

TOWN OF UNDERHILL
APPLICATION OF DAVID SHIFFERT
FOR CONDITIONAL USE REVIEW/SIDE SETBACK WAIVER
FINAL FINDINGS AND DECISION

In re: David Shiffert
41 Meadow Lane
Underhill, VT 05489

Docket No. DRB 15-06: Shiffert

I. INTRODUCTION AND PROCEDURAL HISTORY:

This proceeding concerns David Shiffert's conditional use review hearing for a side setback waiver for an existing accessory structure (shed) within the required setback on the property located at 41 Meadow Lane in Underhill, VT.

A. On June 19, 2015, David Shiffert filed an application for conditional use review. A copy of the application and additional information are available at the Underhill Town Hall.

B. On July 1, 2015, a copy of the notice of a public hearing was mailed via Certified Mail to the Applicant, David Shiffert, 41 Meadow Lane, and to the following owners of properties adjoining the property subject to the application:

1. David Shiffert, 41 Meadow Lane, Underhill, VT 05489
2. Charles & Shirley Cressman, 45 Meadow Lane, Underhill, VT 05489
3. Timothy Sullivan, 5 Meadow Lane, Underhill, VT 05489
4. Robert Center & Leila Bandar, 9 Meadow Lane, Underhill, VT 05489
5. Christine & Christomos Toulis, 11 Meadow Lane, Underhill, VT 05489
6. Lisa & Donald Tripp, 17 Meadow Lane, Underhill, VT 05489
7. Andrew & Sharon Gilmer, 25 Meadow Lane, Underhill, VT 05489
8. Paul & Susan Ruess, 44 Meadow Lane, Underhill, VT 05489

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

1. The property to be developed MD041;
2. The Underhill Town Hall;
3. The Underhill Center Post Office;
4. The Underhill Flats Post Office

D. On July 1, 2015, notice of public hearing was published in Seven Days Newspaper.

E. The Conditional Use Review Hearing began at 6:35 PM on July 20, 2015.

F. 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
- Mark P Green (non-voting DRB alternate)

Applicant, David Shiffert; Shirley and Charlie Cressman (abutters), Jenny Port (PV416), Norm Poutre (PV416), and current house residents Catherine Kearns and Merlin Poutry also attended the hearing.

- G. 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:
- David Shiffert (Applicant/property owner- MD041), 4685 Greenbush Road, Charlotte, VT 05445 [current mailing address];
 - Shirley & Charles Cressman, 45 Meadow Lane (abutters) –provided written comments prior to the hearing.
 - Merlin Poutry & Catherine Kearns, 41 Meadow Lane, current occupants and potential purchasers of the house.
- H. During the course of the hearing the following exhibits were submitted to the Development Review Board:
- a) Conditional Use Review Hearing Request (signed by applicant 6/19/15);
 - b) Conditional Use Review Standards Findings Checklist;
 - c) Photographs(3) depicting existing shed in relation to the property boundary (no date);
 - d) Email correspondence from David Shiffert and Charlie & Shirley Cressman (6/19/15);
 - e) Correspondence from Charlie Cressman, 45 Meadow Lane (received 6/11/15);
 - f) Correspondence from Charlie Cressman with site plan, 45 Meadow Lane (6/11/15);
 - g) Withdrawn building permit (B-15-14);
 - h) Aerial photograph/tax map of the property;
 - i) A copy of the public hearing notice posted in Seven Days Newspaper and mailed to property abutters;
 - j) Written comments from Shirley & Charles Cressman, 45 Meadow Lane (abutters);
 - k) Procedure checklist for the meeting.

These exhibits are available in the Shiffert, MD041, Conditional Use file at the Underhill Town Hall.

II. FINDINGS:

Factual Findings

The minutes of the meeting written by Penny Miller (DRB Clerk) 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 for a 3' side setback waiver for an existing accessory structure (shed) on the property located at 41 Meadow Lane (MD041) in Underhill, VT.
- B. The property is located within the Underhill Flats Village Center zoning district as defined in Article II, Table 2.2 of the Unified Land Use and Development Regulations, last amended March 4, 2014.
- C. The required side setback for accessory structures in the Underhill Flats Village Center zoning district is 15' as measured from the side property line.
- D. The Board finds that the existing shed is approximately 12' from the side property line and does not meet the minimum side setback requirements for the Underhill Flats Village Center zoning district.
- E. The Applicant has requested a waiver pursuant to review under Section 5.5 of the Unified Land Use and Development Regulations.

III. CONCLUSIONS:

The Board reviewed the application for conformance with the following sections of the Unified Land Use and Development Regulations:

- Article II, Table 2.2 – Underhill Flats Village Center
- Section 3.7 - Lot, Yard, & Setback
- Section 5.4 – Conditional Use Review

IV. DECISION AND CONDITIONS:

Based upon the findings above, and subject to the conditions below, the Development Review Board grants [6-0-1; W.Towle abstaining] approval for the requested side yard setback waiver as described at the hearing and in the submitted application documents with the following conditions:

1. Based on the testimony provided during the hearing and application materials, the board finds that the applicant's request qualifies for a waiver, and grants a 3' setback waiver from the side property line.
2. The Board recognizes the unique circumstances and received testimony from Shirley & Charles Cressman, 45 Meadow Lane (property abutters), that they do not object to the placement of the shed within the side setback.
3. The property owner shall obtain a zoning permit issued by the Zoning Administrator for the existing shed at its current location; recognizing the DRB approved 3' side setback waiver. Per §10.3(C)(1), DRB decisions, including approvals, may be appealed under Section 10.5; however, administrative zoning permits issued by the Zoning Administrator for DRB-approved

development cannot be separately appealed under Section 10.5.

4. Upon obtaining an approved zoning permit, the shed shall be considered a nonconforming structure in accordance with Section 3.9 of the Unified Land Use and Development Regulations. Nonconforming structures may be continued to be used indefinitely in accordance with Act [§4412(7)] and §3.9 of the Unified Land Use and Development Regulations.

Dated at Underhill, Vermont this 24th day of July 2015.

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 8/24/2015.