

1 **ARTICLE III. GENERAL REGULATIONS**

2
3 **Section 3.1 Abandoned & Damaged Structures**

4
5 **A. Abandoned Structures.** Structures that are not substantially commenced within one
6 year of the issuance of a zoning permit, or within two years of being substantially damaged
7 or destroyed, shall be considered abandoned for the purposes of these regulations.

8
9 **B. Damaged or Destroyed Structures.** No zoning permit shall be required for the
10 stabilization of a damaged structure to prevent hazards to public health and safety, or to
11 adjoining properties, structures or uses; nor for the timely repair or reconstruction of a
12 damaged structure to the extent of its prior condition and use, subject to the following:

- 13
14 1. Repair or reconstruction of a damaged structure must begin within two years and be
15 substantially completed within three years of the date of the event resulting in its
16 damage or destruction.
17
18 2. A zoning permit shall be required for any repair or reconstruction that results in changes
19 to pre-existing structural dimensions (e.g., structure height or footprint), densities (e.g.,
20 number of dwelling units), or uses under applicable provisions of these regulations.
21
22 3. Any repair or restoration of a nonconforming structure that increases the degree of
23 nonconformance is subject to review by the Development Review Board (DRB) under
24 Section 3.9. A repair or restoration that does not increase the former degree of
25 nonconformance does not require DRB review.
26
27 4. A zoning permit is required for repairs or improvements to a damaged structure within
28 the Flood Hazard Overlay District (Special Flood Hazard Areas), which must comply with
29 all applicable requirements of these regulations under Article VI.
30
31 a. A substantially damaged or destroyed structure within the Flood Hazard Overlay
32 District may be reconstructed in the same location only if it cannot be relocated to a
33 less hazardous location on the parcel. The lowest floor of the reconstructed
34 structure must be elevated above the base flood elevation, or otherwise conform to
35 district requirements.
36

37 **C. Incomplete Structures.** The owner of a structure that is substantially incomplete at the
38 time a zoning permit expires, or three years after being damaged or destroyed, shall:

- 39
40 1. Apply for a zoning permit, or permit extension under Section 10.3 to resume
41 construction, and thereby confirm the owner’s intent not to abandon the structure; or
42
43 2. Remove all materials from the site, restore the site to surface grade, and establish
44 ground cover sufficient to prevent soil erosion.

D. **Noncompliance.** Failure to comply with this section will be treated as a zoning violation under Section 10.6.

Section 3.2 Access

~~A. **Access & Frontage Requirements.** In accordance with the Act [§4412], no development except for forestry and agriculture may be allowed on a lot that does not have frontage on a regularly maintained public road (Class I, II or III town or state highway) or public waters, or by site plan review approval with the Development Review Board (DRB) under Section 5.3, access to a public road or public waters by a Class IV town highway or a permanent easement or right of way at least 20 feet in width.~~

~~B.—~~

~~C. Any lot subdivided after the effective date of these regulations shall meet:~~

~~D.—~~

~~E. minimum road frontage requirements for the district in which it is located, unless modified or waived by the Development Review Board under Section 8.6, or in association with a planned unit development under Article IX; and~~

~~F. relevant access requirements under this section.~~

~~G. **Nonconforming Lots.** A lot legally in existence as of the effective date of these regulations that does not meet minimum access and frontage requirements shall be considered a pre-existing nonconforming lot. Access to a nonconforming lot may be approved by the DRB, in consultation with the Selectboard and Underhill Jericho Fire Department, subject to the following requirements:~~

~~1. Access must be provided by a permanent easement or right of way, as documented in deed language to be recorded in the land records of the town or, with the written approval of the Selectboard, by a Class IV town highway that is upgraded and maintained by the applicant and successors, in accordance with Subsection D.11 and the town highway ordinance.~~

~~2. Development of a nonconforming lot under this section that is accessed by a 20-foot easement or right of way shall be limited to one principal use or structure and associated accessory structures and uses as allowed for the district in which it is located. If land subdivision or additional development is proposed, access must be provided in accordance with Subsection D.~~

~~3. Access review under this section shall be conducted concurrently by the DRB with site plan, conditional use, or subdivision review as applicable. If no other DRB review is required, access to a nonconforming lot under this section shall be subject to site plan review procedures under Section 5.3.~~

H.A. Highway Access. Access to town highways is subject to the approval of the Underhill Selectboard and, for properties that front on or directly access state highways, the Vermont Agency of Transportation. Applicants are encouraged to meet with town and state highway

officials to identify and incorporate relevant access management requirements in project design prior to applying for a municipal land use permit under these regulations; however, as a condition of town or state highway access approval, compliance with these regulations and the Town Road Ordinance is also required. Accordingly:

1. The Zoning Administrator shall refer applications for subdivision or development on town highways to the Selectboard and, for subdivision or development on state highways, to the Vermont Agency of Transportation. No municipal permits or approvals under these regulations shall be issued until written recommendations from state and/or town highway officials have been received or 30 days have elapsed from the date of referral, whichever is sooner. Specific access recommendations may be incorporated in relevant findings and conditions of permit approval.
2. All highway accesses (curb cuts, road intersections) and related improvements shall be designed to meet access requirements under these regulations as well as other applicable state or municipal access management recommendations. ~~Where the requirements of these regulations differ from other town or state access requirements, the more restrictive shall apply.~~
3. If required by the Town’s Road Ordinance, Aa town or state highway access permit shall be obtained ~~after site plan, conditional use or preliminary subdivision~~after approval is issued by the DRB under Article 5 or Section 7.5 of these regulations.
4. If applicable, Aa municipal or state highway access permit must be obtained prior to the issuance of a certificate of occupancy or compliance under Section 10.4. The Zoning Administrator may consult with town or state highway officials in determining whether a proposed access meets all relevant access requirements prior to the issuance of a certificate of occupancy or compliance.

B. **Access Management & Driveway Standards.**

1. **Related Standards.** Accesses to town highways shall at minimum meet the requirements of the town highway ordinance and these regulations. Access to state highways shall meet Vermont Access Management Program Guidelines in effect at the time of application. Where the requirements of these standards-regulations differ from other town or state requirements, the more restrictive shall apply.

~~2. **Number.** A lot shall be served by no more than one access (curb cut) onto a town or state highway except for:~~

~~a. A temporary or permanent access used only for farming or forestry purposes, as approved by the Selectboard or state;~~

~~b. A temporary access for use during construction or special events, as authorized by the Selectboard or state; or~~

~~c. A lot or use for which it has been demonstrated by the applicant, and determined by the DRB in consultation with town or state highway officials, that an additional access is necessary for vehicular and pedestrian safety, to improve traffic circulation, to reduce traffic congestion or, that because of physical site constraints (e.g., streams, wetlands, or steep slopes), strict compliance with this requirement would result in a less functional site layout.~~

~~3.2.~~ **Subdivisions.** No additional access rights to a public highway shall automatically result from the subdivision or re-subdivision of parcels established after the effective date of these regulations [March 2, 2011], nor for the development or redevelopment of contiguous parcels under common ownership and control as of the effective date of these regulations. Such lots shall be accessed from a shared access and driveway, a cross connection to an adjoining lot, or a development road, unless otherwise approved by the DRB in consultation with state or town highway officials under Subsection D.2.

~~4.3.~~ **Redevelopment.** For land subdivision and development subject to review by the Development Review Board – including the re-subdivision, redevelopment or change in use of an existing lot – the DRB may require, in consultation with town or state highway officials, the elimination, consolidation and/or relocation of existing accesses to meet the requirements of these regulations, the town highway ordinance or state access management guidelines.

~~5.4.~~ **Width Edge-Defining Features.** ~~The width of an access (curb cut) shall be limited to the width as approved under D.9, and shall not extend along the length of road frontage.~~ The installation of ~~curbing~~, landscaping, or other edge-defining features may be required by the DRB under Article XIII of these regulations as needed to physically or visually define and limit access width. Curbing may be recommended by the DRB for the Selectboard to consider as part of their review.

~~6.5.~~ **Zoning Districts.** No access shall be provided to serve a lot located in another zoning district which is to be used for a use that is prohibited within the district in which the access is located.

~~7.~~ **Corner and Through Lots.** ~~Where a lot has frontage on two roads (e.g., a corner or through lot), access to the lot shall be provided from the secondary (less traveled) road unless otherwise documented by the applicant and determined by the DRB as necessary to improve vehicle and pedestrian safety and traffic circulation onsite or on adjoining roads.~~

6. **Shared Access.** Shared accesses and driveways serving up to three lots and internal cross-connections to adjoining lots are encouraged and may be required for development subject to DRB review as necessary to minimize the number of access points and intersections along public highways. Shared driveways may be located within side or rear yard setbacks, and shall be maintained under a shared maintenance

1 agreement accepted by the town. The interests of each owner of a shared access and
2 driveway shall be protected by an easement recorded in the deed of each lot.

3
4 ~~8.7. Driveway Standards and Development Road Location.~~ All new, relocated or upgraded
5 driveways ~~must meet town driveway standards, including Vermont Agency of~~
6 ~~Transportation B-71 standards for residential and commercial drives, as most recently~~
7 ~~amended (see Appendix A). In addition shall:~~

8
9 a. ~~Driveways shall be~~ located not less than 12 feet from side and rear lot lines unless
10 waived by the Development Review Board for shared driveways [see Subsection D.8
11 and Section 3.7(E)(3)] and lots with limited frontage [see Subsection B].

12
13 ~~b.~~ Driveways and development roads shall be ~~located to avoid, to the extent physically~~
14 ~~feasible, located to minimize site disturbance on~~ areas of steep slope (15% or more)
15 (see Section 3.18), primary agricultural soils, and surface waters, wetlands and
16 associated buffer areas (see Section 3.19), and to minimize the number and extent
17 of stream crossings.

18
19
20
21 ~~The average finished grade of a driveway shall not exceed 12% as measured over any 50-foot~~
22 ~~section, unless otherwise specifically authorized by the Underhill Selectboard under the~~
23 ~~town highway ordinance and the Underhill-Jericho Fire Department.~~

24
25 ~~Driveways that exceed 500 feet in length shall include a 10-foot by 30-foot pull-off area~~
26 ~~every 500 feet and terminate in a "Y" turnaround.~~

27
28 ~~**Development Roads.** For the purposes of these regulations, any access driveway or road~~
29 ~~servicing four or more lots shall be considered a private development road which must meet~~
30 ~~town highway standards, including Vermont Agency of Transportation A-76 standards for~~
31 ~~development roads as most recently amended (see Appendix B), and the requirements of~~
32 ~~Section 8.6. Lot frontage along a private development road can be used to meet district~~
33 ~~frontage requirements. A private road may be accepted and taken over by the town only in~~
34 ~~accordance with adopted town highway policies and ordinances in effect at the time of~~
35 ~~application.~~

36
37 ~~**Class IV Roads.** If a Class IV road is to be used for development that requires year-round~~
38 ~~access, the road shall be upgraded and maintained by the applicant and his or her successors~~
39 ~~in interest to at minimum meet town driveway (B-71) standards. If the development is for~~
40 ~~more than three lots, the Class IV road must be brought up to town highway (A-76)~~
41 ~~standards in accordance with Section 8.6 and the town highway ordinance. Public rights-of-~~
42 ~~way used to access private property shall remain open to the public.~~

43
44 **Section 3.3 Conversion or Change of Use**

- 1 A. A conversion or change in the use of land, existing buildings and other structures is
2 subject to the following requirements:
3
 - 4 1. The proposed use must meet all the requirements of these regulations pertaining to
5 such use, including but not limited to any district, access, and parking requirements, as
6 well as any other applicable municipal regulations currently in effect.
7
 - 8 2. A conversion or change of use from one permitted use to another permitted use
9 requires a zoning permit issued by the Zoning Administrator in accordance with Section
10 10.3. Site plan approval also may be required under Section 5.3 depending upon the
11 type of permitted use.
12
 - 13 3. A conversion or change in use from a permitted use to a conditional use, or from one
14 conditional use to another conditional use, requires conditional use approval by the DRB
15 under Section 5.4 prior to the issuance of a zoning permit. An approval for one
16 conditional use shall supersede and replace a previously-approved conditional use
17 unless a request is submitted and approved by the DRB to retain the previous approval.
18
 - 19 4. A conversion or change of use of a nonconforming use or structure also must meet the
20 requirements of Sections 3.9 (Nonconforming Structures) and 3.10 (Nonconforming
21 Uses).
22
 - 23 5. A conversion or change of use that involves the subdivision of land also requires
24 subdivision approval by the DRB under Article VII prior to the issuance of a zoning
25 permit or other approval.
26
- 27 B. Where a conversion or change of use results in increased wastewater generation,
28 including but not limited to the conversion of a seasonal camp or accessory dwelling to a
29 single family dwelling, a single family dwelling to a two-family or multi-family dwelling, or a
30 dwelling to a mixed use, a certificate of occupancy shall not be issued by the Zoning
31 Administrator until a state wastewater system and water supply permit has been submitted
32 in accordance with Section 3.23 and the Act [§4414(13)].
33

34 **Section 3.4 Equal Treatment of Housing**

- 35 A. In accordance with the Act [§4412(1)], these regulations shall not have the effect of
36 excluding the following from the Town of Underhill:
37
 - 38 1. Mobile homes, modular housing, or other forms of prefabricated housing, except upon
39 the same terms and conditions as conventional housing is excluded.
40
 - 41 2. Housing necessary to meet the needs of the local population, as identified in the
42 Underhill Town Plan.
43
 - 44 3. Mobile home parks (see Section 4.13).
45

- 1
- 2 4. Multi-family dwellings, consisting of three or more dwelling units in a structure.
- 3
- 4 5. One accessory dwelling per principal single family dwelling, as a permitted use, if it
- 5 meets the requirements of these regulations (see Section 4.15).
- 6
- 7 6. A state licensed or registered care home or group home that serves no more than eight
- 8 persons who have a handicap or disability (see Sections 4.7 & 4.10).
- 9
- 10 B. Provisions have been made for each of the above types of housing within designated
- 11 zoning districts.
- 12

13 **Section 3.5 Fences & Walls**

- 14
- 15 A. Fences and walls are considered accessory structures for purposes of these regulations,
- 16 subject to the following:
- 17
- 18 1. Fences and walls are not required to meet minimum district front, side and rear setback
- 19 distance requirements for accessory structures under Article II.
- 20
- 21 a. Fences or walls may be located within town highway rights-of-way, but shall not
- 22 obstruct public rights-of-way, including travel lanes, shoulders and ditches, bicycle
- 23 lanes and pedestrian paths and sidewalks, or interfere with corner visibility or site
- 24 distances for vehicular or pedestrian traffic.
- 25
- 26 b. The Town of Underhill assumes no liability for damage to private fences or walls
- 27 located within town highway rights-of-way, nor any responsibility for their
- 28 maintenance and repair.
- 29
- 30 c. All fences and walls located within state highway rights-of-way require approval
- 31 from the Vermont Agency of Transportation.
- 32
- 33 2. No zoning permit or approval is required for:
- 34
- 35 a. agricultural walls and fences (see Section 10.2),
- 36 b. temporary fencing incidental to an approved construction project,
- 37 c. residential fences or walls less than six feet in height that do not obstruct public
- 38 rights-of-way, or interfere with corner visibility or sight distances for vehicular or
- 39 pedestrian traffic, except within the Flood Hazard Area Overlay District.
- 40
- 41 3. All other fences and walls, including all fences and walls within the Flood Hazard Overlay
- 42 District (Special Flood Hazard Areas) require a zoning permit.
- 43
- 44 a. Fences and walls within the Flood Hazard Overlay District must meet applicable
- 45 development standards under Article VI.

- b. No zoning permit shall be issued for a fence or wall within a state highway right-of-way without written approval from the Vermont Agency of Transportation.
- c. For a fence located on a property line, the submission of a signed agreement between the adjoining property owners is required prior to the issuance of a zoning permit.

Section 3.6 Height Requirements

A. No structure shall exceed maximum district height requirements except as allowed under Subsection B, and the following structures which are specifically exempt from district height requirements:

***Height:** The distance above ground of a structure as measured vertically from the average finished grade at the base of the structure to the highest point of the structure or roof surface (see Section 11.2).*

- 1. Farm structures, including barns and silos.
- 2. Church steeples, spires and belfries.
- 3. The following accessory structures which, as mounted or installed, do not exceed 50 feet in height as measured from ground level:
 - a. wind generators with blades less than 20 feet in diameter,
 - b. rooftop solar collectors less than 10 feet high,
 - c. chimneys, belvederes, cupolas, weathervanes, and
 - d. flag poles.
- 4. The placement of antennae used to transmit and/or receive communications signals on a property owner's premises if the aggregate of the largest faces of the antennae is not more than eight square feet and if the antennae and any mast support does not extend more than 12 feet above the roof of that portion of the building to which the mast is attached.
- 5. Structures subject to review by the Vermont Public Service Board, including wind generation, electrical transmission, and certain telecommunications towers which are specifically exempt from municipal regulation (see Sections 4.16, 10.2).
- 6. Telecommunications towers regulated by the municipality which meet the requirements of Section 4.18.
- 7. Antennae structures less than 20 feet in height and ski lift towers associated with an approved downhill ski area (alpine ski facility).

1 B. The Development Review Board may waive district height requirements and approve a
2 structure in excess of the maximum allowed height as a conditional use subject to
3 conditional use review under Section 5.4, only upon finding that:

- 4
- 5 1. The additional height is necessary to accommodate the proposed use, which is an
6 allowed use within the district in which it is located.
7
- 8 2. The height of the structure does not constitute a hazard to public safety, or to adjoining
9 properties.
10 3. That portion of the structure above the district height requirement shall remain
11 unoccupied except for normal maintenance and repair activities.
12
- 13 4. Front, side and rear yard setbacks are sufficient to protect adjoining properties and
14 public rights-of-way in the event of structural collapse.
15
- 16 5. The structure is not to be used for advertising purposes.
17
- 18 6. Access to the structure, particularly for climbing, is restricted.
19
- 20 7. The increased height shall not result in an undue adverse visual impact, as viewed from
21 adjoining properties or public rights-of-way. "Undue visual adverse impact" in this
22 context may be determined by taking into account:
23
 - 24 a. The height of a proposed structure in relation to its overall size and mass;
 - 25 b. The height of the proposed structure in relation to the heights of structures in the
26 immediate vicinity; and
 - 27 c. Scenic resources in the vicinity, including scenic views or viewsheds that may be
28 impacted.
29
- 30 8. Fencing and screening are provided as necessary to limit public access or to mitigate
31 adverse impacts to adjoining properties or scenic resources.
32
- 33 9. Lighting, if deemed necessary by the DRB in accordance with state and federal
34 regulations, shall be restricted to the minimum required for security and safe operation
35 (also see Section 3.11 "Outdoor Lighting").
36

37 C. **Balloon test.** As necessary to determine potential visual impacts under Subsection B,
38 the DRB may require the applicant to fly a four-foot diameter brightly colored balloon at the
39 location and maximum elevation of a proposed structure.
40

- 41 1. If a balloon test is required, the applicant, in consultation with the Zoning Administrator,
42 shall advertise the date, time, and location of this balloon test at least seven days in
43 advance of the test in a newspaper with a general circulation in the Town. The applicant
44 shall also inform the DRB in writing of the date, time, and location of the test at least 15
45 days in advance of the test.

2. The balloon shall be flown for at least eight consecutive daylight hours on two days. If visibility and weather conditions are inadequate for observers to be able to clearly see the balloon test, further test may be required by the DRB.

Section 3.7 Lot, Yard, Frontage & Setback Requirements

A. Only one principal use or structure shall be located on a single lot, unless otherwise allowed as an adaptive reuse under Section 4.2, a mixed use under Section 4.12 or, with the approval of the Development Review Board, as part of a planned residential or planned unit development under Article IX.

B. No building lot shall be so reduced in area that it cannot meet area, yard, setback, frontage, coverage and other dimensional requirements for the district in which it is located, except as allowed under Subsection E.

C. District frontage requirements for lots served by private development roads shall be the same as frontage requirements for lots served by public roads.

D. Corner and through lots with frontage on two or more roads must meet frontage and front setback requirements for each adjoining road right-of-way. Access shall be provided from the secondary (least traveled) right-of-way as required under Section 3.2, unless otherwise approved by the DRB to improve site and traffic circulation or limit traffic congestion on adjoining roads.

E. Frontage Requirements. In accordance with the Act [§4412], no development except for forestry and agriculture may be allowed on a lot that does not have frontage on a regularly maintained public road (Class I, II or III town or state highway) or public waters, or by site plan review approval with the Development Review Board (DRB) under Section 5.3, access to a public road or public waters by a Class IV town highway or a permanent easement or right-of-way at least 20 feet in width.

1. Any lot subdivided after the effective date of these regulations shall meet:

- a. Minimum road frontage requirements for the district in which it is located, unless modified or waived by the Development Review Board under Section 8.6, or in association with a planned unit development under Article IX; and
- b. Relevant access requirements under the Town’s Road Ordinance.

~~1.~~ Lot frontage along a private development road can be used to meet district frontage requirements.

2.

~~D.F.~~ **Waivers.** District dimensional requirements may be reduced by the Development Review Board, after notice and public hearing, only for the following:

- 1
- 2 1. To allow for limited additions to or enlargements of nonconforming structures, or
- 3 structures on nonconforming lots (see Sections 3.8, 3.9 and 5.5).
- 4
- 5 2. As part of a site plan or conditional use review under Sections 5.3 or 5.4, if the DRB finds
- 6 that a dimensional waiver for a structure can be mitigated through screening, design or
- 7 other remedy, and the waiver is necessary for structures that provide for:
- 8
 - 9 a. disability access, fire safety, or other requirements of state or federal law, or for
 - 10 b. energy conservation or renewable energy.
- 11
- 12 3. District lot frontage requirements, in accordance with Section 8.6, for:
- 13
 - 14 a. minor subdivisions (up to three lots) that are accessed by a shared driveway,
 - 15 b. lots that will be maintained in perpetuity as undeveloped open land to be used only
 - 16 for passive outdoor recreation or resource conservation,
 - 17 c. lots located on a cul-de-sac or at the end of an existing dead-end road, or
 - 18 d. to allow for rear lot (e.g., flag lot) infill development within the Underhill Flats
 - 19 Village Center and Underhill Center Village zoning districts.
- 20
- 21 4. As part of an approved master plan for a planned residential or planned unit
- 22 development (see Section 9.1).
- 23
- 24 5. To allow certain structures that exceed district height requirements, subject to
- 25 conditional use review under Section 5.4 and the requirements of Section 3.6.B.
- 26

27 E.G. For development subject to subdivision, site plan or conditional use review, the DRB
28 may also require greater setback and buffer distances and additional landscaping and/or
29 screening within designated setback areas; and may also limit or prohibit the use of setback
30 areas for parking and storage as necessary to protect public health, safety, and welfare, or to
31 avoid or mitigate undue adverse impacts to adjoining properties, rights-of-way, uses or
32 significant natural or scenic resources (see Sections 5.5 and 8.3).

33

34 **Section 3.8 Nonconforming Lots**

35

- 36 A. Any lot in individual, separate and nonaffiliated ownership from surrounding properties
- 37 legally in existence on the effective date of these regulations may be developed for the
- 38 purposes allowed in the district in which it is located, even though not conforming to
- 39 minimum lot size requirements, if the lot is not less than one-eighth (1/8) of an acre in area
- 40 and has a minimum width or depth dimension of not less than 40 feet, as allowed under the
- 41 Act [§4412].
- 42
- 43 B. If, after the effective date of these regulations [March 2, 2011], a nonconforming lot
- 44 subsequently comes under common ownership with one or more contiguous lots, the lot
- 45 shall be deemed merged with the contiguous lot(s), for the purposes of these regulations.

1 However, the lots shall not be deemed merged and may be separately conveyed if all of the
2 following are found:

- 3
- 4 1. the lots are conveyed in their preexisting, nonconforming configuration; and
- 5 2. on the effective date of these regulations, each lot had been developed with a water
- 6 supply and wastewater disposal system; and
- 7 3. at the time of transfer, each water supply and wastewater disposal system is functioning
- 8 in an acceptable manner, as documented by a professional engineer or licensed
- 9 designer; and
- 10 4. the deeds of conveyance create appropriate easements on both lots for replacement of
- 11 one or more wastewater systems, potable water systems, or both, in case there is a
- 12 failed system or failed supply as defined in state statutes.
- 13

14 C. The Development Review Board may reduce applicable minimum district, surface water
15 and wetland setback requirements by no more than 50%, subject to conditional use review
16 under Section 5.4 and waiver provisions under Section 5.5, as necessary to allow for the
17 development of a pre-existing nonconforming lot, if the DRB determines that the lot cannot
18 otherwise be developed in conformance with these regulations. Any further reduction in
19 dimensional requirements shall require variance approval under Section 5.5.

20
21 D. A lot legally in existence as of the effective date of these regulations that does not meet
22 minimum access under the Town’s Road Ordinance and the frontage requirements under
23 Section 3.7 shall be considered a pre-existing nonconforming lot.

24
25 1. Development of a nonconforming lot under this section that is accessed by a 20-foot
26 easement or right-of-way shall be limited to one principal use or structure and
27 associated accessory structures and uses as allowed for the district in which it is located.

28
29 5-2. Access review under this section shall be conducted concurrently with site plan,
30 conditional use, or subdivision review as applicable. If no other DRB review is required,
31 access to a nonconforming lot under this section shall be subject to site plan review
32 procedures under Section 5.3.

33
34 G.E. Lots established under an approved planned residential or planned unit development
35 under Article IX that do not meet minimum district dimensional standards shall not be
36 considered nonconforming lots for purposes of subsequent merger under Subsection B or
37 development in conformance with an approved plan.

38
39 **Section 3.9 Nonconforming Structures**

40
41 A. Any structure, or portion thereof, legally in existence as of the effective date of these
42 regulations which does not meet the requirements of these regulations shall be considered a
43 nonconforming structure. A nonconforming structure may continue to be occupied or used
44 indefinitely in accordance with the Act [§4412(7)], subject to the following:
45

- 1 1. A nonconforming structure may undergo normal maintenance and repair without a
2 zoning permit, provided that such action does not increase the degree of
3 nonconformance.
4
- 5 2. A damaged nonconforming structure may be repaired or reconstructed in accordance
6 with Section 3.1, provided that the repair or reconstruction does not increase the
7 degree of nonconformance.
8
- 9 3. A nonconforming structure may be structurally enlarged, extended, expanded, modified
10 or moved, with the issuance of a zoning permit under Section 10.3, provided that the
11 enlargement, expansion, modification or relocation does not increase the degree of
12 nonconformance, and meets all other applicable requirements of these regulations.
13
- 14 B. In the event that no reasonable alternative exists, the Development Review Board may
15 grant a waiver for a nonconforming structure to be structurally enlarged, expanded,
16 extended, modified or relocated in a manner that reduces minimum required district,
17 surface water and wetland setback distances by up to 50%, subject to conditional use review
18 under Section 5.4, and waiver provisions under Section 5.5. Any further increase in the
19 degree of nonconformance, or reduction in applicable dimensional requirements, shall
20 require variance approval by the DRB under Section 5.5.
21
- 22 C. Relocations, additions or improvements to nonconforming structures within the Flood
23 Hazard Overlay District also must meet the requirements of Section 6.6.
24

25 **Section 3.10 Nonconforming Uses**
26

- 27 A. Any use of land or a structure legally in existence as of the effective date of these
28 regulations which does not meet the requirements of these regulations shall be considered a
29 nonconforming use. A nonconforming use may be continued indefinitely in accordance with
30 the Act [§4412(7)], subject to the following:
31
- 32 1. A nonconforming use may be changed to another nonconforming use that is of the
33 same or a more restrictive nature only with the approval of the Development Review
34 Board, subject to conditional use review under Section 5.4.
35
- 36 2. A nonconforming use shall not be re-established if it has been changed to or replaced by
37 a conforming use, or it has been discontinued for a period of 18 months, regardless of
38 the intent to resume the nonconforming use.
39
- 40 3. A nonconforming use may be re-established within a structure or portion thereof which
41 has been damaged or destroyed, only if repair or reconstruction of the structure is
42 started within two years of the date of such damage or destruction, and is completed
43 and the use reestablished within three years thereafter in accordance with Section 3.1.
44

Section 3.11 Outdoor Lighting

A. **Purpose.** The town's rural character is enhanced by the ability to clearly view and enjoy a night sky that is free of light pollution. While limited outdoor lighting may be necessary for safety and security, or desirable to promote nighttime recreational activities; inappropriate, poorly designed or improperly installed outdoor lighting can result in unsafe conditions and nuisances for adjoining property owners and motorists, sky glow which obstructs views of the night sky, and unnecessary power consumption.

B. **General Standards.** To allow for outdoor lighting, while minimizing its undesirable effects, the following standards apply to all outdoor lighting installations in the Town of Underhill, with the exception of temporary holiday light displays and net-metered solar panels which are exempt from these regulations:

1. All outdoor lighting shall be kept to the minimum required for safety, security, and intended use, consistent with the character of the neighborhood in which it is located.
2. Permanent outdoor lighting fixtures shall not direct light upward or onto adjacent properties, roads, or public waters, or result in lighting levels that are uncharacteristic of the surrounding neighborhood or area.
3. Outdoor lighting fixtures shall be cast downward or be designed to minimize glare. Such fixtures may include recessed, shielded, or cutoff fixtures, or low luminance lamps.
4. Outdoor lighting fixtures shall include timers, dimmers, and/or sensors to reduce energy consumption and eliminate unnecessary lighting.
5. Reflecting surfaces which may impair the vision of drivers of motor vehicles on nearby roads shall not be permitted.

C. **Specific Standards.** Outdoor lighting installations associated with development that is subject to subdivision, site plan or conditional use review shall meet the following requirements, unless waived by the Development Review Board as not applicable to a particular project:

1. The applicant shall provide information regarding exterior lighting fixtures, including fixture type, mounting locations and heights, illumination levels and distribution, and color, to be submitted as part of the subdivision or development review application.
 - a. A lighting plan, prepared by a qualified engineer or lighting expert, may be required by the DRB for projects that include recreation field, parking, street, or security lighting.
 - b. The DRB also may require an independent technical analysis of potential lighting impacts and appropriate mitigation measures, prepared by a qualified lighting expert, to be paid for by the applicant.

- 1
- 2 2. Electrical lines to outdoor lighting fixtures shall be installed underground.
- 3
- 4 3. Security lighting shall be used only where unusual or hazardous conditions require it.
- 5 Security lighting, where deemed necessary by the DRB as documented by the applicant,
- 6 shall be shielded and aimed so that only designated surfaces or areas are illuminated.
- 7
- 8 4. Timers, dimmers, and/or sensors shall be used to reduce energy consumption and
- 9 eliminate unnecessary lighting.
- 10
- 11 5. Street lighting shall not be provided except in the Underhill Flats Village Center District
- 12 and Underhill Center Village District or where it is deemed necessary by the DRB for
- 13 motorist and pedestrian safety, such as at road intersections or pedestrian crossings.
- 14
- 15 6. Outdoor lighting, except for approved security lighting, shall be on only during business
- 16 hours, unless otherwise specifically approved by the DRB.
- 17
- 18 D. **Waiver.** The Development Review Board may waive or modify the requirements of this
- 19 section, subject to conditional use review under Section 5.4, if it finds that doing so will not:
- 20
- 21 1. Jeopardize the stated intent of these provisions under Subsection A; and
- 22
- 23 2. The modification or waiver is necessary for public safety, or to meet an overriding public
- 24 purpose, such as the illumination of a public building or monument, or for the nighttime
- 25 display of the national flag; and
- 26
- 27 3. Appropriate conditions are attached to minimize adverse impacts to adjoining
- 28 properties and rights-of-way.
- 29

30 **Section 3.12 Outdoor Storage**

31

32 **A. Solid & Hazardous Wastes.**

- 33
- 34 1. The accumulation and storage of waste, scrap materials or junk on any property is
- 35 prohibited except:
- 36
- 37 a. in an existing or approved salvage yard (Section 4.17) or waste management facility
- 38 (Section 4.16);
- 39 b. within an enclosed building designated and permitted for that purpose (i.e., storage
- 40 shed, utility building, garage or barn); or
- 41 c. in a screened outdoor area approved by the DRB in association with an allowed use.
- 42
- 43 2. The dumping or outdoor storage of trash, garbage, construction debris, hazardous or
- 44 corrosive wastes or chemicals, or any refuse is prohibited except in solid or hazardous

1 waste management facilities or salvage yards approved in accordance with these
2 regulations and state law.

- 3
4 3. The disposal and composting of brush, yard, and organic kitchen waste generated as
5 part of the normal operation and maintenance of a household or commercial property,
6 in a manner that meets applicable health and safety regulations, is exempt from these
7 regulations.

8
9 B. **Motor Vehicles.** The storage on any lot of more than three unregistered or uninspected
10 junk motor vehicles, other than farm or on-premise utility vehicles, is prohibited except
11 within an approved motor vehicle repair facility or salvage yard. Unregistered vehicles must
12 be stored or screened so that they are not visible from town and state highways, other
13 public rights-of-way, and adjoining properties. No one may discard or abandon any motor
14 vehicle upon the land of another, with or without the permission of the landowner, except in
15 an approved motor vehicle repair facility or salvage yard.

16
17 C. **Aboveground Storage Tanks.** The storage of any highly flammable or hazardous liquid
18 or gas in an above ground tank with a unit capacity exceeding 550 gallons must meet all
19 applicable state and federal construction, storage and safety standards, and the following:

- 20
21 1. A tank with a capacity of up to 10,000 gallons must be located at least 100 feet from all
22 lot lines.
23
24 2. A tank with a capacity in excess of 10,000 gallons must be located at least 200 feet from
25 all lot lines.
26
27 3. Tanks shall be properly retained with dikes having a capacity of not less than 1.5 times
28 the capacity of the tank, or as otherwise required by the state.
29
30 4. Where applicable, the applicant shall submit a copy of the permit issued for storage
31 tank installation by the Vermont Department of Public Safety prior to the issuance of a
32 zoning permit.

33
34 **Section 3.13 Parking, Loading & Service Areas**

35
36 A. **Parking.** Off-street parking spaces shall be provided on the same lot as the associated
37 use, or on an adjacent lot in the same ownership or under permanent easement, as set forth
38 below:

- 39
40 1. All required parking spaces shall have a minimum width of nine feet, a minimum length
41 of 18 feet, unobstructed access and maneuvering room, and a gravel or paved surface
42 sufficient for year-round use.
43

- 1 2. A minimum number of parking spaces as determined by the proposed use shall be
 2 provided in accordance with minimum requirements listed in Table 3.1, unless
 3 otherwise modified or waived under Subsection C.
 4

Table 3.1 Minimum Off-Street Parking Requirements	
Use	Parking Space
Bed & Breakfast	2 per dwelling, and 1 per guest room
Dwelling – Accessory	1 per dwelling unit
Dwelling – Single, Two Family	2 per dwelling unit
Dwelling – Multi-Family	3 per every 2 dwelling units
Funeral Home	1 per employees and 5 per visiting room
Health Clinic	3 per physician, dentist, or other primary caregiver
Home Child Care	2 per dwelling unit, and 1 per nonresident employee
Home Occupation/Home Industry	2 per dwelling unit, and 1 per nonresident employee
Light Industry	1 per employee for the largest shift
Lodging	1 per guest room
Mixed Use	Total sum required for each use; or as determined from use-specific shared parking analyses
Motor Vehicle Service Station	3 per service bay
Office/Professional/Government/Business	1 per 300 sq ft of gross floor area
Personal Service	1 per employee, and one per customer service area
Private Club	1 per 4 members
Public Assembly	1 per 200 square ft gross floor area, or 1 per 5 seats capacity, whichever is greater
Public Facility [with limited/no public access]	1 per 1,000 sq. ft of gross floor area and 1 per employee
Residential Care Facility	1 per 5 beds, and 1 per employee for the largest shift
Restaurant, Bar	1 per 5 seats, and 1 per employee for the largest shift
Retail Sales & Service	1 per 300 square feet of gross floor area
School/Day Care Facility	3 spaces per 10 children enrolled
Warehouse	1 per 1,000 square feet of gross floor area, and 1 per employee
Unspecified	As determined from accepted parking standards (e.g., Institute for Transportation Engineers standards) or site-specific parking analyses.

- 5
 6 3. Parking areas associated with multi-family, public, commercial and industrial uses are to
 7 be located to the rear or side of principal buildings, behind the front building line, unless
 8 the Development Review Board finds that another location is justified due to physical
 9 site constraints, to improve pedestrian and vehicular safety and site circulation, or to
 10 accommodate shared parking facilities. In addition:

- 11
 12 a. Parking areas for such uses shall be screened from adjoining residential properties
 13 and public rights-of-way by fencing or hedging that does not block vehicular lines of
 14 sight.
 15

1 b. In addition to the requirements listed in Table 3.1, all multi-family, public,
2 commercial and industrial uses must provide adequate, clearly marked
3 handicapped parking spaces in accordance with state and federal disability (ADA)
4 requirements, and at least one bicycle rack for use by employees, residents, and/or
5 the general public.

6
7 4. All off-street parking areas in excess of eight parking spaces shall incorporate
8 landscaped areas which at minimum equal 10% of the total parking area, unless waived
9 by the Development Review Board under C. Landscaped areas shall be integrated into
10 parking lot and stormwater management design, and shall be regularly maintained.

11
12 5. For development subject to site plan or conditional use review, shared parking and/or
13 landscaping, screening, lighting, snow removal, pedestrian or transit facilities may be
14 required as a condition of approval as necessary to meet the requirements of this
15 section and applicable development review criteria.

16
17 **B. Loading & Service Areas.**

18
19 1. Where a proposed development will require the frequent or regular loading or
20 unloading of goods or passengers, on-site loading or transit areas shall be provided.

21
22 2. Service areas shall be provided for fire and emergency vehicles, waste and recycling
23 collection, utility boxes, snow storage, and other purposes as necessitated by the
24 proposed use.

25
26 3. All loading and service areas shall be clearly marked and located in such a manner so
27 that parked vehicles will not block or obstruct sight visibility at intersections, or from
28 any internal road or access.

29
30 4. Loading, utility, waste and recycling collection areas, to the extent physically feasible,
31 shall be located to the rear of principal buildings and screened from the view of
32 adjoining public rights-of-way and residential properties.

33
34 **C. Waivers.** For development subject to subdivision, site plan or conditional use review,
35 the Development Review Board may waive on-site parking, loading or service area
36 requirements based on the determination under one or more of the following provisions
37 that, due to circumstances unique to the development, the strict application of these
38 standards is unnecessary to meet the intent and requirements of these regulations:

39
40 1. Green areas are to be set aside and maintained as open space for future conversion to
41 parking, loading and/or services areas in the event that the spaces initially permitted are
42 subsequently deemed inadequate to meet demonstrated need.

43
44 2. Adequate shared parking, loading, and/or service areas for use by two or more
45 businesses exist on the same or contiguous lots, under common ownership or a long-

1 term lease, as documented by the applicant from a site- and use-specific shared parking
2 analysis.

- 3
- 4 3. Adequate off-site public parking, including public or on-street parking, exists within
5 reasonable walking distance (up to 1000 feet) of the establishment.
- 6
- 7 4. The proposal is for the development of affordable or elderly housing as defined under
8 Section 11.2, and it is documented by the applicant that the required number of spaces
9 is not necessary and the cost of meeting the parking requirement would adversely affect
10 the financial viability of the project.

11

12 **Section 3.14 Performance Standards**

13

14 A. No land or structure in any zoning district shall be used or occupied in any manner that
15 creates dangerous, injurious, noxious or otherwise objectionable conditions that adversely
16 affect or interfere with the reasonable use of adjoining or nearby properties.

17

18 B. The following performance standards, as measured at the property line, must be met
19 and maintained for uses in all districts, except for agriculture and forestry. In determining
20 ongoing compliance, the burden of proof shall fall on the applicant or property owner. No
21 use, under normal conditions, shall cause, create or result in:

- 22
- 23 1. Noise in excess of 60 decibels (dBA) that is not the result of occasional, customary
24 activities associated with an allowed use (e.g., lawn mowing), or as otherwise specified
25 for a particular use; or noise that represents a significant increase in noise levels in the
26 vicinity of the use so as to be incompatible with the surrounding area.
- 27
- 28 2. Clearly apparent vibration which, when transmitted through the ground, is discernable
29 at property lines without the aid of instruments.
- 30
- 31 3. Smoke, dust, noxious gases, or other forms of air pollution which constitute a nuisance
32 or threat to neighboring landowners, businesses or residents; which endanger or
33 adversely affect public health, safety or welfare; which cause damage to property or
34 vegetation; or which are offensive and uncharacteristic of the affected area.
- 35
- 36 4. Releases of heat, cold, moisture, mist, fog or condensation which are detrimental to
37 neighboring properties and uses, or public health, safety, and welfare.
- 38
- 39 5. Electromagnetic disturbances or electronic transmissions or signals which will
40 repeatedly and substantially interfere with the reception of radio, television, or other
41 electronic signals, or which are otherwise detrimental to public health, safety and
42 welfare (except from facilities which are specifically licensed and regulated through the
43 Federal Communications Commission).
- 44

- 1 6. Glare, lumen, light or reflection which constitutes a nuisance to other property owners
2 or tenants, which impairs the vision of motor vehicle operators, or which is otherwise
3 detrimental to public health safety and welfare (see Section 3.11);
4
- 5 7. Liquid or solid waste or refuse which cannot be disposed of by available methods
6 without undue burden to municipal or public disposal facilities, which pollutes surface
7 or ground waters, or which is otherwise detrimental to public health, safety and welfare
8 (see also Section 3.12).
9
- 10 8. Undue fire, safety, explosive, radioactive emission or other hazard which endangers the
11 public, public facilities, or neighboring properties, or which results in a significantly
12 increased burden on municipal facilities and services.
13
- 14 9. Agricultural operations shall at minimum observe Accepted Agricultural Practices (AAPs)
15 as defined and administered by the Vermont Agency of Agriculture, Food and Markets.
16
- 17 10. Forestry operations shall at minimum observe Accepted Management Practices (AMPs)
18 as defined and administered by the Vermont Department of Forests, Parks and
19 Recreation.
20
- 21 C. The Zoning Administrator or Development Review Board may consult with state and
22 federal regulatory agencies in determining accepted performance standards for a particular
23 use, activity, or type of equipment.
24

25 **Section 3.15 Ponds**

- 26
- 27 A. **Intent.** The construction, reconstruction or expansion of any pond requires a zoning
28 permit from the Town. The intent of regulating pond construction is to protect the lives and
29 property of Underhill residents, the infrastructure of the community, and the natural
30 environment by:
31
 - 32 1. reducing the possibility of impoundment failure resulting from improper design or
33 construction;
 - 34 2. minimizing the potential for flood damage to upstream properties by the storage of
35 flood waters; and
 - 36 3. minimizing damage caused by the sudden release of stored water from impoundment
37 failure or intentional rapid draining of the impoundment.
38
- 39 B. **Application Requirements.** Prior to issuance of a zoning permit, the applicant shall
40 submit the following information, including copies of any permits issued by the Vermont
41 Department of Environmental Conservation and/or the U.S. Army Corps of Engineers, as
42 applicable to a particular project:
43
 - 44 1. **Application materials.** In addition to the requirements of Section 10.3, an application
45 for pond construction shall include:

- 1 a. Information regarding pond design and construction, including the identity and
- 2 qualifications of the person(s) responsible for pond design and installation;
- 3 b. A site plan showing the location of existing drainage, surface waters, wetlands,
- 4 wells and septic systems;
- 5 c. A sketch of the pond location on either a copy of a survey or a parcel map showing:
- 6 setbacks, the existing slope of the site, the water source and method of discharge,
- 7 and the location and size of emergency spillway;
- 8 d. A cross section drawing;
- 9 e. Information regarding maximum pond depth in relation to the water table;
- 10 f. A description and cross section for any dam or form of retention;
- 11 g. The approximate volume of water to be contained; and
- 12 h. A description of the vegetative cover that is planned to control erosion.

13
14 2. Applications shall also include required state and federal permits, as identified from
15 state project review sheets. These may include but not be limited to:

- 16
- 17 a. A state dam permit for any pond that will impound, or be capable of impounding
- 18 500,000 cubic feet or more of water from the VT Department of Environmental
- 19 Conservation.
- 20
- 21 b. A state stream alteration permit for any pond that necessitates work in a stream.
- 22
- 23 c. Approval of the Vermont Department of Fish and Wildlife Commissioner for the
- 24 placement of obstructions in streams that block the passage of fish.
- 25
- 26 d. A state wetlands permit for any pond located within or near a wetland (see also
- 27 Section 3.19).
- 28
- 29 e. U.S. Army Corps of Engineers permits.
- 30

31 **C. General Requirements.**

- 32
- 33 1. A pond shall be considered accessory to the principal use of a property.
- 34
- 35 2. Natural drainage patterns shall be maintained.
- 36 3. No pond shall be located on or extend beyond existing property lines.
- 37
- 38 4. **Setbacks.** The following setbacks are required for all ponds as measured horizontally
- 39 from the nearest point of pond excavation or embankment:
- 40
- 41 a. Property Line: 25 feet
- 42 b. Leach Field: 100 feet
- 43 c. Drilled Well: 25 feet
- 44 d. Shallow Well: 100 feet
- 45 e. Principal Structure: 25 feet

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5. All earth work shall be conducted between June 1st and October 1st.

6. All ponds shall be regularly inspected, repaired and maintained.

D. **Excavated Ponds.** Excavated ponds under 20,000 cubic feet may be issued a permit by the Zoning Administrator. Conditional use review and approval from the Development Review Board under Section 5.4 is required for the construction, reconstruction or expansion of an excavated pond of 20,000 cubic feet or more, which shall be designed by a professional engineer licensed by the state with expertise in pond design and construction. All excavated ponds must meet the following requirements:

1. Clearing limits shall be clearly marked on the ground and confined to the immediate construction area to avoid unnecessary disturbance.

2. During the excavation process, soil will be disposed of in an upland site at least 50 feet from the edge of the pond and other surface waters and wetlands.

3. Pond banks shall not exceed a 3:1 slope (three-foot horizontal distance to one-foot vertical distance).

4. All areas stripped of vegetation, except the ponded area, shall be seeded and mulched immediately following the completion of excavation.

E. **Embankment Ponds.** Embankment ponds that require the construction, reconstruction or installation of water control structures such as earthen dikes, concrete dams, and/or spillways may be allowed as a conditional use subject to conditional use review by the Development Review Board under Section 5.4, and the following requirements:

1. The pond shall be designed by a professional engineer, licensed by the state, with expertise in pond design and construction.

2. The design of all water control structures shall be based on the size of the watershed area that drains into the pond and, at minimum, a 25-year storm event.

3. It shall be demonstrated to the satisfaction of the Board that the pond and associated spillway areas will not adversely affect municipal facilities, adjoining properties, or downstream drainage. Easements from adjoining landowners shall be submitted for impoundment and/or spillway areas that will extend on to or have the potential to flood adjoining properties.

4. An erosion control plan that incorporates appropriate erosion control methods from the Vermont Handbook for Soil Erosion and Sediment Control as most recently amended shall be submitted for review and approval.

1 5. The pond shall be maintained on a regular basis. As a condition of approval, the Board
2 may require periodic safety inspections by a professional engineer, and the submission
3 of safety reports.
4

5 **F. Flood Hazard Areas.** All ponds constructed within the Flood Hazard Area Overlay
6 District (Special Flood Hazard Areas) are subject to conditional use review under Section 5.4
7 and applicable requirements under Section 6.6. Applications for ponds within this district
8 shall be referred to the state for review and comment.
9

10 **G. Discontinuance or Deconstruction.** A zoning permit is also required for the
11 discontinuance, removal or deconstruction of an existing or approved pond to ensure that
12 natural drainage patterns and adjoining surface waters, wetlands and properties will not be
13 adversely affected. The application shall include a description of the methods used to drain
14 and deconstruct the pond, and site restoration.
15

16 **H. Liability.** Any municipal approval or zoning permit issued for pond construction or
17 deconstruction shall clearly state that the applicant and his or her successors and assigns is
18 responsible for the pond's safety and retains liability for its failure if the pond is not
19 constructed, maintained, operated, or repaired in a safe and proper manner. The
20 municipality, in approving pond construction, assumes no liability in the event of failure.
21

22 **Section 3.16 Signs**
23

24 **A. Purpose.** These sign regulations are established to achieve the following objectives:
25

- 26 1. To ensure businesses, activities, events, or products are provided with sufficient
27 opportunity for identification and promotion.
- 28 2. To ensure the safety and well being of the users of streets, roads and highways in the
29 Town of Underhill.
- 30 3. To reduce distractions and obstructions from signs which would adversely affect traffic
31 safety, and to alleviate hazards caused by signs projecting over or encroaching upon
32 public ways.
- 33 4. To discourage visual competition in signage and ensure that signs aid orientation and
34 adequately identify uses and activities to the public.
- 35 5. To protect the natural and historic beauty of Underhill's rural highways and scenic vistas
36 from indiscriminate outdoor signage.
37

38 **B. Applicability.** No outdoor sign shall be erected, displayed, moved or modified in size,
39 height or lighting without the issuance of a zoning permit by the Zoning Administrator,
40 except for signs that are exempt from the requirement to obtain a zoning permit (Subsection
41 G) or are otherwise prohibited under these regulations (Subsection H).
42

43 **C. General Standards.** All signs, other those specified under Subsection D, shall require a
44 zoning permit issued by the Zoning Administrator in accordance with the following
45 requirements:

- 1 1. No outdoor advertising signs shall be permitted in any district except for the purpose of
2 identifying an existing, on-premise use in those districts where such a use is allowed.
3
- 4 2. Signs placed on or which are a part of an awning or canopy are subject to all
5 requirements of these regulations.
6
- 7 3. No sign shall be erected, relocated or maintained so as to prevent free entrance to or
8 exit from any right-of-way, driveway, door, fire escape or public street or road.
9
- 10 4. No sign shall be erected or placed within a municipal right-of-way except with the
11 approval of the Underhill Selectboard or the Vermont Agency of Transportation.
12
- 13 5. No sign shall be permitted which prevents a clear and unobstructed view of official signs
14 or impairs sight distances at intersections.
15
- 16 6. No sign shall be mounted on a roof, or extend above the highest roof eave.
17
- 18 7. No sign shall have more than two faces.
19
- 20 8. Permanent signs, including any sign on display for more than 45 days in any one-year
21 period, with the exception of posted trespassing, hunting and safety zone signs, shall
22 not be erected, attached, drawn or painted on fences, utility poles, trees, rocks, or other
23 natural features.
24
- 25 9. Freestanding signs shall not extend above the roof eave of the business establishment,
26 nor be located within 20 feet of a side or rear property line, or within any right-of-way
27 with the exception of real estate signs. The top of the freestanding sign shall not be
28 more than 15 feet high.
29
- 30 10. No sign shall be erected within or projected into or above any public street or sidewalk
31 right of way.
32
- 33 11. No sign shall be illuminated during hours when premises are unoccupied or are not
34 open for business. Internally illuminated signs are specifically prohibited. Illuminated
35 signs shall not produce undue glare, hazards or distractions. A constant, shielded light
36 source of one color may be used, provided that the light fixture is mounted on the top
37 or side of the sign, is directed downward onto the sign surface, and does not cast light
38 onto neighboring properties, public rights-of-way, or vehicular traffic. The light source
39 shall not be visible from adjacent properties or roads.
40
- 41 12. Except for the period from Thanksgiving to New Years Day, no sign or display shall
42 contain string lighting, pennants, moving parts, or similar attention gathering devices
43 nor shall they contain or support any device capable of emitting noise.
44

1 13. All signs shall be maintained in a safe and secure condition. Nothing in these regulations
2 shall prevent the normal maintenance and repair of an existing sign, including the
3 replacement of broken parts. If the Zoning Administrator determines that a sign is not
4 secure, safe, or in a good state of repair, a written warning and/or notice of violation
5 may be issued under Section 10.6 with a request that any defect be immediately
6 corrected.

7
8 **D. Sign Standards for Park Street, Route 15, and that portion of Pleasant Valley Road**
9 **from Underhill Center Bridge #9 to Stevensville Road:**

- 10
11 1. The total area of all signs, including all freestanding, wall, and projecting signs, shall not
12 exceed 42 square feet per lot or development.
13
14 2. No more than one freestanding sign, identifying one or more businesses, is allowed per
15 lot or development.
16
17 3. A freestanding sign identifying an individual business shall not exceed 16 square feet in
18 area.
19
20 4. Directory signs identifying multiple businesses shall not exceed 24 square feet in area.

21
22 **E. Other Areas.** Within all other areas, including other zoning districts:

- 23
24 1. The total area of all signs, including freestanding wall or projecting signs shall not
25 exceed 16 square feet per lot or development.
26
27 2. No more than one freestanding sign, identifying one or more businesses is allowed per
28 lot or development.
29
30 3. A freestanding sign identifying an individual business shall not exceed eight square feet
31 in area.
32
33 4. Directory signs identifying multiple businesses shall not exceed 16 square feet in area.

34
35 **F. Measurement.** The sign area shall be defined as the total area of one sign face as
36 measured from the outer edges, excluding any supporting frames or panels. Signs consisting
37 of freestanding characters shall include any intervening spaces (the entire message area) in
38 the calculation of total sign area. The height of a sign shall be measured from ground level
39 to the highest portion of the supporting structure.

40
41 **G. Exempted Signs.** The following signs shall not require a zoning permit, but must meet all
42 applicable requirements of Subsection C:

- 43
44 1. Signs erected and maintained by the town or state on public roads for directional, safety
45 or public service purposes, including tourist information services.

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2. Small unlit, directional, warning or informational signs which do not exceed two square feet in area, which are intended to inform the public (e.g., that identify restrooms, public telephones, freight entrances, vacancies) and are located on the premises.
3. One unlit flag or banner used for advertising or informational purposes (e.g., "sale", "open") which does not exceed 16 square feet in area.
4. Legally posted, trespassing, hunting or safety zone signs.
5. One private home identification sign not exceeding two square feet in area.
6. One unlit sign advertising a home-based business (e.g., home child care, home occupation, home industry or bed & breakfast), that does not exceed eight square feet in area.
7. One unlit sign advertising an active farming operation, which does not exceed 16 square feet in area.
8. One unlit residential subdivision sign, placed at the main entrance of a subdivision, which does not exceed 16 square feet in area.
9. One sign or bulletin board incidental to a school, church, library, public park or other government facility, which does not exceed 16 square feet in area.
10. One unlit sandwich board or other moveable sign per business, which does not exceed four feet in height, nor 12 square feet in area, and is displayed only during hours of operation;
11. One temporary real estate "for sale" or "for rent" sign that does not exceed six square feet in area, and is removed immediately following property sale or rental;
12. Temporary on-premise signs for the sale of seasonal agricultural products, not exceeding 16 square feet in area, which are in place for no longer than six months during any one year period;
13. Temporary sign erected for a fair, exposition, or other municipal, philanthropic, or community sponsored special event that does not exceed 16 square feet in area, is installed on the premises or in another off-site location approved by the Selectboard no more than two weeks prior to the event, and is removed immediately following the event;
14. Temporary auction, lawn or garage or similar sale signs, not exceeding six square feet in area per side, which shall be removed immediately following the sale.

- 1 15. One temporary, unlit advertising sign, not exceeding 16 square feet, for an approved
2 construction project or residential subdivision, which shall be removed when
3 construction is completed or 75% of residential lots have been transferred into
4 individual ownership.
- 5
- 6 16. Temporary election signs to be posted and removed in accordance with state law. Such
7 signs may be displayed not more than 30 days prior to an election, and shall be removed
8 within seven days of the vote.
- 9
- 10 17. One unlit historic or landmark sign per historic property.
- 11
- 12 18. Decorative, wall-mounted nostalgic or replica signs that are not used for advertising
13 purposes, and do not exceed eight square feet in area.
- 14
- 15 19. Wall murals intended solely for artistic, non-advertising purposes.
- 16
- 17 20. Unlit window signs and displays.
- 18
- 19 H. **Prohibited Signs.** The following signs are specifically prohibited in the Town of Underhill:
20
 - 21 1. Signs which impair highway safety.
 - 22 2. Off-premise signs, except for those that conform to state laws;
 - 23 3. Signs that are internally illuminated, animated, flashing, oscillating, revolving, or made
24 of reflective material or paint, with the exception of public safety signs, time and
25 temperature signs, and barber poles;
 - 26 4. Signs identifying businesses that are no longer in existence;
 - 27 5. Signs erected, attached or maintained on any utility pole or government signpost; and
 - 28 6. Signs mounted on or attached to parked rolling stock (e.g., a motor vehicle or trailer)
29 that is not in active use as a vehicle, but is used primarily as a support or foundation for
30 the sign.
- 31
- 32 I. **Nonconforming Signs.** Any sign lawfully in place prior to the effective date of these
33 regulations that does not conform to these regulations with respect to area, height, setback,
34 location, number or lighting, shall be considered a nonconforming sign. Such signs may
35 receive normal maintenance and repair; however no nonconforming sign shall be enlarged,
36 extended, changed in design or altered to advertise a different business or product, unless it
37 is brought into conformance with these standards.
- 38
- 39 1. A nonconforming sign that has been damaged or destroyed beyond 50% of its appraised
40 value for a period of six months; that has been abandoned for a period of six months or
41 more; or that identifies a business, activity or product that has not existed at that
42 location for six months or more must be removed.
- 43

44 **Section 3.17 Source Protection Areas**

45

1 A. To protect the quality of public water supplies, and associated source protection areas:

- 2
- 3 1. No development shall be allowed within a 200-foot radius of a well or spring that serves
- 4 a public water supply, except for activities, structures and uses that directly relate to the
- 5 water system; and
- 6 2. To the extent physically feasible, all on-site septic systems, including leach fields, shall
- 7 be located outside of a designated source protection area.
- 8

9 B. All development within designated source protection areas, except for agriculture,
10 forestry, single and two family dwellings, associated accessory uses and structures, and uses
11 that are specifically prohibited under Subsection D, shall be subject to conditional use review
12 by the Development Review Board under Section 5.4, to include findings that:

- 13
- 14 1. The proposed development is consistent with the Source Protection Plan as most
- 15 recently adopted and approved by the state, does not include a prohibited activity or
- 16 use under Subsection B, and does not present a threat to the public water supply.
- 17
- 18 2. There shall be no on-site discharge of hazardous materials from floor drains; all floor
- 19 drains will drain into holding tanks.
- 20
- 21 3. All drainage ways and sediment traps shall be regularly maintained in full working order
- 22 by the owner.
- 23
- 24 4. Site clearing and disturbance, and on-site paving, roofing, and other impervious surfaces
- 25 that increase surface runoff and limit water infiltration and recharge, are minimized. All
- 26 runoff from impervious surfaces shall be diverted to areas covered with vegetation for
- 27 surface infiltration.
- 28
- 29 5. The storage and application of fertilizers, pesticides, herbicides and other chemicals
- 30 shall comply with all state and federal regulations and best management practices.
- 31
- 32 6. Above ground storage tanks for oil, gasoline or other petroleum products shall be placed
- 33 in a building or other impervious containment area to prevent spills and leaks from
- 34 reaching groundwater (also see Section 3.12).
- 35
- 36 7. The use of sodium chloride for ice control shall be minimized.
- 37

38 C. The DRB, as a condition of approval, may required groundwater monitoring on-site or in
39 the immediate vicinity of the project.

40

41 D. The following uses and activities are specifically prohibited within designated source
42 protection areas:

- 43
- 44 1. Operations, including home based businesses, which manufacture, use, process, store or
- 45 dispose of hazardous materials or wastes in amounts that could threaten public water

1 supplies, including but not limited to metal plating, chemical manufacturing, wood
2 preserving, photographic processing, motor vehicle service, auto body repair, furniture
3 stripping, and dry cleaning materials.

4
5 2. Solid and hazardous waste landfills, storage and transfer facilities, dumps, and salvage
6 yards.

7
8 3. Outdoor storage of salt, de-icing materials, snow dumps, pesticides or herbicides.

9
10 4. The storage or spreading of sludge from wastewater treatment facilities.

11
12 5. Cemeteries.

13
14 6. The storage of unregistered vehicles, unless stored in an enclosed structure and parked
15 on an impervious surface or drained of all fluids.

16
17 7. Installation of floor drains or sumps that discharge directly to the ground.

18
19 8. Underground storage tanks, and above ground storage tanks that lack an adequate
20 impervious containment area.

21
22 **Section 3.18 Steep Slopes**

23
24 A. **Purpose.** The purpose of this section is to regulate land subdivision and development to
25 minimize site disturbance and construction on steep slopes (15% to 25%), and to avoid site
26 disturbance on very steep slopes (> 25%) in order to:

27
28 1. Maintain existing topography, including natural (pre-development) elevations, grades
29 and drainage patterns.

30 2. Minimize impervious surfaces, stormwater runoff, channeling, flooding and soil erosion,
31 on steep slopes.

32 3. Prevent hazards to life and property resulting from slope instability or failure, including
33 rock falls, slides, slumps and other downslope movements of materials or structures.

34 4. Avoid stream sedimentation and adverse impacts to surface and ground water quality,
35 and aquatic habitat.

36 5. Maintain and re-establish vegetation on steep slopes to stabilize soils, and to maintain
37 riparian buffers.

38 6. Minimize the adverse visual impacts of steep slope development, as viewed from public
39 vantage points.

40 7. Avoid the need for permanent and costly engineered slope stabilization and stormwater
41 management practices on very steep slopes, including excessive long-term management
42 and maintenance costs.

43 8. Ensure that development on steep slopes is constructed and maintained in conformance
44 with best management practices for construction, stormwater management and erosion
45 control.

1
2 B. **Applicability.** The requirements of this section apply to all land subdivision and
3 development including, within the context of this section, site clearing and preparation,
4 grading and excavation, construction, and the installation of driveways, roads, utilities and
5 other infrastructure, on steep or very steep slopes as defined under Section 11.2

6
7 1. **Exemptions.** The following are specifically exempt from the requirements of this
8 section:

- 9
10 a. Agriculture conducted in conformance with Accepted Agricultural Practices (AAPs)
11 as defined by the Secretary of Agriculture, Food and Markets (see Section 10.2).
12
13 b. Forestry (silviculture), conducted in conformance with Accepted Management
14 Practices (AMPs) as defined by the Commissioner of Forests, Parks and Recreation,
15 including logging roads which conform to "Acceptable Management Practices for
16 Maintaining Water Quality on Logging Jobs in Vermont" as most recently amended
17 (see Section 10.2).
18
19 c. Utilities, including telecommunications facilities, power generation facilities, and
20 transmission lines regulated by the Vermont Public Service Board (see Sections
21 4.16, 10.2).
22
23 d. Extraction and quarrying operations which are separately regulated under Section
24 4.8.
25
26 e. The construction of additions or new accessory structures that, in total, do not
27 increase the pre-existing building coverage of the lot within a steep or very steep
28 slope area, as of March 2, 2011, by more than 500 square feet.
29
30 f. Site disturbance and clearing that is customary and incidental to residential
31 gardening and landscaping activities (see Section 10.2).
32
33 g. Emergency remedial action to stabilize an unstable or failing slope which poses an
34 imminent threat to public health, safety or welfare, provided that the action
35 involves the least necessary disruption of natural features of the site.
36
37 h. Unpaved paths or trails incidental a residential use that are maintained for use only
38 by residents of the property and guests (see Section 10.2).
39
40 i. Isolated, noncontiguous areas of steep or very slope with a total area of 1,000
41 square feet or less.
42
43 2. All other development on steep and very steep slopes is subject to conditional use
44 review under Section 5.4 or, for the subdivision of land, applicable subdivision standards
45 under Article VII, and the requirements of this section.

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- 3. The DRB may waive one or more standards under this section, and associated application requirements, if it finds that:
 - a. such requirements and standards are not applicable to a particular project; or
 - b. it is evident, based on submitted information and a site inspection, that the proposed development involves minimal site disturbance and poses a negligible threat to water quality, public roads and facilities, and to adjoining properties.

- C. **Application Requirements.** In addition to application requirements under Section 5.2, applications for development on steep or very steep slopes shall include the following:
 - 1. A copy of the USGS topographic map showing the location of the property in relation to general site topography and drainage.
 - 2. A slope map of the property generally showing areas of steep (15% to 25%) and very steep (>25%) slope, as determined from one or more of the following:
 - a. USGS topographic maps,
 - b. Digital elevation data available from the Vermont Center for Geographic Information, or
 - c. Vermont Soil Survey map units, available from the USDA Natural Resource Conservation Service.
 - 3. A site plan for the property prepared by a licensed professional engineer or surveyor showing:
 - a. The location of all surface waters, wetlands, and required setback and buffer areas (see Section 3.19).
 - b. The general location and density of existing vegetation and a tabulation of the type, area and location of vegetation to be removed.
 - c. The location of rock outcrops and ledges larger than 200 square feet in area.
 - d. The location of all existing and proposed improvements, including building envelopes or footprints, driveways, roads and other impervious surfaces, and trail and utility corridors.
 - 4. A grading plan for the property prepared by a licensed professional engineer or surveyor showing:
 - a. The limits of proposed site disturbance on steep and very steep slopes.
 - b. Existing elevation contours at 2-foot intervals (National Geodetic Vertical Datum) within and extending 100 feet beyond all areas of proposed site disturbance.
 - c. For linear development (e.g., driveway, road, trail) attached elevation cross-sections (profiles) and slope calculations for each segment identified on the grading plan.

- 1 d. Elevation contours for finished grades within all proposed areas of site disturbance.
- 2 e. The location of existing and proposed erosion control and stormwater management
- 3 facilities or measures.
- 4
- 5 5. A stormwater management, erosion prevention and sediment control plan, prepared or
- 6 certified by a professional engineer, that includes:
- 7
- 8 a. A construction narrative and schedule.
- 9 b. Calculations of the volume and velocity of surface runoff from the lot pre- and post-
- 10 development.
- 11 c. A description of soils within and extending 100 feet beyond all proposed areas of
- 12 disturbance, including information regarding soil slope, erodability, construction
- 13 stability, and depth to bedrock.
- 14 d. Temporary and permanent measures to control stormwater runoff and prevent soil
- 15 erosion during all phases of development, and associated construction details.
- 16 e. Temporary and permanent slope stabilization measures, and associated
- 17 construction details.
- 18 f. Specifications for site re-vegetation following final construction and grading.
- 19
- 20 6. For development that involves the construction of structures on steep slopes, an
- 21 architectural or engineering plan, prepared by a licensed professional, that includes
- 22 structural elevations and sections, and identifies building construction methods and
- 23 details.
- 24
- 25 7. The following also shall be submitted as applicable for development that directs or
- 26 channels stormwater runoff off-site to adjoining surface waters, properties or public
- 27 rights-of-way:
- 28
- 29 a. Approval from the Underhill Selectboard or Vermont Agency of Transportation for
- 30 drainage into public road rights-of-way.
- 31 b. Drainage easements for drainage onto adjoining properties.
- 32 c. A hydrologic study prepared by a qualified professional, to be paid for by the
- 33 applicant, if required by the DRB to determine the effects of proposed development
- 34 on surface waters, wetlands, special flood hazard areas and downstream facilities in
- 35 the vicinity of the project, and recommended mitigation measures.
- 36
- 37 **D. Steep Slopes (15% to 25%).** Development, including building envelopes or footprints,
- 38 driveways, parking areas, septic systems, and road and utility corridors shall be sited to
- 39 minimize site disturbance on steep slopes (15% to 25%), in conformance with the following
- 40 standards:
- 41
- 42 1. Existing vegetation and drainage patterns shall be maintained to the maximum extent
- 43 physically feasible to avoid stream alterations and relocations, and increased
- 44 stormwater runoff due to vegetation removal, slope disturbance, re-contouring or site
- 45 compaction. No new drainageways shall be created or additional runoff directed to

1 surface waters, wetlands, public rights-of-way, or adjacent properties unless all
2 necessary state and municipal approvals and drainage easements are obtained.

- 3
- 4 2. The area(s) of site disturbance shall be limited in extent to that necessary to
5 accommodate proposed development, including access and supporting infrastructure,
6 and shall be stabilized and re-vegetated at the completion of construction and final
7 grading.
- 8
- 9 a. Areas of site disturbance shall exclude ridgelines and, to the extent physically
10 feasible, rock outcrops greater than 200 square feet in area.
- 11
- 12 b. Areas of site disturbance shall be located outside of required setback areas,
13 including property line and surface water and wetland setbacks. Setback distances
14 shall be increased as necessary to avoid slope instability or surface runoff that could
15 damage surface waters, wetlands or adjoining properties.
- 16
- 17 c. Areas of site disturbance and construction, as approved by the DRB, shall be clearly
18 marked (staked or fenced) on the ground during all phases of construction.
- 19
- 20 d. Site disturbance and construction shall be phased so that only those areas under
21 active construction are exposed.
- 22
- 23 e. Topsoil removed from disturbed areas shall be stockpiled and stabilized for
24 replacement on the site following final construction and grading. Topsoil shall not
25 be stockpiled on slopes greater than 10%.
- 26
- 27 f. Temporary measures shall be used to stabilize slopes and soils until final grades are
28 established, in conformance with a DRB-approved construction or phasing
29 schedule.
- 30
- 31 g. All disturbed areas shall be stabilized during winter months. Site stabilization
32 measures shall be installed by October 15th. No site disturbance or construction
33 shall occur between October 15th and April 15th unless specific measures for
34 winter construction, stormwater management and erosion control are approved.
- 35
- 36 h. Finished grades shall not exceed 3:1 (three-foot horizontal to one-foot vertical) and
37 shall be rounded to eliminate sharp angles and blend into natural land contours,
38 except where retaining walls or other engineered slope-stabilization measures are
39 proposed.
- 40
- 41 i. Permanent vegetation shall be re-established and maintained following final
42 construction and grading as necessary to stabilize disturbed and graded slopes, to
43 minimize stormwater runoff and erosion, and to screen development as viewed
44 from public vantage points to avoid undue adverse visual impacts.
- 45

- 1 3. Driveways, roads and utility corridors, to the maximum extent physically feasible, shall
2 be shared and designed and constructed to:
3
 - 4 a. Follow natural elevation contours to minimize the amount of cut and fill and slope
5 stabilization required, and the adverse visual impacts of road and utility cuts.
 - 6 b. Avoid rock outcrops and ledges larger than 200 square feet in area.
 - 7 c. Minimize the number and extent of stream crossings and buffer area disturbance
8 within steep slope areas.
 - 9 d. Avoid channeling or directing stormwater runoff to adjoining properties, public
10 rights-of-way, and surface waters and wetlands.
 - 11 e. Not exceed an average finished grade of 12% as measured over any 50-foot section,
12 in accordance with Sections 3.2 and 8.6.

13
14 An existing farm or logging road with a gradient of 25% or less may be converted and
15 upgraded for recreational use or to access development if it meets all applicable
16 requirements of these regulations. However, if an alternative route exists that results
17 in less slope or site disturbance, the DRB may require the installation of a new driveway
18 or access road and the stabilization, re-vegetation and abandonment of the farm or
19 logging road.

- 20
21 4. Structures shall be designed, to the maximum extent physically feasible, to conform to
22 rather than alter steep slope areas.
23
 - 24 a. Reduced building footprints, stilts, step-down and similar construction methods
25 shall be used to minimize the need for slope terracing and retaining walls.
 - 26 b. Excavation for foundations and footings shall be limited to the extent physically
27 feasible to minimize site disturbance and ensure compatibility with surrounding
28 terrain. Footings shall extend to stable rock or soil.
 - 29 c. Site excavation for building pads is prohibited for detached accessory structures
30 other than garages.
 - 31 d. Compacted clean fill shall be used as necessary to support proposed structures.
 - 32 e. Structures shall be set back from the top and bottom of cut and fill slopes an
33 adequate distance (generally six feet plus one-half the height of the cut or fill)
34 necessary to ensure structural safety.
 - 35 f. Structures on steep slopes shall be screened and constructed of materials that
36 minimize their visibility from public vantage points.
- 37
38 5. Stormwater runoff and erosion shall be managed on-site in conformance with
39 management plans approved by the DRB, through the use of best management
40 practices (BMPs) approved by state which are appropriate for the type of development
41 and site-specific slope, drainage and soil conditions. For the purpose of these
42 regulations, the following publications, as most recently revised, shall serve as official
43 guides and specifications for stormwater management and erosion control. Practices
44 designed and constructed in accordance with these technical documents shall be
45 presumed to meet this standard:

- 1
- 2 a. Vermont Stormwater Management Manual, Volumes I and II.
- 3 b. Vermont Standards & Specifications for Erosion Prevention and Sediment Control.
- 4 c. Vermont Erosion Prevention and Sediment Control Field Guide.
- 5

6 State stormwater management and construction permits may serve as documentation
7 that this standard has been met.

8

9 **E. Very Steep Slopes (>25%).** Site disturbance and development, not limited to grading,
10 building construction and the installation of driveways, roads, utilities or other
11 infrastructure, is prohibited on very steep slopes (>25%) except for activities that are exempt
12 under Subsection B, and the following, which must otherwise meet all relevant steep slopes
13 standards under Subsection D.

- 14
- 15 a. Hiking, rock climbing, snowmobile and mountain-biking trails that are open to the
16 public and are regularly maintained by a public, nonprofit or commercial entity.
- 17
- 18 b. Ski lifts and trails associated with an existing or permitted alpine or Nordic ski
19 facility, including permitted year-round recreational uses of such facilities.
- 20
- 21 c. Development on a lot legally in existence as of March 2, 2011 for which the DRB
22 determines that no portion of the lot has a slope of 25% or less and, as such,
23 prohibiting development on very steep slopes would preclude any reasonable use
24 of the property.
- 25
- 26 d. A driveway or road required to serve proposed development which extends no
27 more than 100 feet into an area of very steep slope, if it is clearly documented that
28 no other means of access can be provided.
- 29

30 **F. Considerations.** Conditions of approval under the standards of this section, as required
31 to meet the intent and purpose of these regulations, may include but are not limited to:

- 32 a. Limitations on the total portion of any steep or very steep slope area that may be
33 cleared, regraded, filled, drained, excavated or otherwise modified.
- 34
- 35 b. Performance bonds or other sureties acceptable to the Underhill Selectboard to
36 ensure that construction, stormwater management and erosion control systems,
37 and slope stabilization and revegetation are completed as approved.
- 38
- 39 c. Easements or deed restrictions on the future use and subdivision of land as
40 necessary to protect remaining undeveloped steep and very steep slope areas.
- 41
- 42 d. Maintenance agreements that ensure permanent slope stabilization and
43 stormwater management facilities are properly maintained.
- 44

- e. Increased setbacks from slopes, property lines, surface waters and wetlands for site disturbance and construction activities, as necessary to maintain slope stability.
- f. The submission of monitoring and site inspections reports and professional certifications during and after the completion of construction.
- g. Construction materials that minimize the visibility of development on steep slopes.
- h. Re-vegetation and screening requirements.
- i. Documentation that all required state and federal permits have been obtained prior to the start of site work.

G. **Liability Waiver.** The applicant and subsequent property owners shall assume all liability in the event that changes in topography and drainage result in damage to neighboring or downstream properties. The Town of Underhill shall be held harmless from any claims for damage for approved development on steep and very steep slopes under these regulations.

Section 3.19 Surface Waters & Wetlands

A. **Purpose.** The town’s rural character is enhanced by the presence of many streams, rivers, and wetlands. In addition to recreational opportunities and aesthetic benefits, these natural features provide important functions for residents and wildlife. The purpose of this section is to:

- 1. Protect the beneficial functions of wetlands including retaining stormwater runoff, soil stabilization, pollutant filtering, flood reduction, and protecting groundwater quality and quantity.
- 2. Prevent soil erosion and river/stream channel instability.
- 3. Protect and maintain water quality.
- 4. Protect wetland and riparian wildlife, fish, and rare, threatened or endangered species habitat.
- 5. Protect human land uses from hazards associated with stream dynamics and shore erosion.
- 6. Conserve agricultural productivity through the protection of stream and river banks.
- 7. Preserve public health and safety through the establishment of vegetated riparian buffer zones, which serve to slow and absorb floodwaters.
- 8. Protect current and future water supplies.

B. **Permits.** No zoning permits or approvals may be issued except in conformance with this section.

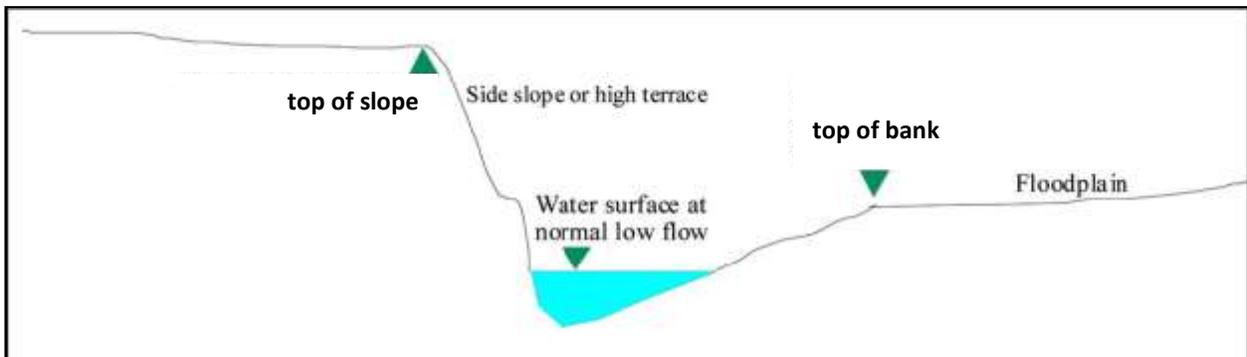
C. **Stream Alterations and Crossings.** Applications that include proposed stream alterations or stream crossings shall be referred to the Stream Alteration Engineer at the Vermont Agency of Natural Resources and to the Army Corps of Engineers. Copies of all

1 applicable state and federal permits shall be required prior to the issuance of a municipal
 2 certificate of occupancy or compliance under Section 10.4.

3
 4 **D. Setbacks.** All structures and impervious surfaces, except for allowed encroachments
 5 under Subsection E below, shall be set back at least:

- 6
 7 1. 100 feet from the Beaver Brook, Settlement Brook, Crane Brook, the Creek, Roaring
 8 Brook, Seymour River, Harvey Brook, Stevensville Brook, Mill Brook, Clay Brook, and
 9 Brown's River, as measured horizontally from the top of the bank, or 50 feet if measured
 10 from top of slope. See Diagram 3.1 below.
 11
- 12 2. 100 feet from all Class I wetlands and 50 feet from Class II wetlands as measured
 13 horizontally from a delineated wetland boundary identified initially from Vermont
 14 Significant Wetland Inventory (VSWI) maps, and through site documentation if required
 15 by the Zoning Administrator or the Development Review Board.
 16
- 17 3. In addition, all structures and other impervious surfaces shall be set back at least 25 feet
 18 from:
 19
 - 20 a. other naturally occurring streams and rivers (as measured horizontally from the top
 21 of the bank, or channel centerline where no bank is discernable), as identified on
 22 USGS topographic maps, Vermont Base Mapping Program orthophotos, or through
 23 site investigation;
 - 24 b. Class III wetlands identified from Vermont Significant Wetland Inventory (VSWI)
 25 maps or through site investigation, as measured horizontally from a delineated
 26 wetland boundary.
 27
- 28 4. **On-Site Septic Systems.** New on-site septic systems, including septic tanks and leach
 29 fields, shall be sited to meet required setback distances from all surface waters and
 30 wetlands specified under this subsection.
 31
- 32 5. **Riparian Buffer.** At minimum, one-half (50%) of the required setback distance as
 33 measured horizontally from the top of a stream bank or top of slope, whichever is

DIAGRAM 3.1
 TOP OF SLOPE/TOP OF BANK



1 applicable, shall be maintained as an undisturbed, naturally vegetated riparian buffer.
 2 Excepted from this requirement are limited clearing and site development associated
 3 with the encroachments under Subsection E below, which may be permitted subject to
 4 conditional use review and approval by the Development Review Board under Section
 5 5.4.

6
 7 6. **Wetland Buffers.** Wetland buffers shall be established for the same areas covered by
 8 the setback requirements under Subsection D above, and shall be maintained as
 9 undisturbed, naturally vegetated buffers. The setback distances for Class I and II
 10 wetland areas may be reduced in accordance with a wetlands permit issued by the
 11 Vermont Agency of Natural Resources Department of Environmental Conservation (DEC)
 12 under the Vermont Wetland Rules. In the event that a state permit has been issued, the
 13 setback requirements specified by the state shall apply. A state wetlands permit shall
 14 be required prior to local approval for permits involving Class I and II buffer/setback
 15 reductions. Subject to conditional use review, the Development Review Board may
 16 authorize a reduction in the Class III wetland setback and buffer area required under D
 17 above and in accordance with the encroachments listed in E below.

18
 19 E. **Encroachments.** The following encroachments may be allowed within local required
 20 riparian and wetland setbacks and buffers under Subsection D above.

21
 22 1. **Permitted Uses.** The following encroachments are allowed as permitted uses, requiring
 23 only a zoning permit from the Zoning Administrator:

- 24 a. The control of non-native species of nuisance plants including, but not limited to,
 25 Eurasian milfoil, water chestnut, purple loosestrife and reed grass (Phragmites),
 26 where such control is by hand pulling of plants or according to a written plan
 27 approved by the DEC Water Quality Division and under any applicable state law.
- 28 b. Buffer re-establishment projects which use “soft” techniques such as tree
 29 revetments and root wads.
- 30 c. Encroachments for stream restoration and bank stabilization projects (e.g.,
 31 armoring, rip-rap) which do not involve dam removal or work within a Special Flood
 32 Hazard Area and that have been approved by the Vermont Agency of Natural
 33 Resources, Army Corps of Engineers, and other state and/or federal agencies as
 34 required.
- 35 d. Encroachments necessary to rectify a natural catastrophe for the protection of the
 36 public health, safety and welfare.

37
 38
 39 2. **Conditional uses.** The Development Review Board may authorize the following
 40 encroachments within local riparian and wetland setback and buffer areas, subject to
 41 conditional use review and approval under Section 5.4 , upon finding that there is no
 42 practical physical alternative to clearing, filling or excavating within the setback or buffer
 43 area; and any resulting undue adverse impacts to surface waters, wetlands, water
 44 quality and associated functions and values will be mitigated through erosion controls,

1 plantings, protection of existing vegetation, and/or other generally accepted mitigation
2 measures:

- 3
- 4 a. Encroachments necessary to improve existing public facilities or to allow a new
5 public facility that functionally requires a riparian location.
- 6
- 7 b. Paved or unpaved public paths, intended for public access and recreation, that are
8 located outside of required riparian and wetland buffer areas. Public access points
9 to surface waters may be allowed but, to the extent physically feasible, shall be
10 limited to areas where a stream or river channel is already confined and/or
11 permanently constrained.
- 12
- 13 c. Stormwater management and treatment facilities meeting accepted state sizing
14 criteria and best management practices set forth in the Vermont Stormwater
15 Management Manuals Volumes I and II as most recently amended, or for which a
16 state stormwater permit has been issued.
- 17
- 18 d. Roadways or access drives for purposes of crossing a stream to gain access to land
19 on the opposite side for purposes of providing safe access to an approved use, in
20 cases where there is no physically feasible alternative for providing safe access. A
21 stream crossing for a road or driveway shall occur at a right angle to the stream
22 channel, and be designed to meet state standards and accepted practices, including
23 current Vermont Department of Fish and Wildlife guidelines for the design of
24 stream and road crossings. All applicable state and/or federal permits and
25 approvals, including stream crossing or stream alteration permits, shall be
26 submitted prior to issuance of certificates of occupancy or compliance.
- 27
- 28 e. Utility lines, including telephone, cable, sewer and water, to the extent necessary to
29 cross or encroach into the buffer where there is no physically feasible alternative
30 for providing or extending utility services.
- 31
- 32 f. Outdoor recreation and education facilities provided that any building or structure
33 (including parking and driveways) associated with such use is located outside
34 setback and buffer areas.
- 35

36 3. **Prohibitions.** The creation of new lawn areas within buffers is not permitted. Property
37 owners already encroaching within riparian or wetland buffers are encouraged to return
38 mowed areas to their naturally vegetated state. Supplemental planting with native
39 vegetation to restore and enhance the effective filtering and bank stabilization functions
40 of a riparian buffer is encouraged.

41
42 F. **Additional DRB Conditions.** For development subject to subdivision, site plan, or
43 conditional use review, the Development Review Board may require increased surface water
44 and wetland setback distances, increased wetland and riparian buffer areas, limited or
45 shared access to surface waters and wetlands, and/or a buffer area management plan as

1 necessary to mitigate adverse impacts to water quality and wetland functions, if it is
2 determined that such measures are necessary due to site-specific slope, soil, or drainage
3 conditions, a lack of natural vegetative cover, or the location and extent of impervious
4 surfaces associated with existing and proposed development on the parcel.

5
6 **G. Expansion of an Existing Structure.** The expansion or enlargement within required
7 setback areas of any structure or portion thereof lawfully in existence prior to the effective
8 date of these regulations shall be subject to review as a nonconforming structure under
9 Section 3.9.

10
11 **Section 3.20 Swimming Pools**

12
13 A. For purposes of these regulations, In-ground swimming pools are considered a type of
14 accessory structure that requires a zoning permit issued by the Zoning Administrator under
15 Section 10.3.

16
17 B. An in-ground swimming pool, and associated deck or patio areas, shall:

- 18
19 1. Meet both minimum setback requirements for accessory structures and maximum lot
20 coverage requirements for the zoning district in which it is located.
21 2. Be enclosed by a securely gated wall, fence, or other substantial structure at least four
22 feet in height to prevent the uncontrolled access by animals and small children.

23
24 **Section 3.21 Tennis Courts**

25
26 For purposes of these regulations, surfaced tennis courts and other paved ball courts shall
27 be considered accessory structures for which a zoning permit issued by the Zoning
28 Administrator under Section 10.3 is required. Tennis courts must meet both minimum
29 setback requirements for accessory structures and maximum lot coverage requirements for
30 the zoning district(s) in which they are located.

31
32 **Section 3.22 Tiny Houses**

33
34 A. For purposes of these regulations, tiny houses, whether mobile or non-mobile, shall
35 meet the same standards as either a single family dwelling or accessory dwelling meant for
36 permanent occupation, and not as a temporary structure or use unless specifically permitted
37 as such under Section 4.19.

38
39 B. If a tiny house is permitted as a temporary structure under Section 4.19, once the
40 construction of the permanent dwelling is complete, the landowner shall either convert the
41 tiny house to an accessory dwelling under Section 3.3, and obtain a conditional use permit
42 under Section 4.15.A.2, or remove the tiny house from the premises.

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44 **Section 3.23 Water Supply & Wastewater Systems**

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A. **Applicability.** No building or structure intended for human occupancy shall be erected, altered or converted to another use unless adequate water supply and wastewater disposal systems are provided in compliance with all applicable municipal and state regulations. This includes:

1. All new accessory or single family dwellings, multi-family dwellings, commercial, industrial and mixed use buildings.
2. Alterations to existing structures which could result in the addition or expansion of a water system or increased wastewater generation, including but not limited to the addition of bedrooms or accessory apartments.
3. Changes in use that could result in the increased water demand or the generation of wastewater, including but not limited to the conversion of a single family dwelling to a two-family or multi-family dwelling.

B. These provisions shall not apply to the normal maintenance of existing water supply and sewage disposal systems, including periodic pumping and cleaning; nor to structures that are to be connected to approved community water or wastewater treatment systems.

1. Any connection to a public water supply shall be subject to approval by the Underhill-Jericho Water District.

C. **Standards.** Water supply and wastewater disposal systems shall be designed and installed by qualified professionals licensed by the state (i.e., a professional engineer, designer, site technician, installer) in accordance with the following:

1. All new wastewater and potable water supply systems shall meet specifications in the Vermont Department of Environmental Conservation’s Environmental Protection Rules as most recently amended and shall be issued a permit from the state.
2. An existing disposal system subject to the provisions of this section shall be inspected by a qualified professional, licensed or registered by the state, to determine whether the system is functioning properly and has the capacity to adequately treat the amount of increased wastewater to be generated. If the system does not have sufficient capacity for the intended use, any addition, replacement or alteration of the system must be upgraded or replaced to comply with the Vermont Environmental Protection Rules as most recently amended and a state permit issued for the upgrade.
3. Wastewater disposal systems located within the Flood Hazard Area Overlay District shall also meet requirements specific to such systems under Section 6.6.
4. Wastewater disposal systems shall meet minimum setback requirements from surface waters and wetlands under Section 3.19.

1 5. To the extent physically feasible, wastewater systems shall not be located within
2 designated source protection areas, in accordance with Section 3.17.
3

4 **D. Off-site Systems.** A lot or use may be served by water supply and/or sewage disposal
5 systems located on an adjoining or noncontiguous parcel. The use of, or connection to, an
6 off-site system shall be secured through an easement or other form of legal conveyance.
7

8 **E. Issuance of a Certificate of Occupancy.** In addition to the requirements of Section 10.4,
9 the Zoning Administrator shall not issue a certificate of occupancy for any structure or use
10 that requires new or upgraded potable water supply and/or wastewater disposal systems
11 until copies of state permits and associated certifications have been received.
12

13 **F. Warning & Disclaimer of Liability.** The issuance of a zoning permit shall not imply that a
14 state approved water supply or wastewater system will be free of malfunction. The
15 provisions of this section shall not create liability on the part of the municipality or any
16 municipal official or employee for any system malfunction.
17

18 **G. Zoning Administrator Duties.**
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20 1. The Zoning Administrator or his or her agent shall have the right under these regulations
21 to:
22

- 23 a. witness test pits,
- 24 b. require an engineer or designer to stake out a new, expanded or replacement
25 system prior to installation,
- 26 c. inspect a system before it is covered, and
- 27 d. require an engineer or designer to submit a copy of the certificate of compliance
28 sent to the State of Vermont wastewater permit office that certifies that the system
29 was installed according to the permitted plan.
30

31 2. Before a Certificate of Occupancy or Compliance is issued under Section 10.4, the Zoning
32 Administrator shall determine that the new, expanded, or replacement system has been
33 installed according to the approved plan, as documented through state permits and
34 certifications under Subsection E.