

Hardwick Development Review Board
Conditional Use Review Request
Eric and Teresa Clark
24 Charlevoix Street, Hardwick
Application #2020-016
June 17, 2020

To consider a Conditional Use Review request by Eric and Teresa Clark for the installation of a temporary, mobile restaurant (ice cream truck) at a pre-existing Single Family Dwelling location in the Highway Mixed Use zoning district. Development would occur at 24 Charlevoix Street in 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 2.3 Highway Mixed Use; 2.8 Flood Hazard Area Overlay; 3.11 Performance Standards; 3.12 Protection of Water Resources; Section 3.13 Parking and Loading Requirements; Section 5.2 Conditional Use Review, Section 5.2 G3 Highway Mixed Use District Standards; 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: PJC Realty NELLC % Rite Aid Corporation; Hardwick Enterprise Group LLC; Amerigas Propane LP; Debra and David Stratton; Basil Coughlan III; Paul and Katharina Schuster; Chrisann and Christopher Aubuchon, Ronald Forant; Denis Chase; and Hardwick Electric 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); Eric Clark, applicant; Teresa Clark and Chelsea Duprey.

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 9, 2020.
2. Floodplain map from Floodplain Manager
3. Parking Plan from the Applicant.
4. Evacuation Plan from the Applicant (with attached map)

Summary of Discussion

Chair John Mandeville began the hearing at 7:00 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.

Mr. Mandeville invited the applicant to present his proposal. Mr. Clark would like to install a 7'x16' trailer converted into an ice cream truck on his property at 24 Charlevoix Street. Mr. Clark will only be serving ice cream at this location. No food would be served from this trailer. The trailer would be parked on his property which currently has his home on site. The Clark property is the only house currently accessed by Charlevoix Street. A 28'x96' section of the lawn would be dedicated to car parking and would accommodate 8-9 vehicles. The parking and the trailer would be located 30' from the existing sidewalk on Route 15 (Wolcott Street).

The ice cream truck would be in operation 7 days each week with proposed hours to be 11am to 9pm. The truck would usually operate from May to late September. Only 1 employee would be utilized at this time. The truck does not utilize a generator as there is a power hook-up on site.

Hardwick Electric has placed a security light on the adjoining pole (down lit) at the request and expense of the applicant.

The applicant requested a sign to be included in his conditional use request. The zoning district allows up to 32 square feet.

The hearing ended at 7:27 pm. Ed Keene made the motion to enter into deliberative session after the following hearing and Kate Brooke seconded. All members were in favor.

Findings of Fact:

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

2.3 Highway Mixed Use – all setbacks and dimensional standards are met for this district. A secondary use (Restaurant) to a permitted use (Single Family Dwelling) is allowed. Applicant is requesting a temporary, mobile restaurant at an existing Single Family Dwelling. Location must be 45 feet from the centerline of Charlevoix and 45 feet from the centerline of Route 15 and 20 feet from the side and rear setbacks.

2.8 Flood Hazard Area Overlay District – The Flood Hazard Area Overlay District permits the parking of recreational vehicles (trailers). Furthermore, the trailer in question has a square footage of less than 500 square feet - accessory structures of 500 square feet or less and outside of the floodway are permitted uses in this overlay. According to the Floodplain Manager, the food trailer must be fully licensed and ready for highway use at all times. The applicant must anchor the toilet and tables with quick release cables or chains that attach to ground anchors, and that the toilet and tables will only be allowed in the floodplain for less than 180 days unless contained in a facility known to be above base flood elevation. The applicant must provide the Development Review Board with an evacuation plan which will be described in detail and approved ahead of time. (See conditions 3-5). **The applicant provided the Board with an evacuation plan which was approved by the board. (See Exhibit #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 Flood Hazard Area Overlay. The proposal is beyond the setback required from the Lamoille River. The proposal is located in Hardwick's Source Protection Area. **The Town of Hardwick does not have any concerns with the proposed "food service venue" usage in the Source Protection Area. A letter was forwarded to the applicant requesting notification of any spill of hazardous waste to the ground of more than 1 gallon.**

3.13 Parking and Loading Requirements – The requested use is a non-residential usage on an existing residential site. "Non-Residential parking areas shall be located to the side or rear of buildings unless otherwise approved under site plan or conditional use review and shall be screened from adjoining residential properties." **The DRB found that adequate parking exists on site. No testimony was received to indicate that screening from adjoining residential properties would be necessary.**

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 Restaurant 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). **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.**

5.2 G3 Highway Mixed Use District Standards

- A) Within and contiguous to parking areas, landscaping shall emphasize the use of shade trees to provide a tree canopy, provide separation between parking spaces to avoid large expanses of parking and minimize the visibility of parking areas from off-site. Suitable locations for shade trees include along walkways, in center islands, in between parking spaces and clustered in appropriate locations. **The proposed development will be temporary and mobile. No new structures will be installed.**
- B) A landscaped strip of at least twenty (20) feet shall be provided parallel to the road, which may be crossed by driveways and sidewalks. Form, location, and composition of the landscaped strip shall be shown on the site plan and approved by the Development Review Board. **Landscaping has been installed near the proposed location. Due to potential for obstruction of visual lines for vehicular traffic, all plantings are low to the ground.**

Decision and Conditions

Based upon these findings, the Development Review Board voted 4-0 to approve the Clark 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 food trailer must be fully licensed and ready for highway use at all times.
4. The applicant must anchor the toilet and tables with quick release cables or chains that attach to ground anchors, and that the toilet and tables will only be allowed in the floodplain for less than 180 days unless contained in a facility known to be above base flood elevation.
5. The applicant must provide the Development Review Board with an evacuation plan which will be described in detail and approved ahead of time.
6. No parking shall be allowed to take place on Route 15.
7. The applicant is allowed to install a business sign up to the 32 square feet maximum size but the sign shall not obstruct pedestrian or vehicular traffic sight lines.

Signed:

 , Chair
John Mandeville, DRB Chair
Administrator

 , acting clerk
Kristen Leahy, Zoning

Date 6-19-2020

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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:
represents a significant increase in noise levels in the vicinity of the use so as to be incompatible with the surrounding area; or
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;