

Hardwick Development Review Board  
Conditional Use Review Request  
Applicant and Landowner: Bridget and Zachary Hoppe  
*146 East Church Street, East Hardwick*  
*Application #2022-070*  
January 11, 2023 –  
continued due to technical problems  
to January 25, 2023

To consider a Conditional Use Review request by Bridget and Zachary Hoppe for a change of use of an existing Agriculturally Exempt Structure with a Single Family Dwelling to a Mixed Use with Agricultural and Forest Processing and Single Family Dwelling in the Compact Residential zoning district. Development would occur at 146 East Church Street in East Hardwick, VT. The Agricultural and Forest Processing would be for commercial cultivation and manufacturing that is not covered by agricultural exemptions to zoning.

The application requires a review under the following sections of the Hardwick Unified Development Bylaws: Table 2.4 Compact Residential District; 3.11 Performance Standards; Section 3.13 Parking and Loading Requirements; Section 4.11 Agricultural and Forest Processing; Section 4.12 Mixed Use; Section 5.2 Conditional Use Review; and Section 5.2 G4 Rural Residential and Compact Residential District Standards.

**Warnings** were posted on Monday, December 19, 2022 and Thursday, January 12, 2023 at 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: Jennifer and Lawrence Fliegelman; Ginger and Arnold Hall; Jonathan Hall and Jessica Martin; Martin Renaud; Caledonia Grange; Cynthia Dailey Life Estate; Vermont Northern Growers Coop; Jill Keene and Brenda Beaupre; David and Gail O'Brien; Lanny and Mary Hill; Deborah and James Draper Sr; Mary and Rodney Churchill; Julie and Stephen Parker; JGW LLC; Lorraine Gomes and Linda Clow; and Marjorie and Forrest Dunbar on Monday, December 19, 2022 and Thursday, January 12, 2023. It was published in News and Citizen on Thursday, December 22, 2022.

**Development Review Board members present by Zoom on January 25, 2023:** John Mandeville, Chair; Ruth Gaillard; Kate Brooke; and Kole.

**Development Review Board members absent on January 25, 2023:** Helm Nottermann

**Others present on January 11, 2023:** Kristen Leahy, Zoning Administrator; Bridget and Zach Hoppe, Applicants; Todd Hill; Lanny Hill; Jennifer Fliegelman; Brenda Beaupre; Jill Keene; Kris Fitts-Hoppe; and Rob Hoppe.

**Others present on January 25, 2023:** Kristen Leahy, Zoning Administrator; Bridget and Zach Hoppe, Applicants; Todd Hill; Lanny Hill; Jennifer Fliegelman (by Zoom), Rob Hoppe (by Zoom), and Kris Fitts-Hoppe (by Zoom).

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

- 1. Email letter from Mike Sullivan at Hardwick Electric, dated January 20, 2023.**

**Summary of Discussion**

On January 11, 2023, the Zoom component of the hearing was not available due to modem issues in the Memorial Building. As a result, the hearing was continued to 7 pm on Wednesday, January 25, 2023.

On January 25, 2023, 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.

Mr. Mandeville invited the applicants to present their proposal. Zach and Bridget Hoppe have recently purchased the property at 146 East Church Street. They are in the process of applying for a Mixed License from the State of Vermont – Tier 1 Cultivation and Tier 2 Manufacturing. There is an existing structure on site that was previously used as a Single Family Dwelling with Hemp/CBD production (Ag. Exempt usage). The Hoppes are planning to use the existing structure as a Single Family Dwelling (2<sup>nd</sup> floor) and an Indoor Cultivation and Manufacturing space for cannabis (1<sup>st</sup> Floor). The Tier 1 license would allow up to 1000 sf of canopy in the interior space and up to 125 plants externally.

The first floor of the existing structure would be designed to support growing on approximately ½ of the space and dry finishing/packing and processing on the remaining ½ of the space.

No retail sales on site – only wholesale. Bridget currently produces and sells CBD botanical remedies and she will be expanding into the cannabis aspect. The remedies are sold through external outlets (Coops, etc).

Zach plans to have approximately 160 plants on the interior of the space and 125 plants in the existing hay fields.

The house is secured with cameras and locking doors. The external plants will have fences, or cameras, or a security company. One version will be selected. Fences will probably be the chosen avenue.

Hardwick Electric Department is working on the installation of power. An email from Mike Sullivan is Exhibit #1. HED will be providing power for the existing structure – currently, the building is powered by generators.

The indoor operation will use water for the plants but will be a closed loop system with no evaporation departing from the building.

The windows on the growing site will be insulated and sheet rocked and will not allow the release of light pollution from the growing lamps. There is a motion sensor floodlight for security but it is down-lit.

There are 2 industrial, large carbon filters in place on the growing side and an additional carbon filter on the drying/processing side.

Neighbors have not had concerns about smells while the hemp production was occurring.

No signs are being requested as this operation will not be advertised.

Shipments will be limited to standard agricultural items such as garden supplies, etc. The applicants will be delivering their product directly to retail sellers.

Jennifer Fliegelman requested a thorough explanation about the power situation. Zach testified that Hardwick Electric is currently working on the power issue. A few trees may need to be removed to deliver the power line. Mike Sullivan has informed Zach that they will be replacing the existing pole off of Church Street and adding a line and pole on the Hoppe property. There will be no need for the generators once the lines have been installed. There is an existing 50kW generator on site but this will only be utilized for power outages once the lines are set. Jennifer Fliegelman inquired as to the time line and stated that she does not have an issue with the



generator being used during a power outage. The generator creates a substantial amount of noise when it is used consistently and 24 hours per day.

Zach reported that Mike Sullivan was estimated a month time frame for the installation. Apparently HED can install with frozen ground, etc. Mike has departed on vacation and cannot be reached for additional information.

The hearing ended at 7:38 pm. Ruth Gaillard made the motion to enter into deliberative session after the following hearing and Kate Brooke seconded. All members were in favor.

#### **Findings of Fact:**

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

**2.4 Compact Residential** – Single Family Dwellings are listed as Permitted uses in this district. Mixed Use and Agricultural and Forest Processing are listed as a Conditional Uses in this district. The cultivation of an agricultural item is typically exempted from zoning. The applicant is seeking to change the use of an existing Agriculturally Exempt Structure to a Mixed Use with a Single Family Dwelling and an indoor cannabis cultivation and manufacturing location. Cannabis cultivation is specifically excluded from the Agricultural Zoning exemption. **The Structure exists and meets the setbacks of the district – Setback from East Church Street is over 40 feet and setbacks from the side and rear are over 20 feet.**

**3.11 Performance Standards** – review was made of the performance standards by the DRB.

- 1) Regularly occurring noise - **The design of the proposed development will not include the use of a generator. This regularly occurring noise will not be incorporated into this operation. See Condition #5.**
- 2) Releases of heat, cold, moisture, mist, fog – **The structure will trap water generation. Evaporation will not occur.**
- 4) Glare, lumen, light or reflection – **No lights, except an existing motion detector security light, are planned for the exterior of the structure. There are grow lights over the crop.**
- 8) Smoke, dust, noxious gases, or other forms of air pollution – **the applicant testified that three large (industrial) carbon filters are in place. See Condition #4.**

**3.13 Parking & Loading Requirements** – the property is located in the Compact Residential district which requires “off-street loading space shall be provided for commercial, industrial or institutional uses...” Table 3.1 lists Agricultural and Forest Processing as Other – parking spaces are “as determined under site plan or conditional use review”. **Only one employee may be utilized in the future. No additional parking design was deemed to be necessary.**

**4.11 Agricultural and Forest Processing** – the following provisions must be met: (1) The processing facility shall be of a size and scale appropriate for the neighborhood in which it is proposed, (2) Where a processing facility uses or generates hazardous materials, the applicant shall demonstrate compliance with applicable state or federal regulations, (3) Wholesale sales of processed products are allowed as a part of any approval. Retail sales may be allowed as a part of conditional use approval. Sales of products in addition to those processed on the site will be limited to those clearly incidental, secondary and ancillary to those processed products or as declared and approved as a part of the conditional use permit. **Applicable provisions are met as the facility is only allowed to grow and process 1000 sq ft of the cannabis crop in the existing structure; cannabis is not considered to be a hazardous material; and retail is not allowed at this location.**

**4.12 Mixed Use** – In designated zoning districts, more than one principal use may be allowed within a single building, or on a single lot, subject to the following provisions: (1) Each of the proposed uses is allowed as a permitted or conditional use within the zoning district in which the mixed use is located, (2) The uses in



combination meet all applicable standards for the district in which the mixed use is proposed, including minimum lot, frontage and setback requirements; or the mixed use is part of a planned unit development (PUD).. and (3) The mixed use shall meet all applicable general regulations under Article 3, including but not limited to sign and parking requirements. **The applicants proposed uses are all permitted or conditional uses in the Compact Residential zoning district. Applicable standards have been met.**

## **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.** The conversion and building use matches the purpose of the Compact Residential district and the character of the surrounding area.
3. **Traffic on roads and highways in the vicinity.** The circulation and traffic patterns on East Church Street will not be impacted by the change of use. No increase in traffic will be created by the proposal. Shipping will not occur in large capacity amounts. The hemp and the cannabis operations will utilize similar amounts of traffic.
4. **Bylaws in effect.** N/A
5. **The utilization of renewable energy resources.** The site may possible acquire solar panels in the future.

### **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. **Additional 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. **State approved wastewater and potable water systems are in place on the site. No additional plans were indicated as necessary.**

## **5.2 G1 Rural Residential and Compact Residential District Standards.**

A) Development shall be designed to minimize loss of agricultural land and natural habitat, impact on water quality, and diminishment of the scenic and rural qualities of the site as experienced both on-site and from other vantage points in the town. **A pre-existing structure** is utilized in this proposed change of use.

B) Access roads, driveways and utility corridors shall be shared to the extent feasible; and, where sites include linear features such as existing roads, tree lines, stone walls, and/or fence lines, shall follow these features to the extent feasible in order to minimize the loss of productive agricultural and forest land, and to avoid physical and visual impacts. **A pre-existing structure is utilized in this proposed change of use.**

### Decision and Conditions

Based upon these findings, the Development Review Board voted 4-0 to approve the conditional use application as presented and amended with the following conditions:

#### Conditions:

1. Any and all necessary town, 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. The applicant must adhere to the all licensing requirements from the State of Vermont, including no on-premise retail sales.
4. The existing carbon filters must be kept operational and in good working order.
5. Indoor cultivation and processing cannot commence until the Hardwick Electric Department has been able to install power that is operational. The existing 50kW generator may only be utilized as a back-up energy source during power outages.

Signed:

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

 \_\_\_\_\_, acting clerk  
Kristen Leahy, Zoning

Date 1/31/23

Date 1/31/23

#### 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;

**Mike Sullivan** <msullivan@hardwickelectric.com>  
To: Kristen Leahy <zoning.administrator@hardwickvt.org>  
Cc: Zach Hoppe <zach\_hoppe@yahoo.com>

Fri, Jan 20, 2023 at 10:38 AM

Hi Kristen...

Hope you are well!

In response to Zach's email below, I can advise that HED is fully aware of Zach's project in East Hardwick and that we are actively working on providing our services to his property.

If you need anything more than this please advise and I will be happy to provide.

Best Regards,

Mike Sullivan

General Manager

Hardwick Electric Dept.