

**Town of Mount Desert Planning Board
Planning Board Meeting Minutes
Meeting Room, Town Hall
6:00 pm, June 14, 2016**

Public Present

Laurie C. Shencavitz, Gerald Shencavitz, Peter Aylen, Judy Aylen, Sharon Musetti, Jean Travers, Paul MacQuinn, Attorney for the Planning Board James W. J. Collier, Esq., Brian Silverman, Anne Funderburk, Seth Singleton, Francoise Leyman, Attorney for the Applicant Ed Bearor, Stephen Salsbury, Attorney for the Shencavitz' and Aylens, Daniel Pileggi, Kelly O'Neil, Acadia National Park Representative John Kelly, Chris Breedlove, C. H. Breedlove, Carey Kish, Jeff Gammel

Board Members Present

David Ashmore, Meredith Randolph, Chairman Bill Hanley, Dennis Kiley, Lili Andrews

Also present were CEO Kimberly Keene, and Recording Secretary Heidi Smallidge

I. Call to Order

Chairman Hanley called the meeting to order at 6:00 pm. Voting members were noted.

II. Approval of Minutes

January 26, 2016: Ms. Andrews noted some minor changes.

MS. RANDOLPH MOVED, WITH MR. KILEY SECONDING, TO APPROVE THE MINUTES AS AMENDED. MOTION APPROVED 5-0.

March 9, 2016: MS. ANDREWS MOVED, WITH MR. KILEY SECONDING, TO APPROVE THE MINUTES AS PRESENTED. MOTION APPROVED 3-0.

III. Quarrying License Application

Public Hearing

A. Conditional Use Approval Application #001-2014

OWNER(S): Harold MacQuinn, Inc.

OPERATOR(S): Fresh Water Stone & Brickwork, Inc.

AGENT(S): Stephen Salsbury, Herrick & Salsbury, Inc.

LEGAL REPRESENTATION: Edmond J. Bearor, Rudman Winchell

LOCATION: Off Crane Road, Hall Quarry

TAX MAP: 007 **LOT(S):** 075 **ZONE(S):** Residential 2

PURPOSE: Quarrying License Application

No conflict of interest was found. Mr. Ashmore confirmed adequate public notice.

Attorney Ed Bearor stated that with regard to the issue of sound, the applicant

1 prefers to take the readings on site; they propose to postpone discussion till the
2 readings can be taken. Instead, they will focus on the issues of screening and
3 buffering. Setbacks will also be discussed with screening and buffering.
4

5 Attorney for the Aylens and Shencavitz' Dan Pileggi reported his records showed
6 the Board had not discussed Sections 6.2 F – Buffering and Screening, G – Road
7 Design, I - Signs, L – Dust Control, M - Blasting, and N - Lighting.
8

9 Steve Salsbury presented information regarding screening and buffering. He
10 presented a plan showing where the berm and trees would be. Side slopes of the
11 berm will be grass.
12

13 Mr. Bearor stated that the quarry was deemed by the Board a lawful non-
14 conforming, pre-existing use and therefore eligible to apply under Section 6.1 of the
15 Quarrying Ordinance as an existing quarrying activity. Per section D-6 of the
16 submittal requirements, the applicant is required to show the footprint of the
17 operation as of the effective date of the ordinance – approximately late 2013 –
18 including the active extraction area, areas with overburden removed, access routes
19 within the quarry, and all reclaimed and un-reclaimed area. The extraction area is
20 defined as the area itself – the actual hole in the ground – including side slopes and
21 adjoining areas with overburden removed, excluding roads, structures, stockpiles,
22 etc. Attorney Bearor asserted that the overburden has been removed to 25 feet of
23 the property lines. The applicant intends to go no further. The applicant is allowing
24 for a 25-foot setback where the berm will go.
25

26 It was Attorney Dan Pileggi's contention that if the overburden had been removed
27 at all it was many years ago and not removed by this applicant. He has numerous
28 aerial photos to show that no additional earth was moved from the area. There is
29 no evidence that the area in question is part of the existing operation.
30

31 Section 2.8 of the ordinance notes the setback can't be invaded, even if the Land
32 Use Ordinance provides greater leeway for invading setbacks. He stressed the
33 setback is critical. Abutters' homes can be seen from the area. The proposed
34 berm also invades the setback area, which is not allowed.
35

36 Attorney Collier asked about the wetlands and the 75-foot setback requirement.
37

38 Mr. Salsbury pointed out the wetlands on the plans. Attorney Bearor noted that per
39 ordinance definition a freshwater wetland is ten or more contiguous acres, or less
40 than ten contiguous acres and adjacent to a surface water body. He contended the
41 area of wetland on the applicant's property was not 10 acres or adjacent to a
42 surface water body and therefore not bound by the 75-foot setback requirement.
43

44 Hall Quarry resident Kelly O'Neill reported that the wetland shows evidence of
45 being filled in across the road. Below that there is a shrub wetland that enters
46 Acadia National Park.

1
2 Attorney Collier asked if the wetland is larger than ten acres. Ms. O'Neill didn't
3 know, but she could tell there are areas of wetlands that are filled in. It would take
4 some research. Ms. O'Neill mentioned there are wetland areas that are not
5 included on area maps.

6
7 Anne Funderburk asked about the berm vegetation. Mr. Salsbury noted the trees
8 would be evergreen trees of an acceptable type. It was noted the applicant is
9 required to maintain the vegetation.

10
11 Hall Quarry resident Seth Singleton brought up the question of property values. It
12 was noted the Board is only able to determine compliance with the LUZO; not make
13 judgement on the property values.

14
15 It was confirmed that the berm does intrude to within the 25-foot setback area.
16 CEO Keene noted the berm was not considered a structure, and therefore not
17 restricted in the setback area. It was noted that quarrying operations were not
18 allowed to fall within a setback, so it had to be determined whether a berm was a
19 part of the quarrying operation or not.

20
21 Abutter Peter Aylen stated that his property had at one point been clearly marked.
22 Those markers are no longer there. He suggested the property lines should be re-
23 established prior to determining setbacks.

24
25 Hall Quarry resident Cary Kish inquired when the last time the property had been
26 surveyed. Mr. Salsbury reported the property had been surveyed recently. Mr.
27 Salsbury was the surveyor of record on the property.

28
29 Attorney Pileggi cited the ordinance saying "*quarrying operations shall not be*
30 *permitted within 50 feet horizontal distance of any property line without written*
31 *permission of the owner of such adjacent property.*" Mr. Pileggi felt a large earthen
32 berm created due to the quarry operations was in fact a part of the quarrying
33 operations and should be required to follow the setback rules. Attorney Bearor
34 noted the area has been cleared of overburden and read further in the ordinance,
35 "*any existing operation which is located less than fifty feet from the property line*
36 *shall not be located any closer.*" The berm is not going any closer than the property
37 line, but within the cleared area considered quarry operations.

38
39 Mr. Collier asked about Section 6.1.D.6 with regard to the footprint of the operation.
40 Discussion ensued regarding marking the quarry area footprint clearly.

41
42 Abutter Gerald Shencavitz stated he had seen and heard trees being cut as part of
43 the process to remove overburden in the area. He alleged the applicants pushed
44 25 feet closer to the property lines. Mr. MacQuinn felt that the work being done
45 was due to a house lot being built. Mr. MacQuinn affirmed they have never cut
46 trees, however the DEP requested a small area be filled, which they did. Mr.

1 MacQuinn asserts the area in question was stripped in the 1980s. The trees there
2 have grown up since.

3
4 Attorney Collier suggested delaying the question of setbacks until a review of the
5 boundaries and the history of the overburden removal can be made. Discussion
6 ensued regarding the boundaries and ways of determining setbacks and quarry
7 operation footprints. Mr. Salsbury stated the distance from the property line to the
8 berm is five to ten feet in some areas. It was estimated that the cut edge of the
9 quarry is approximately 50 feet from the property line, and the applicant hopes to
10 go another 25 feet.

11
12 Attorney Pileggi opined that the ordinance allows maintenance of any existing
13 operation within the 50-foot buffer but does not allow for new operations or
14 extraction. Attorney Bearor felt that the ordinance does in fact allow for this. Mr.
15 Bearor stated the ordinance states that the extraction area is the quarry itself;
16 meaning the hole, including side slopes and adjoining areas with overburden
17 removed. The removal of overburden is an example of the intent to harvest the
18 rock and part of the extraction area.

19
20 Attorney Collier agreed with Attorney Bearor. He cited case law noting a manifest
21 with intent to quarry can be executed by removing the overburden. He felt there
22 was no time limit on that intent.

23
24 Attorney Pileggi disagreed with Attorney Collier. He stated Maine has never
25 adopted the case law referred to by Mr. Collier. The ordinance in place is the only
26 authority in this issue.

27
28 Carey Kish pointed out that the area size seems to be currently undetermined and
29 needs to be mapped if the question is cogent to the issue. He added that aerial
30 photos can speak to the question of when and where quarrying operations
31 occurred.

32
33 Gerald Shencavitz asked who mapped the wetlands. He mentioned a number of
34 tributaries. He recalled seeing a DEP report stating the wetlands in the area were
35 at nearly 10 acres.

36
37 Ms. Randolph mentioned the wetlands in question are not limited to just the
38 property. Attorney Collier noted that the burden of proof lay with the applicants to
39 show the size of the wetland is ten acres or less.

40
41 It was agreed to request a statement from S.W. Cole delineating the wetland area
42 and a statement of whether or not the area meets the definition of freshwater
43 wetland as stated in the ordinance. It was also agreed to request mapping of the
44 quarry area to show the footprint of the operation, including the active extraction
45 area, all areas with overburden removed, access roads, and all reclaimed and

unreclaimed areas in accordance with Section 6.1D.6 and the definition of footprint of operations.

Mr. Kiley felt that available GIS mapping of the area to be juxtaposed with aerial photos should also be submitted and provided to both the applicant and to other concerned parties. Attorney Bearor agreed to the submittal of the plan and photos and sharing the information. Attorney Pileggi noted a sequence of aerial photos of the area were available.

A short recess was called.

With regard to Section 6.2F, Buffering and Screening, Chairman Hanley felt the area with overburden removed needs to be defined before a meaningful discussion can be had. It was agreed to discuss this with setbacks at the next meeting. Mr. Ashmore hoped the Board would have all aerial photos available at the next meeting. Mr. Salsbury said he had aerial photos back as far as the 1940s and 1950s. Mr. Ashmore hoped those could be reviewed.

It was agreed to try to review sections 6.2G, I, L, M, and N.

Section 6.2G, Road and Driveway Design, Circulation and Traffic – Mr. Salsbury noted there were no changes to the plans since the earlier submittals. Travel surfaces will be covered with fresh stone to keep the dust down. CEO Keene noted that the Public Works Director was requiring an apron on the road.

Mr. Singleton asked about access to the quarry, which is over a private road. Beyond the fork up Crane Road there are residences and cabins. He asked whether the Town would be liable in the event of an accident. Attorney Collier felt the liability would lie with the applicant as the dominant tenant. Mr. Collier added that Article 6.1C requires information on rights of way and access which has been submitted to the Planning Board.

Attorney Pileggi had no comment on Section 6.2G. The public did not have comment on Section 6.2G.

MR. KILEY MOVED, WITH MS. RANDOLPH SECONDING, TO ADOPT ITS PREVIOUS FINDINGS OF FACT AND CONCLUSION OF LAW FOR SECTION 6.2G, I.E. THE FINDINGS OF FACT STATING THE APPLICANT DESCRIBED DRIVEWAY AND TRAVEL SURFACES; SEE APPLICATION, AND THE CONCLUSION OF LAW STATING THE STANDARDS OF SECTION 6.2.G.1-3 HAVE BEEN MET, SUBJECT TO THE CONDITION THAT (PER 6.2G.3) THE APPLICANT WILL CONSTRUCT A PAVED FIVE-FOOT APRON AT THE END OF CRANE ROAD AS REQUIRED BY THE PUBLIC WORKS DIRECTOR. MOTION APPROVED 5-0.

6.2I – Signs: Mr. Salsbury reported there was nothing changed from the original

1 submission. Attorney Pileggi had no comments. The public had no comments.

2
3 MR. KILEY MOVED, WITH MS. RANDOLPH SECONDING, TO ADOPT ITS
4 PREVIOUS FINDINGS OF FACTS AND CONCLUSION OF LAW FOR SECTION
5 6.2I; I.E. THE FINDINGS OF FACT STATING APPLICANT DESCRIBED SIGN AT
6 SITE; SEE APPLICATION. SPECIFIED SIGNS AT ENTRANCE, ALONG
7 PERIMETER AND AT REFEULING AREA REQUIRED FOR PUBLIC SAFETY,
8 AND CONCLUSION OF LAW STATING THE STANDARDS OF SECTION 6.2I
9 HAVE BEEN MET, SUBJECT TO THE CONDITIONS THAT 1) A SIGN WILL BE
10 POSTED AT THE ENTRANCE TO THE SITE WARNING OF QUARRY, 2) AS
11 APPROPRIATE, "NO TRESPASSING"/WARNING SIGNS WILL BE POSTED
12 EVERY 50 FEET ALONG THE PERIMETER OF THE SITE, 3) A SIGN WILL BE
13 POSTED DESIGNATING THE REFUELING AREA. MOTION APPROVED 5-0.

14
15 6.2L – Dust: Mr. Salsbury reported that the application states the applicant will
16 water the working areas and access roads on an as-needed basis during dry
17 conditions to keep dust in control. Chairman Hanley pointed out the application
18 also noted that machinery have dust collection bagging systems in place.

19
20 Attorney Pileggi noted that during the first review of this section, proof of best
21 management practices for dust control were required. Mr. Pileggi felt this had not
22 been submitted. Ms. Funderburk inquired whether calcium chloride would be used.
23 Attorney Collier noted the application states it may be used.

24
25 Mr. Shencavitz mentioned that the dust resulting from the cutting of rock can be a
26 source of radon. He asked if there had been any consideration for radon for this
27 quarry.

28
29 Mr. MacQuinn noted that when rock is cut, water is applied at every source of dust
30 to control it. Mr. Shencavitz asked what assurance was available that water would
31 control the potential release of radon.

32
33 Attorney Collier noted that the application states that dust must be controlled by
34 sweeping or paving or watering or other Best Management Practices. Mr. Collier
35 felt that this statement required one or a combination of the options noted. Mr.
36 Collier noted that radon was not a criteria in the ordinance.

37
38 MR. KILEY MOVED, WITH CHAIRMAN HANLEY SECONDING, THAT THE DUST
39 CONTROL EFFORTS PROPOSED IN THE APPLICATION FULFILLS AND IS
40 CONGRUENT WITH WHAT THE ORDINANCE REQUIRES. MOTION
41 APPROVED 5-0.

42
43 Section 6.2M - Blasting: Attorney Bearor stated the applicant will be amending the
44 application. There will be no blasting. Attorney Pileggi requested that if the
45 application is approved, make no blasting a condition of approval.

46

1 There was no comment from the public.

2
3 MR. KILEY MOVED, WITH CHAIRMAN HANLEY SECONDING, TO FIND
4 SECTION 6.2M NOT APPLICABLE AS THERE WILL BE NO BLASTING.
5 MOTION APPROVED 5-0.

6
7 Ms. Randolph stated that no blasting should be made a condition of approval,
8 should the application be approved.

9
10 Section 6.2N – Lighting – Mr. Salsbury reported that no artificial lighting is proposed
11 for the property. Attorney Pileggi had no comment. Ms. Funderburk inquired
12 whether vehicle headlights would be prohibited. Attorney Bearor noted this did not
13 mean vehicle headlights would be prohibited.

14
15 MR. KILEY MOVED, WITH MS. RANDOLPH SECONDING, TO FIND SECTION
16 6.2N WAS NOT APPLICABLE. MOTION APPROVED 5-0.

17
18 It was noted that Setback and Buffering and Noise were the only two items left to
19 discuss. Chairman Hanley recalled that more quantitative data was required for the
20 discussion of noise. Attorney Bearor noted that they can inform the Board of when
21 the noise data will be available, and discuss it along with buffering, or they can be
22 done separately. Mr. Kiley felt the Board should try to address both issues.

23
24 Attorney Collier inquired whether the amount of noise before quarrying activities
25 had been submitted. He referred to Section 6.1J. Attorney Bearor noted the
26 application stated it was the measurement of noise of the equipment at the property
27 line.

28
29 Attorney Collier suggested setting a future meeting.

30
31 CHAIRMAN HANLEY MOVED, WITH MS. RANDOLPH SECONDING, TO TABLE
32 THE MEETING TO A FUTURE DATE TO BE SET BY POLL AND DETERMINED
33 BY WHEN DATA REGARDING NOISE WOULD BE AVAILABLE FOR REVIEW.

34
35 CEO Keene noted the noise data needed to be submitted to the CEO before a
36 meeting can be scheduled.

37
38 MOTION TO TABLE THE MEETING APPROVED 5-0.

39
40 **IV. Adjournment**

41
42 CHAIRMAN HANLEY MOVED, WITH MR. KILEY SECONDING, TO ADJOURN THE
43 MEETING. MOTION APPROVED 5-0.

44
45 Meeting was adjourned at 8:29 pm.
46