

1 TOWN OF ESSEX ZONING BOARD OF ADJUSTMENT
2 MEETING MINUTES
3 MARCH 4, 2021

4
5 **THESE DRAFT MINUTES WILL BE UPDATED PRIOR TO THE APRIL 1ST**
6 **MEETING.**

7
8 **Note: This was a virtual meeting held on Microsoft Teams**

9
10 **ZONING BOARD (ZBA) MEMBERS PRESENT:** Nick Martin, Chair; Michael Plageman,
11 Vice Chair; Tracey Delphia, Clerk; and Hubert Norton.

12
13 **OTHERS PRESENT:** Sharon Kelley, Zoning Administrator; Deana Stoneback, Administrative
14 Assistant; Bryan Currier; Al Senecal; and Brian Bertsch.

15
16 The meeting came to order at 6:04 p.m.

17
18 Chair Nick Martin read the COVID language of the meeting procedure into the record, which included
19 acknowledgement of the public oath.

20
21 **AGENDA ITEM 1: UNSPECIFIED USE: Jonathan & Debra Lang are proposing an Airbnb**
22 **located at 51 Upper Main Street in Mixed Use District-Planned Unit Development (MXD-PUD).**
23 **Tax Map 90, Parcel 5, Lot 1.**

24
25 **Board Member Plageman MOVED and Board Member Norton SECONDED a MOTION to open**
26 **the Fact Finding/Public Hearing. The MOTION passed 4-0.**

27
28 Sharon Kelley reported that Johnathan Lang was not willing to attend an online meeting and
29 acknowledged to her that he wanted the application to go forward for review. Kelley stated that the
30 application was submitted for a 2020 meeting, however Lang asked to hold off with the review due to
31 Covid. Kelley noted that the Airbnb has been operating for a few years and the application was
32 submitted as he was unaware he needed to go through the zoning process. It was also noted that he will
33 be using an additional bedroom for the Airbnb. His long term plan is to create an accessory apartment in
34 the garage and use all 3 bedrooms as an Airbnb.

35
36 **Board Member Delphia MOVED and Board Member Norton SECONDED a MOTION to**
37 **close the Fact Finding/Public Hearing. The MOTION passed 4-0.**

38
39 During deliberations, the Zoning Board expressed concern about the driveway leading to the house.
40 They noted that the driveway splits in different directions after you enter off from Route 15. One
41 direction will take you to the barns and apartment building, and the other to the house, which is much
42 further back into its own lot. The ZBA wants precautions taken for emergency vehicles and/or Airbnb
43 renters, and suggested directional signage along the driveway to show the location to the house. They
44 amended proposed Condition 1 one to add in this safety concern. The ZBA requested that the standard
45 language for the Covid condition be added to the proposed conditions.

46
47 **Board Member Norton MOVED and Board Member Delphia SECONDED a MOTION to**
48 **approve the application for 51 Upper Main Street, as warned, subject to the following**
49 **Findings and Conditions:**

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51 **FINDINGS:**

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- 1) The landowners and applicants are Jonathan & Debra Lang. The parcel under review is located at 51 Upper Main Street in the Town of Essex, Chittenden County, State of Vermont. This is an approximate 10.02-acre lot with 82 ft. +/- of frontage. The lot is serviced by town water and a pump station for sewer. The parcel is located in the Mixed-Use Development-Planned Unit Development District (Retail Business (B1) Subzone).
- 2) The proposal is to utilize two of the three bedrooms within the house as an Airbnb, with the possibility of utilizing all 3 bedrooms should an accessory apartment be created within the existing garage located on the parcel.
- 3) Staff provided an ortho view of the parcel.
- 4) Pursuant to state statute a ‘Notice of Hearing’ was provided to the applicant for posting on the property.
- 5) The abutting property owners were notified of this meeting by certified mail.
- 6) The applicants were mailed a copy of this Staff Report prior to the meeting.
- 7) At the 3/12/2020 Planning Commission meeting, the Zoning Administrator informed the Planning Commission of this unspecified use application. No comments were provided.
- 8) Johnathan Lang provided, in part, the following written statement:

The property currently has 3 bedrooms and 2½ bathroom, and a garage. My lot has parking for 10 plus cars. All access to the house would be through my existing driveway and would not impact parking used for the barns.

My existing business of hosting weddings would be an ideal fit to utilize my house as well as visitors to our area.

This house is currently served by municipal sewer and water.

I am aware that the Planning Commission has provided comments on previously approved Airbnb’s that require the VT Dept. of Fire & Safety; along with the VT Tax Department and Dept. of Health is notified. This will be done and I will follow all state guidelines.

The house does not have an alarm system. I will provide my name, email address and telephone number directly to the Essex Police Chief once the Airbnb becomes operational.

I will not be allowing dogs on the premises.
- 9) There were no public comments.
- 10) In an email dated 2/21/2020, the Recreation Director said,

Indian Brook passes will only be sold to residents of the community with proof of residency (not junk mail) and cannot be a “guest” pass purchased by the property owners.

99 11) In an email dated 2/20/2020, the Fire Chief said,

100

101 *The Lang's will need to check with the State Fire Marshall to ensure compliance with*
102 *any requirement they have. In addition, I would request the following:*

103

104

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106

107

108 12) In an email dated 2/20/2020, the Police Chief said,

109

110 *Essex PD would request that the owners must notify Airbnb renters and they are required*
111 *to follow all applicable state laws, local ordinances, rules and regulations. For example;*
112 *Noise regulations, Winter Parking Ban, Burning regulations, firearms regulations,*
113 *Animal regulations (all dogs must have tags and current rabies vaccinations, dogs on*
114 *leash off owner's property, etc.*

115

116 *Finally emergency contact names and phone numbers for the Airbnb owners so if there*
117 *are problems with renters we know who to contact about the property. (Fires, medical*
118 *emergencies, etc.)*

119

120 13) In an email dated 2/24/2020, Aaron Martin, Town Engineer said,

121

122

123 14) Pursuant to Section 5.7 of the Zoning Regulations, **the Zoning Board** finds the following:

124

- 125 a. There will be no adverse effect on the capacity of the existing or planned
126 community facilities;
- 127 b. There will be no adverse effect on the character of the area/neighborhood
128 affected;
- 129 c. There will be no adverse effect on traffic on roads and highways in the vicinity;
- 130 d. The proposed use will be in compliance with the bylaws now in effect;
- 131 e. The proposed use will not adversely affect utilization of renewable energy
132 resources;
- 133 f. The proposed use is in conformance with the Town Plan;
- 134 g. The proposed use does not require site plan review; and
- 135 h. The proposed use is in conformance with community character.

136

137 **CONDITIONS:**

138

- 139 1) Prior to commencement of operation of the Airbnb, the landowner shall provide evidence
140 that the E911 address is located by the driveway and on the building; and that directional
141 signage is located along the driveway to the house.
- 142 2) The landowners shall adhere to all state and local laws, rules & regulations and
143 ordinances as noted in Finding 12 above and shall inform all Airbnb renters of same.
- 144 3) The landowners shall submit a copy of all State permits to the Zoning Administrator prior
145 to commencement of the Airbnb.

- 146 4) The landowners shall provide their emergency contact information directly to the Police
147 Chief.
148 5) The applicant shall follow the guidelines from the State Health Department in connection
149 with COVID.
150 6) All conditions from previous approvals shall remain in effect except as modified herein.
151 7) By acceptance of the conditions of this approval without appeal, the applicants confirm
152 and agree for themselves and all assigns and successors in interest that the conditions of
153 this approval shall run with the land and the land uses herein permitted will be binding
154 upon and enforceable against the applicant and all assigns and successors in interest.

155 **The MOTION passed 4-0.**

156 **AGENDA ITEM 2: CONDITIONAL USE: A&C Realty, LLC: Proposal to remove an**
157 **additional 150,000 cubic yards of ledge located at 123 Old Colchester Road in the**
158 **Industrial (I1) and Agriculture-Residential (AR) Zones. Tax Map 6, Parcel 21.**
159

160 Sharon Kelley represented staff and made the following points:
161

- 162 • The landowner, Al Senecal, was proposing to extract an additional 150,000 cubic yards
163 of ledge, which involves blasting and crushing on the industrial lands located at 123 Old
164 Colchester Road;
165 • The parcel is a 57.8-acre parcel consisting of two zoning district, Industrial (I1) and
166 Agricultural-Residential (AR). The I1 lands consist of approximately 21.2-acres, and the
167 proposed work will be done on the I1 portion of lands;
168 • In 2015, the ZBA approved removal of 90,000 cubic yards, including blasting and
169 crushing. She referred to lines 91-92 of the Staff Report wherein the ledge removal
170 totalled 105,000 cubic yards;
171 • She noted that she received calls of inquiry on the project but no complaints came to her.
172 • Public Works reported to her that they have been satisfied with the work done to date on
173 the project;
174 • The Staff Report details all the criteria required for ZBA review, which includes Section
175 4.6 'Extraction of Earth Resources' and Section 5.7 'Conditional Use';
176 • The submittal included an updated traffic study; a processing plan describing the process
177 of handling, crushing and removal of rock material; materials on the crusher; a blasting
178 plan; and a biography on the blaster, Brent Tardiff;
179 • All state approvals require an amendment; and
180 • The State Act 250 division handles noise complaints, if any.
181

182 Chair Martin asked if the calls received were complaints. Kelley stated that her memory was
183 that several calls came in inquiring about a loud bell-like sound.
184

185 Bryan Currier, P.E. of O'Leary-Burke Civil Associates, Brian Currier and Al Senecal spoke on
186 this application.
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191 **Board Member Delphia MOVED and Board Member Norton SECONDED a MOTION to**
192 **close the Fact Finding/Public Hearing. The MOTION passed 4-0.**

193

194 **Board Member Norton MOVED and Board Member Delphia SECONDED a MOTION to**
195 **approve the application for 51 Upper Main Street, as warned, subject to the following**
196 **Findings and Conditions:**

197

198 **FINDINGS:**

199

200 1. The following plans were submitted for both the ZBA & PC applications:

- 201 • Plan Sheet #1, “Overall Plan, A + C Realty, Greystone, 123 Old Colchester Road,
202 Essex, Vermont,” prepared by O’Leary-Burke Civil Associates, PLC, dated 9/18/14,
203 last revised 1/20/21;
- 204 • Plan Sheet #2, “Site Plan, A + C Realty, Greystone, 123 Old Colchester Road, Essex,
205 Vermont,” prepared by O’Leary-Burke Civil Associates, PLC, dated 9/18/14, last
206 revised 1/20/21;
- 207 • Plan Sheet #3, “Landscaping Plan, A + C Realty, Greystone, 123 Old Colchester
208 Road, Essex, Vermont,” prepared by O’Leary-Burke Civil Associates, PLC, dated
209 9/18/14, last revised 1/20/21;
- 210 • Plan Sheet #4, “Lighting Plan, A + C Realty, Greystone, 123 Old Colchester Road,
211 Essex, Vermont,” prepared by O’Leary-Burke Civil Associates, PLC, dated 9/18/14,
212 last revised 1/20/21;
- 213 • Plan Sheet #5, “Road Way Details, A + C Realty, Greystone, 123 Old Colchester
214 Road, Essex, Vermont,” prepared by O’Leary-Burke Civil Associates, PLC, dated
215 9/18/14, last revised 1/20/21;
- 216 • Plan Sheet #6, “Water Details, A + C Realty, Greystone, 123 Old Colchester Road,
217 Essex, Vermont,” prepared by O’Leary-Burke Civil Associates, PLC, dated 9/18/14,
218 last revised 1/20/21;
- 219 • Plan Sheet #7, “Sewer Details, A + C Realty, Greystone, 123 Old Colchester Road,
220 Essex, Vermont,” prepared by O’Leary-Burke Civil Associates, PLC, dated
221 9/18/2014; last revised 1/20/21;
- 222 • Plan Sheet #8, “Pump Station Details, A + C Realty, Greystone, 123 Old Colchester
223 Road, Essex, Vermont,” prepared by O’Leary-Burke Civil Associates, PLC, dated
224 1/20/21;
- 225 • Plan Sheet #E1, “EPSC Plan, Pre-Construction, Greystone, 123 Old Colchester Road,
226 Essex, Vermont,” prepared by O’Leary-Burke Civil Associates, PLC, dated 9/18/14,
227 last revised 1/20/21;
- 228 • Plan Sheet #E2, “EPSC Plan, Construction Phase, Greystone, 123 Old Colchester
229 Road, Essex, Vermont,” prepared by O’Leary-Burke Civil Associates, PLC, dated
230 9/18/14, Plan Sheet #2, “Site Plan, A + C Realty, Greystone, 123 Old Colchester
231 Road, Essex, Vermont,” prepared by O’Leary-Burke Civil Associates, PLC, dated
232 9/18/14, last revised 1/20/21;
- 233 • Plan Sheet #E3, “EPSC Plan, Construction Phase, Greystone, 123 Old Colchester
234 Road, Essex, Vermont,” prepared by O’Leary-Burke Civil Associates, PLC, dated
235 9/18/14; Plan Sheet #2, “Site Plan, A + C Realty, Greystone, 123 Old Colchester
236 Road, Essex, Vermont,” prepared by O’Leary-Burke Civil Associates, PLC, dated

- 237 9/18/14, last revised 1/20/21;
- 238 • Plan Sheet #E4, “EPSC Plan, Post Construction, Greystone, 123 Old Colchester
- 239 Road, Essex, Vermont,” prepared by O’Leary-Burke Civil Associates, PLC, dated
- 240 9/18/14, last revised 1/20/21;
- 241 • Plan Sheet #E5, “EPSC Plan, Erosion Control Details, Greystone, 123 Old Colchester
- 242 Road, Essex, Vermont,” prepared by O’Leary-Burke Civil Associates, PLC, dated
- 243 9/18/14, last revised 1/20/21;
- 244 • Miscellaneous Plans & Reports, including “Traffic Evaluation” dated November 30,
- 245 2020; “Processing Plan – Greystone,” date-stamped received by the Community
- 246 Development Department on Feb. 3, 2021 “Powerscreen 1000 Maxtrak Cone
- 247 Crusher” Blasting Plan dated January 2016; and Brent J. Tardif, PG, President/Senior
- 248 Geologist “Area of Expertise” document, date-stamped received by the Community
- 249 Development Department Feb 3, 2021. These reports will be kept in the application
- 250 file located in the Community Development Department.
- 251 • Plan Sheet #ST1, “Storm Management, A + C Realty, Greystone, 123 Old Colchester
- 252 Road, Essex, Vermont,” prepared by O’Leary-Burke Civil Associates, PLC, dated
- 253 1/20/21; and
- 254 • Plan Sheet #ST1, “Storm Water Details, A + C Realty, Greystone, 123 Old Colchester
- 255 Road, Essex, Vermont,” prepared by O’Leary-Burke Civil Associates, PLC, dated
- 256 1/20/21.

257

258 2. The applicant/landowner is Al Senecal d/b/a A & C Realty, LLC. The E-911 address is 123

259 Old Colchester Road. This 57.8-acre parcel runs through two Zoning Districts and the parcel

260 is identified with 48 Upper Main Street (Tax Map 6, Parcel 21). The parcel is located in the

261 Industrial (I1) Zoning District consisting of approximately 21.2 acres and the Agriculture-Residential

262 (AR) Zoning District (approximately 36.6 acres). All site improvements have and will

263 continue to occur in the I1 Zone, located at 123 Old Colchester Road.

264

265 3. **PROPOSAL:** The applicant is proposing ‘Extraction of Earth’s Resources’ to extract

266 approximately 150,000 cubic yards of ledge. The overburden soil will be reused as fill onsite

267 and blasted ledge will be crushed and removed from the site. An application is before the

268 Planning Commission for a site plan amendment to add two 20,000 s.f. buildings. This would

269 bring a total of 3 buildings on the site.

270 It is noted that the ZBA’s 2015 approval was for 90,000 cy of ledge removal. The actual

271 amount of ledge removed was 105,000 cubic yards. As with this application the total

272 removal of ledge is an estimate. If approved the total excavation removal for this site will be

273 255,000 +/- cubic yards.

274

275 The applicant’s narrative stated, in part,

276

277 *The stormwater pond, building site, and contractor’s yard which were part of the original*

278 *approval have been constructed. During construction these areas will be used as staging*

279 *areas and temporary stockpile locations for the rock processing activities associated with*

280 *this next phase of construction.*

281

282 *Available space onsite limits the amount of crushed rock which can be stockpiled at any*

283 *one time so rock crushing occurs as space allows. Based on data from the past four*
284 *years Omega Excavation has processed an average of 20,000 cubic yards of rock per*
285 *year which was the result of three to four rock crushing sessions, each lasting*
286 *approximately two-weeks.*

287
288 *With this next phase of construction Omega Excavation expects to be able to process an*
289 *additional 10,000 cubic yards of material per year, or 30,000 cubic yards total, because*
290 *more space has been created that can be used stockpile material.*

291
292 If approved by the ZBA & PC, the proposal will require an amendment to the following State
293 permits:

294
295 Act 250
296 Wastewater System and Potable Water Supply
297 Public Water System Construction Permit
298 Stormwater Discharge Permit
299 Construction General Permit (erosion control)
300 Multi-Sector General Permit

- 301
302 4. The abutting property owners were notified by certified mail by the Community
303 Development Office. A courtesy copy was sent to the Village of Essex Junction Planning
304 Department.
305
306 5. Bryan Currier, P.E. of O’Leary-Burke Civil Associates, Al Senecal and Brian Bertsch spoke
307 on this application.
308
309 6. The applicant has submitted the following responses in connection with Zoning Regulation
310 Section 4.6-Extraction of Earth Resources, as follows:

- 311
312 (a) Application Materials. In addition to the application materials required for conditional
313 use review, the following shall be submitted with any application for extraction
314 operations, and shall be prepared by a licensed engineer or other qualified person:
315 (i) Cross – sections of the extraction area showing depth of extraction, temporary slope
316 of extraction faces, elevation of pit floor, and other areas affected by the extraction
317 operation;

318
319 ***Please refer to SH 2 – Site Plan showing the 4 acre blasting boundary associated***
320 ***with the two additional buildings proposed as part of the Industrial Park. In***
321 ***addition, please refer to SH 9 - Cross Section Plan, which has been created to show***
322 ***existing and finished grades running north/south and east/west through the***
323 ***project site. As stated on the plan, the ledge face transitions on the east and south***
324 ***ends of the site will be dependent on the amount of overburden discovered during***
325 ***the pre-blast drilling process. If the amount of overburden discovered on the***
326 ***southern end of the site is minimal, the tallest ledge face will be about 52’ high.***

327

328 (ii) A description of all equipment to be operated on the site, and the proposed location
329 for such equipment;

330
331 ***The project will require the use of typical heavy excavation equipment including;***
332 ***excavators, bulldozers, loaders, rollers, graders, and dump trucks. The site will also***
333 ***include a portable rock crusher. A specification sheet has been provided for a***
334 ***crusher, or a comparable crusher, that will be used for the project. Blasting and***
335 ***processing of ledge material will move north to south to maximize the screening***
336 ***and sound damping provided by the existing topography.***

337
338 (iii) A description of proposed working hours and the operating season of the extraction
339 operation;

340
341 **The previous Town of Essex approvals mandated that blasting and rock processing**
342 **shall only occur between the hours of M-F 8:30 AM and 4:00 PM. The Act 250**
343 **permit for the project requires blasting and rock processing be suspended from**
344 **December 21-March 21 of each year.**

345
346 (iv) A discussion of the planned rate of extraction and the daily number of truckloads of
347 material to be transported from the site;

348
349 *Please refer to the attached Processing Plan included in the application materials.*

350
351 (v) An indication on the site reclamation plan, and description of the ways in which the
352 extraction operation will be buffered or screened from surrounding properties or
353 from public roads;

354
355 ***The reclamation plan for the site will be the construction of the 3 proposed***
356 ***buildings and associated private roadway, please refer to SH 2 – Site Plan. The***
357 ***industrial zoned section of the parcel has three main direct abutters to the earth***
358 ***extraction work; the State of Vermont to the north (I-289), the Town of Essex to the***
359 ***south (tree farm recreational facility) and the New England Central Railroad to the***
360 ***west. These adjacent properties will be screened by 20-25' existing vegetation***
361 ***buffers to the north and south and a 50' wetland buffer to the west. In addition,***
362 ***the development of the existing vegetation to the west of station 10+00-16+00 of***
363 ***the private roadway will be left to screen the earthwork required to construct the***
364 ***proposed buildings. The proposed landscaping plan, SH 3 Landscaping Plan,***
365 ***includes a row of white spruce trees on the edge of the contractor's yard along***
366 ***route 2A. This will help provide additional screening during the winter months.***

367
368 (vi) A plan for the control of storm water and erosion during the extraction period;

369
370 ***A full erosion prevention and sediment control (EPSC) plan has been provided with***
371 ***the application materials, SH E1-SH E5. The existing EPSC measures; including the***
372

373 ***sediment pond, wetland protection berm, silt fence, and construction entrance will***
374 ***be maintained during the construction of the proposed project. A moderate risk***
375 ***construction general permit will need to be amended by the Vermont Stormwater***
376 ***Program for the project. Additionally, as part of the State Act 250 process the***
377 ***project will be subject to a Multi-Sector General Permit for industrial operation.***
378 ***Once the construction is complete, a stormwater treatment system will be installed***
379 ***based on the SH ST1 - Stormwater Management Plan included with the application***
380 ***materials. The stormwater management plan will be subject to a Stormwater***
381 ***Discharge Permit from the State of Vermont Stormwater Program.***

382
383 (vii) A traffic study from a qualified consultant addressing sight distance and turning
384 movement characteristics of the entrance to the project and the impact of
385 anticipated traffic on the safety and congestion of surrounding roads;

386
387 ***Please see the attached updated traffic study prepared by O'Leary-Burke Civil***
388 ***Associates. No traffic issues are expected as a result of the project.***

389
390 (viii) Notification that a Reclamation Plan has been reviewed and approved by the
391 Planning Commission in accordance with the provisions of Subsection (D)(2) of
392 below; and

393
394 ***The Applicant filed a Site Plan Amendment Application with the Town of Essex***
395 ***Planning Commission on January 25th , 2021.***

396
397 (b) Specific Standards.

398 (i) A buffer strip of at least twenty – five feet (25') shall be maintained around the
399 perimeter of the site. The buffer strip shall retain the original vegetation and plant
400 materials. The Board may require supplemental plantings in order to effectively
401 screen the extraction site and operations from adjoining properties or public
402 roadways.

403
404 ***Please refer to SH 2 – Site Plan, the proposed project will take place in the center of***
405 ***the site and, therefore, will not have a significant impact on the existing buffer***
406 ***strips along the perimeter of the site.***

407
408 (ii) An area of no more than five (5) acres shall be open for active extraction at any time.
409 Other areas shall either be retained in their original condition or be closed in
410 accordance with the approved site reclamation plan.

411
412 ***Please refer to SH 2 – Site Plan, the approximate blasting boundary associated with***
413 ***the building construction is less than 4 acres. The extraction operations from the***
414 ***previous approval are set to be completed in the summer of 2021.***

415

416 (iii) If the Board of Adjustment deems it necessary to prevent a potential safety hazard,
417 suitable fencing may be required around the excavation area, sedimentation basins,
418 or areas for storage of waste or equipment.

419
420 ***Please refer to SH 2 – Site Plan, as part of the original approval a 4-foot-tall woven***
421 ***wire fence atop the ledge face has been installed.***

422
423 (iv) Slopes on the working face of the excavation area shall not exceed four (4) vertical on
424 one (1) horizontal.

425
426 ***The slopes on the working face of the extraction area will exceed four (4) vertical***
427 ***on one (1) horizontal.***

428
429 (v) Hours of operation on the extraction site shall be determined by the Board of
430 Adjustment.

431
432 ***The previous Town of Essex approvals mandated blasting and rock processing shall***
433 ***only occur between the hours of M-F 8:30 AM and 4:00 PM. The Act 250 permit for***
434 ***the project requires blasting and rock processing be suspended from December 21-***
435 ***March 21 of each year.***

436
437 (vi) Adequate provision shall be made for control of storm water runoff in conformance
438 with the Essex Stormwater Ordinance in effect at the time of application. Swales,
439 brooks and other waterways shall be diverted upstream of the open extraction area
440 and routed around all disturbed areas. Sedimentation basins shall be provided as
441 needed. The volume, velocity and quality of water exiting the site shall be the same
442 as, or better than, prior to commencement of the extraction activities.

443
444 ***Please see response to requirement (a) (vi) above.***

445
446 (vii) Appropriate measures shall be provided for the control of dust from all
447 extraction and processing activities as well as from hauling activities. Dust shall not
448 adversely affect surrounding properties or public roadways.

449
450 ***The contractor will be responsible, at their own expense, for ensuring that the dust***
451 ***created as a result of construction does not create a nuisance or a safety hazard***
452 ***where and when deemed necessary by the Project Engineer or the Town of Essex***
453 ***Public Works Dept. The contractor will be required to wet sections of the***
454 ***construction area with water, apply calcium chloride or sweep asphalt roads with a***
455 ***power broom as dust control.***

456
457 (viii) Adequate sound screening by landforms and/or vegetation shall be provided to
458 prevent noise from adversely affecting surrounding properties or public roadways.

459

460 ***Please refer to the attached Processing Plan.***

461

462 (ix) Traffic to and from the extraction operation shall not cause dangerous or hazardous
463 conditions on public roads in the area, nor shall it cause undue degradation of public
464 roads serving the site. Particular attention shall be given to the point where the site
465 access road intersects public roads.

466

467 ***Please see the attached updated traffic study prepared by O’Leary-Burke Civil***
468 ***Associates. No traffic issues are expected as a result of the project. All truck traffic***
469 ***must take a right turn out of the project entrance and continue on VT Route 2A.***

470

471 (x) Stumps removed from the site may be buried on – site if the burial location is not
472 located in any flood plain. This disposal site must be identified on any approved plan
473 and approved by the Town Engineer. If off – site stump disposal is proposed, the
474 disposal location must satisfy all relevant State requirements.

475

476 ***The site is not located within any flood plain. If the stumps are buried on-site they***
477 ***will be placed within the western fill zone of the construction yard. If the stumps***
478 ***are taken off-site they will be disposed of in a location that satisfies all relevant***
479 ***State requirements.***

480

481 (xi) No extraction activities shall occur within designated flood hazard areas or, unless
482 specifically approved by the Board of Adjustment under Section 3.11, within surface
483 water or wetland buffer areas.

484

485 ***The site is not within a designated flood hazard area.***

486

487 7. The applicant submitted the following responses specific to Section 5.7 -Conditional Use:

488

489 **General Standards**

490 1) Capacity of existing or planned community facilities – The Board shall consider the
491 demand for community services and facilities resulting from the proposed development
492 in relation to the available capacity of affected services and facilities, the Town’s adopted
493 capital improvement plan, official map and any impact fee ordinance in effect.
494 Conditions, including project phasing or improvements necessary to accommodate the
495 proposed development, may be imposed as necessary to ensure that the demand for
496 facilities or services does not exceed existing or planned capacity.

497 ***The proposed project will have little effect on the demand for community services. The***
498 ***project is proposing municipal water and sewer connections to proposed buildings.***
499 ***The pump station has been designed for the amount of sewer allocated to the parcel.***
500 ***The access roadway is proposed as a private road. All of the construction traffic***
501 ***associated with the project will be forced to turn right on Old Colchester Rd and***
502 ***directly onto VT Route 2A.***

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- 2) Character of the area affected – The Board shall consider the location, scale, type, density and intensity of the proposed development in relation to the character of the area likely to be affected, as defined by the purpose(s) of the zoning district(s) within which the project is located, and specifically stated polices and standards of the municipal plan.

The extraction of earth’s resources, processing of gravel products, and stockpiling has been taking place since the Fall of 2016. The project is surrounded by the New England Central Railway railroad tracks, multiple commercial properties and the Circ Highway (I-289). The project is within I-1 Industrial zoned land. The stated purpose of the Industrial District is, “This area provides for employment opportunities in manufacturing, warehousing, research and development and commercial uses which specifically serve the industries or their employees in areas serviced by good transportation facilities and public utilities.” The process of earth extraction will create employment opportunities through the manufacturing of gravel products. The proposed 60,000 SF of commercial space will also contribute to the districts goal of providing employment opportunities in the Town of Essex. Along with employment opportunities the purpose for the Industrial District is to be serviced by good transportation facilities and public utilities. The project is located adjacent to VT Route 2A and the Circ Highway (I-289). In a case where excessive gravel products are needed statewide, a connection to the railway could be proposed. The proposed buildings will have access to Manipal water from the main along Old Colchester Road and Municipal sewer from a proposed pump station utilizing the existing Pinecrest forcemain along VT Route 2A. Power and Gas are also available along Old Colchester Road and VT Route 2A.

- 3) Traffic on roads and highways in the vicinity – The Board shall consider the projected impact of traffic resulting from the proposed development on the existing and planned capacity, safety, efficiency and use(s) of affected roads, bridges and intersections. A traffic impact study may be required. The Board will rely on generally accepted transportation standards and the Town’s adopted road and public works standards in evaluating traffic impacts, and shall not approve a project that will result in the creation of unsafe conditions for motorist, pedestrians, or cyclists, or unacceptable levels of service for local streets, highways and intersections. The Board may impose conditions as necessary to avoid or mitigate undue adverse effects resulting from the proposed development, including improvements to the street network and/or traffic management strategies and control devices.

The project is not expected to impact the level of service of local streets, highways and intersections. A revised traffic report has been submitted to show how traffic associated with the project will impact the level of service in the AM and PM peak hours.

- 4) Bylaws and ordinances in effect – The Board shall consider whether the proposed development complies with all municipal bylaws and ordinances in effect at the time of

547 application, including other applicable provisions of these Regulations. No development
548 shall be approved in violation of existing municipal bylaws and ordinances.

549 *The original site plan approval was granted by the Town Planning Commission on*
550 *December 11, 2014 and the Conditional Use approval was granted by the Town Zoning*
551 *Board of Adjustment on March 13, 2015. The amendment includes the extraction of*
552 *150,000 cy of ledge in order to construct two additional 20,000 SF buildings, municipal*
553 *utilities, and a 1,500 LF private roadway.*

554

555 5) Utilization of renewable energy resources – The Board shall consider whether the
556 proposed development will interfere with the sustainable use of renewable energy
557 resources, including the existing and future availability of and access to such resources,
558 on adjoining properties.

559 *The project will not interfere with the ability to provide sustainable use of renewable*
560 *energy resources. The topography of the site is not ideal for the use of renewable*
561 *resources. The site is primarily ledge and with 5 to 12 percent slopes.*

562

563 **Specific Standards**

564

565 1) Conformance with the Town Plan – Applications for conditional use approval shall
566 conform to specific, applicable policies and objectives of the Town Plan of record.

567 *The purpose of the conditional use for earth extraction is to create the*
568 *infrastructure necessary for an Industrial Park. The project conforms to many of*
569 *the objectives in the Town Plan in Chapter 3 - Economic Development. Specifically*
570 *the project conforms to Objective 3.1.8, “Promote infrastructure readiness.” The*
571 *creation of the industrial park will create the opportunity for the diversification of*
572 *the Essex economy by attracting small commercial and industrial businesses. The*
573 *proposed pump station has been designed for the full buildout of sewer allocation*
574 *dedicated to the parcel. The project also conforms to Objective 3.1.4, “Work with*
575 *all economic sectors and capitalize on our assets to diversify the Essex economy*
576 *and promote Essex as a destination, using the target industry analysis provided in*
577 *this plan as a guide.” The Industrial Park will likely attract similar specialty*
578 *manufacturing businesses highlighted in the Industry Targets for Essex. The*
579 *project site is identified as part of the Enterprise Planning Area by the CCRPC.*
580 *Enterprise Planning Areas, “are areas where local zoning authorizes a future*
581 *concentration of employment uses that attract workers from the County and multi-*
582 *county region. Development in these Planning Areas should have adequate*
583 *wastewater capacity and access to transit or be near these services. Typically, this*
584 *area encompasses major employers or a cluster of single employers and has current*
585 *or planned transit service.” The Industrial Park is an ideal location to meet the*
586 *goals of the Enterprise Planning Area as it has access to wastewater capacity and*
587 *VT Route 2A. These areas will promote future employment and economic*
588 *opportunities for the Town of Essex.*

589

590 2) Site plan review criteria – The Board of Adjustment may apply any applicable site
591 plan review criteria under Section 5.6 in its review of conditional use applications that
592 do not require site plan review and approval as it deems necessary to fully evaluate a
593 proposed conditional use under the criteria of this section.

594 *The project amendment has been submitted to the Town’s Planning Commission*
595 *for review and approval.*

596
597 3) Conformance with community character – The Board of Adjustment may consider
598 whether the development has an undue adverse effect on the character of the
599 community as specifically expressed in the policies and objectives of the Essex Town
600 Plan.

601 *The extraction of earth’s resources, processing of gravel products, and stockpiling*
602 *has been taking place since the Fall of 2016. The project has not created any*
603 *undue or significant impacts to the abutting landowners since construction began.*
604 *The project is surrounded by the New England Central Railway railroad tracks,*
605 *multiple commercial properties and the Circ Highway (I-289). The proposed*
606 *buildings are entirely within the I-1 Industrial zoning district and meets the goals*
607 *of providing employment opportunities now and in the future for the Town of*
608 *Essex.*

609
610 8. Police Chief provided the following written comments:

611
612 *No comments other than the concern of constant truck traffic over the railroad crossing.*
613 *And once the site is built, keeping trucks from using Old Colchester Rd.*

614
615 9. In an email, the Fire Chief requested specific information regarding the site plan review
616 application with the Planning Commission, as follows:

- 617
618 1. *Could we please get the building dimensions. The narrative indicates 20,000 sq ft, but*
619 *we want to confirm.*
620 2. *Will they be equipped with an automatic fire sprinkler / alarm system?*
621 3. *If so, please indicate on the plans the location of the Sprinkler Rooms.*
622 4. *Please indicate where the hydrants will be located. There appears as though one new*
623 *hydrant, but need to confirm.*
624 5. *Please indicate the width of the proposed fire lanes around each building.*

625
626 10. The Recreation Director did not have any comments for this application.

627 11. In an email dated 2/25/2021, Public Works said,

628
629 *The above referenced project has been reviewed by the Public Works Department a*
630 *number of times and, received Zoning Board approval back in 2015. Although the*
631 *comments below have been reviewed and addressed by the Zoning Board as part of a*
632 *previous approval, Public Works is of the opinion that the following comments continue*
633 *to be part of any Conditional Use determination from the ZBA.*

- 634 1. *The Hours of operation for site blasting and aggregate processing should be*
635 *limited to 8:30AM to 4 PM, M-F.*
- 636 2. *The applicant will be required to adhere to the approved blasting plan and*
637 *aggregate processing plan. Any deviation from these plans will be a violation.*
- 638 3. *Proper vegetative buffers shall be left in place or added to the site to properly*
639 *screen blasting and processing operations.*
- 640 4. *Old Colchester Road will be free of dust, gravel or other materials from the site at*
641 *all times. If determined to be needed by the Town, the applicant shall wet sweep*
642 *the roadway as often as needed to maintain a clean road surface. Failure to*
643 *comply may result in shutdown of all haul operations until the required*
644 *maintenance is performed.*
- 645 5. *No truck traffic from the site should be allowed to travel east on Old Colchester*
646 *Road. This can be ‘soft’ with signs posted at the exit of the site prohibiting trucks*
647 *from turning left or ‘hard’ through a Town Ordinance change prohibiting*
648 *Trucks on Old Colchester Road. Old Colchester Road is a relatively quiet*
649 *residential street with moderate to low traffic levels; truck traffic does not belong*
650 *on this street, east of the site entrance other than small delivery trucks.*
- 651 6. *If not specified in the application, it is recommended that sound monitoring take*
652 *place at the boundary of the site both during the blasting operation and during*
653 *processing as a check on estimated values provided prior to operation of the*
654 *facility. Recurring values in excess of the mid -60’s dBA as indicated in their*
655 *application should result in reconsideration of the noise abatement measures by*
656 *the approving municipal Boards.*
- 657 7. *As indicated in earlier reviews, the impact of the truck and other project traffic*
658 *over time on the portion of Old Colchester Road between the site entrance and*
659 *VT2A is an important consideration. The Town will assess a Traffic Impact Fee*
660 *and a Heavy Truck Fee on all future development within the approved project*
661 *area.*

662 **12. IN CONSIDERATION OF SECTION 5.7 OF THE ZONING REGULATIONS AND**
663 **INCLUDING THE ABOVE FINDINGS, THE BOARD FINDS:**
664

- 665 a) With proper conditions the proposed use will not adversely affect the capacity of existing or
666 planned community facilities;
- 667 b) With proper conditions the proposed use will not adversely affect the character of the
668 area/neighborhood affected;
- 669 c) With proper conditions the proposed use will not adversely affect the traffic on roads and
670 highways in the vicinity;
- 671 d) The proposed use will not adversely affect the by-laws now in effect;
- 672 e) The proposed use will not adversely affect utilization of renewable energy resources;
- 673 f) The proposed use is in conformance with the Town Plan;
- 674 g) The changes proposed to the site are under Planning Commission review; and
- 675 h) The proposed use does not have an undue adverse effect on the character of the community.

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CONDITIONS:

- 1) All conditions from the previous 2015 extraction approval not affected by this application shall remain in effect. All excavation shall be in conformance with the plans as noted in Finding 1 above, with the exception of deviations that may be required to comply with other conditions of this approval.
- 2) The applicant shall submit a copy of all State approvals prior to the issuance of a Zoning Permit.
- 3) The applicant shall adhere to the approved blasting plan and aggregate processing plan. Any deviation from these plans shall be a violation and the applicant shall return to the Zoning Board of Adjustment.
- 4) The applicant shall not exceed extraction of 150,000 cubic yards of ledge and shall provide a written accounting to the Zoning Administrator after removal of the first 50,000 cubic yards and each subsequent 50,000 cubic yards.
- 5) The applicant shall return to the ZBA once 150,000 c.y. of ledge has been removed should the project not be complete.
- 6) Failure to comply with keeping Old Colchester Road free of dust, gravel or other materials from the site shall result in a shutdown of all haul operations until the required maintenance is performed.
- 7) By acceptance of the conditions of this approval without appeal, the applicants confirm and agree for themselves and all assigns and successors in interest that the conditions of this approval shall run with the land and the land uses herein permitted will be binding upon and enforceable against the applicant and all assigns and successors in interest.

AGENDA ITEM 4: MINUTES: DECEMBER 3, 2020:

Board Member Delphia MOVED and Board Member Plageman SECONDED a MOTION to approve the 12/3/2020 minutes as written.

The MOTION passed 4-0.

Kelley reported that she is expecting a new application for the January ZBA meeting.

The meeting adjourned at 6:13 p.m.

ZONING BOARD OF ADJUSTMENT

By:

_____, Chair
Nick Martin