



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

CONDITIONAL USE REVIEW APPLICATION OF VICTOR VEVE TO CONSTRUCT A DRIVEWAY AND IMPACT STEEP SLOPES AND VERY STEEP SLOPES

In re: Victor Veve, d/b/a Rical, LLC
32 Downs Road (DW032)
Underhill, VT 05489

Docket No. DRB-18-14

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

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns the conditional use review application of Victor Veve d/b/a Rical, LLC 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 John A. & Cheryl B. Perreault and is located at 32 Downs Road (DW032) in Underhill, Vermont.

- A. On August 20, 2018, the applicant, Victor Veve d/b/a Rical LLC, submitted a conditional use review application for the abovementioned project. The application was accepted and determined to be complete shortly thereafter. A site visit was scheduled for Monday, September 17, 2018 at 5:45 PM, and the hearing was scheduled for Monday, September 17, 2018 at 6:35 PM.
- B. On August 30, 2018, notice of the conditional use review hearing was mailed via Certified Mail to the following property owners adjoining the property subject to the application:
1. DW020 – Robert & Kitty L. Reed, 20 Downs Road, Underhill, VT 05489
 2. DW029 – James J. & Sheila J. Corbett, 29 Downs Road, Underhill, VT 05489
 3. DW034 – Gordon W. & Renee Grant, 34 Downs Road, Underhill, VT 05489
 4. DW036 – Christopher & Megan Martin, 36 Downs Road, Underhill, VT 05489
 5. DW041 – Harman & Rhonda Dinwiddie, 41 Downs Road, Underhill, VT 05489
 6. DW080 – Robert Jr. & Matthew E. Holstein, P.O. Box 284, Jericho, VT 05465
 7. Landowner: DW032 – John A. & Cheryl B. Perrault, 219 Ash Street, Hopkinton, MA 01748
 8. Applicant: Victor Veve, P.O. Box 47, Cambridge, VT 05444
- C. During the week of August 26, 2018, notice of the public hearing for the proposed conditional use review application was posted at the following locations:
1. The Underhill Town Clerk's office;
 2. The Underhill Center Post Office; and
 3. Jacobs & Son Market.

- D. On September 1, 2018, notice of public hearing was published in the *Burlington Free Press*.
- E. The scheduled site visit at the property's location (32 Downs Road, Underhill, Vermont) commenced at 5:45 PM on Monday, September 17, 2018.
- F. Present at the site visit were the following members of the Development Review Board:
 - 1. Board Member, Charles Van Winkle, Chair
 - 2. Board Member, Mark Green
 - 3. Board Member, Penny Miller
 - 4. Board Member Stacey Turkos
 - 5. Board Member, Shanie Bartlett, Alternate
 - 6. Board Member, Mark Hamelin, Alternate

Municipal representatives and members of the public present during the site visit were:

- 7. Planning & Zoning Administrator, Andrew Strniste
 - 8. Applicant: Victor Veve (In re: 32 Downs Road, Underhill, VT)
 - 9. Applicant's Engineer: Paul O'Leary (In re: 32 Downs Road, Underhill, VT)
 - 10. Abutting Neighbor: Robert Reed (20 Downs Road, Underhill, VT)
 - 11. Abutting Neighbor: Kitty L. Reed (20 Downs Road, Underhill, VT)
 - 12. Abutting Neighbor: Sheila J. Corbett (29 Downs Road, Underhill, VT)
 - 13. Abutting Neighbor: James J. Corbett (29 Downs Road, Underhill, VT)
 - 14. Abutting Neighbor: Gordon W. Grant (34 Downs Road, Underhill, VT)
 - 15. Abutting Neighbor: Renee Grant (34 Downs Road, Underhill, VT)
- G. The conditional use review hearing commenced at 6:54 PM on Monday, September 17, 2018 at the Town of Underhill Town Hall, 12 Pleasant Valley Road, Underhill, VT.
 - H. Present at the conditional use review hearing were the following members of the Development Review Board:
 - 1. Board Member, Charles Van Winkle, Chair
 - 2. Board Member, Mark Green
 - 3. Board Member, Penny Miller
 - 4. Board Member, Stacey Turkos
 - 5. Board Member, Shanie Bartlett, Alternate
 - 6. Board Member, Mark Hamelin, Alternate

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

Others present at the hearing were:

- 1. Applicant, Victor Veve (In re: 32 Downs Road, Underhill, VT; Mailing Address: P.O. Box 47, Cambridge, VT)
- 2. Applicant's Engineer, Paul O'Leary (In re: 32 Downs Road, Underhill, VT; Address: 13 Corporate Drive, Essex Junction, VT 05452)
- 3. Abutting Neighbor, Robert Reed (20 Downs Road, Underhill, VT)
- 4. Abutting Neighbor, Kitty Reed (20 Downs Road, Underhill, VT)

5. Abutting Neighbor, Sheila Corbett (29 Downs Road, Underhill, VT)
 6. Abutting Neighbor, James Corbett (29 Downs Road, Underhill, VT)
 7. Abutting Neighbor, Megan Martin (36 Downs Road, Underhill, VT)
 8. Attending Member of the Public: Michael Skinner (Four Seasons Sotheby's International Realty, 550 Hinesburg Road, South Burlington, VT 05403)
- I. At the outset of the hearing, Chairperson Charles Van Winkle explained the criteria under 24 V.S.A § 4465(b) for being considered an "interested party." Those who spoke at the hearing were:
1. Applicant, Victor Veve
 2. Applicant's Engineer, Paul O'Leary
 3. Abutting Neighbor, Robert Reed
 4. Abutting Neighbor, Sheila Corbett
 5. Abutting Neighbor, James Corbett
 6. Abutting Neighbor, Megan Martin
- J. In support of the conditional use review application, the following exhibits were submitted to the Development Review Board:
1. Exhibit A - DW032 - Veve Conditional Use Staff Report
 2. Exhibit B - DW032 Veve Conditional Use Review Hearing Procedures
 3. Exhibit C - Conditional Use & Site Plan Review Hearing Request Application
 4. Exhibit D - Site Plan Review Standards Findings Checklist
 5. Exhibit E - Conditional Use Review Standards Findings Checklist
 6. Exhibit F - BFP Notice of Public Meeting
 7. Exhibit G - Certificate of Service
 8. Exhibit H - Correspondence Regarding Existing Driveway
 9. Exhibit I - Access Permit (A-18-20)
 10. Exhibit J - Site Plan
 11. Exhibit K - Driveway Profile
 12. Exhibit L - Erosion Control Plan
 13. Exhibit M - Details Sheet
 14. Exhibit N - Existing Slopes
 15. Exhibit O - ANR Slopes Map
 16. Exhibit P - Zoning Map
 17. Exhibit Q - Section 3.18 Steep Slopes & Very Steep Slopes

No additional exhibits were distributed to the Development Review Board (hereafter referred to as "Board") prior to the Monday, September 17, 2018 hearing; however, the following exhibits were submitted into the record during the hearing:

18. Exhibit R - Comments from Underhill-Jericho Fire Department
19. Exhibit S - Correspondence from Fitzgerald Environmental Associates, LLC Regarding Wetlands
20. Exhibit T - Map of Wetland Assessment Wetland by Fitzgerald Environmental Associates, LLC

All exhibits are available for public review in the Veve Conditional Use Review file (DW032/DRB 18-14) at the Underhill Zoning & Planning office.

II. FACTUAL FINDINGS & CONCLUSIONS

The Minutes of the Monday, September 17, 2018 meeting, written by Andrew Strniste, are incorporated by reference into this decision. Please refer to the Minutes for a summary of the testimony.

Based on the submitted application, testimony, exhibits, and evidence, the Development Review Board makes the following findings under the requirements of the 2011 *Underhill Unified Land Use and Development Regulations* (ULUDR) as amended through March 6, 2018:

PROJECT SYNOPSIS

The applicant, Victor Veve, is seeking conditional use approval to construct a driveway on steep slopes and very steep slopes on property located at 32 Downs Road in Underhill, VT, which is owned by John A. & Cheryl B. Perreault. Since the applicant is proposing to construct a driveway that impacts steep slopes and very steep slopes, conditional use approval under Sections 3.18.B.2, 3.18.D and 3.18.E is required. The property is located within the Rural Residential and Soil & Water Conservation zoning districts as defined under Article II, Tables 2.5 and 2.7 of the ULUDR.

ARTICLE II, ZONING DISTRICTS

A. ARTICLE II, TABLE 2.5 –RURAL RESIDENTIAL DISTRICT

The Board finds the proposed project is to construct a driveway that will impact steep slopes and very steep slopes to access a single-family dwelling. Upon completion, the proposed project and single-family dwelling will be consistent with the purpose statement of the Rural Residential District, as the completed residence will access Grant's Landing, which subsequently accesses Downs Road – an existing public road.

The Board also finds that the lot is nonconforming, as the lot fails to meet the frontage requirement of the Rural Residential District of 250 feet (noting that the district that the single-family dwelling is located in establishes the requirements that apply per Section 2.2.E.2) – the lot has approximately 190 feet of frontage.

B. ARTICLE II, TABLE 2.7 – SOIL & WATER CONSERVATION DISTRICT

The Board finds the subject lot contains an area in the Soil & Water Conservation District, as depicted on the best interpretation of the official zoning map. The Board notes that the applicant is not proposing to impact this area of the property, and therefore, review of the project as it relates to this table is not required. Lastly, the area identified as Soil & Water Conservation could potentially be inaccurately delineated on the unofficial zoning map, and therefore, the Board recommends that the applicant verify the zoning districts as they relate to the subject property for future projects.

ARTICLE III, GENERAL REGULATIONS

A. SECTION 3.2 – ACCESS

The Board finds that the applicant obtained an access permit from the Selectboard on Tuesday, August 14, 2018 (Access Permit #: A-18-20) (see Exhibit I). The Selectboard's review was narrowed to the driveway's layout in anticipation of this Board reviewing sediment, erosion and stormwater control measures since the driveway impacts steep slopes and very steep slopes. The Board finds that approval of this application shall not infringe upon any of the conditions enumerated in that access permit. In addition, the Board incorporates by reference the Selectboard's condition of providing a culvert at the intersection of the proposed driveway and

Grant's Landing, as well as expanding the width of the shared portion of the driveway from 12 feet to 14 feet.

The Board finds that the proposed driveway layout will conform with Section 3.2.B, and presumes that the existing shared driveway is built in conformance with the previous subdivision approval. Additionally, the proposed driveway will be located approximately 18 ft. from the north, side property line, which indicates the driveway's closest point to either the side or rear property line. As evidenced in Exhibit K (the driveway profile), the proposed driveway will not exceed a slope of 10% and has depicted multiple 12 ft. by 45 ft. pull-off areas.

B. SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS

The Board finds that this application pertains to the impact that the proposed driveway will have on steep slopes and very steep slopes. Therefore, assessment of the anticipated single-family dwelling as it relates to yard and setback requirements is not the focus of review. However, as presented, the applicant is proposing to locate a single-family dwelling that will seemingly meet these requirements; in addition, this information will be verified administratively during the building permit review process. As stated under Section 3.2 above, the proposed driveway will satisfy the setback requirements.

However note, the existing lot is considered pre-existing nonconforming, as the lot fails to satisfy the 250 ft. frontage requirement of the Rural Residential District. While the lot fails to meet this dimensional requirement, the applicant can proceed with the proposed project for the reasons explained under Section 3.8, directly below.

C. SECTION 3.8 – NONCONFORMING LOTS

The Board finds that the lot being reviewed as part of this application was legally in existence on the effective date of the *Underhill Unified Land Use & Development Regulations* (adopted on March 1, 2011 and amended through March 6, 2018). Therefore, the lot may be developed per Section 3.8.A for the purposes allowed in the district in which the lot is located even though it does not conform to the minimum lot size requirements.

D. SECTION 3.11 – OUTDOOR LIGHTING

The Board finds that this application pertains to the impact that the proposed driveway will have on steep slopes and very steep slopes, and as a result, review of the outdoor lighting is not a focus of review. The Board anticipates that the applicant will adhere to the standards provided under this Section, and delegates the authority to determine conformance of the proposed project (and subsequent projects) as it relates to this Section to the Zoning Administrator.

E. SECTION 3.13 – PARKING, LOADING & SERVICE AREAS

The Board finds that this application pertains to the impact that the proposed driveway will have on steep slopes and very steep slopes, and as a result, review of the parking areas is not a focus of review. The Board anticipates that the applicant will adhere to the standards provided under this Section, and delegates the authority to determine conformance of the proposed project (and subsequent projects) as it relates to this Section to the Zoning Administrator.

F. SECTION 3.14 – PERFORMANCE STANDARDS

The Board finds that the applicant did not submit the requisite information to satisfy the requirements of Section 3.14; however, the Board finds that the applicant is proposing a use (a single-family dwelling) that is consistent with other uses in the area, and does not anticipate that the applicant's project will cause, create, or result in any of the situations identified in this Section.

G. SECTION 3.17 – SOURCE PROTECTION AREAS

The Board finds that the subject lot is not located within a source protection area, and therefore, review and analysis under this Section is not required.

H. SECTION 3.18 – STEEP SLOPES

The Board finds that there are areas of steep slopes (15-25%) and very steep slopes (>25%) on the lot. Since the applicant is proposing a driveway that will traverse these slopes (as depicted in Exhibit N), conditional use review is required per Sections 3.18.B.2, 3.18.D and 3.18.E.

Section 3.18.A – Purpose: The Board finds that the applicant has submitted materials illustrating that the proposed project will be consistent with the various purpose statements enumerated in this Subsection.

Section 3.18.B – Applicability: Since the applicant proposes the construction of a driveway that will impact steep slopes and very steep slopes, under Section 3.18.B.2, the Board finds that applicant must adhere to the standards of Section 3.18 since none of the exemptions under Section 3.18.B.1 apply.

Section 3.18.C – Application Requirements: The Board finds that the applicant has submitted the necessary materials as it pertains to the driveway layout, road profile, erosion control measures, and topography to assess the impact on the existing steep slopes and very steep slopes.

Section 3.18.D – Steep Slopes (15% to 25%): The Board finds that the proposed project shall conform to the subsections enumerated within this section:

Section 3.18.D.1 (Untitled): Given the proposed single-family dwelling location, the Board finds that the applicant is proposing a driveway layout on steep slopes and very steep slopes that maintains the existing vegetation and drainage patterns to the maximum extent physically feasible. Through previously created engineered check dams and level spreaders, the applicant proposes to retain the existing drainage patterns and avoid creating new drainage ways or placing additional burden on the existing drainage ways. The Board notes the applicant has conceded that some increase in stormwater volume will likely occur; however, as testified to by the applicant's engineer, the rate of runoff (velocity) will remain the same, which would be more impactful since the rate of runoff relates to the rate of erosion.

Section 3.18.D.2 (Untitled): The applicant has informed the Board that he plans to minimize site disturbance, which the Board finds is reflected in the submitted plans. While the driveway layout includes two switchbacks, the Board finds these switchbacks are necessary in order to access the plateau on which the applicant plans to construct the single-family dwelling. The applicant has submitted the necessary materials demonstrating that the site will be stabilized and re-vegetated at the completion of construction. During construction, the applicant is responsible for conducting an inspection after rain events that are greater than or equal to 0.2 inches. The applicant is also responsible for immediately notifying the Zoning Administrator if any unplanned impacts have occurred relative to the driveway construction or stormwater collection. The applicant shall also update the plans in accordance to the information presented at the hearing – Level Spreader #2 located west of Grant's Landing (the shared driveway) is to be relocated east of Grant's Landing onto the subject property.

Additionally, the Board finds that the applicant has satisfied the requirements enumerated in

this subsection:

- a. The areas of site disturbance are anticipated to exclude ridgelines;
- b. The large majority of site disturbance will be located outside of required setback areas. The Board waives the site disturbance setback requirement along the north, side property line where the proposed driveway accesses Grant's Landing (the shared driveway), as well as the switchback nearest the north, side property line, per Section 3.18.B.2;
- c. The Board finds that all areas of site disturbance and construction shall be clearly marked on the ground during all phases of construction;
- d. If feasible, the Board finds that site disturbance and construction shall be phased so that only those areas under active construction are exposed;
- e. The applicant shall stockpile and stabilize (not to exceed slopes greater than 10%) topsoil removed from disturbed areas for replacement on the site following final construction and grading;
- f. The Board finds that measures will be taken to stabilize slopes and soils until final grades are established;
- g. Site stabilization measures shall be installed prior to October 15. No site disturbance or construction shall occur between October 15 and April 15 since no specific measures for winter construction were submitted for review by this Board;
- h. The Board finds that the finished grades shall not exceed 3:1; and
- i. The Board finds that permanent vegetation will be re-established and maintained following final construction and grading in accordance with this subsection.

Section 3.18.D.3 (Untitled): The Board finds that the proposed driveway will follow the natural elevation contours; avoid known outcrops and ledges larger than 200 square feet in area; not cross any streams or buffer areas; avoids the channeling and directing of stormwater runoff onto adjoining properties, public rights-of-way, and surface waters and wetlands; and will not exceed an average finished grade over 10%.

Section 3.18.D.4 (Untitled): Since the applicant is not proposing to build the single-family dwelling on a steep slope, review under this Subsection is not required.

Section 3.18.D.5 (Untitled): The Board finds that the stormwater and erosion measures presented during the hearing satisfactory.

Section 3.18.E – Very Steep Slopes (>25%): While site disturbance and development, including the installation of driveways, on very steep slopes are normally prohibited, the Board finds that the applicant has submit the plans illustrating that the applicant satisfies the exemption under Section 3.18.E.d, which permits the construction of a driveway to serve a proposed development that extends no more than 100 feet into an area of very steep slope. The Board finds that the proposed layout presents the most manageable and least offensive approach to access the proposed location of the single-family dwelling.

Section 3.18.F – Considerations: The Board has included any preferred considerations enumerated under this subsection of the *Underhill Unified Land Use & Development Regulations* under Section IV of this decision.

I. SECTION 3.19 – SURFACE WATERS & WETLANDS

The Board finds that the Agency of Natural Resources has not, nor has the applicant, identified any surface waters on the lot. Additionally, the applicant has submitted documentation illustrating that there are no known wetlands in the project location (see Exhibit T). Therefore, review under this Section is not required.

J. SECTION 3.23 – WATER SUPPLY & WASTEWATER SYSTEMS

The Board finds that this application pertains to the impact that the proposed driveway will have on steep slopes and very steep slopes, and as a result, review of the water supply and wastewater systems is not a focus of review. Nevertheless, the Board finds that the landowners have obtained a wastewater permit from the State of Vermont, Department of Environmental Conservation approving a mound system and drilled well (see WW Permit #: WW-4-4978) allowing a four-bedroom, single-family dwelling.

ARTICLE V, DEVELOPMENT REVIEW

A. SECTION 5.1 – APPLICABILITY

The Board finds that conditional use review is required per Section 3.18.B.2 and is to be reviewed in relation to Sections 3.18D and 3.18.E. As part of Section 5.4.C of the *Unified Land Use & Development Regulations*, when considering conditional use review applications, the Board shall apply all of the site plan review standards under Section 5.3.

B. SECTION 5.3 – SITE PLAN REVIEW

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

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

Section 5.3.B.1 – Existing Site Features:

The Board finds that the proposed driveway will traverse an area of steep slopes (15%-25%) and very steep slopes (>25%). The Board finds that the proposed driveway incorporates and avoids undue adverse impacts to known significant natural, historic and scenic resources identified in the Underhill Town Plan, maps and related inventories, in addition to other enumerated items listed under Subsection a. The Board finds that none of the mitigation techniques identified in Subsection b are required.

Section 5.3.B.2 – Site Layout & Design: The Board finds that the proposed driveway and intended single-family dwelling satisfy, and are not contrary to, the purpose and stated goals under Subsection b, Rural Residential and Water Conservation District. As stated above, the proposed project minimizes to the extent physically feasible, encroachments on open fields and prominent ridgelines or hilltops, and is oriented and designed in a manner that is compatible with the residential character and scale of adjoining development within the Downs Road area.

Section 5.3.B.3 – Vehicle Access: The Board finds that the applicant is proposing to access Grant’s Landing (the driveway currently serving 34 Downs Road), which bisects the subject property – 32 Downs Road. Staff finds that the proposed project is consistent with the requirements of this subsection.

Section 5.3.B.4 – Parking, Loading & Service Areas: See Section 3.13 above.

Section 5.3.B.5 – Site Circulation: The Board finds that this application pertains to the impact that the proposed driveway will have on steep slopes and very steep slopes, and as a result, review of the site circulation is not a focus of review. Therefore, the Board makes no finding regarding this subsection.

Section 5.3.B.6 – Landscaping and Screening: The Board finds that this application pertains to the impact that the proposed driveway will have on steep slopes and very steep slopes, and as a result, review of the landscaping and screening is not a focus of review. Nevertheless, the Board finds that landscaping and screening techniques to be implemented will be consistent with those of a single-family dwelling.

Section 5.3.B.7 – Outdoor Lighting: See Section 3.11 above for more information.

Section 5.3.B.8 – Stormwater Management and Erosion Control: The Board finds that the applicant has submitted several site plans pertaining to stormwater management, erosion control and sediment control measures that either satisfies or exceeds the requirements of this Subsection (see Exhibits J-N).

C. SECTION 5.4 – CONDITIONAL USE REVIEW

Section 5.4.A – Purpose: The Board finds that conditional use review is required per Section 3.18.B.2, which requires conditional use approval for construction that impacts steep slopes (15% to 25%) and very steep slopes (>25%). The Board finds that the conditions imposed herein address the identified potential impacts, as well as help reduce, avoid, or mitigate those impacts.

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

Section 5.4.B.1 – The Capacity of Existing or Planned Community Services or Facilities: The Board finds that the construction of the driveway, thus allowing access to an intended single-family dwelling on the pre-existing lot, is not expected to change or increase the anticipated demand of community services and facilities, as the lot has already been approved as part of a previous subdivision application.

Section 5.4.B.2 – The Character of the Area Affected: The Board finds that the proposed construction of the driveway will not affect the character of the area, as the proposed driveway will serve a single-family dwelling in an area that is largely, if not all, single-family dwellings.

Section 5.4.B.3 – Traffic on Roads and Highways in the Vicinity: The Board finds that the proposed construction of the driveway, thus allowing access to an intended single-family dwelling on the pre-existing lot, is not expected to significantly change or increase the anticipated traffic on roads and highways in the vicinity, as the lot has already been approved as part of a previous subdivision application.

Section 5.4.B.4 – Bylaws in Effect: The Board finds that, by approving this application, the proposed project and associate lot is in conformance with the regulations in effect at the time of this approval.

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

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

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

Section 5.4.D.1 – Conformance with the Town Plan: The Board finds that the proposed driveway to serve the intended single-family dwelling is consistent with the Town Plan.

Section 5.4.D.2 – Zoning District & Use Standards: The Board finds that the proposed driveway to serve the intended single-family dwelling conforms with the zoning districts and use standards as outlined above upon approval by this Board.

Section 5.4.D.3 – Performance Standards: See Section 3.14 above.

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

D. SECTION 5.5 – WAIVERS & VARIANCES

The Board finds that the applicant has not asked for any waivers. In addition, any waivers granted by this Board are enumerated in this decision herein and outlined below under Section III of this decision. The Board finds that Section 5.5.B, in regards to dimensional waivers, and Section 5.5.C, in regard to variances, does not apply.

ARTICLE VI, FLOOD HAZARD AREA REVIEW

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

ARTICLE X, SPECIFIC USE STANDARDS

A. SECTION 10.3 – ZONING PERMITS

Section 10.3.D – Effective Dates and Permit Renewals: The Board finds that the applicant shall complete the driveway within one year of this approval in accordance with Subsections 10.3.D.1 & 10.3.D.2 below.

SECTION 10.3.D.1 – ZONING PERMITS: The Board finds that the permit issued as part of this decision will remain in effect for one year from the date of issuance. The applicant must substantially commence the permit within one year or the permit will become null and void. “Substantially commence” entails “initial site preparation; the installation of an access; and the installation of a foundation, water and/or wastewater system on-site.” (See Article XI for definition of “Substantially Commenced”)

Note: under Section 3.1.C, should the owner of a structure that is substantially incomplete at the time the zoning permit expires, the owner of that structure shall either: 1) apply for a zoning permit – in this case submit a new conditional use review application (see directly below) – or apply for a permit extension under Section 10.3; or 2) remove all materials from

the site, restore the site to surface grade, and establish ground cover sufficient to prevent soil erosion.

SECTION 10.3.D.2 – DRB APPROVALS: The Board finds that conditional use approvals expire with the expiration of the zoning permit, and may only be extended as provided under Section 10.3.D.1 (not explicitly provided above). Once the approved uses or structures are established, the conditional use approval will remain in effect and run with the land. The Board finds that the applicant shall establish the uses within 12 months (1 year or 9 October, 2019) of the approval date of this decision (9 October, 2018).

III. WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS

The Board grants the following waivers/modifications:

- The Board waives the site disturbance setback requirement along the north, side property line where the proposed driveway accesses Grant's Landing (the shared driveway), as well as the switchback nearest the north, side property line, per Section 3.18.B.2. The applicant may only encroach upon the setback to the limits as portrayed on the submitted site plans (see Exhibits J - N) and presented during the hearing. Any deviation from the project presented as part of this application may require additional review by this Board (see delegation clause below - § IV.14).
- The applicant, or subsequent landowner(s), are/is not required to come before the Board for the construction of any buildings, out buildings, ancillary buildings, or accessory buildings, which would typically be required for any projects obtaining site plan review approval; instead the application for a building permit for those abovementioned buildings can be administratively reviewed and approved. However, those structures must conform to the Regulations in effect at the time of the proposed projects.

IV. DECISIONS AND CONDITIONS OF APPROVAL

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

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

1. The Board requires the project to be constructed in accordance with the drawing set submitted as part of the review process and as amended accordingly to address the requirements herein, listed as follows:
 - a. 40-Scale Driveway Plan (Prepared by O'Leary-Burke Civil Associates, PLC and Dated August 27, 2018), to be subsequently amended as required as part of this approval;
 - b. Driveway Plan & Profile (Prepared by O'Leary-Burke Civil Associates, PLC and Dated August 27, 2018), to be subsequently amended as required as part of this approval;
 - c. Erosion Control Plan (Prepared by O'Leary-Burke Civil Associates, PLC and Dated August 27, 2018), to be subsequently amended as required as part of this approval;

- d. Detail Sheet (Prepared by O'Leary-Burke Civil Associates, PLC and Dated August 27, 2018), to be subsequently amended as required as part of this approval; and
 - e. 40-Scale Existing Slopes (Prepared by O'Leary-Burke Civil Associates, PLC and Dated August 27, 2018), to be subsequently amended as required as part of this approval.
2. The Board requires the applicant to submit two full scale, and two 11 inch by 17 inch copies, as well as digital copies, of the plans listed under Condition 1 above to the Zoning Administrator upon updating, prior to submitting a building permit application, to be filed in the zoning file accordingly.
 3. The Board finds that that the applicant shall update the plans in accordance to the information presented at the hearing – that level spreader #2 located west of Grant's Landing (the shared driveway) be relocated to the east of Grant's Landing onto the subject property. The Board further requires the applicant provide stormwater calculations using the existing culvert crossing Grants Landing as a study point and verify the following:
 - a. Establish a baseline "pre development" stormwater rate of runoff calculation at the study point.
 - b. Verify the culvert crossing Grants Landing at the study point is of adequate size and hydraulic gradient to accommodate the pre development runoff calculated as part of section 3.a above. If not specify correct size.
 - c. Ensure via level spreader or other stormwater attenuation device that post development rates of stormwater runoff do not exceed the pre development rates.
 4. Verify 3 a, b & c above by submitting calculations documenting said conclusions. The Board finds that the applicant shall update the plans to depict the culvert at the intersection of the proposed driveway and Grant's Landing (the shared driveway), which will run parallel to Grant's Landing.
 5. Applicant shall be held responsible to ensure Downs Road can accommodate the additional volume of water expected by the development. Applicant shall be responsible for any required ditching along the south side of Downs road from Grants Landing to the Reed property access at 20 Downs Road.
 6. The Board incorporates by reference the Selectboard's condition of providing a culvert at the intersection of the proposed driveway and Grant's Landing, as well as expanding the width of the shared portion of the driveway from 12 feet to 14 feet.
 7. During construction, the applicant is responsible for conducting an inspection after rain events that are greater than or equal to 0.2 inches.
 8. In accordance with Section 3.18.D.2.c, the Board finds that all areas of site disturbance and construction shall be clearly marked on the ground during all phases of construction;
 9. In accordance with Section 3.18.D.2.d, if feasible, the Board finds that site disturbance and construction shall be phased so that only those areas under active construction are exposed;
 10. In accordance with Section 3.18.D.2.e, the applicant shall stockpile and stabilized (not to exceed slopes greater than 10%) topsoil removed from disturbed areas for replacement on the site following final construction and grading;
 11. In accordance with Section 3.18.D.2.g, Site stabilization measures shall be installed prior to October 15. No site disturbance or construction shall occur between October 15 and April 15 since no specific measures for winter construction were submitted for review by this Board;
 12. The Board finds that any outdoor lighting that is added as part of this proposed project shall be

downward facing and shielded.

13. Prior to the issuance of a Certificate of Occupancy, the applicant shall provide a certification letter from a Vermont Licensed Professional Engineer or qualified consultant indicating that the driveway and stormwater management infrastructure have been constructed according to what was proposed as part of this review.
14. Delegation of authority. The Board hereby delegates authority to the Zoning Administrator regarding the fulfillment of the proposed project. The Board empowers the Zoning Administrator to act on behalf of the Board regarding any proposed changes in the approval or proposed design. These changes are not limited in scope, but are left to the discretion of the Zoning Administrator on when to defer changes or modifications to the Board.
15. The Board also hereby delegates authority to the Zoning Administrator to renew the approval should the project not begin substantial construction within the initial permit year.

Dated at Underhill, Vermont this 9th day of October, 2018.

Charles Van Winkle

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 9 November, 2018.