

Katie R. Foster  
E-Mail: [krfoster@rudmanwinchell.com](mailto:krfoster@rudmanwinchell.com)  
Direct Dial: (207)992-2417

January 8, 2018

Hancock "Griff" Fenton, Chairman  
Lamoine Board of Appeals  
Town of Lamoine  
606 Douglas Highway  
Lamoine, ME 04605

Re: Harold MacQuinn, Inc. –Appeal to the Board of Appeals  
Kittredge Pit – Gravel Extraction Permit

Dear Chair Fenton:

Enclosed is an administrative appeal from the December 11, 2017 decision of the Planning Board denying an application submitted by Harold MacQuinn, Inc. for a Site Plan Review Permit.

Our firm's check payable to the Town of Lamoine in the amount of \$100.00 for the application fees (\$50.00 fee for each Appeal) was sent with the application for a Gravel Permit submitted on December 13, 2017.

Thank you.

Sincerely,



Katie R. Foster  
KRF/leb  
Enclosures

cc: Paul MacQuinn, JR., President – Harold MacQuinn, Inc. (w/encl.)  
Stephen Salisbury, PLS (w/encl.)

**Town Of Lamoine  
Application for Variance or  
Appeal to the Board of Appeals**

Name of Appellant: Harold MacQuinn, Inc.

Mailing Address: P.O. Box 789

City or Town: Ellsworth, Maine 04605

Telephone (Home) \_\_\_\_\_ (Work): (207)667-4653

Name(s) of Property Owner: Harold MacQuinn, Inc.

The undersigned requests that the Board of Appeals consider one of the following:

X 1. **An Administrative Appeal.** Relief from the decision, or lack of decision, of the Planning Board in regard to an application for a Site Plan Review Permit. The undersigned believes that (check one):

X an error was made in the denial of the permit

X the denial of the permit was based on a misinterpretation of the ordinance

\_\_\_\_\_ there has been a failure to approve or deny the permit within a reasonable period of time

\_\_\_\_\_ other \_\_\_\_\_

Please explain in more detail the fact surrounding this appeal (please attach a separate piece of paper). You should be as specific as possible so that the Board of Appeals can give full consideration to your case.

\_\_\_\_\_ 2. **A Variance.**

a. Nature of Variance: Describe generally the nature of the variance.

\_\_\_\_\_  
\_\_\_\_\_

In addition, a sketch plan of the property must accompany this application showing dimensions and shape of the lot, the size and locations of existing buildings, the locations and dimensions of proposed buildings, or alterations, and any natural or topographic peculiarities of the lot in question.

- b. **Justification of Variance:** In order for a variance to be granted, the appellant must demonstrate to the Board of Appeals that the strict application of the terms of the zoning ordinance would cause undue hardship. There are four criteria which must be met before the BOA can find that a hardship exists. Please explain how your situation meets each of these criteria listed below:
1. The land in question cannot yield a reasonable return unless the variance is granted.
  
  2. The need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood.
  
  3. The granting of a variance will not alter the essential character of the locality.
  
  4. The hardship is not the result of action taken by the appellant or a prior owner.

I certify that the information contained in this application and its supplement is true and correct.

Date: January 8, 2018

  
\_\_\_\_\_  
(Appellant's Signature)  
Katie R. Foster, Esq.  
Edmond J. Bearor, Esq.  
Attorney for Harold MacQuinn, Inc.

**Note to Appellant:** This form should be returned to the Chairman of the Board of Appeals. You will be notified of the date, time and location of the hearing on your appeal.

## **HAROLD MACQUINN, INC. APPEAL OF PLANNING BOARD DENIAL OF SITE PLAN REVIEW PERMIT APPLICATION**

In February 2017, the Applicant submitted an application to the Lamoine Planning Board to obtain a Site Plan Review Permit pursuant to the Site Plan Review Ordinance as amended March 16, 2011.

On December 11, 2017, the Planning Board denied MacQuinn's application finding that the Applicant had failed to present evidence that the proposed operation had failed to meet four of the fourteen review criteria:

1. **Section J.1 (Vote 1-3) Preserve and enhance the landscape;** "The Applicant presented insufficient evidence that the proposed use will preserve the landscape in its natural state as much as practicable, or maintain and preserve the Cold Spring Water Company supply, the aquifer, or the isolated wetland to the maximum extent. The Board also considered the provisions citing that after construction is completed, 'landscaping shall be designed and planted that will define, soften or screen the appearance of the development and minimize the encroachment of the proposed use on neighboring land uses. Environmentally sensitive areas such as aquifers, significant wildlife habitats, wetlands, steep slopes, floodplains, historic buildings and sites, existing and potential archaeological sites and unique natural features will be maintained and persevered to the maximum extent."
2. **Section J.10 (Vote 1-3) Groundwater protection;** "The Applicant has not demonstrated the proposed site development's lack of adverse impact upon groundwater, and in particular upon the aquifer and the Cold Water Spring Company public water supply."
3. **Section J. 17 (Vote 1-3) Stormwater drainage;** "The Applicant has not met its burden of establishing that the proposed use will have no unreasonable burden on water supplies for the property or on adjacent properties, including the water supply to Cold Spring Water Company.
4. **Special review standards for mineral exploration and extraction – as it fails to meet all applicable standards of the Lamoine Gravel Ordinance.**

The Town of Lamoine ordinance fails to articulate the quantitative standards necessary to transform the unmeasured quality "preserve and enhance the landscape" into specific criteria objectively usable by both the Planning Board and the Applicant in gauging the impact of the proposed use on this area of Town. The Planning Board did not establish or articulate how the Applicant failed to fit within the requirement that the natural features be maintained and preserved "to the maximum extent."

The Planning Board did not point to any evidence to support the premise that the requested excavation would not adequately protect the aquifer or the immediately adjacent, possibly connected Cold Spring recharge area. Instead they chose to dismiss the testimony of the

Applicant's expert, Michael A. Deyling of Summit Environmental Consultants, Inc. and a peer review report that was requested by the Planning Board, paid for by the Applicant, as part of the prior application. The peer review, conducted by Robert G. Gerber of Ransom Consulting, Inc. recommended the installation of a number of additional monitoring wells. The Applicant installed all of the recommended monitoring wells and the evidence continues to support the contentions of the Applicant's expert.

Harold MacQuinn, Inc. contends that the Standard of Review on appeal for the Site Plan Review Ordinance is a *de novo* hearing on the issues raised on appeal.