

CONDITIONAL USE HOME OCCUPATION for a CORDWOOD OPERATION

Owner & Applicant: Allen and Andrea Lavalette P.O. Box 583, Hinesburg, VT 05461	Property Location, Tax Map #, Area & Zoning District: 126 Beaver Pond Road, 06-01-44.000, 10.1-Acres, Rural Residential 2 Zoning District (RR2)
--	--

BACKGROUND – 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 RR2. Beaver Pond Road is a private road providing access to ten properties, with access to the Texas Hill Road. The location for the proposed use is at the southwestern corner of the property. The location map provided by staff shows the surrounding neighborhood and the proximity of nearby homes.

Section 2.5.5 of the HZR limits properties in the RR2 to having only one principal use. If the property did not have a residence or other use, then the Applicants could apply for a commercial cordwood operation per Section 3.4.3(16) of the HZR. Since the Applicants’ residence is on the property, a second principal use as listed in Section 3.4.3(16) is not possible; however, the application can be reviewed as a conditional use home occupation per Sections 5.1.2 or 5.2 of the HZR. Sections 5.1.2 and 5.2 of the HZR refer to the same home occupation performance standards and also require review under the general conditional use standards in Section 4.2.2 of the HZR. Both Section 5.1.2 and 5.2 of the HZR allow for exterior storage of materials if they are completely screened from adjoining properties and roadways. Section 5.2 (larger home occupation) allows for the use of larger accessory structures, but also requires site plan review under Section 4.3 of the HZR. The Applicants’ proposal does not include any accessory structures, so review under section 5.1.2 appears to fit the proposal and be the least complicated. If this application was on a non-developed property and applied for a conditional use commercial cordwood operation per Section 3.4.3(16) of the HZR, then the performance standards of Section 5.12 of the HZR, which are similar to those of Section 5.1.3 of the HZR, would apply.

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 – approximately 12-14 loads. Those logs would be processed into firewood during the winter months, and delivered to customers throughout the year. They propose to store and cut the wood on the southernmost part of their property as shown on the submitted natural resource map. There are no proposed structures. The processing operation would largely be a one-person operation, possibly with assistance from one to two family members. The narrative states that a firewood processing machine is already located in the processing area.

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 may be a wetland close to Texas Hill Road. There is a waterway/unmapped stream along the western side of the property. A concern has been raised that wood chips are entering this waterway and causing problems.

The conditional use application was received and deemed complete on November 14, 2022. The Applicant submitted a narrative and a natural resources plan, both by Trudell Consulting Engineers. Staff has provided a location map. There have also been five letters of concern submitted as of the

writing of this staff report. All these submissions are contained in the document file (06-01-44.000) in the Hinesburg Planning & Zoning office.

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 represented 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 Applicant previously 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. The letters from people from the area list road maintenance, excessive noise, limiting the use of adjacent properties, traffic from others working on the business, created a pull off area to park vehicles, lack of screening, hazardous waste and water pollution concerns.

The December 20, 2022 public hearing was warned in *The Citizen* on December 1, 2022

STAFF REVIEW – The difference between a permitted use and a conditional use is that a permitted use is considered valid anywhere in the zoning district if the site plan criteria can be met. A conditional use may require special conditions to be appropriate, and may not be appropriate on all the properties in a zoning district. The Applicants' property may not be suitable for the proposed use. Given the prior, unpermitted use, the nearby residents have an idea of how this proposed use would operate and affect surrounding properties, which they have relayed in submitted letters.

Two recent approved applications are comparable. One was the Bush home occupation for a metal working business, which was approved on April 16, 2019. This was to the east on Texas Hill Road, and the Applicant has direct access to Texas Hill Road, and conducted their business in an insulated structure that limited noise. The other was the Place larger home occupation for cordwood processing, which was approved on February 15, 2022. This was a cordwood operation that accessed VT Route 116, and is located in the middle of a property that is nearly four times the area, that is well screened and distant from adjoining landowners.

The hours of operation and number of employees appear to conform to section 5.1.2 of the HZR. The heavy truck traffic may be fine on Texas Hill Road, but appears to be excessive for the residential private road, Beaver Pond Road, which presents a compliance issue per Section 5.1.2(4) and Section 4.2.2 of the HZR. Per the testimony of the neighbors, the prior, unpermitted use was extremely problematic, and the proposed use appears to have similar issues with regard to exterior impacts (particularly noise, vibration and possibly pollution) and changes to the character of the neighborhood – both performance standards in Section 5.1.3 of the HZR.

In review of the conditional use standards of Section 4.2.2 of the HZR, the following concerns are noted:

- The proposed use, according to five submitted letters, has had a detrimental effect on the character of the neighborhood with excessive noise, traffic, pollution and road maintenance, that does not conform to Section 4.2.2(2) of the HZR.
- Has apparently had a negative effect on traffic on the private Beaver Pond Road, which does not conform to Section 4.2.2(3) of the HZR.

- Has apparently had a negative effect on the shared, private road and the use of adjacent properties as described in the five submitted letters, which does not conform to Section 4.2.2(6) of the HZR.
- May have discharged pollutants into a stream, which does not conform to Section 4.2.2(7) of the HZR.

STAFF COMMENTS – Items that the Applicants will need to address at the hearing.

1. **Noise & Vibrations (Section 5.1.3(3) of the HZR)** – This seems to be the greatest concern of the nearby residents, who submitted letters of concern. Also submitted, but was not saved to the Town website due to format, was a recording of the noise taken from one of the neighboring properties. The noise appears to limit the use of adjacent properties. The Applicants could propose to build an insulated structure and provide screening to lessen the amount of noise heard on adjacent properties. A site visit could allow the DRB to review the noise of the proposed use.
2. **Road Maintenance, Traffic, Circulation & Emergency Services (Sections 5.1.2(4), 4.2.2(3), 4.2.2(6) of the HZR)** – It appears that the truck traffic is having a detrimental effect on the roadway, is limiting vehicular and pedestrian circulation, and may affect access to emergency services. The Applicants will need to propose how the Beaver Pond Road access will be maintained with this use, and will need to figure out a better way access the area of use without restricting use of Beaver Pond Road to the other residences. Damage to Beaver Pond Road by the traffic generated from this use may simply be too damaging to this road without appropriate improvements. Even with such improvements, the proposed traffic may be incompatible for this sort of a residential, neighborhood road.
3. **Screening of vehicles and exterior storage (Section 5.1.3(2) of the HZR)** – The Applicants appear to need to find a better location to store their vehicles and materials that are part of this use and/or to propose adequate screening.
4. **Stream pollutants (Section 4.2.2(7) of the HZR)** – The Applicants appear to need to provide adequate water quality treatment to address this concern.
5. **Character of Neighborhood (Sections 5.1.3(5) & 4.2.2(2) of the HZR) & Use of adjacent property (Section 4.2.2(6) of the HZR)** – The proposed use appears to have had a negative effect on the neighborhood and the use of adjacent properties. Noise could potentially be addressed if the processing operation was inside a suitable structure.

Respectfully submitted,

Mitchel Cypes, P.E.,
Hinesburg Development Review Coordinator