

TOWN OF UNDERHILL
APPLICATION OF CHARLES AND ASHLEY ALEXANDER
FOR SUBDIVISION
PRELIMINARY FINDINGS AND DECISION

In re: Charles and Ashley Alexander
348 Irish Settlement Road
Underhill, VT 05489

Docket No. DRB-07-13: Charles and Ashley Alexander

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Charles and Ashley Alexander's preliminary hearing application for a 2-Lot subdivision permit for property located at 348 Irish Settlement Road in Underhill, VT.

1. On July 23, 2007, Charles and Ashley Alexander filed an application for subdivision for the project. A copy of the application and site plan are available at the Underhill Town Hall. A sketch plan hearing was held on August 20, 2007. The Sketch plan was approved.
2. On October 4, 2007, notice of a public site visit was published in the Mountain Gazette.
3. On October 16, 2007, a copy of the notice of a public site visit was mailed to the applicants, Charles and Ashley Alexander, 348 Irish Settlement Road, Underhill, VT, 05489. A copy of the notice of public site visit was mailed to the following owners of properties adjoining the property subject to the application:
 - a. Dupre/Mulhern, 368 Irish Settlement Rd., Underhill, VT 05489
 - b. Berube, 351 Irish Settlement Rd., Underhill, VT 05489
 - c. Mulvihill, 318 Irish Settlement Rd., Underhill, VT 05489
 - d. Kerrigan, RR1 Box 987, Moretown, VT 05660
 - e. Bradford, P.O. Box 56, Underhill Center, VT 05490
 - f. Northrop, 414 Irish Settlement Rd., Underhill, VT 05489
 - g. Williamson, 341 Irish Settlement Rd., Underhill, VT 05489
 - h. Moulton, 49 Highland Rd., Underhill, VT 05489
4. A site visit was held at the property on Saturday, October 27, 2007. Present the site visit were:
 - Chuck Brooks
 - Matt Chapek
 - Stan Hamlet

- Penny Miller
- Peter Seybolt
- Deb Shannon
- Scott Tobin, Chair
- Charlie Van Winkle

Chris Murphy, Zoning Administrator, and Zoning Assistant Kari Papelbon also attended the site visit. Michael Weisel also attended the site visit.

5. On February 15, 2008, a copy of the notice of preliminary hearing was mailed to the applicants, Charles and Ashley Alexander, 348 Irish Settlement Road, Underhill, VT, 05489 and to the abutters listed above in (3).
 6. By February 25, 2008, notice of the site visit and preliminary hearing on the proposed Alexander subdivision was posted at the following places:
 - a. The Underhill Town Clerk's office;
 - b. The Underhill Center Post Office;
 - c. The Underhill Flats Post Office;
 - d. The Town of Underhill website;
 7. The preliminary hearing was scheduled for 6:15 PM on March 3, 2008.
 8. Present at the preliminary hearing were the following members of the Development Review Board:
 - Chuck Brooks
 - Stan Hamlet
 - Penny Miller
 - Peter Seybolt
 - Scott Tobin, Chair
- Kari Papelbon, Zoning Administrator also attended the meeting.
9. At the outset of the hearing, Chairperson Scott Tobin explained the criteria under 24 V.S.A. § 4465 (b) for being considered an "interested party." Interested parties who spoke at the hearing were:
 - Charles Alexander, 348 Irish Settlement Road, Underhill, VT 05489
 - Peter Lazorchak, McCain Consulting, 93 South Main Street, Waterbury, VT 05676
 - Jeff and Angela Moulton, 49 Highland Road, Underhill, VT 05489
 10. During the course of the hearing the following exhibits were submitted to the Development Review Board:

1. A staff report sent by Zoning Administrator Kari Papelbon to the Development Review Board, Charles and Ashley Alexander, and Peter Lazorchak of McCain Consulting;
2. Plans prepared by Peter Lazorchak of McCain Consulting for Charles and Ashley Alexander, dated 2-7-08 (Sheets 1-3);
3. A copy of the survey prepared by Warren A. Robenstien for Charles and Ashley Alexander dated 1-28-08;
4. Copies of the Warranty Deed that conveyed the land from Haverstick to Alexander and the Alexanders' Current Use Contract;
5. A copy of the letter to the Underhill-Jericho Fire Department requesting review of the subdivision plans dated 2-13-08;
6. A copy of the letter from the Underhill-Jericho Fire Department dated 2-19-08;
7. A copy of the letter to the Chittenden East Supervisory Union #12 dated 2-13-08;
8. A copy of the completed Act 250 School Impact Questionnaire for Residential Projects from Superintendent James G. Massingham dated 2-14-08;
9. A copy of the variance request for the proposed driveway to Lot to and waiver requests for the proposed leachfield area;
10. A copy of the Subdivision Checklist: Preliminary Hearing.

These exhibits are available in the Charles and Ashley Alexander, IS348 Subdivision file at the Underhill Zoning Office.

II. FINDINGS

Background

The Minutes of the meetings written by Kari Papelbon are incorporated by reference into this decision. Please refer to these Minutes for a summary of the testimony.

Based on the application, testimony, exhibits, and other evidence the Development Review Board makes the following findings:

1. The subject property, 348 Irish Settlement Road, lies in the Rural Residential District.
2. The Applicants, Charles and Ashley Alexander, are applying for a 2-lot subdivision of property at 348 Irish Settlement Road. The proposed new lot will be approximately 3.4 acres and is described on the plans as Lot 2.
3. The proposed Lot 2 will be accessed by a driveway off of Fuller Road. This driveway will cross a small stream. Chris Brunelle, Stream Alteration Engineer with the State of Vermont, has been contacted. A Stream Alterations Permit will

not be required as the project is in an area where the drainage is less than one square mile (actual drainage area is 0.10 square miles).

4. The width of the proposed driveway to Lot 2 is not depicted on the site plan. The driveway will be at least 12 feet wide per the Town of Underhill Road Policy.
5. The Underhill Jericho Fire Department has requested that the driveway turnaround have a 30-foot curve radius.
6. Neighbor Jeff Moulton has requested that the driveway fan out at the point where it meets Fuller Road. The DRB finds this to be a reasonable request.
7. A 5-foot culvert has been proposed before the driveway will cross the stream. This culvert must be able to support a minimum of 35,000 pounds.
8. The driveway has been engineered with two switchbacks to meet the required 10% grade per the Underhill Road Policy.
9. A 100-foot variance for the driveway has been requested as the driveway will cross the stream.
10. The criteria for variance approval as stated in § 4469 (a) of the Vermont Municipal and Regional Planning and Development Act are:
 - There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions, and not the circumstances or conditions generally created by the provisions of the bylaw in the neighborhood or district in which the property is located.
 - Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the bylaw, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
 - Unnecessary hardship has not been created by the appellant.
 - The variance will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.

- The variance will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan.

11. Analysis of Variance Criteria: When applying the statutory variance criteria to the requested variance the Board must, by statute, strictly apply the criteria.

- a. § III (V) of the Underhill Zoning Regulations states “no structure for human habitation or septic systems will be permitted within 100 feet of the streambank or any watercourse” and that “dumping, filling, excavation or grading of land within 100 feet of any streambank or any watercourse shall be permitted only if doing so does not affect the water table or natural water flow patterns, cause erosion due to removal of vegetation cover, or increase the possibility of flooding.”
- b. The proposed driveway will cross a stream and require grading less than 100 feet from the stream.
- c. The proposed Lot 2 is encumbered by a stream that runs in the middle of the southern portion of the lot across from Fuller Road. Fuller Road is the only road that can provide access to the proposed lot. Lot 2 also has a very steep bank up to the site of the proposed building envelope, where there is a flat shelf. The best location for the proposed driveway requires crossing the stream and, due to the steepness of the terrain, requires switchbacks in order to lessen the grade of the drive to acceptable limits. While entering just northerly of the existing culvert would avoid a stream crossing, even with extensive earthwork it was not possible to design to the 10% standard while maintaining the leachfield area. The 10% driveway grade is to allow safe passage of vehicles up and down the steep bank of Lot 2.
- d. Since the leachfield area must be sited where the soils are best suited for septic, and since the building envelope must be sited where the land is most level, the driveway could not be moved and designed to meet safe grades and visibility while still maintaining the leachfield area and remaining outside of the 100-foot streambank buffer. The Board finds that due to the above, the lot could not otherwise be developed.
- e. The steepness of the parcel and the stream are natural features that have not been created by the applicants.
- f. Lot 2 is located in an area that contains residential parcels and single-family homes; thus, the addition of a single-family home will not alter the character of the neighborhood. The applicants and their engineer have provided detailed plans for the prevention of erosion and runoff, and must adhere to State and Federal regulations regarding potable water,

wastewater, earth disturbance, stormwater, and streams. The Board finds that such provisions will ensure that neighboring properties will not be adversely affected by the development of Lot 2.

- g. Although the request is for a full variance, reducing the streambank setback to 0, this is the minimum that will afford relief and the least deviation possible as the stream covers over 150 feet in the lower middle portion of Lot 2 off of Fuller Road, and the driveway could not be moved and designed to safely maintain grade, visibility, and the leachfield area.
 - h. With the above findings and justifications, the Board has determined that this variance request meets the variance criteria. Final approval will be conditioned upon Selectboard approval of the driveway and construction of the driveway as per the approved plans.
12. The Underhill Road Foreman has requested that stone-lined ditches be used where grades are 5% or more, that the engineering plans show a side profile of the silt fence detail, that filter fabric be used instead of sand cushion, and that 5-inch stones are used in culvert headwalls.
 13. No utility easements are shown on the survey or engineering drawing. The location of all existing and proposed easements shall be shown on the final plans.
 14. This project requires several permits, including, but not limited to, a State wastewater permit and a Construction General Permit, and shall comply with the Army Corps of Engineers general permit standards and requirements.
 15. Lot 2 will be served by its own drilled well and leachfield.
 16. The well shield protection areas depicted on the plans extend onto the adjacent properties. The Town of Underhill does not have jurisdiction over well shields.
 17. An easement across Lot 1 to the existing leachfield and the proposed replacement leachfield serving Lot 1 extends to Fuller Road for access. Lot 2 will be served by a leachfield and replacement leachfield below Lot 1's leachfields.
 18. A waiver request for the leachfield area setback to the wetland on Lot 1 and a waiver request for the leachfield area setback to the stream on Lot 2 have been submitted. The proposed setback of the leachfield area to the wetland on Lot 1 is 52 feet; the proposed setback of the leachfield area to the stream on Lot 2 is 62 feet.
 19. The Underhill Subdivision Regulations contain a provision for waivers which states:

“The [DRB] may waive or vary, subject to appropriate conditions, the provisions of any or all improvements and application submission requirements as in its judgment

of the special circumstances of a particular plat or plats are not requisite in the interest of public health, safety and general welfare, or which in its judgment are inappropriate because of an inadequacy or lack of connecting facilities adjacent to or in proximity to the subdivision.

In granting waivers or variances, the [DRB] shall require such conditions as will, in its judgment, secure substantially the objectives of the requirements so waived or varied. No such waiver or variance may be granted if it would have the effect of nullifying the intent and purpose of the Town's Plan, By-Laws, or the Zoning Regulations, which may be acted on by the [DRB] only."

20. Analysis of waiver requests:

- a. § III (V) of the Underhill Zoning Regulations states "no structure for human habitation or septic systems will be permitted within 100 feet of the streambank or any watercourse" and that "dumping, filling, excavation or grading of land within 100 feet of any streambank or any watercourse shall be permitted only if doing so does not affect the water table or natural water flow patterns, cause erosion due to removal of vegetation cover, or increase the possibility of flooding."
- b. The State Wastewater System and Potable Water Supply Rules Subchapter 5, §1-501 (a)(1) states "Municipalities may continue to have ordinances and/or bylaws that are not specifically regulating potable water supplies and/or wastewater systems, but rather regulating development in general, (ex: setbacks)..."
- c. Leachfields do not qualify for variances under statute as they are not structures. Town Counsel has recommended that the applicants apply for the submitted waivers for the leachfield setbacks to the wetland and stream.
- d. The leachfields must be sited in the area with soils best suited for septic disposal. The vast majority of the treatment occurs in the first 2 feet of effluent flow through unsaturated soil and additional polishing occurs in the next foot with 3 feet below the bottom of the leachfield being the State regulatory requirement. In this case, there is a minimum of ± 5 feet of unsaturated soil, which significantly exceeds the State requirements.
- e. The State Wastewater Management Regulations allow for a setback distance of 50 feet from a leachfield to a stream and there is no State setback requirement to a Class III wetland.
- f. Erosion and stormwater runoff control measures, including, but not limited to, silt fencing, stone check dams, stone-lined ditches, and diversion swales have been depicted on the engineering drawings.

- g. Based on the above findings the Board finds that the plans provide for adequate wetland and stream protection and that the waiver requests will not be detrimental to public health safety, and general welfare, nor will granting such waivers have the effect of nullifying the Town's Plan, By-Laws, or Zoning Regulations.
21. The survey is not currently tied to the engineering drawing. The building envelope, driveway, proposed building locations, existing and proposed easements, new property code for Lot 2, applicable zoning regulations, and the correct year in the approval blocks shall be shown on the final survey.

III. DECISION AND ADDITIONAL FINAL HEARING REQUIREMENTS

Based upon the findings above, and subject to any of the additional final hearing requirements set forth below, the Development Review Board grants preliminary approval for the subdivision as presented at the preliminary hearing.

Additional Final Hearing Requirements:

1. The final engineering plans and survey shall show a "fan out" of the driveway at the point where it meets Fuller Road. A "pull-off" to increase the driveway width shall be shown on the engineering plans and survey at both switchbacks.
2. Stone-lined ditches shall be used where grades are 5% or more, the engineering plans shall show a side profile of the silt fence detail, and 5-inch stones be used in culvert headwalls. These details shall be shown on the engineering drawings.
3. The location of all existing and proposed easements shall be shown on the final plans.
4. Evidence of submission of an application for all State permits required, including, but not limited to, wastewater and potable water, stormwater, and/or a Construction General Permit shall be submitted to the Zoning Administrator prior to scheduling the final hearing. A letter from Mike Adams of the Army Corps of Engineers or Chris Brunelle, State Stream Alterations Engineer, regarding the driveway stream crossing and earth disturbance in a stream and the standards and requirements for coverage under the Army Corps of Engineers general permit shall be submitted to the Zoning Administrator prior to scheduling the final hearing.
5. The engineering drawing and survey must match for final subdivision approval. The building envelope, driveway, proposed building locations, existing and proposed easements, new property code for Lot 2,

applicable zoning regulations, and the correct year in the approval blocks shall be shown on the final survey. Revised copies of the engineering drawings and survey must be submitted to the Zoning Administrator prior to scheduling the final hearing.

6. The Board grants preliminary approval for the 100-foot variance request for the driveway's setback to the stream. Final approval will be conditioned upon Selectboard approval of the driveway and construction of the driveway as per the approved plans.
7. The Board grants preliminary approval for the waiver request for the leachfield setback to the wetland on Lot 1. The leachfield shall be 52 feet from the wetland.
8. The Board grants preliminary approval for the waiver request for the leachfield setback to the stream on Lot 2. The leachfield shall be 62 feet from the stream.

Dated at Underhill, Vermont this 17th day of March, 2008.



Scott Tobin, Chair, Development Review Board