TOWN OF UNDERHILL
APPLICATION OF ANDREW GRAB
FOR A 2-LOT SUBDIVISION
FINAL 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 Grabs' final hearing application for a 2-lot subdivision of property located at 449 Irish Settlement in Underhill, VT.

A. On July 1, 2013, Andrew Grab filed an application for subdivision for the project. A copy of the application materials and additional information are available at the Underhill Town Hall. A sketch plan meeting was held on July 29, 2013.

B. Application for Preliminary Approval was made on October 7, 2013. A Preliminary hearing was held on November 4, 2013. On October 18, 2013, a copy of the notice of preliminary hearing was mailed via Certified Mail to owners of properties adjoining the property subject to the application.

C. Application for Final Approval was made on January 6, 2014. The Final hearing was held on February 3, 2014.

D. On January 10, 2014, a copy of the notice of the final hearing was mailed via Certified Mail to the Applicant, Andrew Grab, 449 Irish Settlement Rd., Underhill, VT 05489, and to the following owners of properties adjoining the property subject to the application:

1. Jacobs, 455 Irish Settlement Road, Underhill, VT 05489
2. Church, 460 Irish Settlement Road, Underhill, VT 05489
3. Hovencamp, 444 Irish Settlement Road, Underhill, VT 05489
4. Martin, 416 Irish Settlement Road, Underhill, VT 05489
5. Berry, 461 Irish Settlement Road, Underhill, VT 05489
6. Goslin, 429 Irish Settlement Road, Underhill, VT 05489

E. Notice of the Final hearing on the proposed Jacobs subdivision was posted at the following places:

1. The property to be developed, IS449
2. The Underhill Town Clerk's office;
3. The Underhill Center Post Office;
4. The Underhill Flats Post Office;

F. On January 18, 2014, notice of a final hearing was published in the *Burlington Free Press.*

G. The hearing began at 6:30 PM on February 3, 2014. The Grab application was the second (2nd) item on the agenda and began at the conclusion of the 1st agenda item (Allendorf Appeal).

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

- Charles Van Winkle, Chairperson
- Will Towle,
- Matt Chapek
- Penny Miller
- Karen McKnight
- Shanie Bartlett
- Mark Hamelin

Zoning & Planning Administrator Sarah McShane, Town Administrator Brian Bigelow, and Consultant Larry Young also attended the hearing.

I. At the outset of the hearing, Chairperson 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:

- Andrew Grab, 449 Irish Settlement Rd., Underhill, VT 05489 (Applicant/Landowner, 449 Irish Settlement Road IS449))

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

- Larry Young, Summit Engineering, Inc., 1233 Shelburne Rd C2, South Burlington, VT 05403

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

a. A staff report sent by Zoning & Planning Administrator to the Development Review Board, the Applicants, the Selectboard, the Underhill Jericho Fire Department, and the Conservation Commission Chair;
b. Andrew Grab's Application for Subdivision: Final (dated 1-6-14);
c. Copy of the plans prepared by Summit Engineering, Inc., (Project #8263: Sheets B1, W1 and D1) dated 10/7/13;
d. Copy of a map created using the Vermont Agency of Natural Resources Atlas.
e. Copy of a portion of NFIP/FIRM panel 185D (Map Number: 50007C0185D, effective July 18, 2011);
f. Copy of a portion of the Vermont Agency of Transportation Standard B-71 'Standards for Residential and Commercial Drives";
g. Copy of the tax map for IS449;

h. Copy of the minutes from the 7-29-13 Sketch Plan meeting; 11-4-13 Preliminary Hearing meeting.
i. Copy of the hearing notice as published in *The Burlington Free Press* on 1/18/2014, posted in three public places, and mailed to abutting property owners;
j. Copy of October 25, 2013 input from the Chittenden East Supervisory Union;
k. Copy of October 29, 2013 input from the Underhill-Jericho Fire Department.
l. Copy of the Findings Checklist
m. Copy of the draft warranty deed
n. Copy of the DEC and Natural Resources Board Project Review Sheet

These exhibits are available in the Grab, IS449, subdivision file at the Underhill Zoning Office.

II. FINDINGS

Factual Findings

The Minutes of the meetings written by Sarah McShane 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 Applicant seeks a permit to subdivide land. The subject property is a ±8.04 acre parcel located at 449 Irish Settlement Road in Underhill, VT (IS449).

B. The property is located in the Rural Residential zoning districts 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 2012 Unified Land Use and Development Regulations.

D. Testimony was received during the Final hearing from Andrew Grab, his consultant Larry Young, and Zoning Administrator Sarah McShane.

III. CONCLUSIONS

Applicable Regulation Standards

Article II, Table 2.3 Dimensional Standards

The Board makes the following findings:

A. The proposed subdivision will result in two lots: Lot 1 will be +- 4.98 acres and contain an existing dwelling. Lot 2 will be +- 3.06 acres. The Board finds both lots as proposed meet the minimum lot size requirements [Table 2.3(D)].

B. The proposed building envelope for Lot 2 meets the setback requirements for principal and accessory structures [Section 2.3(D)].

Article II, Table 2.7, Flood Hazard Overlay District

The Board makes the following findings:

A. No portion of the 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:

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. Section 3.2(D)(10) is not applicable as no private development roads are proposed.
L. 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:

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 the proposed development is outside of the groundwater source protection area.

Section 3.19, Surface Waters & Wetlands

The Board makes the following findings:

A. 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 [Section 3.19(D)].
B. No development or encroachments are proposed within the riparian buffer or setback. Section 3.19(E)].
C. There are no wetlands on the property according to the ANR Natural Resources Atlas.

Section 3.22, Water Supply & Wastewater Systems

The Board makes the following findings:

A. The applicant has submitted for recording in the Land Records an approved Wastewater System and Potable Water Supply Permit, approved by the Vermont Department of Environmental Conservation Wastewater Management Division.
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 7.6, Subdivision Review, Final Subdivision Review

The Board makes the following findings:

A. The Applicant satisfied the submission requirements of Section 7.6(B)
B. A hearing was held on February 3, 2014 in accordance with Section 7.6(C).
C. This decision is written in fulfillment of Section 7.6(D).

Section 7.7, Plat Recording Requirements

The requirements of Section 7.7 will be conditions of approval. See Decision and Conditions below.

Article VIII, Subdivision Standards

The Board makes the following findings:

A. The Applicant has 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 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 [Section 8.2(A)].
C. The proposal is for the subdivision of one new residential lot of +- 3.06 acres out of 8.04 acres. The proposal is within the density calculations for the land [Section 8.2(B)].
D. The proposed subdivision is located within the Rural Residential Zoning District, an area identified in the Town Plan to "afford medium density residential development along the roads where houses have been traditionally built and where soil cover is thicker than on the hillside." [Section 8.2(D)].
E. Lot 2 is configured for one residential building lot with a building envelope that complies with the setback requirements of the Rural Residential Zoning District. [Sections 8.2 (F), (G)].
F. The proposed subdivision creates 0.10 acres of impervious surface and therefore does not require coverage under General Permit 3-9010. See revised Site Plan (sheet W1 dated 11/1/13) (Section 8.5).
G. The proposed subdivision is in conformance with the Underhill Highway Ordinance as required by Section 8.6 (A)(9).
H. Sections 8.6(B) through (E) are not applicable as the application does not include the creation or extension of a private development road, no common or shared parking areas are proposed, no transit or bus stop shelters are required, and no pedestrian access has been proposed for the private development.
I. A private drilled well and septic system will serve Lot 2.
J. The application meets the requirements of Section 8.7 as a letter from the Underhill Jericho Fire Department indicates their ability to provide services to the proposed subdivision, and an approved State Wastewater System and Potable Water Supply Permit has been submitted.
K. Submission and recording of deeds is a condition of final approval [Section 8.8].
L. The Board finds the development is in conformance with:

    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 Area
    Section 3.17- Source Protection Areas
    Section 3.19- Surface Waters & Wetlands
    Section 3.22- Water Supply & Wastewater Systems
    Section 7.2- Applicability
    Article VIII- Subdivision Standards

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 2012

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 testimony and plan layout, has been submitted to justify the waiver.

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

The Board makes the following findings:

A. The development driveway meets the Vermont Agency of Transportation A-76 and B-71 standards. The proposed curb-cut was inspected by the Town Road Foreman and Town Administrator on January 9, 2014 and reviewed for conformance with the Underhill Road Policy.
B. The Selectboard approved and issued an access permit on January 30, 2014.

IV. DECISION AND CONDITIONS

Based upon the findings above, the Development Review Board unanimously grants approval for the 2-lot subdivision as described at the hearing and in the submitted application documents, with the following conditions:

A. The parcel codes for Lot 1 (IS449) and Lot 2 (IS445) shall appear on the final Mylars.

B. The survey shall include the most recent revision date.

C. 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 [Section 3.22(E)].

D. 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.

E. 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)].

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

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

H. The E-911 codes for Lot 1 (IS449) and Lot 2 (IS445) shall be posted per the Underhill Jericho Fire Department specifications prior to issuance of a building permit.

Dated at Underhill, Vermont this 24 day of February, 2014.

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_____.