

NEW HANOVER TOWNSHIP
ZONING HEARING BOARD
APPEAL

MAR 22 2001

NO. _____

1. Date of Appeal _____

2. Date of Decision by Zoning Officer N/A

3. Appellant's Name Gibraltar Rock, Inc.

Appellant's Address 355 Newbold Road
Fairless Hills, PA 19030

4. Owner of real estate affected by this appeal: Gibraltar Rock, Inc.

Owner's Address 355 Newbold Road
Fairless Hills, PA 19030

5. Appellant's interest in property is Owner

6. A brief description and exact location of the real estate to be affected by such proposal is as follows:

Parcel No. 470000908008, Block 030, Unit 009
Parcel No. 470002538009, Block 032, Unit 020
and Parcel No. 470000906001, Block 032, Unit 030, Lot 3
consisting of 163± acres

7. This application is for:

- Special Exception (in the alternative)
 Variance
 Other (explain) Challenge to substantive in-
validity of zoning ordinance

8. If appeal is for a Special Exception complete the following:

Appellant claims that the Special Exception herein requested may be allowed un-
der Article 11, Section 1102.3, of the New Hanover Township Zoning
Ordinance.

9. Set forth a reasonably accurate description of the improvements and the additions
intended to be made under this appeal, indicating the size of such proposed im-
provements.

See attached.

10. Appellant state reasons why this appeal should be allowed.

See attached.

11. Give the name and address of each adjoining property owner. (Attach a plot plan showing the locations of the adjoining property owners in relation to the property involved in this appeal.) Attach additional sheet if more space is needed.

Name	Address
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See attached plan.

12. Attach to this appeal a plot plan of the real estate affected, indicating the size of the lot, the location and size of improvements now erected and proposed to be erected thereon.

13. Enclose Filing Fee of \$ 2,000.00

STATE OF PENNSYLVANIA : SS.
COUNTY OF MONTGOMERY :

Gibraltar Rock, Inc., by John Silvi, President (Appellant), being duly sworn according to law, deposes and says that the facts set forth above are true and correct.


Appellant

Gibraltar Rock, Inc.

By: John Silvi, President

Sworn to and subscribed
before me this 22nd day
of March, 192001


Notary Public

NOTARIAL SEAL
JOYCE E. GALLAGHER, Notary Public
Warrington Twp., Bucks County

MAR 22 2001

APPLICATION OF GIBRALTER ROCK, INC. CHALLENGING THE SUBSTANTIVE
VALIDITY OF THE NEW HANOVER TOWNSHIP ZONING ORDINANCE

The Applicant, Gibraltar Rock, Inc., by and through its attorneys, HARRIS AND HARRIS, hereby challenges the substantive validity of the New Hanover Township Zoning Ordinance pursuant to Section 916.1.(a)(1) and Section 909.1(a) of the Pennsylvania Municipalities Planning Code (MPC) and requests that the New Hanover Township Zoning Hearing Board hold a hearing on this challenge pursuant to Section 916.1.(c)(1) of the MPC.

The Applicant is the record owner of parcels 47-908-8, 47-2538-9 and 47-906-1 (the "Property") located in New Hanover Township, Montgomery County. The Property is surrounded by Church Road, Colflesh Road, Layfield Road (Rte. 663) and Big Road (Rte. 73). The Applicant desires to operate a quarry, Use H-12, on the Property, part of which is zoned LI-Light Industrial District and part of which is zoned HI-Heavy Industrial District. Use H-12-Extractive Operation (mining, quarrying, etc.) is not permitted in either the LI or HI District.

The Applicant alleges that the New Hanover Township Zoning Ordinance imposes a de jure exclusion of quarrying in New Hanover Township because although Use H-12 is defined at Section 305.8.L. of the Zoning Ordinance, it is not permitted in any zoning district in New Hanover Township. Section 302.4 states, "A use not listed in Parts 4 through 11, as noted above, is not permitted in the specific zoning district." Use H-12 is not listed in Parts 4 through 11 of the Zoning Ordinance as a use permitted by right, special exception or conditional use in any zoning district and is therefore de jure excluded in New Hanover Township. Quarrying is a legitimate business use of property in Pennsylvania and may not be excluded. See Exton Quarries, Inc. v. Zoning Board of Adjustment of West Whiteland Township, 425 Pa. 43, 228 A.2d 169 (1967) and In re: Appeal of Miller and Son Paving, Inc. from the Decision of the Board of Supervisors of Plumstead Township Denying Its Curative Amendment Application, 161 Pa.Cmwlth. 138, 636 A.2d 274 (1993).

In addition, the Applicant alleges that even if Use H-12 is permitted in the HI-Heavy Industrial District, the New Hanover Township Zoning Ordinance imposes a de facto exclusion of quarrying in New Hanover Township. The area zoned HI, which would be the district most likely to accommodate quarrying in the Township, is surrounded by property zoned LI-Light Industrial District, in which quarrying is not permitted, and is so small and irregular that it makes quarrying economically impossible in either area zoned HI-Heavy Industrial. Further, a portion of the land zoned HI is

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underlain with rock that is unsuitable for use as aggregate in road construction and paving. For this additional reason the Zoning Ordinance operates as a de facto exclusion of quarrying.

The Applicant also challenges all of the provisions of the New Hanover Township Zoning Ordinance in the HI and LI Zoning Districts which purport to regulate quarrying operations other than the designation of the location of the district in which quarrying is permitted as they are preempted by the Non-Coal Surface Mining Conservation and Reclamation Act (NSMCRA). See Section 603.(b) of the MPC, as amended by Act 68 of 2000, which provides that zoning ordinances may contain regulations, except to the extent that those regulations of mineral extraction by local ordinances and enactments have heretofore been superseded and pre-empted by, inter alia, the NSMCRA. The Applicant specifically challenges the requirements of Section 2107.FF.(1) and (2) as preempted by NSMCRA. The Applicant also asserts that a water impact study along with all requirements of Section 305.8.L are preempted by NSMCRA to the extent they seek to regulate the operational aspects of quarrying. This application is being submitted with a traffic impact study pursuant to Section 2107.FF.(1) of the Zoning Ordinance. Finally, the Applicant challenges the setbacks set forth in Section 305.8.L.(2)(b)(2) of the Zoning Ordinance as de facto exclusionary and unreasonable.

In the alternative, in the event that the Zoning Hearing Board determines that Use H-12, Extractive Operation, is permitted in the HI-Heavy Industrial District, the Applicant hereby applies for a special exception to operate a quarry in the HI-Heavy Industrial District pursuant to Section 1102.3 of the Zoning Ordinance. In support of its request for a special exception, the Applicant will demonstrate that it meets all of the objective criteria of the New Hanover Township Zoning Ordinance which have not been preempted, and that its proposed use will not have a negative effect on the health, safety and welfare of the residents of New Hanover Township.

The Applicant seeks the following relief:

1. A declaration that the New Hanover Township Zoning Ordinance unconstitutionally operates as both a de jure and de facto exclusion of quarrying in New Hanover Township.
2. The granting of site-specific relief to permit the applicant to operate a quarry operation on Parcel Nos. 47-908-8, 47-2538-9 and 47-906-1 in the LI and HI Districts subject only to compliance with the regulations adopted pursuant to the NSMCRA and the Applicant's

Department of Environmental Protection Non-Coal Surface Mining Permit.

3. In the alternative, a special exception to operate a quarry in the HI-Heavy Industrial Zoning District, subject only to compliance with the regulations adopted pursuant to the NSMCRA and the Applicant's Department of Environmental Protection Non-Coal Surface Mining Permit.

Respectfully submitted,

HARRIS AND HARRIS

By: 

STEPHEN B. HARRIS, ESQUIRE and
DAVID J. SANDER, ESQUIRE
Attorneys for Gibraltar Rock,
Inc.

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