

EX#320

PZ# 23-6SUP

EXHIBIT #9

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Land Use Department



**TOWN OF LEDYARD**  
Department of Land Use and Planning  
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**MEMORANDUM FOR THE RECORD**  
June 8, 2023 PZC Meeting

**Property Address:** 1340 Baldwin Hill Rd, Gales Ferry, CT  
**Application:** #PZ23-6SUP – Special Permit Approval - Excavation  
**Applicant/Owner:** B&R Holding Company, LLC  
**Lot Size:** 20.6 acres (896,900)  
**Lot Frontage:** Approx. 280ft on Baldwin Hill – but access is not off frontage  
**Zoning District:** CIP  
**Public Water/Sewer:** N/A  
**Wetlands/Watercourses:** Occur on the site.  
**Flood Hazard Zone:** No.  
**CAM Zone:** No.  
**Public Water Supply Watershed:** No.  
**Proposed Public Improvements:** No.  
**Legal:** #PZ23-06 SUP Submitted to Land Use Office on 5/02/23. Received by PZC on 5/11/23.  
Public Hearing to open 6/08/23.

**EXISTING CONDITIONS and HISTORY:**

- The Property is currently being used for the removal of rock, stone, gravel, sand and other material. The owner has contracted with a company to provide aggregate to support the off-shore wind project in New London. Applicants state that the use has been ongoing since prior to the adoption of Zoning Regulations in 1963.
- There is no direct access to the property from the frontage. Access appears to be provided from the gravel roads that originate on the abutting parcel to the north – 1348 Baldwin Hill – which is owned by Terra Firma Inc. not B&R Holding Co. as well as an additional access point off of the gravel road that runs alongside several parcels. Though not in common ownership, both parcels appear to be associated with the excavation activity.
- More than half the site is involved in the current operation. Recent activity has included blasting of the ledge which drew complaints from neighboring properties and prompted a review of the file to determine whether the use was actually permitted.
- A review of the file provided some insight into what the historic use has been, what approvals were given and what limitations were in place. There is some evidence of a material processing operation since the 60's, but this involved the processing of materials brought from off-site. There have never been approvals for "excavation" or a quarry on the property. The only "approval" for activity on the subject parcel was for the processing and re-sale of materials brought from off-site.
- A court document mentions the use of **1352 and 1354R** (separate from 1322 (now 1340)) as **"a sand and gravel bank" – not 1322.**

- The court documents also mention **long periods of no activity** on the "Vivirito" property which is the subject property in this application. Aerial photos of the parcel also demonstrate little activity until 2010 or so.
- A 1997 Appraisal of the property described the property as "**vacant land – limited gravel and stone crushing operation**" consistent with the off-site material processing use described.
- In 2011, Chris McLaughlin of B&R Holding Company requested a letter from the Zoning Official at the time confirming that their "gravel operation" on 1322 Baldwin Hill was a grandfathered use. (Note: A portion of what was 1322 Baldwin is now 1340 Baldwin Hill Rd.) **In a letter dated 4/2/2011, Mr. McLaughlin describes the operation on 1340 Baldwin as "receiving rock, gravel, and topsoil and recycling these items into useful products."**

The Zoning Official brought the matter to the Zoning Commission in 2011 and they voted to approve Chris McLaughlin's request to "**process topsoil, gravel, dead sand, and concrete from off-site sources**" at the site located at 1322 (now 1340) Baldwin Hill Rd. The minutes from that meeting confirm that a gravel operation existed prior to 1963 and that the "manufacture of gravel from the parcel" was a lawful pre-existing use of the property. It was represented to the Commission that prior to 1963, the activity was "**the acceptance of raw material from off-site**" which was then processed into gravel and removed from the site. There would be no filling on the property – that is all material would be removed after it was processed. This particular activity was never formally abandoned and is therefore grandfathered.

- **This is the important part...**
- **The chairman also acknowledged that the part of the gravel operation that involved the processing of material "from the site" was also a legally existing, non-conforming use, and as such could continue, but not be expanded. The current proposal clearly represents an expansion of this particular use!**
- There were conditions about the use of the rock crusher as well. Manufacturing was and is a use that is allowed in the CIP Zone, but the activity must occur indoors. In this case, the Chairman felt that any outdoor "manufacturing" of gravel i.e. activity involving the use of the crusher etc. would be considered non-conforming. He then stated that any increase in outdoor activity including more frequent truck trips or rock crushing and processing of material from OFF-SITE sources into gravel did not constitute an "intensification" of use (though I assume he meant "expansion" as intensification of a non-conforming use is generally permitted and exactly what the chairman described). There was no discussion about the processing of on-site material or quarrying by the Commission as that was not the permission being sought.
- Despite all the various documents, there is some question as to what activity was occurring where and did it involve quarrying as far back as the early 60's. The only mention of Quarrying was on a 2007 Real Estate Contract. No other documents or photos support the prior continuous quarry use on precisely the subject parcel since 1963. This activity on the 1340 Baldwin Hill parcel did not appear to start until around 2010– well after the adoption of zoning. The only approved blasting on file was in conjunction with the site preparation for the Self-storage facility on the adjacent property.

**PROPOSAL:** Excavation including the processing and removal of materials found on-site. Proposal is not clear on the total amount of rock to be blasted and processed. Hours of operation proposed

to be from 6:30am to 5:30pm Mon – Sat. Operations to continue until 2027. (Note: Excavation permits are valid for 3 years only).

**GROTON PUBLIC UTILITIES:** N/A

**WPCA did provide comments and concerns about the effect of the blasting on nearby wells.**

**LEDGE LIGHT HEALTH DISTRICT:** N/A (?)

**DPW DIRECTOR/TOWN ENGINEER:** No public improvements or drainage

**BOND:** Per Section 8.16(F): Before a permit is granted to an applicant starting an operation regulated by Special Permit under this Section, the applicant shall post a bond to the Town of Ledyard in an amount and form approved by the Commission to guarantee that the premises shall be excavated, graded and landscaped in conformance with the approved Plan of Operation.

**STAFF COMMENTS:**

1. Excavation and manufacturing are 2 distinct uses. The historic activity described could have been considered manufacturing as it involved the processing of raw materials into a finished product, but that really is not the correct classification for either the current or past use. The historic use was more of a commercial service or industrial use. The proposed use falls under Excavation without a doubt. The only other time such activity is permitted is when a site is being prepared for an approved development- and even then, an excavation permit may still be needed if the material being removed were going to be processed on site and sold.

I would also add that the fact that the Zoning Commission approved a "conforming" use on the subject parcel would prevent the owner from re-establishing any existing or pre-existing non-conforming use. The only permitted use for the property is manufacturing and a limited gravel processing operation (on-site material) that was deemed non-conforming and not permitted to expand.

The only way to permit the current activity is to obtain an Excavation Permit per the current regulations which must be renewed every three years. Could possibly propose a future development that involved ledge removal as part of the site work – but there would likely still be the need for an excavation component to remove, process and sell the gravel in the manner that this activity is occurring.

2. The Plan references Section 12.4 of the regulations. There is no such section. I presume applicant meant Section 8.16 Excavation
3. Filling, excavating, or the relocation of 300 cubic yards or more of topsoil, sand, gravel, clay, stone or other materials in any district is allowed by Special Permit and requires a Plan of Operation. No such plan has been submitted. The Operations Plan must include a closure plan prepared and approved by a licensed Professional Engineer showing how the entire site will be closed/restored upon completion of the excavation. For phased operations, no permit shall be issued for a subsequent phase until the prior phase has been completed and a report provided by a licensed Professional Engineer.
4. The active gravel removal area shall not exceed a total of ten (10) acres at any time. The proposal exceeds this limit.
5. Please provide all information required for submission per Section 8.16(M)(2)- particularly f & g
  - a. Applicable Site Plan information per check sheet

- b. The proposed truck access to the excavation. (provided)
  - c. The hours of operation. (provided)
  - d. The machinery to be used on site.
  - e. The type of buildings or structures to be constructed on site. (N/A?)
  - f. Location of existing structures on the subject parcel and adjacent properties, including information regarding depth to the ground water table and a log of soil borings taken to the depth of the proposed excavation.
  - g. details for final grading and landscaping after completion of operations, and proper drainage of the area of the operation during and after completion of the work.
6. In addition to the requirements of 8.16, and other applicable regulations pertaining to site development, access, lighting etc., Applicant must comply with the Special Permit Criteria listed in Section 11.3.4.

Applicant has not provided sufficient information to determine compliance with several of the Special Permit Criteria – particularly 8.3.4 (B) (D) (E) and (F).

(B) that transportation services would be adequate and that the uses would not cause traffic congestion or undue traffic generation that would have a deleterious effect on the welfare or the safety of the motoring public;

(D) that no adverse effect would result to the property values or historic features of the immediate neighborhood;

(E) that the character of the immediate neighborhood would be preserved in terms of scale, density, intensity of use, existing historic/natural assets/features and architectural design;

(F) In accordance with CGS §22a-19, that the proposed uses would not cause any unreasonable pollution, impairment or destruction of the air, water and other natural resources of the state; and

7. As "blasting" was never formally approved on the site, no studies were conducted to my knowledge concerning the potential impact to nearby wells, structures or groundwater resources.
8. How much truck traffic is and will be generated by the activity?
9. The stated purpose of the Excavation regulations is to insure the following:
- 1. the landscape is not needlessly marred during and after operations;
  - 2. the work will not be a source of dust, pollution, and/or siltation;
  - 3. the site will not be generally characterized by unsightliness as evidenced by open pits, rubble or other indications of completed digging operations which would have a deteriorating influence on nearby property values; and
  - 4. the site will have future usefulness when the operation is complete.

I do not believe the current operation or property conditions comply with the stated purpose.

I have not fully reviewed for conformance with the Site Plan Check Sheet or applicable sections of Chapter 9 – Site Development Standards, but most are not applicable.

***Respectfully submitted,***

***Juliet Hodge***