

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

Name of Appellant Doug Gott & Sons, Inc.

Mailing Address c/o Michael L. Ross, Esquire, PO Box 1123

City or Town Ellsworth, Maine 04605

Telephone (Home) _____ (Work) 667-1373

Name(s) of Property Owner Doug Gott & Sons, Inc. re: Map 3, Lot 8 (former Stephens lot)

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

1. An Administrative Appeal. Relief from the decision, or lack of decision, of the Code Enforcement Officer or Planning Board in regard to an application for a permit. The undersigned believes that (check one):

an error was made in the denial of the permit s, both site plan and gravel extraction

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. Please see attached.

2. A Variance.

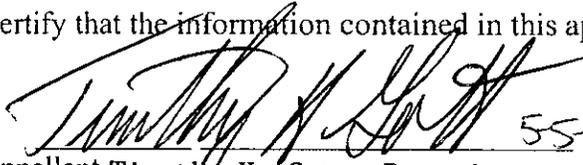
a. Nature of Variance: Describe generally the nature of the variance.

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.



5-5-10

Appellant Timothy H. Gott, President
Doug Gott & Sons, Inc.



Michael L. Ross, Esquire
Attorney for Appellant

5-5-10

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.

Doug Gott & Sons
Addendum to Appeal Applications

I. SITE PLAN REVIEW APPLICATION

The denial of the applicant's site plan application was based on the applicant's failure to meet three Site Plan Review Ordinance standards. The applicant appeals those determinations, as set forth below:

A. Standard #6, Buffering and Screening

According to the Board, once the property is cleared up to the required 50' setback, there would not be enough of a natural buffer left sufficient to screen the gravel operation from the abutters.

The Planning Board erred in finding that the applicant failed to meet the standards set forth in Section J.6 of the Lamoine Site Plan Review Ordinance. That standard does not require that the natural buffer left after clearing to the 50' setback be sufficient to screen the operation; rather, this is more of "setback" requirement that would not be met if the applicant had proposed extending the operation closer to the property lines than 50 feet. The Gott application specifically calls for a 50-foot buffer to be retained on the two sides of the property that abut other landowners, and therefore meets this requirement.

Additionally, the standard specifically contemplates the use of man-made materials (fencing), or additional planting in order to accomplish the appropriate amount of screening. During deliberations, the Planning Board specifically stated that this standard could be met by imposing conditions upon the applicant which ensure the buffering and screening requirements were met. Therefore, an outright rejection of the application based on Standard #6 was erroneous and should be reversed.

B. Standard #10, Groundwater Protection

The site plan application indicates that the groundwater protection standards will be met, and included a professionally engineered hydrogeological services report stating that the public water supply would not be impacted. Expert testimonial evidence established the intent to install a new monitoring well once the site is prepared, and indicated the plan adequately accounts for the protection of water quality.

Nevertheless, the Board found that the groundwater protection standards would not be met. This finding constitutes reversible error.

C. Standard #16, Comprehensive Plan Compliance

According to the Board, the proposed gravel operation is inconsistent with the purpose and intent of the Lamoine Comprehensive Plan. This finding is erroneous for several reasons.

First, the Comprehensive Plan says nothing about limiting the amount of gravel extraction activities within the town. Indeed, the Plan specifically recognizes gravel mining as the “major commercial activity” with the Town, and only mentions the intent to curtail “heavy industrial development.” Neither the Comprehensive Plan nor the Land Use Ordinance define sand and gravel extraction as a “heavy industrial” activity. Additionally, the town’s land use ordinance does not limit further gravel extraction activities in this area. The Planning Board’s determination, therefore, that this permit application is for an “industrial use” (see page 1, paragraph 8 of the board’s “Findings”) is patently incorrect and should be reversed.

Second, the Planning Board’s determination that the proposed operation would entail significant “visual degradation, dust, noise and high truck traffic volume” to the point that surrounding property values would be affected simply does not stand to reason. As the Board noted (and as contemplated in the Comprehensive Plan), there is already significant gravel extraction activity in this area. In addition, the Board noted that the applicant intends to use the lot primarily for the “storage of sand, loam and gravel,” adjacent to the already-operational gravel pit on the existing “B&H Pit” owned by Gott, not as an additional extraction area. Therefore there is not likely to be a significant increase in the level of noise and “visual degradation” over that already in existence.

Finally, and most significantly, the imposition of performance standards based on a town’s Comprehensive Plan has been summarily rejected by the Law Court. *See Nestle Waters North America, Inc. v. Town of Fryeburg*, 2009 ME 30 ¶ 24 (“A comprehensive plan imposes an obligation on the town, not on private citizens or applicants for permits.”). Therefore, the Planning Board’s rejection of the site plan application on the basis that such operation would not be consistent with the intent of the Lamoine Comprehensive Plan constitutes reversible legal error.

II. GRAVEL PERMIT APPLICATION

The Board denied the gravel extraction permit application based on the applicant’s failure to meet the requirements of standard #6, Section 7 D 6 of the Gravel Ordinance.

The Board found that the operation would “adversely affect surrounding properties” because it would compromise the quality of life of abutting residential property owners, and reduce property values. This conclusion, however, was based on the testimony of residents regarding the pre-existing operations, not the actual proposed use of the Stephens lot as simply primarily a storage area adjacent to the existing Gott operation. Therefore this finding is in error.

The Board also found that there would be inadequate buffering and screening of the operation and referred to the site plan ordinance standard for buffering and screening as set forth above. However, the Board failed to make findings based on the Gravel Ordinance standard for screening, as contained in Section 8 B; therefore the Board’s denial of the permit application for gravel extraction should be reversed based on failure to apply the appropriate standard.

The applicant also appeals this decision for the same reasons as those stated in Section I above. Further, the applicant reserves the right to supplement this appeal as necessary prior to the ZBA’s public hearing on this matter.