



# Town of Underhill

## Development Review Board

### Conditional Use Review Findings & Decision

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#### CONDITIONAL USE REVIEW APPLICATION OF KARLA & WILLIAM RUSSELL TO CONSTRUCT A POOL, PAVILION AND DECK ON STEEP SLOPES AND VERY STEEP SLOPES

In re: Karla & William Russell  
270 Pleasant Valley Road (PV270)  
Underhill, VT 05489

Docket No. DRB-19-03

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

#### **I. INTRODUCTION AND PROCEDURAL HISTORY**

This proceeding concerns the conditional use review application of Karla & William Russell pertaining to the proposed construction of a pool, pavilion and deck on steep slopes and very steep slopes pursuant to the *Underhill Unified Land Use and Development Regulations (ULUDR)* Sections 3.18.B.2, 3.18.D and 3.18.E. The subject property is currently owned by Karla & William Russell and is located at 270 Pleasant Valley Road (PV270) in Underhill, Vermont.

- A. On February 27, 2019, the applicants, Karla & William Russell, submitted a conditional use review application for the abovementioned project. The application was accepted and determined to be complete on March 29, 2019. A site visit was scheduled for Monday, April 15, 2019 at 5:50 PM, and the hearing was scheduled for Monday, April 15, 2019 at 6:35 PM.
- B. On March 29, 2019, 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. MO145 [*Previously MO027*] – Timothy & Theresa Potvin Trustees, P.O. Box 135, Underhill Center, VT 05490
  2. MO151 [*Previously MO014*] – Paul & Julie Dragon, P.O. Box 104, Underhill Center, VT 05490
  3. MO229 [*Previously MO012*] – David B. & Janet R. Ely, P.O. Box 235, Underhill Center, VT 05490
  4. PV265 – Paul M. & Roberta A. Gillespie, 265 Pleasant Valley Road, Underhill, VT 05489
  5. PV268 – Shane W. & Maria K. McCormack, 268 Pleasant Valley Road, Underhill, VT 05489
  6. PV285 – Reginald Potvin, 285 Pleasant Valley Road, Underhill, VT 05489
  7. Applicant: PV270 – William E. & Karla A Russell, P.O. Box 218, Jericho, VT 05465
  8. Applicant: PV270 – William E. & Karla A. Russell, 270 Pleasant Valley Road, Underhill, VT 05489
- C. During the week of March 24, 2019, 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 30, 2019, notice of public hearing was published in the *Burlington Free Press*.
- E. The scheduled site visit at the property's location (270 Pleasant Valley Road, Underhill, Vermont) commenced at 5:50 PM on Monday, April 15, 2019.
- F. Present at the site visit were the following members of the Development Review Board:
1. Board Member, Charles Van Winkle, Chair
  2. Board Member, Stacey Turkos, Vice Chair
  3. Board Member, Matt Chapek
  4. Board Member, Mark Green
  5. Board Member, Daniel Lee
  6. Board Member, Karen McKnight
  7. Board Member, Penny Miller

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

8. Planning & Zoning Administrator, Andrew Strniste
  9. Applicant: Karla Russell (270 Pleasant Valley Road, Underhill, VT)
  10. Applicants' Consultant: Briana Cronin (16 Tupper Road, Underhill, VT)
- G. The conditional use review hearing commenced at 6:35 PM on Monday, April 15, 2019 at the Town of Underhill Town Hall, 12 Pleasant Valley Road, Underhill, Vermont.
- H. Present at the conditional use review hearing were the following members of the Development Review Board:
1. Board Member, Charles Van Winkle, Chair
  2. Board Member, Stacey Turkos, Vice Chair
  3. Board Member, Matt Chapek
  4. Board Member, Mark Green
  5. Board Member, Daniel Lee
  6. Board Member, Karen McKnight
  7. Board Member, Penny Miller

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

Others present at the hearing were:

1. Applicant, Karla Russell (270 Pleasant Valley Road, Underhill, VT)
  2. Applicants' Consultant, Briana Cronin (16 Tupper Road, Underhill, VT)
- I. At the outset of the hearing, Chairperson 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. Applicant, Karla Russell

2. Applicants' Consultant, Briana Cronin

J. In support of the conditional use review application, the following exhibits were submitted to the Development Review Board:

1. Exhibit A - PV270 - Russell Conditional Use Staff Report
2. Exhibit B - Russell (PV270) Conditional Use Review Hearing Procedures
3. Exhibit C - Development Review Application
4. Exhibit D - Conditional Use & Site Plan Review Responses
5. Exhibit E - Project Narrative
6. Exhibit F - Zoning Permit Application (B-19-05)
7. Exhibit G - Certificate of Service
8. Exhibit H - BFP Notice
9. Exhibit I - Soil Survey
10. Exhibit J - Site Plan (Existing Conditions)
11. Exhibit K - Site Plan with Original Building Envelope
12. Exhibit L - Site Plan with Proposed Development
13. Exhibit M - USGS Map
14. Exhibit N - Project Parameters
15. Exhibit O - ANR Source Protection Areas Map
16. Exhibit P - ANR Surface Waters & Streams Map
17. Exhibit Q - ANR Wetlands Map

No additional exhibits were distributed to the Development Review Board (hereafter referred to as "Board") prior to the Monday, April 15, 2019 hearing, nor were any exhibits submitted into the record during the hearing.

All exhibits are available for public review in the Russell Conditional Use Review file (PV270/DRB 19-03) at the Underhill Zoning & Planning office.

**II. FACTUAL FINDINGS & CONCLUSIONS RELATING TO THE UNDERHILL UNIFIED LAND USE & DEVELOPMENT REGULATIONS**

The Minutes of the Monday, April 15, 2019 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, Karla & William Russell, are seeking conditional use approval to construct a pool, pavilion and deck on steep slopes and very steep slopes on property they own located at 270 Pleasant Valley Road in Underhill, VT. Since the applicants are proposing to construct aspects of these structures on steep slopes and very steep slopes, conditional use approval under Sections 3.18.B.2, 3.18.D and 3.18.E is required. The property is located within the Mt. Mansfield Scenic Preservation zoning district as defined under Article II, Table 2.6 of the ULUDR.

***ARTICLE II, ZONING DISTRICTS***

**A. ARTICLE II, TABLE 2.6 –MT. MANSFIELD DISTRICT**

The Board finds the proposed project is to construct a pool, pavilion and deck on steep slopes and very steep slopes. Upon completion, the proposed project and single-family dwelling will be consistent with the purpose statement of the Mt. Mansfield Scenic Preservation District, as the completed structures will not be visible from Pleasant Valley Road, and therefore, not impacting the scenic vistas of the Mt. Mansfield Scenic Preservation District. Additionally, since the structures will be in close proximity to the dwelling unit, the project will achieve the compact, cluster of structures as desired in this district.

The Board also finds that the lot conforms to the district’s dimensional requirements, and that the existing and proposed structures meet the district’s zoning district requirements, such as frontage, setbacks, building coverage and lot coverage.

**ARTICLE III, GENERAL REGULATIONS**

**A. SECTION 3.2 – ACCESS**

The Board finds that the existing lot accesses Pleasant Valley Road, a Class I highway. This application has not been referred to the Road Foreman or the Vermont Agency of Transportation since the access way is to remain unchanged. Since no modifications are being made to the existing driveway, review under this Section is unnecessary, and therefore, an access permit under the *Underhill Road, Driveway & Trail Ordinance* is not necessary. See Section III of this decision below for more information.

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

The Board finds that the proposed construction of the pool, pavilion and deck will satisfy the minimum lot, yard & setback requirements of the Mt. Mansfield Scenic Preservation District; however, it will impact steep slopes and very steep slopes. The proposed structures will be considered an accessory to the one existing, principal structure – a single-family dwelling. No dimensional waivers have been requested.

**C. SECTION 3.11 – OUTDOOR LIGHTING**

The Board finds that no new outdoor lighting fixtures have been depicted on the proposed site plan; however, any new lighting associated with the proposed pool, pavilion and deck shall be downward facing, shield lighting. Each light shall have no objectionable spillover light to adjacent properties.

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

The Board finds that the proposed structures: the pool, pavilion and deck, do not increase the number of parking spaces that are required for the existing use – a single-family dwelling.

**E. 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 proposed structures (pool, pavilion and deck) are consistent with other uses in the area, and are not anticipated to cause, create, or result in any of the situations identified in this Section.

The Board notes that should the pool need to be drained, the release of the chlorinated water or other chemical water treatment could be harmful to the adjacent wetlands and unnamed stream located to the east. The Board finds that applicants shall create an alternative strategy/contingency plan, in the event that the pool needs to be emptied, that does not result in

the chlorinated or other chemically treated water being released into the wetland/stream area.

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

The Board finds that the subject lot is almost entirely located within a Groundwater Source Protection Area (see Exhibit O). While associated accessory structures to single-family dwellings are exempt from the requirements of this Section under subsection 3.17.B, the Board advises that the applicants be conscientious of this source protection area and in the event that any pool water is to be released into the surrounding area, the applicant should ensure that it has not been treated with chlorine or other chemicals for a minimum period of two weeks prior to release.

**G. SECTION 3.18 – STEEP SLOPES**

The Board finds that the subject lot contains areas of naturally occurring and artificially made steep slopes (15-25%) and very steep slopes (>25%). Since the applicants are proposing to construct accessory structures on naturally occurring areas of steep slopes and very steep slopes, conditional use review is required per Sections 3.18.B.2, 3.18.D and 3.18.E.

Section 3.18.A – Purpose: The Board finds that the applicants have submitted materials illustrating that the proposed project will be consistent with the various purpose statements enumerated in this Subsection.

Section 3.18.B – Applicability: Since the applicants are proposing to construct a pool, pavilion and deck on naturally occurring steep slopes and very steep slopes, per Section 3.18.B.2, the applicants must adhere to the standards of Section 3.18 since none of the exemptions under Section 3.18.B.1 apply. The Board notes that the applicants have proposed construction on very steep slopes; however, when reviewing Section 3.18.B.3.b and Section 3.18.E.c in conjunction with one another, the Board finds that construction in these areas will result in minimal site disturbance, as well as pose a negligible threat to water quality, public roads and facilities, and to the adjoining properties. As a result, the prohibition pertaining to development on very steep slopes is waived accordingly. The Board also notes that prior to construction of the existing single-family dwelling, the subject lot contained natural slopes that were leveled in order to accommodate the then proposed construction – the single-family dwelling.

Section 3.18.C – Application Requirements: The Board finds that the applicants have submitted the necessary materials as it pertains to the proposed pool, pavilion and deck; erosion control measures; and topography to assess the impact on the existing steep slopes and very steep slopes.

Section 3.18.D – Steep Slopes (15% to 25%): The Board finds that the proposed project shall conform to the subsections enumerated within this section:

Section 3.18.D.1 (Untitled): The Board finds that the lot contains moderate to dense vegetation. When constructing the proposed pool, pavilion and deck, a small area of forest located to the west of the existing single-family dwelling will be cleared to accommodate the proposed construction. During the site visit, the applicants expressed a desire to maintain as much vegetation as possible. The applicants are not proposing to make any stream alterations or relocations, nor are the applicants anticipating increased stormwater runoff due to vegetation removal, slope disturbance, re-contouring or site compaction. The applicants are not proposing any new drainage ways or the creation of additional runoff directed to surface waters, wetlands, public rights-of-ways or adjacent properties.

Section 3.18.D.2 (Untitled): The applicants have informed the Board that they plan to minimize

site disturbance, which the Board finds is reflected in the submitted plans. Also, the applicants have submitted the necessary materials demonstrating that the site will be stabilized and re-vegetated at the completion of construction.

Additionally, the Board finds that the applicants have satisfied the requirements enumerated in this subsection:

- a. The areas of site disturbance are anticipated to exclude ridgelines;
- b. The area of site disturbance will be located outside of required setback areas;
- c. The Board finds that all areas of site disturbance and construction shall be clearly marked on the ground during all phases of construction;
- d. If feasible, the Board finds that site disturbance and construction shall be phased so that only those areas under active construction are exposed;
- e. The applicant shall stockpile and stabilize (not to exceed slopes greater than 10%) topsoil removed from disturbed areas for replacement on the site following final construction and grading;
- f. The Board finds that measures will be taken to stabilize slopes and soils until final grades are established;
- g. Site stabilization measures shall be installed prior to October 15. No site disturbance or construction shall occur between October 15 and April 15 since no specific measures for winter construction were submitted for review by this Board;
- h. The Board finds that the finished grades shall not exceed 3:1; and
- i. The Board finds that permanent vegetation will be re-established and maintained following final construction and grading in accordance with this subsection.

Section 3.18.D.3 (Untitled): The Board finds that this subsection pertains to driveways, roads, and utility corridors, and therefore, does not apply for the aforementioned reasons stated in Section 3.2 of this decision.

Section 3.18.D.4 (Untitled): The Board finds that the applicants are minimally altering a steep slope and very steep slope that is both naturally and artificially occurring. The Board observed that a retaining wall will be utilized, and that the fill will be sloped from the top of the retaining wall to the ground area. As the applicants' project relates to this subsection, the Board finds that the proposed structures generally conform to this subsection.

Section 3.18.D.5 (Untitled): The Board finds that the stormwater and erosion measures presented during the hearing are satisfactory; however, the applicants shall conform to the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control, published by the Watershed Management Division of the Vermont Department of Environmental Conservation when performing excavation and site work.

Section 3.18.E – Very Steep Slopes (>25%): While site disturbance and development, including the construction of structures, on very steep slopes are normally prohibited, the Board finds this prohibition can be waived in accordance with Section 3.18.B.3.b, which allows the Board a requirement of Section 3.18 provided that:

“it is evident, based on submitted information and a site inspection, that the proposed development involves minimal site disturbance and poses a negligible threat to water quality, public roads and facilities, and to adjoining properties.”

The Board finds that the impact to areas of very steep slope is negligible. In addition, prior to the construction of the existing single-family dwelling, the portion of the lot being built on was an area of steep slope and very steep slope, and therefore, to allow development to extend further onto the slope is reasonable.

Section 3.18.F – Considerations: The Board has included any preferred considerations enumerated under this subsection of the *Underhill Unified Land Use & Development Regulations* under Section IV of this decision.

Section 3.19.G – Liability Waiver: The Board recommends that the applicants and subsequent property owners continually be aware of the liability waiver statement enumerated within this subsection.

#### **H. SECTION 3.19 – SURFACE WATERS & WETLANDS**

The Board finds that a Class II Wetlands is located to the east of the proposed structures (Exhibit L), and two unnamed streams are located to both the west and east of the proposed structures (Exhibit L & P). Note, one unnamed stream starts on the east side of the residence and heads north to converge with the second stream before turning to the south following Pleasant Valley Road. The applicants have submitted a site plan depicting that the proposed construction will satisfy the 50-foot setback requirement for Class II Wetlands, and the 25-foot setback requirement for unnamed streams. Specifically, the Board finds that the proposed development will be located approximately 111 feet from the unnamed stream located to the east, as measured to the edge of the deck, and approximately 97 feet from the Class II Wetlands located to the east.

#### **I. SECTION 3.23 – WATER SUPPLY & WASTEWATER SYSTEMS**

The Board finds the existing single-family dwelling has a wastewater permit from the State of Vermont: WW-4-2076. Should any updates be to the Wastewater System & Potable Water Supply Permit be required, a copy of that permit be submitted prior to obtaining a Certificate of Occupancy Permit for the pavilion.

### **ARTICLE V, DEVELOPMENT REVIEW**

#### **A. SECTION 5.1 – APPLICABILITY**

The Board finds that conditional use review is required per Sections 3.18.B.2 and 3.18.E and is to be reviewed in conjunction with Sections 3.18. As required under Section 5.4.C of the *Unified Land Use & Development Regulations*, when considering conditional use review applications, the Board shall apply all of the site plan review standards under Section 5.3.

#### **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 proposed structures (pool, pavilion and deck) will impact areas of steep slopes (15%-25%) and very steep slopes (>25%). The Board finds that the proposed structures incorporate and avoid undue adverse impacts to known significant natural, historic

and scenic resources identified in the Underhill Town Plan, maps and related inventories, in addition to other enumerated items listed under Subsection a. The Board finds that none of the mitigation techniques identified in Subsection b are required.

Section 5.3.B.2 – Site Layout & Design: The Board finds that the proposed structures satisfy, and are not contrary to, the purpose and stated goals under Subsection c, Mt. Mansfield Scenic Preservation and Soil & Water Conservation Districts. As stated above, the proposed project will impact naturally occurring slopes, but will avoid impacting the Class II Wetlands and the unnamed stream to the east. To further develop the lot in the vicinity of the single-family dwelling, additional impact to the slopes will be required (see Exhibit L). The Board finds that there will be no adverse impact to natural and scenic resources.

Section 5.3.B.3 – Vehicle Access: The Board finds that the lot is accessed via one curb-cut from Pleasant Valley Road. No modifications to the existing curb-cut or driveway are anticipated.

Section 5.3.B.4 – Parking, Loading & Service Areas: See Section 3.13 above.

Section 5.3.B.5 – Site Circulation: The Board finds the site circulation patterns are intended to remain the same, thereby consistent with site circulation patterns expected for a single-family dwelling.

Section 5.3.B.6 – Landscaping and Screening: The Board finds that the landscaping & screening techniques will continue to be consistent with other single-family dwelling in the vicinity.

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 have submitted the requisite information pertaining to stormwater management, erosion control and sediment control measures that satisfies the requirements of this Subsection. See Section 3.18.D.5 above for more information.

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

Section 5.4.A – Purpose: The Board finds that conditional use review is required per Sections 3.18.B.2, 3.18.D and 3.18.E, which require conditional use approval for construction that impacts steep slopes (15% to 25%) and very steep slopes (>25%). 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 construction of the proposed structures (pool, pavilion and deck) on steep slopes and very steep slopes, is not expected to change or increase the anticipated demand of community services and facilities, as no additional dwelling units are proposed on the lot.

Section 5.4.B.2 – The Character of the Area Affected: The Board finds that the proposed construction of the pool, pavilion and deck will not affect the character of the area, as the structures will be shielded by the single-family dwelling from Pleasant Valley Road. In regards

to the following components of the Character of the Area Affected, the Board made the following findings:

- **Location:** the property is located in the Mt. Mansfield Scenic Preservation District, which largely contains single-family dwellings and accessory structures.
- **Scale:** the scale of the proposed construction is consistent with the development that currently exists on the property and the surrounding properties.
- **Type:** the proposed structures would be accessory to the single-family dwelling. Accessory structures are permitted within the Mt. Mansfield Scenic Preservation District.
- **Density:** the proposed structures will not increase the density in the area affected.
- **Intensity:** the proposed structures will negligibly change the intensity of the area affected.

Section 5.4.B.3 – Traffic on Roads and Highways in the Vicinity: The Board finds that the proposed construction of the structure will not increase the traffic on the roads and highways in the vicinity, thus not resulting in an adverse impact.

Section 5.4.B.4 – Bylaws in Effect: The Board finds that, -, the proposed project will be in conformance with the regulations in effect at the time of this approval.

Section 5.4.B.5 – The Utilization of Renewable Energy Resources: The Board finds that the proposed structures 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 proposed structures are consistent with the Town Plan.

Section 5.4.D.2 – Zoning District & Use Standards: The Board finds that the proposed structures conform to the zoning districts and use standards as outlined above upon approval by this Board.

Section 5.4.D.3 – Performance Standards: See 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**

The Board finds that the applicants have not asked for any dimensional waivers. In addition, any waivers granted by this Board are enumerated in this decision herein and outlined below under Section IV of this decision. The Board finds that Section 5.5.B, in regards to dimensional waivers, and Section 5.5.C, in regard to variances, do not apply.

#### **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: The Board finds that the applicant shall complete the proposed structures within three years of this approval in accordance with, and as outlined by, Subsections 10.3.D.1 & 10.3.D.2 below.

SECTION 10.3.D.1 – ZONING PERMITS: The Board finds that the permit issued as part of this decision will remain in effect for three years from the date of issuance. The applicant must substantially commence the permit within three years 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”).

The Board recognizes that the normal length of an issued permit is one-year; however, at the request of the applicants, extends the permit length to three years. The extension to three years has been granted due to implications of Section 3.18.D.2.g, which requires site stabilization measures be installed by October 15 when impacting steep slopes. Section 3.18.D.2.g continues to state that “no site disturbance or construction shall occur between October 15 and April 15 unless specific measures for winter construction, stormwater management and erosion control are approved” by this Board. Since no specific measures were submitted to the Board for review, no site disturbance or construction may occur between October 15 and April 15. Therefore, should contractors not be scheduled in 2019, the three-year zoning permit extension will allow the applicants to schedule contractors for 2020, and then allow for an additional year to complete the construction of the pool, pavilion and deck.

*Note:* under Section 3.1.C, should the owner of a structure that is substantially incomplete at the time the zoning permit expires, the owner of that structure shall either: 1) apply for a zoning permit – in this case submit a new conditional use review application (see directly below) – or apply for a permit extension under Section 10.3; or 2) remove all materials from the site, restore the site to surface grade, and establish ground cover sufficient to prevent soil erosion.

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 (not explicitly provided above). 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 uses within 36 months (3 years or 6 May 2022) of the approval date of this decision (6 May 2019).

## III. FACTUAL FINDINGS & CONCLUSIONS RELATING TO THE UNDERHILL ROAD, DRIVEWAY & TRAIL ORDINANCE

The Board finds that the *Underhill Road, Driveway & Trail Ordinance* does not apply since no modifications to the existing driveway and existing curb cut are proposed. Since Board review is unnecessary, an access permit is not required as a part of this decision, and if an access permit is in place, that approval, and any associated conditions of approval, are to remain in place.

## IV. WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS

The Board grants the following waivers/modifications:

- The Board waives the prohibition of impacting very steep slopes (Section 3.18.E) in accordance with Section 3.18.B.3.b, finding that based on the submitted information and a site inspection, that the proposed development involves minimal site disturbance and poses a negligible threat to water quality, public roads and facilities, and to adjoining properties.
- The Board modifies the length of the zoning permit in accordance with Section 10.3.D above to be three years from the date of this decision (6 May 2019).
- The applicants, or subsequent landowner(s), are/is not required to come before the Board for the construction of any buildings, 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 abovementioned buildings can be administratively reviewed and approved. However, those structures must conform to the Regulations in effect at the time of the proposed projects.

## **V. 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 driveway will generally conform 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 Board requires the project to be constructed in accordance with the drawing set submitted as part of the review process and as amended accordingly to address the requirements herein, listed as follows:
  - a. Russell Resident – Overall Master Plan L100 (Prepared by Wagner Hodgson Landscape Architecture, modified by Briana O. Cronin, Dated February 28, 2019 and revised on March 27, 2019); and
  - b. Russell Property Poolside Pavilion, Scheme 4 Plan & Elevations (Prepared by GK Architects, Dated November 14, 2019) contained as part of the Zoning Permit Application (Exhibit F).
2. The Board requires the applicant to submit two full scale, and two 11 inch by 17 inch copies, as well as digital copies, of the plans listed under Condition 1 above to the Zoning Administrator.
3. The Board finds that applicants shall create an alternative strategy/contingency plan in the event that the pool needs to be emptied that does not result in the chlorinated water or other chemically treated pool water being released into the wetland/stream area.
4. During construction, the applicant is responsible for conducting an inspection after rain events that are greater than or equal to 0.2 inches.
5. In accordance with Section 3.18.D.2.c, the Board finds that all areas of site disturbance and construction shall be clearly marked on the ground during all phases of construction;
6. In accordance with Section 3.18.D.2.d, if feasible, the Board finds that site disturbance and construction shall be phased so that only those areas under active construction are exposed;

7. In accordance with Section 3.18.D.2.e, the applicant shall stockpile and stabilize (not to exceed slopes greater than 10%) topsoil removed from disturbed areas for replacement on the site following final construction and grading;
8. In accordance with Section 3.18.D.2.g, Site stabilization measures shall be installed prior to October 15. No site disturbance or construction shall occur between October 15 and April 15 since no specific measures for winter construction were submitted for review by this Board;
9. In accordance with Section 3.20.B.2, the applicant shall enclose the swimming pool by a securely gated wall, fence, or other substantial structure at least four feet in height to prevent the uncontrolled access by animals and small children
10. In accordance with Section 3.11, The Board finds that any outdoor lighting that is added as part of this proposed project shall be downward facing and shielded. Each light shall have no objectionable spillover light to adjacent properties.
11. Should any updates be to the Wastewater System & Potable Water Supply Permit be required, a copy of that permit be submitted prior to obtaining a Certificate of Occupancy Permit for the pavilion.
12. Prior to the issuance of a Certificate of Occupancy, the applicant shall provide a certification letter from a Vermont Licensed Professional Engineer or qualified consultant indicating that the proposed construction was in accordance to what was proposed as part of this review.
13. **Delegation of Authority.** The Board hereby delegates authority to the Zoning Administrator regarding the fulfillment of the proposed project. The Board empowers the Zoning Administrator to act on behalf of the Board regarding any proposed changes in the approval or proposed design. These changes are not limited in scope, but are left to the discretion of the Zoning Administrator on when to defer changes or modifications to the Board. In the event that the a building envelope modification is required, the Board finds that the Zoning Administrator is empowered to make this modification so long as if conforms with the requirements under Section 7.8 of the *Underhill Unified Land Use & Development Regulations*.

Dated at Underhill, Vermont this 6<sup>th</sup> day of May, 2019.

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Development Review Board Member, Charles Van Winkle, Chair

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 6 June, 2019.