

BOLTON PLANNING & ZONING COMMISSION
Regular Meeting
7:30 p.m., Wednesday, May 12, 2021
Virtual Meeting utilizing Zoom
Minutes & Motions

Members Present: Chairman Adam Teller, Vice Chairman James Cropley, Christopher Davey, Benjamin Davies, Arlene Fiano, Thomas Manning, Thomas Robbins and Alternates Rodney Fournier and Marilee Manning

Members Excused: Alternate Jeremy Flick

Staff Present: Patrice Carson, AICP, Consulting Director of Community Development, Jim Rupert, Interim Administrative Officer and Zoning Enforcement Officer, and Yvonne Filip, Recording Secretary

Others Present: Town Engineering Consultant Joe Dillon, George Koutouzis, Andrew Bushnell, Thomas Fiorentino, Sandy Pierog, Milton Hathaway, Sean Skorton, Ronald Beaudoin

1. Call to Order: Chairman A. Teller called the meeting to order at 7:30 p.m.

2. Approval of Minutes: May 5, 2021 Special Meeting Minutes

Correction: Page 2, paragraph after Vote: fourth sentence – add “by the owner” after “signed”.

C. Davey moved to approve the minutes of the May 5, 2021 special meeting as amended. **A. Fiano seconded.** Vote: 5-0-1 (Davies ((Cropley did not vote.)) Motion passed.

3. Public Hearings (begin at 7:45 p.m.)

a. Continuation of Public Hearing: Special Permit Application Excavation Business, Equipment Storage & Material Processing Areas, 1 Notch Road, William Phillips (#PL-21-1)

A. Teller opened the public hearing. P. Carson read the public notice into the record. Present for the applicant were: Engineer Andrew Bushnell, Attorney Tom Fiorentino and Bill Phillips.

Atty Fiorentino said a memo regarding this application was prepared and filed with the Town. Mr. Phillips’ business has outgrown the footprint of the Clark Road site. He had been looking for a location in Bolton and became aware of this old quarry location being available. B. Phillips has a contract to purchase the property contingent on the site plan approval and special permits needed. This industrial site will be used for the storage of raw materials and construction equipment, and the processing of some materials. These are all permitted uses in the Industrial Zone. The materials storage locations have been shown on one of the plans. B. Phillips has met with the neighbors and Town staff. He has been reasonable in addressing the neighbor’s concerns, most of which have been addressed in the memo.

A. Teller asked what materials will be processed and the nature of processing and if trees will be along the roadside for screening. Atty Fiorentino said debris concrete will be processed occasionally. B. Phillips will stockpile the material and then bring in a crusher to pulverize the concrete into dust. Asphalt will be processed into millings infrequently. The proposed landscaping is shown on the plan; the existing trees will remain and additional landscaping added

as buffering to the Residential Zone. A. Bushnell said there are tall arborvitae plantings along the road. The entrance gate to the property will be moved to the south to get the entrance farther away from the Notch Road intersection to make the area safer for traffic. Trees will be moved and replanted where the gate is now which is Plan A. Plan B is to plant new trees. A few trees will be taken out to establish the sight line up Notch Road. A. Teller said the regulations require buffering of the Residential Zone. The tree line that is there was established with difficulty and had to be planted twice. Atty Fiorentino said B. Phillips intends to have a buffer. A. Bushnell said there is a natural earth berm to the south that will remain in place. This has about a 10' rise to the street. A. Teller confirmed with A. Bushnell that residents will not be able to see into the site because of the berm. A. Teller asked about the noise generated by the rock crusher and where it would be located. Atty Fiorentino said the processing equipment is shown on the plan as set back and down behind the landscaping. The equipment that the owner will rent is belt driven so it will be quieter. Processing of material will be infrequent such as four times per year and no more than four days in a row. The processing will not take place in the evenings or on weekends. A. Bushnell said the proposal includes evergreen plantings on the upper level for buffering and noise control. A. Teller said 8:30 a.m. seems early to be crushing rock. Atty Fiorentino said the applicant is willing to listen to recommendations from the PZC.

R. Fournier asked if the debris concrete will be coming from crumbling foundations. Atty Fiorentino said there could be some but it would be more along the lines of coming from commercial buildings.

C. Davey said eleven stockpiles are shown. When is materials processing to take place – once all stockpiles are full? Are there any environmental concerns with material storage and being subjected to the elements? Atty Fiorentino said the stockpiles will be used for various materials such as top soil, gravel, sand, etc. When $\frac{1}{2}$ to $\frac{3}{4}$ of the storage areas are filled the processing equipment will be brought in. The pads have been designed to have minimal environmental impact. A. Bushnell added the debris material will be certified clean before being brought to this location. The property will be graded to the sediment basins on site for erosion control. The fill stockpile could be covered with grass seed. There will be no erosion or wash from the concrete pile. P. Carson said the IWA looked at the water quality controls. A water quality basin is shown. C. Davey asked how is it determined that clean material is brought to the site? Atty Fiorentino said each of the jobs is tested. B. Phillips is not licensed to remove asbestos or hazardous material. He is primarily in demolition. A. Teller asked if oil will seep from asphalt or millings. Atty Fiorentino said oil from the material itself does not travel when mixed with water. What travels off roadways is oil leaking from vehicles. A. Bushnell said petroleum is bound to the aggregate in the blacktop. An oil/water separator will be installed to separate the oil that comes from vehicles.

C. Davey asked if a traffic study was done for this application. Atty Fiorentino said the applicant did not have a traffic study done. The plan was submitted to the Highway Department and no objections were raised.

R. Fournier asked if the billboard will be removed. Atty Fiorentino said “yes” adding the State is not licensing new billboards for ones that have expired. And there is encroachment onto State property with this one.

A. Teller confirmed with Atty Fiorentino that the plan is to have construction vehicles turn right and go up the hill when leaving the property. The applicant was told by the Highway Department that a left turn should not be prohibited just in case. Joe Dillion said drivers will be encouraged to take right-hand turns up the hill.

J. Rupert said town staff have been reviewing the application. The applicant has been responsive to all staff concerns. For another site that was storing millings the PZC asked staff to check with DEEP about this being a hazardous material. The answer from DEEP was no, absolutely not. The applicant has addressed every concern brought back to him.

A. Teller said this is an industrial site backed up by rocks and pointed toward a residential zone. It is very difficult to enforce the DEEP noise regulations. DEEP, State Police, and most towns do not have the devices to measure noise levels. A. Teller is very concerned that even though there are formal state noise limitations it is hard to hold someone to those levels. A. Teller asked J. Rupert as ZEO and acting Town Administrative Officer if neighbors report noise issues to him what can he do. J. Rupert said a noise meter or an app on a phone could be used to measure noise levels. The two Resident Troopers would enforce a noise ordinance. J. Rupert's expectation from the applicant is that he would address noise concerns even when measured with an imprecise phone app. The town would be able to enforce noise levels allowable if that is a condition of approval by the PZC. This would be the noise that leaks off the site, not while standing near equipment. J. Dillion said it can be established what an acceptable standard will be and get a base line for the two highways that pass by the site. Atty Fiorentino said to establish a base line the site would have to be developed per the site plan before measuring could be done. The State went through and cut down the buffer along the highway; during peak times the highway noise is tremendous. Noise generated by the site would break through the ambient noise from the highway. And material processing may not happen or likely not more than one time per year. A. Teller said the DEEP regulations address a lot of these issues – background noise, measurement procedures, and class of facility making the noise and that which is receiving the noise. PZC can incorporate those as a condition of approval.

Public Comment:

Ronald Beaudoin, 2 Cook Drive – He lives within 500' of the quarry. R. Beaudoin has experience with acoustics by working at Pratt & Whitney. He submitted a letter that addresses his concerns. In addition, he said the equipment listed to be used at this site are all noisy. Someone said that highway noise would diminish the noise from this site but that is not true. R. Beaudoin complained to the DOT about the taking down of trees at the intersection of I-384 and Route 6 because noise is going to be an issue. CT DOT said there is no money to replace the trees. However, a rock crusher will create more noise. Who will monitor the noise and the dust? Would fines ever be collected from the owner? Is there a turnaround plan for trucks? What if the wetlands dry up or this operation creates problems in the wetlands? The taking down of the 15-year old trees that now create a buffer will cause a doubling effect of the noise echoing off the rock wall. A. Teller asked R. Beaudoin if he has anything new to present; everything he has said is in the letter he submitted. R. Beaudoin summed up his comments by saying there is a site plan calling for an enhanced wetlands sediment basin that empties out through two pipes directly into Railroad Brook. Why is there not a catch basin there? Was that ever permitted? Does the applicant have to receive a new IWA permit? A. Teller said the applicant has received an IWA permit.

Atty Fiorentino said all these concerns are addressed in the memo. As was said earlier this is not going to be an 8:30am–4:30pm operation. It will primarily be a storage site. A dust mitigation plan is included in the application file. A. Teller asked if the applicant will have a problem with a condition of not processing from 4:30pm to 9:00am. Attorney Fiorentino replied no.

J. Cropley said he agrees with conditioning any approval with something about the noise generation. The residents there hear nothing from that site now. Trucks will be going into the property and noise will be generated. PZC will want to know what the noise level is so the Town does not get calls all the time about the noise. It is going to be louder than hearing frogs. The operation the applicant is running will not have fifteen trucks running in there every day. Something about acceptable noise level should be part of any approval so there is not total chaos for the residents and the Town. The processing of material on site has to have some limitations. This operation will be stockpiling materials and storing equipment and the truck traffic to bring the material in and out. A commercial truck can drive on any highway in the state whenever they want to. We do not regulate those roads; we regulate the property itself. If a town road is overused Bolton has to address that.

Discussion ensued about how to measure the noise level to be expected. The noise level would be good to know before granting any approval. J. Dillion said an opinion can be made by using known values and tables of noise generation by equipment type. A study by an acoustical engineer would be another story. J. Cropley said the site is a mess and getting the actual equipment there is not possible. A. Teller said it would not be the same conditions once the site is graded. A. Teller said PZC could have experts review the plan to make recommendations and charge the applicant for the study. J. Cropley said we could ask for a study but noise travels in different directions. The applicant is suggesting material processing will be done one to two times per year. A wood chipper on someone's property exceeds noise levels; we do not regulate someone coming next to your house and using a chipper. A. Teller said industrial properties use industrial equipment. This site has been zoned industrial for many, many years. There is the right of the owner to use it as an industrial site. If a special permit approval mentions noise regulations then the Town should enforce it if there are complaints. P. Carson said a condition could state the maximum number of times per year processing could be done and notice to the Land Use Department must be given ahead of time. J. Cropley said PZC just approved an industrial use for processing in a mixed-use zone. This is the right use for the right location. A. Teller said PZC limited that approval to one small area of the property.

Atty Fiorentino brought Commissioner's attention to page 2, item 6 of the application narrative suggesting processing four times per year for four days and giving prior notice of 48 hours to the ZEO. Mr. Phillips is willing to change that to two times per year for up to four days and to consider processing only during the winter when windows are closed. However, there is the tradeoff of trees being bare. Or use a maximum of ten days per year and those can be spread out. T. Manning said he would prefer notice to ZEO of seven days; A. Teller said three business days for notice. J. Rupert said three business days is enough notice as ZEO.

R. Beaudoin said the State is specific with noise regulations. Noise can be detrimental to health. The Town can make the condition stricter than what the State's minimal levels are. T. Manning said PZC should incorporate the State limitations. PZC should not expect an industrial operation to be on the same level as ordinary conversation.

T. Manning moved to close the public hearing. **A. Fiano seconded.** Discussion: T. Manning said it looks like the PZC is not willing to do a noise study, otherwise the public hearing would need to be continued. Conditions of approval could include noise regulations, time limitation, and to provide notice to the town that processing will be taking place.

A. Teller said an acoustic engineer would not be able to tell us what level of noise will be generated without the site being prepared per the plan. PZC can limit the use and the narrative suggests limits. Is this industrial use less noxious than others to the neighbors? PZC could have rezoned the site. A. Teller sympathizes with the neighbors about the next person that may come onto the site and not be willing to work concerns out with the neighbors. We have enough information to make a rational decision.

C. Davey said he is getting the feeling that PZC is backing off for the need of an acoustic study. If the PZC did request a study and it shows the noise could not be abated would that be sufficient to deny the use? Could that open the PZC up to litigation? This is an industrial zoned site. There is no assurance ahead of time that the State noise laws are going to be met. He agrees there should be a condition as part of any approval. He will vote in favor of closing the hearing. Vote: 7-0-0. Motion passed.

4. Residents' Forum (Public Comment for items not on the agenda): There were none.

Commissioners were agreeable to moving to item 6.b. next as the applicant was present.

5. Staff Reports:

P. Carson had nothing to report on other than the work done on applications on the agenda. J. Rupert reported #PL-21-1 has been worked on for some time. This will be an improvement to the site and will have a lot more vegetation than when operating as a quarry. This is a good plan.

6. Old Business:

a. Discussion/Possible Decision: Special Permit Application for Excavation Business, Equipment Storage & Material Processing Areas, 1 Notch Road, William Phillips (#PL-21-1)

A. Teller said he is okay with continuing this item until the next meeting for the PZC to think about the plan and discussion. P. Carson noted the June meeting will already be a heavy one.

T. Manning moved to approve William Phillips' Special Permit for an excavation business, equipment storage and material processing areas at 1 Notch Road (aka 17 Wall Street), application #PL-21-1, in accordance with the application and plans submitted as "Plan Prepared For LANDIE CONSTRUCTION, 17 Wall Street, Bolton, CT" (3 sheets) dated: 2/20/2020 & 10/8/2020 & 9/2/2020, revised through 4/29/2021, which is conditioned on the following:

1. The approval letter shall be placed on the mylars to be recorded in the Office of the Town Clerk.
2. This approval is subject to compliance with any comments or requirements of the Health District, Fire Marshal, Town Engineer, and Inland Wetlands Commission.
3. All appropriate seals and signatures of the design professionals for this plan shall be placed on the plans before recording.

4. The drawing set shall include details for the proposed turf reinforcement mat, stone check dam, stormwater infiltration berm and grass buffer strip.
5. The traffic control sign(s) proposed along the east shoulder of Notch Road shall be specifically called out and shown on the Site Plan.
6. Continued implementation of the dust mitigation control that is included in the application.
7. Material processing operations shall be limited as to number of times and number of days as set forth in the application - 4 times per year at a maximum of 4 days each time with the following stipulations: No processing shall occur on weekends, or on weekdays between 4:00 p.m. and 9:00 a.m. Notice to the ZEO shall be given at least 3 business days prior to the beginning of processing. Noise from such operation shall be limited to that provided in the CT Regulations of State Agencies 22A-69-1 through 22A 69-7.4.
8. A Site Improvement Bond which includes Erosion & Sedimentation controls and a 20% contingency in the amount of \$98,251.73 (\$81,876.44 bond estimate plus \$16,375.29 contingency) shall be filed prior to the commencement of work on the site. Should items covered by this Bond not be constructed within a year from approval, an appropriate escalation factor shall be reviewed by the Town Engineer and applied if warranted.

The Planning and Zoning Commission finds with these conditions the plan meets the requirements of the Bolton Zoning Regulations.

Change to the motion suggested by A. Teller and accepted by T. Manning: Add to Condition 7 - The applicant shall comply with the State noise limitations. **J. Cropley seconded.**

Discussion: A. Teller said this is an industrial zoned site. Staff and Mr. Dillion have indicated that it meets the technical specifications our regulations would impose. It is a special permit application, therefore it is a use permitted on the site provided it does not reasonably interfere with other people's use of their property on abutting or neighboring sites. The conditions suggested seem to be sufficient to do that. A. Teller is not thrilled with this because inherent is the fact that this is a small industrial site historically plopped in the middle of an otherwise residential zone and off a state highway. Bolton does not have a lot of industrial land in town, this land was never rezoned, and the time to rezone, if there were true objections to this, should have been before this but it was not done. The application meets the requirements of the zone. To some extent we are constrained to grant approval. C. Davey acknowledges the comments from abutters. He sympathizes with those living near or abutting an industrial zoned site that has not been operated that way but he agrees with A. Teller's reasoning. The concerns raised are significant and worthy of consideration. C. Davey personally did not feel that any evidence was presented to lead him to disbelieve the findings of Town Staff, the applicant's engineer, or the applicant. Given how the parcel is zone and what is allowed the PZC is compelled to honor the town's zoning regulations. A. Teller said the story does not end with approval. The conditions are enforceable. People have to be the "squeaky wheel"; if issues arise, people have to complain about the operations and to document to complaints. They are entitled to do so as residents, taxpayers, and citizens. The history of working with Mr. Phillips is that he has been responsive to concerns and that has been corroborated by J. Rupert.

Vote: 7-0-0. Motion passed.

b. Discussion/Possible Decision: Site Plan Modification to Expand Existing Outdoor Patio for Dining, 275 Boston Turnpike, George Koutouzis (#PL-21-2)

Applicant and owner George Koutouzis was present.

P. Carson said there was a staff report issued for this application which is to expand an existing patio out to the parking lot and in front toward the street. The Town Engineer reviewed the plan. There are enough parking spaces to meet the requirements although the handicapped spaces will be moved. J. Dillion was satisfied with the engineered design of the columns and the sewer gravity line sleeve. The owner will have to get a BLRWPCA permit. The sewer line will be bonded through BLRWPCA. A lighting plan was submitted. An egress plan for fire and safety codes is pending. P. Carson said page 115 of the packet spells out how many tables and people can be accommodated on the patio. Parking availability more than meets the minimum required and is close to the maximum number. T. Manning asked if item 4 in the suggested motion is therefore not needed. P. Carson said that is up to the PZC if they are satisfied with what has been submitted. T. Manning asked if item 3 is needed. P. Carson said the existing underground grease traps should be on the plan. J. Dillion review the plan dated 4-8-2021.

A. Teller said Commissioners are familiar with this site and the parking lot is fairly large. However, losing a number of parking spaces to put in the patio is not an issue. He is not concerned in looking for a more formal parking analysis.

T. Manning moved to approve George Koutouzis’s Site Plan to expand the existing outdoor patio for dining at 275 Boston Turnpike (Georgina’s Restaurant), application #PL-21-2, in accordance with the application and plans submitted as “Plan Prepared For TSAMBIKA LLC, 275 Boston Turnpike, Bolton, CT” (1 sheet) dated: 2/25/2021, revised through 4/8/2021, which is conditioned on the following:

1. A copy of any required submission to the CTDOT shall be submitted to the Building Department.
2. This approval is subject to compliance with any comments or requirements of the Health District, Fire Marshal, Town Engineer, and the BLRWPCA.
3. The existing underground grease traps located at the southwestern corner of the building shall be shown on the Site Plan.
4. A plan for egress from the building onto the patio and into the parking lot shall be submitted to show Fire and Building Codes can be met.

The Planning and Zoning Commission finds with these conditions the plan meets the requirements of the Bolton Zoning Regulations.

J. Cropley seconded. A. Teller said the Commissioners are familiar with the site and the operation of it. This will not be a change in how it operates. Vote: 7-0-0. Motion passed.

c. Other: There was none.

7. New Business

a. Other: There was none.

8. Correspondence: There was none.

9. Adjournment:

A. Teller adjourned the meeting at 9:37 p.m.

Respectfully Submitted,

Yvonne B. Filip

Yvonne B. Filip, Planning & Zoning Commission Recording Secretary

Please see minutes of subsequent meetings for approval of these minutes and any corrections hereto.