

**TOWN OF HINESBURG  
DEVELOPMENT REVIEW BOARD  
FINDINGS OF FACT, CONCLUSIONS & ORDER**

**For Allen and Andrea Lavalette  
Conditional Use for a Home Occupation Cordwood Operation  
Tax Map 06-01-44.000**

Based on the public hearing and the documents contained in the “document” file for this proposal, the DRB enters the following Findings of Fact, Conclusions and Order.

**FINDINGS OF FACT**

1. Allen and Andrea Lavalette, hereafter referred to as the Applicants, are requesting conditional use approval for a home occupation commercial cordwood operation per Section 5.1.2 of the Hinesburg Zoning Regulations (HZR) on their 10.1-acre property located on 126 Beaver Pond Road in the Rural Residential 2 Zoning District (RR2). Beaver Pond Road is a private road providing access to ten properties, with access to the Texas Hill Road. The proposed use is to be located outside near the southwestern corner of the property. The location map provided by staff shows the surrounding neighborhood and the proximity of nearby homes. The DRB reviewed this application with an in-person meeting with Zoom access on December 20, 2022, with a site visit on January 14, 2023, and with another in person meeting with Zoom access on January 17, 2023. The Applicants were in attendance at the meetings and the site visit. Their Engineer, Roger Dickinson, attended the December 20, 2022 meeting.
2. The Applicants propose to process 100-cords of wood per year as described in the narrative dated October 21, 2022. They propose to have logs delivered in the summer and fall. One cord requires about seven logs. Approximately 12-15 truckloads of logs, with about 50 logs per truckload would be delivered per year. Those logs would be cut using a hydraulic wood processor into firewood during the winter months, and delivered by the Applicants to customers by a one-ton pickup truck throughout the year. There would be an additional 100 round trips loading and delivering cords of wood. They propose to store and cut the wood on the southernmost part of their property as shown on the submitted natural resource map. The Applicants testified at the hearing that they would need a day and a half to cut 7 or 8 cords of wood.
3. The Applicants wanted to apply for a commercial cordwood operation per Section 3.4.3(16) of the HZR. This is not possible because Section 2.5.5 of the HZR limits properties in the RR2 to having only one principal use. The Applicants residence is on the subject property. A cordwood operation would be a second use. However, the Applicants could apply for a conditional use home occupation per Section 5.1.2 of the HZR. A cordwood operation reviewed under either Section 3.4.3(16) or 5.1.2 of the HZR would need to satisfy the requirements of Sections 4.2.2 and 5.12 of the HZR. A home occupation also needs to satisfy the performance standards requirements of Section 5.1.3 of the HZR, which is similar to the performance standards requirements of Section 5.12 of the HZR. Site plan review per Section 4.3 of the HZR is not required for home occupations under Section 5.1.2.
4. The Applicants’ property is triangular shaped with a small frontage on Texas Hill Road and a long frontage along Beaver Pond Road. There are some moderate to steep slopes on each side of the Applicants’ residence. There are some steep slopes along the southern property line to the

south of the area the Applicants are proposing their business. The location of their southern property line was not clearly known by the Applicants during the site visit.

5. The Applicants started the business a couple of years ago without any permits. Notices of violation were issued in June and July of 2021. The Applicants did not appeal the violation notices, but also did not cease the operation immediately. The Town sought to enforce the violation by taking the case to the VT Superior Court, Environmental Division. The case was settled through mediation. As part of the resolution, the Applicants testified that they stopped the operation on or about August 1, 2022, and that they will not process firewood on their property for sale to others until they make a conditional use application and receive approval. In addition to the area shown on the resource map, the Applicants previously processed and stored wood, and parked vehicles on their property near the bottom of Beaver Pond Road, and within the Beaver Pond Road right of way adjacent to their property.
6. A concern has been raised that wood chips are entering this waterway and causing problems. The woodchips appear to have been a problem when the Applicants were operating the business at the bottom of Beaver Pond Road – adjacent to the stream and near the drainage swale.
7. There may be a wetland on the Applicants’ property close to Texas Hill Road. There is a unmapped stream along the northern side of the property. There is a drainage swale along the Beaver Pond Road right-of-way, on the side away from the roadway of the parking area that the Applicants first used. Both the stream and the roadside swale discharge to a drainage swale along Texas Hill Road and then crosses Texas Hill Road to wetlands and streams where woodchips were observed.
8. The Applicants propose hours of operation of 8am-4pm Monday through Friday to process the wood, and that the processing would occur over a two-to-three-week period in winter. There are no proposed structures. The processing would occur outdoors. The processing operation would largely be a one-person operation, possibly with assistance from one to two family members. The firewood processing machine is already located in the processing area. The application does not propose any new lighting, water, sewer, nor landscaping.
9. Access to the Applicants’ property is from Beaver Pond Road, which is a private road serving 10 properties, including those on Spencer Hill Road. Nine of these properties are developed with single family residences. Beaver Pond Road accesses Texas Hill Road, which is a public right-of-way. The other eight property owners have agreed to share the maintenance costs for Beaver Pond Road. The Applicants do not want to join this association, but claim that they place gravel on the roadway near their residence. Concerns have been raised about damage to the roadway by the trucks delivering logs to the Applicants’ property. The neighbors testified that the Applicants are not coordinating with the maintenance work done by the neighbors and that the work done by the Applicants is not adequately repairing damage caused by the Applicants.
10. Nine letters or emails of concern were submitted, seven of which were from abutting landowners. Six of the other eight properties with year-round single-family residences that use Beaver Pond Road to access Texas Hill Road submitted letters or emails. None of these submittals were supportive of the home occupation. These letters and emails included photos and raised the following concerns:
  - The noise from wood processor, trucks, and tractor is extremely noticeable and continues for a long duration. The noise generated disturbs the quality of life. The earlier operation used gas powered chainsaws that was very loud. They dispute the comment on steep

slopes stopping noise, but rather the terrain amplifies the noise. That they can hear the noise from the home occupation inside their homes with the doors and windows closed.

- The proposed use has created ruts and pot holes in the roadway and firewood debris in the roadway and a stream. Several letters discuss that the Applicants will not join the road association. Comments at the hearing dispute the effectiveness of some work that was claimed to be done by the Applicants on Beaver Pond Road.
- Concern regarding the use's effect on Texas Hill Road.
- That the home occupation use is not screened and is visible from several neighboring properties.
- That the Applicants used a portion of the shared right-of-way for their cordwood business without permission from the association.
- That the Applicants started the use before getting a permit to do so.
- Disputes the Applicants narrative stating that only two family members at most will be working at the home occupation, when they have observed three members of the family and additional people working at the home occupation.
- That the home occupation restricts pedestrian use and may hinder access by emergency vehicles.
- Several letters describe aggressive behavior by the Applicants.

11. The DRB had a site visit on the Lavalette's property on Saturday morning January 14, 2023. The Applicants demonstrated the use of their hydraulic wood processor and the wood being conveyed from the wood processor on to their pickup truck. Board observations included the following:

- The steepness of the roadway, which is about 15% as measured on the Town's GIS program.
- The sound coming from the wood processor and the conveyance of the wood to the truck was noticeable. In short bursts the noise is bearable, but would be a concern if continued over time.
- The noise and vibrations made from the operation is noticeable on adjacent properties, the Beaver Pond roadway, and the greater area.
- The existing screening of the proposed home occupation was inadequate. The home occupation was clearly visible from the adjacent property.
- There was too much snow on the roadway to see the damage provided in pictures.

12. The conditional use application was received and deemed complete on November 14, 2022. The Applicants submitted a narrative and a natural resources plan, both by Trudell Consulting Engineers. Staff has provided a location map. Nine letters/emails of concern were submitted from Michael & Doreen Patterson, Brian Collier & Kristin Dykstra, Peter & Phyllis Modley, Bob & Leanne Klyza Linck, Roger & Joyce Boyer, Natasha Duarte & Charles Abry, Emily & Chris Thomas, Barbara Forauer, and David Tucker. All these submissions are contained in the document file (06-01-44.000) in the Hinesburg Planning & Zoning office.

13. The following members of the DRB were present for the conditional use and site plan review for a cordwood operation home occupation on December 20, 2022, constituting a quorum: Dennis Place, Dick Jordan, Jon Slason, Ted Bloomhardt, John Lyman, Branden Martin, Michael Webb and Jeff Daugherty. The following members of the DRB were present for a site visit on January 14, 2023: Dennis Place, Dick Jordan, Jon Slason, Ted Bloomhardt, John Lyman and Jeff Daugherty. The following members of the DRB were present for a continuation of the home occupation application on January 17, 2023, constituting a quorum: Dennis Place, Dick Jordan,

Jon Slason, Ted Bloomhardt, John Lyman, Branden Martin and Michael Webb. See the official meeting minutes for a list of others present at the meetings.

14. The December 20, 2022 public hearing was warned in *The Citizen* on December 1, 2022.
15. Similar home occupation applications have obtained approval from the DRB by locating the use far from property lines and/or placing operations that create noise inside structures. These approved home occupation applications did not share an access with other residential properties.

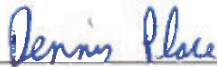
### CONCLUSIONS

1. Since the principal use on the Applicants' property is an existing residence and Section 2.5.5 of the HZR limits properties in the RR2 to having only one principal use, reviewing this application as a conditional use commercial cordwood operation per Section 3.4.3(16) of the HZR is not approvable. Review of the proposed use as a permitted home occupation per Section 5.1.1 of the HZR is not approvable because such home occupations are required to "be conducted wholly within the principal dwelling structure", which is not proposed. The Applicants can apply for a conditional use home occupation per Section 5.1.2 of the HZR. Review per Sections 4.2.2, 5.1.3 and 5.12 of the HZR is also required.
2. The proposed number of employees described in Findings of Fact #8, or as alleged in the public comments described in Findings of Fact #10 conforms to the requirements of Section 5.1.2(3) of the HZR.
3. The proposed heavy truck traffic to bring 700 logs per year on a private road as described in Findings of Fact #2 would be in excess of the heavy truck traffic volume that is characteristic of the rural residential neighborhood's private roadway and does not conform to the requirements of Section 5.1.2(4) of the HZR.
4. The Applicants testified that they need a day and a half to cut seven cords of wood. Therefore, they would need 20 days, or four weeks (working Monday-Friday) to cut 100-cord of wood. This is significantly longer than the two to three weeks stated indicated by the Applicants. Observations from the site visit appear to indicate that more time would be required to cut the logs into cord wood than what was stated in the narrative. Considering the noise and vibrations observed by the DRB at the site visit described in Findings of Fact #11, the concerns of the residents described in Findings of Fact #10, and the duration of the activity, the proposed development does not conform to the exterior impacts requirements of Section 5.1.3(3) of the HZR. The evidence indicates that the proposed development will cause disturbance to the occupants of surrounding properties. For the same reasons, the proposed development does not conform to the no excess noise or vibration requirements of Sections 5.12.1 & 5.12.2 of the HZR.
5. The proposed development would create noise, vibrations, and damage to the roadway that has been documented by several neighbors. The truck traffic, processing noise, and exterior storage would also adversely impact the character of the neighborhood. The proposed development does not conform to the requirements of Sections 5.1.3(5) & 4.2.2(2) of the HZR. Furthermore, the Applicants have not demonstrated their willingness or ability to improve and maintain Beaver Pond Road to support the proposed development, or to mitigate road damage that would likely stem from operation.

6. Adverse impacts to adjacent properties and the neighborhood include: noise and vibrations that can be heard and felt on adjacent properties; truck traffic that could block Beaver Pond Road and restrict use by pedestrians and emergency vehicles; documented damage to the roadway impacting access to the other residential properties on Beaver Pond Road and Spencer Hill Road. The proposed development does not conform to the requirements of Sections 4.2.2(6) of the HZR for adverse effect on the appropriate use of adjacent property, and 4.2.2(7) of the HZR for adverse effect on public welfare in any other manner.

**ORDER**

Based on the Findings of Fact and Conclusions set forth above, the Hinesburg DRB denies the proposed conditional use home occupation cordwood operation application.



Development Review Board

February 7, 2023

Date

Board Members participating in this decision: Dick Jordan, Jon Slason, Ted Bloomhardt, Michael Webb and Jeff Daugherty voted in favor of this decision to deny the application. Dennis Place and Branden Martin voted against this decision to deny the application.

Vote to approve this decision: 5-2

**30-day Appeal Period:** - An "interested person", who has participated in this proceeding, may appeal this decision to the Vermont Superior Court, Environmental Division within 30 days of the date this decision was signed. Participation shall consist of offering, through oral or written testimony, evidence or a statement of concern related to the subject of the proceeding. See V.S.A. Title 24, Chapter 117, Section 4465b for clarification on who qualifies as an "interested person".

Notice of the appeal, along with applicable fees, should be sent by certified mail to the Vermont Superior Court - Environmental Division. A copy of the notice of appeal should also be mailed to the Hinesburg Planning & Zoning Department at 10632 VT Route 116, Hinesburg, VT 05461. Please contact the Court for more information on filing requirements, fees, and current mailing address.

**State Permits:** - It is the obligation of the Applicant or permittee to identify, apply for, and obtain required state permits for this project prior to any construction. The VT Agency of Natural Resources provides assistance. Please contact the regional Permit Specialist at 879-5676 (111 West St, Essex Jct., VT 05452) for more information.

All new residential and/or commercial construction including additions, alterations, renovations, and repairs are subject to either the Vermont Residential Building Energy Standard (RBES) - 21 V.S.A. § 266, or the Vermont Commercial Building Energy Standard (CBES) - 30 V.S.A. § 53. A certificate of occupancy cannot be issued until the required RBES or CBES certification has been filed in the town records.