

Hardwick Development Review Board  
Conditional Use Review Request  
O'Brien, David & Gail  
30 River Street, East Hardwick  
Application #2022-006  
April 6, 2022

To consider a Conditional Use Review request by David and Gail O'Brien for the renovation of an existing Single Family Dwelling in the Central Business zoning district. Development would occur at 30 River Street in East Hardwick, VT. Site is in the Floodway in the Flood Hazard Area Overlay. Applicants are also requesting to change the use from Single Family Dwelling to Mixed Use (Single Family Dwelling, Office, Retail, and Community Center).

The application requires a review under the following sections of the Hardwick Unified Development Bylaws: Table 2.1 Central Business District; 2.8 Flood Hazard Area Overlay; Section 3.9 Nonconforming Structures & Nonconforming Uses; 3.11 Performance Standards; 3.12 Protection of Water Resources; Section 3.13 Parking and Loading Requirements; Section 4.12 Mixed Use; Section 5.2 Conditional Use Review; Section 5.2 G1 Central Business District Standards and 5.3 Flood Hazard Review.

**Warnings** were posted on Wednesday, March 16, 2022 at the Hardwick Memorial Building, at the Hardwick Post Office and the East Hardwick Post Office. The warning was sent to the following neighboring property owners: Meredith Holch; Christopher Kane; Stella and Norman Gravel; James L Teuscher Trust; 64 Main Street LLC; Farm Connection LTD; East Hardwick Fire District #1; and Jeffery Montgomery on Tuesday, March 22, 2022. It was also published in The News & Citizen on Thursday, March 17, 2022.

**Development Review Board members present:** Ed Keene; Helm Nottermann; Kate Brooke; John Mandeville, Chair; and Kole.

**Development Review Board members absent:** Ruth Gaillard

**Others present:** Kristen Leahy, Zoning Administrator (acting clerk); David O'Brien, the applicant; Doug Casavant; Shelly Richards (via Zoom), and Stella Gravel (via Zoom).

**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 March 18, 2022.
2. Letter from Norman and Stella Gravel dated March 31, 2022.

### **Summary of Discussion**

Chair John Mandeville began the hearing at 7:01. 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. It was noted for the record that four members of the Development Review Board are from East Hardwick and are familiar with the applicants. Furthermore, Kate Brooke is on the board for the East Hardwick Neighborhood Organization. The EHNO may be utilizing the community center space in the future. The relationships do not meet the threshold of conflicts of interest but were disclosed as courtesy.

Mr. Mandeville invited the applicant to present his proposal. David and Gail O'Brien purchased the River House last year. The structure has been neglected and empty for many years. The O'Briens reside in the house at 35 Main Street which is directly across from 30 River Street (River House). River House is in the floodplain and in the floodway. Currently, the structure is a Single Family Dwelling which the applicants intend to use as

a short term rental and as overflow space for visiting relatives. The applicants are also seeking to potentially use the first floor as a community meeting space in the summer months. East Hardwick Neighborhood Organization may use the space to provide services for those who are using the Lamoille Valley Rail Trail. To accommodate this potential use, the applicants are requesting a change of use to Mixed Use with Office, Single Family Dwelling, Retail, and Community Center options.

The retail/office/community center space would be staffed by volunteers and would not provide off-street parking for vehicles. A bike rack for visiting bikers may be installed at a later time. The concept is to allow East Hardwick to have a centralized space within walking distance and to target those who venture through town on the Rail Trail.

The improvements will primarily occur on the interior of the structure. No additions or changes to the existing footprint. The existing deck will be reinforced and improved.

Shelly Richards voiced strong concerns about potential parking issues. In particular, she is worried that vehicles will block River Road and prevent her from exiting her driveway/house. Prior to the hearing, Norman Gravel also expressed verbal concerns to the Zoning Administrator about the possibility of parked vehicles blocking River Road.

Dave testified that the structure will usually be a residence with only 1-2 vehicles associated with that use. The applicants are aware of the parking limitations and are able to provide overflow parking across Main Street at their other property. The concept with EHNO would be to appeal to bicycles which will not have a vehicular parking component. Parking delineation will be installed and visitors will be prevented from blocking River Road.

Shelly Richards also requested that those who are using the space at River House be prevented from using her driveway as a turn-around.

Dave reviewed the proposed maintenance and interior work for River House. The DRB did not have any concerns about the ascribed valuation of labor or parts.

The issue of parking was again discussed. Doug Casavant testified that the East Hardwick Fire District #1 owns the land directly in front of River House and will allow two parking spaces. Shelly Richards stated that her parents Norman and Stella Gravel gave River House access to the same two parking spaces.

Shelly also expressed concerns about the possibility of the river bank falling into the Lamoille River. Exhibit #2 from Norman and Stella Gravel reiterates those concerns.

The hearing ended at 7:50 pm. Ed Keene made the motion to enter into deliberative session after the hearing and Helm Nottermann seconded. All members were in favor.

#### **Findings of Fact:**

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

**2.1 Central Business District** – A Single Family Dwelling structure is listed as Conditional Uses in the district. Applicants are requesting to renovate their existing Single Family Dwelling. In addition, the applicants are requesting to change their use from Single Family Dwelling to Mixed Use with the following conditional uses included: Single Family Dwelling; Office; Retail Sales; and Community Center. Structure must be 25 feet from the centerline of River Street and 5 feet from the side and rear setbacks. **These setbacks are non-conforming but pre-existing.**

**2.8 Flood Hazard Area Overlay District** – The Flood Hazard Area Overlay District lists “Substantial improvements to existing structures” and “Non-substantial improvements to existing structures (in floodway)” as Conditional Uses. Applicants are proposing to update and improve the existing building’s interior. No building expansion or construction outside of the original building footprint has been proposed. **The proposal was reviewed by the Floodplain manager, Sacha Pealer (See Exhibit #1). Ms. Pealer recommended an extensive review of the update proposal to verify that this will be a non-substantial improvement. The Development Review Board reviewed the parts & labor lists provided by the applicants. No concerns were identified. The improvements will be non-substantial improvements to an existing structure in the floodway.**

**3.9 Nonconforming Structures & Nonconforming Uses** – The existing structure is within the dimensional standards established in Table 2.1 (Central Business) and in 3.12 Protection of Water Resources. The Single Family Dwelling is within the 75 feet setback from the Lamoille River and does not meet the front or side or rear setback standards. However, this section allows nonconforming structures to be restored if the reconstruction does not increase the degree of nonconformity which existed prior to any damage. **The restoration will not increase the nonconformity.**

**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 pre-existing structure is located within the 75 feet setback from the Lamoille River. **This section allows for the renovation of any structure in existence prior to the effective date of these bylaws and not in compliance with the Section. The structure will not be expanded. No concerns were voiced regarding the possible impacts on the quality of the Lamoille River water.**

**3.13 Parking & Loading Requirements** – the property is located in the Central Business district which requires off-street parking for employees and for dwelling or lodging units. A Single Family Dwelling must provide 2 parking spaces. **No employees will be utilized. Two parking spaces will be available – parallel to River Road. All other parking must occur on Main Street or off site. The applicants will be responsible for enforcing the parking requirement.**

**4.12 Mixed Use** – more than one principal use may be allowed within a single building subject to provisions: 1) each of proposed uses is allowed as a permitted or conditional use within the zoning district, 2) the uses in combination meet all applicable standards for the district, and 3) the mixed use shall meet all applicable general regulations under Article 3. **The requested uses are all conditional uses in the Central Business district. Applicable standards are met and the general regulations are met as well.**

## **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.** The renovation and building use matches the purpose of the Central Business district and the character of the surrounding area.

3. **Traffic on roads and highways in the vicinity.** The circulation and traffic patterns on Main Street and

River Street will not be impacted by the existing use. Possible adverse effects were identified – See Condition #3. No increase in traffic will be created by the proposal.

4. **Bylaws in effect.** The East Hardwick Fire District #1 will be able to handle the water needs of the proposed uses.

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). **Except as mentioned earlier, 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 G1 Central Business District Standards.**

A) The use of front yards shall be limited to landscaping, pedestrian paths and associated pedestrian amenities (e.g. street furniture, pedestrian scale lighting and signs) and driveways. Outdoor storage, parking, and loading areas shall not be located within front yards unless the Board finds that the property is a pre-existing building or that no other practical alternative exists. **The proposed development will not require any new structures.**

B) Buildings should be oriented toward and relate to, both functionally and visually, public streets and/or common greens, parks or plazas, and not be oriented toward parking lots. The front façade should include a main entry-way and pedestrian access to the street. Buildings located on corner lots shall either be oriented toward the major street or include a corner entrance. The Board may impose a maximum setback, relative to adjacent buildings, to achieve a consistent streetscape. **The proposal is a renovation of an existing structure. A consistent streetscape will be achieved by this proposal.**

C) New buildings and additions to existing buildings shall be designed to be compatible with, and not stand in contrast to, historic structures located within the district with regard to building scale, massing, materials, orientation, and rhythm of openings. **Neither new buildings nor additions are being proposed with this renovation.**

**5.3 Flood Hazard Review**

(D) **Conditional Use Review** – A project qualifies as substantial improvement if the cost of the work is 50% or

more of the market value of the building. Cost estimate of \$10,222 for the work is 44.8% of the Grand list assessed value of \$22,800. **The Development Review Board found the cost estimates to be fair and reasonable.**

(G) **Development Standards – Special Flood Hazard Area.**

(1) All development shall be:

- a. reasonably safe from flooding;
- b. designed, operated, maintained, modified, and adequately anchored to prevent flotation, collapse, or lateral movement of the structure;
- c. constructed with materials resistant to flood damage; **the work to the deck is above the Base Flood Elevation.**
- d. constructed by methods and practices that minimize flood damage;
- e. constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- f. adequately drained to reduce exposure to flood hazards;
- g. located so as to minimize conflict with changes in channel location over time and the need to intervene with such changes; and
- h. required to locate any fuel storage tanks (as needed to serve a building in the Special Flood Hazard Zone) a minimum of one foot above the base flood elevation and be securely anchored to prevent flotation, or storage tanks may be placed underground, if securely anchored as certified by a qualified professional. **The fuel tank is pre-existing and at a minimum of 1 foot above the BFE.**

(H) **Development Standards – Floodway Areas**

- (1) Encroachments or development above grade and less than one foot above the base flood elevation, are prohibited unless hydrologic and hydraulic analyses are performed in accordance with standard engineering practice, by a registered professional engineer, certifying that the proposed development will:
  - a. Not result in any increase in flood levels (0.00 feet) during the occurrence of the base flood;
  - b. Not increase any risk to surrounding properties, facilities, or structures from erosion or flooding. **Per Sacha Pealor, the engineer's analysis and floodway certification is not applicable as there is no change in building footprint or other change below BFE.**

**Decision and Conditions**

Based upon these findings, the Development Review Board voted 5-0 to approve the O'Brien 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 applicants will obtain written permission from the East Hardwick Fire District #1 for the use of two parking spaces directly in front of the existing structure. The parking spaces will be parallel to River Street.

Signed:

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

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

Date 4/11/22

Date 4/11/22

**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;

Pealer, Sacha

Fri, Mar 18, 2:00 PM (3 days ago)

to me

Dear Kristen Leahy:

Thank you for sending the zoning application for renovations at 30 River Street, East Hardwick. I see this project includes work within the existing building footprint of the residential structure and on the existing deck. Below are my comments on this project in relation to Hardwick's flood hazard regulations (Unified Development Bylaws).

Based on the effective Flood Insurance Rate Map for Hardwick dated 7/17/2002, the project is in the Special Flood Hazard Area (Zone AE) and floodway of the Lamoille River. I'll use "floodplain" as shorthand for the whole Special Flood Hazard Area.

Prior to this application, the building owners applied for a Letter of Map Amendment (LOMA) from FEMA, hoping the building was high enough to be officially taken out of the floodplain. The application was not successful, and the building remains in the floodplain, according to FEMA's LOMA determination document. Another outcome is that we now have FEMA's official say that the Base Flood Elevation (BFE) at the building is 1043.3 feet NGVD29. So, be sure to use FEMA's BFE when reviewing this project; the Elevation Certificate in the application packet shows a different BFE and needs to be updated.

### **Substantial Improvement: 5.3 G (3) and 8.2 Definitions**

I suggest the town proceed carefully and get a little more information before deciding this project is not a substantial improvement. A substantial improvement, including interior renovations, would mean the building is required to meet **5.3 G (3)**. The lowest floor including basement of a substantially improved residential structure must be at or above the Base Flood Elevation.

It looks like the project could be very close to the substantial improvement threshold. A project qualifies as substantial improvement if the cost of work is 50% or more of the market value of the building before work begins (see **8.2** for full definition). The market value used for the calculation should be for the building only and not include land value.

The cost estimate of \$10,222 for the work is 44.8% of the grand list assessed value of \$22,800. When a project is this close to 50%, it is important to make sure the costs are reasonable and complete, and the market value is accurate for the current condition of the building. For the cost estimate, be sure the labor rates used are reasonable/appropriate for the area and for the skill level of the work, even if the owners plan to do the work themselves. For the market value, I see an email from a realtor suggesting the market value could be about \$85,000. I would be cautious about relying on this figure because it includes the land value and to my knowledge is not prepared by a licensed appraiser. For more information on making substantial improvement determinations and market value, please see Chapter 4 of the FEMA Publication 758: Substantial Improvement/Substantial Damage Desk Reference.

If the project is a substantial improvement, then the building needs to meet 5.3 G(3). The Elevation Certificate suggests it might already, but I did have some questions going through the application and Elevation Certificate. I suggest the town be extra careful to confirm that the lowest floor reported on the certificate includes any basement, crawlspace, or enclosure floor and is in fact above the Base Flood Elevation (BFE).



If there is a basement or crawl space below the lowest floor reported on the Elevation Certificate, then the building does not currently meet substantial improvement requirements unless that basement floor is also above BFE. At our site visit on 8/11/21, I recall the owners mentioning there is a basement or crawl space with furnace (we did not enter the space at the time). Question C2.a of the certificate shows the lowest floor is 3.3 feet higher than the FEMA-determined Base Flood Elevation of 1043.3 feet. Question C2.a of the certificate should report the elevation of any basement, crawlspace, or enclosure floor as the lowest floor, even if it is a dirt floor. Question A7 shows the building as matching building diagram #7, meaning there is an enclosed space below the first floor that is at a walkout level. I recommend the town get confirmation that C2.a is in fact the basement/crawlspace floor elevation and not the first floor living space.

In any case, this Elevation Certificate needs updates to show the FEMA-determined Base Flood Elevation, lowest deck elevation (C2.h), and any other issues as described above. If this project is a substantial improvement, the town will need to receive a corrected Elevation Certificate before the town can decide if/how the building can meet substantial improvement requirements.

### **Floodway standard: 5.3 H**

The floodway standard aims to keep projects from diverting floodwater or otherwise raising flood heights. The engineer's analysis and floodway certification required under 5.3 H (1) is not applicable if there is no change in building footprint or other change below BFE. Before permitting, I recommend the town confirm that the fuel tank is going to be sited on land above BFE. If the tank is installed at the street level, then it is likely above the BFE and outside of the floodplain. Also, the town will want to confirm that any enlarged or additional deck parts including deck supports are above the BFE. I suggest requesting written confirmation from a licensed land surveyor that the fuel tank and deck work are all above BFE.

Please let me know if you have any questions. You may consider this email as ANR flood hazard review to assist with the local permit process per 24 V.S.A. §4424.

Best wishes,

**Sacha Pealer**, CFM|Northeastern River Scientist & Floodplain Manager (she, her)  
Vermont Agency of Natural Resources | Department of  
Environmental Conservation  
Watershed Management Division, Rivers Program  
1 National Life Drive, Davis 3 | Montpelier, VT 05620-3522  
802-490-6162 office & cell  
[Sacha.Pealer@vermont.gov](mailto:Sacha.Pealer@vermont.gov)  
<http://dec.vermont.gov/watershed/rivers>

Norman & Stella Gravel  
East Hardwick VT,058360

03/31/2022

Norman and I Stella Gravel got a letter from Office of the Zoning Administrator about the property owned by David & Gail O'Brien our concern is not what they do with the property as that is none of our business , We don't understand the letter to us as I was told that is what the zoning committee was supposed to do We will tell you what I and we have seen , My parents bought the house down the road in 1945 where my brother and I lived ,in 1967 Norman moved here ,so this is what Norman and I have seen in the years .When the ice would let go in the river in early spring the rapids was so bad people would come running out of the building, with in time they moved out ,than when the flood Irene came it washed out the bank and put water in the basement Norman and I had to rebuild the road when the man came the lady that owned the building if he would have man come and look at her bank ,the man said no the bank is not safe I have no way to get down there and be safe also at the same time Norman and I was going to have the bank fixed on the lot next to the building got to thinking about a said why should we fix it we don't own it as it was expensive so it was never fixed , My mom planted flowering trees there and they are going down the bank. So this is the reason why Norman and myself are saying NO for a tenant if you come up and look for yourself would you want to live in that building 24x7 it is scary , sorry this is so lengthy ,but felt that is the only way we could explain the issues again nothing to do with the owners

Respectfully Submitted

*Stella Gravel*  
*Norman F Gravel*