

Local Law #6-2008
PROPOSED ZONING AMENDMENTS FOR TIMBER HARVESTING
TOWN OF GARDINER

- 1. The Use Table is hereby modified by changing the line “Timber harvesting” so that timber harvesting is shown as “P” instead of “S” in the RA and SP-1 districts, with Section References in the right column changed to read: “Sections 220-32 and 220-16.” A new footnote “8” is inserted after the word “harvesting ,” which reads at the bottom of the page as follows:**

“8. Timber harvesting in the RA and SP-1 districts requires a timber harvesting permit from the Building Inspector pursuant to §220-32. Timber harvesting in the SP-2 and SP-3 districts requires both a timber harvesting permit and a special permit as required by §220-16.”

- 2. Section 220-32, shown as “reserved,” is hereby amended by replacing it with the following new Section 220-32:**

§220-32 TIMBER HARVESTING

A. Timber Harvesting Permit Requirement

1. Within the RA and SP-1 districts, no timber harvesting shall occur without a timber harvesting permit issued by the Building Inspector, unless such timber harvesting is exempted from this permit requirement by subsection G below.
2. Timber harvesting within the SP-2 and SP-3 districts is regulated by §220-16. In addition to complying with the submission requirements, timber harvesting permit requirement, and standards below, timber harvesting within the SP-2 and SP-3 districts shall also comply with applicable provisions of § 220-16.

B. Submission Requirements for Timber Harvesting Permit

An applicant for a timber harvesting permit shall submit a Sustainable Forest Management Plan (SFMP) prepared by a qualified Professional Forester listed as such in the offices of the New York State Department of Environmental Conservation (NYSDEC), Region 3. Such SFMP shall demonstrate compliance with all standards contained in Subsection D below as well as applicable timber harvesting guidelines issued by NYSDEC (<http://www.dec.ny.gov/lands/5240.html>). In addition, the application shall include the following:

1. A description of the land on which the proposed timber harvest will occur, including deed and filed map references, lot numbers, and tax parcel numbers.
2. The full name and address of the owner and of the applicant, the names and addresses of their responsible officers if any of them are corporations, and written permission from the owner if the applicant is not the owner.
3. The signature of the professional forester responsible for the SFMP and the application.
4. The location of any access to a paved road or any unpaved Town road, all logging roads, existing or proposed, and all staging areas for loading equipment and logs.
5. All wetlands, water courses, topography at 5-foot intervals, slopes identified as unstable by the Professional Forester, and slopes exceeding 25%.
6. A plan for cleanup and restoration of any staging area or landing upon completion of the harvesting operations.
7. If the Professional Forester determines that engineering controls are necessary to prevent erosion and sedimentation, identification of the location and type of such engineering

controls.

8. Such other information as may reasonably be required by the Building Inspector to establish compliance of the proposed work or change in use with the requirements of this chapter.

C. On-Site Requirements for Timber Harvesting Permit Application

In addition to the application information required in B above, the applicant shall take following actions on-site where a timber harvest is proposed:

1. Mark all trees selected for harvest. Any specimen trees identified for protection shall also be appropriately marked.
2. Flag the line designating the protected 100-ft buffer for streams and wetlands (including all wetlands designated by NYSDEC and wetlands that meet the criteria of the US Army Corps of Engineers). The wetland buffer shall be flagged by a qualified wetland scientist.

D. Standards for SFMP and its Implementation

1. No clear cutting shall be permitted unless specifically shown in the approved Sustainable Forest Management Plan (SFMP), in which case a reforestation plan shall also be included in the SFMP. The replanting shall consist of diverse non-invasive species. Replanting of trees pursuant to such reforestation plan shall be secured by a performance guarantee as provided in §220-68B.
2. No timber harvesting or logging road construction shall occur within the 100-foot wetland buffer or within 100 feet of any streams classified by NYSDEC, except as necessary to cross a stream where permitted by NYSDEC.
3. Timber harvesting operations shall comply with the provisions of §220-36 (Steep Slopes). No timber harvesting or logging road construction shall occur on any slope exceeding 25%, measured according to the provisions of §220-36B. In addition, no timber harvesting shall occur on slopes identified as unstable by the Professional Forester in the SFMP.
4. Best Management Practices for stormwater management shall be required to prevent runoff of mud, debris, and silt-laden stormwater from the site to streams, public roads, or the shoulders or drainage systems of public roads.
5. No tree cutting, harvesting or removal, other than for exempt operations, shall take place between the hours of 6:00 p.m. and 7:00 a.m., or on Sundays or legal holidays.
6. All trees shall be felled so that no trees or debris falls on any adjoining property or on any roads not owned or controlled by the applicant.
7. All stumps shall be cut off as low as possible and shall, in general, be no higher than the diameter of the tree trunk when measured on the uphill side of the stump.
8. Landing and loading areas shall be located as close as possible to the timber harvesting operations and shall be smoothed to remove all ruts and debris at the conclusion of the timber harvesting operation.
9. The timber harvesting operation shall comply with all applicable erosion, sediment control, and stormwater management regulations.
10. Equipment used for timber harvesting shall be as small and non-disruptive to the forest as is economically feasible and safe.
11. Logging roads and skid trails shall not result in erosion or stream sedimentation. The SFMP shall ensure the proper location of such roads and skid trails and, where necessary, the use of appropriate engineering controls.

E. Performance Guarantee

All site restoration required by the SFMP, including replanting of trees pursuant to a reforestation plan, removal of stumps and debris, restoration of landing and loading areas, and remediation of

any damage to retained natural vegetation, roads, or drainage systems, shall be secured by a performance guarantee as provided in §220-68B.

F. Procedures for Approval and Enforcement of a Timber Harvesting Permit

1. The Building Inspector shall promptly review the timber harvesting permit application, inspect the site, and approve or deny the application, giving the reason for any denial. A copy of the permit or decision to disapprove shall be delivered or mailed to the applicant within fifteen business days of the submission of a complete application.
2. Any permit shall be conditioned upon approval of access point(s) onto a public road, issued by the Town Highway Superintendent, and the posting of a performance guarantee as necessary for the protection and repair of damage to the road from heavy vehicle access and egress, as provided in subsection E above.
3. The Timber Harvesting permit shall consist of the application submitted with the approval of the Building Inspector endorsed thereon. It shall become effective when the Building Inspector has filed written approval of the permit application in the office of the Town Clerk. A copy of the Timber Harvesting permit shall be placed in the permanent property file for the property.
4. A Timber Harvesting permit shall be valid for a period of two years from the date of its issuance, except where a multi-phase SFMP has been submitted, in which case the permit may be approved with time limits indicated within the permit for each phase. No Timber Harvesting permit shall be valid for a period in excess of ten years.
5. Before any site work begins, the Building Inspector shall inspect the site to assure that the buffer areas and staging areas are adequately marked and that any other applicable permit conditions have been implemented. The Building Inspector shall make periodic inspections to assure compliance with the SFMP and all conditions of approval.
6. The Building Inspector shall have the authority to issue a stop-work order for all or part of the cutting and harvesting activity if in his or her opinion conditions created by a spring thaw, adverse weather conditions or any other cause may make damage to public roads likely or may result in soil erosion or other damage beyond or outside of the boundaries of the area of the timber harvesting operation.
7. Inspection of the site and review of the SFMP may be delegated by the Building Inspector to a qualified professional forester retained by the Town. Enforcement action may only be taken by the Building Inspector or the Town Board pursuant to §220-57.
8. If slash and/or logging debris are to be burned on site, a burn permit shall be required to provide the Town notice and an opportunity to monitor burning activities to ensure that any such burning does not create a hazard to public health or safety.

G. Exemptions

The following shall not require a Timber Harvesting Permit in the RA and SP-1 Districts:

1. Harvesting of trees and firewood for the personal use of the property owner.
2. Reasonable site clearing preparatory to construction of a building for which a building permit has been issued.
3. Clearing of land for rights-of-way of utilities.
4. Clearing and maintenance of land for agricultural purposes.
5. The harvesting of evergreens specifically planted for Christmas trees.
6. Thinning of a sugarbush.
7. A bona fide commercial landscaping operation.
8. Any other removal of timber from a lot in quantities less than 20 standard cords of wood, 2,000 cubic feet or 10,000 board feet, as measured by the international 1/4 inch log rule, within any calendar year.

9. The normal maintenance of trees or property through the pruning or topping of trees or timber, or the cutting, removal or harvesting of trees or timber which are dead or diseased or are a hazard to public safety or health or property.

10. Timber harvests on lands which are enrolled under §480-a of the New York State Real Property Tax Law, and its predecessor, the Fisher Forest Act, provided that all of the following are satisfied:

a. A copy of a valid certificate of approval of enrollment in either §480-a or the Fisher Forest Act is presented to the Building Inspector prior to the commencement of any timber harvesting operations.

b. A copy of the renewal forms certifying continued enrollment of a parcel in the 480-a program is filed annually in years of active logging with the Building Inspector, if applicable.

c. A copy of file maps and a management plan for the Fisher Forest Act or §480-a is submitted in conjunction with a certificate of approval.

d. Subsection D(2) and D(5) above, pertaining to setback and hours of operations, are complied with in full, irrespective of the requirements of §480-a or the Fisher Forest Act.

3. Section 220-34, “Excavation, Grading, and Clear-cutting” is hereby amended by revising it as follows:

4.

§220-34 EXCAVATION, GRADING, AND CLEARCUTTING

A. Excavation and grading necessary for the construction of a structure for which a Building Permit has been issued shall be permitted, provided that it does not adversely affect water quality, natural drainage, or structural safety of buildings or lands, cause erosion or sedimentation, or create any noxious conditions or hazard to public health or safety.

B. In the event that construction of a structure is stopped prior to completion and the Building Permit expires, the premises shall be promptly cleared of any rubbish or building materials by the property owner, and any open excavation with a depth greater than two feet below existing grade shall either be promptly filled in and the topsoil replaced, or shall be entirely surrounded by a fence at least six feet high that will effectively block access to the area of the excavation.

C. The Planning Board may, in connection with a Major Project Site Plan or Major Subdivision, require an applicant to furnish an irrevocable letter of credit, certified check, or other form of security to guarantee reclamation of areas to be excavated or graded if a project is abandoned. Such security shall be for an amount reasonably related to the potential cost of such reclamation, and shall be in a form deemed acceptable by the Town Attorney.

D. For regulation of Soil Mining, see §220-17 of this chapter. For regulation of Timber Harvesting, see §220-32.

E. No excavation or grading and no clearcutting of 10,000 square feet or more in preparation for site development shall be undertaken prior to the grant of any Special Permit, Site Plan, or subdivision approval required for such development.

F. Excavation or grading of any area exceeding 2,000 square feet and/or clearcutting of any area exceeding three acres shall require a zoning permit from the Building Inspector, unless such

excavation or clearcutting is performed pursuant to an approved Site Plan, Special Permit, subdivision, or Building Permit, or as a normal and customary activity in conjunction with a farm operation (as defined in Article XII).

G. Excavation and grading shall comply with applicable requirements for erosion and sediment control.

H. No person, firm or corporation shall strip, excavate or otherwise remove topsoil for sale, or for use other than on the premises from which it is taken, except in connection with the construction or alteration of a building on such premises and excavation or grading incidental thereto.

4. Section 220-36 is hereby amended by revising it as follows:

§220-36 STEEP SLOPE REGULATIONS

The Town finds that the alteration of steep slope areas poses potential risks of erosion, sedimentation, landslides, and the degradation of scenic views. Accordingly, the following requirements are hereby imposed in areas with slopes exceeding 15%. **Within the SP district, the provisions of Section 220-16 shall supersede this Section 220-36.**

A. For any subdivision, Special Permit, Site Plan, Timber Harvesting Permit, building permit, zoning permit or variance that involves the disturbance of slopes greater than 15%, conditions shall be attached to ensure that:

1. Adequate erosion control and drainage measures will be in place so that erosion and sedimentation does not occur during or after construction.
2. Cutting of trees, shrubs, and other natural vegetation will be minimized, except in conjunction with timber harvesting operations performed pursuant to §220-32.
3. Safety hazards will not be created due to excessive road or driveway grades or due to potential subsidence, road washouts, landslides, flooding, or avalanches.
4. Proper engineering review of plans and construction activities will be conducted by the Town to ensure compliance with this section, paid for by escrow deposits paid by the applicant.
5. No Certificate of Occupancy will be granted until all erosion control and drainage measures required pursuant to this section have been satisfactorily completed.

B. Slope determinations shall be made based upon the topographic information required for a particular approval, along with such other topographic information as the reviewing board or official shall reasonably require or the applicant shall offer. In cases of uncertainty or dispute, a qualified professional retained by the Town, at the applicant's expense, shall determine the location of regulated slopes.

C. For purposes of determining the location of steep slope areas, only contiguous slopes containing at least 5,000 square feet of steep slopes, as defined above, shall be considered.

5. Section 220-16F(8) is hereby amended by revising it as follows:

8. Forest management. Timber harvests and clear-cutting in excess of 2,000 square feet of land per year are allowed only by special permit from the Planning Board, provided that:

- a. Such activities minimize clear-cutting and comply with the most recent versions of Timber Harvesting Guidelines for New York and Best Management Practices, as promulgated by the New York State Department of Environmental Conservation (DEC) and available from the Town's Building Department.
- b. Such cutting is part of a forest management or wildlife habitat improvement plan prepared by a DEC certified forester and approved by the DEC or other professional or organization deemed acceptable by the Planning Board; and/or
- c. Such cutting is necessary to prevent an imminent threat to life, public safety or property; and/or
- d. Such cutting is necessary to ameliorate damage arising from severe natural occurrences, such as ice, wind, or insect damage.
- e. In addition to complying with this §220-16, timber harvests shall also comply with all relevant provisions of §220-32, including the requirement to obtain a Timber Harvesting Permit from the Building Inspector after receiving a special permit from the Planning Board. The Timber Harvesting Permit shall include all conditions imposed by the Planning Board as part of its special permit approval. In case of any conflict between the requirements of §220-16 and 220-32, the more restrictive requirement shall control.

6. Section 220-74 (Definitions) is hereby amended by deleting the existing definition of “Clear-cutting” and adding the following new definitions:

Clear cutting: A method of cutting, removal or harvesting that removes 75% or more of the trees of six inches or more in diameter at breast height (DBH) in any area of more than two acres.

Diameter at Breast Height (DBH): The diameter of a tree 4 1/2 feet above ground level.

Sugarbush: A stand of trees consisting primarily of sugar maple (*acer saccharum*) tapped annually for the commercial production of maple syrup, maple sugar, maple candy or other maple products.

Timber Harvesting: The cutting, removal, or harvesting of timber or trees for the purpose of selling or milling such timber or trees, excluding the cutting of trees for the personal use of the landowner.