

TOWN OF UNDERHILL, VT
Planning & Zoning Administrator

P.O. Box 120, Underhill, VT 05489
E-mail: smcshane@underhillvt.gov

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

MEMORANDUM

To: DRB, SB, UJFD, UCC
From: Sarah McShane, PZA

Re: Agenda and Information for 7/20/2015 Meeting

Development Review Board
AGENDA

Monday, July 20, 2015 - 6:30 Public Hearing
Underhill Town Hall, 12 Pleasant Valley Rd. Underhill, VT

6:30 PM	Public Comment Period
6:35 PM	Conditional Use Review- Per Section 5.5 Applicant: D. Shiffert Docket #: DRB 15-06 Location: 41 Meadow Lane <i>(Per Section 5.5- Applicant request approval for a 3' side setback waiver for an existing shed)</i>
8:00 PM	Other Business Review minutes of 6/15/2015
8:15 PM	Adjourn

DRB 15-06 (MD041) Contents:

- 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);

Shiffert
Conditional Use Review/Waiver Request
July 20, 2015

- g) Withdrawn building permit (B-15-14);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) A copy of the procedure checklist for this meeting.

Hearing on the Application of David Shiffert
Conditional Use Review- Request 3' side setback waiver

Applicant(s): David Shiffert
Consultant(s): N/A
Property Location(s): 41 Meadow Lane (MD041)
Acreage: ±2.55 Acres
Zoning District(s): Underhill Flats Village Center

Underhill Flats Village Center:

1.0 acre minimum lot size
150 ft road frontage

Setbacks:

Principal

- Front – None
- Side & Rear – 20 ft

Accessory Structure

- Front: None/ Shall be located at or behind the front building line of the principal structure
 - Side & Rear – 15 ft

Max. Bldg. Coverage: 50%
Max. Lot Coverage: 75%
Max. Building Height: 35 ft

Relevant Regulations: Unified Land Use & Development Regulations (as amended 3/4/14);
2015 Road, Driveway & Trail Ordinance

- Article II, Table 2.2 – Underhill Flats Village Center
- Section 3.7 - Lot, Yard, & Setback
- Section 5.4 – Conditional Use Review
- Section 5.5 – Waivers & Variances

Comments/Questions

- The applicant is requesting DRB approval for a 3' side setback waiver for an existing shed. The DRB can grant waivers and/or variances for dimensional requirements under Section 5.5 of the zoning regulations subject to conditional use review. Although the standards for conditional use review are important, more importantly are the requirements for dimensional waivers listed under Section 5.5. The board should closely review §5.5(B)(2)(a-d) and the required findings for granting waivers [§5.5(B)(4)(a-d)].
- On 6/3/15 the property owner was issued an after-the-fact zoning permit for an existing shed on the property at 41 Meadow Lane. The property owner submitted information in the permit application demonstrating compliance with the required setbacks. The zoning permit was issued for an 8' x 12' shed (14' in height). The shed was permitted to be 15.25' from the side setback as measured from the property line.
- The property owner withdrew the zoning permit upon finding out that the existing shed was located closer than the permitted 15.25' from the side property line. The property owner subsequently filed an application for a 3' side setback waiver to be reviewed by the DRB.
- The setbacks for accessory structures in the Underhill Flats Village Center zoning district are as follows: Front: None; however structures shall be located at or behind the front building line of the principal structure/ Side & Rear – 15 ft as measured from the property line.
- Although the applicant's request for a 3' side setback is minimal and the abutting property owners are not in opposition, it is in staff's opinion that the board should deny the request since it does not meet any of the requirements for granting waivers under Section 5.5(B)(2)(a-d). Furthermore, there are numerous reasonable alternatives for relocating the structure outside of the side setback and the hardship was created by the property owner and not by unique physical circumstances.

Section 5.5 Waivers & Variances

B. Dimensional Waivers.

The DRB, in association with site plan or conditional use review, or on appeal of a Zoning Administrator's determination, may reduce minimum district setback requirements (under Tables 2.2 –2.7) or minimum surface water and wetland setbacks (under Section 3.19) in accordance with the Act [§4414] and the following requirements.

1. A waiver request, including information regarding the specific circumstances, need and justification for the waiver shall be submitted in writing with the application for site plan or conditional use review.
2. A waiver under this section may be granted by the DRB only as necessary to:

a. Allow for the reasonable development and use of a pre-existing nonconforming lot under Section 3.8.

b. Allow for additions or improvements to a pre-existing nonconforming structure under Section 3.9.

c. Comply with federal or state public health, safety, access and disability standards.

d. Allow for the siting of renewable energy structures.

3. The minimum required setback distance shall be reduced by no more than 50% under this provision. Variance approval under Subsection C shall be required for any further reduction in dimensional requirements.

4. In granting a waiver under this section, the DRB shall find, based upon clear and convincing evidence of a specific need and circumstances that:

a. No reasonable alternative exists for siting the structure, addition or improvement outside of 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 accepted mitigation measures.

Section 5.4 – Conditional Use Review

Conditional use review is intended to ensure compliance with standards addressing the potential impacts of development on adjoining properties, the neighborhood, and/or zoning district in which the development is located, and the community at large. Typically, land uses are subject to conditional use review because their scale, intensity and potential for off-site impacts warrant more careful scrutiny by the Development Review DRB. Standards and conditions relate to the identification, avoidance and/or mitigation of potential impacts.

General Standards for Conditional Use Review

1. The capacity of existing or planned community services or facilities.
2. The character of the area affected.
3. Traffic on roads and highways in the vicinity.
4. Bylaws in effect.
5. The utilization of renewable energy resources.
6. Performance Standards.
7. Legal Documentation

Shiffert

Conditional Use Review/Waiver Request

July 20, 2015

Note: In addition to the Conditional Use general standards set forth in Section C above, the Development Review DRB shall also apply all applicable site plan review standards set forth in Section 5.3.

Underhill DRB Rules of Procedure
Hearing Checklist
Conditional Use/Waiver Hearing
Application of David Shiffert
7-20-2015

State the following:

1. "This is a conditional use review hearing on the application of David Shiffert for approval of a 3' side setback waiver for an existing shed on property located at 41 Meadow Lane in Underhill, VT to a one bedroom accessory dwelling.

Conditional use review is intended to ensure compliance with standards addressing the potential impacts of development on adjoining properties, the neighborhood, and/or zoning district in which the development is located, and the community at large. Typically, land uses are subject to conditional use review because their scale, intensity and potential for off-site impacts warrant more careful scrutiny by the Development Review Board. Standards and conditions relate to the identification, avoidance and/or mitigation of potential impacts.

This application is subject to review under the Unified Land Use and Development Regulations, as amended 3/4/2014."

2. Copies of the Rules of Procedure that the Board follows are available for review from the Planning & Zoning Administrator.
3. The order of speakers tonight will be:
 - a. We will hear from and ask questions of the Applicant(s);
 - ~~b. Then we will hear and ask questions of the Zoning & Planning Administrator, Sarah McShane;~~
 - c. Then we will give other persons in the room a chance to speak. Under our Rules of Procedure each speaker is limited to five minutes; however, that time can be extended upon request to and majority consent of the Board; then
 - d. The Applicant will have an opportunity to respond; then
 - e. Final comments will be solicited from all parties.
 - f. All speakers should address their comments to the Board, not to other parties present at the hearing.
 - g. Board Members may feel free to ask questions of any speaker.
4. Are any State or municipal representatives present?

5. An Interested Parties Info Sheet has been provided to all attendees. Please review it for further information.

Then state:

"Only those interested persons who have participated, either orally or through written statements in a DRB proceeding may appeal a decision rendered in that proceeding to the Environmental Division of Superior Court.

6. If you are an applicant, or an interested party who wants to participate in the hearing, we will have you come up to the witness chair and clearly state your name, residential address, and mailing address if it differs.

7. I am now going to swear in all those present who wish to speak tonight. All individuals who plan to testify must take the following oath by responding "I do" at the end: ***"Do you hereby swear that the evidence you give in the cause under consideration shall be the whole truth and nothing but the truth under pains and penalties of perjury?"***

8. Are there any conflicts of interest or have there been any ex parte communications on the part of the Board Members?

9. At this point I am going to enter into the record the information package that was sent by the Zoning & Planning Administrator prior to the hearing. The information included in this package relevant to this hearing is:

- 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) A copy of the procedure checklist for this meeting.

10. We'll begin testimony, and hear from the applicants.

~~11. Next we will hear from the Zoning & Planning Administrator.~~

12. Are there members of the public who would like to speak? Please indicate your name and address for the record.

13. Any final comments from anyone?

14. Does the Board feel that they have enough information at this time to make a decision on the application?

- a. *If more information is needed to make a decision on the application, continue the hearing to a date and time certain, and outline for the Applicant(s) what is required at that continued hearing; or*
- b. *If, by consensus, enough information has been presented to make a decision on the application, announce that the evidentiary portion of the hearing is closed.*

15. Does the Board wish to discuss the application in open or closed session? (After the ruling, continue with the info below.)

“Within 45 days from this hearing, the Planning & Zoning Administrator, on behalf of the DRB, will send a copy of the decision and letter to the Applicant(s) and those who have participated in tonight’s hearing. A 30-day appeal period will begin on the date the decision is signed.

If there are no other comments or questions we will close [this portion of] the meeting.”

TOWN OF UNDERHILL

P.O. Box 120
Underhill, VT 05489

Phone: (802) 899-4434 x106

Fax: (802) 899-2137

CONDITIONAL USE HEARING REQUEST

INSTRUCTIONS TO APPLICANT:

Complete the form below and submit it to the Zoning Administrator with a check for the initial hearing fees. Include a copy of the building permit application (if applicable), two original and twelve 11" x 17" copies of a site development plan, a copy of the State Project Review Sheet, draft legal documents (if applicable), the information on the attached checklist(s), and any written waiver or modification requests. Separate State permits including, but not limited to, water/wastewater, stormwater, Act 250, and Construction General permits may be required. It is the obligation of the Applicant to contact the State Permit Specialist at 802-879-5676 to obtain a Project Review Sheet.

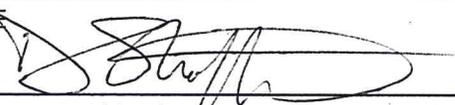
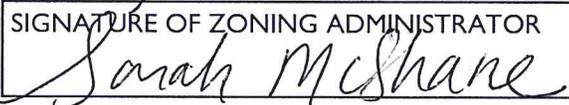
FEES: \$150 + Certified Mail costs + recording fees

A hearing before the Development Review Board will be scheduled upon receipt of a complete application. For assistance with this application, please contact the Zoning Administrator at 899-4434, x106.

ZONING DISTRICT(S): Check all that apply

PROPERTY CODE: MD 41

- Underhill Flats Village Center
- Rural Residential
- Water Conservation
- Scenic Preservation
- Soil & Water Conservation

APPLICANT: <u>David Shiffert</u>	MAILING ADDRESS: <u>41 Meadow Ln, Underhill, VT 05489</u>
PHONE: <u>(802) 238-9276</u>	E-MAIL: <u>davidshiffert@gmail.com</u>
SUBJECT PROPERTY ADDRESS: <u>41 Meadow Lane</u>	
DESCRIPTION OF PROPOSED PROJECT: <u>Requesting a waiver for side setback for an existing shed w/ basement root cellar. The current structure measures twelve feet from the property line, so request is for 3 foot waiver.</u>	
APPLICANT SIGNATURE: 	DATE: <u>6/19/15</u>
HEARING DATE (to be determined by the Zoning Administrator): <u>July 20, 2015</u>	
SIGNATURE OF ZONING ADMINISTRATOR: 	DATE: <u>6/19/2015</u>

*paid \$150 check #250
David Shiffert 6/19/15*

TOWN OF UNDERHILL, VERMONT

Article V, Section 5.4 – Conditional Use Review Standards Findings Checklist



Required

Submitted

Section 5.4(B) General Standards Cont'd

(2) Character of the area affected.

Indicate how the proposed conditional use relates to the character of the area in terms of location, scale, type, density, and intensity. Include any mitigation measures that will be utilized to avoid undue adverse impacts to the character of the area.

Does not affect character of the area.

(3) Traffic on roads and highways in the vicinity.

Specify the projected impact of traffic resulting from the proposed conditional use. Include the impacts to the condition, capacity, safety, efficiency and use of existing and planned roads, bridges, intersections and associated highway infrastructure in the vicinity.

Does not affect traffic.

TOWN OF UNDERHILL, VERMONT

Article V, Section 5.4 – Conditional Use Review Standards Findings Checklist



Required

Submitted

Section 5.4(B) General Standards Cont'd

(4) Bylaws in effect.

Indicate how the proposed conditional use complies with all municipal bylaws and ordinances.

With requested waiver for 3 feet, the conditional use complies with the Town's 15 foot setback for accessory structures in the zoning district

(5) Utilization of renewable energy resources.

Demonstrate how the proposed conditional use will not interfere with the sustainable use of renewable energy resources, including access to, or the direct use or future availability of such resources.

Does not apply







Sarah McShane

From: C&S <cs.mailbox@gmx.com>
Sent: Friday, June 19, 2015 6:57 PM
To: David Shiffert; Sarah McShane
Cc: Catherine Kearns
Subject: Re: Fwd: 41 meadow Ln waiver application

Not a problem Dave,

Glad you got it all straightened out. Catherine took the time to visit us on Fri and we had a great visit. My only purpose was to have the paperwork correct for the record. I do not have any other issues. I hope the extra work with the town goes quickly. Let me know if we need to do anything to help out.

charlie & Shirley

=====
On 2015-06-19 11:54 AM, David Shiffert wrote:

> Dear neighbors and Sarah,

>
> Attached for Sarah McShane are the needed photos to accompany the
> waiver application that I filled out this morning with Sarah's help.
> These show that the nearest corner of the building measures 12 feet 1
> inch to the property line (the other corner measures 13 feet 6 inches
> to the line)
>
> Catherine and Merlin (buyers under contract for 41 Meadow Lane), the
> photos show the agreed-upon property line between 41 Meadow Lane and
> 45 Meadow lane. The Cressmans had the good idea to set markers in the
> lawn at ground level so that the line is always visible as you
> consider your activities on that side of your property.

>
> A waiver request, as opposed to a request for a zoning variance, is
> what was needed in this case. The waiver is appropriate when the
> distance of encroachment into the required setback is less than half
> the setback distance required. I requested a waiver for 3 feet.

>
> There is a hearing for this application on July 20 at 6 pm in the
> Underhill Town Office. I have paid the hearing fee of \$150 and will
> receive invoice for the required notifications sent out to 7 abutting
> neighbors. A new Permit Notice will be posted on my mailbox for this
> waiver request.

>
> Charlie and Shirley, for the purpose of that hearing and bringing this
> issue to closure, it would be most helpful if you could respond to
> Sarah McShane to indicate that you support the waiver request as
> described on the Permit Notice. You, of course, may also attend the
> July 20 hearing to express your wishes and concerns.

>
> Yours Truly,

>
> David

>

Sherri,

Just to update you on todays info. It seems that my source for the 20 feet now is having 2nd thoughts and that maybe it was changed. I also asked Randy Clark about the 20 verses 15 feet but no response back yet. I know the towns current position is 15 feet. All of this is mute anyway as I have measured his setback as approx 12.5 feet from a previous surveyed line which I have provided and is also in your files. This puts him as needing a variance for the 12.5 feet. I do not contest this, I only wish to see all the records corrected to prevent any future issues with a new owner as he is in the process of selling "by owner" rather than with a realtor. If the 12.5 is used on a form it should be listed as "approx". The alternative is to have the line remarked with temporary marks using a transit and pins which then I then would install a few cast donuts to preserve the marks.

Please forward this to the appropriate individuals.
thanks

Charlie Cressman
45 meadow lane
899-4461



Zoning Administrator,

The information that Dave Shiffert supplied is incorrect (41 Meadow Lane). The distance from his shed to my property line is closer to 12.5 feet approx. When my new septic was developed a few years ago I had it surveyed and a copy of the plan is in the towns files. The boundaries are well marked with a concrete can with a pipe at the center and at the other end the telephone pole which was placed over the boundary marker. A copy is attached of the enclosed dimensions with the original surveyor's info. This same info appears on the copy in your files.

I understand that the towns requirement is only 15 feet, however the Homestead Acres development I have been told is 20 feet. The latter being a deed restriction rather than a town requirement. I am in the process of getting a copy and will forward it to you.

I wish to get all this corrected before it is finalized before proceeding. I am not contesting his deviation only that all the information is corrected and the various exceptions are noted as I understand he is in the process of selling. I do not wish to have a dispute with a new owner as to where the boundaries are.

Charlie Cressman
45 Meadow Lane

SERVERYER

JUSTIN WILLIS

434-3103

PO Box 98

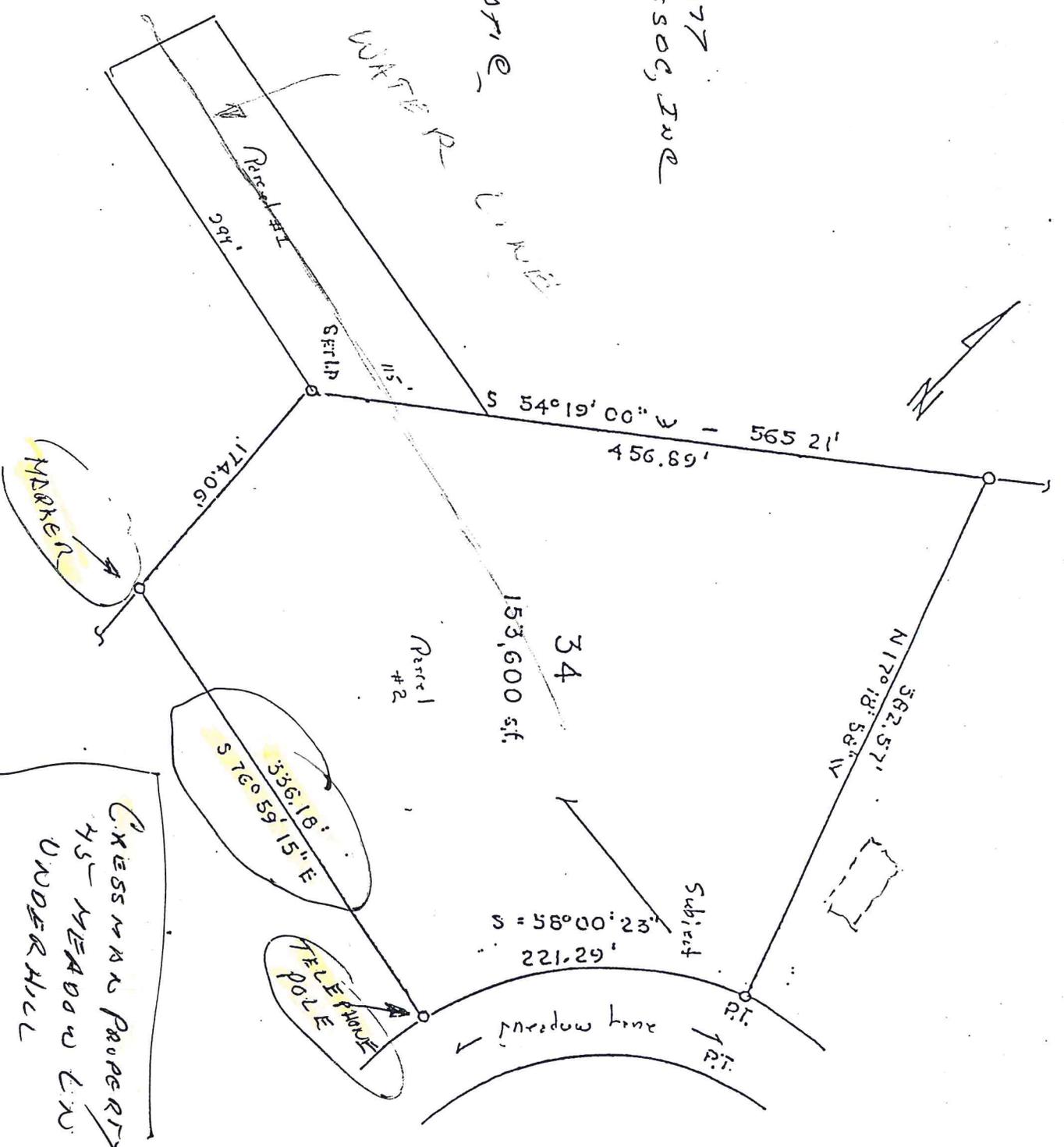
RICHMOND, VT 05477

WILLIS DESIGN ASSOC, INC

LARGE PLAN
IN FILE FOR SEPTOR

PLAN

LINE



TOWN OF UNDERHILL

P.O. Box 120
Underhill, VT 05489

Phone: (802) 899-4434 x106

Fax: (802) 899-2137

BUILDING PERMIT

THIS PERMIT IS VALID ONLY FOR THE PROJECT AND TIMEFRAME
AS DETAILED BELOW.

Permit #: B-15-14

Date Approved: 6-3-2015

Property Code: MD041

Date Effective: 6-19-2015

Zoning District(s): Underhill Flats Village Center

Permit Expires: 6-19-2016

APPLICANT(S): DAVID SHIFFERT	PROPERTY LOCATION: 41 MEADOW LANE
CONSULTANT(S): None	CONTACT INFORMATION: SEE APPLICATION
SQUARE FOOTAGE OF DISTURBANCE: ~96 sq ft.	PROPOSED CONSTRUCTION / USE: 8' x 12' SHED
DESCRIPTION OF PROJECT (Include Dimensions and Setbacks): After the fact permit for the construction of an existing 8' x 12' (height = 14ft) shed. Construction will be 210 ft from front lot line, 15.25 ft & 300 ft from side lot lines, and 150 ft from rear lot line. Per application total building coverage = ~1.2%. Total lot coverage = ~1.2%.	
CONDITIONS / RESTRICTIONS: Permit issued in conformance with the Unified Land Use and Development Regulations. No construction may commence prior to the end of the 15-day appeal period (effective date of permit). Please refer to any State permits for State requirements. Any changes to the plan (change in square footage, height, etc.) will require approval by the Zoning Administrator. Project exempt from Certificate of Occupancy requirement. Contact the Listers' office upon completion of your project.	

ZONING ADMINISTRATOR SIGNATURE

Sarah McEvoy

TOWN CLERK RECORDING

This permit is for the approved construction project described above. Separate State permits including, but not limited to, water/wastewater, stormwater, Act 250, and Construction General Permits may be required. It is the obligation of the Applicant to contact the State Permit Specialist at 802-879-5676 prior to construction. The Zoning Administrator or her agent may access the above property for purposes of inspections before, during, and upon completion of the project. Interested parties may exercise their appeal rights pursuant to 24 VSA § 4465. A Permit Notice sign will be supplied to the Applicant with this permit to be posted within view of a Town Highway until the 15-day appeal period expires. Applicant and/or their consultant(s) should check with the Zoning Administrator for any posted road restrictions. Failure to complete this project by the permit expiration date will require a new permit from the Zoning Administrator.



DM004

MD049

MD045

MD050

MD005

MD044

MD009

MD041

MD011

SU007

MD025

MD017

MD014

Meadow Ln

1 inch = 100 feet
Meadow Ln

For Planning Purposes Only.
Scale and feature locations are approximate.
Map created 7-2-2015

SU002

TOWN OF UNDERHILL, VT
Planning & Zoning Administrator

P.O. Box 120, Underhill, VT 05489
E-mail: smcshane@underhillvt.gov

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

July 2, 2015

David Shiffert
41 Meadow Lane
Underhill, VT 05489

Dear Applicant:

This letter is to notify you of your conditional use review hearing before the Development Review Board on **Monday, July 20, 2015** for a 3' side setback waiver for an existing shed on the property located at 41 Meadow Lane within the Underhill Flats Village Center zoning district. Waiver and variance requests are reviewed under Section 5.5 of the Unified Land Use and Development Regulations. The public hearing will begin at the Town Hall, 12 Pleasant Valley Rd., at approximately 6:35 PM.

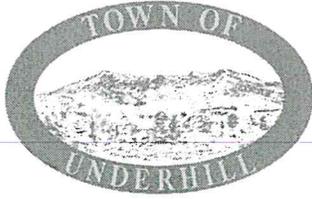
The hearing is open to the public and interested parties and abutting neighbors have the right to provide comments. Additional information related to this application is available at the Town Hall Planning & Zoning Administrator's Office.

If you have any questions, I can be reached at the addresses or phone number listed above.

Sincerely,


Sarah McShane
Planning & Zoning Administrator

cc: File



Town of Underhill

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

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

NOTICE OF PUBLIC MEETING

Town of Underhill Development Review Board (DRB) Hearing
Monday, July 20, 2015 at 6:30 PM
At the Underhill Town Hall, 12 Pleasant Valley Rd. Underhill, VT

The DRB will hold a conditional use review hearing on the application of David Shiffert for approval of a 3' side setback waiver for an existing shed. The property is located at 41 Meadow Lane (MD041) within the Underhill Flats Village Center zoning district. Waiver and variance requests are reviewed under §5.5 of the Unified Land Use and Development Regulations. The public hearing will begin at the Town Hall, 12 Pleasant Valley Rd., at 6:35 PM.

Additional information for this hearing may be obtained at the Underhill Town Hall. The hearing is open to the public. Pursuant to 24 VSA §§4464(a)(1)(C) and 4471(a), participation in this local proceeding is a prerequisite to the right to take any subsequent appeal. If you cannot attend the hearings, comments may be made in writing prior to the meeting and mailed to: Planning & Zoning Administrator, P.O. Box 120, Underhill, VT 05489 or to smcshane@underhillvt.gov

Additional information may be obtained at the Underhill Town Hall. The meeting and hearing are open to the public. Pursuant to 24 VSA §§4464(a)(1)(C) and 4471(a), participation in this local proceeding, by written or oral comment, is a prerequisite to the right to take any subsequent appeal. If you cannot attend the hearing, comments may be made in writing prior to the meeting and mailed to: Zoning & Planning Administrator, P.O. Box 120 Underhill, VT 0589 or to smcshane@underhillvt.gov

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