

Hardwick Development Review Board
Conditional Use Review Request
154 Route 15 West LLC - landowner
Bryan Palilonis - applicant
154 VT Route 15 West, Hardwick
Application #2023-066
November 1, 2023

To consider a Conditional Use Review request by Bryan Palilonis for 154 Route 15 West LLC for the inclusion of an Indoor Recreation in an existing Mixed Use structure in the Highway Mixed Use zoning district. Development would be non-substantial improvement in Zone AE in the Flood Hazard Area Overlay and in the Source Protection Overlay.

The application requires a review under the following sections of the Hardwick Unified Development Bylaws: Table 2.3 Highway Mixed Use District; 2.8 Flood Hazard Area Overlay; 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 G(3) Highway Mixed Use District Standards; and 5.3 Flood Hazard Review.

Warnings were posted on Tuesday, October 17, 2023 in 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: Hardwick Lake LLC c/o Dennis Pudvah; LB2, LLC; Aubuchon Realty Company Inc; Walgreen Eastern Co Inc; Merchants Bank Community Bank NA; Union Bank; Town of Hardwick; and Hardwick Electric on Tuesday, October 17, 2023. It was also published in The News and Citizen on Thursday, October 19, 2023.

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

Development Review Board members absent: N/A

Others present: Kristen Leahy, Zoning Administrator (acting clerk); Cary Bessette, Landowner.

During the course of the hearing and prior to the hearing the following exhibits were submitted:

1. Substantial Improvement Determination from the Zoning Administrator, dated October 30, 2023.
2. Letter from David Upson, Jr., Town Manager re: Source Protection Area, dated October 31, 2023
3. Letter from David Upson, Jr., Town Manager re: Water and Sewer confirmation, dated October 31, 2023.
4. Email letter from Sacha Pealer, State of Vermont Flood Plain Manager, dated November 1, 2023
5. Parking plan from Landowner for the Palilonis expansion.

Summary of Discussion

Chair John Mandeville began the hearing at 7 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 landowner to present the proposal. Cary Bessette, the landowner, testified that the structure at 154 Route 15 West was flood impacted. The repairs, renovations, and the new roof were submitted with a recent appraisal. The current total estimates will be under the 50% threshold of appraised value with all

of the proposed changes. The Base Flood Elevation at the structure is 803.8 and the structure is at 804.6 and 805.6.

The change of use would split the currently empty middle section of the property. The section would be divided between an expansion of the restaurant space and the creation of a new martial arts studio space. 154 Route 15 West is a Mixed Use structure with a combination of conditional uses. This request is to add Indoor Recreation to the Mixed Use combination. The restaurant's additional space would encompass an expansion of the restaurant and an ax throwing venue (Indoor Recreation) and the residual space would be a martial arts studio (also Indoor Recreation).

The Restaurant/Indoor Recreation section would have two additional employees. Three additional tables (12 customers) and a bar with 6 bar seats. Music would be 1-2 per month, typically ending at 10 pm. The hours (to start) would be Wednesday to Saturday from 11:30 to 8:00 pm.

No changes will be made to the size of the existing building and no increase in the asphalt section of the parking lot. The parking lot will be seal coated and line stripped with a new parking plan (See Exhibit #5). Employee parking will be created at the rear of the structure.

No new outside lights are being planned currently but will be down-lit if installed.

The hearing ended at 7:25 pm. Helm Nottermann made the motion to enter into deliberative session after the following hearing and Kole 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. Indoor Recreation and Mixed Use are both listed as Conditional Uses in the district. Applicant is requesting to include an Indoor Recreation facility (ax throwing venue) in an existing Mixed Use structure. **Location is 45 feet from the centerline of Vermont Route 15 West and 20 feet from the side and rear setbacks.**

2.8 Flood Hazard Area Overlay District – The Flood Hazard Area Overlay District lists “Non-Substantial improvements to existing structures” as a permitted use. **A substantial improvement determination was completed by the Zoning Administrator (See Exhibit #1). The requested upgrades to the property will be non-substantial. The Floodplain Manager also reviewed the request and submitted a letter on November 1, 2023 (See Exhibit #4).**

3.11 Performance Standards – review was made of the performance standards by the DRB. **No adverse aspects were identified. Music will occur on a limited basis in a non-residential location.**

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. **Indoor Recreation facilities are not specifically prohibited within the designated Source Protection Area. A letter of support was received from David Upson, Jr., the Town Manager. See Exhibit #2. The DRB accepted Mr. Upson's letter of support as testimony that the water supply will not be subject to contamination from this facility.**

3.13 Parking and Loading Requirements – The Highway Mixed Use District lists Indoor Recreation Facility parking as “Other.” The Development Review Board determines the appropriate number. Additionally, “off-street loading areas shall be provided for commercial uses which will receive shipments in vehicles too large for DRB Decision for 154 Route 15 West LLC Conditional Use, November 2023

a standard parking space.” “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 expanded space will have 3 tables (12 customers) and a bar with 6 seats. There will be an additional 2 employees on staff. DRB found that adequate parking exists on site. No testimony was received to indicate that screening from adjoining properties would be necessary. A parking plan was submitted (See Exhibit #5).**

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 use is a conditional use in the Highway Mixed Use district.**

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.** Location within the Highway Mixed Use district matches the purpose of this district and the character of the surrounding area.
- 3. Traffic on roads and highways in the vicinity.** The Highway Mixed Use circulation and traffic pattern on Vermont Route 15 West is directed by the existing use in the area. No adverse effect was identified.
- 4. Bylaws in effect.** Source Protection Area concerns were addressed in the conditions. Town water and sewer concerns were addressed by the Town Manager (See Exhibit #3).
- 5. The utilization of renewable energy resources.** Not applicable.

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.**

5.2G3 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 utilizes a pre-existing structure with established parking areas and landscaping.**
- 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. **The proposal utilizes a pre-existing structure with an established landscaping strip.**

5.3 Flood Hazard Review

C. Non-substantial repairs and improvements are proposed for the property. The structure is already located above the Base Flood Elevation (Elevation certificate is on file). Flood damage resistant materials and techniques will be employed.

Decision and Conditions

Based upon these findings, the Development Review Board voted 5-0 to approve the 154 Route 15 West LLC 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. 154 Route 15 West LLC must follow all applicable hazardous materials and waste handling procedures to ensure there is no soil contamination from activities occurring during construction or from the on-going operation of the building.
4. 154 Route 15 West LLC must provide the Town of Hardwick with an annual inventory of all hazardous materials stored and/or used in the building. The inventory shall be provided to the Town Manager's office by the first of July of each year.
5. No vehicular parking will occur on VT Route 15 West.
6. Any additional external lighting will be down-lit and designed to reduce light pollution.

Signed:


_____, Chair
John Mandeville, DRB Chair
Administrator


_____, acting clerk
Kristen Leahy, Zoning

Date 11/7/23

Date 11/7/23

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:

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;

Substantial Improvement Worksheet for Floodplain Construction

(for reconstruction, rehabilitation, addition, or other improvements, and repair of damage from any cause)

Property Owner: 154 Route 15 West, LLC
 Address: 154 VT ROUTE 15 WEST, HARDWICK, VT
 Permit No.: 2023-066
 Location: HARDWICK VT - 21004-00000
 Description of improvements: Include Indoor Recreation; Flood 2023 Repairs AND NEW ROOF

Present Market Value of structure ONLY (market appraisal or adjusted assessed value, BEFORE improvement, or if damaged, before the damage occurred), not including land value:

\$ 582,300

Cost of Improvement -

Actual cost of the construction** (see items to include/exclude)

\$ 233,900

Include volunteer labor and donated supplies.

Ratio = $\frac{\text{Cost of Improvement (or Cost to Repair)}}{\text{Market Value}} \times 100$

40.17 %

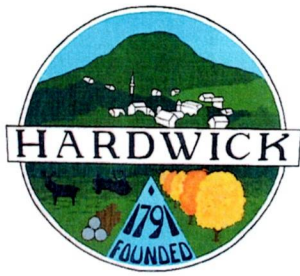
If ratio is 50 percent or greater (**Substantial Improvement**), entire structure including the existing building must be elevated to the base flood elevation (BFE) and all other aspects brought into compliance.

Important Notes:

1. Review cost estimates to ensure that all appropriate costs are included or excluded.
2. If a residential pre-FIRM building is determined to be substantially improved, it must be elevated to or above the BFE. If a non-residential pre-FIRM building is substantially improved, it must be elevated or dry floodproofed to the BFE.
3. Proposals to repair damage from any cause must be analyzed using the formula shown above.
4. Any proposed improvements or repairs to a post-FIRM building must be evaluated to ensure that the improvements or repairs comply with floodplain management regulations and to ensure that the improvements or repairs do not alter any aspect of the building that would make it non-compliant.
5. Alterations to and repairs of designated historic structures may be granted a variance or be exempt under the substantial improvement definition) provided the work will not preclude continued designation as a "historic structure."
6. Any costs associated with directly correcting health, sanitary, and safety code violations may be excluded from the cost of improvement. The violation must have been officially cited prior to submission of the permit application.

Determination completed by: Kristi Hays

Date: 10/30/23



Town of Hardwick
Office of the Town Manager
P.O. Box 523
Hardwick, Vermont 05843

- Phone: (802) 472-6120 Fax: (802) 472-3793 david.upson@hardwickvt.gov

October 31, 2023

Bryan Palilonis
154 Route 15 W
Hardwick, VT 05853

Dear Mr. Palilonis,

We have reviewed your request to expand activities at your business located at 154 VT Route 15W in Hardwick and hereby approve your request based on the following conditions as your location falls within our Town's drinking water source protection area, therefore:

1. You may not discharge any waste onto or into the ground from your location.
2. You must report to the Town Manager's office any spill of hazardous materials into the ground that amounts to more than 1 gallon.
3. You must provide the town with an annual inventory of all hazard materials stored or in use in the space that you lease. The inventory must be provided to the Town Manager's Office by the first of July each year.
4. You comply with all Town, State, or Federal permit requirements.

If you have questions or comments on anything included herein, please feel free to contact my office.

Respectfully,

A handwritten signature in blue ink, appearing to read 'David Upson'.

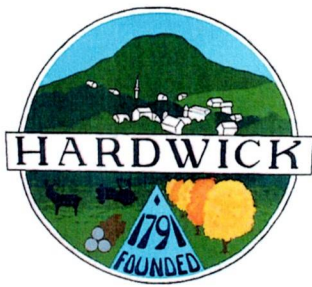
David Upson
Town Manager

Cc: Bear Bessette
Cc: Hardwick Zoning Administrator

Hardwick Town Manager's Office
Hardwick Town Clerk
Hardwick Public Works Director

David Upson
Tonia Chase
Tom Fadden

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October 31, 2023

Bryan Palilonis
154 Route 15 W
Hardwick, VT 05853

Re: Water & Sewer confirmation of for 154 VT Route 15W expansion.

Mr. Palilonis,

The purpose of this letter is to confirm that the Town of Hardwick currently has the capacity to serve the proposed recreational activities taking place at 154 VT Route 15W in Hardwick, with both municipal drinking water and wastewater treatment for the design flow rate of 405 GPD on your existing State of Vermont wastewater permit.

If you have any questions, please don't hesitate to contact me.

Sincerely,

David Upson
Town Manager
Town of Hardwick
Wastewater Treatment Facility 3-1143

Cc: Patrick Larsen, Larsen Applied Earth Science, LLC
Bear Bessette

Zoning Administrator's Office
Town Clerk's Office
Public Works Foreman

Kristen Leahy
Tonia Chase
Tom Fadden

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154 Route 15 West - Flood Hazard Review comments

1 message

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

Wed, Nov 1, 2023 at 4:20 PM

To: "zoning.administrator" <zoning.administrator@hardwickvt.gov>

Hi Kristen,

Thanks again for sending this application in for state floodplain review comments under 24 V.S.A. §4424.

I agree this structure is in the Special Flood Hazard Area (Zone AE) and subject to review under Hardwick's Flood Hazard Area Regulations (Section 5.3 of Hardwick's Unified Development Bylaws). The primary question is whether this project, including both improvements and repairs following flooding in July 2023, meet the 50% substantial improvement threshold. If the % of both improvements and repairs equals or exceeds 50% of the market value of the structure, then the building is required to be elevated or floodproofed under 5.3 G.3 and 4 of Hardwick's regulations. If not, the town will need to record the % and basis for that percentage, in the event additional repairs or improvements are needed for the building within the year.

Before Hardwick determines this is not a substantial improvement, I recommend checking the following:

1. Be sure the market value used is acceptable to the lister and reflects the structure only and not the land.
2. Be sure the improvement costs and repairs costs are both included as outlined in the list of costs to include in FEMA guidance (see attached excerpt from FEMA Publication 758: Substantial Improvement/ Substantial Damage Desk Reference at https://www.fema.gov/sites/default/files/2020-08/fema_p_758_complete_r3_0.pdf)
3. FEMA guidance calls for special care whenever the % is coming in at 40% or greater. The town should require more detailed itemized estimates for the work and be sure the estimates include fair labor rates for all labor, even if some of the work will be done by the owners or by volunteer. The estimates I saw seemed to be more summary in nature and labor costs did not appear to be itemized. Best to require final receipts as follow up to document the final %. Doing so helps ensure the work is in fact not substantial and also helps to assign a % in case other work is proposed within the year (because substantial improvements are calculated over 1 year in Hardwick's definitions Article 8).

If you get information that suggests the project is a substantial improvement, then the town will need more information about how the project will meet substantial improvement requirements, and I suggest contacting me for assistance.

Even if the project is not a substantial improvement, the improvements/repairs should be reviewed to

make sure they address the “all development” requirements under 5.3 G1. For example, use of flood damage resistant materials (see Table 2 of *Technical Bulletin 2: Flood Damage Resistant Materials Requirements* (https://www.fema.gov/sites/default/files/2020-07/fema_tb_2_flood_damage-resistant_materials_requirements.pdf) and techniques to protect plumbing, electrical and other service utilities work to ensure the new portions are reasonably safe from flooding (e.g. elevation of system components). The key here is to make sure the new features of the building are constructed in a reasonably safe from flooding manner, since they are more likely to be exposed to floodwater in the future if the building as a whole is not elevated/ floodproofed now. Please let me know if you have any questions.

Thanks,

Sacha Pealer (she, her), CFM | Northeastern River Scientist & Floodplain Manager

Vermont Agency of Natural Resources | Department of
Environmental Conservation

Watershed Management Division, Rivers Program

1 National Life Drive, Davis 3 | Montpelier, VT 05620-3522

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

