

Hardwick Development Review Board
Conditional Use, Variance, and Flood Plain Review Request
Town of Hardwick – Yellow Barn Business Accelerator (YBBA)
323 & 325 Vermont Route 15 West, Hardwick
Application 2022-072 Amending #2020-002B
January 18, 2023

To consider a Conditional Use and Variance request by the Town of Hardwick to reduce the footprint of the Mixed Use structure (Accelerator Building – approximately 25,000) and to shift the setback variance on the left rear corner of the Accelerator Building. Site is in the Highway Mixed Use zoning district.

The amended application requires a review under the following sections of the Hardwick Unified Development Bylaws: Table 2.3 Highway Mixed Use; Section 5.2 Conditional Use Review; Section 5.2 G3 Highway Mixed Use District Standards; and Section 7.4 Variances.

Warnings were posted on Friday, December 30, 2022 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: Hardwick Electric; JKO Properties LLC; Ken, Chris, and Margaret Davis; Margaret Marcy Rev. Living Trust; LB2, LLC; Aubuchon Realty Company, Inc; and 154 Route 15 West LLC. on Friday, December 30, 2022. It was also published in The News and Citizen, on Thursday, January 5, 2023.

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

Development Review Board members absent: Ruth Gaillard

Others present: Kristen Leahy, Zoning Administrator (acting clerk); David Upson, Jr. Town Manager; Eric Remick, Chair of the Select Board; and Jon Ramsey, CAE.

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 7:30 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 Town of Hardwick representatives to describe the amendment request. Eric Remick testified that the original Yellow Barn zoning application included the restoration of the existing garage and the construction of a new building which would have been 36,000 square feet with over 35 feet in height. The project received bids beyond the funding scope. As a result, a new plan has been introduced. The new Accelerator building will now be 25,000 square feet and under 35 feet in height.

The building will shift slightly away from Route 15 and become closer on one corner to the setback from the LVRT. This shift necessitates an amendment to one of the variances that was received in the initial decision.

The uses in the Accelerator building will not change. The parking and access plans remain the same. The impact to wetlands and the flood plain has not been altered in a negative manner.

The hearing ended at 7:42 pm. Kole made the motion to enter into deliberative session 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:

2.3 Highway Mixed Use – all setbacks and dimensional standards are not met for this district. **Variance amendment is being sought for the rear setback for the Accelerator Building. Applicant is requesting to reduce the footprint of the Accelerator Building.**

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 this capacity negatively. The Police and Fire Chiefs are familiar with the proposal and have not expressed any concerns. **The Accelerator Building will be reduced from 35,000 to 25,000 square feet. No additional impacts to either capacity.**
2. **Character of the area affected.** Proposed development is compatible with the area.
3. **Traffic on roads and highways in the vicinity.** The proposal will consolidate the curb cuts in a high traffic count area. An improvement to traffic safety should be realized. **No changes to the original proposal.**
4. **Bylaws in effect.** Per testimony from the previous Town Manager, Shaun Fielder, no negative effects are anticipated for the Town Water and Wastewater. **No new testimony from the current Town Manager, David Upson, Jr.**
5. **The utilization of renewable energy resources.** The Town hopes to install and utilize solar power on this project. **No changes to the original proposal.**

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 still 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. **Further landscaping, beyond the proposed landscape plan, 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.**

5.2G3 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 proposal meets this standard.**
- 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. **A landscaped strip of 25 feet will be provided parallel to the road. This was shown on the original site plan and was approved by the Development Review Board. No changes to the original proposal**

7.4 Variances – one variance amendment is being requested for the project. Variance would be necessary for the rear/side setback.

- 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 variance amendment is being requested due to the shape (narrow triangle) of the lot and the location of the property next to the rail-bed. Wetlands also dictated the request.**
 - (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; **Affirmative.**
 - (3) that the unnecessary hardship has not been created by the appellant; **The Town of Hardwick did not create the lot nor install a rail way through the parcel.**
 - (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 variance amendment would not alter the essential character of the neighborhood.**
 - (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 variance for the rear corner of the Accelerator building would allow the building to be 10 feet into the setback on one corner of the structure.**
- (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. **The Development Review Board grants the variance amendment for this proposal.**

Decision and Conditions

Based upon these findings, the Development Review Board voted 4-0 to approve the Town of Hardwick – Yellow Barn Business Accelerator conditional use amendment application as presented with the following conditions:

Conditions:

1. *Remains intact*
2. *Remains intact*
3. ~~The DRB permits the Accelerator Building to be 36 feet and to exceed the 35 feet maximum height.~~
Removed from the Conditions.
4. *Remains intact*
5. *Remains intact*
6. *Remains intact*
7. *Remains intact*
8. *Remains intact*
9. *Remains intact*
10. *Remains intact*
11. *Remains intact*
12. *Remains intact.*
13. *Remains intact*

The Development Review Board also voted 4-0 to approve the Town of Hardwick variance amendment request. A variance is granted to construct the Accelerator Building 35 feet from the centerline of the right of way (Rail Trail) rather than at the district requirement of 45 feet from the centerline of the right of way.

Signed:

 _____, Chair
John Mandeville, DRB Chair

 _____, acting clerk
Kristen Leahy, Zoning Administrator

Date 1/24/23

Date 1/24/23

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;