

**MINUTES**  
**PEMBROKE ZONING BOARD OF ADJUSTMENT**  
**September 28, 2009 approved 10/20/09**

**MEMBERS PRESENT:** William Bonney, Chair; Bruce Kudrick, Vice Chair; Dana Carlucci, Tom Hebert

**ALTERNATES PRESENT:** Mick Pinard, Paul Paradis, Mark Simard

**EXCUSED:** Tom LoPizzo; Susan Gifford, Recording Secretary

**STAFF PRESENT:** Everett Hodge, Code Enforcement Officer

Chairman Bonney called the meeting to order at 7:00 p.m.

**PUBLIC HEARING**

Case #09-18-Z

Applicant:                   Concord Sand & Gravel  
Robert Cole, President  
320 Sheep Davis Road  
Concord, NH 03301

Property Owner(s):       Robert Cole, Successor Trustee  
CS&G Revocable Trust and Lucille A. Ladd, Successor Trustee  
Levi K. Ladd Revocable Trust (collectively, the "Property Owners")

Property Address:       North Pembroke Road  
Pembroke, NH 03275  
Tax Map 5559 Lots 3 & 5 located in the R3 Rural Agricultural -Residential  
Zoning District

**Special Exception** under *Section 143-113* - Applicant is requesting permission to expand its present mineral extraction and processing operations into nearby properties owned by the Property Owners. This use is only permitted by **Special Exception** in the R3 Zoning District per 143-19 Table of Uses.

Mr. Everett Hodge confirmed that all abutters were notified and that cards were received back from all abutters. Mr. Hodge read a letter received 9/28/09, dated 9/25/09 in response to the 9/19/09 notice of hearing. In the letter, Sandra Maroney, 377 Monarch Street, Louisville, Colorado stated that she requested a copy of the proposal on Tuesday 9/22/09 and was told she would need to wait until Thursday 9/24/09 to speak with Mr. Hodge. Because she had inadequate information, Ms. Maroney asked that the hearing not be held tonight. The Board discussed that Ms. Maroney could have sent an agent, or attended the meeting herself. John French called Mr. Hodge and stated that he is in favor of the proposal. The Board made the decision to proceed with the public hearing tonight in Case #09-18-Z.

Chairman Bonney opened the public/c hearing at 7:05 p.m. Due to the excused absence of one regular member, Paul Paradis was designated to vote on Case #09-18-Z.

There were 4 regular members and 3 alternate members; therefore, there was a full five member board present for this hearing. Chairman Bonney explained the rules of the hearing.

Tax map information, copies of assessment cards and copy of Proposed Excavation Overview Plan, Project No. 82560.00 dated September 2009, prepared by Nobis Engineering, Inc., 18 Chennell Drive, Concord, NH were provided, The plan references 2009 Project Overview plan base plan titled "Existing Conditions Plat

Concord Sand and Gravel off North Pembroke Road, Pembroke NH dated June 15, 2009, as prepared by "Richard D. Bartlett & Associates, LLC."

The applicant has operated a mineral extraction and processing business on abutting properties since 1985-1986. The applicant now wants to work on some of the remaining parcels purchased by related trusts over the years, that is, Map 559, Lots 3 and 5. Those parcels are largely abutted by other parcels owned by the Applicant and Property Owners. Collectively, the above referenced properties contain approximately 41.01 acres. The parcel located at Map 258 Lot 13-3 (containing approximately 16.57 acres) shall serve as a buffer of operations. The Applicant has no intention of commencing excavation, mineral extraction, or any other activity on this parcel. Accordingly, Special Exceptions for the above described uses are, as a practical matter, limited to portions of the two parcels of land located at Map 559, Lots 3 and 5 which are composed of approximately 24.44 acres and have historically supported such uses without incident. The area is zoned for such use by special exception, and as mentioned previously, much of the surrounding land is owned by the Applicant and Property Owners. The Applicant does not plan to make any changes to its operational plans - using the same ingress and egress routes to the site from an access point on Route 106. Unless some future need for the Applicant's materials arises along North Pembroke Road, the town's road infrastructure will be largely unaffected by this application. While the amount of land dedicated to mineral extraction will expand, the Applicant does not anticipate that the rate at which it removes minerals from the site will increase appreciably. In short, the town and neighbors will experience little or no change in existing operations.

Brett Kane of Nobis Engineering, 18 Chennell Drive, Concord NH made the presentation. Tracey Sweeney, LLS of Richard Bartlett Associates, 214 North State Street, Concord NH and Bob Cole, owner of Concord Sand and Gravel were present at the hearing.

On behalf of the applicant, Brett Kane of Nobis Engineering stated that mineral extraction and processing have occurred on the existing site, Map 559 Lot 6, since 1985. The entire site is in the R3 District, and a small portion on the west side is also in the Aquifer Conservation District. Concord Sand and Gravel has been in business for 25 years. Lot 6 encompasses approximately 200 acres; including all lots there is about 240 acres. The centralized operation will remain where it is. The main driveway entrance on Route 106 north of Sam's Club will continue to be used as the main entrance. A gated and locked secondary driveway is located on North Pembroke Road. The dark area on the displayed plan is the area that has been reclaimed and vegetated. The applicant proposes to expand the excavation to Map 559 Lots 3 and 5 which make up about 24 acres. Map 258 Lot 13-3 is 16.5 acres and will remain a buffer area. No excavation is planned on Map 258 Lot 13-3. Concord Sand and Gravel is providing a 500 foot setback from the nearest residential properties where a 50 foot setback is required. Over time, Concord Sand and Gravel will move to Map 559, Lots 3 and 5 where there is a 100 year life excavating minerals dependent on market demand. All three parcels are in the R3 zoning district, outside of and east of the Aquifer Conservation area. All three parcels are currently wooded and vacant.

Brett Kane addressed the 9 points necessary for a Special Exception as they applied:

- 1) Please describe how the requested use is essential or desirable to the public convenience or the general welfare. *The extraction and processing of raw materials is important because such activities provide natural resources for a wide array of road, public infrastructure and building projects in the State of NH and particularly, in the Merrimack Valley area. Such activities use the State's natural resources to develop and enhance statewide infrastructure. The applicant has supplied raw materials to a number of operations in the Pembroke and Concord area. In addition, this Applicant has demonstrated it is able to successfully balance the industrial character of this use with the environmental features of the area, and run a sound operation for many decades. Those operations contribute significantly to the tax base of the community, without placing pressure on any of the municipal resources.*
- 2) Please state how the requested use will not impair the integrity or character of the district or adjoining

zones, nor be detrimental to the health, morals or general welfare. *The Applicant proposes an expansion of permitted uses that will complement its existing operations on abutting parcels. We are unaware of any complaints or adverse effects with respect to the Applicant's ownership or the operation of its present extraction and processing activities on its abutting parcels. Measures in excess of that required by law will be taken to assure appropriate setbacks from all neighboring parcels not owned by the Applicant or Property Owners. The applicant has wholly dedicated one parcel (Map 258, Lot 13-3) to be used solely as a buffer for its operations. Likewise, the Applicant will conduct its operations and reclaim all its properties in a manner that complies with all local and state laws, permits and approvals. That reclamation will be sensitive to the environmental features of the area and ensure that the properties can be used productively by others in the future.*

- 3) Please describe how the specific site is an appropriate location for the proposed use and the character of adjoining uses will not be affected adversely. *The site at issue is comprised of land that largely abuts other parcels owned by the Applicant and Property Owners. Such abutting parcels are currently being used, and historically have been used, for the same purposes requested through this application (extraction and processing of raw materials).*
- 4) Please show that no factual evidence is found that property values in the district will be adversely affected by such use. *The expansion of Applicant's mineral extraction and processing operations should not adversely affect property values given that much of the surrounding land is already, and has historically been, employed for the same uses.- not only by the Applicant but by other property owners along parcels adjacent to those of the Applicant on North Pembroke Road. The area is zoned for such use, and thus, industrial uses for mineral extraction and processing by special exception are already factored in as an expected use of the property. With the generous buffers planned by the Applicant, the expansion of the excavation area will have no impact on the value of residential property owned by surrounding owners.*
- 5) Will undue traffic or no nuisance or unreasonable hazard result from your proposed use? *No, the applicant's proposed operations will comply with all federal, state and local permitting, assuring that the use will be reasonable and lawful. The Applicant intends to continue using its access point in Concord, along Route 106, at its major ingress/egress route. The State has issued a driveway permit for that use, and the Applicant believes no amendment to the permit is required because the volume of traffic will not be meaningfully altered to require such an amended permit. Barring a need for excavation material along North Pembroke Road to the east, few, if any, trucks will use frontage along North Pembroke Road for ingress and egress. There is adequate sight distance for such traffic. Posted speed limits along that road also ensure safe traffic operations.*
- 6) Please explain how adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use. *Applicant will ensure that any facilities are in compliance with appropriate local and state laws, rules, ordinances, statutes, regulations, as well as state and local permitting. Applicant currently has all the equipment and facilities needed to successfully operate the sites as an excavation program - and has done so for 30-plus years. At present, no facilities exist on the parcels which are the subject of this applications. Those parcels are entirely vacant land.*
- 7) Please show that there are no valid objections from abutting property owners based on demonstrable fact. *Applicant is not aware of any concerns or objections at this time. Applicant has tried to meet with all abutters to discuss its plan. Due to scheduling conflicts with certain abutters and /or abutters living out of state, Applicant has not had an opportunity to personally speak with every abutter as of the filing of this Special Exception Application, but anticipates doing so prior to the hearing.*
- 8) Please show that the proposed use has an adequate water supply and sewerage systems and meets the applicable requirements of the State. *There will be little of no water use or sewer generation by the site. Water usage and sewer generation will be confined to Applicant's abutting parcels in Concord NH, which are already permitted for such uses. Those uses are confined to bathroom facilities in the office of Applicant on adjacent property in Concord.*
- 9) If the proposed use is for multi-family dwellings, will it be served by the town water system and by the

town sewerage system. *N/A*

Brett Kane stated that the applicant verbally contacted all but one abutter, and personally met with all but two abutters. The applicant also met with several non-abutting neighbors. The proposal does need state approval for alteration of terrain. In response to Board questions about the elevation, Brett Kane stated the original elevation is 440 feet at the top and when done, will be at 292 feet. However, it won't be a sheer face. The applicant started using a benching operation this year, using steps of 50 foot face, 20 foot bench, 50 foot face, 20 foot bench and so forth. If this area were to be restored, the area below will have a layer of suitable materials. In response to a question on whether the applicant plans to fence the entire area, there are currently no plans to install a fence because of the large buffer lot.

Everett Hodge noted that one of the ZBA members lives on Wellington Way, 1400 feet from one of the proposed lots to be excavated. Everett Hodge explained the abutter notice process to him. The gentleman has come home and found cracked windows due to the operation going on now. He has not made any claims for damages to Concord Sand and Gravel. Bob Cole asked that the gentleman contact him and not hesitate to call with any concerns. It is possible to place a seismograph at the property to measure disturbance. During a previous blasting operation, a seismograph was placed at the property of Jean Archambeault on Borough Road. Bob Cole stated that Concord Sand and Gravel utilizes the services of Maine Drilling and Blasting, which uses best practices for blasting, including electronic cat microseconds between blasts. Bob Cole apologized that he was not aware of any issue on Wellington Road.

In response to Board questions on the procedure used to notify neighbors of blasting, Bob Cole stated that every time there is personal notification to everyone on a call list, including abutters, Fire Department Dispatch, National Guard, Brigham's Helicopters, Sam's Club and residences. Other residences can request that they be put on the call list. Concord Sand and Gravel can also place a seismograph on properties to measure the impact of blasting. The amount of blasting has declined over the last three years due to the economic turndown. Without the State of NH 10-year highway plan, demand for materials might even be lower.

Chairman Bonney summarized the case. The applicant, Concord Sand and Gravel, proposes to expand its present mineral excavation and processing operation to nearby properties owned by the property owners. The existing site has been in operation since 1985. The site is in the R3 Zoning District except for a small portion that is in the AC Aquifer Conservation district. The entire parcel is 240 acres, Map 559. Lot 6 is 200 acres. The main driveway entrance will continue to be off Route 106 north of Sam's Club. The access at North Pembroke Road is locked and gated. Map 559, Lots 3 and 5 consist of 24 acres. The parcel located at Map 258 Lot 13-3 (containing approximately 16.57 acres) shall serve as a buffer of operations. Where the zoning ordinance requires 50 foot setback, Concord Sand and Gravel will provide a 500 foot setback to residences. Concord Sand and Gravel operations will be 300 feet from the property line on Concord Sand and Gravel property along North Pembroke Road. The operation will continue at the level it currently is, with no additional traffic. The elevation is now at 440 feet and will be 292 feet at the highest elevation when excavation is complete. When excavation is complete, Concord Sand and Gravel will reclaim the area. No fence is planned at this time. One abutter has found cracked windows in his home, and his house shakes when blasting is going on. Maine Drilling and Blasting uses best practices to limit impact on adjacent homes. This year, Concord Sand and Gravel started a benching operation with alternating 50 foot face and 20 foot bench and it is working very well. Blasting operations have declined over the last three years. Neighbors can request they be put on the call list to be notified of any planned blasting.

There being no further input, Chairman Bonney closed the public hearing at 7:50 p.m.

Chairman Bonney led a review of the Special Exception criteria. 1) It is essential or desirable to the public

to have access to natural materials, agree. 2) Applicant has been in business for 25 years and wishes to use more square footage of their property for excavation . 3) The proposed business is in a commercial district, with other commercial businesses around the property. 4) No factual evidence was presented that the operation will adversely affect property values. 5) The traffic pattern will remain the same on that area of Route 106. 6) The applicant has adequate equipment and procedures. 7) No one attended the meeting stating they were opposed. The abutter from Colorado was sent additional information. 8) No water is necessary on the site. 9) N/A

**Motion:** Bruce Kudrick moved to approve a Special Exception to allow Applicant to expand its present mineral extraction and processing operations into nearby properties owned by the Property Owners (Map 559, Lots 3 and 5) at North Pembroke Road in the R3 Zoning District with the following conditions:

1. Must follow all applicable State and local regulations.

Paul Paradis seconded.

**VOTE:** PAUL - Y DANA - Y BRUCE- Y  
TOM H Y BILL - Y

MOTION TO GRANT A SPECIAL EXCEPTION TO ALLOW APPLICANT TO EXPAND ITS PRESENT MINERAL EXTRACTION AND PROCESSING OPERATIONS IN TO NEARBY PROPERTIES -MAP 559, LOTS 3 AND 5, APPROVED WITH CONDITIONS ON A 5-0 VOTE

**PUBLIC HEARING**

Case #09-19-Z

Applicant: Kelly Beauchesne  
Beauchesne & Associates, LLC  
385 Pembroke Street  
Pembroke, NH 03275

Property Owner(s): Patricia Crafts, Trustee  
383A Pembroke Street  
Pembroke, NH 03275

Property Address: 385 Pembroke Street  
Pembroke, NH 03275  
Tax Map 565 Lot 230 located in the R1 Medium Density-Residential and the AD Architectural Design Zoning Districts

**Special Exception** under *Section 143-113* - Applicant dba Beauchesne & Associates, LLC, s requesting permission to add a changeable copy sign below the existing approved sign. A **Special Exception** is needed because the changeable copy sign will increase the total square footage above the 12 square feet that is allowed by 143-62 Dimensional Table of Signs. This use is only permitted by **Special Exception** in the R1 Zoning District per 143-62.

Mr. Everett Hodge confirmed that all abutters were notified and that cards were received back from all abutters. One ZBA member stated he was pleased to see business in town expanding, and asked if this will provide jobs. Everett Hodge explained that in the R1 zone, a Special Exception is needed beyond a 12 square foot sign. No Special Exception is needed for the original sign up to 12 square feet. The Board agreed that the sign ordinance has not changed, but is confusing. Discussion ensued on whether a Variance was needed for a sign greater than 12 square feet. The existing 12 square foot sign was grandfathered from the previous occupant of the property. In the LO zone, a 12 square foot sign is also permitted.

The members discussed what would change, besides the questions and the criteria from a Special Exception to a Variance. A regular 12 square foot sign in the R1 zone needs a Special Exception. A larger sign needs a variance. No objections have come in from notified abutters, but from a legal perspective, if someone should challenge the sign after the fact in the future, the proper procedures should be followed. The applicant's representative (mother-in-law) agreed it was best to have Kelly Beauchesne fill out the Variance paperwork and appear at a future ZBA meeting, Chairman Bonney directed Everett Hodge to re-notice abutters of the Variance hearing at no additional cost to the applicant, once the paperwork was completed.

**Motion:** Bruce Kudrick moved to not hear Case #09-19-Z as a Special Exception,. Due to disparities within section 143-62 **Dimensional Table of Signs**, the applicant will reapply for a **Variance** under section 143-114 Variances. The cost to reapply will be the responsibility of the Town per the Zoning Board of Adjustment. Dana Carlucci seconded.

**VOTE:** PAUL - Y DANA - Y BRUCE- Y  
TOM H Y BILL - Y

MOTION TO HAVE APPLICANT REAPPLY FOR A VARIANCE APPROVED ON A 5-0 VOTE

**MINUTES OF PREVIOUS MEETINGS**

**Motion:** Tom Hebert moved to approve the minutes of September 9, 2009 as amended. Bruce Kudrick seconded.

**VOTE:** PAUL- Y DANA - Y BRUCE - Y  
TOM H Y BILL - Y

MINUTES OF SEPTEMBER 9, 2009 APPROVED AS AMENDED ON A 5-0 VOTE.

**OTHER**

**Date of next ZBA meeting** – The ZBA October 2009 meeting will be on Tuesday, October 20, 2009 (due to vacation.)

**ADJOURN** **Motion:** Dana Carlucci moved to adjourn. Bruce Kudrick seconded. Vote was unanimous in favor of motion. Meeting adjourned at 8:15 p.m.

Respectfully submitted,

Susan P. Gifford  
Recording Secretary