

TOWN OF LYNDEBOROUGH

JOINT BOARD MEETING

Selectmen, Conservation Commission, Planning Board
October 17, 2019

Approved

6:30 PM Call to Order & Roll Call

Members Present:

Selectmen: Chairman Mark Chamberlain and Selectman Fred Douglas

Conservation Commission: Chairperson Sharon Akers, Kris Henry, and Gregory Kreider

Planning Board: Larry Larouche and Julie Zebuhr

ZBA: Chairperson Karen Grybko

Town Administrator Russ Boland and Building Inspector/Code Enforcement Officer Leo Trudeau.

Public present: Burton Reynolds, Richard Duplease, Michelle Duplease, Brian Drayton, and other guests

Media present: Jessie Salisbury

Tonight's meeting is to discuss the Wilton asphalt plant application before the Wilton Zoning Board of Adjustment (ZBA) and to determine Lyndeborough's position. The Town of Lyndeborough was noticed as an abutter due to potential regional impact.

The Conservation Commission provided supporting documents titled: *(See attached)*

- Summary of Recommendations of Inquiring for Hot Mix Asphalt Plant in Wilton

- Summary of Asphalt Producers in Southern NH and Quinn Brothers Corp.

Other documents handed out included: *(See attached)*

- Wilton Conservation Commission letter dated, October 3, 2019 addressed to the Wilton Zoning Board of Adjustment

- Package from Russ Boland that included:

 - Potential Regional Impact Notice

 - Public Notice for the Asphalt Hearing on October 23, 2019 dated September 16, 2019 signed by Neil Faiman, Wilton ZBA Chairman

 - Wilton ZBA Minutes of September 10, 2019

36 Chairman Chamberlain is expecting a letter from the Nashua Regional Planning
37 Commission (NRPC) and will distribute it to the Boards after he receives it. *(Attached)*

38 Chairman Chamberlain read the Wilton Conservation Commission letter prior to
39 tonight's meeting and felt it does give this Board a lot to think about in terms of the
40 standards they need to hold the applicant to.

41 Karen Grybko asked if the land is Industrially Zoned. The answer is "Yes". She asked if
42 this is an allowed use and Chairman Chamberlain replied, "The way I read the zoning,
43 yes".

44 K. Grybko wanted to verify if the applicant is going before the ZBA just for the height of
45 the smoke stacks. She was corrected they are not smoke stacks but two storage silos
46 at a mixing plant. K. Grybko asked if this is regulated by the State of New Hampshire,
47 then do we have an opinion on that. Chairman Chamberlain said it is still a height issue
48 for the zoning. The proposed height is 68 feet and 72 feet. Zoning has a 45 feet
49 maximum.

50 K. Grybko asked if they will argue a taller stack is cleaner. She was reminded they are
51 not stacks. Chairman Chamberlain explained how the storage silo works. The material
52 goes into the top then goes down through and mixes to become asphalt then it is
53 transported on a conveyor belt to the storage silo. The trucks pull into the mixing plant
54 under the silos and fill-up with asphalt. "They are two pieces of machinery not stacks.
55 They are substantial, it's not just a chimney sticking up, they are a few good size pieces
56 of equipment," said Chairman Chamberlain.

57 Burton Reynolds asked if we know what the decibel level it is going to be from the
58 operation of a plant, giving that Goss Park is right in front of it. Chairman Chamberlain
59 does not know the decibel level. He is not sure if noise is something the ZBA will deal
60 with. If the ZBA denies it, the case can go to Superior Court. If the ZBA passes the
61 variance, the next step is the Wilton Planning Board and they will have to develop a site
62 plan and that Board would take up the environmental concerns. The ZBA is constricted
63 as to what they can look at.

64 Chairman Chamberlain explained, "The hardship has to be uniqueness to the land, and
65 this is pretty much the same land all the way down through there, so he is not sure how
66 they will argue uniqueness. They have to determine if it will be a reasonable use or not
67 and that is the key for the ZBA. If you don't want it, you have to prove that it's not
68 reasonable."

69 Chairman Chamberlain is aware the ZBA has been doing a lot of research. They are
70 aware there is a potential lawsuit on their hands and they want to make sure they follow
71 the rules.

72 Sharon Akers asked about noise levels and reasonable use. Chairman Chamberlain
73 said it might be in one of the criteria, that it is not detrimental to the surrounding areas.
74 You might be able to make that argument that way, same as in the air quality and water
75 quality. It could potentially be detrimental to the surrounding area.

Kris Henry wondered if the process is backwards and should it go to the Planning Board first. The Wilton ZBA is only looking at the height restriction. They are building the case because of the height restriction. They specifically point out that they want to maintain rural character and do not invite heavy industrial and this is why this is here.

K. Henry added about these plants, whatever safety measures are put in place, to capture and scrub whatever emissions they put out. Their goal is just get it to the acceptable levels for State and Federal regulations, but it will still emit harmful things.

Fact Sheet

Depending on the size of the asphalt plant, potential emissions are: Volatile Organic Compounds (VOC's), Nitrogen Oxide (NOx), Hydrocarbons, Carbon Dioxide, Carbon Monoxide, hazardous air pollutants, and particular matters. The fact sheet specifies that VOC's and NOx react to form ground level ozone – NOx is a major ozone depleting emissions.

According to the USEPA fact sheet (see epa_hotmixemissions.pdf) regarding potential emissions from asphalt processing plants include: Formaldehyde, Hexane, Phenol, Toluene, Polycyclic Aromatic Hydrocarbons, Arsenic, Benzene, Cadmium, Carbon Monoxide, Sulfur Dioxides, Nitrogen Oxides, condensed particulates. These emissions are regardless of controls put in place. With controls in place, these are reduced to acceptable levels of the State and Federal Regulations.

Exposure to these air toxins may cause cancer, central nervous system problems, liver damage, respiratory problems, skin irritations, vertigo and nausea. *(end of fact sheet)*

K. Henry read the chemical list above and mentioned again that most plants will try to bring emissions down to acceptable levels at the State and Federal levels. He asked, "Should we consider that Lyndeborough Center is only 1.5 miles away and does this support what our Master Plan states."

Sharon Akers noted that Goss Park is used by both towns while Chairman Chamberlain added that Goss Park is in the foot print of the proposed asphalt plant.

K. Henry noted that the Wilton Water Works had identified Goss Park as a potential backup aquifer for them. That is another concern. If there is an accident or a spill it will contaminate that water and up to 80 miles downstream can be affected by a spill.

K. Henry mentioned he did a brief research in NHDES. He found a violation in 1991 when a tank failed while the quarry was in active use. In a two-year span Mr. Quinn was sent was a lot of correspondence. The tank was removed in 1994 and a mediation program put in place. So there was a history of basically kicking the can a bit for solving a leak in a 5,000 gallon underground diesel tank on the quarry.

Greg Kreider asked a procedural question. "If the Zoning Board approves this and it ends up with the environmental questions at the Planning Board, does the Town have the opportunity to come in?" Chairman Chamberlain believes that the Wilton Planning Board would also have to deem this case a potential regional impact application.

115 Selectman Douglas wanted to confirm if ultimately the Planning and Zoning Boards in
116 Wilton make the final affirmative decision that we have appeal rights as an abutter.

- 117 1. Appeal rights regionally to the appropriate Boards.
- 118 2. Appeal to Superior Court, just like any other abutter (The advantage of being a
119 legal abutter is the right to speak to the issues and appeal the decision)

120 Brian Drayton was concerned about guarantees against fire and accidents as well as
121 potential impact of property values.

122 Mark Chamberlain said he believes the applicant produced a document from a few real
123 estate firms that abutting properties would not be affected.

124 B. Drayton added that if it was 20-years ago when he was moving to this area and if he
125 heard there was an asphalt plant, he would not have purchased a house in this area.
126 He asked if the Boards can have someone do an independent real estate evaluation.

127 Chairman Chamberlain replied it's so subjective. If you can find a similar use you can
128 do that but in this case there has not been a new asphalt plant around here in a while.
129 You will have to bring in different opinions and see if they are similar or wildly
130 inaccurate.

131 B. Drayton said supposed you could look at property values near other plants, different
132 years and data. They discussed the Amherst asphalt plant but noted that is a very
133 different area. The Amherst asphalt plant land was owned by Quinn who sold to it to
134 Brox. This could be a similar situation, prepping the Wilton property for a sale.

135 Chairman Chamberlain said one thing that will affect Lyndeborough is the higher truck
136 traffic generated from the asphalt plant.

137 K. Henry: "If there is an accident and fire, are our fire departments collectively, able to
138 handle that?"

139 Chairman Chamberlain reported that Selectman McQuade confirmed they are part of
140 the same foam bank system. "If I was on their Board, I would bring in the Fire Chief and
141 ask him specific questions how it's dealt with and if there is adequate means with the
142 surrounding towns. The Lyndeborough Fire Station is closer than the Wilton Fire
143 Station, but regardless, Wilton and Lyndeborough would be the first responders to any
144 fire calls on that property. Chairman Chamberlain would suggest to get it on record,
145 because if the fire chief has any hesitation, that would be something to consider. They
146 made an argument about the ladder height for the trucks, which was pointed out that
147 that was not necessarily the reason for the zoning height limitations. It might have been
148 to keep the building heights down for aesthetic reasons.

149 Leo Trudeau, "I have lived between three-quarters of a mile and a mile north of the
150 Caldwell Drive location for that asphalt plant in Amherst. At 5:00 a.m., nearly every day,
151 when they start those big propane guns to make the asphalt, the noise levels, did it
152 exceed acceptable decibel levels for resident, maybe not, but it was very noticeable and
153 it would wake me up from a sleep. That will be the reality for anyone living anywhere

154 near any of these plants that they would have to live with it. Is there a line between
155 commercial property and residential property where the noise ordinance would or would
156 not be enforceable? Would a commercial property be able to make noise that will go-
157 over on a residential property that we can or cannot enforce? Those things are noisy.
158 Again, about storage of fuels, they have at least 10,000 gallon or more propane tanks,
159 like a depot size. I don't know if this proposed plant will be fired with propane."

160 Another audience member confirmed the plan is to truck propane in. The discussion
161 turned to if the propane will be trucked in or be transported via the railroad.

162 K. Henry said in a previous meeting that property sight lines were discussed and what is
163 enforceable or not. That could be another gray area.

164 Selectman Douglas asked if the emergency services, such as the fire departments,
165 because of the types of VOC's they are dealing with, or catastrophically dealing with.
166 Do you know if the surrounding towns are outfitted with the type of equipment needed
167 such as respirators and everything else needed?

168 T/A Boland responded that Lyndeborough belongs to the Hazardous Materials District.
169 If there was an incident there they would call the responding resources and set-up a hot
170 zone and stay back until the required equipment arrived. They would be coming out of
171 Nashua. We are members, but that is a very valid questions. In terms of the two
172 particular towns, Lyndeborough and Wilton would be the first ones there. Do we have
173 the equipment and if not, would they [the asphalt plant] outfit us with that.

174 Selectman Douglas addressed the need for a catastrophic plan for a hot zone and
175 blocking off Rt. 31 and all the access roads to stabilize the situation before anyone goes
176 in there. T/A Boland added evacuation zones would be a huge concern.

177 Selectman Douglas added that in the case of an emergency there would be
178 environmental issues with air and water. He also noted prevailing winds would go up to
179 the Pead Hill area.

180 Chairman Chamberlain mentioned they would have to do more targeted training.
181 Equipment such as a foam trailer would possibly be needed.

182 Richard Duplease: Are they required to have any on-site fire suppressants. T/A Boland
183 did not know the answer. It would have to go through the Wilton Planning Board, the
184 Fire Marshall and State approval.

185 Chairman Chamberlain said that the Planning Board can add stipulations they find
186 reasonable, even if the Fire Marshall didn't specify them, and could require fire
187 suppression for example because they don't have a full-time fire department.

188 Sharon Akers asked if those are things we can ask for as abutters. The answer was,
189 "Yes".

190 The Boards discussed if they are going to take a position as a Town and if they were
191 going to support positions that others have taken such as the Wilton Conservation
192 Commission, and if the Selectmen would be sending a representative.

193 Selectman Douglas was disappointed the Wilton ZBA scheduled their meeting the same
194 night as Lyndeborough Selectmen's regularly scheduled meeting. He felt they should
195 have coordinated the times. He suggest they send Wilton a letter asking them take
196 Lyndeborough's meetings into consideration when they schedule future meetings.

197 Sharon Akers felt that many people will be attending as individuals.

198 ZBA Chairperson Karen Grybko wanted to make people aware that Zoning Boards are
199 only obligated to take comments from abutters or somebody designated from the Town
200 or you have to show you are a preferred witness or an abutter. She felt a letter read
201 into the minutes would be a good idea.

202 K. Grybko felt that most of the questions here tonight are for the Planning Board in
203 regards to environmental concerns and not for the variance for the height.

204 Chairman Chamberlain said when looking at the Zoning Regulations, it appears the
205 application request falls under Permitted Use of a Manufacturing Processing Use which
206 is allowed in the Industrial Zone otherwise they would have asked for a variance for
207 that. The applicant decided to use the quarry as a Grandfathered Use but this an
208 expansion of that use.

209 A case was cited: "...However, enlargement or expansions may not be substantial"
210 –New London Land Use, page 3 543 A.2nd 1385 (NH 1998)

211
212 Chairman Chamberlain would argue that putting a separate plant in there is an
213 expansion of the use of the property.

214
215 Chairman Chamberlain said that zoning is difficult because it balances the rights of the
216 landowner against the rights of the Town to regulate but also take into consideration the
217 abutters. This is tough to do sometimes. He felt we need to give them as much help as
218 possible in regards to things we have concerns with, to have it on record.

219 Karen Grybko suggested a letter be read into the minutes by a designee and that will
220 carry more weight. Put all the arguments into the letter and they will have the letter to
221 refer to. K. Henry agreed. The letter needs to be signed and dated and it was
222 suggested to notify the Wilton ZBA ahead of time of who the designee will be.

223 T/A Boland went over the list of concerns which included, fire suppression, noise, dust
224 migration, odor, water quality, air quality, traffic, VOC's, property value diminishment,
225 rescue from heights, hours of operation, and emergency operation plans. A resident
226 suggested maintaining rural character as part of the Master Plan.

227 Hours of operation at a typical plant was discussed. There could be 10-12 trucks
228 waiting at 5:00 a.m. to load material. There could be trucks coming and going all day
229 long. What is considered normal hours of operation? It was noted that the asphalt is

230 sampled and checked by the State, especially if the material is going to cover an on-
231 ramp or off-ramp due to specific make-up. This inspection has to occur right away
232 therefore things are moving very rapidly by 5:00 a.m.

233 Leo Trudeau added, "The owners did their research. The demand is there, otherwise
234 why would they have proposed to build that plant in Wilton. Regardless of the timeline
235 given, that you can't start up until this time, they will just start up when they want and
236 get a little slap on the wrist or accept a fine. They would like to run it around the clock."

237 It was discussed that during the off-season hours, contaminants such as recycled
238 asphalt, shingles, and roadway materials would be hauled there.

239 K. Henry: His concern as a citizen is there has been a lot of confusion and consolidation
240 in the asphalt industry and general construction. There are three major players in
241 southern New Hampshire; Pike, Brox and Continental. For someone to build an asphalt
242 plant now is odd when the other companies already own that market. The Quinn
243 Corporation has a track record over the course of 90's and early the 2000's, they sold
244 off all of their concrete, quarry and asphalt plants. It appears they are looking to get the
245 variances in place in order sell it to a buyer. Then you are the mercy of a much larger
246 company making a lot of asphalt. That is my biggest concern."

247 Mark Chamberlain confirmed that the approval would carry with the land. That is more
248 than likely what he is trying to do, increase the value of his land so he can sell to
249 someone like a Broxx or Continental.

250 When an applicant goes to the ZBA they are asking for an exception from what the town
251 voted on and you have to prove your case.

252 T/A Boland will draft a letter and circulate it amongst the Boards and Committees for
253 comments and suggested edits. Members can sign the letter early next week.

254 **VOTE: Selectman Douglas made a motion, Chairman Chamberlain seconded to**
255 **have Sharon Akers read the letter regarding the Town's concerns on the**
256 **proposed asphalt plant verbatim into the Wilton Zoning Board of Adjustment's**
257 **minutes at their meeting on October 23, 2019. Motion passed 2-0.**

258 **VOTE: Selectman Douglas made a motion, Chairman Chamberlain seconded to**
259 **adjourn at 7:25 p.m. Motion passed 2-0.**

260 Respectfully submitted,
261 Kathleen Humphreys, Selectmen, ZBA and Planning Board Secretary
262

263
264 Chairman Mark Chamberlain:_____

265
266 Selectman Fred Douglas:_____

267
268 Selectman Richard McQuade:_____

- Sub

10-17-19

- Submitted by Lyndeborough Conservation Commission at Joint Board Meeting

Lyndeborough Conservation Commission

Summary of Asphalt Producers in Southern NH and Quinn Bros Corp.

Major Asphalt Producers in Southern NH:

There are 3 major producers of Asphalt in Southern NH, all largely located near the 93 corridor:

- Pike Industries, Inc. (Owned by CRH of Ireland)
- BROX Industries, Inc.
- Continental Paving

There has been substantial consolidation of Asphalt Plants and related construction operations (stone quarry, cement production, etc.) since the 1980's to the early 2000's.

Regarding Quinn Bros Corp. / Quinn Properties, LLC

Known violations at location:

5000 Gallon Underground Single Wall Steel Diesel Fuel Storage Tank at 50 Quinn Dr. Wilton, NH.

Tank Tightness Failure: 4.22.1991

Tank Removal: January/February 1994

(See attached IISProxy.dll-3.pdf, IISProxy.dll-4.pdf, IISProxy.dll-5.pdf and IISProxy.dll-6.pdf)

Further Remediation: 2015 remediation / removal of 50,000 lbs of soil / solid fill.

(See attached IISProxy.dll-1.pdf and IISProxy.dll-2.pdf in reference to IISProxy.dll-6.pdf)

Reference minutes from Wilton ZBA meeting 7.9.2019 (see attached minutes_2019_07_09.pdf) for proposed asphalt plant on land owned by *Quinn Properties, LLC

*Quinn Properties, LLC

NH Business ID: 789076 – LLC

NAIACS Code: own, manage commercial real estate

Est. 2.27.2019

Quinn Bros. Corp. (Domestic Profit Corporation)

NH Business ID: 18756

Mailing Address:

PO Box 909, Amherst NH 03031

Est. 5.19.1976 – 2019 (Currently in good standing)

Additional Background:

Pike Industries owns the LAW Quarry Inc. located at 50 Quinn Dr., Wilton NH. (Formerly owned by Quinn Bros Corp.) which is adjacent to the proposed Hot Mix Asphalt Plant on land owned by Quinn Properties LLC.

BROX Industries owns and operates the former Quinn Bros Corp Asphalt plant in Amherst NH.

Redimix (also owned by CRH) owns former Quinn Bros Corp cement production facility which is adjacent to the BROX Ind. Asphalt Plant at 5 Caldwell Dr., Amherst NH. Ref. <https://redimixcompanies.com/about/history>

Reference McLane Middleton Law Firm:

https://www.mclane.com/news?req=2002/news_mclane-law-firm-represents-quinn-bros-in-asset-sales-and-quarry-lease

"McLane, Graf, Raulerson & Middleton, Professional Association recently represented Quinn Bros. Corp. of Amherst, New Hampshire, in the sale of its Asphalt Division, located in Amherst, and the sale of its aggregate processing plant and equipment at its quarry located in Wilton and Lyndeborough, New Hampshire. McLane also represented Quinn Bros. Corp. in negotiating a related long-term mineral lease and agreement concerning the quarry real estate. The sales and lease, worth an estimated \$10 million, were to Pike Industries, Inc. of Belmont, New Hampshire."

"Quinn Bros. Corp. has operated in southern New Hampshire since the 1960s, producing and transporting, aggregate material, asphalt and cement. The company's cement hauling division will remain an active component of its ongoing operations. Pike Industries is a wholly owned subsidiary of Oldcastle Materials, Inc., part of the CRH, plc corporate family headquartered in Ireland. CRH is one of the world's largest suppliers of asphalt and building materials.

The former Quinn Bros. Corp. asphalt plant has the capacity to produce 500,000 tons of asphalt per year. Pike Industries currently has a contract to resurface sections of New Hampshire Route 101A in the towns of Milford, Amherst and Nashua, and is sourcing asphalt locally from the plant for that project.

The Quinn Bros. Corp. quarry, consisting of approximately 120 acres of land in the Towns of Wilton and Lyndeborough, contains an estimated 50 million tons of mineable material."

Lyndeborough Conservation Commission
Summary of Recommendations of Inquiry for Hot Mix Asphalt Plant in Wilton

Air Quality

Depending on the size and output of the proposed asphalt plant, potential emissions are:

- *Volatile Organic Compounds (VOC)
- *Nitrogen Oxide (NOx)
- Hydrocarbons
- Carbon Dioxide
- Carbon Monoxide
- Hazardous Air Pollutants
- Particulate Matter
-

**(VOC's and NOx react to form ground level ozone – NOx is a major ozone depleting emission.)*

****According to the United States Environmental Protection Agency's Fact Sheet (see epa_hotmix-emissions.pdf) regarding potential emissions from asphalt processing plants includes:**

- Formaldehyde
- Hexane
- Phenol
- Toluene
- Polycyclic Aromatic Hydrocarbons
- Arsenic
- Benzene
- Cadmium
- Carbon Monoxide
- Sulfur Dioxides
- Nitrogen Oxides
- Condensed Particulates

*(**Exposure to these air toxins may cause cancer, central nervous system problems, liver damage, respiratory problems, skin irritation, vertigo and nausea.)*

These are regardless of controls in place. With controls in place, these are reduced to acceptable levels of State and Federal regulations.

Email dated 10.17.2019 From:

Linda M. Magoon
Sr. Compliance Assessment Specialist
Air Resources Division
NH Department of Environmental Services
29 Hazen Drive
Concord, NH 03301

"HMA plants require a NHDES Air Resources Permit prior to operation. The permit establishes production and emission limits for a particular facility. The facility is required to report annually the amount of asphalt produced and the type and quantity of pollutants released into the air. NHDES performs periodic inspections of a facility to ensure that they are in compliance with their air permit. NHDES does not measure the air quality at a specific facility per se.

NHDES does receive complaints about odor from HMA plants, but they are rare. Within the last two years, NHDES received four complaints relative to one asphalt plant in particular, located in Gorham. The other complaint concerned an HMA plant in Franklin. Although NHDES does not regulate odors per se, when we receive a complaint, we follow-up with the facility to ensure that they are in compliance with their permit and conduct a site inspection as appropriate."

Water Quality:

Reference Chris Balch letters "pb_letter.pdf", "wilton_water_works.pdf"

Email Dated 10.17.2019 From:

Pierce Rigrod, Supervisor
Source Water Protection Program
Drinking Water & Groundwater Bur.
Pierce.Rigrod@des.nh.gov
(603) 271-0688

It is likely both the Air Division and Waste Division (Aboveground Storage Tank Program) will play a primary role in providing permits for this facility, and the Water Division through the Alteration of Terrain Program should site disturbance involve over 100,000 square feet.

An asphalt (description of asphalt) production facility would likely have diesel or other "regulated substances" (defined under state regulation Env-Wq 401, Best Practices for Groundwater Protection) on-site and be subject to AST regulations and permitting should storage of oil exceeding 660 gal (a single tank) or 1,320 gal cumulatively in multiple tanks, and all storage/handling would need to comply with Env-Wq 401 for oil and other regulated substances. Limiting inside drains to the ground (floor drain) and outside spillage of asphalt products and discharge through stormwater practices should be reviewed and controlled through design/practice. In areas where they may be incidental releases through transfers, discharge to a stormwater practice, that practice could be lined and a structural method to collect spills from the practice. (e.g., swale or detention basin) This is actually integrated into the Alteration of Terrain regulation.

Water quality issues (impacts) are likely limited from the asphalt product itself, as typically it hardens

at ambient temperatures so the primary control issue in terms of maintaining water quality is likely around the release of fluid substances that are used in making the asphalt. (diesel, etc.) While there are typically state permit requirements for these facilities, you should also look at any possible additional requirements in your local groundwater and surface water zoning, including provisions to monitor ground or surface water nearby. If there are any commercial wastewater discharges (not stormwater but wastewater discharged onto the ground) this may trigger a groundwater discharge permit or registration (when no regulated contaminants are present). I would speak with Mitch Locker in our Bureau who should be able to clarify what state requirements could apply if a groundwater discharge is planned. As far as Air emissions, I would defer to the Air Division and call the main line and they should refer you.

See additional responses below to your questions.

Pierce

- 1.) Has DES documented the impact on the water quality due to other plant operations?

This question is best answered by our Waste Division, Petroleum Remediation Program but petroleum products if not contained have the potential to impact groundwater and degrade/impair surface water. <https://www.des.nh.gov/organization/divisions/waste/orcb/prp/prp/index.htm>

- 2.) Has DES received any complaints from the public/townships about water quality?

I assume you are referring generally to asphalt plants. In my experience, I have fielded questions on occasion about asphalt production plants/water quality concerns, but not a great deal. Asphalt manufacturing is listed as a potential contamination source (PCS) under RSA 485-C (NH Groundwater Protection Act) and needs to follow "BMPs" proscribed under Env-Wq 401 to limit releases of regulated substances to the environment.

- 3.) Have there been any incidents or accidents that posed a concern for public safety or local water supply?

I don't know of any but that doesn't mean there have not been any of these incidents you mention. Our OneStop program does allow queries that can search all records related to permits/actions, etc and there is an "asphalt batching" pick under the section for Aboveground Storage Tanks. Compliance incidents would be documented in the Petroleum Remediation Bureau.

**Reference file lcc_hotmixasphalt-asphaltnotes10172019.docx "Known Violations at Location"*

OR go to NHDES web address

<http://www4.des.state.nh.us/DESONestop/BasicSearch.aspx>

Enter **NHD510089469** into the search field "Any DES Interest ID" and review "Underground Storage Tank Program" and "Initial Response Spill Site" files which are also included with these documents.

Wilton Conservation Commission

P.O. Box 83, Wilton Town Hall, Wilton, NH 03086

<http://www.ci.wilton.nh.us/>

W. Bart Hunter, Chair – 603.654.9288 – barthunter@tellink.net

William G. Mahar – 603.654.3512 – wmahar@tds.net

H. Alan Preston – 603.654.9557 – preskee@tellink.net

Jeffrey Stone – 603.654.2994 – wccjeff@irs.jetemail.net

Jennifer S. Beck – 603.654.5526 – jenniferscottbeck@gmail.com

Peter Howd – 727.439.6517 – peterhowd@gmail.com

Leslie P. Tallarico, Alternate

October 3, 2019

Milford Conservation Commission
1 Union Square
Milford, NH 03055

Lyndeborough Conservation Commission
9 Citizens' Hall Rd
Lyndeborough, NH 03082

Temple Conservation Commission
PO Box 191
Temple, NH 03084

Neighbors,

For your information we are attaching a letter sent by the Wilton Conservation Commission to the various boards in our town with land use responsibilities, to you, and to NH OSI and NH DES regarding the proposal to construct and operate an asphalt batch plant in northern Wilton just off Route 31. This letter only addresses our concerns regarding the request for a height variance now in front of our Zoning Board. A finding of regional impact has been made and comments from adjoining towns have been solicited by that board. Information about the case can be found [here](#).

As a finding of regional impact has been made, any input you wish to supply will be considered at the next hearing of the Wilton Zoning Board on October 23 at 7:30 PM in the Wilton-Lyndeborough High School cafeteria. Comments may be submitted in writing to Wilton Zoning Board, PO Box 83, Wilton, NH 03086.

Sincerely,

W. Bart Hunter, Chair

Wilton Conservation Commission

P.O. Box 83, Wilton Town Hall, Wilton, NH 03086

<http://www.ci.wilton.nh.us/>

W. Bart Hunter, Chair – 603.654.9288 – barthunter@tellink.net

William G. Mahar – 603.654.3512 – wmahar@tds.net

H. Alan Preston – 603.654.9557 – preskee@tellink.net

Jeffrey Stone – 603.654.2994 – wccjeff@irs.jetemail.net

Jennifer S. Beck – 603.654.5526 – jenniferscottbeck@gmail.com

Peter Howd – 727.439.6517 – peterhowd@gmail.com

Leslie P. Tallarico, Alternate

October 3, 2019

Town of Wilton Zoning Board of Adjustment

P.O. Box 83

Wilton NH, 03086

The Wilton Conservation Commission, with Jeffrey Stone recused, unanimously recommends that the height variance requested for an asphalt batch plant proposed by Quinn Properties, LLC (the “applicant”) on lot B-10 be denied. After careful consideration of its existing application and facts relating to asphalt batch plants, we believe the request fails to meet the standards established by the New Hampshire courts for granting a variance in support of the extension of a nonconforming, or grandfathered, use. A brief explanation of our thoughts on those two issues follows. Should you desire a more complete version, we would be happy to provide that, either in writing, or by testimony at your next public hearing on this case.

Our first concern is that the Quinn Properties, LLC application (the “application”) is worded, and presented by counsel, so that approval of the proposed height variance, and the asphalt plant, would establish it as “an extension” of the nonconforming, or grandfathered, use of this land (see the first paragraph of its typed attachment.) As written, the proposed asphalt plant would benefit from all the protections afforded the pre-existing, nonconforming use. While the wording of the opening may not have been carefully considered, this does not absolve the Zoning Board of Adjustment from treating it as such. The New Hampshire Office of Strategic Initiatives (OSI) offers the following guidance to a Zoning Board of Adjustment in such cases (*The Board of Adjustment in New Hampshire: A Handbook for Local Officials*, NH OSI, December 2018, p 11-19):

A legal test for expansion of nonconforming uses has been established by the New Hampshire Supreme Court from cases such as *New London Land Use Association v. New London Zoning Board of Adjustment & a*, 130 N.H. 510 (1988). In reviewing whether a particular activity is protected as within the existing nonconforming use, the following factors, or tests, **must** [*emphasis ours*] be considered:

- To what extent does the challenged activity reflect the nature and purpose of the existing nonconforming use. (i.e., does the proposed change arise “naturally” through evolution, such as new and better technology, or changes in society.)
- Is the challenged activity merely a different manner of utilizing the same use or does it constitute a use different in character, nature and kind from the nonconforming use?
- Does the challenged activity have a substantially different impact on the neighborhood?
- Enlargement or expansion of a nonconforming use may not be substantial and may not render the property proportionally less adequate.

Only one ‘negative’ answer is required in order for the asphalt batch plant to be rejected as a use “protected as within the existing nonconforming use.” We feel that the proposed extension fails all four of these tests and thus the asphalt plant must be considered a new and different use by the Wilton Zoning Board of Adjustment (WZBA). To give just one possible example – an asphalt plant is a very different industrial operation from a quarry, would require construction of several new buildings, and would have a different and expanded set of impacts on the neighborhood. A statement for the record should be made when the WZBA decides this issue.

We believe that this “New London Test” should be decided first. If the proposed use (the asphalt plant) is deemed invalid as an extension of the nonconforming use, then it would seem illogical at this time to discuss, and render a decision, about the requested variance. The WZBA should rather require the applicant to submit a new application reflecting the fact that the proposed asphalt plant would be a new use, the evaluation of which could involve different review standards further in the process. It seems clear to us that any application for an asphalt plant that might possibly be built on B-10, cannot include, implicitly or explicitly, construction as an “extension” of the grandfathered quarry. Consideration of the variance is moot until the status of the use is corrected.

With regard to the requested variance for the height of the proposed mix plant and storage silos, we feel the application fails to successfully meet the criteria established by a series of NH court cases needed for approval. Collectively, these are referred to as the Simplex standards. In the application these tests and their answers are numbered 1-5, with some sections having multiple questions. The WZBA must evaluate the answers to each of the Simplex tests.

While we take issue with many of the applicant’s Simplex answers, for brevity we will focusing on its responses in section 5(a) of the application. We have reproduced the Simplex questions and the applicant’s answers from its application (indented passages below) for context and clarity of our critique:

5(a) i: No fair and substantial relationship exists between the public purposes of the ordinance provision and the specific application of the provision to the property:

- a. As discussed above, the rationale behind the 45-foot limit as applied to an industrial structure is unclear.
- b. Without a variance the property can't be used for an asphalt batch plant because by design they are more than 45 feet high.
- c. A variance for structures with a height of more than 45' does not violate the general public purposes of the ordinance because the silo and the plant attached to it would be located on a small piece of a much larger parcel (Lot B-10) that is itself bordered by other industrial users, a state owned rail corridor and other industrial zoned parcels owned by the applicant. It is highly unlikely that the silo and associated plant equipment will be seen, heard or otherwise noticeable by residents outside the boundaries of the existing Quinn Properties LLC existing quarry operation.

5(a) i. a: We find the response irrelevant. Regardless of the origin and history of Wilton Zoning Ordinance (WZO) 8.2.6, it is the existing ordinance, just as 60 years is the age cutoff for elderly housing. It may be arbitrary, but it is the standard as approved by the town, regardless of origin. Secondly, since the origin of the 45-foot limit is unknown but being debated (see "As discussed above" in a.), it could just as well be case that the ordinance was drafted with the purpose of prohibiting industrial development that would require stacks and the associated release of airborne emissions, whereas the emissions from tall agricultural silos (in the Res-Ag District) were deemed less offensive in a primarily rural community. The origin of WZO 8.2.6 could have nothing to do with firefighting capability and everything to do with preserving the rural character of our community.

5(a) i. b: Their statement is false. Asphalt batch plants are commercially available with silo heights under the 45-foot limit. We can supply vendor information on request. Denying the variance would not deny the use. We suspect the applicant is making an economics-based request as smaller, but compliant, plants likely produce and store less asphalt.

5(a) i. c: The applicant writes, "It is highly unlikely that the silo and associated plant equipment will be seen, heard **or otherwise noticeable** by residents outside of the boundaries of the Quinn Properties LLC existing quarry operation" [emphasis ours]. The potential for operational impacts to surrounding properties here, and in earlier answers, is denied by the applicant. In determining that regional impacts may exist on 9/10/2019, the WZBA explicitly found that the operation of an asphalt batch plant on this site may be reasonably expected to be "noticeable by residents outside the boundaries" of lot B-10 for a number of possible reasons. Accordingly, the WZBA has already found it likely that the applicant may fail this test.

5(a) ii: The proposed use is a reasonable one:

- a. The proposed use is a reasonable one given the location and current use of Lot B-10 and the surrounding properties.

5(a) ii a. We feel the applicant is intentionally confusing the word "surrounding" with "abutting." Both in this answer and in previous answers regarding impacts on surrounding properties (such as decrease in property values), the applicant has routinely chosen to substitute the meaning of the term "abutting" where the court's guidance, based on its use of the word "surrounding", is clearly intended to be geographically broader. We expect there will be impacts on Goss Park, other residents in a 2-mile radius (according to EPA studies), and to traffic using Forest Road (Rt 31), not to mention the road itself.

5(a) iii: The hardship is a consequence of special conditions of the property that distinguish it from other properties in the area:

- a. The property is not flat and rises more than 200 feet above the base elevation of the proposed plant which would be near the railroad tracks at the bottom of the lot in terms of elevation. The top of the 72' structure will be considerably lower than industrial operations higher up on B-10.
- b. The property is already a stone quarry and use as a stone quarry diminishes the ability to use it for other industrial purposes.
- c. The next door neighbor, Granite State, is an operating quarry and would not be a good neighbor for many traditional operations.
- d. Because the industry has changed so that quarries and asphalt and cement plants have linked ownership, a quarry needs and asphalt or cement plant to survive.

5(a) ii.a: The topography of Lot B-10 is not a unique or special characteristic compared to other lots in this district.

5(a) ii.b-c: "A nonconforming use may not be used to form the basis for a finding of uniqueness to satisfy the hardship test." (Grey Rocks Land Trust v. Town of Hebron, 136 NH 239, 1992 as summarized in "Grandfathered - The Law of Nonconforming Uses and Vested Rights (2009 Ed).", H. Bernard Waugh, Jr., p. 29). We think the applicability of Mr. Waugh's statement regarding New Hampshire case law is clear when applied to this application. The existence of the applicant's quarry may not be used to support a finding of hardship. Moreover, the special conditions finding applies to the applicant's property, not that of the neighbor in (c). But, should it be considered here, the presence of the Granite State quarry next door makes Lot B-10 less unique (or special), not more unique.

5(a) ii.d: This is a purely economic argument for the plant itself and does not relate to the height of the silos. It does not bear on locating the plant on Lot B-10 – only that the plant and the quarry share ownership. Denying the variance would not deny the opportunity to own an asphalt plant in a different location.

To summarize, The Wilton Conservation Commission recommends:

1. That the Wilton Zoning Board of Adjustment reject the variance application from Quinn Properties, LLC for lot B-10. We believe the asphalt batch plant is NOT an allowable extension of the nonconforming quarry.
2. That the Wilton Zoning Board of Adjustment deny the variance as hardship was not shown to exist, among other failures in meeting the Simplex criteria.

Respectfully submitted,

W. Bart Hunter
Chair, Wilton Conservation Commission

CC: Town of Wilton Planning Board
Town of Wilton Select Board
Town of Lyndeborough Conservation Commission
Town of Temple Conservation Commission
Town of Milford Conservation Commission
Souhegan River Local Advisory Committee
Nashua Regional Planning Commission
New Hampshire Office of Strategic Initiatives, Planning Division
New Hampshire Department of Environmental Services



Town of Wilton, NH
Zoning Board of Adjustment

RECEIVED

SEP 19 2019

SELECTMEN'S OFFICE

Notice of Development of Potential Regional Impact

Pursuant to RSA 36:54-57, the Town of Wilton Zoning Board of Adjustment on Tuesday, September 10, 2019, determined that the development proposed in ZBA Case #7/9/19-1, if approved, reasonably could be construed as having the potential for regional impact. The ZBA has therefore afforded the towns of Lyndeborough, Temple, Greenville, Mason, and Milford, and the Nashua Regional Planning Commission, the status of abutters as defined in RSA 672:3 for the limited purpose of providing notice and giving testimony.

Please find enclosed the minutes of the September 10 meeting and the notice of the forthcoming hearing on ZBA Case #7/9/19-1.

Sincerely,

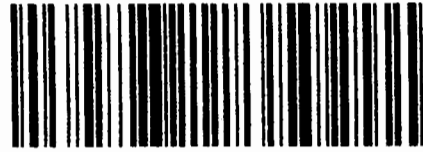
Neil Faiman, Chairperson
Wilton ZBA

Main Street • P. O. Box 83 • Wilton, NH 03086 • (603)654-9451

handed out to all
at meeting

TOWN OF WILTON
PO BOX 83
WILTON, NH 03086

CERTIFIED MAIL



7016 3560 0000 7220 8821

NEOPOST

FIRST CLASS MAIL

09/17/2019

US POSTAGE \$004.50⁰

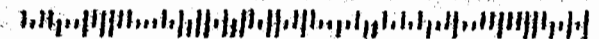


ZIP 03086
041110400858

NAME _____
1ST NOTICE _____
2ND NOTICE _____
RETURN _____

*Board of Selectmen
Mark Chamberlain, Chair
9 Cottingham Hall Rd.
Syndeborough, NH 03082*

0308239702 R002





Town of Wilton, NH
Zoning Board of Adjustment

Monday, September 16, 2019

Dear Sir or Madam,

Quinn Properties, LLC has applied for a variance to section 8.2.6 of the Wilton Zoning Ordinance to allow the construction of an asphalt batch plant and silo on Lot B-10, 50 Quinn Drive, which would be 68 and 72 feet in height respectively, where the ordinance limits structures to a maximum height of 45 feet.

This will be a new hearing from the beginning on this case: testimony and discussion from the July 9, 2019 hearing will be disregarded except as it may re-arise at this hearing.

The Town of Wilton Zoning Board of Adjustment will consider this application in a public hearing in the cafeteria of the Wilton-Lyndeborough Cooperative High School on Wednesday, October 23, 2019 at 7:30 p.m.

The application, and any other documents that have been received by the ZBA in connection with this case, are available for inspection in the Land Use Office in the Wilton Town Hall, and may also be accessible at the Zoning Board web site at www.wiltonzba.org/cases/2019070901.

Sincerely,

Neil Fauman, Chairperson
Wilton ZBA

Case #7/9/19-1, continued from September 10

**Town of Wilton, New Hampshire
Zoning Board of Adjustment
Draft Minutes**

DATE: September 10, 2019

TIME: 7:30 PM

PLACE: Wilton Town Hall

PRESENT: Neil Faiman, Chair; Joanna Eckstrom; Jeff Stone; Paul Levesque; Peter Howd
(Alternate); Bob Spear (Alternate)

Absent: Andy Hoar

Staff: Land Use Administrator Michele Decoteau

Attendees: DJ Garcia, Asst. Fire Chief Ron Campbell, Justin Harrington, Judith Klinghoffer, Lincoln Geiger, Mike McGonagall, Robert Silvers, Jess Carson, R. Kahn, Karon Walker, K. Schwab, D. Dion, Robin Maloney, Marilyn Jones, Cori Ryan, William Ryan, Doreece Miller, Chris Balch, Paula Iasella, D. TwoEagles, Tim Draper, W. P. Hunter, Sheri Jennings, Karen Bailey, Stephen Jones, Heather Gray, Wright, David W. Fidget Mooney, John Zavgren, Dodie Finlayson, Andrew Finlayson, Jennifer Bernet, Susan Brown, Patricia Quaglia, Sandy Gallo, Jessie Salisbury, Denise Duncan, Maggie Zavgren, Wes Melcher, Anthony Graham, Glynn Graham, Hugh Renwick, Carol Renwick, Lisa LaDouce, Mickey Pieterse, Jillian Montmarquet, Kevin Fagall, Irvine Pentler, John Slater, John Slater, Ralph Buschmann, Helen Sargent, Jonathan Sargent, Lorey Zahn, Casey Coteau, Katherine Rockwood, Marjorie Lemay, Paul Lemay, Nancy Wallace, Bill Abrahams-Dematte, Deb Abrahams-Dematte, Gene Jonas, Asra Zahn, Matt Bangert, Nancy Block, Mercedes Olster, Zack Olster, Brandon McCarthy, Ben Hofstetter, Marissa Hamilton, Danielle Molino, Brian Grayton, Lynn Rocca, Annette Hollenbach, Shannon Linn, Elizabeth Collins, Carrie Carson, Anthony Carson, Dawn Beam, Shannon Silva, R. Smith, Megan Gordon, Cory Schulerman, Nathan Walker, Tina Day, Richard Cheek, Joan Ross, Dan Ross, Jennifer Hanks, Sharon Akers, Lisa Wowianko, Roger Laducer, Robin Schoen, Police Chief Eric Oleson

1) Call to Order: N. Faiman opened the meeting at 7:38 PM.

N. Faiman reviewed RSA 36:54, Regional Impact Determination, and what that means for the cases before the Board. Moving forward, an RSA 36:54 review will be made on all cases and based on the applications.

#07/9/19-1 Quinn

P. Howd recused himself from this case.

J. Stone, P. Levesque, N. Faiman, J. Eckstrom, B. Spear (sitting in for Andy Hoar) will continue on this case.

40 W. Keefe for J. Quinn wrote a letter and N. Faiman read the letter (attached). IF the Board finds
41 that there is regional impact, the Board will send out notices to municipal boards and NRPC.
42 RSA 36:55

- 43 I. Relative size - this did not seem relevant
- 44 II. Proximity to border - this abuts the border
- 45 III. Transportation networks - this would use transportation on the roads
- 46 IV. Anticipated emissions - N. Faiman said we don't know if this an issue - but intuition is that
47 this would be a consideration - not a finding that there IS an impact, but a concern that
48 there could possibly be emissions.
- 49 V. Proximity to aquifers - this was possible but not confirmed
- 50 VI. Shared facilities - we do share a school and streets but the Board was unsure how this
51 would impact the schools

52

53 J. Eckstrom asked for confirmation that the abutting notices were sent and particularly the notices
54 to Lyndeborough abutters. M. Decoteau confirmed that all the abutters, including those in
55 Lyndeborough, were noticed. Letters were sent July 2019

56

57 B. Spear clarified that the impact is on the borders. What about the stream in Goss Park? N.
58 Faiman said it comes from Lyndeborough and into Wilton.

59

60 J. Eckstrom clarified that the only change is notices are sent to other communities. N. Faiman
61 said we would have to determine what Towns would be notified and we would have to notify
62 Nashua Regional Planning Commission (NRPC)

63

64 J. Stone said it is better that we don't find an impact. Most of the points made in RSA 36:55 apply
65 or are relevant. They might be concerns.

66

67 The Board discussed the logistics of finding a meeting place large enough and noticing the
68 public. N. Faiman said that the notices will be in the Milford Cabinet, the Post Office, Town
69 Hall, The ZBA website, the ZBA page on town website, and the website calendar.

70

71 J. Eckstrom MOVED that the ZBA finds that there may be a regional impact for case #07/9/19-1
72 Quinn, and in addition to NRPC, the Board will notify the Select Boards of Lyndeborough,
73 Temple, Greenville, Mason, and Milford and Continue the case to the next regular meeting.
74 October 8, 19 at 7:30PM tentatively at the High School cafeteria. B. Spear SECONDED.

75

76 Roll call vote	80 P. Levesque - yes
77 N. Faiman - yes	81 B. Spear - yes. Motion carried.
78 J. Eckstrom - yes	82 P. Howd recused himself.
79 J. Stone - yes	

83
84 Chief Eric Olesen offered to help finding the location.

85
86 J. Klinghoffer said that it is an issue the ZBA is having a meeting on Yom Kippur, the most
87 important fasting day of the year in the Jewish faith. She said it was an issue as this will exclude
88 everyone in the Jewish faith.

89
90 B. Hunter asked if this is going to be a new public hearing. N. Faiman said no, this will be a
91 continuation but we will restart the testimony.

92
93 J. Slater said he lived on the odd side of the street and less than 500 feet from the street at the end
94 of the property in question. He wanted to know why he was not included in the abutters list. N.
95 Faiman said the list of who has to be notified is state statute. J. Slater said he should have been
96 notified out of courtesy.

97
98 B. Spear MOVED that given the 8th falls on Yom Kippur, change the meeting date and time to
99 Oct 15.

100
101 Discussion

102 The Board discussed scheduling and not everyone could make the date. B. Spear withdrew his
103 motion.

104
105 B. Spear MOVED to change the October meeting to Oct 23, 2019, 7:30 PM for all ZBA cases at
106 the High School cafeteria. J. Eckstrom SECONDED. All in Favor. Chief Oleson again
107 volunteered to assist with finalizing the location for this meeting.

108
109 Case # 09/10/10-1 – ROCKWOOD

110 N. Faiman asked the Board if there would be any regional impact for a B&B in downtown
111 Wilton? The Board discussed the application.

- 112 I. Relative size - this did not seem relevant
113 II. Proximity to border - it is not close to the border
114 III. Transportation networks - this would use transportation on the roads, but not impact them
115 IV. Anticipated emissions - none were anticipated
116 V. Proximity to aquifers - - this did not seem relevant

117
118
119 B. Spear MOVED to find no regional impact for the B&B application. J. Eckstrom SECONDED.
120 All in Favor.

121
122 Case # 09/10/10 -2 -HARRINGTON

285 it and Deb Diffley did a pretty nice job getting value from it. If the purpose of the restriction of
286 the residential use in an industrial location. P. Howd said he had a concern about a comingling of
287 a commercial and residential use. It is the direction this is going. N. Faiman said site plan review
288 wouldn't address how the uses comeingle inside the building, He thought they would be more
289 concerned with Parking,

290
291 K. Walker what if the variance were to the expiration of a variance? How would that change the
292 hardship questions? N. Faiman said this discussion is hypothetical.

293
294 The Board discussed the substantial justice. P. Howd asked for clarification on the business plan
295 that residential use be a requirement for this business. J. Harrington said that for his business, he
296 does clean outs and works long hours and this is a way to solve that issue. N. Faiman said that
297 security might be a reason. P. Howd said if we are treating as an industrial property and we've
298 said there is no longer a non-conforming use, we are starting new looking at the request for
299 residential use. Why are we going to allow him to violate that term in the ordinance? If the Board
300 looks through the hardship statement - this isn't unique.

301
302 J. Stone said he would argue that is unique that is a small lot unsuitable for much else. There is
303 space there that doesn't lend itself to the commercial side. Using it residentially works, we've
304 seen that.

305 B. Spear asked if it is the grandfathered non-conforming use does that still stand. J. Eckstrom
306 that lapsed. If the use is abandoned for more than a year.

307
308 J. Klinghoffer asked if the property is unique because it is located in a spot that has heavy traffic
309 in both directions. It makes sense to have a caretaker on site for security.

310
311 S. Jones said his concern was that if the two things are separate, a decision that is too vaguely
312 worded, would allow for two separate uses in the future. K. Daily said it was stated that this
313 could be an owner occupied variance? But in this case, it is not the owner who is occupying.

314
315 The Board discussed if this could be a rental property and if there were conditions they should
316 impose to keep the uses in tandem. B. Spear said he wanted to think of this as a caretaker
317 position. P. Levesque said that he saw this as a home and it has been a home for long time. B.
318 Spear said that is how he was thinking but then this was turned in to a business and the
319 residential use lapsed.

320
321 N. Faiman said that having a caretaker on site is a value.

323 S. Jones said his point is that the two uses shouldn't be separate. J. Harrington said he had no
324 problem in keeping the two uses together. W. Keefe said we hope that Mr. Harrington
325 eventually buys the business and has no problem. The property is suited to a mixed use.

326

327 B. Spear said if the business goes away, the owner and/or operator would be living in the
328 residence. J. Stone asked if it had to be the owner if the building was leased. N. Faiman said the
329 way the variances are worded, you could use the property as a commercial venture or as a mixed
330 use, but not as residential use. P. Levesque said the uses are not tied together. N. Faiman said it
331 is reasonable to add the residential use with the commercial use but if you take away the
332 commercial use, could you continue the residential use? The Board discussed various options of
333 keeping the two uses tied together and if a future variance would be required if the use was to be
334 solely residential.

335

336 N. Faiman said that the language in the public use would be a guide. He asked the owner's
337 representative and the applicant if they were comfortable with a mixed use.

338

339 J. Eckstrom MOVED to grant the variance to 8.5 and allow the use of the house as a retail shop
340 selling collectables and antiques and as a single family residence to be occupied by the owner of
341 the property or the owner of the business. P. Levesque SECONDED.

342

343 Discussion

344 J. Stone said the Variance would restrict the kind of use. Is there a value to the town restricting
345 the commercial use. N. Faiman this does seem very specific but 15 years ago we were
346 specific and they had to come back.

347

348 Noting the time was getting late, the ZBA will not take testimony past 10:30PM without a vote
349 to do so.

350

351 At 10:28 PM, J. Eckstrom MOVED to continue for 15 minutes. B. Spear SECONDED. All in
352 favor.

353

354 Roll call vote on the motion to grant the variance:

355 J. Eckstrom- yes

358 P. Lavesque - yes

356 P. Howd - no

359 N. Faiman - yes. Motion carries.

357 J. Stone - yes

360

361 Application for the Special Exception.

362

363 J. Stone MOVED to deny the Special Exception for 8.6.1. for the following reason: The Special
364 Exception granted in 2004 is still in effect and is not necessary. P. Howd SECONDED.

365 Roll call vote on the motion deny the Special Exception:

366 P. Howd - yes

369 J. Eckstrom - yes

367 P. Levesque- yes

370 J. Stone – yes. Motion to deny is carried.

368 N. Faiman - yes

371

372 P. Howd MOVED to table minutes to next meeting. J. Stone SECONDED. All in favor.

373

374 **5) Other business**

375 a) Fall planning conference. Sat Oct 5, 2019. Please see M. Decoteau if you want to
376 register on paper or register on line and have an invoice sent to Town Hall.

377 b) Budget - Noted

378

379 J. Stone MOVED to Adjourn at 10:35 pm, B. Speer SECONDED. All in favor.

380

381 Respectfully Submitted by Michele Decoteau, Land Use Administrator

382 Approved on XXXXXXXXXXXXXXXX

383

384 Exhibits on file in the Land Use office

385 B-010.Letter from W. Keefe Quinn Properties LLC Variance Application on B-10 Advance

386 Statement Regarding Regional Impact

387



October 18, 2019

Neil Faiman, Chairperson
Wilton Zoning Board of Adjustment
42 Main Street
PO Box 83
Wilton, NH 03086

Re: Review of Regional Impact for Quinn Properties, LLC Variance Request

Dear Mr. Faiman and Members of the Board:

On September 10, 2019, the Wilton Zoning Board of Adjustment (ZBA), per NH RSA 36:56, reviewed Quinn Properties, LLC case 7/9/2019-1 requesting a height variance for proposed asphalt plant silo(s) and determined that the project may, if approved have a regional impact. The Nashua Regional Planning Commission (NRPC) was then notified on September 19, 2019, via certified mail, of the potential regional impact and was requested to provide input on the subject.

It is our understanding that the proposed use, an asphalt plant, is a permitted use in Wilton's B-10 Industrial District. The variance requested is to permit a 72-foot high silo and 68-foot high "batch plant" whereas a maximum height of 45 feet is permitted for both structures in the Industrial District. Based on our review of the application materials available to us, it is unclear whether the requested height variances are necessary for practical or efficient operation of the proposed use or whether they are intended to increase the proposed asphalt plant's capacity. Clarification of the reasons behind the variance request would be helpful in framing the scope of any potential impact. NRPC's review of the pending application is limited to issues that may be of regional impact only. Such potential issues related to the pending case could include groundwater impacts, visual impacts, potential emissions and traffic.

Regarding potential groundwater impacts, it is our understanding that the portion of the site proposed for the subject development is not located within the Aquifer Protection District, however, the proximity of the proposed facility to Aquifer Protection District boundaries should be clarified. It appears based on the plans submitted, that petroleum products would be stored within a containment area. Should the project advance to the Planning Board, the sufficiency of proposed containment areas should be reviewed in greater detail and a Spill Prevention, Control and Countermeasure Plan should be provided. In the minutes of the July 9, 2019 ZBA meeting, the applicants asserted that the proposed structure would not be visible to surrounding properties not owned by the applicants or from the road. No counter testimony appears to have been provided and a review of property information, topography and aerial imagery appears to support

the assertion. No information relative to emissions can be found in the record. The applicants should address the potential for emissions that could result from the proposed facility.

Regarding traffic, the record shows that materials will be both trucked into and out of the site and it is reasonable to assume that there will be employees on the site as well. The requested height variance is likely to impact the viability or capacity of the facility and consequently, overall traffic volumes. No traffic related information, however, appears to have been provided. In order to adequately complete its review, NRPC respectfully requests that a traffic study be provided that includes, at a minimum, the following:

- 1.) Trip generation data and traffic distribution patterns;
- 2.) Average daily and maximum daily traffic generated by trucks delivering to and from the proposed plant;
- 3.) Identification of all roads and intersections to be impacted;
- 4.) Estimated peak hour turning movement counts;
- 5.) Typical load capacity of trucks entering and exiting the site;
- 6.) Identification of any potential adverse traffic impacts and a description of any proposed mitigation measures.

Thank you for the opportunity to review this pending application. If the board should require any additional information or assistance, we would be pleased to comply.

Sincerely,


NASHUA REGIONAL PLANNING COMMISSION

Jay Minkarah
Executive Director

cc: NRPC Commissioner Kermit Williams
NRPC Commissioner Jim Kofalt
William Keefe, Esq.