



# TOWN OF UNDERHILL

## Development Review Board

ROBERT & PAIGE MANNING

CONDITIONAL USE: WAIVER/VARIANCE REQUEST HEARING

Docket #: DRB-19-04

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Applicant(s):	Robert & Paige Manning
Consultant:	Dan Westover (Contractor)
Property Location:	421 Vermont Route 15 (VT421)
Acreage:	± 15.1 Acres
Zoning District(s):	Underhill Flats Village Center District
Project Proposal:	Request for a Dimensional Waiver to Construct a Deck onto the Accessory Structure/Dwelling, which is Proposed to Be Within the Property's Setback

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

- Article II, Table 2.2 – Underhill Flat Village Center District (pg. 9)
- Article III, Section 3.2 – Access (pg. 30)
- Article III, Section 3.3. – Conversion or Change of Use (pg. 33)
- Article III, Section 3.7 – Lot, Yard & Setback Requirements (pg. 38)
- Article III, Section 3.8 – Nonconforming Lots (pg. 39)
- Article III, Section 3.9 – Nonconforming Structures (pg. 40)
- 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)
- Appendix A – *Underhill Road, Driveway, Trail Ordinance*

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### **CONTENTS:**

- a. Exhibit A - Manning Conditional Use Review Staff Report
- b. Exhibit B - Manning (VT421) Conditional Use Review Hearing Procedures
- c. Exhibit C - Development Review Application
- d. Exhibit D - Responses to Development Review Application Questions

- e. Exhibit E - Zoning Permit Application (B-19-07)
- f. Exhibit F - Notice to BFP
- g. Exhibit G - Certificate of Service
- h. Exhibit H - Site Plan-Existing Conditions
- i. Exhibit I - Site Plan-Setbacks
- j. Exhibit J - Waiver & Variance Limitations
- k. Exhibit K - Proposed Deck w. Waiver & Variance Limitations
- l. Exhibit L - Photographs
- m. Exhibit M - Applicants' Hand-drawn Site Plan
- n. Exhibit N - Variance Request Narrative (if Required)

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## COMMENTS/QUESTIONS

1. **SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS:** A dimensional waiver may be approved by the Board “to allow for limited additions to or enlargements of nonconforming structures or structures on nonconforming lots” (§ 3.7.E.1).
2. **SECTION 3.8 – NONCONFORMING LOTS:** The Board may reduce the district setback requirements in accordance with Article V “as necessary to allow for the development of a pre-existing nonconforming lot, if the Board determines that the lot cannot otherwise be developed in conformance with the regulations.”
3. **SECTION 3.11 – OUTDOOR LIGHTING:** The Board typically requires that if new lighting is installed, it shall be downcast and shielded.
4. **SECTION 3.18 – STEEP SLOPES:** The ANR Atlas depicts steep slopes (15%-25%) in the vicinity of the project area; however, photographs illustrate that the project area is relatively flat.
5. **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.
6. **SECTION 5.3.B.8 – STORMWATER MANAGEMENT AND EROSION CONTROL:** The Board typically requires 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.
7. **SECTION 5.4.B.4 – BYLAWS IN EFFECT:** The landowners have yet to receive a Certificate of Occupancy Permit for the accessory dwelling, as they had previously advised that they would submit the necessary certification letter required to obtain the permit as soon as possible. To date, the certification letter has not been submitted, and therefore, the habitants (landowners/applicants) of the accessory dwelling are in violation of the *Underhill Unified Land Use & Development Regulations*.
8. **SECTION 5.5.B.2 – APPLICABILITY OF WAIVER REQUEST:** A waiver may be approval in four situations. The proposed project seemingly qualifies under two of the four situations below:
  - a. To allow for the reasonable development and use of a pre-existing nonconforming lot.
  - b. To allow for additions or improvements to a pre-existing nonconforming structure.
9. **SECTION 5.5.B.4 – WAIVER REQUEST ELEMENTS:** The Board shall find that the proposed project satisfies four elements prior to issuing a waiver. When reviewing the four elements, the Board should take note of the following elements as it relates to the project:
  - a. *Element 1* – No reasonable alternative exists for siting the structure, addition or improvement outside of the required setback area.

b. *Element 3* – The waiver represents the minimum setback reduction necessary to allow for the proposed development.

10. **SECTION 5.5.C – VARIANCES:** Should the applicants revise their plans to have a wider deck, a variance may be required, and the project shall be reviewed under the variance criteria enumerated within this subsection.

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# STAFF FINDINGS OF RELEVANT SECTIONS

## ARTICLE II – ZONING DISTRICTS

	Underhill Flats Village Center	Existing Single-Family Dwelling	Existing Accessory Dwelling	Proposed Deck
<b>Lot Size:</b>	1.0 Acre	0.67 Acres		
<b>Frontage:</b>	150 ft.	167 ft.		
<b>Setbacks:</b>	Principal	Accessory	Source: Site Plan (Exhibit I)	
• Front East	0 ft.	0 ft.	37 ft.	119 ft. 146 ft.
• Side 1 North	20 ft.	15 ft.	39 ft.	1.5 ft. 8 ft.
• Side 2 South	20 ft.	15 ft.	79 ft.	141 ft. 148 ft.
• Rear West	20 ft.	15 ft.	76 ft.	29 ft. 12 ft.
<b>Max. Building Coverage:</b>	50%	Assumed Met		
<b>Max. Lot Coverage:</b>	75%	Assumed Met		
<b>Maximum Height:</b>	35 ft.	Assumed Met		

TABLE 2.2 – UNDERHILL FLATS VILLAGE CENTER DISTRICT

PG. 9

**Purpose Statement:** The purpose of the Underhill Flats Village Center District (formerly known as the Residential District) is to allow for the continuation of existing small scale commercial, residential and public uses, and to encourage development that is compatible with and promotes a compact, historic village settlement pattern. This may include higher densities of a development as supported by existing and planned infrastructure.

- The proposed deck neither adds, nor reduces density in the Underhill Flats Village Center District.
- The existing lot does not conform to the lot size requirement, and is therefore, a preexisting nonconforming lot (see Section 3.8, Nonconforming Lots below).
- The existing accessory structure does not satisfy the north side property setback requirement, and is therefore, nonconforming (see Section 3.9, Nonconforming Structures below).
- The proposed project does not satisfy the north, side setback requirement, nor satisfies the west, rear setback requirement, thus requiring a setback waiver (see Table above).

## ARTICLE III – GENERAL REGULATIONS

### SECTION 3.2 – ACCESS

PG. 30

- The subject lot has access to Vermont Route 15, a State Highway.
- While the lot is nonconforming, no modifications to the existing access way are being proposed, nor does the proposed project require modifications to the existing access way.
- This application has not been referred to the Road Foreman or VT AOT since the access way will remain unchanged
- In regards to § 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 unnecessary.

### SECTION 3.3 – CONVERSION OR CHANGE OF USE

PG. 33

- A Conversion of Use Permit (CL-18-09) was approved on November 9, 2018 to permit the conversion of the accessory structure (garage) to a detached accessory dwelling.

**SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS** **PG. 38**

- The proposed deck will be attached to the accessory dwelling, which is accessory to the one principal structure on the lot – a single-family dwelling.
- The proposed deck will not satisfy the north, side and the west, rear property setback requirements, and therefore, a dimensional waiver is required.
  - A dimensional waiver may be approved by the Board “to allow for limited additions to or enlargements of nonconforming structures or structures on nonconforming lots” (§ 3.7.E.1)

**SECTION 3.8 – NONCONFORMING LOTS** **PG. 39**

- The Board may reduce the district setback requirements in accordance with Article V “as necessary to allow for the development of a pre-existing nonconforming lot, if the Board determines that the lot cannot otherwise be developed in conformance with the regulations.”

**SECTION 3.9 – NONCONFORMING STRUCTURES** **PG. 40**

- The existing accessory structure/dwelling is a pre-existing, nonconforming structures.
- Typically, nonconforming structures cannot be expanded; however, the Board may grant a dimensional waiver to expand a nonconforming structure in accordance with Article V.

**SECTION 3.11 – OUTDOOR LIGHTING** **PG. 41**

- No new lighting is proposed (see Exhibit D).
- The Board typically requires that if new lighting is installed, it shall be downcast and shielded.

**SECTION 3.13 – PARKING, LOADING & SERVICE AREAS** **PG. 44**

- The proposed deck does not increase the number of parking spaces that are required for the existing uses on the property – a single-family dwelling (two parking spaces) + an accessory dwelling (one parking space).

**SECTION 3.14 – PERFORMANCE STANDARDS** **PG. 46**

- The proposed deck 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. 55**

- The subject lot is not within a Source Protection Area, and therefore, review under this Section is not required.

**SECTION 3.18 – STEEP SLOPES** **PG. 56**

- The ANR Atlas depicts steep slopes (15%-25%) in the vicinity of the project area (see directly to the right)
- The applicants have submitted photographs illustrating that the project area is likely under a 15% slope (see Exhibit L).



**SECTION 3.19 – SURFACE WATERS & WETLANDS**

**PG. 63**

- The ANR Atlas does not depict any surface waters or wetlands on the property.
- While an existing pond is located to the northwest of the project area, the pond is approximately 84 ft. from the northwest corner of the property.

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

**PG. 68**

- A wastewater permit is not required for the proposed project.
- The applicants obtained a wastewater permit (Permit #: WW-4-5151) as part of the Conversion of Use Permit (CL-18-09) process.

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**ARTICLE V – DEVELOPMENT REVIEW**

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**SECTION 5.1 – APPLICABILITY**

SECTION 5.1.A – TYPE OF REVIEW REQUIRED

**PG. 112**

- Conditional use review is required in accordance with Sections 3.7.E.1 and 3.9.

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 deck appears to avoid the resources identified under Section 5.3.A.1.
- Should the Board discover any of the resources identified under Section 5.3.A.1, they have 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**

**Underhill Flats Village Center & Underhill Center Village Districts.** Site design and layout shall reinforce a traditional, compact village settlement pattern characterized by a pedestrian scale and orientation, traditional densities and setbacks, well-defined streetscapes that include sidewalks or paths to facilitate pedestrian circulation, and a well-defined physical and visual edge to the built environment. Principal buildings shall be

- The proposed deck is consistent with the traditional, compact village settlement pattern, as described.
- The proposed deck is located in the rear of the accessory structure, and therefore, not visible from the front yard.

scaled and oriented in relation to adjoining structures, with principal facades and entrances facing the road or central greens, and shall establish maintain a consistent front set back distance (building line) from the street in relation to adjoining structures.

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

- The property is currently accessed by one curb-cut via Vermont Route 15.
  - 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 expected to continue being consistent with site circulation patterns associated with single-family dwellings.

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

- No modifications to landscaping and screening are proposed.
- The proposed deck will be located to the rear of the accessory structure and will not be seen the front yard.
- 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**

- The Board typically requires 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 is proposed to occur in the property's setbacks per Sections 3.7.E.1 and 3.9.

SECTION 5.4.B – GENERAL STANDARDS

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

- The construction of the proposed deck 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 deck is not anticipated to have an adverse impact on the character of the area, as the accessory dwelling and proposed deck is an accessory structure to the single-family dwelling.

- **Location:** the property is located in the Underhill Flats Village Center District, which largely contains compact development, including 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 the surrounding properties.
- **Type:** the proposed deck would be attached to the accessory dwelling, which is an accessory use to the single-family dwelling. Accessory structures are permitted within the Underhill Flats Village Center District.
- **Density:** the proposed structures will not increase the density in the area affected.
- **Intensity:** the proposed deck 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 deck is 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**

- The landowners have yet to receive a Certificate of Occupancy Permit for the accessory dwelling, as they had previously advised that they would submit the necessary certification letter required to obtain the permit as soon as possible. To date, the certification letter has not been submitted, and therefore, the habitants (landowners/applicants) of the accessory dwelling are in violation of the *Underhill Unified Land Use & Development Regulations*.
- The proposed deck will conform with the *Underhill Unified Land Use & Development Regulations* should they applicants get approval from the Board.

*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 deck will comply with the Underhill Flats Village Center District and use standards should the Board grant conditional use approval under Section 5.5 below.

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

- See Section 3.14 above.

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

- Does not apply.

**SECTION 5.5 – WAIVERS & VARIANCES**

SECTION 5.5.A – APPLICATIONS & REVIEW STANDARDS **PG. 123**

SECTION 5.5.B – DIMENSIONAL WAIVERS

*SECTION 5.5.B.1 – WAIVER REQUEST RATIONALE*

**PG. 124**

- The applicants have requested a waiver to construct a deck which will provide an outdoor area for their elderly relatives (see Exhibit N).

*SECTION 5.5.B.2 – APPLICABILITY OF WAIVER REQUEST*

**PG. 124**

- The Board may grant a waiver if one of the following is true:
  - To allow for the reasonable development and use of a pre-existing nonconforming lot under Section 3.8.
  - To allow for additions or improvements to a pre-existing nonconforming structure under Section 3.9.
  - Comply with federal or state public health, safety, access and disability standards.
  - Allow for the siting of renewable energy structures.
- Statement 1 and 2 above appear to be applicable.

*SECTION 5.5.B.4 – WAIVER REQUEST ELEMENTS*

**PG. 124**

- |   |   |
|---|---|
| <p>a. <i>Element 1</i> – No reasonable alternative exists for siting the structure, addition or improvement outside of the required setback area.</p>   | <ul style="list-style-type: none"><li>• In viewing the submitted photographs (see Exhibit L), the sliding door appears to be centered in the middle of the building; therefore, the construction of a deck that aligns with the door appears inevitable, thereby encroaching upon the setback and requiring a waiver.</li></ul> |
| <p>b. <i>Element 2</i> – The reduced setback is not contrary to public health, safety and welfare, stated objectives and policies of the Underhill Town Plan, or the intent of these regulations.</p>   | <ul style="list-style-type: none"><li>• Staff is unaware of any stated objectives and policies in the Town Plan where the construction of the proposed deck would be contrary.</li></ul>  |
| <p>c. <i>Element 3</i> – The waiver represents the minimum setback reduction necessary to allow for the proposed development.</p>   | <ul style="list-style-type: none"><li>• The Board should explore if the deck can encroach in the setback area less than what is depicted in Exhibit K.</li></ul>  |
| <p>d. <i>Element 4</i> – Any potential adverse impacts resulting from reduced setbacks on adjoining properties, surface waters or wetlands shall be mitigated through site design, landscaping and screening, other accepted mitigation measures.</p> | <ul style="list-style-type: none"><li>• The Board should evaluate if any mitigation measures are required as a result of the construction of the proposed deck.</li></ul>   |

SECTION 5.5.C – VARIANCES

- Staff warned the hearing a variance request/waiver request hearing with the understanding that the applicants were requesting a variance, but were willing to discuss a potential waiver. After reviewing the application in more detail, and observing Exhibit K, Staff discovered that only a waiver is necessary assuming that the applicants still wish to building a 12 ft. by 16 ft. deck that is center on the accessory structure (see Zoning Permit Application in Exhibit E). Should the applicants revise their plans to have a wider deck, a variance may be required.

SECTION 5.5.C.2 – VARIANCE REQUEST ELEMENTS

PG. 125

- Due to Staff’s discovery that only a waiver is required with the plans currently proposed, variance review is not required. However, in the event the plans change, or the Board determines that a variance review is required, the Board shall consider the application in relation to the variance criteria set out directly below.

*Element 1* – There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions and not the circumstances or conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located.

*Element 2* – Because of such physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these regulations and that the authorization of a variance is necessary to enable the reasonable use of the property.

*Element 3* – The unnecessary hardship has not been created by the applicant or appellant.

*Element 4* – The variance, if authorized will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources or be detrimental to the public welfare.

*Element 5* – The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.

SECTION 5.5.C.3 – RENEWABLE ENERGY STRUCTURES

PG. 125

- Does not apply.

SECTION 5.5.C.4 – VARIANCES WITHIN THE FLOOD HAZARD OVERLAY DISTRICT

PG. 126

- Does not apply.

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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.