



# Town of Underhill

## Development Review Board

### Final Findings and Decision

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#### **APPLICATION OF MARCY GIBSON FOR A SUBDIVISION REVISION TO ADJUST AN ALREADY APPROVED BUILDING ENVELOPE**

In re: Marcy Gibson  
50 New Road (NR050)  
Underhill, VT 05489

Docket No. DRB-16-09

**Decision:** Approved with conditions (see Section IV – Decisions and Conditions of Approval)

#### **I. INTRODUCTION AND PROCEDURAL HISTORY**

This proceeding concerns a subdivision revision application submitted by Marcy Gibson regarding a subdivision revision to relocate the building envelope located at 50 New Road in Underhill, Vermont.

- A. On September 11, 2016, Marcy Gibson filed an application for a subdivision revision for the abovementioned project with the Underhill Planning & Zoning Department. Planning Director & Zoning Administrator, Andrew Strniste, received the application and determined that it was complete shortly thereafter. A hearing date was scheduled for October 17, 2016.
- B. On September 28, 2016, a copy of the notice of the subdivision revision hearing was mailed via Certified Mail to the following owners of properties adjoining the property subject to the application:
  - A. NR057 – Town of Underhill, 57 New Road, Underhill, VT (hand delivered to Town Administrator)
  - B. NR077 – Town of Underhill, Town Garage, P.O. Box 120, Underhill, VT (hand delivered to Town Administrator)
  - C. PV139 – Richard J. & Barbara A. Albertini, 139 Pleasant Valley Road, Underhill, VT
  - D. PV165 – Michael & Kimberly McClellan, P.O. Box 152, Underhill Center
  - E. PV175 – William R. Bartoli & James Taylor, 175 Pleasant Valley Road, Underhill, VT
  - F. PV191 – Michael F. Oman, P.O. Box 216, Underhill Center, VT
  - G. Applicant – Marcy Gibson, 50 New Road, Underhill, VT
  - H. Applicant – McCain Consulting, Inc., 93 South Main St., Waterbury, VT 05676
- C. During the week of September 25, 2016, notice of the public hearing for the proposed Gibson subdivision revision was posted at the following places:
  - A. The Underhill Town Clerk's office;

- B. The Underhill Center Post Office; and
  - C. The Underhill Flats Post Office.
- D. On October 1, 2016, the notice of public hearing was published in the *Burlington Free Press*.
- E. The subdivision revision hearing convened at 6:35 pm on October 17, 2016 at the Town of Underhill Town Hall.
- F. Present at the subdivision revision hearing were the following members of the Development Review Board:
- A. Board Member, Charles Van Winkle, Chairperson
  - B. Board Member, Mark Green
  - C. Board Member, Penny Miller
  - D. Board Member, Mark Hamelin
  - E. Board Member, Shanie Bartlett
  - F. Staff Member, Andrew Strniste, Planning Director & Zoning Administrator

Others present at the hearing were:

- 1. Marcy Gibson, Landowner
  - 2. Gunner McCain, Consultant
  - 3. Kevin Gibson
  - 4. Olivia Gibson
  - 5. Kaleam Gibson
- G. At the outset of the hearing, Chair 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. Marcy Gibson
  - 2. Kevin Gibson
- H. In support of the final plat application, the following exhibits were submitted to the Development Review Board:
- Exhibit A – Application for Final Subdivision Review
  - Exhibit B – Final Subdivision Checklist
  - Exhibit C – Final Subdivision Findings of Fact
  - Exhibit D – Burlington Free Press Hearing Notice
  - Exhibit E – List of Abutting Property Owners
  - Exhibit F – Letter to Abutting Neighbors
  - Exhibit G – Project Request Cover Memo
  - Exhibit H – Previously Approved Plan
  - Exhibit I – Wastewater Permit - WW-4-2964 (2008)
  - Exhibit J – DRB-07-16 Findings and Decision (Final Subdivision)
  - Exhibit K – SUB-08-01 Subdivision Permit
  - Exhibit L – DRB-11-05 Findings and Decision (Subdivision Revision)
  - Exhibit M – Site Plan with Building Envelopes Highlighted

Exhibit N – Well Shield Envelope Highlighted  
Exhibit O – Wastewater Water Permit Amendment Memorandum  
Exhibit P – ANR Map – Steep Slopes  
Exhibit Q – McClellan Email Regarding Concerns  
Exhibit R – Staff Memorandum  
Exhibit S – Amendment to WW-4-2964 Worksheet

All exhibits are available for public review in the NR050 subdivision revision file (DRB 16-09) at the Underhill Zoning & Planning office.

## **II. FINDINGS**

The Minutes of the meetings, written by Andrew Strniste, are incorporated by reference into this decision. Please refer to these Minutes for a summary of the testimony.

Based on the submitted application, testimony, exhibits, and evidence, the Development Review Board makes the following findings under the requirements of the Underhill Unified Land Use and Development Regulations (ULUDR):

### **A. ARTICLE II, TABLE 2.3 RURAL RESIDENTIAL**

The Board finds that the relocation of the building envelope will continue to meet the zoning district's dimensional and policy requirements. Specifically, the building envelope as proposed meets the 30 feet front setback requirement, as well as the 50 feet side and rear setbacks. The boards finds that ambiguity in the wording of previous decisions affecting this property created a pretense to the zoning administrator that the development was restricted to the identified building envelop. The board finds the revised building envelope to be informational only and sets no restrictions or limitation on it.

### **B. ACCESS, SECTION 3.2**

The Board finds that access was approved as part of the 2007 subdivision application, and subsequently revised during a subdivision revision hearing by the Development Review Board in 2011. The Board heard the application on July 18, 2012, and approved the relocation of the driveway as presented, which was then approved by the Selectboard on July 22, 2011.

Since the applicant is proposing to move the building envelope, the approved access permit will consequently be modified. Therefore, the Board finds that an access permit amendment is required as a condition of approval.

### **C. LOT, YARD & SETBACK REQUIREMENTS, SECTION 3.7**

The Board finds that the proposed subdivision revision will continue to meet the minimum lot, yard & setback requirements.

### **D. SOURCE PROTECTION AREAS, SECTION 3.17**

The proposed dwelling is to be located within the groundwater source protection area and located 138 feet from the proposed drilled well; however, since the proposed dwelling is to be a single-family dwelling, the Board finds that it is exempt under § 3.17.B, and therefore, does not require conditional use review. The proposed subdivision revision does not alter any previous findings

regarding source protection areas.

**E. STEEP SLOPES, SECTION 3.18**

The Board finds that the relocation of the building envelope lessens the impact on steep slopes, as the building envelope will contain less slopes than previously approved.

**F. SURFACE WATERS & WETLANDS, SECTION 3.19**

The Board finds that there are no surface waters or wetlands on the involved parcel of land.

**G. WATER SUPPLY & WASTEWATER SYSTEMS, SECTION 3.22**

The Board finds that the proposed subdivision revision requires a water/wastewater permit amendment since the leach field and drilled well are to be relocated. Approval is conditioned on the applicant obtaining the requisite water/wastewater permit amendments from the State of Vermont.

**H. REVISIONS TO AN APPROVED SUBDIVISION, SECTION 7.8**

Modifications to an already approved subdivision plan requires a subdivision amendment from the Development Review Board if the proposed amendment is not listed under § 7.8 of the Underhill Unified Land & Development Regulations. The Board finds that the Zoning Administrator has not been given the authority to issue an administrative amendment for the relocation of a building envelope under § 7.8.B.

**I. SUBDIVISION STANDARDS, SECTIONS 8.1 TO 8.8**

The Board approved the subdivision on March 1, 2008 (Exhibit J) and then approved a modification for the cub cut and access drive on August 11, 2011 (Exhibit L), determining that all standards had been met. The Board finds that the proposed revisions will not alter any of the previous finding and will continue to meet the requirements of Article VIII.

**III. CONCLUSION**

The Board is satisfied with the level of investigation, engineering and evaluation conducted in the application submittal and review process concerning the abovementioned project. The Board thoroughly reviewed all aspects of the proposal under the evaluation criteria in the ULUDR.

The Board concludes that the level of detail requested was met, and therefore, there will be no undue adverse impact to the Town from the proposed development.

**IV. DECISIONS AND CONDITIONS OF APPROVAL**

Based upon the findings above, and subject to the conditions below, the Development Review Board grants approval for the subdivision revision as presented at the hearing with the following conditions:

1. All conditions of the 2008 approval and 2011 approval shall remain in effect unless specifically amended herein.
2. The revised building envelope is for reference only; any proposed or future structures regulated by the Uniform Land Use and Development Regulations shall conform to the setback listed in said regulations at the time of permit.

3. An access permit amendment is required, accompanied by a certification by a qualified consultant, letter stating that the amended access drive will not have an adverse effect on stormwater drainage;
4. Any future modifications to the building envelope may be administratively reviewed unless the Zoning Administrator determines that further additional review by the Board is necessary;
5. Any new electric, data and communication utilities shall be underground.
6. Prior to developing, all water/wastewater Permit amendments from the VT Agency of Natural Resources shall be submitted to the Zoning Administrator.
7. No transfer, sale or long-term lease of title to property as defined under 32 VSA § 9601 of any portion of an existing lot; predevelopment site work; or issuance of zoning permits to develop a subdivided lot shall occur until the subdivision revision has been approved by the DRB, and the final Mylars have been recorded in the Underhill Land Records [see § 7.2(C)].
8. The parcel codes for all Lots shall appear on the final Mylars. Prior to submitting the Mylars, please contact the Zoning Administrator for the parcel codes.
9. The final plat shall be submitted for recording within 180 days of the date of this approval in accordance with § 7.7.
10. All subdivision and recording fees must be paid in full prior to recording a subdivision plat in accordance with § 7.7(B)

Dated at Underhill, Vermont this 31 day of October, 2016.

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Charles Van Winkle, Chair, Development Review Board

NOTICE: This decision may be appealed to the Vermont Environment 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 30 November 2016.