

# Town of Underhill

## Development Review Board

### Conditional Use Review Findings & Decision

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#### CONDITIONAL USE REVIEW APPLICATION OF CHRIS WELLS & HEIDI MCLAUGHLIN FOR A DIMENSIONAL WAIVER TO BUILD A SINGLE-FAMILY DWELLING IN THE PROPERTY'S SETBACKS

In re: Chris Wells & Heidi McLaughlin  
28 Range Road (RA028)  
Underhill, VT 05489

Docket No. DRB-18-08

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

#### I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns the conditional use review application of Chris Wells & Heidi McLaughlin pertaining to a dimensional waiver to build a single-family dwelling in the property's setbacks pertaining to property they own located at 28 Range Road (RA028) in Underhill, Vermont.

- A. On March 14, 2018, the applicants, Chris Wells & Heidi McLaughlin, submitted a conditional use review application for the abovementioned project. The application was accepted and determined to be complete shortly thereafter. A site visit was scheduled for Monday, April 16, 2018 at 6:40 PM, and the hearing was scheduled for Monday, April 16, 2018 at 7:55 PM.
- B. On March 28, 2018, notice of the conditional use review hearing was mailed via Certified Mail to the following property owners adjoining the property subject to the application:
  1. RA023 – Anderson H. & Theresa A. Hunt Trustees, P.O. Box 167, Underhill Center, VT 05490
  2. RA026 – Brian & Christine Wichert, 26 Range Road, Underhill, VT 05489
  3. RA029 – Eric & Lori Gildemeister, 29 Range Road, Underhill, VT 05489
  4. RA030 – Nicholas F. Bosco & Amy S. Place, 30 Range Road, Underhill, VT 05489
  5. SO009 – Guy G. & Joan C. Kennedy, 9 South Hill, Underhill, VT 05489
  6. Applicant: RA028 – Chris Wells & Heidi McLaughlin, 493 Vermont Route 15, Underhill, VT 05489
- C. During the week of March 25, 2018, notice of the public hearing for the proposed conditional use review application was posted at the following locations:
  1. The Underhill Town Clerk's office;
  2. The Underhill Center Post Office; and
  3. Jacobs & Son Market.
- D. On March 31, 2018, notice of public hearing was published in the *Burlington Free Press*.

- E. The scheduled site visit at the property's location (28 Range Road, Underhill, Vermont) commenced at 6:40 PM on April 16, 2018.
- F. Present at the site visit were the following members of the Development Review Board:
  - 1. Board Member, Penny Miller, Acting Chair
  - 2. Board Member, Matt Chapek
  - 3. Board Member, Mark Green
  - 4. Board Member Daniel Lee

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

- 5. Planning & Zoning Administrator, Andrew Strniste
  - 6. Applicant: Chris Wells (28 Range Road, Underhill, VT)
  - 7. Applicant: Heidi Wells (28 Range Road, Underhill, VT)
  - 8. Abutting Neighbor: Christine Wichert (26 Range Road, Underhill, VT)
  - 9. Abutting Neighbor: Nicholas Bosco (30 Range Road, Underhill, VT)
  - 10. Abutting Neighbor: Amy Place (30 Range Road, Underhill, VT)
- G. The conditional use review hearing commenced at 8:19PM on Monday, April 16, 2018 at the Town of Underhill Town Hall, 12 Pleasant Valley Road, Underhill, VT.
  - H. Present at the conditional use review hearing were the following members of the Development Review Board:
    - 1. Board Member, Penny Miller, Acting Chair
    - 2. Board Member, Matt Chapek
    - 3. Board Member, Mark Green
    - 4. Board Member Daniel Lee

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

Others present at the hearing were:

- 1. Applicant, Chris Wells (28 Range Road, Underhill, VT)
  - 2. Applicant, Heidi McLaughlin (28 Range Road, Underhill, VT)
  - 3. Abutting Neighbor, Brian Wichert (26 Range Road, Underhill, VT)
  - 4. Abutting Neighbor, Christine Wichert (26 Range Road, Underhill, VT)
- I. At the outset of the hearing, Acting Chairperson Penny Miller explained the criteria under 24 V.S.A § 4465(b) for being considered an "interested party." Those who spoke at the hearing were:
    - 1. Applicant, Chris Wells
    - 2. Applicant, Heidi McLaughlin
  - J. In support of the conditional use review application, the following exhibits were submitted to the Development Review Board:
    - 1. Exhibit A – RA028 - Wells McLaughlin Conditional Use Staff Report

2. Exhibit B – Wells McLaughlin (RA028) Conditional Use Review Hearing Procedures
3. Exhibit C - Conditional Use & Site Plan Review Hearing Request Application
4. Exhibit D - Conditional Use Review Standards Findings Checklist
5. Exhibit E - Site Plan Review Standards Findings Checklist
6. Exhibit F - BFP Notice of Public Meeting
7. Exhibit G - Certificate of Service
8. Exhibit H - ANR Correspondence Re WW Permit
9. Exhibit I - Pictures of Previous Structure
10. Exhibit J - Site Plan Sketch
11. Exhibit K - Proposed Floor Plan
12. Exhibit L - Site Plan of Original Footprint
13. Exhibit M - Site Plan of Proposed Project
14. Exhibit N - Site Plan of Waiver & Variance Limitations

No additional exhibits were distributed to the Board prior to the Monday, April 16, 2018 hearing, nor were any additional exhibits submitted into the record during the hearing.

All exhibits are available for public review in the Wells/McLaughlin Conditional Use Review file (RA028/DRB 18-08) at the Underhill Zoning & Planning office.

## **II. FACTUAL FINDINGS & CONCLUSIONS**

The Minutes of the April 16, 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:

### ***PROJECT SYNOPSIS***

The applicants, Chris Wells and Heidi McLaughlin, record owner of the property located at 28 Range Road (RA028) in Underhill, Vermont, are seeking conditional use approval to construct a single-family dwelling within the abovementioned property's setback requirements. Since the applicants are proposing to construct a building within the property's setback requirement, a dimensional waiver is required under Section 5.5.B. The entire property is located within the Rural Residential zoning district as defined under Article II, Table 2.3 of the ULUDR.

### ***ARTICLE II, ZONING DISTRICTS***

#### **A. ARTICLE II, TABLE 2.5 –RURAL RESIDENTIAL DISTRICT**

The Board finds the proposed project will meet the applicable dimensional standards under this district with the approval of the dimensional waiver, as explained below. In addition, the proposed single-family dwelling is consistent with the zoning district's stated purpose of accommodating medium density development on land that has access to public roads (Range Road) where traditional development has taken place.

### ***ARTICLE III, GENERAL REGULATIONS***

#### **A. SECTION 3.2 – ACCESS**

The Board finds that the applicants are not proposing to relocate the existing curb cut, nor will they be making any modifications to the existing the driveway. While the existing driveway

encroaches upon the property's setback requirement (approximately six (6) feet), the applicants are not proposing to increase the degree of nonconformance, and therefore, the Board finds that the access way satisfies the requirements of this Section. The Board notes that the applicants DO NOT have to relocate the existing access way.

**B. SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS**

The Board finds that the applicants are proposing to increase the amount of living space; however, are not proposing to increase the overall footprint of the previously existing single-family dwelling with an attached deck. The applicants are proposing to convert the area that was the attached deck into living space upon constructing the new building. Therefore, the applicants are not proposing to increase the footprint from that which previously existed.

The Board notes the existing lot fails to meet the minimum acreage requirement of 3.0 acres, as the lot is approximately 0.25 acres, and therefore, nonconforming. In addition, since the applicants are proposing to construct a single-family dwelling in the exact same footprint of that which previously existed, the single-family dwelling will be a nonconforming dwelling since it will not meet the setback requirement of being 50 feet from the side and rear property lines. Upon completion, the single-family dwelling will be located approximately 68 feet from the north (meeting the 30 feet front setback requirement), side property line; approximately 38.5 feet from the south, side property line (32 feet if measured from the bulk head); and 38 feet from the west, rear property line. The proposed single-family dwelling will be more than 30 feet from the east, front property line.

Though the single-family dwelling will fail to meet the dimensional requirements, since the applicant has satisfied the requirements of Section 3.8, 3.9 and 5.5.B, as explained below, they are not prohibited from obtaining approval by this Board.

**C. SECTION 3.8 – NONCONFORMING LOTS**

The Board finds that the lot being reviewed as part of this application was legally in existence on the effective date of the *Underhill Unified Land Use & Development Regulations* (adopted on March 1, 2011 and amended through March 6, 2018). Therefore, the lot may be developed for the purposes allowed in the district the lot is located even though it does not conform to the minimum lot size requirements.

**D. SECTION 3.9 – NONCONFORMING STRUCTURES**

The Board finds that the applicants are undergoing a reconstruction process that will increase the degree of nonconformance since a portion of the reconstruction will occur within the property's setback requirement (see Exhibit N). As explained above, the applicants will be increasing the volume of the single-family dwelling by adding living space in the area that once was the attached deck. Therefore, a waiver is required per Sections 3.9.B and 5.5.B. See Section 5.5.B below in regard to the waiver analysis.

**E. SECTION 3.11 – OUTDOOR LIGHTING**

The Board finds that the outdoor lighting will be consistent with outdoor lighting associated with single-family dwellings. Any outdoor lighting that is added as part of this proposed project shall be downward facing and shielded.

**F. SECTION 3.13 – PARKING, LOADING & SERVICE AREAS**

The Board finds that there is sufficient evidence to believe that the applicants will meet the parking requirement of two parking spaces as required per table 3.1.

**G. 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 finds that the applicants are proposing a use that is consistent with other uses in the area, and does not anticipate that the applicant will cause, create, or result in any of the situations identified in this section.

**H. SECTION 3.17 – SOURCE PROTECTION AREAS**

The Board finds that while a groundwater source protection area has been identified on the southern area of the lot, the proposed single-family dwelling is exempt from review under Section 3.17.B.

**I. SECTION 3.18 – STEEP SLOPES**

The Board finds that there are no areas of steep slopes (15-25%) or very steep slopes (>25%) on the lot, and therefore, review and analysis under this Section is not required.

**J. SECTION 3.19 – SURFACE WATERS & WETLANDS**

The Board finds that there are no surface waters or wetlands on the lot, and therefore, review and analysis under this Section is not required.

**K. SECTION 3.23 – WATER SUPPLY & WASTEWATER SYSTEMS**

The Board finds that the applicants are planning on utilizing the existing well and wastewater system currently located on the lot. The applicants shall submit formal documentation from the State of Vermont advising that an updated Wastewater System and Potable Water Supply Permit is not required, or if one is required, submit for recordation the Wastewater System & Potable Water Supply Permit prior to obtaining a Certificate of Occupancy permit, as required under Section 10.4.A of the *Underhill Unified Land Use & Development Regulations*.

**ARTICLE V, DEVELOPMENT REVIEW**

**A. SECTION 5.1 – APPLICABILITY**

The Board finds that as part of Section 5.4.C of the *Unified Land Use & Development Regulations*, site plan review is required in addition to conditional use review required by Section 5.4.

**B. SECTION 5.3 – SITE PLAN REVIEW**

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

Section 5.3.B – Standards: The Board has considered this section's standards and issues the following comments and/or imposes the following safeguards, modifications, and conditions:

SECTION 5.3.B.1 – Existing Site Features: The Board finds that the applicants submitted an adequate site plan depicting the proposed project. While the majority of the site features enumerated under Section 5.3.B.1 were not illustrated with great specificity, the Board was able to obtain that information through other sources, such as the ANR Website, or the site features were not applicable to this application. As a result, the Board determined that the proposed use would not adversely affect those enumerated features, and 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 reconstruction of the single-

family dwelling with added living space is not contrary to the purpose and stated goals under Subsection b, Rural Residential, noting that the single-family dwelling will be consistent with the scale of the surrounding community.

Section 5.3.B.3 – Vehicle Access: The Board finds that the proposed single-family dwelling will be served by an existing driveway accessing Range Road. The Board IS NOT requiring that the applicants relocate the existing access way.

Section 5.3.B.4 – Parking, Loading & Service Areas: The Board finds that there is sufficient evidence to believe that the applicants will meet the parking requirement of two spaces as required under Section 3.13.

Section 5.3.B.5 – Site Circulation: The Board finds that the proposed single-family dwelling is consistent with the site circulation patterns of a residential unit/lot.

Section 5.3.B.6 – Landscaping and Screening: The Board finds that the applicants are not proposing any landscaping or screening techniques; however, the site layout and design will occur in a residential area that provides various techniques of landscaping and screening. Therefore, the Board finds that no additional screening and landscaping is mandated.

Section 5.3.B.7 – Outdoor Lighting: See Section 3.11 above for more information.

Section 5.3.B.8 – Stormwater Management and Erosion Control: The Board finds that the applicants shall utilize the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control when constructing the single-family dwelling.

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

Section 5.4.A – Purpose: The Board finds that conditional use review is required per Sections 3.9.B and 5.5.B which requires conditional use approval for the construction of a structure within a property's setback requirements. Specifically, a dimensional waiver under Section 5.5.B is required if the encroachment is less than 50% of the property's setback requirement. The Board finds that the conditions imposed herein address the identified potential impacts, as well as help reduce, avoid, or mitigate those impacts.

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

Section 5.4.B.1 – The Capacity of Existing or Planned Community Services or Facilities: The Board finds that the reconstruction of the single-family dwelling will not result in an increase in demand on community services and facilities, as the previous use was a two bedroom, single-family dwelling, and the proposed use will be a two bedroom, single-family dwelling.

Section 5.4.B.2 – The Character of the Area Affected: The Board finds that the proposed reconstruction of the single-family dwelling will not affect the character of the area, as the area is largely, or mostly, single-family dwellings. In addition, the proposed, reconstructed single-family dwelling will be of similar type, intensity, density and use as the other buildings and uses in the area.

Section 5.4.B.3 – Traffic on Roads and Highways in the Vicinity: The Board finds that the

reconstruction of the single-family dwelling will not result in an increase in traffic on roads and highways in the vicinity, nor will the proposed project create any congestion, since the proposed use is the same.

Section 5.4.B.4 – Bylaws in Effect: The Board finds that this application is in conformance with the regulations in effect at this time with the approval by this Board.

Section 5.4.B.5 – The Utilization of Renewable Energy Resources: The Board finds that the proposed dwelling will not interfere with any sustainable use of renewable energy resources.

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

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

Section 5.4.D.1 – Conformance with the Town Plan: The Board finds that the reconstructed single-family dwelling is consistent with the Town Plan.

Section 5.4.D.2 – Zoning District & Use Standards: The Board finds that the reconstructed single-family dwelling conforms with the zoning districts and use standards as outlined above upon approval by this Board.

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.

Section 5.4.D.4 – Legal Documentation: The Board finds that this Section does not apply.

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

Section 5.5.A – Applications & Review Standards: The Board finds that it has the authority to waive application requirements and site plan or conditional use review standards under Sections 5.3 and 5.4 that it determines are not relevant to a particular application. The applicants have specifically asked for a dimensional waiver, which is approved, as explained below.

The Board has noted other conditions that have been waived throughout this decision. The Board makes no finding on any provision that was not explicitly waived, and has not been explicitly addressed.

Section 5.5.B – Dimensional Waivers: The Board, in association with Conditional Use Review, finds that it can reduce the minimum district setback requirements so long as the following information is obtained and following requirements are met:

Section 5.5.B.1 – Untitled: The applicants are proposing to construct a larger single-family dwelling with the same footprint of the previous single-family dwelling with attached deck. Due to the property's constraints (e.g. installed wastewater system and well, the lot's nonconformity), the applicants have presented an application illustrating the justification for a dimensional waiver.

Section 5.5.B.2 – Untitled: The Board finds that a waiver may be granted by the Board if one of the criteria enumerated under this Section is found to be true. The Board finds two of the criteria to be true: 1) the waiver is necessary to reasonably develop and use the pre-existing nonconforming lot, and 2) the waiver will allow for additions and/or improvements to a pre-existing nonconforming structure. While the applicants have demolished the previous structure, they are permitted to rebuild a damaged structure to the same dimensions. Rather than reconstruct the structure first, and then obtain the waiver, the applicants have asked for the waiver prior to constructing the building.

Section 5.5.B.3 – Untitled: The Board finds that they may reduce the setback by no more than 50%, or in this case 25 feet. The applicants have presented an application illustrating that they are not anticipating to exceed this threshold.

Section 5.5.B.4 – Untitled: The Board finds based on clear and convincing evidence that the applicants have satisfied the elements enumerated in this subsection, all of which are required to be satisfied in order to grant a waiver:

Section 5.5.B.4.a – Element 1: No reasonable alternative exists for siting the structure, addition or improvement outside of the required setback area.

The Board finds that the applicants are constrained by the existing wastewater system and well. The relocation of these systems would be unreasonable, and therefore, reconstructing the single-family dwelling in the footprint of the previous single-family dwelling, which is within the property's setback is justifiable.

Section 5.5.B.4.b – Element 2: The reduced setback is not contrary to public health safety and welfare, stated objectives and policies of the Underhill Town Plan, or the intent of these regulations.

The Board finds that the reduced setback is not contrary to the public health, safety and welfare; nor is contrary to the stated objectives and policies of the *Underhill Town Plan*, or the intent of these regulations.

Section 5.5.B.4.c – Element 3: The waiver represents the minimum setback reduction necessary to allow for the proposed development.

The Board finds that the approved waiver represents the minimum setback reduction necessary to allow for the proposed single-family dwelling.

Section 5.5.B.4.d – Element 4: Any potential adverse impacts resulting from reduced setbacks on adjoining properties, surface waters or wetlands shall be mitigated through site design, landscaping and screening, or other accepted mitigation measures.

The Board finds that there are no adverse impacts resulting from the reduced setbacks on adjoining properties, surface waters or wetlands. No mitigation measures are required as part of this decision.

Section 5.5.C – Variances: The Board finds that this Subsection does not apply, and therefore, review and analysis under this Subsection is not required.

**ARTICLE VI, FLOOD HAZARD AREA REVIEW**

The Board finds that there are no Special Flood Hazard Areas, as illustrated on the requisite Flood Insurance Rate Maps, present on the lot, and therefore, review under Article VI is not required.

**ARTICLE X, SPECIFIC USE STANDARDS**

**A. SECTION 10.3 – ZONING PERMITS**

Section 10.3.D – Effective Dates and Permit Renewals:

SECTION 10.3.D.1 – ZONING PERMITS: The Board finds that the permit issued as part of this decision will remain in effect for one year from the date of issuance. The applicants must substantially commence the permit 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 applicants shall establish the uses within 12 months (1 year or May 18, 2019) of the approval date of this decision (May 18, 2018).

**III. WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS**

The Board grants the following waivers/modifications:

- The Board approves the dimensional waiver, which therefore permits the applicants to encroach upon the south, side property setback requirement and the west, rear property setback requirement. The applicants may only encroach upon the setback to the limits as portrayed on the submitted site plans (see Exhibits M & N) and presented during the hearing. Any deviation from the project presented as part of this application requires additional review by this Board.
- The applicants, or subsequent landowner(s), are/is not required to come before the Board for the construction of any out buildings, ancillary buildings, or accessory buildings, which would typically be required for any projects obtaining site plan review approval; instead the application for a building permit for those accessory-type buildings can be administratively reviewed and approved. However, the abovementioned structures must conform to the Regulations in effect at the time of the proposed projects.

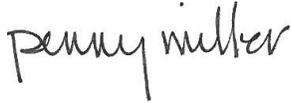
**IV. DECISIONS AND CONDITIONS OF APPROVAL**

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

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

1. The applicants shall submit formal documentation from the State of Vermont advising that an updated Wastewater System and Potable Water Supply Permit is not required, or if one is required, submit for recordation the Wastewater System & Potable Water Supply Permit prior to obtaining a Certificate of Occupancy permit, as required under Section 10.4.A of the *Underhill Unified Land Use & Development Regulations*.
2. The Board finds that any outdoor lighting that is added as part of this proposed project shall be downward facing and shielded.
3. The Board finds that the applicants should utilize the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control when constructing the single-family dwelling.

Dated at Underhill, Vermont this 18 day of May, 2018.



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Penny Miller, Acting Chairperson, 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 17, 2018.