

TOWN OF MARSHFIELD
DEVELOPMENT REVIEW BOARD
Findings of Fact and Conclusions of Law

Hearing Dates:
May 11, June 8, July 13, Aug. 10 & 24, Sept. 28, 2023

Decision on the application of:

Owner/Applicant: Henry Harris

Address/Location: 1356 Ennis Hill Road, Marshfield, VT 05658

Zone(s): Agricultural & Rural Residential (ARR) / Forestry & Conservation (FC)

Parcel ID: EN023

Re: Site Plan Review for an Accessory On-Farm Business

I. Procedural History and Applicant Request

1. On March 31, 2023, Henry Harris (Owner/Applicant) submitted a Conditional Use application and supplemental materials to conduct accessory on-farm events on parcel EN023 at 1356 Ennis Hill Road.
2. The Zoning Administrator (ZA) determined that the proposed project requires DRB review and referred the project to the Development Review Board (DRB) for Conditional Use and Site Plan review in accordance with Sections 245 and 250.
3. On May 11, 2023, after warning the project in the *Times Argus* newspaper, the DRB convened for a public hearing to review the proposal. The hearing was not opened as one or more neighbors testified that they hadn't received 15-days' notice prior to the hearing and Applicant acknowledged that the notices were late. The hearing was continued to June 8, 2023, at 6:30 p.m.
4. On June 8, 2023, the DRB convened for a public hearing. A few days prior to the meeting, adjoining landowners in the Town of Calais notified the ZA that they had not received notice of the project. The hearing was not opened; the Applicant acknowledged that he hadn't sent notices to the Calais landowners, however, he wasn't aware that he was supposed to, as he hadn't been required to do that for prior applications. The hearing was continued to July 13 with a site visit scheduled for 5:30 p.m. followed by the public hearing at 6:30 p.m.
5. On July 13, 2023, the site visit and hearing were cancelled due to flood damage (the Old Schoolhouse Common building closed), unsafe road conditions, severe thunderstorm warnings, Governor declared state of emergency, and Governor request that residents stay off the roads after 4 p.m. The hearing was not continued to a date-certain, as it was not known when the town office building would be open and able to resume holding public meetings.

6. On August 10, 2023, at 5:30 p.m., a site visit was conducted of the premises. In Attendance: Henry Harris, Dina Bookmyer-Baker, Les Snow, Gary Leach, Lorraine Banbury, Freddie Suarez, and Mary Lou.

Following the site visit, after due notice, the DRB conducted a warned public hearing to review the project. The hearing was conducted in-person and was live-streamed. Due to flood-related damage to the Old Schoolhouse Common, the meeting room was not ADA accessible, however, the hearing could be attended via Zoom. The hearing was audio and video recorded.

In Attendance: DRB members: Dina Bookmyer-Baker, Les Snow, Gary Leach, and Margaret Campbell. Staff: Lorraine Banbury (ZA) and Asher Barnum (DRB Clerk). Present and sworn in: Kathleen Hayes (former ZA), Henry Harris (Applicant), Robinson Billings, Susan Condon, Clinton Holt, and Tim Howe; present via Zoom: James Arisman, Heather Nodler, Marin Aster, Mary Myers, Graham Unangst Rufenacht, Mark Michaelis, and Jake Durrell (Counsel for Mr. Harris).

Exhibits: The application materials submitted to the DRB included the following:

Initial DRB packet (11 pages), received 6/6/23:

- Conditional Use Permit Application, received 3/31/23.
- Application for Site Plan Review, received 5/9/23.
- Applicant's supporting materials:
 - Letter Re: *Conditional Use Permit Application – Accessory On-Farm Events*, prepared by Henry Harris, 2 pages, dated 3/31/23.
 - Description of Use: Site Plan and CUP Criteria, prepared by Henry Harris, 3 pages.
 - May 2023 Site Plan (map).
 - Henry Harris 2023 CUP Application – Site Plan Notes, 1 page.
- Staff summary from Kathleen Hayes, ZA, Re: *EN029 Harris: CUP/Site Plan Application for Ongoing Events*, Concerns/Comments, dated 6/8/23.
- Understanding Land Use Regulations For Farm Businesses (Feb. 2016), one-page excerpt of https://www.nofavt.org/sites/default/files/files/resources/understanding_land_use_regulations_for_farm_businesses.pdf, included in 6/6 packet by Staff for reference.
- Supplemental materials (10 pages), packet received 7/11/23:
 - Email from Kathleen Moore, *Message for Henry Harris Hearing on 6/8/2023*, sent 6/7/23.
 - Email from Ellen Cooke, *For DRB 6823 meeting*, sent 6/8/23.
 - Email from Mark Michaelis, *Henry Harris permit application*, sent 6/8/23.
 - Revised ZA Comments and Recommendations, prepared by ZA Hayes, 3 pages.
 - Letter to Neighbors, *Collaborative Vision for Ennis Hill Road and a Sustainable Marshfield*, prepared by Henry Harris.
- Email from Kali Williams, *Support for Mr. Henry Harris and Conditional Use Permits*, sent 7/13/23.
- Information packet prepared by Henry Harris, dated 7/12/23, submitted at 8/10/23 hearing.
- May 2023 Site Plan map, annotated by Bookmyer-Baker and Applicant at 8/10/23 site visit.
- AAFM farm determination letter, signed by Laura DePietro, dated 5/4/22.
- Prior DRB decision for a youth camp, dated 7/17/19.

- Prior DRB decision for a 5-day event, signed 6/16/22.

The Board heard testimony and continued the hearing to resume on August 24, 2023, at 6:30 p.m.

7. On August 24, 2023, the DRB convened to resume the review. The Applicant requested to continue the review until after September 14. The Board continued the review to September 28, 2023, at 6:30 p.m.
8. On September 28, 2023, the DRB convened to resume the review. The hearing was conducted in-person and live-streamed and was audio- and video-recorded.

In Attendance: DRB members: Dina Bookmyer-Baker, Les Snow, Gary Leach (video), and Margaret Campbell (video). Staff: Lorraine Banbury (ZA), Kathleen Hayes (former ZA), and Asher Barnum (DRB Clerk). Present and sworn in: Robinson M. Billings, Clinton Holt, Tim Howe, Susan Condon, and David Spooner; present via zoom: Henry Harris (Applicant), Jake Durrell (Applicant's Attorney), Maren Aster, Heather Nodler, and Manny Sainz.

Exhibits: The application materials submitted to the DRB included the materials in the August 10, 2023 list above and an additional exhibit:

- *Final Memorandum In Support of Henry Harris's 2023 Cup & Site Review Application*, prepared by Jacob O. Durrell, Esq., 6 pages, dated and submitted 9/28/23.

At the conclusion of the review, the DRB closed the hearing and deliberated the merits of the application on a later date.

II. Findings and Conclusions

Below are the DRB's findings-of-fact, based on the evidence in the record for the proceedings conducted on the above dates, which includes the application materials and all testimony provided at the hearings.

9. **Existing conditions:** Henry Harris owns 168± acres, known as *Grass Roots Farm*, located at 1356 Ennis Hill Road, which lies mostly within the ARR district. The farm is comprised of three abutting parcels. Two small areas, along the south-easterly edges of the southern-most parcel, 91 Ai Ennis Place, lie in the FC district. The property is developed with three dwellings (the original farmhouse at 1447 Ennis Hill Rd., Mr. Harris' house at 1356 Ennis Hill Rd., a yurt dwelling occupied by Mary Lou, and a dwelling at 91 Ai Ennis Pl.), a greenhouse, barn, and heifer shed. The property includes access drives to Ennis Hill Rd. and Ai Ennis Place. The property is served by on-site water and septic systems. The Agency of Agriculture, Food & Markets considers *Grass Roots Farm* to be a farm operation regulated by the Agency (AAFMM letter).

10. Project: The proposal is to conduct an Accessory On-Farm Business (AOFB) consisting of single and multi-day events on the property at 1356 Ennis Hill Road. Events will be held on the parcels with frontage on Ennis Hill Road, not the 91 Ai Ennis Place parcel that lies south of May Road (Site Plan). The Ennis Hill Road parcels lie entirely within the ARR zoning district. The proposal is to conduct educational, recreational, or social events that feature agricultural practices or qualifying products, or both, as defined under 24 V.S.A. § 4412(11)(A)(i)(II). Multi-day/overnight events will not exceed eight (8) nights; no more than two (2) overnight events will be held in any one calendar month; no more than ten (10) overnight events will be held in each calendar year; and no more than two hundred (200) people may attend any one event. Parking will be provided in the areas shown on the Site Plan. Overnight lodging will include tent camping in the areas shown on the Site Plan. Tent sites will be located at least 100 feet from neighboring properties. Lodging in Mr. Harris' residence will be provided, as needed, for up to five people. Off-site lodging may be provided as well. On-site food, hydration, and portable toilets will be provided. Events may be offered for free, by donation, or for a fee. Temporary tents or canopies may be erected in which to conduct events.

No new construction of permanent structures or additions to existing buildings are proposed.

11. Zoning district requirements: The project site, on Ennis Hill Road, lies entirely within the ARR zoning district. The project makes no change to the acreage or frontage of the property. No new permanent structures or additions to existing structures are proposed. The project includes temporary tents or canopies to be erected. All such shelters shall be located not less than 65' from the road centerline. The Harris dwelling is approximately 120' from the road centerline. As shown on the annotated site plan map, the proposed location of the event tent, adjacent to the Harris dwelling, would meet this requirement.
12. Section 245 Conditional Uses: As set forth in 24 V.S.A. § 4412(11), "No bylaw shall have the effect of prohibiting an accessory on-farm business at the same location as a farm." Although the ZA referred the application for site plan and conditional use review, and Applicant completed and submitted both Site Plan and Conditional Use forms, the law limits municipal land use regulation of an AOFB to site plan review. 24 V.S.A. § 4412(11)(D) states, "Activities of an accessory on-farm business that are not exempt under section 4413 of this title may be subject to site plan review pursuant to section 4416 of this title."
13. Sections 250–251 Site Plan Review: Site Plan review by the DRB is required for an AOFB in accordance with 24 V.S.A. § 4412(11). The DRB shall make findings to determine that the project complies with the following objectives:
- a) *Compatibility between the proposed use and existing adjacent uses*: The Agency of Agriculture, Food & Markets considers Grass Roots Farm to be a farm operation regulated by the Agency (AAFM letter). The proposed use is to conduct an AOFB that will host single and multi-day events on the farm. Conducting multi-day overnight agricultural events from time to time will temporarily change the use, activity hours, noise, and traffic on and around the subject property. The Board

received and heard testimony from several neighbors who expressed their concern that the proposed use would have an adverse impact – increased traffic, noise, lights – on the character of their rural neighborhood and would therefore be incompatible with the existing adjacent uses.

– **Conclusion:** Although the project will likely impact compatibility with existing adjacent uses, the AOFB law supersedes many compatibility concerns other than health and safety considerations, which can be addressed by the site plan review objectives below. The project is allowed under the AOFB law as set forth in 24 V.S.A. § 4412(11). Approval shall include conditions to help minimize the impact of multi-day overnight stays on the adjacent properties.

- b) *Maximum safety of vehicular and pedestrian circulation between the site and roads:* The site includes existing farm driveways to provide access to the parking areas. To help manage the impact of event traffic on surrounding properties, Applicant proposes to use appropriate signage for parking and directing traffic to the site. Applicant proposes to install lighting appropriate for pedestrian circulation and safety.
- **Conclusion:** The proposal includes adequate measures to address the safety of vehicular access and pedestrian safety and circulation. Approval shall include a condition to ensure that lighting installed for pedestrian safety will not unduly disturb the adjacent properties.
- c) *Adequacy of circulation, parking, and loading facilities:* The site includes existing access drives and adequate area for vehicular circulation and parking for the proposed project (Site Plan). Loading activities will be small-scale and will not require a permanent facility for the proposed intermittent events. Applicant proposes to employ appropriate signage for parking and directing vehicular circulation within the site.
- **Conclusion:** The site and proposed measures will provide adequate circulation, parking, and loading areas. Approval shall include a condition to ensure that the proposed signage will not unduly disturb the adjacent properties.
- d) *Adequacy of landscaping, screening, setbacks and architectural design, and location of all proposed signs and outdoor lighting, toward achieving maximum compatibility with and protection of adjacent property:* The site is of adequate area to accommodate the project. The site includes existing vegetative buffers to the east and west. Proposed event tents will help contain noise from the activities. Applicant proposes to install signage and lighting for parking, directing traffic and vehicular circulation, and pedestrian safety within the site.
- **Conclusion:** The existing landscaping is adequate. Approval shall include conditions to ensure that noise and the proposed lighting and signage will not unduly disturb adjacent properties.
- e) *The protection of the utilization of renewable energy resources:* No renewable energy resources are proposed. The project does not include structures of sufficient height and proximity to adjacent properties to interfere with their utilization of solar energy, for example.
- **Conclusion:** The project will not interfere with the utilization of renewable energy resources on adjacent properties.

III. Decision

Based on the findings and conclusions set forth herein and the evidence in the record of the proceedings, the DRB concludes that the proposed request to conduct an Accessory On-Farm Business meets the Site Plan Review standards in Section 250, with the following conditions:

- (1) Applicant shall hold educational, recreational, or social events that feature agricultural practices or qualifying products, or both, as defined under 24 V.S.A. § 4412(11)(A)(i)(II).
- (2) Applicant shall operate the AOFB as set forth in 24 V.S.A. § 4412(11)(B) and shall continue to operate the farm in compliance with the threshold criteria for the applicability of the Required Agricultural Practices (RAP) rules as set forth in those rules (6 V.S.A. chp 215, subchapter 2).
- (3) Any multi-day/overnight event shall not exceed eight (8) nights' duration.
- (4) Applicant shall not hold more than two (2) overnight events in any one calendar month.
- (5) Applicant shall not conduct more than ten (10) overnight events in any one calendar year.
- (6) Applicant shall limit the number of attendees at any one event to not more than two hundred (200) people, including staff.
- (7) Applicant shall not deviate from the agricultural subject-matter, maximum duration, frequency, or size of events as stated above, even for a single event, without first obtaining an additional Conditional Use review.
- (8) Overnight camping tent sites shall be located at least 100 feet from neighboring properties.
- (9) Event attendees shall arrive no earlier than the first day of an event and depart no later than the final day of an event or following the eighth night of an event, whichever is shorter. Attendees shall stay on the premises for no longer than 8 consecutive nights.
- (10) Applicant shall obtain Vermont Department of Health permits for on-site food preparation as required for specific events.
- (11) Portable toilets shall be provided on-site, and wastewater shall be trucked off-site.
- (12) The Applicant shall install appropriate directional and informational signage to manage traffic, parking, and on-site vehicular circulation. Said signage shall be installed not more than 3 days prior to an event and be removed no later than 3 days following the conclusion of an event.
- (13) Any lighting installed for the safety of event attendees shall be downcast and shielded and shall not spill onto neighboring properties. Safety lighting for an event shall not be illuminated more than 3 days prior to an event and may remain illuminated for no more than 3 days following the conclusion of an event.
- (14) All temporary tents or canopies erected for events shall meet the setbacks for the ARR zoning district. Event tents shall be installed no earlier than 3 days prior to an event and shall be removed no later than 3 days following the conclusion of an event.

(15) Applicant shall not permit any noise, whether amplified or unamplified, that is unreasonably loud, excessive, or disturbing (e.g., drum circles, drumming, bagpiping, etc.) when measured at the property line or that is unreasonable and substantially incompatible with the surrounding quiet rural area. Applicant shall not allow “fireworks” or incendiaries to be launched before, during, or after events. Quiet hours, from 10 p.m. to 7 a.m., shall be employed during events.

Voting in favor: Campbell, Snow, Leach, Bookmyer-Baker.

Voting to deny: None. Absent: Warshow.

The decision carried, 4-0.

Approved at Marshfield, Vermont, this 8th day of November 2023.

By: 
Dina Bookmyer-Baker, Chair
Marshfield Development Review Board

NOTICE: State permits may be required for this project. The permittee should contact State agencies (<https://dec.vermont.gov/assistance/permits>) to determine what permits must be obtained before any construction may commence.

NOTICE OF RIGHT TO APPEAL: In accordance with 24 V.S.A. §§ 4471 and 4472, this decision may be appealed to the Environmental Division of the Vermont Superior Court within 30 days of the date of this decision. Notice of appeal shall be filed by certified mailing, with fees, to the Vermont Environmental Court and by mailing a copy of the appeal to the Marshfield Town Clerk. Failure of any interested person to appeal this decision to the Vermont Environmental Court within the specified 30-day period shall result in such interested person being bound by this decision or act of the DRB. Thereafter, such an interested person shall not contest, either directly or indirectly, the decision or act of the DRB in any subsequent proceeding, including any enforcement action brought under the provisions of Title 24, Chapter 117 of the Vermont Statutes Annotated. See also *Town of Marshfield Zoning Regulations* Section 235 (Appeals to Environmental Court).