



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

**CONDITIONAL USE REVIEW APPLICATION OF TIMOTHY & THERESA POTVIN TO CONSTRUCT A DETACHED
ACCESSORY DWELLING**

In re: Timothy & Theresa Potvin
27 Moose Run (MO027)
Underhill, VT 05489

Docket No. DRB-18-04

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

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns a conditional use review application for the construction of a detached accessory dwelling on property located at 27 Moose Run (MO027) in Underhill, Vermont, owned by Timothy & Theresa Potvin.

- A. In January 2018, the applicants, Timothy and Theresa Potvin, officially filed a conditional use review application for the abovementioned project. The application was accepted and determined to be complete shortly thereafter. A site visit was scheduled for Saturday, March 3, 2018 at 8:30 AM, and the hearing was scheduled for Monday, March 5, 2018 at 6:35 PM.
- B. On February 7, 2018, notice of the conditional use review hearing was mailed via Certified Mail to the following property owners adjoining the property subject to the application:
1. HA058X –University of Vermont, Attn: Linda Seavey, Director, Campus Planning Services, 109 South Prospect Street, Burlington, VT 05405
 2. MT352X – Vermont State Agency of Natural Resources, 103 South Main St, Waterbury, VT 05676
 3. MO010 – Jason L. Wyman, 413 Pleasant Valley Road, Underhill, VT 05489
 4. MO012 – David B. & Janet R. Ely, P.O. Box 235, Underhill Center, VT 05490
 5. MO014 – Paul & Julie Dragon, P.O. Box 104, Underhill Center, VT 05490
 6. PV270 – W.M. E. & Karla A. Russell, P.O. Box 218, Jericho, VT 05465
 7. PV285 – Reginald Potvin, 285 Pleasant Valley Road, Underhill, VT 05489
 8. PV295 – David J. Hathaway & Carolyn J. Green, P.O. Box 211, Underhill Center, VT 05490
 9. PV309 – Richard W. & Gretchen A. Becker Trustees, 309 Pleasant Valley Road, Underhill, VT 05489
 10. PV318 – John & Tammy Boudah, 318 Pleasant Valley Road, Underhill VT 05489
 11. PV334 – John M. & Lise Wursthorn, 334 Pleasant Valley Road, Underhill, VT 05489
 12. PV354 – Lee Kirby, 354 Pleasant Valley Road, Underhill, VT 05489
 13. PV366 – Eric Howard & Regina Marcarelli, 366 Pleasant Valley Road, Underhill, VT 05489

14. Applicant: MO027 – Timothy & Theresa Potvin Trustees, P.O. Box 135, Underhill Center, VT 05490

- C. During the week of February 4, 2018, notice of the public hearing for the proposed conditional use review application was posted at the following locations:
1. The Underhill Town Clerk's office;
 2. The Underhill Center Post Office; and
 3. The Underhill Flats Post Office.
- D. On February 10, 2018, the notice of public hearing was published in the *Burlington Free Press*.
- E. While a site visit was scheduled to commence at the property's location on Saturday, March 3, 2018, at 8:30 AM, due to miscommunication between Staff and the Board, no municipal representatives attended the site visit.
- F. The conditional use review hearing commenced at 6:35PM on Monday, March 5, 2018 at the Town of Underhill Town Hall, 12 Pleasant Valley Road, Underhill, VT.
- G. 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, Stacey Turkos

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

Others present at the hearing were:

1. Applicants' Representative, Mary Potvin (27 Moose Run, Underhill, VT 05489)
 2. Applicants' Representative, Phil Potvin (27 Moose Run, Underhill, VT 05489)
 3. Abutting Neighbor, Tammy Boudah (318 Pleasant Valley Road, Underhill, VT 05489)
- H. At the outset of the hearing, Chairperson Charles Van Winkle explained the criteria under 24 V.S.A § 4465(b) for being considered an "interested party." Those who spoke at the hearing were:
1. Mary Potvin
 2. Phil Potvin
- I. In support of the conditional use review application, the following exhibits were submitted to the Development Review Board:
1. Exhibit A – Potvin Conditional Use Review Staff Report
 2. Exhibit B – Potvin (MO027) Conditional Use Review Hearing Procedures
 3. Exhibit C - Application for Conditional Use and Site Plan Review
 4. Exhibit D - Site Plan Review Findings Checklist

5. Exhibit E - Conditional Use Review Findings Checklist
6. Exhibit F - Burlington Free Press Notice
7. Exhibit G - Certificate of Service
8. Exhibit H - Building Permit Application
9. Exhibit I - Project Review Sheet
10. Exhibit J - Site Plan
11. Exhibit K - ANR Steep Slopes Map
12. Exhibit L - ANR Streams, Waterbodies & Wetlands Map
13. Exhibit M - ANR Private Wells Map
14. Exhibit N - ANR Source Protection Areas Map

No additional exhibits were distributed to the Board prior to the Monday, March 5, 2018 hearing. At the meeting, the following exhibit was submitted into the record:

15. Exhibit O - MMU Ability to Serve Letter
16. Exhibit P - Updated Site Plan

No other exhibits were submitted. All exhibits are available for public review in the Potvin Conditional Use Review file (MO027/DRB 18-04) at the Underhill Zoning & Planning office.

II. FACTUAL FINDINGS& CONCLUSIONS

The Minutes of the March 5, 2018 meeting, written by Andrew Strniste, are incorporated by reference into this decision. Please refer to the Minutes for a summary of the testimony.

Based on the submitted application, testimony, exhibits, and evidence, the Development Review Board makes the following findings under the requirements of the Underhill Unified Land Use and Development Regulations (ULUDR) as amended March 6, 2012 & March 4, 2014:

PROJECT SYNOPSIS

The applicants, Timothy & Theresa Potvin, record owner of the property located at 27 Moose Run (MO027) in Underhill, Vermont, are seeking conditional use approval to construct a detached accessory dwelling at the abovementioned property. Since the applicants are proposing to construct a new accessory structure to accommodate the detached accessory dwelling, conditional use approval is required under Section 4.2B.1. In addition, since the applicants are proposing to construct a detached accessory dwelling that will exceed 50% of the principal dwelling's total habitat floor area, conditional use approval is also required per Section 4.2.B.3.

The property is located in two zoning districts: the Mt. Mansfield Scenic Preservation District as defined in Article II, Table 2.5 of the ULUDR, and the Soil & Water Conservation District as defined in Article II, Table 2.6 of the ULUDR. The proposed detached accessory dwelling unit is proposed to be built in the Mt. Mansfield Scenic Preservation District, and therefore, review under the Soil & Water Conservation District standards is not required.

ARTICLE II, ZONING DISTRICTS

A. ARTICLE II, TABLE 2.5 – MT. MANSFIELD SCENIC PRESERVATION DISTRICT

The Board finds the proposed project will meet the applicable dimensional standards under this district. In addition, the proposed detached accessory dwelling is consistent with the zoning district's stated purpose of encouraging compatible lower densities of development that helps maintain the rural character of Underhill.

B. ARTICLE II, TABLE 2.6 – SOIL AND WATER CONSERVATION DISTRICT

The Board finds the proposed detached accessory dwelling will not be located in the Soil & Water Conservation, and therefore, review and analysis under this table is not applicable.

ARTICLE III, GENERAL REGULATIONS

A. SECTION 3.2 – ACCESS

The Board finds that the applicants will be required to obtain an access permit from the Selectboard prior to commencing construction of the detached accessory dwelling structure. The proposed accessway shall conform to the Underhill Road Ordinance and any conditions imposed by the Selectboard during their review. The Board acknowledges that the driveway depicted on the site plan is for illustration purposes only and is potentially subject to change during the access permit review process. Changes made during the access permit review process do not require additional review by this Board so long as those changes are consistent with this decision, as determined by the Zoning Administrator.

B. SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS

The Board finds that the proposed detached accessory dwelling meets the minimum setback requirements for an accessory structure. Specifically, the Board finds that the detached accessory dwelling is proposed to be ±490 Feet from the west, front property line; ±660 Feet from the north, side property line; ±210 Feet from the south, side property line; and ~1,670 Feet from the east, rear property line. The subject lot also contains a primary dwelling unit, which is not under review as part of this application, as well as other ancillary structures (also not under review). Detached accessory dwellings are permitted under Section 4.2 of the Underhill Unified Land Use & Development Regulations. While the lot contains an area of Class II Wetlands, the applicants are proposing to construct the dwelling unit more than 50 feet from the mapped area.

C. SECTION 3.13 – PARKING, LOADING & SERVICE AREAS

The Board finds that there is sufficient evidence to believe that the applicants will meet the parking requirement of one space as required per table 3.1.

D. SECTION 3.14 – PERFORMANCE STANDARDS

The Board finds that the applicant did not submit the requisite information to satisfy the requirements of Section 3.14; however, the Board does not anticipate that the applicant will cause, create, or result in any of the situations identified in this section.

E. SECTION 3.17 – SOURCE PROTECTION AREAS

The Board finds that while a groundwater source protection area has been identified on the southern area of the lot, the proposed detached accessory dwelling will not be constructed in this designated area, and therefore, review and analysis under this Section is not required.

F. SECTION 3.18 – STEEP SLOPES

The Board finds that there are areas of steep slopes (15-25%) or very steep slopes (>25%) on the lot, specifically on the easterly and northerly portion of the lot; however, the applicants are not proposing to construct the detached accessory structure in an area that contains steep slopes and very steep slopes, and therefore, review and analysis under this section is not required.

G. SECTION 3.19 – SURFACE WATERS & WETLANDS

The Board finds that the subject lot contains a Class II Wetland to the north and a pond to the east of the proposed development site. The Board finds that the applicants have satisfied the setback

requirements for both the Class II Wetlands (50-foot setback requirement) and the pond (25-foot setback requirement – unnamed waterbody and/or Section 3.16).

H. SECTION 3.22 – WATER SUPPLY & WASTEWATER SYSTEMS

The Board finds that the applicants have depicted a mound wastewater disposal system and a drilled well. The applicants shall submit for recordation the Wastewater System & Potable Water Supply Permit prior to obtaining a Certificate of Occupancy permit, as required under Section 10.4.A of the Underhill Unified Land Use & Development Regulations.

ARTICLE V, DEVELOPMENT REVIEW

A. SECTION 4.2 – ACCESSORY DWELLING

The Board finds that the construction of a new structure to accommodate an accessory dwelling (i.e. a detached accessory dwelling) requires conditional use review per Section 4.2.B.1. In addition, conditional use review is required for accessory dwellings that exceed 50% of the principal dwelling unit's total habitable floor area, as required under Section 4.2.B.3. The Board makes the following findings in regard to this section:

- Only one accessory dwelling is proposed;
- The accessory dwelling will be located in an accessory structure;
- The accessory dwelling will exceed 50% of the existing total habitable floor area of the single-family dwelling, excluding unfinished attics and basements;
- The accessory dwelling will meet the setback, building coverage, and lot coverage requirements of the Mt. Mansfield Scenic Preservation;
- The applicants are in the process of obtaining water/wastewater permits for the detached accessory buildings;
- The driveway will be accessed off of Moose Run; and
- One additional onsite parking space will be provided.

The Board permits the applicants to access the detached accessory dwelling via its own separate driveway, as well as permit the floor area of the detached accessory dwelling to exceed 50% of the existing total habitable floor area of the single-family dwelling, not to exceed 75% (1,602 sq. ft. as calculated by using the square footage information from the Lister's card).

ARTICLE V, DEVELOPMENT REVIEW

A. SECTION 5.1 – APPLICABILITY

The Board finds that as part Section 5.4.C of the ULUDR, site plan review is required in addition to conditional use review required by Section 5.4.

B. SECTION 5.3 – SITE PLAN REVIEW

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

Section 5.3.B – Standards: The Board has considered this section's standards and issues the following comments and/or imposes the following safeguards, modifications, and conditions:

SECTION 5.3.B.1 – Existing Site Features: The Board finds that the proposed detached accessory dwelling will have minimal impact, if any, to significant natural, historic and scenic resources identified in the Underhill Town Plan, maps, and related inventories, as well as the list

enumerated in this subsection.

Section 5.3.B.2 – Site Layout & Design: The Board finds that the proposed detached accessory dwelling avoids adverse impacts to natural and scenic resources and environmentally sensitive areas within the Mt. Mansfield Scenic Preservation District. The Board also notes that there are no adverse impacts to the scenic vistas – an important stated purpose of the underlying zoning district.

Section 5.3.B.3 – Vehicle Access: The Board finds that the proposed detached accessory dwelling will be served by its own driveway and will require an access permit from the Selectboard. The Board finds that Moose Run will not be adversely impacted with the addition of the residential unit.

Section 5.3.B.4 – Parking, Loading & Service Areas: The Board finds that there is sufficient evidence to believe that the applicants will meet the parking requirement of one space as required under Section 3.13.

Section 5.3.B.5 – Site Circulation: The Board finds that the construction of the detached accessory dwelling is consistent with the site circulation patterns of a residential units/lots.

Section 5.3.B.6 – Landscaping and Screening: The Board finds that the site layout and design will occur in a wooded area that provides adequate screening and no further landscaping is mandated.

Section 5.3.B.7 – Outdoor Lighting: The Board finds that the outdoor lighting will be consistent with outdoor lighting associated with single-family dwellings. Any outdoor lighting that is added as part of this proposed project shall be downward facing and shielded.

Section 5.3.B.8 – Stormwater Management and Erosion Control: The Board finds that the applicants should utilize the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control when constructing the detached accessory dwelling.

C. SECTION 5.4 – CONDITIONAL USE REVIEW

Section 5.4.A – Purpose: The Board finds that conditional use review is required per Sections 4.2.B.1 & 4.2.B.3, which requires conditional use approval for the construction of a new accessory structure for a detached accessory dwelling, as well as for cases where the detached accessory dwelling's floor area exceeds 50% of the total habitable floor area of the single-family dwelling. The Board finds that the conditions imposed herein address the identified potential impacts, as well as help reduce, avoid, or mitigate those impacts.

Section 5.4.B – General Standards: The Board finds that the conditions imposed herein will likely mitigate any potential undue adverse effects.

Section 5.4.B.1 – The Capacity of Existing or Planned Community Services or Facilities: The Board finds that the proposed detached accessory dwelling will not result in an increase in demand on community services and facilities.

Section 5.4.B.2 – The Character of the Area Affected: The Board finds that detached accessory dwellings are compatible with the Town Plan and are allowed in all zoning districts, and must

be allowed in accordance with State law (24 V.S.A. § 4412).

Section 5.4.B.3 – Traffic on Roads and Highways in the Vicinity: The Board finds that the proposed detached accessory dwelling will not result in a significant impact on traffic, nor will it create congestion.

Section 5.4.B.4 – Bylaws in Effect: The Board finds that this application is in conformance with the regulations in effect at this time.

Section 5.4.B.5 – The Utilization of Renewable Energy Resources: The Board finds that the proposed detached accessory dwelling will not interfere with any sustainable use of renewable energy resources.

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

Section 5.4.D – Specific Standards: The Board finds that it may consider the Subsections 5.4.D.1 through 5.4.D.4 and impose conditions as necessary to reduce or mitigate any identified adverse impacts of a proposed development.

Section 5.4.D.1 – Conformance with the Town Plan: The Board finds that the proposed detached accessory dwelling is consistent with the Town Plan.

Section 5.4.D.2 – Zoning District & Use Standards: The Board finds that the detached accessory dwelling conforms with the zoning districts and use standards as outlined above.

Section 5.4.D.3 – Performance Standards: The Board finds that the proposed project will comply with the performance standards set forth in Section 3.14 above.

Section 5.4.D.4 – Legal Documentation: The Board finds that this Section does not apply.

D. SECTION 5.5 – WAIVERS & VARIANCES

Section 5.5.A – Applications & Review Standards: The Board finds that it has the authority to waive application requirements and site plan or conditional use review standards under Sections 5.3 and 5.4 that it determines are not relevant to a particular application. The Board has noted those conditions that have been waived throughout this decision. Any provision that was not explicitly waived, and has not been explicitly addressed, the Board makes no finding on.

ARTICLE VI, FLOOD HAZARD AREA REVIEW

The Board finds that there are no Special Flood Hazard Areas, as illustrated on the requisite Flood Insurance Rate Maps, present on the lot, and therefore, review under Article VI is not required.

III. WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS

The Board grants the following waivers/modifications:

- the applicants, or subsequent landowner(s), are/is not required to come before the Board for the construction of any out buildings, ancillary buildings, or accessory buildings, which would typically be required for any projects obtaining site plan review approval; instead the

application for a building permit for those accessory-type buildings can be administratively reviewed and approved. However, the abovementioned structures must conform to the Regulations in effect at the time of the proposed projects.

- The applicants are not required to come before the Board for additional review should any modifications to the driveway be made during the access permit review process so long as those modifications are consistent with this decision, as determined by the Zoning Administrator. The Board recognizes that the identified location of the driveway on the engineering plans submitted as a part of this application are for illustration purposes only and may not necessarily reflect the final footprint of the driveway.
- The Board waives the regulation requiring the applicants to access the detached accessory dwelling via a shared driveway, thus permitting the applicants to access the detached accessory dwelling via its own separate driveway
- The Board waives the 50% of the existing total habitable area of the single-family dwelling floor area requirement, thus allowing the floor area of the detached accessory dwelling to exceed 50% of the existing total habitable floor area of the single-family dwelling, not to exceed 75% (1,602 sq. ft. as calculated by using the square footage information from the Lister's card).

IV. DECISIONS AND CONDITIONS OF APPROVAL

The Board is satisfied with the level of investigation, engineering and evaluation conducted in the application submittal and review process concerning the above-mentioned project. The Board thoroughly reviewed all aspects of the proposal under the evaluation of the Underhill Land Use & Development Regulations and concludes that based on the evidence submitted and the above findings, the proposed subdivision and development generally conforms to the aforementioned Regulations.

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

1. The Board finds that an access permit shall be required from the Select board prior to commencing construction of the detached accessory dwelling.
2. The Board finds that the Wastewater System & Potable Water Supply Permit shall be submitted for recordation prior to obtaining a Certificate of Occupancy permit, as required under Section 10.4.A of the Underhill Unified Land Use & Development Regulations.
3. The Board finds that any outdoor lighting that is added as part of this proposed project shall be downward facing and shielded.
4. The Board finds that the applicants should utilize the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control when constructing the detached accessory dwelling.

Dated at Underhill, Vermont this 16th day of April, 2018.

Charles Van Winkle

Charles Van Winkle, Chairperson, Development Review Board

NOTICE: This decision may be appealed to the Vermont Environment Court by an interested person who participated in the proceedings before the Development Review Board. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings. Appeal period ends May 16, 2018.