



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, CZA, CTM
Zoning Administrator

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