

Hardwick Development Review Board
Conditional Use Review Request
Applicant and Landowner: Timothy Fuller
281 Mountain View Road, East Hardwick
Application #2023-068
November 1, 2023

To consider a Conditional Use Review request by Timothy Fuller for a change of use of an existing Accessory Structure to Agricultural and Forest Processing (indoor cultivation & processing) in the Compact Residential zoning district. Development would occur at 281 Mountain View Road in East Hardwick, VT.

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, October 17, 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: Justin Lander and Rose Friedman; John Laggis Life Estate; Chad and Danielle Brochu; Partridge Friedman Family Trust; David Austin and Beverly Jene; Angela Monark and Kevin Gebbie; and Scott Slayton Life Estate on Tuesday, October 17, 2023. It was published in The News & Citizen on Thursday, October 19, 2023.

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; Tim Fuller, applicant

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

None

Summary of Discussion

Chair John Mandeville began the hearing at 7:30 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 testified that he has a pre-existing 24 feet by 36 feet structure on his property. The roof was compromised during last summer's rain events and Mr. Fuller had to rebuild the Accessory Structure. The Accessory Structure had served as a shop/garage building.

The application is requesting a change of use of this Accessory Structure. Mr. Fuller has a Vermont Tier 1 Cannabis Cultivation license, which allows up to 1000sf of cultivation. The conversion of the shop/garage will allow him to grow during the winter months (not currently available in the existing greenhouse structure) and will provide additional space for the processing of the cannabis crop (drying, curing, and packaging).

No retail will occur on site. The current and proposed development will only sell to retail locations and will not sell directly to customers.

The hearing ended at 7:40 pm. Helm Nottermann 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:

2.4 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 Accessory Structure to indoor cannabis cultivation and processing. Cannabis cultivation/processing is excluded from the Agricultural Zoning exemption. **The Accessory 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. An emergency generator will be installed but will not be used as a primary source of energy and will only be utilized if the electrical grid is not working.**
- 2) Releases of heat, cold, moisture, mist, fog – **The Accessory Structure 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 he has a carbon filter set-up for the Accessory Structure. The cannabis crop has been cultivated at this location for the last year and no complaints regarding smell have been received by the zoning office.**

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.

4. **Bylaws in effect.** N/A

5. **The utilization of renewable energy resources.** The applicant would like to install solar power 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 5-0 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 11/7/23

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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;