

Hardwick Development Review Board
Appeal of Zoning Administrator's Decision to Deny Application #2016-002
Wilma & Earl Shatney – applicant
Glenn Howland – applicant's legal counsel
Kristen Leahy – Hardwick Zoning Administrator
March 15, 2016

To consider an appeal of a denial of a “Home Occupation” application in the Compact Residential District in East Hardwick.

Warnings were posted on February 22, 2016 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: Louise Howard Life Estate, Tracy Martin and David Gross, Therese and Daniel Martin, Sara Potter, John and Joyce Mandeville, and Marjorie and Forrest Dunbar. It was also published in the Hardwick Gazette on Wednesday, February 24, 2016.

Development Review Board members present: Dan Bandit, Acting Chair; Ruth Gaillard; Ed Keene; and Helm Nottermann.

Development Review Board members absent: N/A

Development Review Board members recused: John Mandeville and Cheryl Michaels

Others present: Wilma Shatney, applicant; Glenn Howland, Attorney of applicant; Michael Biewalski, reporter for the Hardwick Gazette; David Gross; Joyce Mandeville; Sue Cross, Acting Clerk; and Kristen Leahy, Zoning Administrator.

During the course of the hearing the following exhibits were submitted:

- #1 Packet of information from Attorney Howland – “The Appellant’s Memorandum”, “The Prefiled Testimony of Wilma Shatney,” “The Notice of Appeal (22 pages)” and the “Petition to Amend Unified Zoning Bylaws.”
- #2 Letter from neighbor, John Mandeville – **contested by Attorney Howland – Not Admitted.**
- #3 Copy of page 29 of the Hardwick Unified Development Bylaws regarding “Home Occupation” and a copy of the decision from Judge Durkin, dated 3/4/15.
- #4 Copy of the partial transcript of the February 24, 2015 hearing before Judge Durkin – **contested by Attorney Howland- Not Admitted.**

Findings of Fact:

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

1. On August 7, 2015, the Town of Hardwick received a petition to amend the Hardwick Unified Development Bylaws from the Office of Attorney Glenn Howard on behalf of Earl and Wilma Shatney. The petition was signed by not fewer than five percent (5%) of the registered voters of Hardwick.
2. The petition to amend included changes to the definition of a “Home Occupation,” changes to the associated performance standards, and changes to exemptions regarding the performance standards.
3. The Hardwick Planning Commission held a public hearing on the petition to amend the bylaws and forwarded the petition, with a report and a recommendation, to the Hardwick Select Board.

4. On December 18, 2015, the Select Board published a warning of a public hearing to be held on January 7, 2016 regarding the request to amend the zoning bylaws. On January 7, 2016, the Select Board held the warned public hearing and, on January 21, 2016, voted to deny in its entirety the petition to amend.
5. On January 5, 2016, a zoning application was received in the Town Offices from Attorney Howland on behalf of Earl and Wilma Shatney. The zoning application requested a permit for a "Home Occupation" at their property on 41 School Street in East Hardwick, Vermont.
6. The Zoning Administrator, Kristen Leahy, reviewed the merits of the application under both the proposed and the existing Hardwick Unified Development Bylaws. On January 22, 2016, Mrs. Leahy denied the application. In her denial, she noted that the Home Occupation in question would have "an undue adverse effect upon the character of the surrounding neighborhood or area," per the decision of March 4, 2015 by Judge Thomas Durkin regarding Docket No. 171-12-13 Vtec – Shatney NOV (Overturned).
7. Mrs. Leahy also noted that the Select Board had already denied the petition to amend but if "the Select Board were to approve the petitioned amendments within the 150 day period following the issuance of a public notice for the first public hearing by the local legislative body (by May 22, 2016), then the Zoning Administrator will revisit this denial."

Decision

Based on these findings, the Development Review Board decided to uphold the denial of zoning application #2016-002. Application #2016-002, a request for a Home Occupation at 41 School Street in East Hardwick for Earl and Wilma Shatney, was correctly reviewed under both the existing zoning bylaws and under the proposed amended zoning bylaws. The application would be denied under the current zoning bylaws. And the approval of the application, under the proposed amended version, would have been conditioned upon the adoption of the proposal to amend the existing Hardwick Unified Development Bylaws. The petition was not adopted by the Hardwick Select Board.

Signed:

D. BANDIT, acting chair
Dan Bandit

3/30/16
Date

[Signature]
Ed Keene

4/1/16
Date

[Signature]
Helm Nottermann

3/28/16
Date

[Signature]
Ruth Gaillard

3/28/16
Date

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.