



Town of Underhill

Development Review Board

Findings and Decision

APPLICATION OF JON HOWARD FOR A CONDITIONAL USE REVIEW - WAIVER/VARIANCE REQUEST TO CONSTRUCT A DECK ADDITION WITHIN THE PROPERTY'S SETBACK REQUIREMENTS

In re: Jon Howard
219 Stevensville Road (ST219)
Underhill, VT 05489

Docket No. DRB-20-12

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

PART I. INTRODUCTION AND PROCEDURAL HISTORY

The subject of this proceeding concerns a conditional use review application for a waiver/variance request that would allow the applicant, Jon Howard, to construct a deck addition on the existing deck within the property's setback requirements, specifically the side setback requirements, as well as to construct a shed onto the detached garage within the property's setback requirements. The Applicant's lot is located at 219 Stevensville Road (ST219) in Underhill, Vermont, and is located in the Water Conservation District and the Soil & Water Conservation District.

- A. On Thursday, October 8, 2020, Jon Howard (the Applicant), filed an application for conditional use review for a waiver/variance request hearing for the abovementioned projects. The application was accepted and determined to be complete by the Planning & Zoning Administrator, Andrew Strniste, on October 15, 2020. The hearing was scheduled for 6:35 PM on November 16, 2020, and was to be held remotely via the Go-To-Meeting platform due to the COVID-19 pandemic.
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, November 16, 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.
- B. On October 28, 2020, notice of the conditional use review – waiver/variance request hearing was mailed via Certified Mail to the following property owners adjoining the property subject to the application:
1. **ML020→ ML010** – Northern Shire L3C, 14 Maple Leaf Road, Underhill, VT 05489
 2. **ST204** – Jeffrey L. & Karen C. Davis, P.O. Box 229, Underhill Center, VT 05490
 3. **ST217** – Elaine Herman Trustee, P.O. Box 116, Underhill Center, VT 05490
 4. **ST221** – Infields, LLC, Livingston Howard, 199 Bayberry Lane, Westport, CT 06880

5. **ST246** – Wheeler Associates c/o Patricia McLaughlin, 37 Foster Road, Essex Junction, VT 05452
 6. **[Applicant] ST219** – Jon Howard & Vanessa M. Kennedy, P.O. Box 43, Underhill Center, VT 05490
- C. During the week of October 25, 2020, notice of the public hearing for the proposed conditional use review – waiver/variance request hearing 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 October 31, 2020, notice of public hearing was published in the *Burlington Free Press*.
- E. In accordance with Act 92, the conditional use review – waiver/variance request hearing commenced at 6:35 PM on Monday, November 16, 2020 via the Go-To-Meeting platform. A public gathering place was not established; the meeting was recorded.
- F. Present at the conditional use review – waiver/variance request hearing were the following members of the Development Review Board:
1. Board Member, Charles Van Winkle, Chairperson
 2. Board Member, Matt Chapek
 3. Board Member, Mark Green
 4. Board Member, Daniel Lee
 5. Board Member, Penny Miller
 6. Board Member, Karen McKnight

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

Others present at the hearing were:

1. Applicant, Jon Howard (219 Stevensville Road, Underhill, VT 05489)

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.

- G. At the outset of the hearing, Chair 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, Jon Howard

Also qualifying as an interested party is Elaine Hermann (Exhibit P), who did not attend the hearing; however, she submitted a letter of support.

- H. In support of the conditional use review – waiver/variance request application, the following exhibits were submitted to the Development Review Board:

Exhibit A - ST219 Howard Waiver & Variance Request Staff Report
Exhibit B - ST219 Conditional Use Review Hearing Procedures

Exhibit C - Development Review Application
Exhibit D - Responses to Development Review Application Questions
Exhibit E - BFP Notice
Exhibit F - Certificate of Service
Exhibit G - Zoning Permit Application (B-20-42)
Exhibit H - Zoning Permit Application (B-20-43)
Exhibit I - Proposed Deck Addition Floor Plan
Exhibit J - Proposed Shed Floor Plan
Exhibit K - Proposed Shed Elevation
Exhibit L - Site Plan Submitted by Applicant
Exhibit M - Waiver/Variance Limitations
Exhibit N - Waiver/Variance Limitations with Setbacks
Exhibit O - Letter of Support from Davis

One additional exhibit was distributed to the Board prior to the hearing (on November 10, 2020):

Exhibit P - Correspondence from Elaine Hermann

No additional exhibits were submitted into the record during the hearing.

All exhibits are available for public review in the ST219 Waiver/Variance Request file (DRB-20-12) at the Underhill Zoning & Planning office.

PART II. FINDINGS

The Minutes of the November 16, 2020 meeting, written by Andrew Strniste, are incorporated by reference into this decision. Please refer to those minutes for a summary of the testimony. The recording of the November 16, 2020 Development Review Board meeting can be viewed on the Mt. Mansfield Community Television's website: <https://archive.org/details/underhill-drb-11162020>.

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* (also known as ULUDR or the "Regulations"), as amended through March 3, 2020:

FACTUAL FINDINGS

The Applicant, Jon Howard, record owner of the property located at 219 Stevensville Road (ST219) in Underhill, Vermont, is seeking conditional use review – waiver/variance request approval under Sections 5.5.B & 5.5.C from the Development Review Board to construct a deck addition on the existing deck within the property's setback requirements, specifically the side setback requirements, as well as to construct a shed onto the detached garage within the property's west, side setback requirements.

The property is located in the Water Conservation District as defined in Article II, Table 2.5 and in the Soil & Water Conservation District as defined in Article II, Table 2.7 of the 2020 *Underhill Unified Land Use & Development Regulations*. The proposed deck addition will be located in the Soil & Water Conservation District (further discussion below under Section 2.2 below), and the proposed shed is located in the Water Conservation District.

After reviewing the application in more depth, but prior to the November 16, 2020 hearing, Staff

discovered that the analysis relating to the proposed shed was incorrect, as Staff was applying the setback requirements for principal structures (50 ft. setback requirement) rather than accessory structures (20 ft. setback requirement). As a result, a dimensional waiver or variance is not required. The proposed shed was measured to be ± 37 ft. from the west side property line, thus located outside of the 20 ft. side setback requirement. Therefore, the Board dismisses review regarding the zoning permit application (Exhibit H, zoning permit application: B-20-43) relating to the proposed shed. Therefore, this review and decision only relates to the deck addition.

ZONING DISTRICTS, ARTICLE II

ARTICLE II – ZONING DISTRICTS

A. ARTICLE II, SECTION 2.2 – BOUNDARY INTERPRETATIONS

In accordance with Section 2.2.E.5, the Board finds that it has the authority to extend district standards up to a distance of 100 feet into an adjacent district. The Board has applied this provision, thereby shifting the Water Conservation District to the east by 100 feet.

For further detail, the Soil & Water Conservation District's side setback requirements are 75 ft, as depicted in Exhibits M & N. As a result, a dimensional waiver would be required for any structures built between 37.5 ft. and 75 ft. from the property's side property line, while a variance would be required for any structures built between 0 ft. and 37.5 ft. from the side property line. As evidenced in the materials presented (Page 4, Exhibit A and Exhibits M & N), the proposed deck addition will be ± 31 ft. from the west side property line, thus requiring a variance, and ± 61 ft. from east side property line, requiring a waiver.

However, by shifting the Water Conservation zoning boundary to the east by 100 ft. in accordance with Section 2.2.E.5, the proposed deck addition would effectively be in the Water Conservation District, and as such, the relevant setback requirement is 50 ft. for side setbacks. Within the Water Conservation zoning district, a dimensional waiver would be required for any structures built between 25 ft. and 50 ft. from the property's side property line, while a variance would be required for any structures built between 0 ft. and 25 ft. from the side property line. With the Water Conservation zoning district's dimensional standards applying to the proposed project and since the proposed deck addition will be ± 31 ft. from the west side property line, only a dimensional waiver is required. And in regards to the east side property setback, the deck would no longer be within the property's setback.

Therefore, the Board finds that by extending Water Conservation District standards 100 ft. in an easterly direction, only a dimensional waiver is required for the proposed deck addition.

B. ARTICLE II, TABLE 2.5 – WATER CONSERVATION DISTRICT

The Board finds that the subject property is located in the both the Water Conservation District and Soil & Water Conservation District and that the proposed project, a deck addition, which is located entire will not impact the aquifer recharge area in Underhill Center in a negative manner. The proposed deck addition will satisfy the front, east side, and rear setback requirements of this District; however, it will fail to satisfy the west side setback requirement, and will encroach into the setback 19 feet. As a result, the proposed deck addition will be setback 31 ft. from the west, side property line.

The Board also finds that the subject lot is nonconforming, as the property fails to satisfy the minimum acreage and frontage requirements of the Soil & Water Conservation District (when a lot is multiple zoning districts it must adhere to the requirements of the strictest zoning district). The subject lot is ± 5.0 acres and contains ± 204 ft. of frontage – failing to satisfy the 15.0 acre and 400 ft.

frontage requirements. While the subject property is a nonconforming lot, development is permitted on the lot in accordance with Section 3.8 (see below).

Lastly, the Board notes that the proposed deck is allowed within both zoning districts, and must satisfy the setback requirements for the principal structure since structures attached to the principal structure are considered an extension of the principal structure (see ULUDR, Article XI, definition of “Principal Structure”).

C. ARTICLE II, TABLE 2.7 – SOIL & WATER CONSERVATION DISTRICT

As outlined under Section 2.2 above, the Board finds that it has the authority to extend district standards by 100 ft. As a result, the dimensional standards of the Water Conservation zoning district apply to the project rather than dimensional requirements of the Soil & Water Conservation zoning district. However, the Board still finds that the frontage and acreage requirements from the Soil & Water Conservation zoning district apply, which the subject lot does not conform to (see directly above under Article II, Table 2.5). Nevertheless, the Board finds that the subject property can still be developed, as allowed under Section 3.8. Also for notation purposes, the existing single-family dwelling is a pre-existing (and previously approved by this Board; DRB Docket #s: DRB-17-11, DRB-17-15 and DRB-18-10) nonconforming structure on a pre-existing nonconforming lot.

GENERAL REGULATIONS, ARTICLE III

A. SECTION 3.2 – ACCESS

The Board finds that the subject property accesses the Class IV section of Stevensville Road. No modifications to the existing access way (driveway or curb cut) are being proposed, nor does the proposed project require modifications to the existing access way. The Board notes that the subject property’s driveway accesses Stevensville Road on the lot that is adjacent to the east, and then connects with the property from the east – the east side property boundary. The existing driveway conforms with the 12 ft. setback requirements. The Board is not requiring 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 proposed deck addition will be attached directly to the west side of the existing deck, which is attached to the west side of the single-family dwelling – the principal structure on the lot. The deck addition will encroach into the west side setback requirement by ±19 ft. As noted above, the Board finds that attached structures to a primary structure are considered an extension of the principal structure (see Article XI of the ULUDR), and since the deck addition will be attached to the principal structure, the deck itself will need to adhere to the setback requirements of the principal structure.

As outlined above, since the Board has moved the zoning boundary between the Water Conservation and Soil & Water Conservation District to the east by 100 ft., the deck will need to adhere to the principal structure setback requirements for the Water Conservation District – front requirement: 30 ft.; side and rear requirement: 50 ft. Therefore, the proposed deck addition will need to adhere to the 50 ft. side setback requirement. Due to the nature of encroachment, a dimensional waiver is required. In accordance with Section 3.7.E.1, the Board finds that the requested waiver will allow for a limited addition to a nonconforming principal structure (see Exhibit M).

The Board finds that the existing lot fails to satisfy the minimum acreage requirement of the Soil & Water Conservation District, which is 15 acres, as the subject property is ± 5.0 acres. The subject property also fails to satisfy the frontage requirement of the Soil & Water Conservation District, which is 400 ft., as the subject property has ± 204 ft. of frontage. See above Article II, Table 2.5 above for more information.

The setbacks as they relate to the proposed deck addition are:

- Front Property Line: >100 ft. (South)
- Side 1 Property Line: ± 31 ft. (West)
- Side 2 Property Line: ± 61 ft. (East)
- Rear Property Line: >100 ft. (North)

Although the proposed deck addition and existing single-family dwelling fail to meet the dimensional setback requirements, since the Applicant has satisfied the requirements of Section 3.9 and 5.5.B, as explained below, they are not prohibited from obtaining approval by this Board.

C. SECTION 3.8 – NONCONFORMING LOTS

The Board finds that the lot was legally existing on the effective date of the current *Underhill Unified Land Use & Development Regulations* (Adopted March 1, 2011; Amended thru March 3, 2020), and therefore, per Section 3.8.A, the lot may be developed for the purposes allowed in the district in which it is located even though it does not conform to the minimum lot size requirements. Specifically for waiver purposes, the Board may reduce the district setback requirements in accordance with Article V “as necessary to allow for the development of a pre-existing nonconforming lot, if the Board determines that the lot cannot otherwise be developed in conformance with the regulations.” Due to the several site constraints outlined below, the ability to construct a conforming structure is significantly limited.

D. SECTION 3.9 – NONCONFORMING STRUCTURES

The Board finds that the existing single-family dwelling was legally in existence as of the effective dates of the current *Underhill Unified Land Use & Development Regulations*, and therefore, may continue to be occupied or used indefinitely. Since the Applicant is only proposing to structurally enlarge/expand, or modify the building footprint within the first 50% of the setback requirement, the Applicant may proceed with obtaining a dimensional setback waiver in accordance with Section 3.9.B.

E. SECTION 3.11 – OUTDOOR LIGHTING

The Applicant is not proposing any additional lighting (see Exhibit D); however, should the Applicant install additional outdoor lighting relating to the project, it shall be downward facing and shielded.

F. SECTION 3.13 – PARKING, LOADING & SERVICE AREAS

The Board finds that the proposed deck addition does not increase the number of parking spaces that are required for the existing use of the property per Table 3.1(ULUDR) – a single-family dwelling (two parking spaces) with an accessory dwelling (one parking space).

G. 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 deck addition 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.

H. SECTION 3.17 – SOURCE PROTECTION AREAS

The Board finds that the subject lot is entirely located in a source protection area; however, since the project is associated with the principal structure – a single-family dwelling – the project is exempt from review under Section 3.17.B.

I. SECTION 3.18 – STEEP SLOPES

The Board finds that there are areas of steep slopes (15-25%) or very steep slopes (>25%) present on the lot, specifically to the north and south of the single-family dwelling. These areas of slope create additional constraints, thus minimizing the possible building envelope of the property. While these areas exist, the Applicant is not proposing any construction that will impact any of these areas, which was verified during the Board's site visit associated with DRB Docket #: DRB-18-10.

To note, while the proposed deck addition appears to encroach upon the "top of bank" area depicted in the site plan (Exhibit M), that boundary was designated for wastewater permitting purposes and is not meant in the context of the Town's zoning regulations.

J. SECTION 3.19 – SURFACE WATERS & WETLANDS

The Board finds that Stevensville Brook is located towards the northern part of the lot. Per Section 3.19.D.1 of the ULUDR, since no floodplains are present on the lot, all structures shall be 50 feet from the stream, as measured horizontally from the "top of slope" – in this case Stevensville Brook. As noted above, the "top of bank" area depicted in the site plan was for the purposes of wastewater permitting, and not in the context of the Town's zoning regulations. Therefore, in evaluating the proposed deck addition in relation to Stevensville Brook, it will be ±225 ft. to the southeast, thus satisfying the setback requirement (even if the more stringent requirement of 100 ft. measured from the "top of bank" were applied).

Regarding wetlands, the site plan (Exhibit M) depicts two areas of Class III Wetlands. The proposed deck addition will be located ±175 ft. from the nearest identified Class III Wetland, thus satisfying the 25 ft. setback requirement. No other classes of wetlands were identified on the property.

K. SECTION 3.23 – WATER SUPPLY & WASTEWATER SYSTEMS

The Board finds that a wastewater permit is likely not required for the construction of the proposed deck addition; however, the Vermont Department of Environmental Conservation maintains jurisdiction over wastewater permitting. For notation purposes, a Wastewater System and Potable Water Supply Permit (WW-4-3990-1, Dated October 24, 2017) was obtained for the previous project to construct additions to the single-family dwelling (DRB-17-11). The permit allows for a five-bedroom, single-family residence, which will utilize an on-site drilled well water supply and an existing with modifications on-site wastewater disposal system.

ARTICLE V, DEVELOPMENT REVIEW

A. SECTION 5.1 – APPLICABILITY

The Board finds that conditional use review is required per Sections 3.7.F.1, 3.9.A.3 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 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 proposed project and was able to ascertain enough information through the site plan and other sources, such as the ANR Website, that the proposed deck addition does not adversely affect or impact the enumerated resources in this subsection. While many of the enumerated features exist on the subject property, the Board finds they will not be impacted by the expansion of the deck. Therefore, no mitigation measures are required under Section 5.3.B.2.

Section 5.3.B.2 – Site Layout & Design: The Board finds that the proposed deck addition is not contrary to the purpose and stated goals under Subsection B, Rural Residential and Water Conservation District, noting that the deck addition has no impact on the rural character of the area and traditional working landscape of the Rural Residential and Water Conservation Districts. Additionally, the proposed deck addition is largely shielded by dense forest vegetation surrounding the proposed structure and existing single-family dwelling.

Section 5.3.B.3 – Vehicle Access: The Board finds the subject lot is accessed by one curb-cut via the Class IV section of Stevensville Road. The Applicant is not proposing 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 deck addition does not increase the number of parking spaces that are required for the existing use of the property – single-family dwelling. See Section 3.13 above for more information.

Section 5.3.B.5 – Site Circulation: The Board finds that the proposed deck addition 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 is not proposing to make any modifications to the landscaping and screening mechanisms currently in place. The subject property is more or less entirely encompassed by dense forest, thereby providing natural screening from adjacent properties and Stevensville Road. As a result no additional screening and landscaping is mandated.

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 work relating to the proposed deck addition.

C. SECTION 5.4 – CONDITIONAL USE REVIEW

Section 5.4.A – Purpose: The Board finds that conditional use review is required per Sections 3.7.F.1, 3.9.A.3 and 5.5.B, which require conditional use approval for the construction of a structure within a property’s setback requirements. Specifically, a dimensional waiver under Section 5.5.B is allowed if the encroachment is less than 50% of the property’s setback requirement. 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 deck addition will not result in an increase in demand on community services and facilities. Comments were not solicited from the Road Foreman, Underhill-Jericho Fire Department, or Mount Mansfield Union School District, as comments from those entities were found to not be applicable.

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

- **Location:** the property is located in the Water Conservation and Soil & Water Conservation Districts, which largely contain low-to-medium density development, including single-family dwellings with decks and porches.
- **Scale:** the scale of the proposed construction is consistent with the development that currently exists on the property and the surrounding properties.
- **Type:** the proposed deck addition will be attached to the principal structure – a single-family dwelling. Decks are permitted uses within both the Water Conservation and Soil & Water Conservation zoning districts.
- **Density:** the proposed deck addition results in no change to the density of the area.
- **Intensity:** the proposed deck addition 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 deck addition 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 is the same.

Section 5.4.B.4 – Bylaws in Effect: The Board finds that as a result of this approval the proposed deck addition will comply with the 2020 *Unified Land Use & Development Regulations*.

Section 5.4.B.5 – The Utilization of Renewable Energy Resources: The Board finds the proposed deck addition is unlikely to interfere with any sustainable use of renewable energy resources.

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 deck addition is not contrary to Town Plan.

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

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 variance; however, during the hearing, the Board discovered that only a waiver is required for the reasons outlined under Section 2.2 above. The waiver has been 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 district 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 deck addition within the property's setback requirement, which is attached to the pre-existing nonconforming principal structure (the Board notes that some of the existing structures have received approval from this Board to be situated within the property's setback requirements via previous waiver & variance applications; see Exhibit M). Due to the nonconforming status and construction features of the principal structure, 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 the first and second criterion to be true: 1) the waiver will allow for the reasonable development and use of a pre-existing nonconforming lot under Section 3.8, and 2) the waiver will allow for additions and/or improvements to a pre-existing nonconforming structure under Section 3.9. The Applicant is proposing to construct a deck addition, a normally permitted action, if not for the pre-existing nonconformance of the lot and the pre-existing nonconformance of the principal structure – a single-family dwelling.

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 deck addition encroaches upon the setback by 19 ft., and they are not anticipating to exceed this threshold.

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 project is constrained by the existing site location of the principal structure, as well as the narrowness of the lot. Specifically, an area of steep slope is located directly to the north of the structure; components of the wastewater system are located directly to the west of the west-side of the structure; the eastern property line is located directly to the east of the structure; and the driveway is located directly to the south of the structure. Any required alteration or movement of the existing structure would be unreasonable, and therefore, the construction of the proposed deck addition within the property's setback 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 deck addition.

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: As outlined under Section 2.2 above, the Board finds that this Subsection does not apply, as the Board finds that it has the authority to shift the zoning district boundary in an easterly direction by 100 ft. In doing so, the proposed deck addition would be located entirely within the Water Conservation District, thus only needing to adhere to the less restrictive 50 ft. side setback requirement instead of the more restrictive 75 ft. side setback requirement. Since the proposed deck addition would be located ± 31 ft. from the west side property line, and is effectively located in the Water Conservation zoning district, only a dimensional waiver is required, as the

proposed project is located more than 25 ft. (representing more than 50% of the setback requirement) from the property boundary. Therefore, review and analysis under this Subsection is not required.

ARTICLE VI, FLOOD HAZARD AREA REVIEW

There are no Flood Hazard Areas present on the lot, 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 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 ULUDR, 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.

PART 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.

PART IV. WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS

The Board grants the following waivers/modifications:

- The Board approves the dimensional waiver, which therefore permits the Applicant to encroach upon the west (side) property setback requirement. The Applicant may only encroach upon the setback to the limits as portrayed on the submitted site plans (encroach into the setback by 19 ft.), the zoning permit application (see Exhibit G), and as presented during the hearing (Exhibits M & N). Any deviation of this project that would result in further encroachment into the setback areas 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.

PART 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 deck addition 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:

Conditions:

1. **CONDITIONS RELATING TO PREVIOUS DECISIONS.** Unless explicitly stated otherwise in this decision, the conditions from the Board's DRB-17-11, DRB-17-15 and DRB-18-10 decisions remain in effect.
2. **OUTDOOR LIGHTING.** The Board finds that any outdoor lighting that is added as part of this proposed project shall be downward facing and shielded.
3. **EROSION PREVENTION & SEDIMENT CONTROL.** The Board finds that the Applicant shall utilize the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control if any remaining work needs to be completed.
4. **CONFORMANCE WITH THIS DECISION.** The project shall conform to the submitted application materials and hearing testimony presented by the Applicant. Any change to the plans or the proposed use of the property, unless otherwise noted in this decision, shall be brought to the Zoning Administrator's attention prior to its enactment to determine if the above conditions need to be amended.
5. **DELEGATION OF AUTHORITY.** The Board hereby delegates authority to the Zoning Administrator (ZA) regarding fulfillment of the proposed project. The ZA is empowered to act on behalf of the Board regarding any changes in the approval or proposed design that are minor in nature. These changes are not limited in scope, but are left to the discretion of the ZA when to defer decisions in this matter to the Board. The delegation of authority will cease upon construction of the project.

Dated at Underhill, Vermont this 18th of December 2020.

Charles Van Winkle

Charles Van Winkle, Development Review Board Chair

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.