

BLISH & CAVANAGH

C O U N S E L L O R S A T L A W

By Courier and Email

Joseph V. Cavanagh Jr.
William R. Landry
Edmund L. Alves, Jr.
Scott T. Spear
Mary Cavanagh Dunn
Joseph V. Cavanagh, III
Christopher J. O'Connor
Matthew J. Landry

Commerce Center
30 Exchange Terrace
Providence, RI 02903-1765
Tel (401) 831-8900
Fax (401) 751-7542
www.blishcavlaw.com

Steven I. Rosenbaum
Of Counsel

John H. Blish
(1986-2007)

December 5, 2024

Mark Carruolo
Planning Director
Town of North Smithfield
Town Hall
83 Greene Street
Slatersville, RI 02896

Re: Petition / Application For Amendment To Zoning Ordinance
Petitioner: Pound Hill Realty, LLC
Property: A.P. 7, Lot 38

Dear Mr. Carruolo:

Enclosed in connection with the above please find six (6) sets of a Petition/Application for Amendment to Zoning Ordinance, together with a proposed Plan to be utilized for notice/publication purposes.

Should you desire additional information or have any questions, please do not hesitate to contact me.

As always, thank you for your assistance.

Sincerely yours,



William R. Landry

Enclosures

cc: David Igliozi, Esq.
Ryan Hurley, Esq.
Timothy Robenhymer, Esq.
Thomas Plunkett, Esq.

PETITION / APPLICATION FOR AMENDMENT TO ZONING ORDINANCE

TO THE HONORABLE TOWN COUNCIL OF THE TOWN OF NORTH SMITHFIELD
c/o MARK CARRUOLO, PLANNING DIRECTOR OF THE
TOWN OF NORTH SMITHFIELD

Pursuant to R.I. Gen. Laws §§ 45-24-50 and 45-24-51 - 45-24-53,

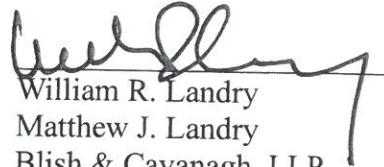
Pound Hill Realty, LLC, c/o 618 Greenville Road, North Smithfield, RI 02896, a Rhode Island limited liability company, and the owner of the parcel of land situated off Old Oxford Road, Pound Hill Road and Pine Hill Road in the Town of North Smithfield, more particularly described as Town of North Smithfield Tax Assessor's Plat 7, Lot 38, consisting of 89.44 acres (hereinafter the "Subject Property"), hereby petitions/applies to the Town Council to amend Chapter 340 ("Zoning") of the Code of Ordinances of the Town of North Smithfield, and the Zoning Map established and maintained pursuant to Section 3.1.1 thereof, in the manner shown and set forth as attached hereto and incorporated by reference, which attachment includes a discussion of the purpose and intent of the proposed Amendment, as well as its Comprehensive Plan consistency.

Pursuant to § 45-24-51 and § 13.1 of Chapter 340, this Petition / Application is directed to the Planning Director, Mark Carruolo, for facilitating the hearings, reviews by the actions by the Planning Board and Town Council provided for therein.

The proposed Amendment would establish a new zoning district, Industrial Special Management District 1 Overlay (ISM 1), to address the unique zoning status of one or potentially more long-standing industrial properties with respect to which conventional zoning provisions are inadequate and insufficient for proper municipal planning purposes, and to change the zoning of the Subject Property from Rural Estate Agricultural (REA), a District with respect to which the Property is not suitable, to Industrial Special Management District One (ISM 1). A corresponding change would be made to the Zoning Map.

PETITIONER / APPLICANT
Pound Hill Realty, LLC

By its Attorneys,



William R. Landry
Matthew J. Landry
Blish & Cavanagh, LLP
30 Exchange Terrace
Providence, RI 02903
(401) 831-8900
wrl@blishcavlaw.com
mjl@blishcavlaw.com

Thomas C. Plunkett
Ryan C. Hurley
Kiernan Plunkett & Redihan, LLP
146 Westminster Street, 5th Floor
Providence, RI 02903
(401) 831-2900
tplunkett@kprlaw.com
rthurley@kprlaw.com

EXHIBIT A

(Site Plan)

STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS
THE TOWN OF NORTH SMITHFIELD

ZONING ORDINANCE AMENDMENT

It is ordained by the Town Council of the Town of North Smithfield as follows:

That the North Smithfield Code of Ordinances, Chapter 340 ("Zoning") and the Zoning Map established and maintained pursuant to Section 3.1.1 thereof be amended for the reasons set forth in Part I below, and in the manner set forth in Parts II - IV below:

I.

STATEMENT OF PURPOSE AND INTENT

1. The property off Pound Hill Road and Pine Hill Road, consisting of approximately 89.44 acres; comprising multiple merged tracts; and presently described as Assessor's Plat 7 Lot 38 (the "Property") is a unique area historically characterized by mining, quarrying, sand and gravel extraction, loam stripping, stone cutting operations, crushing, washing, and/or processing of materials.

2. While the aforesaid uses are not presently permitted in any established Zoning District previously provided for in the Zoning Ordinance, traditional zoning and related enforcement under that Ordinance and/or under Chapter 156 ("Earth Removal") or Chapter 288 ("Soil Erosion & Sediment Control") are limited, complicated, and inadequate by reason of (i) the long standing pattern of use of the Property to the contrary; (ii) the unique rules applicable to the continuation and expansion of nonconforming uses that involve "diminishing assets"; (iii) the historic merger and consolidation of lots, as required by § 340-2.3 of the Zoning Ordinance, that requires the Property to be considered as a single lot; (iv) the lack of clarity and certainty as to the precise zoning status of the Property notwithstanding more than thirty (30) years of litigation between the Town and the Owners of the Property; (v) the severely limited potential for other

uses of the Property in view of its location and physical conditions; (vi) the limited opportunities for oversight by the Town that has resulted from the historic status quo and litigation associated with the Property and the need and desire of the Town for greater oversight and public transparency with respect to the Property in a manner not easily accomplished through traditional zoning; (vii) the need for enhanced knowledge of the regulatory status – and occurrences – associated with the regulatory oversight by the State and Federal regulatory bodies and officials over certain activities and impacts (*e.g.*, blasting, air quality, water quality, safety, etc.) associated with the uses on the Property; and (viii) the likelihood that the aforesaid conditions will persist indefinitely without planned, customized zoning treatment of the Property in order to advance the public health, safety and welfare and the policies and goals of the Comprehensive Plan.

3. Residential development, while a permitted use, is not feasible on the Property because there is no accessible sewer or water infrastructure there, and public drinking water wells and housing are infeasible given the nature of the historic use of the Property; its adjacent proximity to uses – including two Superfund sites (referenced more fully below), that are incompatible with – and preclusive of – residential development of the site. As it is, the several residences in the Pine Hill Road area have to have portable water brought in.

4. The current zoning of the Property is Rural Estate Agricultural District ("REA"), a District "established to provide protection to areas where the conservation of water bodies and streams are of significant importance, where development may be threatened by flood, or would increase the danger of flood elsewhere and where limited agriculture pursuits and low-density residential uses are compatible with open space objectives." Such zoning is inadequate in view of the broader aforesaid litany of unique considerations and public health, safety and welfare issues applicable to the Property.

5. The Comprehensive Plan specifically recognizes the development limitations associated with REA-zoned land, even land lacking the historic use incompatibilities specifically associated with the Property. It notes that this area, "encompasses the Landfill & Resource Recovery (f/k/a "Wilson") and Western Sand & Gravel EPA Superfund sites. Less than 10 percent of the REA area is currently developed. Development proposals must consider the constraints associated with the existence of the EPA Superfund sites and the need to protect the Slatersville Aquifer and Reservoirs". (p. 15). The Holliston Sand & Gravel operation, an intense earth removal enterprise, is also situated adjacent to the Property; the North Smithfield Auto Salvage; and Doeringo Truck Body enterprises.

6. The aforesaid industrial activities on the Property have been substantial in terms of economic development within the Town and hold significant opportunity for further economic development and expansion of the local tax base. The materials from the Property are in great demand for development projects in the region, including public works projects involving bridges and roads, and private development and redevelopment of every nature. The material is uniquely suitable for and compliant with the intense testing requirements of the controlling regulatory authorities for roads, seawalls, bridges, etc., including the Army Corps of Engineers and the Rhode Island, Massachusetts and Connecticut Departments of Transportation.

7. The Town's Comprehensive Plan recites that "North Smithfield has very little undeveloped commercially-zoned property remaining"; and that the Town "must consider both flexibility in its land development process to encourage development of remaining industrially-zoned land, along with the potential zone changes to add to the Town's industrial base." (p. 51). Similarly, the Plan notes elsewhere that eighty-eight percent (88%) of the land in North Smithfield is zoned residential. We must address the challenge of increasing revenue from

commercial taxes to meet the Town's financial needs without raising residential taxes in addition to creating local jobs to the greatest extent possible ... ". (pp. 37, 46).

8. The Petitioner's property is not the only property within the Town that could potentially be evaluated for inclusion in an Industrial Special Management District Overlay Zone. This is a factor that has been considered in connection with the creation of that district below.

II.

AMENDMENTS to Chapter 340 ("Zoning")

A. Section 340-3.1 ("Establishment of Districts") is changed to add the following District, Symbol, and Description:

"Industrial Special Management District One Overlay (ISM 1)"

B. Section 340-3.1 ("Establishment of Districts") is changed to add the following new district as follows:

"Industrial Special Management District One (ISM 1)."

This district is established to provide for planned development of one or more unique areas historically characterized by mining, quarrying, sand and gravel extraction, loam striping, stone cutting, crushing, washing, and/or processing of materials; having substantial limitations for other development; and with respect to which customized, supervised planned development is necessary and desirable."

C. Section 340-3.4 and Attachment 2 ("District Use Regulations Table") is hereby modified as follows:

(1) With respect to the use described in Subsection J.2 as "Mining, Quarrying, Sand And Gravel Extraction, Loam Stripping, Stone Cutting", add thereto the words "crushing,

washing, and/or processing of materials"; and change the designation under the "REA" zoning district designation from "N" [*i.e.*, "Not Permitted"] to "P with a reference to "Footnote #11";

- (2) Adding "ISM 1" as a District with a similar footnoted reference to "Footnote #11";
- (3) Adding to the Footnote Key at the bottom of the Table at Footnote #11 as follows:
"11. See the provisions of Section 340-3.4.1".
- (4) Adding a new Subsection 3.4.1 as part of Section 340-3.4, following the District Use Regulations Table, as follows:

3.4.1 Permitted Uses In ISM 1 Overlay District.

A. The use regulations for the ISM 1 District shall be the same as for the REA District, except that "Mining, Quarrying, Sand And Gravel Extraction, Loam Stripping, Stone Cutting, Crushing, Washing and Processing of Materials shall be permitted uses subject to the following conditions:

- (i) Development Plan (Site Plan) Approval by the Planning Board pursuant to Article XXV of a site plan or the property substantially similar to Exhibit A hereto providing for perimeter fencing, residential buffering, berming and landscaped screening from adjacent residential development; perimeter fencing; and the "benching" and "stepping" of excavation at feasible locations;
- (ii) In a manner similar to what is provided for in § 288-9 ("Excavation Operations") of the Chapter 288 of the North Smithfield Code of Ordinances ("Soil Erosion And Sediment Control"), and notwithstanding that the Property is exempt from said Chapter, the Owner of the Property shall, on request, or before December 31 of each year, provide evidence in writing that the existing excavation operations accomplish the objectives of that Chapter as such procedures prevent soil erosion and sedimentation from occurring and procedures regarding water disposal and soil erosion promote the safety, public health and general welfare of the Town.
- (iii) Within thirty (30) days of the enactment of this Amendment, and thereafter upon request, the owner of the Property shall provide to the Building Officer and to The Town Administrator a written listing of all State and Federal Permits in place a well as, upon request, all permitting, enforcement and investigative activities and corresponding documentation with respect to the Property occurring within the preceding twelve (12) months, including but not limited to, as applicable, blasting; air quality; water quality; wetlands protection; stormwater management; and mining safety.

(iv) The provisions of Chapter 310 ("Vehicles and Traffic"), § 310-17 ("Heavy trucks; Permit on certain roads; Exceptions") shall continue to be applicable to trucks accessing the Property as set forth therein.

(v) The emission of sound from the activities on the Property shall be governed by the standards and provisions similar to those in Chapter 229 of the North Smithfield Code of Ordinances § 229-5B applicable to certain other types of construction, demolition, rock crushing, cutting and earthmoving activities. Such activities shall be exempt from said Chapter to the extent they occur (except in the case of an emergency and notice to the Town):

- (a) Between the hours of 7:00 a.m. and 6:00 p.m., Eastern Standard Time and Daylight Savin Time, Monday through Friday; and
- (b) On Saturdays form 7:00 a.m. to 4:30 p.m.; and
- (c) Such activities are prohibited on Sundays and legal holidays."

III.

AMENDMENT TO ZONING MAP

The Zoning Map established and maintained pursuant to Section 3.4.1 of Chapter 340 ("Zoning") is hereby amended to change the Zoning District of the property from Rural Estate Agricultural (REA) to Industrial Special Management District One (SMD 1).

IV.

AMENDMENTS to Chapter 156 ("Earth Removal")

A. Section 156-5A is hereby amended to add the words, "except as otherwise provided for permitted uses under Chapter 340 ("Zoning"), Section 340.3.4 ("District Use Regulations Table") and Attachment 2";

B. Section 156-6 is hereby amended to add the words, and as applicable to Zoning Board special permits required under Chapter 340 ("Zoning"), Section 340.3.4 ("District Use Regulations Table") and Attachment 2".