

Hardwick Development Review Board  
Conditional Use Review & Variance Request  
*Bryan Palilonis*  
2932 Craftsbury Road, Hardwick  
Application #2018-037  
October 10, 2018

*To consider a Conditional Use Review request and a Variance Request by Bryan Palilonis to construct an Accessory Structure (garage) to a Conditional Use (Single Family Dwelling) within the stated 75 feet front setback of the Forest Reserve zoning district. Development would occur at 2932 Craftsbury Road, Hardwick, VT.*

The application requires a review under the following sections of the Hardwick Unified Development Bylaws: 2.7 Forest Reserve Table; 3.11 Performance Standards; 3.12 Protection of Water Resources; Section 3.15 Steep Slopes and Erosion Control; 5.2 Conditional Use Review; and 5.2 G5 Forest Reserve District Standards and Section 7.4 Variances.

**Warnings** were posted on September 24, 2018 at the Hardwick Memorial Building, the Hardwick Post Office and the East Hardwick Post Office. The warning was sent to the following neighboring property owners: Heartbeat Lifesharing Corp.; Roger and Michelle Dufresne; Jennifer Courtner and Kyle Woolard; and Lynne Gedanken on September 24, 2018. It was also published in The Hardwick Gazette on Wednesday, September 26, 2018.

**Development Review Board members present:** Ruth Gaillard; Edward Keene; John Mandeville, Chair; Kate Brooke; and John Page

**Development Review Board members absent:** Cheryl Michaels and Helm Nottermann;

**Others present:** Kristen Leahy, Zoning Administrator (acting clerk)

**During the course of the hearing and prior to the hearing the following exhibits were submitted:**  
None

### **Summary of Discussion**

Chair John Mandeville began the hearing at 7:03 pm. He noted that the hearing was quasi-judicial, explained the hearing procedure, asked board members for any disclosures of conflict of interest, and swore in all those who wished to speak at the hearing.

The applicant, Bryan Palilonis, was unable to attend the hearing due to a work conflict. Mr. Palilonis asked the board to review the merits of his application without his presence at the hearing. The applicant wishes to build a garage at his single family dwelling. The garage is an accessory structure over 500 square feet. As single family dwellings require a conditional use in the Forest Reserve zoning district, the proposed accessory structure also requires a conditional use.

The proposed garage would be for personal storage of the applicant's vehicles, etc. The applicant is not requesting the ability to create a business within this structure.

A variance from the front setback requirement is also being sought. The property location is limited by the presence of a year-round stream and a steep hillside and Route 14. The applicant has requested a 60 feet setback from the centerline rather than the 75 feet which is required in the Forest Reserve district.

The hearing ended at 7:35 pm.

## **Findings of Fact:**

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

**2.7 Forest Reserve** – all setbacks and dimensional standards are met for this district except for the front setback from Craftsbury Road. Conditional use of Accessory Structure to a Conditional Use (Single Family Dwelling) is allowed. Applicant is requesting a variance due to hardship of land.

**3.11 Performance Standards** – review was made of the performance standards by the DRB. **No adverse aspects were identified.**

**3.12 Protection of Water Resources** – The Natural Resources Atlas identifies a year-round stream at the requested location to the right of the existing Single Family Dwelling. The stream is actually located on the left of the dwelling. **The proposed project will be at least 75 feet from the year-round stream.**

**3.15 Steep Slopes & Erosion Control** – Development shall not take place on slope gradients in excess of 25% with the exception of limited site improvements necessary to facilitate development on contiguous land less than 25% gradient. **The applicant is seeking a variance due to the presence of a slope gradient in excess of 25%.**

## **5.2 Conditional Use Review**

### *E) General Review Standards*

*The proposed conditional use will/ will not result in an undue adverse effect on any of the following:*

1. **The capacity of existing or planned community facilities and services.** The proposed use will not affect either capacity.
2. **Character of the area affected.** Proposed Change of Use is compatible with the area.
3. **Traffic on roads and highways in the vicinity.** Proposal will not affect the current traffic patterns.
4. **Bylaws in effect.** N/A
5. **The utilization of renewable energy resources.** N/A

### **F) Specific Review Standards shall include:**

1. **Siting & Dimensional Standards.** All conditional uses shall meet minimum applicable dimensional and density standards as specified for the district in which the use is located (Article 2), the particular use (Article 4), and for the protection of surface waters (Section 3.12). **Variance is requested for the front setback, otherwise, all standards are met by the proposal.**

2. **Performance Standards.** All conditional uses shall meet performance standards as specified in Section 3.11. **The performance standards were reviewed. See Condition #2.**

3. **Access & Circulation Standards.** All conditional uses shall meet applicable access management standards as specified in Section 6.6. **Standards will be met by the proposed changes.**

4. **Landscaping & Screening Standards.** The Board may require landscaping, fencing, screening or site grading as necessary to maintain the character of the area, or to screen unsightly or incompatible uses from town highways, other public rights-of-way, or adjoining properties. **Landscaping was not indicated as**

necessary.

**5. Stormwater Management & Erosion Control Standards.** All conditional uses shall incorporate accepted stormwater management and erosion control practices as appropriate for the setting, scale and intensity of the existing and planned development. **Additional requirements were made by the Development Review Board. See Condition #3**

**5.2 G5 Forest Reserve District Standards.** Within the Rural Residential District, development shall be designed in accordance with the following standards:

Development within the Forest Reserve District should not detract from the site's scenic qualities, nor obstruct significant views from public vantage points, and should blend in with the existing landscape. Development shall take into consideration existing contours and forest cover to ensure that adequate opportunities exist for the siting and natural screening of development to minimize site disturbance and visual impacts. The Board may require the submission of a visual assessment for conditional uses within this district, and/or require additional screening of structures consistent with the natural and built environment. **The development will not disturb the natural environment.**

**7.4 Variances** – one variance is being requested for the Accessory Structure. A variance would be necessary for the front setback from Craftsbury Road.

A) The Development Review Board shall hear and decide upon requests for variances pursuant to the Act [§4469] and appeal procedures under Section 7.3. The Board may grant a variance, and render a decision in favor of the appellant, only if all of the following facts are found, and the findings are specified in its written decision:

(1) that 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 such conditions and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located; **The property has a steep slope, Route 14, and a year-round stream on site. The proposed location for the garage is the only feasible location on this property.**

(2) that because of such physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is necessary to enable the reasonable use of the property;

**The Accessory Structure is not feasible at any other location on the property.**

(3) that the unnecessary hardship has not been created by the appellant;

**The slope of property and the presence of a year-round stream are pre-existing elements.**

(4) that 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, nor be detrimental to the public welfare; and

**The proposed Accessory Structure is in the Forest Reserve zone. The structure will not require the removal of a large section of woodlands. The proposed structure will not be located in proximity to any other residencies.**

(5) that the variance, if authorized, will represent the minimum that will afford relief and will represent

the least deviation possible from the zoning regulation and from the plan.

**The proposed structure will meet the 60 feet setback established in the Rural Residential zoning district but in order to meet the more stringent 75 feet setback for the Forest Reserve zoning district, the hillside would need to be excavated.**

- (B) In granting a variance, the Development Review Board may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of these bylaws and the municipal plan currently in effect. In no case shall the Development Review Board grant a variance for a use which is not permitted or conditionally permitted within the zoning district, or which results in an increase in allowable density. **Requested use is conditionally permitted in the Forest Reserve zoning district.**

### Decision and Conditions

Based upon these findings, the Development Review Board voted 5 to 0 to approve the Palilonis conditional use application as presented and amended with the following conditions:

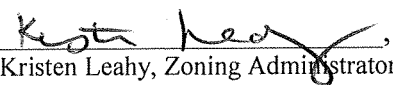
#### Conditions:

1. Any and all necessary state and federal permits must be in place before development can commence.
2. The Applicant will adhere to the Performance Standards as detailed in the Hardwick Unified Development Bylaws, Section 3.11 (Attached).
3. The Applicant must take appropriate action to mitigate the erosion of the hillside behind the proposed Accessory Structure.

The Development Review Board also voted 5 to 0 to approve the Palilonis variance request. A variance is granted to construct the accessory structure (garage) at 60 feet from the centerline of the road (Route 14, North Craftsbury Road) rather than at the district requirement of 75 feet from the centerline of the road.

Signed:

  
\_\_\_\_\_, Chair  
John Mandeville, DRB Chair

  
\_\_\_\_\_, acting clerk  
Kristen Leahy, Zoning Administrator

Date 10/15/18

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#### NOTICE:

This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding (in person or in writing) before the Development Review Board. Such appeal must be made 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.

## Hardwick Unified Development Standards

### Section 3.11 Performance Standards

- (A) The following performance standards must be met and maintained for all Conditional Uses and Home Occupation uses in all districts, except for agriculture and forestry, as measured at the property line. In determining ongoing compliance, the burden of proof shall fall on the applicant, property owner, and/or all successors and assigns; in the case of appeals to the Zoning Administrator alleging a violation of one or more of the following standards, the burden of proof shall rest with the appellant. No Conditional Uses or Home Occupation uses, under normal conditions, shall cause, create or result in:
- (1) **regularly occurring noise**, which:
    - i. represents a significant increase in noise levels in the vicinity of the use so as to be incompatible with the surrounding area; or
    - ii. in excess of 65 decibels, or 70 decibels within the Industrial District.
  - (2) **releases of heat, cold, moisture, mist, fog** or condensation which are detrimental to neighboring properties and uses, or the public health, safety, and welfare;
  - (3) **any electromagnetic disturbances or electronic transmissions or signals** which will repeatedly and substantially interfere with the reception of radio, television, or other electronic signals, or which are otherwise detrimental to public health, safety and welfare (except from telecommunications facilities which are specifically licensed and regulated through the Federal Communications Commission);
  - (4) **glare, lumen, light or reflection** which constitutes a nuisance to other property owners or tenants, which impairs the vision of motor vehicle operators, or which is otherwise detrimental to public health safety and welfare;
  - (5) **liquid or solid waste or refuse** in excess of available capacities for proper disposal which cannot be disposed of by available existing methods without undue burden to municipal or public disposal facilities; which pollute surface or ground waters; or which is otherwise detrimental to public health, safety and welfare;
  - (6) **undue fire, safety, explosive, radioactive emission or other hazard** which endangers the public, public facilities, or neighboring properties; or which results in a significantly increased burden on municipal facilities and services.
  - (7) **clearly apparent vibration** which, when transmitted through the ground, is discernable at property lines without the aid of instruments; or
  - (8) **smoke, dust, noxious gases, or other forms of air pollution** which constitute a nuisance or threat to neighboring landowners, businesses or residents; which endanger or adversely affect public health, safety or welfare; which cause damage to property or vegetation; or which are offensive and uncharacteristic of the affected area;