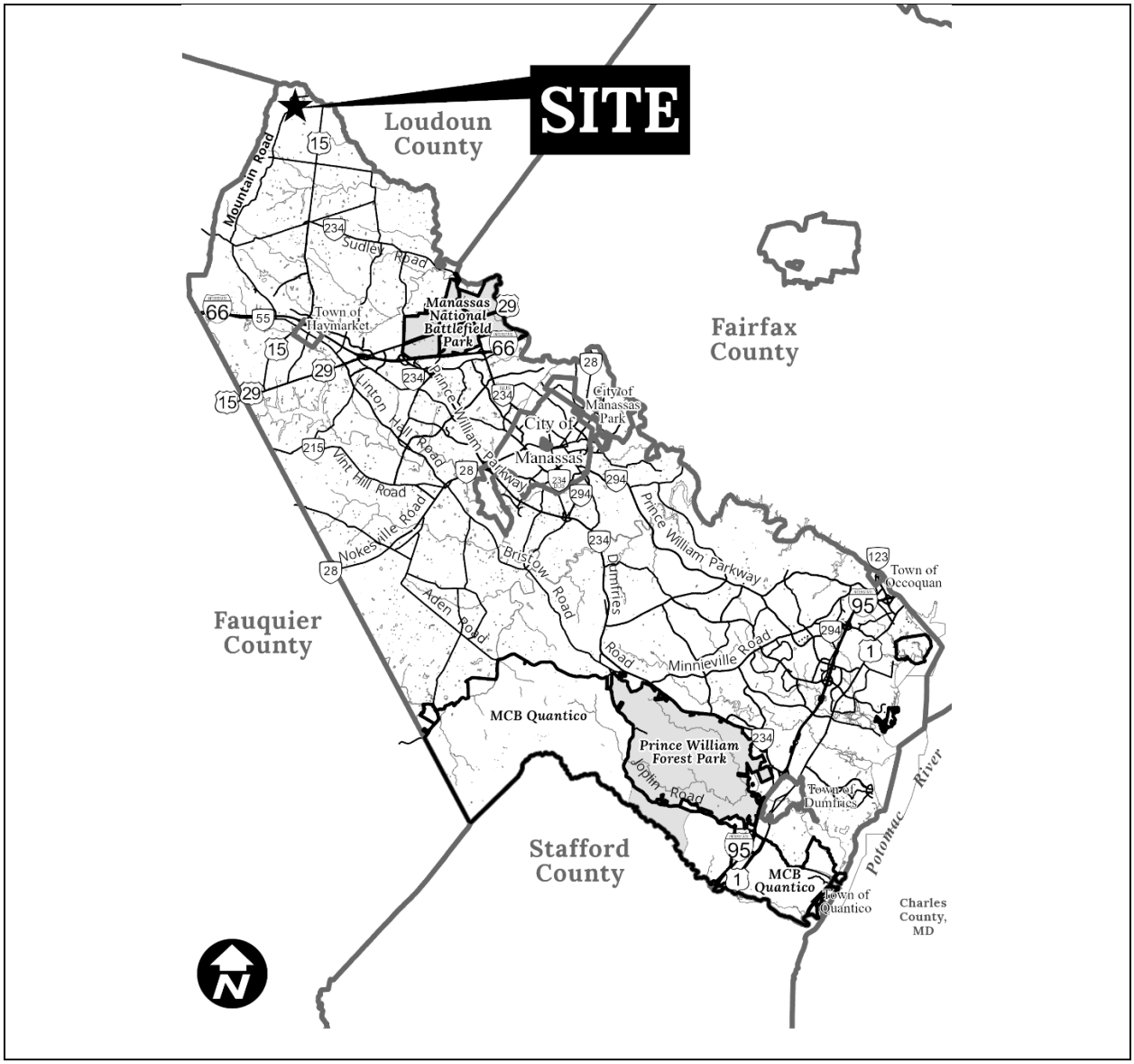
**APPEAL**

**Case Number:** #APL2025-00016




| | |
|---|---|
| **APPELLANT:** Peter Hobart<br>1401 Mountain Road, Haymarket, VA 20169 | **OWNER:** Timothy J. Hailer and Kimberly Taiedi. |
| **PROPERTY ADDRESS:** 1261 Mountain Road, Haymarket, VA 20169 ("the Property") | |
| **MAGISTERIAL DISTRICT:** Gainesville | **LOT SIZE:** 10.3048-acres |
| **G.P.I.N.:** 7202-53-9500 | **ZONING DISTRICT** A-1, Agricultural |
| **SUBJECT OF APPEAL:** To consider an appeal of the Zoning Administrator's determination (ZNR2025-00093), issued on February 11, 2025, that the removal of trees on an A-1 zoned property larger than 10 acres in order to clear land for an agricultural use would not violate Zoning Ordinance Section 32-250.53, even if it took place within 50 feet of a residential property. The subject property is located in the A-1, Agricultural Zoning District; GPIN: 7202-53-9500; 1261 Mountain Road in the Gainesville Magisterial District. | |


Mountain Road
1261 Mountain Road
(7202-53-9500)
Hobart
1401 Mountain
Road
Cheal Court
Forest Lake Lane
Spring Lake Drive
Rolling Ridge Road
SITE
1261 Mountain Road
APL2025-00016
N
Note: Any determination of topography or contours or any depiction of physical improvements, property lines or boundaries is for general information only and shall not be used for design modification or construction of improvements to real property or for floodplain determination.
Map prepared by the Prince William County Department of Development Services (3/27/2025 gxm) Aerial Imagery ©2024 PWC

PRINCE WILLIAM COUNTY



# STAFF REPORT

**Appeal Case #APL2025-00016**
**Board of Zoning Appeals Public Hearing Date: May 19, 2025**
**Dispatch Date: May 5, 2025**

## Request

The appeal application submitted on March 10, 2025, with the supplemental information submitted on April 24, 2025, challenges the issued determination that the removal of trees on an A-1 zoned Property larger than 10 acres in order to clear land for an agricultural use would not violate Zoning Ordinance Section 32-250.53, even if it took place within 50 feet of a residential property (Attachment A). The subject of the appeal is the Zoning Administrator's determination letter (ZNR2025-00093), issued on February 11, 2025 (Attachment B). The Appellant is a neighbor of the subject Property. The appeal was timely submitted within the required 30-day appeal period.

## Site and Area Characteristics

The Property that is subject to this appeal consists of a 10.3-acre parcel located at 1261 Mountain Road (GPIN 7202-53-9500) and is zoned A-1, Agricultural. The Property is regulated by Part 301 (Agricultural Zoning District) and Part 510 (Agritourism and Arts Overlay District) of the Zoning Ordinance. The Property is located within the "rural area" designation of the Agritourism and Arts Overlay District, which was adopted by the Prince William County Board of Supervisors in February 2021. The Agritourism and Arts Overlay District promotes agricultural, agritourism and arts uses on A-1, Agricultural zoned lots within the "rural area" designation on lots of 2 acres or greater in size. The Property is developed with a residential single-family dwelling unit constructed in 2000, and an existing bona fide agricultural use (the keeping/raising of livestock). Agricultural uses are permitted by-right on the Property, pursuant to Zoning Ordinance regulations and the Code of Virginia (*See* Appendix 1 & 2).

## Background

In February 2021, the Prince William Board of County Supervisors adopted the Agritourism and Arts Overlay District, which is found in Part 510 of the Zoning Ordinance. The "Purpose and Intent" of the regulations in Part 510 states: *"The purpose of the Agritourism and Arts Overlay District (AAOD) is to facilitate investment involving improvements to land and structures within the AAOD while encouraging agricultural and small business, artistic (including music and performing arts) uses. The AAOD overlay*

*properties are already zoned A-1, Agricultural. The objective is to offer more flexibility in small business uses allowed and the development standards related to those uses in the AAOD as incentives for investment in agritourism and arts-related businesses. An intended result of the AAOD is to help establish an area with agritourism and art-related businesses integrated together in a manner that maintains the rural character of the Rural Area."* Pursuant to Section 32-510.03, uses of such A-1 zoned properties include but are not limited to, farm wineries/breweries, petting farms, animal display, horse and domestic equine rides, hayrides, nature trails, open air or covered picnic area with restrooms, educational classes, lectures, and seminars.

The owner of the subject Property, Mr. Hailer, has established a bona fide agricultural use on his property with the keeping/raising of livestock. Agricultural uses are permitted by-right on such parcels (see Appendix 1 & 2). Prior to commencing such bona fide agricultural use on the Property, County records reflect that the property owner had been actively preparing the Property for the proposed agricultural operation, including the clearing of trees, removal of the tree stumps, filling the holes from the stump removal, and leveling the Property to create pasture areas for livestock and placement of agricultural buildings to support the then proposed and now existing agricultural operation. These preparation activities are customarily associated with a proposed agricultural use of a property and are therefore exempt from County regulations, pursuant to Code of Virginia Section 15.2-2288.6. (see Appendix 2).

**Staff Analysis**

The Appellant challenges the Zoning Administrator's determination that the removal of trees on an A-1 zoned Property larger than 10 acres in order to clear land for an agricultural use would not violate Zoning Ordinance Section 32-250.53, even if it took place within 50 feet of a residential property (Attachment A).

The Zoning Administrator's rationale was explained in the letter that is under appeal:

> 1261 Mountain Road is over 10 acres in size and is zoned A-1. As such, agricultural uses and the keeping of livestock are permitted on the property by right pursuant to Section 32-301.02(1 ). My determination is that the removal of trees on an A-1 zoned property larger than 10 acres in order to clear land for an agricultural use would not violate Section 32-250.53, even if it took place within 50 feet of a residential property. The purpose of Section 32-350.53, entitled "Timbering," is to address timbering, which is explicitly the subject of all three of its subsections. Its purpose is not to impose general buffering requirements; those are found in Sections 32-250.30 to 32, entitled "Buffer Areas." Section 32-250.53 does not provide a "Fifty Foot Buffer rule."
>
> My determination was also informed by, among other things, (1) the opinion of the County arborist and the Virginia Department of Forestry that cutting down trees to establish a farm is land clearing, not timbering; (2) the fact that removing trees without replanting them is not forestry, which is the subject of timbering; and (3) the historical fact that farms need to remove trees in order to fully use the lot for agriculture, or even just to remove trees to install a shed or fence within 50 feet of a neighboring property.

The Zoning Administrator's decision was also influenced by Virginia Code Section 3.2-301 ("the Virginia Right to Farm Act", and Virginia Code Section 15.2-2288.6 (governing local regulation of Agricultural operations). The Right to Farm Act provides that localities cannot enact zoning ordinances that unreasonably restrict or regulate farm structures of farming and forestry practices in agricultural districts unless such restriction bears a substantial relationship to the health, safety and general welfare of the public. Virginia Code Section 15.2-2288 similarly states that "no locality shall regulate the carrying out of [activities or events that are usual and customary at Virginia agricultural operations], unless there is a substantial impact on the health, safety, or general welfare of the public."

Both Section 25.2-2286 and the Virginia Right to Farm Act limit a locality's ability to prevent farms from clearing land or removing trees near neighboring properties, provided these activities are customary agricultural practices and do not substantially impact public health, safety, or general welfare. Localities must ensure that any regulations on such activities are reasonable and consider the economic impact on the agricultural operation. Prohibiting the removal of trees withing 50 feet of neighboring properties and requiring farms to maintain a 50 foot buffer around the property would both be limiting a customary agricultural practice and have a negative economic impact on the agricultural operation.

**BZA Authority**

The authority of the BZA is prescribed by statute*. Lake George Corp. v. Standing*, 211 Va. 733, 735, 180 S.E.2d 522, 523 (1971). Pursuant to the Code of Virginia, the Prince William County Code, and the Prince William County Board of Zoning Appeals Bylaws, the BZA has certain limited and identified powers. Those include the power "[t]o hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of §§ 15.2-2280 et seq. or of any ordinance adopted pursuant thereto," as well as the power" [t]o hear and decide appeals from the decision of the Zoning Administrator after notice and hearing as provided by § 15.2-2204."

Even if the BZA were to hold that the Zoning Administrator's determination that the removal of trees on an A-1 zoned Property larger than 10 acres in order to clear land for an agricultural use would not violate Zoning Ordinance Section 32-250.53, even if it took place within 50 feet of a residential property constituted a "decision" subject to appeal, it is unclear what the BZA could do with such an appeal. The BZA does not have authority to compel the Zoning Administrator to find that a use violates the Zoning Ordinance, issue a violation notice, or pursue enforcement action. The BZA only has the authority to "reverse or affirm, wholly or partly, or may modify, [the] order, requirement, decision or determination" that is being appealed. There is no authority for the BZA to order the Zoning Administrator to pursue alleged violations, which appears to be the Appellant's goal in this appeal.

**County Staff Recommendation**

Staff recommends that the BZA dismiss the subject appeal and expressly adopt the following findings of fact and conclusions of law:

1. The zoning administrator's interpretation that the removal of trees on an A-1 zoned property larger than 10 acres in order to clear land for an agricultural use would not violate Zoning Ordinance Section 32-250.53, even if it took place within 50 feet of a residential property, is presumed correct and the appellant failed to meet its burden of proof to rebut such presumption of correctness by a preponderance of the evidence.
2. A locality's failure to pursue an alleged violation is not appealable to the BZA.
3. The BZA considered all the evidence presented to the body by County staff and the appellant before and during the May 19, 2025, hearing, including, but not limited to, the appellants' appeal application, the County staff report, and witness testimony.

**ATTACHMENTS**

Attachment A: Application for Appeal Case #APL2025-00016
Attachment B: Zoning Determination Case #ZNR2025-00093

**APPENDIX**

Appendix 1: Applicable Zoning Ordinance Sections & Definitions
Appendix 2: Applicable Code of Virginia Sections & Definitions

Zoning Administrator

PRINCE WILLIAM COUNTY

# Application for an Appeal

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**Fee*: $** 866.25

Make checks payable to PWC
(*in accordance with current Fee Schedule)

APL APL2025-00016
Planner: LFB
Hearing Date: 5-19-2025

| | | | |
|---|---|---|---|
| **Applicant Information** | Name<br>Peter Hobart | Title<br>Esquire | |
| | Mailing Address<br>1401 Mountain Road | City/State<br>Haymarket, Virginia | Zip Code<br>20169 |
| | Email<br>peterhobart@usa.com | Phone<br>(610) 883-3324 | |
| **Owner Information**<br>Same as Applicant ☐ | Name<br>Timothy Hailer and Kimberly Taiedi | | |
| | Mailing Address<br>1261 Mountain Road | City/State<br>Haymarket, Virginia | Zip Code<br>20169 |
| | Email<br>hailerdirtsolutions@gmail.com | Phone<br>(703) 966-6871 | |
| **Property Information** | Address<br>1261 Mountain Road | City/State<br>Haymarket, Virginia | Zip Code<br>20169 |
| | GPIN (Grid Parcel Identification Number)<br>7202-53-9500 | Lot Size (Acres or Square Feet)<br>10.30 | |
| | Zoning District<br>A-1 | Magisterial District<br>Gainesville | |
| **Subject of Appeal** | This is an application to the ☑ Board of Zoning Appeals **or** the ☐ Board of County Supervisors for an appeal from the following determination by the Zoning Administrator: Fink-Butler | | |
| **Justification for an Appeal** | Applicant statement (Use additional pages if necessary)<br>Please see attached Justification. | | |

I hereby certify that the information provided in this application and the attached evidence is accurate, true and correct to the best of my knowledge and belief.

Applicant Signature: _____ Date: 03/10/2025

Receipt #: _____ Date: _____


5 County Complex Court, Suite 180, Prince William, Virginia 22192 • (703) 792-3340 | zoningadministration@pwcgov.org | www.pwcva.gov/zoning

# Application for an Appeal

## Appeal Checklist

**THE BOARD WILL HEAR ALL REQUESTS FOR AN APPEAL WITHIN 90 DAYS FROM THE RECEIPT OF THE COMPLETED APPLICATION.**

**THE COMPLETED APPLICATION MUST BE RECEIVED BY CLOSE OF BUSINESS DAY NO LATER THAN 30 DAYS FROM RECEIPT OF A VIOLATION NOTICE AND CORRECTION ORDER OR ZONING DETERMINATION.**

THE FOLLOWING INFORMATION MUST ACCOMPANY AN APPLICATION TO THE BOARD AND IS TO BE **PROVIDED BY THE APPLICANT**

**The application form must be completed by the applicant in its entirety. Incorrect or inaccurate information may result in dismissal of the application for a variance.**

- [x] Attach a complete justification statement and the rationale for the appeal
- [x] Attach any applicable background information
- [x] The fee in accordance with the current fee schedule.

THE FOLLOWING INFORMATION **WILL BE PROVIDED TO THE APPLICANT** BY ZONING ADMINISTRATION DIVISION OF THE DEPARTMENT OF DEVELOPMENT SERVICES

- [ ] Hearing date, which will be the next applicable agenda date. All cases will be heard within ninety (90) days from receipt of the completed application.
- [ ] Applicant will receive a Board of Zoning Appeals Resolution of Action following the hearing.

**Application received from:** Peter Hobart **Date:** 3/10/25

**Application received by:** _____ **Date:** _____



5 County Complex Court, Suite 180, Prince William, Virginia 22192 • (703) 792-3340 | zoningadministration@pwcgov.org | www.pwcva.gov/zoning

# IN THE ZONING BOARD OF APPEALS OF PRINCE WILLIAM COUNTY

| | | |
|---|---|---|
| Appeal of Hobart, *et al.* | : | Number: ZNR-2025-00093 |
| | : | |
| v. | : | |
| | : | |
| Zoning Administrator Lisa Fink-Butler | : | Filing Date: March 10, 2025 |

## JUSTIFICATION

### Factual Background

The facts underlying this appeal are relatively straightforward:

• 1261 Mountain Road is a ten-acre property in the Prince William County ("PWC") A-1 agricultural district that is bordered by *seven* private residences (and a small open public area on a *cul-de-sac* shown in yellow), in what was once a peaceful, quiet, densely-wooded neighborhood.

• Shortly after buying this property, the new owner ("Hailer"—the owner of the trucking company "Hailer Dirt Solutions") began a multi-year process of near-constant tree-felling, vegetation-clearing, and re-grading activity all over this ten-acre lot, at times invading neighboring properties and public land, while simultaneously running a dirt-hauling/trucking company from this location.


**1261 Mountain Road Before and After**


**Spring Lake Drive Cul-de-sac Before and After**

• Hailer told neighbors (on video) that it was his goal to remove "*every single tree*" from the property, and admitted to PWC staff that he was, among other things: "*selling timber,*" "*harvesting firewood;*" "*storing firewood;*" "*selling firewood;*" and "*milling timber into posts.*" [Attachment A; video available upon request].

• Throughout this timeframe (beginning in late 2022, throughout 2023-2024, and in 2025 to date), *many* aggrieved neighbors voiced their concerns to PWC staff over and over again, in every conceivable way. Prime among the issues they raised is why PWC staff are not enforcing PWC Code § 32-250.53(1) requiring that a fifty-foot buffer must be left between neighboring residences and the kind of "*timbering, harvesting, **or** clearing*" operations in which Hailer has been engaging for almost three years ("The Fifty Foot Rule").

> **PWC Code, § 32-250.53(1) *"Timbering, harvesting, or clearing of wooded areas in A-1, Agricultural districts, as permitted by this chapter, shall not occur within 50 feet of any property lines adjoining areas or other properties which are zoned to a different classification than A-1, Agricultural or whose primary use is residential."* (emphasis supplied).**

• The responses offered by PWC staff over this same timeframe have ranged from: "*Hailer is just removing a few dead/diseased trees;*" to "*Hailer is just harvesting some trees for firewood;*" to "*Hailer is exempt from all regulations because he has a bona fide agricultural use exception;*" to "*Hailer is now clearing his property to make a pasture.*" At no time has any enforcement action been taken in this regard, including after the Board of Zoning Appeals ("BZA") reversed the Zoning Administrator's granting of a *bona fide* agricultural use ("BFAU") determination to Hailer, after explicitly finding that Hailer had deceived her with regard to his intended use of 1261 Mountain Road. It should also be noted that, while not asked this question, the Zoning Administrator has inexplicably volunteered in writing that she does not intend to enforce the Fifty Foot Rule even if the BZA ultimately finds that it is applicable to the situation on Mountain Road.

## Executive Summary

A formal request for a proper legal determination on the issue of the applicability of the Fifty Foot Rule in the context of 1261 Mountain Road was filed with the Zoning Administrator pursuant to PWC Code Sec. 32-200.1 on December 9, 2024. This Code section specifically states that such determinations, *"... shall include any conclusions of law and findings of fact by the County Attorney."* Notably, no such *"conclusions of law and findings of fact"* were in fact included in the Zoning Administrator's response. Rather, her response relied on three numbered, but unsupported, claims, none of which (even if true) constitutes a valid legal consideration. These are:

1. The alleged opinions of the County arborist and VDOF that *"clearing"* is not *"timbering."*
2. The unsupported claim that removing trees without *re-planting* is not *"forestry"*(followed by an unexplained and unsupported claim that *"forestry... is the subject of timbering.")*.
3. The unsupported claim that, *"farms need to remove trees in order to use their lot."*

Not one of these claims—even if true—is relevant to a proper legal analysis of the regulation at issue.

1. Where, as here, the law is already clear, complete, and sufficient on its face, the opinions of the Zoning Administrator, the County arborist, and VDOF are both unnecessary and irrelevant.

2. Nowhere in any of the extensive definitions of relevant terms in the PWC Code is there any mention of *"re-planting"* or *"forestry,"* and it is inappropriate to attempt to insert them here.

3. What an owner may *wish* to do with his property has no legal bearing whatsoever on what the law *allows* him to do, and no agricultural exception appears in any of the relevant regulations (in fact, Virginia Code § 3.2-301. clearly states that Counties may, *"... adopt setback requirements, minimum area requirements, and other requirements that apply to land on which agriculture and silviculture activity is occurring,"* which is the exact nature of PWC's Fifty Foot Rule).

## Proper Regulatory Interpretation

The interpretation of the law is a professional endeavor that is governed by rules known as, **"the canons of statutory construction."** Such analysis should be conducted according to procedures established and taught through many years of formal legal training and practice. The Zoning Administrator's response completely ignores these rules and procedures. The correct legal procedure and the applicable canons for examining the Fifty Foot Rule are as follows:

1. **Statutory (or in this case Regulatory) Interpretations Are Questions of Law Not Fact:** The Virginia Supreme Court has made it clear in cases like Northern Virginia Real Estate v. Martins, 283 Va. 86 (2012) that determining what a law *actually means* relies on the law itself, not on surrounding facts, such as the lay-opinions of non-legal staff or the wishes of landowners (*"An issue of statutory interpretation is a pure question of law."*). Accordingly, the Zoning Administrator's reliance on what she, an unnamed member of VDOF, and the County arborist *think* a word means, and her personal belief regarding what farms might need, are completely irrelevant to a proper legal analysis. Duly elected PWC legislators have already provided complete definitions of the relevant terms, and it is inappropriate for a Zoning Administrator to try to change those definitions. In so doing, she is no longer interpreting the law; she is ignoring it.

2. **Examine Every Word Without Addition or Subtraction:** The Virginia Supreme Court has made it clear in cases like Posey v. Commonwealth, 123 Va. 551 (1918) that those interpreting laws are bound, *"... by the plain meaning of the language used [and] are not permitted to add or to subtract the words... Because we assume the legislature carefully chose the words used, it is our duty to give reasonable effect to every word."* In this case, the Zoning Administrator has violated this fundamental canon of regulatory construction in several ways:

**A. "Timbering":** She has ignored PWC legislators' clear and complete legal definition of the term, *"timbering"* (as well as the examples they provided), that was duly enacted into law in the PWC Zoning Ordinance: *"Timbering shall mean the harvesting of trees for commercial products or for farm use, including but not limited to saw timber, pulpwood, posts, and firewood."* Notably, nowhere in this definition, is there any reference to re-planting, and where legislators chose not to include such a requirement, the Zoning Administrator has no authority to insert it.

Moreover, while the Appellant is certain that re-planting is not a necessary element of PWC's *"timbering"* definition as written, it may be helpful to note that in sworn court documents, Hailer has admitted not just to cutting down hundreds of trees, but also to, *"planning to plant additional trees (over 100 have already been planted...)"* [Attachment B]. What else could PWC staff possibly ask for in order for Hailer's admitted actions to meet even their own, improperly expanded definition of *"timbering"?* If admitted cutting and re-planting of trees is not enough to satisfy the Zoning Administrator's definition of *"timbering,"* the only other possibility is that she is choosing to enforce the Fifty Foot Rule only when an owner *voluntarily self-identifies* as someone who is conducting *"timbering."* This would lead to an absurd result in which the Fifty Foot Rule could only be applied to owners who voluntarily admit to what they are doing and agree to be bound by the Rule (which seems to be the approach being taken by PWC staff at present). This is an unacceptable way for PWC staff to perform their duties with respect to "enforcing" the law.

Finally, a survey of the laws in all fifty states found only four other jurisdictions that define the term *"timbering"* in their regulations: West Virginia, Pennsylvania, Ohio, North Carolina. As the attached copies [Attachment C] reveal, *every one* of these definitions supports the Appellant's case, not the position of the PWC Zoning Administrator.

Notwithstanding all of this, the Zoning Administrator has doggedly ignored the facts and the law and substituted her own personal opinion regarding the applicability of this term. This is legally impermissible.

**B. "Or" Means "In the Alternative":** The Zoning Administrator has ignored the clear and unambiguous use of the disjunctive word *"or"* in the Fifty Foot Rule, employed by PWC legislators to identify multiple scenarios in which the Fifty Foot Rule is applicable. It is a bedrock legal principle that, *"the use of the disjunctive word 'or,' rather than the conjunctive 'and,' signifies the availability of alternative choices." See* Rose v. Commonwealth, 53 Va. App. 505 (2009) (*quoting* Lewis v. Commonwealth, 267 Va. 302 (2004)). She is not entitled to simply ignore the words in a duly enacted law under the guise of "interpretation," and her behavior in this regard violates both her sworn duty and the separation-of-powers doctrine.

**C. "Clearing":** The Zoning Administrator has ignored the unambiguous and extremely thorough definition of *"clearing"* that was duly enacted into law in the Zoning Ordinance by elected PWC legislators: *"Clearing shall mean removing or causing to be removed the vegetation growing in the soil. Such removing or causing to be removed shall include any intentional or negligent act to (1) cut down, (2) remove all or a substantial part of, or (3) damage a tree or other vegetation which will cause the tree or other vegetation to decline and/or die. Such acts shall include but not be limited to damage inflicted upon the root system of the vegetation by the application of toxic substances, by the operation of equipment and vehicles, by storage of material, or by the change of natural grade due to unapproved excavation or filling, or damage caused by the unapproved alteration of natural physical conditions."* Again, there is no mention of re-planting, and this definition, by its clear terms, includes cutting down trees **for any reason**.

It should also be noted that while the Zoning Administrator ignores the legal effect of the term *"clearing"* in the Fifty Foot Rule, this is the exact term that she herself has repeatedly chosen to use in describing the activity that has in fact been taking place at this location for almost three years now (including in the instant determination letter, which reads in pertinent part: *"... cutting down trees to establish a farm is land clearing..."*.

**D. "Harvesting":** While the term *"harvesting"* is not defined in the PWC Code, it does appear as an alternative triggering activity in the Fifty Foot Rule. When words are not clearly defined by the PWC Code, the Zoning Ordinance specifically instructs the Zoning Administrator to look to the Merriam-Webster dictionary definition is such circumstances. In this case, that definition is as follows: *"verb, to catch or collect a crop or natural resource for human use."* Once again, there is no mention of re-planting. And once again, it should be noted that while the Zoning Administrator ignores the legal effect of the term *"harvesting"* in the Fifty Foot Rule, it is the exact term she used to describe the activity that the owner of 1261 Mountain Road admitted that he intended to perform in her improvidently-granted BFAU determination letter (reversed by this Board last year on the grounds that the owner had deceived her) [Attachment D].

In light of the foregoing, it is clear that PWC's duly-elected legislators took great care to make their intentions clear when enacting the Fifty Foot Rule. They provided three alternative triggering conditions. They provided extensive definitions. They even provided examples. Nowhere did they include any requirement that any of the enumerated activities involve *"re-planting."* Nowhere did they include an exception for farming or other agricultural use. And neither the Zoning Administrator, nor the County arborist, nor the Department of Forestry has any authority to add such requirements or exceptions to Prince William County's reasonable regulation of land use in our community [Attachment E].

3. **Short Titles Are Not Controlling (or Even Relevant When the Law Is Clear):** While the Zoning Administrator fails to make this point clearly, from her confusing statement that, *"removing trees without replanting them is not forestry, which is the subject of timbering,"* it may be deduced that she is having difficulty seeing past the short title of the Fifty Foot Rule. That difficulty is easily dismissed. Another well-understood canon of regulatory construction in the legal world is that short titles do not control the law, but rather the reverse is true. *See, e.g.,* In re Gilbert, 18 Va. Cir. 271 (1989) (*"The approach enforced here today is also perfectly consistent with another well-established principle of statutory construction whereby the body of a statute determines its application and not its short title." citing* Sutherland Stat. Constr. (4th Ed) '47.03)). This canon is grounded in the historical tradition of legislators writing the law, and their leaving it to their clerks to come up with short titles as a simple indexing tools and shorthand references. To try to use the latter to limit the former is to misunderstand how the law works on a fundamental level. Where, as here, the body of the law is clear, the short title cannot be used to change its meaning; a principle that is generally well-understood by those who draft and interpret the law for a living.

Furthermore, if the Zoning Administrator's misunderstanding of this fundamental legal principal were to be accepted by the BZA, it would invalidate not just the Fifty Foot Rule, but a host of other PWC regulations as well, including, for example: Sec. 17-41 (Discharge of fireworks); Sec. 4-63.1 (Transportation, harboring, and sale of skunks and racoons); and Sec. 32-400.13 (Storage of trucks) [Attachment F].

4. **Effectuating Legislative Purpose and Intent is the Primary Goal:** At the same time that the Zoning Administrator has attempted to bring irrelevant and inapplicable considerations into the analysis of the Fifty Foot Rule, she has also failed to consider *relevant* and *applicable* factors.

One of these is to give effect to the clearly stated purpose and intent of the regulation. *See* Sec. 32-900.10 (2): *"The Board of Zoning Appeals... shall consider the purpose and intent of any... regulations in making its decision."* In this case, the legislative goal is clearly set forth in the division heading in which the Fifty Foot Rule appears: *"Sec. 32-250.51. - Purpose and intent. The purpose and intent of this section is to establish protective regulations for vegetation in the County in order to better control problems of flooding, soil erosion, air pollution and noise, to make the County a healthier, safer and more aesthetically pleasing place in which to live. The further intent of this section is... to dissuade unnecessary clearing, disturbing and deforestation of land so as to preserve insofar as is practicable the natural and existing growth of vegetation, and to control the destruction and removal of vegetation in the County so as to benefit its citizens..."* Accordingly, the clear goal of PWC's elected legislators in enacting this legislation was to *"protect vegetation"* and *"dissuade unnecessary clearing,"* and in this regard, the Zoning Administrator has failed to effectuate that intent to a spectacular degree.

**5. The Standard That the Zoning Administrator Is Commanded to Apply Is Strict:** Another factor that *is* relevant to an analysis of the Fifty Foot Rule is the standard that the Zoning Ordinance directs the Zoning Administrator to apply. The very first directive in the PWC Zoning Ordinance commands: *"The Zoning Administrator shall strictly construe the following terms and definitions..."* (PWC Zoning Ordinance, Article I, Part 100). Included in the definitions that follow are the terms, *"timbering,"* and *"clearing."* In addition to its ordinary meaning, the term "strict" has special legal significance. "Strict scrutiny" is the most demanding standard available in the legislative context; accordingly, it is not a term that is employed lightly by legislators. It clear from her determination on this issue that the Zoning Administrator has not only failed to construe the definition of *"timbering"* strictly, she has also failed to construe it according to its stated definition at all, and has further failed even to consider the alternative terms of, *"clearing"* or *"harvesting."*

6. **Limits of Discretion of the Zoning Administrator**: The Zoning Administrator follows her three enumerated (but unsupported) claims in the determination letter with a gratuitous statement that regardless of the outcome of this appeal, *"... the BZA's decision would not affect my decision."* This unsolicited pronouncement shows a lack of understanding of the limits of the discretion afforded to a Zoning Administrator. The Virginia Code clearly states that the decision of the BZA shall be binding upon the property owner (Sec. 15.2-2301: *"A decision by the governing body on an appeal [i.e. the BZA] taken pursuant to this section shall be binding upon the owner of the property which is the subject of such appeal..."*). Moreover, in the case of a binary analysis like this one (where a regulation either does or does not apply), once a final determination has been made by the appellate body, there is simply no discretion left to be exercised (*see. e.g.,* Yassa v. Moore, 3 Va. Cir. 189 (1984) (holding that once non-permitted use was established, *"there was no discretion to be exercised by the zoning administrator."*)).

The single case cited by the Zoning Administrator in support of her expansive view of her own discretion in this regard (Ancient Art v. Virginia Beach, 263 Va. 593 (2002)) is highly misleading. In that case, following the striking down of a general ban on tattoo parlors in the jurisdiction, the owner of one particular tattoo parlor demanded that a permit be issued to him. Because there was now no specific regulation in play following the striking of the general ban, the court correctly concluded that the decision to issue a permit for a tattoo parlor still fell within the Zoning Administrator's discretion because it required consideration of a variety of other factors, such as how tattoo parlors should be classified, in which zoning districts such establishments could be located, and the definition of the term, *"personal services."*). In the court's words: *"... in the absence of any zoning regulation regarding the operation or location of tattoo parlors, or a definition of the term "personal services establishment"... the determination... involved the exercise of discretion by the Zoning Administrator." Id.*

Here, by contrast, reversal of the Zoning Administrator's decision by the BZA would not result in an absence of regulations or definitions regarding the Fifty Foot Rule, but rather in the presence of a clear regulation and several very clear definitions. There are simply no other factors for the Zoning Administrator to consider. By operation of law, a decision of this Board would immediately become binding upon the property owner, thereby beginning the long-overdue process of protecting and restoring the badly-damaged environment in this neighborhood in a manner that is consistent with the stated purpose and intent of the Fifty Foot Rule. Despite her claim to the contrary, the Zoning Administrator has no authority to override the decision of the Board of Zoning Appeals on this extremely straightforward issue.

## Conclusion

The foregoing legal analysis clearly demonstrates that the opinion of the County arborist and an unidentified VDOF employee regarding *"clearing,"* and the Zoning Administrator's inexpert opinion regarding *"forestry"* and whether *"farms need to remove trees"* are all legally irrelevant to the applicability of the Fifty Foot Rule. In addition, attempts by the Zoning Administrator to change PWC legislators' definition of the term, *"timbering,"* and to simply ignore their deliberate inclusion of the alternative grounds of *"harvesting or clearing,"* are legally inappropriate and impermissible. And her apparent misunderstanding of the role and authority of the BZA relative to her own is troubling.

By contrast, the factors that are relevant to the applicability of the Fifty Foot Rule include: the **plain language** used by PWC's elected legislators; the associated **PWC legal definitions**; the stated **purpose and intent** of the rule; the existing structure of other PWC regulations; and the practice in every other jurisdiction which defines the term, *"timbering,"* all of which militate *in favor* of its enforceability with respect to the situation at 1261 Mountain Road.

Just one example of the effect of the Zoning Administrator's failure to enforce the Fifty Foot Rule at 1261 Mountain Road over the past three years is clearly illustrated in Attachment G, which shows over *twenty* pieces of machinery, equipment, materials, and junk deposited on this property within fifty feet of neighboring property lines. Complaints, inspections, junk yard/dump heap violations, abatements, and renewed offenses followed, all at taxpayer expense, but none of this would have happened, or continue to happen, had the Rule simply been enforced from the outset.

Contrary to the Zoning Administrator's assertion, a decision by this Board to enforce the Fifty Foot Rule will have an immediate and remedial effect in this particular case. On behalf of the *seven* families who have had to endure living right next to almost three years of near-constant environmental destruction on an industrial scale with no effective intervention or meaningful oversight by PWC, I ask you to make that decision today.

Dated: March 10, 2025

Respectfully submitted,

Peter Hobart

**ATTACHMENT A**

From: Hugh, Wade <whugh@pwcgov.org>

Sent: Monday, March 25, 2024 8:35 PM

Subject: RE: Lack of Notice; Admission of Commercial Activity/Timbering; Continued Land Disturbance [Not Permitted or Within Any Exemption]

Good evening! I have been reading all the messages from the community, and as I stated in the past, I have been reacting to the messages. I have met with staff on numerous occasions to make sure we are looking at the issues from all possible angles. As I mentioned before, the Zoning Administrator position is autonomous as it relates to making Zoning interpretations and Determinations. While the Zoning Administrator will seek input from staff, the final decision rests with the Zoning Administrator. It's my responsibility, along with her agency Director, to ensure she is free to make decisions without undue pressure from the outside. This is the only way we can ensure consistency in the management of the County Zoning Ordinance.

Let me respond to the questions/comments you posed below.

Bonafide Agricultural Determination – I attached the Bona Fide Agricultural Application. Lisa's team is reviewing the application and may have a determination rendered by this Friday. I will send you the determination as soon as it's rendered, so the responsibility will rest with me to ensure you receive it in a timely manner.

Proposed Agricultural Uses – When I visited the property, Mr. Hailer stated that he is sending most of the good trees to a local lumber mill (I believe Culpeper) to have the wood milled into fence board and posts. When the lumber company representative viewed the trees, they identified the ones that are rotten and can't be used for lumber. Mr Hailer said he removed the dead and dying trees to protect his home and the future farm animals from being injured. Mr. Hailer was selling or giving away the poor grade wood as firewood. The Zoning Administrator previously stated the removal of trees for an agricultural use of the property is not considered timbering by her interpretation of the definition. If the community disagrees, you will have the opportunity to Appeal the Zoning Administrator's Determination related to the Bona fide Agricultural use.

Clearing and Grading – County staff reviewed the clearing and grading associated with the driveway and determined the site was stabilized and the grades were not substantially changed; thus, a grading plan was not required. I defer to the professional staff who are certified by the State to conduct these inspections, so I support their findings.

Porch Construction – Mr. Hailer commenced construction of a front porch without the appropriate Zoning and Building Permits. The County issued violations and required Mr. Hailer to obtain permits for construction. Mr. Hailer obtained the necessary permits, which addressed the violations.

I will be coordinating the community meeting in conjunction with Supervisor Weir's Office.

Thanks, Wade

**ATTACHMENT B**

**VIRGINIA:**

**IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY**
**(Civil Division)**

GARY B. ROSS )
)
Plaintiff, )
)
v. ) Case No. CL24000519-00
)
TIMOTHY HAILER, et al. )
)
Defendant. )

**Defendant Timothy Hailer's Responses and Objections to the Plaintiff Gary B. Ross' First Set of Interrogatories and Requests for Production of Documents**

. . .

**Interrogatory 13:**

Identify all preventive and/or remedial activities you have taken to preserve the natural and/or cultural values of the Premises and/or dominant scenic, agricultural, woodland, and/or wetland characteristics of the Premises since the time of your purchase of it.

**Response:**

The Defendants have developed an agricultural stewardship plan and have worked diligently with Prince William County and the Virginia Department of Agriculture to ensure that their work and plans are well within the county and the Commonwealth's rules and regulations for agricultural properties. The Agricultural Stewardship Plan is provided in conjunction with the Defendant's Responses to the Plaintiffs Requests for Documents and is incorporated herein by reference. Furthermore, the Defendants have worked diligently to ensure that they are building a beautiful property that will fully and completely fit with the agricultural nature of the Property. They are also planning to plant additional trees (over 100 have already been planted) to screen their Property . . .

# ATTACHMENT C

**WEST VIRGINIA [Winfield]**

V 1717.17 TIMBERING.

(a) Definition. Timbering shall be construed to include the removal by select-cut or clear-cut of trees and brush, for commercial or personal purposes, which would allow the possibility of additional storm water runoff.

**PENNSYLVANIA [Plains Twp]**

PA § 27-802. Use Regulations.

Forestry activities that include timbering operations that exceed five acres shall be conducted in accordance with the following requirements: (1) A zoning permit application shall be submitted to the Plains Township Zoning Officer prior to harvesting or otherwise removing trees on any tract of land larger than five acres. (2) Prior to the start of operations, a forestry management plan shall be prepared and filed with the submission of the zoning permit application.

**NORTH CAROLINA [St. James]**

10.3.5 Application requirements.

A. An application for a tree clearing certificate is not required for those activities which can demonstrate an exemption in accordance with the provisions of Article 10.3.2 above.

[...]

8. The proposed limits of timbering activities, including the location and extent of all tree protection fencing as required under Article 10.4...

**OHIO**

• Moreland Hills: 1353.01 TIMBERING OR COMMERCIAL CUTTING DEFINED.

As used in this chapter, "timbering or commercial cutting" means the cutting or removal of five trees or more having a trunk diameter of eight (8) inches or more DBH (diameter at breast height).

**ATTACHMENT D**

PRINCE WILLIAM COUNTY

Department of Development Services

March 27, 2024

**SENT BY FIRST CLASS & CERTIFIED MAIL**

Timothy J. Hailer and Kimberly Taiedi Francis
1261 Mountain Road
Haymarket, VA 20169

**Re:** **Bona Fide Agricultural Use Zoning Determination:** #ZNR2024-00146
**Property Address:** 1261 Mountain Road; **GPIN:** 7202-53-9500; **Acreage:** 10.3048 acres
**Zoning District:** A-1, Agricultural Zoning District

Dear Property Owners:

This is in response to your submission received on March 12, 2024, requesting a zoning determination for the above referenced property. The subject property ("the Property") contains 10.3048 acres and is zoned A-1, Agricultural. Based on information obtained from the Real Estate Assessment Office, the subject lot is currently developed with a residential single-family detached dwelling unit constructed in 2000, containing 4,648 square feet of dwelling area.

You have stated in your request letter that you propose to use the Property for agricultural purposes, for the raising of various farm animals such as hens, goats, cows, and chickens, as well as horses, including space for preparing and packaging eggs from pastured hens, an outdoor/indoor riding paddock for horses, and silvicultural activity (harvesting of timber on the Property for the sale of firewood). You have also stated in your request letter that you are proposing to construct a 58'x36' barn and two 12'x16' barns on the Property for the housing, and handling of farm animals, storing of agricultural tools, equipment, and machinery, as well as feed for farm animals and storage of the firewood harvested from the Property. Information submitted with your application confirms that the above referenced Property has been issued Farm #1236/Tract #2741 by the U.S. Department of Agriculture Farm Service Agency. **This proposed use, as described above and as outlined in your commitment letter, would be considered permitted by-right bona fide agricultural use of the Property and would not be deemed a commercial or business use except as referenced in Part 510 of the Prince Wiliam County Zoning Ordinance.**

Since A-1 zoned property cannot have two principal uses, the identified bona fide agricultural use of the Property will be deemed its principal use, and the existing residential use on the lot will be considered accessory to the identified bona fide agricultural use of the Property. **Please be advised that for the existing residential use on the Property (residential single-family detached dwelling unit) to be a permitted accessory use of the principal bona fide agricultural use on the Property, the occupants that reside in the dwelling must be a property owner, a manager/operator of the bona fide agricultural operation, or an employee of the bona fide agricultural operation.**

Based on the application submission information submitted with ZNR2024-00146, including the notarized commitment letter and conformance with all required zoning regulations, you may now pursue the necessary County permits and approvals for any proposed primary agricultural buildings/structures to support the identified bona fide agricultural use specifically outlined in this

5 County Complex Court, Suite 180, Prince William, Virginia 22192 • 703-792-3340 | zoningadministration@pwcgov.org

## ATTACHMENT E

| PWC/DICTIONARY DEFINITION: | UNCONTESTED FACTS: |
|---|---|
| • PWC: *"Timbering* shall mean the harvesting of trees for commercial products or for farm use, including, but not limited to… posts and firewood." | • Hailer has cut down trees for posts for use on "farm" and firewood for sale (and also admitted replanting). |
| • PWC: *"Clearing* shall mean removing… vegetation growing in the soil… includ[ing] cut[ting] down a tree or other vegetation/damage inflicted upon the root system by the operation of equipment and vehicles." | • Hailer has admitted to PWC he is *"clearing"* and PWC has repeatedly called what he is doing, *"clearing."* He uses heavy machinery to do so. |
| • Merriam-Webster Dictionary: *"Harvesting* means to collect a natural resource for human use." | • Hailer has admitted to PWC he is *"harvesting"* and PWC has repeatedly called what he is doing *"harvesting."* |

## ATTACHMENT F

**Sec. 17-41. - Discharge of fireworks.**

(a) The use or discharge of fireworks, firecrackers, explosives **or rockets of any kind** is prohibited in any park or recreational area, unless the activity is sponsored by the park authority and is conducted in accord with the provisions of Article V of Chapter 9 of this Code.

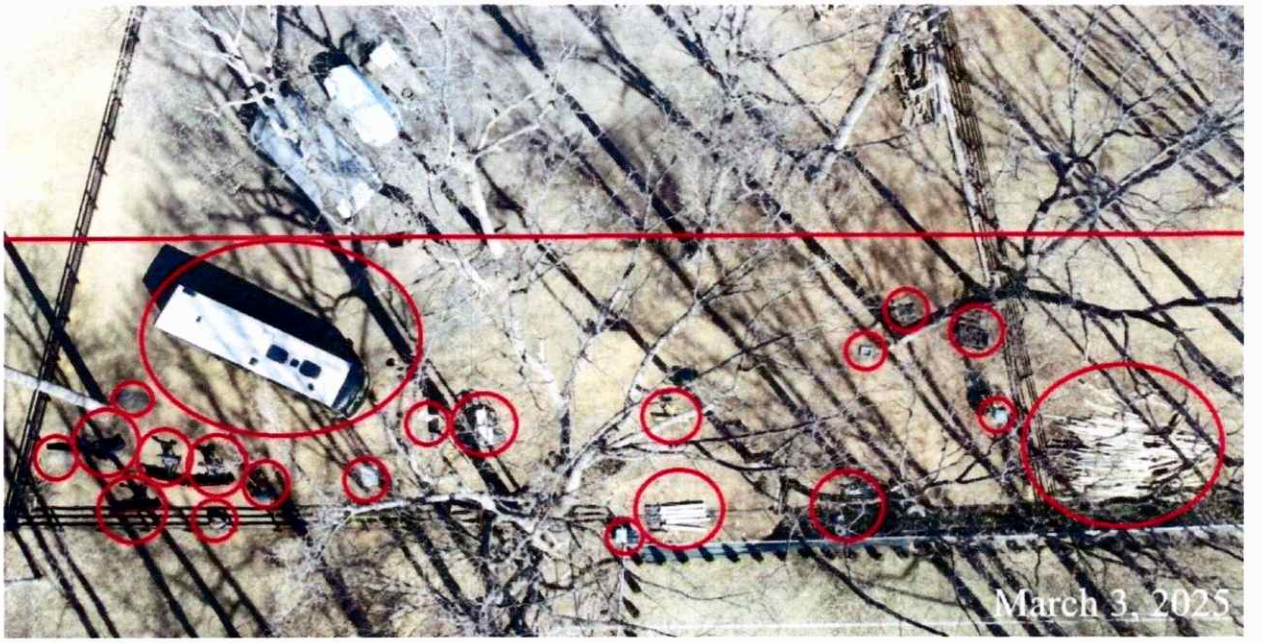
**Sec. 4-63.1. - Transportation, harboring, and sale of skunks and raccoons prohibited.**

For as long as a rabies emergency shall exist in accordance with section 4-63, the transportation, **importation**, **translocation**, harboring, and sale of **foxes, skunks and raccoons** in Prince William County is prohibited.

**Sec. 32-400.13. - Storage of trucks prohibited.**

1. Except as permitted by section 13-327 of the County Code and unless essential to the nature of the use, such as commercial parking, or otherwise permitted in this chapter, the storage of the following commercial vehicles shall be prohibited in all B and O districts and the M-2 District, except when actively engaged in loading or unloading operations: (a)Cement trucks.(b)**Construction equipment**.(c)Dump trucks. (d) Garbage, refuse or recycling trucks.(e) **Passenger buses** (excluding school buses).(f) Tow trucks.(g) Tractors or **trailers** of a tractor-trailer truck. 2. Except as permitted by section 13-327 of the County Code, the following vehicles registered with the Virginia Department of Motor Vehicles or any other state or government agency as having a gross vehicle weight of 10,100 pounds or more, shall be prohibited in all B and O districts, except when actively engaged in loading or unloading operations:(a) Box trucks.(b) Flat bed trucks.(c) Stake bed trucks.(d) **Step vans**.(e) **Trailers**.

**ATTACHMENT G**

**IN THE ZONING BOARD OF APPEALS OF PRINCE WILLIAM COUNTY**

| | | |
|---|---|---|
| Appeal of Hobart, *et al.* | : | Number: APL-2025-00016 |
| v. | : | Number: ZNR-2025-00093 |
| Zoning Administrator Lisa Fink-Butler | : | Filing Date: March 10, 2025 |

## SUPPLEMENTAL MATERIALS

Understanding that the Board appreciates brevity whenever possible, the following few statements and materials are respectfully submitted in support of this appeal:

1. **Determination Being Appealed:** The County Attorney's office has expressed concern that the subject matter of this appeal may be unclear since the Application form itself did not explicitly list the reference number of the Determination being appealed. With regard to that Application form, it was the undersigned's initial impression that the form was asking for the *name* of the Zoning Administrator (as they change over time). The *number* of the Determination at issue (ZNR-2025-00093) *was* explicitly provided in the Justification, which was attached to this same Application. Both documents were simultaneously submitted, and the Application specifically directed the reader to the Justification (*see* Attachment A).

It should also be noted that when the Application and accompanying Justification were presented at the Zoning counter, the receiving staff member looked it over and made no mention of the Determination number being required on the Application as well as the Justification. The acceptance of the filing fee, the issuance of a receipt, the setting of a hearing date, the provision of signs for posting, multiple administrative communications, and other indicia of correctness followed. Accordingly, all indications are that there was not—nor should there now be—any confusion about which Determination is being appealed.

In order to avoid the possibility of any confusion remaining, however, the Determination letter that is the subject of this appeal is attached hereto in its entirety (*see* Attachment B).

2. **Caselaw**: As the Board is no doubt aware, the law of zoning is derived from two primary sources: Zoning regulations (both county and state) and the associated caselaw. In fact, in the Determination letter at issue here, the Zoning Administrator herself cites two cases: Ancient Art v. Virginia Beach and Rohrer v. Funkhouser (*see* Attachment B). Courtesy copies of both cases are attached hereto in the event that the Board wishes to review them in advance of the hearing (and the Appellant would be pleased to provide the Board with copies of any other cases cited in its Justification upon request, but does not wish to burden the Board with a voluminous record).

The inapplicability of Ancient Art to this case has already been discussed in the Appellant's Justification. Having only just received a copy of Rohrer from the County Attorney, however, the following distinction is provided in the hope that it may be helpful to the Board's analysis: In the Rohrer case, the Westmoreland County Zoning Administrator approved a subdivision site plan. Sometime *after* that approval had been granted, the petitioner made a request for *eight* different Determinations of matters underlying the previously-granted site plan in an apparent attempt to challenge the propriety of the plan retroactively. The petitioner also attempted to reserve the right to submit, *"additional administrative requests"* in the future. On these exceptional facts, the Court denied the petitioner's request, finding that: *" Logically, there is no end to the process which the petitioner seeks to set in motion." See* Rohrer at 504. On the facts of that case, this makes sense.

Here, by contrast, there is no prior site plan. There is no prior county action of any kind. In fact, it is not the action, but the inaction of the Zoning Administrator that is at issue in this case. Moreover, there are not eight requests; there are two: *"[W]e... request a formal, appealable determination regarding the applicability of PWC Code § 32-250.53 to actions taking place (past and present) at 1261 Mountain Road"* (*see* Determination Request Letter, paragraph 17). There is

also no reservation of the right to submit additional requests. There is simply a request that the Zoning Administrator consider the actions of the owner both prior to and following the request for Determination.

If it were improper for a Zoning Administrator to make decisions regarding the *past* actions of an owner, the Zoning Ordinance would only apply to future actions, meaning that violations, corrective orders, and remediation would *never* be available options. Moreover, even such future actions would be immune from regulation once they took place. This would create a situation in which owners would be motivated to do whatever they pleased on their properties regardless of the rules, secure in the knowledge that once completed, the officials charged with enforcing the Zoning Ordinance would simply conclude: *"What's done is done and can't be helped."* This cannot be considered an appropriate approach to the "enforcement" of the Zoning Ordinance.

This position is also contradicted by the fact that multiple violations for *past* misconduct have been issued in this case. And while corrective action and remediation has been ordered and vigorously pursed by county staff in response to past violations on *other* properties, the same cannot be said for this case.

It is inescapable that Zoning Administrators can and should consider past conduct in determining whether the Zoning Ordinance has been violated. The only remaining question, then, is why the Zoning Administrator is declining to do so in this case.

3. **Viewing:** In a prior appeal relating to this same property, at least one member of the Board took the time to view the subject property in person. The Appellant maintains that the current appeal turns on an issue of pure law, in which the appearance of the property is not controlling—either the Fifty Foot Rule applies to properties located next residences in the A-1 district, or it does not—but if any Board or staff member chooses to view the property in its current state, the Appellant respectfully suggests that the harms taking place within fifty feet of neighboring

residences are more regularly detectable at any given time from the public lands to the north of the *cul-de-sac* which services 1400, 1401, and 1402 Spring Lake Drive (*see* Attachment C), than they are from the expansive, clear-cut, front yard which has been created along Mountain Road.

This is not to suggest that those living in the *cul-de-sac* are the only ones who have been harmed by activity taking place within the fifty-foot zone. Other neighbors have lost the many protections previously provided by the scores of mature trees and bushes that once bordered their properties, and are regularly subjected to the running of heavy machinery along these now-bare property lines, further damaging what little tree-cover remains. Those living on the *cul-de-sac*, however, also have to contend with the massive parking area and the busy trucking yard that have been created in that area, and the piles of construction materials, heavy equipment, and other assorted items that are regularly stored there.

Dated: April 23, 2025

Respectfully submitted,

Peter Hobart

**ATTACHMENT A**

Zoning Administrator

PRINCE WILLIAM COUNTY

## Application for an Appeal

**Fee*: $** 866.25

Make checks payable to PWC

(*In accordance with current Fee Schedule)

APL_____

Planner:_____

Hearing Date:_____

| | | | |
|---|---|---|---|
| **Applicant Information** | Name<br>Peter Hobart | Title<br>Esquire | |
| | Mailing Address<br>1401 Mountain Road | City/State<br>Haymarket, Virginia | Zip Code<br>20169 |
| | Email<br>peterhobart@usa.com | Phone<br>(610) 883-3324 | |
| **Owner Information**<br>Same as Applicant ☐ | Name<br>Timothy Hailer and Kimberly Taiedi | | |
| | Mailing Address<br>1261 Mountain Road | City/State<br>Haymarket, Virginia | Zip Code<br>20169 |
| | Email<br>hailerdirtsolutions@gmail.com | Phone<br>(703) 966-6871 | |
| **Property Information** | Address<br>1261 Mountain Road | City/State<br>Haymarket, Virginia | Zip Code<br>20169 |
| | GPIN (Grid Parcel Identification Number)<br>7202-53-9500 | Lot Size (Acres or Square Feet)<br>10.30 | |
| | Zoning District<br>A-1 | Magisterial District<br>Gainesville | |
| **Subject of Appeal** | This is an application to the ☑ Board of Zoning Appeals or the ☐ Board of County Supervisors for an appeal from the following determination by the Zoning Administrator: Fink-Butler | | |
| **Justification** | Applicant statement (Use additional pages if necessary)<br>Please see attached justification. | | |

### IN THE ZONING BOARD OF APPEALS OF PRINCE WILLIAM COUNTY

| | | |
|---|---|---|
| Appeal of Hobart, *et al.* | : | Number: ZNR-2025-00093 |
| v. | : | |
| Zoning Administrator Lisa Fink-Butler | : | Filing Date: March 10, 2025 |

### JUSTIFICATION STATEMENT AND RATIONALE

#### Factual Background

The facts underlying this appeal are relatively straightforward:

• 1261 Mountain Road is a ten-acre property in the Prince William County ("PWC") A-1 agricultural district that is bordered by *seven* private residences (and a small open public area on a *cul-de-sac* shown in yellow), in what was once a peaceful, quiet, densely-wooded neighborhood.

**ATTACHMENT B**

PRINCE WILLIAM COUNTY

Department of Development Services
Zoning Administration Division

February 11, 2025

**SENT BY FIRST CLASS & CERTIFIED MAIL**

Peter Hobart
1401 Mountain Road
Haymarket, VA 20169

**Re: Zoning Determination Case # ZNR2025-00093**
**Address**: 1261 Mountain Road; **GPIN:** 7202-53-9500; **Acreage:** 10.3
**Zoning District:** A-1, Agricultural

Mr. Hobart,

You have asked for an interpretation/determination of Zoning Ordinance Section 32-250.53 as it applies to 1261 Mountain Road. In particular, you seek a determination as to whether 1201 Mountain Road violates Section 32-250.53 because of timbering, harvesting, or clearing that is occurring within 50 feet of a property whose primary use is residential.

1261 Mountain Road is over 10 acres in size and is zoned A-1. As such, agricultural uses and the keeping of livestock are permitted on the property by right pursuant to Section 32-301.02(1). My determination is that the removal of trees on an A-1 zoned property larger than 10 acres in order to clear land for an agricultural use would not violate Section 32-250.53, even if it took place within 50 feet of a residential property. The purpose of Section 32-350.53, entitled "Timbering," is to address timbering, which is explicitly the subject of all three of its subsections. Its purpose is not to impose general buffering requirements; those are found in Sections 32-250.30 to 32, entitled "Buffer Areas." Section 32-250.53 does not provide a "Fifty Foot Buffer rule."

My determination was also informed by, among other things, (1) the opinion of the County arborist and the Virginia Department of Forestry that cutting down trees to establish a farm is land clearing, not timbering; (2) the fact that removing trees without replanting them is not forestry, which is the subject of timbering; and (3) the historical fact that farms need to remove trees in order to fully use the lot for agriculture, or even just to remove trees to install a shed or fence within 50 feet of a neighboring property.

Your Application also contains a series of questions, including whether Section 32-250.53 applies to "actions past and present" on 1261 Mountain Road. However, answering these questions goes far beyond what is required by a zoning administrator in providing a determination. See Rohrer v. Funkhouser, 99 Va. Cir. 502 (Cir. Ct. 2004), discussing *Va. Code Ann. § 15.2-2286(A)(4)*.

The Zoning Ordinance allows that anyone aggrieved by a zoning determination of the Zoning Administrator may appeal the decision to the Board of Zoning Appeals. An appeal must be filed within thirty (30) days of receipt of this letter. The Board of Zoning Appeals will schedule and

advertise a public hearing to consider an appeal within 90 days of the filing. The determination contained within this letter shall be final if an appeal is not filed within 30 days of receipt of this letter. The application fee and appeal application forms are available on our web page at the following link: https://www.pwcva.gov/assets/2021-06/Application%20for%20an%20Appeal.pdf

I should add that it appears that the purpose of your request is to seek an appeal from the Board of Zoning Appeals (BZA) because you disagree with my interpretation. Of course, it would be your right to do so. However, you should know the BZA's decision would not affect my decision not to issue a violation for an alleged violation of Section 32-250.53 as it applies to 1261 Mountain Road. This decision involves judgment and discretion, and it lies solely with me as the zoning administrator. Ancient Art Tattoo Studio v. City of Va. Beach, 263 Va. 593, 561 S.E.2d 690 (2002). There are many factors that would influence my decision. Perhaps the most important of these is whether I believe there is a violation and whether I could truthfully testify to that belief.

Sincerely,

Lisa Fink-Butler

Lisa Fink-Butler, CZA, CTM
Zoning Administrator

cc: Kimberly V. Taiedi & Timothy J. Hailer, Surv., 1261 Mountain Road, Haymarket, VA 20169

**ATTACHMENT C**


263 Va. 593
Supreme Court of Virginia.

ANCIENT ART TATTOO STUDIO, LTD., et al.
v.
CITY OF VIRGINIA BEACH, et al.

Record No. 011299.
|
April 19, 2002.



**Synopsis**
Applicant for business license and certificate of occupancy to operate tattoo parlor filed petition for writ of mandamus seeking order directing city zoning administrator to grant application. The Circuit Court, City of Virginia Beach, Frederick B. Lowe, J., denied writ. Applicant appealed. The Supreme Court, Cynthia D. Kinser, J., held that decision on application was discretionary with zoning administrator, and thus applicant was not entitled to writ of mandamus to compel grant of application.

Affirmed.

**Procedural Posture(s):** On Appeal.

West Headnotes (4)

[1] **Mandamus** Nature and Scope of Remedy in General

**Mandamus** Nature of Acts to Be Commanded

"Mandamus" is an extraordinary remedy that may be used to compel performance of a purely ministerial duty, but it does not lie to compel the performance of a discretionary duty.

4 Cases that cite this headnote

[2] **Mandamus** Nature and Scope of Remedy in General

Writ of mandamus may be issued only when there is a clear right to the relief sought, a legal duty to perform the requested act, and no adequate remedy at law.

3 Cases that cite this headnote

[3] **Mandamus** Proceedings to Procure and Grant or Revoke Licenses, Certificates, and Permits

Decision on application for business license and certificate of occupancy to operate tattoo parlor was discretionary with zoning administrator, and thus applicant was not entitled to writ of mandamus to compel grant of application, even though court determined that ordinance banning tattoo establishments was invalid, given that remainder of zoning ordinance was effective, tattoo parlor did not automatically fall into other zoning category for personal service establishments, which included permanent makeup, zoning ordinance did not specifically permit tattoo parlor as matter of right in any zoning district, but rather depended on zoning classification, and zoning ordinance did not alter statutory 90-day period for decision on application. West's V.C.A. §§ 15.2-912, 15.2-2286, subd. A, par. 4, 18.2-371.3.

1 Case that cites this headnote

[4] **Mandamus** Matters of Discretion

Mandamus will not lie to compel the performance of any act or duty necessarily calling for the exercise of judgment and discretion on the part of the official charged with its performance; where the official duty in question involves the necessity on the part of the officer of making some investigation, and of examining evidence and forming his judgment thereon mandamus will not lie.

4 Cases that cite this headnote

**Attorneys and Law Firms**

**690 *595 Kevin E. Martin–Gayle (William C. Bischoff; Stallings & Richardson, on briefs), Virginia Beach, for appellants.

Mark D. Stiles (Leslie L. Lilley, on brief), Virginia Beach, for appellees.

**691 Present: All the Justices.

**Opinion**

Opinion by Justice KINSER.

In this appeal, we consider whether the circuit court erred in denying mandamus relief to petitioners who sought approval of applications to operate tattoo establishments. Because we conclude that a zoning administrator's decision on the applications involved the performance of a discretionary duty, we will affirm the circuit court's judgment.

FACTS AND MATERIAL PROCEEDINGS

In a petition for a writ of mandamus, Ancient Art Tattoo Studio, Ltd. (Ancient Art) challenged the validity of an ordinance of the City of Virginia Beach (the City) that has prohibited the operation of tattoo establishments within the City limits since 1965. The circuit court ruled that the ordinance at issue, Virginia Beach City Code § 23–51, is inconsistent with the City's authority to regulate the conduct of tattoo parlors as set forth in Code § 15.2–912, and also with the provisions of Code § 18.2–371.3.[1] Thus, the court held that, to the extent that the City's denial of Ancient Art's previously filed application for a business license and certificate of occupancy to operate a tattoo parlor was premised on Section 23–51, the permits should be issued. However, the court stated that Ancient Art must satisfy any other legitimate requirements of the City's ordinances.

Joseph M. Dufresne, president of Ancient Art, then filed another application to obtain the required permits to operate a tattoo parlor.[2] The City's interim zoning administrator (Zoning Administrator) advised Dufresne that, in light of the circuit court decision invalidating Virginia Beach City Code § 23–51, she could not make a determination *596 on the application until she had conducted further research. Ancient Art then filed a petition for a supplemental writ of mandamus to require the Zoning Administrator to grant the requested approval immediately. In the petition, Ancient Art alleged that it had complied with all the provisions of the City's zoning ordinance and that, therefore, issuing the required certificates is "a perfunctory ministerial procedure" that is generally handled "at the counter." Ancient Art asserted, however, that the Zoning Administrator purposefully delayed approval of its applications in order to allow the City sufficient time in which to amend its zoning ordinance so as to preclude the operation of tattoo establishments in certain zoning districts.

At a hearing on Ancient Art's supplemental petition, the court heard testimony from Dufresne and the Zoning Administrator. According to Dufresne, the Zoning Administrator stated that "she had 90 days to make a decision, and she was instructed [by the City Attorney's office] to take the full 90 days." However, the Zoning Administrator disputed Dufresne's assertion and instead testified that she had been requested not to issue permits for tattoo establishments "over the counter." She acknowledged that businesses performing temporary tattooing and body piercing had been previously classified as "personal service establishments" that are permitted in the City's RT 2 Resort Tourist District. *See* Virginia Beach City Code §§ 1510 and 1511. However, the Zoning Administrator explained that, because of the invalidation of the City's ordinance banning tattoo establishments and the absence of any other ordinances specifically addressing the practice of tattooing, she needed time to determine the appropriate classification for a tattoo parlor. She also stated that she was aware of and could not ignore the fact that the City had pending amendments to its zoning ordinance regarding the classification and location of tattoo parlors. Nevertheless, she admitted that if she "had to make a decision today, ... [the] tattoo parlors can go into place."

The circuit court denied the petition, concluding that the City should have a reasonable period of time in which to consider Ancient Art's applications and enact appropriate **692 zoning regulations relating to the location and operation of tattoo establishments. The court subsequently entered an order memorializing this ruling.

On April 24, 2001, a few days before entry of the court's final order, the City adopted several amendments to its zoning ordinance. The amendments permit the operation of tattoo parlors in the City's B–2 Business District with a conditional use permit. However, the *597 amendments specifically prohibit the operation of tattoo parlors in the City's RT–2 Resort Tourist District, where Ancient Art had originally planned to open a tattoo establishment.

Ancient Art appeals from the denial of its petition for a supplemental writ of mandamus. It contends that the Zoning Administrator is not authorized to take up to 90 days to rule on pending applications. Instead, relying on Virginia

Beach City Code § 103(e), Ancient Art asserts that the issuance of a certificate of occupancy is mandatory upon the applicant's compliance with the requirements of the City's zoning ordinance, and that the Zoning Administrator cannot delay approval in order for the City to enact zoning changes. Thus, Ancient Art argues that, because it satisfied all existing zoning requirements, the circuit court should have granted a writ of mandamus directing immediate approval of Ancient Art's pending applications.

## ANALYSIS

**[1]** **[2]** Mandamus is an extraordinary remedy that may be used "to compel performance of a purely ministerial duty, but it does not lie to compel the performance of a discretionary duty." *Board of County Supervisors v. Hylton Enters., Inc.*, 216 Va. 582, 584, 221 S.E.2d 534, 536 (1976) (citing *Griffin v. Board of Supervisors*, 203 Va. 321, 328, 124 S.E.2d 227, 233 (1962)); *accord Town of Front Royal v. Front Royal & Warren County Indus. Park Corp.*, 248 Va. 581, 584, 449 S.E.2d 794, 796 (1994); *Early Used Cars, Inc. v. Province*, 218 Va. 605, 609, 239 S.E.2d 98, 101 (1977). A writ of mandamus may be issued only when there is a clear right to the relief sought, a legal duty to perform the requested act, and no adequate remedy at law. *Hylton Enters.*, 216 Va. at 584, 221 S.E.2d at 536; *Richmond–Greyhound Lines v. Davis*, 200 Va. 147, 151–52, 104 S.E.2d 813, 816–17 (1958).

**[3]** Applying these principles, we conclude that Ancient Art was not entitled to a writ of mandamus. After the circuit court decided that the City's long-standing ordinance banning the operation of tattoo establishments was not valid, the Zoning Administrator had to look to the City's zoning ordinance to determine, for the first time, how tattoo parlors should be classified for the purpose of deciding in which zoning districts those establishments could be located. Unlike the situation in *Town of Jonesville v. Powell Valley Village Limited Partnership*, 254 Va. 70, 77–78, 487 S.E.2d 207, 212 (1997), where the town had no zoning regulations in effect after its zoning ordinance ***598** was declared void *ab initio*, the City's zoning ordinance was not affected by the court's ruling and provided the framework for the Zoning Administrator's decision on Ancient Art's applications. Contrary to Ancient Art's argument, tattoo establishments did not, after the ban was invalidated, automatically fall into the category of "personal service establishments" that are permitted in the RT–2 Resort Tourist District, *see* Virginia Beach City Code § 1511, merely because establishments providing temporary tattoos, body piercing, and permanent make-up had previously been given that classification. This is so even if Ancient Art is correct in its assertion that permanent make-up "is nothing more than tattooing by another name."

**[4]** Thus, in the absence of any zoning regulation regarding the operation or location of tattoo parlors, or a definition of the term "personal service establishments" in the City's zoning ordinance, the determination as to how to classify a tattoo parlor necessarily involved the exercise of discretion by the Zoning Administrator. Even if Ancient Art had complied with all other zoning requirements, the Zoning Administrator's decision, in these circumstances, remained discretionary and was not the performance of a purely ****693** ministerial duty. As this Court stated many years ago:

> [I]t is well settled that *mandamus* will not lie to compel the performance of any act or duty necessarily calling for the exercise of judgment and discretion on the part of the official charged with its performance.
>
> ....
>
> [W]here the official duty in question involves the necessity on the part of the officer of making some investigation, and of examining evidence and forming his judgment thereon *mandamus* will not lie.

*Thurston v. Hudgins*, 93 Va. 780, 783, 20 S.E. 966, 967–68 (1895) (citations and quotation marks omitted), *quoted in Richlands Medical Assoc. v. Commonwealth ex rel. State Health Comm'r*, 230 Va. 384, 386–87, 337 S.E.2d 737, 739 (1985).

Relying on our decision in *Planning Commission v. Berman*, 211 Va. 774, 180 S.E.2d 670 (1971), Ancient Art nevertheless contends that the Zoning Administrator purposefully delayed making a decision on its applications so that the City would have time to amend its ***599** zoning ordinance in order to preclude the location of tattoo parlors in certain zoning districts. In *Berman*, the petitioners sought approval of a site plan and issuance of a building permit for a free standing restaurant in a zoning district that permitted such restaurants as a matter of right. We concluded that the evidence supported the trial court's decision that the reasons given for denying approval of the site plan were "purely 'technical' and constituted an effort to illegally control the use of the land contrary to the existing zoning law[.]" *Id.* at

775–76, 180 S.E.2d at 671–72. The denial of approval was not predicated on the applicant's failure to comply with zoning regulations, but on the desire of the planning commission to prevent any further increase in the number of free standing franchise restaurants on a particular street. *Id.* at 776, 180 S.E.2d at 672.

Ancient Art overlooks a significant difference between the facts in *Berman* and those in the present case. There, the restaurant was to be located in a zoning district that permitted free standing restaurants as a matter of right. Once the applicant complied with any other zoning requirements, approval of the site plan and issuance of the building permit were purely ministerial acts. In contrast, the City's zoning ordinance did not specifically permit the operation of a tattoo parlor as a matter of right in any particular zoning district. Rather, the right to operate such an establishment in a particular zoning district, specifically the RT–2 Resort Tourist District, depended on its classification under the City's zoning ordinance. As already noted, that determination was a discretionary act.

The Zoning Administrator also was not required to make a decision "over the counter" as Ancient Art argues. Under Code § 15.2–2286(A)(4), the Zoning Administrator had 90 days in which to respond to Ancient Art's applications. The provisions of Virginia Beach City Code § 103(e) do not alter or reduce that 90–day period. Instead, Section 103(e) merely requires the Zoning Administrator to "issue such certificate if [she] finds that all of the requirements of this ordinance have been met[.]" To make the finding that Ancient Art had satisfied all requirements of the City's zoning ordinance, the Zoning Administrator first had to determine the appropriate classification for a tattoo establishment.

Our decision is not altered by the Zoning Administrator's testimony that, if she "had to make a decision today," she would issue the certificate. She was not required, under the provisions of either Code § 15.2–2286 or Virginia Beach City Code § 103(e), to make a decision on the day that Ancient Art submitted its applications. Nor ***600** was Ancient Art entitled to a decision under the City's existing zoning ordinance before the enactment of the amendments. *See* *Parker v. County of Madison*, 244 Va. 39, 42, 418 S.E.2d 855, 857 (1992)(the obligation to act in accordance with the new law, not the former, is not affected by the mere filing of an application before the new law becomes effective). Additionally, we note that the circuit court's order specified that the denial of mandamus relief was without prejudice to Ancient Art's right to file a petition for a writ of mandamus if the City failed to act on Ancient Art's ****694** pending applications within 60 days of March 26, 2001.

Thus, we conclude that mandamus was not an appropriate remedy to obtain the relief sought by Ancient Art. Accordingly, the circuit court did not err in denying Ancient Art's petition for a supplemental writ of mandamus, and we will affirm the circuit court's judgment.

*Affirmed.*

**All Citations**

263 Va. 593, 561 S.E.2d 690

## Footnotes

1 Virginia Beach City Code § 23–51(b) provided that "[i]t shall be unlawful for any person in the city to operate a tattoo establishment or engage in the practice or business of tattooing as a tattoo operator or as a tattoo artist."

2 Ancient Art subsequently filed an application in its name.

# Rohrer v. Funkhouser

Circuit Court of Westmoreland County, Virginia

August 4, 2004, Decided

Case No.: CL03-52

**Reporter**
99 Va. Cir. 502 *; 2004 Va. Cir. LEXIS 418 **

B. L. Rohrer v. Trenton L. Funkhouser, Zoning Administrator

## Core Terms

zoning administrator, requests, zoning, administrative determination, rights

## Case Summary

**Overview**

HOLDINGS: [1]-There was no authority requiring a zoning administrator to respond to a landowner's requests because the requests did not pertain to determinations of vested rights accruing under Va. Code Ann. § 15.2-2307; [2]-The purpose of Va. Code Ann. § 15.2-2286(A)(4) was to set a 90 day deadline for a zoning administrator to act on a request for a decision which he or she must approve or disapprove or for a determination on a zoning matter within the scope of his or her authority, which applied only to determination of vested rights under§ 15.2-2307.

**Outcome**
Demurrer sustained.

## LexisNexis® Headnotes

Civil Procedure > ... > Writs > Common Law Writs > Mandamus

**HN1[] Common Law Writs, Mandamus**

A mandamus is an extraordinary remedy employed to compel a public official to perform a purely ministerial duty imposed upon him or her by law. A ministerial act is one which a person performs in a given state of facts and prescribed manner in obedience to the mandate of legal authority without regard to, or the exercise of his or her own judgment upon the propriety of the act being done.

Civil Procedure > ... > Responses > Defenses, Demurrers & Objections > Demurrers

**HN2[] Defenses, Demurrers & Objections, Demurrers**

Upon consideration of a demurrer, the court accepts all facts alleged in or reasonably inferable from the plaintiffs pleadings to be true. The court does not evaluate and decide the merits of a claim, it only tests the sufficiency of factual allegations to determine whether the plaintiff's pleading states a cause of action. Where the respondent has demurred, the petitioner is not entitled to the assumption that his or her legal theories are correct.

Business & Corporate Compliance > Real Property > Zoning > Administrative Procedure
Real Property Law > Zoning > Administrative Procedure

Business & Corporate Compliance > Real Property > Zoning > Local Planning
Real Property Law > Zoning > Local Planning

**HN3[] Zoning, Administrative Procedure**

Va. Code Ann. § 15.2-2286(A)(4) authorizes a locality to appoint or designate a zoning administrator.

Business & Corporate Compliance > Real Property > Zoning > Ordinances
Real Property Law > Zoning > Ordinances

**HN4[] Zoning, Ordinances**

Under Va. Code Ann. § 15.2-2286(A)(4), zoning administrators are given the general authority to administer and enforce a zoning ordinance on behalf of the governing body, and also are given specific authority to order in writing the remedying of any condition violating zoning, to insure compliance with zoning by bringing legal action or other appropriate proceedings and to make findings of fact and, with concurrence of the attorney for the governing body, conclusions of law regarding determinations of rights accruing under Va. Code Ann. § 15.2-2307.

Business & Corporate Compliance > Real Property > Zoning > Administrative Procedure
Real Property Law > Zoning > Administrative Procedure

Business & Corporate Compliance > Real Property > Zoning > Ordinances
Real Property Law > Zoning > Ordinances

**HN5[] Zoning, Administrative Procedure**

The general authority of a zoning administrator to administer and enforce a zoning ordinances is far too broad and general to find that it imposes a purely ministerial duty on a zoning administrator to render administrative interpretations of facts and law on any zoning matter.

Civil Procedure > ... > Writs > Common Law Writs > Mandamus

**HN6[] Common Law Writs, Mandamus**

Mandamus will not lie to compel the performance of any act or duty necessarily calling for the exercise of judgment and discretion on the part of the official charged with its performance.

Civil Procedure > ... > Writs > Common Law Writs > Mandamus

**HN7[] Common Law Writs, Mandamus**

Mandamus is applied prospectively only; it will not be granted to undo an act already done.

Civil Procedure > ... > Writs > Common Law Writs > Mandamus

**HN8[] Common Law Writs, Mandamus**

A writ of mandamus is to compel, not to revise or correct action, however erroneous it may have been and is not like a writ of error or appeal, which is a remedy for erroneous decisions.

Business & Corporate Compliance > Real Property > Zoning > Administrative Procedure
Real Property Law > Zoning > Administrative Procedure

Business & Corporate Compliance > Real Property > Zoning > Nonconforming Uses
Real Property Law > Zoning > Nonconforming Uses

**HN9[] Zoning, Administrative Procedure**

There is specific authority under Va. Code Ann. § 15.2-2286(A)(4) for a zoning administrator to make fact findings and with the concurrence of the county's attorney conclusions of law, but such authority is limited to determination of rights accruing under Va. Code Ann. § 15.2-2307 which pertains to vested rights or "non-conforming uses,"

Business & Corporate Compliance > Real Property > Zoning > Administrative Procedure
Real Property Law > Zoning > Administrative Procedure

**HN10[] Zoning, Administrative Procedure**

The purpose of the last paragraph of Va. Code Ann. § 15.2-2286(A)(4) is to set a 90 day deadline for a zoning administrator to act on a request for a decision which he or she must approve or disapprove or for a determination on a zoning matter within the scope of his or her authority which applies only to determination of vested rights under Va. Code Ann. § 15.2-2307. Beyond setting an action deadline this last paragraph imposes

no additional duty or authority on a zoning administrator to render administrative determinations above and beyond that imposed under the other provisions of § 15.2-2286(A)(4).

## Headnotes/Summary

**Headnotes**

An action of mandamus does not lie to compel the performance of any act or duty that calls for the exercise of judgment and discretion on the part of the official charged with its performance.

An action of mandamus applies prospectively only and does not lie to undo an act already done.

**Counsel:** **[**1]** John G. Dicks, Esquire, FutureLaw, L.L.C., Richmond, Virginia.

Russell H. Roberts, Esquire, Fredericksburg, Virginia.

**Judges:** Harry T. Taliaferro, III.

**Opinion by:** Harry T. Taliaferro, III

## Opinion

**[*502]** The petitioner brought this action against the respondent Trenton L. Funkhouser, the Zoning Administrator of Westmoreland County ("the Administrator") seeking a Writ of Mandamus compelling the Administrator to respond to certain "administrative determinations" pertaining to the Administrator's prior approval of a site plan. The specific requests are in a letter dated February 26, 2003, from petitioner's counsel to the Administrator. To this petition, the respondent filed a Demurrer on the grounds that the requests were simply argumentative of decisions already necessarily made by the Administrator in his approval of the site plan and that answering such requests was beyond the duty and the scope of the authority of the Administrator.

The Court for the reasons hereinafter stated sustains the Demurrer.

(1) *Writ of Mandamus.*

HN1[↑] A Mandamus is "an extraordinary remedy employed to compel a public official to perform a purely ministerial duty imposed upon him by law. A ministerial act is one which a person performs in a given state of **[**2]** facts and prescribed manner in obedience to the mandate of legal authority without regard to, or the exercise of his own judgment upon the propriety of the act being done." *Richlands Medical Ass'n v. Commonwealth ex rel. State Health Comm'r*, 230 Va. 384, 337 S.E.2d 737 (1985).

**[*503]** (2) *Demurrer*

HN2[↑] Upon consideration of a Demurrer, the Court accepts all facts alleged in or reasonably inferable from the plaintiffs pleadings to be true. The Court does not evaluate and decide the merits of a claim, it only tests the sufficiency of factual allegations to determine whether the plaintiff's pleading states a cause of action. *West Virginia Properties, Inc. v. First VA Mtg. & Real Estate Inv. Trust*, 221 Va. 134, 267 S.E. 2d 149 (1980), *Board of Sums. v. Southland Corp.*, 224 Va. 514, 297 S.E.2d 718 (1982). Where the respondent has demurred, the petitioner is not entitled to the assumption that his or her legal theories are correct. *Ward's Equip., Inc. v. New Holland N.A., Inc.*, 254 Va. 379, 493 S.E.2d 516 (1997).

(3) *Allegations in Petition*

In summary, the allegations are that the petitioner, a land owner in Westmoreland County, appealed to the Planning Commission the Administrator's approval of a site plan which is referenced in three letters attached to the Petition as "The Homes at Branson Cove"; that by the letter dated February 26, 2003, the petitioner requested the Administrator to make "administrative determinations" relative to eight matters set forth in such letter; that such requests pertain to the propriety of the Zoning Administrator's prior approval **[**3]** of the site plan[1]; that by the letter dated April 16, 2003, from the respondent's attorney to the petitioner's attorney the Administrator declined to make the requested administrative determinations except as to Request No. 8, but only to the extent that such request referred to a "non-conforming use"; and that the Administrator is required to respond to all of petitioner's requests within

[1] The requested determinations pertain to proffers made by the Applicant, vacating the old Belfield Subdivision, the use of a zoning affidavit to satisfy vacating a subdivision, the lack of unanimous lot owner consent to vacating the old subdivision, the site plan's alteration of a previously platted street, the site plan's alteration of access to an existing state highway, the site plan's failure to comply with VDOT regulations, the failure to vacate a previously sold lot in Belfield Subdivision, and the possibility of the creation of a non-conforming lot.

90 days and failed to do so.

(4) *Analysis*

The authority of local governments to enact land use ordinances is created under Chapter 22 (Planning, Subdivision of Land & Zoning) of Subtitle II of Title 15.2 of the Code of Virginia. The authority granted to localities to adopt zoning ordinances is contained in §15.2-2286.

HN3[↑] Paragraph 4 of §15.2-2286(A) authorizes a locality to appoint or designate a zoning administrator. The gravaman of the Demurrer is that under paragraph 4, the zoning administrator is not compelled to answer the **[*504]** petitioner's request for administrative determinations because such matters lie beyond the duty and scope of authority of the Administrator.

The specific provision in §15.2-2286(A)(4) argued by both parties is the last paragraph in the section which states as follows: "The zoning administrator shall respond within ninety **[**4]** days of a request for a decision or determination on zoning matters within the scope, of his authority unless the requester has agreed to a longer period."

HN4[↑] Under §15.2-2286(A)(4), zoning administrators are given the general authority to administer and enforce a zoning ordinance on behalf of the governing body, and also are given specific authority to order in writing the remedying of any condition violating zoning, to insure compliance with zoning by bringing legal action or other appropriate proceedings and to make findings of fact and, with concurrence of the attorney for the governing body, conclusions of law regarding determinations of rights accruing under §15.2-2307. These are additional grants of authority not applicable here.

The central issue to the Court's determination is what under the facts of this case defines the authority and duty of a zoning administrator. HN5[↑] The general authority of a zoning administrator to administer and enforce a zoning ordinance, if such is argued as the grounds for a Writ of Mandamus, is far too broad and general to find that it imposes a purely ministerial duty on a zoning administrator to render administrative interpretations of facts and law on any zoning matter.[2] Propounding **[**5]** responses to petitioner's administrative determinations would necessarily require discretion in the interpretation of law and finding of fact.

The petitioner's letter of February 26, 2003, is an invitation to join in a debate on the propriety of what the Administrator has already done[3] by challenging finding of facts and law already necessarily made by the Administrator. This is underscored by the statement in the February 26, 2003, letter that "we reserve the right to submit such additional administrative requests as may be necessary or appropriate to address issues or responses made in these or other administrative determinations". Logically, there is no end to the process which the petitioner seeks to set in motion through a Writ of Mandamus.[4]

HN9[↑] There is specific authority under §15.2-2286(A)(4) for a zoning administrator to make fact findings and with the concurrence **[*505]** of the county's attorney conclusions of law, but such authority is limited to determination of rights accruing under Code §15.2-2307 which pertains to vested rights or "non-conforming uses".

Request No. 8 in petitioner's letter dated February 26, 2003, is the only request which touches upon non-conforming use and the county attorney did respond to this **[**6]** request in his April 16, 2003, letter to petitioner's counsel. The Court finds that the other seven requests in petitioner's letter do not pertain to determinations of vested rights accruing under §15.2-2307.

We find that HN10[↑] the purpose of the last paragraph of §15.2-2286(A)(4) is to set a 90 day deadline for a zoning administrator to act on a request for a decision which he or she must approve or disapprove or for a determination on a zoning matter within the scope of his or her authority which this Court finds applies only to determination of vested rights under §15.2-2307. We

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[2] It was held in *Thurston v. Hudgins*, 93 Va. 780, 783, 20 S.E. 966, 967 (1895) that HN6[↑] "mandamus will not lie to compel the performance of any act or duty necessarily calling for the exercise of judgment and discretion on the part of the official charged with its performance . . .".

[3] In *Board of Supervisors v. Combs*, 160 Va. 487, 498, 169 S.E. 589, 593 (1933), it was held that HN7[↑] "Mandamus is applied prospectively only; it will not be granted to undo an act already done."

[4] *Richlands* 230 Va. at 387 states that HN8[↑] a Writ of Mandamus is "to compel, not to revise or correct action, however erroneous it may have been and is not like a writ of error or appeal, which is a remedy for erroneous decisions".

find that beyond setting an action deadline this last paragraph imposes no additional duty or authority on a zoning administrator to render administrative determinations above and beyond that imposed under the other provisions of §15.2-2286(A)(4).

(5) *Summary*

We find no authority requiring the Administrator to respond to the petitioner's requests. The respondent's Demurrer to the Petition for a Writ of Mandamus is sustained. Respondent's counsel shall prepare an Order reflecting the ruling set forth in this letter far endorsement of counsel and entry by this Court. The objections of petitioner's counsel are duly noted.

Harry T. Taliaferro, III

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End of Document

PRINCE WILLIAM COUNTY

Department of Development Services
Zoning Administration Division

February 11, 2025

**SENT BY FIRST CLASS & CERTIFIED MAIL**

Peter Hobart
1401 Mountain Road
Haymarket, VA 20169

**Re: Zoning Determination Case # ZNR2025-00093**
**Address**: 1261 Mountain Road; **GPIN:** 7202-53-9500; **Acreage:** 10.3
**Zoning District:** A-1, Agricultural

Mr. Hobart,

You have asked for an interpretation/determination of Zoning Ordinance Section 32-250.53 as it applies to 1261 Mountain Road. In particular, you seek a determination as to whether 1261 Mountain Road violates Section 32-250.53 because of timbering, harvesting, or clearing that is occurring within 50 feet of a property whose primary use is residential.

1261 Mountain Road is over 10 acres in size and is zoned A-1. As such, agricultural uses and the keeping of livestock are permitted on the property by right pursuant to Section 32-301.02(1). My determination is that the removal of trees on an A-1 zoned property larger than 10 acres in order to clear land for an agricultural use would not violate Section 32-250.53, even if it took place within 50 feet of a residential property. The purpose of Section 32-350.53, entitled "Timbering," is to address timbering, which is explicitly the subject of all three of its subsections. Its purpose is not to impose general buffering requirements; those are found in Sections 32-250.30 to 32, entitled "Buffer Areas." Section 32-250.53 does not provide a "Fifty Foot Buffer rule."

My determination was also informed by, among other things, (1) the opinion of the County arborist and the Virginia Department of Forestry that cutting down trees to establish a farm is land clearing, not timbering; (2) the fact that removing trees without replanting them is not forestry, which is the subject of timbering; and (3) the historical fact that farms need to remove trees in order to fully use the lot for agriculture, or even just to remove trees to install a shed or fence within 50 feet of a neighboring property.

Your Application also contains a series of questions, including whether Section 32-250.53 applies to "actions past and present" on 1261 Mountain Road. However, answering these questions goes far beyond what is required by a zoning administrator in providing a determination. See Rohrer v. Funkhouser, 99 Va. Cir. 502 (Cir. Ct. 2004), discussing *Va. Code Ann. § 15.2-2286(A)(4).*

The Zoning Ordinance allows that anyone aggrieved by a zoning determination of the Zoning Administrator may appeal the decision to the Board of Zoning Appeals. An appeal must be filed within thirty (30) days of receipt of this letter. The Board of Zoning Appeals will schedule and

advertise a public hearing to consider an appeal within 90 days of the filing. The determination contained within this letter shall be final if an appeal is not filed within 30 days of receipt of this letter. The application fee and appeal application forms are available on our web page at the following link: https://www.pwcva.gov/assets/2021-06/Application%20for%20an%20Appeal.pdf

I should add that it appears that the purpose of your request is to seek an appeal from the Board of Zoning Appeals (BZA) because you disagree with my interpretation. Of course, it would be your right to do so. However, you should know the BZA's decision would not affect my decision not to issue a violation for an alleged violation of Section 32-250.53 as it applies to 1261 Mountain Road. This decision involves judgment and discretion, and it lies solely with me as the zoning administrator. Ancient Art Tattoo Studio v. City of Va. Beach, 263 Va. 593, 561 S.E.2d 690 (2002). There are many factors that would influence my decision. Perhaps the most important of these is whether I believe there is a violation and whether I could truthfully testify to that belief.

Sincerely,

Lisa Fink-Butler

Lisa Fink-Butler, CZA, CTM
Zoning Administrator

cc: Kimberly V. Taiedi & Timothy J. Hailer, Surv., 1261 Mountain Road, Haymarket, VA 20169

PRINCE WILLIAM COUNTY

Zoning Administrator

RECEIVED
2024 DEC -9 P 3:03
DEVELOPMENT SERVICES

# Application for Interpretation/ Determination

**(Zoning Ordinance, Proffer Conditions, and Special Use Permit Conditions)**

ZNR 2025-00093
Staff: LFB
Due Date: 6 to 8 weeks

**Fee*: $** 551.25

Make checks payable to PWC
(*in accordance with current Fee Schedule)

| | | | |
|---|---|---|---|
| **Applicant Information** | Name: Peter Hobart | Title: Esquire | |
| | Mailing Address: 1401 Mountain Road | City/State: Haymarket, Virginia | Zip Code: 20169 |
| | Email: peterhobart@usa.com | Phone: (610) 883-3324 | |
| | Check one: ☐ Property Owner ☐ Authorized Agent of Property Owner ☑ Other: Neighbor | | |
| **Property Information** | Address: 1261 Mountain Road | City/State: Haymarket, Virginia | Zip Code: 20169 |
| | GPIN (Grid Parcel Identification Number): 7202-53-9500 | | |
| **Type of Inquiry** | ☑ Interpretation/Determination of Zoning Ordinance – Part of Section # § 32-250.53 | | |
| | ☐ Interpretation/Determination of proffers – Rezoning case # | | |
| | ☐ Interpretation/Determination of special use permit conditions – SUP case # | | |

## Minimum Submission Checklist

- ☑ Completed standard application form
- ☑ Request letter signed by applicant
- ☑ Supporting Documents
- ☑ Processing fee in accordance with current fee schedule

**Note: The response to this request will be posted online to our website. Please contact this office if you have any questions or concerns.**

**Applicant Signature** Peter Hobart **Date** 12/9/2024

**IN THE ZONING OFFICE OF PRINCE WILLIAM COUNTY**

| | | |
|---|---|---|
| To the Attention of | : | Number: _____ |
| Zoning Administrator Fink-Butler | : | Filing Date: December 9, 2024 |

**FORMAL REQUEST FOR DETERMINATION**

1. The background of this case is well known to Prince William County ("PWC") staff.

2. PWC Code clearly provides in pertinent part that: *"Timbering, harvesting, or clearing of wooded areas in A-1, Agricultural districts, as permitted by this chapter, shall not occur within 50 feet of any property lines adjoining areas or other properties which are zoned to a different classification than A-1, Agricultural or whose primary use is residential."* See PWC Code, § 32-250.53. By its plain language, this regulation sets out **three** alternative situations in which a buffer is required: *"timbering, harvesting, or clearing..."*

3. To avoid any confusion, we are requesting a final, appealable determination by the Zoning Administrator of the applicability of this Fifty Foot Buffer rule to 1261 Mountain Road **on all three of the alternative bases set forth in the rule**.

4. **Timbering:** PWC Code clearly defines *"timbering"* as follows: *"Timbering shall mean the harvesting of trees for commercial products or for farm use, including but not limited to saw timber, pulpwood, posts, and firewood."* See PWC Code, Chapter 32, Article I-Terms Defined. This is the full extent of the definition. Notably, nowhere does it contain any mention of re-growth, re-planting, or any other such additional requirement, and PWC Code instructs that, *"The Zoning Administrator shall strictly construe the following terms and definitions."* Id.

5. **Clearing:** The PWC Code clearly defines *"clearing"* as follows: *"Clearing shall mean removing or causing to be removed the vegetation growing in the soil. Such removing or causing to be removed shall include any intentional or negligent act to (1) cut down, (2) remove all or a substantial part of, or (3) damage a tree or other vegetation which will cause the tree or other*

*vegetation to decline and/or die. Such acts shall include but not be limited to damage inflicted upon the root system of the vegetation by the application of toxic substances, by the operation of equipment and vehicles, by storage of material, or by the change of natural grade due to unapproved excavation or filling, or damage caused by the unapproved alteration of natural physical conditions."* See PWC Code, Chapter 32, Article I-Terms Defined.

6. **Harvesting:** The term "harvesting" is not defined in relation to this section of the PWC Code. However, this same Code section provides that, *"... If ambiguity remains, the Zoning Administrator shall then rely upon the conventional, recognized meaning of the word or phrase (e.g., current edition, Merriam-Webster's Dictionary)."* The Merriam-Webster dictionary definition of "harvesting" is as follows: *"Harvesting, verb, present participle of harvest, as in picking, to catch or collect (a crop or natural resource) for human use."*

7. Over the past two and a half years, the owner of 1261 Mountain Road, Tim Hailer ("Hailer") has used industrial-grade commercial machinery to fell and remove hundreds of mature trees, and destroy and remove almost all vegetation and understory right up to—and in some cases over—neighboring property lines, as well as on public lands, in direct violation of PWC's Fifty Foot Buffer Rule (see Attachment A).

8. Hailer has admitted to PWC staff, among other things, that he plans on, *"milling timber into posts;" "selling firewood;" and "selling timber"* (see Attachment B). In fact, he currently has a sign reading: *"Firewood for Sale"* posted at the entrance to his driveway. (see Attachment C).

9. All of this has been done without the benefit of a survey, or indeed any other kind of meaningful limitation or oversight by PWC staff, despite repeated requests from aggrieved neighbors, thereby ravaging the environment, leaving vast tracts of land denuded for well over a year, and causing increased runoff and downstream pollution (not to mention tremendous nuisance, threats and acts of violence, and an onslaught of racial/sexual slurs directed by Hailer toward neighbors).

10. In the spring of 2024, Hailer seized on the idea of seeking a *bona fide* agricultural use ("BFAU") determination, which was endorsed by PWC Zoning Administrator Lisa Fink-Butler

("Fink-Butler") on March 27, 2024, despite multiple protests from aggrieved neighbors who offered compelling testimonial, photographic, and video evidence that this was nothing more than a ruse to continue to avoid complying with applicable regulations.

11. Fink-Butler's erroneous granting of the Hailer BFAU was ultimately reversed by the BZA on June 17, 2024, at great cost to residents in terms of time and money (see Attachment D).

12. Following the BZA reversal, aggrieved residents immediately renewed their requests to PWC staff to protect the buffer to which they are entitled, but once again, Fink-Butler and her staff refused to take any action (see Attachment E).

13. Subsequent investigation by aggrieved residents has revealed numerous instances in which the Buffer Rule has been applied by PWC staff—including Fink-Butler herself—in legally indistinguishable situations, raising the troubling question of why PWC staff are willing to extend the protections to some county residents, but not others (see, e.g., Attachments F, G, and H).

14. In addition, on almost every occasion that PWC staff have attempted to defend their decision not to enforce the Buffer Rule on the basis that they do not view Hailer's activity as, "timbering," they have themselves characterized his behavior as, **"clearing."** Both Fink-Butler (under oath) and Deputy County Attorney Skoff *used this exact term* multiple times at the BZA hearing (the recording of which can be found at: https://pwcgov.granicus.com/player/clip/3498).

15. Furthermore, in her letter improvidently granting BFAU to Hailer (which was subsequently reversed), Fink-Butler not once, but twice, referred to Hailer's activity as, "**harvesting":**

i. *"You have stated in your request letter that you propose to use the Property for... **harvesting** of timber on the Property for the sale of firewood..."*

ii. *"You have also stated in your request letter that you are proposing.... storage of the firewood **harvested** from the property..."*(see Attachment I).

16. The obvious purpose of the PWC Buffer Rule to afford a measure of protection to residences—where taxpayers work and raise their families—from the kind of massively disruptive tree-felling and land-clearing activity that takes place at places like the Hailer property.

17. Based on PWC staff's complete failure to enforce the Buffer Rule to date, we have no alternative but to request a formal, appealable determination regarding **the applicability of PWC Code § 32-250.53 to actions taking place (past and present) 1261 Mountain Road with specific and separate explanations** for PWC's failure to enforce each of the **independent, alternative grounds** under which this rule applies, to wit:

A. Does PWC consider the activity at 1261 Mountain Road to constitute **"timbering"** within the meaning of § 32-250.53, and if not, please provide a valid and properly supported legal explanation. More specifically, if the plain meaning of PWC's stated definition of "timbering" is not independently sufficient to explain what conduct qualifies as "timbering" in the Zoning Administrator's view, please cite to specific additional definitions of this term, where they may be found, and under what authority they are being considered by the PWC Zoning Administrator.

B. Does PWC consider the activity at 1261 Mountain Road to constitute **"clearing"** within the meaning of § 32-250.53, and if not, please provide a valid and properly supported legal explanation (since these provisions are applicable in the alternative, separate and apart from "timbering," please provide an independent justification/determination regarding this sub-part).

C. Does PWC consider the activity at 1261 Mountain Road to constitute **"harvesting"** within the meaning of § 32-250.53, and if not, please provide a valid and properly supported legal explanation (since these provisions are applicable in the alternative, separate and apart from "timbering," please provide an independent justification/determination regarding this sub-part).

D. Does PWC have any other, proper legal basis for refusing to enforce § 32-250.53 at 1261 Mountain Road, and if so, please provide a valid and properly supported legal explanation.

Submitted this 9th day of December, 2024,

Peter Hobart

# Chapter 32 - ZONING
## ARTICLE I. - TERMS DEFINED
## PART 100. DEFINITIONS

**The Zoning Administrator shall strictly construe the following terms and definitions.** In the event a term is not defined in this section, the Administrator shall refer to other chapters of the Prince William County Code and to the building code for guidance. **If ambiguity remains, the Zoning Administrator shall then rely upon the conventional, recognized meaning of the word or phrase (e.g., current edition, Merriam-Webster's Dictionary).** In determining what activities comprise components of any use defined herein, the Zoning Administrator may consult the current edition of the North American Industrial Classification Standards. The definitions provided herein shall not be deemed, nor shall they be construed to be, a listing of the uses permitted in the zoning districts created by this chapter.

[…]

• **Clearing shall mean** removing or causing to be removed the vegetation growing in the soil. Such removing or causing to be removed shall include any intentional or negligent act to (1) cut down, (2) remove all or a substantial part of, or (3) damage a tree or other vegetation which will cause the tree or other vegetation to decline and/or die. Such acts shall include but not be limited to damage inflicted upon the root system of the vegetation by the application of toxic substances, by the operation of equipment and vehicles, by storage of material, or by the change of natural grade due to unapproved excavation or filling, or damage caused by the unapproved alteration of natural physical conditions.

[…]

• **Timbering shall mean** the harvesting of trees for commercial products or for farm use, including but not limited to saw timber, pulpwood, posts, and firewood.

**ATTACHMENT A**

**ATTACHMENT B**

From: Hugh, Wade <whugh@pwcgov.org>

Sent: Monday, March 25, 2024 8:35 PM

Subject: RE: Lack of Notice; Admission of Commercial Activity/Timbering; Continued Land Disturbance [Not Permitted or Within Any Exemption]

Good evening! I have been reading all the messages from the community, and as I stated in the past, I have been reacting to the messages. I have met with staff on numerous occasions to make sure we are looking at the issues from all possible angles. As I mentioned before, the Zoning Administrator position is autonomous as it relates to making Zoning interpretations and Determinations. While the Zoning Administrator will seek input from staff, the final decision rests with the Zoning Administrator. It's my responsibility, along with her agency Director, to ensure she is free to make decisions without undue pressure from the outside. This is the only way we can ensure consistency in the management of the County Zoning Ordinance.

Let me respond to the questions/comments you posed below.

Bonafide Agricultural Determination – I attached the Bona Fide Agricultural Application. Lisa's team is reviewing the application and may have a determination rendered by this Friday. I will send you the determination as soon as it's rendered, so the responsibility will rest with me to ensure you receive it in a timely manner.

Proposed Agricultural Uses – When I visited the property, Mr. Hailer stated that he is sending most of the good trees to a local lumber mill (I believe Culpeper) to have the wood milled into fence board and posts. When the lumber company representative viewed the trees, they identified the ones that are rotten and can't be used for lumber. Mr Hailer said he removed the dead and dying trees to protect his home and the future farm animals from being injured. Mr. Hailer was selling or giving away the poor grade wood as firewood. The Zoning Administrator previously stated the removal of trees for an agricultural use of the property is not considered timbering by her interpretation of the definition. If the community disagrees, you will have the opportunity to Appeal the Zoning Administrator's Determination related to the Bona fide Agricultural use.

Clearing and Grading – County staff reviewed the clearing and grading associated with the driveway and determined the site was stabilized and the grades were not substantially changed; thus, a grading plan was not required. I defer to the professional staff who are certified by the State to conduct these inspections, so I support their findings.

Porch Construction – Mr. Hailer commenced construction of a front porch without the appropriate Zoning and Building Permits. The County issued violations and required Mr. Hailer to obtain permits for construction. Mr. Hailer obtained the necessary permits, which addressed the violations.

I will be coordinating the community meeting in conjunction with Supervisor Weir's Office.

Thanks, Wade

**ATTACHMENT C**

## ATTACHMENT D


## ATTACHMENT E

### Complaint Form For Property Violations

#### 1. (untitled)

**Furnished in Confidence***

**1. Select Violations:**

Other - Provide Details Below

**2. Please provide specific for every checked item above.**

Yesterday (6-17-24), the PWC Zoning Board reversed the Zoning Administrator's BFAU decision in relation to 1261 Mountain Road, and did so based on an explicit finding that agricultural use is NOT ongoing or in process at 1261 Mountain Road. In light of this development, I am now filing a complaint regarding the timbering, harvesting, and/or clearing that has been taking place at this address right up to (and in some cases, beyond) neighboring property lines in violation of Sec. 32-250.53 for no legitimate agricultural purpose. The Zoning Ordinance definition of "clearing" is very clear and certainly covers what has been taking place at 1261 Mountain Road, not for any legitimate agricultural purpose. The same is true for "timbering." Thank you.

**3. Address being complained about:**

**Street Address**

1261 Mountain Road

**Apt/Suite/Office**

**City**

Haymarket

**State**

VA

**Zip**

20169

**ATTACHMENT F**

# COUNTY OF PRINCE WILLIAM, VA
# CERTIFICATE OF ZONING APPROVAL

**APPROVED**

PERMIT NO: ZNA2019-03392 ISSUE DATE: January 3, 2019

| APPLICANT INFORMATION | | OWNER INFORMATION | |
|---|---|---|---|
| NAME: | GREGORY F BENSON | NAME: | TONY C RUDY |
| ADDRESS: | 13020 QUAY CT<br>WOODBRIDGE VA 22193 | ADDRESS: | 4152 CALHOUN DR<br>HUNTINGTON BEACH CA 92649 |
| PHONE: | (703) 501-0300 | | |

**SITE INFORMATION**

SITE ADDRESS: 9205 KEYSER RD
NOKESVILLE VA 20181

GPIN: 7792-45-8343

HCOD:
DEVELOPMENT:

MAGISTERIAL DISTRICT: 10 - Coles
ZONING: A-1 LOT: 05

USE/COND: CZA - TIMBERING - PURSUANT TO SEC.32-250.53 OF THE PWC ZONING ORDINANCE, 50' BUFFER ALONG RESIDENTIAL PARCEL SEE ATTACHED SURVEY

NOT IN RESOURCE PROTECTION AREA

APPLICANT SIGNATURE

Greg Benson
APPLICANT PRINT NAME

Michael Earl
ISSUING AGENT

Lisa Fink-Butler
LISA FINK-BUTLER, CZA, CTM
ZONING ADMINISTRATOR

RECEIPT NO: RCPT20190103063808

**ATTACHMENT G**

# COUNTY OF PRINCE WILLIAM, VA

# CERTIFICATE OF ZONING APPROVAL

**APPROVED**

2022-03670 ISSUE DATE: January 14, 2022

| APPLICANT INFORMATION | OWNER INFORMATION | |
|---|---|---|
| CHRISTOPHER & KRISTINE BECKMAN | NAME: | CHRISTOPHER & KRISTINE BECKMAN |
| 2790 MEANDER CREEK LN<br>HAYMARKET VA 20169 | ADDRESS: | 2790 MEANDER CREEK LN<br>HAYMARKET VA 20169 |

**SITE INFORMATION**

2790 MEANDER CREEK LN
HAYMARKET VA 20169

GPIN: 7200-59-3809

Chesapeake Bay Preservation Area
MOUNTAIN CREST ESTATES

MAGISTERIAL DISTRICT: 20 - Gainesville
ZONING: A-1 LOT: 20A

CZA - TIMBERING - PURSUANT TO SEC.32-250.53 OF THE PWC ZONING ORDINANCE, 50' BUFFER ALONG RESIDENTIAL PARCEL - SEE ATTACHED SURVEY - SUBJECT TO WATERSHED APPROVAL AND REGULATIONS (SEE NOTES ON ATTACHED HOUSE LOCATION SURVEY PLAT) - SUBJECT TO CONDITIONS OF THE PERMIT FROM THE VIRGINIA DEPARTMENT OF FORESTRY

CE PROTECTION AREA

IT SIGNATURE

Beckman
T PRINT NAME

Elizabeth Larkin
ISSUING AGENT

Lisa Fink-Butler
LISA FINK-BUTLER, CZA, CTM
ZONING ADMINISTRATOR

**ATTACHMENT H**

# COUNTY OF PRINCE WILLIAM, VA
# CERTIFICATE OF ZONING APPROVAL

**APPROVED**

PERMIT NO: ZNA2017-05390 ISSUE DATE: April 19, 2017

| APPLICANT INFORMATION | | OWNER INFORMATION | |
|---|---|---|---|
| NAME: | CHRISTOPHER MCLAUGHLIN | NAME: | CHRISTOPHER MCLAUGHLIN |
| ADDRESS: | 10610 HAWK RIDGE CT<br>NOKESVILLE, VA 20181 | ADDRESS: | 10610 HAWK RIDGE CT<br>NOKESVILLE, VA 20181 |

PHONE: (571) 484-6188

**SITE INFORMATION**

SITE ADDRESS: 10610 HAWK RIDGE CT
NOKESVILLE, VA 20181

GPIN: 7294-99-1320

HCOD:
DEVELOPMENT:

MAGISTERIAL DISTRICT: 05 - Brentsville
ZONING: A-1 LOT: 02

USE/COND: CZA - TIMBERING - PURSUANT TO SEC.32-250.53 OF THE PWC ZONING ORDINANCE, 50' BUFFER ALONG RESIDENTIAL PARCEL SEE ATTACHED SURVEY - NO RPA

NOT IN RESOURCE PROTECTION AREA

C M McLaughlin
APPLICANT SIGNATURE

Hahn Kwon
ISSUING AGENT

Christopher C. McLaughlin
APPLICANT PRINT NAME

Lisa Fink-Butler
LISA FINK-BUTLER, CZA, CTM
ZONING ADMINISTRATOR

RECEIPT NO: RCPT20170419032749

**ATTACHMENT I**

PRINCE WILLIAM COUNTY

Department of Development Services

March 27, 2024

**SENT BY FIRST CLASS & CERTIFIED MAIL**

Timothy J. Hailer and Kimberly Taiedi Francis
1261 Mountain Road
Haymarket, VA 20169

**Re:** **Bona Fide Agricultural Use Zoning Determination:** #ZNR2024-00146
**Property Address:** 1261 Mountain Road; **GPIN:** 7202-53-9500; **Acreage:** 10.3048 acres
**Zoning District:** A-1, Agricultural Zoning District

Dear Property Owners:

This is in response to your submission received on March 12, 2024, requesting a zoning determination for the above referenced property. The subject property ("the Property") contains 10.3048 acres and is zoned A-1, Agricultural. Based on information obtained from the Real Estate Assessment Office, the subject lot is currently developed with a residential single-family detached dwelling unit constructed in 2000, containing 4,648 square feet of dwelling area.

You have stated in your request letter that you propose to use the Property for agricultural purposes, for the raising of various farm animals such as hens, goats, cows, and chickens, as well as horses, including space for preparing and packaging eggs from pastured hens, an outdoor/indoor riding paddock for horses, and silvicultural activity (harvesting of timber on the Property for the sale of firewood). You have also stated in your request letter that you are proposing to construct a 58'x36' barn and two 12'x16' barns on the Property for the housing, and handling of farm animals, storing of agricultural tools, equipment, and machinery, as well as feed for farm animals and storage of the firewood harvested from the Property. Information submitted with your application confirms that the above referenced Property has been issued Farm #1236/Tract #2741 by the U.S. Department of Agriculture Farm Service Agency. **This proposed use, as described above and as outlined in your commitment letter, would be considered permitted by-right bona fide agricultural use of the Property and would not be deemed a commercial or business use except as referenced in Part 510 of the Prince William County Zoning Ordinance.**

Since A-1 zoned property cannot have two principal uses, the identified bona fide agricultural use of the Property will be deemed its principal use, and the existing residential use on the lot will be considered accessory to the identified bona fide agricultural use of the Property. **Please be advised that for the existing residential use on the Property (residential single-family detached dwelling unit) to be a permitted accessory use of the principal bona fide agricultural use on the Property, the occupants that reside in the dwelling must be a property owner, a manager/operator of the bona fide agricultural operation, or an employee of the bona fide agricultural operation.**

Based on the application submission information submitted with ZNR2024-00146, including the notarized commitment letter and conformance with all required zoning regulations, you may now pursue the necessary County permits and approvals for any proposed primary agricultural buildings/structures to support the identified bona fide agricultural use specifically outlined in this

**Applicable Zoning Ordinance Sections & Definitions**

**PART 100. – Definitions**

*Agriculture* shall mean the tilling of soil, fish hatcheries and production facilities, raising for production and sale of crops, plants, shrubs and trees, such as fruit and nut trees, ornamental landscape trees, Christmas trees and nursery stock, wholesale horticulture operations, wholesale greenhouse operations, sod farms, keeping, raising, grazing and selling of livestock, including but not limited to, horses, beef or dairy cattle, pigs, goats, or poultry, including secondary agricultural industry or nonretail business uses necessary for the production or sale of the crops, plants, trees or livestock raised on the premises. Tree farms for the purpose of selling standing timber, forestry or silvicultural operations are excluded from this definition. Timbering, as defined in this chapter, is excluded from this definition.

*Agricultural products* shall mean any livestock, aquaculture, poultry, horticultural, floricultural, viticulture, silvicultural, or other farm crops.

*Agricultural-related products* shall mean items sold at a farm market to attract customers and promote the sale of agricultural products. Such items include, but are not limited to, all agricultural and horticultural products, animal feed, baked goods, ice cream and ice cream based desserts and beverages, jams, honey, gift items, food stuffs, clothing, and other items promoting the farm and agriculture in Virginia, and value-added agricultural products and production on-site.

*Agricultural tourism* shall mean the practice of visiting an agritourism, horticultural, or agricultural activity, including, but not limited to, a farm, orchard, winery, greenhouse, or a companion animal or livestock show, for the purpose of recreation, education, or active involvement in the operation, other than as an owner, contractor or employee of the activity.

*Agriculturally related uses* shall mean those activities that predominantly use agricultural products, buildings or equipment, such as pony rides, corn mazes, pumpkin rolling, barn dances, sleigh/hay rides, and educational events, such as farming and food preserving classes. This is not an exhaustive list of possible uses.

*Agritourism activity* shall mean any agricultural activity that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, wineries, breweries, distilleries, ranching, historical, cultural, harvest-your-own activities, natural activities and attractions, or other purposes of agricultural tourism, whether or not the agritourism participant paid to participate in the activity.

*Agritourism participant* shall mean any person, other than an agritourism professional, who engages in an agritourism activity.

*Agritourism professional* shall mean any person who is engaged in the business of providing one or more agritourism activities, whether or not for compensation.

**Sec. 32-250.53. - Timbering.**
(NOTE: This Zoning Ordinance regulation is outdated as it is now preempted by Code of Virginia Sec. 15.2-2288.6, see APPENDIX 2)

1. Timbering, harvesting, or clearing of wooded areas in A-1, Agricultural districts, as permitted by this chapter, shall not occur within 50 feet of any property lines adjoining areas or other properties which are zoned to a different classification than A-1, Agricultural or whose primary use is residential.

2. Before beginning timbering, the owner of the property, the owner of the timber rights, or the operator of the timbering activity shall secure a timbering permit which may necessitate a survey to be performed by a licensed surveyor who shall clearly mark the boundaries of the property to be timbered. The surveyor in such instances shall also clearly mark the location of the 50-foot wide undisturbed area based on the location of these boundaries.

3. Once timbering has been conducted on a property, disturbance within 50 feet of any property line, as required by this section, shall not be permitted without the approval of the Planning Director. Such approval shall only be granted by the Director upon a finding that disturbance is appropriate for the following purposes and under the following guidelines:

(a) Construction, installation, operation, and maintenance of electric, gas, and telephone transmission lines, railroads, and public roads and their appurtenant structures may be permitted.

(b) Construction, installation, and maintenance of water lines, sewer lines, and local gas lines may be permitted, provided that:

> (1) To the degree possible, such utilities and shall cross at a right angle and not run parallel to the property line within 50 feet of that property line;
> (2) No more land shall be disturbed than is necessary to provide for the desired utility installation;
> (3) All installation and maintenance of such utilities and facilities shall be in compliance with applicable state and federal requirements and permits and designed and constructed in a manner that limits disturbance within 50 feet of the property line.

**PART 301. – Agricultural Districts**

**Sec. 32-301.02. - Uses permitted by right.**

The following uses shall be permitted by right in the A-1 district:

1. Except for the keeping of domestic fowl as regulated in Part 508, agricultural uses, the keeping of livestock, and fishery uses, farm wineries and breweries with limited brewery licenses in accordance with section 32-300.07.10, on lots two acres or greater. For lots principally used for agricultural purposes, the limits on the number of horses and other domestic equines provided in subsection 32-300.02.6. shall not apply for lots ten acres or larger in size. Accessory structures such as, but not limited to, barns, sheds, and stables shall be permitted as required for bona fide agricultural uses.

**Applicable Code of Virginia Sections & Definitions**

**§ 15.2-2288.6. Agricultural operations; local regulation of certain activities.**

A. No locality shall regulate the carrying out of any of the following activities at an agricultural operation, as defined in § 3.2-300, unless there is a substantial impact on the health, safety, or general welfare of the public:

1. Agritourism activities as defined in § 3.2-6400;

2. The sale of agricultural or silvicultural products, or the sale of agricultural-related or silvicultural-related items incidental to the agricultural operation;

3. The preparation, processing, or sale of food products in compliance with subdivisions C 3, 4, and 5 of § 3.2-5130 or related state laws and regulations; or

4. Other activities or events that are usual and customary at Virginia agricultural operations.

Any local restriction placed on an activity listed in this subsection shall be reasonable and shall take into account the economic impact of the restriction on the agricultural operation and the agricultural nature of the activity.

B. No locality shall require a special exception, administrative permit not required by state law, or special use permit for any activity listed in subsection A on property that is zoned as an agricultural district or classification unless there is a substantial impact on the health, safety, or general welfare of the public.

C. Except regarding the sound generated by outdoor amplified music, no local ordinance regulating the sound generated by any activity listed in subsection A shall be more restrictive than the general noise ordinance of the locality. In permitting outdoor amplified music at an agricultural operation, the locality shall consider the effect on adjoining property owners and nearby residents.

D. The provisions of this section shall not affect any entity licensed in accordance with Chapter 2 (§ 4.1-200 et seq.) of Title 4.1. Nothing in this section shall be construed to affect the provisions of Chapter 3 (§ 3.2-300 et seq.) of Title 3.2, to alter the provisions of § 15.2-2288.3, or to restrict the authority of any locality under Title 58.1.

**§ 3.2-300. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Agricultural operation" means any operation devoted to the bona fide production of crops, animals, or fowl, including the production of fruits and vegetables of all kinds, meat, dairy, and poultry products, nuts, tobacco, nursery, and floral products and the production and harvest of products from silviculture activity. "Agricultural operation" also includes any operation devoted to the housing of livestock as defined in § 3.2-6500.

"Production agriculture and silviculture" means the bona fide production or harvesting of agricultural or silvicultural products but does not include the processing of agricultural or silvicultural products or the above ground application or storage of sewage sludge.

**§ 3.2-6400. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Agricultural products" means any livestock, aquaculture, poultry, horticultural, floricultural, viticulture, silvicultural, or other farm crops.

"Agritourism activity" means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, wineries, ranching, horseback riding, historical, cultural, harvest-your-own activities, or natural activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity.

"Agritourism professional" means any person who is engaged in the business of providing one or more agritourism activities, whether or not for compensation.

"Farm or ranch" means one or more areas of land used for the production, cultivation, growing, harvesting or processing of agricultural products.

"Inherent risks of agritourism activity" mean those dangers or conditions that are an integral part of an agritourism activity including certain hazards, including surface and subsurface conditions; natural conditions of land, vegetation, and waters; the behavior of wild or domestic animals; and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations. Inherent risks of agritourism activity also include the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including failing to follow instructions given by the agritourism professional or failing to exercise reasonable caution while engaging in the agritourism activity.

"Participant" means any person, other than an agritourism professional, who engages in an agritourism activity.

**§ 3.2-6500. Definitions.**

As used in this chapter unless the context requires a different meaning:

"Agricultural animals" means all livestock and poultry.

"Farming activity" means, consistent with standard animal husbandry practices, the raising, management, and use of agricultural animals to provide food, fiber, or transportation and the breeding, exhibition, lawful recreational use, marketing, transportation, and slaughter of agricultural animals pursuant to such purposes.

"Humane" means any action taken in consideration of and with the intent to provide for the animal's health and well-being.

"Livestock" includes all domestic or domesticated: bovine animals; equine animals; ovine animals; porcine animals; cervidae animals; capradae animals; animals of the genus Lama or Vicugna; ratites; fish or shellfish in aquaculture facilities, as defined in § 3.2-2600; enclosed domesticated rabbits or hares raised for human food or fiber; or any other individual animal specifically raised for food or fiber, except companion animals.

"Poultry" includes all domestic fowl and game birds raised in captivity.