

Town of Underhill

Development Review Board

Site Plan Review Findings & Decision

CONDITIONAL USE REVIEW APPLICATION OF MICHAEL DIFFENDERFFER TO CONVERT A MULTI-FAMILY DWELLING TO A MIXED-USE STRUCTURE CONTAINING: THREE DWELLING UNITS (MULTI-FAMILY DWELLING), OFFICE SPACE AND RESTAURANT SPACE; AS WELL AS TO CONSTRUCT A COVERED PORCH WITHIN A RIPARIAN BUFFER

In re: Michael Diffenderffer
15 Pleasant Valley Road (PV015)
Underhill, VT 05489

Docket No. DRB-19-12

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

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns the conditional use review application of Michael Diffenderffer (hereafter also known as Applicant) pertaining to the conversion of a multi-family dwelling to a mixed-use structure containing: three dwelling units (multi-family dwelling), office space and restaurant space; as well as to construct a covered porch within a riparian buffer on property he co-owns located at 15 Pleasant Valley Road (PV015) in Underhill, Vermont.

- A. On or before September 6, 2019, the Applicant submitted a conditional use review application pertaining to the aforementioned project. Planning Director & Zoning Administrator, Andrew Strniste, received the application and determined the application to be complete shortly thereafter. A site visit was scheduled to commence at 6:00 PM on Monday, October 21, 2019, while a hearing was scheduled to commence at 6:35 PM on Monday, October 21, 2019 at Underhill Town Hall – 12 Pleasant Valley Road.
- B. On October 2, 2019, 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. PR025 – Peter K. & Ellen M. Duval, 25 Pine Ridge Road, Underhill, VT 05489
 2. PR027 – David A. Demuynck & Cathy A. Leathersich, 27 Pine Ridge Road, Underhill, VT 05489
 3. PV011 [*Hand Delivered*] – Town of Underhill; Attn: Town Administrator, P.O. Box 120, Underhill, VT 05489
 4. PV012 [*Hand Delivered*] – Town of Underhill; Attn: Town Administrator, P.O. Box 120, Underhill, VT 05489
 5. PV019 – Trustees of David A. & Carla N. Osgood, David & Carla Revocable Trust, P.O. Box 81, Underhill Center, VT 05489

6. PV020 – Michael K. & Emily E. Diffenderffer, 20 Pleasant Valley Road, Underhill, VT 05489
(*Notice Received as Applicant for Subject Application*)
 7. Applicant: PV015 – Michael & Emily Diffenderffer, P.O. Box 42, Underhill Center, VT 05490
(*Notice Sent to: 20 Pleasant Valley Road*)
- C. During the week of September 29, 2019, 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. Notice of the public hearing was thought to have been published in the *Burlington Free Press* on October 5, 2019; however, as outlined below, Staff Member Strniste discovered in the spring of 2020 that the notice was never submitted for publication.
- E. The scheduled site visit at the property's location (15 Pleasant Valley Road, Underhill, Vermont) commenced at 6:00 PM on October 21, 2019.
- 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, Stacey Turkos, Vice Chairperson
 3. Board Member, Matt Chapek, Clerk
 4. Board Member, Mark Green
 5. Board Member, Daniel Lee
 6. Board Member, Karen McKnight
- Municipal representatives and members of the public present during the site visit were:
7. Planning Director & Zoning Administrator, Andrew Strniste
 8. Energy Committee Member, Steve Webster (64 Krug Road)
 9. Applicant, Michael Diffenderffer (15 Pleasant Valley Road)
 10. Abutting Neighbor, Carla Osgood (19 Pleasant Valley Road)
 11. Abutting Neighbor, Peter Duval (25 Pine Ridge Road)
 12. Underhill Conservation Commission Member and Underhill Resident, Amy Golodetz (29 Pleasant Valley Road)
- G. The conditional use review hearing commenced at 6:35 PM on Monday, October 21, 2019 at Underhill Town Hall, 12 Pleasant Valley Road, Underhill, VT.
- 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, Stacey Turkos, Vice Chairperson
 3. Board Member, Matt Chapek, Clerk

4. Board Member, Mark Green
5. Board Member, Daniel Lee
6. Board Member, Karen McKnight

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

Others present at the hearing were:

7. Applicant, Michael Diffenderffer (15 Pleasant Valley Road)
 8. Energy Committee Member, Steve Webster (64 Krug Road)
 9. Abutting Neighbor, Carla Osgood (19 Pleasant Valley Road)
 10. Underhill Conservation Commission Member and Underhill Resident, , Amy Golodetz (29 Pleasant Valley Road)
- 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 Diffenderffer
 2. Abutting Neighbor, Carla Osgood
 3. Underhill Conservation Commission Member and Underhill Resident, Amy Golodetz
- J. In support of the conditional use review application, the following exhibits were submitted to the Development Review Board:
1. Exhibit A - Diffenderffer Conditional Use Review Staff Report
 2. Exhibit B - Diffenderffer (PV015) Conditional Use Review Hearing Procedures
 3. Exhibit C - Development Review Application
 4. Exhibit D - Project Narrative & Information
 5. Exhibit E - Zoning Permit Application # B-19-18
 6. Exhibit F - Zoning Permit Application # CL-19-05
 7. Exhibit G - Certificate of Service
 8. Exhibit H - BFP Notice
 9. Exhibit I - § 3.17 Source Protection Areas (ULUDR)
 10. Exhibit J - Existing & Proposed Upper Level Floor Plan
 11. Exhibit K - Existing & Proposed Lower Level Floor Plan
 12. Exhibit L - Existing & Proposed Elevations
 13. Exhibit M - Wastewater System Site Plan

No additional materials were distributed to the Development Review Board prior to the hearing, nor were any additional exhibits submitted into the record during the hearing.

- K. The Board agreed that additional information was required in order to make a decision about the application. The Applicant agreed to continue the hearing to a later date and supplement the application. The Board continued the hearing, and scheduled the hearing to a date and time certain in accordance with Section 5.2.B.3 of the *Unified Land Use & Development Regulations* – Monday, January 6, 2020 at 6:35 PM. The Board informed the Applicant that a letter memorializing the requested materials would be sent shortly after the evening's hearing.

- L. On October 22, 2019, on behalf of the Board, the Planning Director & Zoning Administrator sent the Applicant a letter (Exhibit P) outlining the materials requested by the Board needed to make a decision about the application.
- M. The continued conditional use review hearing began at 6:35 PM on Monday, January 6, 2020 at Underhill Town Hall, 12 Pleasant Valley Road in Underhill Vermont.
- N. Present at the continued conditional use review hearing were the following members of the Development Review Board:
 - 1. Board Member, Charles Van Winkle, Chairperson
 - 2. Board Member, Stacey Turkos, Vice Chairperson
 - 3. Board Member, Matt Chapek, Clerk
 - 4. Board Member, Mark Green
 - 5. Board Member, Daniel Lee
 - 6. Board Member, Karen McKnight

Also in attendance during the evening's hearing was Staff Member Andrew Strniste, Planning Director & Zoning Administrator. No other members of the public, including the Applicant, were in attendance during the evening's hearing.

- O. Staff Member Strniste informed the Board that the Applicant was not prepared to present additional information, and as a result, the Board continued the hearing, and scheduled it to a date and time certain in accordance with Section 5.2.B.3 of the *Unified Land Use & Development Regulations* to March 16, 2020 at 6:35 PM.
- P. On March 16, 2020, the continued conditional use review hearing commenced at 6:35 PM. Due to the COVID-19 worldwide pandemic, the Underhill Selectboard closed the Town Hall to the general public, including public meetings. As a result, the continued hearing proceeded with participation being done largely by conference call. The following participants attended the hearing at Underhill Town Hall:
 - 1. Board Member, Charles Van Winkle, Chairperson
 - 2. Staff Member, Andrew Strniste, Planning Director & Zoning Administrator

The following participants attended the hearing via conference call:

- 3. Board Member, Stacey Turkos, Vice Chairperson
- 4. Board Member, Penny Miller, Clerk
- 5. Board Member, Matt Chapek
- 6. Board Member, Mark Green
- 7. Board Member, Daniel Lee
- 8. Board Member, Karen McKnight
- 9. Applicant, Michael Diffenderffer (15 Pleasant Valley Road)

For clarification purposes, the entire Board was present for the evening's hearing, as well as Staff

Member Strniste and the Applicant.

Q. Those members of the public who spoke at the hearing were:

1. Applicant, Michael Diffenderffer

R. The Board provided the Applicant additional clarity pertaining to the items they requested in the October 22, 2019 letter. With the guidance provided, the Board continued the hearing, and scheduled it to a date and time certain in accordance with Section 5.2.B.3 of the *Unified Land Use & Development Regulations* to Monday, June 1, 2020 at 6:35 PM.

S. On March 19, 2020, the Applicant met with the Underhill Selectboard to explore the feasibility of a shared parking agreement or boundary line adjustment relating to his property at 20 Pleasant Valley Road, Underhill, Vermont. Discussion with the Selectboard was intended to assist the Applicant in formulating a preferred parking layout.

T. When preparing for the June 1, 2020 continued conditional use review hearing, Staff discovered that the hearing was not originally warned in the *Burlington Free Press* – a requirement of the hearing process. Upon this discovery, Staff consulted with the Town's attorney, who advised that the hearing should be re-warned in its entirety to ensure compliance with the State's and Town's warning requirements.

U. With new Town COVID-19 procedures in place, the continued conditional use review hearing commenced remotely via the Go-To-Meeting platform on Monday, June 1, 2020 at 6:43 PM. The meeting was delayed as the Board waited, to no avail, for the Applicant to attend the meeting.

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, June 1, 2020 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.

V. Present at the continued conditional use review hearing were the following members of the Development Review Board:

1. Board Member, Charles Van Winkle, Chairperson
2. Board Member, Stacey Turkos, Vice Chairperson
3. Board Member, Penny Miller, Clerk
4. Board Member, Matt Chapek
5. Board Member, Mark Green
6. Board Member, Karen McKnight
7. Board Member, Daniel Lee

Also in attendance during the evening's hearing was Staff Member Andrew Strniste, Planning Director & Zoning Administrator. No other members of the public, including the Applicant, were in

attendance during the evening's hearing.

- W. Staff Member Strniste informed the Board of the administrative error relating to the *Burlington Free Press* publication. The Board discussed Monday, August 3, 2020 as a feasible date to recommence with the "re-warned" conditional use review application. The hearing was expected to commence at 6:35 PM.
- X. Shortly after the Monday, June 1, 2020 Development Review Board meeting, the conditional use review hearing was formally scheduled to commence remotely via the Go-To-Meeting platform on Monday, August 3, 2020 at 6:35 PM. No public gathering place was provided for the hearing.
1. The Monday, August 3, 2020 meeting agenda contained both a hyperlink to attend the meeting by computer, table or smartphone, as well as a dial-in phone number and access code allowing participation via telephone.
- Y. During the week of June 28, 2020, 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
- Z. On July 4, 2020, notice of the public hearing was published in the *Burlington Free Press*.
- AA. On July 14, 2020, 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. PR025 – Peter K. & Ellen M. Duval, 25 Pine Ridge Road, Underhill, VT 05489
 2. PR027 – James & Mary Sussman, 27 Pine Ridge Road, Underhill, VT 05489
 3. PV011 [*Hand Delivered*] – Town of Underhill; Attn: Town Administrator, P.O. Box 120, Underhill, VT 05489
 4. PV012 [*Hand Delivered*] – Town of Underhill; Attn: Town Administrator, P.O. Box 120, Underhill, VT 05489
 5. PV019 – Trustees of David A. & Carla N. Osgood, David & Carla Revocable Trust, P.O. Box 81, Underhill Center, VT 05489
 6. PV020 – Michael K. & Emily E. Diffenderffer, 20 Pleasant Valley Road, Underhill, VT 05489 (*Notice Received as Applicant for Subject Application*)
 7. Applicant: PV015 – Michael & Emily Diffenderffer, P.O. Box 42, Underhill Center, VT 05490 (*Notice Sent to: 20 Pleasant Valley Road*)
- BB. In accordance with Act 92, the conditional use review hearing commenced at 6:35 PM on August 3, 2020 via the Go-To-Meeting platform. A public gathering place was not established; the meeting was recorded.
- CC. Attending the remote meeting and 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, Stacey Turkos, Vice Chairperson
3. Board Member, Penny Miller, Clerk
4. Board Member, Matt Chapek
5. Board Member, Mark Green
6. Board Member, Karen McKnight
7. Board Member Daniel Lee

Also present at the evening's hearing was Staff Member, Andrew Strniste, Planning Director & Zoning Administrator. Members of the public that were present during the hearing were:

8. Applicant, Michael Diffenderffer
9. Applicant's Representative, John Stuart

DD. Consistent with 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 Diffenderffer
2. Applicant's Representative, John Stuart

EE. In support of the conditional use review application, the exhibits outlined above, admitted in what was thought to be the original hearing (October 21, 2019), were readmitted, in addition to the minutes, audio recording and video recordings of the aforementioned Board meetings. In addition, the following exhibits were submitted into the record:

1. Exhibit N - PV015 Diffenderffer Conditional Use Supplemental Staff Report
2. Exhibit O - PV015 Conditional Use Hearing Procedures
3. Exhibit P - Diffenderffer 08032020 Conditional Use Continuance Request Materials
4. Exhibit Q - Email Correspondence from Diffenderffer
5. Exhibit R - Wastewater System & Potable Water Supply Design
Exhibit R (Detailed) - Wastewater System & Potable Water Supply Design
6. Exhibit S - Proposed Site Plan
Exhibit S (Detailed) - Proposed Site Plan
7. Exhibit T - Updated Site Plan (Supersedes Exhibit S)
8. Exhibit U - Updated Site Plan - Zoomed In (Supersedes Exhibit S)
9. Exhibit V - RSG Memorandum
10. Exhibit W - Charging Station Models
11. Exhibit X - Charging Station Examples

No additional materials were distributed to the Development Review Board prior to the hearing, nor were any additional exhibits submitted into the record during the hearing.

FF. Additional information relating to the submitted site plans was required in order to make a decision about the application. The Board continued the hearing, and scheduled the hearing to a date and time certain in accordance with Section 5.2.B.3 of the *Unified Land Use & Development Regulations* – Monday, August 17, 2020 at 6:35 PM.

GG. In accordance with Act 92, the continued conditional use review hearing commenced at 6:35 PM on August 17, 2020 via the Go-To-Meeting platform. A public gathering place was not established; the meeting was recorded.

1. The Monday, August 17, 2020 meeting agenda contained both a hyperlink to attend the meeting by computer, table or smartphone, as well as a dial-in phone number and access code allowing participation via telephone.

HH. Attending the remote meeting and present at the continued conditional use review hearing were the following members of the Development Review Board:

1. Board Member, Charles Van Winkle, Chairperson
2. Board Member, Stacey Turkos, Vice Chairperson
3. Board Member, Penny Miller, Clerk
4. Board Member, Matt Chapek
5. Board Member, Mark Green
6. Board Member, Karen McKnight
7. Board Member Daniel Lee

Also present at the evening's hearing was Staff Member, Andrew Strniste, Planning Director & Zoning Administrator. Members of the public that were present during the hearing were:

8. Applicant, Michael Diffenderffer
9. Applicant's Representative, John Stuart

II. Those members of the public who spoke at the hearing were:

1. Applicant, Michael Diffenderffer
2. Applicant's Representative, John Stuart

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

1. Exhibit Y - Correspondence Re Updated Information
2. Exhibit Z - Updated Overall Site Plan (08.17.2020) (Supersedes Exhibit T)
3. Exhibit AA - Updated Site Plan (08.17.2020) (Supersedes Exhibit U)

No additional materials were distributed to the Development Review Board prior to the hearing, nor were any additional exhibits submitted into the record during the hearing.

All exhibits are available for public review in the PV015 Diffenderffer Conditional Use Review file (DRB-19-12) at the Underhill Zoning & Planning Office.

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

The Minutes of the October 21, 2019, January 6, 2020, March 16, 2020, June 1, 2020, August 3, 2020

and August 17, 2020 meetings, written by Staff Member Strniste, are incorporated by reference into this decision. Please refer to the minutes for a summary of the testimony. The meetings of October 21, 2019 and January 6, 2020 were audio recorded, and are available by request from the Planning & Zoning Administrator at the Underhill Town Offices. The meeting of March 16, 2020 was recorded via the Zoom platform, and can also be made available by request to the Planning & Zoning Administrator at the Underhill Town Offices. The June 1, 2020, August 3, 2020 and August 17, 2020 Development Review Board meetings were recorded via the Go-To-Meeting Platform, and can be viewed on the Mt. Mansfield Community Television's website:

June 1, 2020 Meeting: <https://archive.org/details/underhill-drb-06012020>,

August 3, 2020 Meeting: <https://archive.org/details/underhill-drb-08032020>,

August 17, 2020 Meeting: <https://archive.org/details/underhill-drb-08172020>.

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* (hereafter "Regulations" or ULUDR) as amended through March 6, 2018:

- The Board notes that the changes made to 2018 *Unified Land Use & Development Regulations* in March 2020 do not alter the review in any way, as those amendments made in 2020 related to the Town's Road Ordinance, and that those eliminations from the *Unified Land Use & Developments* were transferred over to the 2018 *Underhill Road, Driveway & Trail Ordinance* in December of 2018.

PROJECT SYNOPSIS

The Applicant, Michael Diffenderffer, co-record owner of the property located at 15 Pleasant Valley Road (PV015) in Underhill, Vermont, is seeking conditional use review approval that will allow for the conversion of a multi-family dwelling containing three dwelling units to a mixed use facility that will contain the following uses: three dwelling units (multi-family use), office space and restaurant space. In addition, the Applicant is proposing to construct a covered porch within a riparian buffer (as depicted in Exhibits Z & AA). The proposed covered porch will extend the length of the building on its rear side (north side of the building). The property is located within the Underhill Center Village and the Flood Hazard Area Overlay zoning districts, as defined under Article II, Tables 2.3 and 2.8 of the *Unified Land Use & Development Regulations*, respectively.

ARTICLE II, ZONING DISTRICTS

A. ARTICLE II, TABLE 2.3 – UNDERHILL CENTER VILLAGE DISTRICT

The Board finds the proposed project conforms with the purpose statement of this district, as the proposed project includes a multi-family component that promotes diverse residential uses, as well as office space and restaurant space that promote small-scale commercial development. The aforementioned uses are accompanied by the type of review each one is required to undergo as it relates to this zoning district. They are outlined directly below:

- Office – Site Plan Review
- Mixed Use (max: 10,000 sq. ft.) – Conditional Use Review
- Dwelling-Multi Family (max: 3 units) – Conditional Use Review
- Restaurant (max: 90 seats; no drive-through) – Conditional Use Review

The subject lot is nonconforming, as it does not conform with the acreage requirement (± 1.1 acres in a 1.50 acre district). The proposed lot satisfies the frontage requirement of 100 ft. for the Underhill Center Village District, as the lot contains 236 ft. along Pleasant Valley Road. In addition, the principal structure conforms with the setback requirements of the underlying zoning district – 0 ft. front setback and 15 ft. side and rear setback. However, the structure is considered nonconforming since it does not satisfy the 100 ft. setback requirement from the Brown's River. As a result, the proposed covered porch, which is to be located on the rear side of the principal structure, will also not conform with the riparian setback requirement for the Brown's River. See Sections 3.7 and 3.19 for additional information.

In addition, the Applicant is proposing the parking areas to be located within the property's 12 ft. setback requirement for driveways and accessory structures. The proposed parking will be nonconforming; however, the Board notes that these areas are already being used for parking purposes, and therefore, the degree of nonconformance is not being increased.

B. ARTICLE II, TABLE 2.8 – FLOOD HAZARD OVERLAY DISTRICT

The Board finds the subject property is in the Flood Hazard Overlay District (see Exhibit Z). While the Board finds that the Applicant is not proposing any structures within the flood hazard overlay district, parking is expected to occur in this area. However, the Board finds that parking is already occurring within this area, and therefore, any new impact to the flood hazard overlay district is likely to be minimal.

ARTICLE III, GENERAL REGULATIONS

A. SECTION 3.2 – ACCESS

The Board finds that the subject lot accesses Pleasant Valley Road, a Class II Town Highway, via two curb cuts – an east curb cut and a west curb cut. Both curb cuts are sprawling and converge with those driveways serving the adjacent lots – Moore Park, owned by the Town, on the west side, and the Osgood family to the east. The Board notes that an access permit is required by this Board, and will be granted as part of this approval. While the permit application was not submitted, the Board finds that the application itself is more for documentation purposes, as the design information provided in the application was sufficient for review. The Applicant shall submit an access permit application for formalization purposes as a conditional of approval.

The Board finds that proposed access plan and parking layout are satisfactory. The submitted site plan (Exhibit Z) better defines the curb cuts, which are to be located entirely on the lot, and thus not converging with the driveways on the adjacent lots. The eastern curb cut will be utilized as the entrance while the western curb cut will be utilized as the exit creating one-way traffic flow around the Brown's River side of the structure. The Applicant shall erect the proper signage to ensure the implementation of this proposed vehicular circulation pattern. In addition, the Applicant is proposing 18 parking spaces on the subject lot – 15 Pleasant Valley Road, which are to be arranged as proposed in Exhibit Z. Five additional parking spaces are provided on the Applicant's property across the street at 20 Pleasant Valley Road (PV020) –). This location will be used for employee parking only. See more information related to parking under Section 3.13 below.

As noted above, various parking spaces are to be located within the property's setback requirement of 12 ft. for accessory structures and the setback requirement of 12 ft. for driveways.

However, as demonstrated at the site visit and in aerial photography presented during the hearings, either some form of the existing driveway or some form of parking is already occurring within the areas designated to be parking areas. As a result, the Board finds that the degree of nonconformance will not be increased as a result of the proposing parking configuration, as the proposed parking areas are more or less in the same area as what is already currently being utilized for parking.

The Board is not requiring the Applicant to eliminate one of the curb cuts, as it finds that the two curb cuts are necessary to ensure pedestrian and vehicular safety on the lot. However, the Board does require that the Applicant bring the driveway areas and parking areas up to AOT B-71 Standards, or utilize some other form of green infrastructure discussed during the hearing. The Board notes that parking on grassed areas is not a form of green infrastructure.

The Board acknowledges the difficulty of proposing a functional site plan for the lot given its nonconforming lot size, in addition to the challenges that result from the proximity to the Brown's River (e.g. floodplains and riparian buffer). Therefore, the Board finds that the current proposal provides the necessary parking and site circulation patterns to satisfy the proposed uses. While the lot is nonconforming, it satisfies the frontage requirements of the underlying district, and therefore, the standards under Section 3.2.B do not apply.

B. SECTION 3.3 – CONVERSION OR CHANGE OF USE

The Applicant is proposing to convert the subject structure from a multi-family dwelling containing three dwelling units to a mixed-used structure containing three dwelling units (multi-family use), office space and restaurant space. A mixed-use project requires conditional use review in the Underhill Center Village District regardless of whether each use by itself is a permitted use. The Applicant has submitted a wastewater system design, thereby having submitted evidence that sufficient wastewater can be provided to the proposed project (Exhibit M).

C. SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS

The existing lot is nonconforming, as it is ± 1.1 Acres in a district where the minimum lot size is 1.5 acres; however, the lot DOES conform with the frontage requirement of the Underhill Center Village District, as the subject lot's frontage is ± 236 ft. in a district that requires a frontage length of 100 ft. The existing principal structure, which will remain the principal structure, satisfies the setback requirements of the Underhill Center Village District (0 ft. front setback requirement and 15 ft. side & rear setback requirement), as outlined below:

- Front Property Line: ± 18 ft. (South)
- Side 1 Property Line: ± 53 ft. (West)
- Side 2 Property Line: ± 61 ft. (East)
- Rear Property Line: ± 73 ft. (North)

Upon the construction of the covered porch, the rear setback measurement will be reduced from ± 73 ft. to ± 66 ft., and will still conform to the District's setback requirement of 15 ft. The Board notes that the existing principal structure is nonconforming as it relates to the riparian buffer for Brown's River, as a large portion of the existing building is within the 100 ft. setback requirement of the river (see Exhibit Z). In addition, the proposed covered porch will increase the degree of

nonconformance as it relates to the riparian buffer (also depicted in Exhibit Z), as the covered porch will encroach further into the riparian buffer. The Board approves the construction of the covered porch for the reasons outlined in Section 3.19 below.

As outlined in Section 3.2 above, the proposed parking layout depicted in Exhibit Z is also nonconforming, as it does not meet either the driveway setback requirement or accessory structure setback requirement of 12 ft. Nevertheless, the areas that will be utilized for parking are more or less in locations already being utilized for parking or driveway purposes. In the event that the proposed parking area relating to this application is expanded from what currently exists, the expansion is negligible at best, and therefore, not noticeably increasing the degree of nonconformance.

Lastly, the Applicant is proposing multiple principal uses, and therefore, is proposing a mixed-use facility. Mixed-use facilities are an allowed use should the Board grant conditional use approval.

D. SECTION 3.8 – NONCONFORMING LOTS

The Board finds that the subject lot was legally in existence on the effective date of the current version of the *Unified Land Use & Development Regulations* (March 1, 2011; amended thru March 6, 2018). The lot is being developed for a purpose that is allowed in the Underhill Center Village District so long as the Board grants conditional use approval.

The Board notes that while the existing lot is nonconforming, the dimensions of the lot are not prohibitive in relation to the proposed project. The Board finds that a dimensional waiver is required for the construction of the covered porch (as discussion in Section 5.5.B of this decision). No other dimensional waivers or variances are required, as the proposed nonconformities are of similar nature to the development that currently exists on site, and therefore, the degree of nonconformance is not being increased.

E. SECTION 3.9 – NONCONFORMING STRUCTURES

The Board makes the following findings in relation to various aspects of the project regarding this subsection:

Principal Structure (Existing): The existing structure is only nonconforming as it relates to the riparian buffer for the Brown's River, discussed above and below. Due to the special flood hazard area, the riparian buffer associated with the Brown's River is 100 ft. As a result, the 100 ft. buffer bisects a large portion of the existing principal structure. While the structure is nonconforming, the Applicant is not restricted from changing use, as outlined in this decision.

Principal Structure (Proposed): The proposed covered porch is considered an extension of the principal structure, as defined in Article XI (see definition for "Principal Structure") since it will share a common wall with the main structure. Therefore, the construction of the covered porch will be increasing the degree of nonconformance as it relates to the existing principal structure, as the covered porch will encroach upon the riparian buffer for Brown's River by ±9 additional feet. As a result, a dimensional waiver in accordance with Section 5.5.B of the *Unified Land Use & Development Regulations* is required.

Parking Area: The majority, if not all, of the parking area depicted in Exhibit Z is nonconforming. As outlined above, since the proposed parking area is more or less in the same area as what is currently being utilized for driveway and parking purposes, the Board finds that the degree of nonconformance is not being increased. As a result of this proposal and approval, the Board finds that these areas will be better delineated upon completion of construction.

In totality, the Board finds that the only increase of nonconformity relates to the construction of the covered porch. Further discussion relating to the riparian buffer can be found under Section 3.19 below.

F. SECTION 3.11 – OUTDOOR LIGHTING

The Board finds that the Applicant is proposing lighting in five locations: at the entrances to each of the two dwelling units on the west and east sides of the structure, as well as three fixtures along the rear of the structure – equal distance apart (see Exhibit Z). No lighting is proposed in the parking areas, as depicted on the site plan. All the proposed light fixtures will be located under covered porches that either currently exist or will be constructed, and therefore, the proposed fixtures will be shielded. Nevertheless, the Board finds that all lighting associated with the proposed project shall be directed downward and shielded.

G. SECTION 3.13 – PARKING, LOADING & SERVICE AREAS

PARKING SPACES: The Board finds the *Unified Land Use & Development Regulations* requires 27 parking spaces for the proposed project, as outlined directly below:

Proposed Use	Requirement	# of Spaces Required
Dwelling Units (3 Dwelling Units)	3 Parking Spaces per 2 Dwellings	5 Spaces
Office Space (1,500 sq. ft.)	1 Parking Space per 300 sq. ft. of Gross Floor Area	5 Spaces
Restaurant Space (60 Proposed Seats & 5 Assumed Employees)	1 Parking Space per 5 Seats + 1 Parking Space Per Employee	17 Spaces
Total		27 Spaces

In an earlier hearing, the Board opined that this parking requirement seemed excessive and recommended that the Applicant explore a potential parking study to determine if the required number of parking spaces could be reduced. In addition, the Applicant explored potential parking arrangements with the Underhill Selectboard.

The Board finds that the Applicant had abandoned his efforts to collaborate with the Underhill Selectboard to arrange for some type of shared parking arrangement. Instead, the Applicant commissioned the Resource Systems Group (RSG) to perform a parking study on the proposed uses with the intention of accommodating all of the parking spaces on the subject lot – 15 Pleasant Valley Road. The Board adopts the findings of the RSG study (Exhibit V), and incorporates them into this decision by reference. Specifically, the Board agrees with RSG that the proposed uses are

complimentary of one another, thereby allowing for a reduction in the number of parking spaces. As outlined in Exhibit V, RSG has recommended that 22 parking spaces be required: four parking spaces for the residential component of the project (multi-family dwelling); five parking spaces for the office component of the project; and 13 parking spaces for the restaurant (café) component of the project.

The Applicant has incorporated the findings from RSG by providing a total of 23 parking spaces, as depicted in Exhibits Z & AA. Specifically, five parking spaces have been depicted across the street from the subject property on land owned by the Applicant. These parking spaces will be used for employee parking for the office and restaurant uses of the project. Since the Board finds that the Applicant owns both the subject lot and the lot where the employee parking will be utilized, a shared parking agreement or easement is not required to be submitted at this time. However, should at any point in time, the Applicant were to convey any of the two lots, then the Applicant shall convey an easement and formalize a shared parking agreement, which shall exist for as long as the subject lot is utilized for office and restaurant purposes. This parking arrangement may only be amended by this Board.

In regards to the other 18 parking spaces, those spaces are contained entirely on the subject property – 15 Pleasant Valley Road (PV015). The parking spaces are arranged in a manner that is spread-out on the lot, and depicted in Exhibits Z & AA. The Board finds that the Applicant shall strictly adhere to the parking configuration provided with the afforded flexibility of assigning at least four (4) permanent parking areas for the multi-family dwelling use. The handicapped parking space shall be located as depicted and be clearly marked and dimensioned. All parking spaces shall be clearly marked, clearly delineated, and for those parking spaces along the entrance and exits of the lot, shall be constructed in a way as to keep the staggered nature of the parking spaces. The Applicant shall ensure that the parking spaces for those staggered spots do not “bleed” together.

In regards to other aspects of the parking area, the Board finds that all of the parking spaces will be located out of the Special Flood Hazard limit, thereby avoiding review under Article VI of the Regulations. The parking area will be within the vegetation buffer required under Section 3.19 of the Regulations; however, the Board finds that the rear yard of the property has already lost its natural vegetative status, as the area has been cleared and grass has been planted. The proposed parking areas depicted within the 50 ft. vegetative buffer are already areas being utilized for parking purposes. In addition, the Board notes that a large portion of the lot is within the 100 ft. riparian buffer. Due to the width of the riparian buffer, construction of any development and/or parking area within the buffer is inevitable. Nevertheless, the Board finds that the Applicant is not proposing to impact the area any more than already impacted. As provided above, the Applicant shall better delineate the parking areas and travel lane areas upon construction of the parking area.

In addition, the Board finds that all of the parking areas are located to the side or rear of the principal building and behind the front building line. While off-street parking areas that contain more than eight (8) parking spaces require 10% of the parking area to be landscaped, the Board waives this requirement due to the nonconformity of the lot, as well as the various constraints the site presents – noted throughout this decision.

In sum, for those aspects of the parking that have not been satisfied in strict conformance of this Section, the Board has made the requisite findings in order to grant a waiver under Sections 3.13.C.2 & 3.13.C.3, as all of the aspects of this waiver have been presented during the application process.

BICYCLE RACK: The Board finds that the Applicant has provided a site plan that depicts a bicycle rack, which is located to the east side of the subject building.

FENCING: The Board finds that Applicant is not proposing any fencing, as the Applicant is proposing to use other screening mechanisms, such as trees and shrubs to shield the property from the adjacent neighbors – specifically the Osgoods to the east.

LOADING & SERVICE AREAS: The Board finds that the Applicant has not depicted areas for loading & service; however, the Board finds that the identification of these areas is not required, as the proposed development will not require the frequent or regular loading or unloading of goods or passengers. In the event that loading or servicing areas are required, the Board expects these events to be infrequent and performed in the one-way travel lane, which will unlikely inhibit the flow of traffic for long periods of time.

PROPERTY MAINTENANCE: The Board finds that Applicant shall ensure that snow removal or snow storage does not interfere with the parking capacity, pedestrian and vehicular circulation layouts proposed. The Applicant advised that snow storage can be placed in the rear yard, and in the event that snow needs to be removed to the property, it can be placed on the Applicant's lot across the street at 20 Pleasant Valley Road (PV020). Snow removal shall be considered in the formulation of the shared parking agreement mentioned above should one need to be implemented. In addition, snow storage and/or removal shall not impede upon sight lines relating to Pleasant Valley Road.

COORDINATION OF TRASH: The Board finds that the Applicant has depicted the location of a screened trash area on the submitted site plan (See Exhibits Z & AA). During the hearing, the Applicant expressed the willingness to relocate the trash area to a different area. The Board provides the Applicant this flexibility and notes that, should the trash area be moved, it should be moved to a location where it cannot be seen from Pleasant Valley Road, nor should it interfere with the proposing parking layout or snow removal functions.

H. SECTION 3.14 – PERFORMANCE STANDARDS

The Board finds that the Applicant submitted sufficient information (Exhibit D) to determine that the proposed project will not cause, create or result in any of the situations identified in this Section. Specifically, the following findings are made in regards to each use:

Multi-Family Dwellings – The Board finds that the Town Plan and zoning regulations encourage the development of these structures in the Underhill Center Village zoning district, and therefore, are to be common uses in these areas. The Applicant's proposal of multi-family use within the structure is consistent with other multi-dwelling structures in Underhill Center. In addition, the three dwelling units proposed as part of this project are already existing, and therefore, no changes are expected regarding this use.

Office – The Board finds that office space is a permitted use requiring site plan review in the

Underhill Center Village zoning district, and once again, encouraged by the Town Plan and the zoning regulations within the District. Office uses are generally “low-key” in nature, as it does not typically involve the frequent coming and going associated with other types of businesses. The Board finds that the hours of operation for the office use are intended to be consistent with typical business hours 8:00 am to 6:00 pm.

Restaurant – The Board finds that the restaurant space has the most propensity to cause a situation outlined in this Section compared to the other uses. However, as testified by the Applicant and outlined in the application, the Applicant is intending to be respectful to the neighbors and is desiring to avoid the situations herein. Nevertheless, the Board finds that a restaurant use within the Underhill Center Village District is consistent with, and encouraged by, the Town Plan and zoning regulations, and finds that a restaurant use within this District is important to the Center’s revitalization.

In totality, the Board finds the small business components of the project shall not operate outside the hours of 6:30 AM to 9:30 PM. The Board understands that there are circumstances where office workers may need to work outside of these hours of operation, and so long as those occurrences are infrequent, then that will not be a violation of this decision. In addition, the Board finds that the Applicant anticipates events from time to time. In regards to these occurrences, the events shall conform with the requirements of Section 4.19 (Temporary Structure or Use) of the Regulations concerning special events. Should these special events become routine in nature, the Applicant shall seek further approval from this Board.

Should any of the proposed uses result in one of the situations outlined within this Section, enforcement action may be taken by the Zoning Administrator.

I. SECTION 3.16 – SIGNS

In the event that the Applicant is proposing any signage, the sign(s) shall conform with the requirements of this Section. Further review by this Board is not required unless explicitly required by the standards within this Section. Otherwise, the review process may be performed by the Zoning Administrator.

J. SECTION 3.17 – SOURCE PROTECTION AREAS

The Board finds that the subject lot is entirely within the Groundwater Source Protection Area, and that the proposed project should conform with this Section, specifically Section 3.17.B, since the project is not a stated exemption. The Board discussed the various criteria during their August 2020 hearings, and determined that the most relevant requirement is ensuring that the use of sodium chloride for ice control shall be minimized. Therefore, the Board finds that Applicant shall minimize the use of sodium chloride for ice control, and pursue other means if possible.

K. SECTION 3.18 – STEEP SLOPES

The Board finds that there are no areas of steep slopes (15-25%), nor are there any areas of very steep slope (>25%), located on the subject property, as identified by the Agency of Natural Resources Atlas, and therefore, review and analysis under this Section is not required.

L. SECTION 3.19 – SURFACE WATERS & WETLANDS

The Board finds that neither the Agency of Natural Resources Atlas, nor the commissioned

engineer, identified any wetlands on the subject property. However, the subject property's rear property line is more or less the Brown's River, and therefore, subject to a riparian buffer. Since the river contains a Special Flood Hazard Area, a 100 ft. riparian buffer, as measured from the "Top of Bank," is required. To note, the first 50 ft. of the riparian buffer (measured from the "Top of Bank") is considered a vegetative buffer, and shall conform with the requirements of Sections 3.19.D.5 and 3.19.E.

The Applicant has submitted a site plan (Exhibits Z & AA) depicting the limits of the 50 ft. vegetative buffer (depicted in green), as well as depicting the 100 ft. riparian buffer (depicted in the blue). Typically, the vegetative buffer is to remain undeveloped as required under Section 3.19.D.5; however, in this case, the Board finds that the vegetative buffer was previously disturbed long before the proposed project, as the area within the vegetative buffer is currently being used for parking purposes and lawn. As a result, the limits of the proposed development within the vegetative buffer, the parking spaces, is consistent with the current functionality of the property, and therefore, while nonconforming, is pre-existing. Thus, the Board finds the Applicant is not increasing the degree of nonconformance with the proposed plan, and approves the use of that area as parking.

In regards to the riparian buffer, the Board finds that a large majority of the lot is within the riparian buffer, including a large portion of the existing structure. The Applicant is proposing the construction of a covered porch to the north side of the existing structure, as well as parking within the buffer. For the same rationale provided above relating the vegetative buffer, the Board finds that the degree of nonconformance pertaining to the parking is not being expanded, and therefore, approves the proposed use of the parking area. The analysis regarding the proposed covered porch is provided under Section 5.5.B (Waivers) below.

The Board notes that its approval under this section does not absolve the Applicant from additional permitting from the State of Vermont or Army Corp of Engineers. Therefore, this Board encourages the Applicant to consult with those government entities to ensure that the proper permitting is in place. In the event that additional permitting is required, the Board requires that those permits be obtained prior to any construction.

In addition, the Board finds that the Applicant shall plant additional vegetation in the vegetative buffer in an effort to restore the area to its original state and to prevent erosion of the river bank. The Board finds that the additional vegetation shall be planted in the area along the Brown's River where no vegetation exists. The Applicant may consult with State Officials for guidance on the appropriate type of plantings and how to plant them.

In regards to this application, the Board notes that a zoning permit, obtained from the Zoning Administrator, must be sought in accordance with Section 3.19.E.1.a prior to the removal and/or control of the "non-native species of nuisance plants." Section 3.19.E.1.a specifically states:

1. **Permitted Uses.** the following encroachments are allowed as permitted uses, requiring only a zoning permit from the Zoning Administrator:
 - a. The control of non-native species of nuisance plants including, but not limited to, Eurasian milfoil, water chestnut, purple loosestrife and reed grass (Phragmites),

where such control is by hand pulling of plants or according to a written plan approved by the DEC Water Quality Division and under the applicable state law.

Therefore, prior to removing the Japanese Knotweed, the Board finds that the Applicant shall conform with the aforementioned provision of the Regulations, specifically contacting the DEC Water Quality Division.

M. SECTION 3.23 – WATER SUPPLY & WASTEWATER SYSTEMS

The Board finds that the Applicant has submitted a wastewater system design (Exhibits M, R & AA). As provided in the aforementioned exhibits, the wastewater system has been designed to accommodate the mixed-use structure: three dwelling units (one 3-bedroom apartment, one 2-bedroom apartment, and one 1-bedroom apartment), office space and restaurant space. The submission of the design satisfies the presumption that the underlying aquifer and underground source protection area will not be contaminated.

The Board acknowledges that it does not have any jurisdiction relating to the permitting of wastewater systems, as that authority rests with the State of the Vermont. Therefore, the Applicant is responsible for ensuring the proper permitting is in place, and shall submit the State Permit for recordation prior to the obtainment of a Certificate of Occupancy.

ARTICLE V, DEVELOPMENT REVIEW

A. SECTION 4.12 – MIXED USE

The Board finds that mixed-use structures are permitted in the Underhill Center Village District so long as the Board grants approval as a conditional use. The Board finds that the mixed-use structure conforms with the requirements of the Regulations, including access, sign and parking requirements, as outlined in this decision.

B. SECTION 4.15 – MULTI-DWELLING STRUCTURES (ACCESSORY DWELLINGS, TWO-FAMILY DWELLINGS AND MULTI-FAMILY DWELLINGS)

The Board finds that the structure is currently a multi-family dwelling. The Applicant is proposing to continue the multi-family aspect of the structure, and in fact, is not proposing to make any changes to its current configuration other than to add a covered porch. On-site parking has been provided, and shall be clearly identified upon construction of the parking area (see Section 3.13 for more information). Additionally, the Applicant has submitted a site plan depicting the wastewater system (see Section 3.23 for more information).

ARTICLE V, DEVELOPMENT REVIEW

A. SECTION 5.1 – APPLICABILITY

The Board finds that conditional use review is required in accordance with Table 2.3.C.18, Section 3.3.A.3, 3.7.F.1, 3.8.C, 3.9.B, 3.19.D.5, 3.19.E, 4.12.A and 5.5.B, as outlined within this decision. 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 of 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 site plan depicting the completed project (see Exhibits Z & AA) and was able to ascertain enough information through the site plan and other resources, such as the ANR Website, that the proposed mixed-use structure with proposed covered porch does not impact the enumerated resources in this subsection any more than they are already impacted. As outlined in this decision, especially as it relates to parking, the functionality of the property is more or less the same as what currently exists, as the parking area for the proposed project is expected to remain in the same area currently utilized.

The Board notes that the existing site features that are already impacted are: existing topography and drainage patterns (§ 5.3.B.1.a.i), surface waters and associated buffers (§ 5.3.B.1.a.iv), special flood hazard areas under Article VI (§5.3.B.1.a.v), and delineated source protection areas (§5.3.B.1.a.vi). Other noted resources under this section are either not applicable to this application, or the proposed project will not cause any impact to those features. The Board has determined that the proposed mixed-use structure will either not further adversely affect, or does not adversely affect, those enumerated features, and therefore, no mitigation measures are required under Section 5.3.B.2. The Board has addressed the impacts on the noted features throughout this decision.

Section 5.3.B.2 – Site Layout & Design: The Board finds that the proposed mixed-use structure and associated parking lot is not contrary to the purpose and stated goals under Subsection A, Underhill Flats Village Center and Underhill Center Village District, noting that the mixed-use building has no adverse impact on traditional-looking structures within the area and conforms with the village settlement pattern. Upon completion, the proposed mixed-use building will be consistent with the structures in the surrounding area, and will be of similar distance from the road to other buildings within the district. While the main entrances to building will be on the side and rear of the building, and not facing Pleasant Valley Road, the Board finds that this design is necessary in order to facilitate the site circulation of the property.

Section 5.3.B.3 – Vehicle Access: The Board finds the subject lot is currently accessed by two curb cuts from Pleasant Valley Road – a western curb cut and an eastern curb cut. Currently, each curb cut serves as both entrance and exit to the property. As part of the project, the Applicant is proposing the eastern curb cut to be an entrance way to the property while the western curb cut will serve as the exit way from the property. Vehicular traffic will be directed in a one-way direction (from east to west) through the lot to help manage traffic and avoid congestion. Parking on the subject lot will be reserved for residents of the dwelling units and patrons of the office space and restaurant space.

Insofar to the employees of the office space and the restaurant space, a separate parking area will be located on the property across the street (PV020 – 20 Pleasant Valley Road), which is also owned by the Applicant. This property is also served by two curb cuts – a west and an east curb cut. Unlike the subject lot, there is no restriction as to which curb cut will be used as the

entrance and exit to the employee parking lot. Vehicular access to this lot (PV020) is expected to be less intense than vehicular access to the subject lot (PV015). In addition, vehicular access to 20 Pleasant Valley Road will serve the existing single-family dwelling.

As outlined above, access to the subject lot (PV015) will serve a parking lot consisting of 18 parking spaces, as depicted in Exhibits Z & AA, including a handicapped parking space. Access relating to 20 Pleasant Valley Road will serve the single-family dwelling and the employee parking area. Access to the employee parking shall not interfere with the access to the single-family dwelling at 20 Pleasant Valley Road. For more information relating to access, see Section 3.2 above. For more information relating to parking, as well as information relating to nonconformance, see Section 3.13 above.

Section 5.3.B.4 – Parking, Loading & Service Areas: As discussed throughout this decision, The Board finds that the Applicant's parking proposal conforms with the requirements of the *Unified Land Use & Development Regulations*. In addition to the parameters outlined in Section 3.13 above (see that Section for more information), the Board finds that no parking is proposed for Moore Park. In addition, no parking is proposed at Underhill Town Hall. If additional parking is required, the Applicant shall not be permitted to utilize either location unless permission is expressly obtained from either the Selectboard or Town Staff. In the event that overflowing parking is required on an ongoing basis, the Applicant shall pursue an amended parking plan and submit it to this Board for review.

Section 5.3.B.5 – Site Circulation: The Board finds that the proposed site circulation for the mixed-use structure is adequate and safe for both pedestrian and vehicular circulation. While mixed-use structures are not common within the Town of Underhill, the Board finds that the Applicant presented a design that gave consideration to the intended uses on the property, location of accesses, buildings, parking areas and existing facilities onsite and on adjoining property. As outlined throughout this decision, traffic will circulate through the property (PV015) in a one-way manner from west to east, with parking at various location (depicted in Exhibits Z & AA). The Applicant shall designate which parking spaces will be utilized for the apartment tenants.

The Board recommends that Applicant consult with the Road Foreman and/or the Selectboard (if required) about the designation of a crosswalk from the employee parking area (PV020) to the subject lot – 15 Pleasant Valley Road (PV015).

Section 5.3.B.6 – Landscaping and Screening: The Board finds that some landscaping and screening techniques will be utilized. Since the entrances to the structure are on the side and rear, the "action" is largely occurring on the rear side of the building, already shielded from Pleasant Valley Road. The Applicant has expressed the desire to landscape the area in front of the building, directly adjacent to the Pleasant Valley Road. This landscaping will not be planted for screening purposes; however, it should be maintained as to not to interfere with the Pleasant Valley Road right-of-way or travel-way or sight lines.

Additionally, the two bordering properties on the rear portion of the property (north) are separated by Brown's River and dense forest coverage. In addition, the property that borders the subject lot to the west is Moore Town Park. The Board finds that landscaping and

screening is not required along this border.

In regards to the border with the lot on the east – 19 Pleasant Valley Road, the Board finds that natural vegetation exists between the two properties, however, more-so on the abutting lot than on the subject lot. The Applicant proposes to plant some vegetation between the parking area and 19 Pleasant Valley Road; however, the Board notes that there is minimal space for these plantings. The Applicant shall ensure that there is landscaping or screening between the two properties

The Board finds that the Applicant is responsible for ensuring that the landscaping is maintained and does not interfere with the parking areas

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 when constructing the parking area and the covered porch.

C. SECTION 5.4 – CONDITIONAL USE REVIEW

Section 5.4.A – Purpose: The Board finds that conditional use review is required in accordance with Table 2.3.C.18, Section 3.3.A.3, 3.7.F.1, 3.8.C, 3.9.B, 3.19.D.5, 3.19.E, 4.12.A and 5.5.B, as outlined within this decision. 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 conversion of the multi-family dwelling structure to a mixed-use structure is not anticipated to have an adverse impact on the existing or future community services or facilities. While Staff did not solicit input from the Underhill-Jericho Fire Department or Mount Mansfield Union School District, the Board agrees that additional demand on these services will not occur. Currently, the structure already contains three dwelling units, and the Applicant is not proposing to increase the number of dwelling units. Therefore, no additional demand is expected to occur on the Mount Mansfield Union School District.

Additionally, since the structure already exists, and the site layout is essentially staying the same, the Underhill-Jericho Fire Department is not expected to be adversely effected by the conversion of use. The updated plans have been forwarded to the Fire Department for their records. The Road foreman was consulted about the project by Staff; however, he expressed no concerns regarding the project.

Section 5.4.B.2 – The Character of the Area Affected: The Board finds that the proposed mixed-use structure will not adversely affect the character of the area, as the mixed-use structure will contain uses that are allowed as a permitted use with site plan review required (office) and conditional use approval (multi-family and restaurant) required. These uses are consistent

with the current and proposed Town Plan's desire to increase commercial activity and have denser residential development in the Town's centers. The Board finds that one year after the issuance of a certificate of occupancy permit this Board and the Applicant must revisit the project to ensure compliance with the conditions of approval and the conditional use standards.. Furthermore, the Board makes the following findings relating to the location, scale, type, density and intensity of the use as it relates to other buildings and uses in the area.

- **Location:** the property is located in the Underhill Center Village District, a district that provides for multi-family dwellings (conditionally), restaurant space (conditionally) and office space (permitted as a site plan review project).
- **Scale:** change to the scale of the structure will be negligible, as the Applicant is only proposing to construct a covered porch onto the rear portion of the building. Otherwise, the existing footprint is expected to remain unchanged.
- **Type:** the proposed uses are either permitted conditionally (multi-family and restaurant) or permitted as a site plan review application (office). All of the applicable proposed uses require review by the Board. However, the proposed uses conform to the intent of the existing and proposed Town Plans, as it relates to the underlying zoning district and center.
- **Density:** the density of the property is not going to change, as the same number of dwelling units will not alter from the existing number of dwelling units – three.
- **Intensity:** the proposed project will result in increased intensity due to the office and restaurant uses of the project; however, this type of intensity (mixed-use containing restaurant use, an office use, and a multi-family dwelling use) is anticipated in the Town's center.

Section 5.4.B.3 – Traffic on Roads and Highways in the Vicinity: The Board finds that the proposed project will have an impact on traffic relating to the roads and highways in the vicinity, as additional traffic is expected with the proposed restaurant space and proposed office space. However, the promotion of these uses within the Underhill Center Village zoning district implicitly anticipates an increase in traffic. Therefore, the Board IS NOT requiring a traffic impact analysis in accordance with Section 5.4.B.3.b.

Section 5.4.B.4 – Bylaws in Effect: The Board finds, with its approval, that the proposed project will conform with the 2011 *Unified Land Use & Development Regulations*, as amended through March 6, 2018.

Section 5.4.B.5 – The Utilization of Renewable Energy Resources: The Board finds that proposed project is not anticipated to interfere with any sustainable use of renewable energy resources. The Board also finds that the Applicant is considering, and the Board encourages, the installation of electric recharge stations on the site.

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 the Subsections 5.4.D.1 through 5.4.D.4 and impose conditions as necessary to reduce or mitigate any identified adverse impacts of a proposed development.

Section 5.4.D.1 – Conformance with the Town Plan: The Board finds that the proposed mixed-use structure containing the following uses: multi-family (three dwelling units), office, and restaurant, as well as the construction of a covered porch within a riparian buffer, is consistent with the existing and proposed Town Plan.

Section 5.4.D.2 – Zoning District & Use Standards: The Board finds that the conversion of the multi-family dwelling to a mixed-use structure containing the following uses: multi-family (three dwelling units), office, and restaurant, as well as the construction of a covered porch within a riparian buffer conforms with the zoning district and use standards, as outlined above, upon approval by this Board.

Section 5.4.D.3 – Performance Standards: The Board finds that the project is expected to comply with the performance standards as set forth in Section 3.14 above.

Section 5.4.D.4 – Legal Documentation: The Board finds that the Applicant shall memorialize the parking arrangement for the employee parking. See Section 3.13 for more information.

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 for the covered porch as it relates to the Brown's River riparian buffer, 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 the minimum surface water setback requirements so long as the following information is obtained and following requirements are met:

Section 5.5.B.1 – Untitled: The Applicant is proposing to construct a covered porch addition within the Brown's River riparian setback requirement, which is attached to the pre-existing nonconforming structure. Due to the property's constraints (being nonconforming and largely being in the riparian buffer), the Applicant has presented an application illustrating the justification for a dimensional waiver.

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 two of the criteria to be true: 1) the waiver is necessary to reasonably develop and use the pre-existing nonconforming lot, and 2) the waiver will allow for additions and/or improvements to a pre-existing nonconforming structure. The Applicant is proposing to construct an addition onto the existing structure, a normally permitted action, if not for the pre-existing nonconformance of the structure.

Section 5.5.B3 – Untitled: The Board finds that it may reduce the setback by no more than 50%, or in this case 50 feet. To note, as outlined in Section 3.19, the first 50 ft. directly adjacent to the riparian water-way (Brown’s River) shall be considered a vegetative buffer; however, the Applicant is not proposing the construction of any structures within this buffer. The Applicant has presented an application illustrating that the proposed construction of the covered porch addition will not exceed this threshold, and therefore, only a waiver is required.

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 Applicant is constrained by the property being located almost entirely within the Brown’s River Riparian Buffer and the lot being nonconforming. Due to the lot’s nonconformance, constructing the covered porch in a manner that is conforming is unattainable, thus justifying the setback waiver.

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 covered porch.

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.

E. 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 a Special Flood Hazard Area exists on the property (see Exhibits Z & AA); however, the Applicant is not proposing any development within this area, and therefore, review under Article VI 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 the permit 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 typically 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 uses within 30 months (2.5 years) of the approval date of this decision (5 October 2020).

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

A. SECTION 4 – GENERAL PROVISIONS RELATING TO ACCESSWAYS

SECTION 4.B – REASONABLE ACCESS

The Board finds that the subject lot is currently served by two curb cuts – a western curb cut and an eastern curb cut – from Pleasant Valley Road, a Class II Town Highway. The Applicant is not proposing to close any of the curb cuts, as both are necessary to ensure function pedestrian and vehicular circulation patterns, which help ensure the safety of those who will be visiting the property, or who work or live at the property.

SECTION 4.C – DEVELOPMENT ROAD & DRIVEWAY STANDARDS

In reviewing the standards for development roads and driveways, the Board shall review the following subsections:

SECTION 4.C.1 – GRADES

The Board finds that the grades relating to the proposed parking lot and proposed access ways (both already in existence) do not exceed a 10% grade, and therefore, satisfy the requirements of this subsection.

SECTION 4.C.2 – TOPOGRAPHY

The Board finds that the existing and proposed access ways and parking lot already impact prime agricultural soils; however, they are not anticipated to cause any additional impact on those prime agricultural soils. No adverse or additional impact relating to the other environmental features enumerated in this section is anticipated.

SECTION 4.C.3 – RADII

The Board finds that a 35 ft. turning radii at the curb cut is excessive, and therefore, does not require the turning radii to meet the 35 ft. radii requirement. The proposed turning radii depicted on the site plan (Exhibit Z & AA) is adequate, and consistent with the tightly configured lots in the Underhill Center Village District.

SECTION 4.C.4 – CURBS

The Board finds that the Applicant is not proposing any curbing, and therefore, is consistent with this subsection.

SECTION 4.C.5 – GEOTEXTILES

The Board finds that the Applicant shall adhere to the requirements of this subsection upon constructing and modifying the driveways.

SECTION 4.C.6 – DRAINAGE

The Board finds that the Applicant shall avoid drainage onto adjacent properties and into the Pleasant Valley Road right-of-way, as well as avoid directing drainage into Brown's River.

SECTION 4.C.7 – SLOPES, BANKS & DITCHES.

The Board finds that the Applicant has provided a stormwater trench that will run immediately next to, and parallel to, the access way and building. This stormwater trench is intended to collect stormwater and direct it away from Brown's River, as well as assist with the absorption water into the ground.

SECTION 4.C.8 – WET AREAS

The Board finds that the existing parking area does not impact any wet areas or impact further the existing wetlands, as provided in this section, and that the Applicant shall conform with the requirements of this subsection when modifying the parking area as proposed in this application.

SECTION 4.C.9 – CULVERTS

Should additional culverts be required, they shall be installed in accordance with the standards of this subsection.

SECTION 4.C.10 – STREAM CROSSINGS

The Board finds that this subsection does not apply as the proposed project does not involve any stream crossings.

SECTION 4.C.11 – BRIDGE

The Board finds that this subsection does not apply as the proposed project does not involve bridges.

SECTION 4.C.12 – DESIGN

The Board finds that the parking area and the curb cuts shall have a clear unobstructed height of at least 13 ft., 6 inches. The Applicant shall ensure that, at the very least, a paved apron at least 10 ft. in length, conforming to the AOT Standards, is constructed at the exit curb cut (the western curb cut). The other provisions of this subsection do not apply.

B. SECTION 5 – SPECIFIC PROVISIONS: DRIVEWAYS & DEVELOPMENT ROADS

SECTION 5.A – DRIVEWAYS

Regarding the standards for driveways, the Board reviews the following subsections:

SECTION 5.A.1 – CONSTRUCTION & DESIGN REQUIREMENTS

The Board requires that the Applicant and respective subsequent landowners upgrade and or construct driveway/parking area modifications in conformance with the AOT B-71 Standards, or for the parking areas, utilize some other form of green infrastructure discussed during the hearing. The Board notes that parking on grassed areas is not a form of green infrastructure.

SECTION 5.A.2 – LOCATION

The Board finds that the Applicant satisfied the requirements of this subsection, as the existing lot is currently served by two curb cuts – a western and an eastern curb cut.

SECTION 5.A.3 – WIDTHS

The Board finds that the Applicant's project will have two curb cuts. The curb cuts will not satisfy Detail C of the AOT B-71 Standards, which requires curb cuts for commercial establishments to be at least 24 ft. However, due to the one-way nature of the access way, the Applicant does not need to satisfy the 24 ft. requirement, thus satisfying requirements of this subsection.

SECTION 5.A.4 – NONCONFORMING LOTS:

While the subject property is nonconforming, the Board finds that the standards and provisions within this subsection do not apply.

IV. WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS

The Board grants the following waivers/modifications:

- The 10% landscape area for parking areas associated with eight or more parking spaces is not required due to the property's nonconformity status, as well as the proposed layout of the access way and parking layout.
- Identification of any specific loading or service areas is not required due to the nature of the businesses, and should there be any deliveries, the nature of the travel way will help facilitate those deliveries.
- The Board waives the 100 ft. riparian setback requirement for the covered porch, which is to be located to the rear of the existing principal structure. The Board finds that the covered porch shall not exceed the limitations provided in the submitted zoning permit application (Exhibit E), and depicted on the site plan (Exhibits Z & AA).

- The Applicant, 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 and any applicable permits and approvals 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 conversion of the multi-family dwelling to a mixed-use structure containing: multi-family, office and restaurant uses, in addition to the construction of a covered porch on the rear of the building, 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:

GENERAL CONDITIONS OF APPROVAL

1. ***Change of Use.*** The Board finds that any use reclassification, change of use, or change of business type pertaining to this application requires additional review by this Board. Further review by this Board is not required should a subsequent business reside in the structure that is in the same non-retail nature as the proposed business in this application so long as the business functions within the parameters of this decision.
2. ***Delegation of Authority.*** The Board hereby delegates authority to the Zoning Administrator regarding fulfillment of the proposed project. The Zoning Administrator is empowered to act on behalf of the Board regarding any minor changes in the approval or proposed design (including the access permit approval). These changes are not limited in scope, but are left to the discretion of the Zoning Administrator on when to defer decisions in this matter to the Board. The delegation of authority shall cease upon the issuance of a certificate of occupancy permit.
3. ***Status Report.*** The Board finds that one year after the issuance of a certificate of occupancy permit this Board and the Applicant must revisit the project to ensure compliance with the conditions of approval and the conditional use standards.

CONDITIONS RELATING TO THE UNIFIED LAND USE & DEVELOPMENT REGULATIONS

4. ***Hours of Operation.*** The Board finds that the small business aspects of the project shall not operate outside the hours of 6:30 AM to 9:30 PM.
 - a. Should the business aspects of the project conduct special events, they shall conform with

the requirements of Section 4.19 (Temporary Structure or Use) of these regulations. Should these events become routine in nature, the Applicant shall seek further approval from this Board.

5. **Parking (General).** The Applicant shall arrange the parking spaces in the same configuration as depicted on the site plan (see Exhibit Z) – 18 parking spaces at 15 Pleasant Valley Road and five (5) parking spaces at 20 Pleasant Valley Road.
 - a. The Applicant is afforded the flexibility to designate which parking spaces will be utilized for the apartment tenants. In accordance with the RSG parking analysis (Exhibit V), the Applicant shall designate at least four parking spaces for the apartment tenants.
 - b. The Applicant shall not pave the parking area.
6. **Parking (On-Site/Off-Site).** All parking shall occur on-site. In the event the demand for parking exceeds the allotted number of parking spaces, the overflow parking shall not interfere with the normal use of Moore Park. Additionally, no overflow parking shall occur at Underhill Town Hall (12 Pleasant Valley Road) unless permission is explicitly and expressly obtained from either the Selectboard or Town Staff. Should overflow parking be required on an ongoing basis, the Applicant shall pursue an amended parking plan and submit it to this Board for additional review.
7. **Parking (Employee).** Access to the employee parking shall not interfere with the access, pedestrian and vehicular site circulation patterns of the single-family residence at 20 Pleasant Valley Road.
8. **Bicycle Rack.** The Applicant shall provide a bicycle rack.
9. **Landscaping & Screening (General).** The Applicant is responsible for ensuring that the landscaping is maintained and does not interfere with parking areas.
10. **Landscaping & Screening (Along Pleasant Valley Road).** Any landscaping that is planted in the front yard shall be maintained and shall not interfere with the Pleasant Valley Road right-of-way or travel-way or sight lines.
11. **Landscaping & Screening (Along the Property Line with 19 Pleasant Valley Road).** The Applicant shall ensure that there is landscaping or screening along the property boundary with 19 Pleasant Valley Road.
12. **Outdoor Lighting.** Any outdoor lighting that may be added as part of this project shall be downward facing and shielded.
13. **Signage.** In the event that the Applicant is proposing any signage, the sign(s) shall conform with the requirements of Section 3.16. Further review by this Board is not required unless explicitly required by this Section. Otherwise, the review process may be performed by the Zoning Administrator.
14. **Groundwater Source Protection Areas.** The Applicant shall minimize the use of sodium chloride for ice control and pursue other means if possible.
15. **Snow Removal.** The Applicant shall ensure that snow removal or snow storage does not interfere with the proposed parking capacity, pedestrian and vehicular circulation layouts, or sight lines.
16. **Trash Removal.** The Applicant is afforded the flexibility to move the trash area so long as it cannot be seen from Pleasant Valley Road. Relocation of the trash area shall not interfere with the proposed parking layout or snow removal functions. The new location shall be updated on the as-

built site plan.

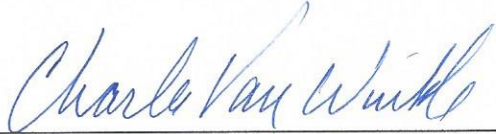
17. **Shared Parking Agreement.** Should at any time the Applicant convey either of the two properties he owns with the intent that the business functions (office and/or restaurant) of the subject property be maintained, then the Applicant shall convey an easement and/or formalize a shared parking agreement, which shall exist for as long as the subject lot is utilized for office and restaurant purposes.
18. **Water/Wastewater Permitting.** The Applicant is responsible for ensuring that the proper water/wastewater permitting with the State of Vermont is in place and shall submit that permit for recordation prior to the obtainment of a certificate of occupancy permit.
19. **Construction.** The Board finds that the Applicant shall utilize the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control when constructing the project.
20. **Duration:** The Board notes that conditional use approvals typically 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 hereby extends the amount of time that the Applicant shall establish the uses. Uses shall be established within 30 months (2.5 years) of the approval date of this decision (5 October 2020).

CONDITIONS RELATING TO THE ROAD, DRIVEWAY & TRAIL ORDINANCE

21. **Access Permit Application.** The Applicant shall submit an access permit application for formalization purposes.
22. **Access-Related Signs.** The Applicant shall erect the proper signage (one-way traffic, handicapped parking spaces, tenant parking) to ensure the implementation of the proposed vehicular circulation patterns and parking areas.
23. **Drainage.** In the event drainage issues emerge, the Board reserves the right to review the project for corrective measures as it relates to drainage.
24. **Culverts.** The Board finds that no additional culverts are proposed. If required, the additional culverts be required, they shall be installed in accordance with the standards subsection 4.C.9 of the Town's road ordinance.
25. **Wet Areas.** The Applicant shall conform with the requirements of the "wet areas" subsection (subsection 4.C.8) of the *Underhill Road, Driveway & Trail Ordinance* when modifying the parking area as proposed in this application.
26. **Sight Lines.** The Applicant shall ensure that snow storage and/or its removal, as well as any vegetation, shall not impede upon sight lines relating to Pleasant Valley Road.

27. **Curb Cut Definition.** The Applicant shall better define the curb cuts and shall locate them entirely on the subject lot, thus not converging with the driveways on the adjacent lots – 11 & 19 Pleasant Valley Road

Dated at Underhill, Vermont this 5th day of **October 2020**.



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.