

Town of Westmoreland  
Zoning Board of Adjustment  
Draft minutes of August 21, 2013

Present: Peter Remy, Chairman; Barry Shonbeck; Russ Huntley; Nancy Ranson; Bill Campbell  
Bill Campbell was a non-voting member as he had not heard all of the previous testimony.  
Brian Merry arrived at 6:40pm .

Graves Trucking Hearing

This hearing is continued from July 24, 2013. Graves Trucking, Inc. submitted an application to the Zoning Board for a Special Exception concerning Article III, Section 305.1 and Article V, Sections 501.A and 501.D and Tables 502 and 505; and Variances concerning Article IV, Sections 402, 414, and 445 and Article V, Tables 502 and 505 of the Westmoreland Zoning Ordinances. The applicant proposes to establish and operate a quarry to excavate bedrock at the property located off Old Route 12 North, Map 17 Lots 28/29 in the Commercial/Industrial and Rural Residential zones.

At the July 24, 2013 hearing the Board voted to grant the variances for Article IV, Section 402 and for Article IV, Section 414. This current hearing addresses the request for a variance for Article IV, Section 445.

Mr. and Mrs. Tim Graves, owners of Graves Trucking, Inc. were present, and represented by Dick Fraser of One Source Properties and Permitting; Attorney Tim Britain of Cleveland, Waters, and Bass, PA; and Peter Hicks, owner and operator of Seismic Solutions.

Chairman Remy convened the meeting at 6:00 pm and the Board members reviewed the minutes of the July 24, 2013 hearing. Minor corrections to spelling and typographical errors were pointed out.

Attorney Britain said that one statement by him on page seven did not include the word "not", thereby giving the sentence the opposite meaning of what he meant. His sentence should have read, "...the easement agreement is rooted in New Hampshire law". Attorney Britain also clarified on page six that he said, "Ms Rodrigues purchased her property seven years after George Graves began excavating sand and gravel." Further down on page six of the minutes Attorney Britain said that another comment he made should have read, "Town Planners considered this when they permitted quarries in these districts (rather than "in every district").

Mr. Shonbeck said that there was some confusion there because Section 441 of the ordinances says that "in **any district** in accordance with 155-E, the removal of soil, sand, or gravel for sale.....shall be permitted.....

Russ Huntley made a motion to accept the minutes as amended and Nancy Ranson seconded. All voted in favor.

Mr. Remy explained to Mr. Graves and his team that with only four voting members present, he could elect to wait until the next month's hearing to have five voting members. The Graves team withdrew to another

space to discuss this and decided to wait for the next hearing, but Mr. Merry arrived at that moment and the Board now had five voting members so the hearing could proceed.

Attorney Rebecca Wagner, an attorney representing Patricia Rodrigues and John Corduff, the closest neighbors to the proposed quarry, submitted a motion for re-hearing the decisions made at the previous hearing on July 24, 2013 to grant variances for Article IV, Section 402 regarding frontage requirements, and Section 414, regarding the location of driveways.

Attorney Britain asked that Mr. Peter Hicks, the blasting expert, be allowed to clear up a statement in the minutes of June 26, 2013 regarding the noise level of the blast that could be heard at the home of the closest neighbor, Patricia Rodrigues and John Corduff. It was questioned whether Mr. Hicks had said that the noise level would be between 100 decibels and 120 decibels.

Mr. Hicks agreed that the minutes reflected what he had said but he was speaking in the context of dangerous decibel levels being around 160 decibels compared to the average decibel level which would reach Ms. Rodrigues' property and explained further the factors that would affect the loudness of the blasts: cloud cover, wind direction, and humidity. Averaging out these variables, Mr. Hicks said that the blasting sound will be about 122 decibels. However, the duration of the sound would be less than one second. A blast will produce temporary sounds, the initiation noise and the rock wash. Both are fleeting sounds and not sustained noise and they will be well under 160 decibels.

Ms. Rodrigues said that it was her understanding that the opening of the quarry required many small blasts. Mr. Hicks explained that small shots are better to initiate and develop the benches. The first shots are not for the production of rock.

Ms. Rodrigues also wanted to correct the minutes of July 24, 2013. At that meeting Ms. Rodrigues said that the minutes of June 26, 2013, when the Board made a site visit, did not accurately reflect a comment she had made and she wanted the minutes amended. The Zoning Board clerk said that she had read the sentence back to Ms. Rodrigues and that she had approved it at the time. Ms. Rodrigues said that the minutes did not reflect the facts.

Mr. Shonbeck made a motion to reopen the review of the July 24, 2013 minutes. The motion was seconded by Russ Huntley and all voted in favor. Mr. Shonbeck suggested that the July 24, 2013 minutes which had already been approved should stand, as is, and that the minutes of the current hearing give Ms. Rodrigues an opportunity to correct the first and second statements attributed to her. Chairman Remy agreed and Ms. Rodrigues said the comment should read, "Ms. Rodrigues said the elder Mr. Graves bought the property which became a sand and gravel operation, and cut through the railroad embankment."

Attorney Britain submitted a letter to the Board which he had sent to them shortly after the July 24, 2013 hearing dealing with Variances concerning Article V, Tables 502 and 505. He wanted to clear up any confusion the Board might have concerning his request to have the Board rule on those Variances. His letter is as follows:

***Dear Mr. Remy:***

*This letter follows the hearing of the Town of Westmoreland Zoning Board of Adjustment (the "Board") held on July 24, 2013 regarding the Graves Trucking, Inc. application filed on April 1, 2013 for a special exception to establish and operate a quarry on its land located off of Old Route 12 North (Tax Map R17, Lot 28), and for variance relief from certain provisions of the Town of Westmoreland Zoning Ordinance in connection with such use as follows: Article IV, Section 402 (Required Frontage on Public Roads); Article IV, Section 414 (Location of Driveway); Article IV, Section 445 (Grading); and Article V, Tables 502 and 505 (Relative to Frontage Requirements in the Commercial-Industrial ("C/I") and Rural Residential ("RR") Zoning Districts).*

*At the July 24 hearing, Richard Fraser of One Source Properties & Permitting, LLC, presented evidence in support of the variance requests concerning Article IV, Section 402, Article IV, Section 414 and Article V, Tables 502 and 505, as the bases for the requested variances were virtually identical. After the close of the public hearing regarding those requests, the Board discussed, considered and voted to grant the requested variances concerning Article IV, Section 402 and Article IV, Section 414. After the Board announced its decisions, I asked the Board to rule on the requested variances concerning Article V, Tables 502 and 505 as the evidence for same had already been presented in connection with Article IV, Section 402. My request seemed to cause confusion, as it appeared that the Board believed that the variance requests concerning Article V, Tables 502 and 505 had already been addressed and resolved by its decision concerning Article IV, Section 402. If my supposition is true, we concur and I am writing to apologize for any confusion and to clarify the record.*

*As the Board is well aware, the requirements set forth in Article V, Tables 502 and 505 merely quantify the frontage requirement established in Article IV, Section 402, and describe the distance required under Article IV, 402 as 200 feet in the C/I District and 500 feet in the RR District. After further reflection on the hearing, we are of the opinion that the Board's decision granting variance relief from Article IV, Section 402 subsumes the relief requested concerning Article V, Tables 502 and 505 and thus no actual decision by the Board is now necessary regarding that request as the relief has already been granted. Assuming the Board agrees with this analysis, on behalf of Graves Trucking, Inc. we hereby withdraw the requests for variances from Article V, Tables 502 and 505 as unnecessary.*

*If the Board disagrees with the above analysis, please advise as soon as possible. Thank you for your assistance.*

**GRAVES TRUCKING, INC.**

**By Its Attorneys,**

**CLEVELAND, WATERS AND BASS, P.A.**

Mr. Remy invited Mr. Fraser to give his arguments for granting a Variance for Article IV Section 445 which states that, "no grading, cut, or fill shall be carried out in any district, which leaves the slope of the finished grade in excess of one to two".

Mr. Fraser read the arguments which he had laid out in his booklet on pages 21 through 24. They are as follows:

**ARTICLE IV, SECTION 445 (GRADING)**

For the reasons stated below, the applicant satisfies these requirements relative to its request for variance relief from the above-referenced section of the ordinance.

**Granting a Variance Will Not be Contrary to the Public Interest**

Granting a variance relative to the grading will not be contrary to the public interest. The zoning ordinance states, "No grading, cut or fill shall be carried out in any district, which leaves the slope of the finished grade in excess of one to two." It is customary to interpret "one to two" to mean 1 unit horizontal to 2 units vertical. The standard would provide that no finished grade would exceed a slope of 63°. As noted on the permit application plan set, the prescribed finished grade relative to quarry faces is set at twelve units vertical to one horizontal. This places the final quarry walls at an angle of 85°, or near vertical. Drilling equipment utilized at quarry sites nearly always set to drill vertical into the bedrock. It offers efficiency and control to the drill operator. This is clearly the standard used for drilling and ultimately setting the final grade for like sites throughout New Hampshire. Drilling at an angle other than vertical presents challenges/ obstacles to the drill operator and would represent a significant increase to the cost to the applicant. Also, the proposed slope will serve to provide the maximum amount of mined aggregate from the site insuring a long-lived source of material for the greater region's demand for said products (private and public sectors).

Abutting property owners, Wesley Staples and George Graves, have been briefed relative to the project and they both have submitted statements conveying their approval of the overall plan. Their statements are part of the record and are included elsewhere in the application booklet.

The vertical walls and any exposed ledge surfaces are deemed by the NHDES as being not erodible, therefore they are not required to be reclaimed in the same sense as typical sand and gravel sites. Obviously, peripheral areas of the proposed use area will be appropriately graded and stabilized utilizing seed prescriptions outlined in the application materials. Setting quarry faces at an angle less than near vertical provides an opportunity for fines to collect on the surface and become transported by stormwater runoff. The planned grading eliminates this potential issue.

It should be noted that a bar gate will be installed at the site to limit access to authorized vehicles only. Signage along the perimeter of the site with substantial berms erected along the perimeter of the project area will be part of the safety measures undertaken by the applicant.

As discussed above, by granting the variance, there will be an increase to the town's tax base and tax revenues. The town will be collecting additional revenues (from increasing the total volume of material eligible to be excavated), pursuant to RSA 72-B (a/k/a the Gravel Tax)

The angle of the finished grade will not impact the overall management and development of the site. The geology remains as described previously and the use will seamlessly dovetail and ultimately replace the existing George Graves operation as earlier stated. It is reasonable to conclude the project area is

uniquely located for such use, and the provision for near vertical faces will have no different effect upon the overall activities which have been a part of the greater locality and what the neighborhood has experienced for nearly a quarter century.

The proposed 12:1 finished grade (faces only) will not alter the essential character of the locality. It will not violate the spirit or intent of the zoning ordinance. It is clear that granting the variance will be beneficial to the public interest.

### The Spirit of the Ordinance is Observed

According to RSA 674:17(h), one of the purposes on the zoning ordinance is "to assure proper use of natural resources and other public requirements;" RSA 674:17(j) provides guidance relative to zoning ordinances and "encouraging the most appropriate use of land throughout the municipality." The provisions in the town's ordinance complement those sections of the RSA. The ordinance does provide as a permitted use the establishment of a quarry in both zoning districts (by special exception). The most appropriate use for the property was clearly articulated in the "Granting a Variance will not be contrary to the public interest" section of this document, namely the proximate location to an existing excavation

site/aggregate processing plant site which will be utilized by the applicant, together with the nature of the bedrock geology, shallow depth to bedrock, and associated slopes making it an ideal site for a quarry.

Granting a variance for the overall use as quarry, also suggests the applicant present a design, including near vertical faces, which most effectively provide measures that accommodate environmental BMPs, ample operating area, and provides the region with a potential long-lived resource to address current and future aggregate demand from public and private entities.

With consideration for the character of the area and the particular suitability of the intended use, the proposed quarry site is indeed the most appropriate use of the land and the proposed near vertical quarry walls provide for the efficient and managed development (environmentally with practicality). It is not contrary to the spirit of the ordinance and does not violate the ordinance's basic zoning objective.

### Granting the Permit Will Do Substantial Justice

As mentioned previously, the proposed use provides a benefit to the general public. Quarrying stone provides aggregate products which are used by all towns and state government. In general, they are used for the maintenance and expansion of the local and regional infrastructure. The material will be available to towns and state government for use as sub-base road materials, ditch maintenance products (used in conjunction with Best Management Practices, stream or river bank stabilization projects, etc.) Also, the materials would be available to the private sector for all types of construction projects related

to residential, commercial, or industrial development. Providing near vertical walls relative to quarry faces serves to increase the amount of material available for said uses.

Granting the variance will increase the town's tax base and tax revenues. This added town revenue is a benefit to the townspeople.

There is nothing to suggest that any loss to the applicant is outweighed by a benefit to the general public, therefore granting the permit will do substantial justice.

### Values of Surrounding Properties Are Not Diminished

Providing near vertical faces as part of the quarry design will have no impact to the values of surrounding properties. It is important to note that a closely related operation (excavation) utilizing the same crushing equipment, trucks, truck routes have been ongoing for nearly 25 years (George Graves excavation site) relative to the surrounding properties. Notably, it has not had an impact to the continued development occurring along Old Route 12 North.

The proposed project will be very similar to what the neighborhood has experienced/presently experiences. The only additional factor being introduced is the process of mining the bedrock. It is very important for the board to realize that activity will occur on a very limited basis. Once the quarry site has been opened, blasting is expected to be limited to 2-3 shots per year. The event (blasting), in realistic terms, has a life measured in seconds. The process of drilling of holes to prepare for each shot will occur over a period of 2-3 days. The noise emanating from the drilling equipment will be non-intrusive based in part on the mature vegetative buffer that exists along the property boundary. Please note the equipment is also equipped with a dust collector which will effectively address the associated potential issue of fugitive dust.

Operating the site utilizing the best Best Management Practices is paramount to the applicant and will be enforced by him with all contractors entering the site. The point is simple...protect the environment and the well-being of the neighbors and community by employing measures (Best Management Practices) which eliminate or effectively mitigate potential impacts (i.e. potential visual impacts, potential dust, potential noise, potential erosion and sediment control issues, etc.). Those measures have been articulated throughout the application materials.

The proposed use, with near vertical faces within the quarry will not trigger a diminution of surrounding property values, and granting the variance will not violate the spirit or intent of the zoning ordinance.

### Literal Enforcement of the Provisions of the Ordinance Would Result in Unnecessary Hardship

A zoning restriction as applied to the applicant's property interferes with their reasonable use of

the property, considering the unique setting of the property in its environment.

The 1:2 final grading standard noted in the zoning ordinance presents a hardship relative to the design of an efficient quarry site, one which is able to accommodate sufficient stormwater storage and infiltration area in the sub-drilled floor, provides an adequate area for stockpiling aggregate materials, and provides a work area which is of adequate size to safely operate its use. As stated previously, the subject property is a land-locked parcel, obviously not having the ability to meet the town's zoning ordinance requirements for any type of development which specify road frontage and driveway placement standards. The unique setting of the property simply causes it to be burdened by zoning restrictions in a manner that is distinct from other situated properties. In addition, the topography (slope) of the property with its shallow depth to bedrock, provide very substantial, if not impossible to negotiate hurdles to using the property for those uses permitted in the zoning ordinance (C/I & RR zoning districts). Most of the uses involve development relative to site improvements by conventional earth moving equipment, and subsequently the construction of buildings both of which are not conducive to this site. Simply stated, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. The applicant wishes not to find himself in a situation whereby the ability to receive a reasonable return on his investment is compromised. The use, with benched, near vertical faces, would not alter the essential character of the neighborhood (as closely related activities have been part of the locality for decades). The property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property.

The general purposes of the zoning ordinance with respect to grading, while applicable to sand and gravel removal, are not applicable in the context of a quarry with benched, near vertical faces. As stated previously, the use of the property as a quarry site is a permitted use (by special exception) within both zoning districts which bisect the property (Commercial/Industrial and Rural Residential zoning districts). By allowing a quarry as a permitted use, the zoning ordinance recognizes the inherent differences between sand and gravel sites and quarry sites. A quarry by general definition has near vertical walls. Moreover, the NHDES recognizes that vertical walls and any exposed ledge surfaces found in quarries are not erodible and therefore are not subject to reclamation standards as typical sand and gravel sites. Obviously, peripheral areas of the proposed use area will be appropriately graded and stabilized utilizing seed prescriptions outlined in the application materials. By granting the variance relative to the proposed near vertical quarry walls, the general purpose of the ordinance will be fairly exercised. The existing character of the neighborhood will be preserved by virtue of recent development projects along Old Route 12 and other long-standing, industry-related uses located proximate to the site (Graves & Hodgkins excavation sites). The subject use with reduced 12:1 sloped faces will simply dovetail with ongoing neighborhood development. The public good (for reasons stated previously) will not be compromised and the landowner will experience unnecessary hardship should the variance not be granted.

At the conclusion of Mr. Fraser's statement Mr. Remy began the discussion.

He asked Mr. Hicks, "Can this property be blasted and meet the requirements of a 1:2 slope?"

Mr. Hicks replied that it is very important to have a vertical face in an aggregate producing quarry. It would be difficult and not safe to place the shots in a rough slope where there is a lot more rock at the bottom than at the top. The biggest factor is to have a uniform pattern of shots placed in a row and then another row. A staggered face is not conducive to producing aggregate. Calculating the amount of explosives would be difficult. The shots would result in undesirable breakage. He did not know of any quarry that is not vertical.

Mr. Remy asked again, "Can it be done?"

Mr. Hicks said no, cost effectiveness alone would prohibit it.

Mr. Campbell said that he is a truck driver and he sees a lot of blasted faces on the highways and it seems they are making vertical faces out of formerly sloping faces.

Mr. Hicks said the biggest safety factor is in the uniform spacing of the holes.

Brian Merry asked about the height of the face. Mr. Fraser figured that the southeast corner will show the most height with the pit floor being at an elevation of 435 feet and the top of the face at that corner will be 600 feet. At the site visit the group was standing at about the 450 foot contour line so there will be a slight decline to the floor of the pit.

Mr. Merry expressed his concern about someone stumbling onto the site and dropping 150 feet.

Mr. Fraser said that the face on the south end would be benched every 50 feet and there will be signs and substantial berms, which are meant to stop the public from accessing the site.

Mr. Remy asked him to define 'substantial' in width and height.

Mr. Fraser said that whatever topsoil is pulled off will be used to create the berms. Mr. Graves said that it would be more than head height, around eight feet high and could be as much as 12 to 14 feet wide at the bottom of the berm, however the earth falls naturally. There will be a berm around the radius of where the blasting occurs. A sizeable area will be stripped prior to blasting.

Attorney Britain said there would be a flat space both in front of and behind the berm, enough space to not come over the berm and be at the edge of the pit.

Mr. Shonbeck asked about the signs.

Mr. Fraser said they would follow state laws for posting and be about 12 by 16 inches. They may say Danger or No Trespassing.

Mr. Merry asked if part of the reason for vertical walls was to contain run-off.

Mr. Fraser said that run off is one benefit of vertical walls. It is an efficient design for a lot of reasons. There is no slope for run-off and fines. Vertical walls provide a larger area for sub-drilling for storm water infiltration. With a slope there is acceleration of the run-off and increased fines, needing more run-off controls. With vertical walls, there is only the water that falls on the floor or on a bench which will also be drilled for infiltration of storm water.

Mr. Huntley said that the spirit of the ordinance, Section 445 does not leave much room for interpretation. It just says not in excess of a one to two slope. How, specifically, does the difference in the slope fit with the spirit of the ordinance?

Attorney Britain answered that the spirit of the ordinance is to allow a quarry by Special Exception in these two districts. The spirit of the ordinance of a sand and gravel operation is to make it an appropriate slope for reclamation or remediation. Whoever developed the slope ordinance was thinking in terms of a sand and gravel operation and not in terms of a quarry. They are two different things. But the appropriate and safe way to develop a quarry is to have the vertical slope.

Mr. Remy asked Attorney Britain if the spirit of the ordinance is to allow people to roll down the hill and not fall one hundred and fifty feet?

Attorney Britain said the ordinance was written for the remediation of a sand and gravel operation.

Mr. Remy said that that issue is covered by 155.e. He thinks that the spirit of this ordinance is to prevent people from falling from a vertical height.

Attorney Britain said that allowing a quarry by a Special Exception and then imposing this grading requirement is inconsistent. A quarry, by definition, has vertical or nearly vertical faces and we have heard the reasons why. You can't say that a quarry is an appropriate use and then put on it a requirement that makes that use more dangerous. He does not think it is the spirit of the ordinance to do that.

Mr. Campbell said it seemed as if the ordinance did not take into account the difference between a sand and gravel operation and a quarry.

Mr. Hicks said that you couldn't get a vertical face in a sand or gravel pit.

Mr. Remy said that the Board has to evaluate the ordinance by the state's criteria. The quarry will be there long after we are gone.

Attorney Britain said there has to be a rational reason for an ordinance and a Variance is the tool for making a rational use when it recognizes that a particular requirement just doesn't apply to an allowable use. It cannot be the spirit of the ordinance to want to create a safety hazard situation by requiring a slope that is contrary to best management practices for a quarry use and the ordinance specifically allows a quarry use.

Mr. Remy said that he understands that but it comes back to Mr. Merry's concerns about safety. That quarry will be there when they are all dead and buried and there will be this wall sitting there.

Attorney Britain said the Board has the ability to impose reasonable conditions on their vote. The safety issues are addressed by the berm Mr. Graves has described to prevent anyone from falling over the edge.

Mr. Huntley asked about the hardship issue. It seemed that you could have a quarry with the slope required by the ordinance. You would be losing a substantial amount of material but is that the hardship which the criteria refers to? What would be the hardship other than financial?

Attorney Britain said that hardship can be financial under state law. Hardship is a two-pronged test. Is this a reasonable use and does this restriction interfere with the reasonable use? This is a reasonable use because the town says it is by Special Exception. But the slope issue is an unreasonable restriction for the reasons testified to in terms of a quarry. This use meets both prongs of the hardship tests as described in the statute.

Mr. Shonbeck said he understands the reasons for a vertical edge for an operational quarry but he has not heard anything about the reasons why there cannot be a slope created after the quarry is no longer operational. It will be there forever and we will not. Is there a reasonable way to adjust the slope after the quarry is played out? Could there be aggregate set aside for the purpose of forming a final slope? Could there be overburden which you have extra of?

Mr. Shonbeck said his main concern is safety, not while blasting but in the final grade. Nowhere in the proposal had he seen it addressed. This thing is going to be there forever and we are not. We are speaking for the future users of the area. He knows kids and quarries. Is there a reasonable way of adjusting that final grade?

Mr. Fraser said that the Board has the ability to set safety conditions, but adjusting the slope would be cost prohibitive and fencing would be much more reasonable and safe.

Mr. Shonbeck said that as long as safety is addressed his fears are somewhat alleviated. Especially as this quarry is located in a neighborhood. Perhaps fencing is reasonable, although he doesn't know about long term maintainance.

Mr. Hicks said that a 45 degree rubble slope is not really safe. He agrees that a fence is a better solution. Chairman Remy said that Section 441.1.E, while it doesn't apply to this proposal does require that excavation slopes in excess of one to two shall be fenced. So it does use fencing as a solution to a more vertical slope.

Chairman Remy brought the discussion back to the hardship issue. Monetary reasons don't usually come into their criteria. Hardship has to be that your land has something different than your neighbor's land. Help us understand that.

Attorney Britain said that if the financial cost of compliance is unreasonable when there is alternative means, particularly if the means required by the Board creates a more dangerous situation at the end of the day he thinks it is unreasonable and still satisfies the hardship criteria.

Mr. Remy said that he understands the cost but everyone has seen sloped excavations. They can be done.

Mr. Hicks said not in a quarry.

Mr. Remy said, sure, because it is about efficiency.

Mr. Hicks said it is about safety, also. A quarry has a vertical face because it is a safer way to blast, a lot safer. When you drill, sometimes the drill doesn't always drill a perfectly straight hole. Sometimes it wanders. He was taught that dynamite is lazy; it always takes the easiest way out. Vibration wise, if you are underloading the top of the column because you're worried that the face is thinned out on top, you can create a lot of vibration over at Ms. Rodrigues' house. If you don't break the rock you've created energy that's going to go out somewhere as vibration. And also sound. The thinner the face on top, the more the sound is going to penetrate. He is not looking at hardship, he is looking at safety. Sound, vibration, and safety are the reasons for a vertical face.

Mr. Remy asked for comments from the abutters.

Attorney Wagner reiterated Mr. Shonbeck's point of how the area should be left when the quarry is played out. She was also concerned for the safety of the walkers and snowmobilers straying off the rail trail and falling off the edge. Her client, Ms. Rodrigues, suggested that the quarry be filled back in with dirt, re-seeding it and creating a pleasant area and perhaps plant trees. And again, for the safety of those who use the rail trail, walkers and snowmobilers. They could wander off the trail and take a nosedive into the pit. She said her client already experiences trouble with water coming off the hill onto her property. Her concern is that since the pit bed will be infiltrated there will be even more water on her property.

Attorney Britain said that filling the quarry back in is an unreasonable request. Where could such a volume of dirt come from? There is no rationale for that and that type of material is better used for other development projects. He understands the safety issue and it is being addressed through berms, signs and fences.

Mr. Remy asked for the elevation of Ms. Rodrigues house.

Mr. Fraser said that her house is on the 425 foot contour line.

Mr. Remy asked Mr. Fraser to speak to the issue of water leaving the site. What happens to that water once it has been infiltrated? Is this something Ms. Rodrigues should be concerned about?

Mr. Fraser said that the state agency has inspected the site and did not find water runoff an issue; that is his specific charge, to determine what effect this project would have on groundwater. He granted the alteration of terrain permit. He suggested Ms. Rodrigues should investigate where the water is coming from and have it remedied.

Attorney Wagner asked if the Board would consider the idea of filling the pit. Mr. Remy said that if this goes to the Planning Board those are things they would consider.

Ms Rodrigues asked Mr. Hicks to address the issue of how many holes will be drilled, how much noise that would involve.

Attorney Britain said that that was a question for when the Special Exception is considered. Mr. Remy agreed. He has his own questions about noise.

Mr. Corduff asked about which type of explosives would be used.

Mr. Hicks said there are many different types of explosives. Mr. Key would be the one who made those decisions.

Mr. Corduff said there were concerns about explosives leaching into the water.

Mr. Hicks said that that is no longer an issue as percolites are no longer used.

Stuart Adams asked whether Cold River's operations are being held to the same standards. He said that a quarry could actually improve the water run-off situation by minimizing runoff. The brook is hammering the people down below, too. He added that Mr. Graves might as well close up shop now if he is made to fill in the quarry hole. He would never make a dime. It's expensive work to do.

Wesley Staples said that Tim Graves is willing to do a lot more than the other quarry in town as far as safety goes. He has been to the other quarry in town and has not seen any berms or fences. Besides, the public's going to do what the public's going to do. Mr. Remy said they may have requirements that are not being enforced. Or maybe those things were not required when they applied for their permit.

At that point, Chairman Remy closed the public hearing and the Board began to deliberate using the criteria for granting a variance.

1. Will not be contrary to the public interest.

Mr. Shonbeck said that his concern is safety and that concern can be alleviated by the combination of the berm and fencing and warning signs. Safety is much more of an issue because this quarry would be located in a neighborhood as opposed to the other quarry in town which has no houses near it.

Mr. Huntley asked whether the public interest is benefitted by a 63 degree slope as opposed to an 85 degree slope. This ordinance does not seem applicable to the proposed use and the question itself doesn't really fit with the ordinance.

Mr. Merry agreed with Mr. Huntley. He said that taking the testimony of the blasting expert at face value, it is in the public interest to blast vertically rather than otherwise. It is safer.

Mr. Shonbeck added that it tends to minimize vibration and noise.

Mr. Huntley agreed that the testimony indicates that the public interest is actually served by granting the variance.

2. It does not violate the spirit of the ordinance.

Chairman Remy said that the one thing that the town's attorney, Attorney Little, said is that this quarry is going to be here for long after we are gone. We should be thinking of this criteria in those terms also. They have offered some remedies for making it safer, if that was the intent of that ordinance.

Mr. Merry said the key word in the ordinance for him is the finish edge, which should be about safety and appearance. If the state does not require quarries to remediate the land and if they are willing to put in these safety protections, then, as far as he's concerned, the spirit of the ordinance is satisfied.

Mr. Shonbeck agreed with Mr. Merry that the ordinance is about safety and as long as those concerns are addressed he feels that the spirit of the ordinance is not violated.

3. Granting the variance will do substantial justice.

Mr. Huntley said that the last paragraph of the application says it; there is nothing to suggest that any loss to the applicant is outweighed by a benefit to the general public. If a quarry is allowed the general public will not benefit or lose no matter the slope results.

Mr. Merry and Mr. Shonbeck both agreed.

4. There will be no diminution in value of the surrounding properties.

Mr. Shonbeck said that a slope that no one can see will not affect the property values.

Mr. Merry said the use is appropriate for the site so the slope is not going to diminish the value of properties.

Mr. Remy reminded the Board that appropriate use has not been established until the Special Exception is heard. But he agreed that the property values should not be diminished.

Mr. Shonbeck said as long as they have not introduced a safety issue to the neighborhood.

5. Literal enforcement would result in unnecessary hardship.

Mr. Huntley said that he wanted to hear about the uniqueness of the land, as it might be that it is a quarry and not sand and gravel so that the slope is a different issue for the distinct uses.

Mr. Merry said that he must defer to the experts at blasting that vertical is the way to go for a variety of reasons so if the enforcement is literal and the proposal does not get done at all, it is a hardship.

Mr. Remy said that there was a lot of testimony about why a vertical face was necessary and safer but he would like clarity about what makes this property unique, that makes it worthy of a variance from that ordinance.

Attorney Britain asked to make a comment. He said that what is unique about it is that it is capable of being developed as a quarry. Not every property is capable of being developed as a quarry so you have a natural resource that is capable of being developed for one of the uses that is specifically contemplated for that zoning district. It is a reasonable use and it is unique because it can be used for that use. And the second part of that hardship test, does the restriction interfere with that reasonable use and clearly it does from Mr. Hick's testimony.

Mr. Shonbeck interjects that the ordinance is not for the ongoing activity but for the finished grade, the slope that will be left after removing the material. He heard Attorney Britain say that it is a blasting issue.

Attorney Britain said that it is a quarry issue.

Mr. Remy said he would like to open up the public hearing for taking testimony.

Attorney Britain said again that it is a quarry issue. Nobody would endeavor to establish a quarry if you are going to impose a 2:1 grade at the end of the life of a quarry. And if you don't have quarries you are not going to have the materials that are necessary for the development of public and private projects that are necessary

in this area. Without rock how are you going to repair the damages of the floods that this area has dramatically experienced in the last month and a half? It is a quarry issue.

Bill Campbell said that if the state hasn't made provisions for reclaiming the quarry, then the state doesn't say that you must blast on a 2:1. There is no reclamation, then you have vertical. It might be over simplifying. Mr. Remy responded that we throw in a local ordinance, the town of Westmoreland's ordinance, that says we have this Section 445 which says the finished grade must not be greater than 2:1.

And Attorney Britain said that was the purpose of a Variance. When you have a requirement in the ordinance that doesn't fit, that's why you grant a variance.

Mr. Remy said as long as you meet the five criteria. That is what they are charged to do.

Attorney Wagner said they had talked at the last hearing that there are a lot of properties in New Hampshire with ledge that are suitable for being quarries so that doesn't make the property unique.

Attorney Britain responded that the uniqueness requirement of the property does not mean unique in the state of New Hampshire or even in the town of Westmoreland, it is unique in the area where it is located.

Ernie Vose, of the Walpole Zoning Board mentioned that the present slope of the land is steeper than 2:1. Mr. Fraser said that a 2:1 slope is twenty-six and a half degrees. Mr. Vose said that is steeper than the present slope but even at that level it's too steep to be safe, in his opinion.

Mr. Remy said yes, but you would roll down.

Mr. Huntley asked what the slope would be leaving out the benches.

Mr. Fraser did the measurements and the math and said that it is almost a 1:1 slope without the benches. Then he folded a piece of paper to show what the face would look like with the benches.

Mr. Remy closed the public comments again and re-entered the Board's deliberations, back to the hardship criteria.

Mr. Shonbeck said that Mr. Fraser's arguments on criteria #5 do not convince him but he has heard arguments that there is a way to get the safety aspect taken care of and to minimize the expense and maximize the amount of material that will be available to the public in another way other than the 2:1 ratio. He is won over by that.

Mr. Remy asked Mr. Shonbeck to help him understand about the hardship aspect.

Mr. Shonbeck said that literal enforcement would require them to bring in material to accomplish the correct slope. It is not impossible. But the reason for a 2:1 slope is mostly a safety issue, in his mind. If they can give

a variance that would allow the applicant to get the maximum material out and still meet the needs of safety that he envisions, then he would argue that the literal enforcement would be a hardship to the applicant and no major gain to the public.

Mr. Merry agreed.

Mr. Remy asked if they were going to impose conditions, what might they be.

Mr. Huntley said that a fence, fairly close to the edge of the pit is the way to go.

Mr. Remy likes a fence on top of the berm and asks when should the berm and/or fence be constructed?

Mr. Shonbeck asked what constituted a fence?

Not just a piece of barbed wire said Mr. Remy.

Attorney Britain said that the planning board determines the type of fence.

Mr. Remy said he would like it to be an impassable fence.

Mr. Shonbeck suggested that the berm follow the active edge of the pit as it is developed.

Mr. Huntley wondered what would happen if five years down the road the owners decide to abandon the quarry.

Mr. Remy said that they could make a recommendation to the Planning Board to make provisions for that.

Mr. Merry said that a fence is really just an attempt at safety. There will be people who will court danger.

Mr. Remy asked for a motion. Mr. Merry made a motion to approve the requested variance subject to the following conditions:

1. A berm will be built and maintained which follows the active edge of the pit until the finished edge is reached .
2. A safety fence will be erected on top of the berm.
3. A recommendation made to the Planning Board that they determine a plan for ensuring the installation of this safety fence if the quarry is abandoned.

Mr. Shonbeck seconded the motion. All voted in favor.

Chairman Remy said that the proposal could go no further until the request for a re-hearing was heard. That hearing was set for the next regularly scheduled Zoning Board meeting, Wednesday, September 18, 2013. The meeting will begin at 6:00 pm and the hearing will start at 6:30 pm.

Bill Campbell made a motion to adjourn and Barry Shonbeck seconded. All voted in favor and the meeting adjourned at 9:04 pm.