



TOWN OF UNDERHILL

APPEAL REQUEST APPLICATION

OFFICE USE ONLY

PROPERTY CODE: PV633
PROPERTY ADDRESS: 633 Pleasant Valley Rd

ZONING DISTRICT(S):

- ☐ Underhill Flats Village Center
- ☐ Underhill Center Village
- ☐ Rural Residential
- ☐ Water Conservation
- ☒ Mt. Mansfield Scenic Preservation
- ☐ Soil & Water Conservation

DRB Docket #: APPEAL - ZA
Received Date: 4/15/2024
Hearing Date: 5/6/2024
Application Completion Date: 4/17/2024
(See Requirements Below)

SUBJECT PROPERTY ADDRESS: 633 Pleasant Valley Road

Appellant Information	Landowner Information (if Different)
NAME(S): Nicholas Borrell, Heather Sikorsky, Russell Vogel, Patricia Vogel	NAME(S): Gordon Williamson
MAILING ADDRESS: 611 and 612 Pleasant Valley Road Underhill, VT	MAILING ADDRESS: 623 Pleasant Valley Road Underhill, VT
EMAIL ADDRESS: Please contact counsel, jbarnard@dinse.com	EMAIL ADDRESS:
PHONE NUMBER: (802) 864-5751	PHONE NUMBER: (802) 734-2824

Description of the Decision Being Appeal & Grounds for Appeals (include References to Applicable State and Local Regulations)

Please see the attached Notice of Appeal.

Requested Relief:	Appeal Request
Please see the attached Notice of Appeal.	Required Materials ☒ Appeal Request Application ☒ Application Fee (\$150.00) ☐ Copies of a Site Plan (if Applicable) ☐ State Project Review Sheet (if Applicable) ☒ Other Necessary and Supporting Information/Documentation ☐ Written Waivers/Modifications Requests ☐ If applicable, Zoning Permit Application ☐ If applicable, Development Review Application <i>Please Checkoff All Submitted Materials</i>

By signing this form, the Appellant agrees to pay all required fees, including hearing fees, notices, publication fees, recording fees and postal fees

APPELLANT SIGNATURE
/s/ Justin Barnard

DATE
4/15/24

As Duly Authorized Agent for Appellants

**TOWN OF UNDERHILL
DEVELOPMENT REVIEW BOARD**

April 1, 2024 Decision From
Interim Zoning Administrator Regarding
633 Pleasant Valley Road

NOTICE OF APPEAL

Nicholas Borrell, Heather Sikorsky, Russell Vogel, and Patricia Vogel (“Appellants”), by and through their attorneys, hereby give notice of their appeal of the attached April 1, 2024 Decision of the Interim Zoning Administrator to the Town of Underhill Development Review Board, pursuant to 24 V.S.A. § 4465(a). As grounds for their appeal, Appellants state as follows:

1. Nicholas Borrell and Heather Sikorsky reside at 612 Pleasant Valley Road, Underhill, Vermont, 05489.
2. Russell and Patricia Vogel reside at 611 Pleasant Valley Road, Underhill, Vermont, 05489.
3. This appeal involves a firewood processing operation at 633 Pleasant Valley Road, Underhill, Vermont.
4. The following regulatory provisions are applicable:
 - A. The definitions of “Forestry” and “Sawmill” contained in Article XI, § 11.2 of the Underhill Land Use Regulations.
 - B. The definition of “Forestry operations” in 24 V.S.A. § 4413(d)(1)(c).
 - C. The permitted and conditional uses allowed in the Mt. Mansfield Scenic Preservation District, as outlined in Article II, Table 2.6 of the Underhill Land Use Regulations.

D. The performance standards set by § 3.14 of the Underhill Land Use Regulations.

E. The Town of Underhill Nuisance Ordinance.

5. Appellants seek a declaration that:

A. The firewood processing operation at 633 Pleasant Valley Road is not a forestry operation as defined by the Underhill Land Use Regulations or 24 V.S.A. § 4413(d)(1)(c).

B. The firewood processing operation at 633 Pleasant Valley Road is an unlawful sawmill in the Mt. Mansfield Scenic Preservation District, as it is neither a permitted nor conditional use.

C. Even if the firewood processing operation at 633 Pleasant Valley Road were a permitted use, it is in violation of the Performance Standards of the Town of Underhill Land Use Regulations due to exceedance of noise standards.

D. Even if the firewood processing operation at 633 Pleasant Valley Road were a permitted use, it is in violation of the Town of Underhill Nuisance Ordinance due to exceedance of noise standards.

6. Appellants are entitled to this relief because the operation at 633 Pleasant Valley Road consists of processing logs from offsite forestry operations into firewood and other woods products, and because noise levels on neighboring properties from the firewood processing operation exceed the applicable standards.

Dated at Burlington, Vermont this 15th day of April, 2024.

By: /s/ Justin Barnard

Justin Barnard, Esq.

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Town of Underhill

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April 1, 2024

Russ & Tricia Vogel
611 Pleasant Valley Road
Underhill, VT 05489

Dear Russ & Tricia,

In October of 2023 Russ came to the town offices and met with me, at which time he presented me with a letter dated October 16, 2023 expressing your families concerns about a firewood processing operation being carried out by Gordon Williamson on land owned by Joseph & Anne Marie Tisbert, Parcel Code: 633 Pleasant Valley Road. Your residence is located approximately 300 feet southwest of where the processing operation was taking place. Your concerns primarily seem to be centered around the noise and hours of operation.

I reached out to Gordon Williamson and asked if he would cease operations so I could have time to look into the regulations. Gordon agreed, and after cleaning up and filling the orders that he needed to do, which I understand included wood for the Tisbert family and one or two other clients, by Thanksgiving the processing of wood stopped. Gordon has continued to stockpile logs on the site, throughout this past winter, but to the best of my knowledge the processor was removed from the site and no processing has taken place to date.

The crux of the issue at hand is whether this sort of firewood processing operation is an allowed use, which requires a permit, a use that is not allowed, or is a forestry practice, exempt from regulation by the town.

In reviewing our Land Use Regulations, adopted March 1, 2011 and last amended March 3, 2020; Forestry, which also references other terms, are defined as follows:

Forestry: The use and management of timber land for purposes of conservation and/or wood production and timber harvesting. This definition specifically excludes sawmills, lumber yards and other similar facilities used for the processing and/or manufacturing of wood and wood products, with the exception of portable sawmills and other equipment used on site in association with timber harvesting activities. See also **Accepted Management Practices. Light Industry.**

The subject property lies in the Mount Mansfield Scenic Preservation District. Forestry is a permitted use within this zoning district as it is within all of Underhill's other Zoning Districts.

Accepted Management Practices (AMPs): Accepted practices for silviculture (forestry) as currently defined by the Commissioner of the Vermont Department of Forests, Parks and Recreation (see exemptions under Section 10.2). See also **Forestry**.

Light Industry: A facility not exceeding 10,000 square feet in total gross floor area, used for the manufacture, processing, fabrication, testing and/or assembly of products. This may also include associated research and development, warehousing and shipping activities. A light industry shall meet all applicable requirements of these regulations, including performance standards. The processing of agricultural products produced on the premises where produced shall not be deemed to be manufacturing. See also Home Industry, **Sawmill**.

Sawmill: A wood processing facility, including structures and yard areas, where logs are stored and processed into lumber and other wood products. Portable chippers and sawmills used in conjunction with active logging operations are excluded from this definition. See also **Forestry**, **Light Industry**.

Sawmills are not an allowed use in the Mt. Mansfield Scenic Preservation Zoning District. However, Portable chippers and sawmills used in conjunction with active logging operations are excluded from this definition, see above

By all accounts the definition of forestry, according to our current regulations, appears to be relative to where the wood harvesting occurs. To the best of my knowledge the logs being processed are coming from outside forestry operations which, according to our definition would put this type of operation into a different category other than forestry.

The site where the processing of firewood is taking place is also within a Zone A Special Flood Hazard Area, according to the 2011 FEMA FIRM Maps. Per Section 6.4 (B)(3) Silvicultural (forestry) activities conducted in accordance with Vermont Department of Forest, Parks and Recreation Accepted Management Practices (AMPs) are exempt from our Flood Hazard Area Regulations.

When our Land Use Regulations were first adopted the definition of a forestry operation was defined by the Commissioner of the Vermont Department of Forests, Parks and Recreation and was relative to where the timber harvesting was occurring. Title 10 VSA Section 2602 (6): "Forestry operation" means activities related to the management of forests, including a timber harvest; pruning; planting; reforestation; pest, disease, and invasive species control; wildlife habitat management; and fertilization. "Forestry operation" includes the primary processing of forest products of commercial value on a parcel **where the timber harvest occurs**.

However, in 2018 the definition of a Forestry operation was expanded to sites that is not the harvest site.

Title 12 VSA Section 5766 (3):

“Forest product” means logs; pulpwood; veneer; bolt wood; wood chips; stud wood; poles; pilings; biomass; fuel wood; maple sap; or bark.

Title 12 VSA Section 5766 (3):

“Forestry operation” means activities related to the management of forests, including timber harvests; removal, storage, or stockpiling of vegetation or timber; pruning; planting; lumber processing with portable sawmills; reforestation; pest, disease, and invasive species control; wildlife habitat management; and fertilization. “Forestry operation” includes one or both of the following:

(A) the primary processing of forest products on a parcel where a timber harvest occurs; and

(B) the primary processing of forest products at a site that is not the harvest site, provided that:

(i) the person conducting the forestry operations owns or has permission to use the site for the forestry operation;

(ii) the forestry operation was established prior to surrounding activities that are not forestry operations;

(iii) the site is used by the forestry operation for 12 or fewer months in any two-year period or 24 or fewer months in any five-year period;

(iv) the forestry operation complies with all applicable law; and

(v) only portable, nonpermanent equipment is used to process the forest products at the site.

After careful consideration, research, and further consideration given to all the parties involved I find the following:

- (i) I find that Gordon Williamson had verbal permission from the owners of the property, Joseph & Anne Marie Tisbert, when he was conducting his operation and on January 16, 2024, I was presented a signed Lease & Land Management Agreement executed by Joseph & Anne Marie Tisbert and Gordon Williamson to use**

the field owned by the Tisberts for Forestry operations limited to no more than 12 months within a 24-month period or 24 months within a 5-year period.

- (ii) I find that the current working farm, which is conserved by the American Farmland Trust, which is enrolled in the Vermont Current Use Program, where the forestry operation was operating, and has been in existence for many years, probably well over a hundred years and probably more. It is difficult to be certain what the law means by “surrounding activities that are not forestry operations” but after careful consideration and consultation with various experts in the field of forestry I conclude “surrounding activities that are not forestry operations” to mean something different from residential dwellings, perhaps a restaurant, or a school, or some type of business. If the legislature meant to include residential dwellings, I believe they would have stated so. It is also my opinion that consideration needs to be given in favor of the working farm, the current owners and their predecessors, and this farm has been in existence most likely prior to any of its surroundings.
- (iii) *the site is used by the forestry operation for 12 or fewer months in any two-year period or 24 or fewer months in any five-year period. Refer to Lease & Land Management Agreement, as stated above.*
- (iv) *the forestry operation complies with all applicable law:* The forestry operation must comply and adhere to all applicable laws and rules controlling forestry operations by the State of Vermont.
- (v) *only portable, nonpermanent equipment is used to process the forest products at the site.* I find that that equipment appears to all be portable and nonpermanent in nature.

Section 3.14(B) Agriculture and Forestry are exempt for Underhill’s Performance Standards.

Section 3.18(B)(10) Forestry operations shall at minimum observe Accepted Management Practices (AMPs) as defined and administered by the Vermont Department of Forests, Parks and Recreation.

Title 12 VSA Section 5757 Forestry operations; protection from nuisance lawsuits

(a) Except as provided for under subsections (b) and (c) of this section, a person conducting a conventional forestry practice shall be entitled to a rebuttable presumption that the conventional forestry practice does not constitute a public or private nuisance if the person conducts the conventional forestry practice in compliance with the following:

(1) the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont as adopted by the Commissioner under 10 V.S.A. § 2622; and

(2) other applicable law.

(b) The presumption under subsection (a) of this section that a person conducting a conventional forestry practice does not constitute a nuisance may be rebutted by showing:

(1) a nuisance resulted from the negligent operation of the conventional forestry practice;

(2) a nuisance resulted from a violation of State, federal, or other applicable law during the conduct of the conventional forestry practice; or

(3) clear and convincing evidence that the conventional forestry practice has a substantial adverse effect on the health, safety, or welfare of the complaining party.

(c) Nothing in this section shall be construed to limit the authority of State or local boards of health to abate nuisances affecting the public health. (Added 2017, No. 198 (Adj. Sess.), § 1, eff. May 30, 2018.)

However, according the Vermont Department of Forest, Parks, and Recreation; nuisance lawsuit protection does not apply to logging that is not part of the management of forests. For example, if logging is a component of converting the land to a non-forest use, it is not a forestry operation and not entitled to this protection.

In conclusion and based upon the foregoing, and in addition to the fact that our regulations state that Forestry operations shall at minimum observe Accepted Management Practices (AMPs) as defined and administered by the Vermont Department of Forests, Parks and Recreation. I find that the forestry operation being conducted by Gordon Williamson on property owned by Joseph & Anne Marie Tisbert, Parcel Code: 633 Pleasant Valley Road, is an exempt forestry operation and is not subject to Underhill's Land Use Regulations. This is my opinion based upon my professional judgement and should not be misconstrued as a legal opinion.

As a suggestion, I strongly encourage all the parties involved to work with one another to possibly come up reasonable hours of operations so the surrounding residents know what to expect.

Kind Regards,



Brad Holden
Interim Zoning Administrator
802-899-4434 Ext 5
bholden@underhillvt.gov

cc: Joseph & Anne Tisbert, 5901 Pleasant Valley Road, Cambridge VT 05444; Gordon Williamson, 623 Pleasant Valley Road, Underhill, VT 05489; Nicholas Borrell & Heather Sikorsky, 612 Pleasant Valley Road, Underhill, VT 05489

Section 10.5 Appeals

A. Zoning Administrator Decisions. An applicant or other "interested person" as defined under the Act [§4465] and Section 11.2 may appeal a decision or act of the Zoning Administrator within 15 days of the date of the decision or act by filing a notice of appeal with the Clerk of the Development Review Board, and by filing a copy of the notice with the Zoning Administrator.

Notice of Appeal. A notice of appeal filed with the Development Review Board under this section shall be in writing and include the following information:

- a. the name and address of the appellant;
- b. a brief description of the property with respect to which the appeal is taken;
- c. a reference to applicable provisions of these regulations;
- d. the relief requested by the appellant, including any request for a variance from one or more provisions of these regulations; and
- e. the alleged grounds why such relief is believed proper under the circumstances.

Appeal by April 16, 2024