



Town of Underhill

Development Review Board

Final Findings and Decision

PRELIMINARY SUBDIVISION APPLICATION OF PAUL & JOAN CHAMBERLIN FOR A 2-LOT SUBDIVISION

In re: Paul & Joan Chamberlin
97 River Road (RV097)
Underhill, VT 05489

Docket No. DRB-16-06

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

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns a preliminary subdivision application submitted by Paul & Joan Chamberlin regarding a 2-lot subdivision of property located at 97 River Road in Underhill, Vermont.

- A. On March 27, 2016, Paul & Joan Chamberlin filed a sketch plan review application for the subdivision for the abovementioned project. A sketch plan review meeting of the project was held on June 17, 2016 and was accepted on August 1, 2016.
- B. On January 30, 2017, Paul & Joan Chamberlin filed an application for preliminary approval for the abovementioned project. Planning Director & Zoning Administrator, Andrew Strniste received the application and determined that it was complete shortly thereafter. A hearing date was scheduled for 6:35 PM at Underhill Town Hall on March 6, 2017.
- C. On February 15, 2017, a copy of the notice of the preliminary subdivision review hearing was mailed via certified mail to the following property owners adjoining the property subject to the application:
 - A. CW011 – Winifred Sullivan, 11 Chamberlin Woods, Underhill, VT 05489
 - B. CW028 – Timothy & Jennifer Chamberlin, 28 Chamberlin Woods, Underhill, VT 05489
 - C. HH015 – Eric & Kristen Baker, 15 Hedgehog Hill Road, Underhill, VT 05489
 - D. HH022 – Clifford Peterson & Helen E. Wagner, P.O. Box 89, Underhill, VT 05489
 - E. Town of Jericho – Town of Jericho; Attn: Town Clerk, Jessica Alexander; P.O. Box 39; Jericho, VT 05465
 - F. MR075 – Linda M. Amundsen, P.O. Box 218, Underhill, VT 05489
 - G. RV091 – David L. Sullivan Life Estate, N.L. & W.L. Sullivan Remaindermen, 91 River Road, Underhill, VT 05489
 - H. RV113 – Ronald E. & Patricia A. Demag, 113 River Road, Underhill, VT 05489
 - I. RV124T – Edwin G. Bovill & Susan Latchem, 5 Fields Lane, Jericho, VT 05465
 - J. RV128T – John L. & Carol A. Larue, 128 River Road, Underhill, VT 05489

- K. RV130 – 130 River Road, Richard A. & Suzanne T. Reyome, 130 River Road, Underhill, VT 05489
 - L. RV133 – David & Rebecca Rogers, 133 River Road, Underhill, VT 05489
 - M. RV137 – Susan L. Dodd & Daniel K. Bobbett, 137 River Road, Underhill, VT 05489
 - N. RV175 – Erik & Joan Kasprick, 35 Lower English Settlement Road, Underhill, VT 05489
 - O. MC100X & MC101X – McClellan Farm Homeowners Association; Chick Erickson, President; 69 McClellan Farm Road; Underhill, VT 05489
 - P. MC100X & MC101X – McClellan Farm Homeowners Association; George Twigg, Vice President; 55 McClellan Farm Road; Underhill, VT 05489
 - Q. Applicant: RV097 – Paul & Joan Chamberlin, 97 River Road, Underhill, VT
 - R. Applicant: Andy Chamberlin & Kiley Krywka, 104 Mountain Road, Underhill, VT 05489
 - S. Consultant: Justin Willis, P.O. Box 1001, Jericho, VT 05465
 - T. Consultant: Bradford Holden, 60 Covey Road, Underhill, VT 05489
- D. During the week of February 12, 2017, notice of the public hearing for the proposed Chamberlin preliminary subdivision 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.
- E. On Saturday, February 18, 2017, the notice of public hearing was published in the *Burlington Free Press*.
- F. The preliminary subdivision review hearing convened at 6:35 pm on March 6, 2017 at the Town of Underhill Town Hall.
- G. Present at the preliminary subdivision hearing were the following members of the Development Review Board:
- A. Board Member, Matt Chapek
 - B. Board Member, Mark Hamelin
 - C. Board Member, Mark Green
 - D. Board Member, Karen McKnight
 - E. Board Member, Penny Miller
 - F. Board Member, Charles Van Winkle, Chairperson

Also in attendance was Staff Member, Andrew Strniste, Planning Director & Zoning Administrator.

Others present at the hearing were:

1. Susan Latchem, Abutting Neighbor (5 Fields Lane, Jericho, VT 05465)
2. Nate Sullivan, Abutting Neighbor (91 River Road, Underhill, VT 05489)
3. Timothy Chamberlin, Abutting Neighbor (28 Chamberlin Woods, Underhill, VT 05489)
4. Jennifer Chamberlin, Abutting Neighbor (28 Chamberlin Woods, Underhill, VT 05489)
5. Winifred Sullivan, Abutting Neighbor (11 Chamberlin Woods, Underhill, VT 05489)
6. Paul Chamberlin, Applicant (97 River Road, Underhill, VT 05489)
7. Joan Chamberlin, Applicant (97 River Road, Underhill, VT 05489)
8. Andrew Chamberlin, Applicant (104 Mountain Road, Underhill, VT 05489)

9. Kiley Krywka, Applicant (104 Mountain Road, Underhill, 05489)
10. Justin Willis, Consultant (P.O. Box 1001, Jericho, VT 05465)

H. 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. Susan Latchem
2. Paul Chamberlin
3. Andrew Chamberlin
4. Justin Willis

I. In support of the final subdivision application, the following exhibits were submitted to the Development Review Board:

- Exhibit A – Application for Preliminary Subdivision
- Exhibit B – Preliminary Subdivision Checklist
- Exhibit C – Preliminary Subdivision Findings Checklist
- Exhibit D – Sketch Plan Approval Letter
- Exhibit E – Preliminary Access Permit (A16-07)
- Exhibit F – 8-30-2016 Selectboard Minutes Regarding Land Use Contract
- Exhibit G – List of Abutters
- Exhibit H – Certificate of Service
- Exhibit I – Burlington Free Press Notice
- Exhibit J – Proposed Road Maintenance Agreement
- Exhibit K – Survey Plat
- Exhibit L – Site Plan
- Exhibit M – Proposed House Site & Access Plan
- Exhibit N – ANR Stream & Waterbodies Map
- Exhibit O – ANR Slope Map
- Exhibit P – ANR Floodplain Map
- Exhibit Q – ANR Deer Wintering Yard Map
- Exhibit R – ANR Habitat Block Map
- Exhibit S – Burlington Free Press Ad Confirmation
- Exhibit T – Burlington Free Press Ad
- Exhibit U – MMU Ability to Service Letter
- Exhibit V – Underhill-Jericho Fire Department’s Comments
- Exhibit W – Chamberlin Preliminary Subdivision Review Staff Report
- Exhibit X - ANR Project Review Sheet
- Exhibit Y - ANR DEC Correspondence Re Wetlands

No exhibits were submitted during the hearing.

The Exhibits submitted as part of the sketch plan application, except as amended above, are also incorporated into this decision.

All exhibits are available for public review in the RV097 Preliminary Subdivision Review file (DRB 16-06) at the Underhill Zoning & Planning office.

II. FINDINGS

The Minutes of March 6, 2017 meeting, written by Andrew Strniste, are incorporated by reference into this decision. Please refer to the 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):

FACTUAL FINDINGS

The applicant, Paul & Joan Chamberlin, record owner of the property located at 97 River Road in Underhill, VT, are seeking a subdivision permit to subdivide land. The property is located in the Rural Residential, Water Conservation, and Soil & Water Conservation zoning districts as defined in Article II, Table 2.3, Table 2.4, and Table 2.6 of the 2014 Underhill Unified Land Use & Development Regulations.

ARTICLE II – ZONING DISTRICTS

A. ARTICLE II, TABLE 2.3 – RURAL RESIDENTIAL DISTRICT

The Board finds that the newly created lots will meet the requirements of the Underhill Rural Residential District.

B. ARTICLE II, TABLE 2.4 – WATER CONSERVATION DISTRICT

The Board finds that the newly created lots will meet the requirements of the Underhill Water Conservation District.

C. ARTICLE II, TABLE 2.6 – SOIL & WATER CONSERVATION DISTRICT

The Board finds that the Soil & Water Conservation zoning district does not apply to the proposed subdivision.

ARTICLE III – GENERAL REGULATIONS

A. SECTION 3.2 – ACCESS

The Board finds that a preliminary access permit (Access Permit #: A-16-07) for the 2-Lot subdivision was received from the Selectboard on May 10, 2016. The Board supports the findings of the Selectboard's decision, acknowledging that the Selectboard granted a waiver for the width of the access way from River Road to the end of the proposed shared driveway. The Board also supports the Underhill-Jericho Fire Department's finding that the road shall not exceed a 10% grade at any point. The Board finds that the applicant should add shoulders to the access way from station number 0+00 to station number 8+00 (of the proposed access way) to provide a safer access for emergency vehicles (see Exhibit M).

The Board finds that the widening of Chamberlin Woods between station numbers 2+00 and 3+00 (of the existing access way) will require a permit from the Army Corps of Engineers due to its close proximity to a Class II Wetland, as acknowledged by the applicant during the hearing. The proposed access way will also traverse a Class III between station numbers 5+00 and 7+00 (of the proposed driveway), which will require a conditional use permit per § 3.19.D.6, which can be held concurrently with the final subdivision review hearing.

B. SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS

The Board finds that the proposed lots will meet the minimum lot and yard requirements, and will meet all setbacks except for the setback requirement regarding the proposed driveway traversing the Class III Wetlands that exists along the western property line of Lot 2 and the eastern property line of 28 Chamberlin Woods. The Board also waives the frontage

requirements per this section (and under Section 3.2), as there is a 30 feet right-of-way that provides access to the newly proposed lot.

C. SECTION 3.17 – SOURCE PROTECTION AREAS

The Board finds that the proposed subdivision is located within a source protection area and will require the relevant permits, as mentioned during the hearing, for the final subdivision review hearing.

D. SECTION 3.18 – STEEP SLOPES

The Board finds that the subdivision contains areas of steep slopes (15-25%) and very steep slopes (>25%); however, the proposed development is generally located on areas of non-steep slopes, and therefore, there will be a *de minimis* impact on the areas of steep slopes.

E. SECTION 3.19 – SURFACE WATERS & WETLANDS

The Board finds that there are three areas of wetlands that are either impacted by, or in close proximity to, the proposed improvements or development. The permit obtained from the Army Corps of Engineers for Chamberlin Woods impacting the Class II Wetlands, between station numbers 2+00 and 3+00, (of the existing access way) shall be submitted as part of the final subdivision review application. In addition, a conditional use permit application shall be filed concurrently with the final subdivision review application to address the access way that will be traversing the Class III Wetland between station numbers 5+00 and 7+00 of the proposed driveway (see Exhibit M). The Board finds that the Class II Wetlands that exists on the proposed Lot 2 will not be impacted by any proposed development.

F. SECTION 3.22 – WATER SUPPLY & WASTEWATER SYSTEMS

The Board finds that the applicant is in the process of obtaining the requisite water supply and wastewater system permits from the Vermont Department of Environmental Conservation. These permits will become a requirement of the final subdivision approval. The Board finds that the applicant will have met his burden of proof regarding water supply and wastewater disposal upon receipt of a permit from the Department of Environmental Conservation.

ARTICLE VI – FLOOD HAZARD AREA REVIEW

The Board finds that a 100-year Flood Hazard Area is located on the existing and proposed lots; however, the proposed development is not expected to impact this area.

ARTICLE VII – SUBDIVISION REVIEW, ARTICLE VII

A. SECTION 7.2 – APPLICABILITY

The Board finds that the applicant's proposed subdivision is subject to the requirements of the 2014 Underhill Unified Land Use & Development Regulations per § 7.2, and has been classified as a "minor subdivision" during the sketch plan review meeting and decision issued on August 1, 2016 (see Exhibit D).

B. SECTION 7.3 – SKETCH PLAN REVIEW

The Board finds that the applicant satisfied the conditions as provided in the Sketch Plan Review Letter issued on August 1, 2016 (see Exhibit D). In regards to condition 6 of the Sketch Plan Review Letter, the Board intends to schedule a site visit prior to the final subdivision review hearing.

C. SECTION 7.5 – PRELIMINARY SUBDIVISION REVIEW

The Board finds that the applicant satisfied the intent of this section and provided the necessary

materials to make a determine on the preliminary subdivision application.

SUBDIVISION STANDARDS, ARTICLE VIII

A. SECTION 8.1 – APPLICABILITY

The Board finds that no technical review is needed at this time. The applicant has not requested any waivers; however, given the Class III Wetlands issue identified above, a conditional use permit, in conjunction with the final subdivision review process, is required for the access way to traverse the Class III Wetland.

B. GENERAL STANDARDS, SECTION 8.2

SECTION 8.2.A – DEVELOPMENT SUITABILITY:

The Board finds that there are no foreseen undue adverse impacts to the public health and safety, the natural environment, neighboring properties and uses, or the character of the area in which the proposed development is located.

SECTION 8.2.B – DEVELOPMENT DENSITY:

The Board finds that the proposed subdivision meets the density requirements per this section for both the Rural Residential and Water Conservation zoning districts.

SECTION 8.2.C – EXISTING CONDITIONS:

The Board finds that the proposed layout of the development will minimize the impact to the natural environment; however, the Board does find that the Class III Wetlands along the western property line of Lot 2, where the access way is proposed to traverse the wetland, will be negatively impacted (see Exhibit M).

SECTION 8.2.D – UNDERHILL TOWN PLAN & DEVELOPMENT REGULATIONS:

The Board finds that the proposed subdivision & development conform to the Underhill Town Plan & the Underhill Unified Land Use and Development Regulations.

SECTION 8.2.E – DISTRICT SETTLEMENT PATTERNS:

The Board finds that the proposed subdivision & development are consistent with the characteristics of the rural zoning districts as described in Section 8.2.E.2.

SECTION 8.2.F – LOT LAYOUT:

The Board finds that the proposed subdivision meets the requirements of this subsection.

SECTION 8.2.G – BUILDING ENVELOPE:

The Board finds that the proposed building envelope on Lot 2 meets the requirements of this subsection, and does not encroach upon any identifiable setback (see Exhibit L).

SECTION 8.2.H – SURVEY MONUMENTS:

The Board makes no finding regarding this subsection.

SECTION 8.2.I – LANDSCAPING & SCREENING:

The Board finds that the applicant is proposing development that preserves the existing trees, tree lines, and wooded areas located on the proposed lot (see Exhibit L). While the building envelope does contain forested area, the applicant has shown development that does not substantially disturb the forested area. The applicant has stated his intention of retaining the

trees/forested area to assist with maximizing privacy and retaining an aesthetically pleasing lot (see Exhibit C).

SECTION 8.2.J – ENERGY CONSERVATION:

The Board finds that the applicant has identified a proposed building envelope located on a south facing slope, where minimum clearing is required in an effort to possibly capitalize on solar energy potential (see Exhibits C).

C. SECTION 8.3 – NATURAL & CULTURAL RESOURCES

SECTION 8.3.A – RESOURCE IDENTIFICATION & PROTECTION

The Board is unaware of any cultural or natural features that should be conserved. The existence of Class II and Class III Wetlands on the western part of the lot is discussed below in Section 8.3.B. (see Exhibit L).

SECTION 8.3.B – SURFACE, WATERS, WETLANDS & FLOODPLAINS

The Board finds the existence of Class II & Class III Wetlands at various locations on the property. The Class II Wetland on Lot 2 will not be impacted by the proposed subdivision and development. The Class II Wetland in proximity of Chamberlin Woods between station numbers 2+00 and 3+00 (of the existing access way) will require a permit from the Army Corps of Engineers. The proposed driveway will also traverse a Class III between station numbers 5+00 and 7+00, which will require a conditional use permit per § 3.19.D.6 that can be reviewed concurrently with the final subdivision review hearing.

SECTION 8.3.C – ROCK OUTCROPS, STEEP SLOPES, HILLSIDES & RIDGELINES

The Board finds that the proposed Lot 2 includes some areas of steep slopes and areas of very steep slope; however, the intended development site will be in an area between 5% to 15% slope, which does not require any additional review.

SECTION 8.3.D – NATURAL AREAS & WILDLIFE HABITAT

The Board finds that a wintering deer yard is located on the northern part of the existing lot (see Exhibit Q); however, the proposed subdivision and development is located to the south of the boundary. The Board also finds that there is a priority level 6/7 habitat block where development is proposed (see Exhibit R).

SECTION 8.3.E – HISTORIC & CULTURAL RESOURCES

The Board is unaware of any historic and cultural resources located on the existing lot, and therefore, makes no finding in regards to this subsection.

SECTION 8.3.F – FARMLAND

The Board finds that the proposed subdivision and development do not impact any prime agricultural soils, and that the applicant has acknowledged that this located was selected to avoid any impact to prime soils or the farm fields (see Exhibit C).

SECTION 8.3.G – FORESTLAND

The Board finds that the applicant is not proposing to disturb any of the forestland that exists on the existing or proposed lots at this time (see Exhibit C & L), and therefore, there will be minimal impact, if any, on forestland.

D. SECTION 8.4 – OPEN SPACE & COMMON LAND

SECTION 8.4.A – OPEN SPACE

The Board finds that the applicant has not proposed to designate any land as open space.

SECTION 8.4.B – COMMON LAND

The Board finds that the applicant has not proposed to designate any land as common land.

SECTION 8.4.C – LEGAL REQUIREMENTS

The Board finds that applicant has submitted a road maintenance agreement (see Exhibit J) and that this agreement should be referenced in the deeds.

E. SECTION 8.5 – STORMWATER MANAGEMENT & EROSION CONTROL

The Board finds that the applicant shall excavate and preform site work in compliance with “The Low Risk Handbook for Erosion Prevention and Sediment Control” (see Exhibit C). The Board also finds that the proposed development shall have minimal impact on stormwater runoff and requires no additional treatment plan.

F. SECTION 8.6 – TRANSPORTATION FACILITIES

SECTION 8.6.A – ACCESS & DRIVEWAYS

The Board finds that the access way is considered a development road up to 11 Chamberlin Woods, a shared driveway to the proposed driveway at 28 Chamberlin Woods, and a driveway from 28 Chamberlin Woods to the newly proposed lot. As noted, the applicant received an access permit by the Selectboard on May 10, 2016 (Access Permit #: A-16-07). The Board incorporates the conditions of that preliminary access permit into this decision by reference (see Exhibit E).

Furthermore, the Board supports the Underhill-Jericho Fire Department’s (UJFD) request, specifically to reduce the slope to 10%. Please refer to Section 3.2 for more information.

SECTION 8.6.B – DEVELOPMENT ROADS

The Board finds that since the proposed access way is going to serve three lots, it must meet the requirements of this subsection.

SECTION 8.6.B.1 – SYSTEM CAPACITY

The Board finds the proposed development will not adversely affect the ability of the road system to handle the added volume and type of traffic to be generated by the newly created lot. The Board also finds the subdivision will not result in undue traffic congestion or delay on public highways, or exceed the functional or structural capacity of travel lanes, intersections, bridges, culverts and other highway infrastructure in the vicinity of the proposed subdivision.

SECTION 8.6.B.2 – LAYOUT

The Board finds the Selectboard has already issued an access permit, and defers to the Selectboard regarding this subsection.

SECTION 8.6.B.3 – DEVELOPMENT ROADS

The Board finds the Selectboard has already issued an access permit, and defers to the Selectboard’s recommendations for dimensional and geometric design standards; however, the Board supports the UJFD’s request for the addition of shoulders to facilitate emergency

vehicle access. Furthermore, the Board notes that the Underhill Unified Land Use & Development Regulations requires a 50 ft. right-of-way, whereas the Selectboard noted a 30 ft. right-of-way.

SECTION 8.6.B.4 - IMPROVEMENTS

The Board finds the Selectboard has already issued an access permit, and defers to the Selectboard's recommendations regarding improvements to Chamberlin Woods.

SECTION 8.6.B.5 - ACCEPTANCE

The Board finds that the proposed development road will not be accepted for ownership by the Town.

SECTION 8.6.B.6 - NAMES, SIGNS AND 911 LOCATOR NUMBERS

The Board finds that names, signs, and 911 locator numbers shall be required as a condition of final approval.

SECTION 8.6.C - PARKING FACILITIES

The Board finds that no parking facilities, other than those to be expected with single-family residences, are proposed.

SECTION 8.6.D - TRANSIT FACILITIES

The Board finds that no transit facilities are proposed.

SECTION 8.6.E - PEDESTRIAN ACCESS

The Board makes no finding regarding this subsection.

G. SECTION 8.7 - PUBLIC FACILITIES & UTILITIES

SECTION 8.7.A - PUBLIC FACILITIES

The Board finds the proposed subdivision and development will not create an undue burden on the existing and/or planned public facilities. The Board finds there will be no adverse impact on the school district (see Exhibit U).

SECTION 8.7.B - FIRE PROTECTION

The Board finds the Underhill Jericho Fire Department has provided an ability to serve letter (Exhibit V), provided that the slope of the road does not exceed 10%.

SECTION 8.7.C - WATER SYSTEMS

The Board finds that the applicant is proposing to supply potable water via a drilled well on the subdivided lot. A water/wastewater permit will be required as part of the final subdivision review application/approval.

SECTION 8.7.D - WASTEWATER SYSTEMS

The Board finds that the applicant is proposing that the lots be served by private wastewater systems. A water/wastewater permit will be required as part of the final subdivision review application/ approval.

SECTION 8.7.E - UTILITIES

The Board finds electrical, communication, and media utilities shall be located below grade.

H. SECTION 8.8 – LEGAL REQUIREMENTS

The Board finds that the applicant has provided a road maintenance agreement for Chamberlin Woods.

III. CONCLUSION

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

The Board concludes that based on the evidence submitted and the above findings, the proposed subdivision/development generally conforms to the Underhill Unified Land Use & Development Regulations.

IV. DECISIONS AND CONDITIONS OF APPROVAL

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

1. The Board supports the Selectboard's findings regarding the improvements to Chamberlin Woods and also requires that the slope of the road does not exceed 10%.
2. As presented during the hearing, the Board requires that the applicant add shoulders to the access way from station number 0+00 to station number 8+00 (of the proposed accessway) to provide safer ingress & egress for emergency vehicles.
3. The Board finds that the widening of Chamberlin Woods between station numbers 2+00 and 3+00 (of the existing access way) will require a permit from the Army Corps of Engineers due to its close proximity to a Class II Wetland, which shall be submitted during the final subdivision review application.
4. The Board finds that a conditional use permit will be required for the proposed access way that will traverse the Class III between station numbers 5+00 and 7+00 (of the proposed driveway) per § 3.19.D.6. The conditional use permit hearing can be held concurrently with the final subdivision review hearing.
5. The Board requires the relevant permits pertaining to the source protection area to be submitted during the final subdivision review application process.
6. The Board requires the relevant permits (or evidence said permits are being applied for) pertaining to water/wastewater disposal to be submitted during the final subdivision review application process.
7. The Board requires the applicant to include parcel codes on the final plat.

Dated at Underhill, Vermont this 22nd day of March, 2017.

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 21 April 2017.