

Town of Underhill

Development Review Board

Findings and Decision

Final Plat Review of Michael Moore Regarding a 2-Lot Subdivision

In re: Michael Moore
319 Irish Settlement Road
Underhill, VT 05489

June 7, 2023

Docket No. DRB-22-03

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

INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns the final plat review application submitted by Michael Moore (hereafter Applicant), regarding a 2-lot subdivision of property he owns located at 319 Irish Settlement Road in Underhill, Vermont.

1. Planning & Zoning Administrator Nick Atherton received the complete application on April 21, 2023. A hearing date was scheduled to commence at 6:30 PM on May 15, 2023.
2. On April 28, 2023, notice regarding the final plat review hearing was mailed via certified mail to the following property owners adjoining the property subject to the application:
 - Michael Moore, PO Box 11, Underhill, VT 05489
 - Leslie M. Rosen & Adrienne R. Rosen, 341 Irish Settlement Road, Underhill, VT 05489
 - Dennis Grage & Susan Murray-Grage, 301 Irish Settlement Road, Underhill, VT 05489
 - Samuel & Leanne Estridge, 318 Irish Settlement Road, Underhill, VT 05489
 - William & Pamela Billings, 310 Irish Settlement Road, Underhill, VT 05489
 - Michael Monnig, 330 Irish Settlement Road, Underhill, VT 05489
 - Roy III & Laura S. Dunphey Revocable Trust, PO Box 364, Underhill, VT 05489
 - Adam & Renee M Rainville, 367 Irish Settlement Road, Underhill, VT 05489
 - Daphne & Walter Tanis, 359 Irish Settlement Road, Underhill VT 05489
3. On April 26, 2023, notice of the public hearing for the proposed final subdivision review hearing was posted by the Zoning Administrator in the following locations:
 - The Underhill Town Clerk's office;
 - The Underhill Center Post Office; and
 - Jacobs Family Market.
4. On Sunday, April 30, 2023, the notice of public hearing was published in the *Burlington Free Press*.
5. The final subdivision review hearing began at 6:35 PM on Monday, May 15, 2023 at the Town of Underhill Town Hall, 12 Pleasant Valley Road, Underhill, Vermont; the meeting was recorded. The meeting was also available via the GoToMeeting platform; a link was provided on the notice

of public hearing and on the Town's website.

6. Present at the final subdivision review hearing were the following members of the Development Review Board:
 - Charles Van Winkle, Chair
 - Karen McKnight
 - Matt Chapek
 - Daniel Lee
 - Mark Green

Also present at the hearing were the following:

- Applicant
 - Planning & Zoning Administrator Nick Atherton (hereafter, Staff)
7. At the outset of the hearing, Chair Charles Van Winkle explained the criteria under 24 V.S.A § 4465(b) for being considered an "interested party." Those who spoke during the hearing were:
 - Charles Van Winkle, Chair
 - Matt Chapek
 - Daniel Lee
 - Karen McKnight
 - Mark Green
 - The Applicant

8. In support of the final subdivision application, the following exhibits were submitted to the Development Review Board:
 - a) Exhibit A - DRB-22-03 Final Subdivision Application
 - b) Exhibit B - 05.15.2023 DRB Agenda
 - c) Exhibit C - IS319 Moore Prelim Subdivision Findings and Decision
 - d) Exhibit D - Moore Draft Plat 04_21_2023
 - e) Exhibit E - Moore Landscape Analysis 02_16_2023
 - f) Exhibit F - Arrowwood Environmental Revised Moore Memo
 - g) Exhibit G - UJFD Final letter (IS319)
 - h) Exhibit H - MMUSD Ability to Serve Letter (IS319)
 - i) Exhibit I - DRB-22-03 (IS319) Cert of Service 04_28_2023
 - j) Exhibit J - BFP DRB 05_15_2023
 - k) Exhibit K - Moore Final Subdivision Cover Letter 5.5.2023 (DRB-22-03)
 - l) Exhibit L - Moore Final Subdivision Civil Design Set Rev 1
 - m) Exhibit M - DRAFT Moore Deed Lot 3A
 - n) Exhibit N - DRAFT Moore Deed Lot 3C
 - o) Exhibit O - DRAFT Access Permit Application (IS319)
 - p) Exhibit P - 05.15.2023 DRB Agenda – Updated
 - q) Exhibit Q – WW-4-2875-3

All exhibits are available for public review in the IS319 Moore Final Plat Review (DRB-22-03) file at the Underhill Planning & Zoning office. The exhibits submitted as part of the sketch plan and preliminary subdivision hearings, except as amended above, are also incorporated into this decision.

The Minutes of the May 15, 2023 Development Review Board meeting, written by Donna Griffiths, are incorporated by reference into this decision. Please refer to the minutes for a summary of the

testimony. The recording of the meeting can be viewed on the Mt. Mansfield Community Television's website.

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

Based on the submitted application, testimony, exhibits, and evidence, the Development Review Board (hereafter Board) makes the following findings under the requirements of the 2011 *Underhill Unified Land Use and Development Regulations* (also known as ULUDR or the "Regulations"), as amended March 3, 2020:

PROJECT SYNOPSIS

The Applicant, Michael Moore, record owner of the property located at 319 Irish Settlement Road in Underhill, VT, seeks to subdivide the above-mentioned property into two lots. The existing property is located in the Rural Residential zoning district as defined in Article II, Table 2.1, of the *Underhill Unified Land Use & Development Regulations*.

ARTICLE II – ZONING DISTRICTS

ARTICLE II, TABLE 2.1 – RURAL RESIDENTIAL DISTRICT

The Board finds that the proposed subdivision involves the division of ±8.66-acre lot into two lots: a ±5.2-acre parent lot (Lot 3A) and a ±3.46-acre new lot (Lot 3C), both of which are intended to host single-family dwellings. Both Lots and the existing and proposed development conform with the purpose statement, the setback requirements, building coverage requirements, and lot coverage requirements of the Rural Residential district.

ARTICLE III – GENERAL REGULATIONS

SECTION 3.2 – ACCESS

The Board finds that the Applicant's proposal involves a shared curb cut to serve both parcels. The Board finds, however, the existing curb cut for Lot 3A must be upgraded to meet the slope requirements of VAOT B-71 standards at the driveway's approach to Irish Settlement Road. The Board finds that the driveway design for Lot 3C (Exhibit L) satisfies the requirements of this Section and the Board is able to waive the 12' driveway property-line setback requirement with the shared driveway design. The Board further finds that the Applicant has submitted an Access Permit application for the revised, shared driveway (Exhibit O).

SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS

The Board finds that Lot 3A will contain the existing single-family dwelling, while the proposed Lot 3C will contain a single-family dwelling. The existing development on Lot 3A conforms with the dimensional standards of the underlying zoning, and the proposed development on Lot 3C conforms with the applicable zoning districts as well. The proposed subdivision is not anticipated to create any additional adverse impact to either lot.

SECTION 3.13 – PARKING, LOADING & SERVICE AREAS

The Board finds that both of the proposed lots satisfy the minimum parking requirements of 2 parking spaces per dwelling unit.

SECTION 3.18 – STEEP SLOPES

The Board finds that the proposed Lot 3C does contain areas of steep slopes (15%-25%), and areas of very steep slopes (>25%), as depicted in Exhibit D. However, the Board finds that the proposed development is designed to avoid steep and very steep slopes where practicable by limiting development to the proposed building envelope.

SECTION 3.19 – SURFACE WATERS & WETLANDS

The Board finds that no surface waters or wetlands are present on the subject property.

SECTION 3.23 – WATER SUPPLY & WASTEWATER SYSTEMS

Each proposed lot will contain a single-family dwelling. Lot 3A is currently served by WW/WS permit #WW-4-2875-2. Proposed Lot 3C will be served by a new mound system and drilled well, which have been documented by WW-4-2875-3 (Exhibit P).

ARTICLE VI – FLOOD HAZARD AREA REVIEW

The Board finds that a Special Flood Hazard Area does not exist on the subject property, and therefore, review under this Article of the regulations is not required.

ARTICLE VII – SUBDIVISION REVIEW

SECTION 7.2 – APPLICABILITY

The Board finds that the Applicant's proposed subdivision is subject to the requirements of the 2020 *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 acceptance letter issued on September 12, 2022.

SECTION 7.3 – SKETCH PLAN REVIEW

The Board finds that the Applicant adequately satisfied the conditions of acceptance provided in the Sketch Plan Review letter issued on September 12, 2022.

SECTION 7.5 – PRELIMINARY SUBDIVISION REVIEW

As part of the preliminary subdivision review application, the Applicant generally addressed many of the comments and concerns identified in the sketch plan review decision. Therefore, the Board finds that the Applicant satisfied the intent of this section and provided the necessary materials to make a determination on the preliminary subdivision review application.

SECTION 7.6 – FINAL PLAT REVIEW

The Board finds that with the Applicants' submission of certain exhibits, the conditions required to conduct final subdivision review have been met.

ARTICLE VIII – SUBDIVISION STANDARDS

SECTION 8.1 – APPLICABILITY

The Board finds that the Applicant has requested a setback waiver for the shared driveway. The Board finds that a waiver shall be issued for the 12' property line setback for driveways.

SECTION 8.2 – GENERAL STANDARDS

SECTION 8.2.(A) – DEVELOPMENT DENSITY

The Board finds that the proposed subdivision meets the density requirements of the Rural Residential Zoning District.

SECTION 8.2.(B) – DEVELOPMENT SUITABILITY

The Board finds that there are no additional unforeseen undue adverse impacts to the public health and safety, neighboring properties, or the character of the area as a result of the subdivision. The Board finds that the development of a single-family home on the newly created parcel is consistent with development in the surrounding area.

SECTION 8.2(C) – EXISTING SITE CONDITIONS

The Board finds that the impact to existing site conditions will be minimal provided development is made in accordance with the proposed site development plan.

SECTION 8.2(D) – UNDERHILL TOWN PLAN & DEVELOPMENT REGULATIONS

The Board finds that the proposed subdivision & development conform to the *Underhill Town Plan* & the *Underhill Unified Land Use and Development Regulations*.

SECTION 8.2(E) – DISTRICT SETTLEMENT PATTERNS

The Board finds that the proposed subdivision & development are consistent with the characteristics of the Rural Districts as described in Section 8.2.E.2, as the subdivision and existing development are to be configured in a way that retains the rural character, as well as reinforcing low densities of residential development interspersed with large contiguous tracts of undeveloped land.

The Board finds that the proposed subdivision & development are similarly consistent with the characteristics of the Rural Residential Zoning District as described in Section 8.2.E.3, as the proposed site plans minimize additional road building, forest fragmentation, and cluster development along Irish Settlement Road.

SECTION 8.2(F) – LOT LAYOUT

The Board finds that Lot 3A conforms with the requirements of this subsection. The Board finds that Lot 3C conforms with the requirements of this subsection.

SECTION 8.2.G – BUILDING ENVELOPE

The Board finds that the Applicant has proposed a building envelope that conforms with the district's dimensional standards (see Exhibit L). The building envelope limits development to the immediate south and north of the dwelling and largely follows minimum principal setbacks elsewhere.

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

The Board finds that the proposal meets the requirements under this section.

SECTION 8.2(J) – ENERGY CONSERVATION

The Board makes no finding regarding this subsection.

SECTION 8.3 – NATURAL & CULTURAL RESOURCES

SECTION 8.3(A) – RESOURCE IDENTIFICATION & PROTECTION

The Board is not aware of, nor have they or the Applicant identified, any cultural or natural resources/features that require protection or preservation.

SECTION 8(B) – SURFACE WATERS, WETLANDS & FLOODPLAINS

The Board finds that the subject parcel contains no surface waters, wetlands, or floodplains.

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

See Section 3.18.

SECTION 8.3(D) – NATURAL AREAS & WILDLIFE HABITAT

The Board finds that consultants have identified a highest-priority wildlife road crossing located at the section Irish Settlement Road where the subdivision is proposed (Exhibits E & F). The road crossing has already been impacted with existing development. During the preliminary hearing, the Board found that the analysis and accompanying map contained errors and omissions that provided limited utility for the purposes of establishing facts under this section. These updated documents satisfy the requirements under 8.3(D), and the Board finds that due to the shared driveway and clustered development, this proposal represents only a marginal impact to existing wildlife habitat.

SECTION 8.3.E – HISTORIC & CULTURAL RESOURCES

The Board is unaware of any historic or cultural resources that require preservation, and therefore, makes no finding regarding this Section.

SECTION 8.3.F – FARMLAND

The Board finds that there is statewide agricultural land located on the existing lot. Should the subdivision occur, Lot 3C would have either zero or a negligible amount of agricultural soils.

SECTION 8.3.G – FORESTLAND

The Board finds minimal additional impact to forestland is anticipated on both lots.

SECTION 8.4 – OPEN SPACE & COMMON LAND

SECTION 8.4.A – OPEN SPACE

The Board finds that the Applicant has not proposed to designate any land as open space.

SECTION 8.4.B – COMMON LAND

The Board finds that the Applicant has 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 Applicant has not designated any land as open space or common land as part of the proposed project.

SECTION 8.5 – STORMWATER MANAGEMENT & EROSION CONTROL

The Board finds the Applicant shall conform to the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control, published by the Watershed Management Division of the Vermont Department of Environmental Conservation when performing excavation and site work. The Board also finds that the proposed development shall have a minimal impact on stormwater runoff and does not require an additional treatment plan.

SECTION 8.6 – TRANSPORTATION FACILITIES

SECTION 8.6.A – ACCESS & DRIVEWAYS

The existing lot is served by its own driveway, which accesses Irish Settlement Rd. Lot 3C is proposed to be served by the existing curb cut. The Board finds, however, the existing curb cut for Lot 3A shall be upgraded to meet the slope requirements of VAOT B-71 standards at the driveways approach with Irish Settlement Road. With this proposed upgrade, the Board shall waive the 12' driveway property-line setback requirement with a shared driveway design.

SECTION 8.6.B – DEVELOPMENT ROADS

The Board finds that this subsection does not apply since the subject access ways already do or will serve less than three (3) lots.

SECTION 8.6.C – PARKING FACILITIES

The Board finds that minimum parking requirements will be met.

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.

SECTION 8.7 – PUBLIC FACILITIES & UTILITIES

SECTION 8.7.A – PUBLIC FACILITIES

The Board finds that the Applicant has submitted an ability-to-serve letter from Mount Mansfield Unified School District (Exhibit H), which satisfies this requirement.

SECTION 8.7.B – FIRE PROTECTION

The Board finds the proposed subdivision and development is not expected to create an undue burden on the ability of the Underhill-Jericho Fire Department to provide fire protection services. The Board finds that the applicant has submitted an ability-to-serve letter from the Underhill-Jericho Fire Department, which satisfies this requirement.

SECTION 8.7.C – WATER SYSTEMS

The Board finds that the Applicant has proposed a drilled well located on Lot 3C.

SECTION 8.7.D – WASTEWATER SYSTEMS

See Section 3.23.

SECTION 8.7.E – UTILITIES

The Board finds the Applicant has submitted site plans satisfying this requirement (Exhibit L).

SECTION 8.8 – LEGAL REQUIREMENTS

The Board finds that this subsection does not apply.

FACTUAL FINDINGS & CONCLUSIONS

The Board finds the application to be complete and closed the evidentiary portion of the hearing on May 15, 2023.

FACTUAL FINDINGS & CONCLUSIONS RELATING TO THE UNDERHILL ROAD, DRIVEWAY & TRAIL ORDINANCE, AMENDED 2018

The Board finds that an access permit is required for the construction of the driveway to access proposed Lot 3C per the *Underhill Road, Driveway & Trail Ordinance*. The Board additionally finds that the Applicant has submitted a draft Access Permit Application (Exhibit O).

SECTION 4.C – DEVELOPMENT ROAD AND DRIVEWAY STANDARDS

The Board finds that there are no development roads proposed as part of this subdivision application.

SECTION 5.A – DRIVEWAYS

The Board finds that the access to Lot 3A is classified as a driveway and the existing curb cut for Lot 3A shall be upgraded to meet the slope requirements of VAOT B-71 standards at the driveways approach with Irish Settlement Road. The Board is able to waive the 12' driveway property-line setback requirement with a shared driveway design. The Board further finds that the proposed driveway design for Lot 3C, including the access location, otherwise complies with the requirements of this section.

WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS

The Board waives the 12' property-line setback requirement for driveways using a shared access to a public road.

DECISIONS AND CONDITIONS OF APPROVAL

The Board is satisfied with the level of investigation, engineering, and evaluation conducted in the application submission 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 concluded that based on the evidence submitted and the above findings, the proposed subdivision and development generally conform to the aforementioned Regulations. The board finds the application to be complete.

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. **Application Fees.** 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*.
2. **Recording.** Only the "Subdivision Plat" (Exhibit D) shall be submitted for recordation in the Underhill Land Records. The plat shall include parcel codes (see below) and shall be submitted for recording within 180 days of the date of this approval (May 16, 2023) 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 December 4, 2023.
3. **Monumentation.** The Applicant shall ensure that the proposed property monumentation for that lot shall be installed as defined on the recordable Mylar.
4. **Transfer of Land.** 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 approval has been obtained from this Board, and the final Mylar (the subdivision plat) has been recorded in the Underhill Land Records per Section 7.2(C).
5. **Subdivision of Land.** 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.
6. **Subdivision Drawings – Revisions & Submission.** The Applicant shall submit two full-size and two 11 inch by 17 inch hardcopies of the drawing set, in addition to

digital pdf copies, to the Zoning Administrator to be filed in the corresponding zoning file. The Applicant is responsible for submitting the following drawings as prepared by KAS Consulting, Inc. The drawings shall be revised in conformance with this Decision and shall be consistent across all of the submitted drawings.

- a. Subdivision Plat (dated 04/21/2023);
 - b. Final Design Plan (dated 12/13/2022), including sheets SP.1-SP.3 and DT.1-DT.2, to be revised and given a new revision date, as required to be in conformance with this approval;
7. The survey shall be updated to include E-911 parcel codes: Lot 3A parcel code IS319 (319 Irish Settlement Road); Lot 3C – IS3xx (3xx Irish Settlement Road).
 8. **Approved Plans & Construction.** The Project shall be constructed in accordance with the drawing set submitted as part of the review process - revised in conformance with this Decision. Any deviations to the approved project prior to or during construction shall be immediately brought to the attention of the Development Review Board.
 9. **Infrastructure Certification.** Prior to the issuance of the Certificates of Occupancy Permit, the Applicant shall provide a certification letter from a Vermont Licensed Professional Engineer or qualified consultant indicating that all infrastructure improvements identified in the subdivision plans under Condition 6 above, and what is required by this Decision, have been constructed according to what was proposed as part of this review.
 10. **E-911 Codes.** Prior to the issuance of the Certificates of Occupancy, the E-911 signage for the respective lot shall be posted per the Underhill-Jericho Fire Department specifications.

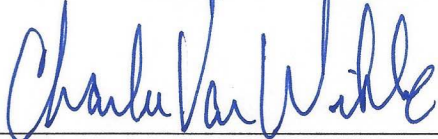
Substantive Land Use & Development Regulations Conditions

11. **Future Modification of Building Envelopes.** The Board finds the submitted site plan and associated building envelope depicted in Exhibit L as controlling. No development is allowed outside the approved building envelope. No modifications to the building envelope are allowed without the express approval of the Development Review Board, through the amendment process.
12. **Erosion Prevention & Sediment Control.** The Applicant and their successors shall conform to the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control, published by the Watershed Management Division of the Vermont Department of Environmental Conservation, when performing future excavation and site work for any proposed projects.
13. **Conformance With Regulations.** Notwithstanding the conditions above, prior to being issued a zoning permit, the Applicant shall comply with applicable aspects of the *Underhill Unified Land Use and Development Regulations* in effect at the time of the application for a zoning permit.
14. **Conformance with State Permits.** The conditions of the ANR Wastewater System and Potable Water Supply Permit shall be incorporated herein.

Substantive Road, Driveway & Trail Ordinance Conditions

15. **Access Permit Approval.** The Board grants approval of the submitted access permit application.
16. **Future Subdivision.** As a condition of this approval, no future subdivision of either lot, created by this subdivision, shall be permitted.

Dated at Underhill, Vermont this 7th day of June, 2023.



Charles Van Winkle, Chair, Development Review Board

NOTICE/APPEAL (ZONING): 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.

NOTICE/APPEAL (ACCESS): This permit covers only the Selectboard's (or its designee's) jurisdiction and authority over town highways under 19 V.S.A. § 1111. It does not release the applicant from the requirements of other applicable federal, state or local statutes, ordinances, rules or regulations, including the Underhill Unified Land Use & Development Regulations. This permit addresses issues including access to, work within, and drainage affecting the town highway and its right-of-way, as described in Section 1111 and the Town's Road Ordinance. It does not address all other possible transportation, access (including the use of private access ways) or development issues which, if relevant to a proposed project, must be addressed separately. This permit may be reviewed pursuant to the procedures and time limits set forth in V.R.C.P. 75.