

# TOWN OF UNDERHILL

## Development Review Board

KARLA & WILLIAM RUSSELL  
CONDITIONAL USE REVIEW  
Docket #: DRB-19-03

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Applicant(s):	Karla & William Russell
Consultant/Representative:	Justin Willis & Briana Cornin
Property Location:	270 Pleasant Valley Road (PV270)
Acreage:	± 14.98 Acres
Zoning District(s):	Mt. Mansfield Scenic Preservation
Project Proposal:	Review of a Conditional Use Review application submitted by Karla & William Russell to building a pool and pavilion on steep slopes.

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### **2018 UNDERHILL UNIFIED LAND USE & DEVELOPMENT REGULATIONS RELEVANT REGULATIONS:**

- Article II, Table 2.6 – Mt. Mansfield Scenic Preservation (pg. 21)
- Article III, Section 3.2 – Access (pg. 30)
- Article III, Section 3.7 – Lot, Yard & Setback Requirements (pg. 38)
- Article III, Section 3.11 – Outdoor Lighting (pg. 41)
- Article III, Section 3.13 – Parking, Loading & Service Areas (pg. 44)
- Article III, Section 3.14 – Performance Standards (pg. 46)
- Article III, Section 3.17 – Source Protection Areas (pg. 55)
- Article III, Section 3.18 – Steep Slopes (pg. 56)
- Article III, Section 3.19 – Surface Waters & Wetlands (pg. 63)
- Article III, Section 3.23 – Water Supply & Wastewater Systems (pg. 68)
- Article V, Section 5.1 – Applicability (pg. 112)
- Article V, Section 5.3 – Site Plan Review (pg. 115)
- Article V, Section 5.4 – Conditional Use Review (pg. 120)
- Article V, Section 5.5 – Waivers & Variances (pg. 123)
- Article VI – Flood Hazard Area Review (pg. 127)

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### **CONTENTS:**

- a. Exhibit A - Russell Conditional Use Review Staff Report
- b. Exhibit B - Russell (PV270) Conditional Use Review Hearing Procedures
- c. Exhibit C - Development Review Application
- d. Exhibit D - Conditional Use & Site Plan Review Responses
- e. Exhibit E - Project Narrative
- f. Exhibit F - Zoning Permit Application (B-19-05)
- g. Exhibit G - Certificate of Service
- h. Exhibit H - BFP Notice

- i. Exhibit I - Soil Survey
- j. Exhibit J - Site Plan (Existing Conditions)
- k. Exhibit K - Site Plan with Original Building Envelope
- l. Exhibit L - Site Plan with Proposed Development
- m. Exhibit M - USGS Map
- n. Exhibit N - Project Parameters
- o. Exhibit O - ANR Source Protection Areas Map
- p. Exhibit P - ANR Surface Waters & Streams Map
- q. Exhibit Q - ANR Wetlands Map

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## COMMENTS/QUESTIONS

1. **TABLE 2.6 – MT. MANSFIELD SCENIC PRESERVATION DISTRICT:** The Board should take notice during the site visit regarding the scenic vistas.
  2. **SECTION 3.11 – OUTDOOR LIGHTING:** The Board should inquire about any proposed outdoor lighting.
  3. **SECTION 3.18 – STEEP SLOPES:** Staff defers to the engineer’s comments regarding the construction on steep slopes.
  4. **SECTION 3.18.C – APPLICATION REQUIREMENTS:** The Board may require additional materials noted in this Section that may not have been submitted should they feel more information is required.
  5. **SECTION 3.23 – WATER SUPPLY & WASTEWATER SYSTEMS:** The Board should inquire if modifications to the water/wastewater system are required.
  6. **SECTION 5.3.B.6 – LANDSCAPING & SCREENING:** The Board should take note of the landscaping & screening techniques of other properties in the areas to determine if any measures under this section should be taken.
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# STAFF FINDINGS OF RELEVANT SECTIONS

## ARTICLE II – ZONING DISTRICTS

	Rural Residential District Requirements	Existing Lot (Single-Family Dwelling)	Existing Lot (Proposed Development)
<b>Lot Size:</b>	3.0 Acres	±14.98 Acres	±14.98 Acres
<b>Frontage:</b>	250 Feet	990 Feet	990 Feet
<b>Setbacks:</b>		Source: ArcMAP	Source: ArcMAP
• Front West	30 Feet	±239 Feet	~296 Feet
• Side 1 North	50 Feet	±351 Feet	~309 Feet
• Side 2 South	50 Feet	±373 Feet	~368 Feet
• Rear East	50 Feet	±537 Feet	~447 Feet
<b>Max. Building Coverage:</b>	25%	Assumed Met	Assumed to be Met
<b>Max. Lot Coverage:</b>	50%	Assumed Met	Assumed to be Met
<b>Maximum Height:</b>	35 Feet	Assumed Met	Assumed to be Met

TABLE 2.6 – MT. MANSFIELD SCENIC PRESERVATION DISTRICT

PG. 21

**Purpose Statement:** To protect the scenic vistas along Pleasant Valley Road. This district includes upland areas with access and/or development constraints, and valley areas with access onto Pleasant Valley Road. The goal of this is achieved by allowing compatible lower densities of development or clustered development that maintains Underhill’s rural character while protecting the views along Pleasant Valley Road.

- Adverse impact to the scenic vistas along Pleasant Valley Road are not anticipated. The Board should take notice during the site visit regarding the scenic vistas.
- The proposed project will contain accessory structures to the principal dwelling, and will be in close proximity to the dwelling, thereby achieving a compact, cluster of structures.
- The proposed project will satisfy the setback requirements (see Table above and § 3.19).

## ARTICLE III – GENERAL REGULATIONS

### SECTION 3.2 – ACCESS

PG. 30

- The subject lot has access to Pleasant Valley Road, a Class I Highway.
- The subject lot conforms to the district requirements.
- This application has not been referred to the Road Foreman or VT AOT since the access way will remain unchanged
- Take note of § 3.2.C.3 – requiring an access permit for this project proposal is unnecessary.
- Since no modifications are being made to the existing driveway, review of § 3.2.D is not necessary.

### SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS

PG. 33

- The proposed structures will be accessory to the one principal structure – a single-family dwelling – on the lot.
- The proposed structures satisfy the dimensional requirements for the Mt. Mansfield Scenic Preservation District (see Table above).

- No dimensional waivers have been requested.

**SECTION 3.11 – OUTDOOR LIGHTING** **PG. 40**

- The Board should inquire about any proposed outdoor lighting.

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

- The proposed structures: the outdoor pavilion, deck and pool, do not increase the number of parking spaces that are required for the existing use – a single-family dwelling.

**SECTION 3.14 – PERFORMANCE STANDARDS** **PG. 44**

- The proposed structures: the outdoor pavilion, deck and pool, is not anticipated to create any of the situations/circumstances enumerated within this Section (specifically § 3.14.B).

**SECTION 3.17 – SOURCE PROTECTION AREAS** **PG. 46**

- Almost all of the lot is within a Groundwater Source Protection Area (see Exhibit O).
- Associated accessory structures to single-family dwellings are exempt from the requirements under Section 3.17.B.

**SECTION 3.18 – STEEP SLOPES**

SECTION 3.18.A – PURPOSE **PG. 56**

- The Board should ensure the project conforms with the various purpose statements enumerated in this Section (see *Unified Land Use & Development Regulations*)

SECTION 3.18.B – APPLICABILITY **PG. 57**

- Review under this section applies since the Applicants are proposing development on steep slopes & very steep slope (see Exhibits J & L).
- None of the exemptions enumerated under Section 3.18.B.2 apply.
- Very Steep Slopes under Section 3.18.E have been identified by the applicant; however, when reviewed in conjunction with Section 3.18.B.3.b and Section 3.18.E.c, there are persuasive argument & documented presented that could justify waiving the Very Steep Slopes regulations.
  - The Applicants have advised that the proposed project will have minimal site disturbance, as well as pose a negligible threat to water quality, public roads and facilities, and to the adjoining properties.
  - The Applicants have indicated that prior to construction of the existing single-family dwelling, the subject lot contained natural slopes that had to be leveled in order to accommodate the then proposed construction (single-family dwelling).

SECTION 3.18.C – APPLICATION REQUIREMENTS **PG. 58**

- The applicant has provided various exhibits pertaining to the proposed project.
- The Board may require additional materials noted in this Section that may not have been submitted should they feel more information is required.

SECTION 3.18.D – STEEP SLOPES (15% TO 25%) **PG. 60**

- The proposed development is anticipated to impact steep slopes.
- The Board should assess the application as it relates to the various standards in this subsection (see § 3.18.D of the *Underhill Unified Land Use & Development Regulations*).
- Staff defers to the Applicants’ submitted materials (see Exhibit E) and the engineer’s testimony.

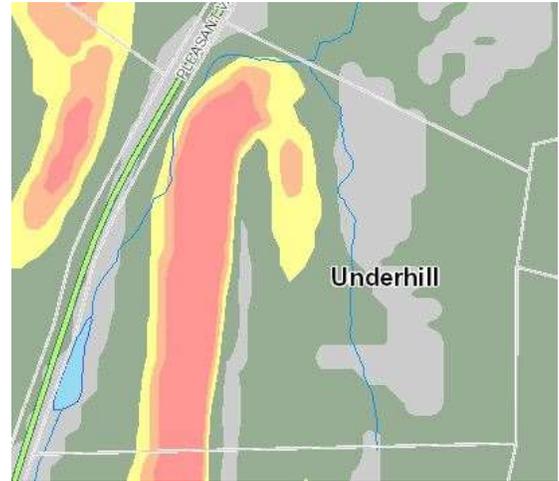
**SECTION 3.18.E – VERY STEEP SLOPES (>25%)**

**PG. 62**

- Typically, all development on Very Steep Slopes is prohibited; however, exempting c. could potentially apply (see Section 3.18.B, bullet point 3 above), which states:

“Development on a lot legally in existence as of March 2, 2011 for which the DRB determines that no portion of the lot has a slope of 25% or less and, as such, prohibiting development on very steep slopes would preclude any reasonable use of the property.”

- While the ANR Atlas Map (see directly to the right) illustrates areas under 15% slope, when reviewing the submitted site plan (see Exhibit J), areas less than 15%, at least in close proximity to the single-family residence, have not been identified. Therefore, the above exemption seems plausible, as the Applicants have communicated to Staff that the lot was largely slopes prior to creating a leveled area for the existing single-family dwelling.



**SECTION 3.18.F – CONSIDERATIONS (>25%)**

**PG. 62**

- The Board has the ability to incorporate as conditions of approval any of the conditions enumerated under this subsection (see § 3.18.F of the *Underhill Unified Land Use & Development Regulations*).

**SECTION 3.18.G – LIABILITY WAIVER (>25%)**

**PG. 62**

- The Applicants shall be advised of the following:

“The applicant and subsequent property owners shall assume all liability in the event that changes in topography and drainage result in damage to neighboring or downstream properties. The Town of Underhill shall be held harmless from any claims for damage for approved development on steep and very steep slopes under these regulations.”

**SECTION 3.19 – SURFACE WATERS & WETLANDS**

**PG. 56**

- The existing lot contains two existing unnamed streams that converge just north of the north property boundary.
- One unnamed stream is located to the west of the existing single-family dwelling and proposed structures, while the other unnamed stream is located to the east of the existing single-family dwelling and proposed structures.
  - The proposed development will be located ~111 ft. from the unnamed stream located to the east, as measured to the edge of the deck.
- The ANR Atlas depicts a Class II Wetland (see Exhibit Q); however, the submitted site plan (see Exhibits J & L) depicts a more accurate portrayal of the Class II Wetland.
  - The proposed development will be located ~97 ft. from the Class II Wetland located to the east, as measured to the edge of the deck, thus satisfying the 50 ft. Class II Wetland buffer.

**SECTION 3.23 – WATER SUPPLY & WASTEWATER SYSTEMS**

**PG. 63**

- Note, Justin Willis was commissioned early in the project design process and referred the Applicants to Staff. The Board should inquire if modifications to the water/wastewater system are required.
- *Current State Wastewater Permit: WW-4-2076*

## ARTICLE V – DEVELOPMENT REVIEW

### SECTION 5.1 – APPLICABILITY

#### SECTION 5.1.A – TYPE OF REVIEW REQUIRED

**PG. 112**

- Conditional use review is required per Section 3.18.D & 3.18.E, and is to be reviewed under §§ 3.18.B.2, 3.18.D and 3.18.E

#### SECTION 5.1.B – COORDINATION OF REVIEW

**PG. 112**

- Does not apply.

### SECTION 5.3 – SITE PLAN REVIEW

#### SECTION 5.3.A – PURPOSE

**PG. 115**

- Site plan review is required per § 5.4.C when reviewing a conditional use review application.

SECTION 5.3.B – STANDARDS *(the Board may wish to consider and impose appropriate safeguards, modifications and conditions relating to any of the following standards:)*

#### *SECTION 5.3.B.1 – EXISTING SITE FEATURES*

**PG. 115**

- The proposed development will impact steep (15%-25%) and very steep slopes (>25%).
- The proposed development is anticipated to incorporate and avoid undue adverse impacts to known significant: natural, historic and scenic resources identified in the Underhill Town Plan, maps and related inventories, and the list enumerated under this subsection.
- See Exhibit D for more information.
- The Board has the ability to require one or more of the mitigation techniques:
  - Increased setback distances or undisturbed buffer areas between proposed development and identified resources.
  - The designation of building envelopes sited to exclude identified resource areas, and to limit the extent of site clearing and disturbance.
  - Permanent protection of identified resource areas as designated open space.
  - The screening of development as viewed from public vantage points.
  - The preparation and implementation of management plans for identified resources.

#### *SECTION 5.3.B.2 – SITE LAYOUT & DESIGN*

**PG. 115**

**Mt. Mansfield Scenic Preservation and Soil & Water Conservation Districts.** Site layout and design, to the extent physically feasible, shall avoid adverse impacts to natural and scenic resources and environmentally sensitive areas within these districts, include those resources listed under Subsection B.1. The applicant should consider, and the DRB may require one or more mitigation measures listed under Subsection B.1 as necessary to

- The proposed development will impact naturally occurring slopes; however, will avoid impacting the Class II Wetlands and the unnamed stream to the east.
- The applicants, and their representatives, have advised that prior to the construction of the single-family dwelling, the property contained naturally occurring slopes that had to be leveled to accommodate the single-family dwelling.

minimize adverse impacts to identified resources in the vicinity of the proposed development.

- To further develop the lot in the vicinity of the single-family dwelling, additional impact to the slopes will be required (see Exhibit L).

*SECTION 5.3.B.3 – VEHICLE ACCESS* **PG. 116**

- The property is currently accessed by one curb-cut via Pleasant Valley Road.
  - No modifications to the existing curb-cut or driveway are anticipated.

*SECTION 5.3.B.4 – PARKING, LOADING & SERVICE AREAS* **PG. 117**

- See Section 3.13 above.

*SECTION 5.3.B.5 – SITE CIRCULATION* **PG. 117**

- Site circulation is anticipated to continue being consistent with site circulation patterns expected for a single-family dwelling.

*SECTION 5.3.B.6 – LANDSCAPING & SCREENING* **PG. 118**

- Landscaping & screening is anticipated to continue being consistent with landscaping & screening techniques for a single-family dwelling.
- The Board should take note of the landscaping & screening techniques of other properties in the areas to determine if any measures under this section should be taken.

*SECTION 5.3.B.7 – OUTDOOR LIGHTING* **PG. 119**

- See Section 3.11 above.

*SECTION 5.3.B.8 – STORMWATER MANAGEMENT AND EROSION CONTROL* **PG. 119**

- Staff defers to information provided in Exhibit E.
- At minimum, Staff recommends that the Board require as a condition of approval that the Applicants adhere to the guidelines set out in the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control.

**SECTION 5.4 – CONDITIONAL USE REVIEW**

SECTION 5.4.A – PURPOSE *(the standards and conditions should relate to the identification, avoidance and/or mitigation of potential impacts:)* **PG. 120**

- Board approval is required for development that occurs on steep and very steep slopes per Sections 3.18.B.2, 3.18.D and 3.18.E.

SECTION 5.4.B – GENERAL STANDARDS *(Conditional Use Review shall be granted only if the Board finds that the proposed development will not result in an undue adverse effect on any of the following subsections:)*

*SECTION 5.4.B.1 – THE CAPACITY OF EXISTING OR PLANNING COMMUNITY SERVICES OR FACILITIES* **PG. 121**

- The construction of the proposed development is not anticipated to have an adverse impact on the existing or planning community services or facilities.
- Staff did not solicit input from UJFD or MMU.

*SECTION 5.4.B.2 – THE CHARACTER OF THE AREA AFFECTED* **PG. 121**

- The construction of the proposed development is not anticipated to have an adverse impact on the character of the area, as the proposed development are accessory structures to the single-family dwelling.
  - **Location:** the property is located in the Mt. Mansfield Scenic Preservation District, which largely contains single-family dwellings and accessory structures.
  - **Scale:** the scale of the proposed construction is consistent with the development that currently exists on the property and surrounding properties.
  - **Type:** the proposed structures would be accessory structures to the single-family dwelling. Accessory structures are permitted within the Mt. Mansfield Scenic Preservation District.
  - **Density:** the proposed structures will not increase the density in the area affected.
  - **Intensity:** the proposed structures will negligibly change the intensity of the area affected.

*SECTION 5.4.B.3 – TRAFFIC ON ROADS & HIGHWAYS IN THE VICINITY* **PG. 121**

- The proposed structures are unlikely to increase the traffic on the roads and highways in the vicinity, thus not resulting in an adverse impact.

*SECTION 5.4.B.4 – BYLAWS IN EFFECT* **PG. 122**

- Staff is unaware of any violations pertaining to the property (270 Pleasant Valley Road).
- Should the Board approve the proposed project, the property will continue to be in conformance with the *Underhill Unified Land Use & Development Regulations*.

*SECTION 5.4.B.5 – THE UTILIZATION OF RENEWABLE ENERGY RESOURCES* **PG. 122**

- The proposed development is not anticipated to interfere with any sustainable use of renewable energy resources.

SECTION 5.4.C – SITE PLAN REVIEW STANDARDS **PG. 123**

- See analysis under Section 5.3 above.

SECTION 5.4.D – SPECIFIC STANDARDS *(The Board may consider the following subsections 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* **PG. 123**

- The proposed development is consistent with the Town Plan.

*SECTION 5.4.D.2 – ZONING DISTRICT & USE STANDARDS* **PG. 123**

- The proposed development will comply with the Mt. Mansfield Scenic Preservation district and use standards should the Board grant conditional use review under Section 3.18.B.2, 3.18.D, 3.18.E and 5.4 above.

*SECTION 5.4.D.3 – PERFORMANCE STANDARDS* **PG. 123**

- See Section 3.5 above.

*SECTION 5.4.D.4 – LEGAL DOCUMENTATION* **PG. 123**

- Does not apply.

**SECTION 5.5 – WAIVERS & VARIANCES**

SECTION 5.4.A – APPLICATION & REVIEW STANDARDS **PG. 123**

- The Applicants have asked the Board to waive two application requirements, as outlined below:
  - Construction on very steep slopes as outlined under Section 3.18.B; and
  - Since construction on steep slopes can only occur between mid-April to mid-October, the Applicants have asked to extend the zoning permit expiration date to accommodate any potential unforeseen scheduling issues.

SECTION 5.5.B – DIMENSIONAL WAIVERS

**PG. 124**

- The Applicants have not requested any dimensional waivers.

SECTION 5.5.C – VARIANCES

**PG. 125**

- The Applicants have not requested a variance.

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**ARTICLE VI – FLOOD HAZARD AREA REVIEW**

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- No Special Flood Hazard Areas are depicted on the existing lot (source: ANR Website); therefore, review under this Article is not required.

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**APPENDIX A – ROAD & DRIVEWAY STANDARDS**

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- Since no modifications to the existing driveway and curb cut are proposed, review under the Road Ordinance is unnecessary – an access permit is therefore not being sought at the direction of Staff.