



Town of Underhill
Development Review Board
Conditional Use Review Findings & Decision

CONDITIONAL USE REVIEW APPLICATION OF ROBERT & PAIGE MANNING FOR A DIMENSIONAL WAIVER TO BUILD A DECK ONTO THE ACCESSORY STRUCTURE/DWELLING, WHICH IS WITHIN THE PROPERTY'S SETBACKS

In re: Robert & Paige Manning
421 Vermont Route 15 (VT421)
Underhill, VT 05489

Docket No. DRB-19-04

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

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns the conditional use review application of Robert & Paige Manning pertaining to a dimensional waiver to build a deck onto an accessory structure/dwelling within the property's setbacks. The accessory structure/dwelling exists entirely on property the applicants, Robert and Paige Manning, own located at 421 Vermont Route 15 (VT421) in Underhill, Vermont.

- A. On March 18, 2018, the applicants 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, May 6, 2019 at 6:00 PM, and the hearing was scheduled for Monday, May 6, 2019 at 6:35 PM.
- B. On April 18, 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. HR016 – Philip Jacobs, 73 Upper English Settlement Road, Underhill, VT 05489
 2. VT419 – Marc R. & Jane Maheux, P.O. Box 236, Underhill, VT 05489
 3. VT420X-P – Underhill-Jericho Fire Department, P.O. Box 150, Underhill, VT 05489
 4. VT423 – Stephen K. & Theresa L. Jennings, 423 Vermont Route 15, Underhill, VT 05489
 5. VT424 – Malachi & Shannon McCaulley, 424 Vermont Route 15, Underhill, VT 05489
 6. VT429T – Robert F. & Judith L. Peterson, 429 Vermont Route 15, Underhill, VT 05489
 7. Applicant: VT421 – Robert & Paige Manning, 421 Vermont Route 15, Underhill, VT 05489
- C. During the week of April 14, 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 April 20, 2019, notice of public hearing was published in the *Burlington Free Press*.

E. The scheduled site visit at the property's location (421 Vermont Route 15, Underhill, Vermont) commenced at 6:00 PM on May 6, 2019.

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

1. Board Member, Charles Van Winkle, Chairperson
2. Board Member, Stacey Turkos, Vice Chairperson
3. Board Member, Shanie Bartlett
4. Board Member, Mark Green

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

5. Applicant: Robert Manning (421 Vermont Route 15, Underhill, VT)
6. Applicant: Paige Manning (421 Vermont Route 15, Underhill, VT)
7. Adjoining Property Owner, Robert Peterson, 429 Vermont Route 15, Underhill, VT

G. The conditional use review hearing commenced at 6:35 PM on Monday, May 6, 2019 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, Charles Van Winkle, Chairperson
2. Board Member, Stacey Turkos, Vice Chairperson
3. Board Member, Shanie Bartlett
4. Board Member, Mark Green
5. Board Member Daniel Lee

Others present at the hearing were:

1. Applicant, Robert Manning (421 Vermont Route 15, Underhill, VT)
2. Applicant, Paige Manning (421 Vermont Route 15, Underhill, VT)

I. At the outset of the hearing, Chairperson 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, Robert Manning
2. Applicant, Paige Manning

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

1. Exhibit A – VT421 Manning Variance/Waiver Request Staff Report
2. Exhibit B – Manning (VT421) Conditional Use Review Hearing Procedures
3. Exhibit C - Development Review Application
4. Exhibit D - Responses to Development Review Application Questions
5. Exhibit E - Zoning Permit Application (B-19-07)
6. Exhibit F - Notice to BFP

7. Exhibit G - Certificate of Service
8. Exhibit H - Site Plan-Existing Conditions
9. Exhibit I - Site Plan-Setbacks
10. Exhibit J - Waiver & Variance Limitations
11. Exhibit K - Proposed Deck w. Waiver & Variance Limitations
12. Exhibit L - Photographs
13. Exhibit M - Applicants' Hand-drawn Site Plan
14. Exhibit N - Variance Request Narrative (if Required)
15. Exhibit O- Occupancy Permit

No additional exhibits were distributed to the Board prior to the Monday, May 6, 2018 hearing, Exhibit O was submitted into the record at the beginning of the hearing.

All exhibits are available for public review in the Manning Conditional Use Review file (VT421/DRB-19-04) at the Underhill Zoning & Planning office.

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

The Minutes of the May 6, 2019 meeting, 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, Robert & Paige Manning, record owner of the property located at 421 Vermont Route 15 (VT421) in Underhill, Vermont, are seeking conditional use approval to construct a deck onto the accessory structure/dwelling, which are located within the abovementioned property's setback requirements. Since the applicants are proposing to construct a structure within the property's setback requirement, a dimensional waiver is required under Section 5.5.B. The entire property is located within the Underhill Flats Village Center zoning district as defined under Article II, Table 2.2 of the ULUDR.

ARTICLE II, ZONING DISTRICTS

A. ARTICLE II, TABLE 2.2 –UNDERHILL FLATS VILLAGE CENTER 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 deck is not contrary to the zoning district's stated purpose of continuing residential uses and encouraging development that is compatible with and promoting a compact, historic village settlement pattern.

ARTICLE III, GENERAL REGULATIONS

A. SECTION 3.2 – ACCESS

The Board finds that the subject property has access to Vermont Route 15, a State Highway. While the lot is nonconforming, no modifications to the existing access way are being proposed, nor does the proposed project require modifications to the existing access way. Therefore, the Board finds that an access permit is not required, and that review under subsection 3.2.D is unnecessary.

The Board notes that the existing driveway encroaches upon the property's setback requirement (at the driveway's closest point, approximately one-foot from the property line), though 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 proposed deck will be attached to the accessory dwelling, which is an accessory use to the one principal structure on the lot – a single-family dwelling. The proposed deck will encroach upon the north side, and west, rear property setback requirements, and therefore, requires a dimensional waiver. In accordance with Section 3.7.E.1, the Board finds that this approved waiver is to allow for the limited addition of a deck to a pre-existing, nonconforming accessory structure on the nonconforming lot.

The Board notes the existing lot fails to meet the minimum acreage requirement of 1.00 acre, as the lot is approximately 0.67 acres, and therefore, nonconforming. Upon completion, the setbacks as they relate to the deck are:

- Font Property Line: ~146 ft. (East)
- Side 1 Property Line: ~8 ft. (North)
- Side 2 Property Line: ~148 ft. (South)
- Rear Property Line: ~12 ft. (West)

The setback requirements for an accessory structure within the Underhill Flats Village Center are 0 ft. from the front property line, though no structure shall be located in front of the front building line of the principal structure; and 15 ft. from the side and rear property lines.

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 constructing a structure that will increase the degree of nonconformance since a portion of the proposed structure will occur within the property's setback requirement (see Exhibit K). 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 and detached accessory dwelling. 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 the proposed deck does not increase the number of parking spaces that are required for the existing uses on the property per Table 3.1 – a single-family dwelling (two parking spaces) + an accessory dwelling (one parking space).

G. SECTION 3.14 – PERFORMANCE STANDARDS

The Board finds that the applicant did not submit the requisite information to make a determination about Section 3.14; however, the Board finds that the proposed construction of the deck is consistent with other uses in the area. Therefore, the Board 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 the subject lot is not in a source protection area, and therefore, review under this Section is not required.

I. SECTION 3.18 – STEEP SLOPES

The Board finds that there are areas of steep slopes (15-25%) and very steep slopes (>25%) on the subject lot; however, the project area was confirmed during the site visit to be an area that is under a 15% slope (and verified in the submitted photographs – see Exhibit L); therefore, review 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. The Board notes that a pond is located approximately 84 feet from the northwest corner of the property.

K. SECTION 3.23 – WATER SUPPLY & WASTEWATER SYSTEMS

The Board finds that a wastewater permit is not required for the construction of the proposed deck. The Board notes that the applicants obtained a wastewater permit (Permit #: WW-4-5151) as part of the application process for the conversion of part of the barn area to an accessory dwelling (see Conversion of Use Permit #: CL-18-09 for details about the conversion).

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 utilized the Site Plan (Exhibit I) and other sources, such as ANR Website, to consider 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 the proposed deck will not impact the enumerated resources in this subsection. As a result, no mitigation measures are required under Section 5.3.B.2.

Section 5.3.B.2 – Site Layout & Design: The Board finds that the proposed deck is aligned with the purpose and stated goals under Subsection A, Underhill Flats Village Center & Underhill Center Village Districts, noting that the proposed deck is consistent with the traditional, compact village settlement patterns, as described. Additionally, the proposed deck is located in the rear of the accessory structure, and therefore, not visible from the front yard thus not altering the aesthetics of the lot.

Section 5.3.B.3 – Vehicle Access: The Board finds the subject lot is accessed by one curb-cut via Vermont Route 15. The applicants are not proposing to modify or relocate the existing curb-cut or driveway, and therefore, 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 the proposed deck does not increase the number of parking spaces that are required for the existing uses on the property. See Section 3.13 for more information.

Section 5.3.B.5 – Site Circulation: The Board finds that the proposed deck will not alter the site circulation, which is expected to remain consistent with site circulation patterns of a residential unit/lot.

Section 5.3.B.6 – Landscaping and Screening: The Board finds the applicants are not proposing any landscaping or screening techniques. The proposed deck will be located at the rear of the accessory structure and will not be seen from Vermont Route 15. As a result, 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 proposed deck.

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 proposed deck will not result in an increase in demand on community services and facilities.

Section 5.4.B.2 – The Character of the Area Affected: The Board finds that the application will not affect the character of the area. Furthermore, the Board makes the following findings relating to the location, scale, type, density and intensity of the proposed use as it relates to

other buildings and uses in the area:

- **Location:** the property is located in the Underhill Flats Village Center District, which largely contains compact development, including 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 deck would be attached to the accessory dwelling, which is an accessory use to the single-family dwelling. Accessory structures and dwellings are permitted uses within the Underhill Flats Village Center District.
- **Density:** the proposed structures will not increase the density in the area affected.
- **Intensity:** the proposed deck will have no impact to the intensity of the area.

Section 5.4.B.3 – Traffic on Roads and Highways in the Vicinity: The Board finds that the proposed deck will not result in an increase in traffic on roads and highways in the vicinity.

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 deck 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 deck will comply with the Town Plan.

Section 5.4.D.2 – Zoning District & Use Standards: The Board finds that the proposed deck to comply with the zoning district's 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.

Any other conditions that have been waived have been noted in 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 deck within the property’s setback requirement that will be attached to a pre-existing, nonconforming structure/dwelling. Due to the property’s constraints (e.g. installed wastewater system, 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. The applicants are proposing to construct a deck onto the accessory structure containing an accessory dwelling – an action that could occur if not for the pre-existing, nonconforming structure.

Section 5.5.B.3 – Untitled: The Board finds that they may reduce the setback by no more than 50%, or in this case 7.5 feet. The applicants have presented an application illustrating that they do not anticipate exceeding 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. The relocation of these systems would be unreasonable, and therefore, constructing the deck 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 deck.

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 of effective date of the issuance zoning permit – to be issued by the Zoning Administrator as a result of this approval.

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 and whatever 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 approves the dimensional waiver, which therefore permits the applicants to encroach upon the north, 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, zoning permit application (see Exhibits E & I) and presented during the hearing. Any deviation from the project presented as part of this application may require additional review by this Board should the deck encroach further into the setback areas.

- 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.

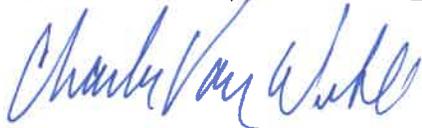
V. DECISIONS AND CONDITIONS OF APPROVAL

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 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 board delegates jurisdictional authority to the Zoning administrator for the life of the permit to make decisions on minor modifications to the site plan in support of any aspect of the site development that deviates from the approved site plan.
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 3rd day of June 2019.



Charles Van Winkle, 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 3 July 2019.