



Town of Underhill

Development Review Board

Final Findings and Decision

APPLICATION OF RADE HOLDINGS, LLC REGARDING A COMBINED CONDITIONAL USE REVIEW AND VARIANCE REQUEST APPLICATION TO CONVERT A MIXED-USE STRUCTURE WITH COMMERCIAL SPACE AND THREE DWELLING UNITS TO A FOUR-DWELLING UNIT, MULTI-FAMILY STRUCTURE

In re: Rade Holdings, LLC
1 Pleasant Valley Road (PV001)
Underhill, VT 05489

Docket No. DRB-18-06

Decision: Denied in Part and Approved in Part with Conditions (see Section IV for More Details)

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns a combined conditional use review and variance request application for the conversion of a mixed-use building containing commercial space and three apartments to a four dwelling unit, multi-family structure at 1 Pleasant Valley Road (PV001) in Underhill, Vermont, which is owned by Rade Holdings, LLC.

- A. On February 12, 2018, Peter Davis, on behalf of Rade Holdings, LLC (also known as the applicant), filed an application for a conditional use for the abovementioned project. The application was received and determined completed by the Planning & Zoning Administrator, Andrew Strniste thereafter. A site visit was scheduled for April 9, 2018 at 6:00 PM, and the hearing was scheduled for April 9, 2018 at 6:35 PM.
- B. Between February 12, 2018 and March 9, 2018, the Planning & Zoning Administrator and Development Review Board became aware of Vermont State statute 24 V.S.A. § 4449(d), which requires all applications submitted and received after the legislative body's (the Selectboard) first public hearing warning date (November 11, 2017) for proposed zoning regulation amendments to be reviewed under the zoning regulations in effect at the time of the application and the proposed zoning regulations. The statute requires the more strict regulations be applied. To note, the Underhill residents approved the proposed zoning regulations on March 6, 2018.
- C. Shortly after Planning & Zoning Staff became aware of the abovementioned statute, Staff reached out to the applicant and recommended submitting a variance request application, as Staff anticipated that the Board would review the application under the 2018 *Underhill Unified Land Use & Development Regulations* since those are the more restrictive regulations. The applicant submitted his variance request application on March 14, 2018. Planning & Zoning Administrator received the application on March 15, 2018 and determined that it was complete shortly thereafter.
- D. On March 22, 2018, notice of the combined conditional use review and variance request hearing

was mailed via Certified Mail to the following property owners adjoining the property subject to the application:

1. PV002X – Town of Underhill, 12 Pleasant Valley Road, Underhill, VT 05489 [*Hand Delivered*]
 2. PV003 – Paul V. Moran & Nancy Jones, P.O. Box 134, Underhill Center, VT 05490
 3. PV004X – Roman Catholic Diocese of Burlington, 55 Joy Drive, South Burlington, VT 05403
 4. KR002 – Todd Mackenzie, 2 Krug Road, P.O. Box 47, Underhill Center, VT 05490
 5. RV285 – Patrick F. & Louise E. Lamphere, 178 Beartown Road, Underhill, VT 05489
 6. Applicant: PV001 – Rade Holdings, LLC, P.O. Box 184, Underhill Center, VT 05490
- E. During the week of March 18, 2018, notice of the public hearing for the proposed combined conditional use review and variance request application was posted at the following locations:
1. The Underhill Town Clerk's office;
 2. The Underhill Center Post Office; and
 3. Jacobs & Son Market.
- F. On March 24, 2018, the notice of public hearing was published in the *Burlington Free Press*.
- G. A site visit at the property location (1 Pleasant Valley Road, Underhill, Vermont) commenced at 6:00 PM on March 19, 2018.
- H. Present at the site visit were the following members of the Development Review Board:
1. Board Member, Stacey Turkos, Acting Chair
 2. Board Member, Shanie Bartlett, Alternate
 3. Board Member, Matt Chapek
 4. Board Member Mark Green
 5. Board Member Daniel Lee

Municipal representatives and members of the public present during the site visit were:

6. Planning & Zoning Administrator, Andrew Strniste
 7. Applicant, Peter Davis on Behalf of Rade Holdings, LLC (Underhill, VT)
 8. Resident, Peter Duval (25 Pine Ridge Road, Underhill, VT)
- I. The combined conditional use review and variance request hearing commenced at 6:35 pm on April 9, 2018 at the Town of Underhill Town Hall.
- J. Present at the conditional use review hearing were the following members of the Development Review Board:
1. Board Member, Stacey Turkos, Acting Chair
 2. Board Member, Shanie Bartlett
 3. Board Member, Matt Chapek
 4. Board Member, Mark Green
 5. Board Member, Daniel Lee

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

Others present at the hearing were:

1. Applicant, Peter Davis on Behalf of Rade Holdings, LLC (1 Pleasant Valley Road)
 2. Abutting Neighbor, Todd Mackenzie (2 Krug Road, Underhill, VT)
 3. Resident, Peter Duval (25 Pine Ridge Road, Underhill, VT)
- K. At the outset of the hearing, Acting Chair Stacey Turkos explained the criteria under 24 V.S.A § 4465(b) for being considered an “interested party.” Those who spoke at the hearing were:
1. Peter Davis on Behalf of Rade Holdings, LLC
- L. In support of the final conditional use review application, the following exhibits were submitted to the Development Review Board:

- Exhibit A - PV001 - Rade Holdings, LLC Conditional Use & Variance Request Staff Report
- Exhibit B - Rade Holdings LLC (PV001) Conditional Use Review & Variance Request Hearing Procedures
- Exhibit C - Conditional Use & Site Plan Review Hearing Request Application
- Exhibit D - Variance Request Application
- Exhibit E - Conditional Use Review Standards Findings Checklist
- Exhibit F - Site Plan Review Standards Findings Checklist
- Exhibit G - Variance Request Narrative
- Exhibit H - Burlington Free Press Notice of Public Meeting
- Exhibit I - Certificate of Service
- Exhibit J - Conversion-Change of Use Permit Application
- Exhibit K - ANR Project Review Sheet
- Exhibit L - Maintenance Plan
- Exhibit M - MMU Ability to Serve Letter
- Exhibit N - UJFD Ability to Serve Letter
- Exhibit O - Correspondence from Abutting Neighbor Pat Lamphere
- Exhibit P - ANR Source Protection Area Map
- Exhibit Q - First Floor Plan
- Exhibit R - Second Floor Plan
- Exhibit S - Site Plan

No other exhibits were subsequently submitted prior to the start of the hearing. However, during the hearing, the following exhibits were submitted into the record:

- Exhibit T – Correspondence from Cynthia Seybolt Re: Application
- Exhibit U – Correspondence from Nancy Jones & Paul Moran Re: Application

All exhibits are available for public review in the PV001 Conditional Use & Variance Request Review file (PV001 / DRB 18-06) at the Underhill Zoning & Planning office.

II. FACTUAL FINDINGS & CONCLUSIONS

The Minutes of the April 09, 2018 meeting, 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 2011 *Underhill Unified Land Use and Development Regulations* (ULUDR) as amended through March 6, 2018:

The Board notes that while the applicant submitted the application for the proposed four dwelling unit, multi-family structure prior to the adoption date of the 2018 *Unified Land Use & Development Regulations*, under 24 V.S.A. § 4449(d), zoning permit applications, including Development Review Board applications, submitted after the Selectboard warns the first public hearing to present proposed amendments to a set of zoning regulations must be reviewed under both the existing zoning regulations (in this case the 2014 *Underhill Unified Land Use & Development Regulations*) and the proposed regulations (the 2018 *Underhill Unified Land Use & Development Regulations*), which were subsequently adopted. The Board finds that the Selectboard warned the first public hearing for the proposed (now adopted) zoning regulation amendments on November 11, 2018. In addition, the Board finds that the more strict set of regulations apply, and in this case, the 2018 *Underhill Unified Land Use & Development Regulations*.

FACTUAL FINDINGS

The applicant, Peter Davis on behalf of Rade Holdings, LLC, record owner of the property located at 1 Pleasant Valley Road (PV001) in Underhill, Vermont, is seeking a conditional use permit to convert an existing mixed-use building containing three apartments and commercial space to a multi-family dwelling building containing four apartments. Since the applicant is proposing a multi-family dwelling, the project requires conditional use review under Article II, Table 2.1. In addition, the applicant is also seeking a variance to permit the fourth dwelling unit since the underlying district, the Underhill Center Village District as outlined under Article II, Table 2.3, only permits three dwelling units within a multi-family dwelling.

DECISION

While the Board typically provides its decision below, for organizational purposes, the Board provides their decision here to better outline their findings and conclusion below. The current use is legally conforming to the 2018 *Underhill Unified Land Use & Development Regulations*, and the applicant is proposing a project that would require a variance of the regulations. While the Board is sympathetic to the applicant's situation created by the timing of the change in development regulations, the Board finds they are legally constrained to apply the appropriate criteria in evaluating this variance request. In the context of this limitation, the Board finds that the applicant, Rade Holdings, LLC., has not presented evidence demonstrating that there are *unique physical circumstances or conditions* creating an unnecessary hardship preventing it from developing the property in strict conformance with the abovementioned regulations, since the property is legally conforming to the regulations currently in effect. *[Emphasis Added]* In addition, the Board finds that the applicant would be creating its own hardship by proposing to convert the structure from a mixed-use building with commercial space and three dwelling units to a multi-family dwelling containing four dwelling units. Thus, the Board finds that applicant has failed to satisfy the first three elements of the variance test provided under Section 5.5.C.2, and explained in more detail below.

Therefore, the Board denies the applicant's request for a variance to permit a fourth dwelling unit. However, the Board is approving the applicant to convert the structure to a multi-family dwelling, not to exceed a total of three dwellings, to be configured at the applicant's discretion. In the alternative, the Board permits the applicant to keep in effect the conditional use approval permitted in 2017 (DRB-17-06) should the applicant choose; however, once the use of the previous decision (DRB-17-06) or this decision (DRB-18-06) is established, the other use not established, is forfeited. In sum, the

findings and conclusions below are in the context of denying the variance for a fourth dwelling unit, and approving a multi-family dwelling with three dwelling units.

ARTICLE II – ZONING DISTRICTS

A. ARTICLE II, TABLE 2.3 – UNDERHILL CENTER VILLAGE DISTRICT

The Board finds that the existing lot does not meet the requirements of the Underhill Center Village District, as the existing building fails to meet the minimum dimensional side setback requirements of 15 feet; the building is a nonconforming structure on a nonconforming lot. In addition, the driveways fail to meet the setback requirements of 12 feet. Lastly, the lot fails to meet the 1.5 acre minimum lot size requirement, as the lot is approximately 0.25 acres.

GENERAL REGULATIONS, ARTICLE III

A. SECTION 3.2 – ACCESS

The Board finds that the existing lot contains two access points from Pleasant Valley Road/River Road, regularly maintained public roads. One access point is located to the west of the existing building (River Road); the other access point is located to the east of the existing building (Pleasant Valley Road). The Board finds that there is no evidence that an access permit has ever been obtained most likely since the existing development predates the access permitting process. The Board waives the requirement of limiting the property to a single access point under Section 3.2.D.2 since both access points are pre-existing, and since the building is intended to be entered from both the west and east sides.

The Board finds the lot is pre-existing to the 2018 Underhill Unified Land Use & Development Regulations, and therefore qualifies as a pre-existing, nonconforming lot under Section 3.8 since it fails to meet the acreage requirement as explained above.

B. SECTION 3.3 – CONVERSION OR CHANGE OF USE

The Board finds that the applicant has failed to satisfy the requirements of Section 3.3.A.1 since the lot fails to meet the dimensional requirements. However, Section 3.3.A.4 allows a nonconforming structure to be converted so long as it meets the requirements of Section 3.9.

Conditional use review is required under Section 3.3.A.3 since the proposed project includes three (3) dwelling units, thus qualifying the use as “multi-family dwelling.” Multi-family dwellings (structures containing three or more dwelling units), retail space, and mixed uses are classified as conditional uses under Table 2.1. Since the applicant is proposing to convert the use from a conditional use (mixed-use structure) to another conditional use (multi-family dwelling), conditional use review is required by this Board.

The Board finds that the Applicant shall obtain formal documentation from Vermont Department of Environmental Conservation stating that a wastewater system & potable water supply permit/approval is not required, or obtain any requisite wastewater system & potable water supply permits the Department of Environmental Conservation may require. These documents shall be submitted prior to obtaining a certificate of occupancy permit from the Zoning Administrator, as the submission of this document creates a rebuttable presumption that the soils, water, and groundwater will not be contaminated.

C. SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS

The Board finds that the existing structure and existing lot are both nonconforming. While the lot contains one existing structure, that structure fails to meet the setback requirements, and could potentially fail to meet the building and lot coverage requirements.

The Board finds that the structure has the following lot characteristics: a front setback of one (1) foot, a west side setback of four (4) feet, an east side setback of 44 feet, and a rear setback of 56 feet. The Underhill Center Village District requires a 0 feet front setback and 15 feet side & rear setback requirement. Furthermore, the lot is \pm 0.26 acres in a district that requires a minimum lot size of 1.5 acres.

Nevertheless, the Board finds that applicant has satisfied the requirements of Sections 3.8 and 3.9, and therefore, will not be prevented from obtaining approval for the three-dwelling multi-family structure from the Board under this section.

D. SECTION 3.8 – NONCONFORMING LOTS

The Board finds that the lot was legally existing on the effective date of the current *Underhill Unified Land Use & Development Regulations* (adopted March 1, 2011; Amended through March 6, 2018), and therefore, per Section 3.8.A, the lot may be developed for the purposes allowed in the district in which it is located, even though it does not conform to the minimum lot size requirements.

E. 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. The applicant is not proposing to structurally enlarge, extend, expand, modify, or move the building, but rather, the applicant is proposing the building to remain in the same footprint.

F. SECTION 3.10 – NONCONFORMING USES

The Board finds that the existing use (a mixed-use structure containing three dwellings and commercial space) conforms to the Underhill Center Village District. However, the applicant's request to permit a fourth dwelling unit would only conform to the 2018 *Underhill Unified Land Use & Development Regulations* with the approval of a variance request application. The Board denies the variance request, and approves the use as a three dwelling unit, multi-family dwelling.

G. SECTION 3.11 – OUTDOOR LIGHTING

The Board finds that the applicant did not submit a lighting plan; however, it waives this requirement under Section 3.11.C. The Board requires all exterior light fixtures for the apartments to be full cut-off, motion sensor activated, and not to exceed 1800 lumens (~100 watt incandescent bulb).

Should the applicant choose to convert the use to a multi-family dwelling containing three dwelling units, all lighting fixtures illuminating signs that were previous erected on the structure shall be removed. Lastly, the Board finds that all new exterior lighting on the building shall be full cut-off or a shielded type, not allowing any upward distribution of light. Floodlighting is not permitted.

H. SECTION 3.13 – PARKING, LOADING & SERVICE AREAS

The Board finds that a three-dwelling, multi-family dwelling shall provide five (5) parking spaces (three parking spaces for every two dwelling units). The applicant submitted a site plan indicating a total of 8 on-site parking spaces located at the sides of the building – seven (7) standard parking spaces and one (1) handicapped parking space, along with a bicycle rack.

The Board finds the handicapped parking space as shown on the site plan is undersized per federal

ADA regulations and that the adjustment of its size will result in the loss of one of the seven (7) standard-sized parking spaces. In addition, as a result of the site visit conducted as part of this application, the Board finds that the applicant would only be able to accommodate six (6) parking spaces, in addition to one handicapped parking space – for a total of seven (7) parking spaces. The Board finds that the parking area on the west side of the building can accommodate two parking spaces, which should be angled towards River Road/Pleasant Valley Road in order to prevent tenants from utilizing the abutting property. Additionally, the Board finds that the parking area on the east side of the building can only accommodate three parking spaces, plus the handicapped parking space. As a result, the applicant has agreed to utilize the east garage bay as an additional parking space.

The Board finds that if the 3 unit multi-family dwelling use is chosen, five (5) parking spaces shall be provided one of which shall be a handicap space, and if the mixed-use (3 dwellings plus commercial) is chosen, seven (7) parking spaces shall be provided, one of which shall be a handicap space. The applicant may configure parking at its discretion so long as it does not exceed the following thresholds: no more than two (2) parking spaces shall be located on the west side of the building (which shall be angled towards River Road to prevent the utilization of the abutting property); no more than four (4) parking spaces shall be located in the parking area on the east side of the building; one (1) parking space may be provided in the east garage bay; a handicapped space must be provided. The Board therefore finds that the applicant can provide enough parking spaces to satisfy the parking requirements of this section.

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 Section 3.13.A.3; however, given the constraints of the lot, it understands that screening the parking, loading, and service areas is not feasible. Furthermore, the Board finds that the applicant is responsible for ensuring that the tenants, and their visitors and vendors, do not utilize the driveway area on 285 River Road for parking or access, and that no dumpsters, or other structures or fences are placed on the abutter's property.

The Board finds that the applicant provided a Maintenance Plan for snow and trash removal and for landscape maintenance, and reaffirms the assertion that the applicant is required to ensure that trash is disposed of properly. In addition, should the accumulation of snow inhibit the accessibility to parking, the applicant shall arrange for excess snow to be removed from site and brought to an off-site location of its choosing.

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

The Board finds that the applicant submitted a site plan indicating a total of 8 on-site parking spaces located at the sides of the building; however, as addressed directly above in Section 3.13, the Board finds that with the addition of the handicapped parking space, the *maximum* total proposed number of parking spaces that can be provided is six (6) parking spaces plus one (1) handicapped parking space. The Board finds that the applicant shall provide at least five (5) parking spaces.

J. SECTION 3.14 – PERFORMANCE STANDARDS

The Board finds that the applicant did not submit the requisite information to satisfy the requirements of Section 3.14; however, the Board does not anticipate that the proposed use of the property will cause, create or result in any of the situations identified in this section. Should the applicant choose to continue use of the property as mixed-use with a commercial space, any change in the commercial use of the property which might reasonably be expected to result in a

significant increase in noise, emissions, or other standards covered in Section 3.14 over the type of use communicated by the applicant in Development Review Board decision#: DRB-17-06 (i.e a baker's shop, or related take-out use) will require a new conditional use review.

K. SECTION 3.16 – SIGNS

The Board finds that should the applicant choose to convert the structure to a three dwelling, multi-family structure, all signs associated with the previously existing commercial component of the structure shall be removed. Any signage proposed by the applicant, or subsequent land owner, shall be reviewed and permitted accordingly under the zoning regulations in effect at the time of application.

L. SECTION 3.17 – SOURCE PROTECTION AREAS

The Board finds the location of the existing property is within an active Groundwater Source Protection Area, but that the existing building is not located within a 200 ft. radius of a public water source.

The Board finds that the applicant is changing the the existing building (mixed-use with residential tenants and a commercial tenant) to a multi-family dwelling. The applicant testified that the new use will be less intense, and therefore, a lower burden with regard to source protection. The Board will rely on the affirmation by State authority that the current wastewater system is adequate for the proposed change of use.

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. The Board finds that the applicant did not provide enough information to satisfy § 3.17.D, however, per Section 5.5.A, the Board waives this requirement for the reasons stated above.

Per Section 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. The Board requires that the use of sodium chloride for ice control shall be minimized since the property is within an active Groundwater Source Protection Area. Per Section 5.5.A, the Board waives the other requirements of this section for the reasons stated above.

M. SECTION 3.18 – STEEP SLOPES

The Board finds that there are no areas of steep slopes (15-25%) or very steep slopes (>25%) present on the lot, and therefore, this section does not apply.

N. SECTION 3. 19 – SURFACE WATERS & WETLANDS

The Board finds that there are no surface waters or wetlands present on the lot, and therefore, this section does not apply.

O. SECTION 3.23 – WATER SUPPLY & WASTEWATER SYSTEMS

The Board finds that the applicant has provided a project review sheet from the Vermont Department of Environmental Conservation indicating that a wastewater system and potable water supply permit/approval may be required should the applicant obtain approval for a four dwelling unit, multi-family structure. Since the Board is restricting the number of dwelling units to three units, the Board finds that the Applicant shall obtain formal documentation from Vermont

Department of Environmental Conservation stating that a wastewater system & potable water supply permit/approval is not required, or obtain any requisite wastewater system & potable water supply permits the Department of Environmental Conservation may require. In the event that the applicant chooses to retain the commercial component of the structure as permitted by this decision and, as explained above, changes the type of retail service provided in the commercial section of the building, the applicant shall inquire with the State regarding possible permit updates.

ARTICLE IV, SPECIFIC USE STANDARDS

A. SECTION 4.15 – MULTI-DWELLING STRUCTURES (ACCESSORY DWELLINGS, TWO-FAMILY DWELLINGS AND MULTI-FAMILY DWELLINGS)

The Board finds that the approved project, a three dwelling unit, multi-family dwelling, satisfies the requirements of this Section, and therefore, no further review and analysis is required under this Section.

ARTICLE V, DEVELOPMENT REVIEW

A. SECTION 5.1 – APPLICABILITY

The Board finds that as part of Conditional Use Review under Section 5.4.C, Site Plan Review is also required under Section 5.4.C of the *Unified Land Use & Development Regulations*.

B. SECTION 5.3 – SITE PLAN REVIEW

Section 5.3.A – Purpose: The Board finds that site plan review is required as part of conditional use review per Section 5.4.C.

Section 5.3.B – Standards: The Board has considered the following standards, and imposes and comments about the following safeguards, modifications and conditions:

SECTION 5.3.B.1 – EXISTING SITE FEATURES: The Board finds that the applicant failed to submit an adequate site plan to make a determination regarding this section. However, it notes that the deficient site plan will not prevent the Board from approving the application (in part) since the building at issue is existing. Therefore, the site layout and design will more or less remain the same. The Board notes that, while the site plan did not illustrate features enumerated under Section 5.3.B.1 with great specificity, the Board was able to obtain that information through other sources (e.g. the ANR Website) and determined that the proposed use would not adversely affect these features. The Board also determined that the proposed project will not negatively impact the enumerated site features, as the applicant will not construct any new buildings or additions. Therefore, no mitigation measures are required under Section 5.3.B.2.

SECTION 5.3.B.2 – SITE LAYOUT & DESIGN: The Board finds that the site layout and design conforms to the stated goals of the Underhill Village Center Districts under Section 5.3.B.2.a. Specifically, the existing site design and layout reinforce the traditional, compact village settlement pattern characterized by a pedestrian scale and orientation, and traditional densities and setbacks. In addition, the principal building is scaled and oriented accordingly with respect to adjoining structures. While the existing building does not meet the setback requirements, many buildings within this district, and the surrounding communities, do not meet the setback requirements.

SECTION 5.3.B.3 – VEHICLE ACCESS: The Board finds that vehicular access points and parking lots are existing. The Board notes that it has the ability to reduce, consolidate, or eliminate all

noncomplying curb cuts under Section 5.3.B.3.b; however, given the property's location in the community and the intended use of the building, the Board waives this requirement per Section 5.5.A. In addition, since the applicant is converting the use of the building, the applicant is required to obtain an access permit from the Selectboard under Section 3.B(iii) of the 2015 Underhill Road Ordinance.

SECTION 5.3.B.4 – PARKING, LOADING & SERVICE AREAS: The Board finds that the applicant shall provide adequate on-site parking for all residential tenants. The applicant shall provide at a minimum five (5) parking spaces, one (1) of which shall be a handicapped parking space. The residential tenant parking spaces shall be dimensioned per Section 3.13.A, and the handicapped parking shall be dimensioned per the Vermont State Accessibility Code. All parking spaces shall be striped. Furthermore, the Board finds that overnight residential tenant parking shall be restricted to on-site; there shall be no overnight tenant parking on the street. The applicant will be held responsible for enforcing this condition. See Section 3.14 above for more information pertaining to parking and service area requirements.

SECTION 5.3.B.5 – SITE CIRCULATION: The Board finds that implementing a site circulation plan is not feasible, as the lot's dimensions provide constraints and limited space to implement a circulation plan, if at all. Nevertheless, the applicant shall ensure that the residential tenants have sufficient ingress and egress from the lot during all hours. If a dumpster is to be used on-site, it shall not interfere with parking or site circulation. Furthermore, the Board recognizes that the *existing* on-site traffic pattern on the west side of the building extends beyond the borders of the property. The Board does not endorse this project impinging on property not owned by the applicant, and it requires the applicant to contain the parking and site circulation to the property's boundary lines.

SECTION 5.3.B.6 – LANDSCAPING AND SCREENING: The Board finds that the applicant would be unable to provide any landscape screening techniques due to the lot's dimensions. However, if a dumpster is used on-site, the Board finds that it shall be adequately screened, and not visible from Pleasant Valley Road or River Road.

SECTION 5.3.B.7 – OUTDOOR LIGHTING: The Board finds that the applicant did not submit a lighting plan; however, this deficiency will not prevent the Board from approving the application. The applicant shall provide full cut-off fixtures for all apartment entries, on a motion sensor, and not to exceed 1800 lumens (approximately a 100-watt incandescent bulb).

In addition, the building lighting shall be full cut-off or a shielded type, not allowing any upward distribution of light. Floodlighting is not permitted. For acceptable light fixture types, the applicant shall follow Guidelines for Good Exterior Lighting Plans 2009, by The Dark Sky Society. See <http://www.darksksociety.org/handouts/LightingPlanGuidelines.pdf> for more detail.

SECTION 5.3.B.8 – STORMWATER MANAGEMENT AND EROSION CONTROL: The Board waives this requirement under 5.5.A as there will be no development phases since the application pertains to a conversion of use rather than an expansion of the existing structure or the construction of a new building.

C. SECTION 5.4 – CONDITIONAL USE REVIEW

Section 5.4.A – Purpose: The Board finds that conditional use review is required due to the

proposed project being classified as a multi-family dwelling. The Board finds that the conditions imposed herein address the identified potential impacts, as well as help reduce, avoid, or mitigate those impacts.

Section 5.4.B – General Standards: The Board finds that the conditions imposed herein will mitigate any potential undue adverse effects.

SECTION 5.4.B.1 – THE CAPACITY OF EXISTING OR PLANNED COMMUNITY SERVICES OR FACILITIES: The Board finds that the proposed multi-family units will not likely result in an increase in the need for community services and facilities; however, as explained above, the applicant shall provide the requisite documentation from the Department of Environmental Conservation that either additional water/wastewater permitting is not required, or provide updated water/wastewater permits. Additionally, the proposed use will not create additional impact on the public school systems, nor does the Board foresee any conditions that need to be imposed to ensure that the demand for community facilities or services does not exceed the available capacity.

SECTION 5.4.B.2 – THE CHARACTER OF THE AREA AFFECTED: The Board finds that the Town Plan encourages multi-family dwelling buildings to be located in the village centers, such as Underhill Center:

§ 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.”

In addition, the Board finds that a multi-family dwelling is consistent with the goals stated in the Underhill Center Village District purpose statement, specifically that the proposed project is a diverse residential use on a compact, safe, walkable setting. Also, the existing structure is consistent with the scale and type of buildings in the neighborhood. However, as proposed, a four dwelling unit, multi-family structure would represent a higher density than is currently established in the surrounding neighborhood, and since the regulations do not permit multi-family dwellings to exceed three dwelling units in this district, the Board limits the number of dwellings to three (3).

SECTION 5.4.B.3 – TRAFFIC ON ROADS AND HIGHWAYS IN THE VICINITY: The Board finds that the change of use from what was originally in place, prior to the applicant’s last year’s application (DRB-17-06) - a mixed-use building containing the old country store and two apartments to a multi-family dwelling containing three dwellings, will result in a decreased impact on road network. The Board has chosen to make the comparison to the use prior to last year’s application (DRB-17-06) because at this time, the use has not been established.

SECTION 5.4.B.4 – BYLAWS IN EFFECT: The Board finds that the applicant previously obtained conditional use approval from this Board for a mixed-use structure containing commercial space and three dwelling units. Once approval was granted for that project, the use came into conformance with the Town's regulations in effect at that time, noting that the use prior to last year's application was in violation of the 2014 *Unified Land Use & Development Regulations*.

SECTION 5.4.B.5 – THE UTILIZATION OF RENEWABLE ENERGY RESOURCES: The Board finds that the proposed conversion of use will not interfere with any sustainable use of renewable energy resources.

Section 5.4.C – Site Plan Review Standards: The Board finds that the site plan review is required as a part of conditional use review. Analysis can be found under Section 5.3 above.

Section 5.4.D – Specific Standards: The Board finds that they may consider the Subsections 5.4.D.1 through 5.4.D.4 and impose conditions as necessary to reduce or mitigate any identified adverse impacts of a proposed development.

SECTION 5.4.D.1 – CONFORMANCE WITH THE TOWN PLAN: The proposed conversion of use complies with the Town Plan (see Section 5.4.B.2 above).

SECTION 5.4.D.2 – ZONING DISTRICT & USE STANDARDS: The Board finds that the project contains a nonconforming structure on a nonconforming lot, and that these characteristics shall not bar the applicant from approval.

SECTION 5.4.D.3 – PERFORMANCE STANDARDS: The Board finds that the proposed project will comply with the performance standards set forth in Section 3.14 above if no significantly different commercial activity than what was proposed by the applicant in the DRB-17-06 applicant is commenced on the property. The Board finds that any change of commercial use which is likely to result in an increase on the impact of adjoining properties will require new conditional use review.

SECTION 5.4.D.4 – LEGAL DOCUMENTATION: The Board finds that the applicant has provided a maintenance plan, which addresses trash removal, snow removal and landscape maintenance. The Board finds that the applicant is responsible for keeping the property free of debris and trash and shall provide adequate interim storage for the collection trash that is not visible from Pleasant Valley Road or River Road. If a dumpster is to be used on-site, it shall be screened as to not be visible from the road and shall not interfere with parking or site circulation.

D. SECTION 5.5 – WAIVERS & VARIANCES

Section 5.5.A – Applications & Review Standards: The Board finds that it has the authority to waive application requirements and site plan or conditional use review standards under Sections 5.3 and 5.4 that it determines are not relevant to a particular application. The Board has noted those conditions that have been waived throughout this decision. Any provision that was not explicitly waived, and has not been explicitly addressed, the Board makes no finding on.

Section 5.5.B – Dimensional Waivers: The Board finds that this subsection does not apply, and therefore, review and analysis under this subsection does not apply.

Section 5.5.C – Variances: The Board finds that the applicant has failed to satisfy three of the five

factors required to obtain a variance (see Section 5.5.C.2 below). All five factors must be satisfied in order to obtain a variance.

SECTION 5.5.C.1 (UNTITLED): The Board finds that the applicant has provided the information required under this section to make a determination on the request.

SECTION 5.5.C.2 (UNTITLED): The Board finds that the applicant has not satisfied three of the five factors required 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 Board finds that while the lot has unique physical circumstances, such as irregularity, narrowness and shallowness of the lot, the unnecessary hardship is not borne from these circumstances, as the applicant already has a conforming structure with a permitted use. The applicant is proposing to make the structure nonconforming.

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: As explained above, the physical circumstances listed above do not inhibit the applicant from developing the property in strict conformity with the provisions of the 2018 *Underhill Unified Land Use & Development Regulations*, as the applicant's current use (a mixed-use structure with commercial space and three dwelling units) conforms to the aforementioned regulations.

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 creating the unnecessary hardship on itself since the current use of the property (a mixed-use structure with commercial space and three dwellings) complies with the regulations in effect at this time.

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.

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: Since the Board finds that a variance is not legally permissible under the Underhill Unified Land Use & Development Regulations, no finding is made with regards to the degree of deviation this proposal makes from the regulations.

ARTICLE VI, FLOOD HAZARD AREA REVIEW

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

ARTICLE X, SPECIFIC USE STANDARDS

B. SECTION 10.3 – ZONING PERMITS

Section 10.3.D – Effective Dates and Permit Renewals:

SECTION 10.3.D.1 – ZONING PERMITS: The Board finds that the permits issued as part of this decision will remain in effect for one year from the date of issuance. The permits must be substantially commenced within one year or the permit will become null and void. “Substantially commence” entails “initial site preparation; the installation of an access; and the installation of a foundation, water and/or wastewater system on-site.” (See Article XI for definition of “Substantially Commenced”)

SECTION 10.3.D.2 – DRB APPROVALS: The Board finds that conditional use approvals expire with the expiration of the zoning permit, and may only be extended as provided under Section 10.3.D.1. Once the approved uses or structures are established, the conditional use approval will remain in effect and run with the land. The Board finds that the applicant shall establish the preferred use within 24 months (two years or May 17, 2020) of the approval date of this decision (May 17, 2018). For clarification purposes the applicant shall choose between the following:

- A mixed-use structure containing commercial space and three dwelling units with the conditions of that 2017 approval (DRB-17-06) remaining in effect with that use; **OR**
- A multi-family dwelling containing only three dwelling units with the conditions of this 2018 approval (DRB-18-06) remaining in effect with that use.

Once the preferred use is established, the use not chosen is forfeited.

III. WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS

The Board grants the following waivers/modifications:

- Per Section 5.5.A, as outlined in Section 3.17, the Board waives specific requirements of the Source Protection Area regulations (See Section 3.17 for more detail).
- Given the property's location in the community and the intended use of the building, under Section 5.5.A, the Board waives the requirement of reducing, consolidating or eliminating the second access point along River Road/Pleasant Valley Road.

IV. DECISIONS AND CONDITIONS

The Board is more or less satisfied with the level of investigation, engineering and evaluation conducted in the application submittal and review process concerning the above-mentioned project. The Board thoroughly reviewed all aspects of the proposal under the evaluation of the *Underhill Unified Land Use & Development Regulations*, and concludes that based on the evidence submitted and the above findings, the proposed subdivision and development generally conforms to the aforementioned Regulations.

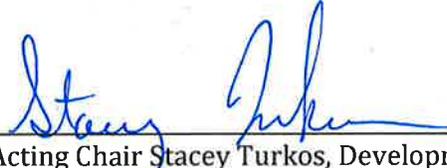
Based on the findings above, and subject to the conditions below, the Board denies the applicant's request for a variance to permit a fourth dwelling unit. However, the Board approves the conversion of use permit from a mixed use structure containing commercial space and three dwelling units to a multi-family dwelling, **NOT TO EXCEED A TOTAL OF THREE DWELLINGS**, to be configured at the applicant's discretion. In the alternative, the Board permits the applicant to keep in effect the conditional use approval permitted in 2017 (DRB-17-06) should the applicant choose; however, once the use of the previous decision (DRB-17-06) or this decision (DRB-18-06) is established, the other use not established is forfeited. In sum, the findings and conclusions above were in the context of denying the variance for a fourth dwelling unit, and approving a multi-family dwelling with three dwelling units.

CONDITIONS:

1. The applicant shall be responsible for keeping the property free of debris and trash, and shall provide adequate interim storage for the collection of trash that is screened and not visible from Pleasant Valley Road or River Road.
2. If a dumpster is to be used on-site, it shall be screened and not visible from Pleasant Valley Road or River Road, nor shall the dumpster interfere with on-site parking or site circulation.
3. Should the accumulation of snow inhibit the accessibility to parking, the applicant shall arrange for excess snow to be removed from the site and brought to an off-site location of the applicant's choosing.
4. The applicant shall secure all required permits or approvals from the applicable Vermont state agencies, including but not limited to the Division of Fire Safety (or written verification if a permit is not required) for the change of occupancy from commercial space to residential space. These permits shall be submitted to the Zoning Administrator prior to obtaining a certificate of occupancy as required under Section 10.4.A.2.
5. The Board finds that the applicant shall obtain formal documentation from the Vermont Department of Environmental Conservation stating that a wastewater system & potable water supply permit/approval is not required, or shall obtain any requisite wastewater system & potable water supply permits the Department of Environmental Conservation may require.
6. A full cut-off fixture is permitted for the new apartment entry on the west side of the building, on a motion sensor, and not to exceed 1800 lumens (~100-watt incandescent bulb).
7. Exterior lighting shall be full cut-off or a shielded type design that does not allow the distribution of light upward. Acceptable light fixtures are confined to those in the Guidelines for Good Exterior Lighting Plans 2009, by the Dark Sky Society.
8. Floodlighting is prohibited.
9. The applicant is required to obtain an access permit from the Selectboard under Section 3.B(iii) of the 2015 Underhill Road Ordinance.

10. The applicant shall provide adequate parking on-site for all residential tenants. Residential tenant overnight parking shall be contained on the site; the applicant is responsible for enforcing this restriction.
11. The Board finds that if the 3 unit multi-family dwelling use is chosen, five (5) parking spaces shall be provided one of which shall be a handicap space, and if the mixed-use (3 dwellings plus commercial) is chosen, seven (7) parking spaces shall be provided, one of which shall be a handicap space. The applicant may configure parking at its discretion so long as it does not exceed the following thresholds: no more than two (2) parking spaces shall be located on the west side of the building (which shall be angled towards River Road to prevent the utilization of the abutting property); no more than four (4) parking spaces shall be located in the parking area on the east side of the building; one (1) parking space may be provided in the east garage bay; a handicapped space must be provided. The Board therefore finds that the applicant can provide enough parking spaces to satisfy the applicable parking requirements.
12. Residential tenant parking spaces shall be dimensional per the requirements under Section 3.13.A.1, and the handicapped parking space shall be dimensioned per the Vermont State Accessibility Code.
13. All parking spaces shall be striped.
14. The applicant shall contain all parking locations and site circulation patterns within the property's boundary lines.
15. The Board requires that the use of sodium chloride for ice control shall be minimized since the property is within an active Groundwater Source Protection Area
16. Should the applicant choose to convert the structure to a three dwelling, multi-family structure, all signs associated with the previously existing commercial component of the structure shall be removed. Any signage proposed by the applicant, or subsequent landowner, shall be reviewed and permitted accordingly under the zoning regulations in effect at the time of application.
17. The applicant shall supply an as-built drawing of the interior first-floor layout (and second floor layout if the modifications are made to the second floor) and the exterior parking configuration to-scale prior to the Certificate of Occupancy being issued.
18. The above conditions must be met by the applicant prior to a Certificate of Occupancy being issued. Any ongoing conditions above shall be the permanent responsibility of the building owner if the property changes ownership.
19. 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 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 17 day of May, 2018.



Acting Chair Stacey Turkos, 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 June 16, 2018.