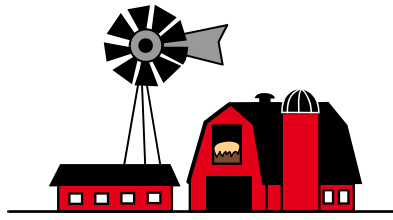


TOWNSHIP COOPERATIVE PLANNING ASSOCIATION

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-- TCPA --

Date: 1/21/2021

To: Haverhill Township Planning Commission
Haverhill Town Board

Re: Conditional Use Permit – HHCUP-21-01
Haverhill Township – Sections 5 & 8

Public Hearing: On Tuesday, February 2nd, 2021 after 7:00 pm the Haverhill Township Planning Commission will hold a public hearing at the Haverhill Town Hall, 4000 55th Ave NE, Rochester, MN, regarding:

Request: An application for a Conditional Use Permit to operate a home-based farm winery and distillery including retail sales and leasing space to a third party within a separate accessory structure. The property consists of 38.87 acres and is located within an A-2 Agricultural Protection District. This is an after-the-fact permit application.

Owner & Applicant: Apples R Us LLC, Jay Clark, 3856 65th Street NE, Rochester, MN 55906

Location: 3856 65th Street NE, Rochester, MN 55906

Partial Legal: Olmsted County PIN #'s 73.08.12.033321 & 73.05.44.033255: Part of the SE ¼ of Section 5 and part of the NE ¼ of Section 8, T105N R15W.

Reviewers:	Olmsted County Public Works	Minnesota Pollution Control
	Minnesota DNR	Rochester-Olmsted County Planning
	Peoples Cooperative Services	Minnesota Department of Transportation
	MN Energy	Olmsted County Public Works
	Olmsted County Assessor	Olmsted County Soil and Water
	GGG Engineering	Olmsted County Health Department
	Century Link	MN Department of Agriculture

Attachments:

1. Application Form & Submittal
2. Location Plat Map
3. Aerial Photo Map
4. Agricultural Building Permit Applications

History:

The applicant operates an apple orchard, produces grapes, and offers seasonal retail sales of apples from this location. Additionally, according to the USDA Farm Service Agency, the applicant also leases space to a third party, in a separate structure, wherein that third party works on their stock cars.

The buildings being used for retail sales and apple storage were constructed as agricultural buildings. The owner/applicant signed an agricultural waiver stating that the buildings would be used for the housing of farm implements, livestock or agricultural produce or products.

Many of the structures on farms are constructed under Section 16B.60 Subdivision 5 which provides an exemption to the building code for active farmers. We have contacted the building inspector on this exemption and are looking for guidance. He was scheduled to do an inspection on Friday January 22, 2021 but the applicant cancelled stating he had a family emergency. The inspection has not been rescheduled as of the date of this report.

The applicant has stated in the past that his son lives in the mobile home which allows for the home-based business as long as the occupant in the home is an integral part of the business. The owner does not reside on the property.

Our records do not indicate a rest room was installed in any of the structures used for retail sales. The only rest rooms are in the mobile home and the building which is leased to a third party for their stock car repair/maintenance. The mobile home has a septic system. The rest room within the leased accessory building is connected to a holding tank.

An irrigation well and a potable water well are located on the property. The irrigation well is used for agricultural production and the potable water supply is used for the mobile home and distillery. We have contacted the Minnesota Department of Health as to the well requirements and use of water for the distillery and as of this date have not had a response.

Ordinance: (in regular type, staff analysis in *italics*)

The applicant is applying for a conditional use permit under the criteria listed in Section 10.02 Home Occupations B. within the Haverhill Township Zoning Ordinance.

- B. Home occupation in the A-1, A-2, or A-3 Agricultural District, upon the granting of a conditional use permit, can be located in accessory structures on the same lot as the dwelling.

The applicant has located a distillery in an accessory building. Within that same building he also offers retail sales of their distilled liquor, apples, and other apple related product; both on site and via the internet. On the application he has indicated he would like this CUP to cover a farm winery as well. The applicant also indicated in conversations, that he is not proposing any tasting rooms thus no tasting of the product on site would be allowed.

Section 4.02 - CONDITIONAL USE:

A conditional use is one that may or may not be compatible with other uses in that district within which it is located. The compatibility of the proposed use must be judged based on particular circumstances of that proposed use and may require the imposing of conditions. The conditional use will be granted after a petition for the permit has been approved by the Haverhill Planning Commission.

- A. Criteria for Granting Conditional Uses: In granting a conditional use, the Haverhill Planning Commission shall consider the effect of the proposed use on the Comprehensive Plan and upon the health, safety and general welfare of occupants of surrounding lands. Among other things, the Commission shall consider the following:

Staff comments and finding are in italics.

1. The proposed use will not be injurious to the use and enjoyment of other property in the neighborhood and will not significantly diminish or impair the values of such property;

There are five non-farm dwellings off and four farm dwelling off 65th Street NE within one quarter mile of the applicant's property. The nearest blacktop roadway is Broadway Ave North which is approximately two miles west of the applicant's access point. To the south are several farm sized parcels which all access Hadley Valley Road NE. Non-farm building sites are north of the site and across the roadway to the east. This property and all adjoining properties are currently zoned A-2.

Without a tasting room and the fact, they are only open seasonally, may increase traffic during the months the retail use is in operation, but not significantly enough to

require roadway upgrades. The Township may consider having the applicant apply additional chloride to the roadway to keep the dust down.

With conditions, this criterion would be met.

2. The proposed use will not impede the normal and orderly development and improvements of the surrounding property;

The area is designated as "Potential Suburban" on Olmsted County Land Use Plan Map. The parcel directly to the south is designated as "Suburban". This indicates that the County has determined the area as eligible for large lot suburban development.

In 2019 the parcel directly to the south, owned by the Bowie Trust, applied to rezone the parcel from A-2 to R-1 Low Density Residential District, which would allow for large-lot suburban development. The Township determined that until the public connecting roadways were upgraded that agricultural zoning should continue.

The Bowie property was approximately one and three-quarters mile from the nearest paved roadway and this property is even further from a paved roadway system, thus it is unlikely that a change in zoning for large lot development would be supported by the Township.

Farming and farm related activities like grapes and apple production can continue, thus, this criterion is met.

3. Adequate utilities, parking, drainage and other necessary facilities will be provided;

Additional parking spaces, septic and well shall be addressed in the conditions. No additional drainage facilities should be required. Electricity is already located on site.

Considering the above information, and the following proposed conditions, it is determined that the proposal would meet this criterion.

4. Adequate ingress and egress will be provided to minimize traffic congestion in the public streets;

Driveway access off of 65th Street is not ideal since it does not meet the roadway at 90 degrees and the approach is a backwards "C" that includes an incline. Semi-tractor and trailers have accessed the parcel using this configuration but as traffic increases along the roadway, upgrades to this access may need to be considered. The applicant should meet with the Township Engineer, Mark Welch, to see how this access could be improved. This will become a recommendation of the permit.

Considering the above information, and the following proposed conditions, it is determined that the proposal would meet this criterion.

5. The traffic generated by the proposed use can be safely accommodated on existing or planned street systems; and the existing public roads providing access to the site will not need to be upgraded or improved by the Township or County to handle the additional traffic generated by the use.

As stated above, seasonal traffic will increase along this roadway system. Upgrades to the access at the property owner's expense should be considered. The Township roadway itself should be adequate to handle the additional traffic. Extra chloride on this stretch of roadway should be considered.

Considering the above information, and the following proposed conditions, it is determined that the proposal would meet this criterion.

6. Adequate measures have been taken or proposed to prevent or control offensive odor, fumes, dust, noise, vibration, or lighting which would otherwise disturb the use of neighboring property.

These items will be considered in the conditions of this permit.

7. The special criteria or requirements indicated in Article X, General Regulations, are complied with;

The following Sections from Article X, General Regulations, found applicable to this proposal, have been considered;

Section 10.04 – Parking Requirements:

Retail Sales requires 1 parking space per 150 feet of floor space.

Section 10.06 – Loading Requirements:

No loading or unloading of trucks is allowed on the public roadway.

Section 10.14 – Noise, Heat, Glare, Vibration, Smoke, Toxic Waste, and Noxious Fumes:

This will be met with the conditions of the permit if approved.

Section 10.16 – Exterior Lighting:

This will be met with the conditions of the permit if approved.

Section 10.18 – Traffic Visibility Zone:

Parcel is not on an intersection so this section not applicable.

8. The water and sanitary systems are or would be adequate to prevent disease, contamination and unsanitary conditions.

Septic and water will need to be reviewed prior to issuance of the permit.

9. The likelihood or necessity of the proposed use increasing the size and number of signs, displays, outdoor lighting, demands on septic systems, water resources, paved areas, and drainage systems.

These items addressed in the conditions.

When deciding on conditional uses to the Floodway, Flood Fringe (FFA and FFB) and the Flood Plain Districts, the following additional factors shall also be considered:

The property is not located in any of the Flood District so 10-22 do not apply.

10. The danger to life and property due to increased flood heights or velocities caused by Encroachments.
11. The danger that materials may be swept onto other lands or downstream to the injury of others.
12. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
13. The relationship of the proposed use to the flood plain management program for the area.
14. The safety of access to the property in times of flood for ordinary and emergency vehicles.
15. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters expected at the site.
16. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
17. The importance of the services provided by the proposed facility to the community.

18. The requirements of the facility for a waterfront location.
19. The availability of alternative locations not subject to flooding for the proposed use.
20. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
22. Based upon technical evaluation of the designated engineer or expert, the Planning Commission shall determine the specific flood hazard at the site and evaluate the suitability of the proposed use in relation to the flood hazard.

When deciding on a conditional use to the A-1, A-2, A-3, and A-4 Agricultural Districts, the following additional factors shall be considered:

23. The amount of prime agricultural land with a crop equivalent rating of 60 or above that would be taken out of production as a result of the use.

The only area which would be considered taken out of production would be the retail sales area and distillery. This would be no more than one acre.

24. The need for new public roads or the need for improvement to existing public roads is minimal.

No new public road is proposed or required.

25. A thorough evaluation of the waterbody and topographic, vegetation and soils conditions on the site must be made to ensure:

- a) The prevention of soil erosion or other possible pollution of public waters, both during and after construction;
- b) The visibility of structures and other facilities as viewed from public waters is limited;
- c) The site is adequate for water supply and on-site sewage treatment; and
- d) The types, uses, and numbers of watercraft that the project will generate are compatible in relation to the suitability of public waters to safely accommodate these watercraft.

25. a-d will be addressed in the conditions.

26. The extent to which the proposed use might interfere with or interrupt present or future agricultural use of the property or adjoining or neighboring properties.

Agricultural uses should be able to continue in the area.

- B. Additional Conditions: In permitting a new conditional use or the alteration of an existing conditional use, the Township Planning Commission may impose, in addition to those standards and requirements expressly specified by this Ordinance, additional conditions which the Township Planning Commission considers necessary to protect the best interest of the surrounding area or the township as a whole. These conditions may include, but are not limited to the following:
1. Increasing the required lot size or yard dimension.
 2. Limiting the height, size or location of buildings.
 3. Controlling the location and number of vehicle access points.
 4. Increasing the street width.
 5. Increasing the number of required off-street parking spaces.
 6. Limiting the number, size, location or lighting of signs and outdoor lighting.
 7. Requiring diking, fencing, screening, landscaping or other facilities to protect adjacent or nearby property.
 8. Designating sites for open space.
 9. Limiting the hours of operation.
 10. Limiting the length of time for which the conditional use may exist.
 11. Increased setbacks from the ordinary high-water level.
 12. Limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted.
 13. Special provisions for the location, design, and use of structures, sewage treatment systems, watercraft launching and docking areas, and vehicle parking areas.

Staff Recommendations:

Staff has reviewed this request in accordance with the applicable standards and provisions, as included in this report. Based upon staff review and analysis included above, staff recommends approval and recommends that at least the following conditions be considered:

Conditions:

1. The applicant may include immediate family members as part of the operation even though they do not reside on the parcel. Additionally, the applicant may no more than 5 full time equivalents working on the property pertaining to this use.
2. Rental of space within the most westerly structure is allowed for personal storage and repair of the renter's own off-road vehicles. No business operations will be allowed.
3. A family member must live on the property for this use to be valid. If a family member no longer lives on the property, then the owner must apply to have the parcel rezoned to Ag/Resource Commercial LiLi, for the use to continue.
4. The applicant must obtain all applicable permits that are required by federal, state, and local agencies.
5. Outside lighting shall be diffused and directed away from adjoining properties or public roads. Down lighting shall be used whenever possible.
6. One advertising sign allowed no larger than 3-foot by 4-foot.
7. Water test results showing that water supply and existing well meets County standards per Article V Section 5.00 of the Olmsted County Well Ordinance shall be provided to the Township on a yearly basis, or the applicant must have bottled water available for the employees and customers. Additionally, copies of water tests results, as required by the Department of Agriculture must be provided to the Township.
8. Rest room facilities must be provided for customers. If a septic system is provided a permit must be issued by the Townships septic inspector. If portable restrooms are used, they must be handicapped accessible with approved sanitary materials for users. The Township Septic Inspector will determine what will be required based upon the use. The conditional use permit is not valid until this issue has been addressed through the Septic Inspector.
9. Off street impervious surfaced parking spaces must be provided to accommodate all customers. No parking along the roadway, even during events will be tolerated. Impervious surfaced parking spaces must be provided at the rate of one space for every 150 square feet of retail space.
10. "Events" that are related to the sale of the wine or spirits must be held inside buildings.

11. Buildings open to the public must meet current state building code for public use, including restrooms and access. If the current buildings are proposed to be used for retail space, the Township Building Inspector must inspect them as to compliance with code. If there is a dispute as to the code it must be resolved via the State Building Code Department. The permit is not valid until this issue has been addressed through the Township Building Inspector.
12. If the property is transferred or leased the new operator/owner must appear before the Township prior to beginning operation. Rezoning may be required.
13. Dust control must be provided for the parking lot and private drive. Additionally, chloride must be applied the full width of the road along the applicants entire property each year.
14. Retail sales are allowed from August 15 to January 1 between the hours of 8 am to 8 pm daily.
15. Review of Conditional Use Permit. This Conditional Use includes, at the discretion of the Town Board, a periodic review to determine compliance with the conditions of the permit, and whether changed circumstances or conditions require changes to the permit. The Town Board may also elect, upon adoption of an appropriate resolution following verification of a complaint that a condition has been violated, to conduct a review of the permit. Said review shall only take place following written notice to the owner of the subject property and a duly noticed public hearing. Following such hearing, the permit may be amended based on changed conditions and experiences with the site.
16. This permit does not allow the business to grow larger than what the traffic generated by the proposed use can be safely accommodated on existing or planned street systems; and the existing public roads providing access to the site will not need to be upgraded or improved by the Township in order to handle the additional traffic generated by the use. At the Town Board's discretion, if a Township road has been damaged due to the extra traffic, the applicant may be required to reimburse the Township for the additional rock used to maintain the road.
17. Violation of the terms of the conditional use permit are subject to the provisions of the CUP and the Township CUP ordinances. Applicant shall have the rights and remedies provided in the CUP. Violations of the CUP may result in revocation of the CUP and the Township shall have all remedies available to it pursuant to its ordinances or otherwise available to it in law or equity. Notwithstanding the foregoing, if Applicant fails to perform any of the terms and conditions of the CUP, the Township shall provide Applicant, in writing, a notice of default and the parties shall hold an initial meeting within ten (10) days following notice of such default for purposes of attempting to resolve the default on an amicable basis unless the Township determines that threat to health, safety or property require a shorter notice

period. If the parties cannot resolve the matter, the Township may issue a notice of violation to Applicant setting forth, in detail, the action(s) that must be taken to remedy the alleged default and a reasonable time-period for curing the default.

18. Reimbursement of Township costs. If a permit is revoked, the permittee shall also reimburse the Township for the Township's reasonable costs including collection and reasonable attorney's fees incurred in connection with such revocation.