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Hardwick Development Review Board
Conditional Use Review Request
Applicant: Caledonia County Natural Resources Conservation District
Landowner: Dona & Patricia Bessette
17 VT Route 14 South, Hardwick
Application #2020-017
June 17, 2020

To consider a Conditional Use Review request by Caledonia County Natural Resources Conservation District for construction improvements to the drainage channel on Route 14 in the Highway Mixed Use zoning district. Development would occur at 17 VT Route 14 South, Hardwick, VT. Site is in Zone AE in the Flood Hazard Area Overlay.

The application requires a review under the following sections of the Hardwick Unified Development Bylaws: Table 2.8 Flood Hazard Area Overlay; 3.11 Performance Standards; 3.12 Protection of Water Resources; and 5.3 Flood Hazard Review.

Warnings were posted on Monday, June 1, 2020 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: William Driscoll; Teresa and Laurent Bellavance; Donald and Robert Dragon; Merrill Chapin, Jr.; Lisa and Steven Ferland; Betty Benway; Lucille Keene; Ruth and Scott Foster; Sharyn and Raymond Salls; Kelly and Nancy Dimick; Roy Hopkins; and Madeline and Frank Young on Tuesday, June 2, 2020. It was also published in The Hardwick Gazette on Wednesday, June 3, 2020.

Development Review Board members present: Ed Keene; Kate Brooke; John Mandeville, Chair; and Ruth Gaillard.

Development Review Board members absent: 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:

1. Email letter from Sacha Pealer, Floodplain Manager dated June 12, 2020
2. FEMA Flood Insurance Rate Map as provided by the Floodplain Manager on June 12, 2020.

Summary of Discussion

Chair John Mandeville began the hearing at 7:27 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.

No members of the public were in attendance. The applicant was available by phone for any questions regarding the plans (due to the State of Emergency – pandemic response). The Development Review Board examined the submitted plans and the suggestions from the Floodplain Manager. No new structures or business uses are being proposed at this time. The application is solely a proposal to improve a drainage channel adjacent to Route 14 but within the Flood Hazard Overlay district.

The hearing ended at 7:37 pm. Ed Keene made the motion to enter into deliberative session after the following hearing and Ruth Gaillard seconded. All members were in favor.

Findings of Fact:

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

2.8 Flood Hazard Area Overlay District – construction improvements to a drainage channel are allowed as a conditional use. According to the Floodplain Manager, the project is primarily located in the floodplain fringe of the Special Flood Hazard Area, although the limits of disturbance do appear to extend a small amount into the floodway. Three primary concerns were identified by the Floodplain Manager - Fill, Temporary Storage, and the Floodway. The following recommendations were made:

- To ensure no accidental filling below Base Flood Elevation, the town might consider requiring in the permit that temporary storage areas be returned to pre-project condition when construction is complete.
- To avoid floodway encroachment, the (Floodplain Manager) recommends the town require certification from a Professional Engineer that there will be no change in grade within the floodway (as in Section 5.3 H.2). See Conditions #3 and #4.

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 property is located in the 25 feet buffer strip but is allowed to accommodate streambank stabilization and restoration projects, in accordance with applicable state and federal regulations. Reasonable provisions must be made for the protection of water quality such as stormwater management provisions to collect and disperse stormwater away from the stream or river.” **The project is designed to mitigate and assist in stormwater restoration.**

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 improvements are 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). **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. **No additional plans were indicated as necessary.**

Decision and Conditions

Based upon these findings, the Development Review Board voted 4-0 to approve the Caledonia County Natural Resources Conservation District conditional use application as presented and amended with the following conditions:

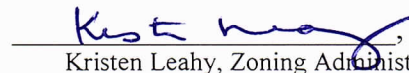
Conditions:

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. To ensure no accidental filling below Base Flood Elevation, the temporary storage areas must be returned to pre-project condition when construction is complete.
4. To avoid floodway encroachment, the town shall require certification from a Professional Engineer that there will be no change in grade within the floodway (as in Section 5.3 H.2).

Signed

 , Chair
John Mandeville, DRB Chair

Date 6-19-2020

 , acting clerk
Kristen Leahy, Zoning Administrator

Date 6-19-2020

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;

Pealer, Sacha <Sacha.Pealer@vermont.gov>

Fri, Jun 12, 2020 at 1:39 PM

To: Kristen Leahy <zoning.administrator@hardwickvt.org>

Cc: Gabe Bolin <gbolin@stone-env.com>, "OBrien, Kerry - NRCS-CD, Saint Johnsbury, VT" <kerry.obrien@vt.nacdn.net>, "Swanberg, Ned" <Ned.Swanberg@vermont.gov>

Hi Kristen,

Thank you for sending the zoning application materials for the stormwater project at 17 Route 14 South. I've reviewed the materials and offer the following comments.

The project involves enhancement of a ditched small stream and a culvert replacement within the Special Flood Hazard Area (Zone AE) for Cooper Brook (or "floodplain"). I noticed in the application materials you had sent a map that just shows the regulatory floodway, or the narrow subzone of the Special Flood Hazard Area, but not the floodplain fringe. For the town's review, I suggest looking at the attached FEMA Flood Insurance Rate Map and Sheet 3a of the detailed plans submitted by Stone Environmental to see both the floodway and the larger Special Flood Hazard Area. The FEMA map shows the floodplain fringe in blue shading and the floodway in blue and red stripes. Based on this information, the project is primarily located in the floodplain fringe of the Special Flood Hazard Area, although the limits of disturbance do appear to extend a small amount into the floodway.

The project relates to Hardwick's flood hazard regulations in the following ways:

1. **Fill:** The project involves importing stone and other earth material to reconstruct the small channel and cover the replacement culvert. This proposal does not appear to create a fill concern that would displace floodwater but I want to discuss the topic of fill briefly here, in case you have questions. In Table 2.8 D of Hardwick's Unified Development Bylaws, fill is prohibited in the Flood Hazard Overlay District (i.e., the floodplain) "for any purpose other than elevating structures." "Fill" is defined in Article 8 as "any placed material that changes the natural grade, increases the elevation, or diminishes the flood storage capacity at the site." Limiting fill is important to preserve space in the floodplain for floodwater to spread out and slow down. In the project design and narrative by Stone Environmental, it appears the project is largely returning the site to the same ground elevation or lower than what is there now, meaning imported material is being substituted for material that will be removed, the flood storage capacity is actually being increased, and would not appear to be "fill" as defined in Article 8 of Hardwick bylaws. A possible exception is the material that is being placed over the replacement culvert, which is technically raising the ground level within the pump station access drive, but at the same time providing a greater opening inside the culvert. Because the culvert is being replaced with a larger culvert that will improve stormwater drainage and passage of floodwater, is being shortened to avoid the floodway, and has a very limited raising of ground levels where an overall cut is proposed, the material over the culvert would not be expected to increase flood hazards, such as by redirecting floodwater or reducing flood storage capacity, if built as proposed.
2. **Temporary Storage:** On Sheet 4 of the plans provided by Stone Environmental, there are

temporary storage areas and equipment storage areas proposed within the mapped Special Flood Hazard Area (the floodplain fringe, shown in red shading on Sheet 4). Although these activities are located within the mapped floodplain, they are noted as being on ground already above the Base Flood Elevation of 816' labelled on the plans. To ensure no accidental filling below Base Flood Elevation, the town might consider requiring in the permit that a) temporary storage areas be limited to lands above Base Flood Elevation or b) returned to pre-project condition when construction is complete. Another approach would be to specify that all surplus or waste materials from the project be relocated outside of the floodplain when construction is complete.

3. Floodway: The plans show the replacement culvert and pump access drive will be positioned just outside the floodway. However, it appears there may be some ground disturbance in the floodway in order to construct the project. The floodway is the most restrictive part of the Special Flood Hazard Area that must be kept clear and open to allow floodwater to pass – see Hardwick bylaws Section 5.3 H. To avoid floodway encroachment, I recommend the town require certification from a Professional Engineer that there will be no change in grade within the floodway (as in Section 5.3 H.2). Alternatively, if the project can avoid disturbance in the floodway, then the town could require the floodway boundary be staked out prior to and during construction by a Professional Engineer with a condition of no disturbance in the floodway.

Please let me know if you have any questions. You may consider this email to be state flood hazard review per 24 V.S.A. §4424.

Best wishes,

Sacha Pealer, CFM

Regional River Scientist & Floodplain Manager

1 National Life Drive, Davis 3

Montpelier, VT 05620-3522

802-490-6162

<http://dec.vermont.gov/watershed/rivers>

National Flood Hazard Layer FIRMette



44°30'2.14"N



Legend

SEE HIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

SPECIAL FLOOD HAZARD AREAS

Without Base Flood Elevation (BFE) Zone A1, A99 With BFE or Depth Zone AE, AO, AH, V5, AR Regulatory Floodway
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OTHER AREAS OF FLOOD HAZARD

0.2% Annual Chance Flood Hazard, Area of 1% annual chance flood with average depth less than one foot or with draining areas of less than one square mile (Zone X)
Future Conditions 1% Annual Chance Flood Hazard Zone X
Area with Reduced Flood Risk due to Levee, See Notes, Zone X
Area with Flood Risk due to Levee Zone D

OTHER AREAS

NO SCREEN
Area of Minimal Flood Hazard Zone X
Effective LOMRs
Area of Undetermined Flood Hazard Zone

GENERAL STRUCTURES

Channel, Culvert, or Storm Sewer
Levee, Dike, or Floodwall

OTHER FEATURES

20.2
17.5
Cross Sections with 1% Annual Chance Water Surface Elevation
Coastal Transect
Base Flood Elevation Line (BFE)
Limit of Study
Jurisdiction Boundary
Coastal Transect Baseline
Profile Baseline
Hydrographic Feature

MAP PANELS

<input type="checkbox"/> Digital Data Available
<input type="checkbox"/> No Digital Data Available
<input checked="" type="checkbox"/> Unmapped

The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards.

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 6/12/2020 at 10:46:26 AM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRW panel number, and FIRW effective date. Map images for unmapped and undetermined areas cannot be used for regulatory purposes.