



Town of Underhill

Development Review Board

Final Findings and Decision

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

In re: C. Wallace & Patricia Stone
11 Doon Road (D0011)
Underhill, VT 05489

Docket No. DRB-16-07

Decision: Approved with conditions (see Section V – 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, and commenced at, 6:00 PM and 6:45 PM at Underhill Town Hall on April 17, 2017, respectively.
- C. On April 23, 2017, the Development Review Board issued its Findings & Decision granting preliminary subdivision approval.
- D. On May 1, 2017, or shortly thereafter, C. Wallace & Patricia Stone, filed an application for final subdivision approval for the abovementioned project. Prior to the hearing, the Planning & Director & Zoning Administrator, Andrew Strniste, received the application and determined that it was complete. A hearing date was scheduled for June 5, 2017 at Underhill Town Hall.
- E. On May 10, 2017, a copy of the notice of the final 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. D0002 – Mike Larson, 2 Doon Road, Underhill, VT 05489
 - C. D0004 – Adam R. & Sabrina Farrell, 4 Doon Road, Underhill, VT 05489
 - D. D0012 – Frank W. & Judith A. Jurasek, 12 Doon Road, Underhill, VT 05489

- E. D0017 – Brian P. Lyster, 17 Doon Road, Underhill, VT 05489
- F. D0019 – Lee Thompson Trustee, 19 Doon Road, Underhill, VT 05489
- G. D0020 – 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 – Elizabeth L. May, 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: D0011 – C. Wallace & Patricia W. Stone, 11 Doon Road, Underhill, VT 05489
- Q. Consultant: Roy Hango, 616 Potato Hill Road, Enosburg Falls, VT 05450

F. During the week of May 7, 2017, notice of the public hearing for the proposed Stone Final 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.

G. On Saturday, May 13, 2017, the notice of public hearing was published in the *Burlington Free Press*.

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

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

- A. Board Member, Matt Chapek
- B. Board Member, Mark Green
- C. Board Member, Penny Miller
- D. Board Member, Karen McKnight
- 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)

J. 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.

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

- Exhibit A – Stone Final Subdivision Review Staff Report
- Exhibit B - Final Subdivision Review Application
- Exhibit C - Final Subdivision Findings Checklist
- Exhibit D – Memorandum to Board from Applicants
- Exhibit E - Certificate of Service
- Exhibit F – Proposed Utility Locations
- Exhibit G – Proposed Road Maintenance Agreement
- Exhibit H – Final Subdivision Review Rules of Procedure

No additional exhibits were submitted during the hearing.

The exhibits submitted as part of the sketch plan review application, and as part of the preliminary subdivision review application, except as amended above, are also incorporated into this decision.

All exhibits are available for public review in the DO011 Final Subdivision Review file (DRB 16-07) at the Underhill Zoning & Planning office.

II. FINDINGS

The Minutes of the June 5, 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 applicants, 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. In response to the Underhill-Jericho Fire Department's comments, the Board recommends that the Selectboard require a 15-foot by 37.5-foot turnaround with a 35-foot radius as a condition of final access approval.

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; however, the applicant shall indicate this area on the site plan during the final access permitting process.

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.

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

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 adequately satisfied the conditions provided in the Sketch Plan Review Letter issued on August 1, 2016. The applicants should be cognizant of removing

the land from the land contract after this subdivision is finalized..

C. SECTION 7.5 – PRELIMINARY SUBDIVISION REVIEW

The Board finds that the applicants adequately satisfied the intent of this Section, and provided the necessary materials to make a determination on the preliminary subdivision application. The applicants were granted preliminary subdivision approval with conditions on April 25, 2017.

D. SECTION 7.6 – FINAL SUBDIVISION REVIEW

The Board finds that the applicants adequately satisfied the intent of this Section, and reasonably provided the necessary materials to make a determination on the final subdivision review application. While the applicants did not submit draft deed language referencing the road maintenance agreement and any associated easements, the Board finds that these documents shall be submitted prior to recording the Mylar.

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 applicants have requested the minimum frontage requirement be waived per Section 8.6.A.2.a. The Stones' land contract with the Town only permits them to remove up to 4.5 acres from the contract. The Board finds that the proposed configuration of Lot 2 allows the applicants to remove a minimal amount of acreage from the land contract which will minimize the impact to the surrounding environmental features, while also containing the isolation shields of the water/wastewater system to the lot. Therefore, the Board grants the waiver request of reducing the minimum frontage requirement.

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 of the Rural Residential zoning district per this section.

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 agricultural 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 applicants have not proposed to designate any land as open space.

SECTION 8.4.B – COMMON LAND

The Board finds that the applicants have 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 applicants 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 will 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 applicants 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 (see Section 3.7 above for more information).

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 a 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. The Board recommends that the Selectboard condition final access approval on the incorporation of these recommendations.

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 that the applicant has represented that all electrical, communications, and media utilities shall be installed underground in accordance with § 8.7.E. The location of the utilities has not been identified on the site; however, the applicants have advised that they will be placed in one of two areas. The location will be ascertained with the associated companies upon approval of this application. The applicant shall submit a copy of the final site plan to the Planning & Zoning Administrator to be filed in the zoning file once finalized.

H. SECTION 8.8 – LEGAL REQUIREMENTS

The Board finds that the applicants have provided a shared maintenance agreement for the shared access way serving Lots 2 & 3; however they have not provided draft deed language referencing the road maintenance agreement or any associated easements. The applicants shall

incorporate by reference the road maintenance agreement and associated easements into the deeds prior to recording.

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. WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS

The Board grants the following waivers/modifications:

1. The Board waives the frontage requirements under Section 3.2.A per Section 8.6.A.2a since the proposed Lot 2 will be accessed by a shared driveway and is part of a minor subdivision.
2. The applicants are not required to come before the Board if they wish to relocate the single-family dwelling or driveway within the building envelope or easement. The Board recognizes that the identified locations on the engineering plans submitted as a part of this application are for illustration purposes only, and do not reflect the final footprint of the single-family dwelling or driveway layout.

V. DECISIONS AND CONDITIONS OF APPROVAL

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

1. The building envelope as depicted on the submitted site plan is the maximum allowed per the 2014 Underhill Unified Land Use & Development Regulations. All subsequent structures shall conform to the zoning Regulations in effect at the time they're proposed regardless if the currently approved building envelope is more permissive.
2. Notwithstanding the conditions above or below, prior to being issued a building permit, the applicant shall comply with applicable aspects of the Underhill Land Use and Development Regulations in effect at the time of the building permit application.
3. The survey plat shall be updated in accordance with this decision, and a full-sized hard copy and digital copy shall be submitted to the Planning & Zoning Administrator to be filed in the zoning files.
4. The Board requires that the applicants formalize upon approval the proposed roadway maintenance agreement, as well as any associated easements as submitted, as part of this application, and they be referenced in the deeds. Said easements and maintenance agreements shall run with the land and be incorporated by reference in the deed.
5. The applicants shall obtain final access approval from the Selectboard. Any changes the Selectboard may impose to the currently proposed access way do not require Development Review Board approval.

6. The Board recommends that the Selectboard incorporate the Underhill-Jericho Fire Department's recommendation of providing a 15-foot by 37.5-foot turnaround with a 35-foot radius as part of its conditions of approval for final access review.
7. Prior to the issuance of a Certification of Occupancy, the applicants shall provide a certification letter from a Vermont Licensed Professional Engineer or Vermont Licensed Designer that the wastewater system and water supply system have been construction according to the approved ANR Plan.
8. The E-911 Codes for the lots shall be posted per the Underhill-Jericho Fire Department specifications prior to the issuance of a Certificate of Occupancy permit.
9. Per Section 7.2.B, no land shall be subdivided until final subdivision approval has been obtained from this Board and the approved subdivision plat is recorded in the Town of Underhill Land Records.
10. No transfer, sale, or long-term lease of title to property as defined under 32 V.S.A. § 9601 of any portion of an existing lot; predevelopment site work; or issuance of zoning permits to develop a subdivided lot shall occur until final subdivision has been approved from this Board, and the final Mylar (only the subdivision plat needed) have been recorded in the Underhill Land Records per Section 7.2.C
11. The final plat shall include parcel codes, and shall be submitted for recording within 180 days of the date of this approval (December 10, 2017) in accordance with Section 7.7 of the Underhill Unified Land Use & Development Regulations. Failure to record the final plat within the specified timeframe shall void this approval.
12. All subdivision and recording fees must be paid in full prior to recording a subdivision plat in accordance with Section 7.7.B of the Underhill Unified Land Use and Development Regulations.
13. New property boundary monumentation referenced on the survey plat shall be installed as a condition of approval.

The project shall conform to the submitted application materials and hearing testimony presented by the applicant. Any change to the plans or the proposed use of the property shall be brought to the Zoning Administrator's attention prior to its enactment to determine if the above conditions need to be amended.

Dated at Underhill, Vermont this 13th day of June, 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 13 July 2017.