



# Town of Underhill

## Development Review Board

P.O. Box 120, Underhill, VT 05489  
www.underhillvt.gov

Phone: (802) 899-4434, x106  
Fax: (802) 899-2137

---

## Development Review Board

### STAFF REPORT

To: DRB  
From: Underhill Planning and Zoning  
Date: September 11, 2018  
Re: Agenda and Information for 09/17/2018

---

## AGENDA

**Monday, September 17, 2018 – Site Visit(s) & Public Meeting(s)**  
**Underhill Town Hall, 12 Pleasant Valley Road, Underhill, VT**

- 5:45 PM *Site Visit @ 32 Downs Road, Underhill, VT (DW032)*
- 6:30 PM Open Meeting, Public Comment Period
- 6:35 PM Conditional Use Review: Impact on Steep Slopes  
Applicant(s): Victor Veve  
Docket #: DRB-18-14  
Location: 32 Downs Road (DW032)
- 7:30 PM Other Business
- Approve Previous Meeting Minutes
- 8:00 PM Adjourn

# Veve Conditional Use Review

**Docket #: DRB-18-14**

**Conditional Use Hearing on the Application of Victor Veve to Construct a Driveway and Impact Steep Slopes and Very Steep Slopes**

Applicant(s): Victor Veve  
 Land Owner(s): John A. & Cheryl B. Perreault  
 Consultant(s): O’Leary & Burke Civil Associates  
 Property Location: 32 Downs Road (DW032)  
 Acreage: ±19.0 Acres (Grand List) / ±18.8 Acres (ArcGIS)  
 Zoning District(s): Rural Residential and Soil & Water Conservation

	<u>Rural Residential</u>	<u>Soil &amp; Water Conservation</u>	<u>Existing/Proposed</u>
Lot Size:	3.0 Acres	15.0 Acres	± 19.0 Acres
Frontage:	250 Feet	400 Feet	~190 Feet
Setbacks:			
• Front:	30 Feet	30 Feet	286 ft. (W) to Downs Rd.
• Side 1:	50 Feet	75 Feet	209 Feet (N)
• Side 2:	50 Feet	75 Feet	136 Feet (S)
• Rear:	50 Feet	75 Feet	>300 Feet (E)
Max. Building Coverage:	25%	7%	Assumed Met
Max. Lot Coverage:	50%	10%	Assumed Met
Maximum Height:	35 Feet	35%	One Story

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

- Article II, Table 2.4 – Rural Residential District (pg. 15)
- Article II, Table 2.7 – Soil & Water Conservation District (pg. 24)
- Article III, Section 3.2 – Access (pg. 30)
- Article III, Section 3.7 – Lot, Yard & Setback Requirements (pg. 38)
- Article III, Section 3.8 – Nonconforming Lots (pg.39)
- Article III, Section 3.11 – Outdoor Lighting (pg. 41)
- Article III, Section 3.13 – Parking, Loading & Service Areas (pg. 44)
- Article III, Table 3.1 – Minimum Off-Street Parking Requirements (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)

### **CONTENTS:**

- a. Exhibit A - DW032 - Veve Conditional Use Staff Report
- b. Exhibit B - DW032 Veve Conditional Use Review Hearing Procedures
- c. Exhibit C - Conditional Use & Site Plan Review Hearing Request Application
- d. Exhibit D - Site Plan Review Standards Findings Checklist
- e. Exhibit E - Conditional Use Review Standards Findings Checklist
- f. Exhibit F - BFP Notice of Public Meeting
- g. Exhibit G - Certificate of Service
- h. Exhibit H - Correspondence Regarding Existing Driveway
- i. Exhibit I - Access Permit (A-18-20)
- j. Exhibit J - Site Plan
- k. Exhibit K - Driveway Profile
- l. Exhibit L - Erosion Control Plan
- m. Exhibit M - Details Sheet
- n. Exhibit N - Existing Slopes
- o. Exhibit O - ANR Slopes Map
- p. Exhibit P - Zoning Map
- q. Exhibit Q - Section 3.18 Steep Slopes & Very Steep Slopes

### **COMMENTS/QUESTIONS**

1. **SECTION 3.2 – ACCESS:** Staff was unable to ascertain the original subdivision plat during a limited search. Staff has provided some access approval materials pertaining to the driveway currently serving 34 Downs Road
2. **SECTION 3.18.D – STEEP SLOPES (15% TO 25%):**
  - a. The Development Review Board should assess the application as it relates to the various standards in this subsection, noting that subsection 3.18.D.3 is most pertinent, as it relates to driveways.
  - b. Ascertaining where rock outcroppings and ledges could potentially be challenging should vegetation exist; therefore, the Board should consider these areas during the site visit.
  - c. The Board shall ensure that no channeling or directing of stormwater runoff to adjoining properties, public rights-of-way, and surface waters and wetlands will occur during the review.
3. **SECTION 3.18.E – VERY STEEP SLOPES (>25%):** The Board will need to inquire about the more than 100 feet exemption as it relates to this project.

### **REVIEW OF RELEVANT SECTIONS**

#### **ARTICLE II – ZONING DISTRICTS**

##### **ARTICLE II, TABLE 2.4 – RURAL RESIDENTIAL DISTRICT (PG. 15)**

The purpose of the Rural Residential District is to accommodate medium density development on

land that has access to public roads where traditional development has taken place, where soil cover is thicker than on the hillside. The Rural Residential district allows for the continuation of existing commercial, residential, and public uses and to encourage future development, particularly along Route 15, Poker Hill Road and Irish Settlement Road that is compatible with these historic uses.

Staff finds that the conditional use review application is to address the impact that the construction of the driveway will have on steep slopes. The construction of the project would allow the existing lot to access an existing public road – Downs Road. Staff notes that the lot is nonconforming (see Section 3.8 below for more information), as it does not meet all of the dimensional standards and requirements. Per Section 2.2.E.2:

The minimum frontage and minimum setback requirement for that portion of the lot within the district in which the structure is to be located shall control. If the structure is to be in both district, the more stringent requirement shall control.

In the subject case, the proposed single-family dwelling is located in the Rural Residential District, and therefore the setback and frontage requirements are to control. In this case, the existing lot fails to meet the frontage requirement of 250 feet (see chart above); however, the lot is pre-existing, nonconforming.

#### **ARTICLE II, TABLE 2.7 – SOIL & WATER CONSERVATION DISTRICT (PG. 24)**

The Soil & Water Conservation District includes significant headwater and aquifer recharge areas, unique and fragile natural areas, critical wildlife, habitat, and mountainsides and ridges characterized by steep slopes and shallows soils. The purpose of this district is to protect Underhill's more remote and inaccessible forested upland areas from fragmentation, development, and undue environmental disturbance, while allowing for the continuation or traditional uses such as forestry outdoor recreation, and compatible development.

Staff finds that the amount of acreage in this district (see Exhibit P) will not be impacted by the proposed construction of the driveway or intended single-family dwelling. Additionally, the area identified as Soil & Water Conservation on the unofficial zoning map could potentially be inaccurately delineated on the best interpretation of the official zoning map. Nevertheless, using the resources available, Staff finds that the proposed project area is not in the immediate vicinity.

### **ARTICLE III – GENERAL REGULATIONS**

#### **SECTION 3.2 – ACCESS (PG. 30)**

Staff finds that the applicant obtained an access permit from the Selectboard on Tuesday, August 14, 2018 (Access Permit #: A-18-20) (see Exhibit I). Staff recommended that the Selectboard narrow their review to the driveway's layout (e.g. minimum turning radii, turnaround area, and pull off areas), as the Development Review Board would be reviewing the impact of the driveway on steep slopes and very slopes, which involves sediment, erosion, and stormwater control measures. Assuming this Board's approval, the Selectboard's approval and the Development Review Board's approval will review all aspects of the proposed driveway.

Staff notes that while the lot is nonconforming, and shall adhere to the requirements of Section 3.2.B, a driveway currently exists, which currently serves 34 Downs Road (DW034). The applicant is proposing to access the existing driveway, thus resulting in a shared driveway from the 32

Downs Road proposed driveway to Downs Road. Since the existing driveway is presumably built in conformance with the previous subdivision approval, Staff finds that further review under 3.2.B may not be required; however note, Staff was unable to ascertain the original subdivision plat during a limited search. Staff has provided some access approval materials pertaining to the driveway currently serving 34 Downs Road (which is associated with this application since the proposed driveway will now share a portion of the existing driveway) (see Exhibit H). Comments from the applicant's engineer (if he or she is able to provide such comments) during the hearing about these materials may be enlightening to determine if these issues still persist today.

Additionally, Staff finds that the driveway is located ~18 ft. from north, side property line, which marks the driveway's closest point to either a side or rear property line. The applicant is not anticipating (as evidenced in Exhibit K) to exceed a slope of 10%, and has depicted multiple pull-off areas.

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

The applicant has illustrated a single-family dwelling to be located on the nonconforming lot. Staff finds that the conditional use review application is to address the impact that the construction of the driveway will have on steep slopes, and therefore, review of the single-family dwelling as it relates to the yard & setback requirements is not the focus of review. However, should the Board review the yard & setback requirements as they related to the single-family dwelling, the applicant will satisfy those requirements (see chart above). In addition, as stated above, the applicant has satisfied the setback requirements for the driveway.

However note, the existing lot is considered pre-existing nonconforming, as the lot fails to satisfy the frontage requirement of the Rural Residential District: 250 ft. While the lot fails to meet all of the dimensional requirements, the applicant is allowed to proceed with development as explained under Section 3.8 directly below.

### **SECTION 3.8 – NONCONFORMING LOTS (PG. 39)**

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

### **SECTION 3.11 – OUTDOOR LIGHTING (PG. 41)**

Staff finds that the conditional use review application is to address the impact that the construction of the driveway will have on steep slopes, and therefore, review of the single-family dwelling as it relates to outdoor lighting is not focus of review. Nevertheless, Staff anticipates that the outdoor lighting is likely to be consistent with that of other single-family dwellings in the area. However, the Board could consider requiring minimal downward shielded lighting should the applicant install outdoor lighting.

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

Staff finds that the conditional use review application is to address the impact that the construction of the driveway will have on steep slopes, and therefore, review of the single-family dwelling as it relates to parking, loading & service areas is not the focus of review. Nevertheless, Staff anticipates that the applicant will satisfy the parking requirement of two spaces per dwelling unit, as the applicant is not proposing any changes to the driveway and parking area.

### **TABLE 3.1 – MINIMUM OFF-STREET PARKING REQUIREMENTS (PG. 44)**

See Section 3.13 – Parking, Loading & Service Areas directly above.

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

Staff finds that the conditional use review application is to address the impact that the construction of the driveway will have on steep slopes, and therefore, review of the single-family dwelling as it relates to performance standards is not the focus of review. Nevertheless, Staff does not foresee that the proposed use would cause, create or result in any of the situations presented in Section 3.14.B.

**SECTION 3.17 – SOURCE PROTECTION AREAS (PG. 55)**

Staff finds the subject lot is not located within a Groundwater Source Protection Area, and therefore, review and analysis under this Section is not required.

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

The Agency of Natural Resource’s Atlas has depicted areas of steep slopes (15-25%) and very steep slopes (>25%) on the lot (see Exhibit \_). Review and analysis under this Section is required:

Section 3.18.A – Purpose (pg. 56): When reviewing a project that impacts steep slopes, the Development Review Board should ensure that the project conforms with the various purpose statements enumerated in this Section.

Section 3.18.B – Applicability (pg. 57): Staff finds this section applies since the project involves the construction and installation of the driveway. Staff finds that none of the exemptions under Section 3.18.B.1 apply, and therefore, review is required under Section 3.18.B.2. The Board may waive one or more standards under this Section (3.18), and associated application requirements, should they find:

1. Such requirement and standards are not applicable to a particular project; or
2. It is evident, based on submitted information and a site inspection, that the proposed development involves minimal site disturbance involves minimal site disturbance and poses a negligible threat to water quality, public roads and facilities, and to adjoining properties.

Section 3.18.C – Application Requirements (pg. 58): Staff finds that the applicant has provided various Exhibits pertaining to the driveway layout, road profile, erosion control measures, and topography. The Development Review Board may require materials provided in this section that may not have been submitted should they feel more information is required.

Section 3.18.D – Steep Slopes (15% to 25%) (pg. 60): Staff finds that the applicant will be constructing a driveway on the subject property, thereby impacting Steep Slopes (15% to 25%). The Development Review Board should assess the application as it relates to the various standards in this subsection (see Exhibit Q), noting that subsection 3.18.D.3 is most pertinent, as it relates to driveways. Staff finds that the driveway will traverse the side of a slope diagonally (rather than straight on), thus minimize the amount of cut required. Ascertaining where rock outcroppings and ledges could potentially be challenging should vegetation exist; therefore, the Board should consider these areas during the site visit. The Board shall ensure that no channeling or directing of stormwater runoff to adjoining properties, public rights-of-way, and surface waters and wetlands will occur during the review. The applicant is not proposing to exceed an average finish grade over 12% over any 50-foot section.

In addition, the Board should also focus on subsection 3.18.D.5, as that section relates to stormwater runoff and erosion. The Board should inquire with the applicant/engineer about these standards.

Section 3.18.E – Very Steep Slopes (>25%) (pg. 62): Staff finds that the applicant will be constructing a driveway that potentially impacts Very Steep Slopes (>25%). The Development Review Board should assess the application as it relates to the various standards in this subsection (see Exhibit Q). Staff notes that, normally, the construction and installation of a driveway over a very steep slope is normally prohibited; however, the applicant could potentially satisfy the following exemption:

“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.”

The Board will need to inquire about the more than 100 feet qualifier as it relates to this project. Based on the ANR Slopes Map (Exhibit O), Staff finds that there appears to be no other means of access to the project location.

Section 3.18.F – Considerations (pg. 63): Staff finds that the Board has the ability to incorporate as conditions of approval any of the conditions enumerated under this subsection (see Exhibit Q).

Section 3.18.G – Liability Waiver (pg. 63): The applicant shall be advised of the following:

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

### **SECTION 3.19 – SURFACE WATERS & WETLANDS (PG. 63)**

The Agency of Natural Resource’s Atlas has not depicted any surface waters or wetlands on the lot, and therefore, review under this Section is not required.

### **SECTION 3.23 – WATER SUPPLY & WASTEWATER SYSTEMS (PG. 68)**

Staff finds that the conditional use review application is to address the impact that the construction of the driveway will have on steep slopes, and therefore, review of the single-family dwelling as it relates to performance standards is not the focus of review. Nevertheless, 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). The permit allows for a four bedroom, single-family residence.

## **ARTICLE V – DEVELOPMENT REVIEW**

### **SECTION 5.1 – APPLICABILITY (PG. 112)**

Staff finds that conditional use review is required per Section 3.9.B, and is to be reviewed under Sections 3.18.B.2, 3.18.D and 3.18.E.

### **SECTION 5.3 – SITE PLAN REVIEW (PG. 115)**

Section 5.3.A – Purpose (pg. 115): When reviewing a conditional use review application, site plan review is also required per Section 5.4.C.

Section 5.3.B – Standards (pg. 115): 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): Staff finds that the proposed driveway will traverse areas of steep (15%-25%) and very steep (>25%) slope. Staff anticipates that the proposed driveway (as well as single-family dwelling) will incorporate and avoid undue adverse impacts to known significant natural, historic and scenic resources identified in the Underhill Town Plan, maps and related inventories, and the list enumerated under this subsection.

Staff notes that the Board has the ability to require one of the mitigation techniques identified in Subsection b, and transcribed below:

- 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.

See Exhibit D for more information.

Section 5.3.B.2 – Site Layout & Design (pg. 115): Staff finds that the proposed driveway and intended single-family dwelling more or less satisfy, and are not contrary, to the purpose and stated goals under Subsection b, Rural Residential and Water Conservation Districts. Staff recommends that Board confirm that the proposed project conforms with the goal of

“minimizing, to the extent physically feasible, encroachments on open field 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 these districts.”

See Exhibit D for more information.

Section 5.3.B.3 – Vehicle Access (pg. 116): Staff finds that the applicant is proposing to access the driveway currently serving 34 Downs Road, which bisects the 32 Downs Road property. Staff finds that the proposed project will be consistent with the requirements of this subsection. Please see Section 3.2 and Exhibit D for more information.

Section 5.3.B.4 – Parking, Loading & Service Areas (pg. 117): Staff finds that the conditional use review application is to address the impact that the construction of the driveway will have on steep slopes, and therefore, review of the single-family dwelling as it relates to parking, loading & service areas is not the focus of review. Nevertheless, please refer to Section 3.13 and see Exhibit D for more information.

Section 5.3.B.5 – Site Circulation (pg. 117): Staff finds that the conditional use review application is to address the impact that the construction of the driveway will have on steep slopes, and therefore, review of the single-family dwelling as it relates to site circulation is not the focus of review. Nevertheless, Staff finds that the site circulation will be consistent with site circulation patterns with other single-family dwellings seen in the area.

Section 5.3.B.6 – Landscaping and Screening (pg. 118): Staff finds that the conditional use review application is to address the impact that the construction of the driveway will have on steep slopes, and therefore, review of the single-family dwelling as it relates to landscaping and screening is not the focus of review. Nevertheless, Staff finds the landscaping and screening techniques will be consistent with landscaping and screening techniques with other single-family dwellings in the area. See Exhibit D for more information.

Section 5.3.B.7 – Outdoor Lighting (pg. 119): Staff finds that the conditional use review application is to address the impact that the construction of the driveway will have on steep slopes, and therefore, review of the single-family dwelling as it relates to outdoor lighting is not the focus of review. Nevertheless, see Section 3.11 above for more information.

Section 5.3.B.8 – Stormwater Management and Erosion Control (pg. 119): Staff defers to the materials submitted by applicant as they relate to stormwater management and erosion control (see Exhibits D & L).

#### **SECTION 5.4 – CONDITIONAL USE REVIEW (PG. 120)**

Section 5.4.A – Purpose (pg. 113): Development Review Board approval is required for development that occurs on steep and very steep slopes per Sections 3.18.B.2, 3.18.D and 3.18.E. The standards and conditions should relate to the identification, avoidance and/or mitigation of potential impacts.

Section 5.4.B – General Standards (pg. 121): Conditional Use Review shall be granted only if the Board finds that the proposed development will not result in an undue adverse effect on any of the following subsections:

Section 5.4.B.1 – The Capacity of Existing or Planned Community Services or Facilities (pg. 121): The construction of the driveway, thus resulting in the construction of a single-family dwelling on the pre-existing lot, is not expected to change or increase the demand of community services and facilities, as the lot has already been approved as part of a subdivision application. See Exhibit E for more information.

Section 5.4.B.2 – The Character of the Area Affected (pg. 121): Staff finds that the proposed construction of the driveway will not affect the character of the area, as the proposed driveway would serve a single-family dwelling in an area that is largely, if not all, single-family dwellings. See Exhibit E for more information.

Section 5.4.B.3 – Traffic on Roads and Highways in the Vicinity (pg. 121): The construction of the driveway, thus resulting in the construction of a single-family dwelling on the pre-existing lot, is not expected to change or increase the demand of community services and facilities, as the lot has already been approved as part of a subdivision application. *Note that a traffic impact study has not been provided to confirm this assumption; however, one*

*could be requested by the Board under Section 5.4.B.3.b if deemed necessary.* See Exhibit E for more information.

Section 5.4.B.4 – Bylaws in Effect (pg. 122): Staff does not believe that the applicant is noncompliant with other aspects of the bylaws in effect at the time of this application submittal. See Exhibit E for more information.

Section 5.4.B.5 – The Utilization of Renewable Energy Resources (pg. 122): Staff does not believe that the proposed driveway and development will interfere with any sustainable use of renewable energy resources. See Exhibit E for more information.

Section 5.4.C – Site Plan Review Standards (pg. 123): Under this subsection, site plan review is required as part of conditional use review. Analysis can be found above under Section 5.3.

Section 5.4.D – Specific Standards (pg. 123): 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): Staff finds that the proposed driveway and single-family dwelling is consistent with the Town Plan.

Section 5.4.D.2 – Zoning District & Use Standards (pg. 123): Staff finds that the proposed driveway and single-family dwelling will comply with the zoning district and use standards, should the Development Review Board grant conditional use review under Sections 3.18.B.2, 3.18.D, 3.18.E and 5.4 above.

Section 5.4.D.3 – Performance Standards (pg. 123): Staff finds that the conditional use review application is to address the impact that the construction of the driveway will have on steep slopes, and therefore, review of the single-family dwelling as it relates to performance standards is not the focus of review. Nevertheless, Staff does not foresee that the propose use would cause, create or result in any of the situations presented in Section 3.14.B.

Section 5.4.D.4 – Legal Documentation (pg. 123): Staff finds that this Section does not apply.

#### **SECTION 5.5 – WAIVERS & VARIANCES (PG. 123)**

Staff finds that the applicant has not asked for any waivers, and therefore, review and analysis under this Section is not required.

### **ARTICLE VI – FLOOD HAZARD AREA REVIEW**

Staff finds that there are no Flood Hazard Areas present on the lot, and therefore, review and analysis under Article VI is not required.