



Town of Underhill

Development Review Board

Conditional Use Review Findings & Decision

CONDITIONAL USE REVIEW APPLICATION OF NATHAN GOLDMAN FOR A DIMENSIONAL WAIVER RELATING TO THE CONSTRUCTION OF AN ENTRY PORCH WITHIN THE PROPERTY'S SETBACKS

In re: Nathan Goldman
68 Pleasant Valley Road (PV068)
Underhill, VT 05489

Docket No. DRB-20-11

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

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns the conditional use review application of Nathan Goldman pertaining to a dimensional waiver for the construction of an entry porch within the property's setback requirements on property Robert & Elizabeth Linde own located at 68 Pleasant Valley Road (PV068) in Underhill, Vermont. The subject property, 68 Pleasant Valley Road, is located on both the north and south sides of Pleasant Valley Road. In regard to this decision, the subject property will refer to the land south of Pleasant Valley Road unless specifically stated otherwise.

- A. On September 5, 2020, the Applicant, Nathan Goldman, submitted a conditional use review application for the abovementioned project. The application was accepted and determined to be sufficiently complete on September 18, 2020. A site visit was scheduled for Monday, October 3, 2020 at 8:30 AM, while a hearing was scheduled remotely via the Go-To-Meeting platform to commence on Monday, October 5, 2020 at 6:35 PM.
1. *Due to the COVID-19 pandemic, the Vermont legislature enacted Act 92 that permits public hearings to be held remotely (without a public gathering place) as long as the remote meeting can be accessed by the public. As a public hearing, the meeting was recorded.*
 2. The Monday, October 5, 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 September 17, 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. **IS003** – Stephen M. & Kim H. Harry, 3 Irish Settlement Road, Underhill, VT 05489
 2. **IS006X** – Underhill Central School, 6 Irish Settlement Road, Underhill, VT 05489
 3. **IS026** – Sandra Costes & Travis Peckham, 26 Irish Settlement Road, Underhill, VT 05489
 4. **IS038** – Robert & Paula A. Diaco Trustees, P.O. Box 12, Underhill Center, VT 05490
 5. **IS050** – Timothy Shawn Reny & Jane Marie Patric Trustees, P.O. Box 106, Underhill Center

05490

6. **PV040** – Edward O. & Louise Matthews, P.O. Box 114, Underhill Center, VT 05490
 7. **PV059** – Robt. A. & Geraldine J. Ayer Life Estate, 59 Pleasant Valley Road, Underhill, VT 05489
 8. **PV070** – Ann W. & Nathan Goldman, 70 Pleasant Valley Road, Underhill, VT 05489
 9. **PV071** – Tomasi Living Trust, 286 Ponus Ridge, New Canaan, CT 06840
 10. **ST015** – Roger D. Giroux, 199 Hullcrest Road, Shelburne, VT 05482
 11. **ST019** – Thomas J. & Suzanne H. Spear, 19 Stevensville Road, Underhill, VT 05489
 12. **ST025** – Thomas P. & Elizabeth A. Smith, 25 Stevensville Road, Underhill, VT 05489
 13. **ST027** – David N. & Amy A. Bombard, 27 Stevensville Road, Underhill, VT 05489
 14. **ST029** – Lee Revocable Living Trust, Thomas R. & Stacy L. Lee Trustees, 29 Stevensville Road, Underhill, VT 05489
 15. **Tomasi Meadow** [*Hand Delivered*] – Town of Underhill, Attn: Town Administrator & Selectboard, 12 Pleasant Valley Road, P.O. Box 120, Underhill, VT 05489
 16. **Landowners: PV068** – Robert & Elizabeth Linde, P.O. Box 64, Underhill Center, VT 05490
 17. **Applicant: PV068** – Nathan Goldman, 70 Pleasant Valley Road, Underhill, VT 05489
- C. During the week of September 13, 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.
- D. On September 19, 2020, notice of public hearing was published in the *Burlington Free Press*.
- E. The scheduled site visit at the property's location (68 Pleasant Valley, Underhill, Vermont) commenced at 8:30 AM on October 3, 2020.
- 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
 4. Board Member, Mark Green
 5. Board Member, Daniel Lee
 6. Board Member, Karen McKnight
 7. Board Member, Penny Miller
- Municipal representatives and members of the public present during the site visit were:
8. Applicant: Nathan Goldman (on behalf of 68 Pleasant Valley Road, Underhill, VT)
 9. Wandering Cow (68 Pleasant Valley Road, Underhill, VT)
- G. In accordance with Act 92, the conditional use review hearing commenced at 6:35 PM on Monday, October 5, 2020 via the Go-To-Meeting platform. A public gathering place was not established; the meeting was recorded.
- H. Present at the conditional use review hearing were the following members of the Development Review Board:

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

While Alternate Board Member, Shanie Bartlett, was in attendance, she abstained from participating in the hearing. Also, in attendance was Staff Member Andrew Strniste, Planning Director & Zoning Administrator.

Others present at the hearing were:

1. Applicant, Nathan Goldman (on behalf of 68 Pleasant Valley Road, Underhill, VT)

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

- I. At the outset of the hearing, Vice Chairperson Stacey Turkos 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, Nathan Goldman

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

1. Exhibit A - Goldman Conditional Use Review Staff Report
2. Exhibit B - Goldman (PV068) Conditional Use Review Hearing Procedures
3. Exhibit C - Development Review Application
4. Exhibit D - Responses to Development Review Application Questions
5. Exhibit E - BFP Notice
6. Exhibit F - Certificate of Service
7. Exhibit G - Zoning Permit Application (B-20-33)
8. Exhibit H - WaterWastewater Permit (WW-4-5409)
9. Exhibit I - Proposed Project Site Plan
10. Exhibit J - WaterWastewater Permit Site Plan
Exhibit J (Detailed) ww-4-5409_Plan-1_Linde052820-v1-1
11. Exhibit K - Waiver-Variance Limitations
12. Exhibit L - Waiver-Variance Limitations with Setbacks

No additional exhibits were distributed to the Board prior to the Monday, October 5, 2020 hearing, nor were any additional exhibits submitted into the record during the hearing.

All exhibits are available for public review in the Goldman Conditional Use Review file (PV068/DRB-20-11) at the Underhill Zoning & Planning office.

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

The Minutes of the October 5, 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 October 5, 2020 Development Review Board meeting can be viewed on the Mt. Mansfield Community Television's website: <https://archive.org/details/underhill-drb-10052020>.

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

PROJECT SYNOPSIS

The Applicant, Nathan Goldman, is seeking conditional use approval, specifically a dimensional waiver, for the construction of an entrance porch within the property's front setback requirement. The subject property is located at 68 Pleasant Valley Road (PV068) in Underhill, Vermont and is owned by Robert & Elizabeth Linde. A dimensional waiver is subject to conditional use review in accordance with Section 5.5.B. The property is located within the Water Conservation zoning district as defined under Article II, Table 2.5 of the ULUDR.

ARTICLE II, ZONING DISTRICTS

A. ARTICLE II, TABLE 2.5 – WATER CONSERVATION

The Board finds that the subject property is located in the Water Conservation District, and that the proposed project, a covered entry porch, will not impact the aquifer recharge area in Underhill Center in a negative manner. The proposed covered entry porch will satisfy the side and rear setback requirements of this District; however, it will fail to satisfy the front setback requirement, and will encroach into the setback by five (5) feet (including the overhang portion of the roof). As a result, the entry porch will be setback 25 ft. from the north, front property line.

The Board notes that the covered entry porch, an allowed use within the district, must satisfy the setback requirements for principal structures since structures attached to the principal structure are considered an extension of the principal structure (see Article XI, definition of "Principal Structure").

ARTICLE III, GENERAL REGULATIONS

A. SECTION 3.2 – ACCESS

The Board finds that the subject property has access to Pleasant Valley Road, a Class II Town Highway. 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 contains the driveway serving 70 Pleasant Valley Road, which is ±10 ft. from the east, side property line, thus not conforming with the 12 ft. setback requirement; however, the driveway is pre-existing nonconforming, and therefore, 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 entry porch connects to the accessory dwelling, which is attached to the principal dwelling; in its entirety, the two dwelling units form the principal structure. The structure was originally a single-family dwelling; however, in early 2020, the Applicant submitted a zoning permit application (Permit #: CL-20-04) to convert a portion of the single-family dwelling to an attached accessory dwelling. Upon additional consideration, the

Applicant wished to construct an additional, direct entrance for the accessory dwelling resulting in the subject application.

The proposed entry porch will encroach upon the north front property requirement by five (5) ft. As provided above, the Board notes that attached structures to the primary structure are considered an extension of the principal structure (see Article XI of the ULUDR). Regardless of the structure's classification, it would need to satisfy a 30 ft. front setback requirement. Due to the 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 K).

The Board notes the existing lot satisfies the minimum acreage requirement of 5.0 acres, as the lot is approximately 32.0 acres. The setbacks as they relate to the proposed covered entry porch are:

- Front Property Line: ±26 ft. (North)
- Side 1 Property Line: ±1,072 ft. (West)
- Side 2 Property Line: ±66 ft. (East)
- Rear Property Line: ±282 ft. (South)

The setback requirements for the proposed entry porch within the Water Conservation District are 30 ft. from the front property line and 50 ft. from the side and rear property lines since the entry porch is considered an extension of the principal structure.

Although the single-family dwelling fails to meet the dimensional requirements, since the Applicant has satisfied the requirements of Sections 3.9 and 5.5.B, as explained below, they are not prohibited from obtaining approval by this Board.

C. SECTION 3.9 – NONCONFORMING STRUCTURES

The Board finds that the Applicant is proposing to construct a covered entry porch that will increase the degree of nonconformance since a portion of the proposed entry porch will be in the property's north front setback requirement (see Exhibit K). Therefore, a dimensional waiver is required per Sections 3.9.B and 5.5.B. See Section 5.5.B below in regard to the waiver analysis.

The Board notes that the existing single-family dwelling was built during the 19th century, and was therefore, never originally permitted by the Town.

D. SECTION 3.11 – OUTDOOR LIGHTING

The Board finds that the Applicant is proposing one ceiling mounted light fixture, which is to be of similar nature to the existing house and neighborhood – shielded and downcast. Should the Applicant add any additional outdoor lighting relating to the project, it shall be downward facing and shielded.

E. SECTION 3.13 – PARKING, LOADING & SERVICE AREAS

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

F. 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 entry porch 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.

G. 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 with an attached accessory dwelling– the project is exempt from review under Section 3.17.B. For notation purposes, the proposed entry porch is located ±838 ft. to the east of a public water source serving Underhill Central School - well outside the 200 ft. setback requirement.

H. SECTION 3.18 – STEEP SLOPES

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

I. SECTION 3.19 – SURFACE WATERS & WETLANDS

In reviewing the resources from the Agency of Natural Resources Atlas, the Board finds that Brown's River traverses through the southern part of the subject property. The proposed entry porch is estimated to be approximately 700 ft. to the north of Brown's River. Crane Brook traverses the lands north of Pleasant Valley Road and is approximately 1,560 ft. from the proposed entry porch.

The Agency of Natural Resources Atlas also depicts various areas of Class II Wetlands, specifically in four different locations in relation to the proposed covered entry porch: 1. to the east (~580 ft.), 2. to the northwest (~1,210 ft.), 3. to the west (~1,605 ft.), and 4. To the southwest (~1,310 ft.). The proposed entry porch satisfies the 50 ft. setback requirement for Class II Wetlands. As a result, the proposed entry porch will not adversely impact the noted features within this section.

J. SECTION 3.23 – WATER SUPPLY & WASTEWATER SYSTEMS

The Board finds that a wastewater permit is likely not required for the construction of the proposed covered entry porch; however, the Applicant is responsible for ensuring with the Vermont Department of Environmental Conservation that one is not required. For notation purposes, a Wastewater System and Potable Water Supply Permit (WW-4-5409, Dated July 7, 2020) was obtained as part of the Conversion of Use Permit (Permit #: CL-20-04). The permit allows for a three-bedroom, single-family residence with a one-bedroom, attached apartment, which will utilize a new, on-site drilled well water supply and an existing, on-site wastewater disposal system (see Exhibits H & J).

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 covered entry porch does not adversely affect or impact the enumerated resources in this subsection. While many of the enumerated features exist on the subject property, they will not be impacted by the construction of the entry porch. Therefore, no mitigation measures are required under Section 5.3.B.1.b.

Section 5.3.B.2 – Site Layout & Design: The Board finds that the proposed covered entry porch is not contrary to the purpose and stated goals under Subsection B, Rural Residential and Water Conservation District, noting that the proposed covered entry porch 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 entry porch is located on the east side of the principal structure and is largely shielded by vegetation in close proximity to the structure. Therefore, the aesthetics of the lot are mildly impacted.

Section 5.3.B.3 – Vehicle Access: The Board finds the subject lot is accessed by one curb-cut via Pleasant Valley 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 covered entry porch does not increase the number of parking spaces that are required for the existing use of the property – single-family dwelling with an attached accessory dwelling. See Section 3.13 for more information.

Section 5.3.B.5 – Site Circulation: The Board finds that the proposed covered entry porch 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 proposing to replace and increase disturbed plantings to preserve the privacy of the entrance from the road and existing driveway (see Exhibit D). While the entry porch will be visible from Pleasant Valley Road, the structure is consistent with other dwellings with entry porches in the district and within the neighborhood. The proposed replacement and increase of plantings will help serve as a screening mechanism from the driveway and Pleasant Valley 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 any uncompleted work pertaining to the proposed entry porch.

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 covered entry porch will not result in an increase in demand on community services and facilities.

Section 5.4.B.2 – The Character of the Area Affected: The Board finds that the proposed covered entry porch 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 (entry porch) as it relates to other buildings and uses in the area:

- **Location:** the property is located in the Water Conservation District, which largely contains medium density development, including single-family dwellings (and accessory 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 entry porch will be attached to the principal structure – a single-family dwelling with an attached accessory structure. Porches are permitted uses within the Water Conservation zoning districts.
- **Density:** the proposed entry porch results in no change to the density of the area.
- **Intensity:** the proposed entry porch 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 entry porch 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 construction relating to the entry porch has not officially begun; however, the footings for the porch have been placed, as the necessary equipment to place the footings was temporarily on-site prior to the hearing. As a result of this approval, the proposed entry porch will comply with the 2020 *Unified Land Use & Development Regulations*.

Section 5.4.B.5 – The Utilization of Renewable Energy Resources: The Board finds that the proposed entry porch will not 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 entry porch is not contrary to Town Plan.

Section 5.4.D.2 – Zoning District & Use Standards: The Board finds that the proposed entry porch 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 dimensional waiver, 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 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 covered entry porch within the property's setback requirement, which is attached to the pre-existing nonconforming principal structure. 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 second criterion to be true: the waiver will allow for additions and/or improvements to a pre-existing nonconforming structure. The Applicant is proposing to construct a covered entry porch, a normally permitted action, if not for the pre-existing nonconformance of the principal structure – a single-family dwelling with an attached accessory 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 15 feet. The Applicant has presented an application illustrating that the proposed covered porch encroaches upon the setback by five (5) ft. and they are not anticipating exceeding 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 construction features of the structure itself. Any required alteration of the proposed project would be unreasonable, and therefore, the construction of the proposed entry porch 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 covered entry 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.

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 – Zone AE (1-percent annual chance floodplains with elevations) is located on the southern portion of the lands south of Pleasant Valley Road, while a Special Flood Hazard Area – Zone A (1-percent annual chance floodplains without elevations) is located on the northern portion of the lands north of Pleasant Valley Road. The proposed entry porch is not located within these identified flood hazard areas (Page 10, Exhibit A), and therefore, review under this Article is not required.

ARTICLE X, SPECIFIC USE STANDARDS

A. SECTION 10.3 – ZONING PERMITS

Section 10.3.D – Effective Dates and Permit Renewals:

SECTION 10.3.D.1 – ZONING PERMITS: The Board finds that the permit issued as part of this decision will remain in effect for one year from the date of issuance. The Applicant must substantially commence construction within one year or the permit will become null and void. “Substantially commence” entails “initial site preparation; the installation of an access; and the

installation of a foundation, water and/or wastewater system on-site.” (See Article XI for definition of “Substantially Commenced”)

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

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

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

IV. WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS

The Board grants the following waivers/modifications:

- The Board approves the dimensional waiver, which therefore permits the Applicant to encroach upon the north (front) 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 five (5) ft.), zoning permit application (see Exhibit G), and as presented during the hearing (Exhibits K & L). 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.

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 covered entry porch generally conforms to the aforementioned Regulations.

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

1. The Board finds that any outdoor lighting that is added as part of this proposed project shall be

downward facing and shielded.

2. The Board finds that the Applicant should utilize the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control for the remaining work needs to be completed.

Dated at Underhill, Vermont this 06 day of November 2020.

Stacey Turkos

Stacey Turkos, Vice 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. § 111. It does not release the applicant from the requirements of other applicable federal, state or local statutes, ordinances or regulations, including the Underhill Zoned Land Use & Development Regulations. This permit addresses issues relating to, work on, and drainage affecting town highways and right-of-way, as described in Section 111 and the Town's Road Maintenance. It does not address private access or private 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.

Permit Issued