

TOWN OF UNDERHILL
APPLICATION OF MARC AND JAEN MAHEUX
FOR A 2-LOT SUBDIVISION
PRELIMINARY FINDINGS AND DECISION

TOWN CLERK'S OFFICE
Received Apr 21, 2015 11:45A
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ATTEST: Sherri Morin, Town Clerk

In re: Marc & Jane Maheux
PO Box 236
Underhill, VT 05489

Docket No. DRB-12-04: Maheux

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Marc & Jane Maheux's preliminary hearing application for a 2-lot subdivision of property located at 38 Poker Hill Road in Underhill, VT.

- A. On February 9, 2015, Marc & Jane Maheux filed a preliminary application for subdivision. A copy of the application and additional information are available at the Underhill Town Hall. A sketch plan review of the project was held on June 4, 2012 and was accepted.
- B. The Applicant obtained Preliminary approval from the Development Review Board on January 6, 2014. The Applicant failed to submit an application for Final Subdivision Review within the required one year deadline [§ 7.6(A)].
- C. On March 17, 2015, a copy of the notice of the preliminary hearing was mailed via Certified Mail to the Applicants, Marc & Jane Maheux, PO Box 236, Underhill, VT 05489 and to the following owners of properties adjoining the property subject to the application:
1. James & Gayle Massingham, 46 Poker Hill Rd, Underhill, VT 05489
 2. Richard, Todd & Leon Provost and David Provost, 39 Poker Hill Rd, Underhill, VT 05489
 3. Marion & Peter Brooks, 33 Poker Hill Rd Underhill, VT 05489
 4. Wendy & Bruce Garrapy, 32 Poker Hill Rd, Underhill, VT 05489
 5. Sara McKay, 11 Barrett Lane, Underhill, VT 05489
 6. Judith & Alton Verity, 13 Fox Run Rd, Underhill, VT 05489
 7. Daniel & Alice Novembrino, PO Box 91, Underhill, VT 05489
 8. Thomas St. Amour, 54 Poker Hill Rd, Underhill, VT 05489
 9. John & Jodi Jenot, 1 Barrett Lane, Underhill, VT 05489
 10. Gregory & Maureen Frede, 13 Barrett Lane, Underhill, VT 05489
- D. A notice of the public hearing for the proposed Maheux subdivision was posted at the following places:
1. The property to be developed, PH038;
 2. The Underhill Town Clerk's Office;
 3. The Underhill Center Post Office;
 4. The Underhill Flats Post Office.

E. On March 19, 2015, notice of a public hearing was published in *The Mountain Gazette Newspaper*.

F. A site visit was held immediately preceding the hearing at 6:00 PM on April 6, 2015.

G. Present at the site visit were the following individuals:

- Charles Van Winkle, Chairperson
- Will Towle
- Matt Chapek
- Penny Miller
- Karen McKnight
- Jim Gilmartin
- Jim Massingham (Abutter PH046)

H. The preliminary hearing began at 6:35 PM on April 6, 2015.

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

- Charles Van Winkle, Chairperson
- Will Towle
- Matt Chapek
- Penny Miller
- Karen McKnight
- Jim Gilmartin

Applicants Marc Maheux also attended the hearing; Planning & Zoning Administrator Sarah McShane was absent.

J. 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:

- Marc Maheux, PO Box 236, Underhill, VT 05489
- Sara McKay, 11 Barrett Lane, Underhill, VT 05489
- Jim Massingham, 46 Poker Hill Road, Underhill, VT 05489

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

- a) Marc & Jane Maheux Application for Subdivision: Preliminary (dated 2-9-15);
- b) A copy of the Survey Plat prepared by David A. Tudhope (#538), Project No. 759, Sheet 1 (dated 5-20-2011);
- c) A copy of the completed Subdivision Checklist: Preliminary Hearing;

- d) A copy of the ANR Form 1 (Notice of Overshadowing at the time of Filing an Application for a Wastewater System and Potable Water Supply Permit) (No date);
- e) A copy of VT DEC ANR Wastewater and Potable Water Supply Permit -Project #: WW-4-4126 (dated October 21, 2013);
- f) A copy of completed application for water allocation from the Jericho-Underhill Water District for the proposed two units (810 gpd: 6 bedrooms @ 135 gals per day) for the newly created lot;
- g) A copy of the draft warranty deeds for both lots;
- h) A copy of the Project Review Sheet from the VT Department of Environmental Conservation & Natural Resources Board (date initiated 10-14-13);
- i) A copy of the letter from Harry Schoppmann of the Underhill Jericho Fire Department (dated October 29, 2013);
- j) A copy of input from the Chittenden South Supervisory Union (dated October 25, 2013);
- k) A copy of the Findings Checklist;
- l) A copy of a letter from the Applicant to the DRB, Re: Explaining Concerns on the Preliminary Findings Checklist (dated 11-25-2013);
- m) A copy of the Application for Water Connection (Jericho-Underhill Water District), (dated 6-10-2004) with a 8.5" x 11" copy of the Survey Plat prepared by David A. Tudhope (dated 5-20-2011);
- n) A copy of a letter from the Applicant to the Selectboard (dated 2-9-2015);
- o) A copy of a letter from Town Administrator to Marc Maheux, Re: Requirement for Access Permit (dated 2-19-2015);
- p) A copy of the Preliminary Subdivision Findings and Decision (dated 1-6-2014);
- q) A copy of the Conditional Use Approval for an Earth Disturbance Project Findings and Decision (dated 6-21-2012);
- r) A copy of the Sketch Plan Letter to Applicant (dated 6-12-2012);
- s) A copy of the DRB minutes from the 6-4-12 Sketch Plan meeting;
- t) A copy of the DRB minutes from 11-4-2013 Preliminary Subdivision Review;
- u) A copy of the DRB minutes from 12-2-2013 continued Preliminary Subdivision Review;
- v) A copy of the hearing notice as published in *Mountain Gazette Newspaper*, posted in 3 public places and mailed to abutters;
- w) A copy of the ANR Atlas map indicating slope and the Special Flood Hazard Area;
- x) A copy of the tax map for PH038 indicating zoning districts;
- y) A copy of the procedure checklist for this meeting; and
- z) Procedural Memo.

The Applicant provided the following exhibits during the public hearing:

- Letter from Peter Mitchell, Subject: Jericho-Underhill Water District Water Allocation Policy Summary, dated March 30, 2015;
- A copy of the revised Survey Plat prepared by David A. Tudhope (#538), Project No. 759, Sheet 1 (dated 11 March 2015);

These exhibits are available in the Maheux, DRB 12-04, PH038, subdivision file at the Underhill Planning & Zoning Office.

II. FINDINGS

Factual Findings

The Minutes of the meetings written by Penny Miller (DRB Clerk) 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 approval to subdivide land. The subject property is a ±15.26 acre parcel located at 38 Poker Hill Road in Underhill, VT (PH038).
- B. The property is located in the Underhill Flats Village Center, Rural Residential, Flood Hazard Area Overlay zoning districts as defined in Article II, Table 2.2, 2.3, and 2.7 of the 2014 Unified Land Use and Development Regulations.
- C. The Applicant obtained Preliminary approval from the Development Review Board on January 6, 2014. The Applicant failed to submit an application for Final Subdivision Review within the required one year deadline. The board felt that the sketch plan acceptance from June 4, 2012 was still valid and allowed the applicant to proceed with a Preliminary subdivision application. Preliminary subdivision approval is requested for the project pursuant to review under the 2014 Unified Land Use and Development Regulations.
- D. Access approval is requested pursuant to review under the 2014 Unified Land Use and Development Regulations.

III. CONCLUSIONS

The Development Review Board finds the application is in conformance with the following sections of the 2014 Unified Land Use and Development Regulations:

- Section 2.2(E) – Boundary Interpretations (pg. 5)
- Article II, Table 2.2 – Underhill Flats Village Center District (pg. 9)
- Article II, Table 2.3 – Rural Residential District (pg. 12)
- Article II, Table 2.7 – Flood Hazard Overlay District (pg. 24)
- Section 3.2 – Access (pg. 27)
- Section 3.7 – Lot, Yard & Setback Requirements (pg. 35)
- Section 3.13 - Parking, Loading and Service Areas (pg. 41)
- Section 3.14 – Performance Standards (pg. 43)
- Section 3.18 – Steep Slopes (pg. 53)
- Section 3.19 – Surface Waters & Wetlands (pg. 60)
- Section 3.22 – Water Supply & Wastewater Systems (pg. 65)
- Article VI – Flood Hazard Area Review (pg. 120)
- Article VII- Section 7.5 – Preliminary Subdivision Review (pg. 137)
- Article VII- Subdivision Standards- Sections 8.1-8.8

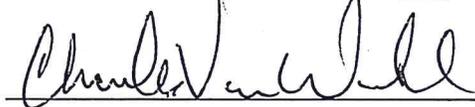
Per section 8.1(D), all Sections above considered not applicable are waived. The Board finds that waiving such requirements will not nullify the intent and purpose of the Unified Land Use and Development Regulations and the Underhill Town Plan, and such waivers are not requisite in the interest of public health, safety and general welfare. Sufficient evidence, in the form of submitted testimony and plan layout, has been submitted to justify the waiver.

IV. DECISION AND FINAL HEARING REQUIREMENTS

Based upon the findings above, and subject to the supplemental final hearing conditions below, the Development Review Board grants preliminary approval for the subdivision as presented at the preliminary hearing.

- A. No additional access rights shall automatically result from the subdivision of parcels established after March 2, 2011, Section 3.2 (D)(3). A highway access (curb cut) permit from the Underhill Selectboard for the new lot (lot #1) is required prior to filing an application for final subdivision review in accordance with Section 8.6(A)(3).
- B. The Board approves one (1) principal existing dwelling on Lot 2 and one (1) principal dwelling on Lot 1.
- C. An application for Final Subdivision review shall be submitted within one year of the date of preliminary approval, but not before the initial 30-day appeal period has expired [Section 7.6(A)].

Dated at Underhill, Vermont this 20 day of APRIL, 2015.



Charles Van Winkle, Chair, Development Review Board

NOTICE: This decision may be appealed to the Vermont Environmental 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 and Rule 5 (b) of the Vermont Rules for Environmental Court Proceedings. Appeal period ends 20 MAY 2015