

Hardwick Development Review Board
Conditional Use Review Request
154 Route 15 West LLC - landowner
James Coe - applicant
154 VT Route 15 West, Hardwick
Application #2022-026
June 15, 2022

To consider a Conditional Use Review request by James Coe for 154 Route 15 West LLC for the inclusion of a Restaurant 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, May 24, 2022 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; PJC Realty, NELLC; Merchants Bank Community Bank; Union Bank; Town of Hardwick; and Hardwick Electric on Tuesday, May 24, 2022. It was also published in The News and Citizen on Thursday, May 26, 2022.

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

Development Review Board members absent: Helm Nottermann

Others present: Kristen Leahy, Zoning Administrator (acting clerk); Nella Caigiuli Coe and James Coe, Applicants; and Bryan Palilonis, business owner (Caja Madera).

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 June 13, 2022.
2. Email communication from the State of Vermont Flood Plain Manager, dated November 4, 2021.
3. Email letter from David Upson, Jr., Town Manager re: Source Protection Area, dated June 13, 2022.
4. Email letter from Sacha Pealer, State of Vermont Flood Plain Manager, dated June 15, 2022.

Summary of Discussion

Chair John Mandeville began the hearing at 7:01 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 applicants to present their proposal. James Coe testified that the proposed development will be the conversion of existing space in a Mixed Use building to a Restaurant. Currently, the restaurant is operating in a food truck (which previously received a conditional use permit to operate) with limited external seating. The space would be upgraded to include a physical on-site kitchen and limited seating for restaurant patrons. Most of the upgrades would be kitchen equipment and the required restaurant ventilation

system. No change would be made to the footprint of the building. There is an ADA compliant bathroom already on site.

Initially, the restaurant will not serve alcohol or wine. This may change in the future.

The Taco Truck has music on Thursday nights (4-7 pm) and the applicants anticipate continuing this event. The location does not border or impact any residential homes. The music will only occur on a limited basis.

A sign is not being requested at this time.

The anticipated hours of operation will be Tuesday to Saturday until 7 pm. This may change in the future.

The restaurant will have approximately 15 seats and 2-3 employees on staff. The parking is present and has spaces for 100+ vehicles.

The dumpster on site is utilized for their trash. The restaurant owner testified that he will be working with Tom Gilbert to establish a composting system.

The hearing ended at 7:30 pm. Ruth Gaillard made the motion to enter into deliberative session after the 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. A Restaurant and Mixed Use are both listed as Conditional Uses in the district. Applicant is requesting to include a restaurant in an existing Mixed Use structure. Location must be 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. **The proposal was reviewed by the Floodplain manager, Sacha Pealer prior to submission of the application (See Exhibit #2). 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 June 15, 2022 (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. **Restaurants 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 #3. 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 requires Restaurant parking to accommodate 1 space per 3 seats and 1 space per each employee on the largest shift. Furthermore, “off-street loading areas shall be provided for commercial uses which will receive shipments in vehicles too large for 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 space will have 2 tables and a bar top table with 15 seats. There will be 2-3 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.**

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.
- 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 improvements require only an administrative permit from the Zoning Administrator.

Decision and Conditions


Based upon these findings, the Development Review Board voted 4 to 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.

Signed:


 _____, Chair
 John Mandeville, DRB Chair
 Administrator


 _____, acting clerk
 Kristen Leahy, Zoning

Date 6/29/22

Date 6/20/22

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;

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
 Permit No.: 2022-026
 Location: _____
 Description of improvements: Change to Restaurant

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:

\$ 344,200

Cost of Improvement -

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

\$ 37,250

Include volunteer labor and donated supplies.

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

10.8 %

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: Krista Heagy

Date: 6/13/22

Taco Truck Transition

Pealer, Sacha <Sacha.Pealer@vermont.gov>
To: Bryan Palilonis <cajamaderatrucks@gmail.com>
Cc: Kristen Leahy <zoning.administrator@hardwickvt.org>

Thu, Nov 4, 2021 at 10:59 AM

Thanks Bryan,

I'm copying Kristen Leahy, since the town will work with you on getting the info you need for your zoning application. The zoning permit will need to include a flood hazard review because the building is in the floodplain (Zone AE). When your application is complete, the town would likely ask me for a review letter that the local Development Review Board could use when considering your permit.

Based on what you describe, it doesn't sound like I need a site visit. If Kristen or you would like a meeting, though, just let me know. At this point, I'll just describe to you what I think the flood review will need to look at and the information you will need to provide for the zoning permit application.

The key floodplain question will be if your remodeling project qualifies as a "substantial improvement" to the building. "Substantial improvement" is when the cost of the improvements to the building are 50% or more of the market value of the building (see Hardwick Zoning bylaw, page 101 for a more detailed definition). The improvements are looked at cumulatively over one year. If the project is a substantial improvement, then the flood regulations require the building as a whole to be protected from flood damage. This means the lowest floor (including any basement) would need to be elevated at least as high as the base flood elevation published by FEMA for that location. Nonresidential buildings have some other options for floodproofing that we can discuss if needed, but I wouldn't be surprised if that particular building is on a slab that is already elevated (just a guess that would need to be confirmed).

So, to pull your application together, I suggest the following:

1. Provide Kristen with a written description of all proposed work on the building (interior included) and any other work including outdoor site work such as utilities, paving, grading, etc.
2. Provide Kristen with a cost estimate for the project, including demolition, materials, and cost of labor. If you do the work yourself (don't pay someone) then you still need to include a reasonable estimate of the labor value. The cost estimate should include the changes to the building that are part of the building value, such as lighting/electrical work, plumbing, wall/floor refinishing, insulation, built-in appliances and built-in furniture. Attached are two FEMA guidance documents on costs to include and costs you don't need to include. In the "Answers to Questions" document, see especially sections 2 and 3. Ideally, you and Kristen can go over the costs to include/exclude together before finalizing the estimate.
3. The town will need to make a substantial improvement calculation to determine if the improvement costs reach 50%. Kristen may have the market value of the building already – most towns use the grand list assessed value, which may need adjustment to current market value depending on the age of the tax assessment.
4. Provide an Elevation Certificate to document the lowest floor elevation (may be optional, read on). An Elevation Certificate for this building may already exist, especially if the owner needed one in the past for flood insurance rating. A surveyor or engineer provides elevations various parts of the building on the certificate form. Ruggles Engineering or other licensed land surveyor can help you with this if one does not already exist. If an elevation certificate already exists for the building, you can go ahead and submit it to the town zoning office right away; it may show the lowest floor is already elevated. If the project is not a substantial improvement, and there is no elevation certificate already, then getting a new one is optional. If the project is a substantial improvement, then you will need to provide an elevation certificate, even if there is not one already done.
5. If the project is a substantial improvement, and the lowest floor is not above base flood elevation, then I recommend letting me know before the zoning application is complete, so we can talk about the flood mitigation options for the building.

I know that's a lot to digest in an email, so if you want to set up a call or meeting, please let me know. I'm happy to go over any questions you may have!

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

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

From: Bryan Palilonis <cajamaderatrucks@gmail.com>

Sent: Wednesday, November 3, 2021 5:59 PM

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

Subject: Re: Taco Truck Transition

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

hi again,

i'm not changing anything to the structure of the building.

the address is correct and the garage section of the building is where i am looking to operate.

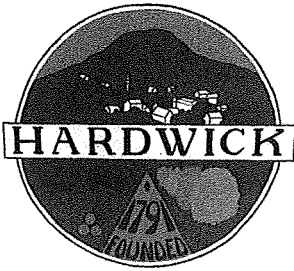
i am hopeful to put a kitchen, hood system in. the water source is already there.

the engineer that i had hired for the water supply test, Nate Sicard from ruggles engineering has done the research and there is no need for Act 250 he said.

all the best,

Bryan

[Quoted text hidden]



**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

Bryan Palilonis
2932 Craftsbury Road
Hardwick, VT 05843

June 13, 2022

Dear Mr. Palilonis:

Your request to utilize approximately 1420 sq. ft of the western most space located in the building owned by 154 Route 15 LLC is approved in accord with the following understandings and conditions:

As described, the project will occur in the 154 Route 15 LLC located at 154 VT Route 15 West, in the town of Hardwick, Vermont. The project will consist of a retrofit of an existing business with no new buildings erected. The intent of the retrofit is to add dining and kitchen space for the Caja Madera Restaurant.

To ensure that you are aware, the building located at 154 VT Route 15 West is in the Town's water well "Source Protection Area" and as such is closely monitored by the Town and by the Vermont Department of Environmental Conservation. Your business 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.

Your request for approval of this construction within the Source Protection Area is conditioned on providing the Town with an annual inventory of all hazardous materials stored and/or used in the space you lease. The inventory must be provided to the Town Manager's Office by the first of July of each year.

I have included a copy of the Town's Source Protection Plan with this letter. We will be updating the plan with information that relates to businesses included in your building. If you have questions or comments on anything included herein, please feel free to contact me and we can discuss them.

Respectfully,

David Upson
Town Manager

CC: Hardwick Select Board
154 Route 15 LLC

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

David Upson Jr
Tonia Chase
Tom Fadden

(802) 472-6120
(802) 472-5971
(802) 472-6029

Flood Hazard Review: Taco restaurant at 154 Route 15 West, Hardwick

2 messages

Pealer, Sacha <Sacha.Pealer@vermont.gov>
To: Kristen Leahy <zoning.administrator@hardwickvt.gov>

Wed, Jun 15, 2022 at 10:25 AM

Thank you Kristen,

Unfortunately, I was out of the office Monday and Tuesday, so just got your message. I scoured my email and don't think you did send this one before. Or I missed it somehow??? I found an email exchange from last fall about this project when in planning stages (see attached).

I did look at your 6/13/22 email and the application this morning. The improvement project is in the Special Flood Hazard Area (Zone AE) of the Lamoille River, according to the FEMA Flood Insurance Rate Map for Hardwick, VT (dated 7/17/2002). The project is outside of the regulatory floodway.

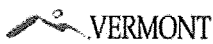
Based on the information in the application, it looks like the project may be a non-substantial improvement. When a project is not a substantial improvement, the building does not need to be elevated as part of that particular project (i.e., the project does not need to meet the requirements of Hardwick Unified Bylaws 5.3 (G)(4). However, the general "all development" standards under 5.3 (G)(1) would still appear to apply. When thinking about these standards, the town would be looking for if the new improvements are reasonably protected from floodwater such as elevating the proposed kitchen equipment and keeping vulnerable finish items (e.g. gypsum) up high. The tricky part is that there doesn't appear to be elevation information for the restaurant's lowest floor, which would be helpful in understanding the flood risks to the new improvements. If the floor elevation is already above base flood elevation, then the interior improvements could be deemed reasonably safe. I wouldn't be surprised if the floor elevation is close to or even above base flood elevation, although this would need to be confirmed. Here are some clues: The effective FEMA flood study suggests the base flood elevation for this location is approximately 803.5 – 803.9 feet NGVD 29. Based on 1-foot land contours at the building (from Vermont Lidar Program), it looks like the lower ground elevations are around the back side of the restaurant, where flood water may be roughly 1-2 feet deep during the base flood. However, the lidar suggests the yard in front of the building could be above base flood elevation, so the restaurant space's floor elevation may be higher than base flood elevation (see Figure 1 below). I recommend the restaurant floor elevation be surveyed by licensed land surveyor, professional engineer, or architect to confirm the floor elevation. Doing so is the best way to make sure the improvements are reasonably safe from flooding.

Hopefully these comments are still helpful for the hearing tonight. You may consider this email to be ANR flood review comments per 24 V.S.A. §4424. Please feel free to contact me if you have any questions or concerns.



Figure 1. Lidar 1-foot contours shown in light brown. Exact elevations may require ground truthing survey.

Best wishes,



Sacha Pealer, CFM|Northeastern River Scientist & Floodplain Manager (she, her)
Vermont Agency of Natural Resources | Department of Environmental Conservation