



City of Auburn, Maine

Office of Planning & Permitting

Eric Cousens, Director

60 Court Street | Auburn, Maine 04210

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To: Auburn Planning Board

From: Katherine Cook, Planning Coordinator

Re: Morin Brick-Penley Corner Road Pit

Date: May 10, 2022

PROPOSAL #1: PUBLIC HEARING/ SPECIAL EXCEPTION: RFJ Morin Brick, LLC (Morin Brick) seeks to develop 19 acres of a 50± acre lot on Penley Corner Road: Morin Brick proposes a clay extraction pit at PID 113-015. The project is pursuant to ARTICLE XVI, DIVISION 2 and 3, ARTICLE IV DIVISION 2 and ARTICLE VIII. The 50± acre lot is currently undeveloped land with a mixture of field and forested areas. Morin Brick plans to excavate approximately 19 total acres. The current zoning is Agriculture and Resource Protection (AG).

The excavation will remain five feet above the seasonal high-water table, while the working pit area will remain less than 10 acres at a time. The total wetland impact will be approximately 2,662 square feet. No buildings or utilities are proposed as part of this project. If approved, construction of the site would begin June-July 2022 and be completed and reclaimed seasonally.

I. PLANNING BOARD ACTION/STAFF SUGGESTIONS: Staff recommends Planning Board discuss this project under Chapter 60 Article XVI Division 2 and 3, Chapter 60 Article IV Division 2, and Chapter 60 Article VIII and hold a Public Hearing followed by a vote.

II. SUGGESTED FINDINGS AND REASONS:

1. The project conforms to all requirements in Chapter 60 Article XVI Division 2 and 3, Chapter 60 Article IV Division 2 and Chapter 60 Article VIII.
2. Excavation is not named as an approved use within the AG zone specifically, but pending a permit from the Planning Board, it is allowed in every district pursuant to Sec. 60-697 and Chapter 60 Article XVI.
3. The applicant has met all requirements of Ch. 60 Article IV Division 2 including dimensional requirements and setbacks appropriate for the AG zone.
4. The applicant will submit a Permit by Rule (PBR) license under Maine Department of Environmental Protection (DEP), NRPA (Attachment 14) for installation of culvert in a stream.
5. The applicant has proposed substantial measures to maintain the aesthetic value of the site. Excavation is proposed to occur in phases with seasonal reclamation using soil maintained and seeded from the site.
6. Disturbance from noise from construction will be minimal as there will be buffers on all sides of the site and operation will only occur during business hours.
7. The proposal can be implemented without detriment to city resources.

For the Planning Board's review, we have addressed the applicant, Morin Brick's, proposal to ensure the project conforms to all provisions within ARTICLE XVI, DIVISION 2 and 3, ARTICLE IV DIVISION 2 and ARTICLE VIII as appropriate and applicable in this section below:

CHAPTER 60 ARTICLE IV, DIVISION 2- Agriculture and Resource Protection (AG) District Zoning Ordinance

Excavation is not a named use within Article IV Division 2 but is allowed pursuant to Sec. 60-697 which states that excavation could be permissible in any district pending an approval by the Planning Board or as otherwise permitted in this section. As this parcel is in the AG zone all the appropriate setbacks for this district apply to the development of this site. The applicant will conform to all setback and density requirements.

(1) *Minimum lot area, width, and depth.* No lot shall be created containing less than ten acres, exclusive of any bodies of water having a surface area of one-fourth of an acre or more and measuring less than 250 feet in width at the street frontage, and 200 feet in depth.

(2) *Density.* The density of year-round dwelling units shall not exceed an average of one dwelling per ten acres.

(3) *Yard requirements.*

- a. *Rear.* There shall be behind every building a rear yard having a minimum depth of 25 feet.
- b. *Side.* There shall be a minimum distance of 15 feet between any building and the side property line.
- c. *Front.* There shall be in front of every building a front yard having a minimum depth of 25 feet or 25 percent of the average depth of the lot whichever is less.

Morin Brick's proposed excavation pit meets each standard using the existing 50.1-acre lot area, 773 feet of road frontage, 25 feet of front and rear setbacks, and 15-foot side setbacks. There is not a building proposed on the site. The excavation is set back at least 100' from each property line as proposed.

CHAPTER 60 ARTICLE VIII - EXCAVATION PERMIT REGULATIONS

Sec. 60-698. - Items to be considered in application review.

(a) In judging whether a resource extraction permit shall be issued, the planning board shall after a public hearing, determine the setback allowances, ingress and egress to provide a site distance that meets minimum safety standards, and access road location and maintenance; **The dimensions for projects in the AG District must meet the standards as follows: There must be at least 25 feet of road frontage, there must be minimum front and rear setbacks of 25 feet, and minimum side setbacks of 15 feet. Morin Brick's proposed excavation pit meets each standard using the existing about 50.1-acre lot area with 773 feet of road frontage, 25 feet of front and rear setbacks, and 15-foot side setbacks. There is not a building proposed on the site. There will be a 24-foot-wide gravel accessway which will access the site from Penley Corner Rd. The pit will be operating during normal business hours during July and August during which time up to five (5) dump trucks per hour, run by 1-3 employees, will haul from the proposed excavation pit to Morin's Auburn factory.**

(b) In judging whether a resource extraction permit shall be issued, the planning board shall address the following, if applicable:

(1) Maintenance of safe and healthful conditions such as the posting of danger areas, the installation of gates to prevent access, etc.; **Signage is required by the City of Auburn.**

(2) The prevention and control of erosion and sedimentation; **Temporary erosion and sedimentation control measures include the use of sediment barrier, erosion control mix, stone check dams, hay bale barriers, catch basin inlet barriers, catch basin sediment collection bags, erosion control blanket, and temporary seeding and mulching as required. Permanent erosion and sedimentation control measures include the use of riprap at exposed storm drain and culvert inlets and outlets, riprap slopes and permanent vegetation. The applicant will keep an inspection log to inspect any disturbed and impervious areas, erosion and stormwater control measures, areas exposed to rain, storage, and vehicle accessways at least once a week as well as before and after storm events and prior to completion of a permanent stabilization. The name of the inspector and their title will be recorded in the log as well as any observations related to erosion and sedimentation control and any Best Management Practices (BMPs) that must be changed. If any BMPs are not being met, they must be changed within seven (7) days of identification.**

(3) The proximity of water bodies and wetland areas; **A wetland delineation was performed on the site in November 2021 where five (5) perennial streams and seven (7) distinct wetland features were delineated shown on Sheets C-101, C-102, C-201, and C-301. There is a 75-foot setback required from all streams and a 25-foot setback from all wetlands. The client will submit a Permit by Rule (PBR license under Maine Department of Environmental Protection (DEP) (Attachment 14) as they need to impact a small area of wetland while working around most of them on the site. They will also need to replace an existing stream crossing for safe access to the site. The total wetland impact will be 2,662 square feet, the disturbed area of the access road is 43,389 square feet and the total impervious area of the access road is 22,323 square feet. The project does not fall within the boundaries of the Lake Auburn or Taylor Watershed, therefore does not require phosphorous control measures. The Maine Department of Inland Fisheries and Wildlife has not identified any essential habitats that would be directly affected by this project, and no vernal pools were detected in the site area. A small portion of the of the southeast corner of the parcel is in the special flood hazard map (FEMA Flood Insurance Rate Map, 07/08/2013) The site work will not extend to this area.**

(4) The effect on the aesthetic, scenic or natural beauty of the immediate area; **A natural buffer of trees and brush surround the stream on the Western Portion of the property. This buffer, which will be maintained during construction, paired with the phased excavation approach will maintain the aesthetic character of the area.**

(5) Whether the size of the resource deposit in relation to the area affected justifies the excavation activity; **This site was found to have a mix of marine regressive sand deposits through test excavation pits across the site, ideal for brick manufacturing.**

(6) The compatibility of the use with the surrounding uses and the neighborhood. Under this criteria items to be addressed are as follows: hours of operation, noise emitted from the types of machinery to be used, dust, provisions of screening, orientation of the excavation operation, etc. **The applicant states that the**

hours of operation will be like Lewiston Auburn Water Pollution Control Authority (LAWPCA) biosolids composting facility and to a nearby farm. There will be no nighttime activity and the noise emitted from the machines is expected to be mitigated by the distance the site will be from the road, and the natural tree and brush buffer which will surround the pit on all sides. The applicant is proposing a gravel tracking pad to stop material from tracking into the public roadway but does not expect dust to be an issue at play.

(c) In judging whether a resource extraction permit should be issued, the planning board shall address the following:

(1) Adequacy of the applicant's reclamation plan. **The site will be stabilized and reclaimed at the end of each extraction season as delineated by Maine Department of Environmental Protection (DEP) Extraction Pit Reclamation Requirements (Title 38 Sec. 490-D.14). The applicant will strip and store suitable topsoil for later reclamation. It will temporarily be seeded with Aroostook rye, annual or perennial rye grass within seven (7) days of removal. If seeding cannot be completed within this timeframe, the soil will be temporarily mulched to maintain the soil quality and drainage.**

(2) The applicant must demonstrate proof of bonding capacity or security adequate to ensure compliance with an approved reclamation plan. **The applicant has provided a letter from their bank signaling capacity for compliance and restoration. Moreover, restoration will occur in phases consistent to the site plan.**

(d) In judging whether a resource extraction permit should be issued for the excavation of organic material, the department of community development and planning shall consider compliance with the criteria cited in subsection (a) of this section and shall address, if applicable, the criteria in subsection (b) of this section. **The applicant is not excavating organic material, so this condition does not apply.**

ARTICLE XVI DIVISION 2- SITE PLAN REVIEW/ SPECIAL EXCEPPTION

It is staff's opinion that the applicant's proposal meets all the criteria and standards in Article XVI Division 2 and Division 3.

(a) As conditions prerequisite to the granting of any special exceptions, the board shall require evidence of the following:

(1) That the special exception sought fulfills the specific requirements, if any, set forth in the zoning ordinance relative to such exception.

(2) That the special exception sought will neither create nor aggravate a traffic hazard, a fire hazard, or any other safety hazard.

(3) That the special exception sought will not block or hamper the master development plan pattern of highway circulation or of planned major public or semipublic land acquisition.

(4) That the exception sought will not alter the essential characteristics of the neighborhood and will not tend to depreciate the value of property adjoining and neighboring the property under application.

(5) That reasonable provisions have been made for adequate land space, lot width, lot area, stormwater management in accordance with section 60-1301(14), green space, driveway layout, road access, off-street parking, landscaping, building separation, sewage disposal, water supply, fire safety, and where applicable, a plan or contract for perpetual maintenance of all the common green space and clustered off-street parking areas to ensure all such areas will be maintained in a satisfactory manner.



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(6) That the standards imposed are, in all cases, at least as stringent as those elsewhere imposed by the city building code and by the provisions of this chapter.

(7) That essential city services which will be required for the project are presently available or can be made available without disrupting the city's master development plan, (Sec. 60-1336.)

III. PLAN REVIEW GROUP COMMENTS:

1) *Possible need of soils study and plan for restoration.*

The applicant provided a phased reclamation plan.

2) *Taxes are worked into lease- land value will change.*

Staff has called the landowner to inform them of possible land value change.

3) *This road was recently paved a three-foot-wide apron to match the existing depth (12.5mm binder)*

This is suggested as a condition of approval for the Planning Board to vote on.

IV. SUGGESTED MOTION:

I make a motion to approve the development of approximately 19 total acres as a clay excavation pit within the approximately 50.1-acre site identified on the tax map as Parcel I.D. 113-015 as a special exception with the following **conditions**:

- 1.) No construction will occur prior to receiving an excavation permit from Department of Public Works.
- 2.) No construction will occur prior to receiving a Permit by Rule (PBR) from Maine Department of Environmental Protection (DEP).
- 3.) In addition to the proposed rock entrance apron, a 3-foot-wide paved apron at the entire entrance width of the site at the same thickness of the existing pavement.