TOWN OF UNDERHILL
APPLICATION OF ELAINE HERMAN
FOR SITE PLAN APPROVAL FOR ACCESS AND A DRIVEWAY TO A
NONCONFORMING LOT OFF OF A CLASS IV TOWN HIGHWAY
FINDINGS AND DECISION

In re: Elaine Herman
217 Stevensville Rd.
Underhill, VT 05489

Docket No. DRB-12-08: Herman

## I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding involves review of Elaine Herman's application for a site plan review approval for access and a driveway off of a Class IV town highway to a nonconforming lot she owns at 217 Stevensville Rd. in Underhill, VT.

A. On September 11, 2012, Elaine Herman filed a site plan review hearing request and an application for an access permit for property she owns at 217 Stevensville Rd., Underhill, VT. A copy of the applications and materials are available at the Underhill Town Hall.

B. On September 12, 2012, copies of the notice of a public site visit and hearing were mailed via Certified Mail to the Applicant, Elaine Herman, P.O. Box 116, Underhill Center, VT 05490, and to the following abutting neighbors:

1. Wheeler Associates, c/o Patricia McLaughlin, 37 Foster Rd., Essex, VT 05452
2. Davis, P.O. Box 229, Underhill Center, VT 05490
3. Blackmer, P.O. Box 133, Underhill Center, VT 05490
4. Maple Leaf Farm Associates, Inc., 10 Maple Leaf Rd., Underhill, VT 05489

C. On September 12, 2012, notice of the site visit and public hearing on the proposed Herman site plan review application were posted at the following places:

1. The property to be developed, 217 Stevensville Rd.;
2. The Underhill Town Clerk's office;
3. The Underhill Center Post Office;
4. The Underhill Flats Post Office;
5. Jacobs IGA;
6. The Underhill Country Store;
7. Wells Corner Market;
8. The Town of Underhill website.

D. On September 13, 2012, notice of a public hearing on the proposed site plan review application was published in *The Burlington Free Press.*

E. Upon Applicant request, the site visit and hearing were rescheduled to October 15, 2012 at 6:00 PM. On September 24, 2012 notice of the rescheduled site visit and hearing were mailed to the Applicant and the abutting property owners in (B) above.

F. On September 26, 2012, notice of the rescheduled site visit and public hearing were posted at the locations in (C) above, with the exception of the property to be developed (217 Stevensville Rd.) which was posted on September 28, 2012.

G. On September 26, 2012, notice of a public hearing on the proposed site plan review application was published in *Seven Days.*

H. The site visit was cancelled on October 15, 2012 due to weather conditions. The hearing began at 6:25 PM on October 15, 2012.

I. Present at the hearing were the following members of the Development Review Board:

1. Penny Miller
2. Matt Chapek
3. Chuck Brooks
4. Will Towle
5. Karen McKnight
6. Charles Van Winkle, Chair

Kari Papelbon, Zoning & Planning Administrator; Steve Owen, Selectboard Member; Seth Friedman, Selectboard Member; Dawna Brisson, Town Administrator; Elaine Herman, Applicant; Jeff Olesky, consultant for Elaine Herman; and one neighbor also attended the hearing.

J. 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. Elaine Herman, P.O. Box 116, Underhill Center, VT 05490.

Consultant who spoke on behalf of the Applicant:

1. Jeff Olesky, P.E., Civil Engineering Associates, Inc., 10 Mansfield View Ln., South Burlington, VT 05403

K. During the course of the hearing the following exhibits were submitted to the Development Review Board:

1. A staff report sent by Zoning and Planning Administrator Kari Papelbon to the Development Review Board, Elaine Herman, the Underhill Selectboard, the Underhill Conservation Commission Chair, and the Underhill-Jericho Fire Department;
2. Elaine Herman's Access Permit Application (dated 9-4-12);
3. Elaine Herman's Conditional Use/Site Plan Review Hearing Request (dated 9-4-12);
4. A copy of the proposed site plan prepared by Jeff Olesky of Civil Engineering Associates, Inc. (dated Sept. 28, 2012);
5. A copy of the completed Site Plan Review Standards Findings Checklist;
6. A copy of the tax map for ST217;
7. A copy of the hearing notice published in Seven Days on 9-26-12.

These exhibits are available in the Herman, ST217, Site Plan Review file at the Underhill Zoning Office.

## II. FINDINGS

### Factual Findings

The Minutes of the meetings written by Kari Papelbon are incorporated by reference into this decision. Please refer to these Minutes for a summary of the testimony.

Based on the application, testimony, exhibits, and other evidence the Development Review Board makes the following findings:

A. The Applicant, Elaine Herman, seeks site plan review approval for access and a driveway off of a Class IV Town Highway to a nonconforming lot she owns.

B. The subject property, 217 Stevensville Rd., Underhill, VT is located in the Water Conservation and Soil and Water Conservation zoning districts per Article II, Tables 2.4 and 2.6 of the 2012 Unified Land Use and Development Regulations.

C. Approval is requested for the project pursuant to review under the following sections of the 2012 Unified Land Use and Development Regulations:

1. Article II, Table 2.4: Water Conservation District
2. Article II, Table 2.6: Soil & Water Conservation District
3. §3.2: Access & Frontage Requirements
4. §3.18: Steep Slopes
5. §5.3: Site Plan Review
6. §5.5(A): Waivers and Variances

## III. CONCLUSIONS

### Applicable Regulation Standards

*Article II, Table 2.4: Water Conservation District*

The Board finds that the proposed driveway and curb cut are off of the Class IV portion of Stevensville Road. The lot does not meet the minimum frontage requirement for the Water Conservation zoning district. The proposed driveway and curb cut will be contained solely within the Water Conservation zoning district.

*Article II, Table 2.6: Soil & Water Conservation District*

The Board finds that the proposed driveway and curb cut are off of the Class IV portion of Stevensville Road. The proposed driveway and curb cut will be contained solely within the Water Conservation zoning district.

*§3.2: Access*

*The Board makes the following findings:*

A. The existing lot does not have frontage along the Class III portion of Stevensville Road, and access is proposed via a curb cut and driveway on the Class IV portion of the road. DRB review and approval is required for this access [Section 3.2(A)].

B. The lot is considered a nonconforming lot as the frontage is less than the required minimum for the Water Conservation zoning district (300 feet). The access will also be reviewed by the Selectboard [Sections 3.2(B), (C)]. The Board recommends approval with conditions [See Decision and Conditions].

C. The Applicants have submitted written testimony that the proposed access and driveway will meet the design requirements of Section 3.2(D), with the exception of Section 3.2(D)(9)(d). The proposed pull-off is at approximately 550 feet rather than the required 500 feet. See *Conclusions* for Section 3.18 and *Decisions and Conditions* below.

*§3.18: Steep Slopes*

The Board makes the following findings:

A. According to testimony by the consultant during the hearing and the submitted plans, the proposed driveway will cross an area of approximately 30% slope for less than 100 feet. This is in accordance with the provisions of Section 3.18(E).

B. Erosion prevention measures are included on the proposed driveway plans.

*§5.3: Site Plan Review*

The Board makes the following findings:

C. The locations of the proposed access and driveway as identified on the proposed plans will not have undue adverse impacts to significant natural, historic, and scenic resources as none have been identified in the proposed access and driveway location, the access and driveway will not be located above 1500 feet in elevation, Stevensville Brook is more than 100 feet from the proposed development, no wetlands have been identified on the property, no Special Flood Hazard Areas exist on the property, no delineated source protection areas exist on the property, there are no mapped significant wildlife habitat areas or travel corridors on the property, and existing scenic resources will be unaffected. Areas of steep and very steep slopes will be crossed within the exemption in Section 3.18(E) [Section 5.3(B)(1)].

D. The proposed location of the access and driveway are compatible with the proposed setting and context of the Water Conservation zoning district as it will avoid adverse impacts to natural and scenic resources. Stevensville Brook is more than 100 feet from the proposed development [Section 5.3(B)(2)].

E. The Applicant has provided written testimony that the proposed access will adhere to the driveway design standards of Section 3.2 with the exception of the location of the pull-off. The submitted plans show a maximum grade of 10% for the driveway and the 12' side setback requirement will be met. The proposed curb cut will not create hazards to vehicles, pedestrians, or bicyclists as the sight distance is adequate and will be designed in accordance with Section 3.2 and VTrans Standard B-71 [Section 5.3(B)(3)].

F. Sections 5.3(B)(4) and (5) are not applicable as no new parking areas or service areas are proposed.

G. The proposed driveway will incorporate existing landscaping features [Section 5.3(B)(6)].

H. No exterior lighting is proposed for the driveway [Section 5.3(B)(7)].

I. Erosion control and stormwater measures are incorporated into the overall driveway plans. Culverts will be installed per Town requirements [Section 5.3(B)(8)].

*Section 5.5, Waivers and Variances*

The Board makes the following findings:

A. The Board waives all requirements and standards of Section 5.3 determined to be not applicable [Section 5.5(A)].

B. The Board accepts the proposed location of the driveway pull-off at approximately 550 feet as depicted on the plans rather than 500 feet as required by the regulations. The Board grants a waiver for this change.

## IV. DECISION AND CONDITIONS

Based upon the findings above, the Development Review Board grants approval for the site plan review application for the access and driveway as described at the hearing subject to the following conditions:

A. The proposed access and driveway as shown on the Proposed Driveway Realignment site plan prepared by Jeff Olesky of Civil Engineering Associates, Inc. (dated September 28, 2012) are approved. Any change to the driveway location depicted on the plan will require additional approval of the Development Review Board.

B. The proposed pull-off at approximately 550 feet as depicted on the plan dated 9-28-12 is approved. The requirement for a pull-off at 500 feet is waived with the acceptance of the location at 550 feet on the approved plan.

C. The proposed access and driveway to the house site on the lot shall be constructed to the standards of Section 3.2 and State Standard B-71.

D. Certification from a licensed engineer that the permitted access and driveway improvements have been completed in conformance with this decision and approved plans shall be required upon completion of the improvements.

Dated at Underhill, Vermont this 25 day of OCTOBER, 2012.

Charles Van Winkle

Charles Van Winkle Chair, Development Review Board

**NOTICE:** This decision may be appealed to the Vermont Division of Superior Court by an interested person who participated in the proceeding 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 25 NOV 2012