Underhill Development Review Board
Conditional Use Application and Variance Request of Verizon New England, Inc.
VT850
Findings and Decision

In re: Verizon New England, Inc.
800 Hinesburg Rd.
So. Burlington, VT 05403
850 VT Rte. 15

UNDERHILL TOWN CLERK'S OFFICE
Received For Record 9-27 A.D., 20 07
At 8 O'clock — minutes A M. & Recorded
In Book 162 Page 351-355 of Underhill Records
Attest Sheri Ashman.
Town Clerk

Docket No. DRB-07-09:

I. INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding concerns Verizon's application to add a utility cabinet to their current site at 850 VT Rte. 15 for additional wiring to provide DSL service to the area.

2. On May 1, 2007 application for a conditional use and a variance from front-yard and wetland setbacks from Karen Farnham was received by the Zoning Administrator to place an additional cabinet at Verizon's current site. A conditional use hearing for this request was required under § VI (B) (8) and a variance was required under sections VI (E) and III (V) (2).

3. On May 3, 2007, notice for this hearing was published in the Mountain Gazette.

4. On May 1, 2007, notice of a public hearing was posted at the following places:

   a. The Underhill Town Clerk's office;
   b. The Underhill Center Post Office;
   c. The Underhill Flats Post Office;
   d. The subject property at 850 VT Route 15.

5. On May 17, 2007 a copy of the notice of a public hearing was mailed to the applicant and the following abutting neighbors:
   a. Menichelli, 853 VT Rte 15, Underhill, VT 05489
   b. Chicoine 868 VT Rte. 15, Underhill, VT 05489
   c. Kelley 880 VT Rte. 15, Underhill, VT 05489
   d. Peruzzi, 16 No. Underhill Station Rd., Underhill, VT 05489
   e. Adams, 13 No. Underhill Station. Rd., Underhill, VT 05489
   f. Lamphere, 27 No. Underhill Station. Rd., Underhill, VT 05489
   g. Rhoads, 832, VT Rte. 15, Underhill, VT 05489
   h. Sorrell 850 VT Rte 15, Underhill, VT 05489
   i. Edson, 829 VT Rte 15, Underhill, VT 05489

5. The conditional use request was considered by the development review board at a public hearing on Monday, May 21, 2007. The development review board reviewed the conditional use request under the Town of Underhill Zoning Bylaw §§ III (V), VI (B) and (E), as amended March 2003.

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

    - Charles Van Winkle, Acting Chair
    - Chuck Brooks
    - Stan Hamlet
    - Peter Seybolt
    - Matt Chapek

7. At the outset of the hearing, Charles Van Winkle explained the criteria under 24 V.S.A. § 4465 (b) for being considered an "interested party." Interested parties who spoke at the hearing:
    a. Norman Rice, Verizon Right-of –Way representative and
    b. Mary Groom, Verizon Planning Engineer.
    c. No abutting neighbors attended.

8. During the course of the hearing the following exhibits were submitted to the Development Review Board:
    - A copy of the Mt. Gazette warning;
    - A copy of a letter dated 5/9/07 from Errol Briggs of Gilman & Briggs Environmental regarding the wetland delineation that he did around the existing pad and a sketch of the delineation by Briggs;
    - A copy of the Applicant's Proposed Findings of Fact";
    - Graphic representations of the proposed cabinet;
    - A site plan by David W Hudson, L.S., dated 5-18-07;
    - A letter dated 5/21/07 from Timothy French from VTRANS approving the installation in regards to sight distances;
    - A deed recorded at Book 91 page 190 showing the easement to New England Telegraph from Jewett for the current cabinet location;
    - A deed of transfer of property rights from Jewett to Sorrell for VT850, the current property owners with abovementioned easement and recorded in the Underhill Land Records at Book Page .Photographs submitted by Verizon of the site; and
    - Photographs taken by Charles Van Winkle showing the VT 850 site and also a similar site in Jericho.

These exhibits are available in the Verrizon/VT850 Development Review Board file at the Underhill Zoning Office.

9. The Minutes of the meeting written by Chuck Brooks are incorporated by reference into this decision. Please refer to these Minutes for a summary of the testimony.

II. FINDINGS

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

1. The use on the subject property, 850 VT Route 15 lies in the Water Conservation District.

2. A hearing for this proposed project is required by Underhill Zoning Regulations, as Amended 2003, ("The Regulations") §§ III (V), VI (E) for a variance and VI (B) for a conditional use.

3. The criteria for conditional use approval as stated in § III (F) of the Underhill Zoning Regulations is: "a determination [by the Board that] ...the proposed conditional use complies with standards applicable as set forth in the by-laws, is not injurious, noxious, or offensive and that the proposed conditional use does not adversely affect:
    - The character of the area
    - Traffic on roads or highways in the vicinity
    - By-laws then in effect.

4. The proposed conditional use will be a cabinet that will hold additional utility cables for provision of DSL service to the surrounding area.

5. The cabinet and cabling will not be injurious, noxious, or offensive to the area.

6. The proposed cabinet will not adversely affect the character of the area, as the area already has one cabinet there, and this 6' x 4' cabinet will be an expansion of a current use. Applicants have also presented a site plan that includes screening plantings with spreading yews. Testimony at the hearings indicated that the Applicant is not averse to planting additional screening in the front of the cabinet to further screen the cabinet from view. The addition of 2 spreading yews on the southeast corner of the proposed cabinet will further screen the cabinet from Rte. 15. With this screening, the character of the area will actually be improved as currently there is not any screening on site.

7. Traffic on roads or highways in the vicinity will not be affected as evidenced by the VTRANS permission with regard to site lines for the proposed project.

8. The proposed project has no impact on by-laws currently in effect.

9. The criteria for a variance are:

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

b. Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the bylaw, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
c. Unnecessary hardship has not been created by the appellant.
d. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.
e. The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan.

10. The area that Verizon has for an easement where the current use is and the proposed use will be is an irregular, small, triangular shaped lot that is bound to the east by wetlands, to the west by VT Rte. 15, to the north by North Underhill Station Road, and to the south by more wetlands and the limits of the easement.

11. This configuration makes it impossible to develop the area in strict conformity with the zoning regulations.

12. The proposed location of the cabinet is the only area within the existing easement where the new cabinet can be located. This is an existing easement that was granted to New England Telephone and Telegraph, the predecessor in interest to this easement. The confines of the easement were not created by the Applicant, thus the hardship was not created by the Applicant.

13. The variance from the wetland set-back if granted will not alter the current character of the area as it is currently used by Verizon for delivery of utility services. A conditional use determination by the state of Vermont will suffice as evidence that the construction as proposed will not unduly effect the wetland area. The proposed new cabinet will be located on the Rte. 15 side of the pad, away from the wetland.

14. The 74' variance from the 75' front-yard set-back from the edge of the state right-of-way along VT Rte. 15 will not change the character of the area in general, nor will it alter the character of the use that currently exists on the easement, the delivery of utility services to area residents.

15. The variances from the wetland and front-yard set-back requirements are the minimum that will afford relief.

16. In addition, the Board finds that the installation of the cabinet to install DSL service to area residents will be a benefit to the community.

III. DECISION AND CONDITIONS

Based upon these findings, the Development Review Board approves the requested variances from the front-yard set-back and wetland set-backs and the issuance of a conditional use permit for the proposed utility cabinet, subject to the conditions set forth below:

1. That Verizon add two plants to the southeast corner of the proposed cabinet to further screen the cabinet; and
2. That the rest of the landscaping plan as presented at the hearing is fully implemented; and
3. The graffiti covering the existing cabinets be removed or the cabinets be repainted with a utility neutral color.

If these conditions are not met, the conditional use and variance approvals for the utility cabinet shall be rescinded.

Dated at Underhill Vermont, this 22 day of June, 2007.

Charles VanWinkle

Charles VanWinkle, Acting Chair Development Review Board

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) 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.