



# Town of Underhill

## Development Review Board

### Final Findings and Decision

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#### APPLICATION OF JOHN VIGGATO TO CONSTRUCT A SEASONAL DWELLING WITH ACCESS TO A CLASS IV ROAD

In re: John Viggato  
23 Fuller Road (FU023)  
Underhill, VT 05489

Docket No. DRB-17-08

**Decision:** Approved with Conditions (see Section IV for More Details)

#### I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns a site plan review application for the construction of a seasonal dwelling with access to a Class IV Road on property located at 23 Fuller Road (FU023) in Underhill, Vermont.

- A. In early spring, the applicant, John Viggato was in touch with Underhill Planning & Zoning about obtaining an access permit to property he owned at 23 Fuller Road. Upon discussion with the Town Administrator, Staff learned the property accessed a Class IV highway, which required Development Review Board approval per Section 3.2.A of the 2011 Underhill Unified Land Use & Development, as amended March 6, 2012 & March 4, 2014; however, Section 3.2.A did not provide a specific procedure or review mechanism. After further discussion with the Town's attorney and the Board's Chair, Staff determined that the most logical review procedure for the abovementioned project was as a Site Plan Review application.
- B. On April 11, 2017, John Viggato (the applicant) filed an application for a site plan review for the above-mentioned project. The application was accepted and determined to be complete shortly thereafter.
- C. On April 12, 2017, a copy of the notice of the site plan review hearing was mailed via Certified Mail to the following property owners adjoining the property subject to the application:
  - A. FU011 – Jessica M. Remillard & Andrew R. Butler, 11 Fuller Road, Underhill, VT 05489
  - B. FU049 – Jeffrey T. & Angela M. Mouton Trustees of the Ourthore Trust, 49 Highland Road, Underhill, VT 05489
  - C. FU054X – Town of Underhill, P.O. Box 120, Underhill, VT 05489 *[Hand Delivered]*
  - D. IS318 – Jason & Amy Marias, 318 Irish Settlement Road, Underhill, VT 05489
  - E. PV421 – Nancy C. Bradford, P.O. Box 56, Underhill Center, VT 05490
  - F. FU023 – John Viggato, 51 Washington Ave, Natick, MA 01760
- D. During the week of April 9, 2017, notice of the public hearing for the proposed site plan review application was posted at the following locations:

- A. The Underhill Town Clerk's office;
  - B. The Underhill Center Post Office; and
  - C. The Underhill Flats Post Office.
- E. On April 15, 2017, the notice of public hearing was published in the *Burlington Free Press*.
- F. A site visit commenced at the property at 6:00 pm on May 1, 2017. No other parties besides the applicant, Staff and the Board Members identified below attended.
- G. The site plan review hearing began at 6:45 pm on May 1, 2017 at the Town of Underhill Town Hall.
- H. Present at the site plan review hearing were the following members of the Development Review Board:
- A. Chair, Charlie Van Winkle
  - B. Board Member, Matt Chapek
  - C. Board Member, Mark Green
  - D. Board Member, Mark Hamelin
  - E. Board Member, Karen McKnight
  - F. Board Member, Penny Miller
  - G. Board Member, Stacey Turkos

No conflicts of interest were identified prior to the commencement of the hearing, and therefore, no recusals occurred.

Also in attendance was Staff Member Andrew Strniste, Planning Director & Zoning Administrator.

Others present at the hearing were:

- 1. John Viggato, Applicant (23 Fuller Road)
- I. At the outset of the hearing, Chair Van Winkle explained the criteria under 24 V.S.A § 4465(b) for being considered an "interested party." No interested parties attended the hearing; however, the following interested party submitted comment for the Board to consider:
- 1. David Demarest, Neighbor
- J. In support of the final subdivision application, the following exhibits were submitted to the Development Review Board:
- Exhibit A - Viggato Site Plan Review Staff Report
  - Exhibit B - Rules of Procedure Hearing Checklist
  - Exhibit C - Site Plan Review Hearing Request Form
  - Exhibit D - Site Plan Review Findings Checklist
  - Exhibit E - Certificate of Service
  - Exhibit F - Access Permit Application
  - Exhibit G - Building Permit Application
  - Exhibit H - Seasonal Camp Specifications

Exhibit I - Water-Wastewater Permit (WW-4-4101)  
Exhibit J - Vermont Wetlands Program Field Letter  
Exhibit K - ANR Individual Wetland Permit  
Exhibit L - Road Profile Plan  
Exhibit M - Site Plan  
Exhibit N - ANR Slopes Map  
Exhibit O - ANR Stream & Waterbodies Map

The following exhibits were subsequently submitted and distributed prior to the start of the hearing:

Exhibit P - Site Plan with Proposed Cabin Location  
Exhibit Q - Comment from Demarest

The following exhibit was submitted during the hearing:

Exhibit R - ANR Deer Wintering Yards Map

All exhibits are available for public review in the FU023 Site Plan Review file (DRB 17-08) at the Underhill Zoning & Planning office, as well as on the Town's website.

## **II. FINDINGS**

The Minutes of the May 1, 2017 meeting, written by Andrew Strniste, are incorporated by reference into this decision. Please refer to the Minutes for a summary of the testimony.

Based on the submitted application, testimony, exhibits, and evidence, the Development Review Board makes the following findings under the requirements of the Underhill Unified Land Use and Development Regulations (hereafter ULUDR or the Regulations):

### ***FACTUAL FINDINGS***

The applicant, John Viggato, record owner of the property located at 23 Fuller Road (FU023) in Underhill, Vermont, is seeking approval from the Board through the site plan review process regarding the construction of a seasonal dwelling that is accessed by a Class IV Highway.

### ***BACKGROUND FINDINGS***

The Board finds that this application comes into review under Section 3.2 of the Underhill Unified Land Use & Development Regulation, which requires Board approval for development that accesses a Class IV Highway. Since the construction of the proposed seasonal dwelling qualifies as "Development"/"Land Development" under Article XI of the Regulations, the applicant is required to obtain Board approval prior to developing the lot.

After further inspection, Underhill Staff discovered that Section 3.2.A does not provide for a mechanism for review, and after discussing the issue with the Town's attorney and the Chair, Staff determined that the most logical review procedure for the aforementioned application was site plan review.

### ***ZONING DISTRICTS, ARTICLE II*** ***ARTICLE II – ZONING DISTRICTS***

**A. ARTICLE II, TABLE 2.3 – RURAL RESIDENTIAL DISTRICT**

The Board finds that the existing lot and proposed seasonal dwelling meets the requirements of the Underhill Rural Residential District, as the proposed building location of the seasonal dwelling will meet the setback requirements per the requirements in this table.

**GENERAL REGULATIONS, ARTICLE III**

**A. SECTION 3.2 – ACCESS**

The Board defers all factual findings to the Selectboard, and supports any conditions they impose upon the applicant. The Board notes that Section 3.2.A requires the Board to approve “Development” that accesses a Class IV Highway. In Article XI of the Regulation, the term “Development” references “Land Development,” which is defined as:

*The construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or any mining operation, excavation or landfill, and any change in the use of any building or other structure, land or extension of use of land.” [Emphasis Added]*

The definition of “Structure” specifically excludes infrastructure such as driveway. Therefore, the Board finds that Section 3.2.A pertains to the review of the building, and not the driveway. Also noted, the applicant is not proposing a new access way, but rather is proposing to upgrade the existing access way.

The Board, therefore, finds that any modification of, or relocation of, the existing driveway during the Selectboard access permitting process will not require additional review by the Development Review Board and can be administratively reviewed. However, if the driveway were to be relocated from its existing location, and further south into the existing Class II wetlands, the driveway will be considered a new access way. This would require conditional use review per Section 3.19.D.6, as explained below. Furthermore, while the Board is not formally reviewing the proposed driveway upgrades, it finds that the driveway will conform with the requirements of Section 3.2.D, specifically noting that Section 3.2.D.11 does not apply since the proposed development will be used for seasonal use only, and not year-round use.

The Board finds that the lot is in conformance with the minimum frontage requirement of 250 feet, as the front property line measures approximately 1,020 feet.

**B. SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS**

The Board finds that the applicant has designated an approximate building site for a year-round single-family dwelling and the building site of the proposed seasonal dwelling. As proposed, the Board finds that one principal structure, the seasonal dwelling, is being proposed on the single lot, thus meeting the requirements of Section 3.7.A. The existing lot meets the acreage and frontage requirements per Table 2.3. The Board finds that the proposed location of the seasonal dwelling shall meet setback requirements of Table 2.3.D. The Board does not require further review of any subsequent accessory structures, so long as they conform with the zoning regulations in effect at the time of the proposal and can be administratively reviewed.

Furthermore, the Board finds that if the applicant were to subsequently propose the construction of a single-family dwelling, or the conversion of the proposed seasonal use dwelling to a year-round dwelling, conditional use review is required under Section 4.2.B.1.

If Section 4.2.B.1 were to be repealed at any point, the Board finds that conditional use review will still be required as the construction of a single-family dwelling would require the seasonal dwelling to be converted into a detached accessory dwelling.

**C. SECTION 3.13 – PARKING, LOADING & SERVICE AREAS**

The Board finds that the Regulations do not require a minimum parking requirement for seasonal dwellings; however, finds that the applicant will satisfy the parking demand with the access way configuration that is proposed.

**D. ARTICLE III, TABLE 3.1 – MINIMUM OFF-STREET PARKING REQUIREMENTS**

The Board finds that the Regulations do not require a minimum parking requirement for seasonal dwellings; however, finds that the applicant will satisfy the parking demand with the access way configuration that is proposed.

**E. SECTION 3.17 – SOURCE PROTECTION AREAS**

The Board finds that there are no Source Protection Areas located on the lot, and therefore, this Section does not apply.

**F. SECTION 3.18 – STEEP SLOPES**

The Board finds that while the lot contains areas of steep slopes (15-25%) or very steep slopes (>25%), the applicant is proposing to construct the seasonal dwelling in an area that is generally flat, and therefore, this section does not apply.

**G. SECTION 3.19 – SURFACE WATERS & WETLANDS**

The Board finds that Settlement Brook meanders through the property along the western property line. The Board finds that the proposed upgrades to the access way will not occur within the buffer area of Settlement Brook, and therefore, no stream alteration or crossing permits are required.

However, the Board finds that the existing driveway traverses a Class II Wetland near the access point to Fuller Road. As noted above, since the driveway is existing, the impact to the Class II Wetland already exists. The applicant has provided an individual wetland permit (Permit # 2012-100), which authorizes the applicant to proceed with upgrading the existing driveway. Furthermore, the proposed upgrades will impact the wetlands less than they are with the current configuration of the driveway. Note that the applicant is currently in the process of transferring the permit from the previous property owner's name to his.

In addition, there is no mechanism requiring review by the Board for upgrades to a driveway/access way impacting wetlands in the Regulations. Therefore, if the Selectboard were to condition access permit approval on major relocation or significant modification of the driveway to the south thereby further impacting the wetlands, the driveway will be considered new, thus requiring Board review under Section 3.19.D.6.

**H. SECTION 3.22 – WATER SUPPLY & WASTEWATER SYSTEMS**

The Board finds that the property received a Wastewater System and Potable Water Supply Permit (Permit #: WW-4-4101) for a four-bedroom single-family residence, which retains with the property and not with the permit applicant. The Board finds that the applicant is proposing a structure that will not utilize potable water or a wastewater system. The applicant is

responsible to update or obtain any State permits pertaining to wastewater and potable water if he chooses to utilize those systems.

***DEVELOPMENT REVIEW, ARTICLE V***

**A. SECTION 5.3 SITE PLAN REVIEW**

SECTION 5.3.A – PURPOSE

The Board finds that the submitted application and proposed development project is consistent with the purpose of site plan review.

SECTION 5.3.B – STANDARDS

The Board finds the following regarding each subsection:

*SECTION 5.3.B.1 – EXISTING SITE FEATURES*

The Board finds that the proposed seasonal dwelling will avoid the noted resources listed under this subsection. The Board notes that the applicant is proposing to upgrade the driveway; however, since the driveway is existing, and there is no mechanism triggering conditional use review for upgrades/expansion of existing driveways, Board review cannot be provided under these circumstances.

*SECTION 5.3.B.2 – SITE LAYOUT & DESIGN*

The Board finds that the proposed development will be consistent with the Rural Residential zoning district's setting and context.

*SECTION 5.3.B.3 – VEHICULAR ACCESS*

The Board finds that applicant is proposing to upgrade the existing 10-foot driveway to a 12-foot driveway, thus meeting the requirements of the Underhill Road Ordinance. The Board defers to the Selectboard regarding the proposed access way upgrades, noting that any relocation of the existing driveway into the Class II Wetlands located to the south would require conditional use review per Section 3.19.D.6. Access to the lot is from Fuller Road, a Class IV Highway, which comes into Board review under Section 3.2.A.

*SECTION 5.3.B.4 – PARKING, LOADING & SERVICE AREAS*

The Board finds that while the Regulations do not provide parking requirements for seasonal dwellings, the applicant will have adequate parking.

*SECTION 5.3.B.5 – SITE CIRCULATION*

The Board finds that the applicant is proposing a layout that provides adequate and safe on-site vehicular and pedestrian circulation.

*SECTION 5.3.B.6 – LANDSCAPING AND SCREENING*

The Board finds that the applicant will be utilizing natural screening techniques to the maximum extent possible. Furthermore, the applicant will be integrating the seasonal dwelling with the existing vegetation and preserving the forested area to the fullest extent possible.

*SECTION 5.3.B.7 – OUTDOOR LIGHTING*

The Board finds that this subsection does not apply.

SECTION 5.3.B.8 – STORMWATER MANAGEMENT AND EROSION CONTROL

The Board finds that the applicant is proposing to utilize several stormwater management and erosion control techniques as identified in the application.

**SECTION 5.5 – WAIVERS & VARIANCES, ARTICLE V**

The Board waives the following review criteria:

1. Access way review – the Board defers to the Selectboard and supports any conditions they impose upon the applicant with the stipulations outlined above.

**III. CONCLUSION**

The Board is satisfied with the level of investigation, engineering and evaluation conducted in the application submittal and review process concerning the above-mentioned project. The Board thoroughly reviewed all aspects of the proposal under the evaluation criteria in the ULUDR.

The Board concludes that based on the evidence submitted and the above findings, the proposed subdivision/development generally conforms to the Underhill Unified Land Use & Development Regulations.

**IV. DECISIONS AND CONDITIONS OF APPROVAL**

Based upon the findings above, and subject to the conditions below, the Development Review Board grants site plan approval as presented at the hearing with the following conditions:

1. As required under the Town of Underhill, Road, Driveway and Trail Ordinance adopted February 3<sup>rd</sup> 2015, a highway access permit from the Selectboard is required. Any modification of, or relocation of, the existing driveway during the Selectboard access permitting process shall not require additional review by the Board and can be administratively approved, if required; however, in the event the driveway were to be relocated out of its existing location, and further into the existing Class II Wetland as part of the Selectboard Review Process, conditional use review shall be required per Section 3.19.D.6.
2. Additional review by the Board is not required for the proposal of any subsequent accessory structures so long as the proposed structures meet the requirements of the zoning regulations, including setbacks, in effect at the time of the proposal; however, any subsequent proposals that include the construction of a separate single-family dwelling, or the conversion of the proposed seasonal dwelling to a year-round dwelling, will require conditional use review.
3. A Certificate of Occupancy is required per Section 10.4.A. The applicant shall have had the individual wetland permit transferred to his name prior to the issuance of the Certificate of Occupancy.
4. Due to the seasonal nature of the proposed use, the Board acknowledges minimal environmental impact is forecasted. In the event the use results in the contamination of surface water, surfacing sewage or a health hazard in the opinion of the Underhill Health Officer; the Board shall require the construction of the wastewater disposal system as permitted under WW-4-4101.

Dated at Underhill, Vermont this 8<sup>th</sup> day of May, 2017.

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Charles Van Winkle, Chair, Development Review Board

NOTICE: This decision may be appealed to the Vermont Environment 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 6/7/2017.