

**Town of Underhill
Development Review Board Minutes
February 24, 2014**

Board Members Present:

Charles Van Winkle, Chairperson
Mark Hamelin
Matt Chapek
Karen McKnight
Penny Miller
Will Towle
Shanie Bartlett (Alternate)

Others Present:

Dexter Lefavour (Bouffard Consultant)
Andy Rowe P.E.
Charles Spence
Chris Spence
Tim Eustis (Esquire for Appellant/Allendorf)
Jim Gillmartin
Peter Kazorchak P.E.(Consultant -Developer/Goplen)
Gunner McCain (Consultant- Developer/Goplen)
Lisa Dame
Zack Tellstone
Kathryn Barickman

Applicant(s) Present:

Grant Allendorf (Appellant)
Susan Allendorf (Appellant)
Richard Bouffard (Applicant 1st Hearing)
Darcy Spence (Applicant 1st Hearing)
Michael Moore (Applicant- Sketch Plan)
Darah Zurit (Applicant- Sketch Plan)

Staff/ Municipal Representatives Present:

Sarah McShane, Zoning & Planning Administrator

RMB Construction Final Subdivision (6:05 pm):

- Chairperson Van Winkle began the meeting by explaining the procedure for the public hearing which comes under the 2012 Unified Land Use and Development Regulations. Chairperson Van Winkle reviewed the definition of interested party.
- DRB members reviewed the applicant information packet provided by the Zoning Administrator. These exhibits are available in the Bouffard Spence (BT010 & BT012) Subdivision file (DRB-13-06) at the Underhill Zoning & Planning Office.
- DRB Member Penny Miller excused herself from the Bouffard hearing.
- Chairperson Van Winkle asked the Board if they had any conflict of interest or ex parte communication. Board members did not report any conflict of interest or ex parte communications.
- R. Bouffard (Applicant) stated that there are currently two dwellings on a single +-10 acre lot. The purpose of the subdivision will be to create two separate lots, each containing a single dwelling. He stated that it will make the properties more marketable.
- P. Miller (Underhill resident), asked whether the small triangular area at the rear of the property will be deeded as a conservation area. R. Bouffard answered yes, the area will be deed restricted.
- Chairperson Van Winkle also stated that a recorded road maintenance agreement will be a condition of approval.
- Chairperson Van Winkle asked if the Board had sufficient information to make a decision.
- M.Hamelin made a motion to approve the application with the conditions that the rear triangular portion of the parcel be recorded as a conservation area in the deed and a road maintenance agreement will be recorded. S. Bartlett seconded the motion. The Board unanimously approved the application.

Allendorf Appeal (6:40 pm):

- Chairperson Van Winkle began the hearing by explaining the procedure for the public hearing which comes under the 2012 Unified Land Use and Development Regulations. He explained the appeal process as defined in the Unified Land Use & Development Regulations. Chairperson Van Winkle reviewed the

definition of interested party and stated that the hearing was a continuation from February 3, 2014. The purpose of the hearing is to review the supporting documentation and accept public comment.

- Tim Eustis (Esquire for Appellant/Allendorf) and Andy Rowe P.E. (Consultant for Appellant/Allendorf) were present to represent the appellants. A.Rowe P.E. began by stating that he had observed the ditches that were shown on the as-built designs. He stated that some changes are inevitable but significant changes warrant subsequent review of the Board.
- G.Allendorf (Appellant) stated that the waterfall feature and the stone swale were not on the original design plans and the ditches are not 18" deep. He stated that the stormwater system deviates too much from the approved plans.
- W.Towle stated that the Board is being asked two separate items- 1) whether the plan has been built per the specifications and 2) is the system performing the way it should.
- A.Rowe P.E. (Consultant for Appellant/Allendorf) stated that the concentrated flow through the backyard and the existing stone swale was not part of the original plans. A.Rowe P.E. stated that the requirement for this development is detention of a 10 year storm.
- T.Eustis (Esquire for Appellant/Allendorf) stated that the main purpose of the appeal is that additional features were constructed and were not approved by the DRB. He stated that the permit should have been amended and the Board has the authority to require modifications.
- P.Miller stated that nothing is built 100% as indicated, it is often necessary to respond to site conditions.
- G.McCain (Consultant for Developer/Goplen) spoke on behalf of Mr. Goplen. S.McShane provided the Board and Mr. Allendorf with a written statement provided by Mr. Goplen. G.McCain stated that the ditches were constructed in response to significant rain events and they have held up to those unusually large rain events. He also stated that the State did not require a permit amendment for the additional stormwater features.
- G.McCain (Consultant for Developer/Goplen) stated that the additional features were built to address natural events and they are not significant changes to the original designs. He also stated that Lower English Settlement Road has had longstanding ponding issues.
- Chairperson Van Winkle asked for additional public comment.
- Kathryn Barickman (2 Lower English Settlement Rd) stated that recent flooding is the worst she has ever seen.
- Lisa Dame (2 Piney Grove) stated that she is very concerned with the usability of the land in the area.
- Charles Spence (241 Spence Rd Huntington, VT) stated that it is wrong to construct a swale in another person's backyard and to flood out a property.
- T.Eustis (Esquire for Allendorf) referred to Section 10.4 Unified Land Use regulations.
- P.Miller requested time to read Mr. Goplen's written comments before closing the evidentiary portion of the hearing.
- Chairperson Van Winkle asked if the Board had sufficient information to make a decision.
- K.McKnight made a motion to close the evidentiary portion of the hearing. W.Towle seconded the motion. The Board unanimously approved the motion. The Board discussed whether to deliberate in open or closed session. Members decided to deliberate in open session following the M.Moore Sketch Application.

M.Moore Sketch Application: (8:05 pm)

Contents Documentation:

- a. Michael Moore Application for Subdivision: Sketch Plan (dated 1/27/14);
- b. A copy of the completed Subdivision Checklist: Sketch Plan;
- c. A copy of the proposed subdivision plan;
- d. Correspondence from Kissane Associates (dated 5-23-2013);
- e. Email correspondence from Jean Halle CN properties (dated 10-28-2013);
- f. Email from Donna Killingsworth, Genesee & Wyoming Railroad Services, Inc. (dated 10-28-2013);

- g. Central Vermont Railway, Inc. Abandonment, Finance Docket No. 11882; Decided 5-7-1938;
 - h. A copy of the meeting notice;
 - i. Copies of the ANR Natural Resources Atlas maps;
 - j. A copy of tax map for CD074
 - k. A copy of the emails between former ZA/PA Papelbon and State Wildlife Biologist John Gobeille;
 - l. A copy of the procedure checklist for this meeting;
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- Chairperson Van Winkle began by explaining the sketch plan process and stated that it is an informal review of the proposal. The Board either accepts or denies the application.
 - M.Moore provided a brief overview stating that he would like to subdivide the 12 acre parcel into two lots of approximately 8 and 4 acres. He also stated that a railroad easement separates the two parcels, however he has supporting documentation that the easement has since reverted back to the property owner.
 - Chairperson Van Winkle stated that the application will need to meet road frontage and lot dimension requirements. The applicant would need to provide evidence that they have the legal right to access the land. He suggested for the next site plan to indicate the location of the Special Flood Hazard Area, water supply and septic, as well as which parcel(s) the railroad easement will go with.
 - W.Towle recommended for the site plan to clearly indicate the property lines and suggested the possible need for boundary line adjustments.
 - Chairperson Van Winkle stated that the applicant would have to provide a road maintenance agreement with their next application.
 - M.Moore stated that there is currently no legal road maintenance agreement.
 - W.Towle stated that the sketch review is an opportunity to flag potential issues. He stated that the road association must have the capacity and ability to provide road maintenance, as well as collect dues.
 - Chairperson Van Winkle stated that the road agreement has to be recorded with the property.
 - W.Towle made a motion to accept the sketch plan with expressed reservations. M.Hamelin seconded. The Board unanimously decided to accept the sketch plan.
 - The Board classified the subdivision as minor and Chairperson Van Winkle stated that the Board would need to arrange a site visit to the property.
 - The applicant M.Moore requested a waiver for preliminary subdivision review.
 - M.Hamelin made a motion to waive the preliminary hearing. K.McKnight seconded the motion. The Board approved the motion (5 in favor, 1 opposed, 1 abstained).

Deliberation of the G.Allendorf Appeal (8:40 pm)

- W.Towle proposed to have an open deliberation session until 9:15 pm and then continue in a closed session at a subsequent meeting.

Board members discussed the following:

- Have the designs changed so significantly that it violates the permit?
- Does the variation exceed DRB's review standard?
- Does it materially alter the DRB's subdivision approval?
- Does the additional construction exceed the DRB's design criteria?
- Has it impacted off-site areas?
- Is the stormwater system close to what was approved?
- What if the Certificate of Compliance had been issued earlier? Three lots had been sold before it was issued.
- Are other aspects of the development noncompliant?
- How does the DRB know it was constructed as designed?

- Would the DRB have approved the cascading waterfall feature?
- P. Miller moved to close the open deliberation and continue in closed session on March 10th at 6:30 pm.
M. Hamelin seconded the motion. The Board unanimously approved the motion.

Old Business (9:20 pm)

- The Board decided to review the previous meeting minutes and approve them via email.
- The Board discussed the Grab Final Decision and would like to have a future work session on writing legal decisions.

Meeting Adjourned at 9:45 pm

The next DRB meeting will be March 10th at 6:30 pm.

Respectfully submitted by:
Sarah McShane, ZA/PZ

These minutes of the 02-24-14 meeting of the DRB were accepted:

This 17 day of April, 2014.



Charles Van Winkle, Chairperson, DRB