TOWN OF UNDERHILL
APPLICATION OF JOHN AND BARBARA MARSH
FOR SITE PLAN APPROVAL FOR ACCESS AND A DRIVEWAY
OFF OF A CLASS IV TOWN HIGHWAY
FINDINGS AND DECISION

In re: John and Barbara Marsh
264 Stevensville Rd.
Underhill, VT 05489

Docket No. DRB-12-02: Marsh

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding involves review of John and Barbara Marsh's application for a site plan review approval for access and a driveway off of a Class IV town highway to a lot they own at 264 Stevensville Rd. in Underhill, VT.

A. On December 13, 2011, John and Barbara Marsh filed an application for an access permit to property they own at 264 Stevensville Rd., Underhill, VT. A site plan review hearing request was submitted for the project on February 6, 2012. A copy of the applications and materials are available at the Underhill Town Hall.

B. On March 7, 2012, copies of the notice of a public hearing were mailed via Certified Mail to the Applicants, John and Barbara Marsh, 35 S. Summit St., Essex Junction, VT 05452, and to the following abutting neighbors:

1. Wheeler Associates, c/o Patricia McLaughlin, 37 Foster Rd., Essex, VT 05452
2. VT ANR, 103 S. Main St., Waterbury, VT 05676
3. Smith, Alexander, et al., 1849 Panton Rd., Panton, VT 05491
4. Towle, 260 Stevensville Rd., Underhill, VT 05489

C. On March 9, 2012, notice of the public hearing on the proposed Marsh site plan review application were posted at the following places:

1. The property to be developed, 264 Stevensville Rd. (by 3/16/12);
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 March 14, 2012, notice of a public hearing on the proposed site plan review application was published in *Seven Days*.

E. The hearing began at 7:25 PM on April 2, 2012.

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

1. Penny Miller
2. Matt Chapek
3. Chuck Brooks
4. Charles Van Winkle, Chair

Kari Papelbon, Zoning & Planning Administrator; Brad Holden, Selectboard Chair; Seth Friedman, Selectboard Member; John and Barbara Marsh, applicants; Dennis Hill, Esq., attorney for the Marshes; Will Towle, neighbor (recused for this hearing); and two members of the public also attended the hearing.

G. 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. Will Towle, 260 Stevensville Rd., Underhill, VT 05489.

Representative(s) who spoke on behalf of the Applicants:

1. Dennis Hill, Esq., 333 Dorset St., South Burlington, VT 05403

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, John and Barbara Marsh, the Underhill Selectboard, the Underhill Conservation Commission Chair, and the Underhill-Jericho Fire Department;
2. John and Barbara Marsh's Site Plan Review Hearing Request (dated 1-25-12);
3. A copy of the completed Site Plan Review Standards Findings Checklist;
4. John and Barbara Marsh's Access Permit Application (dated 10-19-11);
5. A copy of the Septic Plan prepared by David Tudhope (Sheet 1 dated 11-28-11);
6. A copy of the Wastewater System and Potable Water Supply Permit (dated 2-23-12);
7. A copy of the original subdivision survey prepared by John Marsh (revised 11-11-91, approved by the Planning Commission Chair 1-14-92);

8. A copy of the letter from ZA Papelbon to Don Foote, Blue Spruce Realty (dated 4-29-09);
9. A copy of the letter from William Towle (dated 10-20-11);
10. A copy of the letter to John Marsh from the Underhill Selectboard (dated 3-11-91);
11. A copy of the letter to John Marsh from the Underhill Selectboard (dated 11-20-91);
12. A copy of the letter to John and Barbara Marsh from the Underhill Planning Commission (dated 12-16-91);
13. A copy of the tax map for ST264;
14. A copy of the hearing notice (published in *Seven Days* on 3-14-12.

I. The hearing was continued to May 7, 2012 at 6:30 PM.

J. Present at the continued hearing on May 7, 2012 were the following members of the Development Review Board:

1. Penny Miller, Vice Chairperson

Kari Papelbon, Zoning & Planning Administrator, also attended the hearing. As there was not a quorum of Board Members present, the hearing was continued to May 14, 2012 at 6:30 PM. All interested parties, including the applicants and consultants, were informed prior to the hearing of the continuance.

K. The continued preliminary hearing began at 6:37 PM on May 14, 2012.

L. Present at the continued hearing on May 7, 2012 were the following members of the Development Review Board:

1. Penny Miller
2. Matt Chapek
3. Chuck Brooks
4. Peter Seybolt
5. Charles Van Winkle, Chair

Kari Papelbon, Zoning & Planning Administrator; John and Barbara Marsh, applicants; Will Towle, neighbor (recused for this hearing); and 3 members of the public also attended the hearing.

M. 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. Will Towle, 260 Stevensville Rd., Underhill, VT 05489

Representative(s) who spoke on behalf of the Applicant(s):

1. Don Foote, Blue Spruce Realty, P.O. Box 1099, Jericho, VT 05465

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

1. A copy of the Easement deed (dated May 7, 2012);
2. A copy of the Acknowledgement and Confirmation (dated May 8, 2012) and Exhibit A;
3. A copy of the Right of First Refusal (dated May 7, 2012);
4. A copy of the Winter Road Maintenance Agreement (dated May 7, 2012 and May 8, 2012).

These exhibits are available in the Marsh, ST264, 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, John and Barbara Marsh, seek site plan review approval for access and a driveway off of a Class IV Town Highway to a lot they own.

B. The subject property, 264 Stevensville Rd., Underhill, VT is located in the Soil and Water Conservation zoning district per Article II, Table 2.6 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 2.6: Soil & Water Conservation District
2. §3.2: Access & Frontage Requirements
3. §5.3: Site Plan Review
4. §5.5(A): Waivers and Variances

D. Mr. Towle provided testimony on the proposal. See the minutes for details.

III. CONCLUSIONS

Applicable Regulation Standards

Article II, Table 2.6

The Board finds that the proposed driveway and curb cut are on the Class IV portion of Stevensville Road. Per Table 2.6(E)(8), the Board finds that a shared driveway was not part of the proposal and the proposed location of the curb cut and driveway are acceptable; no stream crossings are proposed with the driveway; and no mapped wetlands, significant wildlife habitat, natural areas, or timber stands will be affected.

§3.2: Access

The Board makes the following findings:

A. The existing lot does not have frontage along the Class III portion of Stevensville Road, and access is proposed via a curb cut and driveway on the Class IV portion of the road. DRB review and approval is required for this access [Section 3.2(A)].

B. The access will also be reviewed by the Selectboard [Section 3.2(B)]. The Board recommends approval with conditions [See Decision and Conditions].

C. The existing lot was created in accordance with subdivision requirements in place at the time of approval in 1990. Access and driveway approval to the lot was not part of the subdivision nor was approval granted by the Selectboard.

D. The Applicants have submitted written testimony that the proposed access and driveway will meet the design requirements of Section 3.2(D).

§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 none have been identified in the proposed access and driveway location, the access and driveway will not be located above 1500 feet in elevation, Stevensville Brook is more than 100 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. Additionally, legal documents submitted and recorded include buffered areas [Section 5.3(B)(1)].

B. The proposed location of the access and driveway are compatible with the proposed setting and context of the Soil & Water Conservation zoning district as it will avoid adverse impacts to natural and scenic resources. Stevensville Brook is more than 100 feet from the proposed development [Section 5.3(B)(2)].

C. The Applicants have provided written testimony to the effect that the proposed access will adhere to the driveway design standards of Section 3.2. The proposed curb cut will not create hazards to vehicles, pedestrians, or bicyclists as the sight distance is adequate and will be designed in accordance with Section 3.2 and VTrans Standard B-71 [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 submitted legal documents provide for screening and buffer areas [Section 5.3(B)(6)].

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

G. The Applicants have provided written testimony that State best management practices for construction sites will be utilized onsite for stormwater management. 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 Charles Van Winkle voting in favor) grants approval for the site plan review application for the access and driveway as described at the hearing subject to the following conditions:

A. The proposed access and driveway as shown on the Septic Plan for 264 Stevensville Road, which includes the parcel site plan, prepared by David A.

Tudhope (11-28-11) are approved. Any change to the driveway location depicted on the plan will require additional approval of the Development Review Board.

B. A letter of review for the access and driveway by the Underhill Jericho Fire Department shall be submitted prior to review by the Selectboard. The Board recommends Selectboard approval with this condition.

C. The proposed access and driveway to the house site on the lot shall be constructed to the standards of Section 3.2.

D. The plan shall be updated to include the buffers as described in the submitted legal documents.

E. 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 4 day of June, 2012.

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 7-4-12.