



Town of Underhill

Development Review Board

Findings and Decision

APPLICATION OF JON HOWARD FOR A WAIVER/VARIANCE TO ENCROACH UPON THE LOT'S SETBACK REQUIREMENT BY CONSTRUCTING TWO ADDITIONS TO THE SINGLE-FAMILY DWELLING

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

Docket No. DRB-17-11

Decision: Approved without Conditions (see Section V for More Details)

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns a waiver/variance request application to allow the applicant, Jon Howard, to build two additions onto his single-family dwelling that would inevitably encroach upon his lot's setback requirements. The applicant's lot is located at 219 Stevensville Road (ST219) in Underhill, Vermont, and is located in the Water Conservation District and the Soil & Water Conservation District.

- A. On May 19, 2017, Jon Howard (also known as the applicant), filed an application for a waiver/conditional use request hearing for the abovementioned project. The application was accepted and determined to be complete by the Planning & Zoning Administrator, Andrew Strniste, shortly thereafter. A site visit was scheduled for 6:00 PM at the property's location, 219 Stevensville Road, Underhill, VT, on June 19, 2017, and the hearing was scheduled later that evening for 7:30 PM at Underhill Town Hall, 12 Pleasant Valley Road, Underhill, VT.
- B. On June 2, 2017, a copy of the notice of the waiver/variance request hearing was mailed via Certified Mail to the following property owners adjoining the property subject to the application:
1. ML020 – Maple Leaf Farm Associates, Inc., 786 College Parkway, Colchester, VT 05446
 2. ST024 – Jeffrey L. & Karen C. Davis, P.O. Box 229, Underhill Center, VT 05490
 3. ST217 – Elaine Herman Trustee, P.O. Box 116, Underhill Center, VT 05490
 4. ST221 – Infields, LLC, 341 Sabal Palm Lane, Vero Beach, FL 32963
 5. ST246 – Wheeler Associates c/o Patricia McLaughlin, 37 Foster Road, Essex Junction, VT 05452
 6. [Applicant] ST219 – Jon Howard, P.O. Box 43, Underhill Center, VT 05490
- C. During the week of May 28, 2017, notice of the public hearing for the proposed waiver/variance request was posted at the following locations:
1. The Underhill Town Clerk's office;
 2. The Underhill Center Post Office; and
 3. The Underhill Flats Post Office.
- D. On June 3, 2017, the notice of public hearing was published in the *Burlington Free Press*.

E. The site visit hearing began at the property's location, 219 Stevensville Road (ST219), at 6:00 PM on June 19, 2017.

F. Present at the site visit were the following members of the Development Review Board:

1. Board Member, Charles Van Winkle, Chairperson
2. Board Member, Matt Chapek
3. Board Member, Karen McKnight
4. Board Member, Penny Miller
5. Board Member, Stacey Turkos

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

Others present at the site visit were:

6. *[Applicant]* Jon Howard, 219 Stevensville, Underhill, VT 05489
7. *[Abutting Neighbor]* Patricia McLaughlin, 246 Stevensville Road, Underhill, VT 05489
8. *[Abutting Neighbor]* Robert McLaughlin, 246 Stevensville Road, Underhill, VT 05489

G. The waiver/variance request hearing commenced at 7:30 PM on June 19, 2017 at the Town of Underhill Town Hall.

H. Present at the waiver/variance request hearing were the following members of the Development Review Board:

1. Board Member, Charles Van Winkle, Chairperson
2. Board Member, Matt Chapek
3. Board Member, Karen McKnight
4. Board Member, Penny Miller
5. Board Member, Stacey Turkos

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

Others present at the hearing were:

1. *[Applicant]* Jon Howard, 219 Stevensville Road, Underhill, VT 05489

I. At the outset of the hearing, Chair Charles Van Winkle explained the criteria under 24 V.S.A § 4465(b) for being considered an "interested party." Those who spoke at the hearing were:

1. Jon Howard

J. In support of the final waiver/variance request application, the following exhibits were submitted to the Development Review Board:

- Exhibit A - ST219 - Howard Waiver & Variance Request Staff Report
- Exhibit B - Variance Hearing Request Form
- Exhibit C - Correspondence from Applicant to Board
- Exhibit D - Certificate of Service

Exhibit E - Notice to Burlington Free Press
Exhibit F - Letter of Support from Elaine Herman
Exhibit G - Floor Plans
Exhibit H - Elevations
Exhibit I - Before Site Plan
Exhibit J - After Site Plan
Exhibit K - Waiver & Variance Limitations
Exhibit L - Zoomed in After Site Plan
Exhibit M - ST219 Howard Waiver & Variance Rules of Procedure
Exhibit N - ANR Habitat Blocks Map
Exhibit O - ANR Slopes Map
Exhibit P - ANR Source Protection Area Map
Exhibit Q - ANR Stream & Waterbodies Map

No additional exhibits were submitted prior to or during the hearing.

All exhibits are available for public review in the ST219 Waiver/Variance Request file (DRB 17-11) at the Underhill Zoning & Planning office.

II. FINDINGS

The Minutes of the June 19, 2017 meeting, written by Planning & Zoning Administrator, 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 2011 Underhill Unified Land Use and Development Regulations (ULUDR) as amended March 6, 2012 & March 4, 2014:

FACTUAL FINDINGS

The applicant, Jon Howard, record owner of the property located at 219 Stevensville Road (ST219) in Underhill, Vermont, is seeking a waiver/variance under Section 5.5.C from the Development Review Board to build two additions to the single-family dwelling within the property's setback requirement.

The property is located in the Water Conservation District as defined in Article II, Table 2.4 and in the Soil & Water Conservation District as defined of Article II, Table 2.6 of the Underhill Unified Land Use & Development Regulations.

ZONING DISTRICTS, ARTICLE II

ARTICLE II – ZONING DISTRICTS

A. ARTICLE II, TABLE 2.4 – WATER CONSERVATION DISTRICT

The Board finds that the existing lot does not meet the requirements of the Underhill Water Conservation District, which includes minimum lot size, minimum frontage, and one of the side setback requirements. The proposed additions will not be built within the Water Conservation District; however, the Board notes that the existing building (the garage) fails to meet the minimum dimensional requirements. Since the building is existing, it therefore qualifies as a nonconforming structure on a nonconforming lot.

B. ARTICLE II, TABLE 2.6 – SOIL & WATER CONSERVATION DISTRICT

The Board finds that the existing lot does not meet the requirements of the Underhill Soil & Water

Conservation District, as the existing building fails to meet the minimum dimensional requirements, which include minimum lot size, minimum frontage, and both side setback requirements. The building is therefore a nonconforming structure on a nonconforming lot.

GENERAL REGULATIONS, ARTICLE III

A. SECTION 3.2 – ACCESS

The Board finds that the lot has not received an access permit; however, since the landowner is not proposing to perform any of the actions under Section 3.B of the Underhill Road Ordinance, an access permit is not required as part of this application.

SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS

The Board finds that the existing lot is a nonconforming lot, as the lot fails to meet the acreage requirement, the frontage requirement, and the side setback requirements of both the Water Conservation District and the Soil & Water Conservation District. The Lot is ±4.7 acres, failing to meet the 5.0 acreage requirement for the Water Conservation District and failing to meet the 15.0 acreage requirement for the Soil & Water Conservation District. The front lot line is 204 feet, failing to meet the requirements of both districts. The primary structure is approximately 396 feet from the front lot line (south), 49 feet from the west side lot line, 9 feet from the east side line, and more than 300 feet from the rear lot line (north). Lastly, Stevensville Brook is located to the north; however, the existing structure is approximately 200 ft. from the stream. No wetlands were identified on the lot.

However, since the Board finds that the applicant has satisfied the requirements of Sections 3.8 and 3.9 below, he will not be prevented from obtaining approval from the Board under this section.

B. SECTION 3.8 – NONCONFORMING LOTS

The Board finds that the lot was legally existing on the effective date of the current Underhill Unified Land Use & Development Regulations (March 1, 2011; Amended March 6, 2012; Amended March 4, 2014), and therefore, per Section 3.8.A, the lot may be developed for the purposes allowed in the district it is located in even though it does not conform to the minimum lot size requirements.

C. SECTION 3.9 – NONCONFORMING STRUCTURES

The Board finds that the existing structure was legally in existence as of the effective dates of the current Underhill Unified Land Use & Development Regulations, and therefore, may continue to be occupied or used indefinitely. Since the applicant is proposing to structurally enlarge/expand, modify the building footprint beyond 50% of the setback requirement, a variance is required per Section 3.9.B.

D. SECTION 3.10 – NONCONFORMING USES

The Board finds that both the existing use and proposed use conform to the Soil & Water Conservation District if the waiver/variance request is approved, and therefore, this section does not apply.

E. SECTION 3.11 – OUTDOOR LIGHTING

Outdoor lighting is a review criteria under site plan review, which is a requirement of conditional use review. The Board finds that site plan review and conditional use review criteria are implicitly addressed when reviewing the application under the variance criteria below. Nevertheless, the Board makes no finding regarding outdoor lighting.

F. SECTION 3.13 – PARKING, LOADING & SERVICE AREAS

The Board finds that the applicant has satisfied the parking requirement of two parking spaces per dwelling.

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

See Section 3.13 – Parking, Loading & Service Areas, directly above.

H. SECTION 3.14 – PERFORMANCE STANDARDS

Performance standards are review criteria under site plan review & conditional use review. The Board finds that site plan review and conditional use review criteria are implicitly addressed when reviewing the application under the variance criteria below. Nevertheless, the Board finds that the applicant will satisfy this subsection, as the proposed construction is consistent with other single-family dwelling projects.

I. SECTION 3.17 – SOURCE PROTECTION AREAS

The Board finds the existing lot is located within a source protection area; however, the Board finds that the development directly relates to a single-family dwelling, and is therefore exempt under Section 3.17.A. The Board notes that the water supply is from a drilled well.

J. SECTION 3.18 – STEEP SLOPES

The Board finds that there are areas of steep slopes (15-25%) or very steep slopes (>25%) present on the lot, specifically to the north and south of the single-family dwelling. These areas of slope create additional constraints, thus minimizing the possible building envelope of the property. While these areas exist, the applicant is not proposing any construction that will impact slopes.

K. SECTION 3.19 – SURFACE WATERS & WETLANDS

The Board finds that Stevensville Brook is located towards the northern part of the lot; however, the applicant is proposing construction that is approximately 200 feet to the south of the Brook, thus meeting the minimum setback standard of 50 feet from the top of the slope per this Section. Class III Wetlands have been identified on the lot, but the proposed additions will not occur in the vicinity of those identified locations.

L. SECTION 3.22 – WATER SUPPLY & WASTEWATER SYSTEMS

The Board finds that the applicant shall submit an updated Wastewater System & Potable Water Supply Permit prior to obtaining the Certificate of Occupancy permit for the proposed additions per Section 10.4.A of the ULUDR.

ARTICLE V, DEVELOPMENT REVIEW

A. SECTION 5.1 – APPLICABILITY

The Board finds that per Sections 5.5.B (regarding waivers) and Section 5.5.C.1 (regarding variances), waiver requests and/or variance requests are to be held concurrently with site plan review under 5.3 or conditional use review under Section 5.4. However, the Board finds that the site plan review and conditional use review criteria are implicitly addressed when reviewing the application under the variance criteria. Therefore, this application is reviewed under the variance review criteria per Section 5.5.C, and a formal analysis under Sections 5.3 and 5.4 is not addressed as part of this decision.

B. SECTION 5.3 – SITE PLAN REVIEW

See Section 5.1 – Applicability, directly above.

C. **SECTION 5.4 – CONDITIONAL USE REVIEW**

See Section 5.1 – Applicability, above.

D. **SECTION 5.5 – WAIVERS & VARIANCES**

Section 5.5.A – Applications & Review Standards: The Board waives the side setback requirements per Article II, Table 2.6 for the single-family dwelling only by granting a variance, thus allowing the applicant to construct the proposed additions.

Section 5.5.B – Dimensional Waivers: The Board finds that by granting a variance that allows the applicant to construct multiple additions onto the single-family dwelling, the applicant is permitted to encroach upon the side setback more than what a dimensional waiver would allow (a dimensional waiver allows the Board to reduce the setback requirement up to 50%). Therefore, the waiver is implicitly approved through the approval of the variance that this Board is granting.

Section 5.5.C – Variances: The Board finds that the applicant has satisfied all of the factors of the variance criteria (see Section 5.5.C.2 below).

Section 5.5.C.1 (Untitled): The Board finds that the applicant has provided the information required under this section.

Section 5.5.C.2 (Untitled): The Board finds that the applicant has satisfied the following factors to obtain a variance, as outlined below:

Factor 1 (Section 5.5.C.2.a): There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions and not the circumstances or conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located.

Findings: The applicant's lot is extremely narrow and exhibits various topographical constraints, thereby limiting the available locations to construct the two additions. Specifically, an embankment exists to the north of the structure making construction in that direction less feasible. The septic tanks are located to the west of the single-family dwelling, while the driveway is located directly to the south. Therefore, the Board finds that the totality of all of these features creates an unnecessary hardship for the applicant.

Factor 2 (Section 5.5.C.2.b): Because of such physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these regulations and that the authorization of a variance is necessary to enable the reasonable use of the property.

Findings: Given the narrowness of the lot, as well as the existing topography and other constraints outlined directly above in Factor 1, developing in strict conformity with the Regulations is unlikely, if not impossible. The permitted building envelope in the immediate vicinity of the single-family dwelling contains an existing garage. The addition of any other structure within this building envelope would likely encroach upon the Water Conservation setback

requirement. The only other area on the lot where topography is not an issue is in an area closer towards Stevensville Road where an existing leach field and Class III Wetlands exist, thus eliminating this area as a feasible location for a workable building envelope.

Factor 3 (Section 5.5.C.2.c): The unnecessary hardship has not been created by the applicant or appellant.

Findings: The Board finds that the applicant is not creating the unnecessary hardship, as the unique physical circumstances substantially inhibit the applicant from constructing any new addition or structure on the property due to the narrowness of the lot, as well as the extreme topography that exists.

Factor 4 (Section 5.5.C.2.d): The variance, if authorized, will not substantially alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.

Findings: The Board finds that the variance will not alter the essential character of the neighborhood. The single-family dwelling encroaches upon the setback already, as it is only nine (9) feet from the property line. The finished additions would make that portion of the dwelling ten (10) feet from the property line; therefore, not encroaching on the property line any more than what is existing. Furthermore, the Board did not receive any objections from the surrounding neighbors.

Factor 5 (Section 5.5.C.2.e): The variance if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.

Findings: The Board finds that the variance approved as part of this decision will represent and afford the least deviation from the Underhill Unified Land Use & Development Regulations possible.

ARTICLE VI, FLOOD HAZARD AREA REVIEW

There are no Flood Hazard Areas present on the lot, and therefore, review under Article VI is not required.

III. CONCLUSION

The Board thoroughly reviewed all aspects of the proposal under the evaluation criteria in the ULUDR, and it was satisfied with the level of investigation, engineering, and evaluation conducted in the application submittal and review process concerning the abovementioned project.

Based on the evidence submitted and the above findings, the Board concludes that the proposed project generally conforms to the Underhill Land Use & Development Regulations.

IV. WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS

The Board grants the following waivers/modifications:

- The side lot line setbacks may be reduced for the single-family dwelling only, and shall not encroach upon the setback than what was proposed and presented as part of this application.
- As explained in Section 5.1 – Applicability, above, variance requests outside of the appeal procedures are to be held concurrently with site plan review or conditional use review. As a result, the approval of this variance would also be implicitly approving the application as a site plan or conditional use application. However, the Board finds that the applicant is not required to come before the Board for the construction of any out buildings, ancillary buildings, or accessory buildings, which would typically be required for any projects obtaining site plan review approval; instead the application for a building permit for those accessory-type buildings can be administratively reviewed and approved by the Zoning Administrator. In addition, the Board makes no specific findings regarding the review criteria under Sections 5.3 and 5.4, and therefore, applications pertaining to those review criteria may be administratively reviewed. However, the abovementioned structures must conform to the Regulations in effect at the time of the proposed projects. Accessory dwellings requiring the construction of an additional structure or the expansion of the proposed single-family dwelling will require additional review.

V. DECISIONS AND CONDITIONS OF APPROVAL

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

1. The Board makes no finding regarding the rooflines of the proposed additions, as the height of the structure shall not exceed 35 feet as permitted by the ULUDR; however, the footprint of the house shall not exceed the limitations as proposed and presented as part of this application.
2. The applicant shall secure all required permits or approvals from the applicable Vermont state agencies. These permits shall be submitted to the Zoning Administrator prior to obtaining a certificate of occupancy as required under Section 10.4.A.2 of the ULUDR.
3. The project shall conform to the submitted application materials and hearing testimony presented by the applicant. Any change to the plans or the proposed use of the property, unless otherwise noted in this decision, shall be brought to the Zoning Administrator's attention prior to its enactment to determine if the above conditions need to be amended.

Dated at Underhill, Vermont this 20th of JULY 2017.

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 19 August, 2017.