



Town of Underhill

Development Review Board

Final Findings and Decision

APPLICATION OF ASHLEY WISHINSKI FOR A CONDITIONAL USE PERMIT FOR A MULTI-FAMILY DWELLING

In re: Ashley Wishinski
111 Irish Settlement Road (IS111)
Underhill, VT 05489

Docket No. DRB-16-10

Decision: Denied with no Conditions (see Section IV for More Details)

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns a conditional use application for the conversion of a single-family dwelling with an attached accessory apartment to a three-family, multi-family dwelling located at 111 Irish Settlement Road (IS111) in Underhill, Vermont.

- A. On October 5, 2016, Ashley Wishinski (also known as the applicant) filed an application for a conditional use for the above-mentioned project. The application was denied, and returned to the applicant on October 6, 2016 with the request to provide additional information previously not answered.
- B. The applicant resubmitted the application on October 10, 2016. The Planning Director & Zoning Administrator (PZA) received the application that same day. The PZA determined that the application provided minimal information. The application, however, satisfied the requirements set out in the Underhill Unified Land Use & Development Regulations (ULUDR). A hearing date was scheduled for October 31, 2016.
- C. On October 13, 2016, a copy of the notice of the conditional use review hearing was mailed via Certified Mail to the following property owners adjoining the property subject to the application:
 - A. Kyle & Katie Clark, 102 Irish Settlement Road, Underhill, VT
 - B. Paul E. & Marlene B. Yanus, P.O. Box 174, Underhill Center, VT
 - C. Michael & Debra Hudson, 114 Irish Settlement Road, Underhill, VT
 - D. Richard M. & Katherine D. Kotulak, P.O. Box 59, Underhill, VT
 - E. Lawrence L. Weed, 120 Irish Settlement Road, Underhill, VT
 - F. Craig G. Walker & Cynthia Carpenter, 75 Sand Hill Road, Underhill, VT
 - G. Douglas J. & Laurie L. Bliss, 101 Sand Hill Road, Underhill, VT
 - H. Applicant – Ashley Wishinski, 111 Irish Settlement Road, Underhill, VT

- D. During the week of October 9, 2016, notice of the public hearing for the proposed conditional use was posted at the following locations:
- A. The Underhill Town Clerk's office;
 - B. The Underhill Center Post Office; and
 - C. The Underhill Flats Post Office.
- E. On October 15, 2016, the notice of public hearing was published in the *Burlington Free Press*.
- F. The conditional use review hearing commenced at 6:35 pm on October 31, 2016 at the Town of Underhill Town Hall.
- G. Present at the subdivision revision hearing were the following members of the Development Review Board:
- A. Board Member, Charles Van Winkle, Chairperson
 - B. Board Member, Mark Green
 - C. Board Member, Mark Hamelin
 - D. Board Member, Penny Miller
 - E. Board Member, Karen McKnight
 - F. Board Member, Matt Chapek
- and
- G. Staff Member, Andrew Strniste, Planning Director & Zoning Administrator

Others present at the hearing were:

- 1. Marlene Yanus, Abutting Neighbor (103 Irish Settlement Road)
 - 2. Paul Yanus, Abutting Neighbor (103 Irish Settlement Road)
 - 3. Lincoln Weed, Abutting Neighbor (120 Irish Settlement Road)
 - 4. Debbie Hudson, Abutting Neighbor (114 Irish Settlement Road)
 - 5. Ashley Wishinski, Applicant (111 Irish Settlement Road)
- H. At the outset of the hearing, Chair Van Winkle explained the criteria under 24 V.S.A § 4465(b) for being considered an "interested party." Those who spoke at the hearing were:
- 1. Marlene Yanus
 - 2. Paul Yanus
 - 3. Lincoln Weed
 - 4. Debbie Hudson
- I. In support of the final subdivision application, the following exhibits were submitted to the Development Review Board:
- Exhibit A – Conditional Use Site Review Hearing Request
 - Exhibit B – Conversion/Change of Use Permit Application
 - Exhibit C – Conditional Use Review Checklist
 - Exhibit D – Site Plan Review Checklist
 - Exhibit E – Burlington Free Press Advertisement

Exhibit F – Certification of Service for Notice to Abutting Neighbors
Exhibit G – Abutting Neighbor Notice
Exhibit H – Site Plan
Exhibit I – Site Plan with Setbacks
Exhibit J – ANR Project Review Sheet
Exhibit K – Correspondence Regarding Water/Wastewater Permits
Exhibit L – Town of Underhill Certificate of Compliance
Exhibit M – Correspondence from Arjay West
Exhibit N – Wastewater Basis of Design
Exhibit O – B-16-11 Building Permit
Exhibit P – CO-16-07 Certificate of Occupancy
Exhibit Q – A-16-02 Access Permit
Exhibit R – Zoning Map
Exhibit S – ANR Source Protection Areas
Exhibit T – ANR Waterbodies & Streams
Exhibit U – ANR Wetlands
Exhibit V – Zoning Permit (Wastewater)
Exhibit W – B-00-51 Building Permit
Exhibit X – IS111-Wishinski Conditional Use Staff Report

Exhibits that were submitted during the hearing were as follows:

Exhibit Y – Mike Hudson Statement
Exhibit Z – MMU Service Memorandum
Exhibit AA – Lister’s Card for 111 Irish Settlement Road

All exhibits are available for public review in the IS111 Conditional Use Review file (DRB 16-10) at the Underhill Zoning & Planning office.

II. FINDINGS

The Minutes of the meetings, written by Andrew Strniste, are incorporated by reference into this decision. Please refer to the Minutes for a summary of the testimony.

Based on the submitted application, testimony, exhibits, and evidence, the Development Review Board makes the following findings under the requirements of the Underhill Unified Land Use and Development Regulations (ULUDR):

FACTUAL FINDINGS

The applicant, Ashley Wishinski, co-record owner of the property located at 111 Irish Settlement Road (IS111) in Underhill, Vermont, is seeking a conditional use permit to convert their single-family dwelling with an attached accessory dwelling into a three-family, multi-family dwelling. Since the ULUDR does not allow a single-family dwelling to have two accessory dwelling units, the applicant is required to obtain a conditional use permit for any structure containing more than two dwelling units (see Article II, Table 2.1).

The property is located in three zoning districts: the Rural Residential as defined in Article II, Table 2.3 of the ULUDR; the Water Conservation District as defined in Article II, Table 2.4 of the ULUDR; and the Soil & Water Conservation District as defined in Article II, Table 2.6 of the ULUDR. The structure at the center of this review is located in the Rural Residential zoning district.

BACKGROUND FINDINGS

The structure being reviewed was issued a building permit on July 26, 2000, and became effective on August 10, 2000 (see Exhibit W). The 2000 building permit makes no reference to accessory apartments or mother-in-law apartments, and therefore, was permitted as only a single-family dwelling. Since the structure was not permitted for any accessory apartments, the construction of the two accessory dwelling units was illegal.

When the applicant subsequently purchased the property, a title search confirmed the existence of the two accessory apartments, and were subsequently determined to be illegal by the title attorney. To bring the structure into conformance with the ULUDR the applicant filed a building permit with the Underhill Planning & Zoning Department (hereafter Zoning) to convert the two illegal accessory apartments into one permitted accessory apartment. A building permit was issued on May 12, 2016 by acting Zoning Administrator Brian Bigelow, permitting the structure to be used as a single-family dwelling with an attached accessory apartment (see Exhibit O). Shortly thereafter, a Certificate of Occupancy was obtained for the structure (see Exhibit P). Mr. Bigelow noted on the Certificate of Occupancy that the second accessory apartment, and more specifically, the kitchen in the second accessory apartment, was removed, and thereby conforming to the ULUDR.

Sometime between May 17, 2016, when Mr. Bigelow performed his site visit, and the conditional use review hearing on October 31, 2016, the applicant reinstalled the kitchen in what was once the second accessory apartment, and began renting out the unit. In other words, the applicant illegally converted the structure back to a single-family dwelling with two accessory dwellings.

ZONING DISTRICTS, ARTICLE II

ARTICLE II, TABLE 2.3 RURAL RESIDENTIAL DISTRICT

While the Board finds that the proposed use of a three-family, multi-family dwelling is an allowed conditional use in this district, it is not necessarily compatible with historic uses along Irish Settlement Road, as stated in the district purpose statement, and is in conflict with the Town Plan, which emphasizes multi-family dwellings primarily in village centers.

ARTICLE II, TABLE 2.4 – WATER CONSERVATION DISTRICT

The Board finds that the lot is partially located within the Water Conservation District; however, the structure is located within the Rural Residential District, and therefore, the Board makes no finding regarding this section of the ULUDR.

ARTICLE II, TABLE 2.6 – SOIL & WATER CONSERVATION DISTRICT

The Board finds that the lot is partially located within the Soil & Conservation District; however, the structure is located within the Rural Residential District, and therefore, the Board makes no finding regarding this section of the ULUDR.

GENERAL REGULATIONS, ARTICLE III

A. ACCESS, SECTION 3.2

The Board finds that an access permit was approved by the Selectboard on May 10, 2016 (Access Permit: # A-16-02; see Exhibit Q), and therefore, satisfies the requirements under § 3.2.

B. CONVERSION OR CHANGE OF USE, SECTION 3.3

The Board finds that the proposed use does not meet all of the requirements of the regulations pertaining to multi-family dwellings per § 3.3.A.1. The applicant failed to meet the parking

requirements, as discussed below.

While the change of use is proposed to be converted from a single-family dwelling with an attached accessory apartment to a three-family, multi-family dwelling, the Board finds that the proposed use will not result in an increase of wastewater generation under § 3.3.B. The wastewater system's basis of design states that the system is constructed to handle a four-bedroom dwelling (see Exhibit N). No change in the number of bedrooms is proposed, and therefore, there will be no increase in wastewater generation.

Furthermore, documentation has been provided (Exhibit J & K), explaining that the Agency of Natural Resources never reclassified the structure, and therefore, the applicant does not need to proceed with any further water/wastewater permit with the Agency of Natural Resources.

The Board finds that the proposed alteration would result in a "public building" as defined under 20VSA Chapter 173, section 2730, and would fall under the jurisdiction of Vermont Department of Public Safety, Fire Safety Division (*the Authority Having Jurisdiction AHJ*). Since the Town has no expertise in the review of public buildings, the Board typically relies on the issuance of a construction permit from the Fire Safety Division as a rebuttable presumption that the proposed alterations are in conformance with applicable State building codes. The applicant provided no indication that the proposed change in use has undergone review or is being reviewed by said AHJ.

C. LOT, YARD & SETBACK REQUIREMENTS, SECTION 3.7

The Board finds that the lot meets the minimum lot, yard & setback requirements.

D. OUTDOOR LIGHTING, SECTION 3.11

The Board finds that the applicant did not submit a lighting plan, and thus, did not satisfy the lighting requirements.

E. PARKING, LOADING & SERVICE AREAS, SECTION 3.13

The Board finds that the applicant did not submit enough information to determine if the parking requirements were met. The Board finds that five parking spots are required per Table 3.1, and should be located towards the side or rear of the principal building per § 3.13.A.3; however, parking spaces were not identified on the site plan.

The Board finds that the applicant did not provide enough information to demonstrate that parking would be screened from adjoining residential properties and public rights-of-way per § 3.13.A.3.

The Board finds that the applicant did not provide adequate and clearly marked handicapped parking spaces per § 3.13.A.3.a.

The Board finds that the applicant did not identify the location of a bicycle rack per § 3.13.A.3.b.

The Board finds that the applicant did not provide a shared parking and/or landscaping, snow removal, pedestrian or transit facility plan.

F. ARTICLE III, TABLE 3.1 – MINIMUM OFF-STREET PARKING REQUIREMENTS

The Board finds that five parking spaces, as well as additional spaces for the handicapped, are required. The applicant did not submit enough information to determine the exact locations of

those parking spaces, nor were the parking spaces identified on the site plan.

G. PERFORMANCE STANDARDS, SECTION 3.14

The Board finds that the applicant did not submit the requisite information to satisfy the requirements of § 3.14.

H. SOURCE PROTECTION AREAS, SECTION 3.17

The Board finds that the structure directly relates to the water supply, and therefore, exempt from setback requirements under § 3.17.A.1.

The Board finds that the structure is currently exempt under § 3.17.B from source protection review since it is a single-family dwelling with an associated accessory use. However, as a multi-family structure, source protection review is required.

The Board makes no finding that the proposed development is consistent with the Source Protection Plan. The Board recognizes that the proposed use is unlikely to be discharging hazardous materials from floor drains, and the applicant is unlikely to store and apply fertilizers, pesticides, herbicides, and/or other chemicals. Furthermore, the Board finds that the applicant did not provide enough information to satisfy § 3.17.D.

Per § 3.17.B, The Board finds that the applicant did not provide any information regarding above ground storage tanks for oil, gasoline, or other petroleum products, nor provided information regarding the use of sodium chloride for ice control, information regarding drainage ways and sediment traps, and information regarding any site clearing or distance.

I. STEEP SLOPES, SECTION 3.18

The Board finds that the structure already exists, and the proposed conversion will not impact any steep slopes or very steep slopes.

J. SURFACE WATERS & WETLANDS, SECTION 3.19

The Board finds that an unnamed stream and pond are located near the south side lot line; however, the existing structure is located more than 300 feet from these water sources. The Board finds that the proposed use will not impact these surface waters.

The Board finds that a Class II Wetland exists in the central location of the property; however, the existing structure is located more than 200 feet from the wetland boundary, and therefore meets the setback requirement. Furthermore, the proposed use will not impact this wetland.

K. WATER SUPPLY & WASTEWATER SYSTEMS, SECTION 3.22

The Board finds that the applicant will not be increasing the water/wastewater demand. In 1996, the Underhill Zoning Administrator issued a zoning permit for the wastewater system (Exhibit V). The zoning permit was issued for a four-bedroom house (Exhibit M), which later received a Certificate of Compliance (Exhibit L). As stated above, the Agency of Natural Resources (ANR) still recognizes the structure as a multi-family house, as from ANR's perspective, they did not change the initial use. Note: the Agency of Natural Resources permitted this structure as a multi-family use because they were aware that the structure was a single-family dwelling with two illegally attached accessory apartments (illegal from the Town's perspective). Since the applicant is proposing to convert the structure into a multi-family house, the applicant is not required to file additional paperwork with the Agency of Natural Resources.

SITE PLAN REVIEW, ARTICLE V, SUBSECTION 3

The Board finds that as part § 5.4.C of the ULUDR, site plan review is required in addition to the review required by § 5.4.

A. EXISTING SITE FEATURES

The Board finds that the applicant failed to submit a site plan showing the site layout and design that identifies:

1. Existing topography and drainage patterns;
2. Areas of steep and very steep slope;
3. Surface waters, wetlands, and associate buffers;
4. Delineated source protection areas;
5. Significant wildlife habitat areas and travel corridors; and
6. Scenic resources including scenic viewsheds, open meadows, and prominent hillsides and ridgelines as viewed from public vantage points; and historic sites and structures, including existing cellar holes, stonewalls, and fences.

B. SITE LAYOUT & DESIGN

The Board finds that the site layout & design is inconsistent with the existing and desired character of the Rural Residential and Water Conservation zoning districts, which is to reinforce the rural character of the district. Furthermore, the Board recognizes that although the building is not oriented and designed in a manner that is compatible with the single-family residential character and scale of the neighborhood, the structure received the requisite building permits to be built to the dimensions as it currently exists.

C. VEHICULAR ACCESS

The Board finds that the applicant received an access permit approval from the Selectboard on May 10, 2016 (Access Permit #: A-16-02; Exhibit Q).

D. PARKING, LOADING & SERVICE AREAS

The Board finds that the parking area is to be located to the rear/side of the principal building. The Board finds that the applicant did not submit enough information to determine if adequate screening was provided. Please see Section 3.13 above for more detail.

E. SITE CIRCULATION

The Board finds that the applicant has provided for adequate and safe on-site vehicular and pedestrian circulation considering the intended use of the property is proposed to be a three-family, multi-family dwelling.

F. LANDSCAPING AND SCREENING

The Board finds that the applicant has not provided enough information to determine if adequate landscaping and screening techniques satisfied the requirements of the ULUDR.

G. OUTDOOR LIGHTING

The Board finds that the applicant has not provided enough information on outdoor lighting to determine if it satisfies the requirements of the ULUDR.

H.

I. STORMWATER MANAGEMENT AND EROSION CONTROL

Because the applicant does not propose any exterior construction, the Board makes no finding

regarding stormwater management and erosion control, and whether it satisfies the requirements of the ULUDR.

CONDITIONAL USE REVIEW, ARTICLE V, SUBSECTION 4

A. CAPACITY OF EXISTING OR PLANNING COMMUNITY SERVICES OR FACILITIES

The Board finds that there would be little impact on demand for community services and facilities as a result of the proposed development. The Board finds that the proposed development would have no impact on schools (Exhibit Z), little impact on emergency services, community water supply and wastewater systems, public parks and trail networks, and public utilities.

B. THE CHARACTER OF THE AREA AFFECTED

The Board finds that the proposed three-family, multi-family dwelling will adversely affect the character of the area affected. The Board finds that the scale of the three-family, multi-family structure is noticeably larger than the single-family dwellings in the vicinity. Furthermore, the structures in the vicinity are single-family dwellings or single-family dwellings with one accessory apartment. While the Board acknowledges that there are adjacent parcels containing more than one dwelling unit, the number of dwelling units on these owner-occupied parcels do not exceed two units. Therefore, the Board finds that the proposed three-family dwelling, three-dwelling unit structure is a more intensive use than the uses in the surrounding area.

The Board finds that the proposed multi-family structure does not conform with the Town Plan (see below).

C. TRAFFIC ON ROADS AND HIGHWAYS IN THE VICINITY

The Board finds that the applicant did not provide enough information to make a determination on the projected impact of traffic on the condition, capacity, safety, efficiency, and use of existing planned roads, bridges, intersections and associated highway infrastructure in the vicinity of the proposed development.

D. BYLAWS IN EFFECT

The Board finds that applicant is not in conformance with all of the municipal bylaws in effect at the time of application, as the applicant has created a second accessory dwelling without the proper municipal permit.

E. THE UTILIZATION OF RENEWABLE ENERGY RESOURCES

The Board finds that the proposed development will not interfere with the suitable uses of renewable energy resources, including access to, or the direct use or future availability of such resources.

F. CONFORMANCE WITH THE TOWN PLAN

The Board finds that the proposed use of a three-family, multi-family dwelling does not conform with the Town Plan, specifically:

§ 3.1 Land Use, which states: “1. **Traditional Village Centers**: Underhill has two traditional *village centers*, Underhill Center and the Underhill Flats area. *These areas are characterized by relatively dense, mixed use development.*” [Emphasis Added]

§ 3.1 Land Use, which states: “2. **Residential Lands:** *These areas are characterized by private house, primarily single-family homes, some with an accessory dwelling.* Current zoning regulations permit single family and two family dwellings in all zoning districts. Multi-family dwellings are allowed as a conditional use in all zoning districts except Soil & Water Conservation. Commercial operations exist in all zoning districts because of allowed conditional uses.” *[Emphasis Added]*

§ 7.3 Affordable Housing, which states, “Increasing density in areas planned for growth and where services and infrastructure already exist is a concept this Plan supports.”

§ 7.3 Affordable Housing, which states, “Provide for greater density in areas designated as village centers by encouraging duplexes and multi-family dwellings.”

§ 7.3 Affordable Housing, which states, “Allow for multi-unit structures where appropriate.”

G. ZONING DISTRICTS & USE STANDARDS

The Board finds that the structure and proposed use conform, or could conform, with the zoning district and use standards.

H. PERFORMANCE STANDARDS

The Board finds that the requisite information was not submitted by the applicant to make a determination in regards to performance standards. See § 3.14, Performance Standards, above.

I. LEGAL DOCUMENTATION

The Board finds that the applicant did not provide the requisite information to make a determination to ensure that all required improvements, rights-of-way and easements, and other common lands or facilities will be installed and adequately maintained either by the applicant, an owners association, or through other legal means.

CONDITIONAL USE REVIEW, ARTICLE V, SUBSECTION 5

A. APPLICATIONS & REVIEW STANDARDS

The Board finds that the applicant did not request any waivers, nor does the Board propose to waive, any application requirements.

III. CONCLUSION

The Board was not satisfied with the level of investigation, engineering and evaluation conducted in the application submittal and review process concerning the abovementioned project. Even if the applicant provided a satisfactory application, the Board denies approval for the conditional use permit because the proposed three-family, multi-family use does not generally conform to the Underhill Unified Land Use & Development Regulations, and more importantly, nor does the proposed use conform to the Underhill Town Plan.

The Board thoroughly reviewed all aspects of the proposal under the evaluation criteria in the Underhill Unified Land Use & Development Regulations, and has made its decision based on the evidence submitted and the above findings.

IV. DECISIONS AND CONDITIONS OF DENIAL

Based upon the findings above, the Development Review Board denies approval for the conditional use permit on the following grounds:

1. A multi-family dwelling in the vicinity of the Irish Settlement Road/Sand Hill Road intersection does not conform to various sections of the Town Plan.
2. The conversion of a single-family dwelling with an attached accessory dwelling to a three-family, multi-family dwelling does not conform with the character of the neighborhood, as the neighborhood consists of single-family dwellings and owner occupied single-family dwellings with attached accessory apartments.
3. The applicant failed to submit enough information to make a determination on various aspects of the application (see above rationale).

Dated at Underhill, Vermont this 13 day of December, 2016.

Charles Van Winkle, Chair, Development Review Board

NOTICE: This decision may be appealed to the Vermont Environment Court by an interested person who participated in the proceedings before the Development Review Board. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings. Appeal period ends January 12, 2016.