TOWN OF UNDERHILL
APPLICATION OF SCOTT MARCEAU
FOR CONDITIONAL USE REVIEW
FINAL FINDINGS AND DECISION

In re: Scott Marceau
59 Harvey Road
Underhill, VT 05489

Docket No. DRB 14-13: Marceau

I. INTRODUCTION AND PROCEDURAL HISTORY:

This proceeding concerns Scott Marceau's conditional use review hearing for a side setback waiver to construct a single family dwelling and garage within the required setback on the property located at 59 Harvey Road in Underhill, VT.

A. On October 28, 2014, Scott Marceau filed an application for conditional use review. A copy of the application and additional information are available at the Underhill Town Hall.

B. On October 28, 2014, a copy of the notice of a public hearing was mailed via Certified Mail to the Applicant, Scott Marceau, 59 Harvey Road, and to the following owners of properties adjoining the property subject to the application:

1. UVM Proctor Maple Research (HA058X), PO Box 233, Underhill Center, VT 05490
2. VT Dept. of Forests, Parks, & Recreation (MT352X), 111 West Street, Essex Junction, VT 05452
3. Strek (HA073), 73 Harvey Road, Underhill, VT 05489
4. Wood (HA063), 63 Harvey Road, Underhill, VT 05489

C. Notice of the public hearing was posted at the following places:

1. The property to be developed HA059;
2. The Underhill Town Hall;
3. The Underhill Center Post Office;
4. The Underhill Flats Post Office

D. On October 29, 2014, notice of public hearing was published in Burlington Free Press Newspaper.

E. A site visit was held on Saturday November 15, 2014 at approximately 9:30 AM. Present at the site visit were the following members of the Development Review Board:

- Charles Van Winkle
- Matt Chapek
- Penny Miller
- Will Towle

- Karen McKnight

Also in attendance were Planning & Zoning Administrator Sarah McShane, the Applicant Scott Marceau and resident Heather Jacobs.

F. The Conditional Use Review Hearing began at 6:30 PM on November 17, 2014.

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

- Charles Van Winkle, Chairperson
- Will Towle
- Penny Miller
- Jim Gilmartin
- Matt Chapek
- Mark Hamelin
- Karen McKnight

Planning and Zoning Administrator, Sarah McShane; Applicant, Scott Marceau; and Resident Heather Jacobs (16 Park Street, Underhill) also attended the hearing.

H. 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:

- Scott Marceau (Applicant/Property owner- HA059)

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

a) Conditional Use Review Hearing Request (dated 8-21-14);
b) Conditional Use Review Standards Findings Checklist;
c) Copy of site plan (tax map) indicating location of proposed dwelling and setbacks;
d) Design Plans for 'The Carleton';
e) A copy of the letter mailed to abutters (dated 10-28-2014);
f) A copy of the public hearing notice posted in 3 public places and in Burlington Free Press;
g) A copy of the tax map for HA059;
h) A copy of the zoning map;
i) A copy of the Boundary Line Adjustment Survey of Lands of the University of Vermont and State Agricultural College and Luther Martin, recorded in the Underhill Land Records, hanging file #243B.
j) A copy of the procedure checklist for the meeting; and
k) Procedural memo.

These exhibits are available in the Marceau, HA059, Conditional Use file at the Underhill Town Hall.

II. FINDINGS:

Factual Findings

The minutes of the meeting written by Sarah McShane 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 seeks Conditional Use Review approval to construct a single family dwelling and garage within the side setbacks on the property located at 59 Harvey Road (HA059) in Underhill, VT.

B. The property is located within the Mt. Mansfield Scenic Preservation & Soil and Water Conservation zoning districts as defined in Article II, Table 2.5 & 2.6 of the 2012 Unified Land Use and Development Regulations. The proposed dwelling and garage are to be located within the Mt. Mansfield Scenic Preservation zoning district.

C. The Board finds that the subject lot is approximately 129' in width and the required side setbacks for the zoning district are 75'.

D. The Applicant has requested a waiver pursuant to review under the 2012 Unified Land Use and Development Regulations.

E. Per Section 5.5, the Board finds that in granting approval for the waivers:

   a. No reasonable alternative exists for siting the structure(s) outside the required setback area;
   b. The reduced setback is not contrary to public health, safety and welfare, stated objectives and policies of the Underhill Town Plan, or the intent of these regulations;
   c. The waiver represents the minimum setback reduction necessary to allow for the proposed development;
   d. Any potential adverse impacts resulting from reduced setbacks on adjoining properties, surface waters or wetlands shall be mitigated through site design, landscaping and screening, or other acceptable mitigation measures.

F. The Board finds the proposal will decrease the degree of non-conformance on the lot.

III. CONCLUSIONS:

The Board finds the application is in conformance with the following sections of the Unified Land Use and Development Regulations:

- Article II, Table 2.5 – Mt. Mansfield Scenic Preservation District
- Article II, Table 2.6 – Soil & Water Conservation District
- Section 3.7 – Lot, Yard & Setback Requirements
- Section 3.8 – Nonconforming Lots
- Section 3.9 – Nonconforming Structures
- Section 3.17 Source Protection Areas
- Section 3.19 – Surface Waters & Wetlands

- Section 3.22 – Water Supply & Wastewater Systems
- Section 5.4 – Conditional Use Review
- Section 5.5 – Waivers & Variances

IV. DECISION AND CONDITIONS:

Based upon the findings above, and subject to the conditions below, the Development Review Board grants final approval for the Conditional Use Review application as described at the hearing and in the submitted application documents with the following conditions:

A. Given the unique properties of the lot, maximum waiver approval of 37.5' to the side property line is granted for both side setbacks. The side setback waiver extends to a maximum depth of 800' into the lot (as measured from the Harvey Road right-of-way).

B. The Board does not approve a waiver for the front setback. The proposed dwelling and garage must be sited to meet the applicable front setback requirement, as measured from the Harvey Road right-of-way.

C. A zoning permit is required for the construction of the principal dwelling, garage, and any associated accessory structures. A zoning permit shall be retained prior to construction in accordance with Section 10.3 of the Unified Land Use and Development Regulations.

D. The Zoning Administrator may issue a zoning permit for the construction of the proposed principal dwelling prior to the demolition of the existing dwelling; however the Applicant shall be required to demolish the existing dwelling prior to being issued a Certificate of Occupancy.

E. The E-911 code shall be posted per Underhill Jericho Fire Department specifications prior to the issuance of any building permit.

Dated at Underhill, Vermont this 1 day of December 2014.

Charles Van Winkle

Charles Van Winkle, Chair, Development Review Board

NOTICE: This decision may be appealed to the Vermont Environmental 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____.