TOWN OF POMFRET
Zoning Board of Adjustment
Findings and Decision

Application #ZP16-05 by Chippers Inc. for storage of logs and processing of firewood on lands of the William A. Russell Jr. Trust at 1241 Pomfret Road (Parcel ID #0500-A).

PROCEDURAL HISTORY:

1. The above referenced application was considered by the Zoning Board of Adjustment (ZBA) at a public hearing on April 7, 2016 which was closed on April 7, 2016. Minutes of that hearing are available in a separate document.
2. At the outset of the hearing the ZBA afforded an opportunity for persons wishing to achieve status as an interested person under 24 V.S.A. § 4406(b) to demonstrate that the criteria set forth in the subsection are met. Kristen Maxham (abutter), Hudson and Margaret Holland (appearance by attorney Peter Vollers)(abutter), Brian Alderfer (neighbor), Lolly Murray (Brian Alderfer's tenant)(neighbor), and Susan Cross (neighbor) were granted status as interested persons.
3. During the course of the hearing the following exhibits were submitted to the ZBA:
   - Letter dated December 18, 2015 from Zoning Administrator Preston Bristow to Mundy Wilson Piper, President and CEO of Chippers, Inc., which determined the storage of logs and processing of firewood on lands east of Pomfret Road to be an expansion of a non-conforming use that required review and approval by the ZBA.
   - Completed Zoning Permit Application #ZP16-05 dated February 22, 2016 with a 2-sheet Site Plan consisting of Exhibit A (overview) and Exhibit B (enlargement of log landing)
   - Letter dated February 23, 2016 from Mundy Wilson Piper, President Chippers, Inc. and Trustee, William A. Russell, Jr. Trust to Pomfret Zoning Board of Adjustment with written narrative explaining the application and including a "Proposed Draft Decision for William A. Russell, Jr. Trust and Chippers, Inc. by the Town of Pomfret ZBA."
   - A document entitled "Log Yard Rules, Effective November 1, 2015" submitted by Mundy Wilson Piper.
   - Five color photographs of the log yard dated April 5, 2016 submitted by Mundy Wilson Piper.
   - Letter dated April 5, 2016 from attorney Peter Vollers representing Hudson and Margaret Holland and Brian Alderfer to the Town of Pomfret ZBA as a Memorandum of Law in opposition to the application and including 11 attached color photographs.
4. After the hearing was closed the following documents were received by the ZBA:
   - Letter dated April 18, 2016 from attorney Paul Gillies representing Mundy Wilson Piper, the Russell Trust, and Chippers requesting that the hearing be reopened and providing reasons why the hearing should be reopened.
   - Email dated April 25, 2016 from attorney Peter Vollers to Preston Bristow for the ZBA in opposition to attorney Paul Gillies' motion to reopen testimony.
5. Participating at the April 7, 2016 hearing were the following ZBA members: Alan Blackmer (Chair), Michael Reese, Loie Havill, Hunter Ulf and Shaun Pickett.

FINDINGS:

1. The public hearing on application #ZP16-05 by Chippers, Inc. was opened on April 7, 2016 and closed on April 7, 2016.

2. Attorney Paul Gillies representing Chippers requested by letter dated April 18, 2016 that the hearing be reopened and provided reasons why the hearing should be reopened.
3. The ZBA finds that insufficient new evidence was submitted for the ZBA to reopen the hearing.
4. Chippers is a land enhancement service that includes turf care, garden management and maintenance of "treescapes" both in neighborhoods and on larger forest and field tracts.
5. Chippers operates on land owned by the William A. Russell, Jr. Trust at 1241 Pomfret Road (Parcel ID #0500-A).
6. Parcel ID #0500-A consists of land located on both the west side and east side of Pomfret Road.
7. Parcel ID #0500-A on which Chippers operates is zoned as a Rural Residential District, as is the entire Town of Pomfret.
8. Chippers was established in 1986 as a home business.
9. Chippers is now a non-conforming use under Part 7 of the Pomfret Zoning Ordinance because no occupied residence is currently associated with the business.
10. Chippers temporarily stores logs removed from individual client jobs in a log pile until there is enough of a stockpile to take a full truckload to the mill.
11. This storage and disposition of logs was originally performed at a location on the west side of Pomfret Road adjacent to the Chippers' buildings.
12. This storage and disposition of logs was relocated to a site on the east side of Pomfret Road (hereafter, the 'Southeast Parcel') in 2011.
13. Chippers submitted a zoning permit application on February 22, 2016 at the request of the Zoning Administrator (application #ZP16-05) which stated under the description of proposed work: "Continue to use the 'Southeast Parcel' for temporary but continual storage of logs. Process firewood on 'Chippers' side of the road."
14. Testimony was received from interested persons that the volume and level of logs stored and disposed has greatly increased since 2011.
15. Testimony was received from interested persons that in association with the storage and disposition of logs on the 'Southeast Parcel,' log trucks enter and exit and reverse direction with the sounding of back up alarms, that heavy equipment sort logs with the sounding of back up alarms, and that burning, chipping and chainsaw use occur with associated smoke and noise.
16. Testimony was received from interested persons that the storage and disposition of logs on the 'Southeast Parcel' is a commercial and industrial use that is loud, unsightly and offensive which adversely affects the character of the area and is a public nuisance as defined in the Pomfret Zoning Ordinance.
17. Chippers indicated in testimony and the submission of written "Log Yard Rules" that future storage and disposition of logs on the 'Southeast Parcel' would not include burning or chipping, that chainsaw use would be minimal, that backing up would be minimized through use of a turning circle, and that there would be no weekend activity.
18. Before authorizing a permit under Part 7 of the Pomfret Zoning Ordinance, the ZBA shall find that the proposed use conforms with the Town Plan and will not "create a public nuisance or adversely affect the character of the area as well as the comfort, convenience and general welfare of the community" (section 11.3.5).
19. The Pomfret Town Plan makes numerous references to protecting, preserving, maintaining, not detracting from, and not negatively affecting rural character and scenic beauty.
20. Public nuisance is defined in the Pomfret Zoning Ordinance as follows: "PUBLIC NUISANCE": comprises all of the elements of meaning generally understood by the legal use-of this term, including without limitation, any business, amusement, activity or land use

which creates or results in any sight, sound, smell, pollution or interference with the occupations, amusements or living conditions of people in the neighborhood to such a degree of unpleasantness or in any manner to such an extent that the Board of Adjustment deems it necessary to prevent or abate the alleged nuisance because it constitutes or threatens to become a hazard to health, a danger to persons or property or to have an adverse impact on the convenience, comfort or general welfare of members of the community (section 4.24).

21. The ZBA finds that the continued use of the 'Southeast Parcel' for storage and disposition of logs does not conform with the Town Plan or with the criteria under section 11.3.5 of the Pomfret Zoning Ordinance.
22. The ZBA finds that the community garden and the community wood bank located on the 'Southeast Parcel' are conforming uses and do not require review and approval by the ZBA.
23. The ZBA further finds that no permit has been applied for or granted for the storage and disposition of logs by Chippers at any location on Parcel #0500-A.
24. The ZBA finds that Chippers is grandfathered for the level of use taking place on Parcel ID #0500-A in 2001 under the Vermont statute of limitations of 15 years.

CONCLUSIONS, DECISION AND CONDITIONS:

Based on the application, testimony, exhibits and other evidence the Zoning Board of Adjustment **denies** application #2016-05 by Chippers, Inc. for storage of logs on lands of the William A. Russell, Jr. Trust (Parcel ID #0500-A) located east of Pomfret Road, and **orders** that any logs and related debris so stored on the east side of Pomfret Road be removed within forty-five (45) days of the date of this decision. The Zoning Board of Adjustment further **restricts** any storage of logs and processing of firewood anywhere on lands of the William A. Russell, Jr. Trust (Parcel ID #0500-A) to a volume and level no greater than was in use in 2001. The Zoning Administer is authorized to work with applicant Chippers, Inc. to determine through historic aerial imagery or other means the volume and level of storage and disposition of logs and processing of firewood in 2001 on the lands of the William A. Russell, Jr. Trust (Parcel ID #0500-A) for the purpose of implementing this condition.

This decision of the Zoning Board of Adjustment regards only the application by Chippers, Inc. for the storage of logs and processing of firewood on lands of the William A. Russell Jr. Trust. The conformity of other aspects of the Chippers, Inc. operation was not considered or addressed in this decision.

Members Alan Blackmer, Michael Reese, Hunter Ulf and Shaun Pickett voted in the affirmative. Member Loie Havill abstained.

Dated at Pomfret, Vermont, this 19th day of May, 2016.

Alan Blackmer

Alan Blackmer, Chair
Pomfret Zoning Board of Adjustment

This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceedings before the Zoning Board of Adjustment. Such appeal must be taken within 30 days of the date of this decision pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.