

TOWN OF UNDERHILL
APPLICATION OF DEBORAH A. & EDWIN T. MOORE III
FOR A REVISED APPROVAL TO A 3-Lot PUD (SUB-10-07)
FINDINGS AND DECISION

In re: Deborah A. & Edwin T. Moore III
122 Stevensville Road
Underhill, VT

Docket No. DRB-13-12: Moore

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns the applicant's hearing for a dimensional requirement waiver on a lot benefiting from a May 28, 2010 approval as part of a 3-lot PRD subdivision, located at 122 Stevensville Road in Underhill, VT.

- A. On September 25, 2013, Edwin T. 'Tom' Moore III filed an application for a revision to the original subdivision for the property. That PRD Subdivision received final approval on May 28, 2010.
- B. After a deficient notice for a hearing on October 21, 2013. A hearing was scheduled for November 4, 2013. On October 18, 2013, a copy of the notice of preliminary hearing was mailed via Certified Mail to the following owners of properties adjoining the property subject to the application:
 - 1. Moore, P.O. Box 24., Underhill Center, VT 05490
 - 2. Abbott, 119 Stevensville Rd., Underhill, VT 05489
 - 3. Kusserow, P.O. Box 125, Underhill Center, VT 05490
 - 4. McClellan 126 Stevensville Rd., Underhill, VT 05489
 - 5. Lamphere, 178 Beartown Rd., Underhill, VT 05489
 - 6. Pedrotty, 177 Beartown Rd., Underhill, VT 05489
 - 7. Moore, P.O. Box 63, Underhill Center, VT05490
- C. On October 18, 2013, notice of the public hearing for the proposed Moore subdivision revision was posted at the following places:
 - 1. The Underhill Town Clerk's office;
 - 2. The Underhill Country Store;
 - 3. Wells Corner Market;
 - 4. The Underhill Center Post Office;
 - 5. The Underhill Flats Post Office;
 - 6. Jacobs IGA;
- D. On October 17, 2013, notice of the public hearing was published in *The Burlington Free Press*.
- E. The hearing began at 6:30 PM on November 4, 2013. The Moore application was the third (3rd) item on the agenda.

- F. Present at the hearing were the following members of the Development Review Board: Charles Van Winkle, Shanie Barlett, Matt Chapek, Mark Hamelin, Karen McKnight, Penny Miller and Helen Wagner. Acting Administrative Officer Brian Bigelow and Applicant, Tom Moore III also attended the hearing.
- G. 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.” No interested parties attended the hearing.
- H. During the course of the hearing the following exhibits were submitted to the Development Review Board:
1. A staff report sent by Acting Administrative Officer Brian Bigelow to the Development Review Board, the Applicants, the Selectboard, the Underhill Jericho Fire Department, and the Conservation Commission Chair;
 2. Deborah and Edwin Moore’s Application for Subdivision: Final (dated 10-7-13);
 3. A copy of the completed Subdivision Checklist: Final Hearing;
 4. A copy of the plans prepared by Willis Design Assoc., Inc. (Project #09-037, Sheet S1 latest revised date 3/22/10) and subsequently modified by the applicant.
 5. A copy of the original Subdivision Permit for the PRD;
 6. A copy of the hearing notice as published in *The Burlington Free Press* on 10-17-13, mailed to abutters and posted in six locations within the Town of Underhill;
 7. A copy of the Findings Checklist;

These exhibits are available in the Moore, ST122, subdivision file (DRB-13-12) at the Underhill Zoning & Planning Office.

II. FINDINGS

Factual Findings

The Minutes of the meetings written by Karen McKnight 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 revised subdivision to a previously approved Planned Residential Development to include a 20’ waiver to the side yard setback for an accessory structure. The subject property is a ±3.08-acre parcel located at 122 Stevensville Road in Underhill, VT (IS449).
- B. The property is located in the Water Conservation zoning district as defined in Article II, Table 2.4 of the 2012 Unified Land Use and Development Regulations.
- C. Subdivision approval is requested for the project pursuant to review under the following sections of the of the 2012 Unified Land Use and Development Regulations:

- Article 2, Table 2.4 - Water Conservation District
- Article 2, Table 2.4.D - Dimensional Standards
- Article 2, Table 2.4.E.6 – Supplemental District Standards:
- Article IX, Section 9.4 - Review Process

III. CONCLUSIONS

Applicable Regulation Standards

Article II, Table 2.4, and 2.4.D Water Conservation District

1. **The Board finds that the application, with exception noted below, meets all of the applicable dimensional standards. The applicants are requesting a waiver from the required (West) side setback of the full 20 feet required under Table 2.4.D. Planned Residential Developments (PRDs) are allowed within the Water Conservation District. Dimensional standards may be modified or varied accordingly under Article IX.**

Article IX Planned Unit Development, Section 9.4 Review Process

A. Applications for PUD or PRD approval shall be reviewed by the Development Review Board concurrently with an application for subdivision review, in accordance with the review process for major subdivisions under Article VII and the following:

1. Approved modifications and other conditions of approval shall be specifically identified in the written decision granting subdivision and planned development approval and noted on or appended to the survey plat and recorded in the land records.
2. If the application of PUD or PRD provisions results in land and/or facilities to be held in common, and/or to be reserved for the preservation of open space, it must meet associated management, legal and recording requirements for such lands and facilities under Sections 8.3, 8.4 and 8.8.
3. The DRB, in approving modifications from zoning density and dimensional requirements, may condition the approval as necessary to mitigate the adverse impacts of higher density development on significant natural, cultural and scenic resources (under Section 8.3), transportation facilities (Section 8.6), public facilities and services (under Section 8.7) and neighboring properties. These may include:
 - a. Limits on the density of development allowed on portions of the site to be developed.
 - b. Increases or decreases in lot sizes, setbacks and building heights near adjoining properties.
 - c. Landscaping, screening or buffer areas.
 - d. Other mitigation measures as recommended by the applicant, state or town officials, or other interested persons during the hearing process.

2. The Board finds that the proposed change to the original Moore PRD (approved May 28, 2010) of an accessory structure on Lot #3 with a zero foot setback from the interior PRD Lot line shared with Lot #1 would not create adverse impacts.
3. The Board finds an absence of new lots being created, an absence of new uses being proposed, and no increase in density or intensity of use.
4. The Board finds that the additional dimensional waiver being sought is consistent with the Town Plan and the purpose of the Water Conservation District,
5. The Board finds that the location proposed for the accessory structure minimizes site disturbances and adverse physical or visual impacts to natural and scenic features and adjoining properties, uses and public rights-of-way and is consistent with the original approval.

IV. DECISION AND FINAL HEARING REQUIREMENTS

Based upon the findings above, and subject to the conditions below, the Development Review Board grants Final Subdivision approval for the proposed revision and modification of a dimensional requirement to the previously approved 2010 Planned Residential Development.

- A. A 20 foot waiver is granted from the 20 foot side yard setback dimensional requirement to the benefit of an accessory structure on Lot#3. The waiver allows for a zero side yard setback from the West side lot line shared with Elizabeth and Edwin T. Moore II of 118 Stevensville Road, as shown on the site plan submitted with the application.
- B. Prior to making application for a Zoning Permit a revised mylar depicting the approved location for the accessory structure shall be prepared and recorded in the Town Land Records.
- C. Prior to issuance of a zoning permit, the location of the approved shed shall be fixed in the field by a land surveyor and off set steaks shall be held in place until completion of construction.
- D. All permit conditions from Subdivision SUB-10-07 that are unchanged by the approval remain in effect.

Dated at Underhill, Vermont this 18 day of November, 2013.



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 DEC 17, 2013