

**Zoning Board of Adjustment
NOTICE OF DECISION**

Conditional Use

Application No.: 18.09.17.Z.

Applicant: Douglas Reed Jr.

Landowners: Douglas Reed Jr., Douglas Reed Sr.

Project Location: Next to 1802 Plains Rd.

Parcels involved: 04 02 22, 04 02 23, 08 01 14

Introduction and Procedural History

1. This proceeding involves review of a Conditional Use application for a firewood processing and storage use submitted by Douglas Reed Jr. under the Town of Weathersfield, Vermont Zoning Bylaws.
2. A copy of the application is available at Weathersfield Town Office.
3. Notice of a public hearing was published in the Valley News.
4. Notice of a public hearing was posted at the following places:
 - a. The municipal clerk's office
 - b. Town of Weathersfield, VT website
 - c. Proctor Library website and bulletin board
 - d. Ascutney and Perkinsville Post Offices
 - e. Ascutney Market
5. A copy of the notice of a public hearing was mailed to abutting property owners.
6. The application was considered by the Zoning Board of Adjustment at a public hearing on October 11th, 2018. The Zoning Board of Adjustment reviewed the application under the Town of Weathersfield Zoning Bylaws, as amended October 21st, 2013.
7. The following members of the Zoning Board of Adjustment were present at the public hearing:
 - Willis Wood
 - James Cahill
 - Todd Hindinger
8. At the start of the hearing, the Zoning Board of Adjustment afforded an opportunity for persons wishing to achieve party status as an interested person under 24 V.S.A. # 4465(b) to

demonstrate that the criteria set forth in that subsection are met. The Zoning Board of Adjustment granted interested person status to the following persons:

- John Berlenbach
- Kristen Reed
- Douglas Reed Jr.
- Nancy Reed
- Tina Wood
- Jeff Pelton
- Marlene Lavoie
- Robert Edgerton
- Hannah Rice
- Robin Tindall
- Colin Tindall
- Ethan McNaughton

9. All interested parties were sworn in by the Zoning Board vice-Chair at the beginning of the public hearing.

10. During the course of the hearing the following exhibits were submitted to the Zoning Board of Adjustment :

- Exhibit #1: Notice of Application
- Exhibit #2: Sketch plan of the site dated 9/17/2018
- Exhibit #3: Two e-mails from State biologist Forrest Hammond, State employee – Wildlife Biologist. Subject: deer wintering areas and impacts. Dated September 25, 2018
- Exhibit #4: Email from State biologist Tim Appleton, State employee – Wildlife Biologist. Subject: deer wintering areas and impacts. Dated October 4, 2018.
- Exhibit #5: Infrared aerial photo showing project area and surrounding landscape. Deer wintering area and wetlands are shown, as are approximate property boundaries.
- Exhibit #6: Natural Resource Atlas map, captured July 23, 2018, showing aerial image of project area and surrounding landscape. Deer wintering area is shown and wetlands are shown, as are approximate property boundaries.
- Exhibit #7: Letter from previous land use administrator, Hal Wilkins, dated Nov. 29th, 2016. A notice to Mr. Douglas Reed (Applicant) that commercial firewood operation is not an allowed use in the C-10 zoning district.
- Exhibit #8: A letter from Ryan Gay of 1602 Plains Road. Subject: Expressing support in

favor of the application.

- Exhibit #9: Email from Tim McNamara, State of VT Environmental Enforcement Officer. Subject: site visit to observe wetlands. Dated Sept. 13, 2018.

These exhibits are available for review at the Weathersfield Town Office.

11. A site visit was conducted by the Zoning Board on October 11th at 6:30 PM with the following people present:

- Colin Tindall
- Doug Reed Jr.
- Ethan McNaughton
- Tina Wood
- Todd Hindinger
- James Cahill
- Willis Wood
- Sven Fedorow

Findings

Based on the application, testimony, exhibits, and other evidence, the Zoning Board of Adjustment makes the following findings:

General Findings:

1. Mr. Douglas Reed Jr., the Applicant, seeks a conditional use permit for a “fire wood Processing storage” (Application, Exhibit #1). The project is in Weathersfield, Vermont, which has adopted Zoning Bylaws. The bylaws were adopted March 5, 1974, and include subsequent amendments through October 21, 2013.
 - a. 2. The reason for the hearing is to review the conditional use permit application for the following:
 - b. a. The proposed use of the property, described in the application as “fire wood processing storage,” is not listed as a permitted or conditional use in this zoning district. Therefore, an “Other Use” determination is required per 4.3.2(e).
 - c. b. Development within 300ft of a deer wintering habitat requires Conditional Use Approval per section 6.10.6.
3. The subject property is a 32-acre parcel located along Plains Road in the Town of Weathersfield, tax map parcel no. 04 02 23. Some references indicate the parcel size as 31.4 acres; because no survey was provided, the findings of fact will refer to this as a 32-acre parcel as indicated on the application.

4. The Applicant clarified that the project and scope of the application is intended to apply to a single parcel, parcel 04 02 23, the 32-acre subject parcel. Since the subject parcel does not as yet have an address, the 1802 Plains Road address is named in related project correspondence but should not be included in the project application materials. The northerly driveway of the subject parcel is shared with the driveway accessing the abutting residence, parcel 04 02 03, located at 1802 Plains Road. The land that the driveway passes over is owned by parcel 04 02 22. The Applicant also owns the property to the south, parcel 04 02 22, but it is not part of this project.
5. The property is located in the Conservation District (C-10) as described on the Town of Weathersfield Zoning Map on record at the Town of Weathersfield municipal office and defined in section 4.3.2(e) of the Zoning Bylaws. No testimony or evidence was provided which demonstrated that section 4.3.2(e) of the Zoning Bylaws was not applicable to this parcel.
6. The general extent of the project is shown on the Site Plan, Exhibit #2. Exhibit #5, an infrared aerial image, shows the majority of the footprint of the project. Near Plains Road in the image, the gravel parking/storage area, rows of logs, and equipment are visible.
7. The Zoning Board members present for the hearing also attended the site visit and observed the site. The project area is occupied by the existing firewood processing equipment, related operating equipment, retired equipment or equipment under repair, and general storage of items which would be customary for this type of work. The processing equipment was not operating at the time but was set up and ready to operate. There is a cleared area, much of which is covered with a gravel surface. Some log-length wood is stored on site. The gravel area has been recently extended in the direction of Plains Road, more accurately shown in the Site Plan Exhibit #2, but subsequent to (or not clearly shown on) the Aerial Image of Exhibit #5. There is also an equipment storage area across the northerly driveway, north and slightly west of the 200' x 300' area shown on the site plan, within the portion of the small section of the subject parcel which wraps behind the northerly abutter, parcel 04 02 21.
8. The processing business was operating up until a recent temporary shutdown to allow for this permit application to proceed. The applicant would like to restart processing.

Conditional Use Approval for "Other Use" Findings:

9. Conditional use approval is requested by the Applicant for the project as an "Other Use" as that term is defined in section 4.3.2(e) of the Zoning Bylaw. The last item listed in Conditional Uses of section 4.3.2(e) provides for "Other uses (as determined after public hearing, by the Board of Adjustment, to be of a similar type and character as those listed above and meeting the purpose of this district)." Examples of those conditional uses listed for this zoning district are Adult day care facilities, Campground, Cemetery, Church, Contractor's storage, Family child care facility, Inn/small hotel, Medical facility, Extraction

of earth resources, Outdoor recreation facility, Public water storage or sewer treatment plant, School, Semi-public.

10. The Applicant described the project as a firewood processing business. He has been making firewood at this location since 1996. The business has grown over time. He originally started processing wood with a chainsaw and splitter. He upgraded to a firewood processing machine in 2013. He trucks in the logs and stockpiles them. Then he processes it as ordered. He has a logging operation and does around 505 cords per year. Wood is processed from 7 AM to 4 PM, Monday through Friday during the busy season and sometimes on Saturday. He has a triaxle truck. Each of his trucks can hold 6 cords. He gets the logs from his logging jobs only. He ships between 80 and 90 triaxle trucks of log length firewood to the site per year. The logs are stacked on the site and cut and split into firewood size with a firewood processor. The firewood is then delivered in smaller trucks from the site to customers .
11. The firewood processing operation is run outside and is not enclosed within a building. A building is not proposed as part of this application. There are no buildings on the parcel.
12. The Applicant provided testimony that his trucks have observed the rules and regulations for the use of the public road. His log trucks are legal to operate on the road. He has been in contact with the Highway Superintendent during periods of road posting and has maintained compliance with their requests. His trucks are not otherwise on the road when it is posted. Ray Stapleton, the current Highway Superintendent, was present at the hearing and did not present any concerns.
13. The former Zoning Administrator, Hal Wilkins, sent a letter to the Applicant on November 29, 2016, stating in part, "This letter concerns your commercial firewood operation at 1802 Plains Road in Weathersfield....At the heart of the matter is the prohibition of industrial uses in the Conservation (C-10) zoning district. Your current activity at the property appears to be covered under the town's definition of "Industry" – Information attached." (Exhibit #7) Reference the exhibit for the full text of the letter.
14. Members of the public and interested persons provided testimony and argued for the permit application to be approved. The relevant arguments presented were: (Also Exhibit #8)
 - a. The operation currently exists.
 - b. It is up and running and has orders pending for people who need the firewood.
 - c. Has a history of firewood processing since 1996.
 - d. Is not bothering them and has not caused negative impacts on them.
 - e. Is providing income for the applicant and jobs for both he and his employees.
 - f. Should be an allowed use in this district.
15. Members of the public and interested persons provided testimony and argued against the granting of the permit application and asked that it be denied. The relevant arguments presented were:
 - a. Firewood processing is not an allowed use in the C-10 district, as it is an industrial

- commercial use.
- b. There are periods of time when in operation that smoke is generated from burning wood waste and the smoke drifts onto nearby properties. The piles are not always attended and can smoke for prolonged periods of time. The smoke is having a negative impact on nearby residents . There was testimony from Nancy Reed that some of the smoke mentioned is coming from an outdoor furnace and thus would not be relevant to the discussion.
 - c. The equipment noise created by the operation is having a negative impact on the abutter to the north.
 - d. The traffic generated by the operation is negatively impacting them due to their use of the road for recreation and their children being present on the road.

Deer Wintering Area Findings:

16. Section 6.10.6 of the Zoning Bylaws, Deer Wintering Areas, states, in part: In all districts, development within 300ft of a State-designated deer wintering area shall be permitted as a conditional use subject to the following limitations: a) Any road or development shall be sited to have the least amount of negative impact on the viability of the deer wintering area, b) An adequate amount of softwood cover shall be left undisturbed to ensure the viability of the area, whenever possible. Consultation with the Department of Fish and Wildlife in the Vermont Agency of Natural Resources or with the Weathersfield Conservation Commission is available and encouraged.
17. Consultation with the Department of Fish and Wildlife in the Vermont Agency of Natural Resources and with the Weathersfield Conservation Commission was completed by the Zoning Administrator. The State Wildlife Biologist, Forrest Hammond, stated in his 11/25/2018 8:15am email: "the clearing for Doug Reed's firewood processing projects...is now not of much use to the deer due to the lack of softwood cover and the human activities that occur there." Further, in his 11/25/2018 11:35 email, "...on an adjacent lot (the subject parcel) there is a firewood processing operation...I really doubt that portion of the DWA is useful to deer anymore." The Wildlife Biologist Tim Appleton's comments also took into account the remaining portion of the subject parcel and the surrounding area, finding that "... my opinion is that the processing facility does incur a significant indirect impact." This email makes several recommendations should the development take place. All the recommendations in this email are adopted in these findings. Reference Exhibits #3 and #4 for the full text of these three emails.
18. Weathersfield Conservation Commission members Jeff Pelton and Tina Wood were present at the hearing. Conservation Commission member Tina Wood stated that she accepted the findings of the State Wildlife Biologists as sufficient and had no further comments. Member Jeff Pelton stated that he was not prepared to comment.
19. Several members of the public and several of the interested persons provided their opinions regarding deer, deer habitat, deer wintering areas, and the Zoning Bylaws.

20. Expansion of the clearing by tree removal and expansion of the gravel surface at the project site has occurred subsequent to the Applicant's purchase of the property in 1995. The clearing was completed to make more room for processing.
21. No testimony or evidence was provided that sufficiently demonstrated section 6.10.6 of the Zoning Bylaws was not applicable to this application.

Other Findings and Definitions

22. In its deliberative session The Board of Adjustment examined definitions for each of the Permitted and Conditional Uses listed for the C-10 zoning district to determine if the proposed use was of a similar type and character to those which were allowed. Examples include: Single family dwelling, two family dwelling, Campground, Cemetery, Contractor's storage, Family child care facility, Inn/small hotel.
23. In its deliberative session The Board of Adjustment examined definitions for Uses not permitted in the C-10 district as listed for the C-10 zoning district to determine if the proposed use was of a similar type and character to those not allowed. Examples include: Gasoline/service station, Highway commercial, Indoor recreation facility, Industrial, Junkyard, Mobile home park, Two family dwelling, Non-highway commercial, Small enterprise, Self-storage facility.
24. The Zoning Bylaw defines the purpose of the Conservation (C-10) district as: "Areas in which sparse development is wise for one or more of the following reasons: remote from roads or utility services; location of scarce mineral resources, prime agricultural or forested land, significant or irreplaceable natural, historic, recreational or scenic resources; slope elevations exceeding 25%; land over 1,500 feet in elevation; severe soil limitations; risk of flooding; or flood ways need."
25. The Zoning Bylaws define Contractor's Storage Yard as: "A lot or portion of a lot or parcel used to store and maintain construction equipment and other materials and facilities customarily required in the building trade by a construction contractor."
26. The Zoning Bylaw defines an Industry use as "The use of a building or land for the manufacture, production, processing, assembly or storage of goods or commodities. Includes research, testing, and large offices (more than ten employees); and others deemed similar in nature by the Zoning Board of Adjustment."
27. The Zoning Bylaw defines a Light Industry use as "Same as Industry, but limited to: a) no more than 10 employees b) buildings do not cover more than 10,000 square feet of land area; c) production of noise, vibration, smoke, dust, heat, odor, glare or other disturbance shall not exceed what is characteristic of the District; d) production of electrical interferences and line voltage variations must not create a nuisance."

28. The Zoning Bylaw defines a Home Industry use as “Any industry or service type operation that is carried on within a residence or an outbuilding of a residence. Examples of Home Industries include: small manufacturing shops, antique shops, and small professional offices, others deemed similar in nature by the Zoning Board of Adjustment.” In all districts except for Industrial (I) 4.2.3(g) these are Accessory uses, not Principal uses. Section 6.6.2 Home Industry states in part A: “The primary purpose of the premises shall be that of private residence. The Home Industry shall be carried on within the residence or within an accessory outbuilding of the residential structure. If the Home Industry is located within the residential structure, it shall occupy less than 50% of the total square footage of the structure. The land area occupied by an accessory outbuilding used for a Home Industry shall not exceed 400 square feet per acre of lot size, not to exceed 4,000 square feet of land area. Section 6.6.2 states, in part f) Noise, vibration, smoke, dust, odor, heat, glare, or other off-site disturbance shall not exceed levels characteristic of the residential area in which the Home Industry is located.
29. The Zoning Bylaw defines a Highway-Commercial use as “The use of a structure and/or lot for the following purposes: motel or large hotel; shopping plaza; wholesale or retail sales; drive-in theater; restaurant; drive-in food service; drive-in bank; lumber yard; sales and service of automobiles, mobile homes, large boats or recreational vehicles; dry cleaner; bar; nightclub; any other purpose deemed by the Zoning Board of Adjustment to be similar in nature to those listed.”
30. The Zoning Bylaw defines a Small Enterprise use as: “A small enterprise is a traditional use of a structure and/or lot and includes commercial and/or light industrial uses that are in keeping with the character of the Village or Hamlet District.” Examples of the uses listed include: light manufacturing, a small retail store, enclosed restaurant, small repair shop, self-service laundry, clinic, small hotel.
31. The Zoning Bylaw defines a Non-highway Commercial use as: “The use of a structure and/or lot for the following purposes: wholesaler, fuel oil depot, bottled gas depot, coal depot, lumber yard, and other similar purposes as determined by the Zoning Board of Adjustment.”
32. Section 6.13 of the Zoning Bylaws, Performance Standards, states in part, “In accordance with 24 V.S.A. Sect. 4414(5), the following standards of performance are to be met and maintained by all uses in all districts. In determining ongoing compliance, the burden of proof shall fall on the applicant, property owner, and/or all successors and assigns. (A) No land or structure in any zoning district shall be used or occupied in any manner so as to create dangerous, injurious, noxious or otherwise objectionable conditions which adversely affect the reasonable use of adjoining or nearby properties.” Part (B) states in brief summary... No use, under normal conditions, shall cause, create or result in: 1 – Noise Pollution, 2 - Noticeable, or clearly apparent vibration, 3 - Smoke, dust, odors, noxious gases, or other forms of air pollution which constitute a nuisance to other landowners. Reference 6.13 for the full text.

33 Expansion of the clearing by tree removal and expansion of the gravel surface at the project site has occurred. Recent easterly expansion towards the road is filling in a wet area. There was testimony given by interested parties that the wet area was a wetland and required protections. There was testimony given by other interested parties that the wet area was not a wetland and did not require protections. The Land Use Administrator inquired with the State to provide comment since the state has regulatory jurisdiction over wetlands in Vermont. Tim McNamara, an Environmental Enforcement Officer with the Vermont Agency of Natural Resources, visited the site with the District Wetland Ecologist. In an email, Mr. McNamara stated “We did not find any current provable violations of ANR administered laws or rules.” The Conservation Commission members present did not provide testimony or evidence on this issue. (Exhibit #9).

Conclusions

It is not the aim or duty of the Zoning Board of Adjustment to favor one individual over another, nor to approve or disapprove any specific activity. Rather, it is to interpret the above findings of facts which “*shall explicitly and concisely restate the underlying facts that support the decision, based exclusively on evidence of the record. Conclusions should be based on the findings of fact.*” (Bylaws 9.6.3)

1. Fire wood processing:

- • Weathersfield Zoning Bylaws define Industry as: “The use of building or land for the manufacture, production, processing, assembly, or storage of goods or commodities.”
- The Zoning Board of Adjustment concludes that the proposed use most resembles the use defined in Industry or Light Industry. Trucking log length wood in to a storage yard and processing it in to firewood is “The use of...land for the...processing... of commodities.”
- Weathersfield Zoning Bylaws state that industrial uses are not permitted in a Conservation (C-10) district.
- Weathersfield Zoning Bylaws state that Light Industry is a permitted use in the Highway Commercial district, but not in the C-10 district.
- The other reference to types of Industry in the language of the Zoning Bylaws of interest is Home Industry. The Zoning Board of Adjustment concludes that the proposed activity would not qualify as a Home Industry because it is not located indoors and is not accessory by virtue of the absence of a residence.

- *“Contractor’s storage yard “ is a conditional use in a C-10 district, but allows storage and maintenance of equipment only, not on site use of equipment. It also requires a site plan review.*

- The Zoning Board of Adjustment concludes that the proposed use could create conditions which do not comply with section 6.13: Performance standards for properties in the C-10 district.

- The Zoning Board of Adjustment concludes that uses which most resemble Industry and Light Industry do not comply with the defined Purpose of the Conservation (C-10) district.

2. Deer Wintering Area:

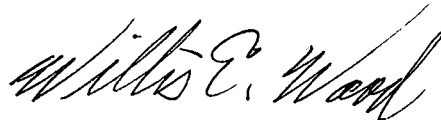
- The existing operation, collectively with other residential development in the area, has had an impact on the mapped deer wintering habitat. Exhibit #4 provides several recommendations should the development be permitted. All the recommendations in this email are adopted as conclusions which apply to this parcel. Any decision in favor of granting the application should include all of the conditions listed in Exhibit 4, as they would apply to the parcel as a whole.
- A decision by the Zoning Board of Adjustment on impact on the mapped deer wintering area is not relevant if the conditional use permit for a wood processing operation is denied.

Decision and Conditions

On October 16th, 2018, at a deliberative session, and based on the foregoing Findings of Fact and Conclusions of Law, the Zoning Board of Adjustment by unanimous vote of the deliberating members:

1. Denies application #18.09.17.Z. for a firewood processing operation.
2. Further development on lot #04 02 23 would require State biologist review on impact to the deer wintering area.

Dated at the Town of Weathersfield, Vermont, this 5th day of November, 2018



Willis Wood, Vice- Chair

Zoning Board Members participating in this decision:

Willis Wood

Todd Hindinger

James Cahill

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding before the Zoning Board of Adjustment.