



# TOWN OF UNDERHILL

## Development Review Board

MICHAEL & ELIZA KRAMER  
Subdivision Amendment Review  
Docket #: DRB-19-06

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**Subdivision Amendment Application of Michael & Eliza Krama to Request a Road/Driveway Width Waiver (Pertaining to the Acer Ridge Subdivision – A Planned Residential Development)**

Applicant(s):	Michael & Eliza Kramer
Consultant:	N/A
Property Location:	3 Acer Ridge (AR003)
Acreage:	± 9.9 Acres
Zoning District(s):	Water Conservation

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**Project Background:** In September 2017, Michael and Eliza Kramer submitted an application to amend the previously approved Acer Ridge Subdivision, a Planned Residential Development, to allow for the construction of a detached accessory dwelling. The Development Review Board approved the Kramer’s request, deferring all road and driveway oversight to the Selectboard (see condition #2 of DRB-17-13, Exhibit H), who at the time, handled review of those project aspects in accordance with the 2015 *Underhill Road, Driveway and Trail Ordinance*.

The Applicants subsequently submitted an access permit application with the Selectboard in accordance with DRB Decision #: DRB-17-13 (See Exhibit H). As part of a condition of approval, the Applicants were required to widen the shared portion of the driveway from Acer Ridge to the detached accessory dwelling (AR001 – 1 Acer Ridge), as required under § 5.A.3.a of the 2015 *Underhill Road, Driveway and Trail Ordinance*. The portion of the shared driveway that is to be widened is approximately 100 ft. in length. At the time, the Applicants did not contest the condition of approval.

As the Applicants were completing their project (the detached accessory dwelling) they discovered that they were required make the road and driveway improvements, as well as submit documentation that the road and driveway improvements have been completed in accordance with the approved access permit (see Exhibit I) – a standard requirement for Applicants seeking to obtain the Certificate of Occupancy Permit. As a result, when examining the impacts that are expected to result from the widening of any of the

shared portion of the driveway, the Applicants discovered that they would have to remove several trees to accommodate a 20 ft. wide accessway.

Contending that the removal of the trees would alter the character of the area, specifically the Acer Ridge subdivision, the Applicants submitted a request in writing to the Selectboard (see Exhibit I) asking them to waive the 20 ft. width requirement, and permit them to keep the existing width – 14 ft. With the implementation of the amended Road, Driveway & Trail Ordinance, the Selectboard informed the Applicants that the more appropriate venue for the application would be before the Development Review Board. As a result, the access permit amendment application was dismissed by the Selectboard and referred to the Development Review Board.

Project Proposed:

The Applicants are requesting a road width waiver request for the shared portion of the driveway between Acer Ridge and the accessory dwelling at 1 Acer Ridge. Specifically, the road width waiver request would permit the shared driveway width to be 14 ft. rather than 20 ft. for a distance of approximately 100 ft. as required under § 5.A.3.a of the *Underhill Road, Driveway and Trail Ordinance*.

While access-related waivers are to consider the variance criteria under 24 V.S.A. § 4469 (see § 8.E of the *Underhill Road, Driveway and Trail Ordinance*), the subject shared driveway is part of a Planned Residential Development, a type of subdivision that permits a relaxation of Town standards and regulations. Therefore, should a waiver be granted, the proper venue, as alluded to by the Selectboard, is likely to be the Development Review Board, as the Board has the ability to consider the already approved subdivision as a whole and evaluate if the waiver would conform with what has already been approved. To note, this specific Planned Residential Development contains two lots that are smaller than 5.0 acre requirement, and in exchange, open space was designated on the lands currently owned by the Applicants – 3 Acer Ridge.

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## **2018 UNDERHILL UNIFIED LAND USE & DEVELOPMENT REGULATIONS RELEVANT REGULATIONS:**

- Article II, Table 2.5 – Water Conservation District (pg. 18)
- Article III, Section 3.2 – Access (pg. 30)
- Article III, Section 3.7 – Lot, Yard & Setback Requirements (pg. 38)
- Article III, Section 3.8 – Nonconforming Lots (pg. 39)
- Article III, Section 3.11 – Outdoor Lighting (pg. 41)
- Article III, Section 3.17 – Source Protection Areas (pg. 55)
- Article III, Section 3.18 – Steep Slopes (pg. 56)
- Article III, Section 3.19 – Surface Waters & Wetlands (pg. 63)
- Article VI – Flood Hazard Area Review (pg. 127)
- Article VII, Section 7.8 – Revisions to an Approved Subdivision

- Article VIII, Section 8.6 – Transportation Facilities
- Article IX – Planned Unit Development
- Appendix A – Road & Driveway Standards

### **CONTENTS:**

- a. Exhibit A - AR003 Kramer Subdivision Amendment Staff Report
- b. Exhibit B - AR003 Subdivision Amendment Review Hearing Procedures
- c. Exhibit C - Subdivision Review Application
- d. Exhibit D - Waiver Request Narrative
- e. Exhibit E - BFP Notice
- f. Exhibit F - Certificate of Service
- g. Exhibit G - DRB Decision # DRB-10-17
- h. Exhibit H - DRB Decision # DRB-17-13
- i. Exhibit I - Access Permit # A-18-18
- j. Exhibit J - 3 Acer Ridge Site Plan
- k. Exhibit K - Site Plan Depicting Area in Review

### **COMMENTS/QUESTIONS**

1. **SEE BACKGROUND INFORMATION ABOVE**
2. **SECTION 3.2 – ACCESS:** In accordance with § 3.2.C, should the Board grant approval of the Applicants’ proposal, the Board will be amending the Selectboard’s previously approved Access Permit #: A-18-18. Should the Board reject the Applicants’ proposal, the driveway would have to be widened to 20 ft (from 14 ft.).
3. **SECTION 3.11 – OUTDOOR LIGHTING:** The Board should inquire if there is any outdoor lighting proposed.
4. **SECTION 8.6.A – ACCESS & DRIVEWAY:** Should the Board approve the waiver request, the driveway will be required to satisfy the other requirements of the Underhill Road, Driveway & Trail Ordinance, as well as the conditions, as amended, in the following permits and approvals:
  - a. Access Permit #: A-12-03 and A-18-18
  - b. Building Permit #: B-13-31 and B-18-26
  - c. Development Review Board Decision #: DRB-10-17 & DRB-17-13
5. **SECTION 8.6.B – DEVELOPMENT ROADS:** According to § 8.6.B of the Unified Land Use & Development Regulations, while an access way is considered a development road when it serves four or more lots, under § 5.B.4.a of the Underhill Road, Driveway & Trail Ordinance should an accessory dwelling be added to 5 Acer Ridge the shared portion of the driveway under review would be considered a Development Road since that specific section of the Road Ordinance refers to residences and lots.
6. **APPENDIX A:**
  - a. **SECTION 4.E – WAIVERS:** The Standards of the Road Ordinance may be waived for a project because of unique physical circumstances or conditions on good cause
  - b. **SECTION 4.E – WAIVERS:** The Board shall consider the standards set forth in 24 V.S.A. § 4469 when reviewing waivers.
  - c. **SEE OTHER ROAD ORDINANCE-RELATED COMMENTS**

# STAFF FINDINGS OF RELEVANT SECTIONS

## ARTICLE II – ZONING DISTRICTS

Water Conservation		
<b>Lot Size:</b>	5.0 Acres	
<b>Frontage:</b>	300 ft.	
<b>Setbacks:</b>		
• Front North	30 ft.	
• Side 1 West	50 ft.	N/A
• Side 2 East	50 ft.	
• Rear South	50 ft.	
<b>Max. Building Coverage:</b>	20%	
<b>Max. Lot Coverage:</b>	30%	
<b>Driveway Setback:</b>	12 ft.	

**TABLE 2.5 – WATER CONSERVATION DISTRICT**

**PG. 18**

**Purpose Statement:** The purpose of the Water Conservation District is to protect the important gravel aquifer recharge area in Underhill Center.

- The proposed road width reduction is not anticipated to adversely affect the gravel aquifer recharge area in Underhill Center.

## ARTICLE III – GENERAL REGULATIONS

### SECTION 3.2 – ACCESS

**PG. 30**

- The subject lot accesses Acer Ridge, a private road, which accesses Beartown Road, a Class III Town Highway.
- The shared driveway subject to review currently serves two lots (3 & 5 Acer Ridge) and three residences (1, 3 & 5 Acer Ridge).
- The Selectboard approved Access Permit #: A-18-18 (see Exhibit I) with a condition of widening the shared driveway from 14 ft. to 20 ft. from the end of Acer Ridge to 1 Acer Ridge.
- In accordance with § 3.2.C, should the Board grant approval of the Applicants' proposal, the Board will be amending the Selectboard's previously approved Access Permit #: A-18-18.
- The current driveway is 14 ft., and should the Board reject the Applicants' proposal, the driveway would have to be widened to 20 ft.
  - Should the driveway be widened to 20 ft., the driveway will be ~100 ft. from the south, front property line – the nearest property line to the portion of the driveway under review.
- See Appendix A for more info as it relates to the *Underhill Road, Driveway & Trail Ordinance*.

### SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS

**PG. 38**

- District dimensional requirements may be reduced by the Board as part of an approved master plan for a Planned Residential Development.

### SECTION 3.8 – NONCONFORMING LOTS

**PG. 39**

- Two of the three Acer Ridge lots (4 & 5 Acer Ridge) are undersized, but were approved under DRB

Decision #: DRB-10-17 – a Planned Residential Development.

**SECTION 3.11 – OUTDOOR LIGHTING** **PG. 41**

- The Board should inquire if there is any outdoor lighting proposed.

**SECTION 3.17 – SOURCE PROTECTION AREAS** **PG. 55**

- The subject subdivision is in a Groundwater Source Protection Area; however, approval of the detached accessory dwelling under DRB Decision #: DRB-17-13 implicitly approved associated impacts caused by the detached accessory dwelling, such as the widening of the shared driveway.

**SECTION 3.18 – STEEP SLOPES** **PG. 56**

- No steep slopes (15-25%) or very steep slopes (>25%) are located in the area subject to review.

**SECTION 3.19 – SURFACE WATERS & WETLANDS** **PG. 63**

- No surface waters & wetlands are located in the area subject to review.

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**ARTICLE VI – FLOOD HAZARD AREA REVIEW**

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- No floodplains are located within the Acer Ridge Subdivision.

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**ARTICLE VII – SUBDIVISION REVIEW**

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**SECTION 7.8 – REVISIONS TO AN APPROVED SUBDIVISION** **PG. 148**

- In accordance of 8.E of the *Underhill Road, Driveway & Trail Ordinance*, road ordinance-related standards proposed to be waived can only be done by the Selectboard or the Development Review Board, and therefore, the Zoning Administrator’s authority to reduce the road width from 20 ft. to 14 ft. is nonexistent.
- As explained in the project background above, the Applicants’ project proposal was referred to the Development Review Board by the Selectboard.

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**ARTICLE VIII – SUBDIVISION STANDARDS**

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**SECTION 8.1 – APPLICABILITY**

SECTION 8.1.B – REQUEST FOR MORE INFORMATION **PG. 150**

- Technical review does not appear to be necessary, though can be required.

SECTION 8.1.C – FINDINGS OF FACT **PG. 150**

- A project narrative has been submitted for review (see Exhibit D).

SECTION 8.1.D – MODIFICATIONS & WAIVERS **PG. 150**

- The Applicants seek a road/shared driveway width waiver – 14 ft. instead of 20 ft.
- The waiver is requested in accordance with Section 8.E of the *Underhill Road, Driveway & Trail Ordinance*.

**SECTION 8.6 – TRANSPORTATION FACILITIES**

SECTION 8.6.A – ACCESS & DRIVEWAY **PG. 162**

- Should the Board approve the waiver request, the Board will be effectively amending the Selectboard’s previously approved access permit: Access Permit #: A-18-18.

- Staff will be soliciting comments from the Underhill Road Foreman and the Underhill-Jericho Fire Department prior to the hearing.
- Should the Board approve the waiver request, the driveway will be required to satisfy the other requirements of the *Underhill Road, Driveway & Trail Ordinance*, as well as the conditions, as amended, in the following permits and approvals:
  - Access Permit #: A-12-03 and A-18-18
  - Building Permit #: B-13-31 and B-18-26
  - Development Review Board Decision #: DRB-10-17 & DRB-17-13
- See Section 3.2 for more info as it relates to the *Underhill Land Use & Development Regulations*.
- See Appendix A for more info as it relates to the *Underhill Road, Driveway & Trail Ordinance*.

**SECTION 8.6.B – DEVELOPMENT ROADS**

**PG. 164**

- According to § 8.6.B of the *Unified Land Use & Development Regulations*, while an access way is considered a development road when it serves four or more lots, under § 5.B.4.a of the *Underhill Road, Driveway & Trail Ordinance* should an accessory dwelling be added to 5 Acer Ridge the shared portion of the driveway under review would be considered a Development Road since that specific section of the Road Ordinance refers to residences and lots.

**ARTICLE IX – PLANNED UNIT DEVELOPMENT**

**SECTION 9.1 – PURPOSE**

**PG. 172**

- The Acer Ridge Subdivision was approved as a Planned Residential Development under DRB Decision #: DRB-10-17.
- The waiver request conforms with the following policies outlined under Section 9.1.A:
  - Master planning for comprehensive, environmentally-sensitive, integrated subdivision and development. [Emphasis Added]
  - Efficient and economical use of land, resources, facilities, utilities and services. [Emphasis Added]
- The Board may modify density and dimensional requirements of the applicable zoning provisions under the *Unified Land Use & Development Regulations*, concurrently with the approval of subdivision review:
  - The Board is reviewing this application as a subdivision amendment; and
  - Various provisions of the *Unified Land Use & Development Regulations* reference the highway ordinance: §§ 3.2.D.1, 8.6.A.3.a, 8.6.A.9 & 8.6.B.
  - The Selectboard has delegated review of *Road Ordinance*-related waivers to Development Review Board when applications involve road-related components.

**SECTION 9.2 - APPLICABILITY**

**PG. 172**

- The subject lot is part of a Planned Residential Development under DRB-10-17 (see Exhibit G).

**SECTION 9.3 – APPLICATION REQUIREMENTS**

**PG. 173**

- The Applicants have submitted a written statement outlining their waiver request (see Exhibit D).

**SECTION 9.4 – REVIEW PROCESS**

**PG. 174**

- The proposed waiver request does not appear to substantially alter any of the findings made under this section or in the Board’s previous decisions: DRB-10-17 & DRB-17-13.

**SECTION 9.5 – GENERAL STANDARDS**

**PG. 175**

- The proposed waiver request appears to be consistent with the goals and policies of the *Underhill*

Town Plan currently in effect, as well as the purpose statement of the Water Conservation zoning district.

- The proposed waiver request is consistent with § 9.5.A.2, which states:  
“The PRD shall present an environmentally sensitive, effective and unified treatment of the site(s), that: (e) minimizes site disturbance and infrastructure development costs, and through lot layout, orientation, and site design maximizes opportunities for energy efficient design and access to and the sustainable use of renewable energy resources.” [Emphasis Added]
- The Planned Residential Development is an allowed use under this Section, and the subject lot is only being used for residential purposes.
- The Applicants’ proposed amendment does not affect the current density of the Acer Ridge Subdivision.

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## **APPENDIX A – ROAD & DRIVEWAY STANDARDS**

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- Waivers that are requested by an Applicant are required to be reviewed by the Selectboard or the Development Review Board in accordance with Section 8.E of the *Underhill Road, Driveway & Trail Ordinance*.
- This application was referred to the Development Review Board by the Selectboard (see Project Background outlined above).

### **SECTION 8 – ADMINISTRATION & PERMITTING**

#### SECTION 4.E – WAIVERS

**PG. 22**

- The Standards of the Road Ordinance may be waived for a project because of unique physical circumstances or conditions on good cause shown by the party seeking the waiver.
- The Board shall *consider* the standards set forth in 24 V.S.A. § 4469 when reviewing waivers:
  - There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions, and not circumstances or conditions generally created by the provisions of the bylaw in the neighborhood or district in which the property is located.
  - Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with provisions of the bylaw, and that the authorization of a variance is therefore necessary to enable the reasonable uses of the property.
  - Unnecessary hardship has not been created by the appellant.
  - The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair and appropriate use or development or adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.
  - The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan.
- Any waivers approved shall be minor and not conflict with the stated purposes of the Road Ordinance or state laws or rules.
- Fiscal reasons are not a basis for granting a waiver.

### **SECTION 5 – SPECIFIC PROVISIONS: DRIVEWAYS & DEVELOPMENT ROADS**

#### SECTION 5.A - DRIVEWAYS

**PG. 11**

##### *3. WIDTHS*

- Shared driveways serving 2 residences must be

- built to B-71 Standards, and be at a minimum 14 ft.
- Shared driveways serving 3 residences must be built to B-71 Standards, and be at a minimum 20 ft.
- The Applicants seek a waiver of the 20 ft. road width, which would be a length of approximately 100 ft.
- Should the waiver be approved, and the landowners of 5 Acer Ridge add another dwelling to their lot, the 5 Acer Ridge landowners will be responsible for widening the road to 20 ft. up to the driveway serving 5 Acer Ridge, unless the Board finds that the driveway would not need to be widened in that circumstance as well (see below for more details).

**SECTION 5.B – DEVELOPMENT ROADS**

**PG. 13**

**4. WIDTHS**

- Should a residence (an accessory dwelling) be added to 5 Acer Ridge, the access way will need to be upgraded at A-76 Standards, as well as widened to 20 ft. in accordance with this subsection, as the accessway will be considered a Development Road according to the Road Ordinance.
  - A Development Road is defined as “any direct or indirect access from a Town or state highway serving four or more lots or **dwelling**s, and any road designated as a “private road” as of the date of adoption of this ordinance.
  - Since this is a subdivision amendment, the Board could consider waiving the width requirement in the abovementioned scenario should the Road Foreman and Underhill-Jericho Fire Department provide positive feedback, as a waiver would apply to the entire subdivision.

**OTHER ROAD ORDINANCE-RELATED COMMENTS**

- Other *Road Ordinance*-related provisions were not found to necessitate review.
  - All other aspects relating to the shared driveway shall conform to all other provisions of the *Road Ordinance*, and all other conditions of approval in the listed permits provided under Section 8.6 above.
- The Board should consider that the subject lot under review is a Planned Residential Development.
  - Planned Residential Developments allow for the relaxation of regulations – the subject PRD contains properties that are less than 5.0 Acres (in the Water Conservation District), “in exchange” for the preservation of open space.
  - As stated in DRB Decision #: DRB-10-17, lots within the Acer Ridge Subdivision are prohibited from being subdivided further (see Condition D of DRB Decision #: DRB-10-17, Page 11, Exhibit G). Therefore, only one more residence can be added to the shared driveway under review – a dwelling to 5 Acer Ridge.

