



## Staff Report

**To:** Development Review Board

**From:** Christopher Yuen, Community Development Director

**Meeting Date:** 05/16/2024

**Subject:** Request for Variance for existing unpermitted 177 sq ft. storage shed located 3' – 4.5" from side property line at 17 Rotunda Avenue by Debra Diamon, Owner

**File:** SP# 3.2024

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Debra Diamond seeks relief from the side setback requirement for an existing unpermitted 177 square foot storage shed located 3' - 4.5" from the side property line at 17 Rotunda Ave. The applicant states that this shed was built by their rental tenant without landlord approval, approximately ten years ago, and that the owner of the neighboring property has not voiced any concerns with the shed. See applicant's attached narrative for more details. Photos of the site are available in Figures 1 and 2, below. A site plan is also attached.

### **EXISTING CONDITIONS AND GENERAL INFORMATION**

**Project Location:** 17 Rotunda Ave

**Project Area Size:** 8,276 sf

**Lot Frontage:** 70 feet

**Existing Land Use:** Residential

**Surrounding Land Use:** Residential

**Zoning District:** R2

**Minimum Lot Size:** 7,500 sf (0.34 acres)

**Lot Coverage:** 27.5% total (Proposed)

**Permitted Lot Coverage:** 30% for buildings; 40% total

### **SECTION 706: ACCESSORY USES AND STRUCTURES**

#### **F. Storage Sheds and Other Structures**

Section 706.F states that: *"Within any residentially zoned District, storage sheds must be located a minimum of five (5) feet from the property line within any side or rear yard. The Administrative Officer may waive this setback for sheds no larger than one hundred and twenty (120) square feet and with a height no taller than twelve (12) feet, and if the structure does not shed rainwater onto neighboring properties."*

The subject storage shed is larger than 120 square feet, so it is required to be located a minimum of five feet from the property line.

The Planning Commission recognizes the challenges of siting storage sheds in small urban lots. The Commission discussed the topic during the 2023 Land Development Code amendments, prior to which, all storage sheds, regardless of size, were required to meet an 8-foot setback requirement regardless of size. The current 5-foot setback requirement for larger sheds, along with a waiver provision for sheds under 120 square feet, represents a compromise that the Planning Commission found to be reasonable.

**SECTION 1703: REQUESTS FOR VARIANCES FROM THE REQUIREMENTS OF CHAPTERS 6 and 7**

B. Action by Development Review Board

Section 1703.B of the Land Development Code states:

*“The Board may approve or deny an application for a Variance. The Board may grant only the minimum relief necessary to allow the applicant reasonable use of the property in question. A use variance shall not be granted.*

*No Variance may grant rights to a particular piece of property, which is not allowed on other properties within the District except as necessary to allow reasonable use of the property as intended within the District.”*

C. Standards of Review

In accordance with 24 V.S.A. § 4469, the Board may grant Variances if it finds that all of the following standards of review are met and such findings are included in its written decisions

1. “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.”

**This standard is not met. There are no known unique physical circumstances or conditions at this lot. The lot meets minimum lot size requirements and is of similar shape and size as nearby lots. However, the applicant states that the relocation or removal of the existing shed would be costly, and may cause damage to adjacent vegetation.**

2. “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.”

**This standard is not met. It would be possible to site a new shed in conformity with the setback requirements, but the shed already exists.**

3. “Unnecessary hardship has not been created by the appellant.”

**This standard is met.** The appellant’s rental tenant built this shed without landlord approval so arguably, it the hardship was not created by the appellant.

4. “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.”

**This standard is met.** The shed is located in the back yard and is not easily visible from the street, particularly as it is screened by trees, bushes and fencing. The shed has existed for about ten years and the municipality has not recorded any complaints about it. It is not expected to impair the use or development of the adjacent property.

5. “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.”

**This standard is met.** The variance, if authorized, would only enable a zoning permit to be issued for the existing shed, at the existing location.

If a variance is granted by the DRB, Staff will accept and process an after-the-fact zoning permit application for the shed, under standard administrative review procedures. If the variance is denied by the DRB, the applicant will be required to move or demolish the shed to comply with zoning regulations.

**RECOMMENDATION**

Given that State Statute requires that all five standards of review be met to qualify for a Variance from zoning regulations, and only three standards appear to be met in this case, Staff recommends the DRB deny the request for a Variance from the requirements of Chapters 6 and 7 of the Land Development Code.

Figure 1: Photos of the shed



Figure 2: 3D Imagery of the property and surrounding area from Google Maps

