



Town of Underhill

Development Review Board

Conditional Use Review Findings and Decision

COURT ORDERED REVIEW OF MR. PETER DUVAL'S WASTEWATER SYSTEM AS IT RELATES TO THE CONDITIONAL USE REVIEW STANDARDS PERTAINING TO HIS APPLICATION TO CONVERT A SINGLE-FAMILY DWELLING TO A FOUR UNIT, MULTI-FAMILY DWELLING

In re: Peter Duval
25 Pine Ridge Road
Underhill, VT 05489

Docket No. DRB-17-16(2)

Decision: While the submission of the wastewater system design conforms with the *Unified Land Use & Development Regulations*, the Board upholds its previous denial based on the reasons outlined in Section IV of this decision.

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns a court ordered review of Applicant Peter Duval's wastewater system design as it relates to the Town's conditional use standards. The application pertains to the conversion of a single-family dwelling at 25 Pine Ridge Road in Underhill, Vermont to a four-unit, multi-family dwelling. The property is owned by Peter K. & Ellen M. Duval. At the request of the Town, a motion for remand was filed with the Environmental Court for the following reasons: 1) to provide the Board the first opportunity to review a complete set of the necessary application materials from Mr. Duval prior to the court's review, as well as 2) to help narrow the issues being litigated by hopefully disposing of certain previously unresolved issues.

A. On Monday, July 15, 2019, the Applicant emailed two PDF documents to the Zoning Administrator, Andrew Strniste:

- A copy of a Town's motion to the Court titled: "Memorandum in Opposition to Appellant's Motion for Reconsideration," and
- A copy of the attachments included in his motion to the Court titled: "Response to the Town's Motion to Remand."

Contained within the second document was a copy of the Applicant's wastewater system design site plan, prepared by Wilcox & Barton, Inc., dated January 30, 2019. The aforementioned documents were submitted into the record, which was later objected to by the Applicant.

B. On Wednesday, July 17, 2019, the Zoning Administrator contacted the Applicant advising that the submitted material was not a complete wastewater system design, as the design details were missing.

C. On Friday, July 19, 2019, Mr. Duval submitted Page 2 of his wastewater plan while also noting his

continued objection to the Board's authority to review the wastewater system design (Exhibit HHH).

- D. On August 1, 2019, notice of the court ordered review was mailed via United States certified mail, return receipt requested, to the following property owners adjoining the property subject to the application, as well as the interested parties that are involved with the Court proceedings:

Abutting Neighbors

1. PR015 – Barbara & John Koier, 15 Pine Ridge Road, Underhill, VT 05489
2. PR026 – John D. & Marilyn O. Hardacre, 26 Pine Ridge Road, Underhill, VT 05489
3. PR027 – David A. Demuynck & Cathy A Leathersich, 27 Pine Ridge Road, Underhill, VT 05489
4. PV015 – Michael & Emily Diffenderffer, P.O. Box 42, Underhill Center, VT 05490
5. PV019 – Trustees of David A. & Carla N. Osgood, David & Carla Revocable Trust, P.O. Box 81, Underhill Center 05490
6. PV029 – Gregory M. Leech & Amy E. Golodetz, 29 Pleasant Valley Road, Underhill, VT 05489
7. [Applicant] PR025 – Peter K. & Ellen M. Duval, 25 Pine Ridge Road, Underhill, VT 05489

Interested Parties (Court)

8. Steven Coddling & Dianne Terry, 34 Pine Ridge Road, Underhill, VT 05489
9. John M. & Nancy Hall, 31 Pine Ridge Road, Underhill, VT 05489
10. John & Cathy McNamara, 7 Pine Ridge Road, Underhill 05489
11. Thomas A. & Susann T. May, P.O. Box 138, Underhill Center, VT 05490

- E. During the week of August 28, 2019, notice of the public hearing for the court ordered review was posted at the following locations:

1. The Underhill Town Clerk's Office;
2. The Underhill Center Post Office; and
3. Jacobs & Son Market

- F. On August 3, 2019, the notice of public hearing was published in the *Burlington Free Press*.

- G. The court ordered review hearing commenced at 6:35 PM on August 19, 2019 at the Town of Underhill Town Hall, 12 Pleasant Valley Road in 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, Chairperson
2. Board Member, Matt Chapek
3. Board Member, Mark Green
4. Board Member, Daniel Lee
5. Board Member, Karen McKnight
6. Board Member, Penny Miller

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

Others present at the hearing were:

1. John Koier, Abutting Neighbor (15 Pine Ridge Road, Underhill, VT)
 2. Barbara Koier, Abutting Neighbor (15 Pine Ridge Road, Underhill, VT)
 3. John Hardacre, Abutting Neighbor (26 Pine Ridge Road, Underhill, VT)
 4. Steve Coddling, Pine Ridge Resident (34 Pine Ridge Road, Underhill, VT)
 5. Thomas May, Pine Ridge Resident (37 Pine Ridge Road, Underhill, VT)
 6. Peter Duval, Applicant (25 Pine Ridge Road, Underhill, VT)
- I. Chair 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. Peter Duval
 2. John Koier
 3. Barbara Koier
 4. Steve Coddling
 5. John Hardacre
 6. Thomas May

Also qualifying as interested parties are Nancy & John Hall, who did not attend the hearing; however, they submitted written comments to the Zoning Administrator prior to the evening’s hearing.

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

Exhibit FFF - Court Order
Exhibit GGG - DRB Decision # DRB-17-16
Exhibit HHH - Email Correspondence from Mr. Duval, Dated 07.19.2019
Exhibit III - Wastewater System Design Site Plan, Dated 01.30.2019
Exhibit JJJ - Wastewater System Design Details, Dated 01.18.2019
Exhibit LLL - ANR Atlas Surface Waters Map
Exhibit MMM - Miscellaneous Materials Submitted by Mr. Duval
Exhibit NNN - Correspondence from Halls
Exhibit OOO - Duval (PR025) Court Ordered Conditional Use Hearing Procedures
Exhibit PPP - Notice to BFP
Exhibit QQQ - Certificate of Service

The following exhibits were subsequently submitted into the record during the hearing:

Exhibit RRR - Correspondence from Duval to Zoning Administrator, Dated 07.15.2019
Exhibit SSS - VCGI Map Depicting Approximate Distance of Wastewater System to Crane Brook
Exhibit TTT - VCGI Lidar Image of Project Location
Exhibit UUU - McClellan WW Permit Site Plan
Exhibit VVV - Whalen WW Permit Site Plan

- K. During the Monday, August 19, 2019, the Board determined that it could not make a decision regarding the wastewater system conforming with the conditional use review standards, as directed in the court order, and therefore, requested the Applicant update the wastewater design site plan (in accordance with the August 20, 2019 Memorandum) to depict the following:

- The “top of slope” in accordance with Section 3.19 and defined under Article XI (see definition of the term “Stream Bank”) of the Town’s land use & development regulations;
 - The “top of bank” in accordance with Section 3.19 and defined under Article XI (see definition of the term “Stream Bank”) of the Town’s land use & development regulations;
 - Measurements shown on the plan between the following features:
 - The shortest distance from the edge of the system to the “top of slope;”
 - The shortest distance from the “top of slope” to the edge of the waterway, presumably the “top of bank;” and
 - “The shortest distance from the edge of the system to the edge of the waterway, presumably the “top of bank.”
 - Information relating to the steep slopes standards in accordance with Section 3.18 (e.g. finishing grades of the system).
- L. The Board agreed to continue the hearing, which was scheduled for the following date and time specified (Section 5.2.B.3): 7:00 PM on Monday, September 16, 2019 at Underhill Town Hall at 12 Pleasant Valley Road, Underhill, Vermont.
- M. The continued court ordered review hearing began at 7:32 PM on Monday, September 16, 2019 at the Town of Underhill Town Hall, 12 Pleasant Valley Road, Underhill, Vermont.
- N. Present at the continued court ordered 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, Matt Chapek
 4. Board Member, Mark Green
 5. Board Member, Daniel Lee
 6. Board Member, Penny Miller

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

Others present at the hearing were:

1. Marilyn Hardacre, Abutting Neighbor (26 Pine Ridge Road, Underhill, VT)
 2. John Hardacre, Abutting Neighbor (26 Pine Ridge Road, Underhill, VT)
 3. John McNamara, Pine Ridge Resident (7 Pine Ridge Road, Underhill, VT)
 4. Dianne Terry, Pine Ridge Resident (34 Pine Ridge Road, Underhill, VT)
 5. Steve Codding, Pine Ridge Resident (34 Pine Ridge Road, Underhill, VT)
 6. Peter Duval, Applicant (25 Pine Ridge Road, Underhill, VT)
- O. Chair 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. Peter Duval
 2. Marilyn Hardcare
 3. Dianne Terry
 4. Steve Codding

Also qualifying as interested parties are John & Barbara Koier and Nancy & John Hall, who did not

attend the hearing; however, they submitted written comments to the Zoning Administrator prior to the evening's hearing.

- P. In support of the continued conditional use review application, the following exhibits were submitted into the record:

Exhibit WWW – Updated Wastewater System Site Plan
Exhibit XXX – Correspondence from John & Barbara Koier
Exhibit YYY – Correspondence from Nancy & John Hall

All exhibits are available for public review in the PR025 Duval Court Order Review file (PR025 / DRB-17-16(2)) at the Underhill Zoning & Planning office.

II. FACTUAL FINDINGS

The Minutes of the August 19, 2019 and September 16th, 2019 meetings, 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 thru March 4, 2014, noting the potential issue with Vermont State statute 24 V.S.A. § 4449(d), as explained in the Board's previous decision (see Page 8 of DRB-17-16):

PROJECT DESCRIPTION

Please refer to the Board's original project description in DRB Decision: DRB-17-16 (see Pages 8 – 9), which provides a more comprehensive overview of the project. The Board notes, however, that the Applicant, as part of his court ordered review, explicitly stated that the proposed multi-family dwelling will contain four, 3-bedroom dwelling units, for a total of 12 bedrooms. In addition to making updated findings pertaining to the wastewater system design, the Board will make updated findings to those applicable sections relating to the number of units and bedrooms (e.g. parking).

A. ARTICLE II, TABLE 2.4 – WATER CONSERVATION DISTRICT

The Board finds that the Applicant submitted sufficient evidence – the wastewater system design (Exhibit WWW) – demonstrating that it is possible for him to obtain a Wastewater System & Potable Water Supply Permit from the State of Vermont, Department of Environmental Conservation (VT DEC). Therefore, the Board finds that, should a valid Wastewater System Permit be issued by the State, this would provide sufficient evidence that the Applicant conforms with the purpose statement of this Zoning District, as the proposed system is not likely to pollute or contaminate the gravel aquifer recharge area in Underhill Center.

ARTICLE III, GENERAL REGULATIONS

C. SECTION 3.2 – ACCESS

The Board upholds its previous findings under DRB Decision: DRB-17-16 regarding this section.

D. SECTION 3.3 – CONVERSION OR CHANGE OF USE

The Board upholds its previous findings under DRB Decision: DRB-17-16 regarding this section.

E. SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS

The Board upholds its previous findings under DRB Decision: DRB-17-16 regarding this section.

F. SECTION 3.11 – OUTDOOR LIGHTING

The Board upholds its previous findings under DRB Decision: DRB-17-16 regarding this section.

G. SECTION 3.13 – PARKING, LOADING & SERVICE AREAS

With the submission of his wastewater system design, the Applicant explicitly confirmed that the project will contain four, 3-bedroom dwelling units for a total of 12 bedrooms – a number assumed as part of the Board’s previous hearing (see DRB-17-16, Page 12, ¶ 5). With this confirmation, the Board finds that its previous request of eight (8) parking spaces, in addition to one (1) handicapped parking space, was a reasonable request.

Nevertheless, with this updated information, the Board finds that Applicant did not address the parking concerns outlined the Board’s previous decision – DRB-17-16. Therefore, the parking layout remains deficient for the following reasons:

- Tandem parking is not a recognized parking layout under this section (see § 3.13.A.1);
- The vehicular circulation patterns are likely to encroach upon the handicapped parking space, or vice versa; and
- The “snow stockpile area” is not an easily accessible location.

The Board upholds all of its other findings relating to this section, which are outlined in decision: DRB-17-16.

H. SECTION 3.14 – PERFORMANCE STANDARDS

The Board upholds its previous findings under DRB Decision: DRB-17-16 regarding this section.

I. SECTION 3.17 – SOURCE PROTECTION AREAS

The Board finds that the Applicant submitted sufficient evidence – the wastewater system design (Exhibit WWW) – demonstrating that it is possible for him to obtain a Wastewater System & Potable Water Supply Permit from the State of Vermont, Department of Environmental Conservation (VT DEC). As explained in its previous decision (DRB-17-16), the Board typically finds that a Wastewater System & Potable Water Supply Permit, or the submission of a wastewater system design plan, creates the presumption that the applicant will not contaminate the nearby soils, surface water and groundwater. Therefore, with the obtainment of a Wastewater Disposal and Water Supply Permit from the State of Vermont, the Board finds that the Applicant will conform with the requirements of this section and will unlikely adversely impact the active groundwater source protection area.

J. SECTION 3.18 – STEEP SLOPES

With the submission of the Applicant’s wastewater system design (Exhibit WWW) on a site plan with land contours, the Board has been able to confirm the specific areas of steep slopes (15-25%) and very steep slopes (>25%) that will be impacted. Specifically, the proposed building addition identified on the site plan (Exhibit WWW) will impact an area of very steep slopes. While this addition will impact very steep slopes, review of this impact is exempt under 3.18.B.1.e & 3.18.E, which allows for the construction of a building addition that, in total, does not increase the pre-existing building coverage of the lot within a steep or very steep slope area by more than 500 sq. ft., as existing on March 2, 2011. The Board finds that the area of the building addition that will impact very steep slopes is under 500 sq. ft.

On the other hand, the proposed wastewater system will impact steep slopes (15-25%), as depicted on the submitted wastewater design site plan (Exhibit WWW). In accordance with Section 3.18.D, the Board is to review the impact to steep slopes to ensure that the project conforms with the purposes outlined under Section 3.18.A. As testified by the Applicant, the wastewater system will not alter the slope, but rather, the system will be installed directly into the existing terrain without altering the slope. Therefore, the Board finds that the impact to steep slopes conforms with the requirements under Sections 3.18.D.1, 3.18.D.2 and 3.18.D.5, noting that Sections 3.18.D.3 and 3.18.D.4 do not apply. Specifically, there are no foreseen adverse impacts to the existing vegetation or drainage patterns that will result from the installation of the wastewater system (§ 3.18.D.1), and at the same time the site disturbance appears to be minimized to the extent possible given the size required by the system (§ 3.18.D.2). Lastly, the impact to steep slopes does not appear to significantly alter stormwater runoff and erosion; however, a standard condition of approval is for an applicant to adhere to the *Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control*.

K. SECTION 3.19 – SURFACE WATERS & WETLANDS

The Board finds that the Applicant submitted a wastewater system design that depicts the system ±113 ft. from the “top of slope” to south (see Exhibit WWW), as well as being ±157 ft. from the edge of Crane Brook (see Exhibit WWW), presumably the “top of bank.” The Applicant testified that the proposed system will be located ±70 ft. from the “top of slope” located to the southeast, which is not explicitly identified on the site plan (see Exhibit WWW). Nevertheless, the Board finds that the wastewater system satisfies the setback requirements from Crane Brook, whether measured from “top of slope” (50 ft. setback requirement) or “top of bank” (100 ft. setback requirement).

L. SECTION 3.22 – WATER SUPPLY & WASTEWATER SYSTEMS

The Board finds that the Applicant has submitted a wastewater system design that is intended to be submitted to the VT DEC for permitting. As explained in its previous decision, the Board largely relies on a wastewater system and potable water supply design plan or correspondence from the VT DEC as evidence that adequate wastewater capacity and water supply will be provided. Therefore, the Board finds the Applicant has satisfied the requirements of this section and expects the submitted design to obtain approval. If the project is not denied for other reasons, the Board will require, prior to the issuance of any building permit related to the project, that the applicant present a valid Water Supply and Waste Water Disposal permit from the authority having jurisdiction (AHJ).

ARTICLE IV, SPECIFIC USE STANDARDS

A. SECTION 4.12 – HOME BUSINESS (HOME OCCUPATION, HOME INDUSTRY)

The Board upholds its previous findings under DRB Decision: DRB-17-16 regarding this section.

ARTICLE V, DEVELOPMENT REVIEW

A. SECTION 5.1 – APPLICABILITY

The Board upholds its previous findings under DRB Decision: DRB-17-16 regarding this section.

B. SECTION 5.3 – SITE PLAN REVIEW

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

Section 5.3.B – Standards: The Board has considered the following standards, and comments about the following standards/requirements:

SECTION 5.3.B.1 – Existing Site Features: The Board finds that the submission of the wastewater system design site plan (Exhibit WWW) allows them to make updated findings regarding incomplete aspects of the project as it relates to this subsection. The Board can now confirm that the proposed project, which includes the addition to the single-family dwelling, renovation to the single-family dwelling, and the installation of the wastewater system, will not negatively impact steep slopes (Section 5.3.B.1.a.iii) (see Section 3.18 above); surface waters, wetlands, and associate buffers (Section 5.3.B.1.a.iv) (see Section 3.19 above); and special flood hazard areas under Article VI (Section 5.3.B.1.a.v). While drainage patterns have not been explicitly addressed, with the submission of the wastewater system design, the Board does not anticipate any negative impacts to drainage patterns for the reasons stated under Section 3.18 above.

Section 5.3.B.2 – Site Layout & Design: With the submission of the wastewater system design site plan (Exhibit WWW), the Board confirms that the proposed wastewater system will satisfy the buffer requirements for Crane Brook. In regards to the other aspects relating to this subsection, the Board upholds its previous findings under DRB Decision: DRB-17-16, specifically emphasizing the Board’s finding that the proposed project – a multi-family dwelling – would **NOT** reinforce the rural character of the district, as all of the properties in the Pine Ridge Road subdivision are single-family dwellings.

Section 5.3.B.3 – Vehicle Access: The Board upholds its previous findings under DRB Decision: DRB-17-16 regarding this section.

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

Section 5.3.B.5 – Site Circulation: The Board upholds its previous findings under DRB Decision: DRB-17-16, specifically emphasizing that it was dissatisfied with the vehicular circulation plan for the reasons stated under Section 3.13 in that decision (DRB-17-16).

Section 5.3.B.6 – Landscaping and Screening: The Board finds that the landscaping plan (unassigned exhibit) submitted as part of the Board’s reconsideration process better conforms with the “walk along” videos (Exhibits VV-Exhibit CCC) that were submitted as part of the Board’s original hearing process. While the submitted landscaping plan (unassigned exhibit) adheres to the requisite screening techniques under this subsection, the Board acknowledges that the plan may be indirectly impacted should the parking layout be altered to address the Board’s concerns under Section 3.13 above. Therefore, the Board is unable to make a definitive determination regarding this subsection until the parking issues are resolved in the event that reconfiguration of the parking area indirectly impacts the proposed landscaping.

Section 5.3.B.7 – Outdoor Lighting: The Board upholds its previous findings under DRB Decision: DRB-17-16 regarding this section.

Section 5.3.B.8 – Stormwater Management and Erosion Control: The Board upholds its previous findings under DRB Decision: DRB-17-16 regarding this section.

C. SECTION 5.4 – CONDITIONAL USE REVIEW

Section 5.4.A – Purpose: The Board finds that conditional use review is required because the applicant is proposing to convert a single-family dwelling, a permitted use under ULUDR Table

2.4.B.4 & 2.4.B.5, to a multi-family dwelling, a conditional use under ULUDR Table 2.4.C.11. The Board makes the following comments as they relate to the conditional use standards enumerated in this subsection:

Section 5.4.B – General Standards: The Board finds that the submitted wastewater system design gives the Board a better understanding of the Applicant’s project, thereby providing a more complete application to evaluate. The Board makes the following findings about the general standards based on the information provided:

Section 5.4.B.1 – The Capacity of Existing or Planned Community Services or Facilities: With the submission of the wastewater system design site plan (Exhibit WWW), the Board confirms that the proposed wastewater system will not adversely affect the soils, surface waters, and groundwater in the project’s vicinity. In regard to the other aspects relating to this subsection, The Board upholds its previous findings under DRB Decision: DRB-17-16.

Section 5.4.B.2 – The Character of the Area Affected: With the submission of the wastewater system design (Exhibit WWW), the Board makes the following updated findings regarding this subsection:

- The Board finds that the proposed project will satisfy the purpose statement of the Water Conservation District, which is to protect the important aquifer recharge area in Underhill Center (Table 2.4, § 2.4.A);

The Board upholds its previous findings stated in its previous decision: DRB-17-16, specifically emphasizing the following findings (see previous decision for more details):

- The Board's reliance on relevant policies and standards of the Underhill Town Plan, the specific standards under Section 5.4.D, as well as the definition of “character of the area” under Article XI.
 - As stated previously, the Board finds that the Pine Ridge Road subdivision is a distinct area/neighborhood, which is drastically different and more contained than Underhill Center and other areas/neighborhoods in the Water Conservation District.
 - While the lots accessed off of Pine Ridge Road are adjacent to Underhill Center, the development along Pine Ridge Road is separated by dense forestland and topography.
- In regard to the type, density and intensity of the project, the multi-family dwelling would be out of place in the Pine Ridge Road subdivision, as all of the development along this road are single-family dwellings.
- The narrowness of lot complicates potential mitigation measures needed to be implemented to shield the proposed project from the surrounding area and neighborhood.

Section 5.4.B.3 – Traffic on Roads and Highways in the Vicinity: The Board upholds its previous findings under DRB Decision: DRB-17-16 regarding this section.

Section 5.4.B.4 – Bylaws in Effect: Since the Board’s reconsideration meeting with the Applicant on August 6, 2018, questions have emerged as to whether the accessory dwelling in the Applicant’s single-family dwelling has been properly permitted by the Town, as no information relating to the accessory dwelling was discovered in the Town’s zoning file.

Additionally, the Board finds that the proposed project would need to be approved as a conditional use to conform with the 2014 *Underhill Unified Land Use & Development Regulations*.

Section 5.4.B.5 – The Utilization of Renewable Energy Resources: The Board upholds its previous findings under DRB Decision: DRB-17-16 regarding this section.

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

Section 5.4.D – Specific Standards: The Board finds that it may consider Subsections 5.4.D.1 through 5.4.D.4 as part of its application review process.

Section 5.4.D.1 – Conformance with the Town Plan: With the submission of the wastewater system design site plan (Exhibit WWW), the Board confirms that the proposed wastewater system will conform to the purpose statement of the Water Conservation zoning district. In regard to the other aspects relating to this subsection, the Board upholds its previous findings under DRB Decision: DRB-17-16.

Section 5.4.D.2 – Zoning District & Use Standards: With the submission of the wastewater system design site plan (Exhibit WWW), the Board confirms that the proposed wastewater system will conform to the setback requirements from Crane Brook and will not adversely impact the relevant steep slope. In regard to the other aspects relating to this subsection, the Board upholds its previous findings under DRB Decision: DRB-17-16.

Section 5.4.D.3 – Performance Standards: The Board upholds its previous findings under DRB Decision: DRB-17-16 regarding this section.

Section 5.4.D.4 – Legal Documentation: The Board upholds its previous findings under DRB Decision: DRB-17-16 regarding this section.

D. SECTION 5.5 – WAIVERS & VARIANCES

Section 5.5.A – Applications & Review Standards: The Board upholds its previous findings under DRB Decision: DRB-17-16 regarding this section.

ARTICLE VI, FLOOD HAZARD AREA REVIEW

The Board upholds its previous findings under DRB Decision: DRB-17-16 regarding this section.

III. WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS

Since the Board has not granted approval, no waivers, modifications or supplementations are to be granted. The Board finds that it does not have the jurisdiction to grant the requested waiver in regard to the driveway width.

IV. DECISION AND RATIONALE OF DENIAL

With the submission of the wastewater system design (Exhibit WWW), the Board finds that the application is more or less complete, as the necessary materials have been submitted for the Board to make a more informed decision about the application. The Board thoroughly reviewed all aspects of

the submitted wastewater system design as it relates to the conditional use review standards outlined in the 2014 *Underhill Unified Land Use & Development Regulations*, and continues to conclude that based on the evidence submitted and the above findings, the application to convert a single-family dwelling to a multi-family dwelling is should be, and is and hereby, DENIED by unanimous vote of the DRB.

For organization purposes, the Board has updated its rationale for denying the application directly below:

1. The Board previously found that the Applicant failed to satisfy numerous standards in the 2014 *Underhill Unified Land Use & Development Regulations*. With the submission of the wastewater system design, the Board was able to ensure that the Applicant conformed with some of the outstanding standards. However, the Board finds that the Applicant has still failed to satisfy the following standards for the stated reasons:
 - a. **ARTICLE III, SECTION 3.13 – PARKING, LOADING & SERVICE AREAS:**
 - i. The Board finds that Applicant failed to update the site plan to address the parking concerns. Therefore, the Board relies on the previously submitted site plan (Exhibit UU) for parking, which depicts four of the parking spaces failing to satisfy the “unobstructed access and maneuvering room” requirement enumerated under this section.
 - ii. Since the Applicant failed to update the site plan to address the parking concerns, the Board continues to find that vehicular circulation will likely encroach upon the handicapped parking space and vice versa.
 - iii. Since the Applicant failed to update the site plan to address the parking concerns, the Board continues to find that the proposed project fails to accommodate landscaping for at least 10% of the total parking area.
 - b. **ARTICLE V, SECTION 5.3.B.6 – SITE PLAN REVIEW, LANDSCAPING AND SCREENING:** In regard to landscaping, the Board is unable to make positive findings due to the indirect effects that are likely to result when resolving the parking area-related issues. Therefore, the Board is unable to determine that the requisite screening techniques will be implemented.
2. The Board continues to find that Pine Ridge Road is a distinct area contained to the subdivision itself. The creation of a multi-family dwelling along this road would be contrary to intended use of the subdivision, as well as being contrary to existing uses along the road – all single-family dwellings. Moreover, the Board finds that a multi-family dwelling within the subdivision is contrary to the type, density and intensity of development in the neighborhood. Due to the reasons stated above under § 5.4.B.2 of this decision (DRB-17-16(2)) and § 5.4.B.2 of its previous decision (DRB-17-16), the Board is unable to impose mitigation measures.
3. The Board finds the Applicant’s project is not supported by the Town Plan, which encourages denser, compact development in the traditional village center areas. The board finds the Pine Ridge Road neighborhood is distinct and separate from the Underhill Village Center district, as explained under Sections 3.4 and 5.4.D.1 of this decision (DRB-17-16(2)) and its previous decision (DRB-17-16).

NOTE #1: The Board originally found that the application was incomplete, as the Applicant failed to submit information requested in the Board’s February 15, 2018 memorandum. With the submission of the wastewater system design, request items 1, 4 and 5, which were not previously submitted have

been addressed. While request items 2 and 3 relating to erosion control and stormwater management have not been submitted, based on the information implied from the submitted site plan, the Board finds that adherence to the *Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control* would be a sufficient condition of approval had the application been approved in order to ensure reasonable erosion control and stormwater management techniques for before and after construction.

Dated at Underhill, Vermont this 27th day of September, 2019.

Charles Van Winkle, Chairman, 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 27 October 2019.