

Hardwick Development Review Board  
Conditional Use Review Request  
Applicant and Landowner: Timothy Fuller  
281 Mountain View Road, East Hardwick  
Application #2022-056  
October 19, 2022

To consider a Conditional Use Review request by Timothy Fuller for a change of use of an existing Agriculturally Exempt Structure to Agricultural and Forest Processing (indoor cultivation) in the Compact Residential zoning district. Development would occur at 281 Mountain View Road in East Hardwick, VT. The Agricultural and Forest Processing would be for commercial cultivation 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 5.2 Conditional Use Review; and Section 5.2 G4 Rural Residential and Compact Residential District Standards.

**Warnings** were posted on Tuesday, September 20, 2022 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: Justin Lander and Rose Friedman; John Laggis Life Estate; Chad and Danielle Brochu; Partridge Friedman Family Trust; Harold and Caroline Casavant; Beverly Jene and David Austin; Angela Monark and Kevin Gebbie; and Scott Slayton Life Estate on Tuesday, September 20, 2022. It was published in The News & Citizen on Thursday, September 22, 2022. It was also published in The Hardwick Gazette on Wednesday, October 5, 2022.

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

**Development Review Board members absent:** Kate Brooke

**Others present:** Kristen Leahy, Zoning Administrator; Curtis Slayton; Sara Churchill; Scott Churchill; Tim Fuller, applicant; Justin Lander (Zoom); and an unidentified phone number on Zoom.

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

1. Email from the Cannabis Control Board stating that the Indoor Cultivator Tier 1 license has been approved. Dated September 1, 2022.

**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.

Mr. Mandeville invited the applicant to present his proposal. Mr. Fuller has a previously constructed greenhouse that has been utilized to grow hemp. He plans to switch the crop from hemp to cannabis. No additional construction will occur. The only change will be the type of crop being grown. Currently, Mr. Fuller has approximately 90 plants under cultivation.

Mr. Fuller testified that he does not have any employees and that he is the sole proprietor. His wife occasionally assists with book keeping, etc. The business is located completely on his property, behind his residence.

No retail will occur at this location. The state license allows 1,000 sq feet of indoor cultivation (Tier 1). There are two auxiliary greenhouses which are used to store lawnmowers and tools.

The property has a state approved potable water and wastewater system. Mr. Fuller does not impact the East Hardwick water system.

The security measures in place include a controlled point of entry, electronic surveillance, and proximity to the owner's full-time residence.

Sara and Scott Churchill and Curtis Slayton expressed concern about potential thieves gaining access through neighboring yards. Mr. Fuller provides access to his abutting neighbors for their horses and he does not foresee any issues with thieves.

The only traffic associated with the business is Mr. Fuller's pick-up truck which would be utilized for the transportation of the cannabis crop.

Solar power is a potential addition in the future. Currently, the greenhouse is powered by electricity from a buried line. No generators are utilized. There are circulation and exhaust fans in the greenhouse. There are lights in the greenhouse, but the applicant "grows with the sun" and does not use the lights at night.

As this would be an Indoor Cultivator Tier 1 business, the Cannabis Control Board does not require fences around the property.

Water filters through the beds and into landscaping cloth on the ground. Air does have the ability to circulate via the exhaust fans and the vents.

Organic fertilizers are used and Mr. Fuller does not apply chemicals to his crop.

Mr. Fuller testified that the cannabis crop does have a particular odor which he can smell when he is in close proximity to the vents/exhaust fans of the greenhouse. He does not detect that odor if he moves away from the structure and the immediate air flow.

Sara and Scott Churchill stated for the record that they are concerned about the potential smell of the cannabis crop. They also expressed concern that the smell may impact the value of their property if they seek to sell their neighboring home. Neighbors were informed that they can submit items of concern regarding the performance standards (such as smell) to the Zoning Administrator. Violations of the DRB decision will be investigated and forwarded to the local Cannabis Control Board.

The hearing ended at 7:30 pm. Kole made the motion to enter into deliberative session after the following hearing and Helm Nottermann 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** – Agricultural and Forest Processing is listed as a Conditional Use 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 an indoor cannabis cultivation location. Cannabis cultivation is excluded from the Agricultural Zoning exemption. **The Agriculturally Exempt Structure exists and meets the setbacks of the district – Setback from Mountain View Road 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 does not include the use of a generator. This regularly occurring noise will not be incorporated into this operation as there is on-site power connection in place.**

2) Releases of heat, cold, moisture, mist, fog – **The greenhouse does not trap water generation. Evaporation will occur.**

4) Glare, lumen, light or reflection – **No lights 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 the cannabis crop does emit a particular odor and may migrate from the greenhouse. The applicant cannot detect the odor when he moves away from the structure.**

**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”. **No employees will be utilized. 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 1000 sq ft of the crop; cannabis is not considered to be a hazardous material; and retail is not allowed at this location.**

## **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 Mountain View Road 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.**

**F) Specific Review Standards shall include:**

**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.

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 Timothy Fuller 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.

Signed:

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

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

Date 10/24/22

Date 10/24/22

## 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;



Kristen Leahy <zoning.administrator@hardwickvt.gov>

**Fwd: VT CCB: Application S-000000895 Approved**

1 message

**David Upson** <david.upson@hardwickvt.gov>  
To: Kristen Leahy <zoning.administrator@hardwickvt.gov>

Tue, Sep 6, 2022 at 9:28 AM

Here's the other  
David Upson  
Hardwick Town Manager  
(802)472-6120

----- Forwarded message -----

From: **VCCB Portal No Reply** <ccb.noreply@vermont.gov>  
Date: Thu, Sep 1, 2022 at 3:46 PM  
Subject: VT CCB: Application S-000000895 Approved  
To: david.upson@hardwickvt.org <david.upson@hardwickvt.org>

The Cannabis Control Board would like to inform you that S-000000895, Indoor Cultivator Tier 1 Small Cultivator has been approved. This applicant's proposed cannabis establishment is within your municipality.

Pursuant to state law, most cannabis establishment application materials are confidential. See 7 V.S.A. § 901(h)(1)(A). The Board is sharing some of the application information in this document to facilitate the Local Control Commission's licensing review. The Board asks that you abide by state law and maintain the confidentiality of this information.

The Local Control Commission may request further information about the proposed cannabis establishment directly from the applicant.

**Business Legal Name and Registered Alternatives:** Naked Hemp

**Address:** [REDACTED] View Road, E Hardwick VT, 05896 (Please note that the address of this establishment is not public information)

**Principals and Controlling Entities:** Timothy Fuller

**Applicant's Email Address:** [REDACTED]

**Applicant's Phone Number:** (802) 535-4548

For this license type, the applicant is asked the following questions which may be relevant to your review:

- Do you comply with required inspections or permits from other state and local agencies (for example, certificates of occupancy)?
  - Yes
- Is the physical site of operation on a municipal water supply?
  - No

In order to issue this license, the CCB requires the approval of Hardwick's Local Control Commission.

Please submit documentation of the Local Control Commission's decision via email to [CCB.Applications@vermont.gov](mailto:CCB.Applications@vermont.gov)

Please note that, pursuant Rule 2.14(d), decisions must be communicated to the Board within 60 days of receipt of request for

approval. If the decision is outstanding for over 60 days, the Board will consider it a presumptive approval to grant and will move forward with the applicant as appropriate.

Local Control Commission authority is defined at 7 V.S.A. § 863, and the Board has developed information for municipalities and Local Control Commissions on its [website](#). For a list of upcoming projects proposed in your municipality, [click here](#)

Thank you,

Cannabis Control Board

For assistance, contact: (802) 828-1010

[CCB.Applications@vermont.gov](mailto:CCB.Applications@vermont.gov)