

Hardwick Development Review Board  
Conditional Use Review Request  
*Duane Wells, LLC*  
*156 Daniels Road, Hardwick*  
*Application #2019-057*  
October 16, 2019

*To consider a Conditional Use Review request by Duane Wells, LLC for the creation of a parking area (Accessory Use to a pre-existing Conditional Use – Mixed Use) in the Village Neighborhood/Central Business zoning district. Development would occur at 156 Daniels Road, 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 2.2 Village Neighborhood; Table 2.8 Flood Hazard Area Overlay; 3.11 Performance Standards; 3.12 Protection of Water Resources; 3.13 Parking and Loading Requirements; 5.2 Conditional Use Review; and 5.2 G2 Village Neighborhood District Standards.

**Warnings** were posted on Tuesday, September 24, 2019 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: Aaron & Michelle Cochran; Jeudevine Housing Limited Partnership; Ivan and Brenda Menard; Eliza Anti; Elizabeth Dow; Theodore Hoadley & Tracy Lafrance; Elsa Mulholland; Rachel & Bert Hooper; Town of Hardwick; Gary & Ellis Richardson; and Lynn Delaricheliere on Tuesday, September 24, 2019. It was also published in The Hardwick Gazette on Wednesday, September 25, 2019.

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

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

**Others present:** Kristen Leahy, Zoning Administrator (acting clerk); Duane Wells, applicant.

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

1. Email letter from Sacha Pealer, Floodplain Manager

### **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.

The applicant, Duane Wells, explained that he owns the Daniels Block which is a mixed-use structure with multiple tenants. The Orleans Southwest Supervisory Union (OSSU) is a current tenant in the structure. A condition of their present lease is that Mr. Wells will provide them with overflow parking spaces. This requirement relates to the occasional district-wide meetings which create additional visitors. The daily parking needs are currently met by the existing parking schematics. The proposed parking area would only be utilized for the OSSU with signs indicating that cars for other businesses will be towed. The parking area will not be plowed until/unless there is a need for the parking area.

The parking area will have staymat and will not be paved. No lights will be installed as there are street lights already in place on the adjacent street.

Approximately 20 parking spots will be created. They will be in 2 rows in the wider section – one row facing

the road and one row facing the bank. Only one row will be installed in the more narrow section. A pedestrian path will be added on the right of the parking area. The access road is to the left (both entry and departure). Mr. Wells will have telephone poles with rebar laid across the parking row facing the river (to prevent cars from descending over the wall). The snow will be plowed into the bank/hillside to the rear of the property.

The hearing ended at 7:18 pm. Helm Nottermann made the motion to enter into deliberative session after the following hearing and Ed Keene seconded. All members were in favor.

### **Findings of Fact:**

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

**2.2 Village Neighborhood** – all setbacks and dimensional standards are met for this district. An Accessory Use (parking) to a Conditional use (Mixed Use) is allowed. Applicant is requesting a parking area for a pre-existing Conditional Use (Mixed Use).

**2.8 Flood Hazard Area Overlay District** – parking, at grade (outside of the floodway) is allowed as a permitted use. According to the Floodplain Manager, the parking lot is near but outside of the floodway. It is recommended that the applicant submits documentation that the project was built as proposed after the project is complete. For example, photos showing specific elevation reference points prior to and after construction (the top of the wall compared to the parking surface). See Condition #5.

**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 on the Lamoille River and in the Flood Hazard Area Overlay. “An undisturbed, vegetated buffer strip shall be maintained for a minimum of 25 feet from all streams, rivers, and lakes. The 25 feet buffer strip shall be measured from the top of the streambank.” The project is well beyond the 25 feet buffer. Prior to granting any permits, the applicant will need to submit a more detailed plan of the proposed parking area. Distances from the retaining wall to the edge of the parking lot, etc. See Condition #4.

**3.13 Parking and Loading Requirements** – The requested use is additional parking for an existing business. “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. The proposal is to the rear of the existing building. 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 Accessory Use 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. The expanded parking should alleviate some aspects of traffic flow in the existing parking area.**

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.**

**5.2G Village Neighborhood 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 property is adjacent to a pre-existing building. No new buildings are being constructed.**

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. **No new buildings are being constructed.**

C) The scale and massing of new buildings, including height, width, street frontage and roof type, shall be compatible and harmonious with surrounding residential structures. Consideration shall be given to buildings serving special civic, social or cultural functions, including places of worship, that may be designed to serve as prominent focal points within the district. **No new structure development proposed for the site.**

**Decision and Conditions**

Based upon these findings, the Development Review Board voted 4-0 to approve the Duane Wells, 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. No fill will be utilized in the project. The parking lot and access driveway will be entirely at-grade when complete, and the retaining wall will not be changed.
4. The applicant must submit a more detailed plan of the proposed parking area. Distances from the retaining wall to the edge of the parking lot, etc.
5. The applicant must submit documentation that the project was built as proposed after the project is complete. The applicant will provide photos showing specific elevation reference points prior to and after construction (the top of the wall compared to the parking surface).

Signed:

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

Date 10/22/19

Kristen Leahy, acting clerk  
Kristen Leahy, Zoning Administrator

Date 10/22/19

**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;

Exhibit A

Kristen Leahy &lt;zoning.administrator@hardwickvt.org&gt;

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**parking area at 156 Daniels Road**

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Pealer, Sacha &lt;Sacha.Pealer@vermont.gov&gt;

Tue, Oct 1, 2019 at 9:18 AM

To: Kristen Leahy &lt;zoning.administrator@hardwickvt.org&gt;

Hi Kristen,

Thank you for sending along the zoning application materials for the proposed parking lot at 156 Daniels Road (Application 2019-057). Based on the Digital Flood Insurance Rate Map (DFIRM) for Hardwick (dated 7/17/2002) and the map on page 13 of the submitted application packet, I agree with your assessment that the parking lot location is within the mapped Special Flood Hazard Area (Zone AE) for the Lamoille River. It appears the parking lot is near but outside of the floodway; the DFIRM shows the floodway boundary runs along the top of the existing retaining wall on the wall's southern end.

My first suggestion is to make sure you have a clear picture of the location and dimensions of the proposed parking area and whether any work is proposed for the access driveway from Daniels Road. For example, the site sketch on page 3 doesn't seem to show the distance from the retaining wall to the edge of the parking lot, and I can't tell which side is the river side.

Otherwise, my review comments are largely the same as those in my email to you on 9/19/19. This project is in an unusual circumstance in that it involves land in the Special Flood Hazard Area that has been filled in the past to create a retaining wall. Lidar terrain data suggests the land is now above Base Flood Elevation. However, the land remains in the Special Flood Hazard Area until maps are changed officially by FEMA.

As long as the parking lot and access driveways are entirely at-grade when complete, and the retaining wall is not being changed, then the project would not be expected to create an impact to the floodplain or floodway or create concerns under Hardwick's flood hazard area regulations. My read of Table 2.8 of Hardwick's Unified Development Bylaw is that an at-grade parking lot may be approved within the Special Flood Hazard Area but that a parking lot could not be constructed by fill (any material that raises ground elevations). In addition, encroachments (including fill) are prohibited in the floodway, unless a professional engineer demonstrates and certifies the project will not increase flood elevations. Any time a project proposes to be at-grade, especially near the floodway, it is a good idea to for the town permit to specify that the applicant submit documentation the project was built as proposed after the project is complete. Examples of documentation: photos showing specific elevation reference points prior to and after construction (e.g. the top of the wall compared to the parking surface), or a site plan with before & after spot elevations, etc.

Please keep in mind other State, Federal or local permits may be required for this project. The VT DEC Permit Specialist (click to follow link) for your area can help to identify other state permits that may be involved.

Please let me know if you have any questions. You may consider this email and the email I sent you on 9/19/19 (below) to be DEC Flood Hazard Review comments per 24 V.S.A. §4424.

Sincerely,

[Quoted text hidden]