the Board of Selectmen that it is satisfied either with the bonding or surety company, or with security furnished by the subdivider.

    b. The subdivider shall provide letters from the Chittenden East School District Superintendent and the Underhill-Jericho Fire Department, addressing the impact of the proposed subdivision...

    c. For lots less than 10 acres in size, the applicant must provide a subdivision permit from the Vermont Agency of Environmental Conservation, Department of Water Resources.

    d. The subdivider shall provide written acknowledgement from the Selectmen that all plans for road construction have been reviewed by the Selectmen and are in compliance with the road policy for the Town of Underhill.

    e. Any other documents required by the [DRB] as a result of preliminary plat approval.

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 (required – 75' setback, 50' setback requested).
   b. Rear setback – 20 feet from building envelope to rear lot line (required – 50' setback, 30' setback shown).

2. A waiver of the bonding requirement in Section II(F)(11)(a) above.

3. The waiver requests for Lot 3 were amended at the final hearing. The new requests are for 35' from the building envelope to the right-of-way and 10' from the building envelope to the rear lot line. The building envelope is proposed to be 40' from both the right-of-way and the rear lot line. The Board considers the front yard to be the northern side of the property along the right-of-way to the adjacent yard, and considers the shared lot line with BE049 as the rear lot line.

III. <u>CONCLUSIONS</u>

Applicable Regulation Standards

Application Submission Requirements, "Final Plat for Subdivisions" [as noted above in Section II (F)] – The Board finds that the application fulfills requirements (3) through (9).

A. Requirement #1 - The Board finds that the application does not include the new parcel codes (see Section IV).
B. Requirement #2 – The Board finds that a proposed name for the private road is not on the plans. The Board recognizes that the Selectboard has approved the name Acer Ridge (see Section IV).
C. Requirement #10 – The Board finds that the requirement for reinforced concrete monuments is out of date. The Board accepts the proposal for iron pins as presented on the survey.
D. Requirement #1, bonding – The Board finds that a waiver of this requirement has been requested. Recommendations for approval will be submitted to the Selectboard.
E. Requirement #2, letters – The Board finds that letters from Chittenden East Supervisory Union and the Underhill-Jericho Fire Department have been received and indicate their ability to provide services for the subdivision.
F. Requirement #3, ANR permit – The Board finds that state permitting requirements with regard to subdivisions have changed since 2002.
G. Requirement #4, Selectboard road approval – The Board finds that this will occur after their decision has been issued. Recommendations for approval will be submitted to the Selectboard.
H. Requirement #5, other – See Section IV.

Planning Standards, "Evaluation Considerations"

The Applicant's consultant provided Findings of Fact in response to the Evaluation Considerations. The Board accepts these responses and makes supplemental findings where applicable.

A. Consideration #5 – The Board finds that where the application does not meet minimum standards in the zoning regulations, waivers have been requested under the Planned Residential Development regulations [see Section II(J) and Section IV].
B. Consideration #8 – The Board finds that a conventional subdivision concept was submitted for density calculation purposes. The Board finds that the site is suitable for the proposed density.

Section III (R), "Planned Residential Development" – Final 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(J) 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 final 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. The proposed Planned Residential Development's is consistent with the goals of the 2010 Town Plan. Where the plan deviates from the minimum requirements in the zoning regulations, waivers have been requested [see Section II(J) and Section IV].

4. The proposed Planned Residential Development's is consistent with the applicable evaluation standards set forth in the Town's Subdivision Regulations.

5. The proposed Planned Residential Development provides for the preservation of open space. An additional 1.3 acres of open space (a total of ±5.3 acres) was added to Lot 1 between the preliminary and final hearings.

6. The proposed shapes and locations of the open space on Lot 1 are sensible treatments of the land. A sample Warranty Deed has been submitted which prohibits development of the open space areas 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. Testimony was provided at the hearing by Mr. Fetters which indicates his acceptance of the proposed Lot 3 building envelope setback to the shared lot line with his property.

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 two 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) 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 designs for the private road and driveways were submitted with the final hearing application package. The Board recognizes that approval of roads and driveways are the jurisdiction of the Selectboard, and recommendations for their approval will be submitted to the Selectboard.

IV. DECISION AND CONDITIONS

Based upon the findings above, and subject to the conditions below, the Development Review Board grants approval for the 3-lot Planned Residential Development and Boundary Line Adjustment as presented at the final hearing.

A. Per the Underhill Subdivision Regulations, final approval of the subdivision is granted upon filing of the final subdivision plat in the Underhill Land Records. No transfer or sale of property may occur prior to recording the final plat and all applicable permits in the Town of Underhill Land Records.

B. All parcel codes and the private road name (Acer Ridge) shall appear on the final Mylars.

C. The following waivers are approved:

1. Lot 3 – 10 feet for the building envelope to the rear lot line (shared line with BE049). The approved setback is 40 feet.
2. Lot 3 – 35 feet for the building envelope to the right-of-way. The approved setback is 40 feet.

D. No lot in this subdivision shall be further subdivided. This language shall appear in any deed to the lots in this subdivision.

E. The Road Maintenance Agreement shall be recorded in the Land Records. A reference to this agreement shall appear in the deeds to all lots.

F. All required State and local permits shall be recorded in the Land Records.

G. All building envelopes and septic areas shall be staked out by the surveyor/engineer prior to any construction, and off-set stakes shall be held in place until completion of construction.

H. A copy of the engineer's letter to the State certifying that the septic systems for Lots 2 and 3 have been installed per the approved plans shall be filed with the Zoning Administrator prior to issuance of a building permit. The certification letter shall be recorded in the Land Records.

I. Prior to recording the final Mylars, the applicant shall submit a copy of the plat and Sheet 1 in digital format. The format of the digital information shall require approval of the Zoning Administrator.

J. All lots shall have their 911 codes posted prior to issuance of any building permit (Lot 1: AR003, Lot 2: AR005, Lot 3: AR004). The lot at 39 Beartown Road will become 6 Acer Ridge (AR006). The apartment at 39 Beartown Road will have an address of 8 Acer Ridget (AR008). The Lewis lot will become 31 Beartown Road (BE031).

K. All subdivision fees shall be paid in full to the Zoning Administrator prior to filing of the final plat.

L. Applicant shall obtain approval of the road and driveway design, underground utilities, and waiver request for the bonding requirement from the Selectboard prior to filing the final plat.

The Board also approved the recommendation to the Selectboard for approval of the road and driveway design, the underground utilities, and the waiver request of the bonding requirement with the following standard condition:

Upon completion of construction of the road, the designer/engineer must certify by letter to the Zoning Administrator that the road has been constructed as designed (per B-71 Standards and the Underhill Road Policy).

Dated at Underhill, Vermont this 1st day of May, 2012.

Charles Van Winkle, Chairperson, 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. Appeal period ends 31 May 2012.