Town of Underhill

Development Review Board
Final Findings and Decision

PRELIMINARY SUBDIVISION APPLICATION OF C. WALLACE & PATRICIA STONE FOR A 2-LOT SUBDIVISION

In re: C. Wallace & Patricia Stone
11 Doon Road (DO011)
Underhill, VT 05489

Docket No. DRB-16-07

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 C. Wallace & Patricia Stone regarding a 2-lot subdivision of property located at 11 Doon Road in Underhill, Vermont.

A. On June 27, 2016, C. Wallace & Patricia Stone filed a sketch plan review application for the abovementioned project. A sketch plan review meeting of the project was held on July 17, 2016 and was accepted on August 1, 2016.

B. On March 29, 2017, C. Wallace & Patricia Stone 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 site visit and hearing date was scheduled for 6:00 PM and 6:45 PM at Underhill Town Hall on April 17, 2017, respectively.

C. On March 30, 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. IS516 – C. Wallace Stone, 11 Doon Road, Underhill, VT 05489
   B. DO002 – Mike Larson, 2 Doon Road, Underhill, VT 05489
   C. DO004 – Adam R. & Sabrina Farrell, 4 Doon Road, Underhill, VT 05489
   D. DO012 – Frank W. & Judith A. Jurasek, 12 Doon Road, Underhill, VT 05489
   E. DO017 – Brian P. Lyster & Elizabeth L. May, 17 Doon Road, Underhill, VT 05489
   F. DO019 – Lee Thompson Trustee, 19 Doon Road, Underhill, VT 05489
   G. DO020 – Anton R. & Yona Yelin, 20 Doon Road, Underhill, VT 05489
   H. IS478 – Larry & Elizabeth Lamphere, 478 Irish Settlement Road, Underhill, VT 05489
   I. IS491 – Dhrama Door VT, LLC, c/o Abbi Jaffe, 491 Irish Settlement Road, Underhill, VT 05489
   J. IS497 – Clifford W. Midkiff & Danyl Rose Duval, 9865 SW 35th Drive, Apt. 56, Portland, OR 97219
   K. IS508 – Theodore & Elena B. Alexander, 508 Irish Settlement Road, Underhill, VT 05489
   L. IS537 – Bridget Stone-Allard & Paul A. Allard, 537 Irish Settlement Road, Underhill, VT 05489
   M. IS560 – Clarke B. Elliott & Jennifer Whitcomb, 560 Irish Settlement Road, Underhill, VT 05489

N. PC032 – Bryn Tyddyn, LLC, 1654 Moore's Hill Road, Syosset, NY 11791
O. IS492X – Roman Catholic Diocese of Burlington, 55 Joy Drive, South Burlington, VT 05403
P. Applicant: DO011 – C. Wallace & Patricia W. Stone, 11 Doon Road, Underhill, VT 05489
Q. Consultant: Roy Hango, 616 Potato Hill Road, Enosburg Falls, VT 05450

D. During the week of March 26, 2017, notice of the public hearing for the proposed Stone Preliminary Subdivision hearing 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, April 1, 2017, the notice of public hearing was published in the *Burlington Free Press.*

F. A site visit at the property located at 11 Doon Road, Underhill, Vermont, commenced at 6:00 pm on April 17, 2017.

G. The preliminary subdivision review hearing began at 6:45 pm on April 17, 2017 at the Town of Underhill Town Hall.

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

A. Board Member, Shanie Bartlett
B. Board Member, Matt Chapek
C. Board Member, Mark Green
D. Board Member, Penny Miller
E. Board Member, Stacey Turkos
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. Robert Stone, Applicant (11 Doon Road, Underhill, VT 05489)
2. C. Wallace Stone, Applicant (11 Doon Road, Underhill, VT 05465)

I. 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." There were no interested parties present at the hearing.

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

Exhibit A – Stone Preliminary Subdivision Review Staff Report
Exhibit B - Preliminary Subdivision Review Application
Exhibit C - Preliminary Subdivision Findings Checklist
Exhibit D - Letter of Request Letter

Exhibit E - List of Abutters
Exhibit F - Certificate of Service
Exhibit G - BFP Notice of Public Meetings
Exhibit H - BFP Advertisement Confirmation
Exhibit I - Preliminary Access Permit
Exhibit J - Sketch Plan Review Letter
Exhibit K - Town Land Contract
Exhibit L - Water-Wastewater Permit (WW-4-4777)
Exhibit M – Survey
Exhibit N - Overall Site Plan
Exhibit O - Site Plan
Exhibit P - Water-Wastewater Details
Exhibit Q - ANR Slopes Map
Exhibit R - ANR Stream & Waterbodies Map
Exhibit S - ANR Wetlands Map
Exhibit T - ANR Flood Hazard Area Map
Exhibit U - ANR Deer Wintering Yards Maps
Exhibit V - ANR Habitat Blocks Maps
Exhibit W - ANR Prime Agriculture Soils Map
Exhibit X - MMU Ability to Serve Letter
Exhibit Y - UJFD Ability to Serve Letter
Exhibit Z - ANR Project Review Sheet

No additional 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 DO011 Preliminary Subdivision Review file (DRB 16-07) at the Underhill Zoning & Planning office.

II. FINDINGS

The Minutes of the April 17, 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, C. Wallace & Patricia Stone, record owner of the property located at 11 Doon Road in Underhill, VT, are seeking a subdivision permit to subdivide land. The property is located in the Rural Residential zoning district as defined in Article II, Table 2.3 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.

ARTICLE III – GENERAL REGULATIONS

A. **SECTION 3.2 – ACCESS**
The Board finds that a preliminary access permit (Access Permit #: A-16-10) for Lot 2 was received from the Selectboard on August 16, 2016. The Board supports the findings of the Selectboard's decision, acknowledging that the Selectboard granted a waiver pertaining to the driveway setback requirement from the Lot 3 property line.

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 requirements. The proposed lot will fail to meet the frontage requirement of 250 feet; however, the Board waives this requirement per § 8.6.A.2.a, which allows the Board to waive frontage requirement for minor subdivisions accessed by a shared driveway. Furthermore, the Board finds that there will be one principal use proposed for the newly subdivided lot, a single-family dwelling, which is permitted per Table 2.3.B.5.

C. **SECTION 3.13 – PARKING, LOADING & SERVICE AREAS**
The Board finds that there is sufficient evidence to believe that the applicants will meet the parking requirement of two spaces as required per table 3.1.

D. **SECTION 3.17 – SOURCE PROTECTION AREAS**
The Board finds that the subdivision/development is not located within any known Source Protection Areas, and therefore, this section does not apply.

E. **SECTION 3.18 – STEEP SLOPES**
The Board finds that the existing lot contains areas of steep slopes (15-25%) and very steep slopes (>25%); however, the development proposed is outside of these areas, and therefore, there will be a *de minimis* impact on the areas of steep slopes.

F. **SECTION 3.19 – SURFACE WATERS & WETLANDS**
The Board finds that the parent lot (Lot 1) contains areas of Class II Wetlands, unnamed streams, and Settlement Brook; however, the proposed Lot 2, as well as its associated development will not be located in the vicinity of these features, and therefore, will cause little to no impact.

G. **SECTION 3.22 – WATER SUPPLY & WASTEWATER SYSTEMS**
The Board finds that the applicants have obtained a Wastewater System and Potable Water Supply Permit from the Agency of Natural Resources (Permit #: WW-4-4777), thus creating a rebuttable presumption that the applicants will not contaminate the surrounding soils, water, and groundwater. The applicants shall ascertain the actual well shield and wastewater isolation zone on the site plan prior to final subdivision review.

ARTICLE VI – FLOOD HAZARD AREA REVIEW

The Board finds that a 100-year Flood Hazard Area is located on the existing lot; however, the proposed lot is not located in the immediate vicinity, and therefore, no review under this article is required.

ARTICLE VII – SUBDIVISION REVIEW, ARTICLE VII

A. **SECTION 7.2 – APPLICABILITY**
The Board finds that the applicants' proposed subdivision is subject to the requirements of the 2014 Underhill Unified Land Use & Development Regulations per § 7.2, and was classified as a "minor subdivision" during the sketch plan review meeting and in the decision issued on August 1, 2016.

B. **SECTION 7.3 – SKETCH PLAN REVIEW**
The Board finds that the applicant more or less satisfied the conditions provided in the Sketch Plan Review Letter issued on August 1, 2016 (see Exhibit D). In regard to condition 3 of the Sketch Plan Review Letter, Staff found that requiring the applicants to obtain Selectboard approval to remove land from a land contract to convey to a family member without the lot being subdivided beforehand would be premature. In regard to condition 4, Staff found that the applicants could proceed without a draft shared access easement at the time of submitting their preliminary subdivision application, as this was not a document that would be material to the Board's review. However, the applicants shall submit this document prior to final subdivision review.

C. **SECTION 7.5 – PRELIMINARY SUBDIVISION REVIEW**
The Board finds that the applicants satisfied the intent of this section and provided the necessary materials to make a determination 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 Board also finds that the applicant has not requested any waivers.

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 the Rural Residential zoning district.

SECTION 8.2.C – EXISTING CONDITIONS
The Board finds that the proposed layout of the development will minimize the impact to the natural environment, and that there will be minimal impact to the existing site features and natural amenities. While the Board finds there are statewide prime agriculture soils present on the proposed Lot 2, the proposed development will be located outside of this designation.

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 except for the frontage requirement under Table 2.3.D; however, this requirement is waived under § 8.6.A.2.a since Lots 2 and 3 will be utilizing a shared driveway.

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.

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 applicants are proposing development that will preserve the existing trees, tree lines, and wooded areas located on the proposed lot, except for the removal of a few trees to enhance the view of Mt. Mansfield to the east. Furthermore, the applicants have stated their intention of retaining the field for agricultural and natural drainage purposes.

SECTION 8.2.J – ENERGY CONSERVATION
The Board makes no findings, nor makes any requirements with regard to energy conservation.

C. SECTION 8.3 – NATURAL & CULTURAL RESOURCES

SECTION 8.3.A – RESOURCE IDENTIFICATION & PROTECTION
The Board is unaware of, nor has the applicant identified, any cultural or natural features that should be conserved.

SECTION 8.3.B – SURFACE, WATERS, WETLANDS & FLOODPLAINS
The Board finds that the parent lot contains wetlands, floodplains, unnamed streams, and Settlement Brook; however, the proposed subdivision and development are not in the vicinity of these features.

SECTION 8.3.C – ROCK OUTCROPS, STEEP SLOPES, HILLSIDES & RIDGELINES
The Board finds that the parent lot contains areas of steep slopes and very steep slopes; however, the subdivided lot and development are proposed to be located in an area where the slope does not exceed 15% according to the Vermont Agency of Natural Resources Atlas.

SECTION 8.3.D – NATURAL AREAS & WILDLIFE HABITAT
The Board finds that a wintering deer yard is located on the eastern part of the existing lot; however, the proposed subdivision and development is to be located to the west of the boundary. The Board also finds that there is a priority level 6/7 habitat block to the east of where the development is proposed. Therefore, the proposed subdivision and development will not impact these two designated areas.

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 regarding this subsection.

SECTION 8.3.F – FARMLAND

While the existence of statewide prime agricultural soils are located on the proposed Lot 2, the Board finds that the proposed subdivision and development will have little impact, as only the driveway is proposed to traverse these soils. Therefore, the Board finds that there will not be a significant fragmentation of the statewide prime agricultural soils.

The Board also finds that the proposed development is to be located towards the edge of the field, thereby reducing the impact on the farmland.

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 lot, and will only be removing a few trees to enhance the view of Mt. Mansfield. Therefore, the impact on forestland will be minimal.

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 this subsection does not apply since no open space or common land were designated as part of the proposed project.

E. SECTION 8.5 – STORMWATER MANAGEMENT & EROSION CONTROL
The Board finds that the applicant shall conform to The Low Risk Site Handbook for Erosion Prevention and Sediment Control, published by the Watershed Management Division of the Vermont Department of Environmental Conservation when performing excavation and site work. The Board also finds that the proposed development shall have a minimal impact on stormwater runoff and does not require an additional treatment plan.

F. SECTION 8.6 – TRANSPORTATION FACILITIES

SECTION 8.6.A – ACCESS & DRIVEWAYS
The applicants obtained a preliminary access permit from the Selectboard on August 16, 2016 (Access Permit #: A-16-10), with the standard conditions.

The Board finds that the access way will be serving two lots, and therefore, the requirements of § 8.6.B do not apply. The Board advises the applicant that they may need to update their site plan to conform with the Town's Road Ordinance after obtaining Selectboard final access approval, specifically in regards to the turnaround and turning radius, as mentioned above in § 3.2.A.

As allowed by § 8.6.A.2.a, the Board waives the frontage requirement of 250 ft. because the proposed subdivision is a minor subdivision accessed by a shared driveway.

SECTION 8.6.B – DEVELOPMENT ROADS
The Board finds that this subsection does not apply since the shared access way will only serve two lots.

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.

SECTION 8.7.B – FIRE PROTECTION
The Board finds there will be no undue burden on the existing and/or planned public facilities. Underhill Jericho Fire Department has provided an ability to serve letter recommending that the proposed driveway include a turnaround, typically meeting the following specifications: a 15 feet by 37.5 feet turnaround with a 35 feet radius.

SECTION 8.7.C – WATER SYSTEMS
The Board finds that the applicant has obtained a Wastewater System & Potable Water Supply Permit (Permit #: WW-4-4777), thereby creating a rebuttable presumption that the soils, water, and groundwater will not be contaminated.

SECTION 8.7.D – WASTEWATER SYSTEMS
The Board finds that the applicant has obtained a Wastewater System & Potable Water Supply Permit (Permit #: WW-4-4777), thereby creating a rebuttable presumption that the soils, water, and groundwater will not be contaminated.

SECTION 8.7.E – UTILITIES
The Board finds the applicant has represented that all electrical, communications, and media utilities shall be installed underground in accordance with § 8.7.E.

H. SECTION 8.8 – LEGAL REQUIREMENTS
The Board finds that the applicant has not provided a shared maintenance agreement for the shared access way serving Lots 2 & 3. The applicants will be required to submit this document prior to the final subdivision review hearing.

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 finds that the site plan submitted for final subdivision review shall identify the actual well shield and actual wastewater isolation zone instead of the presumptive well shield and the presumptive wastewater isolation zone.
2. The Board finds that a draft shared maintenance agreement shall be submitted as part of the final subdivision review application.
3. The Board requires the applicant to include parcel codes on the final plat.
4. The Board finds that the location of all proposed utilities shall be shown on the final plat per Section 8.7.E.

Dated at Underhill, Vermont this 23rd day of April, 2017.

Charles Van Winkle

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 24 May 2017.