



# Town of Underhill

## Development Review Board

### Conditional Use Review Findings & Decision

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#### CONDITIONAL USE REVIEW APPLICATION OF MIKE MORIN FOR A DIMENSIONAL WAIVER RELATING TO THE CONSTRUCTION OF A DETACHED GARAGE WITHIN A CLASS II WETLAND BUFFER

In re: Mike Morin  
196 Poker Hill Road (PH196)  
Underhill, VT 05489

Docket No. DRB-21-03

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

#### **I. INTRODUCTION AND PROCEDURAL HISTORY**

This proceeding concerns the conditional use review application of Mike Morin pertaining to a dimensional waiver relating to the construction of a detached garage within a Class II Wetlands buffer on property he co-owns located at 196 Poker Hill Road (PH196) in Underhill, Vermont. The subject property, 196 Poker Hill Road, is located on east side of Poker Hill Road and located in the Rural Residential zoning district.

- A. On March 24, 2021, the Applicant, Mike Morin, submitted a conditional use review application for the abovementioned project. The application was accepted and determined to be sufficiently complete on March 29, 2021. A site visit was scheduled for Saturday, May 3, 2021 at 5:30 PM, while a hearing was scheduled remotely via the Go-To-Meeting platform to commence on Monday, May 3, 2021 at 6:35 PM.
1. *Due to the COVID-19 pandemic, the Vermont legislature enacted Act 92 that permits public hearings to be held remotely (without a public gathering place) as long as the remote meeting can be accessed by the public. As a public hearing, the meeting was recorded.*
  2. The Monday, May 3, 2021 meeting agenda contained both a hyperlink to attend the meeting by computer, table or smartphone, as well as contained a dial-in phone number and access code allowing a participant to attend via phone.
- B. On April 7, 2021, notice of the conditional use review hearing was mailed via Certified Mail to the following property owners adjoining the property subject to the application:
1. **PH178** – Janet Carlson & Steven Weir, 178 Poker Hill Road, Underhill, VT 05489
  2. **PH191** – Martin & Julie Richards, 191 Poker Hill Road, Underhill, VT 05489
  3. **PH197** – John & Alice Devena Fifield, 197 Poker Hill Road, Underhill, VT 05489
  4. **PH203** – Allen David Tremblay & Sheri Osgood, 203 Poker Hill Road, Underhill, VT 05489
  5. **PH204** – Jordan & Rachel Wyckoff, 106 Cherry Tree Lane, Jeffersonville, VT 05464
  6. **Applicant/Landowners: PH196** – Michel (Mike) & Sherri Morin, 196 Poker Hill Road,

Underhill, VT 05489

- C. During the week of April 4, 2021, notice of the public hearing for the proposed conditional use review application was posted at the following locations:
  - 1. The Underhill Town Clerk's office;
  - 2. The Underhill Center Post Office; and
  - 3. Jacobs & Son Market.
- D. On April 10, 2021, notice of public hearing was published in the *Burlington Free Press*.
- E. The scheduled site visit at the property's location (196 Poker Hill Road, Underhill, Vermont) commenced at 5:30 PM on May 3, 2021.
- F. Present at the site visit were the following members of the Development Review Board:
  - 1. Board Member, Charles Van Winkle, Chairperson
  - 2. Board Member, Penny Miller, Vice Chairperson
  - 3. Board Member, Shanie Bartlett
  - 4. Board Member, Matt Chapek
  - 5. Board Member, Mark Green
  - 6. Board Member, Daniel Lee
  - 7. Board Member, Karen McKnight

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

- 8. Jon "Kail" Romanoff, Interim Zoning Administrator
  - 9. Applicant: Mike Morin (196 Poker Hill Road, Underhill, VT)
- G. In accordance with Act 92, the conditional use review hearing commenced at 6:35 PM on Monday, May 3, 2021 via the Go-To-Meeting platform. A public gathering place was not established; the meeting was recorded.
- H. Present at the conditional use review hearing were the following members of the Development Review Board:
  - 1. Board Member, Charles Van Winkle, Chairperson
  - 2. Board Member, Penny Miller, Vice Chairperson
  - 3. Board Member, Shanie Bartlett
  - 4. Board Member, Matt Chapek
  - 5. Board Member, Mark Green
  - 6. Board Member, Daniel Lee
  - 7. Board Member, Karen McKnight

Also in attendance was Staff Member John "Kail" Romanoff, Interim Zoning Administrator.

Others present at the hearing were:

- 1. Applicant, Mike Morin (196 Poker Hill Road, Underhill, VT)

Due to the COVID-19 pandemic, all attending parties (the Board Members, Staff and the Applicant) attended the meeting remotely via the Go-To-Meeting platform.

I. 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:

1. Applicant, Michael Morin

J. In support of the conditional use review application, the following exhibits were submitted to the Development Review Board:

1. Exhibit A - Morin Conditional Use Review Staff Report
2. Exhibit B - Morin (PH196) Conditional Use Review Hearing Procedures
3. Exhibit C - Development Review Application
4. Exhibit D - Responses to Development Review Application Questions
5. Exhibit E - BFP Notice
6. Exhibit F - Certificate of Service
7. Exhibit G - Zoning Permit Application (Z-21-17)
8. Exhibit H - ANR Atlas Site Plan
9. Exhibit I - Vermont State Wetlands Permit Application

No additional exhibits were distributed to the Board prior to the Monday, May 3, 2021 hearing nor were any additional exhibits submitted into the record during the hearing.

All exhibits are available for public review in the Morin Conditional Use Review file (PH196/DRB-21-03) at the Underhill Zoning & Planning office.

## **II. FACTUAL FINDINGS & CONCLUSIONS RELATING TO THE UNDERHILL UNIFIED LAND USE & DEVELOPMENT REGULATIONS**

The Minutes of the May 3, 2021 meeting, written by Kail Romanoff, are incorporated by reference into this decision. Please refer to those minutes for a summary of the testimony. The recording of the May 3, 2021 Development Review Board meeting can be viewed on the Mt. Mansfield Community Television’s website: <https://archive.org/details/underhill-drb-05032021>.

Based on the submitted application, testimony, exhibits, and evidence, the Development Review Board makes the following findings under the requirements of the 2011 *Underhill Unified Land Use and Development Regulations* (ULUDR), as amended through March 3, 2020:

### ***PROJECT SYNOPSIS***

The Applicant, Mike Morin, is seeking conditional use approval, specifically a dimensional waiver relating to the construction of a detached garage within a Class II Wetlands buffer. The subject property is located at 196 Poker Hill Road (PH196) in Underhill, Vermont and is owned by Michel N. & Sherri A. Morin—Life Estate. A dimensional waiver is subject to conditional use review in accordance with Section 5.5.B. The property is located within the Rural Residential zoning district as defined under Article II, Table 2.4 of the ULUDR.

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

#### **A. ARTICLE II, TABLE 2.4 – RURAL RESIDENTIAL**

The Board finds that the subject property is located in the Rural Residential District, and that the proposed project, a detached garage, is consistent with other accessory structures within the district and in the surrounding neighborhood, thus conforming with the traditional development patterns of the zoning district. The proposed detached garage will satisfy the front, side, and rear setback requirements; however, it will fail to satisfy the 50 ft. Class II Wetlands setback. The proposed detached garage will encroach into the setback by five (5) feet (including the overhang portion of the roof). As a result, the proposed detached garage will be setback  $\pm 45$  ft. from the Class II Wetland (located to the south).

The Board notes that a proposed detached garage is an allowed use within the district, as it is considered an accessory structure.

### **ARTICLE III, GENERAL REGULATIONS**

#### **A. SECTION 3.2 – ACCESS**

The Board finds that the subject property has access to Poker Hill Road, a Class III Town Highway. No modifications to the existing access way (driveway or curb cut) are proposed, nor does the proposed project require modifications to the existing access way. The Board notes that the driveway is located approximately 82 ft. from the north, side property line and approximately 211 ft. from the rear, east property line, thus conforming with the 12 ft. setback requirement. The Board does not require the Applicant to make any modifications to or relocate the driveway in accordance with Section 3.2.D.4. As a result, the Board finds that the issuance of an access permit is not needed and that review under subsection 3.2.D. is unnecessary.

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

The Board finds that the subject property fails to satisfy the minimum 3.0 acre requirement for the Rural Residential District, as the property is  $\pm 2.34$  acres. However, the subject property satisfies the 250 ft. frontage requirement, as the property contains  $\pm 338$  ft. of frontage along Poker Hill Road. Additionally, the detached accessory structure satisfies the underlying zoning district's setback requirements (30 ft. front and 20 ft. side and rear), as measured using the ANR atlas, and its setbacks are as follows:

- Front Property Line:  $\pm 63$  ft. setback (West)
- Side 1 Property Line:  $\pm 98$  ft. setback (North)
- Side 2 Property Line:  $\pm 212$  ft. setback (South)
- Rear Property Line:  $\pm 190$  ft. setback (East)

While the proposed accessory structure satisfies the District's setback requirements, it fails to conform with the 50 ft. Class II Wetlands setback requirement, as the detached garage will encroach into the setback by  $\pm 5$  ft. Due to the encroachment, a dimensional waiver is required in accordance with Sections 3.19.D.6 and 5.5.B. The Board agrees with Staff's interpretation that Section 5.5.B provides the authority to allow the setback reduction.

Although the detached garage fails to meet the Class II Wetland setback requirement, since the Applicant has satisfied the requirements of Section 3.19, in conjunction with Section 5.5.B, as explained below, the Applicant is not prohibited from obtaining approval by this Board.

#### **C. SECTION 3.11 – OUTDOOR LIGHTING**

The Board finds that the Applicant proposes lighting over the entrance door to the detached garage, and it will be downcast and shielded (see Exhibit D). Should the Applicant add additional outdoor lighting relating to the project at a later date, it shall be downward facing and shielded.

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

The Board finds that the proposed detached garage is not a use that increases the demand in parking for the existing use of the property per Table 3.1 – a single-family dwelling (two parking spaces). In any event, the proposed detached garage will increase the parking capacity on the property.

**E. SECTION 3.14 – PERFORMANCE STANDARDS**

The Board finds that the Applicant did not submit the requisite information to make a determination about Section 3.14; however, the Board finds that the proposed detached garage is consistent with other uses/structures in the area. Therefore, the Board does not anticipate that the Applicant will cause, create, or result in any of the situations identified in this section.

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

The Board finds that the subject lot is not located in a source protection area nor is the proposed detached garage located within 200 ft. of a public water source which is approximately 703 ft. to the south. Additionally, since the project is an associated use of the principal structure's use – a single-family dwelling – the project is exempt from review under Section 3.17.B.

**G. SECTION 3.18 – STEEP SLOPES**

The Board finds that there are areas of steep slopes (15-25%) and very steep slopes (>25%) on the subject lot; however, during the site visit, the proposed detached garage was confirmed to be in an area that is under a 15% slope. Therefore, review and analysis under this Section is not required.

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

The ANR Atlas site plan (Exhibit H) depicts an unnamed stream traversing the middle part of the subject property. Using the ANR Atlas, the proposed detached garage will be located ±32 feet from the unnamed stream, which satisfies the 25 ft. setback requirement. The Board additionally notes that Staff's field measurements during a site visit in late fall/early winter 2020 confirmed that the location of the proposed garage meets the 25 ft. setback requirement from the unnamed stream. No named rivers or brooks are located on the property.

In addition, the ANR Atlas depicts the approximate location of the Class II Wetlands on the property, noting that the depiction may not be fully accurate. The Applicant has had the Class II Wetlands delineated. When Staff conducted a site visit in fall/early winter 2020, he confirmed that the actual distance of the Class II Wetlands is further to the southeast from the proposed detached garage location than what is depicted by the ANR Atlas. Specifically, the detached garage is located ±45 ft. from the wetland, encroaching upon the Class II Wetland setback by ±5 ft.

Section 3.19.D.6 permits the Development Review Board to reduce Class II Wetland setback requirements if the Applicant obtains a Wetlands permit from the Vermont Department of Environmental Conservation. During the hearing, the Board confirmed that the Applicant has submitted a Vermont Wetlands Program permit application and the permit is expected to be issued in the immediate future. The Board is authorized to approve an encroachment into a Class II Wetland Buffer if there are no other practical physical alternatives. When considered in conjunction with the waiver criteria under Section 5.5.B, the Board finds a setback waiver relating to Class II Wetlands is applicable to the proposed detached garage (see rationale under Section 5.5.B below).

**I. SECTION 3.23 – WATER SUPPLY & WASTEWATER SYSTEMS**

The Board finds that it is likely a wastewater permit is not required for the construction of the proposed detached garage; however, the Applicant is responsible for confirming with the Vermont Department of Environmental Conservation that one is not required. For notation purposes, the Board is unaware of water and wastewater permits for the subject property.

#### **ARTICLE V, DEVELOPMENT REVIEW**

##### **A. SECTION 5.1 – APPLICABILITY**

The Board finds that conditional use review is required per Sections 3.19.D.6 and 5.5.B. As required under Section 5.4.C of the *Unified Land Use & Development Regulations*, when considering conditional use review applications, the Board shall apply all the site plan review standards under Section 5.3.

##### **B. SECTION 5.3 – SITE PLAN REVIEW**

Section 5.3.A – Purpose: The Board finds that site plan review is required as part of conditional use review per Section 5.4.C.

Section 5.3.B – Standards: The Board has considered this Section's standards and issues the following comments and/or imposes the following safeguards, modifications, and conditions:

SECTION 5.3.B.1 – Existing Site Features: The Board finds that the Applicant submitted a satisfactory aerial plan depicting the proposed project and was able to ascertain enough information through the submitted aerial plan, site visit and other sources, such as the ANR Website, that the proposed detached garage does not adversely affect or impact the enumerated resources in this subsection other than associated wetlands (§ 5.3.A.1). While many of the other enumerated features exist on the subject property, they will not be impacted by the construction of the proposed detached garage.

To note, the ANR Biofinder has identified the following features that will be impacted with the construction of the garage: 1) Surface Water and Riparian Areas, 2) Riparian Wildlife Connectivity, and 3) Physical Landscape Diversity; however, as outlined under Section 5.5.B, due to the many constraints of the property, avoiding these features is challenging, if not unavoidable.

Since the Class II Wetlands and its associated buffer is an identified feature within this subsection, the Board has the authority to apply any of the mitigation measures under Section 5.3.B.2; however, the Board finds that none of the measures provided within are necessary to apply.

Section 5.3.B.2 – Site Layout & Design: The Board finds that the proposed detached garage is not contrary to the purpose and stated goals under Subsection b, Rural Residential and Water Conservation District, noting that the proposed detached garage has no impact on the rural character of the area and traditional working landscape of the Rural Residential and Water Conservation Districts. The Board also finds that shielding the detached garage is not feasible due to the property's characteristics.

Section 5.3.B.3 – Vehicle Access: The Board finds the subject lot is accessed by one curb-cut via Poker Hill Road. The Applicant does not propose to modify or relocate the existing curb-cut or driveway, and therefore, the Board IS NOT requiring any modification to the existing access way.

Section 5.3.B.4 – Parking, Loading & Service Areas: The Board finds that the proposed detached garage does not increase the number of parking spaces that are required for the existing use of the property—a single-family dwelling. See Section 3.13 above for more information.

Section 5.3.B.5 – Site Circulation: The Board finds that the proposed detached garage does not alter the site circulation, which is expected to remain consistent with site circulation patterns of a residential unit/lot.

Section 5.3.B.6 – Landscaping and Screening: The Board finds that the Applicant does not propose any landscaping or screening relative to the project. While the proposed detached garage will be visible from Poker Hill Road, the structure is consistent with other accessory structures in the district and surrounding neighborhood. Nevertheless, no additional screening and landscaping is mandated by the Board.

Section 5.3.B.7 – Outdoor Lighting: See Section 3.11 above for more information.

Section 5.3.B.8 – Stormwater Management and Erosion Control: The Board finds that the Applicant shall utilize the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control for sitework pertaining to the proposed detached garage.

#### C. SECTION 5.4 – CONDITIONAL USE REVIEW

Section 5.4.A – Purpose: The Board finds that conditional use review is required per Sections 3.19.D.6 and 5.5.B which require conditional use approval for the construction of a structure within a Class II Wetland buffer. Specifically, a dimensional waiver under Section 5.5.B is allowed if the encroachment is less than 50% of the Class II Wetland setback requirement (§ 5.5.B.3). The Board finds that the conditions imposed herein address the identified potential impacts, as well as help reduce, avoid, or mitigate those impacts.

Section 5.4.B – General Standards: The Board finds that the conditions imposed herein will likely mitigate any potential undue adverse effects.

Section 5.4.B.1 – The Capacity of Existing or Planned Community Services or Facilities: The Board finds that the proposed detached garage does not result in an increase in demand on community services and facilities.

Section 5.4.B.2 – The Character of the Area Affected: The Board finds that the proposed detached garage does not affect the character of the area, as the area is largely single-family dwellings or agricultural buildings with accessory structures, including detached garages. Furthermore, the Board makes the following findings pertaining to the location, scale, type, density, and intensity of the use (detached garage) as it relates to other buildings and uses in the area:

- **Location:** the property is located in the Rural Residential District, which largely contains medium density development, including single-family dwellings with detached garages.
- **Scale:** the scale of the proposed construction is consistent with the development that currently exists on the property and the neighboring properties.

- **Type:** the proposed detached garage is an accessory structure and is a permitted use within the Rural Residential zoning district.
- **Density:** the proposed detached garage results in no change to the density of the area.
- **Intensity:** the proposed detached garage negligibly changes the intensity of the area.

Section 5.4.B.3 – Traffic on Roads and Highways in the Vicinity: The Board finds that the proposed detached garage does not result in an increase in traffic on roads and highways in the vicinity, nor does the project create any congestion, since the use of the property is not altered.

Section 5.4.B.4 – Bylaws in Effect: The Board finds that the proposed detached garage, as a result of this approval, complies with the 2020 *Unified Land Use & Development Regulations*.

Section 5.4.B.5 – The Utilization of Renewable Energy Resources: The Board finds that the proposed detached garage does not interfere with any sustainable use of renewable energy resources and should facilitate the utilization of renewable energy, as the structure is oriented in a way that could capitalize on solar power in the future.

Section 5.4.C – Site Plan Review Standards: The Board finds that site plan review is required as a part of conditional use review. Analysis can be found under Section 5.3 above.

Section 5.4.D – Specific Standards: The Board finds that it may consider Subsections 5.4.D.1 through 5.4.D.4 and impose conditions as necessary to reduce or mitigate any identified adverse impacts of the proposed development.

Section 5.4.D.1 – Conformance with the Town Plan: The Board finds that the proposed detached garage is not contrary to the Town Plan.

Section 5.4.D.2 – Zoning District & Use Standards: The Board finds that the proposed detached garage conforms with the zoning district and use standards, as outlined above.

Section 5.4.D.3 – Performance Standards: The Board finds that the project complies with the performance standards set forth in Section 3.14 above.

Section 5.4.D.4 – Legal Documentation: The Board finds that this Section does not apply.

#### **D. SECTION 5.5 – WAIVERS & VARIANCES**

Section 5.5.A – Applications & Review Standards: The Board finds that it has the authority to waive application requirements and site plan or conditional use review standards under Sections 5.3 and 5.4 that it determines are not relevant to a particular application. The Applicant has specifically asked for a dimensional waiver to reduce the setback requirement as it relates to the identified Class II Wetland, which is approved as explained below.

Any other conditions that have been waived have been noted in this decision. The Board makes no finding on any provision that was not explicitly waived and has not been explicitly addressed.

Section 5.5.B – Dimensional Waivers: The Board, in association with Conditional Use Review, finds that it can reduce wetland setback requirements as long as the following information is obtained and following requirements are met:



Section 5.5.B.1 – Untitled: The Applicant proposes to construct a detached garage within a Class II Wetland. The Board finds that the Applicant has presented an application illustrating the justification for a dimensional waiver. The Board also notes that Section 5.5.B of these regulations takes precedence in authorizing the Board to grant a waiver for structures built in a Class II Wetlands buffer. While Section 3.19 provides several applicable regulations, the authority to grant the waiver remains under Section 5.5.B.1.

Section 5.5.B.2 – Untitled: The Board finds that a waiver may be granted by the Board if one of the criteria enumerated under this Section is found to be true. The Board finds the first criterion to be true: the waiver will allow for the reasonable development and use of a pre-existing nonconforming lot. The Applicant proposes to construct a detached garage, a normally permitted action if not for the many constraints that exist on the property.

Section 5.5.B.3 – Untitled: The Board finds that it may reduce the setback by no more than 50%, or in this case 25 feet. The Applicant has presented an application illustrating that the proposed detached garage encroaches upon the setback by five (5) ft. and does not anticipate exceeding this measurement.

Section 5.5.B.4 – Untitled: The Board finds based on clear and convincing evidence that the Applicant has satisfied the elements enumerated in this subsection, all of which are required to be satisfied in order to grant a waiver:

Section 5.5.B.4.a – Element 1: No reasonable alternative exists for siting the structure, addition or improvement outside of the required setback area.

The Board finds that the siting of the project is restricted by the location of the existing principal structure, the infrastructure, and environmental constraints. An underground powerline and water/wastewater infrastructure impact the layout of any proposed and future development near the existing single-family dwelling. In addition, the unnamed stream and identified wetland constrain the siting of any potential development on the property. Thus, any required alteration of the proposed project would be unreasonable, and therefore, the construction of the proposed detached garage within the Class II Wetland buffer is justifiable.

Section 5.5.B.4.b – Element 2: The reduced setback is not contrary to public health, safety and welfare, or stated objectives and policies of the Underhill Town Plan, or the intent of these regulations.

The Board finds that the reduced setback is not contrary to the public health, safety, and welfare nor is it contrary to the stated objectives and policies of the *Underhill Town Plan*, or the intent of these regulations.

Section 5.5.B.4.c – Element 3: The waiver represents the minimum setback reduction necessary to allow for the proposed development.

The Board finds that the approved waiver represents the minimum setback reduction necessary to allow for the proposed detached garage.

Section 5.5.B.4.d – Element 4: Any potential adverse impacts resulting from reduced

setbacks on adjoining properties, surface waters or wetlands shall be mitigated through site design, landscaping and screening, or other accepted mitigation measures.

The Board finds that there are no adverse impacts resulting from the reduced setback on adjoining properties, surface waters, or wetlands. No mitigation measures are required as part of this decision.

Section 5.5.C – Variances: The Board finds that this Subsection does not apply, and therefore, review and analysis under this Subsection is not required.

***ARTICLE VI, FLOOD HAZARD AREA REVIEW***

The Board finds that no Special Flood Hazard Areas are located on the property, and therefore, review and analysis under this Article is not required.

***ARTICLE X, SPECIFIC USE STANDARDS***

**A. SECTION 10.3 – ZONING PERMITS**

Section 10.3.D – Effective Dates and Permit Renewals:

SECTION 10.3.D.1 – ZONING PERMITS: The Board finds that the permit issued as part of this decision will remain in effect for one year from the date of issuance. The Applicant must substantially commence construction within one year or the permit will become null and void. “Substantially commence” entails “initial site preparation; the installation of an access; and the installation of a foundation, water and/or wastewater system on-site.” (See Article XI for definition of “Substantially Commenced”)

SECTION 10.3.D.2 – DRB APPROVALS: The Board finds that conditional use approvals expire with the expiration of the zoning permit and may only be extended as provided under Section 10.3.D.1. Once the approved uses or structures are established, the conditional use approval will remain in effect and run with the land. The Board finds that the Applicant shall establish the use within 12 months of the effective date of the issuance of the zoning permit – to be issued by the Zoning Administrator as a result of this approval.

**III. FACTUAL FINDINGS & CONCLUSIONS RELATING TO THE UNDERHILL ROAD, DRIVEWAY & TRAIL ORDINANCE**

The Board finds that the *Underhill Road, Driveway & Trail Ordinance* does not apply since no modifications to the existing driveway and existing curb cut are proposed. Since Board review is unnecessary, an access permit is not required as a part of this decision. In addition, whatever access permit is in place (if at all), that approval and any associated conditions of approval, are to remain in place.

**IV. WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS**

The Board grants the following waivers/modifications:

- The Board approves the dimensional waiver which permits the Applicant to encroach upon the Class II Wetland setback requirement. The Applicant may only encroach upon the setback to the limits as portrayed on the submitted aerial plan (encroach into the setback by five (5) ft.)

and zoning permit application (see Exhibit G). Any deviation of this project that would result in further encroachment into the setback area may require additional review by this Board.

- The Applicant, landowner, or subsequent landowner(s) are/is not required to come before the Board for the construction of any out buildings, ancillary buildings, or accessory buildings, which would typically be required for any projects obtaining site plan review approval. Instead, the application for a building permit for those accessory-type buildings can be administratively reviewed and approved. However, the abovementioned structures must conform to the Regulations in effect at the time of the proposed projects.

## **V. DECISIONS AND CONDITIONS OF APPROVAL**

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 of the *Underhill Land Use & Development Regulations* and concludes that based on the evidence submitted and the above findings, the proposed detached garage generally conforms to the aforementioned Regulations.

Based upon the findings above, and subject to the conditions below, the Development Review Board grants conditional use approval for the project presented in the application and at the hearing with the following conditions:

1. The Board finds that the Applicant is responsible for ensuring that the proper wetlands permitting with the State of Vermont is in place and shall submit a copy of the permit to the Zoning Administrator prior to the obtainment of a certificate of occupancy.
2. The Board finds that any outdoor lighting that is added as part of this proposed project shall be downward facing and shielded.
3. The Board finds that the Applicant should utilize the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control if any remaining sitework that needs to be completed.

Dated at Underhill, Vermont this 27<sup>th</sup> day of May 2021.

*Charles Van Winkle*

Charles Van Winkle, Chairperson, Development Review Board

NOTICE/APPEAL (ZONING): 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.

NOTICE/APPEAL (ACCESS): This permit covers only the Selectboard's (or its designee's) jurisdiction and authority over town highways under 19 V.S.A. § 1111. It does not release the applicant from the requirements of other applicable federal, state or local statutes, ordinances, rules or regulations, including the Underhill Unified Land Use & Development Regulations. This permit addresses issues including access to, work within, and drainage affecting the town highway and its right-of-way, as described in Section 1111 and the Town's Road Ordinance. It does not address all other possible transportation, access (including the use of private access ways) or development issues which, if relevant to a proposed project, must be addressed separately. This permit may be reviewed pursuant to the procedures and time limits set forth in V.R.C.P. 75.

**No Access Permit Issued**