



# Town of Underhill

## Development Review Board

### Conditional Use Review Findings and Decision

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#### CONDITIONAL USE REVIEW APPLICATION BY PETER DUVAL TO CONVERT A SINGLE-FAMILY DWELLING WITH AN ATTACHED ACCESS DWELLING TO A FOUR UNIT, MULTI-FAMILY DWELLING

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

Docket No. DRB-17-16

**Decision:** Denied (see Section IV for More Details)

#### I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns a conditional use application for the conversion of a single-family dwelling with an attached accessory 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.

- A. On November 2, 2017, the applicant, Peter Duval, submitted hard copies of his conditional use review application to the Planning & Zoning Administrator. The applicant subsequently submitted digital copies of his application on November 4, 2017. Sometime between Monday, November 6, 2017 and Wednesday, November 15, 2017, the application was determined complete. A site visit was scheduled to begin at 8:30 AM on Sunday, December 3, 2017, and the hearing was scheduled to commence at 6:35 PM on Monday, December 4, 2017.
- B. On November 11, 2017, the Town's legislative body, the Selectboard, warned their first and second public hearings for the proposed zoning regulation amendments to the *Underhill Unified Land Use & Development Regulations*.
- C. On November 15, 2017, notice of the conditional use review hearing was mailed via United States certified mail, return receipt requested, to the following property owners adjoining the property subject to the application:
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. Demuyne & 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, VT 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

- D. During the week of November 12, 2018, notice of the public hearing for the proposed conditional use permit was posted at the following locations:
1. The Underhill Town Clerk's office;
  2. The Underhill Center Post Office; and
  3. The Underhill Flats Post Office.
- E. On November 18, 2017, the notice of public hearing was published in the *Burlington Free Press*.
- F. A site visit at the property location (25 Pine Ridge Road, Underhill Vermont) commenced at 8:30 AM on Sunday, December 3, 2017.
- G. Present at the site visit 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, Penny Miller
  6. Board Member, Stacey Turkos

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

7. Planning & Zoning Administrator, Andrew Strniste
  8. Applicant, Peter Duval (25 Pine Ridge Road, Underhill, VT 05489)
  9. Abutting Neighbor, Barbara Koier (15 Pine Ridge Road, Underhill, VT 05489)
  10. Abutting Neighbor, John Koier (15 Pine Ridge Road, Underhill, VT 05489)
  11. Abutting Neighbor, Marilyn O. Hardacre (26 Pine Ridge Road, Underhill, VT 05489)
  12. Abutting Neighbor, John D. Hardacre (26 Pine Ridge Road, Underhill, VT 05489)
  13. Abutting Neighbor, Cathy Leathersich (27 Pine Ridge Road, Underhill, VT 05489)
  14. Abutting Neighbor, David Demuynck (27 Pine Ridge Road, Underhill, VT 05489)
  15. Abutting Neighbor, Gregory M. Leech (29 Pleasant Valley Road, Underhill, VT 05489)
  16. Pine Ridge Resident, Chantal O'Connor (2 Pine Ridge Road, Underhill, VT 05489)
  17. Pine Ridge Resident, Thomas M. Costello (2 Pine Ridge Road, Underhill, VT 05489)
  18. Pine Ridge Resident, John McNamara (7 Pine Ridge Road, Underhill, VT 05489)
  19. Pine Ridge Resident, Heidi Duke (16 Pine Ridge Road, Underhill, VT 05489)
  20. Pine Ridge Resident, Geoff Duke (16 Pine Ridge Road, Underhill, VT 05489)
  21. Pine Ridge Resident, Leslie Dee (28 Pine Ridge Road, Underhill, VT 05489)
  22. Pine Ridge Resident, Thaddeus F. Gembczynski Jr. (28 Pine Ridge Road, Underhill, VT 05489)
  23. Pine Ridge Resident, Nancy Hall (31 Pine Ridge Road, Underhill, VT 05489)
  24. Pine Ridge Resident, Dianne Terry (34 Pine Ridge Road, Underhill, VT 05489)
  25. Pine Ridge Resident, Roy Towlen (38 Pine Ridge Road, Underhill, VT 05489)
- H. The conditional use review hearing commenced at 6:35 PM on December 4, 2017 at the Town of Underhill Town Hall, 12 Pleasant Valley Road in Underhill, Vermont.
- I. 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
7. Board Member, Stacey Turkos

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. Marilyn Hardacre, Abutting Neighbor (26 Pine Ridge Road, Underhill, VT)
4. John Hardacre, Abutting Neighbor (26 Pine Ridge Road, Underhill, VT)
5. David Demuynck, Abutting Neighbor (27 Pine Ridge Road, Underhill, VT)
6. Bethany Demuynck, Abutting Neighbor (27 Pine Ridge Road, Underhill, VT)
7. Cathy Leathersich, Abutting Neighbor (27 Pine Ridge Road, Underhill, VT)
8. Greg Leech, Abutting Neighbor (29 Pleasant Valley Road, Underhill, VT)
9. Amy Golodetz, Abutting Neighbor (29 Pleasant Valley Road, Underhill, VT)
10. Chantal O'Connor, Pine Ridge Resident (2 Pine Ridge Road, Underhill, VT)
11. Cathy McNamara, Pine Ridge Resident (7 Pine Ridge Road, Underhill, VT)
12. John McNamara, Pine Ridge Resident (7 Pine Ridge Road, Underhill, VT)
13. Heidi Duke, Pine Ridge Resident (16 Pine Ridge Road, Underhill, VT)
14. Jamie Duke, Pine Ridge Resident (16 Pine Ridge Road, Underhill, VT)
15. Geoff Duke, Pine Ridge Resident (16 Pine Ridge Road, Underhill, VT)
16. Leslie Dee, Pine Ridge Resident (28 Pine Ridge Road, Underhill, VT)
17. Thaddeus F. Gembczynski Jr., Pine Ridge Resident (28 Pine Ridge Road, Underhill, VT)
18. Nancy Hall, Pine Ridge Resident (31 Pine Ridge Road, Underhill, VT)
19. Dianne Terry, Pine Ridge Resident (34 Pine Ridge Road, Underhill, VT)
20. Steve Coddington, Pine Ridge Resident (34 Pine Ridge Road, Underhill, VT)
21. Susan May, Pine Ridge Resident (37 Pine Ridge Road, Underhill, VT)
22. Carol Truesdell, Pine Ridge Resident (38 Pine Ridge Road, Underhill, VT)
23. Roy Towlen, Pine Ridge Resident (38 Pine Ridge Road, Underhill, VT)
24. Scott Thomas, Underhill Resident (263 River Road, Underhill, VT)
25. Peter Duval, Applicant (25 Pine Ridge Road, Underhill, VT)

J. 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. Geoff Duke
3. Leslie Dee
4. John McNamera
5. David Demuynck
6. Nancy Hall
7. Cathy Leatherisch
8. John Koier

9. Chantal O'Connor
10. Marilyn Hardacre
11. Dianne Terry
12. Susan May
13. Jamie Duke
14. Heidi Duke

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

- Exhibit A - PR025 - Duval Conditional Use Staff Report
- Exhibit B - PR0025 Rules of Procedure - Conditional Use Review
- Exhibit C- Conditional Use & Site Plan Review Hearing Request Application
- Exhibit D - Site Plan Review Standards Checklist
- Exhibit E - Site Plan Review Standards Checklist Supplement
- Exhibit F - Conditional Use Review Standards Checklist
- Exhibit F Supp - Conditional Use Review Standards Checklist Supplement
- Exhibit G - Project Narrative
- Exhibit H - Certificate of Service
- Exhibit I - Maintenance Plan
- Exhibit J - Floor Plan Proposal
- Exhibit K - Supplemental Floor Plan Proposal
- Exhibit L - Lot Configuration Sketch
- Exhibit M - Site Plan of Existing Conditions
- Exhibit N - Zoomed In Site Plan of Existing Conditions
- Exhibit O - Site Plan of Proposed Project
- Exhibit P - Zoomed-In Site Plan of Proposed Project
- Exhibit Q - ANR Groundwater Source Protection Areas Map
- Exhibit R - ANR Slopes Map
- Exhibit S - ANR Streams & Waterbodies Map
- Exhibit T - ANR Floodplains Map
- Exhibit U - Proposed Site Plan with Labels
- Exhibit V - Zoomed-In Proposed Site Plan with Labels

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

- Exhibit W - Mt. Mansfield Modified Union School District Ability to Serve Letter
- Exhibit X - Thesis by Wendy Usrey Titled The Rental Next Door The Impact of Rental Proximity on Home Values
- Exhibit Y - Copy of the Pine Ridge Road and Evergreen Road Subdivision
- Exhibit Z - Act 250 Land Use Permit # 4C0377-1
- Exhibit AA - Copy of Map Illustrating Floodplains in Project Vicinity
- Exhibit BB - Petition of Opposition by Pine Ridge Road Neighborhood

L. Prior to the commencement of the evening's hearing, the applicant had requested a continuance, which was subsequently granted at the hearing, and scheduled for a date and time specified at the hearing (Section 5.2.B.3): 6:35 PM on Monday, February 5, 2018 at Underhill Town Hall at 12 Pleasant Valley Road, Underhill, Vermont.

M. The continued conditional use review hearing began at 6:35 PM on Monday, February 5, 2018 at

the Town of Underhill Town Hall, 12 Pleasant Valley Road, Underhill, Vermont.

N. Present at the subdivision amendment continued 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
7. Board Member, Stacey Turkos

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. Marilyn Hardacre, Abutting Neighbor (26 Pine Ridge Road, Underhill, VT)
4. John Hardacre, Abutting Neighbor (26 Pine Ridge Road, Underhill, VT)
5. David Demuynck, Abutting Neighbor (27 Pine Ridge Road, Underhill, VT)
6. Chantal O'Connor, Pine Ridge Resident (2 Pine Ridge Road, Underhill, VT)
7. Tom Costello, Pine Ridge Resident (2 Pine Ridge Road, Underhill, VT)
8. Cathy McNamara, Pine Ridge Resident (7 Pine Ridge Road, Underhill, VT)
9. John McNamara, Pine Ridge Resident (7 Pine Ridge Road, Underhill, VT)
10. Heidi Duke, Pine Ridge Resident (16 Pine Ridge Road, Underhill, VT)
11. Jamie Duke, Pine Ridge Resident (16 Pine Ridge Road, Underhill, VT)
12. Geoff Duke, Pine Ridge Resident (16 Pine Ridge Road, Underhill, VT)
13. Leslie Dee, Pine Ridge Resident (28 Pine Ridge Road, Underhill, VT)
14. Thaddeus F. Gembczynski Jr., Pine Ridge Resident (28 Pine Ridge Road, Underhill, VT)
15. Elizabeth Gembczynski, Pine Ridge Resident (28 Pine Ridge Road, Underhill, VT)
16. Kathleen Gembczynski, Pine Ridge Resident (28 Pine Ridge Road, Underhill, VT)
17. Nancy Hall, Pine Ridge Resident (31 Pine Ridge Road, Underhill, VT)
18. Dianne Terry, Pine Ridge Resident (34 Pine Ridge Road, Underhill, VT)
19. Steve Coddington, Pine Ridge Resident (34 Pine Ridge Road, Underhill, VT)
20. Susan May, Pine Ridge Resident (37 Pine Ridge Road, Underhill, VT)
21. Thomas May, Pine Ridge Resident (37 Pine Ridge Road, Underhill, VT)
22. Roy Towlen, Pine Ridge Resident (38 Pine Ridge Road, Underhill, VT)
23. 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. Leslie Dee
3. John McNamara
4. Chantal O'Connor
5. Nancy Hall
6. Marilyn Hardacre

7. Tom Costello
8. Roy Towlen
9. Thomas May
10. Susan May
11. Jamie Duke
12. John Koier

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

Exhibit DDD - PR025 - Duval Conditional Use Supplemental Staff Report.  
Exhibit CC - Email Correspondence from Cathy McNamara Regarding Act 250 Permit  
Exhibit DD - Email Correspondence from Rachel Lomonaco (ANR) Regarding Act 250 Permit

Q. Prior to the commencement of the evening's hearing, the applicant had again requested a continuance, which was subsequently granted at the hearing, and scheduled for a date and time specified at the hearing (Section 5.2.B.3): 6:35 PM on Monday, May 7, 2018 at Underhill Town Hall at 12 Pleasant Valley Road, Underhill, Vermont. Prior to the end of the hearing, Chair Van Winkle advised that the Board would close the oral testimony portion of the hearing at the May 7, 2018 hearing; however, would accommodate those participants that were unable to attend the May 7, 2018 continued hearing by leaving open the evidentiary portion of the hearing, thereby letting all interested parties, including the applicant, until May 21, 2018 to submit written evidence and testimony into the record.

R. Between February 5, 2018 and March 6, 2018, the Planning & Zoning Administrator and Development Review Board became aware of Vermont State statute 24 V.S.A. § 4449(d), which requires all applications submitted and received after the legislative body's (the Selectboard) first public hearing warning date (November 11, 2017) for proposed zoning regulation amendments to be reviewed under the zoning regulations in effect at the time of the application and the proposed revised zoning regulations. The statute requires the more strict regulations be applied. To note, the Underhill residents approved the proposed zoning regulations on March 6, 2018.

S. Thereafter, Planning & Zoning Staff reached out to the applicant advising that the application could potentially be subject to review under the 2018 *Underhill Unified Land Use & Development Regulations*.

T. The continued conditional use review hearing began at 6:35 PM on Monday, May 7, 2018 at the Town of Underhill Town Hall, 12 Pleasant Valley Road, Underhill, Vermont.

U. Present at the subdivision amendment continued 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
7. Board Member, Stacey Turkos

Others present at the hearing were:

1. Barbara Koier, Abutting Neighbor (15 Pine Ridge Road, Underhill, VT)
2. Cathy McNamara, Pine Ridge Resident (7 Pine Ridge Road, Underhill, VT)
3. John McNamara, Pine Ridge Resident (7 Pine Ridge Road, Underhill, VT)
4. Heidi Duke, Pine Ridge Resident (16 Pine Ridge Road, Underhill, VT)
5. Jamie Duke, Pine Ridge Resident (16 Pine Ridge Road, Underhill, VT)
6. Leslie Dee, Pine Ridge Resident (28 Pine Ridge Road, Underhill, VT)
7. Thaddeus F. Gembczynski Jr., Pine Ridge Resident (28 Pine Ridge Road, Underhill, VT)
8. Elizabeth Gembczynski, Pine Ridge Resident (28 Pine Ridge Road, Underhill, VT)
9. Kathleen Gembczynski, Pine Ridge Resident (28 Pine Ridge Road, Underhill, VT)
10. Nancy Hall, Pine Ridge Resident (31 Pine Ridge Road, Underhill, VT)
11. Dianne Terry, Pine Ridge Resident (34 Pine Ridge Road, Underhill, VT)
12. Steve Codding, Pine Ridge Resident (34 Pine Ridge Road, Underhill, VT)
13. Yuri Britten, Attendee (13 Bereand Lane, Jericho, VT)
14. Peter Duval, Applicant (25 Pine Ridge Road, Underhill, VT)
15. Gunner McCain, Applicant's Consultant (93 S. Main St., Waterbury, VT)

V. 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. Dianne Terry
3. Cathy McNamara
4. John McNamara
5. Jamie Duke
6. Heidi Duke
7. Leslie Dee
8. Nancy Hall
9. Steve Codding

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

Exhibit EE - PR025 - Conditional Use Continuance Request Materials  
Exhibit FF - Duval Recommended Changes to February 5, 2018 Minutes  
Exhibit GG - PR025 - 24 V.S.A. § 4449(d)  
Exhibit HH - Email from John Koier Regarding Application

X. Prior to the conclusion of the evening's hearing, Chair Van Winkle reminded all parties that the Board would leave open the evidentiary portion of the hearing until May 21, 2018 to allow those participants that were unable to attend the evening's continued hearing to submit written evidence and testimony into the record.

Y. On May 21, 2018, during the scheduled "Old Business" portion of the agenda (scheduled for 6:40 PM at Underhill Town Hall, 12 Pleasant Valley Road, Underhill, Vermont), the Board provided clarity on which set of the zoning regulations applied in relation to 24 V.S.A. § 4449(d), and then asked all other written testimony and evidence to be submitted into the record. The following exhibits were submitted to the Development Review Board:

Exhibit II - Duval Correspondence Re 24 VSA 4449(d)  
Exhibit JJ - Memorandum to DRB Regarding PR025  
Exhibit KK - Duval-sh068-Phase4-Elev-050718  
Exhibit LL - 38019 - Duval Memo - 20180504  
Exhibit MM - Phases of Development  
Exhibit NN - Gooseneck Wall Light  
Exhibit OO - LED\_bollard\_BR840\_series  
Exhibit PP - Step Light G5\_6\_7\_pdf  
Exhibit QQ - PR025 20180521 Motion to Stay Proceedings  
Exhibit RR - PR025 201805211600 Narrative  
Exhibit SS - PR025 201805211600 Presentation with notes  
Exhibit TT - PR025 201805211600 Presentation  
Exhibit UU - 38019 - Duval Site Plan - 20180507  
Exhibit VV - Walk Along Pine Ridge -- KR014-Connell  
Exhibit WW - Walk Along Pine Ridge -- PR007-McNamara  
Exhibit XX - Walk Along Pine Ridge -- PR027-Leathersich  
Exhibit YY - Walk Along Pine Ridge -- PV001-Rade  
Exhibit ZZ - Walk Along Pine Ridge -- PV029-Leech-Golodetz  
Exhibit AAA - Walk Along Pine Ridge -- SH068-Hamill  
Exhibit BBB - Walk Along Pine Ridge Landscape Only  
Exhibit CCC - Walk Along Pine Ridge Phase 4

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

## II. FACTUAL FINDINGS

The Minutes of the December 4, 2017, February 5, 2018 and May 21, 2018 meetings, written by Andrew Strniste, as well as Minutes of the May 7, 2018 meeting, written by the Board's Clerk, Matt Chapek, are incorporated by reference into this decision. Please refer to the Minutes for a summary of the testimony.

Under Vermont State statute 24 V.S.A. § 4449(d), zoning permit applications, including development review board applications, submitted after the Town's legislative body's warning for the first public hearing to present to the public proposed amendments to a set of zoning regulations shall be reviewed under both the existing regulations and the proposed regulations. In other words, after November 11, 2017, the date of the Underhill Selectboard's first publicly warned hearing for the proposed amendments to the 2014 *Underhill Unified Land Use & Development Regulations*, all zoning permit applications, including development review board applications, are to be reviewed under the 2014 *Underhill Unified Land Use & Development Regulations*, as well as the proposed 2018 *Underhill Unified Land Use & Development Regulations*.

In reviewing the pertinent correspondence between the applicant and the Planning & Zoning Administrator, which was captured in a memorandum sent to the applicant on March 26, 2018 (see Exhibit GG), the Board notes that there is sufficient evidence to suggest that the application should be reviewed under the 2018 *Underhill Unified Land Use & Development*. While the applicant suggests that the date the application was submitted (November 2, 2017) is the date the application is considered "filed," thus complete, the Board recognizes that the Planning & Zoning Administrator requested the applicant to submit more information, as authorized under Section 5.2.A.1.e of the Town's *Unified Land Use & Development Regulation*, and likely did not consider the application complete until after

November 11, 2017 – likely November 14, 2017 or November 15, 2017.

In the interest of fairness to the applicant, the Board finds the 2014 *Underhill Unified Land Use & Development Regulations* apply. The Board notes had this application been reviewed under the 2018 *Underhill Unified Land Use & Development Regulations*, the proposed multi-family dwelling use would be nonconforming, as multi-family dwelling uses were eliminated in the underlying, applicable zoning district.

Therefore, 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:

**PROJECT DESCRIPTION**

The applicant, Peter Duval, is co-owner of the property located at 25 Pine Ridge Road. The applicant is proposing to convert the existing single-family dwelling with an attached accessory dwelling (located in the basement) to a four-unit, multi-family dwelling.

As outlined in Exhibit G, the applicant originally described his project as:

“A multi-generational, mixed-use, flexible-configuration residence and barn, with cascaded use of thermal energy, fortified for storms and natural disasters of the future. All descriptions of site work and buildings in this proposal are a presentative expression of the program, not a predetermined outcome of the anticipated design process.”

The description of the program is also outline in Exhibit G, which was submitted with the application materials for the December 4, 2017 hearing. The Board acknowledges the forward thinking of the applicant’s proposal and recognizes that he has since altered his application to conform with application requests and accommodate concerns. While the Board appreciates the forward thinking of the project proposal, the application still must be reviewed under the applicable zoning regulations, and therefore, the proposed project must be reviewed as if it were the more familiar multi-family dwelling use designation.

Since the proposed project involves the conversion of a single-family dwelling with an attached accessory dwelling (a permitted use as depicted under Article II, Table 2.1) to multi-family dwelling use designation (a conditional use as depicted under Article II, Table 2.1), conditional use approval by this Board is required. The applicant has advised that the proposed project will be constructed in four phases:

<u>Phase</u>	<u>Descriptions</u>	<u>Year of Completion</u>
0	Renovation	2019
1	Build-up	2020
2A	South Addition	2025
2B	West Addition	2022
3	Breezeway	2030
4	Silo and Knoll	2030

\*See Exhibit SS, Pages 55 & 56

The subject property is located at 25 Pine Ridge Road (Pine Ridge Road), which is in the Water Conservation District as defined in Article II, Table 2.5.

**A. ARTICLE II, TABLE 2.4 – WATER CONSERVATION DISTRICT**

The Board finds that the existing structure with proposed addition subject to this application, and as depicted on the site plan (Exhibit UU), meet the minimum dimensional requirements, specifically pertaining to setbacks and frontage. The existing use, a single-family dwelling with an attached accessory dwelling, is a permitted use (ULUDR Table §§ 2.4.B.4 & 2.4.B.5), and that the proposed use, a multi-family dwelling, is a conditional use (ULUDR Table § 2.4.C.11), and therefore, the conversion of use requires conditional use approval from this Board under Section 3.3.A.3.

The Board finds that the applicant did not submit sufficient factual evidence demonstrating that he will be able to attain a Wastewater System & Potable Water Supply Permit from the State of Vermont, Department of Environmental Conservation. Since the applicant failed to submit a wastewater system design plan, the Board cannot confirm that the applicant's project will conform to the purpose statement of the Water Conservation District, which "is to protect the important gravel aquifer recharge area in Underhill Center." See Section 3.22 for more details.

**ARTICLE III, GENERAL REGULATIONS**

**C. SECTION 3.2 – ACCESS**

The Board finds that had the conditional use review application been approved, the applicant would have been required to obtain an access permit from the Underhill Selectboard. The applicant has informed the Board that he is only requesting one waiver: the width of the driveway being reduced from 20 feet to 12 feet, which is the jurisdiction of the Selectboard. As proposed, the Board finds that the proposed driveway and access point satisfy the requirements of the 2014 *Underhill Unified Land Use & Development Regulations*.

**D. SECTION 3.3 – CONVERSION OR CHANGE OF USE**

The Board finds that conditional use review approval is required per Section 3.3.A.3 since the applicant proposes to convert a single-family dwelling with an attached accessory dwelling, permitted uses 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.

**E. SECTION 3.4 – EQUAL TREATMENT OF HOUSING**

The Board finds that the applicant relies on this section in Exhibit SS, Page 51, to argue that the Board should not deny his project based on the type of housing being proposed, specifically relying on Section 3.4.A.4, which states:

A. In accordance with the Act [§ 4412(1)], these regulations shall not have the effect of excluding the following from the Town of Underhill: (4) multi-family dwellings, consisting of three or more dwelling units in a structure.

The Board finds that this section requires the inclusivity of multi-family housing. Since April 2017, the Board has approved two multi-family dwelling projects:

1. DRB Docket #: DRB-17-09 – A mixed-use building containing three dwelling units and office space (413 Vermont Route 15, Underhill, Vermont), and
2. DRB Docket #: DRB-17-06 – A mixed-use building containing three dwelling units and commercial space (1 Pleasant Valley Road, Underhill, Vermont).
  - a. Note: the applicant for this project subsequently submitted a variance request application to convert the commercial space to a fourth dwelling unit under the 2018 *Underhill Unified Land Use & Development Regulations*; however, the

proposed project was denied, and allowed to keep the building as permitted under DRB-17-06 or convert a structure to entirely a three-unit, multi-family dwelling.

The Board finds that these proposals were located within the Village Centers, thus satisfying stated goals in the *Underhill Town Plan* focusing on centering multi-family/group living facilities in the Village Centers:

- Chapter 3 (Page 17 – Context): “The goal of land use planning in Underhill is to create a unified development plan for the Town that preserves its rural character by encouraging denser, compact development and economic opportunities in traditional village center areas. . . .”
- Section 3.5 (Page 25 - Policy): “The Water Conservation zoning district purpose definition should reflect the geologic reason for creation of the district, the traditional uses within the district, and also provide guidance for future development within the zoning district.”
- In regard to increasing the affordable housing stock for those of low and moderate incomes, Section 7.3 (Page 47 – Strategy): “Provide for greater density in areas designated as village centers by encouraging duplexes and multi-family dwellings.”
- Section 7.3 (Page 47 – Strategy): “Encourage multi-generational, multi-income and senior housing in the village centers.”

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

The Board finds that the applicant is proposing one principal use – a four-unit, multi-family dwelling – to be located on the lot, thus satisfying the requirements of Section 3.7.A. Additionally, the applicant has not asked for any district dimensional waivers, as allowed under Section 3.7.E.

The property satisfies the frontage requirement of 300 feet, as the frontage for the subject property is ±304 feet. Assuming completion, the proposed structure would be ~77 feet from the north, side property line; ~86 feet from the west, side property line; ~98 feet from the east, side property line; and greater than 100 feet from the south property; therefore, meeting the setback requirements of 30 feet from the front property line and 50 feet from the side and rear property lines. Lastly, the proposed structure is located over 300 feet to the north from an unnamed brook and 650 feet to the north from Brown’s River, thus satisfying the requirements for unnamed brooks and named rivers (see Section 3.19 for additional detail).

**G. SECTION 3.11 – OUTDOOR LIGHTING**

The Board finds that the applicant submitted supporting documentation (Exhibits NN, OO & PP) illustrating that he would satisfy the outdoor lighting requirements under this section, which conforms with the Board’s desire that all lighting shall be downward facing, shielded lighting, installed with motion sensors, not exceeding 1800 lumens each (~100 watt incandescent bulb) and have no objectional spillover light to adjacent properties.

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

The Board finds that the applicant has proposed four (4) tandem parking spaces, one (1) single parking space and one (1) handicapped parking space for the 4-unit project. Although the 2014 *Underhill Unified Land Use & Development Regulations* requires a minimum of six (6) parking spaces (3 spaces per 2 dwelling units), the Board requested a minimum of eight (8) parking spaces in addition to one (1) handicapped parking space in its letter of February 15, 2018 - along with unit outlines/locations on the site plan indicating number of bedrooms per unit.

While the Board acknowledges that the intent of tandem parking space design is commendable in minimizing impervious surfaces and parking sprawl, it finds the proposed parking layout which includes tandem parking in the majority of its parking spaces as unacceptable for several reasons:

The Board regards tandem parking as a more typical urban or village center practice and not one that is realistically to be followed voluntarily in a rural residential setting. It has the potential to encourage multiple vehicles to be parked along the roadway in violation of Section 3.13.a.

The Board finds that tandem parking design is not recognized in the *Underhill Unified Land Use & Development Regulations* and fails to meet the maneuverability requirement of Section 3.13.A.1, which states:

“All required spaces shall have a minimum width of nine feet, a minimum length of 18 feet, unobstructed access and maneuvering room, and a gravel or paved surface sufficient for year-round use.”

Under Section 5.4.D, the Board may consider use standards and “impose conditions as necessary to reduce or mitigate any identified adverse impacts of a proposed development.” Although the applicant verbally testified in a previous hearing that the proposed multi-family project would contain 12 bedrooms, there is no supporting documentation illustrating such, and therefore, the Board is unable to evaluate if the depicted number of parking spaces is adequate.

The Board finds that vehicular circulation will likely encroach upon the handicapped parking space and vice versa, as the corner of the handicapped space is between 11 and 12 feet from the edge of the driveway.

The Board notes that the excess snow removal area, identified on the site plan (Exhibit UU) as “snow stockpile area” is in an area that is not easily accessible, as it is located behind the screened composting area and parking spaces.

The Board finds that the applicant has satisfied the other requirements of this section, such as: providing a bicycle rack. While the applicant does not propose to screen the parking area by the way of fencing or hedging, he has met the intent of this section with the implementation of the berm and trees.

The Board finds that the Section 3.13.C, pertaining to waivers of on-site parking requirements, does not apply.

**I. SECTION 3.14 – PERFORMANCE STANDARDS**

The Board finds that the applicant did not submit the requisite information to support that he will not be in violation of the regulations enumerated in this Section; however, the Board finds that the proposed use, a multi-family dwelling, is unlikely to create or result in any of the situations under Section 3.14.B. The Board finds that the Zoning Administrator has the authority to take enforcement action should one of the situations under this Section have occurred.

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

The Board finds that the proposed project location is within an active groundwater source protection area, and as a result, the applicant is required to satisfy Section 3.17.B. The Board finds

that the attainment of a State of Vermont, Department of Environmental Conservation 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. The applicant has failed to submit a Wastewater System & Potable Water Supply Permit or a wastewater system design plan, and therefore, the Board is unable to verify (specifically in reference to Section 3.17.B.1) that the proposed project will not have an adverse impact to the active groundwater source protection area.

**K. SECTION 3.18 – STEEP SLOPES**

The Board finds that there are areas of steep slopes (15-25%) or very steep slopes (>25%) on the property under consideration; however, the existing structure with the proposed addition will not impact steep slopes. However, the site plan (Exhibit UU) depicts that the “approximate proposed leach field area” is located on a steep slope – between 16% and 18% (eight/nine feet in elevation over a linear length of 50 feet). Additionally, the Board expresses reservations with this part of the site plan, as the area immediately adjacent to the “approximate proposed leach field area” advised that the slope is to be verified with on-site mapping. According to slope information provided by the Agency of Natural Resources (Exhibit R), there is convincing evidence that the “approximate proposed leach field area” is located in an area of very steep slopes, where septic systems are prohibited as stated under Section 3.18.E.

Assuming the proposed leach field is an area of steep slopes, under Section 3.18.D, septic systems are to be sited to minimize site disturbance, in conformance with the standards enumerated therein. The Board finds that the applicant has not submitted the requisite information to evaluate that the “existing vegetation and drainage materials will be maintained to the maximum extent physically feasible to avoid stream alterations and relocations, and increased stormwater runoff due to vegetation removal, slope disturbance, re-contouring or site compaction.” Also, the Board is unable to determine that no new drainageways will be created thus satisfying the requirements under Section 3.18.D.1.

Since the applicant has designated the area as approximate, determining that the wastewater system will satisfy the requirements of this section is not feasible with the information presented. Assuming the “approximate proposed leach field area” will remain as shown on the site plan, the area will be within the east, side yard setback, thus not satisfying the requirements of Section 3.18.D.2.b. The applicant has not acknowledged the other requirements under Section 3.18.D.2.b, though the Board finds that those requirements are more related to installation than review.

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

The Board finds that Brown’s River and unnamed brook are located on the property – according to the Agency of Natural Resource’s website (Exhibit S). The existing principal structure is located over 300 feet to the north from the Crane Brook (noting that Staff had incorrectly labeled the stream as an unnamed brook) and over 650 feet to the north from Brown’s River. The proposed additions to the existing structure will not encroach upon these setbacks.

However, the Board is unable to say with certainty that the “approximate proposed leach field area” will meet the setback requirements from Crane Brook under Section 3.19.D.4, as the brook is not identified on the site plan (Exhibit UU). Since Crane Brook is an area considered a Zone A Flood Hazard Area (Exhibit T), the leach field must be sited at least 100 feet from the top of the bank (Section 3.19.D.1). Note, the top of the bank is also not identified on the site plan. Due to the lack of information submitted about the wastewater system, as well as the failure to illustrate Crane Brook on the site plan, the Board is unable to determine if mitigation measures need to be

taken under Section 3.19.F.

**M. SECTION 3.22 – WATER SUPPLY & WASTEWATER SYSTEMS**

In most applications presented to the Board, either the Wastewater System & Potable Water Supply system has been designed or the permitting process will have started with the anticipation of submitting a permit application to the State of Vermont, Department of Environmental Conservation. In some applications, the obtainment of a Wastewater System & Potable Water Supply Permit is not required, which is usually acknowledged by some form of correspondence from the Department of Environmental Conservation.

The Board largely relies on a wastewater system and potable water supply design plan or correspondence from the Department of Environmental Conservation as evidence that adequate wastewater capacity and water supply will be provided. In the subject application, the applicant has failed to present a wastewater system & potable water supply design plan, nor submitted any correspondence from the Department of Environmental Conservation.

Section 3.22.A states:

“No building or structure intended for human occupancy shall be erected, altered or converted to another use unless adequate water supply and wastewater disposal systems are provided in compliance with all applicable municipal and state regulations.”

The Board recognizes that the State retains jurisdiction of the Wastewater System & Potable Water Supply permitting process; however, the lack of design prevents the Board from determining if the systems will meet the requirements of the Town’s regulations (e.g. setbacks). Additionally, the applicant has refused to identify on the floorplans (Exhibit SS, Pages 58-60) the number of bedrooms that will be contained in the completed multi-family dwelling. While the applicant has advised during various hearings that there will be 12 bedrooms, this assertion is unsubstantiated in the exhibits provided. The Board finds that convincing evidence submitted by the applicant and the engineer has not been presented attesting to the adequacy of the wastewater and water capacity since a finalized project (specifically the unit outline with bedroom allocation) and a wastewater system design plan have not been achieved at this time.

Both the applicant (Exhibit SS, Pages 13-17) and the engineer (Exhibit LL) attest that there is sufficient soil capacity to support an on-site leach field to serve the proposed four-unit project. However, the Board finds – specifically in regards to the engineer’s conclusions – that these conclusions are based on a document and resource review and constitute a preliminary determination only, as stated in his memorandum. The applicant asserts that the soils are excellent – advising that the soils are Adams and Windsor deep loamy sand (AdD). The board acknowledges that the Adams and Windsor (AdD) soil types are typically well drained sands with excellent characteristics for on-site wastewater disposal; however, the “D” attribute indicates a land slope of 12% to 30% to fall within the jurisdiction of steep slopes section outlined in the UULDR. The board finds insufficient evidence has been submitted in order to make a determination as to whether or not the area of development requires conformance with the steep slope criteria of the UULDR. The board is unable to conclude with positive findings with regards to the adequacy of the site to accommodate waste water disposal.

**ARTICLE IV, SPECIFIC USE STANDARDS**

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

During the review of the application, the applicant alluded to home businesses being present within the proposed buildings. The applicant has since abandoned this idea and the proposal no longer contains any home business (Exhibit RR, Page 8).

**ARTICLE V, DEVELOPMENT REVIEW**

**A. SECTION 5.1 – APPLICABILITY**

The Board finds that Conditional Use Review is required, since the applicant is proposing to convert a single-family dwelling with an attached accessory dwelling, permitted uses 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. As part of Conditional Use Review under Section 5.4, Site Plan Review is also required under Section 5.4.C.

**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 applicant submitted an adequate site plan depicting the proposed project. As discussed under Sections 3.18, 3.19 and 3.22 above, there are concerns about the proposed location of the leach field since parts of the project remain conceptual in nature (i.e. the lack of a definitive unit outline and lack of wastewater system design). Nevertheless, the existing site features enumerated in Section 5.3.B.1.a are not addressed – the most important being drainage patterns (Section 5.3.B.1.a.i), areas of steep and very steep slope (Section 5.3.B.1.a.iii); surface waters, wetlands, and associated buffers (Section 5.3.B.1.a.iv); and special flood hazard areas under Article VI (Section 5.3.B.1.a.v). The board finds that insufficient evidence has been submitted to make positive findings under section 5.3.B.1.b.

Section 5.3.B.2 – Site Layout & Design: The Board finds that the existing structure with the proposed additions (as depicted in Exhibits II – Exhibits CCC), as it relates to scale, setbacks, and height conforms with the general standards and Section 5.3.B.2.b. The applicant has proposed a structure that, when completed, would be of similar scale to those single-family dwellings along Pine Ridge Road, and satisfies the setback and height requirements of the Water Conservation District.

In regards to intensity, the Board finds that the proposed four-unit, multi-family dwelling does not conform with Section 5.3.B.2.b, as ~~the~~ a multi-family dwelling in Pine Ridge Road subdivision, a distinct area separate from Underhill Center, would **NOT** reinforce the rural character of the district. The Board notes that all of the lots in the Pine Ridge Road subdivision are single-family dwellings. The Board is unable to determine if the buffering requirements have been satisfied for the wastewater system. See Section 5.4.B.2 below for more detail.

Section 5.3.B.3 – Vehicle Access: The Board finds that the vehicular access point is existing. This Board typically defers to the Selectboard in regards to access permitting. See Section 3.2 above for additional information.

Section 5.3.B.4 – Parking, Loading & Service Areas: See Section 3.13 above for information regarding parking. The Board finds that the applicant has advised that trash storage will be

located inside the building (Exhibit RR, Page 8).

Section 5.3.B.5 – Site Circulation: The Board finds that the applicant has provided an exceptional pedestrian circulation plan, as residents have multiple means of accessing various parts of the dwelling. However, the Board is dissatisfied with the vehicular circulation plan for the reasons stated under Section 3.13 above.

Section 5.3.B.6 – Landscaping and Screening: The Board finds that the applicant has presented a site plan (Exhibit UU) that is inconsistent with the “walk along” videos (Exhibit VV – Exhibit CCC). The landscaping in the “walk along” videos contain a large number trees in the front yard setback (along Pine Ridge Road) that were not evidenced during the site plan on Sunday, December 3, 2017. In relation to the site plan (Exhibit UU), the applicant is proposing 15 trees – four (4) along the east side of the driveway and 11 along the west side property line. Therefore, the Board is unable to determine that the requisite screening techniques will be implemented to satisfy the requirements under this subsection and Section 5.3.B.6.

Section 5.3.B.7 – Outdoor Lighting: See Section 3.11 above for information regarding outdoor lighting requirements.

Section 5.3.B.8 – Stormwater Management and Erosion Control: The Board finds that the applicant was anticipating taking erosion control measures to minimize the project’s potential impact on erosion (Exhibit RR, Pages 8). The Board finds that the applicant did not submit sufficient information pertaining to stormwater management; however, the Board typically finds that the applicants shall conform to, and utilize the, Vermont DEC Low Risks Site Handbook for Erosion Prevention and Sediment Control.

#### 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 with an attached accessory dwelling, permitted uses 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: Based on the incomplete/ insufficient information provided, the Board finds that it is unable to imposed conditions herein mitigating potential undue adverse effects, largely because of the unanswered questions that remain about the application. The Board makes the following comments about the general standards based on the information provided:

Section 5.4.B.1 – The Capacity of Existing or Planned Community Services or Facilities: The Board finds that the proposed project will not create an undue adverse impact on the Mt. Mansfield Modified Union School District (Exhibit W), and unlikely to cause an undue adverse impact on the Underhill-Jericho Fire Department. The Board notes that applicant has not provided a wastewater system plan design, and therefore, unable to confirm that the proposed project will not adversely affect the soils, surface waters, and groundwater in the vicinity (see Section 5.4.B.2 below and Section 3.22 above for more information).

Section 5.4.B.2 – The Character of the Area Affected: The Board finds that they are to evaluate the proposed project’s location, scale, type, density, and intensity “in relation to the character of the area affected, as defined by the zoning district purpose statements and specifically stated

and relevant policies and standards of the Underhill Town Plan.”

The Board finds that the applicable zoning district pertaining to the subject application is the Water Conservation District, which has the following purpose statement:

“The purpose of the Water Conservation District is protecting the important gravel aquifer recharge area in Underhill Center.” (Table 2.4, § 2.4.A)

The applicant contends that the Board is constrained to the Water Conservation District’s purpose statement only when reviewing the application under this subsection. The Board disagrees. However, should the Board review the application in relation to the Water Conservation District’s purpose statement, the Board finds that a wastewater system design plan has not been provided demonstrating that a wastewater system is possible that will not pollute the important gravel aquifer recharge area in Underhill Center (discussed in more detail under Section 3.22 above).

As stated above, the Board finds that the Water Conservation District’s purpose statement does not help the Board in evaluating if proposed development conforms to the scale, type, density and intensity in relation to the character of the area affected. Therefore, the Board turns to relevant policies and standards of the Underhill Town Plan as well as the specific standards under Section 5.4.D below. In addition, in evaluating the character of the area, the definition of “character of the area” under Article XI states:

“For purposes of these regulations, the “character of the area” or character of a neighborhood is the planned type, density and pattern of development for a particular area or neighborhood, as defined by zoning district purpose statements and clearly stated goals, policies, and objects of the Underhill Town Plan that are specific to that area and/or the physical circumstances of development. “

Since the Board finds that the purpose statement of the Water Conservation District does not provide the guidance needed to help evaluate the project under this subsection, the Board turns to the proposed development in a particular area or neighborhood (as provided in the definition above). The Board finds that the Pine Ridge Road subdivision to be a distinct area/neighborhood, drastically different and more contained than Underhill Center and other areas/neighborhoods in the Water Conservation District. The entirety of the Pine Ridge Road subdivision (with the inclusion of Evergreen Road) was created in the late 1970s/early 1980s as one subdivision under Act 250 Land Use Permit #: 4C0377-1 (Exhibit Z). As evidenced during the site visit, the lots accessed off of Pine Ridge Road may be adjacent to Underhill Center, but is separated by dense forestland, and topography. As a result, the Board finds that the Pine Ridge Road area to be its own distinct area within the Water Conservation District.

As initially proposed, the project’s scale was out place with the character of the area; however, the Board finds that the applicant had reduced the building mass from what was originally proposed (see Exhibits J & K) to what is currently proposed (see Exhibits II – CCC). The current revised building mass may be of a scale that conforms with the Pine Ridge Road neighborhood.

In regard to the type, density and intensity of project, the Board finds that the multi-family dwelling would be out of place on Pine Ridge Road. All of the lots accessed off of Pine Ridge

Road contain single-family dwellings. Moreover, while the Board understands the Act 250 Land Use Permit does not have any weight as part of this review, the permit shows that there was an overriding intent for the lots within the Pine Ridge Road and Evergreen Road Subdivisions to contain single-family dwelling – understanding the Act 250 process there is an opportunity to apply for approval that may allow landowners to convert their single-family dwelling to, or construct a multi-family dwelling. Due to the narrowness of the lot, the Board would be unable to impose mitigation measures to shield the facility from the surrounding area and neighbor.

See Section 5.4.D.1 below for information regarding the Town Plan.

Section 5.4.B.3 – Traffic on Roads and Highways in the Vicinity: The Board finds that McCain Consulting, Inc. has concluded that the four unit, multi-family dwelling will produce approximately 25 trip ends per day, thus result in excess of a 400% increase in traffic originating from the subject parcel. While the Board did advise the applicant to use ITE Trip Generation software to perform the analysis, the Board expresses some skepticism with the results since the applicant has not provided a definitive unit outline identifying the number of bedrooms within the multi-family dwelling. If the Board was to assume the applicant’s oral testimony proposing 12 total bedrooms, the Board finds 25 trips to be low. Nevertheless, since the Board advised the applicant to use ITE Trip Generation, the Board will defer to the results produced. As a result, the Board finds that the additional 25 trips will not result in adverse effects on the condition, capacity, safety, efficiency and use of Pine Ridge Road and the Underhill road network, bridges, intersections and associated highway infrastructure.

Section 5.4.B.4 – Bylaws in Effect: 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 finds that the proposed conversion of use would not interfere with any sustainable use of renewable energy resources. The Board notes that the applicant’s proposed project would take advantage of many renewable energy resources and techniques.

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 they may consider Subsections 5.4.D.1 through 5.4.D.4 as part of their application review process.

Section 5.4.D.1 – Conformance with the Town Plan: The applicant contends that the proposed project conforms with the Town Plan and is supported by the ECOS Plan (The Chittenden County Environment, Community, Opportunity, Sustainability Plan). While Staff has identified several passages within the Town Plan where he thinks the Plan supports the project (Exhibit DDD, Page 10 & 11), the Board interprets these sections as directing the Planning Commission on how to review and update affordable housing portions of the Town Plan. The Board finds that the passages in the Town Plan that Staff opined illustrating that the Plan does support the application (Exhibit DDD, Page 11 & 12) are more persuasive. Those passages in the Town Plan have been memorialized in this decision under Section 3.4 above. The Board finds that these passages are consistent with one another, with the common language of encouraging denser development – like multi-family dwelling – in the village centers – Underhill Flats

Village Center and Underhill Village Center.

In regards to the underlying zoning districts as described in the Town Plan, the Board finds that the applicant did not submit the requisite information needed to determine if the project meets the purpose statement of the Water Conservation District – specifically, the applicant did not submit a wastewater system design plan that would have illustrated that the project would not pollute the gravel aquifer recharge area for Underhill Center.

Section 5.4.D.2 – Zoning District & Use Standards: The Board finds that applicant did not submit enough information to determine that the wastewater system will not encroach upon the property’s setbacks (Exhibit UU), in addition to, convincing evidence illustrating that the wastewater system will not be placed in an area of very steep slopes (Exhibit UU in comparison with Exhibit R), or in a surface water buffer (Exhibit UU in comparison with Exhibits S & T).

Section 5.4.D.3 – Performance Standards: See Section 3.14 above for more formation regarding performance standards requirements.

Section 5.4.D.4 – Legal Documentation: The Board finds that the applicant is proposing a trail easement that would traverse the property from north to south – from Pine Ridge Road to Brown’s River (Exhibit SS, Page 11). The Board finds that the feasibility of this trail is low. First, the proposed trail is to bisect Crane Brook Trail with no means of crossing the brook – which would require the proper permits under Section 3.19.C (including addition review by this Board). Second, the applicant proposes that the trail terminate at Brown’s River, at which point, trail users would be able to connect with either River Road or Pleasant Valley Road via Brown’s River. And third, assuming the applicant is proposing the trail to continue across Brown’s River, the property immediately to the south of the River is private property (either 15 Pleasant Valley Road or 19 Pleasant Valley Road) not owned by him. Therefore, the applicant does not have the authority to continue the trail directly to Pleasant Valley Road unless he obtained the proper legal documentation from the applicable landowner(s). As a result, the Board finds that the utilization of the trail would be low, if not non-existent, as the Board does not foresee trail users crossing Crane Brook and Brown’s River without bridges, nor foresees trail users utilized Crane Brook or Brown’s River to access River Road or Pleasant Valley Road.

The Board finds that no other rights-of-way and easements are required. The applicant submitted a maintenance plan (Exhibit I) pertaining to trash removal, snow removal and landscaping, which is consistent with other maintenance plans submitted in previous conditional use review applications.

#### **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 Board has not granted any waivers pertaining to application requirements. The Board finds that the applicant has requested one waiver – pertaining to the driveway – which falls under the purview of the Selectboard.

#### **ARTICLE VI, FLOOD HAZARD AREA REVIEW**

The Board finds that there are Flood Hazard Areas that encompass Crane Brook and Brown’s River

(Exhibit T) present on the lot; however, review under Article VI is not required because no development is proposed within this area.

### **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 request waiver in regard to the driveway width.

### **IV. DECISION AND RATIONALE OF DENIAL**

The Board finds that the application is incomplete, as all of the necessary materials have not been submitted (Section 5.2.B.2). The applicant has failed to provide the information needed to make an informed decision after repeated requests for various materials from the Zoning Administrator and this Board (explained in detail below). At the request of the applicant, the Board granted him a continuance at the December 4, 2017 hearing for him to supplement his application with more information. At the February 5, 2018 hearing – the continued hearing – the applicant failed to present additional information and asked for a continuance prior to the commencement of the evening's hearing. Shortly after the February 5, 2018 hearing, the Board provided a list of materials required to make a decision about the application (Exhibit EE). Upon submission of materials (Exhibit II – Exhibit CCC) at the May 21, 2018 hearing, the Board determined that the applicant failed to submit some of the basic information that had been requested throughout the process and in the memorandum (Exhibit EE). The Board finds that the applicant has used the development review process to formulate his project over the past six to seven months rather than coming to the Board with a finalized plan to be approved at the outset.

The applicant contends that the Development Review Board is not "design review." While the applicant is correct that this Board does not have the authority to conduct design review, the Board finds that there are design-related components of the project that relate to the conditional use review criteria necessary to grant approval of any conditional use review application.

After in-depth deliberation the Board finds that the some of the information provided far exceed the requirements of the regulations, while other information was sub-par at best, as the applicant failed to provide enough information to Board, resulting in an incomplete application. The Board thoroughly reviewed all aspects of the proposal under the evaluation of the 2014 *Underhill Unified Land Use & Development Regulations*, and concludes that based on the evidence submitted and the above findings, the application to convert a single-family dwelling with an attached accessory dwelling to a multi-family dwelling is denied for the following reasons:

1. The Board finds that key aspects of the application could not be reviewed because the application is incomplete. The Board notes that the applicant failed to provide all of the information requested in the February 15, 2018 (Exhibit EE) memorandum, specifically:
  - a. Request item 1 pertaining to the identification of areas of steep slope and very steep slope;
  - b. Request item 2 pertaining to erosion control techniques during & after construction;
  - c. Request item 3 pertaining to stormwater management techniques/design, during and after construction;
  - d. Request item 4 pertaining to septic system depiction – the location and layout of the primary & replacement systems;

- e. Request item 5 pertaining to the number of bedrooms in each unit;
2. Based on the information that was provided, the Board finds the applicant failed to satisfy numerous standards in the 2014 *Underhill Unified Land Use & Development Regulations*, specifically:
- a. **ARTICLE II, TABLE 2.4 – WATER CONSERVATION DISTRICT:** Due to the failure to submit a wastewater system design plan, the Board cannot confirm that the applicant’s project will conform to the purpose statement of this district, which is to protect the important gravel aquifer recharge area in Underhill Center.
  - b. **ARTICLE III, SECTION 3.13 – PARKING, LOADING & SERVICE AREAS:**
    - i. The Board is unable to determine if the provided number of parking spaces is adequate for the project since the applicant failed to identify the number of bedrooms within each unit.
    - ii. The Board finds that four of the parking spaces depicted on the site plan (Exhibit UU) failed to satisfy the “unobstructed access and maneuvering room” requirement enumerated under this section.
    - iii. The Board finds that vehicular circulation will likely encroach upon the handicapped parking space and vice versa.
    - iv. The Board finds that the applicant failed to accommodate landscaping for at least 10% of the total parking area.
  - c. **ARTICLE III, SECTION 3.17 – SOURCE PROTECTION AREAS:** The Board is unable to verify that active groundwater source protection area will not be adversely impacted. The submission of an ANR- Water Supply & Wastewater Disposal Permit or a wastewater system design plan would have created a presumption that this source protection area would not have been adversely impacted.
  - d. **ARTICLE III, SECTION 3.18 – STEEP SLOPES:**
    - i. The Board finds that the area depicted on the site plan (Exhibit UU) as “approximate proposed leach field area” is located on a slope that is unverified. The site plan depicts an area of unverified steep slope; however, when compared with the resources from the Agency of Natural Resources (Exhibit R), there is convincing evidence that the “approximate proposed leach field area” is located in an area of very steep slopes, where septic systems are prohibited.
    - ii. The Board finds that the applicant failed to submit the necessary materials in regard to the wastewater system (which is to be located on a steep slope according to the site plan – Exhibit UU) to evaluate that that the “existing vegetation and drainage materials will be maintained to the maximum extent physically feasible to avoid stream alterations and relocations, and increased storm water runoff due to vegetation removal, slope disturbance, re-contouring or site compaction.”
    - iii. The Board is unable to determine that no new drainageways will be created.
    - iv. Since the applicant has designated the area as approximate, determining that the wastewater system will satisfy the requirements of this section is not feasible with the information presented.
    - v. Assuming the “approximate proposed leach field area” will remain as shown on the site plan, the area will be within the east, side yard setback, thus not satisfying the requirements of Section 3.18.D.2.b
  - e. **ARTICLE III, SECTION 3.19 – SURFACE WATERS & WETLANDS:**
    - i. Due to the lack of certainty pertaining to the wastewater system, as well as the failure to illustrate Crane Brook on the site plan (Exhibit UU) the Board is

unable to say with certainty that the “approximate proposed leach field area” will meet the setback requirements from Crane Brook under Section 3.19.D.4.

**f. ARTICLE III, SECTION 3.22 – WATER SUPPLY & WASTEWATER SYSTEMS:**

- i. The lack of a wastewater system & potable water supply design prevents the Board from determining if the systems will meet the requirements of the Town’s regulations (e.g. setbacks).
- ii. The applicant has failed to identify on the unit outline (Exhibit SS, Pages 58-60) the number of bedrooms that will be contained in the completed multi-family dwelling. The Board finds that the applicant and his engineer did not present convincing evidence attesting to the adequacy of the water supply and wastewater disposal capacity.
- iii. The Board finds that the engineer’s conclusions pertaining to the wastewater disposal & potable water supply system are based on a document and resource review and are not adequate to provide positive findings (Exhibit LL).

**g. ARTICLE V, SECTION 5.3.B.6 – SITE PLAN REVIEW, LANDSCAPING AND SCREENING:** In regard to landscaping, the Board finds that the applicant has presented a site plan (Exhibit UU) that is inconsistent with the “walk along” videos (Exhibit VV – Exhibit CCC), and as a result, the Board is unable to determine that the requisite screening techniques that will be implemented.

3. The Board finds that the applicant did not submit sufficient evidence demonstrating that the project meets the character of area as it relates to the purpose statement of the Water Conservation District. The applicant failed to submit a wastewater system design demonstrating that the septic system will not pollute the gravel aquifer recharge area in Underhill Center.
4. In the alternative, should the Board use additional evaluation criteria, as explained in Section 5.4.B.2 above, the Board finds 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 the neighborhood. Due to the reasons stated above under 5.4.B.2, the Board is unable to impose mitigation measures.
5. The Board finds the applicants’ 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 above.

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Dated at Underhill, Vermont this 29<sup>th</sup> day of June, 2018.

*Charles Van Winkle*

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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 29 July 2018.