



Town of Underhill

Development Review Board

Findings and Decision

APPLICATION OF KURT THOMA & RACHEL FRAUMANN FOR A CONDITIONAL USE REVIEW - WAIVER/VARIANCE REQUEST TO CONSTRUCT DECKS, AS WELL AS EXPAND THE SECOND FLOOR FROM A HALF FLOOR TO A FULL FLOOR, WITHIN THE PROPERTY'S SETBACK REQUIREMENTS

In re: Kurt Thoma & Rachel Fraumann
43 Ellsworth Meadow Lane (EM043)
Underhill, VT 05489

Docket No. DRB-19-07

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

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns a conditional use review application for a waiver/variance request that would allow the Applicants, Kurt Thoma & Rachel Fraumann, to construct multiple decks, as well as to expand the second $\frac{1}{2}$ floor into a full floor, within the property's setback requirements, specifically the north, side setback requirements. The Applicants' lot is located at 43 Ellsworth Meadow Lane (EM043) in Underhill, Vermont, and is located in the Mt. Mansfield Scenic Preservation District.

- A. On July 8, 2019, Co-Applicant, Kurt Thoma, filed an application for conditional use review for a waiver/variance request hearing for the abovementioned project. The application was accepted and determined to be complete by the Planning & Zoning Administrator, Andrew Strniste, shortly thereafter. A site visit was scheduled to commence at the property's location (43 Ellsworth Meadow Lane) at 6:00 PM on August 5, 2019, and the hearing was scheduled for 6:35 PM on August 5, 2019 at Underhill Town Hall, 12 Pleasant Valley Road, Underhill, VT.
- B. On July 18, 2019, notice of the conditional use review – waiver/variance request hearing was mailed via Certified Mail to the following property owners adjoining the property subject to the application:
1. EM013 – Matthew Apgar & Brenda Parker, 13 Ellsworth Meadow Lane, Underhill, VT 05489
 2. EM027 – Mark P. Hamelin & Susan E. Ray, 27 Ellsworth Meadow Lane, Underhill, VT 05489
 3. EM044 – Gail L. Canedy, P.O. Box 6, Underhill Center, VT 05490
 4. EM045 – Randy L. Vance, 67 Chapin, Essex Junction, VT 05452
 5. MA007 – Michael H. & Darlene T. Charland, 7 Macomber View, Underhill, VT 05489
 6. [Applicant] EM043 – Kurt Thoma & Rachel Fraumann, 161 Austin Drive, Unit 34, Burlington, VT 05401

- C. During the week of July 14, 2019, notice of the public hearing for the proposed conditional use review – waiver/variance request hearing 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 July 20, 2019, notice of public hearing was published in the *Burlington Free Press*.
- E. The site visit at the property's location (43 Ellsworth Meadow Lane, Underhill, Vermont) commenced at 6:00 PM on Monday, August 5, 2019.
- F. Present at the site visit were the following members of the Development Review Board:
1. Board Member, Stacey Turkos, Vice Chairperson,
 2. Board Member, Matt Chapek
 3. Board Member, Mark Green
 4. Board Member, Daniel Lee
 5. Board Member, Penny Miller

Members of the public present during the site were:

6. Applicant, Kurt Thoma (43 Ellsworth Meadow Lane, Underhill, VT 05489)
 7. Applicant, Rachel Fraumann (43 Ellsworth Meadow Lane, Underhill, VT 05489)
 8. Abutting Neighbor, Mark Hamelin (27 Ellsworth Meadow Lane, Underhill, VT 05489)
 9. Abutting Neighbor, Susan Ray (27 Ellsworth Meadow Lane, Underhill, VT 05489)
 10. Abutting Neighbor, Gail Canedy (44 Ellsworth Meadow Lane and 400 Pleasant Valley Road, Underhill, VT 5489)
 11. Neighbor, Bill Wilson (2 Ellsworth Meadow Lane, Underhill, VT 05489)
 12. Neighbor, Pavel Krsiak (28 Ellsworth Meadow Lane, Underhill, VT 05489)
 13. Neighbor, Norman Poutrie (416 Pleasant Valley Road, Underhill, VT 05489)
- G. The conditional use review – waiver/variance request hearing commenced at 6:35 PM on August 5, 2019 at the Town of Underhill Town Hall, 12 Pleasant Valley Road, Underhill, Vermont.
- H. Present at the conditional use review – waiver/variance request hearing were the following members of the Development Review Board:
1. Board Member, Stacey Turkos, Vice Chairperson
 2. Board Member, Matt Chapek
 3. Board Member, Mark Green
 4. Board Member, Daniel Lee
 5. Board Member, Penny Miller

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

Others present at the hearing were:

1. *[Applicant]* Kurt Thoma, 43 Ellsworth Meadow Lane, Underhill, VT 05489

2. *[Applicant]* Rachel Fraumann, 43 Ellsworth Meadow Lane, Underhill, VT 05489
 3. *[Abutting Neighbor]* Mark Hamelin, 27 Ellsworth Meadow Lane, Underhill, VT 05489
 4. *[Abutting Neighbor]* Susan Ray, 27 Ellsworth Meadow Lane, Underhill, VT 05489
 5. *[Abutting Neighbor]* Gail Canedy, 44 Ellsworth Meadow Lane and 400 Pleasant Valley Road, Underhill, VT 05489
 6. *[Neighbor]* Bill Wilson, 2 Ellsworth Meadow Lane, Underhill, VT 05489
 7. *[Neighbor]* Pavel Krsiak, 28 Ellsworth Meadow Lane, Underhill, VT 05489
 8. *[Neighbor]* Norman Poutrie, 416 Pleasant Valley Road, Underhill, VT 05489
- I. At the outset of the hearing, Vice Chairperson 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. Kurt Thoma
 2. Mark Hamelin
 3. Gail Canedy
 4. Bill Wilson

Also qualifying as an interested party is Randy Vance, who did not attend the hearing; however, submitted comments via email.

- J. In support of the conditional use review – waiver/variance request application, the following exhibits were submitted to the Development Review Board:

Exhibit A - EM043 Thoma-Fraumann Waiver-Variance Request Staff Report
 Exhibit B - Thoma-Fraumann (EM043) Conditional Use Review Hearing Procedures
 Exhibit C - Development Review Application
 Exhibit D - Responses to Development Review Application Questions
 Exhibit E - Zoning Permit Application (B-19-23a)
 Exhibit F - Zoning Permit Application (B-19-23b)
 Exhibit G - Notice to BFP
 Exhibit H - Certificate of Service
 Exhibit I - Floor Plans
 Exhibit J – Elevations
 Exhibit K - Recorded Seasonal Camps
 Exhibit L - Wastewater System & Potable Water Supply Permit (WW-4-5075)
 Exhibit M - Wastewater System & Potable Water Supply Site Plan
 Exhibit N - Wastewater System Details
 Exhibit O - Site Plan with Proposed Additions, Waiver & Variance Limitations
 Exhibit P - Site Plan with Setback Measurements
 Exhibit Q - Tax Map Discrepancy

No additional exhibits were submitted prior to the hearing, while one exhibit was submitted into the record during the hearing:

Exhibit R – Email Correspondence from Randy Vance

All exhibits are available for public review in the EM043 Conditional Use Review – Waiver/Variance Request file (DRB-19-07) at the Underhill Zoning & Planning office.

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

The Minutes of the August 5, 2019 meeting, written by Planning & Zoning Administrator, Andrew Strniste, are incorporated by reference into this decision. Please refer to the Minutes for a summary of the testimony.

Based on the submitted application, testimony, exhibits, and evidence, the Development Review Board makes the following findings under the requirements of the 2011 *Underhill Unified Land Use and Development Regulations* (ULUDR) as amended thru March 6, 2018:

FACTUAL FINDINGS

The Applicants, Kurt Thoma & Rachel Fraumann, record owners of the property located at 43 Ellsworth Meadow Lane (EM043) in Underhill, Vermont, seek conditional use review – waiver/variance request approval under Section 5.5.C from the Development Review Board to construct/enlarge multiple decks, as well as to expand the second ½ floor to a full floor, at the existing seasonal dwelling (located toward the northeast corner of the lot). The entire primary structure is sited within the side (north) setback, and all additions and renovations will also occur within the same north side setback.

The proposed deck to be located to the south of the existing structure only requires a dimensional waiver, as the deck will be approximately 46 ft. from the north side property line, thereby encroaching into the setback by 29 ft. The proposed deck to be located to the north of the existing structure requires a dimensional variance, as the deck will be approximately 24 ft. from the north side property line, thereby encroaching into the setback by 51 ft. The proposed second floor expansion of the existing structure also requires a dimensional variance, as the structure is located approximately 24 ft. from the north side property line, thus also encroaching into the setback by 51 ft. The Board notes that second floor expansion of the existing structure requires a variance because the Applicants propose to increase the degree of nonconformance, which takes into consideration volume.

Under Article XI, “**Degree of Nonconformance**” is defined as:

The degree to which a structure, or portion thereof, does not meet required dimensional standards (e.g., minimum setback distances) as specified in these regulations. For purposes of these regulations, any enlargement or other structure alteration which extends the footprint, height or volume of a structure within a required setback distance, or above the maximum allowed height (i.e., the amount of encroachment), shall be considered to increase the degree of noncompliance.

The property is located in the Mt. Mansfield Scenic Preservation District as defined in Article II, Table 2.6 of the *Underhill Unified Land Use & Development Regulations*.

ZONING DISTRICTS, ARTICLE II

ARTICLE II – ZONING DISTRICTS

A. ARTICLE II, TABLE 2.6 – MT. MANSFIELD SCENIC PRESERVATION DISTRICT

The Board finds that the existing lot is a nonconforming lot, in addition to the structure being

located entirely with the property's north, side property setback requirement, thereby making the structure a nonconforming structure. The existing lot fails to satisfy the minimum acreage requirement, as well as the minimum frontage requirement of this zoning district.

The proposed project will not cause an adverse impact to the scenic vistas along Pleasant Valley Road, as the subject property contains dense forestland, thereby shielding the existing structure and proposed project from nearby neighbors and Pleasant Valley Road. Additionally, the subject lot, and continued use as a camp, is in a lower-density neighborhood – Ellsworth Meadow Lane.

Since the Applicants propose to construct the decks, as well as expand the volume of the structure, within the property's setbacks, a dimensional waiver & a variance are required, as the existing structure is located entirely within the north side setback requirement.

GENERAL REGULATIONS, ARTICLE III

A. SECTION 3.2 – ACCESS

The Board finds that the subject lot accesses Ellsworth Meadow Lane, a private road with access to Pleasant Valley Road. Since the Applicants do not propose a change of use from the building's currently designated camp status, the *Underhill Road, Driveway & Trail Ordinance* is not invoked. Therefore, no modifications to the driveway or Ellsworth Meadow Lane are required at this time.

SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS

The Board finds that the existing lot is nonconforming, as the lot fails to meet the acreage and frontage requirements of the Mt. Mansfield Scenic Preservation zoning district. The Lot is ±1.04 acres, failing to meet the 10.0 acreage requirement for the aforementioned district. The front lot line (east) is 358 feet, which also fails to meet the frontage requirement of 400 ft.

Requirement: In the Mt. Mansfield Scenic Preservation District, primary buildings, including attached structures (i.e. decks) are required to meeting the following setback requirements: 30 ft. from the front property line and 75 ft. from the side and rear property line.

Existing Conditions: The existing primary structure (the camp) is ±31 feet from the front lot line (east), ±278 feet from the south side lot line, ±24 feet from the north side line, and ±154 feet from the rear lot line (west). The existing primary structure is located completely within the side setback (north).

Proposed Conditions: Upon completion of the proposed decks, the setbacks will be: ±31 feet from the front lot line (east), ±276 feet from the south side lot line, ±24 feet from the north side lot line, and ±143 from the rear lot line (west).

Since the Board finds that the Applicants have satisfied the requirements of Sections 3.8 and 3.9 below, they will not be prevented from obtaining approval from the Board under this section.

B. SECTION 3.8 – NONCONFORMING LOTS

The Board finds that the lot was legally existing on the effective date of the current *Underhill Unified Land Use & Development Regulations* (Adopted March 1, 2011; Amended thru 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.

C. SECTION 3.9 – NONCONFORMING STRUCTURES

The Board finds that the existing camp 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 Applicants propose to construct a deck on the south/east of the building which will be entirely within the side (north) setback; since this proposed construction will not encroach more than 50% into the side (north) setback requirement, a waiver is required. Additionally the Applicants propose to construct a deck on the north of the building, as well as increase the volume of the existing building; since this proposed construction will encroach more than 50% into the side (north) setback requirement, a variance is required.

D. SECTION 3.10 – NONCONFORMING USES

The Board finds that both the existing use and proposed uses conform to the Mt. Mansfield Scenic Preservation District if the waiver/variance request is approved, and therefore, this section does not apply.

E. SECTION 3.11 – OUTDOOR LIGHTING

The Board finds that the Applicants have not definitively addressed whether any outdoor lighting will be installed. Should any outdoor lighting be installed, it should be downcast and shielded.

F. SECTION 3.13 – PARKING, LOADING & SERVICE AREAS

The Board finds that *Unified Land Use & Development Regulations* does not provide a parking requirement for camps/seasonal dwellings. Nevertheless, the Board finds that the Applicants have provided the necessary parking to serve the camp/seasonal dwelling.

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

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

H. SECTION 3.14 – PERFORMANCE STANDARDS

The Board finds that the Applicants will satisfy the requirements of this section, as the proposed construction is consistent with other single-family and seasonal dwellings in the area.

I. SECTION 3.17 – SOURCE PROTECTION AREAS

The Board finds the existing lot is not located within a source protection area, and therefore, review under this Section is not required.

J. SECTION 3.18 – STEEP SLOPES

The Board finds that the entire lot, as depicted by the Agency of Natural Resource's Atlas, contains areas of steep slopes (15-25%) and very steep slopes (>25%). During the Board's site visit, they verified that the area in the immediate vicinity of the camp/seasonal dwelling was flat, and therefore, the proposed construction will not impact steep slopes or very steep slopes.

In addition, also during the site visit, the Board noted that a septic system had just been recently constructed, which likely impacted steep and/or very steep slopes. The Board notes that impacts to steep and very steep slopes require approval from the Board. However, as explained under Section 5.5, siting the wastewater system in another area on the lot was unlikely in addition to the entire lot containing areas of steep and very steep slope. The Board recognizes that obtaining a Wastewater System & Potable Water Supply Permit for this particular lot was extremely challenging, and therefore, would have been inclined to approve impact to steep slopes application. Therefore, this application, which includes the application materials for the Wastewater System & Potable Water Supply Permit submitted to the State off Vermont, Agency of Natural Resources,

acknowledges that the Board has reviewed the impact to steep slopes and approves that impact after-the-fact.

K. SECTION 3.19 – SURFACE WATERS & WETLANDS

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

L. SECTION 3.23 – WATER SUPPLY & WASTEWATER SYSTEMS

The Board finds that a Wastewater System & Potable Water Supply Permit is not required for the proposed project, as the Applicants are not adding any additional bedrooms to the existing structure. However, the Applicants did obtain a Wastewater System & Potable Water Supply Permit (Permit #: WW-4-5075) prior to the submission of their application in order to construct a wastewater system for the existing seasonal dwelling.

ARTICLE V, DEVELOPMENT REVIEW

A. SECTION 5.1 – APPLICABILITY

The Board finds that per Sections 5.5.B (regarding waivers) and Section 5.5.C (regarding variances), waiver requests and/or variance requests are to be held concurrently with site plan review under 5.3 or conditional use review under Section 5.4.

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. In conjunction with other resources, such as the ANR Website, numerous site features under this Section are not applicable to this application. While the proposed decks appear to impact areas of steep and very steep slopes on the Agency of Natural Resources Atlas website, the Board confirmed during their site visit that the immediate project area does not contain slopes. Additionally, the Board determined that the proposed project does not adversely affect, or already conforms to, the enumerated features within this Section, and therefore, no mitigation measures are required under Section 5.3.B.1.b.

Section 5.3.B.2 – Site Layout & Design: The Board finds that the proposed project is not contrary to the purpose and stated goals under Subsection C, Mt. Mansfield Scenic Preservation District, noting that the proposed decks, as well as the expanded second floor, will be consistent with the site layout and design of other properties in the area and will avoid adverse impacts to the natural and scenic resources and environmentally sensitive areas within the Mt. Mansfield Scenic Preservation District.

Section 5.3.B.3 – Vehicle Access: The Board finds that the proposed project does not require any parking in addition to what already serves the existing camp, which is accessed by an

existing shared driveway on Ellsworth Meadow Lane. The Board DOES NOT require the Applicants to relocate the existing access way.

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

Section 5.3.B.5 – Site Circulation: The Board finds that the proposed project will be consistent with the site circulation patterns of a residential unit/lot, which includes seasonal dwellings/camp.

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 cannot be seen from Pleasant Valley Road and Ellsworth Meadow Lane; therefore, the Board finds that no additional screening and landscaping is mandated. The Applicants have stated that they do not intend to cut trees unrelated to the proposed construction and will retain the natural screening that exists on the site.

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

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 during construction.

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, 5.5.B and 5.5.C when construction of a structure occurs within a property's setback requirements. Specifically, a dimensional waiver under Section 5.5.B is required if the encroachment is more than 0%, but less than 50%, of the property's setback requirement, while a dimensional variance under Section 5.5.C is required if the encroachment is more than 50%, but less than 100%, 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 project will not result in an increase in demand on community services and facilities, as the seasonal dwelling will remain one bedroom, but with two floors (rather than one and ½) and decks.

Section 5.4.B.2 – The Character of the Area Affected: The Board finds that the proposed project will not affect the character of the area, as the area is largely, or mostly, seasonal dwellings (camps) or single-family dwellings. 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 Mt. Mansfield Scenic Preservation District, in an area largely containing compact development such as seasonal dwellings and single-

family dwellings.

- **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 project consists of enlarging the existing camp by a half floor and adding two decks to a seasonal dwelling. Seasonal dwellings (camps) are permitted uses within the Mt. Mansfield Scenic Preservation District.
- **Density:** the proposed project will not increase the density in the area affected.
- **Intensity:** the proposed project 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 project 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 remains the same.

Section 5.4.B.4 – Bylaws in Effect: The Board notes that review regarding the wastewater system impacting steep and very steep slopes would have likely been required; however, given the circumstances explained in Section 5.5 below, the impact to the steep and very steep slopes would have been approved. Therefore, this approval shall serve as an acknowledgement that the impact to steep slopes is approved as the requirements under Section 3.19 have been satisfied. Regarding all other matters, the Board finds that this application is 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 project 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 project, is consistent with the Town Plan.

Section 5.4.D.2 – Zoning District & Use Standards: The Board finds that the proposed project conforms to the zoning district 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:

A dimensional waiver is required in order to build the south/east-side deck, while a variance is required for the north-side deck, as well as the expansion of the half, second floor into a full upper

floor. Each of the abovementioned development will encroachment into the side (north) setback.

Section 5.5.B – Dimensional Waivers: The Board finds that a dimensional waiver is required for the south/east-side deck addition, as it will encroach upon the side (north) setback by 29 feet.

Section 5.5.B.1 – Untitled: The Applicants propose to construct a deck onto the seasonal dwelling, which will be located within the side (north) setback. Due to the property's constraints (e.g. installed wastewater system, the lot's nonconformity, and steep & very steep slopes), 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 those 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' proposal to construct a deck on the seasonal dwelling, a pre-existing nonconforming structure on a pre-existing nonconforming lot, is a reasonable development.

Section 5.5.B.3 – Untitled: The Board finds that they may reduce the setback by no more than 50%, or in this case 37.5 feet. The Applicants have presented an application illustrating that they do not anticipate exceeding this threshold for the south-side deck.

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 wastewater system and steep & very steep slopes. The relocation of the wastewater system is likely to be non-existent due to the topography that exists at the property, and therefore, the construction of this deck 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 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 the applicant has satisfied all of the factors of the variance criteria for the proposed north-side deck and second floor expansion (see Section 5.5.C.2 below).

Section 5.5.C.1 (Untitled): The Board finds that the Applicants have provided the necessary information to make a determination on the proposed deck and second floor expansion.

Section 5.5.C.2 (Untitled): The Board finds that the Applicants have satisfied the following factors to obtain a variance to encroach into the north-side setback by 51 ft. for the proposed deck and second floor expansion, which are outlined directly 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 Applicants' lot is nonconforming, and the existing seasonal dwelling is located entirely within the side (north) setback. In addition, the existing lot is almost entirely located in an area containing steep slopes or very steep slopes. Lastly, the wastewater system has been located in an area that is likely to be the only feasible location on the lot given its topography. Therefore, these factors limit the available locations for construction on the lot, especially pertaining to the proposed north-side deck expansion. Therefore, the Board finds that the totality of all of these features creates an unnecessary hardship for the Applicants.

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

Findings: Given the factors outlined above (the nonconformity of the lot, the location of the wastewater system, and the existence of steep and very steep slopes), developing in strict conformity with the Regulations is unlikely, if not impossible. The permitted building envelope on the lot contains the recently constructed, approved wastewater system. The addition of any other structure within this building envelope would likely encroach upon the system's setback requirement and isolation distances. Therefore, these constraints have more or less eliminated a feasible location for new development within a workable building envelope.

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

Findings: The Board finds that the Applicants did not create the unnecessary hardship in regards to the proposed deck and second floor expansion, as the unique physical circumstances substantially inhibit the Applicants from constructing any new addition or structure on the property due to the constraints outlined above.

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 for the proposed deck and second floor will not alter the essential character of the neighborhood. The existing seasonal dwelling is located twenty-four (24) feet from the side (north) property line. Upon completion, the deck expansion will not encroach upon the side setback any further than the current conditions. Furthermore, the Board did not receive any objections from the surrounding neighbors relating to the proposed project and the 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: The Board finds that the variance approved as part of this decision will represent and afford the least deviation from the *Underhill Unified Land Use & Development Regulations* possible.

ARTICLE VI, FLOOD HAZARD AREA REVIEW

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

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. In addition, the Applicants do not propose to convert the seasonal dwelling (camp) to a single-family dwelling, and therefore, Section 1.E.4 of the *Underhill Road, Driveway & Trail Ordinance* does not apply at this time. Since review under the Road Ordinance 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 side (north) setback requirement may be reduced for the proposed south/east deck addition, and the construction shall not encroach upon that side setback any more than what was proposed and presented as part of this application – 29 feet. As a result, the edge of south/east deck addition shall be no less than 46 feet measured from the side property line.
- The side (north) setback requirement may be reduced for the proposed north-side deck, and the construction shall not encroach upon the side setback any more than what was proposed and presented as part of this application – 51 ft. As a result, the edge of the north deck addition shall be no less than 24 feet measured from the side property line.
- The side (north) setback requirement may be reduced for the proposed second floor expansion, and shall not encroach upon the setback any more than what was proposed and presented as part of this application – 51 ft, excluding second story roof overhangs
- The Board finds that the applicants are not required to come before the Board for the construction of any out buildings or ancillary buildings which would typically be required for any projects obtaining site plan review approval; instead the application for a building permit for those ancillary-type buildings can be administratively reviewed and approved by the Zoning Administrator in accordance with the zoning regulations in effect at the time of application for the proposed project(s).

V. CONCLUSION, DECISION 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 abovementioned project. The Board thoroughly reviewed all aspects of the proposal under the evaluation of the 2018 *Underhill Land Use & Development Regulations*, and concludes that based on the evidence submitted and the above findings, the proposed development generally conforms to the aforementioned Regulations.

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

Conditions:

1. The existing seasonal dwelling is to remain as a season dwelling in accordance with the recorded document titled “Seasonal Camps in Underhill” (see Exhibit K).
2. The Board makes no finding regarding the rooflines of the proposed second floor volume expansion, as the height of the structure shall not exceed 35 feet (but should remain only two floors) as permitted by the ULUDR; however, the footprint of the house shall not exceed the limitations as proposed and presented as part of this application.
3. The Applicants shall secure all required permits or approvals from the applicable Vermont state agencies. These permits shall be submitted to the Zoning Administrator prior to obtaining a certificate of occupancy as required under Section 10.4.A.2 of the ULUDR.
4. The project shall conform to the submitted application materials and hearing testimony presented by the Applicants. Any change to the plans or the proposed use of the property,

unless otherwise noted in this decision, shall be brought to the Zoning Administrator's attention prior to its enactment to determine if the above conditions need to be amended.

5. The Applicants shall limit tree cutting/limbing to the absolute minimum needed for construction of the decks and the second story in an effort to maintain the natural screening of the building from adjoining properties.
6. **Delegation of authority.** The Board hereby delegates authority to the Zoning Administrator regarding fulfillment of the proposed project. The Zoning Administrator is empowered to act on behalf of the Board regarding any minor 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 decisions in this matter to the Board. The delegation of authority will cease upon issuance of an occupancy permit.

Dated at Underhill, Vermont this 13 of September 2019.



Stacey Turkos, Development Review Board Vice 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 October 2019.