

TOWN OF HALIFAX
Zoning Board of Adjustment

Application for Conditional Use Review
Findings and Decision

Permit Application No. 2015-09

Introduction and Procedural History

1. This proceeding involves review of an application for Conditional Use in the Halifax Conservation District submitted by C. A. Denison Lumber Co., Inc. (Applicant) under the Town of Halifax Zoning Regulation.
2. The Halifax Zoning Board of Adjustment (Board) received the application on April 17, 2015. A copy of the application is available at Halifax Town Office, 246 Branch Road, Halifax, VT 05358 and www.halifaxvermont.com (look under "Committees," then "Zoning.")
3. On May 22, 2015, notice of a public hearing was published in the Brattleboro Reformer.
4. On May 22, 2015, notice of a public hearing was posted at the following places:
 - a. The municipal clerk's office,
 - b. Halifax Post Office bulletin board, and
 - c. Halifax Center bulletin board.
5. On May 21, 2015, a copy of the notice of a public hearing was mailed to the Applicant. On May 21, 2015, a copy of the notice of public hearing was mailed to the following owners of properties adjoining the property subject to the application.
 - Dorothy Hirsch Trust, c/o Merchants Trust Co., 4996 Main St, Manchester Center, VT 05255
 - Peter & Donna Silverberg, 400 Woodstock Road, Stockbridge, MA 01550
 - Mary Horne & Seth Geeslin, 156 Slice Drive, Stamford, CT 06907
 - Steven & Beverly Jackson, 1 Westwood Road, Burlington, CT 06013
 - Larry & Susan Longe, PO Box 53, West Halifax, VT 05358
 - Susan Kelly, 557 Old Stage Road, West Halifax, VT 05358
 - Joyce Burland, 6 Overlook Road, Santa Fe, NM 87505
 - Melvin Osborne, 1690 Carpenter Hill Road, Guilford, VT 05301
 - Matthew Ollis, 3524 Deer Park Road, Brattleboro, VT 05301
 - David & Rebecca Wright, 3756 Deer Park Road, Brattleboro, VT 05301
 - Tom & Carol Wright, 77 Josh Road, Brattleboro, VT 05301
 - Russell Amato, 23 West Pond Road, North Brandford, CT 06471
 - Paul Taylor, 442 Josh Road, Brattleboro, VT 05301
 - Lawrence J. Tavares, 85 Lake Road, Tiverton, RI 02878

- John & Deborah Ann Medeiros, 390 King Road, Tiverton, RI 02878
 - Nicholas Bartenhagen, 3658 Jacksonville Stage Road, Brattleboro, VT 05301
 - James Kotanchik Trust, c/o Frederick Misilo, Jr., 370 Main St, Worcester, MA 01608
 - James Diemand, PO Box 141, Turners Falls, MA 01376
 - Jared & Leland Smith, 4402 Jacksonville Stage Road, Guilford, VT 05301
 - Joel Faxon, 38 Old Farm Hill Road, Newtown, CT 06470
 - Town of Halifax, PO Box 127, West Halifax, VT 05358
 - Janet Ham, 131 Hillside Road, Franklin, MA 02038
 - Keith Sperre, 26 Calvin Road, West Hartford, CT 06110
 - John Rossetti, 5231 Jacksonville Stage Road, Brattleboro, VT 05301
 - Ian Hull, 4609 Jacksonville Stage Road, Brattleboro, VT 05301
 - John Ford Sise, PO Box 936, Walpole, NH 03608
 - Liam Wheeler & Mary Chester, 5156 Jacksonville Stage Road, Guilford, VT 05301
 - Dow Williams, 340 N. Show Canyon Dr. #22, Ivins, UT 84738
6. The Board considered the application at a public hearing on June 9, 2015. The hearing was recessed and continued on June 24, July 14, and July 28, 2015. The final public hearing was held on September 8, 2015. The Board reviewed the application under the Town of Halifax Zoning Regulation, as amended on March 6, 2012.
7. The following Board members were present at the hearing:
- Sirean LaFlamme
 - Bill Pusey
 - Brian McNeice
 - Stephan Chait
 - Linda Lyon
8. At the outset of the hearing, the Board afforded those persons wishing to achieve status as an interested person an opportunity, under 24 VSA. § 4465(b), to demonstrate that the criteria set forth in that statute could be met. The Petition for Interested Party Status is available at the Halifax Town Office, 244 Branch Road, W. Halifax, VT 05358 and www.halifaxvermont.com (look under “Committees,” then “Zoning.”)
9. During the course of the hearing, various parties submitted documents to the Board. These documents are available at the Halifax Town Office, 244 Branch Road, W. Halifax, VT 05358 and www.halifaxvermont.com (look under “Committees,” then “Zoning.”)

Location and Nature of Activity for Requested Conditional Use Permit

The Applicant seeks a Conditional Use Permit to construct and operate a schist quarry. The subject property is a 1210+/- acre parcel located at 5076 Jacksonville Stage Road in the Town of Halifax, VT (tax map parcel no. JCS.5076). [The property is more fully described in a Special Warranty Deed from NRA Foundation, Inc., Trustee of Denison Charitable Remainder Annuity Trust to C.A. Denison Lumber, Inc., dated August 26, 2000, and recorded at Book 45, Pages 87-88, of the Town of Halifax Land Records].

Introduction to Findings

According to the Section 308 (4) of the Halifax Zoning Regulation, “Resource Industry” uses require a Conditional use Permit from the Board. The Regulation defines “Resource Industry” as “An activity involved in the primary processing of agricultural or forestry products, including saw mills, but excluding those activities identified in the definition of Agricultural Use. Includes earth and mineral Extraction.”¹

The Board developed its evaluation based on relevant sections of (1) Town of Halifax Zoning Regulation (Regulation); (2) Halifax Town Plan (Plan); and (3) Vermont Municipal and Regional Planning and Development Act, Title 24 VSA Chapter 117 (Act). According to the Regulation, the Board can permit a Conditional Use “in a particular zoning district only upon a finding by the Zoning Board of Adjustment that such a use in a specified location will comply with the conditions and standards for the location of operation of such use as specified in this regulation.”

For the proposed stone quarry, the most applicable General Conditional Use Standards are “(ii) the character of the area affected, as defined by the purpose or purposes of the zoning district within which the project is located, and specifically stated policies and standards of the municipal plan. (iii) Traffic on roads and highways in the vicinity. (iv) Bylaws and ordinances then in effect.”

In addition, according to Section 103 of the Regulation “The application of this Regulation is subject to the provisions of all sub-chapters of the Act.” Section 4401 of the Act states that “A municipality that has adopted a plan through its bylaws may define and regulate land development in any manner that the municipality establishes in its bylaws, provided those bylaws are in conformance with the [town] plan.” The Act defines “conformance with the plan” as “a proposed implementation tool, including a bylaw or bylaw amendment that is in accord with the municipal plan in effect at the time of adoption, when the bylaw or bylaw amendment includes all the following: A) Makes progress toward attaining, or at least does not interfere with, the goals and policies contained in the municipal plan; B) Provides for proposed future land uses, densities, and intensities of development contained in the municipal plan; C) Carries out, as applicable, any specific proposals for community facilities, or other proposed actions contained in the municipal plan.”

Given the above, it is the Board’s responsibility to consider relevant sections of the Regulations, Plan, and Act in evaluating a request for Conditional Use Permit. The following sections of these authorities, in particular, provide a framework for evaluating the application for Conditional Use Permit.

¹One must note, however, that the Conditional Uses for Village and Rural Residential Areas include “Resource Industry” and a separate entry for “Earth & Mineral Extraction.” The records from the time of the Regulation’s adoption do not allow us to ascertain whether including “Earth and Mineral Extraction” in the definition of “Resource Industry” may have been an unintended error.

Intent (Zoning Regulation, § 101)

It is the intent of this Zoning Regulation to provide for orderly growth in Halifax and to further the purposes established in Section 4302 of the Act.

Purpose; goals (Act, § 4302)

(a) General purposes. It is the intent and purpose of this chapter to encourage the appropriate development of all lands in this State ... to protect residential, agricultural and other areas from undue concentrations of population and overcrowding of land and buildings, from traffic congestion, from inadequate parking and the invasion of through traffic, and from the loss of peace, quiet and privacy.

Conservation District Purpose (Zoning Regulation, § 308 (2))

The purpose of the Conservation District is to protect the natural resource value of lands that are essentially undeveloped, are important upland wildlife habitat or corridors, particularly for large game animals such as deer and bear, or have high forestry value, are unsuitable for land development, or include irreplaceable, limited or significant natural, recreational, or scenic resources.

Land Use Classification - Purpose of the Conservation District (Town Plan, p. 22)²

The purpose of the Conservation District is to protect the natural resource value of lands that are essentially undeveloped; lack direct access to arterial or collector roads; are important upland wildlife habitat or corridors, particularly for large game animals such as deer, moose and bear; have high forestry value; are unsuitable for land development; or include irreplaceable, limited, or significant natural, recreational or scenic resources.

The Conservation District shall be used for agriculture, forestry, open space conservation, strict resource management, recreation, hunting [Note: The balance of this sentence refers to residential development and thus is not relevant to the Conditional Use application.]

Conservation District Recommendations (Town Plan, p. 22)

These lands are appropriate for low-intensity recreation, forestry, wildlife habitat, agriculture, hunting and other open space uses. Development, which creates significant amounts of traffic or noise, or which otherwise has an adverse impact on the environment, is undesirable.

Conditional Use (Zoning Regulation, Article 7: Definitions)

A use permitted on a particular zoning district only upon a finding by the Zoning Board of Adjustment that such a use in specified location will comply with the conditions and standards for the location of operation of such use as specified in this regulation.

Conditional Use Permits (Zoning Regulation § 203 (3))

The ZBA shall hear and decide upon applications for conditional use permits. In considering its action, the Board shall make findings on general and specific standards, and may attach conditions as provided for in Section 4414(3) of the Act.

²We used page numbers from the spiral-bound version of the Town Plan. Page numbers from other printed or on-line versions may differ slightly.

a. *General Conditional Use Standards* are as provided in Section 4414(3)(A) of the Act: (ii) the character of the area affected, as defined by the purpose or purposes of the zoning district within which the project is located, and specifically stated policies and standards of the municipal plan. (iii) Traffic on roads and highways in the vicinity. (iv) Bylaws and ordinances then in effect.³

Act § 4414, Zoning: permissible types of regulations, (3) Conditional uses

In any district, certain uses may be allowed only by approval of the appropriate municipal panel, if general and specific standards to which each allowed use must conform are prescribed in the appropriate bylaws and if the appropriate municipal panel, under the procedures in subchapter 10 of this chapter, determines that the proposed use will conform to those standards. These general standards shall require that the proposed conditional use shall not result in an undue adverse effect on any of the following: (i) The capacity of existing or planned community facilities. (ii) The character of the area affected, as defined by the purpose or purposes of the zoning district within which the project is located, and specifically stated policies and standards of the municipal plan. (iii) Traffic on roads and highways in the vicinity. (iv) Bylaws and ordinances then in effect. (v) Utilization of renewable energy resources.

Findings

Given the breadth and depth of information provided by the Applicant and many others, the Board opted to evaluate this information in the context of the authorities cited above. The following findings provide that analysis. Some of the findings are not based on strong regulatory language, but rather address recommendations and sometimes policies that provided guidance, but may lack in details. There is significance to the cumulative analysis of these provisions as they relate to the proposed project. However, for the most part, our conclusion is based on the General Conditional Use Standards in the Regulations, and, in particular, the relationship of those Standards to the Town Plan.

Based on the application, testimony, exhibits, and other materials submitted during the public hearing process, the Board makes the following findings. For each finding, we first provide the principal section of the Zoning Regulation, Town Plan, or Act from which we derived the finding. Then we provide the finding. The findings are the indented text.

Economic Development Policies (Town Plan, p. 26)

1. Support economic development, which provides diversified and stable local employment opportunities, enhances Halifax's small-town rural character, and protects the community's important natural resources.

The Applicant stated that there might be up to four employees at the site on any given day. This is not a definitive commitment by the Applicant to provide jobs to Halifax residents.

³The cited Standards are those that are most applicable to the proposed quarry.

The quarry would not enhance “Halifax’s small-town rural character.” Rather, an industrial activity, such as a quarry, would degrade the character of the Conservation District. (The Applicant classified the quarry as “industrial” in the Stormwater Discharge Permit.)

An intent of the Act is to provide protection from the “loss of peace, quiet and privacy.” The noise from industrial quarry operations could impede the efforts of residents who rely on the relative quiet of the Conservation District to pursue their work from offices and studios near the quarry.

Developing and operating a quarry in a Conservation District would eliminate habitat and thus does not protect “the community’s important natural resources.”

2. Require that economic development take into account the burden and/or expansion of existing town services and facilities. Ensure that growth is in balance with the provision of services and taxes. Ensure that housing and Town taxes in Halifax remain affordable to all residents.

The project opponents provided a detailed analysis, based on published standard procedures and stated assumptions, indicating that the additional traffic from stone haul trucks would increase yearly road maintenance by about \$93,000 per year. The Applicant did not provide analysis to counter the derivation of the estimate of increased road maintenance costs nor did the Applicant offer to compensate the Town for any such expenses. Therefore, the taxpayers would then absorb the costs for any additional road maintenance costs resulting from quarry operations. The estimated increase in road maintenance costs is nearly 8% of Halifax’s projected Fiscal Year 2016 budget of \$1,200,000.

At the hearing held on 28 July 2015, a Halifax property owner and resident submitted to the record a document that provided analysis of published data indicating that certain land activities can lead to decreased values for nearby properties. The Applicant did not provide quantitative data or a qualitative rationale as to why property values near the quarry would not decrease. If property values decrease, the Town would need to increase the tax rates for all taxed properties in order to maintain revenue.

3. Require that all commercial and industrial development adequately controls its wastes, relate satisfactorily to existing land uses, and do not result in traffic congestion.

“The Conservation District shall be used for agriculture, forestry, open space conservation, strict resource management, recreation, [and] hunting” (Town Plan, p. 22.) An industrial activity in a Conservation District does not “relate satisfactorily to existing land use.”

4. Encourage the development of cottage industries, home-based work and entrepreneurial ventures which preserve and revitalize Halifax’s rural character and have minimal impact on the community’s environment and infrastructure.

An industrial activity in the Conservation District could impede residents near the quarry from successfully pursuing their home-based work and entrepreneurial ventures if, as several residents testified, the industrial noise compromises their ability to concentrate and work

productively. The applicant's sound study indicated that the operation would cause noise that would be louder than current sound levels.

[Note that #5, regarding child care, from the Plan does not apply to the proposed quarry.]

6. Pursue economic development that does not cause excessive noise, large volumes of traffic, noxious or hazardous wastes, radioactive materials, and/or electromagnetic emissions.

The Applicant's *Noise Impact Assessment for a Dimensional Stone Quarry* provided measurements of sound produced from one specific area under one set of conditions at a given point in time. Those conditions do not provide an all-encompassing model for all sound generated under all operational conditions of the quarry. Using the Applicant's data, the noise at residents could increase by 2 - 4 times over the ambient sound levels (an increase of 10 decibels causes a doubling in loudness.) This substantial increase in noise over ambient levels during quarry operation will not be the "natural" sounds of the Conservation District, but rather industrial sounds. An intent of the Act is to provide protection from the "loss of peace, quiet and privacy."

Fish and Wildlife Policies (Town Plan, p. 35)

#3 Encourage the maintenance of contiguous tracts of forestland and/or open land.

Development of a quarry would create a 14.5-acre habitat gap in the Conservation District.

Earth and Mineral Extraction Policies (Town Plan, pp. 37 - 39)

While Halifax's earth and mineral extraction operations are economically important to the town and region, they clearly present potential land use problems which must be adequately addressed in order to protect the health, safety and welfare of the general public. By their very nature, extraction operations are often considered unsightly intrusions on the landscape. They can also have significant adverse impacts on neighboring properties through air and noise pollution and traffic congestion, and can degrade the quality and quantity of area water supplies, and wildlife habitats.

The quarry would have an undue adverse effect on the character of the area as defined by the Zoning District and the policies in the Town Plan.

#2. Minimize noise and adverse impacts on public highways, aesthetics, surface water, air quality, adjacent properties and the character of the area.

Regarding noise, see the response under Economic Development Policies, item 6.

Regarding surface water quality, see the response to § 405, #8.

#3. Require that all proposals for extraction include a site rehabilitation plan, and a bond or escrow account to assure restoration of mineral, stone, sand and gravel extraction areas.

Although asked by the Board, the Applicant did not substantiate the derivation of the \$10,000 escrow account nor provide a sufficiently detailed analysis to reasonably ensure the Board that the amount is adequate. The amount seems to be too low given the acreage that will be affected and the 50-year time-frame for the operation. The reclamation plan is weak and, although the Board asked in writing and at hearings, the Applicant did not provide details on the specifics of the reclamation plan.

Earth/Mineral Extraction (Zoning Regulation § 501)

Where permitted by this Regulation, the extraction and processing of soil, sand, stone or gravel, except when incidental to construction of a building on the same premises, shall be permitted only after the Board of Adjustment finds, following Conditional Use Review, that the proposed activity meets the standards below in addition to any other applicable standards contained in this Regulation. The applicant for a Conditional Use Permit for earth/mineral extraction shall submit two copies of a proposed Site Restoration Plan along with all other required documents. In all districts where permitted, earth/mineral extraction operations shall comply with the following:

§ 501, #1. The operation shall conform to all General Performance Standards (§ 405).

§ 405, #1. Noise in excess of 70 decibels.

There were disparities among the expert witnesses regarding the design, conduct, and interpretation of the noise studies. The Applicant's submission, *Noise Impact Assessment for a Dimensional Stone Quarry*, reported one 70 decibel value in the report. The Applicant conducted the sound test in one specific area, under one set of conditions, and at a given point in time. Over time, conditions such as weather, wind speed and direction, vegetation cover, and depth of drilling will change. In response, the quality, directionality, and volume of sound in and near the quarry will also change. Therefore, the limited data set is weak evidence for concluding that noise will not exceed 70 decibels at property lines.

§ 405, #8. Discharge, runoff, or leaching of harmful wastes

The State of Vermont granted the Applicant a Stormwater Discharge Permit. However, the Board has concerns about surface water quality, and specifically asked the Applicant to address potential acid drainage due to the iron and sulfur content of the pyrite within the quarry rock. The Applicant responded "No pH monitoring plan is proposed or has been required for this site. According to VHB [the Applicant's consultant] staff familiar with testing the pH of receiving waters downstream of quarries, abnormal pH is not a common concern for quarries in this region (the staff member consulted was unable to recall a sample that depicted abnormal pH)." The vague and generic response to the Board's specific question lacks scientific rational and rigor, failing to construct a defensible rationale supporting the assertion that runoff from the quarry site would not have an adverse effect on the biota that use the receiving waters.

Several residents who live near the proposed quarry asked the Applicant very specific

questions about potential effects of the quarry to the quantity and quality of their water supplies. The Applicant did not fully address these concerns, leaving unanswered questions for those residents.

§ 501, #4. It will not adversely impact any wetland area or stream bank, nor cause the sedimentation of streams.

See response to § 405, #8.

§ 501, #8. It will provide, in the form of a Site Restoration Plan, for restoration of the area operation and site restoration process.

See response to Earth and Mineral Policies, #3.

Transportation Policies (Town Plan, p. 52)

#3. Require that new development not result in an undue financial burden on the Town by necessitating highway expenditures which are in excess of those anticipated within the budget for roads, bridges, and equipment.

The project opponents provided a detailed analysis, based on published standard procedures and stated assumptions, indicating that the additional traffic from stone haul trucks would increase yearly road maintenance by about \$93,000 per year. The Applicant did not provide analysis to counter the derivation of the estimate of increased road maintenance costs nor offer to compensate the Town for any such expenses. Therefore, the taxpayers would then absorb the costs for any additional road maintenance costs resulting from quarry operations. The estimated increase in road maintenance costs is nearly 8% of Halifax's projected Fiscal Year 2016 budget of \$1,200,000.

Conclusion

A Conditional Use is “A use permitted on a particular zoning district only upon a finding by the Zoning Board of Adjustment that such a use in specified location will comply with the conditions and standards for the location of operation of such use as specified in this regulation.” (Zoning Regulations, Article 7: Definitions).

“The purpose of the Conservation District is to protect the natural resource value of lands that are essentially undeveloped, are important upland wildlife habitat or corridors, particularly for large game animals such as deer and bear, or have high forestry value, are unsuitable for land development, or include irreplaceable, limited or significant natural, recreational, or scenic resources.” (Zoning Regulation, § 308 (2))

The development and operation of an industrial facility in the Conservation District of Halifax does not conform with relevant sections of the (1) Town of Halifax Zoning Regulation; (2) Halifax Town Plan; and (3) Vermont Municipal and Regional Planning and Development Act, Title 24 VSA Chapter 117. The development and operation of the proposed project will result in undue adverse effects on the character of the Conservation District (Zoning Regulation § 203 (3) (a) (ii)). Therefore, after careful consideration of the information provided by the Applicant and others, the Halifax Zoning Board of Adjustment denies the Conditional Use Permit.

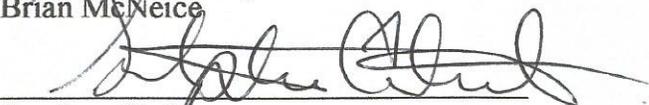
Dated at Halifax, Vermont, this 17th day of October, 2015.

Sirean LaFlamme, Chair

William Pusey



Brian McNeice



Stephan Chait



Linda Lyon

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) 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.