TOWN OF UNDERHILL
APPLICATION OF THE VT AGENCY OF NATURAL RESOURCES,
DEPARTMENT OF FORESTS, PARKS, AND RECREATION
FOR SITE PLAN APPROVAL FOR A PARKING AREA
OFF OF A CLASS IV TOWN HIGHWAY
FINDINGS AND DECISION

In re: VT ANR
Dept. of Forests, Parks, and Recreation
352 Mountain Rd.
Underhill, VT 05489

Docket No. DRB-12-07: VT ANR

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding involves review of Gary Sawyer's application on behalf of the VT Agency of Natural Resources, Department of Forests, Parks, and Recreation for site plan review approval for a parking area accessed off of a Class IV town highway (Stevensville Rd.) on the Mount Mansfield State Forest property at 352 Mountain Rd. in Underhill, VT.

A. On July 19, 2012, Gary Sawyer filed an application for site plan review for approval to construct a new parking area at the end of Stevensville Rd. on the Mount Mansfield State Forest property at 352 Mountain Rd., Underhill, VT. A copy of the application and materials are available at the Underhill Town Hall.

B. On July 19, 2012, copies of the notice of a public site visit and hearing were mailed via Certified Mail to the Applicant, Gary Sawyer, Dept. of Forests, Parks, and Recreation, 111 West St., Essex Junction, VT 05452, and to the following abutting neighbors:

1. Ethan Allen Firing Range, U.S. Government, 113 Ethan Allen Rd., Jericho, VT 05465
2. Davis, P.O. Box 229, Underhill Center, VT 05490
3. Wheeler Associates, c/o Patricia McLaughlin, 37 Foster Rd., Essex Junction, VT 05452
4. Marsh, 35 S. Summit St., Essex Junction, VT 05452
5. Smith, Alexander, et al, 1849 Panton Rd., Panton, VT 05491
6. Williams, P.O. Box 139, Underhill Center, VT 05490
7. Smith/Mellencamp, 110 Summit St., Burlington, VT 05401
8. Smith, TTEEs, c/o Fred H. Smith, 12 Clearview Dr., Natick, MA 01760
9. Fogg, Rennie, McKenny, 81 Brigham Hill Rd., Essex, VT 05452
10. Gould/Murray, 15 Mill Pond Ln., South Burlington, VT 05403
11. McNulty, 18 Charles St., Pittsfield, MA 01201

12. Munt, 85 South St., Burlington, VT 05401
13. Russell, 4156 NW Tamarack, Corvalis, OR 97330
14. Chittenden Trust Co., Doris L. Evans Rev. Trust, 2 Burlington Sq., Burlington, VT 05401
15. Bennett, P.O. Box 95, Underhill Center, VT 05490
16. Riley, P.O. Box 188, Underhill Center, VT 05490
17. Pincus/Albright, P.O. Box 87, Underhill Center, VT 05490
18. A. Johnson Company, 995 S. 116 Rd., Bristol, VT 05443
19. Strek, 73 Harvey Rd., Underhill, VT 05489
20. Marceau, 59 Harvey Rd., Underhill, VT 05489
21. UVM Campus Planning Services, Attn: Linda Seavey, Director, 109 South Prospect St., Burlington, VT 05405
22. Potvin, P.O. Box 135, Underhill Center, VT 05490
23. Howard/Macarelli, 366 Pleasant Valley Rd., Underhill, VT 05489
24. Horner, 4 Macomber View, Underhill, VT 05489
25. Canedy, P.O. Box 6, Underhill Center, VT 05490
26. Vance, 381 Orchard Rd., Colchester, VT 05446
27. Parisi, P.O. Box 5, Underhill Center, VT 05490
28. Parisi, 112 S. Main PMB 205, Stowe, VT 05672
29. Norris/Deady, 78 Corbett Rd., Underhill, VT 05489
30. Bradford, P.O. Box 56, Underhill Center, VT 05490 (hand delivered)
31. Gamarci, 33 Waughbrook Ln., Underhill, VT 05489
32. McLane, TTEE, Deane Squabetty Trust, 2117 Granger Way, Lummi Island, WA 98262
33. Town of Stowe Town Clerk, P.O. Box 248, Stowe, VT 05672
34. Town of Cambridge Town Clerk, P.O. Box 127, Jeffersonville, VT 05464
35. Sogle Property, LLC. 675 Glenn Dr., Cambridge, VT 05444
36. Matoaka Forest LLC, c/o Fountain Forestry, P.O. Box 25, Pittsfield, NH 03263

C. On July 19, 2012, notice of the public site visit and hearing on the proposed ANR site plan review application were posted at the following places:

1. The property to be developed, at the end of Stevensville Rd. (MT352X);
2. The Underhill Town Clerk's office;
3. The Underhill Center Post Office (7/20);
4. The Underhill Flats Post Office;
5. Jacobs IGA;
6. The Underhill Country Store;
7. Wells Corner Market.

D. On July 21, 2012, notice of a public site visit and hearing on the proposed site plan review application was published in *The Burlington Free Press.*

E. The site visit began at 6:15 PM on August 6, 2012.

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

1. Penny Miller, Vice/Acting Chair
2. Matt Chapek
3. Chuck Brooks

Kari Papelbon, Zoning & Planning Administrator; Gary Sawyer, VT Dept. of Forests, Parks, and Recreation, Applicant; Jeff and Karen Davis, neighbors; Bob and Patsy McLaughlin, neighbors; Will Towle, neighbor; Brad Holden, Selectboard Member also attended the site visit.

G. The hearing began at 7:32 PM on August 6, 2012.

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

1. Penny Miller, Vice/Acting Chair
2. Matt Chapek
3. Chuck Brooks

Kari Papelbon, Zoning & Planning Administrator; Brad Holden, Selectboard Chair; Gary Sawyer, Applicant; Will Towle, neighbor (recused); Karen and Rob Williams, neighbors; Donald and Gail Canedy, neighbors; Bob and Patsy McLaughlin, neighbors; and Jeff and Karen Davis, neighbors, also attended the hearing.

I. At the outset of the hearing, Vice/Acting Chairperson Penny Miller explained that there was not a quorum of the Board. The hearing was continued to Monday, August 20, 2012 at 6:30 PM.

J. The continued hearing began at 6:37 PM on August 20, 2012.

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

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

Kari Papelbon, Zoning & Planning Administrator; Brad Holden, Selectboard Chair; Seth Friedman, Selectboard Member; Gary Sawyer, Applicant; Will Towle, neighbor (recused); Rob Williams, neighbors; Bob and Patsy McLaughlin, neighbors, 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. Gary Sawyer, VT ANR Dept. of Forests, Parks, and Recreation, 111 West St., Essex Junction, VT 05452
2. Rob Williams, 223 Stevensville Rd. (mailing address in Section I(B) above)
3. Will Towle, 260 Stevensville Rd., Underhill, VT 05489
4. Bob McLaughlin, 246 Stevensville Rd. (mailing address in Section I(B) above)

Written comments were received from:

1. Alexander Smith, 276 Stevensville Rd. (mailing address in Section I(B) above)
2. Jeff and Karen Davis, 230 Stevensville Rd. (mailing address in Section I(B) above)

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

1. Seth Friedman, Selectboard
2. Brad Holden, Selectboard Chair

M. 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, Gary Sawyer, the Underhill Selectboard, the Underhill Conservation Commission Chair, and the Underhill-Jericho Fire Department;
2. Gary Sawyer's Site Plan Review Hearing Request (dated 7-18-12);
3. A copy of the Parking Area Site Plan prepared by Gary Sawyer (dated 7-19-12);
4. A copy of the tax map for MT352X;
5. A copy of the hearing notice published in *The Burlington Free Press* by 7-21-12;
6. Photos submitted by Board Member Chuck Brooks;
7. Photos submitted by Will Towle;
8. A copy of the letter from Alexander Smith;
9. A copy of the email from Jeff and Karen Davis.

These exhibits are available in the VT ANR, MT352X, 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 Applicant, Gary Sawyer on behalf of the VT Agency of Natural Resources, Department of Forests, Parks, and Recreation, seeks site plan review approval for a new parking area off of a Class IV Town Highway (Stevensville Rd.) on the Mount Mansfield State Forest property.

B. The subject property, 352 Mountain Rd., Underhill, VT is located in the Soil and Water Conservation zoning district per Article II, Table 2.6 of the 2012 Unified Land Use and Development Regulations.

C. Approval is requested for the project pursuant to review under the following sections of the 2012 Unified Land Use and Development Regulations:

1. Article II, Table 2.6: Soil & Water Conservation District
2. §3.2: Access & Frontage Requirements
3. §3.13: Parking, Loading & Service Areas
4. §3.19: Surface Waters & Wetlands
5. §4.16: Public Facility
6. §5.3: Site Plan Review
7. §5.5(A): Waivers and Variances

D. Mr. Williams, Mr. Towle, and Mr. McLaughlin provided testimony with specific concerns on the proposal during the hearing. See the minutes for details.

E. Mr. Alexander provided written testimony against the proposal. See the letter for details.

F. Mr. and Mrs. Davis provided written testimony on the proposal. See the letter for details.

III. CONCLUSIONS

Applicable Regulation Standards

Article II, Table 2.6

The Board finds that the proposed parking area will be accessed via the Class IV portion of Stevensville Road. Maximum lot coverage has not been exceeded. The property is an existing public facility – the Mount Mansfield State Forest—per Table 2.6(E)(5).

§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 exists via the Class IV portion of the road [Section 3.2(A)].

B. The proposal was reviewed by the Selectboard during the hearing on August 20, 2012. Two members of the Selectboard provided testimony during the hearing regarding the inadequacy of the existing road for additional usage without significant upgrades [Section 3.2(B)].

C. No new access or upgrades to the existing access have been proposed.

§3.13: Parking, Loading & Service Areas

The Board makes the following findings:

A. The proposed parking area is of sufficient size to meet minimum parking space dimensions [Section 3.13(A)(1)].

B. The proposed parking area meets the minimum number of off-street parking spaces required per Table 3.1 [Section 3.13(A)(2)].

C. The proposed parking area is for use by trail users and is not associated with any buildings. There have been no details regarding the provision of handicapped parking spaces [Section 3.13(A)(3)].

D. The proposed parking area will be screened using existing vegetation on the Mount Mansfield State Forest property [Section 3.13(A)(4)].

E. The Applicant provided testimony that a determination has not been made as to whether the proposed parking area will be plowed during the winter [Section 3.13(A)(5)].

F. Section 3.13(B) is not applicable due to the nature of the use of the property.

Section 3.19, Surface Waters & Wetlands

The Board makes the following findings:

A. The proposed parking area is located 40 feet from the top of slope of the Stevensville Brook. The minimum setback requirement is 50 feet from the top of slope. The Applicant requested a variance during the hearing for this setback reduction and provided testimony that moving the parking area to comply with the setback would require more earthwork. No mapped wetlands are in the vicinity of the proposed parking area [Section 3.19(D)(1)].

B. The proposed parking area will be outside of the required riparian buffer [Section 3.19(D)(5)].

C. The proposed parking area does not qualify as a permitted encroachment [Section 3.19(E)(1)].

Section 4.16, Public Facility

The Board makes the following findings:

A. The proposed parking area is on State-owned land and meets the criteria for a public facility [Section 4.16(A)].

B. The purpose of the proposed parking area is to serve the existing trails on the State-owned property at the end of Stevensville Rd.

C. The proposed parking area may be regulated with regard to location, size, setbacks, off-street parking, and traffic as related to the proposal. The Board finds that the location is not suitable for the intended use as it is off of a privately- and minimally-maintained Class IV road and cannot support the anticipated additional traffic without significant upgrades [Section 4.16(A)].

D. Public facilities are not excluded in the zoning district and there is existing parking area serving the trails on Stevensville Rd. [Section 4.16(A)].

Section 5.3, Site Plan Review

The Board makes the following findings:

A. Site Plan Review is required for the proposed project.

B. Existing topography and drainage patterns, with the exception of an earthen berm to divert water from the parking area to the stormwater structure, will be maintained [Section 5.3(B)(1)(a)(i)].

C. The land in the area of the proposed parking lot is not above 1500 feet in elevation [Section 5.3(B)(1)(a)(ii)].

D. There are no areas of steep (15%-25%) or very steep (>25%) slopes in the area of the proposed parking lot [Section 5.3(B)(1)(a)(iii)].

E. The required minimum 50-foot setback to the Stevensville Brook is not met [Section 5.3(B)(1)(a)(iv)].

F. There are no Special Flood Hazard Areas in the vicinity of the proposed parking area [Section 5.3(B)(1)(a)(v)].

G. There are no delineated source protection areas in the vicinity of the proposed parking area [Section 5.3(B)(1)(a)(vi)].

H. The Applicant provided testimony at the hearing that a wildlife biologist found no significant wildlife habitat areas or travel corridors that will be affected by the proposed parking area. No written determinations have been submitted with the application [Section 5.3(B)(1)(a)(vii)].

I. The Applicant provided testimony at the hearing that the State's archaeologist had not found any historic sites or structures in the vicinity of the proposed parking area. No written determinations have been submitted with the application [Section 5.3(B)(1)(a)(viii)].

J. The proposed parking area does not meet the required 50-foot setback to Stevensville Brook and could be sited to meet the requirement; therefore, the Board finds that the proposals is not consistent with Section 5.3(B)(2) for the Soil & Water Conservation District.

K. The proposed parking area will be accessed via the existing access off of the Class IV section of Stevensville Rd. [Section 5.3(B)(3)].

L. See Findings for Section 3.13 above related to parking, loading and service areas [Section 5.3(B)(4)].

M. Access for the proposed parking area is off of the Class IV portion of Stevensville Rd. Testimony was received during the hearing that this is a one-lane road with limited private maintenance. Winter and mud season travel are difficult on this portion of the road, as was depicted in submitted photos. The proposal does not include upgrades to the road [Section 5.3(B)(5)].

N. The Applicant's written responses to this section indicate that the natural screening and landscaping would be incorporated into the plans as much as possible [Section 5.3(B)(6)].

O. Section 5.3(B)(7) is not applicable as no outdoor lighting is proposed.

P. A stormwater sediment basin with filter, earthen berm, stone-lined ditch, and silt fence has been proposed in the submitted plan. No engineering details have been submitted with the application [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. The setback requirement to Stevensville Brook does not meet the criteria under Section 3.19(E)(2) as the parking area could be moved or reduced in size to comply

with setbacks. The hardship criteria for a variance have not been demonstrated for the project as there are other locations on the property that could support a parking area and comply with setbacks. Variance denied [Sections 5.5(B) and (C)].

IV. DECISION

Based upon the findings above, the Development Review Board (Penny Miller, Chuck Brooks, Matt Chapek, and Charles Van Winkle) denies approval for the site plan review application for the proposed parking area as described at the application submissions and during the hearing.

Dated at Underhill, Vermont this 30 day of August, 2012.

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 September 29, 2012.