



Town of Underhill

Development Review Board

Conditional Use Review Findings & Decision

SITE PLAN / CONDITIONAL USE REVIEW APPLICATION OF MICHAEL STEEVES AND KAITLYN KOHL TO CONSTRUCT A DRIVEWAY AND IMPACT STEEP SLOPES AND VERY STEEP SLOPES

In re: Michael Steeves/ Kaitlyn Kohl
459 Pleasant Valley Road (PV459)
Underhill, VT 05489

5 March 2024

Docket No. DRB-23-08

Decision: DENIED

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns the conditional use review application of Michael Steeves / Kaitlyn Kohl pertaining to the proposed construction of a driveway, which will impact steep slopes and very steep slopes pursuant to the *Underhill Unified Land Use and Development Regulations* (ULUDR) Sections 3.18.B.2, 3.18.D and 3.18.E. The subject property is currently owned by Kaitlyn Kohl and is located at 459 Pleasant Valley Road (PV459) in Underhill, Vermont.

- A. On October 27, 2023, the applicant, Michael Steeves & Kaitlyn Kohl, submitted an engineered driveway design plan set to the Zoning Administrator and requested an access permit. The property, located at 459 Pleasant Valley Road, is owned by Kaitlyn Kohl.
- B. The Interim Zoning Administrator, having no previous communication with the applicant, reviewed the plan set and advised the applicant that the lot was predominantly located in the Soil & Water Conservation District with a portion, located in the rear, lying in the Mt. Mansfield Scenic Preservation District. The minimum required frontage in either zone is 400 feet and the minimum lot size for the Soil & Water District, in which the existing house is located, is 15 acres. The existing lot frontage is +/-359 feet, and the acreage was depicted as 8.67 acres +/- per the applicant's submittals.
- C. The Interim Zoning Administrator determined that the lot is a pre-existing nonconforming lot and therefore access review was referred to the Development Review Board per Section 3.8 (D), subject to site plan review procedures under Section 5.3.
- D. A site visit was scheduled for Saturday, November 18, 2023, and a site plan review hearing was warned for Monday, November 20, 2023 at 6:35 PM.
- E. On November 1, 2023, notice of the site plan review hearing was mailed via Certified Mail to the following property owners adjoining the property subject to the application:
 1. William Stapleton & Christine Murphy, 477 Pleasant Valley Road, Underhill, VT 05489

2. Federal Home Loan Mortgage Corp, 5000 Plano Parkway, Carrollton, TX 75010
 3. Thomas & Roseann Frazar, 29 Corbett Road, Underhill, VT 05489
 4. Nikita Salmon, 414 Irish Settlement Road, Underhill, VT 05489
 5. Karen Hess, 433 Pleasant Valley Road, Underhill, VT 05489
 6. Tyler & Kelly Mulcahy, 452 Pleasant Valley Road, Underhill, VT 05489
- F. During the week of November 1, 2023, notice of the public hearing for the proposed site plan review application was posted at the following locations:
1. The Underhill Town Clerk's office;
 2. The Underhill Center Post Office; and
 3. Jacobs & Son Market.
- G. On November 3, 2023, notice of public hearing was published in the *Burlington Free Press*.
- H. The scheduled site visit at the property's location (459 Pleasant Valley Road, Underhill, Vermont) commenced at 9:30 AM on Saturday, November 18, 2023.
- I. Present at the site visit were the following members of the Development Review Board:
1. Board Member, Charles Van Winkle, Chair
 2. Board Member, Brian Bertsch
 3. Board Member, Matt Chapek
 4. Board Member, Karen McKnight
 5. Board Member, Shanie Bartlett
 6. Board Member, Meg Armstrong, Alternate
- Municipal representatives and members of the public present during the site visit were:
7. Interim Planning & Zoning Administrator, Brad Holden
 8. Abutting Neighbor: Tyler Mulcahy (453 Pleasant Valley Road, Underhill, VT)
 9. Abutting Neighbor: Thomas Frazar, (29 Corbett Road, Underhill, VT)
- J. The site plan review hearing commenced at 6:35 PM on Monday, November 20, 2023, at the Town of Underhill Town Hall, 12 Pleasant Valley Road, Underhill, VT.
- K. Present at the hearing were the following members of the Development Review Board:
1. Board Member, Charles Van Winkle, Chair
 2. Board Member, Brian Bertsch
 3. Board Member, Matt Chapek
 4. Board Member, Karen McKnight
 5. Board Member, Shanie Bartlett
 6. Board Member, Meg Armstrong, Alternate
 7. Board Member, Penny Miller, Alternate

Also, in attendance was the Interim Planning & Zoning Administrator, Brad Holden.

Others present at the hearing were:

1. Applicant, Michael Steeves (In re: 459 Pleasant Valley Road, Underhill, VT;)
 2. Abutting Neighbor, Tyler Mulcahy (453 Pleasant Valley Road, Underhill, VT)
 3. Abutting Neighbor, Christine Murphy (477 Pleasant Valley Road, Underhill, VT)
 4. Abutting Neighbor, James Corbett (29 Downs Road, Underhill, VT)
- L. At the outset of the hearing, Chairperson 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. Applicant, Michael Steeves
 2. Abutting Neighbor, Tyler Mulcahy
 3. Abutting Neighbor, Christine Murphy
- M. In support of the application, the following exhibits were submitted to the Development Review Board:
- A. November 18 & 20, 2023 Underhill Development Review Board Agenda
 - B. Steeves-Kohl Access Permit Application.
 - C. 3-page plan set:
 - Site Plan, 459 Pleasant Valley Road, depicting the existing house site and proposed driveway, prepared by O’Leary-Burke Civil Associates, PLC, file 2023-96-S7, dated 11/02/23.
 - Overall Site Plan, depicting existing and proposed features, contours, house site, and property boundaries. No title block, scale, or date.
 - Site Plan, 459 Pleasant Valley Road, depicting the proposed driveway profile, prepared by O’Leary-Burke Civil Associates, PLC, file 2023-96-S4, dated 10/26/23.
 - D. November 1, 2023 Certificate of Service
 - E. November 3, 2023 Burlington Free Press Notice of Public Hearing
 - F. VT Agency of Natural Resources Atlas slope map
 - G. VT Agency of Natural Resources Atlas habitat block map
 - H. VT Agency of Natural Resources Atlas hydric soils & wetland map
 - I. VT E911 viewer map with addresses and parcel data
 - J. November 9, 2023 email with comments from the Underhill-Jericho Fire Department.

No additional exhibits were distributed to the Development Review Board (hereafter referred to as “The Board”) prior to the Monday, November 20, 2023 hearing.

All exhibits are available for public review in the Steeves/ Kohl site plan review file (PV459/DRB 23-08) at the Underhill Zoning & Planning office.

Upon review of the application materials by the board prior to and during the November 20th 2023 hearing, the board concluded that the application involved impacts on steep slopes and very steep slopes as defined by the Underhill Unified Land Use and Development Regulations. The board further concluded that the conditional use review criteria applied to the proposed development, and the application needed to be re-warned to include the conditional use review criteria. The board continued the site plan review hearing to December 18, 2023.

N. On December 3, 2023, 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. William Stapleton & Christine Murphy, 477 Pleasant Valley Road, Underhill, VT 05489

2. Federal Home Loan Mortgage Corp, 5000 Plano Parkway, Carrollton, TX 75010
 3. Thomas & Roseann Frazar, 29 Corbett Road, Underhill, VT 05489
 4. Nikita Salmon, 414 Irish Settlement Road, Underhill, VT 05489
 5. Karen Hess, 433 Pleasant Valley Road, Underhill, VT 05489
 6. Tyler & Kelly Mulcahy, 452 Pleasant Valley Road, Underhill, VT 05489
- O. During the week of December 4, 2023, notice of the public hearing for the 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. Jacobs & Son Market.
- P. On December 2, 2023, notice of public hearing was published in the *Burlington Free Press*.
- Q. The board re-opened the site plan review hearing and the conditional use review hearing commenced on Monday December 18, 2023. The board combined the two hearings. The board re-introduced as evidence the application materials from the November 20th 2023 hearing. The exhibits are listed as follows:
- A. November 18 & 20, 2023 Underhill Development Review Board Agenda
 - B. Steeves-Kohl Access Permit Application.
 - C. 3-page plan set:
 - a. Site Plan, 459 Pleasant Valley Road, depicting the existing house site and proposed driveway, prepared by O'Leary-Burke Civil Associates, PLC, file 2023-96-S7, dated 11/02/23.
 - b. Overall Site Plan, depicting existing and proposed features, contours, house site, and property boundaries. No title block, scale, or date.
 - c. Site Plan, 459 Pleasant Valley Road, depicting the proposed driveway profile, prepared by O'Leary-Burke Civil Associates, PLC, file 2023-96-S4, dated 10/26/23. November 1, 2023 Certificate of Service
 - D. November 3, 2023 Burlington Free Press Notice of Public Hearing
 - E. VT Agency of Natural Resources Atlas slope map
 - F. VT Agency of Natural Resources Atlas habitat block map
 - G. VT Agency of Natural Resources Atlas hydric soils & wetland map
 - H. VT E911 viewer map with addresses and parcel data
 - I. November 9, 2023 email with comments from the Underhill-Jericho Fire Department.

Additional Exhibits in support of the application were submitted and are listed as follows:

- J. Steeve-Kohl Conditional Use (Art. V) Application and waiver request
- K. 5-page plan set:
 - o EPSC Plan depicting existing slopes, proposed driveway, retaining walls, and stormwater details prepared by O'Leary – Burke Civil Associates, PLC. File 2023-96-S8, dated 11/30/23.
 - o A color image depicting the existing house, existing driveway, and the proposed driveway and stormwater details. No title block, scale or date.
 - o Site Plan, 459 Pleasant Valley Road, depicting the proposed driveway profile, prepared by O'Leary-Burke Civil Associates, PLC, file 2023-96-S8, dated 11/30/23.

- Site Plan (Phase 1), 459 Pleasant Valley Road, depicting the existing house site and proposed driveway, retaining walls, and stormwater details prepared by O’Leary-Burke Civil Associates, PLC, file 2023-96-S8, dated 11/02/23.
 - Site Plan (Finished), 459 Pleasant Valley Road, depicting the existing house site and proposed driveway, retaining walls, finished contours, and stormwater details prepared by O’Leary-Burke Civil Associates, PLC, file 2023-96-S8, dated 11/30/23.
- L. Steeves/Kohl, 459 Pleasant Valley Road, Conditional Use Review/Site Plan Review Staff Report; DRB Guideline.
- R. The combined conditional use / site plan review hearing commenced at 6:35 PM on Monday, December 18th, 2023 at the Town of Underhill Town Hall, 12 Pleasant Valley Road, Underhill, VT. Those who spoke at the hearing were:
1. The Applicant, Michael Steeves
 2. Abutting Neighbor, Tyler Mulcahy
 3. Abutting Neighbor, Christine Murphy
 4. Karl Marchessault, P.E.
 5. The board reviewed the materials the applicant had submitted, had additional questions and continued the hearing to January 8th, 2024.
- S. On January 8th 2024, due to the illness of the applicant, the board opened the hearing, no testimony was taken and the hearing was continued to Monday January 22, 2024.
- T. Prior to the January 22nd hearing additional exhibits were submitted a follow
- M. An email from Karl Marchessault, P.E. dated 1/3/2024 addressing prior questions from the board.
 - N. Overall Site Plan, depicting existing and proposed features, contours, house site, and property boundaries. No title block, scale, or date.
 - O. EPSC Plan depicting existing slopes, proposed driveway, retaining walls, and stormwater details prepared by O’Leary – Burke Civil Associates, PLC. File 2023-96-S9, dated 01/02/24, Sheet 3.
 - P. Site Plan, 459 Pleasant Valley Road, depicting the proposed driveway profile, prepared by O’Leary-Burke Civil Associates, PLC, file 2023-96-S9, dated 01/03/24.
 - Q. Site Plan (Phase 1), 459 Pleasant Valley Road, depicting the existing house site and proposed driveway, retaining walls, and stormwater details, and tree planting, prepared by O’Leary-Burke Civil Associates, PLC, file 2023-96-S9, dated 01/03/24.
 - R. Site Plan (Finished), 459 Pleasant Valley Road, depicting the existing house site and proposed driveway, retaining walls, finished contours, tree plantings, and stormwater details prepared by O’Leary-Burke Civil Associates, PLC, file 2023-96-S9, dated 01/03/24.
 - S. HydroCAD software solutions stormwater report dated 1/3/2024, prepared by O’Leary – Burke Civil Associates, PLC.

Additional submittals presented at the 1/22/2024 Conditional Use/Site Plan Review Hearing

- T. Site Plan (Phase 1), 459 Pleasant Valley Road, depicting the existing house site and proposed driveway, retaining walls, and stormwater details, tree planting, and revised grading prepared by O’Leary-Burke Civil Associates, PLC, file 2023-96-S10, dated 01/22/24, Sheet 1.

- U. EPSC Plan depicting existing slopes, proposed driveway, retaining walls, and stormwater details prepared by O’Leary – Burke Civil Associates, PLC. File 2023-96-S9, dated 01/22/24, Sheet 3.
 - V. Site Plan (Finished), 459 Pleasant Valley Road, depicting the existing house site and proposed driveway, retaining walls, finished contours, tree plantings, grading changes, and stormwater details prepared by O’Leary-Burke Civil Associates, PLC, file 2023-96-S10, dated 01/22/24.
- U. The board re-opened the combined conditional use / site plan review hearing at 6:35 PM on Monday, January 22nd, 2024 at the Town of Underhill Town Hall, 12 Pleasant Valley Road, Underhill, VT. Those who spoke at the hearing were:
1. The Applicant, Michael Steeves
 2. Abutting Neighbor, Tyler Mulcahy
 3. Abutting Neighbor, Christine Murphy
 4. Karl Marchessault, P.E.

II. FACTUAL FINDINGS & CONCLUSIONS

The Minutes of the Monday, November 20, 2023, December 18, 2023 and January 22, 2024 meeting 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 2011 *Underhill Unified Land Use and Development Regulations* (ULUDR) as amended through March 6, 2018:

PROJECT SYNOPSIS

The applicant, Michael Steeves & Kaitlyn Kohl were seeking both site plan and conditional use approval to construct a driveway on steep slopes and very steep slopes on property located at 459 Pleasant Valley Road, Underhill, VT, which is owned by Kaitlyn Kohl. Since the applicant proposed a driveway on a pre-existing non-conforming lot, the interim Zoning Administrator therefore deferred access review to the Development Review Board per Section 3.8 (D), subject to site plan review procedures under Section 5.3. Upon conducting their initial review the board also determined that proposed development impacted Steep Slopes and Very Steep Slopes. The review criteria is listed under UULUDR as amended on 3 March 2020, and the Underhill Road, Driveway & Trail Ordinance as amended 18 December 2018. The development Review Board identified sections of the UULUDR applicable towards this application. Article III, Section 3.18D Steep Slopes (15-25%), Section 3.18.E Very Steep Slopes (>25%) and Article V, Section 5.3 Site Plan review.

Steep Slopes (Article III, Section 3.18)

A. Purpose. The purpose of this section is to regulate land subdivision and development to minimize site disturbance and construction on steep slopes (15% to 25%), and to avoid site disturbance on very steep slopes (> 25%) in order to:

1. Maintain existing topography, including natural (pre-development) elevations, grades and drainage patterns.

2. Minimize impervious surfaces, stormwater runoff, channeling, flooding and soil erosion, on steep slopes.
 3. Prevent hazards to life and property resulting from slope instability or failure, including rock falls, slides, slumps and other downslope movements of materials or structures.
 4. Avoid stream sedimentation and adverse impacts to surface and ground water quality, and aquatic habitat.
 5. Maintain and re-establish vegetation on steep slopes to stabilize soils, and to maintain riparian buffers.
 6. Minimize the adverse visual impacts of steep slope development, as viewed from public vantage points.
 7. Avoid the need for permanent and costly engineered slope stabilization and stormwater management practices on very steep slopes, including excessive long-term management and maintenance costs.
 8. Ensure that development on steep slopes is constructed and maintained in conformance with best management practices for construction, stormwater management and erosion control.
- A. Applicability. The requirements of this section apply to all land subdivision and development including, within the context of this section, site clearing and preparation, grading and excavation construction, and the installation of driveways, roads, utilities and other infrastructure, on steep or very steep slopes as defined under section 11.2
1. **FINDING:** *The board finds that the proposed development includes site clearing and preparation, grading and excavation construction, and the installation of driveway.*
- B. Exemptions
1. **FINDING:** *The board finds that the proposed development is not specifically exempt from the requirements of section 3.18.*
- C. Application requirements. In addition to the application criteria listed under section 5.2, applications for development on steep or very steep slopes shall include the following:
1. A copy of the USGS topographic map showing the location of the property in relation to general site topography and drainage.
 - i. **FINDING:** *The board finds that a USGS topographic map showing the location of the property in relation to general site topography and drainage was submitted.*
 2. A slope map of the property generally showing areas of steep (15% to 25%) and very steep (>25%) slope, as determined from one or more of the following:
 - i. USGS topographic maps,
 - ii. Digital elevation data available from the Vermont Center for Geographic Information, or
 - iii. Vermont Soil Survey map units, available from the USDA Natural Resource Conservation Service.
 1. **FINDING:** *The board finds that a slope map was submitted.*
 3. A site plan for the property prepared by a licensed professional engineer or surveyor showing:
 - i. The location of all surface waters, wetlands, and required setback and buffer areas (see Section 3.19).
 - ii. The general location and density of existing vegetation and a tabulation of the type, area and location of vegetation to be removed.
 - iii. The location of rock outcrops and ledges larger than 200 square feet in area.
 - iv. The location of all existing and proposed improvements, including building envelopes or footprints, driveways, roads and other impervious surfaces, and trail and utility corridors.

1. **FINDING:** *The board finds that a partial site plan for the property was submitted.*
4. A grading plan for the property prepared by a licensed professional engineer or surveyor.
 - i. **FINDING:** *The board finds that a grading plan for the property was submitted by a licensed professional engineer.*
5. A stormwater management, erosion prevention and sediment control plan, prepared or certified by a professional engineer.
 - i. **FINDING:** *The board finds that a stormwater management plan and erosion prevention and sediment control plan as well as a grading plan for the property was submitted by a licensed professional engineer.*
6. For development that involves the construction of structures on steep slopes, an architectural or engineering plan, prepared by a licensed professional, that includes structural elevations and sections, and identifies building construction methods and details.
 - i. **FINDING:** *The board finds that other than a driveway no structures are proposed on steep slopes or very steep slopes.*
7. The following also shall be submitted as applicable for development that directs or channels stormwater runoff off-site to adjoining surface waters, properties or public rights-of-way:
 - i. Approval from the Underhill Selectboard or Vermont Agency of Transportation for drainage into public road rights-of-way.
 - ii. Drainage easements for drainage onto adjoining properties.
 - iii. A hydrologic study prepared by a qualified professional, to be paid for by the applicant, if required by the DRB to determine the effects of proposed development on surface waters, wetlands, special flood hazard areas and downstream facilities in the vicinity of the project, and recommended mitigation measures.
 1. **FINDING:** *The board finds that the development review board has jurisdiction over the proposed access and any drainage into a public road or right of way.*
 2. **FINDING:** *The board finds there are drainage easements on adjacent properties.*
 3. **FINDING:** *The board finds hydrologic study prepared by a qualified professional was submitted in support of the application.*

Very Steep Slopes (>25%). Site disturbance and development, not limited to grading, building construction and the installation of driveways, roads, utilities or other infrastructure, is prohibited on very steep slopes (>25%) except for activities that are exempt under Subsection B, and the following, which must otherwise meet all relevant steep slopes standards under Subsection D. to meet the intent and purpose of these regulations, may include but are not limited to:

- A. Hiking, rock climbing, snowmobile and mountain-biking trails that are open to the public and are regularly maintained by a public, nonprofit or commercial entity.
 - a. **FINDING:** *The board finds the proposed development does not qualify for an exemption for activity on Very Steep Slopes.*

- B. Ski lifts and trails associated with an existing or permitted alpine or Nordic ski facility, including permitted year-round recreational uses of such facilities.
 - a. **FINDING:** *The board finds the proposed development is not associated with an existing or planned Nordic ski facility.*
- C. 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.
 - a. **FINDING:** *The board finds the proposed development contains an existing single family house that was legally in existence as of March 2, 2011.*
 - b. **FINDING:** *The board finds the lower portion of the lot closest to Pleasant Valley Road contains slopes that are not considered Steep or very Steep in accordance with the UULDR*
 - c. **FINDING:** *The board finds the existing single family home had been occupied prior to the applicant purchasing the property and the existing single family home constitutes a reasonable use of the property.*
- D. A driveway or road required to serve proposed development which extends no more than 100 feet into an area of very steep slope, if it is clearly documented that no other means of access can be provided.
 - a. **FINDING:** *The board finds the proposed driveway extends more than 100 feet into an area of Steep Slopes and Very Steep Slopes. The board finds that alternative means of access have not been fully explored therefore have not been clearly documented that no other mean of access can be provided.*

Site Plan Review (Article V, Section 5.3)

Purpose. Site plan review is intended to ensure that site layout and development design are functional, safe, attractive, and consistent with the purpose and character of the district(s) in which the development is located. Standards specifically relate to the internal layout of the site, its physical design, and the functional and visual integration of the site with adjoining properties, uses and infrastructure.

1. Existing Site Features.

- a. Site layout and design, to the extent physically feasible, shall incorporate and avoid undue adverse impacts to significant natural, historic and scenic resource identified from the Underhill Town Plan, maps and related inventories, or through site investigation. These include but may not be limited to:
 - i. existing topography and drainage patterns;
 - ii. land above 1500 feet in elevation;
 - iii. areas of steep (15%-25%) and very steep (>25%) slope (see Section 3.18);
 - iv. surface waters, wetlands, and associated buffers (see Section 3.19);
 - v. special flood hazard areas under Article VI;
 - vi. delineated source protection areas (see Section 3.17);
 - vii. significant wildlife habitat areas and travel corridors;
 - viii. 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.

FINDING: *The board finds that the proposed project the proposed driveway, supporting walls and removal of the natural tree canopies and understories will have an adverse impact to the scenic view as the driveway will be situated on a prominent hillside. The board finds this is not compatible with natural and scenic and environmentally sensitive area. Secondly, the proposed screening is inadequate for the scale of the disturbance.*

b. The DRB may require one or more of the following measures as necessary to avoid or mitigate adverse impacts to natural, scenic and historic resources in the vicinity of the proposed development:

- i. Increased setback distances or undisturbed buffer areas between proposed development and identified resources.
- ii. The designation of building envelopes sited to exclude identified resource areas, and to limit the extent of site clearing and disturbance.
- iii. Permanent protection of identified resource areas as designated open space.
- iv. The screening of development as viewed from public vantage points.
- v. The preparation and implementation of management plans for identified resources.

2. Site Layout & Design. The location and orientation of structures, and supporting infrastructure on the site shall be compatible with their proposed setting and context, as determined from specific policies of the Underhill Town Plan, zoning district objectives, existing site conditions and features, adjoining or facing structures in the vicinity, and other applicable provisions of these 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:

Mt. Mansfield Scenic Preservation and Soil and 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, including 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 minimize adverse impacts to identified resources in the vicinity of the proposed development.

FINDING: *The board finds that a single-family home in this area of Underhill is compatible with the proposed setting and context. However the board also finds the proposed access drive is not compatible with the proposed setting and context, as determined from specific policies of the Underhill Town Plan, zoning district objectives, existing site conditions and features, adjoining or facing structures in the vicinity, and other applicable provisions of these regulations, including density, setback, height and buffering requirements.*

3. Vehicle Access. Vehicular access, including road intersections shall meet applicable town and state access management and design standards, including those set forth in Section 3.2. Curb cuts and road intersections shall not create hazards to vehicles, pedestrians or bicyclists on site or on adjoining roads, sidewalks and pathways.

FINDING: *The board finds the proposed driveway access does not create a hazard and the proposed location is an overall improvement on the existing curb cut.*

4. Parking, Loading & Service Areas. On-site parking, loading and service areas shall be provided in accordance with the requirements of Section 3.13, and the following, with

particular attention given to pedestrian and vehicular safety:

FINDING: *The board finds no parking plan was submitted but that parking loading and service areas are anticipated to be consistent with those in use for a single-family home.*

5. Site Circulation. Provision shall be made for adequate and safe onsite vehicular and pedestrian circulation, with consideration given to the intended use of the property, the location of accesses, buildings, parking areas, and existing facilities onsite and on adjoining properties.

FINDING: *The board finds that the proposed driveway is not in accordance with the maximum slope allowable under the Underhill Road Driveway & Trail ordinance.*

6. Landscaping and Screening. Landscaping shall be provided to enhance the overall appearance of the site, to integrate new development into its natural and historic surroundings, and to maintain or establish physical and visual compatibility with neighboring properties.

FINDING: *The board finds that additional landscaping is proposed as part of the project, but does not find that the proposed landscaping adequately screens the proposed development from passersby in the Mount Mansfield Scenic Preservation district.*

7. Outdoor Lighting. Outdoor lighting installations shall meet the requirements of Section 3.11. The DRB may require the submission of an outdoor lighting plan, prepared by a qualified engineer or lighting expert, for projects determined by the DRB to pose a potential for significant off-site lighting impact due to the number, location and/or intensity of proposed lighting fixtures. 20 21

FINDING: *The board finds that no information on lighting was submitted in support of the application.*

8. Stormwater Management and Erosion Control. Temporary and permanent stormwater management and erosion control measures shall be used during all phases of development as necessary to minimize surface runoff and erosion, protect water quality, and to avoid damage to downstream properties and infrastructure in conformance with the following requirements.

FINDING: *The board finds that a stormwater management plan is proposed inclusive of a stormwater management basin. The board finds that an erosion control plan was submitted.*

Conditional Use Review (Article V, Section 5.4)

D. Purpose. Conditional use review is intended to ensure compliance with standards addressing the potential impacts of development on adjoining properties, the neighborhood, and/or zoning district in which the development is located, and the community at large. Typically, land uses are subject to conditional use review because their scale, intensity and potential for off-site impacts warrant more careful scrutiny by the Development Review Board (DRB). Standards and conditions relate to the identification, avoidance and/or mitigation of potential impacts.

E. 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:

- i. The capacity of existing or planned community services or facilities. The applicant and DRB shall consider the demand for community services and facilities resulting from the proposed

development in relation to the available capacity of existing and planned community services and facilities.

1. **FINDING:** *The board find that the replacement of a single-family home will not create an undue adverse impact on the demand for community services.*
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 purpose statements and specifically stated and relevant policies and standards of the Underhill Town Plan.
 - i. **FINDING:** *The board finds that the location of the single family home proposed as part of the driveway is compatible with the area. However the board also finds the scale, type, density and intensity of the proposed driveway in relation to the character of the area affected is not compatible.*
3. Traffic on roads and highways in the vicinity. The applicant and DRB shall consider the projected impact of traffic resulting from the proposed development on the condition, capacity, safety, efficiency and use of existing and planned roads, bridges, intersections and associated highway infrastructure in the vicinity of the proposed development; and shall not approve a project that would result in significant congestion (e.g., a Level of Service below C), or the creation of unsafe conditions for motorists or pedestrians.
 - i. **FINDING:** *The board finds that the project proposes no additional traffic resulting from the replacement of a single-family home.*

Waivers & Variances (Article V, Section 5.5)

A. Applications & Review Standards. The DRB may waive application requirements, and site plan or conditional use review standards under Section 5.3 and 5.4, that it determines are not relevant to a particular application.

B. Dimensional Waivers. The DRB, in association with site plan or conditional use review, or on appeal of a Zoning Administrator's determination, may reduce minimum district setback requirements (under Tables 2.2 – 2.8) or minimum surface water and wetland setbacks (under Section 3.19) in accordance with the Act [§4414] and the following requirements.

1. A waiver request, including information regarding the specific circumstances, need and justification for the waiver shall be submitted in writing with the application for site plan or conditional use review.
 - a. **FINDING:** *The board finds that the applicant has submitted a waiver request for relief from the standards under section 3.18 Part E "Very Steep Slopes, line - d.*
 - b. **FINDING:** *The board finds that the proposed new driveway required to serve the new proposed development extends more 100 feet into an area of very steep slopes and is in conflict with the regulations.*
 - c. **FINDING:** *The board finds that it has not been clearly documented that no other means of access can be provided.*
2. A waiver under this section may be granted by the DRB only as necessary to:
 - a. Allow for the reasonable development and use of a pre-existing nonconforming lot under Section 3.8.
 - a. **FINDING:** *The board finds a waiver under this criterion to be in applicable. The existing single-family home on the lower section of the property is a reasonable development.*

- b. Allow for additions or improvements to a pre-existing nonconforming structure under Section 3.9.
 - a. **FINDING:** *The board finds that the application does not include any addition or improvement to a pre-existing non-conforming structure. In fact the applicant has testified that he intends to remove the existing single-family structure.*
 - c. Comply with federal or state public health, safety, access and disability standards.
 - a. **FINDING:** *The board finds that the project does not involve compliance with federal or state public health, safety, access, and disability standards.*
 - d. Allow for the siting of renewable energy structures.
 - a. **FINDING:** *The board finds that no renewable energy structures are proposed with this application.*
3. The minimum required setback distance shall be reduced by no more than 50% under this provision. Variance approval under Subsection C shall be required for any further reduction in dimensional requirements.
- a. **FINDING:** *The board finds that there is no evidence suggesting that the minimum required setback distance can be met or requires a reduction.*
4. In granting a waiver under this section, the DRB shall find, based upon clear and convincing evidence of a specific need and circumstances that:
- a. No reasonable alternative exists for siting the structure, addition or improvement outside of the required setback area.
 - i. **FINDING:** *The board needs to find that there is no reasonable alternative exists for siting the structure, addition, or improvement outside of the required setback area.*
 - b. 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.
 - i. **FINDING:** *The board finds that no reduced setbacks were requested.*
 - c. The waiver represents the minimum setback reduction necessary to allow for the proposed development.
 - i. **FINDING:** *The board finds that criteria doesn't apply.*
 - d. Any potential adverse impacts resulting from reduced setbacks on adjoining properties, surface waters or wetlands shall be mitigated through site design, landscaping and screening, or other accepted mitigation measures.
 - i. **FINDING:** *The board finds that criteria doesn't apply.*

III. 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 driveway will generally conform to the aforementioned Regulations.

- The board finds that the proposed development is in direct conflict with the purpose and intent of the Mt Mansfield Scenic Preservation District.
- The board finds the proposed development is an undue environmental disturbance in the Soil and Water Conservation District.
- The board finds that the proposed project exceeds the allowable waiver criteria afforded to by the board by the UULDR, and does not grant the project any waivers.

- The board finds the proposed development heavily impacts site disturbance on Steep Slopes (15% to 25%).
- The board find the proposed development impacts Very Steep Slopes (>25%) and is prohibited in accordance with section 3.18.E of the UULDR.
- The board finds the project does not qualify for any of the exemption criteria outlined in section 3.18.E.

Based upon the findings above, the Development Review Board hereby denies the access permit/ site plan/ conditional use application.

Dated at Underhill, Vermont this 5th day of March 2024.



Development Review Board Member, Charles Van Winkle, Chair

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 4 April 2024.