

Town of North Smithfield

Office of the Building and Zoning Official



September 15, 2022

RE: Complaint for Plat 07 Lot 38

Mr. Jason Richer:

This letter is about the property known as, plat: 07 lot: 038. There was a complaint filed in the Building and Zoning Department on Friday September 02, 2022. The nature of the complaint was the question of the needed certificate of compliance, expansion of the use onto other property areas, and other questions pertaining to buffers, signs, and a cease-and-desist order that was issued.

To provide some history on the ownership of the property. The Pezza family has owned property formerly designated as Lot #38 on Plat #7 and Lot #1 on Plat #10 since the 1950's. In 1958 Carmine Pezza appeared before the Town Council and requested that the zoning be changed from residential to business. The request was granted on March 25, 1958. The Pezza family and its businesses have been removing earth materials and rock from the land since the 1950's.

There were Questions (1 & 9) about the lateral expansion of the earth removal on to multiple properties and a cease-and-desist order. The building official at that time issued orders to intend to stop excavation and removal activities on the land purchased in 1984 The Pezza's sought injunctive relief in the pending consolidated actions. The parties appeared in Superior Court on December 30, 2004, and the Court ordered the status quo to remain in effect and restrained the Town from scheduling a zoning board hearing. As a result, the Pezza's continued the removal and blasting activities including on the land acquired in 1984 and no Zoning Board hearing was scheduled. **These issues have been settled by court orders.**

There was also a question about the use of the roads at Pound Hill Road and Pine Hill Terrace. This issue has also been addressed in a prior court case. The Court granted injunctive relief and entered an order on November 21, 2001, permitting the Pezza family to use Pine Hill Road and Pound Hill Road. A bond was required. Days of the week and times were set, and permission made for avoidance of school buses. **There was no restriction on the number of trips.** Since that time the parties have acquiesced to the term of that order and acted in good faith in accordance with the Court Order. Bonds have been obtained each year. **The bonds in effect from 2014 to the present.**

There were multiple questions asked (2-8 & 10-13) in the complaint that was filed. Many of these items were part of an ordinance that was drafted, Article IV Soil and Earth Removal Operations. This ordinance was enacted on June 18, 1979. This property has been in operation as an earth removal location since the 1950's and has been owned by the Pezza family and it's corporations since. **This article shall not apply.** There is a section in the Earth Removal Ordinance, Article IV Soil and Earth Removal Operations:

Sec. 11-41. Exemptions from article provisions. This article shall not apply to earth removal **being conducted on the date of its enactment**, on any tract of land, up to limits of presently owned property, within the town. The following conditions shall be considered as conclusive evidence that such real property is or has been used for the purpose of earth removal: (a) Such real property was acquired or leased prior to the effective date of this

article; Property was in operation since the 1950's This article shall not apply to earth removal being conducted on the date of its enactment, on any tract of land, up to limits of presently owned property, within the town."

I have enclosed the documents for your review. If you have any further questions, please contact me at 401-767-2200 ext. 311.

Sincerely,



Lawrence E. Enright Jr.
Building and Zoning Official
Town of North Smithfield
83 Green Street
North Smithfield, RI 02896



Town of North Smithfield

Office of the Building and Zoning Official



September 15, 2022

RE: Complaint for Plat 07 Lot 38

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There were Questions (1 & 9) about the lateral expansion of the earth removal on to multiple properties and a cease-and-desist order. The building official at that time issued orders to intend to stop excavation and removal activities on the land purchased in 1984. The Pezza's sought injunctive relief in the pending consolidated actions. The parties appeared in Superior Court on December 30, 2004, and the Court ordered the status quo to remain in effect and restrained the Town from scheduling a zoning board hearing. As a result, the Pezza's continued the removal and blasting activities including on the land acquired in 1984 and no Zoning Board hearing was scheduled. **These issues have been settled by court orders.**

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I have enclosed the documents for your review. If you have any further questions, please contact me at 401-767-2200 ext. 311.

Sincerely,



Lawrence E. Enright Jr
Building and Zoning Official
Town of North Smithfield
83 Green Street
North Smithfield, RI 02896

GRANITE REALTY COMPANY
LEONARD PIZZA AND CONSTANCE
PIZZA

VS

C.A. NO. 91 141

THE TOWN OF NORTH SMITHFIELD
By and through its Treasurer, Richard
F. Erickson, the Town Council of the
Town of North Smithfield, by and through
its duly elected members

MATERIAL SAND & STONE CORP. AND
C. PIZZA & SONS, INC.

VS

C.A. NO. 91 674

THE TOWN OF NORTH SMITHFIELD

ORDER

This matter came on to be heard on November 21, 2001, before Mr. Justice Fortin
upon the motion of the plaintiffs for a restraining order and after hearing thereon. It
is hereby ORDERED:

1. The plaintiffs' motion is granted. The plaintiffs are hereby permitted to use
Round Hill Road and Pine Hill Terrace as a means of entrance and exit from the
property in question in North Smithfield, Rhode Island, for the transport of sand,
gravel, rock and any other earth materials.
2. The plaintiffs shall post a bond with the Town of North Smithfield in the amount
set in 1991 at the time of the earlier court proceedings in this matter.
3. The plaintiffs may use the roadways Monday through Friday from 6:00 a.m. to
6:00 p.m.
4. The trucks used by the plaintiffs shall not travel on the roadways for a period of
one minute before and five minutes after the scheduled pick-up or drop-off
times of the school buses on Round Hill Road and Pine Hill Terrace from the
boundary of the plaintiffs' property on to Route 1. If a school bus is present
and on the roadway in these areas by a truck, then the truck shall pull to the
side of the road and stop until the school bus has passed.
5. During times of inclement weather the plaintiffs shall adjust the truck's headlights
and wipers to be synchronized by the school buses.

IN WITNESS WHEREOF

- 6. The defendants shall furnish school bus schedule times to the plaintiffs forthwith.
- 7. This matter is reassigned for further hearing to December 14, 2001, at 11:00 a.m. and this order shall remain in effect until that hearing and all subpoenas served shall remain in full force and effect.

BY ORDER

[Handwritten Signature]
 Dep. Clerk of Court

ENTER

[Handwritten Signature]

Portinato, J.

Presented by

Thomas C. Plunkett (1662)
 KIERNAN, PLUNKETT & REDDIN
 21 Friendship Street
 Providence, RI 02903
 (401) 831-2900
 (401) 331-7125 FAX

to Thomas E. Heimer, Esq.
 630 Putnam Pike
 Greenville, RI 02828
 FAX 949-5955

Louis Jachymy, Jr., Esq.
 1635 Mineral Spring Avenue
 North Providence, RI 02904
 FAX 354-0403

Gerard W. DeGelles, Esq.
 1536 Westminster Street
 Providence, RI 02903
 FAX 272-4907

CERTIFICATION

I hereby certify that I made a copy of the within document as shown above.

Date

8/19/22

[Handwritten Signature]

The Regular Meeting of the North Smithfield Town Council was held in Memorial Town Building at Slatersville, R.I., on February 25, 1958.

The Meeting was called to order by President Cross at 7 o'clock P.M.; with Councilmen Greenwood, Davis, Powell and Halliwell present.

Sitting as Probate Court the following was acted upon:

- Kellogg, Lois S., estate of
 - Courboyer, Adrilo Joseph, estate of
 - Racicot, Therese, estate of
 - Hoar, Meredith, estate of
 - Egan, John J., estate of
 - Wright, Joseph, estate of
 - Hamlin, Jennie H., estate of
 - Choiniera, Paul & Yvonne est. of
- Final Account allowed
 - Guardian's 26th Acct. allowed
 - Administration allowed
 - Final Account allowed
 - Pet. for Guard. Cont'd 1 mo.
 - Will allowed to Probate
 - Sale of Pers. Prop. allowed
 - Change of Name allowed

No further Probate Action being in order the Council sitting as the Governing Body of North Smithfield acted thusly:

Edwin Wilks, Jr., former Plant Manager of the now liquidated Slatersville Mills, a division of The Kendall Company was present and took this opportunity to present to the Town of North Smithfield as a donation from The Kendall Company a deed transferring the so-called Slatersville Athletic Field consisting of more than seven (7) acres of land. IT WAS VOTED TO ACCEPT SAID DEED AND PRESIDENT CROSS ASSURED MR. WILKS THAT THE COUNCIL ON BEHALF OF THE TOWN OF NORTH SMITHFIELD IS ACCEPTING THIS DONATION WITH MOST SINCERE APPRECIATION.

Carminé Pezza was present and asked for a Change of Zone from residential to business on land owned by himself and Emma R Pezza which is situated westerly of the Old Oxford Road and northerly of the Douglas Pike and Pound Hill Road designated as Lot #38 on Assessors Plat #7 and lot #1 on Assessors Plat #10 AND IT WAS VOTED THAT THE SAME BE ADVERTISED FOR HEARING AT THE NEXT REGULAR MEETING.

IT WAS VOTED TO ACCEPT FOR ALL HIGHWAY PURPOSES THAT NEW STREET KNOWN AS KNOLL RIDGE DRIVE AND THE CLERK WAS ORDERED TO RECORD DEED AS PRESENTED.

IT WAS VOTED that Detective Licenses be issued to George and Woodrow Wilkins providing necessary Bonds are filed.

IT WAS VOTED that Outdoor Movie License be granted to Rustic Drive-In Theatre for coming season at following fees:
Mondays through Saturdays \$200.00
Sundays and Holidays \$100.00 providing Police Protection be furnished by licensee according to wishes of the Chief of Police.

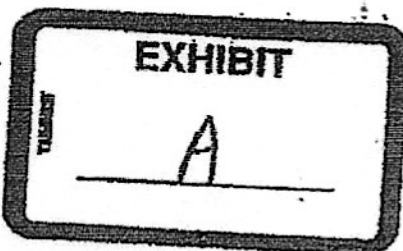
IT WAS VOTED TO accept the Police Report for the month.

IT WAS VOTED TO accept the Welfare Report for the month.

IT WAS VOTED TO allow two petitions for Joint Use of Poles between the Blackstone Valley Gas & Electric Co., and New England Tel. & Tel. Company.

A communication from the Veterans of Foreign Wars requesting permission to run their Annual Carnival July 19-through July 27 and also requesting the use of the Towns newly acquired Athletic Field for said Carnival and IT WAS VOTED that permission for above be given providing necessary releases are given to Town.

IT WAS VOTED that Carl Hurd be appointed Acting Building Inspector until the return of Regular Building Inspector John Svendsen.



February 25, 1958

IT WAS VOTED that the Treasurer be and is hereby authorized to borrow Fifty Thousand (\$50,000.00) dollars in anticipation of Taxes.

IT WAS VOTED that the Clerk be authorized to pay all bills as approved this evening together with bills for the Special Election and Town Meeting.

A motion was made that the Janitor at the Town Hall work from 8 A.M. until 7:30 P.M. with an hour off for lunch Mondays through Fridays, 8 A.M. until 12 noon on Saturdays and that he be on duty at all Regular Town Council Meetings. IT WAS VOTED that this Motion be laid on the Table until next Regular Meeting.

IT WAS VOTED that the following Building Application be approved:
Omer and Louis Landry Torraine Avenue Home \$5500.00

The Meeting adjourned at 10:15 P.M.

D. Powell DeWain, Town Clerk
MARCH 25, 1958

REGULAR MEETING

The regular meeting of the North Smithfield Town Council was held in Memorial Town Building on March 25, 1958.

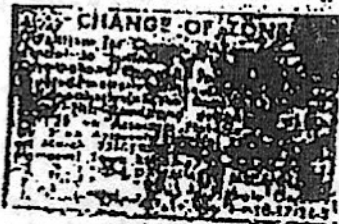
The meeting was called to order at seven (7) o'clock, P.M. by President Cross with Councilmen Greenwood, Davis, Powell and Powell present.

Sitting as a Probate Court, the following was acted upon, viz:

Cahill, Anna H. estate of Administrator d.b.n. appointed
Hutton, Veronica C. estate of Pet. for Discont of Conservator all'd
Egan, John J. estate of Discont. of appt of Guardian all'd

No further probate matters being ready for action the Council, acting as the governing body acted upon the following, viz:

A petition for a change of zone from residential to business on land owned by Carmine and Emma Pezza and situated westerly of the Old Oxford Road and Northerly of the Douglas Pike and Pound Hill Road, designated as Lot # 38 on Assessor's Plat # 7 and Lot # 1 on Assessor's Plat # 10 having properly advertised for a hearing at this meeting was read AND NO REMONSTRANTS BEING PRESENT TO OBJECT TO SAID PROPOSED SAID CHANGE IT WAS VOTED THAT THE CHANGE BE ALLOWED.



IT WAS VOTED that seven petitions for joint use of poles between the B.V.G. and E. Company and The New England Tel. and Tel. be allowed.

IT WAS VOTED that the Welfare report for the month be accepted

IT WAS VOTED that the police report for the month be accepted.

IT WAS VOTED that the highway surveyor contact William Leahy whom is connected with a road surfacing company and ask Leahy to estimate cost of surfacing roads in Town, said estimate to cost the Town nothing.

Town of North Smithfield

Office of the Building and Zoning Official

November 13, 1998

Leonard & Constance Pezza
d/b/a Granite Realty Company
11 Winsor Avenue
Johnston, RI 02919

Re: Plat 7 Lot 38 and Plat 10 Lot 1 in North Smithfield

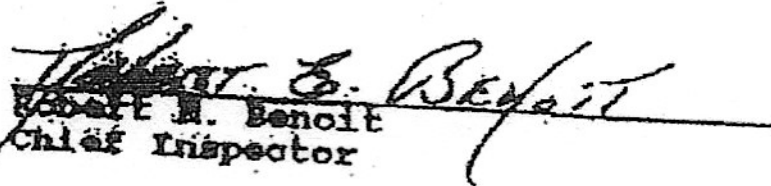
Mr. & Mrs. Pezza:

This is to inform you that it has been determined by the zoning official that you are operating a "quarrying operation" located on Plat 7 Lot 38 and Plat 10 Lot 1 in North Smithfield.

You are hereby **ORDERED TO CEASE AND DESIST** with the Quarry operation at this location. The blasting of rock materials at this site is disrupting the quality of life of the abutting property owners.

You have the right to appeal this order to the Zoning Board of Review. If you have any questions regarding this matter, please call this office at 767-2207, from 8 am to 4 pm, Monday through Friday.

Respectfully,

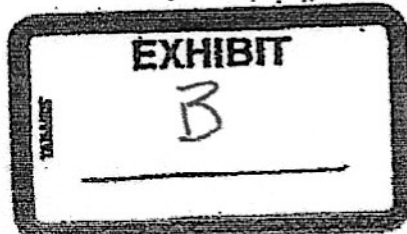

Robert M. Benoit
Chief Inspector

REB/mdf

cc Kenneth Bianchi, Town Administrator
Irving J. Owens, State Fire Marshall
Louis Jackvony III, Town solicitor



575 Smithfield Road, North Smithfield, Rhode Island 02896 • (401) 767-2207



Received Event (Event Succeeded)

Date: 12/3/88
Time: 8:29 AM
Sender: TOWN ANEX
787-2286

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Town of North Smithfield

Office of the Building and Zoning Official

December 3, 1988

Richard A. Constantino, Esq.
d/b/a Constantino Realty Company
11 Market Avenue
Johnston, RI 02819


Re: Cease and desist orders on Plat 7 Lot 380 and Plat 10 Lot 1
Mr. & Mrs. Moran

I am in receipt of your communication dated November 30, 1988, along with the two affidavits regarding the quarrying and blasting being conducted on the property in question.

This is to inform you that upon review of all documents submitted to this office, it is my opinion that I must remove the cease and desist order that was placed on your property (Plat 7 Lot 380 and Plat 10 Lot 1) on or about November 30, 1988, in the Town of North Smithfield.

If you have any questions, please call this office. We may be reached at 787-2287, from 8 am to 4 pm, Monday through Friday.

Sincerely,


Building and Zoning Official

cc: Louis Jankovics, III, Town Solicitor
Joseph Pignelli, Town Administrator
Town Council Members



375 Smithfield Road, North Smithfield, Rhode Island 02886 • (401) 767-2287



EXHIBIT
C

Town of North Smithfield

Office of the Building and Zoning Official

T.P.
11/18

November 1, 2004

Leonard and Constance Pezza
D/B/A Granite Realty Co.
11 Winsor Avenue
Johnston, RI 02919
RE: Plat 7 Lot 30 and Plat 10 Lot 1, located in North Smithfield

Mr. and Mrs. Pezza:

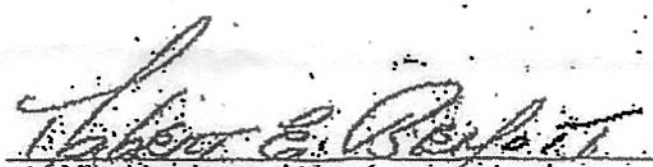
It has been brought to my attention that you are possibly excavating and blasting on a portion of land that was purchased by you in April of 1984.

This parcel of land which was known as Plat 7 Lot 4 was combined into Plat 7 Lot 38, by our Tax Assessor.

However, the sand, gravel and blasting operation on the existing Lot 38 is considered to be a pre-existing non-conforming use. It can not be extended or enlarged.

Therefore, if you are working on the portion of land purchased in 1984, you are hereby ordered to cease and desist with any and all excavation type of activity. If you have any questions concerning this order, please contact this office.

Sincerely,


Robert E. Benoit
Chief Inspector

REB/sjl

EXHIBIT
D

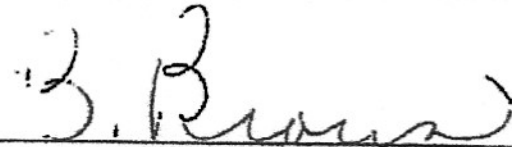


fax 274 5455
Mark Hadden, Esq.
Solicitor
Town of North Smithfield
Town Hall
575 Smithfield Road
North Smithfield, RI 02896

CERTIFICATION

I hereby certify that I faxed a copy of the within to counsel of record, as above.

Dated: November 2, 2006



STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

GRANITE REALTY COMPANY,
LEONARD PEZZA AND CONSTANCE
PEZZA

VS

C. A. NO. 99 1811

THE TOWN OF NORTH SMITHFIELD,
By and through its Treasurer, Richard
F. Erickson; The Town Council of the
Town of North Smithfield, by and through
its duly elected members

MATERIAL SAND & STONE CORP. AND
C. PEZZA & SONS, INC.

VS

C. A. NO. 91 5374

THE TOWN OF NORTH SMITHFIELD

ORDER

This matter came on to be heard on the plaintiffs' motion to reassign for hearing and on plaintiffs' motion for a stay and on defendant's objection thereto before Mr. Justice Procaccini on November 2nd, 2006, and after hearing thereon, it is hereby ORDERED:

1. The plaintiffs' motion for a stay is granted. The hearing on the appeal of Leonard A. Pezza and Constance Pezza d/b/a Granite Realty of the cease and desist order of the Building and Zoning Official before the Zoning Board of North Smithfield is hereby stayed pending the further order of this court on application of any of the parties. The stay is without prejudice to other rights of the parties in regard to these pending actions.

True Copy Attest:



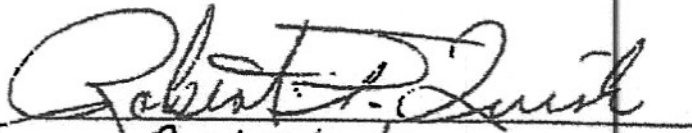
Office of Clerk of Superior Court
Counties of Providence & Bristol
Providence, Rhode Island

SUPERIOR COURT
FILED
HENRY S. KINCH JR., CLERK

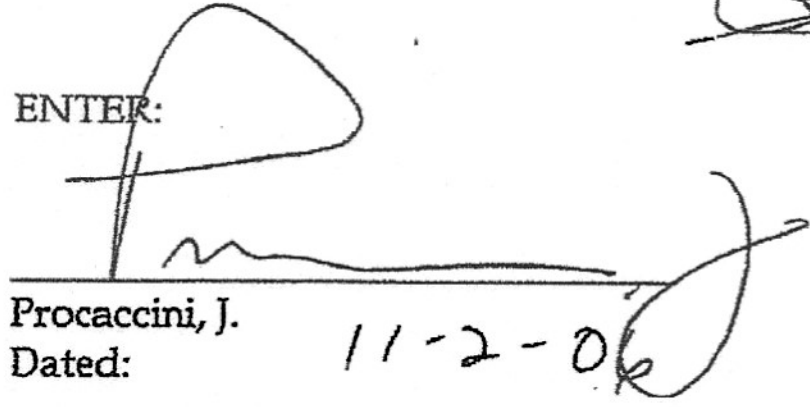
2006 NOV-2 P 2:07

2. The plaintiffs' motion to reassign is passed and plaintiffs will resubmit their motion to amend the complaint.

By ORDER:



Asst Clerk

ENTER:


Procaccini, J.

Dated: 11-2-06

Presented by:


THOMAS C. PLUNKETT 1662
KIERNAN, PLUNKETT & REDIHAN
91 Friendship Street
Providence, RI 02903
(401) 831-2900
(401) 331-7123 FAX
e-mail: tplunkett@kprlaw.com

to fax 455 0882
Thomas J. McAndrew, Esq.
One Turks Head Place
Providence, RI 02903

fax 272 5858
Richard Nadeau, Esq.
NADEAU & SIMMONS
56 Pine Street
Providence, RI 02903



The Hanover Insurance Company | 440 Lincoln Street, Worcester, MA 01653
 Citizens Insurance Company of America | 645 West Grand River Avenue, Howell, MI 48843
 Massachusetts Bay Insurance Company | 440 Lincoln Street, Worcester, MA 01653

CONTINUATION CERTIFICATE

Principal:
 Material Sand & Stone Corp.

Bond No.: BLEA513965

Date: October 24, 2021

618 Greenville Road

Continuation Term: Gravel Removal Permit Bond

From: December 23, 2021 **To:** December 23, 2022

North Smithfield RI 02875

Obligee:

Town of North Smithfield

Agent:

SINCLAIR INSURANCE GROUP, INC

575 Smithfield Road

35 Thorpe Ave

North Smithfield RI 02875

Wallingford, CT 06492-1999

Bond Amount: \$ \$35,000.00

Premium: \$ \$438.00

It is hereby agreed that the above referenced captioned numbered Bond issued by The Hanover Insurance Company (hereinafter the "Surety") is continued in force in the above amount for the Continuation Term period of the continued term stated above, and is subject to all the covenants and conditions of said Bond.

This Continuation Certificate shall be deemed a part of the original Bond, and not a separate obligation, no matter how long the Bond has been in force or how many premiums are paid for the Bond, unless otherwise provided for by statute or ordinance applicable.

Surety's liability under said Bond and for all continuation certificates issued in connection therewith shall not be cumulative and in no event shall the liability of the Surety exceed the amount as set forth in the Bond or in any additions, riders, or endorsements properly issued by the Surety as supplements thereto.

In witness whereof, the company has caused this instrument to be duly signed, sealed and dated as of the above "continuation effective date."



The Hanover Insurance Company

By: *Renee C. Woychik*
 Attorney-In-Fact

cc: 1500994

**THE HANOVER INSURANCE COMPANY
 MASSACHUSETTS BAY INSURANCE COMPANY
 CITIZENS INSURANCE COMPANY OF AMERICA**

POWER OF ATTORNEY

THIS Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

KNOW ALL PERSONS BY THESE PRESENTS:

That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire, and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, (hereinafter individually and collectively the "Company") does hereby constitute and appoint,

Renee C. Wozniak

Of: SINCLAIR INSURANCE GROUP, INC, Wallingford, CT

each individually, if there be more than one named, as its true and lawful attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, any and all surety bonds, recognizances, undertakings, or other surety obligations. The execution of such surety bonds, recognizances, undertakings or surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company, in their own proper persons. Provided however, that this power of attorney limits the acts of those named herein; and they have no authority to bind the Company except in the manner stated and to the extent of any limitation stated below:

Gravel Removal Permit Bond

in the amount of: \$35,000.00

That this power is made and executed pursuant to the authority of the following Resolutions passed by the Board of Directors of said Company, and said Resolutions remain in full force and effect:

RESOLVED: That the President or any Vice President, in conjunction with any Vice President, be and they hereby are authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as it acts, to execute and acknowledge for and on its behalf as surety, any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons.

RESOLVED: That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or Vice President in conjunction with any Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile. (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 - Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America and affirmed by each Company on March 24, 2014)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by two Vice Presidents, this 19th day of July, 2018.

THE HANOVER INSURANCE COMPANY
 MASSACHUSETTS BAY INSURANCE COMPANY
 CITIZENS INSURANCE COMPANY OF AMERICA

[Signature]
 Bryan J. Salvatore, Executive Vice President

THE HANOVER INSURANCE COMPANY
 MASSACHUSETTS BAY INSURANCE COMPANY
 CITIZENS INSURANCE COMPANY OF AMERICA

[Signature]
 James H. Kawiecki, Vice President

THE COMMONWEALTH OF MASSACHUSETTS)
 COUNTY OF WORCESTER) ss.



On this 19th day of July, 2018 before me came the above named Executive Vice President and Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.

ARLEEN V. SIMONS
 Notary Public
 COMMONWEALTH OF MASSACHUSETTS
 My Commission Expires
 June 15, 2023

[Signature]
 Arleen V. Simons, Notary Public
 My Commission Expires June 15, 2023

I, the undersigned Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this 23rd day of December 2021

THE HANOVER INSURANCE COMPANY
 MASSACHUSETTS BAY INSURANCE COMPANY
 CITIZENS INSURANCE COMPANY OF AMERICA

[Signature]
 Carrie A. Bligh, Vice President

CERTIFIED COPY

7. Thereafter, Plaintiffs provided certain undisputed documentation to the Town demonstrating absolutely that:

a. quarrying and sand, stone earth and gravel removal is a legal conforming use;

b. the Building Official cannot order cessation of such legal operations.

8. On December 3, 1998, based upon this undisputed evidence, the Building Official rescinded his previously issued cease and desist, and operations ensued. (Exhibit "C").

9. This notwithstanding, the North Smithfield Town Council in 2001 informed the Building Official that due to neighbor complaints, it "ordered" that the Building Official stop the operations. The Building Official has yet to do so pursuant to that request and the Plaintiffs continued to operate.

10. On November 1, 2004 the Building Official sent to the plaintiffs an order requiring them to stop excavation and blasting on the said property. A copy is attached as Exhibit D.

11. The plaintiff Material Sand & Stone Corp. is dependent upon the products from the property for its continued viability.

12. The order is improper in that this issue is the subject of the pending litigation and the plaintiffs have the right to conduct the excavation and blasting activities on the property which the Building Official seeks to prevent.

13. An appeal of the order of the Building Official has been filed but the plaintiffs should not be compelled to proceed with the appeal since the issue is the subject of this prior pending litigation.

14. As a result, there is a case and/or controversy between the parties as to the status of the Plaintiffs' operations of quarrying, and sand, stone, earth and gravel excavation and removal on the property.

14. Plaintiffs are in imminent danger of irreparable harm.

15. Plaintiffs are without an adequate remedy at law.

WHEREFORE, the Plaintiffs seek a declaratory judgment as follows:

A. The Court finds that the sand, stone, earth and gravel removal and quarrying are legal nonconforming uses on the property and that the Town cannot interfere with such lawful operation;

B. That the Court enjoin and restrain the Town from interfering with Plaintiffs legal use of the property, and from enforcing the order of the Building Official, and from conducting the hearing on the appeal;

C. Enter an award for relief as the Court deems fair and just.

Plaintiffs,
MATERIAL SAND & STONE CORP.
LEONARD PEZZA and
CONSTANCE PEZZA
By their Attorney,



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Dated: December , 2004

STATE OF RHODE ISLAND
PROVIDENCE, Sc.

90-604
SUPERIOR COURT

LEONARD PEZZA and CONSTANCE
PEZZA and MATERIAL SAND & STONE CORP.

VS.

C.A. NO. 99-1811

THE TOWN OF NORTH SMITHFIELD
By and through its Treasurer, Richard
Connors; The Town Council of the
Town of North Smithfield, by and through
its duly elected members

SECOND AMENDED COMPLAINT FOR
INJUNCTIVE AND DECLARATORY RELIEF

1. Plaintiffs, Leonard Pezza and Constance Pezza are the owners of Town of North Smithfield Assessor's Plat 7, Lot 38 and Plat 10, Lot 1, now Plat 7, Lot 38.
2. Plaintiff, Material Sand & Stone Corp., is a Rhode Island Corporation doing business in the State of Rhode Island and is in the business of sand, stone, earth and gravel processing and sale and has received sand, stone, earth and gravel from the said property of plaintiffs, Leonard Pezza and Constance Pezza.
3. The Defendant, Town of North Smithfield, is a duly organized municipality in the State of Rhode Island. Richard Connors is its treasurer and is named solely in his capacity of Treasurer.
4. Since approximately the late 1950's, the plaintiffs and/or their predecessors have been involved in a quarrying operation and removal of sand, stone, earth and gravel on Plat 7, Lot 38 and Plat 10, Lot 1, now Plat 7, Lot 38. Said lots are zoned commercial by legislative action of the Town Council on March 25, 1958. (Exhibit "A").
5. Plaintiffs are either exempt or have all of the requisite permits, licenses and approvals for the continued operation of a quarry or the removal of sand, stone, earth and gravel on the property.
6. This notwithstanding, on November 13, 1998 the Building Official of the Town of North Smithfield issued a cease and desist order to Plaintiffs. (Exhibit "B").