

Town of Underhill

Development Review Board

Final Subdivision Findings and Decision

COMBINED SKETCH PLAN, PRELIMINARY SUBDIVISION & FINAL SUBDIVISION REVIEW APPLICATION OF MARC & JANE MAHEUX TO REAFFIRM THE PREVIOUS FINAL SUBDIVISION REVIEW APPROVAL FOR A 2-LOT SUBDIVISION

In re: Marc & Jane Maheux
38 Poker Hill Road
Underhill, VT 05489

Docket No. DRB-18-07

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

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns the combined sketch plan review, preliminary subdivision & final subdivision review application submitted by Marc & Jane Maheux regarding the reaffirmation of a previously approved final subdivision review application concerning a 2-lot subdivision of property they own located at 38 Poker Hill Road in Underhill, Vermont.

- A. On May 9, 2012, the Maheuxes filed a sketch plan review application for the abovementioned project. A sketch plan review meeting was held with the Board on June 4, 2012. The application was accepted.
- B. Subsequently, Mr. Maheux submitted a conditional use review application pertaining to an earth disturbance project, which was approved with conditions by the Development Review Board (see DRB Decision #: DRB-12-04, dated June 12, 2012).
- C. The Development Review Board granted preliminary subdivision approval for the 2-Lot Subdivision on January 6, 2014 (see DRB Decision #: DRB-12-04). However, the applicants failed to submit a final subdivision review application within the required one year deadline (*Section 7.6.A of the Underhill Unified Land Use & Development Regulations*), and therefore, was required to resubmit a preliminary subdivision review application. The applicants submitted a combined sketch plan review & preliminary subdivision review application on February 9, 2015 that was largely identical to the previous preliminary subdivision review application, with several supporting documents added. The Board granted approval of the combined sketch plan review and preliminary subdivision review application on April 6, 2015 (see DRB Decision #: DRB-12-04, dated April 20, 2015).
- D. The applicants submitted an application for final subdivision review on December 7, 2015. The application was determined complete by Acting Zoning Administrator, Brian Bigelow, and a hearing date was scheduled for February 1, 2016. The Board approved the application on March 7, 2016 (see DRB Decision #: DRB-12-04, dated March 7, 2016). According to Section

7.7.A, which references 24 V.S.A. § 4463(b) and 27 V.S.A. Chapter 17, applicants are to submit the Mylar of the approved subdivision plat for recordation with the Town's land records within 180 days of the date of the decision. If Mr. Maheux did not submit a Mylar by September 3, 2016 he would be required to reapply for subdivision approval.

- E. On Thursday, July 21, Town Administrator, Brian Bigelow, contacted Mr. Maheux by email asking if he had recorded the Mylar for the aforementioned project. The applicant advised on Friday, July 22, 2016 that he did not record his Mylar, and asked if this would be a problem. On Friday, July 22, 2016, the Town Administrator advised that there was a 180-day period to record the Mylar from the date of the decision. Planning & Zoning Administrator, Andrew Strniste, confirmed the 180-day period to record the Mylar on Monday, July 25, 2016.
- F. On Monday, September 19, 2016, the applicants submitted their Mylar for recordation to the Planning & Zoning Administrator for review and confirmation that it was in conformance with the Development Review Board's March 7, 2016 final subdivision review approval. On Tuesday, September 20, 2016, the Planning & Zoning Administrator emailed the applicant to inform Mr. Maheux that his Mylar was not submitted within the 180-day period and that his subdivision approval was void. He was then advised that he would need to reapply should he wish to continue with his project.
- G. On March 28, 2018, the applicants, filed a combined sketch plan, preliminary subdivision review, and final subdivision review application for the abovementioned project. Planning Director & Zoning Administrator, Andrew Strniste, received the application and determined that it was complete shortly thereafter. A site visit was scheduled for 6:00 PM on April 16, 2018 at the property's location (38 Poker Hill Road, Underhill, VT) and a hearing was scheduled for 7:15 PM on April 16, 2018.
- H. On March 28, 2018, notice regarding the combined sketch plan, preliminary subdivision & final subdivision review hearing was mailed via certified mail to the following property owners adjoining the property subject to the application:
 - 1. BR001 – John & Jodi Jenot, 1 Barrett Lane, Underhill, VT 05489
 - 2. BR011 – Sara McKay, 11 Barrett Lane, Underhill, VT 05489
 - 3. BR013 – Gregory F. & Maureen E. Frede, 13 Barrett Lane, Underhill, VT 05489
 - 4. FR013 – Alton F. & Judith J. Verity, 13 Fox Run, Underhill, VT 05489
 - 5. FR029 – Amy A., Irvin & Rick D. Withham, 29 Fox Run, Underhill, VT 05489
 - 6. PH032 – Wendy & Bruce Garrapy, 32 Poker Hill Road, Underhill, VT 05489
 - 7. PH033 – Peter T. & Marion I. Brooks, 33 Poker Hill Road, Underhill, VT 05489
 - 8. PH039 – Richard A. & Todd L. & Leon J. Jr. Provost, David J. Provost, 39 Poker Hill Road, Underhill, VT 05489
 - 9. PH045 – Silvia Forsberg Life Estate, Andreas & Michaela & Frederik Forsberg Remaindermen, P.O. Box 146, Underhill, VT 05489
 - 10. James G. & Gayle L. Massingham, 46 Poker Hill Road, Underhill, VT 05489
 - 11. PH054 – Scott Hinman, 54 Poker Hill Road, Underhill, VT 05489
 - 12. Applicants: PH038 – Marc & Jane Maheux, P.O. Box 236, Underhill, VT 05489
- I. During the week of March 25, 2018, notice of the public hearing for the proposed Maheux combined sketch plan, preliminary subdivision & final subdivision review hearing was posted at the following places:

1. The Underhill Town Clerk's office;
2. The Underhill Center Post Office; and
3. Jacobs & Son Market.

J. On March 31, 2018 notice of public hearing was published in the *Burlington Free Press*.

K. A site visit at the property's location (38 Poker Hill Road, Underhill, Vermont) commenced at 6:00 PM on April 16, 2018.

L. Present at the site visit were the following members of the Development Review Board

1. Board Member, Penny Miller, Acting Chairperson
2. Board Member, Matt Chapek
3. Board Member Mark Green
4. Board Member Daniel Lee

Municipal representatives and members of the public present during the site visit were:

5. Planning & Zoning Administrator, Andrew Strniste
6. Applicant, Marc Maheux (38 Poker Hill Road, Underhill, VT)
7. Abutting Neighbor, Scott Hinman (54 Poker Hill Road, Underhill, VT)

M. The combined sketch plan, preliminary subdivision & final subdivision review hearing began at 7:36 PM on April 16, 2018 at the Town of Underhill Town Hall, 12 Pleasant Valley Road, Underhill, Vermont. Due to time constraints, the hearing was continued to later in the evening. The Maheux subdivision hearing resumed after the Wells/McLaughlin Conditional Use review hearing was completed.

N. Present at the combined sketch plan, preliminary subdivision & final subdivision hearing were the following members of the Development Review Board:

1. Board Member, Penny Miller, Acting Chairperson
2. Board Member, Matt Chapek
3. Board Member, Mark Green
4. Board Member, Daniel Lee

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

Others present at the hearing were:

1. Applicant, Marc Maheux (38 Poker Hill Road, Underhill, VT 05489)
2. Abutting Neighbor, Scott Hinman (54 Poker Hill Road, Underhill, VT 05489)
3. Underhill Resident, Peter Duval (25 Pine Ridge Road, Underhill, VT 05489)

O. At the outset of the hearing, Acting Chairperson Penny Miller explained the criteria under 24 V.S.A § 4465(b) for being considered an "interested party." Those who spoke at the hearing were:

1. Applicant, Marc Maheux

2. Abutting Neighbor, Scott Hinman
3. Underhill Resident, Peter Duval

P. In support of the combined preliminary & final subdivision application, the following exhibits were submitted to the Development Review Board:

1. Exhibit A – PH038 Maheux Staff Report - Combined Sketch, Preliminary & Final Subdivision Review
2. Exhibit B - PH038 Maheux Sketch, Preliminary & Final Subdivision Hearing Procedures
3. Exhibit C - Final Subdivision Review Application
4. Exhibit D - Request for Combined Hearing Correspondence
5. Exhibit E - DRB-12-04 Preliminary Subdivision Findings Checklist
6. Exhibit F - BFP Notice of Public Meeting
7. Exhibit G - Certificate of Service
8. Exhibit H - ANR Slopes Map
9. Exhibit I - Zoning Districts
10. Exhibit J - School District Ability to Serve Letter
11. Exhibit K - UJFD Ability to Serve Letter
12. Exhibit L - Draft Deeds
13. Exhibit M - Correspondence to-from SB re. Access Permit
14. Exhibit N - Correspondence from Jericho-Underhill Water District
15. Exhibit O - Wastewater System & Potable Water Supply Permit # WW-4-4126
16. Exhibit P - Correspondence Regarding WW Permit
17. Exhibit Q - Correspondence from Applicant Dated 11.25.2013
18. Exhibit R - Underhill PZA Preliminary Subdivision Review Staff Report
19. Exhibit S - Underhill DRB Preliminary Subdivision Findings & Decision
20. Exhibit T - Underhill PZA Final Subdivision Review Staff Report
21. Exhibit U - Underhill DRB Final Subdivision Findings & Decision
22. Exhibit V – Survey
23. Exhibit W - Survey with More Information
24. Exhibit X - Site Plan
25. Exhibit Y - Wastewater System Details

No additional exhibits were distributed to the Board prior to the Monday, April 16, 2018 hearing, nor were any additional exhibits submitted into the record during the hearing.

All exhibits are available for public review in the PH038 Maheux Combined Sketch Plan, Preliminary Subdivision & Final Subdivision Review file (PH038 / DRB 18-07) at the Underhill Zoning & Planning office.

II. FACTUAL FINDINGS & CONCLUSIONS

The Minutes of the April 16, 2018 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 2018 *Underhill Unified Land Use and Development Regulations* (ULUDR):

PROJECT SYNOPSIS

The applicants, Marc & Jane Maheux, record owner of the property located at 38 Poker Hill Road in Underhill, VT, seek to subdivide their property into two separate lots. The property is located in the Underhill Flats Village Center and Rural Residential zoning districts as defined in Article II, Tables 2.2 & 2.4 of the 2018 amended *Underhill Unified Land Use & Development Regulations*. While the application as submitted had been approved at various times prior to this review, the current Planning & Zoning Staff determined that proposed Lot 1 does not meet the frontage requirements, as explained below.

ARTICLE II – ZONING DISTRICTS

A. ARTICLE II, SECTION 2.2 – BOUNDARY INTERPRETATIONS

Section 2.2.E – Untitled: As stated above, Planning & Zoning Staff determined that Lot 1 fails to meet the frontage requirement considering the subdivided lot is located in two zoning districts. Staff's interpretation of the regulations is substantiated by the Town's attorney who was consulted in a similar, relatively recent subdivision application and who cited both his interpretation of the regulations and supporting case law. Specifically, the Town's attorney provided the Town's staff documentation stating that when a property is subdivided, each lot must meet the minimum requirements of all districts in which a lot is located. As applied to the current application, the proposed Lot 1 must meet the minimum requirements of both the Underhill Flats Village Center and Rural Residential zoning districts, including frontage requirements. The frontage for Lot 1 is proposed as approximately 176 feet; however, the Rural Residential zoning district requires lot frontage to be a minimum of 250 feet. Lot 1 fails to meet the frontage requirements of the Rural Residential zoning district. Note: the frontage requirement for Lot 2 is not at issue since the lot is entirely located within the Underhill Flats Village Center Zoning District.

The Board acknowledges that in the past it has consistently and intentionally interpreted the ULUDR regulations to indicate that the specific location of the building envelope on a lot in two zoning districts determines which zoning district prevails with regards to dimensional requirements (i.e. setbacks, frontage), contrary to the more recent legal interpretation stated in the above paragraph. The application currently before the Board is a reaffirmation of a subdivision approval that has been reviewed in a number of hearings under the Board's past interpretation of the regulations and approved most recently in 2016 with a 176 foot frontage for Lot 1 - considering the building envelope was located in the Underhill Flats Village Center zoning district requiring only 150 feet frontage.

B. ARTICLE II, TABLE 2.2 – UNDERHILL FLATS VILLAGE CENTER DISTRICT

The Board finds that the proposed subdivision occurs within the Underhill Flats Village Center District and the Rural Residential District, with the proposed development occurring entirely within the Underhill Flats Village Center District. The Board finds that Lot 2 meets the requirements of this district; however, Lot 1 fails to meet the frontage requirements of this district. Both lots satisfy the district's purpose statement of allowing for the continuation of existing small scale residential uses, as well as encouraging development that is compatible with and promoting a compact, historic village settlement pattern.

C. ARTICLE II, TABLE 2.4 – RURAL RESIDENTIAL DISTRICT

The Board finds that the proposed Lot 1 contains areas of land in both the Underhill Flats Village Center District and Rural Residential District. Although the Board finds that the proposed development on Lot 1 will occur entirely within the Underhill Flats Village Center District, as mentioned above, the requirements of both zoning districts apply. Therefore, the

frontage for Lot 1 is required to be at least 250 feet. Since the applicants propose Lot 1 frontage to be approximately 176 feet, Lot 1 fails to meet the requirement. Otherwise, the Board does not see any issues pertaining to the proposed development that are of concern.

ARTICLE III – GENERAL REGULATIONS

A. SECTION 3.2 – ACCESS

The Board finds that the applicants have submitted documentation stating that an access permit was not required if no changes were proposed to the existing conditions, specifically the access point and the driveway serving the existing detached garage. The Board reaffirms its Findings from its Final Subdivision Review Subdivision Findings & Decision (DRB Decision #: DRB-12-04, Dated March 7, 2016).

B. SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS

The Board finds that the proposed lots will each contain one principal use or structure: Lot 1 will contain the proposed single-family dwelling with an attached garage and a detached accessory building that will serve as a garage and a dwelling unit, and Lot 2 will contain the existing single-family dwelling. The Board notes that under the 2018 amended *Underhill Unified Land Use & Development Regulations*, Conditional Use review is required when an ancillary structure is constructed with the initial intent of being a detached Accessory Dwelling (a living unit). Also note that with Conditional Use approval, a construction project must be substantially initiated within 1 year or the approval expires.

The Board finds that only Lot 2 will meet the frontage requirements under the 2018 amended *Underhill Unified Land Use & Development Regulations*. Lot 1 fails to meet the frontage requirements because of the reasons stated under Section 2.2.E (see above). Despite receiving recent counsel that a lot in two zoning districts must meet the dimensional requirements of both, the Board finds approval of the proposed frontage for Lot 1 is warranted because of an exceptional situation: 1) the current 2018 amended regulations have not altered the frontage requirement from previously adopted zoning regulations; 2) the Board's interpretation of the frontage requirement on this specific parcel has been historically consistent; and 3) the proposed subdivision is identical to the previously approved subdivision. All other dimensional requirements are satisfied, noting that the single-family dwelling depicted on the site plan and submitted survey are for illustration purposes only and may be altered during the building permitting process upon approval from the Zoning Administrator.

C. SECTION 3.13 – PARKING, LOADING & SERVICE AREAS

The Board finds that there is sufficient evidence to believe that the applicant will meet the parking requirement of two spaces as required per Table 3.1.

D. SECTION 3.17 – SOURCE PROTECTION AREAS

The Board finds the existing property is not within any source protection areas, and therefore, review and analysis under this section is not required.

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%) but that the applicants do not propose construction in these areas. Since the Board finds that building envelopes are to be the least restrictive as permitted by regulations in effect at the time of subsequent development projects, any construction within steep slope areas may require review by this Board.

F. SECTION 3.19 – SURFACE WATERS & WETLANDS

The Board finds that Roaring Brook bisects the proposed Lot 1. The applicants submitted a site plan and survey illustrating the “Top of Slope” to be closer in proximity to the proposed development than the regulations allow. The regulations require a 100-foot setback from a designated Top of Slope or Top of Bank to a structure or impervious surface. However, the Board finds that the “Top of Slope” indicated on the site plan references a site feature relative to the septic system design. Applying Diagram 3.1 in the regulations to the proposed subdivision, there is a floodplain located on the property, and therefore, The Board finds that the applicable feature from which to measure the surface land setback is the “Top of Bank.” During the site visit, the Board confirmed that “Top of Bank” is in the immediate vicinity of Roaring Brook, and therefore, the proposed development as presented on the survey and site plan will be well beyond the 100-foot setback. While testimony was provided indicating that proposed Lot 1 may contain wetlands, no evidence was presented demonstrating it so.

G. SECTION 3.23 – WATER SUPPLY & WASTEWATER SYSTEMS

The Board finds that the applicants obtained a Wastewater System & Potable Water Supply Permit from the State of Vermont, Department of Environmental Conservation on October 21, 2013 (Permit #: WW-4-4126). The permit is for an in-ground wastewater system and for connection to municipal water. This permit shall be recorded in the Underhill Land Record prior to the issuance of a Certificate of Occupancy for the proposed single-family dwelling on Lot 1.

ARTICLE VI – FLOOD HAZARD AREA REVIEW

The Board finds that a floodplain exists on Lot 1; however, the applicants propose development that is outside of this area. Nevertheless, should the applicant propose development within this area at a later time, the requirements of this Article, or the applicable regulation in effect at the time of the proposal, shall be satisfied.

ARTICLE VII – SUBDIVISION REVIEW

A. SECTION 7.2 – APPLICABILITY

The Board finds that the applicants' proposed subdivision is subject to the requirements of the 2018 amended *Underhill Unified Land Use & Development Regulations* per Section 7.2 and was classified as a “minor subdivision” during its initial review in 2012.

B. SECTION 7.3 – SKETCH PLAN REVIEW

In regards to this particular application, the Board found that the applicants could forgo the sketch plan review and the preliminary subdivision review process since the applicants propose to reaffirm the previously approved final subdivision review application. The applicants submitted a combined sketch plan review, preliminary subdivision, & final subdivision review application on March 28, 2018. This combined application addressed the requirements of sketch plan review.

C. SECTION 7.5 – PRELIMINARY SUBDIVISION REVIEW

In regards to this particular application, the Board found that the applicants could forgo the sketch plan review and the preliminary subdivision review process since the applicants propose to reaffirm the previously approved final subdivision review application. The applicants submitted a combined sketch plan review, preliminary subdivision, & final subdivision review application on March 28, 2018. This combined application addressed the requirements of preliminary subdivision review.

D. SECTION 7.6 – FINAL SUBDIVISION REVIEW

As part of the combined sketch plan, preliminary subdivision, & final subdivision review application, the applicants resubmitted the application materials he submitted as part of his previous Final Subdivision Review application, which was approved on March 7, 2016. Therefore, the Board finds that the applicants satisfied the intent of this section and provided the necessary materials to make a determination on the final subdivision review application.

SUBDIVISION STANDARDS, ARTICLE VIII

A. SECTION 8.1 – APPLICABILITY

The Board finds that no technical review was needed for this proposed project. The Board also finds that the applicants have not asked for any waivers.

SECTION 8.1.D – MODIFICATIONS & WAIVERS

The Board finds that it can waive any standard under Article XIII that it determines does not apply to a particular subdivision. While frontage is a criteria considered in ALL subdivision applications, the Board finds that there are circumstances specific to this particular application justifying a waiver for the frontage requirement for Lot 1: 1) the applicants' application has been approved various times since 2012 with the noncompliant frontage dimension for Lot 1, and 2) the Board was directed in the past by the Town's staff and by the Planning Commission that the correct way to interpret the regulations was as explained under Article II, Section 2.2 – Boundary Interpretations (see above). The Board notes that the result of abovementioned circumstances created a dependency by the applicants that the Town was conveying the correct interpretation of the Regulations.

The Board finds that that this waiver is consistent with the requirements of this subsection; that the waiver is not contrary to the public health, safety and general welfare; and that the waiver is not contrary to the intent and purpose of these regulations, the Town Plan, or other municipal bylaws and ordinance in effect at the time of this application.

While the request for the waiver was not submitted in writing, the Board finds that the request was implicit for the reasons stated above. The Board finds that there are no conditions attached with this waiver.

NOTE: The Board finds that this waiver is for this application only and shall not be construed to be precedent setting nor will this waiver be allowed in the future if this subdivision is required to appear again before the Board.

B. SECTION 8.2 – GENERAL STANDARDS

SECTION 8.2.A – DEVELOPMENT SUITABILITY

The Board finds that the proposed subdivision would not result in undue adverse impacts to the public health and safety, the natural environment, neighboring properties and uses, or the character of the area in which it is located. The Board finds that the applicants do not propose to set aside any land as open space. In addition, The Board reaffirms its Findings from its Final Subdivision Review Subdivision Findings & Decision (DRB Decision #: DRB-12-04, Dated March 7, 2016).

SECTION 8.2.B – DEVELOPMENT DENSITY

The Board finds that the proposed subdivision meets the density requirements per this section.

SECTION 8.2.C – EXISTING CONDITIONS

The Board reaffirms its Findings from its Final Subdivision Review Subdivision Findings & Decision (DRB Decision #: DRB-12-04, Dated March 7, 2016), which stated that the existing conditions are comprised of rolling terrain extending from Poker Hill Road downwards to Roaring Brook. The landscape and vegetative cover are indicative of land masses typical of the area along Poker Hill Road. The Board finds that the proposed development will not adversely affect the existing conditions.

SECTION 8.2.D – UNDERHILL TOWN PLAN & DEVELOPMENT REGULATIONS

The Board finds that the proposed subdivision & development conform to the *Underhill Town Plan*. While the proposed Lot 1 fails to meet the frontage required, the approval by this Board results in the Board finding that the proposed subdivision & development conform to 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 Underhill Flats Village Center District, as described under Section 8.2.E.1 and the Rural Districts as described in Section 8.2.E.2.

SECTION 8.2.F – LOT LAYOUT

The Board finds that the proposed subdivision satisfies the requirements of this Subsection except for the frontage requirement for Lot 1. As explained under Section 3.7 above, the Board finds that the applicants are permitted to proceed with the proposed subdivision.

SECTION 8.2.G – BUILDING ENVELOPE

The Board reaffirms its Findings from its Final Subdivision Review Subdivision Findings & Decision (DRB Decision #: DRB-12-04, Dated March 7, 2016) that the building envelope is approved to be the least restrictive allowed by the zoning regulations at the time of application for a building permit for proposed construction.

SECTION 8.2.H – SURVEY MONUMENTS

The Board finds that proposed property monumentation shall be installed as defined in the recordable Mylar.

SECTION 8.2.I – LANDSCAPING & SCREENING

The Board anticipates the proposed development will meet the intention of this subsection.

SECTION 8.2.J – ENERGY CONSERVATION

The Board reaffirms its Findings from its Final Subdivision Review Subdivision Findings & Decision (DRB Decision #: DRB-12-04, Dated March 7, 2016), which states that no evidence was submitted in support of energy conservation.

C. SECTION 8.3 – NATURAL & CULTURAL RESOURCES

SECTION 8.3.A – RESOURCE IDENTIFICATION & PROTECTION

Neither the Board nor the applicants are aware of cultural and natural resources/features on the existing lot.

SECTION 8.3.B – SURFACE WATERS, WETLANDS & FLOODPLAINS

The Board finds that the proposed Lot 1 will contain Roaring Brook, which lays within a floodplain. The Board finds that the proposed development will be located outside of the surface water setback and out of the floodplains; however, should the applicants subsequently submit an application for development within the setback or in the floodplain, additional review by this Board will likely be required.

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

The Board finds that the subdivision had been configured to minimize impact to areas of steep slopes and very steep slopes.

SECTION 8.3.D – NATURAL AREAS & WILDLIFE HABITAT

The Board finds that priority level 7 habitat block is located on the existing property. The Board finds that applicants do not propose any development in that area at this time.

SECTION 8.3.E – HISTORIC & CULTURAL RESOURCES

The Board makes no findings in regards to historic and cultural resources on the existing lot.

SECTION 8.3.F – FARMLAND

The Board makes no findings in regards to farmland on the existing lot.

SECTION 8.3.G – FORESTLAND

The Board finds that the proposed development of Lot 1 will be located in the immediate vicinity of Poker Hill Road and will not disturb or impact forestland that exists in the central and rear areas of the lot.

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 the applicants have not designated any land as open space or common land as part of the proposed project.

E. SECTION 8.5 – STORMWATER MANAGEMENT & EROSION CONTROL

The Board finds that the applicants shall conform to the Vermont DEC 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 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 Board finds that each of the proposed lots will be served by existing driveways, and therefore, only the standards of Sections 3.2 & 8.6.A apply. As explained in Section 3.2, the

applicants have submitted documentation that an access permit is not required from the Selectboard if no changes are made to the existing conditions.

SECTION 8.6.B – DEVELOPMENT ROADS

The Board finds that this subsection does not apply since each proposed lot will be served by its own separate driveway and curb cut.

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 finds that this section does not apply, and therefore, review under this Section is not required.

G. SECTION 8.7 – PUBLIC FACILITIES & UTILITIES

SECTION 8.7.A – PUBLIC FACILITIES

The Board finds the proposed subdivision 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 that the proposed subdivision will not create an undue burden on the ability of the Underhill-Jericho Fire Department to provide fire protection services.

SECTION 8.7.C – WATER SYSTEMS

The Board finds that the applicants have already obtained a Wastewater System and Potable Water Supply Permit (Permit #: WW-4-3462-1), and that the applicants propose to connect the new lot to municipal water.

SECTION 8.7.D – WASTEWATER SYSTEMS

The Board finds that the applicants have already obtained a Wastewater System and Potable Water Supply Permit (Permit #: WW-4-3462-1), and that the wastewater system has been identified on the site plan.

SECTION 8.7.E – UTILITIES

The Board finds the applicants shall install utilities at the direction of the electric company, preferably underground.

H. SECTION 8.8 – LEGAL REQUIREMENTS

The Board finds that the applicants submitted draft deeds to be recorded upon conveyance. The Board finds that no other legal documentation is required to be recorded (e.g. road maintenance agreements, easements, etc.).

III. WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS

The Board grants the following waivers/modifications:

1. The Board grants a waiver for the frontage requirement for Lot 1, and permits the nonconforming frontage distance of approximately 176 feet (250-foot requirement) for the reasons stated under Section 8.1.D.
2. The applicants are not required to come before the Board if he wishes to relocate the driveway, so long as the relocation is consistent with the findings of this decision, which is to be determined by the Zoning Administrator. The Board recognizes that the identified location on the engineering plans submitted as a part of this application is for illustration purposes only. As noted under Section 8.6 above, additional review by the Selectboard may be required should the applicants proposed any modifications to the existing driveway layout.
3. The applicants are not required to come before the Board if they wish to relocate the single-family dwelling on Lot 1, assuming that it does not require review under another section of the *Unified Land Use & Development Regulations* and that it maintains all setbacks as required under the current regulations. The Board recognizes that the identified location of this structure on the engineering plans submitted as a part of this application is for illustration purposes only and does not reflect the final footprint of the single-family dwelling.

IV. DECISIONS AND CONDITIONS OF APPROVAL

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 of the 2018 amended *Underhill Land Use & Development Regulations* and concludes that based on the evidence submitted and the above Findings, the proposed subdivision and development generally conform to the aforementioned Regulations.

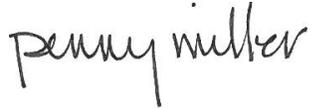
Based upon the Findings above, and subject to the conditions below, the Development Review Board grants final subdivision approval for the project presented in the application and at the hearing with the following conditions:

1. 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 (the subdivision plat) has been recorded in the Underhill Land Records per Section 7.2.C
2. 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.
3. The Board requires the project to be constructed in accordance with the drawing set submitted as part of the review process and as amended accordingly to address the changes herein and which are to be recorded, listed as follows:
 - a. Survey Plat (Prepared by David A. Tudhope and Dated May 20, 2011), or subsequent revision to the extent required as part of this approval.

- b. Subdivision Plan (Prepared by David A. Tudhope and Chad E. Branon, P.E. and Dated August 9, 2013), or subsequent revision to the extent required as part of this approval.
4. The Board requires the applicants to record the abovementioned plans (Under Condition 3) as Mylars in the Underhill Land Records:
 - a. The Survey Plat shall contain the following features:
 - i. Property lines;
 - ii. Any applicable easements;
 - iii. Existing and proposed monumentation;
 - iv. Parcel Codes
 - b. The Subdivision Site Plan shall contain the following features:
 - i. Property lines;
 - ii. Any applicable easements;
 - iii. Any existing structures within the subdivision;
 - iv. Building envelope;
 - v. Intended location for utilities;
 - vi. Approved curb cut locations;
 - vii. Parcel Codes
5. The Board requires the that abovementioned plans be updated in conformance with this decision, and that to-scale hard copies, in addition to digital copies, be submitted to the Zoning Administrator to be filed in the corresponding zoning files.
6. 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.
7. The final plat shall include parcel codes and shall be submitted for recording within 180 days of the date of this approval (May 21, 2018, 2018) in accordance with Section 7.7 of the 2018 amended *Underhill Unified Land Use & Development Regulations*. Note, one-hundred eighty days (180) from the date of this decision is November 17, 2018.
8. 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 2018 amended *Underhill Unified Land Use & Development Regulations*.
9. The Wastewater System and Potable Water Supply Permit shall be recorded in the Underhill Land Record prior to the issuance of a Certificate of Occupancy for the proposed single-family dwelling on Lot 1.
10. Prior to the issuance of a Certificate of Occupancy, the applicants shall provide a certification letter from a Vermont Licensed Professional Engineer or qualified consultant indicating that all infrastructure improvements identified in the subdivision plans under Condition 3 above, and what is required by this decision, have been constructed as per this review.
11. The applicants shall conform to the Vermont DEC 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.
12. New property boundary monumentation referenced on the survey plat shall be installed as a condition of approval.

13. The Board delegates authority to the Zoning Administrator to make decisions based on any ongoing jurisdiction issues, and said decisions can be appealed by the aggrieved to the Development Review Board.
14. Notwithstanding the conditions above, prior to being issued a building permit, the applicants shall comply with applicable aspects of the Underhill Land Use and Development Regulations in effect at the time of the building permit application.

Dated at Underhill, Vermont this 21 day of May, 2018.



Penny Miller, Acting Chairperson, 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 June 20, 2018.