

Town of Underhill

Development Review Board

Final Subdivision Findings and Decision

COMBINED PRELIMINARY & FINAL SUBDIVISION REVIEW APPLICATION OF TARA & KEITH CARTER FOR A 2-LOT SUBDIVISION

In re: Tara & Keith Carter
39 Hobart Hill Road (HB039)
Underhill, VT 05489

Docket No. DRB-19-09

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

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns the combined preliminary & final subdivision review application submitted by the applicants, Tara & Keith Carter, regarding a 2-lot subdivision of property they own located at 39 Hobart Hill Road (HB039) in Underhill, Vermont.

- A. On July 18, 2019, the Applicants filed a sketch plan review application for the abovementioned project. A sketch plan review meeting of the project was held on August 19, 2019 and a letter of acceptance was issued on September 3, 2019. As outlined in the sketch plan review letter, the applicant requested, and the Development Review Board voted to, waive preliminary subdivision review.
- B. On September 12, 2019, the Applicants filed a combined preliminary and final subdivision review application for the abovementioned project. Planning Director & Zoning Administrator, Andrew Strniste, received the application materials and determined that it was complete shortly thereafter. A site visit was scheduled to commence on Monday, October 7, 2019 at 5:45 PM, while the hearing date was scheduled for 7:10 PM at Underhill Town Hall on Monday, October 7, 2019.
- C. On September 19, 2019, notice regarding the combined preliminary & final subdivision review hearing was mailed via certified mail to the following property owners adjoining the property subject to the application:
 1. Applicants: HB039 – Keith & Tara Carter, 39 Hobart Hill Road, Underhill, VT 05489
 2. HB040 – Sean & Erin Jones, 40 Hobart Hill, Underhill, VT 05489
 3. HC036 – William R. & Debbie M. Davis, 36 Hill Crest Lane, Underhill, VT 05489
 4. VT970T – Kyle J. & Sarah H. Hobart, 1049 Vermont Route 15, Underhill, VT 05489
 5. Town of Westford – Town of Westford, Attn: Nanette Rogers, 1713 Vermont Route 128, Westford, VT 05494

D. During the week of September 15, 2019, notice of the public hearing for the proposed Carter combined preliminary & 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.

E. On Saturday, September 21, 2019 the notice of public hearing was published in the *Burlington Free Press*.

F. A site visit at the property located at 39 Hobart Hill Road, Underhill, Vermont, commenced at 5:45 PM on Monday, October 7, 2019.

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

1. Board Member, Stacey Turkos, Vice Chairperson
2. Board Member, Matt Chapek
3. Board Member, Mark Green
4. Board Member, Karen McKnight
5. Board Member, Penny Miller

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

6. Applicant, Tara Carter
7. Applicant, Keith Carter

H. The combined preliminary subdivision and final subdivision review hearing began at 7:11 PM on Monday, October 7, 2019 at the Town of Underhill Town Hall, 12 Pleasant Valley Road, Underhill, Vermont.

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

1. Board Member, Stacey Turkos, Vice Chairperson
2. Board Member, Matt Chapek
3. Board Member, Mark Green
4. Board Member Karen McKnight
5. Board Member, Penny Miller

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

Others present at the hearing were:

1. Applicant, Tara Carter (39 Hobart Hill Road, Underhill, VT 05489)
2. Applicant, Keith Carter (39 Hobart Hill Road, Underhill, VT 05489)

J. At the outset of the hearing, Stacey Turkos 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, Tara Carter
2. Applicant, Keith Carter

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

1. Exhibit A - Carter Preliminary & Final Subdivision Review Staff Report
2. Exhibit B - Carter (HB039) Preliminary & Final Subdivision Review Hearing Procedures
3. Exhibit C - Application for Subdivision
4. Exhibit D - Access Permit Application # A-19-09
5. Exhibit E - Correspondence from Carroll Peters
6. Exhibit F - Project Narrative
7. Exhibit G - BFP Notice
8. Exhibit H - Certificate of Service
9. Exhibit I - Sketch Plan Review Letter
10. Exhibit J - MMU Ability to Serve Letter
11. Exhibit K - Proposed Subdivision Plan
12. Exhibit L - Deed (1 of 3)
13. Exhibit M - Deed (2 of 3)
14. Exhibit N - Deed (3 of 3)
15. Exhibit O - Survey Showing Right-of-Way
16. Exhibit P - Survey of Previous Subdivision

No additional exhibits were distributed to the Board prior to the hearing; however, during the hearing, the following exhibit was submitted into the record:

17. Exhibit Q - Draft Road Maintenance Agreement

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 HB039 Carter Combined Preliminary & Final Subdivision Review file (DRB-19-09) at the Underhill Zoning & Planning office.

II. FACTUAL FINDINGS & CONCLUSIONS RELATING TO THE UNDERHILL UNIFIED LAND USE & DEVELOPMENT REGULATIONS

The Minutes of the October 7, 2019 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 2011 *Underhill Unified Land Use and Development Regulations* (ULUDR), as amended March 6, 2018:

PROJECT SYNOPSIS

The Applicants, Tara & Keith Carter, record owners of the property located at 39 Hobart Hill Road (HB039) in Underhill, VT, are seeking a subdivision permit to subdivide the abovementioned land into two lots. The existing property is located in the Rural Residential and Soil & Water Conservation zoning districts as defined in Article II, Tables 2.4 and 2.7 of the 2018 *Underhill Unified Land Use & Development Regulations*. Upon approval of the Applicants' subdivision

application, the Applicants understand that Lot 1B will remain a “wood lot,” and therefore, to develop the lot (construction of any dwelling or use permitted in the district) will require additional review by this Board to determine further compliance with the development and subdivision regulations in effect at the time of application.

ARTICLE II – ZONING DISTRICTS

A. ARTICLE II, TABLE 2.4 – RURAL RESIDENTIAL DISTRICT

The Board finds that the proposed Lot 1A, which contains the existing single-family dwelling is entirely within the Rural Residential District. Lot 1B will remain a “wood lot,” and development on that lot will require additional review by this Board to determine compliance with the subdivision regulations in effect at the time of applications. The Applicants have advised that there is no intention of developing Lot 1B in the near future. As proposed, both lots (Lots 1A & 1B) conform to the district requirements and the purpose statement of the Rural Residential District, as the subdivision will create lots that better conform to medium density development.

Both lots, however, will fail to satisfy the frontage requirement of this district. The Board finds that this requirement can be waived since this is a minor subdivision where both lots are accessed by a shared driveway. Therefore, the Board waives the frontage requirements in conformance with Sections 3.2.A.1.a, 3.7.E.3.a and Section 8.6.A.2.a. In regards to Lot 1A, the single-family dwelling conforms to the dimensional requirements, as well as satisfies the district’s minimum acreage of the Rural Residential District. Lot 1B will satisfy the minimum acreage requirement of the Rural Residential District, while the district’s dimensional requirements do not apply at this time for the reasons stated above.

B. ARTICLE II, TABLE 2.7 – SOIL & WATER CONSERVATION

The Board finds that the proposed Lot 1B, which will remain a “wood lot” contains the land within the Soil & Water Conservation zoning district. Since the Applicants are not proposing any development on Lot 1B at this time, no impact is to occur within this district. Since the applicants are proposing a “wood lot,” review and analysis under this Section is not required at this time.

ARTICLE III – GENERAL REGULATIONS

A. SECTION 3.2 – ACCESS

The Board finds that the Applicants have submitted an access permit for the existing curb cut currently serving Lot 1B. Currently, Lot 1A is served by a shared driveway, which also serves 40 Hobart Hill Road. The Applicants are proposing to access Lot 1B via the existing shared driveway where the driveway meets the property at the Underhill-Westford Townline. Since the Applicants are foregoing the development of Lot 1B; therefore, retaining Lot 1B as a “wood lot,” no additional review is required other the curb cut, as any driveway layout being proposed for the access permit would be for conceptual purposes and likely to change at the time the Applicants or successors develop Lot 1B.

As a result, the Board approves the access permit for the Lot 1B curb cut placement only. Upon further development of Lot 1B, the Applicants or their successors will be required to submit a driveway layout to be approved by this Board in addition to the other materials required to review the development on Lot 1B. Inasmuch for Lot 1A, the Board finds that the existing driveway currently meets the 2018 *Underhill Road, Driveway & Trail Ordinance*. Please refer to Section IV of this decision for more information.

B. SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS

The Board finds that Lot 1A will retain the existing single-family dwelling – the principal use and structure of the lot. Lot 1B will remain a “wood lot” until the Applicants or subsequent landowner(s) amend the subdivision to allow for land development.

As currently proposed, both lots (Lots 1A & Lot 1B) will fail to satisfy the frontage requirements of both the Rural Residential and Soil & Water Conservation zoning districts. The Applicants have formally requested a frontage waiver, which this Board approves in conformance with Sections 3.2.A.1.a, 3.7.E.3.a and 8.6.A.2.a.

All other applicable dimensional requirements, specifically in regards to the single-family dwelling on Lot 1, appear to have been satisfied. The Applicants have not requested any lot, yard or setback waivers.

C. SECTION 3.13 – PARKING, LOADING & SERVICE AREAS

Since the Applicants are only proposing a “wood lot,” the Board finds that review under this section is not required at this time and reserves the right to make findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill Unified Land Use & Development Regulations* be amended, thereby impacting this section, the zoning regulations in effect at the time of application shall apply.

D. SECTION 3.17 – SOURCE PROTECTION AREAS

The Board finds the existing property is not within a source protection area. However, in the future, should Lot 1B be identified as containing a source protection area, the Applicants will need to conform with the applicable regulations in effect at the time of the desired development.

The Board notes that since the Applicants are only proposing a “wood lot,” review under this section is not required at this time and the Board reserves the right to make findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill Unified Land Use & Development Regulations* be amended, thereby impacting this section, the zoning regulations in effect at the time of application shall apply.

E. SECTION 3.18 – STEEP SLOPES

Since the Applicants are only proposing a “wood lot,” the Board finds that review under this section is not required at this time and reserves the right to make findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill Unified Land Use & Development Regulations* be amended, thereby impacting this section, the zoning regulations in effect at the time of application shall apply.

F. SECTION 3.19 – SURFACE WATERS & WETLANDS

The Board finds that an unnamed stream traverses the proposed Lot 1A in an easterly direction. The existing single-family dwelling is approximately 160 ft. to the south of the unnamed stream. In regards to Lot 1B, since the Applicants are only proposing a “wood lot,” the Board finds that review under this section is not required at this time and reserves the right to make findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill Unified Land Use & Development Regulations* be amended, thereby impacting this section, the zoning regulations in effect at the time of application shall apply.

G. SECTION 3.23 – WATER SUPPLY & WASTEWATER SYSTEMS

The Board finds that the Applicants obtained a Wastewater System & Potable Water System Permit (not submitted into the record, and therefore, for reference purposes only: Permit #: WW-4-2431) from the Agency of Natural Resources, Department of Environmental Conservation, dated August 23, 2005. The Board notes that a new Wastewater System & Potable Water System Permit is not required at this time for the subdivision of the existing property since the proposed Lot 1B is to remain as a “wood lot.”

Furthermore, the Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section or the requirements of the State’s regulations relating to water supply and wastewater systems. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill Unified Land Use & Development Regulations* be amended, thereby impacting this section, the zoning regulations in effect at the time of application shall apply.

ARTICLE VI – FLOOD HAZARD AREA REVIEW

At this time, the Board finds that a Special Flood Hazard Area does not exist on the property. However, the Board finds that review under this section is not required at this time since the Applicants are proposing Lot 1B to be a “wood lot,” and therefore, reserves the right to make findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.) in the event circumstances change. The Board does not guarantee that the applicants, or their successors, will satisfy the requirements of this section. The Board notes that the applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill Unified Land Use & Development Regulations* be amended, thereby impacting this section, the zoning regulations in effect at the time of application shall apply.

ARTICLE VII – SUBDIVISION REVIEW

A. SECTION 7.2 – APPLICABILITY

The Board finds that the Applicants’ proposed subdivision is subject to the requirements of the *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 letter issued on September 3, 2019 (Exhibit I).

B. SECTION 7.3 – SKETCH PLAN REVIEW

The Board finds that the Applicants sufficiently satisfied the conditions of approval provided in the Sketch Plan Review Letter issued on September 3, 2019.

C. SECTION 7.5 – PRELIMINARY SUBDIVISION REVIEW

The Board finds that, having previously waived a separate preliminary subdivision review hearing (see Exhibit I), the Applicants are permitted to combine preliminary and final subdivision review. As a result, the Applicants submitted an application that addressed the requirements that are typically required as part of a preliminary subdivision review hearing.

D. SECTION 7.6 – FINAL SUBDIVISION REVIEW

As part of the combined preliminary & final subdivision review application, the Applicants generally addressed many of the comments and concerns identified in the sketch plan review decision (see Exhibit I). Therefore, the Board finds that the applicant satisfied the intent of this section and provided the necessary materials to make a determination on the final subdivision review application.

The Board notes the approval of the Applicants' subdivision review application pertains to the creation of a "wood lot" only (Lot 1B being the "wood lot"). In other words, the Board is only permitting the subdivision of land. This subdivision approval does not permit subsequent development on Lot 1B, which is typically associated with familiar subdivision review applications.

ARTICLE VIII – SUBDIVISION STANDARDS

A. SECTION 8.1 – APPLICABILITY

The Board finds that no technical review was needed for this proposed project. Additionally, the Applicants have requested one waiver: a waiver of the frontage requirement for the proposed Lot 1, as the lot will be accessed via a shared driveway. Frontage waivers are permitted under Sections 3.2.A.1.a, 3.7.E.a and 8.6.A.2.

The Board notes that they reserve the right to perform a technical review during the subsequent application process to permit development on Lot 1B should any concerns emerge during their review.

B. GENERAL STANDARDS, SECTION 8.2

SECTION 8.2.A – DEVELOPMENT SUITABILITY

Since the Applicants are only proposing a "wood lot," the Board finds that review under this section is not required at this time and reserves the right to make findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill Unified Land Use & Development Regulations* be amended, thereby impacting this section, the zoning regulations in effect at the time of application shall apply.

SECTION 8.2.B – DEVELOPMENT DENSITY

The Board finds that the proposed subdivision meets the density requirements of the Rural Residential and Soil & Water Conservation zoning districts.

SECTION 8.2.C – EXISTING SITE CONDITIONS

The Board finds that the existing lot contains areas of steep slopes and very steep slopes, as well as an unnamed stream; however, development can be situated in areas that will not directly impact these areas.

Nevertheless, since the Applicants are only proposing a “wood lot,” the Board finds that further review under this section is not required at this time and reserves the right to make additional findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill Unified Land Use & Development Regulations* be amended, thereby impacting this section, the zoning regulations in effect at the time of application shall apply.

SECTION 8.2.D – UNDERHILL TOWN PLAN & DEVELOPMENT REGULATIONS

The Board finds that the proposed subdivision conforms to the current 2015 *Underhill Town Plan* and the current 2018 *Underhill Unified Land Use and Development Regulations*. Since the Applicants are only proposing a “wood lot,” the Board finds that their review under this section as it pertains to proposed development is not required at this time and reserves the right to make findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill Unified Land Use & Development Regulations* be amended, thereby impacting this section, the zoning regulations in effect at the time of application shall apply.

SECTION 8.2.E – DISTRICT SETTLEMENT PATTERNS

The Board finds that the proposed subdivision is consistent with the characteristics of the rural zoning districts as described in Section 8.2.E.2, as well as the characteristics of the Soil and Water Conservation District as described in Section 8.2.E.3. Since the Applicants are only proposing a “wood lot,” the Board finds that their review under this section as it pertains to proposed development is not required at this time and reserves the right to make findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill Unified Land Use & Development Regulations* be amended, thereby impacting this section, the zoning regulations in effect at the time of application shall apply.

SECTION 8.2.F – LOT LAYOUT

The Board finds that the proposed subdivision meets the requirements of this subsection. Furthermore, the proposed configuration of Lot 1B does not inhibit future subdividing or development elsewhere on Lot 1A, noting that the existing lot contains areas of steep slopes and an unnamed stream that could potentially limit future subdividing and development options.

SECTION 8.2.G – BUILDING ENVELOPE

Since the Applicants are only proposing a “wood lot,” the Board finds that review under this section is not required at this time and reserves the right to make findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill*

Unified Land Use & Development Regulations be amended, thereby impacting this section, the zoning regulations in effect at the time of application shall apply.

SECTION 8.2.H – SURVEY MONUMENTS

The Board finds that proposed property monumentation shall be installed as defined on the recordable mylar.

SECTION 8.2.I – LANDSCAPING & SCREENING

Since the Applicants are only proposing a “wood lot,” the Board finds that review under this section is not required at this time and reserves the right to make findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill Unified Land Use & Development Regulations* be amended, thereby impacting this section, the zoning regulations in effect at the time of application shall apply.

SECTION 8.2.J – ENERGY CONSERVATION

Since the Applicants are only proposing a “wood lot,” the Board finds that review under this section is not required at this time and reserves the right to make findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill Unified Land Use & Development Regulations* be amended, thereby impacting this section, the zoning regulations in effect at the time of application shall apply.

C. SECTION 8.3 – NATURAL & CULTURAL RESOURCES

Since the Applicants are only proposing a “wood lot,” the Board finds that review under this section is not required at this time and reserves the right to make findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill Unified Land Use & Development Regulations* be amended, thereby impacting this section, the zoning regulations in effect at the time of application shall apply.

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

Since the Applicants are only proposing a “wood lot,” the Board finds that review under this section is not required at this time and reserves the right to make findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill Unified Land Use & Development Regulations* be amended, thereby impacting this section, the zoning regulations in effect at the time of application shall apply.

F. SECTION 8.6 – TRANSPORTATION FACILITIES

SECTION 8.6.A – ACCESS & DRIVEWAYS

See Section 3.2 above and Appendix A below pertaining to access.

SECTION 8.6.B – DEVELOPMENT ROADS

The Board finds that this subsection does not apply at this time, as the proposed curb to serve Lot 1B will only be the third lot access from Hobart Hill Road, and therefore, not elevating the shared driveway to development road status.

SECTION 8.6.C – PARKING FACILITIES

The Board finds that no parking facilities 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, specifically the Mount Mansfield Unified Union School District (Exhibit J). The Board reserves the right to make additional findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill Unified Land Use & Development Regulations* be amended, thereby impacting this section, the zoning regulations in effect at the time of application shall apply.

SECTION 8.7.B – FIRE PROTECTION

Since the Applicants are only proposing a “wood lot,” the Board finds that review under this section is not required at this time and reserves the right to make findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill*

Unified Land Use & Development Regulations be amended, thereby impacting this section, the zoning regulations in effect at the time of application shall apply.

SECTION 8.7.C – WATER SYSTEMS

Since the Applicants are only proposing a “wood lot,” the Applicants are not required to submit a wastewater system & potable water supply design at this time. Therefore, the Board finds that review under this section is not required at this time and reserves the right to make findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section or the current State Wastewater System and Potable Water Supply rules currently in effect. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. In regards to the Town’s regulations, should the 2018 *Underhill Unified Land Use & Development Regulations* be amended, thereby impacting this section, the zoning regulations in effect at the time of application shall apply.

SECTION 8.7.D – WASTEWATER SYSTEMS

Since the Applicants are only proposing a “wood lot,” the Applicants are not required to submit a wastewater system & potable water supply design at this time. Therefore, the Board finds that review under this section is not required at this time and reserves the right to make findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section or the current State Wastewater System and Potable Water Supply rules currently in effect. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. In regards to the Town’s regulations, should the 2018 *Underhill Unified Land Use & Development Regulations* be amended, thereby impacting this section, the zoning regulations in effect at the time of application shall apply.

SECTION 8.7.E – UTILITIES

Since the Applicants are only proposing a “wood lot,” the Board finds that review under this section is not required at this time and reserves the right to make findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill Unified Land Use & Development Regulations* be amended, thereby impacting this section, the zoning regulations in effect at the time of application shall apply.

H. SECTION 8.8 – LEGAL REQUIREMENTS

The Board finds that the Applicants have submitted a draft road maintenance agreement to incorporate into associated deeds, thus satisfying the requirements of this Subsection. The Board acknowledges that they do not have the authority to require private landowners that are not Applicants to the subject project to enter into a private agreement, i.e. a road maintenance agreement. The Board encourages the Applicants to work with the relevant landowners to come to an agreement to implement the road maintenance agreement; however, in the event a landowner refuses to enter into the agreement, the Applicants should continue with the agreement with all participating members.

III. FACTUAL FINDINGS & CONCLUSIONS RELATING TO THE UNDERHILL ROAD, DRIVEWAY & TRAIL ORDINANCE

A. SECTION 4 – GENERAL PROVISIONS RELATING TO ACCESSWAYS

SECTION 4.B – REASONABLE ACCESS

The Board finds that the proposed curb cut provides reasonable access to a private road (Hobart Hill Road), which connects to Vermont Route 15 through the Town of Westford.

SECTION 4.C – DEVELOPMENT ROAD & DRIVEWAY STANDARDS

In reviewing standards for development roads and driveways, the Board shall review the following subsections:

SECTION 4.C.1 – GRADES

The Board finds that the existing grades pertaining to the current shared driveway serving Lots 1A, 1B and 40 Hobart Hill Road do not need to be addressed at this time. Since the Applicants are proposing Lot 1B as a “wood lot,” the Board finds that review under this section as it pertains to the driveway layout for Lot 1B is not required at this time and reserves the right to make findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill Road, Driveway and Trail Ordinance* be amended, thereby impacting this section, the ordinance in effect at the time of application shall apply.

SECTION 4.C.2 – TOPOGRAPHY

The Board finds that the existing topography pertaining to the current shared driveway serving Lots 1A, 1B and 40 Hobart Hill Road contains areas of steep slopes, as identified by the ANR Atlas (see Page 5, Exhibit A). In addition, the current shared driveway crosses an unnamed stream. The Board finds that the existing shared driveway satisfies the requirements of this subsection.

In regards to Lot 1B, since the Applicants are proposing this lot to be a “wood lot,” the Board finds that review under this section as it pertains to the driveway layout serving this lot (Lot 1B) is not required at this time, and therefore, the Board reserves the right to make findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill Road, Driveway and Trail Ordinance* be amended, thereby impacting this section, the ordinance in effect at the time of application shall apply.

SECTION 4.C.3 – RADII

The Board finds that the existing radii pertaining to the current shared driveway serving Lots 1A, 1B and 40 Hobart Hill Road provides the Underhill-Jericho Fire Department, and other large vehicles such as delivery trucks, the ability to serve the property’s safely. Since the Applicants are proposing Lot 1B as a “wood lot,” the Board finds that review under this section as it pertains to the driveway layout for Lot 1B is not required at this time and

reserves the right to make findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill Road, Driveway and Trail Ordinance* be amended, thereby impacting this section, the ordinance in effect at the time of application shall apply.

SECTION 4.C.4 – CURBS

The Board finds that this section does not apply.

SECTION 4.C.5 – GEOTEXTILES

The Board makes no findings regarding this Section as it relates to the existing shared driveway. Since the Applicants are proposing Lot 1B as a “wood lot,” the Board finds that review under this section as it pertains to the driveway layout for Lot 1B is not required at this time and reserves the right to make findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill Road, Driveway and Trail Ordinance* be amended, thereby impacting this section, the ordinance in effect at the time of application shall apply.

SECTION 4.C.6 – DRAINAGE

The Board finds that the existing drainage infrastructure pertaining to the current shared driveway serving Lots 1A, 1B and 40 Hobart Hill Road more or less satisfies the requirements of this section. Since the Applicants are proposing Lot 1B as a “wood lot,” the Board finds that review under this section as it pertains to the driveway layout for Lot 1B is not required at this time and reserves the right to make findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill Road, Driveway and Trail Ordinance* be amended, thereby impacting this section, the ordinance in effect at the time of application shall apply.

SECTION 4.C.7 – SLOPES, BANKS & DITCHES

The Board finds that the slopes, banks & ditches pertaining to the current shared driveway serving Lots 1A, 1B and 40 Hobart Hill Road more or less satisfies the requirements of this section. Since the Applicants are proposing Lot 1B as a “wood lot,” the Board finds that review under this section as it pertains to the driveway layout for Lot 1B is not required at this time and reserves the right to make findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill Road, Driveway and Trail Ordinance* be amended, thereby impacting this section, the ordinance in effect at the time of application shall apply.

SECTION 4.C.8 – WET AREAS

The Board finds that the current shared driveway serving Lots 1A, 1B and 40 Hobart Hill Road more or less satisfies the requirements of this section relating to wet areas. Since the Applicants are proposing Lot 1B as a “wood lot,” the Board finds that review under this section as it pertains to the driveway layout for Lot 1B is not required at this time and reserves the right to make findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill Road, Driveway and Trail Ordinance* be amended, thereby impacting this section, the ordinance in effect at the time of application shall apply.

SECTION 4.C.9 – CULVERTS

The Board finds that the existing culverts pertaining to the current shared driveway serving Lots 1A, 1B and 40 Hobart Hill Road more or less satisfy the requirements of this section. Since the Applicants are proposing Lot 1B as a “wood lot,” the Board finds that review under this section as it pertains to the driveway layout for Lot 1B is not required at this time and reserves the right to make findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill Road, Driveway and Trail Ordinance* be amended, thereby impacting this section, the ordinance in effect at the time of application shall apply.

SECTION 4.C.10 – STREAM CROSSINGS

The Board finds that the stream crossing pertaining to the current shared driveway serving Lots 1A, 1B and 40 Hobart Hill Road already exists, and that the Applicants should ensure the proper permits from the Agency of Natural Resources and the Army Corps of Engineers, if applicable, have been obtained. Since the Applicants are proposing Lot 1B as a “wood lot,” the Board finds that review under this section as it pertains to the driveway layout for Lot 1B is not required at this time and reserves the right to make findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill Road, Driveway and Trail Ordinance* be amended, thereby impacting this section, the ordinance in effect at the time of application shall apply.

SECTION 4.C.11 – BRIDGE

The Board finds that the existing shared driveway serving Lots 1A, 1B and 40 Hobart Hill Road traverses an existing culvert. Since the Applicants are proposing Lot 1B as a “wood lot,” the Board finds that review under this section as it pertains to the driveway layout for Lot 1B is not required at this time and reserves the right to make findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill Road, Driveway and Trail Ordinance* be amended, thereby impacting this section, the ordinance in effect at the time of application shall apply.

SECTION 4.C.12 – DESIGN

The Board finds that the existing design pertaining to the current shared driveway serving Lots 1A, 1B and 40 Hobart Hill Road satisfies the requirements of this section. Since the Applicants are proposing Lot 1B as a “wood lot,” the Board finds that review under this section as it pertains to the driveway layout for Lot 1B is not required at this time and reserves the right to make findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill Road, Driveway and Trail Ordinance* be amended, thereby impacting this section, the ordinance in effect at the time of application shall apply.

C. SECTION 5 – SPECIFIC PROVISIONS: DRIVEWAYS & DEVELOPMENT ROADS

SECTION 5.A – DRIVEWAYS

Regarding the standards for driveways, the Board reviews the following subsections:

SECTION 5.A.1 – CONSTRUCTION & DESIGN REQUIREMENTS

The Board finds that the existing shared driveway serving Lots 1A, 1B and 40 Hobart Hill Road more or less satisfy the requirements of this section. Since the Applicants are proposing Lot 1B as a “wood lot,” the Board finds that review under this section as it pertains to the driveway layout for Lot 1B is not required at this time and reserves the right to make findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill Road, Driveway and Trail Ordinance* be amended, thereby impacting this section, the ordinance in effect at the time of application shall apply.

SECTION 5.A.2 – LOCATION

The Board finds that the granting of the submitted access permit provides one access (curb cut) to the proposed Lot 1B, thus satisfying the requirements of this subsection. The proposed curb cut is in the location of an existing rough-in driveway that accesses the back portion of the lot. The proposed curb cut is approximately 26 ft. from the Underhill-Westford Townline, which is to serve as a property line in accordance with Section 2.2.F. Therefore, the proposed curb cut satisfies the 12 ft. setback requirement as required in Table 2.1.

SECTION 5.A.3 – WIDTHS

The Board finds that the existing shared driveway serving Lots 1A, 1B and 40 Hobart Hill Road satisfies the width requirements of this section. Since the Applicants are proposing Lot 1B as a “wood lot,” the Board finds that review under this section as it pertains to the driveway layout for Lot 1B is not required at this time and reserves the right to make findings under this section when a future application is submitted for development (e.g. the construction of a single-family dwelling, etc.). The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of this section. The Board notes that the Applicants have been advised accordingly and have acknowledged that is

their understanding. Should the 2018 *Underhill Road, Driveway and Trail Ordinance* be amended, thereby impacting this section, the ordinance in effect at the time of application shall apply.

SECTION 5.A.4 – NONCONFORMING LOTS:

The Board finds that this subsection does not apply.

IV. WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS

The Board grants the following waivers/modifications:

1. The Board waives the frontage requirement for both proposed lots (Lots 1A & 1B) in accordance with Sections 3.2.A.1.a, 3.7.E.3.a and Section 8.6.A.2.a, as the lot will be served by a shared driveway with Lot 2.

V. 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 *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:

Procedural Conditionals

1. This approval is for a 2-Lot subdivision of land where the proposed Lot 1A will retain the existing single-family dwelling and the proposed Lot 1B will be considered a “wood lot.” In other words, the Board is only permitting the subdivision of land, and therefore, this subdivision approval does not permit the subsequent development on Lot 1B typically associated with familiar subdivision review applications.
2. Upon the Applicants’, or subsequent landowner(s)’, desires to propose development, they shall submit a subdivision amendment application for the Board to review the proposed development as it relates to the zoning regulations and road ordinance in effect at the time of application to ensure conformance. The Board does not guarantee that the Applicants, or their successors, will satisfy the requirements of the applicable regulations or ordinance. The Board notes that the Applicants have been advised accordingly and have acknowledged that is their understanding. Should the 2018 *Underhill Unified Land Use & Development Regulations* or 2018 *Underhill Road, Driveway and Trail Ordinance* be subsequently amended, the zoning regulations/road ordinance in effect at the time of application shall apply.
3. 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

4. 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.
5. The Board requires the Applicant to only record the subdivision plat (Exhibit K), Titled Total Station Subdivision Survey for Keith and Tara Carter, Prepared by Carroll A. Peters, as a Mylar in the Town of Underhill Land Records.
6. The Board requires the subdivision plan (Exhibits K) to 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.
7. 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.
8. The final plat shall include parcel codes and shall be submitted for recording within 180 days of the date of this approval (October 30th, 2019) in accordance with Section 7.7 of the Underhill Unified Land Use & Development Regulations. One-hundred eighty (180) days from the date of this approval is (April 28th, 2020).
9. 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.

Substantive Land Use & Development Regulations Conditions

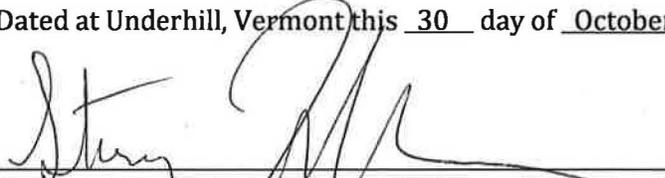
10. The Board finds that the Applicants shall record a Road Maintenance Agreement that at a minimum includes Lots 1A and Lots 1B – the two lots involved with their subdivision application. The Board acknowledges that they cannot require non-applicants to enter into a private agreement, and therefore, encourages the Applicants to find a satisfactory Road Maintenance Agreement that will include all users of the road, and that addresses snow removal, road maintenance, and potential future subdivisions of land that could result in additional properties access the road.
11. New property boundary monumentation referenced on the survey plat shall be installed as a condition of approval.
12. 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 (DRB).
13. Notwithstanding the conditions above, prior to being issued a building permit, the Applicants shall comply with applicable aspects of the *Underhill Unified Land Use and Development Regulations* in effect at the time of the application. The Zoning Administrator is not empowered to waive all deferred review criteria (Section VIII, Subdivision Standards) listed above regarding Lot 1B.

Substantive Road, Driveway & Trail Ordinance Conditions

14. As part of this review process, the Board approves the access permit application (Access Permit #: A-19-09) submitted in conjunction with this subdivision application. The access permit application only pertains to the Lot 1B curb cut to Hobart Hill Road. Construction of a driveway to serve Lot 1B has not been approved, and will require subsequent review by this Board at the time of review for future development.

15. In the event that the Applicants or the successors wish to construct a driveway to serve the interior of Lot 1B (thereby not serving any development at that time), the Board delegates that review to the Zoning Administrator so long as he or she would normally have the authority to do so under the Road Ordinance in effect at the time of review. Otherwise, review by the Development Review Board is required.
16. For more information about the Board's findings as they relate to the access permit, please see Section 3.2 above, as well as Section III of this decision related to the *Underhill Road, Driveway & Trail Ordinance*.

Dated at Underhill, Vermont this 30 day of October 2019.



Stacey Turkos, Development Review Board Vice Chair

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 November 29th, 2019.