

**Town of Underhill**  
Development Review Board Minutes  
Chairperson Charles Van Winkle

October 15, 2012

**Board Members Present:**

Charles Van Winkle, Chair  
Penny Miller  
Chuck Brooks  
Will Towle  
Matt Chapek  
Karen McKnight

**Staff/Municipal Representatives Present:**

Kari Papelbon, Zoning & Planning Administrator  
Seth Friedman, Selectboard Member  
Steve Owen, Selectboard Member  
Dawna Brisson, Town Administrator

**6:25 PM:** Chairperson Charles Van Winkle called the Herman Site Plan Review hearing to order at the Underhill Town Hall.

**Applicant(s) Present:**

Elaine Herman  
P.O. Box 116 (ST217)  
Underhill Center, VT 05490

**Consultant(s) Present:**

Jeff Olesky, P.E.  
Civil Engineering Associates, Inc.  
10 Mansfield View Ln.  
South Burlington, VT 05403

**Others Present:**

Neighbor  
Don Foote, Blue Spruce Realty

<b>Identifier:</b>	<b>Contents:</b>
ZA-1	Elaine Herman's Access Permit Application (dated 9-4-12)
ZA-2	Elaine Herman's Conditional Use/Site Plan Review Hearing Request (dated 9-4-12)

- ZA-3 A copy of the proposed site plan prepared by Jeff Olesky of Civil Engineering Associates, Inc. (dated Sept. 28, 2012)
- ZA-4 A copy of the completed Site Plan Review Standards Findings Checklist
- ZA-5 A copy of the tax map for ST217
- ZA-6 A copy of the hearing notice published in *Seven Days* on 9-26-12

- Chairperson Van Winkle began the meeting by explaining the procedure for the, which comes under the 2012 Unified Land Use and Development Regulations and the 2002 Road Policy. He then swore in interested parties present and entered the above items into evidence.
- Jeff Olesky, Civil Engineering Associates, Inc., provided an overview of the project on behalf of Elaine Herman. Mr. Olesky explained the current configuration of the driveway, which is accessed via a shared driveway over 246 and 219 Stevensville Rd. The intent of the request for a new curb cut and driveway is to keep Ms. Herman's access and driveway wholly on her lot. The proposed curb cut on Stevensville Rd. will be just short of the easterly property line on the flat portion of the property, and the new driveway will cross an old spring not currently in use. Minimum width standards and a 10% grade have been met until the new driveway meets the existing driveway. A portion of the existing driveway will remain above 10% grade as there is no practical way to reduce it. Mr. Olesky explained that there is a turnaround proposed at the junction of the new and old driveways, but this is at approximately 550 feet rather than at 500' as required in the regulations. Mr. Olesky stated that they would be requesting a waiver of that provision as the proposed location would allow for a natural turnaround area that would require less earthwork.
- Board Member Penny Miller asked whether the minimum radius requirement would be met. Mr. Olesky stated that it would. Brief discussion ensued. Mr. Olesky stated that the most severe curve radius is about 30 feet, and sight distances have been achieved.
- Ms. Herman stated that her rationale for her request is that the existing driveway is too steep, it cannot be plowed properly, and she cannot drive up her current driveway in the winter due to steepness. Board Member Will Towle asked for a brief history of the property. Ms. Herman provided additional details that her house was originally built as a camp in 1937, the property was converted to a year-round residence in the 1970s, and she purchased the lot in 1991.
- Chairperson Van Winkle asked if any new development was proposed. Ms. Herman replied that there was not.
- Board Member Chuck Brooks asked if the property was for sale, to which Ms. Herman replied that it was not.
- Board Member Towle asked whether the easement over the Wheeler lot was lost, to which Ms. Herman stated that it had not been lost yet. Board Member Towle asked what the impetus was for the new driveway request. Ms. Herman

stated that she would like to stay there but as she is “getting older,” she is having difficulty with the existing driveway.

- ZA/PA Papelbon asked whether Board Member Miller’s question about the radius had been answered. Board Member Miller stated that a minimum radius was not immediately apparent on the B-71 standard cut sheet. A brief discussion of curvature requirements ensued.
- Board Member Towle asked if the intention was to also allow the adjoining house to use the new driveway. Ms. Herman stated that such was not her intent but that she would not be opposed to having a conversation with whoever purchases the lot.
- ZA/PA Papelbon asked what the steepest slope to be disturbed would be. Mr. Olesky stated that the driveway crosses an area of approximately 30% slope for a distance less than 100 feet.
- Board Member Towle asked if any mapped wetlands were identified on the site. Mr. Olesky stated that there were no mapped wetlands present. Mr. Olesky explained that the wet area was the result of an unused spring that has been let to run, forming a drainage swale that was not connected to anything else.
- Applicants for the next hearing arrived at 6:40 PM.
- Chairperson Van Winkle asked if the driveway would be constructed this year. Ms. Herman stated that if the weather holds she will construct this year.
- ZA/PA Papelbon explained the regulations regarding steep slopes and driveways. This application meets the exemption.
- Board Member Chuck Brooks asked whether the Selectboard Members present had conducted a site visit and whether they saw any issues from their perspective. Neither of the Selectboard Members had problems or concerns with the proposal.
- Board Member Towle asked whether waivers would be requested for any items that may not comply with the regulations. Mr. Olesky stated that they would.

**6:46 PM:** Chairperson Van Winkle asked if the Board felt they had enough information to make a decision. The Board indicated that they did. Chairperson Van Winkle asked whether the Board wished to deliberate in open or deliberative session. A brief discussion ensued.

**6:48 PM:** Board Member Penny Miller made a motion, seconded by Board Member Karen McKnight, to discuss the application in open session following the next hearing. The motion was passed by all Board Members present. After a brief discussion of process and length of time for the next hearing, Jeff Olesky and Elaine Herman departed.

**6:50 PM:** Chairperson Charles Van Winkle called the Dame/Goplen combined sketch plan review and final subdivision hearing to order at the Underhill Town Hall.

**Applicant(s) Present:**

Lisa Dame  
5C Woodland Dr.  
Jericho, VT 05465

**Others Present:**

Anne Jobin-Picard  
13 Lower English Settlement Rd.  
Underhill, VT 05489

Don Foote  
Blue Spruce Realty  
P.O. Box 1099  
Jericho, VT 05465

Zach Tellstone  
5C Woodland Dr.  
Jericho, VT 05465

<b>Identifier:</b>	<b>Contents:</b>
ZA-1	A copy of Lisa Dame's and Brent Goplen's Application for Subdivision: Sketch Plan (dated 9-17-12)
ZA-2	A copy of Lisa Dame's and Brent Goplen's Application for Subdivision: Final (dated 9-26-12)
ZA-3	A copy of the completed Subdivision Checklist: Sketch Plan
ZA-4	A copy of the proposed plan prepared by Gunner McCain of McCain Consulting, Inc. (dated 9-10-12)
ZA-5	A copy of the proposed survey prepared by Keith Van Iderstine of McCain Consulting, Inc. (revised 10-8-12)
ZA-6	A copy of the completed Subdivision Checklist: Final Hearing
ZA-7	A copy of the completed Subdivision Standards Findings Checklist
ZA-8	A copy of the hearing notice published in <i>Seven Days</i> on 9-26-12
ZA-9	A copy of the email from Doug Robie (dated 10-2-12)

- Chairperson Van Winkle began the meeting by explaining the procedure for the combined sketch plan review and final subdivision hearing, which come under the 2012 Unified Land Use and Development. He then swore in interested parties present.
- Board Member Will Towle stated that he had not recognized Ms. Dame's name from the application materials but recognized that she had been a potential purchaser of the property for sale next to his lot. Due to the adversarial nature of that proceeding, Board Member Towle stated that he would recuse himself from the hearing. Discussion of procedure for continuing the hearing to deliberate on the Herman application ensued.

**6:56 PM:** Board Member Will Towle made a motion, seconded by Board Member Chuck Brooks, to continue the hearing for 10 minutes to deliberate on the Herman application. The motion was passed by all Board Members present.

**6:57 PM:** Open deliberations began on the Herman application.

**6:59 PM:** Board Member Chuck Brooks made a motion, seconded by Board Member Will Towle, to approve the waiver for the requirement to have the pull-off at 500' as required by the regulations in favor of the location as depicted on the plans. The motion was passed by all Board Members present. Board Member Towle added that his inclination to approve the application and waiver was based on the fact that it is a pre-existing lot with an existing house which was about 90 years old and had been a year-round residence for more than 40 years.

**7:00 PM:** Board Member Will Towle made a motion, seconded by Board Member Penny Miller, to approve the application as presented with the waiver granted above. Brief discussion ensued as to process and the findings checklist. The motion was passed by all Board Members present.

Board Member Will Towle was recused from the Dame/Goplen hearing.

**7:05 PM:** The DRB reconvened the Dame/Goplen hearing. Board Member Will Towle left at this point.

- Chairperson Van Winkle asked what the issue was in the emails. ZA/PA Papelbon stated that the issue was that the warning was specifically for amending the location of the building envelope and a question arose earlier in the day about phasing of the road, which was not warned. Procedurally, can the phasing be discussed? Chairperson Van Winkle stated that the warning was for an amended final plat. ZA/PA Papelbon read the warning. Chairperson Van Winkle stated that his experience has been that as long as the warning was for an amended final plat anything can be discussed. ZA/PA Papelbon stated that the warning was specifically for the revision to the building envelope. Chairperson Van Winkle stated that to do so requires amendment to the final plat. Discussion ensued.
- Board Member Chuck Brooks asked what the second issue was. ZA/PA Papelbon stated that the issue that was raised was with regard to the final condition of final subdivision decision, which required the road and shared infrastructure to be completed and certified prior to issuance of a zoning permit to any lot. No phasing was included as part of the condition. ZA/PA Papelbon continued to explain that Lot 1 is the first lot up for purchase and the condition states that the entire road and stormwater infrastructure must be in place before a building permit can be issued to Lot 1. The question is whether this is something that can

be discussed at this hearing or whether the hearing should be continued so that the warning can include the amendment to the condition. Chairperson Van Winkle asked if there was enough time to warn for two weeks. ZA/PA Papelbon stated that the continued hearing would probably have to be scheduled for an off-night.

- Board Member Brooks asked about the timetable. ZA/PA Papelbon stated that her concern is for the warning and giving people adequate notice, a procedural question. Board Member Brooks asked about the building envelope. ZA/PA Papelbon stated that there is no issue with discussing and ruling on the building envelope request.
- Board Member Brooks asked what the need for public input was on the request for the revision to the road condition, other than the warning. Chairperson Van Winkle stated that the developer must put the road in before they can be issued a building permit, and that the bank will want to know whether a building permit can be obtained. The condition is to prevent a building permit from being issued without improvements being finished, which was required in lieu of bonding.
- Board Member Brooks stated that his opinion was that the condition revision is something that should be warned as there are opinions on both sides of the fence, that he has questions in his mind about whether the requirement to complete the infrastructure should be waived, and that he did not feel that there had been enough time to obtain all necessary information. Board Member Brooks added that he wanted the item warned so that anyone who has input can present information on the item.
- Chairperson Van Winkle suggested going through the request for the building envelope revision.
- Lisa Dame, Applicant, provided input on her request.
- Board Member Chuck Brooks asked why the request was made to relocate the building envelope. Ms. Dame stated that she wished to move the envelope further east for additional privacy for a proposed residence and pasture for horses. She is currently under contract for the lot.
- Board Member Brooks asked whether any waivers were being requested for the proposed relocation. Ms. Dame stated that she was not clear on the question. Chairperson Van Winkle stated that the proposed building envelope as drawn by the consultants appears to meet the setback requirements, but if she wanted to ask for any considerations she could request them now. Board Member Brooks added that there is a 50-foot setback requirement to both the side and rear lot lines and he could not determine whether the building envelope as drawn met the requirements. ZA/PA Papelbon stated that it was close. Board Member Penny Miller stated that the approval could be contingent upon the setbacks being met.
- Board Member Miller asked whether any structures for horses were being requested, to which Ms. Dame replied no, that she would be using the existing barn.

- Ms. Dame stated that her request to McCain Consulting was to move the building envelope further east in compliance with the setbacks, so she was not requesting any waivers.
- Chairperson Van Winkle provided a brief history of the subdivision.
- ZA/PA Papelbon stated that she believed the building envelope location with regard to setbacks could be easily fixed and that the intent was to comply with the setback requirements.
- Don Foote, Blue Spruce Realty, is representing Ms. Dame in the purchase of the property. Mr. Foote stated that Ms. Dame had originally looked at the lot on Stevensville Rd., which fell through, but found the lot at 2 Piney Grove and liked everything except the location of the building envelope. Ms. Dame wishes to move the building envelope for privacy and for less visual impact. Mr. Foote stated that the closing was supposed to happen that day, but could not occur due to the concern with the condition requiring the road and shared infrastructure to be constructed prior to issuance of a building permit. He provided details about the location of the driveway for Lot 1 and the private road. Mr. Foote stated that the impact of the development of Lot 1 is that it is effectively a separate lot as compared to the rest of the subdivision. He stated that any additional delay could be a problem as Ms. Dame wishes to build this year.
- Chairperson Van Winkle asked whether Lot 1 was part of the covenants for the road, to which Mr. Foote replied that was stated that it was in the road association and added information about the stormwater pond. Mr. Foote added that if Ms. Dame has to wait to build due to continuing the discussion about the road, the delay would have an impact.
- ZA/PA Papelbon stated that she did not have a problem with talking about the road, but her concern was for procedural correctness.
- Anne Jobin-Picard arrived at 7:21 PM.
- Board Member Miller stated that she remembers the issue with Lot 1 (that the house would be close to the road) and that it might be more appealing to the neighbors across the road to have the house further away. She stated that correspondence had been received from a neighbor about the view. Board Member Miller explained to Ms. Dame that building envelopes can be defined in different ways, and this building envelope has been more defined. This means that all buildings would be required to be within the building envelope. Ms. Dame stated that she only had plans to build within the proposed building envelope.
- ZA/PA Papelbon stated that the building envelope setback should be confirmed. She added that an email from Doug Robie had been received requesting a vegetated buffer for visual impact and dust from the road.

**7:25 PM:** Chairperson Van Winkle swore in Anne Jobin-Picard.

- Chairperson Van Winkle read the statutory reference for notice procedures [24 VSA Section 4464(a)(1)(A)], which requires identification of the purpose of the hearing. Chairperson Van Winkle stated that the warning did not include amendments to the phasing condition, so to maintain transparency, he did not think it would be fair to rule on it.
- Board Member Brooks asked whether there was anything the public could say that would affect the Board's decision on the road condition.
- Board Member Miller asked about who made the request for the road to be phased. ZA/PA Papelbon stated that there was a question about phasing in the final subdivision decision, but the question was never answered. Board Member Miller asked if anyone does not want to have the road phased. ZA/PA Papelbon stated that she did not know. Chairperson Van Winkle stated that clearing for the road had begun and that money from the sale of the lot to Ms. Dame could help to construct the road.
- Board Member Miller asked if Ms. Dame has to wait to get a building permit until the whole road and stormwater system is in. ZA/PA Papelbon stated that that was the way the condition was constructed and thus is the issue. Board Member Miller stated that construction of the stormwater pond would not happen this year. ZA/PA Papelbon stated that she did not know and had not received any information from the engineer or property owner.
- Board Member Brooks asked what the final subdivision decision condition stated. Board Member Miller asked if the decision was open to interpretation at all. ZA/PA Papelbon retrieved the decision. Discussion ensued. ZA/PA Papelbon read the condition and stated that, unfortunately, the way that the condition is worded does not consider Ms. Dame's situation. ZA/PA Papelbon asked whether it could be discussed. The Board agreed to discuss it.
- Board Member Brooks asked the Selectboard whether they felt that the phasing, if allowed, would affect the town road. Selectboard Member Seth Friedman stated he did not know enough about it to make a statement. Selectboard Member Steve Owen stated that he did not believe it would affect the town road.
- Board Member Brooks stated that he did not have a problem with allowing a building permit for Lot 1 with strict language regarding installing the remainder of the road. Chairperson Van Winkle clarified that Board Member Brooks would be in favor of revising the final subdivision decision to allow the revised location of the building envelope on Lot 1 as proposed, amending the final subdivision decision condition to allow for a building permit to be issued on Lot 1, and a condition that no permits will be issued on the remaining lots until the road and stormwater improvements have been installed.
- Board Member Matt Chapek asked about the existing house, which has an existing driveway. Discussion ensued. ZA/PA Papelbon stated that she had to ask the procedural question again. The Board stated that they were conjecturing. Discussion continued.

- Chairperson Van Winkle provided a summary for neighbor Anne Jobin-Picard.
- Ms. Jobin-Picard stated that she was ok with moving the building envelope. She asked where the driveway would be. Chairperson Van Winkle stated that it would be in the same location as approved.
- Board Member Karen McKnight asked if the change in the location of the building envelope would make the house more apparent to River Road. Board Members Miller and Chapek explained that it would not.
- Board Member Miller summarized that there were no issues with moving the building envelope as long as setbacks are met. ZA/PA Papelbon asked if there were any conditions with regard to the email received from Doug Robie. Chairperson Van Winkle stated that his request has been noted. No condition.
- Chairperson Van Winkle stated that he sees the process to be: the DRB reestablishes the original decision. Board Member Miller asked for clarification on reestablishing the original decision. Chairperson Van Winkle stated that the decision would be amended, and the impacts to the town and any applicant or adjacent landowner do not appear to be significant in his opinion. ZA/PA Papelbon stated that she has no issue with the intent and she understands the situation, but she has to disagree on the procedure and thinks the condition modification should have been warned. Board Member McKnight stated that she agreed with ZA/PA Papelbon.
- Board Member Miller stated that the building will be moved, the driveway will have to be lengthened, and asked what that means. ZA/PA Papelbon stated that the driveway was not part of the road.
- Board Member Miller stated that she was working hard to see if moving the building envelope would naturally have some impact on the language of the driveway or road such that it has to come up for discussion and decision. Chairperson Van Winkle stated that he did not think so.
- Chairperson Van Winkle asked for a straw vote on the building envelope relocation. There were no issues. Chairperson Van Winkle stated that the larger issue was whether the final plat decision could be amended because it was not properly warned. Board Member Brooks stated that he thought they could. Chairperson Van Winkle stated that he would entertain a motion for the building envelope relocation and to allow for the issuance of a building permit. Board Member Brooks stated that he does not have a problem making a motion, but that the language has to be very specific. Chairperson Van Winkle and Board Member Brooks discussed the motion language: limited to Lot 1 with the express understanding that no other building permits will be issued until all the improvements (access road and stormwater system) are installed.

**7:42 PM:** Board Member Chuck Brooks made a motion, seconded by Board Member Matt Chapek, to allow the movement of the building envelope as depicted on the site plan dated September 10, 2012, with no waivers, and the modification of the last condition in the final subdivision decision to allow a building permit to be issued to Lot 1

with the express understanding that no other building permits will be issued until all the improvements (access road and stormwater system) are installed. Chairperson Van Winkle asked if there was any discussion. Board Member Penny Miller asked for two minutes. Chairperson Van Winkle mentioned that there is a mess on Lot 1 as they are using the lot as a staging area for logs. A brief discussion ensued.

Board Member Miller stated that she would naturally defer every procedural issue to ZA/PA Papelbon and that is her intellectual inclination, but she needs Chairperson Van Winkle to “get her from A to B.” Her heart says “B,” but her intellect says “A.”

Chairperson Van Winkle stated that he would give her the common sense argument: it is not in the DRB’s best interest to come back in two weeks to open the hearing, advise phasing, and vote. He would rather vote now. Board Member Miller asked if the Board came back in two weeks would they vote in favor of phasing so that Lot 1 would be able to develop without the road being fully constructed. The Board indicated that they would. Board Member Brooks reiterated the common sense comment, and stated that this was not something the DRB saw when the subdivision was presented; however, the DRB is now in the situation where the DRB can save a future resident of Underhill some money. Board Member Miller asked what if an engineer said developing Lot 1 would result in stormwater issues. Board Member Brooks stated that you cannot do a “what if” because it is not the case. Board Member Miller stated that she had to do a “what if,” and that she would disagree with the engineer. Board Member Brooks stated that no engineer said such. Discussion ensued.

Board Member Chapek stated that he likes the idea that this potential property owner wants to push the envelope back when another might not want to. He stated that he thinks this is a better plan.

Chairperson Van Winkle reiterated the motion and called for a vote.

Chairperson Charlie Van Winkle, Board Member Penny Miller, and Board Member Matt Chapek voted in favor.

Board Member Karen McKnight stated that she has a concern for whether someone might have a problem with the phasing.” Chairperson Van Winkle stated that they could appeal. Board Member Brooks stated that for the public to have a problem with something, they would have to come and tell the DRB. He stated that he cannot imagine anything that the public could tell the DRB that would affect his decision on the phasing the DRB took in the public recommendations on design, but if the DRB forces the owner of Lot 1 to wait, it will cost her a lot of money. Board Member Brooks continued to say that nothing the public can say to him will make him want to delay this decision, which will cost Ms. Dame a lot of money.

ZA/PA Papelbon stated that while her heart was with Ms. Dame, she thinks that, procedurally, Board Member Brooks’ statement is wrong because it is denying the

public the opportunity to provide their input on something that was not warned. ZA/PA Papelbon stated such was her concern. Board Member Brooks stated that that was fine and ZA/PA Papelbon's opinion. He added that he does not feel comfortable twisting anyone's arm, but he also does not feel comfortable costing Ms. Dame more money by coming back - nothing would change his mind about allowing Lot 1 to go in as Lot 1 is unique.

Board Member McKnight asked what would happen if she said no. The Board stated that she could do so. Board Member McKnight stated that her only issue is the warning – she would have felt the same as the Board in two weeks. Board Member McKnight voted against. Motion carried.

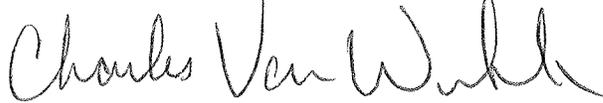
All hearing attendees left at this point.

The Board discussed a letter to the Selectboard, a conversation with a perspective application, the DRB's upcoming schedule, town planning events, and an updated review for the ZA/PA.

**8:45 PM:** End of meeting.

These minutes of the 10-15-12 meeting of the DRB were accepted

This 25 day of OCTOBER, 2012.



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Charles Van Winkle, Chairperson

*These minutes are subject to correction by the Underhill Development Review Board. Changes, if any, will be recorded in the minutes of the meeting of the DRB.*