

Hardwick Development Review Board  
Conditional Use Review Request  
Parker, Michael  
43 Bean Avenue, Hardwick  
Application #2023-052  
October 4, 2023

To consider a Conditional Use Review request by Michael Parker for a change of use of two existing Accessory Structures to Home Industry in the Rural Residential zoning district. Development would occur at 43 Bean Avenue in Hardwick, VT.

The application requires a review under the following sections of the Hardwick Unified Development Bylaws: Table 2.6 Rural 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 District Standards.

**Warnings** were posted on Tuesday, September 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: Benjamin Patoine, Daniel Renaud, William Hill Trust, Gino Caccavale, Mary Lammi, Guy Patoine Life Estate, Aaron Patoine, and Janet Howard on Thursday, September 14, 2023. It was also published in The News & Citizen on Thursday, September 14, 2023.

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

**Development Review Board members absent:** Helm Nottermann

**Others present:** Kristen Leahy, Zoning Administrator (acting clerk), Michael, Lydia and Oly Parker – applicant and family.

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

1. Home Industry Description from Michael Parker, Applicant

**Summary of Discussion**

Chair John Mandeville began the hearing at 7 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. Michael Parker explained that the Home Industry would be utilizing pre-existing structures (a greenhouse and a garage). Mr. Parker has received a Tier 1 Mixed Cultivation permit from the State of Vermont. This permit will allow him to grow a product that is not exempt from Agricultural zoning exemptions in the Garage structure (indoor) and the greenhouse (outdoor). No change will be made to the existing structures. No retail will occur on the site.

The Home Industry will not have a generator but will obtain power from a recently installed solar power array. The garage has the closed loop with no release of odor or moisture. The greenhouse is considered to be outside cultivation and is open to the environment.



The operation is located in a quiet area of the town and will only utilize a shipping container in the future for tool storage. There are security cameras on the property which are linked to the owner's home (rather than a security company). The lighting is limited to 2 motion detector lights with low light pollution impact.

The hearing ended at 7:20 pm. Kate Brooke made the motion to enter into deliberative session after the hearing and Ruth Gaillard seconded. All members were in favor.

### **Findings of Fact:**

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

**2.6 Rural Residential** – Home Industry is listed as a Conditional Use in this district. The applicant is seeking to change the use of two existing Accessory Structures to a mixed cultivation location. Their crop is currently excluded from the Agricultural Zoning exemption. **The Accessory Structures exist and meet the setbacks of the district – Setback from Bean Avenue and Dutton Road is over 60 feet and setbacks from the side and rear are over 50 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 potentially 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 design of the proposed development traps and evaporates all water generation within the garage structure but not in the greenhouse.**
- 4) Glare, lumen, light or reflection – **The design of the proposed development will not include external floodlights and will only have down-lit motion detector lights.**
- 8) Smoke, dust, noxious gases, or other forms of air pollution – **The design of the proposed development will not exchange air with the outside. The air inside the growing spaces does not leave the growing spaces in the garage. The greenhouse does not have the same design and will allow the air to move outward. No testimony was received to indicate that this aspect will be an issue at this location.**

**3.13 Parking & Loading Requirements** – the property is located in the Rural Residential district which requires “off-street loading space shall be provided for commercial, industrial or institutional uses...” Table 3.1 lists Home Industry as needing 2 spaces per unit. **The homeowner will be the only employee. No 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 two Accessory Structures (greenhouse and garage)**
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. **The applicant indicated that a shipping container may be utilized for tool storage in the future.**
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. **The applicant and his family strive to make the Home Industry development unobtrusive.**
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. **Accomplished. Actively engaged in composting.**
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 sign will be utilized.**
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. There will be processing on site in the garage structure.**

## 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 Rural Residential district and the character of the surrounding area. Dutton Road is already the location of growing fields.
3. **Traffic on roads and highways in the vicinity.** The circulation and traffic patterns on Dutton Road will not be impacted by the change of use. No increase in traffic will be created by the proposal.
4. **Bylaws in effect.** N/A
5. **The utilization of renewable energy resources.** Solar energy is already incorporated.

### 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. **Screening is already in place – hedge line and trees serve as a visual buffer.**
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 G4 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. **The proposed development will convert two existing structures.**

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. **The proposed development will not impact productive agricultural and forest land.**

### Decision and Conditions

Based upon these findings, the Development Review Board voted 4-0 to approve the Parker 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. The applicant must adhere to the all licensing requirements from the State of Vermont, including no on-premise retail sales.
4. The only external lighting to be allowed will be down lit lighting at the external doors. No external flood lights will be permitted.

Signed:

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

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

Date 10/10/23

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#### 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;