

Town of Underhill

Development Review Board

Findings and Decision

PRELIMINARY SUBDIVISION APPLICATION OF JASON MARIAS FOR A 3-LOT SUBDIVISION

In re: Jason Marias
318 Irish Settlement Road (IS318)
Underhill, VT 05489

Docket No. DRB-17-04

Decision: Approved with conditions (see Section V – Decisions and Conditions of Approval)

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns the preliminary subdivision application submitted by Jason Marias regarding a 3-lot subdivision of property located at 318 Irish Settlement Road.

- A. On February 16, 2017, Jason Marias filed a sketch plan review application for the abovementioned project. A sketch plan review meeting pertaining to the project was held on February 20, 2017, and a letter of acceptance was issued on March 7, 2017.
- B. On July 5, 2017, Jason Marias filed an application for preliminary subdivision approval for the abovementioned project. Planning Director & Zoning Administrator, Andrew Strniste received the application and determined that it was complete shortly thereafter. A site visit was scheduled to commence on Monday, July 17, 2017 at 6:00 PM, and the hearing date was scheduled for 7:15 PM at Underhill Town Hall on Monday, July 17, 2017.
- C. On June 28, 2017, a copy of the notice of the preliminary subdivision review hearing was mailed via certified mail to the following property owners adjoining the property subject to the application:
 1. IS301 – Dennis Grage & Susan Murray-Grage, 301 Irish Settlement Road, Underhill, VT 05489
 2. IS310 – William & Pamela Billings, 310 Irish Settlement Road, Underhill, VT 05489
 3. IS341 – Leslie M. Rosen & Adrienne R. Rosen, 341 Irish Settlement Road, Underhill, VT 05489
 4. IS348 – Charles J. & Ashley R. Alexander, 348 Irish Settlement Road, Underhill, VT 05489
 5. IS351 – Mary Jo Berube, 351 Irish Settlement Road, Underhill, VT 05489
 6. FU011 – Jessica M. Remillard & Andrew R. Butler, 11 Fuller Road, Underhill, VT 05489
 7. FU012X [*Hand Delivered*] – Town of Underhill, P.O. Box 120, Underhill, VT 05489
 8. FU023 – John Viggato, 51 Washington Ave., Natick, MA 01760
 9. FU049 – Jeffrey T. & Angela M. Moulton Trustees of the Ourthore Trust, 49 Highland Road, Underhill, VT 05489
 10. FU054X [*Hand Delivered*] – Town of Underhill, P.O. Box 120, Underhill, VT 05489
 11. IS318 [*Applicant*] – Jason & Amy Marias, 318 Irish Settlement Road, Underhill, VT 05489

- D. During the week of June 25, 2017, notice of the public hearing for the proposed Marias Preliminary Subdivision hearing was posted at the following places:
1. The Underhill Town Clerk's office;
 2. The Underhill Center Post Office; and
 3. The Underhill Flats Post Office.
- E. On Saturday, July 1, 2017, the notice of public hearing was published in the *Burlington Free Press*.
- F. A site visit to the property located at 318 Irish Settlement Road, Underhill, Vermont, commenced at 6:00 PM on July 17, 2017.
- G. Present at the site visit were the following members of the Development Review Board:
1. Board Member, Penny Miller, Acting Chairperson
 2. Board Member, Matt Chapek
 3. Board Member, Mark Green
 4. Board Member, Karen McKnight
 5. Board Member, Stacey Turkos

Municipal representatives and members of the public present during the site visit were:

6. Planning & Zoning Administrator, Andrew Strniste
 7. Applicant's Engineer, Dexter Lefavour from Horizon Engineering Associates, LLP
 8. Abutting Neighbor, Pamela Billings
 9. Abutting Neighbor, William Billings
 10. Abutting Neighbor, Jeffrey T. Moulton
- H. The preliminary subdivision review hearing began at 7:15 PM on July 17, 2017 at the Town of Underhill Town Hall.
- I. Present at the preliminary subdivision hearing were the following members of the Development Review Board:
1. Board Member, Penny Miller, Acting Chairperson
 2. Board Member, Matt Chapek
 3. Board Member, Mark Green
 4. Board Member, Karen McKnight
 5. Board Member, Stacey Turkos

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

Others present at the hearing were:

1. *[Applicant]* Jason Marias, 318 Irish Settlement Road, Underhill, VT 05489
2. *[Applicant's Engineer]* Dexter Lefavour, Horizon Engineering Associates, 34 School St., Littleton, NH 03561
3. *[Abutting Neighbor]* Mary Jo Berube, 351 Irish Settlement Road, Underhill, VT 05489

4. *[Abutting Neighbor]* Jeffrey T. Moulton, 49 Highland Road, Underhill, VT 05489

J. At the outset of the hearing, Acting Chair Penny Miller explained the criteria under 24 V.S.A § 4465(b) for being considered an “interested party.” Those who spoke at the hearing were:

1. Jason Marias, Applicant
2. Dexter Lefavour, Horizon Engineering Associates, Applicant’s Engineer
3. Jeffrey T. Moulton, Abutting Neighbor
4. Mary Jo. Berube, Abutting Neighbor

K. In support of the final subdivision application, the following exhibits were submitted to the Development Review Board:

- Exhibit A – Marias Preliminary Subdivision Review Staff Report
- Exhibit B – IS318 Rules of Procedure - Preliminary Subdivision Review
- Exhibit C – Application for Preliminary Subdivision Review
- Exhibit D – Preliminary Subdivision Findings Checklist
- Exhibit E – Burlington Free Press Notice
- Exhibit F – Certificate of Service
- Exhibit G – Sketch Plan Review Acceptance Letter
- Exhibit H – Road Maintenance Agreement
- Exhibit I – Subdivision Plat
- Exhibit J – Site Plan
- Exhibit K – Lot 1 Site Plan
- Exhibit L – Lots 2 & 3 Site Plan

After circulating the staff report, but prior to the hearing, Staff distributed/updated the following exhibits:

- Updated Exhibit I – Subdivision Plat
- Updated Exhibit J – Site Plan
- Updated Exhibit K – Lot 1 Site Plan
- Updated Exhibit L – Lots 2 & 3 Site Plan
- Exhibit M – Deer Yard Correspondence

During the hearing, Staff entered the following exhibit into the record:

- Exhibit N – IS318 Marias Preliminary Access Permit

The exhibits submitted as part of the sketch plan application, except as amended above, are also incorporated into this decision.

All exhibits are available for public review in the IS318 Preliminary Subdivision Review file (DRB 17-04) at the Underhill Zoning & Planning office.

II. FINDINGS

The Minutes of the July 17, 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 2014 Underhill Unified Land Use and Development Regulations (ULUDR):

FACTUAL FINDINGS

The applicant, Jason Marias, record owner of the property located at 318 Irish Settlement Road in Underhill, VT, is seeking a subdivision permit to subdivide land. The property is located in the Rural Residential zoning district as defined in Article II, Table 2.3 of the 2014 Underhill Unified Land Use & Development Regulations.

ARTICLE II – ZONING DISTRICTS

A. ARTICLE II, TABLE 2.3 – RURAL RESIDENTIAL DISTRICT

The Board finds that the focus of the proposed subdivision and proposed development are located in the Rural Residential District.

ARTICLE III – GENERAL REGULATIONS

A. SECTION 3.2 – ACCESS

The Board finds that a preliminary access permit (Access Permit #: A-17-05) for Lots 2 & 3 was obtained from the Selectboard on July 11, 2017. This permit was approved with the standard conditions and the following conditions:

1. Use 18" by 30" CMP for Access Culvert;
2. Underhill-Jericho Fire Department Approval Required; and
3. Meet the 15' by 37.5' Turnaround Dimensions or Equivalent as *May Be Required* by the UJFD.

The Board finds that the applicant shall incorporate these conditions into the final subdivision application. Since the applicant is requesting that the driveway straddle the property lines of Lots 2 & 3, the Board waives the driveway setback requirement per Section 3.2.D.9.a and Section 8.6.A.2.a.

B. SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS

The Board finds that the proposed lots and proposed development will meet the requirements of the Rural Residential zoning district. One principal use is proposed for each lot. Each lot will contain a single-family dwelling and is permitted per Table 2.3.B.5. All lots meet the minimum frontage requirement of 250 feet. Furthermore, all proposed development projects will satisfy the setback requirements and the maximum building and lot coverage requirements.

C. SECTION 3.13 – PARKING, LOADING & SERVICE AREAS

The Board finds that there is sufficient evidence to believe that the applicants will meet the parking requirement of two spaces as required per table 3.1.

D. SECTION 3.17 – SOURCE PROTECTION AREAS

The Board finds that the subdivision/development is not located within any known source protection areas, and therefore, finds that review under this Section is not required.

E. SECTION 3.18 – STEEP SLOPES

The Board finds that the existing lot contains areas of steep slopes (15-25%) and very steep slopes (>25%); however, the applicant is not proposing development to be constructed in these areas, and therefore, there will be minimal impact on the areas of steep slopes.

F. SECTION 3.19 – SURFACE WATERS & WETLANDS

The Board finds that Settlement Brook is located directly across Fuller Road; however, the associated 50 ft. setback is not expected to impact any of the proposed development locations as shown on the site plans. Furthermore, the Board finds that wetlands have been identified in the northern area of Lot 3 and towards the eastern portion of Lot 1. The applicant is not proposing any new development in these areas, and therefore, will cause little to no impact.

G. SECTION 3.22 – WATER SUPPLY & WASTEWATER SYSTEMS

The Board finds that the applicant has not submitted a Wastewater System and Potable Water Supply Permit from the Agency of Natural Resources. The Board cannot make a finding with regards to water supply and wastewater disposal and will rely on the ANR permit as a rebuttable presumption that the project has adequate water and wastewater disposal capabilities. The applicant shall submit a copy of the permit or evidence that an application has been made with his Final Subdivision Review application.

ARTICLE IV – SPECIFIC USE STANDARDS

A. SECTION 4.2 – ACCESSORY DWELLING

The Board finds that the applicant will need to submit a conditional use application for the proposed detached accessory dwelling. The applicant has the option to proceed whenever he wishes; however, the Board notes that they can review a conditional use request at the same time as the final subdivision review application per Section 7.2.F.

ARTICLE VI – FLOOD HAZARD AREA REVIEW

The Board finds that a 100-year Flood Hazard Area is not located on the existing lot, and therefore, review under this article is not required.

ARTICLE VII – SUBDIVISION REVIEW, ARTICLE VII

A. SECTION 7.2 – APPLICABILITY

The Board finds that the applicant's proposed subdivision is subject to the requirements of the 2014 Underhill Unified Land Use & Development Regulations per § 7.2, and was classified as a "minor subdivision" during the sketch plan review meeting and in the decision letter issued on March 7, 2017.

B. SECTION 7.3 – SKETCH PLAN REVIEW

The Board finds that the applicant adequately satisfied the conditions provided in the Sketch Plan Review Letter issued on March 7, 2017. The applicant is in the process of obtaining formal confirmation from the State of Vermont that the deer wintering yard does not exist. Wetlands were delineated; however, a water/wastewater permit has not been obtained. The applicant shall submit a draft survey as close to completion as possible as part of the applicant's final subdivision review application.

C. SECTION 7.5 – PRELIMINARY SUBDIVISION REVIEW

The Board finds that the applicant satisfied the intent of this section and provided the necessary materials to make a determination on the preliminary subdivision application.

SUBDIVISION STANDARDS, ARTICLE VIII

A. SECTION 8.1 – APPLICABILITY

The Board finds that no technical review is needed at this time. The Board also finds that the applicant has implicitly requested that the Board waive the side setback requirements for the

proposed driveway since it will straddle the property line between Lots 2 & 3. The Board waives this requirement under Sections 3.2.D.9, 3.7 and 8.6.A.2.a.

B. SECTION 8.2 – GENERAL STANDARDS

SECTION 8.2.A – DEVELOPMENT SUITABILITY

The Board finds that there are no foreseen undue adverse impacts to the public health and safety, the natural environment, neighboring properties and uses, or the character of the area in which the proposed development is located. The Board notes that due to the configuration of the existing lot and positioning of the wells and wastewater system, impacting neighboring properties with regards to the well shields and isolation distances for the wastewater systems is likely.

SECTION 8.2.B – DEVELOPMENT DENSITY

The Board finds that the proposed subdivision meets the density requirements of the Rural Residential District.

SECTION 8.2.C – EXISTING CONDITIONS

The Board finds that the proposed layout of the development will minimize the impact on the natural environment, and that there will be minimal impact to the existing site features and natural amenities. The Board notes that prime agriculture soils are present on the lots and will be impacted; however, due to other constraints, development is not feasible outside of these identified areas.

SECTION 8.2.D – UNDERHILL TOWN PLAN & DEVELOPMENT REGULATIONS

The Board finds that the proposed subdivision & development conform to the Underhill Town Plan & the Underhill Unified Land Use and Development Regulations.

SECTION 8.2.E – DISTRICT SETTLEMENT PATTERNS

The Board finds that the proposed subdivision & development are consistent with the characteristics of the rural zoning districts as described in Section 8.2.E.2.

SECTION 8.2.F – LOT LAYOUT

The Board finds that the proposed subdivision meets the requirements of this subsection.

SECTION 8.2.G – BUILDING ENVELOPE

The Board finds that the applicant is proposing the least restrictive building envelope as allowed by the current 2014 Underhill Unified Land Use & Development Regulations. Per Section 8.3.B.3, the Board finds that the applicant shall adjust the building envelope to incorporate buffers for the mapped wetlands as depicted on the site plan. Per Section 8.3.C.1, the applicant, to the extent physically feasible, shall attempt to exclude areas from the building envelope that contain areas with a slope greater than 15%.

SECTION 8.2.H – SURVEY MONUMENTS

The Board makes no finding regarding this subsection.

SECTION 8.2.I – LANDSCAPING & SCREENING

The Board finds that the applicant is proposing development that will require the removal of wooded areas in order to accommodate the development locations. The removal of these areas is inevitable due to the existing lot being heavily forested; however, the development locations

will ultimately preserve the existing trees and tree lines, thus satisfying the intent of this Section.

SECTION 8.2.J – ENERGY CONSERVATION

The Board makes no findings, nor makes any requirements with regard to energy conservation.

C. SECTION 8.3 – NATURAL & CULTURAL RESOURCES

SECTION 8.3.A – RESOURCE IDENTIFICATION & PROTECTION

The Board has not identified, nor has the applicant identified, any cultural or natural resources/features that requires protection or preservation.

SECTION 8.3.B – SURFACE, WATERS, WETLANDS & FLOODPLAINS

The Board finds that there will be no adverse impacts on the wetlands that exist in various locations on the existing lot; nor will there be any adverse impacts to Settlement Brook, which is immediately across Fuller Road. The Board notes that the applicant shall adjust the building envelope to incorporate buffers for the mapped wetlands as depicted on the site plan.

SECTION 8.3.C – ROCK OUTCROPS, STEEP SLOPES, HILLSIDES & RIDGELINES

The Board finds that the existing lot contains areas of steep slopes and very steep slopes; however, the applicant has identified locations outside of these areas where the proposed development is to be constructed, and therefore, there will be a *de minimis* impact on the areas. To the extent physically feasible, the applicant shall attempt to exclude areas from the building envelope that contains areas with a slope greater than 15%.

SECTION 8.3.D – NATURAL AREAS & WILDLIFE HABITAT

The Board finds that informal correspondence has been submitted verifying that the identified wintering deer yard is no longer present on the lot. The applicant shall submit formal correspondence from the State of Vermont as part of the final subdivision application hearing. Furthermore, the Board finds that a priority level 6/7 habitat block is located on the existing lot and that the proposed development will be located in, and likely fragment, this area.

SECTION 8.3.E – HISTORIC & CULTURAL RESOURCES

The Board is unaware of any historic or cultural resources that require preservation, and therefore, makes no finding regarding this Section.

SECTION 8.3.F – FARMLAND

The Board finds that the applicant is proposing development to occur on prime agricultural soils; however, due to other constraints on the property (e.g. steep slopes and wetlands), development on these agricultural soils is unavoidable, and as a result, fragmentation is highly probable.

SECTION 8.3.G – FORESTLAND

The Board finds that the lot is largely forested and that the proposed future development would necessitate the clearing of part of the forest to accommodate the driveways and the proposed single-family dwellings.

D. SECTION 8.4 – OPEN SPACE & COMMON LAND

SECTION 8.4.A – OPEN SPACE

The Board finds that the applicant has not proposed to designate any land as open space.

SECTION 8.4.B – COMMON LAND

The Board finds that the applicant has not proposed to designate any land as common land.

SECTION 8.4.C – LEGAL REQUIREMENTS

The Board finds that this subsection does not apply since the applicant has not designated any land as open space or common land as part of the proposed project.

E. SECTION 8.5 – STORMWATER MANAGEMENT & EROSION CONTROL

The Board finds that the applicant shall conform to the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control, published by the Watershed Management Division of the Vermont Department of Environmental Conservation when performing excavation and site work. The Board also finds that the proposed development shall have a minimal impact on stormwater runoff and does not require an additional treatment plan.

F. SECTION 8.6 – TRANSPORTATION FACILITIES

SECTION 8.6.A – ACCESS & DRIVEWAYS

The applicant obtained a preliminary access permit from the Selectboard on July 11, 2017 (Access Permit #: A-17-05), with the noted conditions in Section 3.2 above. The applicant shall incorporate the changes resulting from those conditions into the final subdivision review application. Furthermore, the Board grants the setback waiver for the driveway as required per Section 3.2.D.9.a.

SECTION 8.6.B – DEVELOPMENT ROADS

The Board finds that this subsection does not apply since the access way will only serve two lots.

SECTION 8.6.C – PARKING FACILITIES

The Board finds that no parking facilities, other than those to be expected with single-family residences, are proposed.

SECTION 8.6.D – TRANSIT FACILITIES

The Board finds that no transit facilities are proposed.

SECTION 8.6.E – PEDESTRIAN ACCESS

The Board finds that review under this section is not required.

G. SECTION 8.7 – PUBLIC FACILITIES & UTILITIES

SECTION 8.7.A – PUBLIC FACILITIES

The Board finds the proposed subdivision and development will not create an undue burden on the existing and/or planned public facilities. The Board directs Staff to obtain comments from the school district to confirm that there will be no adverse impacts.

SECTION 8.7.B – FIRE PROTECTION

The Board finds there will be no undue burden on the existing and/or planned public facilities. The Board directs staff to obtain comments from Underhill Jericho Fire Department to confirm

their ability to serve. These comments shall be addressed and incorporated into the final subdivision review application.

SECTION 8.7.C – WATER SYSTEMS

The Board finds that the applicant has not begun the application process of obtaining a Wastewater System & Potable Water Supply Permit. The applicant shall obtain these permits and depict the most up-to-date well shields for the drilled/dug wells.

SECTION 8.7.D – WASTEWATER SYSTEMS

The Board finds that the applicant has not begun the application process of obtaining a Wastewater System & Potable Water Supply Permit. The applicant shall obtain these permits and depict the most up-to-date isolation shields for the wastewater systems.

SECTION 8.7.E – UTILITIES

The Board finds the applicant shall illustrate the expected locations of all electrical, communications, and media utilities, which shall be installed underground in accordance with § 8.7.E.

H. SECTION 8.8 – LEGAL REQUIREMENTS

The Board finds that the applicant has provided a draft road maintenance agreement. The applicant shall provide as part of the final subdivision review application draft deeds referencing the road maintenance agreement and other easements.

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. WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS

The Board grants the following waivers:

1. The driveway setback requirement for Lots 2 & 3 per Sections 3.2.D.9.a and 8.6.A.2.a.

V. DECISIONS AND CONDITIONS OF APPROVAL

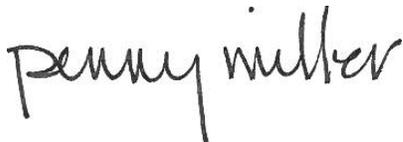
Based upon the findings above, and subject to the conditions below, the Development Review Board grants preliminary approval for the subdivision as presented at the hearing with the following conditions:

1. The Board finds that the applicant shall incorporate the conditions of the preliminary access permit into the final subdivision review application.
2. The Board cannot make a finding with regards to water supply and wastewater disposal and will rely on the Vermont Agency of Natural Resource, Department of Environmental

Conservation permit as a rebuttable presumption that the project has adequate water and wastewater disposal capabilities. The applicant shall submit a copy of the permit or evidence that an application has been made with his Final Subdivision Review application. Once obtained, the applicant shall depict the most up-to-date well shields for the drilled/dug wells and the most up-to-date isolation shields for the wastewater systems on the site plan.

3. Per Section 8.3.B.3, the Board finds that the applicant shall adjust the building envelope to incorporate buffers for the mapped wetlands as depicted on the site plan.
4. Per Section 8.3.C.1, the applicant, to the extent physically feasible, shall attempt to exclude areas from the building envelope that contain areas with a slope greater than 15%.
5. The applicant shall submit formal correspondence from the State of Vermont as part of the final subdivision review application confirming that the deer wintering yard no longer exists.
6. The Board finds that the applicant shall conform to the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control.
7. The Board finds the applicant shall illustrate on the site plan and subdivision plat the expected locations of all electrical, communications, and media utilities, which shall be installed underground in accordance with § 8.7.E.
8. The applicant shall provide as part of the final subdivision review application draft deeds referencing the road maintenance agreement and easements.
9. The Board finds that the applicant shall submit a draft survey as close to completion as possible as part of the final subdivision review application.
10. The Board requires the applicant to include parcel codes on the final plat. The parcel codes can be obtained once the survey is completed and submitted to the Zoning Administrator who can subsequently request the codes.

Dated at Underhill, Vermont this 8th day of August, 2017.



Penny Miller, Development Review Board Acting Chair

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 September 7, 2017.