



Town of Underhill

Development Review Board

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Development Review Board

STAFF REPORT

To: DRB
From: Underhill Planning and Zoning
Date: January 26, 2018
Re: Agenda and Information for 02/05/2018

AGENDA

Monday, February 5, 2018 – Public Hearings Underhill Town Hall, 12 Pleasant Valley Road, Underhill, VT

- 6:30 PM Open Meeting, Public Comment Period
- 6:35 PM Continued Conditional Use Review – Conversion of Use to a Multi-Unit Dwelling
Applicant(s): Peter Duval
Docket #: DRB-17-16
Location: 25 Pine Ridge Road (PR025)
- 9:00 PM Other Business
• Approve January 22, 2018 Minutes
- 9:00 PM Adjourn

Duval Conditional Use Review Supplemental Staff Report

Conditional Use Hearing on the Application of Peter Duval to Convert an Existing Single-Family Dwelling with an Attached Accessory Dwelling to a Multi-Family Dwelling Containing Four Dwelling Units, which Also Involves New Construction that Expands the Existing Footprint

Docket #: DRB-17-16

Applicant(s): Peter Duval
 Consultant(s): Little River Survey Company, LLC
 Property Location: 25 Pine Ridge (PR025)
 Acreage: ± 5.00 Acres (Grand List)/±5.23 Acres (ArcMap)
 Zoning District(s): Water Conservation District

	<u>Water Conservation District</u>	<u>Existing</u>	<u>As Proposed</u>
Lot Size:	5.0 Acres	± 5.00 Acres	± 5.00 Acres
Frontage:	300 Feet	~304 Feet	~304 Feet
Setbacks:			
• Front (North):	30 Feet (Prin) / 30 Feet (Acc)	~112 Feet	~75 Feet
• Side 1 (West):	50 Feet (Prin) / 20 Feet (Acc)	~26 Feet	~26 Feet
• Side 2 (East):	50 Feet (Prin) / 20 Feet (Acc)	~97 Feet	~98 Feet
• Rear (South):	50 Feet (Prin) / 20 Feet (Acc)	~813 Feet	~813 Feet
Max. Building Coverage:	20%	Assumed to Be Met	TBD
Max. Lot Coverage:	30%	Assumed to Be Met	TBD
Maximum Height:	35 Feet	Assumed to Be Met	TBD

2014 UNDERHILL UNIFIED LAND USE & DEVELOPMENT REGULATIONS RELEVANT REGULATIONS:

- Article II, Table 2.4 – Water Conservation District (pg. 15)
- Article III, Section 3.13 – Parking, Loading & Service Areas (pg. 41)
- Article III, Section 3.17 – Source Protection Areas (pg. 52)
- Article IV, Section 4.12 – Home Business (Home Occupation, Home Industry)
- Article V, Section 5.3 – Site Plan Review (pg. 108)
- Article V, Section 5.4 – Conditional Use Review (pg. 113)
- Article V, Section 5.5 – Waivers & Variances (pg. 116)
- Article VI – Flood Hazard Area Review (pg. 120)

ORIGINAL APPLICATION CONTENTS:

- a. Exhibit A – Duval Conditional Use Review Staff Report
- b. Exhibit B – PR0025 Rules of Procedure – Conditional Use Review
- c. Exhibit C- Conditional Use & Site Plan Review Hearing Request Application

- d. Exhibit D - Site Plan Review Standards Checklist
- e. Exhibit E - Site Plan Review Standards Checklist Supplement
- f. Exhibit F - Conditional Use Review Standards Checklist
Exhibit F Supp - Conditional Use Review Standards Checklist Supplement
- g. Exhibit G - Project Narrative
- h. Exhibit H - Certificate of Service
- i. Exhibit I - Maintenance Plan
- j. Exhibit J - Floor Plan Proposal
- k. Exhibit K - Supplemental Floor Plan Proposal
- l. Exhibit L - Lot Configuration Sketch
- m. Exhibit M - Site Plan of Existing Conditions
- n. Exhibit N - Zoomed In Site Plan of Existing Conditions
- o. Exhibit O - Site Plan of Proposed Project
- p. Exhibit P - Zoomed-In Site Plan of Proposed Project
- q. Exhibit Q - ANR Groundwater Source Protection Areas Map
- r. Exhibit R - ANR Slopes Map
- s. Exhibit S - ANR Streams & Waterbodies Map
- t. Exhibit T - ANR Floodplains Map
- u. Exhibit U - Proposed Site Plan with Labels
- v. Exhibit V - Zoomed-In Proposed Site Plan with Labels

CONTENTS SUBMITTED AT PREVIOUS HEARING (DECEMBER 4, 2017):

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

SUPPLEMENTAL CONTENTS:

- cc. Exhibit CC – Email Correspondence from Cathy McNamara Regarding Act 250 Permit
- dd. Exhibit DD – Email Correspondence from Rachel Lomonaco (ANR) Regarding Act 250 Permit

OVERVIEW/SUMMARY

After the conclusion of the December 4, 2017 hearing, Staff has inquired and researched various issues that emerged during that hearing. Following this summary is more detailed analysis.

At the previous hearing, Staff observed that the discussion was largely centered on and around the “character of the area affect” analysis under Section 5.4.B.2 of the *Underhill Unified Land Use & Development Regulations*. Staff believes that the “character of the area” component of the conditional use review analysis may have been oversimplified in *some* previous conditional use applications and, as such, may have resulted in Development Review Board Findings that appear to have a more subjective basis. Upon further research and with guidance from established authorities, Staff’s reconsidered understanding is that a conditional use review analysis requires the documentation of factual information in the Findings to assist in evaluating if there are any

undue adverse effects and to support the DRB's Decision. If all identified undue adverse effects can be mitigated, then the application should likely be approved.

As a reminder, Section 5.4.B states:

"B. **General Standards.** Conditional use approval shall be granted by the DRB only upon finding that the proposed development shall not result in an undue adverse effect on any of the following:"

1. [Omitted]
2. **"The Character of the area affected.** The applicant and DRB shall consider the location, scale, type, density and intensity of the proposed development in relation to the character of the area affected, as defined by zoning district purposes statements AND specifically stated and relevant policies and standards of the Underhill Town Plan. [Emphasis Added] **[Emphasis Added]**
 - a. Mitigation measures shall be employed by the applicant as necessary to avoid undue impacts to the character of the area. These measures may include site plan or building design modifications; increased setback distances, buffers, or screening; the designation of building envelopes to minimize impacts to significant natural, historic or scenic resources or other measures acceptable to the DRB."
3. [Omitted]
4. [Omitted]
5. [Omitted]

Based on the plain reading of the Regulation above, there are various criteria to consider when evaluating what is considered an undue adverse effect on the character of the area.

While the Development Review Board is not a Design Review Board, Staff's understanding is that the Board has the authority to ask for the necessary information to make a determination about location, scale, type, density and intensity relative to the character of the area affected.

While the applicant provided very detailed information in regards to various aspects of his project at the December 4, 2017 hearing, other aspects were conceptual in nature and did not provide definitive information that directly addressed certain criteria under the *Underhill Unified Land Use & Development Regulations*. Staff advises that the Development Review Board should have a clear understanding of the application they are going to make a determination about, and therefore, if there are any unanswered questions, the Board should refrain from making a decision about the application until that information is submitted.

Staff observed the following issues emerge at the December 4, 2017 (note, the list below is not exclusive):

- At one point, the applicant informed Staff and/or the Board that the footprint of the proposed project could possibly be reconfigured. Ascertaining the footprint of the proposed structure is critical in making a determination about the scale of the proposed structure.
- The applicant discussed a commercial component as part of the proposed project. Identifying the extent of the commercial component will be critical in determining the scale and intensity of the project. For example, if the commercial component is very small in nature, and fits the definition of home occupations under Section 4.12, then the

scale/intensity is likely to be negligible. However, if the commercial component is more impactful, then the commercial component may be better classified as a home industry, or the use as a whole may be better classified as a mixed-use development.

- The applicant suggested that each of the four dwelling units could differ in number of bedrooms and would be housed in separate, but connected, multi-level structures. The applicant has proposed a total of six covered parking spaces to be provided within the structures. A more detailed site plan and floorplans indicating number of bedrooms per unit would be relevant in helping the Board determine how many parking spaces are required, where they are located, and whether the Board will require additional parking for dwelling units with a greater number of bedrooms. The applicant has identified a trail being incorporated into the project. The following issues emerged in regards to the trail during the hearing:
 - Safety concerns – the trail would provide a more inconspicuous, additional ingress/egress to the Pine Ridge development, which could increase their vulnerability to crime.
 - Privacy concerns – the trail would be in very close proximity to a neighboring single-family dwelling.
 - Feasibility concerns:
 - The trail does not contain a bridge over Crane Brook calling into question of how frequently the trail would be used; and
 - The trail does not have a connection with Underhill Center, as the trail ends at the rear property line, thus leaving a gap in the trail between the rear property line and Pleasant Valley Road.

In addition, for the trail to be used by the public, an easement identifying the trail would be ideal in order to ensure its continued use when the property is transferred to another party. Otherwise, the continued use of the trail cannot be guaranteed.

- Increased traffic generated by the additional dwelling units on the applicant's property was a concern of various adjoining and nearby neighbors. The impact on traffic is unknown at this point in time.

Also note, that Staff may have overstated that the application was in complete conformance with areas of the Town Plan, as there seems to be areas of the Town Plan where the applicant does not conform in conformance, as demonstrated below; however, the Board will need to determine which, if any, Sections of the Town Plan apply.

At the December 4, 2017 hearing, the applicant requested that the hearing be continued to a later date so he could submit additional information. Since the applicant plans to submit additional information, the evidence-submission portion of the hearing is ongoing. If the Board determines that additional information is required, Staff recommends that the Board continue the hearing to another future date, *specifically acknowledging what materials are required* for the Board to make a decision on the application. In addition, if another site visit is required to obtain more information, the Board should also consider scheduling one.

REVIEW OF RELEVANT SECTIONS

ARTICLE II – ZONING DISTRICTS

ARTICLE II, TABLE 2.4 – WATER CONSERVATION DISTRICT (PG. 15)

The purpose of the Water Conservation District is to protect the important gravel aquifer recharge

area in Underhill Center.

Staff finds that the obtainment of a Wastewater System and Potable Water Supply Permit would provide sufficient evidence that the gravel aquifer recharge area in Underhill Center would be protected.

ARTICLE III – GENERAL REGULATIONS

SECTION 3.13 – PARKING, LOADING & SERVICE AREAS (PG. 41)

The applicant is required to provide three (3) parking spaces for every two (2) dwellings units; therefore, the applicant is required to provide 6 (six) parking spaces. The applicant has failed to identify these locations on the site plan; however, has communicated that parking will be located in the buildings. The Board should verify the parking plan during the hearing, which should also confirm that the applicant is providing an adequate, and clearly marked handicapped parking spaces in accordance with State and federal disability requirements (§ 3.13.A.3.b).

Per Section 3.3.A.3, parking areas associated with multi-family dwellings shall be located to the rear or side of the principal building. Since the applicant plans to have parking inside the structures, locating the spaces to the side or rear is unnecessary. However, if the Board confirms that some parking may occur outside of the structures, the Board should consider if screening techniques (e.g. fencing or hedging) shall be included as a condition if approved since parking at the side or rear is unlikely due to terrain limitations and setback.

See Article V below, which discusses parking in more detail.

SECTION 3.17 – SOURCE PROTECTION AREAS (PG. 52)

In regards to Section 3.17.B, Staff finds that Conditional Use Review is required under this Section since the structure is a multi-family dwelling. The Board has previously allowed the obtainment of a Wastewater System and Potable Water Supply Permit to satisfy the presumption that there are no adverse impact to Source Protection Areas if the structure is converted to a multi-family dwelling, thus satisfying this subsection. The Board should note any requirements under Section 3.17.B that may be of some concern; however, Staff anticipates that the applicant will likely comply with all of the provisions of this subsection.

ARTICLE IV – SPECIFIC USE STANDARDS

SECTION 4.12 – HOME BUSINESS (HOME OCCUPATION, HOME INDUSTRY) (PG. 82)

The applicant informed the Board that he anticipates there will be some type of home business, or multiple home businesses, incorporated into his proposed project. Depending on the extent of the home business, the applicant may require additional permitting, either as a home business or a mixed-use development. The Board should obtain the necessary information to determine the extent of the business. The nature of the business could be a factor in determining the intensity of the project, which is a review criteria under the conditional use review analysis, which is discussed below. For reference purposes, Table 4.2, Summary of Home Occupation & Home Industry Standards, has been provided below:

Table 4.2 Summary of Home Occupation & Home Industry Standards		
	Home Occupation	Home Industry
Zoning Districts	All	All

Type of Review Required	Administrative Review (Zoning Permit)	Conditional Use Review (DRB Conditional Use Approval)
Principal Use	Dwelling	Single Family Dwelling
Business owner must reside on premises	Yes	Yes
Character of Area	Must maintain residential character; no exterior alterations	Must have no undue adverse impact on the character of the neighborhood; no exterior alterations
	Home Occupation	Home Industry
Maximum Floor Area:		
Principal Dwelling	49% or 1000 sf of gross dwelling floor area	No limit
Accessory Structure	No limit	No limit
Nonresident Employees (on-site at same time)	Maximum: 2	Maximum: 5
Outdoor Storage, Display	None	Within designated yard areas
Hazardous Materials Storage	None	Allowed in conformance with applicable municipal, state and federal regulations
Parking	Parking for residents, employees, and up to two business vehicles	Parking for residents, employees, and for other commercial vehicles and equipment within designated yard or parking areas
Performance Standards	See Section 3.14	See Section 3.14
Traffic Generation	Residential Use (max: 10 vehicle trips per day)	Business Use (volume similar to other uses in vicinity, on the same road)
Sales & Service	Limited to goods, services produced or provided on the premises; open to the public by appointment only	Limited to goods, services produced or provided on the premises
Signs	One (see Section 3.16)	One (see Section 3.16)

ARTICLE V – DEVELOPMENT REVIEW

SECTION 5.3 – SITE PLAN REVIEW (PG. 108)

Section 5.3.B – Standards (pg. 108): "The DRB may consider and *impose appropriate safeguards, modifications and conditions relating to any of the following standards [Emphasis Added]:*"

Section 5.3.B.1 – Existing Site Features (pg. 108): If the Board finds that the proposed project will impact one of the criteria listed below (Section 5.3.B.1.a), then they can take one of the measures listed under 5.3.B.1.b to avoid or mitigate the undue adverse impact:

- Existing topography and drainage patterns;
- Land above 1500 feet in elevation;
- Areas of steep (15%-25%) and very steep (>25%) slope (see Section 3.18);
- Surface waters, wetlands, and associated buffers (see Section 3.19);
- Special flood hazard areas under Article VI;
- Delineated source protection areas (see Section 3.17);
- Significant wildlife habitat areas and travel corridors;
- Scenic resources including scenic viewsheds, open meadows, and prominent hillsides and ridgelines as viewed from public vantage points; and historic sites and structures, including existing cellar holes, stonewalls and fences.

Section 5.3.B.2 – Site Layout & Design (pg. 108): The Board will need to determine that

“the *location* and *orientation* of the structure[(s)], and supporting infrastructure on the site [will] be compatible with the proposed setting and context, as determined from specific policies of the Underhill Town Plan, zoning district objects, existing site conditions and features, adjoining or facing structures in the vicinity, and other applicable provisions of [*the Underhill Unified Land Use & Development Regulations*], including density, setback, height and buffering requirements. To ensure that development is designed in a manner that is consistent with the existing and desired character of the district within which it is located, the following general standards shall apply as specified for particular district.” *[Emphasis Added]*

- b. **"Rural Residential and Water Conservation Districts.** Site design and layout shall reinforce the rural character and traditional working landscape of these districts, characterized by wooded hillsides, open fields, and a visual and functional relationship of structures to the surrounding landscape. Buildings shall be sited to minimize, to the extent physically feasible, encroachments on open fields and prominent ridgelines or hilltops, and *be oriented and designed in a manner that is compatible with the residential character and scale of adjoining development within these districts.*" *[Emphasis Added]*

Section 5.3.B.4 – Parking, Loading & Service Areas (pg. 110): The applicant proposes to incorporate parking inside of the structures surrounding the courtyard; however, has not definitively identified these locations on the site plan. The applicant has indicated a net increase of ten bedrooms, for a total of 12 bedrooms; therefore, the Board should determine if an increase in parking spaces is warranted under Sections 5.3.B & 5.4.D, which allows the Board to impose conditions necessary to reduce or mitigate any identified adverse impacts – in this case, potential overflow parking. The Board should ascertain that an area for trash and recyclables is provided and screened as necessary. Also note, as briefly discussed above and in the previous hearing, for multi-family dwellings, parking areas are to be located on the side or rear, behind the front building line, of the structure.

Section 5.3.B.5 – Site Circulation (pg. 110): The Board should ascertain that there is sufficient room in the courtyard for vehicular maneuverability and for pedestrian safety.

Locations for on-site stacking of snow and for trash/recycling containers awaiting pick-up should not impede safe site circulation.

Section 5.3.B.6 – Landscaping and Screening (pg. 111): The Board should consider landscaping or screening mechanisms as possible mitigation techniques, particularly in regards to parking and the scale of the structure.

SECTION 5.4 – CONDITIONAL USE REVIEW (PG. 113)

Section 5.4.A – Purpose (pg. 113): "Conditional use review is required to ensure compliance with standards addressing the potential impacts of the proposed development on adjoining properties, the neighborhood, and/or zoning district in which the development is located, and the community at large. Typically, land uses that are subject to conditional use review require the review because of their scale, intensity and potential for off-site impacts. In regards to the subject application, scale and intensity are among the relevant factors."

Section 5.4.B – General Standards (pg. 114): "Conditional Use Review shall be granted only if the Board finds that the proposal development will not result in an undue adverse effect on any of the following" subsections below.

Staff acknowledges that all concerns and potential issues that have been raised should be taken into consideration by the Development Review Board. Additionally, the Board must consider factual evidence and information in making a determination on whether any aspects of the application have an undue adverse effect on the criteria in the subsections below and whether those effects can be mitigated. Therefore, the Board should advise the applicant about what further information is necessary in order to provide a complete and informative decision.

Section 5.4.B.1 – The Capacity of Existing or Planned Community Services or Facilities (pg. 114): The Board shall consider whether the proposed multi-family dwelling will result in a burden to community services and facilities. Mount Mansfield Union School District the Underhill-Jericho Fire Departments have stated their ability to serve (UJFD has verbally communicated the ability to serve to the applicant). In addition, the Board should consider as a condition of approval the obtainment of a Wastewater System and Potable Water Supply Permit, which should suffice that there will not be a burden on that type of infrastructure.

Section 5.4.B.2 – The Character of the Area Affected (pg. 114): Upon researching the applicant's assertion, and after consultation with the Vermont League of Cities and Towns, Staff has concluded that the previous staff report regarding this application provided the Board incomplete information by advising that the Zoning Regulations view the character of "the area" synonymously with the character of "the neighborhood." As previously stated, Staff recommended that the Board should evaluate if the character of the neighborhood included only Pine Ridge Road, or if the neighborhood included surrounding areas as well. This statement was an oversimplification of the "character of the area" analysis, as the "character of the area" analysis seems to also include a component that considers the development in relation to the zoning district and its purpose statement.

However note, contrary to the applicant's assertion during the hearing, the term "character of the neighborhood" is referenced several times in the *Underhill Unified Land Use & Development Regulations*, including in Article XI Definitions, which defines "Character of the

Area” as:

"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 of neighborhood, as defined by the zoning district purpose statements and clearly-stated goals, policies and objectives of the Underhill Town Plan that are specific to that area and/or the physical circumstances of developments." *[Emphasis Added]*

As shown, the definition of “character of the area” seems to infer that the two terms (“character of the area” and “character of the neighborhood”) are synonymous with one another; but nevertheless, the term that is more applicable for the subject application is “character of the area” since “character of the area” is the specific term used under the conditional use review evaluation criteria.

As follow-up to the December 4, 2017 hearing, Staff consulted with the Vermont League of Cities and Towns, as well as conducted research on the definition of “character of the area.” A lot of the research has yielded that the Board should consider the “character of the area” in relation to other areas within the relevant zoning district (as alluded to in the definition directly above). As stated under Table 2.1, the purpose statement of the Water Conservation District is “to protect the important gravel aquifer recharge area in Underhill Center.” Therefore, the obtainment of a Wastewater System and Potable Water Supply Permit indicates the applicant would satisfy the purpose statement of the Water Conservation District. The district’s purpose statement appears to predominantly deal with geologic issues and is silent when providing a vision of the type of development that is anticipated for the district.

While the obtainment of a Wastewater System and Potable Water Supply Permit likely demonstrates that the proposed development ostensibly meets the district’s purpose statement, this subsection indicates the Board shall perform an analysis regarding the proposed project’s location, scale, type, density, and intensity relative to other development in the Water Conservation District, and as “defined by zoning district purpose statements and *specifically stated and relevant policies and standards of the Underhill Town Plan.*” *[Emphasis Added]* Therefore, the Board seemingly needs to determine which policies and standards of the Underhill Town Plan to evaluate the application under.

Similar to the Underhill Unified Land Use & Development Regulation, the 2015 Town Plan also states that the purpose of the Water Conservation District is “to protect the important gravel aquifer recharge area in Underhill” (see Section 3.5 of the Town Plan). In addition, this section of the Town Plan specifically states that multi-family dwelling are allowed in the district as a conditional use.

In Staff’s opinion, of the stated context, goals, and policies mentioned in the Town Plan, the following provide support for the approval of this conditional use application:

- (Section 3.5 – Page 24) Goal
"Land uses allowed within a zoning district should conform to the purpose of the zoning district and be approved by the community."
 - Assuming the applicant obtains a Wastewater System & Potable Water Supply Permit, the proposed development will satisfy the purpose statement of the district.

- Since multi-family dwellings are a conditional use in the Water Conservation District, it is a use approved by the community so long as it satisfies the conditions.
- (Chapter 7.1 – Page 44) Context

"The Town of Underhill recognizes that safe, attractive, and affordable homes are a necessary foundation for the health and well-being of town residents. 24 V.S.A § 4302 encourages safe and affordable housing for all Vermonters. In order to achieve this goal, housing must meet the needs of diverse social and income groups; new and rehabilitated housing should be safe and located conveniently to employment and village centers, and sites for multi-family and manufactured housing should be readily available."

 - Approval of this application provides the *opportunity* for affordable multi-family housing, recognizing, however, that the Town Plan presupposes a relationship between multi-family housing and affordability that does not necessarily exist.
- (Section 7.3 – Page 47) Context

"In order to improve opportunities for affordable housing, regulatory barriers should be identified and revised where appropriate, zoning restrictions on multi-family dwellings can be reviewed and relaxed where appropriate . . ."

 - See comment above on affordability.

In Staff's opinion, of the stated context, goals, and policies mentioned under the Town Plan, the following are not in support of approving this conditional use application:

- (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 zoning district, and also provide guidance for future development within the zoning district."

 - While the task has not been carried out by the Planning Commission yet, the Water Conservation District's does not traditionally contain multi-family dwellings. In fact, of the two existing multi-family dwelling in the water conservation district, two are located in the historical Underhill Center village.
- (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 encourage denser, compact development and economic opportunities in traditional village center areas . . ."

 - Although the definition of rural character of Underhill is somewhat subjective, this statement seems to give greater context of rural character in regards to development with denser development in the traditional village center areas.
- (Section 7.3 – Page 47) Strategy

In regards to the policy of increasing the affordable housing stock for those of low and moderate incomes, "provide for greater density in areas designated as village centers by encouraging duplexes and multi-family dwellings."

 - Note that the goal of this strategy is to "strive to make residence in the Town available to all income levels."
- (Section 7.3 – Page 47) Strategy

In regards to the policy of increasing the housing stock that allows for young

families and individuals and older community members to remain in the community, “encourage multi-generational, multi-income and senior housing in the village centers.”

- Note that the goal of this strategy is to “strive to make housing affordable for all residents.”

In Staff’s opinion, of the stated context, goals, and policies mentioned elsewhere in the Town Plan, the following could provide as support to either approve or deny the conditional use application:

- (Section 1.1 – Page 1) Goal
“The Town should make a commitment to the responsible stewardship and sustainable use of Underhill’s natural resources in a manner that protects and enhances the Town’s environmental well-being for the benefit of future generations; the preservation of natural features that contribute to Underhill’s ecological health and biological diversity; and the preservation of Underhill’s rural character, scenic landscape, working farms, managed forestlands, and cultural heritage.”
 - The preservation of Underhill’s rural character is subjective in nature. Whether the project conforms to the rural character of Underhill will have to be evaluated by the Board.
- (Section 7.3 – Page 47) Strategy
In regards to the policy of increasing housing that allows for young families and individuals and older community members to remain in the community, “allow for multi-unit structures where appropriate.”
 - Note that the goal of this strategy is to “strive to make housing affordable for all residents.”

As evidenced by the few excerpts above, the Town Plan contains some seeming inconsistencies that the Board will need to determine if they are distinguishable from one another, or if a few of these policies/goals/strategies are truly in conflict with one another. If these policies/goals/strategies are in conflict with one another, the Board should gather enough information to provide a factual determination about the application.

Also to note, at the hearing, Ms. Nancy Hall submitted Exhibit Z – Act 250 Land Use Permit # 4C0377-1 into the record, and specifically directed the Board’s attention to condition 5, which states:

“This project has been reviewed and is approved for the construction of one single-family residence on each of the approved lots. Construction of other type dwellings, including public buildings, duplexes and condominium units, is not allowed without prior review and approval of the Agency, and such approval will not be granted unless the proposal conforms to the applicable laws and regulations.”

In response, Chair Van Winkle inquired if the permit had been renewed under condition 13, which required the permit to be extended before February 11, 2000 in order to remain effective. Subsequently, Ms. Cathy McNamara conducted research about the renewal date and discovered that “effective June 30, 1994, permits issued for all other developments and subdivisions shall be for an indefinite term” (see Exhibit CC). Staff verified this assertion with Rachel Lomonaco, the District 4 Coordinator for the Act 250 Program (see Exhibit DD); therefore, the Act 250 Permit has been extended indefinitely.

While the Act 250 Permit gives the Board an idea of what the intention of the subdivision is, this information should not be used as a determining factor in the Board's decision. Staff notes that the Act 250 Permit allows an applicant to convert the dwelling to a multi-family dwelling so long as the applicant gets approval by the Agency of Natural Resources. Therefore, the Act 250 does not explicitly deny the applicant from proceeding with his project; however, he would still need to get approval from the Agency of Natural Resources, which typically occurs after approval from the Town is obtained.



As part of the information gathering process, the Board should be advised of the type of information that is acceptable to request from the applicant. While the Development Review Board is not a design review board, it is incumbent on the Board to consider some fundamental design components during a conditional use review hearing. As stated under this subsection, the Board **shall** consider the "location, scale, type, density and intensity of the proposed development" [*Emphasis Added*]. Unlike previous conditional use applications for multi-family housing which have proposed increasing the density of dwelling units within an existing building footprint, this proposal involves the addition of new buildings and very specific, intentional site circulation. Therefore, the Board should require whatever is reasonably necessary to make a determination on this application in regards to location, scale, type, density and intensity.

Lastly, while a prior multi-family project application (Wishinski) was similar in nature to the subject application, the Board should keep in mind that each conditional use application should be viewed on its individual merits and challenges, while acknowledging that a better understanding of conditional use review applications has been obtained through each subsequent hearing process.

Section 5.4.B.3 – Traffic on Roads and Highways in the Vicinity (pg. 114): At the previous hearing, the applicant advised that there will be a total of 12 bedrooms. Specifically, he guesstimated that there will be four dwellings, each containing three bedrooms (noting however, the applicant did not steadfastly confirm this assertion, as some units may be more or less than three bedrooms). While the applicant has advised that only two units would be added, as well as estimating three cars would be added to the roads/highways (see Page 3, Exhibit F Supp.), the estimates are unsubstantiated. Staff notes that the dynamics of a multi-family dwelling is different from a single-family dwelling with an attached accessory dwelling unit, and therefore, Staff finds that a traffic study may be necessary to identify the impact on traffic. If required, the Board should determine how formal of a traffic study is required.

Section 5.4.D – Specific Standards (pg. 116): Staff finds that the Board may consider subsections 5.4.D.1 thru 5.4.D.4 and impose conditions as necessary to reduce or mitigate any identified adverse impacts of a proposed development:

- Conformance with the Town Plan (Section 5.4.D.1 – pg. 116);
- Zoning District & Use Standards (Section 5.4.D.2 – pg. 116);
- Performance Standards (Section 5.4.D.3 – pg. 116); and

- Legal Documentation (Section 5.4.D.4 – pg. 116).