TOWN OF UNDERHILL
APPLICATION OF WILLIAM AND ELAINE MORTON
FOR A 2-LOT SUBDIVISION
FINAL FINDINGS AND DECISION

In re: William and Elaine Morton
439 Cilley Hill Rd.
Underhill, VT 05489

Docket No. DRB-11-11: Morton

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns William and Elaine Morton's final hearing application for a 2-lot subdivision of property located at 439 Cilley Hill Rd. in Underhill, VT.

A. On February 3, 2012, Willis Design Associates, Inc. filed an application for subdivision on behalf of William and Elaine Morton for the project. A copy of the application and additional information are available at the Underhill Town Hall.

B. On February 21, 2012, a copy of the notice of the final hearing was mailed via Certified Mail to the Applicants, William and Elaine Morton, P.O. Box 115, Underhill, VT 05489, and to the following owners of properties adjoining the property subject to the application:

1. Bond, 435 Cilley Hill Rd., Underhill, VT 05489
2. Rawson, 350 Cilley Hill Rd., Underhill, VT 05489
3. Richardson/Steiner, 82 Sunset Dr., Northborough, MA 01532
4. Heh, 52 Kelley Rd., Underhill, VT 05489

A copy of the notice was also emailed to Justin Willis, Willis Design Associates, Inc., at willisdesignvt@comcast.net and to Brad Holden at bholdenvt@gmail.com.

C. On February 23, 2012, notice of the public site visit and final hearing on the proposed Morton subdivision was posted at the following places:

1. The property to be developed, CH439;
2. The Underhill Town Clerk's office;
3. The Underhill Country Store;
4. Wells Corner Market;
5. The Underhill Center Post Office;
6. The Underhill Flats Post Office;
7. Jacobs IGA;
8. The Town of Underhill website.

D. On February 29, 2012, notice of a public site visit and final hearing was published in *Seven Days.*

E. A site visit was held at the property on March 19, 2012 at 6:00 PM. Present at the site visit were:

- Chuck Brooks
- Will Towle
- Penny Miller
- Matt Chapek
- Charles Van Winkle

Zoning & Planning Administrator Kari Papelbon, Consultants Justin Willis and Brad Holden, Applicant William Morton, and three neighbors also attended the site visit.

F. The final hearing began at 6:47 PM on March 19, 2012.

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

- Chuck Brooks
- Will Towle
- Matt Chapek
- Penny Miller
- Charles Van Winkle, Chairperson

Zoning & Planning Administrator Kari Papelbon, Consultants Justin Willis and Brad Holden, Applicant William Morton, and two neighbors also attended the hearing.

H. At the outset of the hearing, Chairperson Charles Van Winkle explained the criteria under 24 V.S.A. § 4465 (b) for being considered an "interested party." Those who spoke at the hearing were:

- William Morton, P.O. Box 115, Underhill, VT 05489 (Applicant)
- Llanda Richardson and Terry Steiner, P.O. Box 251, Underhill, VT 05489 (CH451)

Consultant(s) who spoke on behalf of the Applicants:

- Justin Willis, Willis Design Associates, Inc., P.O. Box 98, Richmond, VT 05477-0098
- Brad Holden, 60 Covey Rd., Underhill, VT 05489

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

1. William and Elaine Morton's Application for Subdivision: Final (dated 2-2-12);
2. A copy of the Subdivision Checklist: Final Hearing;
3. A copy of the plans prepared by Justin Willis of Willis Design Associates, Inc. (Sheets S1 and D1 dated 2-16-12);
4. A copy of the driveway design prepared by Civil Engineering Associates, Inc. (Sheets C1.0, C2.0, and C2.1 dated Jan. 2012);

5. A copy of the survey prepared by Brad Holden (dated Feb. 2012);
6. A copy of the email from Alan Quackenbush, State Wetlands Office (dated 10-11-11);
7. A copy of the letter from Justin Willis of Willis Design Associates, Inc. to Todd Fischer of the Underhill Jericho Fire Department (dated 2-6-12);
8. A copy of the letter from John Alberghini of Chittenden East Supervisory Union (dated 2-8-12);
9. A copy of the VT Project Review Sheet (dated 3-5-12);
10. A copy of the completed Subdivision Standards Findings Checklist;
11. A copy of the minutes from the 12-5-11 Sketch Plan Review Meeting;
12. A copy of the tax map for CH439;
13. A copy of the hearing notice (published in *Seven Days* on 2-29-12);
14. A copy of the letter from Harry Schoppmann of the Underhill-Jericho Fire Department (dated 3-19-12);
15. A copy of the procedure checklist and staff memo for this hearing.

These exhibits are available in the Morton, CH439, subdivision file at the Underhill Zoning Office.

II. FINDINGS

Factual Findings

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:

A. The applicants seek a permit to subdivide land. The subject property is a ±21-acre parcel located at 439 Cilley Hill Road in Underhill, VT (CH439).

B. The property is located in the Rural Residential and Soil and Water Conservation zoning districts as defined in Article II, Table 2.3 and Article II, Table 2.6 of the 2011 Unified Land Use and Development Regulations.

C. Subdivision approval is requested for the project pursuant to review under the following sections of the 2011 Unified Land Use and Development Regulations:

- Article II, Table 2.3 – Rural Residential District
- Article II, Table 2.6 – Soil & Water Conservation District
- Section 3.2 – Access
- Section 3.7 – Lot, Yard & Setback Requirements
- Section 3.19 – Surface Waters & Wetlands
- Section 3.22 – Water Supply & Wastewater Systems
- Section 7.6 – Subdivision Review, Final Subdivision Review
- Article VIII – Subdivision Standards

D. Driveway approval for Lot 2 is requested pursuant to review under the 2002 Underhill Road Policy and the 2011 Unified Land Use and Development Regulations. An Access Permit was approved by the Selectboard on March 15, 2012.

E. Ms. Richardson asked whether a duplex was an allowed use in the zoning district. Mr. Steiner asked about the replacement disposal area shield encroaching on his land.

III. CONCLUSIONS

Applicable Regulation Standards

Article II, Table 2.3, Dimensional Standards

The Board finds that the application as proposed meets all of the applicable dimensional standards.

Article II, Table 2.6, Dimensional Standards

The Board finds that the application as proposed meets all of the applicable dimensional standards. The Board also finds that the existing house is located within the Rural Residential zoning district, and that no development is proposed in the Soil & Water Conservation zoning district.

Section 3.2, Access

The Board makes the following findings on the application as proposed:

A. Access for Lot 2 is proposed with adequate frontage on Cilley Hill Road. The existing access for Lot 1 meets frontage requirements on Cilley Hill Road [Section 3.2(A)].
B. Section 3.2(B) is not applicable to the subdivision as it does not involve a nonconforming lot.
C. As the access for Lot 2 is proposed on a town highway (Cilley Hill Road), an access permit from the Select board is required and was approved on March 15, 2012 [Section 3.2(C)].
D. Only one access point per lot, with the exception of a utility easement, is proposed. This meets the requirement of Section 3.2(D)(2).
E. Additional accesses shall require review and approval of the Selectboard or the DRB in accordance with Section 3.2(D)(3).
F. The proposed width of the access to Lot 2 does not extend along the length of the road frontage [Section 3.2(D)(5)] .
G. The subdivision is an allowed development in the Rural Residential and Soil and Water Conservation zoning districts. Lot 2 will be located entirely within the Rural Residential zoning district [Section 3.2(D)(6)].
H. Neither of the proposed lots will be corner/through lots after subdivision [Section 3.2(D)(7)].
I. No shared driveways are proposed as only two lots will result from the subdivision. Topography prohibits creating a shared driveway in conformance with the regulations [Section 3.2(D)(8)].

J. The Lot 2 access meets the requirements of Section 3.2(D)(9), and an Access Permit application was approved by the Selectboard on March 15, 2012.
K. Sections 3.2(D)(10) and (11) are not applicable.

Section 3.7, Lot, Yard & Setback Requirements

The Board makes the following findings on the application as proposed:

A. The application as proposed meets the requirements of Sections (A) and (B). Sections (C) and (D) are not applicable.
B. No waivers have been requested [Section 3.7 (E)].

Section 3.19, Surface Waters & Wetlands

The Board makes the following findings:

A. No stream alterations or crossings are proposed in the application [Section 3.19(C)].
B. The building envelope and proposed driveway meet all required setbacks [Section 3.19(D)(2), (3)].
C. The proposed septic system meets the required setbacks [Section 3.19(D)(4)].
D. The wetland buffer requirements will be incorporated into conditions of approval [Section 3.19(D)(6)].
E. No encroachments are proposed in the application [Section 3.19(E)].
F. The prohibition of new lawn areas within buffers will be incorporated into conditions of approval [Section 3.19(E)(3)].

Section 3.22, Water Supply & Wastewater Systems

The Board makes the following findings:

A. The proposed septic system design for Lot 2 and a replacement system for Lot 1 are being reviewed by the Vermont Department of Environmental Conservation Wastewater Management Division. Submission of an approved Wastewater System and Potable Water Supply Permit will be considered in fulfillment of this section [Section 3.22 (A) and (C)(1), (2)].
B. The Underhill-Jericho Water District does not provide service to the area of the proposed subdivision. Water will be supplied to Lot 2 via the proposed well and to Lot 1 via the existing well [Section 3.22(B)(1)].
C. Section 3.22(C)(3) is not applicable as there are no mapped Special Flood Hazard Areas in the vicinity of the proposed subdivision.
D. The proposed septic system on Lot 2 and the replacement septic area on Lot 1 meet all setback requirements from surface waters and wetlands [Section 3.22(C)(4)].
E. The proposed septic system is not located in a designated Source Protection Area [Section 3.22(C)(5)].
F. Section 3.22(D) is not applicable as no off-site septic systems are proposed.

Section 7.6, Subdivision Review, Final Subdivision Review

The Board makes the following findings:

A. The preliminary subdivision review requirement was waived at the sketch plan review meeting on December 5, 2011 in conformance with Section 7.5(B).
B. The submission requirements of Section 7.6(B) and the hearing requirements of Section 7.6(C) were fulfilled.
C. This decision is written in fulfillment of Section 7.6(D).

Article VIII, Subdivision Standards

The Board makes the following findings:

A. The Applicant's consultant provided responses to applicable sections of Article VIII on the Findings Checklist. The Board accepts these responses and makes supplemental findings where applicable [Section 8.1(C)].
B. The land, as evidenced by the submission of plans compliant with all district dimensional standards, is suitable for the intended use and proposed density of development, and will not result in undue adverse impacts to public health and safety, the natural environment, neighboring properties and uses, or the character of the area. Wetland buffers and setbacks will be met as shown on the plans [Section 8.2(A)].
C. The proposed subdivision meets the requirements of Sections 8.2(B) through (I). No pedestrian access is proposed for the private development. Topography prevents developing the land with a shared driveway in conformance with design requirements; therefore, the proposed lots are slightly irregular to meet minimum frontage requirements and driveway design requirements for Lot 2.
D. Section 8.2(J) is not applicable as the orientation of the house within the proposed building envelope will be at the discretion of the owner.
E. No comments have been received from the Underhill Conservation Commission regarding the proposed subdivision. No mapped floodplains, designated source protection areas, deer wintering areas, or animal corridors are located on the parcel [Section 8.3(A)].
F. Section 8.3(B)(5) will be a condition of approval. See Section IV below.
G. Development has been proposed to avoid areas of 18% - 22% slope that exist on the property in accordance with Section 8.3(C).
H. No wildlife habitat or travel corridors have been identified in the vicinity of the proposed development [Section 8.3(D)].
I. Sections 8.3(E), (F), and (G) are not applicable as no historic or cultural resources, farmland, or forestland exist on the property.
J. Wetlands and their associated buffers are shown on the site plan. The wetland buffer requirements will be incorporated into conditions of approval in fulfillment of Section 8.4(A). Section 8.4(B) is not applicable as no common land is proposed. Language requiring compliance with setbacks and buffers will be incorporated into deeds to the lots and will be a condition of final approval.
K. Erosion prevention and sediment control plans have been submitted with the final application in fulfillment of Section 8.5.
L. The application meets the requirements of Section 8.6(A) as only one curb cut onto Cilley Hill Road was proposed, and the driveway to Lot 2 meets the driveway design requirements. An Access Permit application for the curb cut was approved by the Selectboard on March 15, 2012.

M. The application meets the requirements of Section 8.6(C) as no common or shared parking areas are proposed, and the parking area for Lot 2 is proposed within the building envelope.

N. Sections 8.6(B), (D), and (E) are not applicable as the application does not include the creation of a private development road, no transit or bus stop shelters are required, and no pedestrian access has been proposed for the private development.

O. The application meets the requirements of Section 8.7 as letters from the Chittenden East Supervisory Union and Underhill Jericho Fire Department indicate their ability to provide services to the proposed subdivision, a State Wastewater System and Potable Water Supply Permit application was submitted and is under review, and utilities will be underground in the easement location shown on the plans. While the Town regulations allow a maximum 12% average driveway grade over any 50-foot section, the Underhill Jericho Fire Department's review indicates that service is not an issue provided the driveway grade is no greater than 10%. It is recommended that that the owner of Lot 2 contact the Fire Department for any questions regarding service. Changes to the driveway plans may require additional review and approval by the Underhill Selectboard.

P. Submission and recording of deeds incorporating buffer and setback requirements to the wetland on the property, as well as the utility easement, will be a condition of final approval.

Q. Per Section 8.1(D), all Sections above considered not applicable are waived. The Board finds that waiving such requirements will not nullify the intent and purpose of the 2011 Unified Land Use and Development Regulations or the Underhill Town Plan, and such waivers are not requisite in the interest of the public health, safety and general welfare. Sufficient evidence, in the form of submitted permit applications and plan layout, has been submitted to justify the waivers.

Underhill Road Policy, Vermont Agency of Transportation B-71 standard

A. The Board finds that the proposed driveway to Lot 2 has been designed to meet all applicable standards and that an Access Permit application was approved by the Selectboard on March 15, 2012.

IV. DECISION AND CONDITIONS

Based upon the findings above, and subject to the conditions below, the Development Review Board grants approval for the 2-lot subdivision as presented at the final hearing.

A. The parcel code for Lot 2, CH441, shall appear on the final Mylars.

B. Per Section 3.2(D)(3), no additional access rights to a public highway shall automatically result from the subdivision or re-subdivision of Lots 1 and 2. Changes to the approved curb cut are the jurisdiction of and shall be reviewed by the Selectboard.

C. Per Section 3.19(D)(6), 50-foot Class II and 25-foot Class III wetland buffers shall be maintained as undisturbed, naturally-vegetated buffers. Wetlands and their associated buffers shall appear on the final site plan and plat as open space per Sections 8.3(B)(5), 8.4(A), and 8.8.

D. Per Section 3.19(E)(3), the creation of new lawn areas within buffers is not permitted.

E. A copy of the Wastewater System and Potable Water Supply Permit and engineer's certification letter shall be submitted prior to issuance of a Certificate of Occupancy on Lot 2 [Section 3.22(E)].

F. Per Section 7.2(B), no land shall be subdivided until final subdivision approval has been obtained from the DRB and the approved subdivision plat is recorded in the Underhill land records.

G. No transfer, sale or long-term lease of title to property as defined under 32 VSA §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 the DRB and the final Mylars have been recorded in the Underhill Land Records [Section 7.2(C)].

H. Deeds shall incorporate the provisions of (B) above as well as the utility easement over Lot 2.

I. Final subdivision approval shall not be construed to constitute acceptance by the Town of Underhill of any street, easement, utility, park, recreation area, or other open space shown on the final plat.

J. The final plat and engineering site plan shall be submitted in accordance with Section 7.7.

K. All subdivision and recording fees must be paid in full prior to recording a subdivision plat in accordance with Section 7.7(B).

L. The E-911 code for Lot 2, CH441, shall be posted per the Underhill Jericho Fire Department specifications prior to issuance of a building permit.

Dated at Underhill, Vermont this 1st day of May, 2012.

Charles Van Winkle

Charles Van Winkle, 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. Appeal period ends 31 May 2012.