TOWN OF UNDERHILL
APPLICATION OF CHARLES AND ASHLEY ALEXANDER
FOR SUBDIVISION
FINAL HEARING 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 final hearing application for a 2-Lot subdivision of property located at 348 Irish Settlement Road in Underhill, VT.

1. On May 30, 2008, McCain Consulting filed a final application on behalf of Charles and Ashley Alexander for subdivision for the project, which included engineering drawings, Proposed Findings of Fact, evidence of submittal for required State and Army Corps of Engineers permits, a copy of the draft septic easement language for the Lot 1 replacement area. A survey, waiver request, and stormwater summary were also submitted prior to the hearing.

2. On May 20, 2008, a copy of the notice of a final subdivision hearing was mailed via certified mail to the applicants, Charles and Ashley Alexander, 348 Irish Settlement Road, Underhill, VT 05489, and to the following owners of properties adjoining the property subject to the application:

    a. Dupre/Mulhern, 368 Irish Settlement Road, Underhill, VT 05489
    b. Berube, 351 Irish Settlement Road, Underhill, VT 05489
    c. Mulvihill, 318 Irish Settlement Road, 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 Road, Underhill, VT 05489
    g. Williamson, 341 Irish Settlement Road, Underhill, VT 05489
    h. Moulton, 49 Highland Road, Underhill, VT 05489

3. On May 15, 2008, notice of a final hearing was published in the Mountain Gazette.

4. By May 20, 2008, notice of the final hearing on the proposed Alexander subdivision were posted at the following places:

    a. The property to be developed, 348 Irish Settlement Road;

b. The Underhill Town Clerk's office;
c. The Underhill Center Post Office;
d. The Underhill Flats Post Office;
e. The Town of Underhill website.

5. The final hearing was scheduled to commence immediately following the preceding hearing scheduled for 6:30 PM on June 16, 2008.

6. Present at the hearing were the following members of the Development Review Board:

- Chuck Brooks
- Peter Seybolt
- Penny Miller
- Charlie Van Winkle
- Scott Tobin, Chair

Kari Papelbon, Zoning Administrator, and Board Member Matt Chapek also attended the hearing. Board Member Matt Chapek did not cast a vote on the subdivision.

7. 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:

- Peter Lazorchak, McCain Consulting, Inc., 93 South Main Street, Suite 1, Waterbury, VT 05676
- Charles and Ashley Alexander, 348 Irish Settlement Road, Underhill, VT 05489

8. During the course of the hearing the following exhibits were submitted to the Development Review Board:

a. A staff report sent by Zoning Administrator Kari Papelbon to the Development Review Board, Charles and Ashley Alexander, and Peter Lazorchak of McCain Consulting, Inc.;
b. Plans prepared by Peter Lazorchak of McCain Consulting for Charles and Ashley Alexander, (Sheet 1 revised 5-30-08, Sheet 2 revised 5-2-08, and Sheet 3 revised 5-22-08 and 6-13-08);
c. A copy of the survey prepared by Warren Robenstien for Charles and Ashley Alexander (revised 6-2-08);
d. A copy of the letter from Zoning Administrator Kari Papelbon to John Gobeille, VT Fish and Wildlife Department Wildlife Biologist (dated 4-11-08);
e. A copy of the letter from John Gobeille regarding the mapped deer yard;

engineer and surveyor, the boundaries of the subdivision, parcel codes, scale, date, north point, and legend. The survey is missing the existing Class III wetland on Lot 1. This is not a material error that would prevent the application from receiving final approval from the Board.

2. Road/Pedestrian Ways/ Easements/Reservations: The Board finds that application satisfied the requirement as the lots and proposed easements are shown on the plans.

3. Lot Lines/Bearings/Distances: The Board finds that the application satisfies the requirement as the lot lines, bearings, and distances are shown on the plans.

4. Road Details: The Board finds that this requirement is not applicable as no new road is proposed.

5. Public Space/Reserved Space: The Board finds that this requirement is not applicable as there are no dedicated open spaces in the subdivision.

6. Lot Numbering: The Board finds that the application satisfies the requirement as the lots are numerically numbered on the proposed plan.

7. Infrastructure: The Board finds that the application satisfies the requirement as septic systems, proposed utility easements, grading, and stormwater details are contained in the plans.

8. Wastewater System Design: The Board finds that the application satisfies the requirement as the location and results of all test pits and septic system areas are shown on the plans. A State of Vermont Wastewater System and Potable Water Supply Permit was issued for the project on June 17, 2008.

9. Existing and Proposed Water Supplies: The Board finds that the application satisfies the requirement as the locations of existing and proposed water sources are contained on the plans. The State of Vermont has jurisdiction over isolation distances between potable water supplies and wastewater disposal systems. A State of Vermont Wastewater System and Potable Water Supply Permit for the project was issued on June 17, 2008.

10. Monumentation: The Board finds that the application satisfies the requirement as monumentation locations and details are contained in the plans.

11. Installation of Infrastructure or Bonding: A waiver request from the requirement that an engineer provide a letter certifying that all required improvements have been satisfactorily completed or, in lieu thereof, supply a Selectboard-approved 2-year performance bond for the improvements at the time of filing the final plat has been submitted. See §II (B) below.

f. A copy of the letter to Mike Adams of the US Army Corps of Engineers regarding the stream crossing (dated 5-5-08);
g. A copy of the letter from Mary Baril of the VT Wastewater Management Division (dated 5-6-08);
h. A copy of the Notice of Intent for Stormwater Discharges (dated 5-8-08);
i. A copy of the letter to Mike Adams of the US Army Corps of Engineers (dated 5-13-08);
j. A copy of the letter from Mike Adams of the US Army Corps of Engineers;
k. A copy of the letter from Heather Mack of the Water Quality Division (dated 5-27-08);
l. A copy of the letter from William Zabiloski of the VT Agency of Natural Resources regarding the wastewater application (dated 6-3-08);
m. A copy of the cover letter to Bill Zabiloski of the VT Agency of Natural Resources from Peter Lazorchak of McCain Consulting regarding Lot 1 requested information (dated 6-11-08);
n. A copy of the newspaper warning (published 5-15-08);
o. A copy of the proposed Septic Easement Deed language;
p. A copy of the waiver request;
q. A copy of the Proposed Findings of Fact;
r. A copy of the email from Jeff and Angela Moulton (dated 6-16-08);
s. A copy of the Charles and Ashley Alexander – 2 Lot Subdivision Town Culvert Analysis;
t. A copy of the Subdivision Checklist: Final Hearing.

These exhibits are available in the IS348 Alexander 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 on the final plat submission requirements as delineated on pages 9-11 of the Underhill Subdivision Regulations, "Final Plat for Subdivisions:"

A. Submission Requirements:

Final Hearing:

1. Survey and Engineering Plan Elements: The Board finds that the engineering drawing and survey show the identifying title, name of the municipality, name and address of the record owner and sub divider, the seal of the registered

3. Recreation: The undeveloped portions of the property will provide sufficient open space for recreation.

4. Runoff and Erosion Control: Erosion control measures are outlined on Sheets 1 and 3 of the plans. The measures proposed to control erosion include installation of construction fencing to delineate disturbed areas, maintenance of silt fencing to filter silt from stormwater runoff, stone-lined ditches and stone erosion check dams along the proposed driveway, diversion swales, and the establishment of both temporary and permanent vegetation as soon as possible during and after construction. Coverage under the State of Vermont Construction General Permit (CGP) is required as greater than 1 acre of disturbance will occur. The permit was approved on June 11, 2008.

5. Compliance with the Town Plan, Ordinances, and By-Laws: The proposed development complies with the regulations found in the Town of Underhill Zoning Regulations, and the submitted subdivision plans achieve the goals of the Town Plan by protecting the natural features on the parcel, maintaining a rural character, and preserving local natural resources. The Vermont Agency of Natural Resources issued a Wastewater System and Potable Water Supply Permit for the proposed wastewater disposal and water supply systems on June 17, 2008.

6. Flood Plain: The area to be developed does not lie in a flood plain.

7. Compatibility with Surrounding Properties: The neighboring properties along Fuller and Irish Settlement Roads contain existing residences and open land. The proposed subdivision, which includes one new residential lot, is in keeping with the pattern of residential development that has taken place in this area.

8. Suitability for Density: The plans which have been submitted with the subdivision application demonstrate that the site is suitable for the one new home proposed. The plans demonstrate that there is adequate area for a compliant wastewater disposal system, which has been permitted by the Vermont Agency of Natural Resources.

9. Pedestrian Traffic: Due to the limited number of residences served by Fuller Road, the road is sufficiently wide enough to accommodate diverse forms of transportation including automobile, pedestrian, and bicycle traffic. An increase in the radius of the driveway ("fan-out") where it meets Fuller Road has been added to the plans to allow for improved sight distances for automobiles, pedestrians, and bicyclists.

10. Provision of Municipal and Governmental Services: Governmental services, including fire protection and police services, do not have to be extended to serve the new home. Letters from the Underhill-Jericho Fire Department and the Chittenden East Supervisory Union have been submitted.

12. UJFD/CESU Letters: The Board finds that the application satisfies the requirement as letters from the Underhill-Jericho Fire Department and Chittenden East Supervisory Union have been submitted.

13. State Permits: The Board finds that the applicant's consultant has submitted applications to the State for all necessary permits.

14. Curb Cut/Selectboard Approval of Driveway: The Board finds that the Underhill Selectboard granted approval of the driveway design and curb cut on June 9, 2008 subject to the condition that the applicant submit to the Development Review Board satisfactory evidence that runoff from a 25-year storm event with the project built will not cause the Town's culvert to fail. The Board accepts the submitted analysis and therefore this condition is fulfilled.

B. Waiver: Engineer's Certification or Bond for Improvements with the Final Mylar: The Board grants the waiver with the condition that before a building permit would issue to Lot 2, an engineer shall provide a letter to the Zoning Administrator certifying that the approved curb cut has been installed per the plan, and that the driveway has been "roughed in" per the approved plan. Driveway top treatment may be installed at the end of the construction period. All erosion control and stormwater measures shall be installed during the driveway "rough-in." The Board recommends approval of the waiver with the recommended condition to the Selectboard.

C. Planning Standards: Evaluation Considerations

1. Suitability for Development: The land is suitable for development according to the submitted plans prepared by Peter Lazorchak of McCain Consulting, Inc., Sheet 1 revised 5/30/08 (revised 6/9/08 for State submittal), Sheet 2 revised 5/2/08 (revised 6/9/08 for State submittal), and Sheet 3 revised 5/22/08 (revised 6/9/08 for State submittal). The area to be developed does not lie in a flood plain and with the implementation of the erosion control measures specified, there are no steep slopes, rock formations, adverse earth formations, or other features that will impair the health, safety, and general welfare of present or future inhabitants of the subdivision or its surrounding areas.

2. Preservation and Protection of Existing Features: One new home is proposed. The Class III wetland on Lot 1 will not be impacted, nor will the mapped deer wintering area as indicated in the letter from Mr. John Gobeille of the VT Department of Fish & Wildlife. The stream crossing will be constructed during the driest months of the year as required by the Army Corps of Engineers for coverage under their General Permit, and erosion control measures will be implemented to ensure silt-laden runoff does not enter the waterway. The 5-foot culvert has been sized to accommodate passage of aquatic organisms in the stream and will be buried to create a more natural stream channel.

11. Water Availability: The new home will be served by an on-site drilled well. The Vermont Agency of Natural Resources issued a Wastewater System and Potable Water Supply Permit for the proposed wastewater disposal and water supply systems on June 17, 2008.

12. Highway Congestion: Fuller Road currently serves residences in the area. The new residence is expected to generate 10 vehicle trip ends per day, which will not significantly increase traffic on the road or in the neighborhood. A "fan-out" at the end of the driveway has increased the radius for improved sight distances and safety.

13. Visual, Air, Noise, Water Pollution: The proposed residence will be partially screened by vegetation. Air pollution, including dust from the driveway and exhaust from heating sources, will not exceed levels generated by typical single-family residences. Similarly, the noise generated by the proposed development will not exceed noise levels generated by single-family residences once construction has ended. Water pollution concerns are addressed by erosion control and wastewater disposal plans.

## III. DECISION AND CONDITIONS

Based upon the findings above, and subject to any of the conditions set forth below, the Development Review Board grants approval for the 2-lot subdivision as presented at the final hearing. The Development Review Board recommends approval of the waiver request for the bonding requirement timeframe with the suggested condition listed in §II (B) above.

### A. Conditions for Subdivision:

1. Recording Requirement: Per the Underhill Subdivision Regulations, final approval of the subdivision is granted upon filing of the final subdivision plat in the Underhill Land Records. No transfer or sale of property may occur prior to recording the final plat and all applicable permits in the Town of Underhill Land Records.

2. State and Federal Permits: Applicant shall comply with all conditions of required State and Federal permits. Copies of all required permits shall be submitted to the Zoning Administrator prior to recording the final plat.

3. Driveway and Erosion Control Measures: Before a building permit would issue to Lot 2, an engineer shall provide a letter to the Zoning Administrator certifying that the approved curb cut has been installed per the plan, and that the driveway has been "roughed in" per the approved plan. Driveway top treatment may be installed at the end of the construction period. All erosion control and stormwater measures shall be installed during the driveway "rough-in."

4. Plans and Plat: The final engineering drawing shall be tied to the final survey.

5. Stake-out of Improvements: All building envelopes, the driveway, and septic areas shall be staked out by the surveyor/engineer prior to any construction, and off-set stakes shall be held in place until completion of construction.

6. Septic Certification Letter: A copy of the engineer's letter to the State certifying that the septic system has been installed per the approved plans shall be filed with the Zoning Administrator.

7. Deed Language: Final deed language for the septic easement over Lot 2 for the Lot 1 replacement wastewater disposal system shall be submitted to the Zoning Administrator for approval before filing of the final plat. The easement shall be referenced in the deeds to the lots.

8. Digital Submission of Plat and Plans: Prior to recording the final Mylars, the applicant shall submit a copy of the certified plat and site plan in digital format. The format of the digital information shall require approval of the Zoning Administrator.

9. 911 Codes: Lot 2 shall post its 911 code (FU011) before issuance of any building permit.

10. Fees: All subdivision fees shall be paid in full to the Zoning Administrator prior to filing of the final plat with the Town Clerk.

Dated at Underhill, Vermont this 3rd day of July, 2008.

Scott Tobin

Scott Tobin, Chair, Development Review Board

NOTICE: This decision may be appealed to the Vermont Environmental 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. No documents shall be recorded until August 2, 2008, when the 30-day appeal period has expired.