

TOWN OF UNDERHILL  
APPLICATION OF ANDREW GRAB  
FOR A 2-LOT SUBDIVISION  
PRELIMINARY FINDINGS AND DECISION

In re: Andrew Grab  
449 Irish Settlement Road  
Underhill, VT 05489

Docket No. DRB-13-10: Grab

**I. INTRODUCTION AND PROCEDURAL HISTORY**

This proceeding concerns Andrew Grab's preliminary hearing application for a 2-lot subdivision of property located at 449 Irish Settlement Road in Underhill, VT.

- A. On July 1, 2013, Andrew Grab filed an application for subdivision for the project. A sketch plan review of the project was held on July 29, 2013 and was accepted.
- B. Application for Preliminary Approval was made on October 7, 2013. A hearing was scheduled for November 4, 2013 at that time. 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. Jacobs, 455 Irish Settlement Rd., Underhill, VT 05489
  2. Church, 460 Irish Settlement Rd., Underhill, VT 05489
  3. Hovencamp, 444 Irish Settlement Rd., Underhill, VT 05489
  4. Martin, 416 Irish Settlement Rd., Underhill, VT 05489
  5. Berry, 461 Irish Settlement Rd., Underhill, VT 05489
  6. Goslin, 429 Irish Settlement Rd., Underhill, VT 05489
- C. On October 18, 2013, notice of the public hearing for the proposed Grab subdivision 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 Grab application was the fourth (4<sup>th</sup>) item on the agenda and began at the conclusion of the 3<sup>rd</sup> agenda item (Moore).

- F. Present at the preliminary hearing were the following members of the Development Review Board: Charles Van Winkle, Shani Bartlett, Matt Chapek, Mark Hamelin, Karen McKnight, Penny Miller and Helen Wagner.

Acting Administrative Officer Brian Bigelow, and Applicant Andy Grab and Consultant Larry Young, Summit Engineering also testified at 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." Those who spoke at the hearing were:

- Ryan Goslin, 429 Irish Settlement Road, Underhill, VT 05489

- 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 to the Development Review Board, the Applicants, the Selectboard, the Underhill Jericho Fire Department, and the Conservation Commission Chair;
2. Andrew Grab's Application for Subdivision: Preliminary (dated 10-7-13);
3. A copy of the plans prepared by Summit Engineering, Inc., (Project #8263: Sheets B1, W1 and D1) dated 10/7/13. In addition, at the hearing the Applicant presented a revised version of Plan Sheet W1 dated 11/1/13;
4. A copy of a map created using the Vermont Agency of Natural Resources Atlas.
5. A copy of a portion of NFIP/FIRM panel 185D (Map Number: 50007C0185D, effective July 18, 2011);
6. A copy of a portion of the Vermont Agency of Transportation Standard B-71 'Standards for Residential and Commercial Drives';
7. A copy of the tax map for IS449;
8. A copy of the minutes from the 7-29-13 Sketch Plan meeting;
9. A copy of the hearing notice as published in *The Burlington Free Press* on 10-17-13, posted in six public places, and mailed to abutting property owners;
10. Copy of October 25, 2013 input from the Chittenden East Supervisory Union
11. Copy of October 29, 2013 input from the Underhill-Jericho Fire Department.

These exhibits are available in the Grab, IS449, subdivision file (DRB- 13-10) at the Underhill Zoning & Planning Office.

## II. FINDINGS

### Factual Findings

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

- A. The Applicant seeks a permit to subdivide land. The subject property is a ±8.0-acre parcel located at 449 Irish Settlement Road in Underhill, VT (IS449).

- B. The property is located in the Rural Residential zoning district as defined in Article II, Table 2.3 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 2012 Unified Land Use and Development Regulations:
- Article II, Table 2.3 – Rural Residential District
  - Article II, Table 2.7 – Flood Hazard Overlay District
  - Section 3.2 – Access
  - Section 3.7 – Lot, Yard & Setback Requirements
  - Section 3.13 – Parking, Loading & Service Areas
  - Section 3.17 Source Protection Areas
  - Section 3.19 – Surface Waters & Wetlands
  - Section 3.22 – Water Supply & Wastewater Systems
  - Section 7.2 – Applicability
  - Section 7.5 – Preliminary Subdivision Review
  - Article VIII – All
- D. Access approval is requested pursuant to review under the 2002 Underhill Road Policy and the 2012 Unified Land Use and Development Regulations. Final review of the access will be made by the Selectboard. DRB recommendations will be submitted to the Selectboard for their consideration and review of the Access Permit.
- E. Abutter Ryan Goslin provided testimony at the hearing regarding his preference for the existing trees to be retained as a buffer. Specifics may be found in the minutes.
- F. Applicant is the sole owner of the property.

### III. CONCLUSIONS

#### **Applicable Regulation Standards**

##### *Article II, Table 2.3, Rural Residential District*

The Board finds that the subdivision as presented on the revised plan sheet W1 (dated 11/1/13) meets all of the applicable dimensional standards. The building envelope was adjusted on this plan sheet to be outside of the rear/side setback. See Conclusions for *Section 3.7*.

##### *Article II, Table 2.7, Flood Hazard Overlay District*

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

- A. No portion of this property lies within a Flood Hazard area as depicted on Map Panel 0185D effective July 18, 2011.

##### *Section 3.2, Access*

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

- A. Access for the subdivision is proposed with adequate frontage on Irish Settlement Road.
- B. Section 3.2(B) is not applicable to the subdivision as it does not involve a nonconforming lot.
- C. As the access for the subdivision is proposed off of Irish Settlement Road, approval from the Selectboard is required for the curb cut [Section 3.2(C)].
- D. The proposed access has been reviewed by Harry Schoppmann of the Underhill Jericho Fire Department.
- E. Only one new access point to serve the subdivision is proposed. This meets the requirement of Section 3.2(D)(2).
- F. A new access is recommended for this new lot because a stream runs between the existing driveway and the new proposed driveway making a shared driveway situation not possible in this circumstance. [Section 3.2(D)(3)]
- G. The proposed width of the access does not extend along the length of the road frontage [Section 3.2(D)(5)].
- H. The subdivision is an allowed development in the Rural Residential zoning district [Section 3.2(D)(6)].
- I. Section 3.2(D)(7) is not applicable as the lot is not a corner lot.
- J. Regarding Section 3.2(D)(8) a shared driveway is not proposed within this application. A stream runs between the existing lot and the proposed lot, prohibiting the opportunity for establishing a shared driveway.
- K. Regarding Section 3.2(D)(9) the proposed driveway meets minimum requirements per the Vermont Agency of Transportation B-71 standard for residential drives. The proposed driveway will be located within prime agricultural soils as shown on the ANR Natural Resources Atlas. The majority of the property is identified as prime agricultural soils, therefore relocating the driveway outside of these soils would not be feasible. The average finished grade of the driveway as proposed will be less than 12% as measured over any 50-foot section, and will be less than 500 feet in length.
- L. Section 3.2(D)(10) is not applicable as no private development roads are proposed.
- M. No Class IV road accesses are proposed with the subdivision [Section 3.2(D)(11)].

*Section 3.7, Lot, Yard & Setback Requirements*

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

- A. Only one principal structure is proposed per lot [Section 3.7(A)].
- B. The subdivision meets the requirements of Section 3.7(B). The building envelope was adjusted on the W1 Site Plan (dated 11/1/13) to be outside of the rear/side setback.
- C. The subdivision will not be served by a private development road [Section 3.7(C)].
- D. No corner lots are proposed [Section 3.7(D)].
- E. No waivers are needed in accordance with Section 3.7(E).

*Section 3.13, Parking, Loading & Service Areas*

The Board finds that the subdivision as presented provides adequate space for off-street parking for the single family dwelling on the new proposed lot.

*Section 3.17 Source Protection Areas*

The Board finds that this proposed development is outside of the groundwater source protection area.

*Section 3.19, Surface Waters & Wetlands*

The Board finds that all proposed structures and impervious surfaces are more than 25 feet away from the un-named stream generally running along the proposed northern property line. No development or encroachments are proposed within the riparian buffer or setback. According to the ANR Natural Resources Atlas there are no wetlands on the property.

*Section 3.22, Water Supply & Wastewater Systems*

The Board makes the following findings:

- A. The applicant has **not** yet submitted evidence to indicate whether the proposed septic system design for the lot in the subdivision has been reviewed by the Vermont Department of Environmental Conservation Wastewater Management Division. A Vermont Agency of Natural Resources and Natural Resources Board Project Review Sheet has **not** been submitted with the preliminary plans. Submission of an approved Wastewater System and Potable Water Supply Permit and a Project Review Sheet will be considered in fulfillment of this section [Section 3.22 (A), (C)(1), and (E)].
- B. The septic system is not proposed within the riparian buffer or setback [Section 3.22(C)(4)].
- C. Section 3.22(C)(5) is not applicable as the proposed subdivision is not located within a Source Protection Area.
- D. Section 3.22(D) is not applicable as no off-site septic systems are proposed.

*Section 7.2, Subdivision Review, Applicability*

The Board makes the following findings:

- A. The proposal qualifies as a subdivision per Section 7.2(C).
- B. The proposed subdivision does not qualify for an exemption under Section 7.2(D).

*Section 7.3, Sketch Plan Review*

- A. The proposed subdivision was classified as a minor subdivision during the sketch plan review on July 29, 2013 per Section 7.3(D).

*Section 7.5, Subdivision Review, Preliminary Subdivision Review*

The Board makes the following findings:

- A. It was determined at the sketch plan hearing on July 29, 2013 that preliminary subdivision review would not be waived in accordance with Section 7.5(B).
- B. The submission requirements of Section 7.5(C) and the hearing requirements of Section 7.5(D) were fulfilled, with the exception of a state project review sheet.
- C. This decision is written in fulfillment of Section 7.5(E).

*Article VIII, Subdivision Standards*

The Board makes the following findings:

- A. The Applicants submitted the Subdivision Standards Findings Checklist. This document will be reviewed at the final subdivision hearing [Section 8.1(C), Sections 8.2 through 8.8].
- B. As discussed at the sketch plan hearing, preservation of existing trees, tree lines and wooded areas is recommended for screening purposes in accordance with Section 8.2[1]. The proposed building envelope on the site plan appears to preserve these areas.
- C. Regarding Section 8.3(F) the building envelope has not been located and configured to avoid the primary agricultural soils and open fields. However, the building envelope as re-configured to accommodate the side/rear setback now limits the amount of potential disturbance.
- D. The Applicants have submitted temporary and permanent stormwater management and erosion control measures on the revised Site Plan (sheet W1 dated 11/1/13) in accordance with Section 8.5.

*Underhill Road Policy, Vermont Agency of Transportation A-76 and B-71 standards*

The Board finds that the proposed development road and driveways meet the Vermont Agency of Transportation A-76 and B-71 standards.

**IV. DECISION AND FINAL HEARING REQUIREMENTS**

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

- A. A proposed deed for the new lot has not yet been submitted. If a proposed deed is required it shall be submitted with the application for final subdivision review.
- B. A copy of the Vermont Agency of Natural Resources and Natural Resources Board Project Review Sheet shall be submitted with the application for final subdivision review.
- C. The proposed curb-cut shall be flagged and inspected by the Town Road Foreman in accordance with the Underhill Road Policy prior to filing an application for final subdivision review.
- D. An Access Permit shall be obtained from the Selectboard prior to filing an application for final subdivision review in accordance with Section 8.6(A)(3).
- E. A copy of the Wastewater System and Potable Water Supply Permit shall be submitted with the application for final subdivision review.
- F. The Board approves one (1) principal dwelling on Lot 2. The Board acknowledges the principal dwelling on Lot 2 is intended to be, and has the wastewater capacity to be, a single family dwelling containing a maximum of 4 bedrooms.
- G. Nothing in this decision shall be deemed to alter any existing deed restrictions or c

Dated at Underhill, Vermont this 21 day of Nov, 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 20 DEC 2013

