

Town of Underhill
Development Review Board
Appeal of the Zoning Administrator's Decision
Findings and Decision

In re: Anthony/Mario Cipri
Appeal of the Zoning Administrator's Decision to Issue Notice of Violation
for Appellants Failure to Secure Legal Access and Valid Building Permit

Docket No. DRB 08-06

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves a notice of appeal submitted by Anthony Cipri for an appeal of the administrative officer's decision to issue a "Notice of Violation" to Anthony Cipri for his failure to secure legal access to his property and a valid building permit for a structure located at 99 Mullen Road by September 1, 2006 per the underlying DRB decision dated January 9, 2006 in reference to Permit Application B-05-071.
2. The Notice of Violation was issued on March 14, 2008.
3. The notice of appeal was received by the Underhill Town Clerk on March 26, 2008, and a second, more detailed appeal notice was filed on April 7, 2008. Copies of these notices are available at Underhill Town Hall.
4. A hearing on the appeal was scheduled for Monday, May 19, 2008.
5. On May 3, 2008 notice of a public hearing was published in the Burlington Free Press.
6. On May 5, 2008, notice of a public hearing was posted at the following places:

Underhill Town Clerk's Office
Underhill Center Post Office
Underhill Flats Post Office
At intersection of Mullen Road and Poker Hill Road
7. On May 7, 2008 a copy of the notice of a public hearing was mailed to the appellant and to the following owners of properties adjoining the property subject to the appeal:
 - Cook (DW094)
 - Clark (CK050)
 - Hayes (DW096)
 - LBA 2003 Vermont Timber Associates, LLC. (IS701)

8. Due to an administrative error, this hearing was cancelled on May 19, 2008 and a new hearing scheduled for Monday, June 9, 2008.
9. Notice of the new hearing date appeared in the Burlington Free Press on May 21, 2008.
10. Notice for this hearing was delivered via certified mail on May 20, 2008 to:
 - Cook (DW094)
 - Clark (CK050)
 - Hayes (DW096)
 - LBA 2003 Vermont Timber Associates, LLC. (IS701)
 - Burgess (DW042)
 - Cipri (MU099)
 - Wieferich (DW092)
 - King (VT949)
 - Angelino (DW040)
11. On June 9, 2008 the Board convened and continued the hearing because of the lateness of the hour to Monday, September 15, 2008 at 6:30 PM.
12. A letter was sent on June 20, 2008 via certified mail to Mr. Cipri and the following abutters about the continued hearing date on June 18, 2008:
 - LBA 2003 Vermont Timber Associates, LLC. (IS701)
 - Hayes (DW096)
 - Clark (CK050)
 - Cook (DW094)
13. A Notice of the 9/15/08 continued hearing appeared in the Mt. Gazette on August 21, 2008.
14. The appeal was considered by the Development Review Board at a public hearing on September 15, 2008. Present at the hearing were the following members of the Zoning Board of Adjustment:

Scott Tobin, Chair
Chuck Brooks, Clerk
Matt Chapek
Peter Seybolt
Deb Shannon
Charlie Van Winkle
15. At the outset of the hearing, Chairman Tobin noted there were no interested parties present.

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

Identifier:	Contents:
ZA-1	Notice of violation dated 03-14-2008
ZA-2	ZBA decision re: Anthony Cipri
ZA-3	Appeal of the decision of the ZA to issue violation from Anthony Cipri dated 03-26-2008
ZA-4	Copy of <i>Appeal of Zoning Administrator Decision</i> form from Anthony Cipri dated 04-03-2008
ZA-5	Copy of Anthony Cipri's deed to lot #MU099
ZA-6	Copy of letter sent by Chris Murphy to Anthony Cipri dated 08-29-2008
ZA-7	Procedure checklist dated 09-12-2008, prepared by Chris Murphy, pertaining to this hearing
ZA-8	Staff report prepared by Chris Murphy

These exhibits are available at the Underhill town clerk's office.

17. Since this was an appeal of the Zoning Administrator's decision, Chris Murphy, Town Administrator and Planner who has been appointed by the Selectboard to act as Zoning Administrator when the zoning administrator is not available staffed the DRB for this hearing.

FINDINGS

This hearing was recorded and Minutes kept by Chuck Brooks, DRB Clerk. The Minutes of this meeting are incorporated by reference into this decision.

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

1. In a decision dated January 9, 2006 Mr. Cipri was given until September 1, 2006 to obtain legal access to his lot and a valid building permit to the structure he constructed on the lot without a permit. If he did not comply with these requirements, he was required to remove the building.
2. The Town did not pursue this further until March 14, 2008, when a letter of a zoning violation was issued because Mr. Cipri had failed to obtain the required legal access and permit.
3. This was 18 months after the time allowed in the underlying decision for Mr. Cipri to obtain access and a permit.
4. The hearing was continued until September 15, 2008, giving Mr. Cipri an additional six months to obtain access and a permit after the 3/14/08 Notice of Violation.

5. Mr. Cipri testified he has a verbal agreement with one abutter for a right of way over his property, (Cook, DW094) but a written right of way agreement has not been received by the Town for recording.
6. Mr. Cipri reportedly is in negotiations with another neighbor, (Burgess, DW042) so that he can then come off Cooks land and out onto Downs Road.
7. Mr. Cipri does not have legal access to his lot nor does he have a valid building permit for the unpermitted structure on his lot as of September 15, 2008.
8. Mr. Cipri is in violation of the ZBA decision dated 1/9/06.
9. The unpermitted structure on the property must be removed.

DECISION

Based upon these findings, the Development Review Board makes the following decisions:

1. That the unpermitted structure located on the property at 99 Mullen Road shall be removed within 30 days of the date of this decision;
2. The material for the structure may remain on-site;
3. That the Zoning Administrator shall conduct a site visit after the 30-day appeal period has expired to verify that the structure has been removed; and
4. The structure shall not be reassembled until such time that an access permit is granted to Mr. Cipri and a valid building permit has been obtained.

Dated at Underhill, Vermont, this 20th day of OCTOBER, 2008.

Scott Sobin, Chair

NOTICE: This decision may be appealed to the Vermont Environmental Court by Mr. Cipri or 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.