

DM ROMA

CONSULTING ENGINEERS

July 13, 2017

Marge Govoni, Chairperson
Town of Windham Zoning Board of Appeals
8 School Road
Windham, Maine 04062

**Re: Application for Amended Conditional Use
35 Cherry Lane, Tax Map 5, Lot 9
MB Properties, Inc. – Record Owner and Applicant**

Dear Ms. Govoni:

On behalf of MB Properties, Inc. we have prepared the enclosed plan and supporting material for an amendment to the Conditional Use approvals (previously referred to as Special Exception Approvals) on the above referenced parcel related to the storage of hazardous material as an accessory use to the Heavy Industrial use that currently exists on the property. In 1992, the applicant received approval from the ZBA to store up to 3,000 lbs of explosives on the property. In 2001, the ZBA granted an amendment to allow up to 5,000 lbs of storage of explosive materials. Copies of the Decision Documents from 1992 and 2001 are included for reference.

The proposal is to install a gravel pad measuring 80 ft by 200 ft that will be used to locate additional magazine storage for explosive materials in accordance with the requirements of the US Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives. The exact capacity of storage that is allowed is a function of the distance to inhabited dwellings or public highways, and the separation distance between individual magazine storage containers. We have prepared a plan showing that, to our knowledge, there are no inhabited structures located within 1,130 ft of the proposed gravel pad besides the structures that the applicant owns and occupies for their own business use. This setback corresponds with a single magazine that would store up to 30,000 lbs of explosives.

We request that the Conditional Use Permit be amended as follows:

- Remove the Condition of Approval #3 from the 2001 ZBA Decision that places a cap on the amount of storage at 5,000 lbs. We propose that the condition would stipulate that the storage capacity shall be in accordance with all federal regulations pertaining to the storage of highly explosive materials.

Upon your review of this information, please let us know if you have any questions or require any additional information.

Sincerely,

DM ROMA CONSULTING ENGINEERS

Dustin M Roma

Dustin M. Roma, P.E.
President

59 Harvest Hill Road, Windham, ME 04062 ◊ (207) 310-0506 ◊ dustin@dmroma.com

ZBA APPLICATION CHECKLIST

Revised 06/11/2013

The following requirements are to be included with each Board of Appeals applications:

1. A cover letter explaining why the Board of Appeals is needed and any other information that might be necessary.
2. A permission letter from the owner, giving you the right to go to the Board of Appeals.
3. A scaled site plan must show the following locations:
 - All buildings
 - Parking spaces
 - Septic Systems
 - All existing and proposed setbacks
4. If the property is being used for more than one use, you need to show the following:
 - The different uses
 - Parking locations for all uses
 - The Town of Windham's Land Use Ordinance is met.
 - If necessary, restaurants must show seating plans to scale.
 - Daycare use must show floor plan and percentage of structure being used.
5. Questions that are attached to application need to be answered with a brief explanation and attached back to application.
6. The Code Enforcement Office will need 8 copies of application, site plans and any other attachments, made into packet form. (The plans must be folded when submitted).
7. All submissions must be 21 days prior to the next scheduled meeting. The ZBA Boards meets the first Thursday of every month unless there is a holiday.
8. Application fee is \$400.00, check made out to the Town of Windham.

PLEASE INFORM US OF ANY SPECIAL REQUIREMENTS YOU MAY HAVE DUE TO A DISABILITY

Statement to Town of Windham Board of Appeals

I acknowledge submitting my application to the Board of Appeals and signing this statement that I the undersigned:

State the proposed plan is to scale and reflects the true representation of the proposal requested.

I further understand that if the Board finds that it does not, then the Board has the right to table my application until I have met the requirements.

Applicants
Signature Dustin M Roma *Date* 7-13-17

**APPLICATION FOR APPEAL
TO WINDHAM ZONING BOARD OF APPEALS
LAND USE APPLICATION**

APPLICANT

NAME: MB PROPERTIES, INC
ADDRESS: 11 CHERRY LANE, WINDHAM, ME 04062
TELEPHONE: 252 - 2019

OWNER

NAME: SAME
ADDRESS: _____
TELEPHONE: _____

ADDRESS OF PROPERTY OR LOCATION 35 CHERRY LANE
MAP # 5 LOT # 9 PROPERTY IS ZONED INDUSTRIAL
LOT WIDTH: 560 FT LOT DEPTH: 900 FT LOT AREA: 440,000 sq. ft.
EXISTING USE OF PROPERTY: HEAVY INDUSTRIAL

TYPE OF APPLICATION

_____	Variance from Ordinance
<u>X</u>	Conditional Use
_____	Appeal from decision of Code Enforcement Officer
_____	Home Occupation 2

PROPOSED USE: Please describe in detail what you wish to do and what the use of any proposed structures will be. (Attach a letter of explanation if necessary :)

AMEND THE CONDITIONAL USE APPROVAL FROM 2001 TO DESIGNATE ADDITIONAL STORAGE AREA AND TO REMOVE CAP ON THE AMOUNT OF EXPLOSIVE MATERIAL STORAGE.

Why is Board of Appeals approval required?

AMENDMENT TO CONDITIONAL USE APPROVAL

Amount of variance required, if any: _____ ft.

TYPE OF SEWAGE DISPOSAL SYSTEM: Present PRIVATE Proposed PRIVATE

STRUCTURAL DIMENSIONS: (Exterior length and width)

Existing: _____ ft. By _____ ft. Number of Stories _____

Proposed: _____ ft. By _____ ft. Number of Stories _____

NUMBER OF ROOMS IN PROPOSED STRUCTURE: _____

IS ADDITIONAL PLUMBING CONTEMPLATED? Yes _____ No X

If yes, please describe: _____

IF REQUIRED, HAS PLANNING BOARD APPROVAL BEEN OBTAINED?

Yes _____ No _____ Not Required X

A location map and a scaled site plan must accompany this application. The site plan must show dimensions of the property, location of all buildings, yards, parking spaces and septic systems, and all existing and proposed setbacks.

An application fee of \$400.00 for residential appeals as well as for non-residential or multi-family is required upon application submission. *If the Code Enforcement Office determines that ordinary and customary expenses associated with review of the development are higher than the \$400.00 fee, then the applicant shall be billed and shall pay to the Town prior to the final approval said expenses, including, but not limited to cost associated with notification of abutters, advertising of public meetings, and all the time dedicated to review of the development.*

NOTE: Applicant or his/her representatives must attend board meetings. If a request is needed to be tabled, the applicant or his/her representative must attend meeting to ask to be tabled. (11/21/91).

The right of any variance from the terms of this chapter granted by the Board of Appeals shall expire if the work or change permitted under the variance is not begun within six (6) months or substantially completed within one (1) year of the date of the vote by the Board.

I CERTIFY THAT THE INFORMATION CONTAINED IN THIS APPLICATION AND IN ITS SUPPLEMENTS IS TRUE AND CORRECT.

Applicant's Signature Dustin M Roma Date 7-13-17

Conditional Use Questions

H. Review Criteria. The Reviewing Authority shall have the power and duty to approve, approve with conditions, or deny conditional use applications based on the following standards:

1. Property Value. The proposed use will not depreciate the economic value of surrounding properties.
 2. Wildlife Habitat. The proposed use will not damage significant wildlife habitat or spawning grounds identified by the Maine Department of Inland Fisheries and Wildlife or by the Town of Windham's Comprehensive Plan.
 3. Botanical Species. The proposed use will not damage rare or endangered botanical species as identified by the Maine Department of Conservation or by the Town of Windham's Comprehensive Plan.
 4. Potable Water
 - (a) The proposed use has access to potable water,
 - (b) The proposed use will not burden either a groundwater aquifer or public water system.
 5. Sewage Disposal. The proposed use has adequate capacity to dispose of sewage waste. A change from one use to another use must show that either:
 - (a) The existing sewage system has adequate capacity for the proposed use, or
 - (b) The existing system will be improved, or a new system will be installed to provide adequate waste disposal capacity.
 6. Traffic. The proposed use has adequate sight distance as established by current Maine DOT Highway Entrance and Driveway Rules.
- Sec. 500 Performance Standards Land Use Ordinance Town of Windham
5 - 10
7. Public Safety. The proposed use will not overburden police, fire and rescue services, as determined by response time, accessibility to the site of the proposed use, and numbers and types of emergency personnel and equipment presently serving the community.
 8. Vibration. The proposed use will not produce inherently and recurrently generated vibrations that exceed a peak particle velocity greater than 2.0 at the closest "protected structure," as defined by the Maine Department of Environmental Protection.
 9. Noise. The proposed use shall meet the noise standards in Section 812.S. of the Site Plan Review Ordinance.
 10. Off-Street Parking and Loading. The proposed use meets the parking and loading standards of Section 812.C. Site Plan Review.
 11. Odors. The proposed use will not emit noxious or odorous matter in such quantities as to be offensive at the lot boundaries.
 12. Air Pollution. No emission of dust or other form of air pollution is permitted which can cause any damage to health, to animals or vegetation, or other forms of property, or which can cause any excessive soiling at any point, and in no event any emission, from any activity permitted composed of any solid or liquid particles in concentration exceeding three-tenths (0.3) grain per cubic foot of the conveying gas or air at any point.
 13. Water Pollution. No discharge at any point into any private sewage disposal system or stream or into the ground of any materials in such nature or temperature as to contaminate any water supply or otherwise cause the emission of dangerous or objectionable elements is permitted.

14. Erosion and Sediment Control. The proposed use will not cause water pollution, sedimentation, erosion, nor contaminate any water supply, nor reduce the capacity of the land to hold water, so that a dangerous or unhealthy condition may result.

15. Hazardous Material. No use shall for any period of time discharge across the boundaries of the lot wherein it is located toxic and noxious matter in concentrations so that a dangerous or unhealthy condition may result.

16. Zoning District and Performance Standards. The proposed use meets the applicable zoning district standards in Section 400 and the applicable performance standards of Section 500. Town of Windham Land Use Ordinance Sec. 500 Performance Standards 5 - 11

17. Solid Waste Management. The proposed use shall provide for adequate disposal of solid wastes. All solid waste must be disposed of at a licensed disposal facility having adequate capacity to accept the project's wastes.

SHORT FORM QUITCLAIM DEED WITH COVENANT

John F. Carr and Patricia A. Carr, both of Biddeford, Maine, FOR CONSIDERATION PAID, grant to **MB Properties, Inc.**, a Maine corporation with a mailing address of 488 River Road, Windham, Maine 04062, with QUITCLAIM COVENANT, certain real property, together with any improvements thereon, located in the Town of Windham, Cumberland County, Maine and more particularly described on Exhibit A attached hereto and made a part hereof.

Being the same premises conveyed to the grantors herein by deed from Henry C. Chaiklin dated June 23, 1997 and recorded in the Cumberland County Registry of Deeds in Book 13158, Page 245.


The property herein conveyed is subject to any rights and easements reserved in a deed from E.L. Dupont DeNemours & Company to Plastic Material Corporation dated May 29, 1946 and recorded in said Registry of Deeds in Book 1827, Page 13; and the appurtenant right of way, also herein conveyed, is subject to conditions and restrictions on use as set forth in a deed from Portland Water District to L.C. Andrew, Inc. dated December 9, 1985 and recorded in said Registry of Deeds in Book 7002, Page 341.

WITNESS our hands and seals this 31st day of December, 2002.

WITNESS:



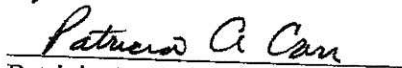
Name:



Name:



John F. Carr



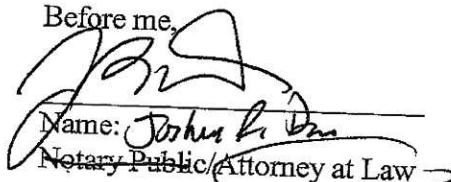
Patricia A. Carr

State of Maine
County of Cumberland, ss.

December 31, 2002

PERSONALLY APPEARED the above-named John F. Carr and acknowledged the foregoing instrument to be his free act and deed.

Before me,



Name:

Notary Public/Attorney at Law

MAINE REAL ESTATE TAX PAID

EXHIBIT A

A certain lot or parcel of land with any buildings thereon situated in the Town of Windham, County of Cumberland and State of Maine, and being designated as a portion of Parcel 9 on a "Plan of Property in Windham, made for Small Business Administration", by H.I. and E.C. Jordan, Surveyors, dated January 16, 1960 and recorded in the Cumberland County Registry of Deeds in Plan Book 52, Page 58, being more particularly bounded and described as follows:

Beginning at the southwesterly corner of a parcel of land conveyed by L.C. Andrew, Inc., et al. to Earl B. Harris by warranty deed dated August 30, 1985, and to be recorded in the Cumberland County Registry of Deeds; thence N 89° 03' 05" W, 454.17 feet along land of Portland Water District to an iron pipe; thence N 34° 40' 58" W, 619.68 feet along land of Portland Water District to a granite monument; thence N 58° 13' 02" E, 785.63 feet to a large sugar maple tree and land now or formerly of Earl B. Harris; thence S 10° 45' E 948.83 feet along land now or formerly of Earl B. Harris to the point of beginning; containing 10.824 acres, more or less, according to a survey of the premises made by James C. Lauzier for L.C. Andrew, Inc. dated June 25, 1984.

Including herein a perpetual right of way in common with others to access and egress by vehicle and otherwise and for the installation and maintenance of utilities over the existing roadway serving the balance of said Parcel 9, which roadway runs from the northeasterly sideline of the Gambo Road for a distance of nine hundred fifty (950) feet, more or less, parallel to and seventy-five (75) feet from the northeasterly sideline of the Maine Central Railroad right of way.

Also including the right perpetually to cross and recross on foot and with vehicles of all kinds, regularly used on public roadways, upon a certain strip or parcel of land located on the northeasterly side of the Gambo Road in the Town of Windham, County of Cumberland and State of Maine, said strip being so much of a road designated "Existing Gravel Road" as lies within the Grantor's 75 foot strip, all as more particularly shown on a plan entitled "Plan Showing Existing Gravel Road, Gambo Road, Windham, Maine made for L.C. Andrew, Inc." prepared by James C. Lauzier; together with the right perpetually to maintain in the present location, the existing facilities for the transmission of electrical power and telephone service.

Received
Recorded Register of Deeds
Dec 31, 2002 02:39:25P
Cumberland County
John B. O'Brien

**WINDHAM BOARD OF APPEALS
NOTICE OF DECISION**

DATE: July 23, 2001

TO: McGoldrick Bros. Blasting Services, Inc.
488 River Road
Windham, ME 04062

RE: Special Exception Permit to install two additional explosive storage containers at
488 River Road, Windham.
(Tax Map 5, Lots 9A, 9A-1, 9A-4, -A-5 and a portion of 14G-2, Industrial zone)

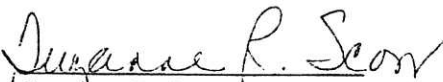
Pursuant to 1 M.R.S.A. (407-1) the Zoning Board of Appeals of the Town of Windham issues the following decision:

Based on the application of 7/5/01, plans submitted and testimony by the applicant and his representative, Paul W. Lawrence at the ZBA meeting of 7/19/01, the Board has unanimously approved your application for a Special Exception/Conditional Use permit to install two additional explosive storage containers. One is for 4,000 lbs. and one for 3,000 lbs. At their properties located off River and Gambo Roads, Windham. (Motion by Edward Woodbury, seconded by Fred Panico) (Tax Map 5, Lots 9A, 9A-1, 9A-5 and a portion of 9A-4 & 14G-2, (Industrial zone) with the following conditions:

1. Buffering as per requirements in Chapter 35 Title 25 MSRA
2. Applicant is required to notify Windham Fire Department of location or relocation of any explosive storage facilities.
3. The cap storage facility is at and will remain at a limit of 5,000 caps

This approval will run with the property and is made subject to the plans and other information contained in the application and supporting documents submitted and the testimony provided by the applicant and (his/her/its) representatives. Any changes from the application, plans, supporting documents and/or testimony shall require review and approval by the Board prior to implementation if such change relates to the approved conditional use. If a proposed change involves a use other than a conditional use, the applicant shall receive any required approvals from the Code Enforcement Officer and/or the Planning Board prior to implementation of the changes.

Any decision of this Board may be appealed to Superior Court within 45 days of said decision.


Suzanne R. Scott
Chairperson, Board of Appeals

FYI

WINDHAM BOARD OF APPEALS
NOTICE OF DECISION

DATE: October 1, 1992

TO: McGoldrick Bros. Blasting Services Inc.
30 Old County Road
Windham, ME 04062

Dear Sirs:

The Board of Appeals has voted to approve your request for a special exception use permit to store explosives on property located off River Road (reference Property Tax Map 5, Lot 9A-5) as the request meets the requirements of said permit.

The Board has further voted to attach the following conditions to this approval.

1. Storage volume be limited to 3,000 lbs.
2. All state and federal regulations must be met.
3. Driveway gate would be within 60' of River Road and the entrance would be a maximum of 30' wide..

Please see Roger Timmons if you have any questions.


Chairman, Board of Appeals