

Hardwick Development Review Board
Conditional Use Review Request
Applicant and Landowner: Nathan and Sarah Apolito
1596 West Hill Road, Hardwick
Application #2022-066
December 7, 2022

To consider a Conditional Use Review request by Nathan Apolito (dba VTegridy Farms) for a change of use of an existing Accessory Structure to Home Industry (indoor cultivation) in the Compact Residential zoning district. Development would occur at 1596 West Hill Road in Hardwick, VT. The Home Industry development 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 4.9 Home Businesses; Section 5.2 Conditional Use Review; and Section 5.2 G4 Rural Residential and Compact Residential District Standards.

Warnings were posted on Tuesday, November 15, 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: Claude and Reginald Riendeau; Gary Keough; Gustavo Teran; Amy and Andrew Crank; Loretta Smith and Daniel Miko; Diane and Marcel Sholan; Anna Couture; Derrick Tatro and Tiffany Smith; Christine and Daniel Gifford; Robbin Towns; Jeffery Marcres; Andrea Robertson Trust; David Ewing; and Janet and Thomas Bellavance on Wednesday, November 16, 2022. It was published in The News & Citizen on Thursday, November 17, 2022. It was also published in The Hardwick Gazette on Wednesday, November 16, 2022.

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

Development Review Board members absent: None

Others present: Kristen Leahy, Zoning Administrator; Diane and Marcel Sholan; William Chidsey; Janet Bellavance; Tiffany Smith; Nathan and Sarah Apolito, landowners/applicant.

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

1. Questions from Marcel and Diane Sholan, dated December 6, 2022.

Summary of Discussion

Chair John Mandeville began the hearing at 7:35 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 landowner/applicants to present their proposal. Nathan and Sarah Apolito testified that they own a single family dwelling at 1596 West Hill Road in Hardwick. The property has an existing Accessory Structure (shed) which is located next to the Single Family Dwelling. Nathan Apolito is currently growing the allowed amount of cannabis for personal consumption. He is pursuing a state Tier 1 cultivation license so that he can sell his plants to a dispensary. The existing 10'x16' accessory structure would be converted into a Tier 1 Indoor Cultivation operation. Tier 1 licenses are allowed to grow up to 1000 square feet of cannabis. Mr. Apolito has enough room to grow 10 small plants – 76 square feet in a hydroponic table. The current proposal is to grow 4-5 plants for local distributors.

No exterior storage will be utilized for the growing operation. Another accessory structure may be needed for personal tools, etc.

Currently, one floodlight is installed.

The smell at this point in time is the worst that will be encountered. Nathan Apolito agreed to change the carbon filters more frequently to reduce the olfactory impact on the neighbors, Marcel and Diane Sholan.

The security plan includes a secured glass window which is too narrow for entrance, locked doors, a security camera which is pointed at the structure (from the house) and motion detecting floodlights. The Cannabis Control Board will be sending an investigator to the site to review the security plan with Nathan Apolito.

The hearing ended at 8 pm. Helm Nottermann made the motion to enter into deliberative session 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:

2.4 Compact Residential – Home Industry 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 Accessory Structure to an indoor cannabis cultivation location. Cannabis cultivation is excluded from the Agricultural Zoning exemption. **The Accessory Structure exists and meets the setbacks of the district – Setback from West Hill 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 shed structure does not trap water generation. Evaporation will occur.**

4) Glare, lumen, light or reflection – **Down-lit, motion detecting lights are in place as security measures.**

8) Smoke, dust, noxious gases, or other forms of air pollution – **the current level of smell is the highest that will occur on site. The neighbors are already smelling the particular odor associated with cannabis. 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 Home Industry as requiring 1 space per employee. **No employees will be utilized. No additional parking design was deemed to be necessary.**

4.9 Home Businesses [Home Occupation, Home Industry] – the following provisions must be met:

1. The Home Industry shall be conducted by residents of the dwelling and up to three full-time nonresident employees. **No employees will be utilized.**
2. The Home Industry shall be carried out within the principal dwelling or an accessory structure. **The Home Industry will be contained in an Accessory Structure (shed).**
3. Exterior storage areas for materials and equipment associated with the Home Industry may be approved by the Development Review Board provided that such areas are clearly designated and are adequately screened from public view and neighboring properties. **No exterior storage is being requested.**

4. The Home Industry shall not have an undue adverse effect upon the character of the neighborhood or result in a change in the outward appearance of the dwelling or the accessory structure. **Per neighbors, the structure does not change the character of the neighborhood.**
5. The Home Industry shall not generate traffic, including delivery traffic, in excess of volumes characteristic of other uses allowed in the district in which the Home Industry is located. **No additional traffic is anticipated. The applicant will use his personal vehicle for delivery.**
6. Off-street parking shall be provided for resident, employee, customer and delivery vehicles, as well as all commercial vehicles or equipment associated with the Home Industry. **Sufficient off-street parking will be provided for all aspects.**
7. Adequate provisions shall be made for water, wastewater and the disposal of solid waste, in accordance with applicable municipal and state regulations. **The process does not exceed the capacity of the private well or wastewater system per verbal verification from a licensed wastewater designer.**
8. Home Industries shall meet all performance standards set forth in Section 3.11. **Reviewed earlier.**
9. The Home Industry shall be permitted one unlit wall-mounted or free-standing sign not to exceed 4 square feet in area. **No signs are being requested.**
10. On-site wholesale or retail sales shall be limited to products produced or services provided on the premises. **No on-site retail sales will be permitted. The operation will be strictly wholesale.**

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. The size and scope of the proposed use will not affect the Town of Hardwick's facilities or services.
2. **Character of the area affected.** The conversion and building use conforms to 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 West Hill 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.
4. **Bylaws in effect.** N/A
5. **The utilization of renewable energy resources.** Solar energy is already in place.

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 5-0 to approve the Nathan Apolito 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 applicant must install and maintain effective charcoal filters in the venting system in the Accessory Structure/growing space.

Signed:


_____, Chair
John Mandeville, DRB Chair
Administrator


_____, acting clerk
Kristen Leahy, Zoning

Date 12/12/2022

Date 12/12/2022

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;

12/06/2022 Questions from Marcel and Diane Sholan

Application #2022-66 -

12/7/2022 7:35 pm Hearing – Conditional Use Review for 1596 West Hill application submitted for a proposed change from Residential Zoning to Home Industry/Indoors for commercial cultivation of Cannabis

- How many plants are you proposing to grow?
- Security pertaining to the neighborhood.
- Security Structure (proposed Home Industry) required of the Cannabis Board including smoke alarms and fire extinguisher(s).
- Privacy of adjoining land owners in regards to security cameras.
- ROW – Parking. Will there be any employee's, deliveries that will require parking for proposed business? What is your business 5 year plan? Expansion?
- SMELL – The past two summers we've smelled what's been growing. Said nothing figuring it was for your recreational use. However, legally you can grow 2 plants per person. If the smell is already pungent with what you are already growing we are highly concerned on what the smell will be for what you're proposing to grow.
- Since the town is currently not sending anyone to do inspections due to covid. how will this business be monitored? Is it the town's responsibility or the State?
- How is waste going to be managed? Water, fertilizer, plants and any other waste involved with growing?