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April 14, 2022

VIA HAND DELIVERY/COURIER
Parsonsfield Zoning Board of Appeals
c/o Town Clerk, Town of Parsonsfield
634 North Road
Parsonsfield, ME 04047

RE: Appeal of Planning Board March 16, 2022, Vote of Approval of Roger Moreau's February 22, 2021, Site Plan Application for New Commercial Uses at (Auto Repair Shop and as Presented Auto Services) at 26 Reed Lane (Rear Lot) following remand from this Board

Dear Members of the Zoning Board of Appeals:

I represent Michael J. Nelligan of 550 Maplewood Road, Parsonsfield, Maine. He owns land that directly abuts 26 Reed Lane and, is and has, for over 7 years now been substantially adversely impacted by Mr. Moreau's long-standing attempt to add new commercial uses to an existing rear lot located in the Village Residential District at 26 Reed Lane. Other than when Mr. Moreau prevented Mr. Nelligan from attending the Planning Board's July 21, 2021 meeting (and thus deprive Mr. Nelligan of his First Amendment Rights) he has attended all of the Planning Board meetings relating to this matter. He is thus an aggrieved party with standing to pursue this appeal.

Under Article VI Section 3(B)(1), an application for appeal needs to include a "concise written statement indicating what relief is requested and why the administrative appeal ... should be granted." This letter is that statement. For relief, Mr. Nelligan, the aggrieved party here, requests that this Board reverse the Planning Board's July 21, 2021 vote (and July 27, 2021 decision letter) and March 16, 2022 vote (and March 23, 2022 decision letter) and deny the Third Application to site one or more new commercial use(s) at 26 Reed Lane, a rear lot.

The Ordinance provides that in reviewing this matter, you are to review the record of the proceedings before the Planning Board. The Board of Appeals is not to receive or to consider any evidence which was not before the Planning Board when it made its decision, but the Board of Appeals may receive and consider written or oral arguments.

Some of you are familiar with this matter as you heard my client's initial appeal last fall. For those who are new, there is an extensive record on Mr. Moreau's Third Application for Site Plan Approval dated February 22, 2021 ("Third Application"). I have attached behind **Tab A**

what I believe to be the index of material submitted to the Planning Board pertaining to the Third Application up through the Planning Board's March 16, 2022 meeting when it voted 3-0 to reapprove the Third Application and the issuance on March 23, 2022 decision letter. The Planning Board Secretary is required to make the full record available to you.

As you may recall on July 21, 2021, the Planning Board voted 4 to 1 to approve the Third Application. A copy of the original Planning Board's July 27, 2021 decision letter is behind **Tab B** and the Minutes of the Planning Board's July 21, 2021 meeting is behind **Tab C**.

Mr. Nelligan appealed that decision to this Board. A copy of that full appeal is in the record and is incorporated herein by this reference. All of the issues raised earlier remain including whether the Planning Board ever actually reviewed the Third Application against the Site Plan standards,¹ one issue continues to stand out and it is a legal issue. It is whether as a new commercial use located on a rear lot, does the Ordinance require that access to that new use meet the commercial access standards which require that a new commercial use be accessed by a 60-foot right of way in width with 30-feet of improved surface on center. Because the Planning Board on July 21, 2021 had approved parking premised on a one bay garage but Mr. Moreau in fact built a two-bay garage, there was also an issue whether Mr. Moreau had met the parking standards.

Back in the fall of 2021 when you first heard this issue you did not state definitely what the Ordinance requires for access when a new commercial use is proposed on a rear lot. Mr. Moreau proposes only to provide access that meets the standard for two or more dwelling units (50-foot right of way) and not an access that meets the standard for a new commercial use (60-foot right of way with travel lane of 30-foot in width on center).

After hearing the arguments you are going to hear again, you stated "that the 50' right-of-way may not be consistent with the Town of Parsonsfield ordinances." Rather than rule definitely you wanted the Planning Board to explain how it arrived at a different conclusion. So you sent what in essence is a legal issue back to the Planning Board and now it is back before you again. A full copy of your Board's October 4, 2021 written decision is behind **Tab D**.

Subsequent to your decision both parties provided even more material to the Planning Board. The applicant submitted a revised site plan that showed more parking but with the parking located impermissibly within the wellhead protection zone. As noted above, this Board had observed that while the Planning Board approved a one-bay garage, Mr. Moreau actually built a 2-bay garage which meant among other things his approved site plan lacked the required parking. So he had to submit a revised site plan showing double the amount of parking (from 5 to 10 spaces). But the Planning Board never bothered to see whether the parking is located

¹ Both parties urged the Planning Board to make required findings. The Applicant's lawyer in her Feb. 14, 2022 letter to the board wrote: "I urge this Board to have a thoughtful discussion at the next meeting and state its findings and conclusions with specificity in a written decision. I also urge the Board to consider each of issues that Mr. Nelligan brought up on appeal to the Zoning Board of Appeals so the ZBA, if it gets this matter back again, will have an adequate record on which to review your findings and conclusions and leaving nothing for resolution at any other time." The board did not do this.

within the wellhead protection zone. State law prohibits an auto repair business being located in that zone, which is an area within 300 feet from a private drinking water well.

On remand only 3 of the original 5-person board members who voted back in July 2021 were present. Of the 5 who voted back in July 2021 three of them (A. Jackson, S. Beckwith and A. Bogeun) had never conducted a site visit at anytime. Despite this fact being known to the Planning Board, the board never conducted a site visit. Relative to the what the Ordinance requires for an access way to serve a new commercial use located on a rear lot, the Planning Board had before it essentially the same arguments you heard last September 2021.

The Planning Board on remand continued to ignore what the Ordinance actually says. The Planning Board ignored the new commercial access standards and instead relied on standards applicable to when an access way is proposed to serve two or more “dwelling units” to say the applicant’s use of the existing 50-foot right of way with a 12 to 14-foot travel lane was sufficient. However the standards governing access to two or more dwelling units apply to dwelling units and not to commercial uses. Mr. Moreau’s counsel has conceded that the Ordinance requires for a new commercial use that access be provided by a right of way at least 60-feet in width with a 30-foot travel lane on center. *See* Attorney Cramer’s letter to the Planning Board dated April 15, 2021 (“The commercial and industrial use standards require 30-feet of pavement on a 60-foot right of way.”) The Planning Board refused to apply this provision because it meant they would have to deny the Third Application. While he did not sit to hear the remand, Mr. Moreau is presently a Planning Board member.

Because the commercial use standards apply, and not the standards for two or more dwelling units, we ask once again that you reverse the Planning Board’s decision. It is based on errors of law and, on that basis, the Planning Board’s approval of the Third Application should be declared null and void.

Here is what the Planning Board said in its written decision dated March 23, 2022, a full copy of which is behind **Tab E**.

The PB reviewed the Town of Parsonsfield Land Use and Development Ordinances (LUO) Article II, Section 6, Paragraph A, Items 1 and 3. Reed Lane is fifty (50) feet wide, is an existing private way, is sufficient access to the lot, has the proper drainage ditches and culverts, and any emergency vehicles have a sufficient turnaround area as depicted on the site plan submitted.

Conclusions

Based on the above finding of fact, the Parsonsfield Planning Board makes the following conclusions:

- Reed Lane is fifty (50) feet wide, is an existing private way, and per the Town of Parsonsfield Land Use and Development Ordinances (LUO) Article II, Section 6, Paragraph A, Items 1 and 3 is sufficient access to the lot, has the proper drainage

ditches and culverts, and any emergency vehicles have a sufficient turnaround area as depicted on the site plan submitted.

- Reed Lane is an existing private way and would not fall under LUO Article II, Section N, Paragraph 4, Items a. through g. as they apply to streets within subdivisions.

Last October in your decision you found “that the 50’ right-of-way may not be consistent with the Town of Parsonsfield ordinances.” See Notice of Decision (Oct. 4, 2021).

Here again is why that is so:

Article II.6.N.4.c & d of the Ordinance says:

c. The standards shown in Table 5, apply according to street classification (both private and Town owned).

d. The centerline of the roadway must be at the centerline of the right-of-way.

TABLE 5
Street Standards

Description	Coll.	Type of Street	
		Residential & Rural	Industrial & Commercial
Minimum Right-of-way Width	50'	50'	60'
Minimum Pavement Width	24'	20'	30'

Mr. Moreau’s counsel again has admitted that for a new commercial use the Ordinance requires access by the private road be by a 60-foot right of way with a 30-foot travel lane on center. See Attorney Cramer’s letter to the Planning Board dated April 15, 2021.

Ignoring the obvious, the Planning Board relied on the criteria in Article II.6.A.3 in approving an access way that did not meet the commercial access standards. That was an error of law.

Section 6. General Performance Requirements:

The following standards apply to all lots created and all land use activities undertaken, where applicable.

A. Access to Lots

B.

1. Each lot must be provided with right of access to the property from public or private ways.

3. All access roads (new and existing) must be constructed to a minimum width of twelve (12) feet if serving one **dwelling unit**, and fifteen (15) feet if serving two or more **dwelling units**. The access road must contain a minimum depth of twelve (12) inches of bank-run gravel for the gravel base course and two (2) inches of crushed surface gravel for the surface gravel course. It must have drainage ditches and culverts at all appropriate points and must provide sufficient area to allow a fire truck or other emergency vehicle to maneuver.²

Appendix: A-Definitions (p.A-5)

*6. **Dwelling Unit**: A room or suite of rooms used by a family as a habitation which is separate from other such rooms or suites of rooms, and which contains independent living, cooking, sleeping, bathing and sanitary facilities.

Since Mr. Moreau is adding a new commercial use, with 10 parking spaces, and not another dwelling unit, this section simply does not apply. Rather the commercial standards apply to his new commercial use. Under Access Road Quality it is stated, “[i]f serving a business..., the access road must meet the construction requirements of road construction.”

It makes no sense to permit a new commercial use that does not meet the standards for commercial access as then the new commercial use is automatically being created as a non-conforming use. The purpose of zoning is to eliminate non-conformities. That is why the Ordinance requires that for any new use, the new use must meet all of the standards in the Ordinance.

Section 5. Conformity Required

Except as hereinafter specified, no building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, expanded, moved, or altered except in conformity with all of the regulations herein specified for the district in which it is located, unless a variance is granted. All lots created shall be in conformity with all regulations herein specified for the district in which it is located.

See also Art. I, Section 6 (“It is the intent of this Ordinance to promote land use conformities.”).

You should be aware the private right of way in question, Reed Lane, while it exists today, it did not come into existence until after the Town adopted zoning in the 1980s. This is all documented in the record (*see* my letter to Planning Board dated June 16, 2021, with attachments and full deed history and earlier ordinances which is incorporated herein). This is undisputed. At the time it was created, because a new rear lot was created, Reed Lane should have been a 50-

² Reed Lane as evidenced by the submitted plan already serves three (3) Residences: 478 Maplewood (Schoolhouse Lot); 13 Reed Lane (Gilbert) and 26 Reed Lane (Rear Lot). Now it is proposed to serve at least one (1) Commercial Use at 26 Reed Lane (Rear Lot).

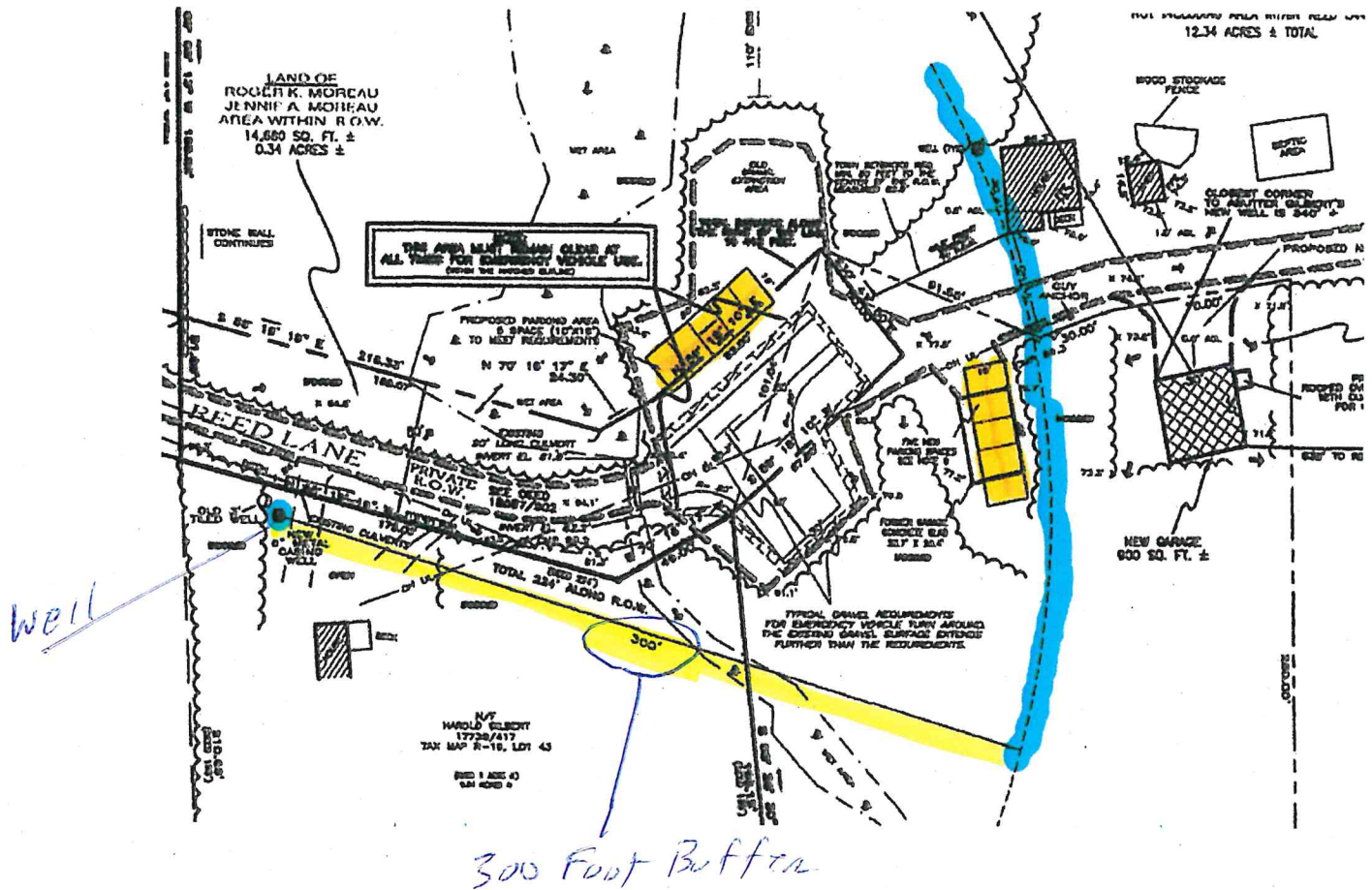
foot right of way. When additional dwelling units were added and accessed by Reed Lane, Reed Lane should have been required to be 50-feet in width. Now that the applicant proposes a new commercial use, Reed Lane must be brought up to the present commercial access standards.

Any way one looks at it, current Ordinance standards require when a new commercial use is to be accessed by a private right of way, the private right of way must meet the standards for a new commercial use, that is be accessed by a 60-foot-wide with a 30-foot travel lane on center. You should so conclude and reverse the Planning Board's decision.

To save the parties considerable time and expense, and as it did in hearing the last appeal, the Board should first decide whether the Planning Board erred in approving the Third Application given that the site plan did not show access to the new commercial use by a 60-foot right of way in width with 30-feet of improved surface on center. There is no dispute that the approved plan only shows a 50-foot-wide deeded right of way with on average about 12 to 14-feet of improved surface. Then the Board need not address the other issues. Instead, it would issue an order vacating and reversing the Planning Board's July 21, 2021 decision and March 16, 2022 decision and decision letters.

The Board can also address whether the Planning Board erred in approving the site plan given that the area to be used by the auto repair shop was within the 300-foot wellhead protection buffer. 38 M.R.S. § 1391 et seq. (the buffer is intended to protect "drinking water wells from contamination by oil or hazardous waste" and that "spills of oil and hazardous waste pose a significant risk to groundwater quality and that the handling of those substances near drinking water wells should be restricted to reduce the risk of contamination"). The proposed parking will be used in part for storage of vehicles to serviced, and is part of the footprint of the business. Condition of Approval #4 on the Site Plan requires the applicant to store vehicles to be repaired in the parking area.³ Vehicles to be repaired leak oil and gas. That is why any area occupied and used by the auto repair and service business (the footprint) must be entirely located outside of the 300-foot wellhead protection zone. There has already been one fire when a torch ignited a fuel tank. The Planning Board erred in approving the Site Plan given it shows and requires that vehicles left to be repaired will be located within the wellhead buffer zone. See drawing on next page.

³ 4. VEHICLES BEING WORKED ON ARE TO BE IN THE AUTHORIZED SPACES AS PER THE SURVEY PLAN SUBMITTED FOR THE JULY 21, 2021 MEETING AND APPROVED MARCH 9, 2022. THE NUMBER OF VEHICLES IS NOT TO EXCEED THOSE SPACES.



Beyond these legal issues there are a host of issues that must be decided if this Board decides that the commercial access standards don't apply to a new commercial use and that a portion of the auto repair operations can be located in the wellhead protection zone. Here are those issues:

- I. **The Planning Board committed legal error when it approved Mr. Moreau's 3rd Site Plan Application given the Ordinance required the applicant to first create a separate lot or lots by subdividing 26 Reed Lane to obtain site plan approval**

The Planning Board erred when it failed to identify the various uses proposed and when in approving the Third Application given that the submitted site plan did not show the proposed new commercial use on a separate lot.

The Town Attorney Lourie provided procedural guidance to the Planning Board in his letter dated May 14, 2021, (*see Mr. Lourie's letter in the record*) (emphasis in original). He said:

I recommend that the board first address the factual and legal issues concerning each new proposed use, prior to examining the proposed layout plan. The first issue is whether the use is listed as a permitted use within the VR district¹, and then whether it is allow[ed] as a permitted use upon what has been determined by the ZBA to be a rear lot benefitted by Art. I § 6. D.3 The board must decide whether more than one use is now permitted, and if so, whether each of the proposed new uses is the *principal use* or an *accessory use* to the existing residential use of the Moreau Lot, and whether the Applicant has met the *special exception* criteria as to the use if required by the district regulations.

¹ I note that several of the proposed new uses appear to be prohibited unless the board makes findings of fact supporting such new use as a *Special Exception* “following site plan review.” Thus, if the board finally votes to approve the site plan, and makes written findings with respect to the plan and change of use, it must also make additional findings as to whether the applicant has shown “by substantial evidence: a. there is no alternate site which is both suitable to the proposed use and reasonably available to the applicant. And b. that an environmental neighborhood impact report shows that there will be no adverse impacts on neighboring uses.” (The board may also have to decide other factual and legal issues as to whether any proposed new use(s) is a principal or accessory use that can be legally established on this lot along with the existing residential use consistent with applicable Zoning Ordinance limitations and Definitional Ordinance.)

The Town Attorney said if the Moreaus wants to try and seek approval for the new commercial uses on the Rear Lot, while maintaining residential uses, they must first subdivide their lot into 2 or more lots before seeking site plan approval.

“[I]t appears likely that the board can approve only one principal use on the Lot, and that all other uses must be accessory to it. If so, Moreau must divide his lot into 2 or more lots if he is to enjoy the benefit of approval of the commercial uses he has requested, as well as continue the existing residential use. “

Id. at n.8.

The Planning Board erred when it disregarded the Town Attorney’s legal advice.

II. The Planning Board here failed to review, discuss, consider, or find that the applicant’s demonstrated compliance with the following standards:

If this Board decides the Board did not commit legal error, then this Board should remand this matter to the Planning Board, so that Planning Board can make the required findings whether the application met the specific standards of the Ordinance. Conclusory findings are insufficient when, as here, the Ordinance requires the Planning Board make positive findings that each review criteria has been met. *Kurlanski v. Portland Yacht Club*, 2001 ME 147, ¶ 14, 782 A.2d

783 (remand required when planning board failed adequately to consider and make positive findings on the required site plan elements).

The Planning Board failed to discuss, consider and apply the site plan standards and general standards governing the application. Ordinance, Art. III, Sec. 6 (detailing the site plan review criteria which the Planning Board must find the applicant met in order to approve a site plan application) and Art. V, Sec. 4(A)(5). *Davis v. SBA Towers II, LLC*, 2009 ME 82, 979 A.2d 86; *Gensheimer v. Town of Phippsburg*, 2005 ME 22, ¶ 18, 868 A.2d 161; *Kurlanski v. Portland Yacht Club*, 2001 ME 147, ¶ 13, 782 A.2d 783. This Board must therefore vacate the Planning Board's July 21, 2021, decision as modified by vote on March 16, 2022, and written decision dated March 23, 2022.

That is what the Ordinance requires.

Article III, Section 6. Criteria for Review and Approval of Site Plans and Subdivisions In approving site plans and subdivisions within the Town of Parsonsfield, the Planning Board shall consider the following criteria and before granting approval shall make findings of fact that the provisions of this Ordinance have been met...

A. Aesthetic, Cultural and Natural Values The proposed activity will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas, or any public rights for physical or visual access to the shoreline.

B. Conformity with Ordinances and Plans The proposed activity conforms with this Ordinance, other duly adopted ordinances, including the Subdivision Regulations of the Town of Parsonsfield, and the Parsonsfield Comprehensive Plan.

C. Erosion The proposed activity will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.

D. Financial Burden on Town The proposed activity will not cause an unreasonable financial burden on the Town for provision of public services and facilities.

E. Financial and Technical Ability 1. Financial Capacity The applicant has adequate financial resources to construct the proposed improvements and meet the criteria of the Land Use and Development Ordinance. When the applicant proposes to construct the building as well as any subdivision improvements, the applicant shall have adequate financial resources to construct the total development. In making the above determinations, the Planning Board shall

consider the proposed time frame for construction and the effects of inflation; 2. Technical Ability In determining the applicant's technical ability, the Planning Board shall consider the applicant's previous experience, the experience and training of the applicant's consultants, engineers, architects and contractors, and the existence of violations of previous approvals granted to the applicant.

F. Flood Areas Flood areas are based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the application as to whether the activity is in a flood-prone area. If the activity, or any part of it, is in such an area, the applicant shall determine the 100-year flood elevation and flood hazard boundaries within the project area. The proposed project plan must include as a condition of plan approval, that principal structures in the project area will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation.

G. Freshwater Wetlands All freshwater wetlands within the proposed site have been identified on maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district.

H. Groundwater The proposed activity must not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.

I. Municipal Solid Waste Disposal The proposed activity will not cause an unreasonable burden on the municipality's ability to dispose of solid waste if municipal services are to be utilized.

J. Municipal/Public Water Supply The proposed activity will not cause an unreasonable burden on an existing public water supply, if one is to be used;

K. Neighborhood Compatibility 1. The proposed activity will be compatible and sensitive to the character of the site and neighborhood relative to land uses, scale, bulk and building height, neighborhood identity and historical character, and orientation on the lot; 2. The proposed activity maximizes the opportunity for privacy by the residents of the immediate area; 3. The proposed activity ensures safe and healthful conditions within the neighborhood; [and] 4. The proposed activity will minimize any detrimental effects on the value of adjacent properties.

L. Pollution The proposed activity will not result in undue water or air pollution. In making this determination, the Planning Board shall consider at a minimum: 1. The elevation of the land above sea level and its relation to the flood plains; 2. The nature of soils and subsoil and their ability to adequately support waste disposal; 3. The slope of the land and its effect on effluents; 4. The

availability of streams for disposal of effluents; 5. The applicable state and local health and water resource rules and regulations; and 6. The impact of phosphorous export and other pollutants on water bodies.

M. River, Stream or Brook Any river, stream or brook within or abutting the proposed project has been identified on maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38, M.R.S.A. Section 480-B, Subsection 9, or as amended.

N. Sewage Disposal The proposed activity will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.

O. Storm Water The proposed activity will provide for adequate storm water management.

P. Sufficient Water The proposed activity has sufficient water available for the reasonably foreseeable needs of the project.

Q. Traffic The proposed activity will not cause unreasonable burdens on public streets or roads either existing or proposed.

Also Article V, Section 4(A)(5) required the Planning Board at a public meeting to review, discuss and make a finding that the applicant demonstrated that the following criteria was met. This the Planning Board did not do.

After the submission of a complete application to the Planning Board, the Board shall approve an application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use:

- (a) Will maintain safe and healthful conditions;
 - (b) Will not result in water pollution, erosion, or sedimentation to surface waters;
 - (c) Will adequately provide for the disposal of all wastewater;
 - (d) Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
 - (e) Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
 - (f) Will protect archaeological and historic resources as designated in the comprehensive plan;
 - (g) Will not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries/Maritime Activities district;
 - (h) Will avoid problems associated with floodplain development and use;
- and
- (i) Is in conformance with the provisions of Section 15, Land Use Standards.

In addition because the' proposed uses as presented triggered the need for a Special Exceptions permit, as they proposed to provide State auto inspection services and auto services (oil changes and tire sales), which under the Ordinance makes the use an Auto Service Station⁴, the Board could not approve the application as presented as it lacked the information required to obtain a Special Exception permit,

Applications for Special Exception Permits In addition to the foregoing requirements, applications for Special Exception Permits must include:

1. An alternative sites analysis identifying and analyzing other reasonable alternative sites and justification of how the proposed site is the most suitable; and
2. A neighborhood environmental impact report evaluating the potential impacts on neighboring properties and environs and presenting mitigating measures that alleviate adverse effects.

Ordinance, Article III, Section 5(E).

What follows is a list of additional issues. Note these issues are all identified and developed more thoroughly in letters submitted to the Planning Board that are part of the record. See Curtis Thaxter LLC Letters dated March 16, 2021, April 4, 2021, May 18, 2021, June 16, 2021, July 15, 2021, and March 16, 2022.

III. Based on administrative res judicata which bars the filling of an application for projects which have already been denied, the Planning Board erred in considering the Moreaus' Third Application Site Plan Approval dated February 22, 2021.

The doctrine of administrative res judicata stands for the principle that "there must be some limit to repeated submissions of applications involving the same subject matter." *Hilltop Terrace Homeowner's Ass'n v. Island County*, 891 P.2d 29, 31 (Wash. 1995). The rule applies "when the subsequent application . . . seeks substantially the same relief as that sought in the previous one." *Driscoll v. Gheewalla*, 441 A.2d 1023, 1027 (Me. 1982).⁵ "Once an application

⁴ An Auto Service Station is defined in the Ordinance as follows: "A place where gasoline, or any other automobile engine fuel, kerosene, or motor oil and lubricants or grease (for operation of motor vehicles) are retailed directly to the public on the premises; including the sale of minor accessories and the servicing and minor repair of automobiles, not including storage of unlicensed vehicles and not including body, frame, or fender straightening and repair." Ordinance, Appendix A, Definitions, page A-2.

⁵ The "essential elements of adjudication" for the purpose of administrative res judicata include: (1) adequate notice, (2) the right to present evidence and legal argument and to rebut opposing evidence and argument, (3) a formulation of issues of law or fact to apply rules to specified parties concerning a specified transaction, (4)

for a land use activity has been denied, the board is not legally required to entertain subsequent applications for the same project, unless the board finds that ‘a substantial change of conditions ha[s] occurred or other considerations materially affecting the merits of the subject matter had intervened between the first application and the (Second).’” Maine Municipal Association, *Manual for Local Planning Boards: A Legal Perspective* 46 (2017).

Because by their Third Application the Moreaus sought approval for the exact same proposed commercial use(s) as in their first and second applications, the Planning Board should not have considered the merits of the Third Application. Enough is enough. The only “substantial change” offered in support of the Third Application was a survey plan showing a 50-foot right of way that the Moreaus already referenced during their Second Application and clearly could have been presented to the Planning Board when it considered the Second Application but did not. Regardless, the survey does not demonstrate a material change in circumstance that has intervened between the Second and Third Application. The Planning Board failed to provide any justification for ignoring this rule of law.⁶

IV. The Planning Board erred when it permitted a biased Planning Board member to sit and hear the application.

Mr. Nelligan through counsel presented to the Planning Board detailed examples that Board Member Yale was biased. *See* Curtis Thaxter LLC letters of April 21, 2021, behind **Tab F** and May 18, 2021, behind **Tab G**. His bias was also clearly evident when on July 21, 2021, he caused the application to be approved even though the applicant never presented the application with changes to the public, there was no site walk even though the Planning Board had new members, there was never a public hearing that was to occur after a finding of completeness, and there was no notice that the Planning Board would that night be summarily considering approval. His actions indicated unmistakable bias to approve the application regardless of the Planning Board’s procedures and without any review.

Maine’s Supreme Court has said:

the rendition of a final decision, and (5) any other procedural elements as may be necessary to constitute the proceeding a sufficient means of conclusively determining the matter in question.

Kurtz & Perry, P.A. v. Emerson, 2010 ME 107, ¶ 19, 8 A.3d 677 (citation omitted).

⁶ In *Hodson v. Town of Hermon*, an applicant’s first site plan application was denied, and was not appealed. *Hodson*, No. AP-99-01, 1999 WL 35298234, at *1 (Me. Super. Ct., Dec 21, 1999). In *Hodson* the applicant then resubmitted a “new” application, which the planning board approved. Abutters appealed to the courts and argued that the second application was identical and should be barred by res judicata. The court recognized that in order to consider the merits of the second application the planning board was required first to determine whether a substantial change of conditions had occurred or other considerations materially affecting the merits of the subject matter had intervened between the first and second application. Here the Planning Board made no such finding.

Procedural due process also assumes that Board findings will be made only by those members who have heard the evidence and assessed the credibility of the various witnesses. The United States Supreme Court when describing administrative proceedings observed that

the weight ascribed by the law to the findings—their conclusiveness when made within the sphere of the authority conferred—rests upon the assumption that the officer who makes the findings has addressed himself to the evidence and upon that evidence has conscientiously reached the conclusions which he deems it to justify. That duty cannot be performed by one who has not considered evidence or argument. It is not an impersonal obligation. It is a duty akin to that of a judge. The one who decides must hear.

Pelkey v. City of Presque Isle, 577 A.2d 341, 343 (Me. 1990). See also *Widewaters Stillwater Co., LLC v. City of Bangor*, No. AP-01-16, 2001 WL 1719231 (Me. Super. Ct., May 31, 2001) (fact that board member was on record of supporting a zone change showed the board member's bias and that board member should not have sat on application for zone change presented to the planning board).

Here, Planning Board Member Yale is on record of saying Mr. Moreau is entitled to a permit without regard to the evidence presented, and without regard to the standards in the Ordinance as to deny him a permit (ignoring 6 years ago Mr. Moreau undertook his activities based on misrepresenting his intentions to the Town) would be to deny him the right to earn a living. His participation on this matter resulted in a due process violation. For this reason the Planning Board's decision must be reversed.

V. The Planning Board/Town violated due process when it allowed an uncertified CEO to sit and advise the Planning Board in this matter.

Throughout these proceedings through July 2021, the Town CEO was not certified by the State under 30-A M.R.S. § 4451 in Comprehensive Planning or Land Use under 30-A M.R.S. § 4301. See attached good faith representation of the Department of Public Safety, Office of State Fire Marshal, Code Enforcement Officer Training And Certificate Program inquiry. <https://www.pfr.maine.gov/ALMSOnline/ALMSQuery/ShowDetail.aspx?DetailToken=9B52DBC78AB149D2E0E7A37D179AFC2F4A005324F2A867A98EDF550473DC25BB> (last visited Aug. 19, 2021).

Per the State, "Land Use Planning – covers applicable local, state, and federal land use regulations, zoning, municipal planning board and appeals board procedures, floodplain management, state subdivision law, site plan review, review and permitting, report procedure, and inspection and enforcement techniques." <https://www.maine.gov/dps/fmo/building-codes/code-enforcement/training-certification> (last visited Aug. 19, 2021).

The Ordinance provides that the CEO has involvement with site plan applications. He is to make an initial determination of completeness of the application. Ordinance Art. III, Sec. 4(B). And if incomplete the CEO is to advise the applicant and the Planning Board. Having not been certified in Land Use Planning, the CEO had no business being in anyway involved with the Moreaus' Third Application for Site Plan Approval. Yet he did. He attended meetings and advised the Planning Board when asked and had direct involvement with the application. This was illegal and also a violation of procedural due process due when a CEO uncertified in land planning (including site plan review) participated in the site plan review process.

VI. The Planning Board never reviewed the application against what the Ordinance requires and thus the Planning Board erred in finding the application was complete.

The Planning Board never reviewed and considered the factors necessary to determine whether the Moreaus met their burden to present a complete application. Ordinance Art. III, Sec. 4(B) ("The Code Enforcement Officer shall make an initial determination of the completeness of the application, which is then subject to the determination of the Planning Board."). One former Planning Board member even showed up at the May 19, 2021, hearing to remind them of this basic task. Per the minutes of that meeting as approved by the Planning Board:

Justin Espinosa asked to speak and introduced himself. He stated that from his experience as a Planning Board member the Board should go through the application and each member should vote whether or not each item meets the conditions for completeness.

To make that determination the Planning Board had to compare the Third Application to the requirements stated on the application itself and in Article III, Section 5. That never occurred.

My letter to the Planning Board dated April 21, 2021, incorporated herein by reference, spells that out in detail and shows how the application was not complete. Most of the items listed were never addressed by the applicant. Thus, the Planning Board, even if had conducted a review of the application against the Ordinance, had no basis to deem the application complete. The lack of completeness caused numerous problems as the Moreaus never were clear on whether they in fact created a new lot, by lease or otherwise, and with a new lot, whether all applicable code and statutory set backs were met. The Ordinance required the Planning Board to review for completeness and give its findings. For this reason alone the Planning Board's decision must be reversed.

It was imperative that a complete site plan be presented showing the new lot and detailing just on that lot where cars will be parked or stored and show the necessary subdivision. This would allow anyone looking at the plan in the future to determine, if approved, where (1) Mr. Moreau would be permitted to undertake his auto related uses outside of the area as shown on the site plan, and (2) otherwise not continue what has been the illegal operation of a junkyard and auto body operation, both of which are prohibited at the site.

VII. The Planning Board violated due process.

By regular practice and procedure, after determining a site plan application to be complete, the Planning Board would hold a site visit, then advertise and hold a public hearing for the applicant to present the deemed completed application, to provide the public the opportunity to see the completed application, ask questions (and allow for cross examination) and present testimony. After the close of the public hearing, the Planning Board would deliberate and consider whether each standard has been met.

The Planning Board did none of the above, no site visit, no public hearing, no presentation of the deemed completed application, no opportunity to ask questions or present testimony or to cross examine, and no deliberations with considerations of the standards. At Planning Board Members Yale's insistence the application was rammed through at the one meeting at which Mr. Moreau secured Mr. Nelligan's absence. All of this rubber-stamping violated state and federal due process protections.

Here the Planning Board had before it a Site Plan application dated February 22, 2021. It was a new application and made no reference to any prior application, or suggested it was an amendment to an earlier denied application. It was brand new. But once again the applicants' counsel directed the Planning Board to disregard the process and treat the brand-new application as an amendment to an earlier application so as to give an excuse for the Planning Board not to conduct a site visit or to hold a public hearing.

Attorney Cramer: ⁷

“And I had written a letter to you late last week, it's our position that following the ZBA's grant of Mr. Nelligan's appeal that we are submitting additional material showing change in circumstances we're hoping that the Board agrees that we are supplementing his May 2020 application not resubmitting a brand new application going through this whole rigmarole again with a site walk, public hearing it's not a different project.”

So that is what the Board did. With no factual legal basis to do so. This is what transpired on July 21, 2021.

Chair Jackson: ⁸

Yes, Mr. Silk.

Attorney Silk:

⁷ Planning Board Meeting Video, 2 of 3, April 21, 2021, at 06:00
<https://www.youtube.com/watch?v=1FCIJEVL4E4>.

⁸ Planning Board Meeting Video, July 21, 2021, at 25:45 <https://www.youtube.com/watch?v=D4bR82LOILo>.

So, it wasn't clear to me tonight you were acting on the applications, as I understood it, that you were going to ask them whether the application is complete...I just want to know if, you have new members on the Board and there's never been a site visit so for you in any position to make any determination whether the site plan conditions are met. You would have had to gone to the site.

If you haven't gone, if you've gone to the site in the absence of a public meeting for a public notice

Chair Jackson:

We're done with it Mr. Silk. We don't need no more comments on that...

Attorney Silk:

I just want to put on the record...

Chair Jackson:

No, we're done, they said voting, these guys made the motion, it's finished, we're finished with it nothing else.

The Planning Board failed to conduct a site visit even though it had members who had not previously visited the site and the Planning Board practice on site plans is to conduct a site visit after finding an application is complete. This is particularly important when here some of the criteria to be considered includes the compatibility of the proposed use with the existing character of the neighborhood.

Reviewing a site plan without firsthand knowledge of the site is difficult.

Therefore, it is prudent to assure that the people doing the review have visited the site.⁹

*"The individual board members also need to be sure to note for the written record at the next board meeting the fact that a site visit was conducted and what information the visit generated that might affect the visiting board member's vote on the application."*¹⁰

*"It is crucial that the ultimate findings and conclusions prepared by the board in making its decision address the evidence from the site visit and that the findings in general are sufficiently detailed to allow a court to determine how the board evaluated all the evidence."*¹¹

Any proposed commercial use in a Village Residential zone should be "appropriate for a village area" and "compatible with the Village District," the purpose of which is to "preserve the

⁹ Site Plan Review Handbook: Maine State Planning Office, 1997 (pg. 29).

¹⁰ Manual for Local Planning Boards: A Legal Perspective MMA-February 2017 revised edition (pg.17).

¹¹ *Ibid* (pg.17).

historic villages in Parsonsfield and to promote the traditional village atmosphere that is common to New England towns.” Ordinance Art. II, Sec. 1(A)-(B).

Site plan standards are intended to protect nearby property owners from activities not suitable at the specific proposed location. This requires an individualized determination based on the character of the proposed location.

The right “to ask” questions and “be heard” is a fundamental right when property rights are at issue. The Planning Board procedure resulted in a denial of Mr. Nelligan’s procedural and substantive due process rights which include:

- An unbiased tribunal.
- Adequate and accurate notice of the proposed action and the grounds asserted for it.
- The opportunity to present reasons for the proposed action not to be taken.
- The right to present evidence, including the right to present witnesses.
- The right to know the opposing evidence.
- The right to cross-examine adverse witnesses.
- A decision based only on the evidence presented.
- Opportunity to be represented by counsel.
- A requirement that the tribunal prepare a record of the evidence presented.
- A requirement that the tribunal prepare written findings of fact and the reasons for its decision.¹²

The Planning Board’s decision must therefore be reversed.

VIII. The Planning Board failed to apply the requirements in the Ordinance applicable to a new commercial use and if they had the application would have had to be denied.

The Planning Board failed to consider and apply the standards applicable to a new commercial use or uses including but not limited to the right of way requirements applicable to

¹² Both an applicant and members of the public who oppose a project are “entitled under the [D]ue [P]rocess [C]lause of the United States and Maine [C]onstitutions to a fair and unbiased hearing.” *Gorham v. Town of Cape Elizabeth*, 625 A.2d 898, 902 (Me. 1993); see also U.S. Const. amend. XIV § 1; Me. Const. art. I, § 6-A; *Lane Constr. Corp v. Town of Washington*, 2008 ME 45, ¶¶ 28–29, 942 A.2d 1202 (recognizing the procedural due process rights of a project’s opponents before a municipal planning board). The Due Process Clause “ ‘protects against the exercise of arbitrary governmental power and guarantees equal and impartial dispensation of law according to the settled course of judicial proceedings or in accordance with fundamental principles of distributive justice.’ ” *Mutton Hill Estates, Inc. v. Town of Oakland*, 468 A.2d 989, 993 (Me. 1983) (quoting the trial court opinion with approval). Due process entitles a party “to a fair and unbiased hearing.” *Lane Constr. Corp.*, 2008 ME 45, ¶ 29, 942 A.2d 1202. The public must have a full and fair opportunity to comment on an application. *Cunningham v. Kittery Planning Board*, 400 A.2d 1070, 1078–79 (Me. 1979); see also *Anderson v. New England Herald Dev. Grp.*, 525 A.2d 1045, 1046 (Me. 1987).

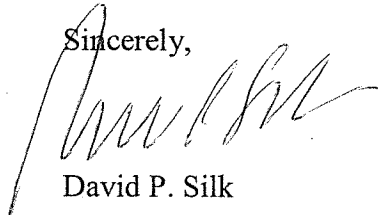
site distances at the entrance at Maplewood, off street parking, buffering, and to the width of the right of way from Maplewood to the commercial use lot (must be 60-feet wide with 30 feet of improved surface for a new commercial use). Ordinance, Art. I, Sec. 5; Art. II, Sec. 6(A [Access to Lots]), 6(E [Buffers/Screening]), 6(L [Off-Street Parking and Loading]), (L)(3)(c)(ix) [Table 4 (Parking Requirement Schedule)], (N Road Construction and/or Acceptance), (N)(4 [Street Design Standards]), (N)(4)(g)(ii) [Table 5 (Street Standards)], (6)(Q [Soil and Water Quality Protection]), and (6)(S [Street Access and Driveways]). See my letter to the Planning Board dated March 16, 2022, with attached Analysis by Mr. Nelligan, both incorporated herein by reference. Mr. Nelligan's analysis is behind **Tab H**. Please review it.

In sum, the Planning Board committed errors of law and abused its discretion. To the extent it made findings, those findings are not supported in the record. Please reverse and vacate the Planning Board's approval of the Third Application. Any new commercial use to be located at 26 Reed Lane must be accessed by a private way that meets the commercial access standards. It is a simple as that. This saga that begin when Mr. Moreau illegally converted a residential garage to a commercial use, started an illegal junk yard, with 5 stop work orders issued, and resulted in the garage burning down when a blow torch ignited a gas tank, has to end.

We appreciate you taking the time to review the material submitted herein. Had the Planning Board properly applied the Ordinance none of this would be necessary.

I look forward to appearing before you at the hearing regarding this appeal.

Sincerely,



David P. Silk

Enclosures:

Appeal Application

Check

Planning Board Index of Record

Tab A: Index: Planning Board Materials

Tab B: Planning Board Decision Letter (July 27, 2021)

Tab C: Minutes of the Planning Board Meeting (July 21, 2021)

Tab D: Zoning Board of Appeal Written Decision (Oct. 4, 2021)

Tab E: Planning Board Written Decision (Mar. 23, 2022)

Tab F: Curtis Thaxter LLC Letter (Apr. 21, 2021)

Tab G: Curtis Thaxter LLC Letter (May 18, 2021)

Tab H: Analysis of Michael Nelligan

Parsonsfield Zoning Board of Appeals

April 14, 2022

Page 20

cc: Michael J. Nelligan w/ enclosures
David A. Lourie, Esq., w/enclosures
Jill A. Cramer, Esq. w/enclosures

TOWN OF PARSONSFIELD
APPLICATION FOR AN ADMINISTRATIVE APPEAL
TO ZONING BOARD OF APPEALS

Name of Appellant Michael J. Nelligan (Abutter)

Mailing Address 550 Maplewood Road

City or Town Parsonfield State Maine

Telephone David P. Silk, Esq.
Direct: 207-253-0720 Map/Lot R19/Lot#44

email dsilk@curtisthaxter.com; lkubiak@curtisthaxter.com; jwashburn@curtisthaxter.com

Name of Owner Roger Moreau, 26 Reed Lane

The undersigned requests that the Board of Appeals Consider this Administrative Appeal:

Relief from the decision, or lack of decision, of the Code Enforcement Officer or Planning Board in regard to an application for a permit. The undersigned believes that (check one):

- An error was made in the denial of the permit
 - The denial of the permit was based on a misinterpretation of the ordinance.
 - There has been a failure to approve or deny the permit within a reasonable period of time.
 - Other See attached letter.
- _____
- _____
- _____

Please explain in more details the facts surrounding this appeal (please attach a separate piece of paper.) You should be as specific as possible so that the Board of Appeals can give full consideration to your case.

Application for an administrative appeal shall be filed with the **Town Clerk**, who shall notify the Chairman of Board of Appeals. A \$100 Application Fee and \$150 Escrow Fee **MUST** be paid with this application. Additional funds may be required to complete the processing of this appeal.

I certify that the information contained in this application and its supplement is true and correct.

Date: 04/14/2022 Appellant Signature: 

You will be contacted by the Chairman of the Appeals Board to schedule your hearing.

Town of Parsonsfield
Zoning Board of Appeals Fees
Effective Date May 11, 2021
Added Reconsideration and fees paid in advance for all applications
Effective Date July 13, 2021

*Initial Fee will be \$250.00 – To be paid in advance with all Applications

- (1) This Fee Schedule applies to Variance Applications, Administrative Appeals, and Reconsiderations.
- (2) Application Fee: \$100.00 – non refundable
- (3) Escrow Fee: \$150.00 (assumes 2 ads @ \$45 ea. and 8 abutters @ \$7.50 ea.)
- (4) When the Escrow amount does not meet actual expenditures, the applicant shall submit additional funds as specified by the Board. Payment is required to continue the ZBA process.
- (5) Independent Review and Advice/Professional Services: Additional fees may be required if the ZBA requires that a consultant or other appropriate professional advisor review one or more aspects of an application or assist the Board. The consultant or other advisors shall first estimate the cost of the review and the applicant shall deposit, with the Town, the full estimated cost, or a good determination of costs, which the Town shall place in the appellant's escrow account. This fee must be paid before proceeding with the appeal.
- (6) When a Final Signed Decision is made by the ZBA, any outstanding balance shall be paid by the appellant prior to the ZBA releasing the decision. Any remaining funds in the escrow will be reimbursed to the applicant.

Signed: ~~May 11, 2021~~ – July 13, 2021 Revision



Edward I. Bower Jr. – Selectboard Chair



Harvey Macomber – Selectboard Member



Jesse Stacey – Selectboard Member

July 13, 2021

078113

CURTIS THAXTER LLC

VENDOR: TOWN OF PARSONSFIELD

OUR REF. NO. YOUR INVOICE NUMBER

INVOICE DATE

INVOICE AMOUNT

AMOUNT PAID

DISCOUNT TAKEN

CHECK NO: 78113

80758

Filing Fee

03/17/2022

\$250.00

\$250.00

\$0.00

Check Date: March 24, 2022

THIS CHECK IS PROTECTED BY A VOID PANTOGRAPH, MICROPRINT SIGNATURE LINE AND A HEAT SENSITIVE PADLOCK ICON. ADDITIONAL SECURITY FEATURES ARE LISTED ON BACK.

CURTIS THAXTER LLC

ONE CANAL PLAZA
PORTLAND, MAINE 04101

078113

KEY BANK NATIONAL ASSOCIATION
PORTLAND, MAINE 52-60/112

CHECK NO.

78113

CHECK DATE

03/24/2022

VENDOR NO.

TEMP

PAY

Two hundred fifty and NO/100 Dollars

CHECK AMOUNT

\$250.00

TO THE ORDER OF TOWN OF PARSONSFIELD



⑈078113⑈ ⑆01200608⑆ 002⑈793⑆ 5⑈

TOWN OF PARSONSFIELD
Planning Board and
Board of Appeals Record
Re: Moreau Third Site Plan Application

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3	03/16/21	(Rev. 2) Site Plan & Private Way Plan (3-10-21: Added Contours And Parking Area) prepared by Michael Lalonde, PLS (Sealed/Signed)	
4	03/16/21	Letter of Attorney David Silk, on behalf of abutter Michael Nelligan, to Planning Board	
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33	07/15/21	Attorney David Silk to Planning Board Exhibit A: David Lourie, Esq. letter to Planning Board (May 14, 2021) Exhibit B: ZBA Notice of Decision (Jan. 12, 2021) Exhibit C: Cindy Wilson Letter to Planning Board (Oct. 7, 2019) Exhibit D: Email from Cindy Wilson to Planning Board (Jan. 8, 2020) Exhibit E: Aerial Photo	
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38	08/19/21	Application for Administrative Appeal, memorandum/ letter from David Silk, Esq. letter to Board of Appeals and attachments: Exhibit A: July 27, 2021 Planning Board Decision (<i>see pp. above</i>)	

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40	08/26/21	Notice of Public Meeting of Zoning Board of Appeals	
41	09/03/21	Attorney Jill Cramer letter to Zoning Board of Appeals with enclosures: <ul style="list-style-type: none"> • September 2, 2020 Jill Cramer letter to Planning Board • January 4, 2021 Jill Cramer letter to Planning Board • April 16, 2021 Jill Cramer letter to Planning Board <i>(see pp. ___ above)</i> • May 6, 2021 Jill Cramer letter to Planning Board <i>(see pp. ___ above)</i> • June 28, 2021 Jill Cramer letter to Planning Board <i>(see pp. ___ above)</i> • January 12, 2021 Zoning Board of Appeals Decision <i>(see pp. ___ above)</i> 	
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TOWN OF PARSONSFIELD
Planning Board
634 North Rd
Parsonsfield, Maine 04047
(207)-625-4558 FAX: (207)-625-8172
planning@parsonsfeld.org

July 27, 2021

Roger Moreau
26 Reed Lane
Parsonsfield, ME 04047

RE: Notice of Decision and Finding of Fact
Map: R19 / Lot #044
Proposed Expand Existing Cabin

Dear Mr. Moreau,

The Planning Board of the Town of Parsonsfield has conducted and finalized its review of your site plan review application. Below are the findings of fact and conclusion.

Findings of fact

The applicant has proposed to build a new garage, located at 26 Reed Lane, for an auto repair shop/business.

The location of the property is identified on the Parsonsfield Tax Map R19, Lot# 44 in the Village Residential district as designated on the zoning map of the Town of Parsonsfield and as defined in the Towns Land Use and Development Ordinance. The proposed use was identified from the Table of Uses in the Land use Ordinance as an Auto, Recreational Vehicle and Small Engine Repair Shop. The property is currently used as a residence and accessed by a 50-foot right-of-way off Maplewood Road (Reed Lane).

The above described site plan review application was received by the Planning Board on March 3, 2021. Letters to abutters were sent on April 1, 2021. The application was tabled at the April 21, 2021 meeting. The application was deemed incomplete at the May 19, 2021 business meeting. The items requested were submitted to the Board in time for the June 16, 2021 meeting. The Board found that more information was needed, that information was submitted in time for the July 21, 2021, meeting.

Conclusions

Based on the above finding of fact, the Parsonsfield Planning Board makes the following conclusions:

- The proposed use would include both a commercial business of an auto repair shop and the residential dwelling of the property/business owner.

- The proposed Auto, Recreational Vehicle and Small Engine Repair Shop is acceptable and in accordance with the Town of Parsonsfield Ordinances.

Therefore, the Parsonsfield Planning Board completed their review of this application on July 21, 2021 and voted to approve the application by vote of 4 in favor and 1 against, with the following conditions.

Conditions

- Operation must adhere to sound conditions noted in the Town of Parsonsfield Noise Ordinance and follow conventional operating hours.
- The permit for this project must be renewed every two (2) years.
- The project/property must be inspected annually by the Code Enforcement Officer.
- Vehicles being worked on are to be in the authorized spaces as per the survey plan submitted for the July 21, 2021 meeting and the number of vehicles is not to exceed those spaces.
- The turnaround must be always clear.

Please be advised that this approval in no way authorizes any development, construction, activity or use that is a violation of applicable ordinances or codes.

Decisions by the Planning Board can be considered for appeal by the Parsonsfield Zoning Board of Appeals by an aggrieved party under the Land Use and Development Ordinance Article 6, Appeals. Such an appeal will need to be filed to the board of appeals within thirty (30) days of this letter.

Respectfully,



Desirae Lyle
Parsonsfield Planning Board Administrative Assistant

For Chairman Allen Jackson



**MINUTES
TOWN OF PARSONSFIELD
PLANNING BOARD MINUTES
6:00 PM
Tuesday, July 21, 2021
TOWN OFFICE BUILDING**

I. Call to Order

Allen Jackson called the meeting to order at 6:00 p.m.

Present: Sabin Beckwith, Allen Jackson, Thelma LaVoie, Andy Yale, Clifford Krolick (Alternate – Arrived at 6:07 p.m. and left the meeting at 6:31 p.m.), Aaron Boguen (Alternate) Code Enforcement Officer Jesse Winters, Recorder Desirae Lyle

Absent: Gerard Clifford

Guests Present: Selectmen Harvey Macomber, Deb Jackson, Ben Bassett, Paul & Judith Beaton, David Silk – Attorney for Mr. Nelligan

NOTE: The following guests arrived at or after 6:05 p.m. Agenda Item II. had already been discussed.

Roger & Joseph Moreau, Jill Cramer – Attorney for Mr. Moreau, Michael LaLonde, Jeff & Marion Wright (Marion left the meeting at 6:15 p.m.), Corey Lane (of Porter arrived at 6:15 p.m.)

II. Public Hearing - Site Plan Review – Ben & Donna Bassett – 8 Sumner Lane – Map U7, Lot 20 – Expand Existing Cabin

Allen Jackson opened the public hearing portion of the meeting at 6:00 p.m.

Allen explained that Mr. Bassett is requesting approval to expand the existing cabin by thirty (30%) percent to include a bedroom, bathroom and new septic system.

Mr. Bassett explained that he recently purchased the property and it is unknown where or what the current septic system drains into, so he would like to install a new system that will have a sealed tank. He is adding 6.8 feet to the back of the cabin facing away from the river.

Allen Jackson closed the public hearing at 6:02 p.m. and asked for a five (5) minute recess.

III. Correspondence

Allen Jackson started listing the correspondence at 6:05 p.m.

NOTE: Cliff Krolick arrived at 6:07 p.m.

Michael LaLonde has submitted new survey maps for Mr. Moreau's project.

David Silk submitted a letter regarding Mr. Moreau's project on July 15, 2021, which was sent to the Board via email.

Jill Cramer submitted a letter for her client Mr. Moreau on June 28, 2021, which was sent to the Board via email.

David Silk submitted an extensive packet at the last Planning Board meeting June 16, 2021, that the Board has reviewed.

IV. Review of Minutes (May 5, 2021 & June 16, 2021)

The June 16, 2021 meeting minutes are not currently available.

Sabin Beckwith made a motion to approve the May 5, 2021 workshop minutes as presented. The motion was seconded by Andy Yale. Motion carried with all in favor.

V. Old Business

A. Site Plan Review – Ben & Donna Bassett – 8 Sumner Lane – Map U7, Lot 20 – Expand Existing Cabin

Allen Jackson reiterated that it is unknown where the current septic drains. Mr. Bassett is willing to install a sealed septic system so that future waste is not draining into the river or wetlands.

Andy Yale made a motion to open discussion on this agenda item by the Board. The motion was seconded by Allen Jackson. Motion carried with all in favor.

Andy Yale asked if the new system will have a backup power source. Mr. Bassett will have a generator available.

Allen Jackson made a motion to close the discussion on this agenda item. The motion was seconded by Sabin Beckwith. Motion carried with all in favor.

Sabin Beckwith made a motion to approve the project as submitted. The motion was seconded by Thelma LaVoie. Motion carried with 3 in favor, and 1 abstention.

Mrs. Wright asked if this was the hearing. Allen stated that the hearing started at 6:00 p.m. and there was no one in attendance to talk about it, the public hearing was closed and the Board has moved into their regular meeting.

Mrs. Wright interrupted stating that there is a shoreland conflict and asked the CEO to speak on the subject. Jesse Winters stated that he and Mrs. Wright disagree on the wording and the interpretation of the Land Use Ordinances. Allen noted that the Board

has already approved the plan as submitted and is moving on to the next item on the agenda.

B. Site Plan Review – Roger Moreau – 26 Reed Lane – Map R19, Lot 044 – Automotive Repair Shop

Allen Jackson asked if there were any questions from the Board.

Andy Yale noted that he has been on the Board the longest and has seen this application, the Board has received information from both parties, no one on the Board has a law degree, and the law is open for interpretation. This citizen board have to review the information submitted and make a decision based on the Board's knowledge of the ordinances.

Cliff Krolick noted that this project has years of history.

Andy Yale made a motion to accept the application as complete and approve the project. The motion was seconded by Sabin Beckwith.

Discussion. Cliff Krolick would like to note that if this application is approved, as it looks like Board is going to do, there needs to be strict enforcement guidelines.

The motion was amended by Cliff Krolick to include the following condition: operation is to adhere to the guidance of the Town of Parsonsfield Noise Ordinance and follow conventional operating hours. Cliff would like it noted that if any complaints are received about this project not adhering to the conditions set by the Board, fines according to the Town of Parsonsfield Land Use Ordinance should be imposed. Andy Yale noted that the CEO would be in charge of enforcing the conditions.

Allen Jackson amended the motion to add the following conditions: the permit for the project be renewed every two (2) years; that the waste containment be inspected annually by the Code Enforcement Officer; no excess parking on the property, vehicles being worked on are to be in the authorized spaces that are depicted current survey plan and that the number of vehicles not exceed the spaces depicted; and the turnaround must be kept clear at all times for emergency vehicles. Allen also asked that the current garage be demolished and removed.

The Board discussed the conditions. Andy Yale agreed with all of the amendments except removing the building. Allen Jackson removed that condition from his amendment.

Allen Jackson asked the Board for a show of hands to vote on the motion and conditions.

Ms. Lane interrupted and stated that she thought the Board was reviewing the application for completeness. Allen explained that the Board is approving the application with conditions. Ms. Lane also asked if the Board has considered the Zoning Board of Appeals (ZBA) decision. Allen answered no. Both Andy and Allen

noted that this is not a public hearing this is a Board meeting. Allen clarified that the Board will only accept information from Mr. Moreau and his attorney and Mr. Nelligan, if he were here and his attorney Mr. Silk.

Mr. Silk noted that it was unclear to him that the Board would be acting on the application tonight. He mentioned that the Board has not held a site walk or public hearing on this project, and would like it noted that he objects to the process. He believes that this will be back in front of the ZBA.

The Board voted and the motion carried as amended with 4 in favor, and 1 against.

NOTE: Cliff Krolick left the meeting at 6:31 p.m.

Roger & Joseph Moreau, Jill Cramer – Attorney for Mr. Moreau, Michael LaLonde, David Silk – Attorney for Mr. Nelligan also left the meeting at this time.

VI. New Business

A. Site Plan Review – Paul Beaton – 102 Lloyd Watson Road – Map U9, Lot 7 – Add New Deck to Existing Deck

The Board reviewed Mr. Beaton's application and found the application incomplete and asked that he submit the following information prior to the next meeting on Wednesday, August 14, 2021.

1. Name, registration number, and seal of the land surveyor, architect, engineer and/or similar professional who prepared any plan.
2. Locations of intersecting roads or driveways within 200 feet of site.
3. Location of open drainage courses, wetlands, stands of trees, and other important natural features, with description of features to be retained and of any new landscaping.
4. Location and dimensions of any existing easements and ten (10) copies of existing covenants or deed restrictions.

Allen Jackson made a motion to hold a site walk on Saturday, August 14, 2021 at 8:00 a.m. The motion was seconded by Andy Yale. Motion carried with all in favor.

Allen Jackson made a motion to hold a public hearing at the next meeting on Wednesday, August 18, 2021 at 6:00 p.m. The motion was seconded by Sabin Beckwith. Motion carried with all in favor.

VII. Open to Public Questions

Mr. Wright asked why the public hearing ended so quickly. Allen Jackson noted that Mr. Wright was not here when the public hearing started, one (1) person spoke and the public hearing was closed.

Mr. Wright then asked Jesse if he knew that Mrs. Wright was going to be at the meeting. Jesse explained that he had met with Mrs. Wright at 3:00 p.m. she had agreed that the Sumner Lane project would be all set. Jesse noted that the public hearing was over before the Wright's even entered the building.


VIII. Schedule Workshop for Wednesday, August 4, 2021

Allen Jackson made a motion that there is no need to have a workshop on Wednesday, August 4, 2021. The motion was seconded by Sabin Beckwith. Motion carried with all in favor.

IX. Adjournment

Sabin Beckwith made a motion to adjourn at 6:45 p.m. It was seconded by Andy Yale. Motion carried with all in favor.

Respectfully Submitted,



**Desirae Lyle
PPB Secretary**

Approved by the Board at the August 18, 2021, Meeting.

Allen Jackson, Chair

(D)

TOWN OF PARSONSFIELD ZONING BOARD OF APPEALS

634 North Rd.
Parsonsfield, ME 04047
207-625-4558
www.parsonsfeld.org

October 4, 2021

Michael Nelligan
550 Maplewood Rd
Parsonsfield, ME 04047

RE: Notice of Decision in Administrative Appeal of Michael Nelligan

NATURE OF APPEAL/COMPLAINT: An error was made in the approval of the Planning Board. The property is located on Parsonsfield Tax Map R19, Lot 44.

This is an appeal from the Planning Board decision dated July 27, 2021, granting the use of an Automotive Repair Shop at 26 Reed Lane.

Findings

1. The Appeal was filed August 23, 2021.
2. The Appellant is the owner of an abutting property with standing to appeal the Moreau Site Plan.
3. The Appellant's appeal of the Planning Board decision is timely.
4. The Board accepted the application as complete at the September 9, 2021 public meeting.
5. The Board held a Public Hearing on September 30, 2021.
6. The Board found that the garage will have two (2) bays and there are not enough parking spaces depicted on the Site Plan.
7. The Board found that the 50' right-of-way may not be consistent with the Town of Parsonsfield ordinances.

Conclusions

1. The Site Plan needs to be updated to show five (5) more parking spaces for the commercial two (2) bay garage.
2. The Planning Board needs to further review the ordinances to determine if the 50' right-of-way is sufficient or if 60' right-of-way is needed for a new commercial use in the village rural district.

The Zoning Board of Appeals voted unanimously (3-0) to send the matter back to the Planning Board for further findings.

RIGHT TO APPEAL: THE APPELLANTS MAY APPEAL TO THE CIVIL COURT WITHIN FORTY-FIVE (45) DAYS FROM DATE OF THIS DECISION.

Respectfully,



Desirae Lyle

For Chairman Jim Baron

(E)

TOWN OF PARSONSFIELD
Planning Board
634 North Rd
Parsonsfield, Maine 04047
(207)-625-4558 FAX: (207)-625-8172
planning@parsonsfeld.org

March 23, 2022

Roger Moreau
26 Reed Lane
Parsonsfield, ME 04047

RE: Notice of Decision and Finding of Fact
Map: R19 / Lot #044
auto, rec. vehicle & small engine repair shop

Dear Mr. Moreau,

The Zoning Board of Appeals (ZBA) remanded review of your application to the Planning Board (PB) of the Town of Parsonsfield. The Planning Board has reviewed the ZBA's decision. Below are the findings of fact and conclusions.

Findings of fact

The PB decision of July 21, 2021 and decision letter dated July 27, 2021 was appealed to the ZBA on August 19, 2021 by Michael Nelligan through his attorney David Silk. At the September 30, 2021 ZBA public hearing, the ZBA remanded the matter back to the PB for further findings. The appellant took the matter to State of Maine Superior Court before the PB could act on the ZBA decision. On February 9, 2022, Superior Court dismissed the case and Mr. Moreau's attorney requested that the matter be placed on the next PB agenda (March 16, 2022).

At their March 16, 2022 meeting the PB reviewed the ZBA decision made at the September 30, 2021 public hearing and subsequent Letter of Decision dated October 4, 2021. The ZBA asked for the following:

1. *The Site Plan needs to be updated to show five (5) more parking spaces for the commercial two (2) bay garage.*
2. *The Planning Board needs to further review the ordinances to determine if the 50' right-of-way is sufficient or if 60' right-of-way is needed for a new commercial use in the village rural district.*

Mr. Moreau's surveyor, Michael Lalonde, has submitted an updated survey plan to include the additional five (5) parking spaces.

The PB reviewed the Town of Parsonsfield Land Use and Development Ordinances (LUO) Article II, Section 6, Paragraph A, Items 1 and 3. Reed Lane is fifty (50) feet wide, is an existing private way, is sufficient access to the lot, has the proper drainage ditches and culverts, and any emergency vehicles have a sufficient turnaround area as depicted on the site plan submitted.

Conclusions

Based on the above finding of fact, the Parsonsfield Planning Board makes the following conclusions:

- The Planning Board has reviewed their original decision made on July 21, 2021 and stands by that decision and the conditions originally agreed upon.
- Mr. Moreau has complied with the ZBA request to have an additional five (5) parking spaces add to the survey plan, bringing the total up to ten (10).
- Reed Lane is fifty (50) feet wide, is an existing private way, and per the Town of Parsonsfield Land Use and Development Ordinances (LUO) Article II, Section 6, Paragraph A, Items 1 and 3 is sufficient access to the lot, has the proper drainage ditches and culverts, and any emergency vehicles have a sufficient turnaround area as depicted on the site plan submitted.
- Reed Lane is an existing private way and would not fall under LUO Article II, Section N, Paragraph 4, Items a. through g. as they apply to streets within subdivisions.

Therefore, the Parsonsfield Planning Board completed their review of the ZBA decision on March 16, 2022 and voted to approve the application by vote of 3 in favor and none against, and readopted the conditions from the July 21, 2021 decision as listed below.

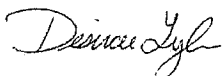
Conditions

- *Operation must adhere to sound conditions noted in the Town of Parsonsfield Noise Ordinance and follow conventional operating hours.*
- *The permit for this project must be renewed every two (2) years.*
- *The project/property must be inspected annually by the Code Enforcement Officer.*
- *Vehicles being worked on are to be in the authorized spaces as per the survey plan submitted for the July 21, 2021 meeting and the number of vehicles is not to exceed those spaces. This plan was amended and signed at the March 16, 2022 PB meeting to include five (5) additional spaces.*
- *The turnaround must be always clear. This refers to the emergency vehicle turnaround that shall be free of vehicle traffic at all times.*

Please be advised that this approval in no way authorizes any development, construction, activity or use that is a violation of applicable ordinances or codes.

Decisions by the Planning Board can be considered for appeal by the Parsonsfield Zoning Board of Appeals by an aggrieved party under the Land Use and Development Ordinance Article 6, Appeals. Such an appeal will need to be filed to the board of appeals within thirty (30) days of the decision.

Respectfully,



Desirae Lyle

Parsonsfield Planning Board Administrative Assistant/Executive Secretary

For Chairman Allen Jackson

7

CURTIS THAXTER
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David Silk
dsilk@curtisthaxter.com

April 21, 2021

HAND DELIVERED

planning@parsonsfeld.org

Rick Sullivan, Chair, and Members of the Planning Board
Town of Parsonsfield
634 North Road
Parsonsfield, ME 04047

RE: Roger Moreau's Third Application for Site Plan Approval for Auto Repair Shop, a New Commercial Use, 26 Reed Lane dated February 22, 2021

Dear Chair Sullivan and Members of the Planning Board,

I represent Michael Nelligan, who owns property that abuts 26 Reed Lane, which is the subject of Mr. Moreau's Third Application for Site Plan Approval dated February 22, 2021, for a new commercial use ("Auto, recreational vehicle, and small engine repair shop") referred to herein as an Auto Repair Shop. Mr. Moreau's application is on the Planning Board's agenda for its April 21, 2021 meeting under New Business for Site Plan Review to determine whether the written application is complete. Before making that decision there are several procedural matters the Board should take up.

As more fully discussed below, the Board should first decide whether to table any action on Mr. Moreau's Third Application for Site Plan Approval. Mr. Moreau's proposed new Auto Repair Shop appears to be located within 300 feet of what looks like a private drinking water well. If accurate, Mr. Moreau is prohibited by State law, 38 M.R.S. § 1391 et seq., from siting or causing to be sited an Auto Repair Shop at 26 Reed Lane at the location proposed.

The well on the Gilbert property, as depicted on the Right of Way survey last revised on March 11, 2021, and using the scale on the survey, is clearly located within 300 feet of the proposed Auto Repair Shop. Until Mr. Moreau can demonstrate he can meet the requirements of State law and the Maine Department of Environmental Protection ("MDEP") wellhead protection zone regulations, it is pointless to proceed with his application. The Board should table this matter unless and until Mr. Moreau can demonstrate what he proposes is not prohibited by Maine law.

Planning Board
April 21, 2021

If you elect not to table any action on the application tonight, I respectfully suggest that there are three tasks for you to address tonight:

1. **You must decide whether Board Member Yale should be recused from hearing this matter on the basis of bias.**
2. **You must decide whether to even hear Mr. Moreau's Third Application for Site Plan Approval and whether it is substantially different from his prior site plan applications.**
3. **If you take up Mr. Moreau's Third Application for Site Plan Approval and follow the process spelled out in the Ordinance pertaining to site plan review, you must determine whether Mr. Moreau's application is complete.**

If you deem Mr. Moreau's Third Application for Site Plan Approval complete, then you should schedule a site visit, and formally notice a public hearing on the site plan. And then after the public hearing you will need to decide whether Mr. Moreau has met his burden to show his application complies with all relevant standards.

I. BOARD MEMBER YALE SHOULD BE RECUSED FROM HEARING THIS MATTER ON THE BASIS OF BIAS.

Participation by a biased board member will taint any board's decision and require a zoning board of appeals, or reviewing court, to remand the matter for a new hearing. Even if Board Member Yale thinks he is not biased, the Planning Board must vote and decide that issue.

The basis for Mr. Yale's bias is statements that he made to the Town's Zoning Board of Appeals ("ZBA") on January 12, 2021, when it granted my client's appeal from the Planning Board's erroneous approval of Mr. Moreau's Second Application Site Plan Approval. Behind Tab A is a transcription of what Mr. Yale said at that time.

Mr. Yale stated to the ZBA that in his view Mr. Moreau has "done everything that was required of him," that the ZBA should assume the Planning Board had done the required "due diligence," and that citizen boards are "supposed to serve the citizens of this town and support the Constitution which decrees the right to life, liberty, and pursuit of happiness." See Minutes of ZBA (Jan. 21, 2021) at 19 and audio recording of proceedings available in the Town Clerk's Office.

Mr. Yale as a sitting Planning Board member knew or should have known that the ZBA limits its review of a Planning Board decision to the record before it. His attempt to introduce new material to the ZBA in order to convince the ZBA to affirm the Planning Board's decision so Mr. Moreau would have a permit, shows that Mr. Yale is biased and prejudiced in favor of Mr. Moreau and is predisposed to finding against my client.

Maine's Supreme Court has said:

Procedural due process also assumes that Board findings will be made only by those members who have heard the evidence and assessed the credibility of the various witnesses. *Id.* The United States Supreme Court when describing administrative proceedings observed that

the weight ascribed by the law to the findings—their conclusiveness when made within the sphere of the authority conferred—rests upon the assumption that the officer who makes the findings has addressed himself to the evidence and upon that evidence has conscientiously reached the conclusions which he deems it to justify. That duty cannot be performed by one who has not considered evidence or argument. It is not an impersonal obligation. It is a duty akin to that of a judge. The one who decides must hear.

Pelkey v. City of Presque Isle, 577 A.2d 341, 343 (Me. 1990). See also *Widewaters Stillwater Co., LLC v. City of Bangor*, No. AP-01-16, 2001WL1719231 (Me. Super. Ct., May 31, 2001) (fact that board member was on record of supporting a zone change showed the board member's bias and that board member should not have sat on application for zone change presented to the planning board).

Here, Mr. Yale is on record of saying Mr. Moreau is entitled to a permit without regard to the evidence presented, and to be presented, and without regard to the standards in the Ordinance. His bias is clear and unmistakable. His participation on this matter will result in a due process violation of my client's rights and cause a reviewing body to vacate subsequent Planning Board action on this application in which Board Member Yale sat.

My client is entitled to a fair and unbiased hearing. I respectfully submit that you need to address this issue and determine whether to allow Mr. Yale to participate as a board member.

II. MR. MOREAU HAS NOT MET HIS BURDEN TO SHOW THAT THERE HAS BEEN A SUBSTANTIAL CHANGE IN CONDITION FROM HIS SECOND APPLICATION FOR SITE PLAN APPROVAL.

The next issue you must decide is whether to even hear Mr. Moreau's Third Application for Site Plan Approval. Attached behind Tab B is my letter to you dated March 16, 2021, which sets forth in detail why Mr. Moreau cannot meet his burden to show to you that his Third Application is substantially different than from his earlier applications.

Here is the standard: "Once an application for a land use activity has been denied, the board is not legally required to entertain subsequent applications for the same project, unless the board finds that 'a substantial change of conditions ha(s) occurred or other considerations materially affecting the merits of the subject matter had intervened between the first application and the (Second).'" Maine Municipal Association, *Manual for Local Planning Boards: A Legal Perspective* 46 (2017). This is a threshold issue that must be decided before you can consider Mr. Moreau's Third Application.

Some of the reasons expressed to support this rule are providing finality to proceedings before a planning board, giving protection to the integrity of the process, immunizing board decisions from change at the whim of agency personnel and shielding its members from possible improper influences, and, finally, stabilizing property interests and sparing nearby property owners the harassment which repetitive application requests undoubtedly generate.

Here, Mr. Moreau has not met his burden to show that there has been a substantial change in condition between the Second and Third Applications that materially change the subject matter of his third application. By both applications Mr. Moreau seeks the exact same new use, an Auto Repair Shop, to be located at 26 Reed Lane. While Mr. Moreau has presented a plan showing the previously undefined easement area, he is not proposing to make any changes to the existing road-way even though he is adding a new use.

To that end, Article I, Section 5 says today what it said when the Planning Board took up both Mr. Moreau's First and Second Application for Site Plan Approval, that

no building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, expanded, moved, or altered except in conformity with all of the regulations herein specified for the district in which it is located, unless a variance is granted.

Mr. Moreau's counsel's letter to you dated April 15, 2021, asserts there has been a substantial change: that substantial change being that Mr. Moreau controls the right of way to 26 Reed Lane and therefore 26 Reed Lane as a rear lot is no longer restricted to one use¹. But the problem for Mr. Moreau is this is not an intervening change; the circumstances are no different from what Mr. Moreau presented and this Board considered on his Second Application for Site Plan Approval.

Indeed, as part of his Second Application for Site Plan Approval, Mr. Moreau represented to the Planning Board that he had owned and controlled the right of way. Behind Tab C is the Planning Board's Decision and Approval letter September 15, 2020, that specifically states: "The right of way is now deeded under the applicant who also owns the parcel located on Map R19/Lot#42."

Mr. Moreau's updated Sketch then presented to the Planning Board showed a 50-foot right of way based on the apparent scale Mr. Moreau used in creating the drawing. See Tab D.

Mr. Moreau's counsel asserted to the Planning Board last summer in a letter dated September 2, 2020 (copy behind Tab E) that by virtue of controlling the right of way, Mr. Moreau was not limited to just one use at 26 Reed Lane. She explained as follows:

"By way of background, Mr. Moreau submitted an application for site plan review on or about June 26, 2019. At the time, Mr. Moreau was occupying the residence located at 26 Reed Lane and had applied for a permit to operate a garage (hereinafter referred to as the "Back Lot") at that location. The Back Lot is

¹ A rear lot accessible only by a right-of-way that does not meet width requirements, may only be used for a single dwelling or other single permitted use. Land Use Ordinance Art. I, §6(D)(3).

titled in the names of Roger K. Moreau and his wife, Jennie A. Moreau. An automotive repair shop is a permitted use in the VR zone with site plan review.

At that time, the Back Lot was accessible only via right-of-way known as Reed Lane over land owned by Cynthia Wilson located at 570 Maplewood Road. The Planning Board and others raised the concern that the Town of Parsonsfield Zoning Ordinance, section 6.D.3 allowed only a single use on parcels that were only accessible only by a right-of-way. Therefore, the conclusion was that Back Lot could be used *either* for a single-family dwelling *or* for a garage, but not both. It is my understanding that Mr. Moreau withdrew his application shortly thereafter.²

On April 6, 2020, Mr. Moreau (along with his parents, Joseph A. Moreau and Claire Moreau) purchased the property owned by Cynthia Wilson located at 570 Maplewood Road, Parsonsfield (RI 9-042) (hereinafter referred to as the "Front Lot"). Ms. Wilson owned the fee interest (title to) the right-of-way known as Reed Lane. She conveyed her interest in Reed Lane to Mr. Moreau and his parents when she sold them the Front Lot. Mr. Moreau is a common owner of both the Front and Back Lots, and he clearly owns an interest in Reed Lane. Based on this alone, the Town could determine that the Back Lot is no longer subject to the restrictions for "rear lots" in Section 6.D.3 of the Zoning Ordinance, thus allowing for multiple uses.

Following his purchase of the Front Lot, on or about May 6, 2020, Mr. Moreau resubmitted his application for site plan review to operate an automotive and small engine repair shop at 26 Reed Lane. This application is now pending before the Planning Board.

If there remained any question regarding Back Lot access and whether Section 6.D.3 of the Zoning Ordinance applied to prohibit a second use on the Back Lot because the properties are titled in two different combinations of ownership, on or about August 7, 2020, Mr. Moreau, his wife, and his parents executed a purchase and sale agreement for the purchase of the right-of-way known as Reed Lane. Ostensibly, Mr. Moreau and his wife (the Back Lot owners) have agreed to purchase from Mr. Moreau and his parents (the Front Lot owners), the fee interest to Reed Lane.

....

In this case, when the Back Lot owners executed the Purchase and Sale Agreement for purchase of Reed Lane, they collectively established sufficient right, title and interest in Reed Lane to give the Back Lot the necessary access to Maplewood Road and to establish that the Back Lot is not "*only* accessible by a right of way. (Emphasis added). Essentially, the Back Lot owners do not need a "right-of-way" because they own an interest in the road itself. Therefore, Section

² This statement is not accurate. On January 13, 2020, the Planning Board denied Mr. Moreau's First Application for Site Plan Approval. Behind Tab F is a copy of the Planning Board denial letter.

6.D.3 no longer applies to the Back Lot, and the Back Lot should not be considered a "rear lot" under the Zoning Ordinance.

To summarize, Mr. Moreau has taken two actions to remove the Back Lot from "rear lot" status (which would deprive it of multiple uses): (1) he purchased the Front Lot, giving him, as a common owner, road frontage and access; and (2) he entered into a purchase and sale for Reed Lane itself, giving the Back Lot owners (collectively) a property interest in Reed Lane. Therefore, this Board should conclude that the "rear lot" provision of the zoning ordinance no longer applies, and the Back Lot may have two uses: a single-family residence and an automotive repair shop."

(emphasis in original)(yellow highlight added).

The only new thing a "substantial change" offered in support of with Mr. Moreau's Third Application for Site Plan Approval is a survey plan showing the same 50 foot right of way. That survey clearly could have been presented to the Planning Board last summer but was not. Regardless, the survey does not demonstrate a material change in circumstance that has intervened between the Second and Third Application.

More significantly, Mr. Moreau's counsel's letter dated April 15, 2021, just repeats what she said to the Planning Board last September when that Board was acting on Mr. Moreau's Second Application for Site Plan Approval, that because he "now" has the fee to the right of way, which Mr. Moreau represented to be of 50 feet in width, 26 Reed Lane is no longer limited to just one use at one time, and that by virtue of having the fee to the right of way Mr. Moreau can maintain an existing residential use and add a new commercial use, the Auto Repair Shop. And she makes the same claim today as she did back in September, the Ordinance does not require Mr. Moreau to bring the right of way up to current standards for a new commercial use based on the erroneous view the road is grandfathered.

Fundamentally there is nothing new presented in Mr. Moreau's Third Application for Site Plan Approval. Mr. Moreau said in Round 2 that because he owned the fee to the right of way, he could have more than one use at 26 Reed Lane. And here in Round 3, he is saying the same thing.

For these reasons you should vote and determine not to take up Mr. Moreau's Third Application for Site Plan Approval because he has not met his burden to show that there has been a substantial change of conditions from his Second Application for Site Plan Approval to his Third Application for Site Plan Approval.

III. MR. MOREAU'S THIRD APPLICATION FOR SITE PLAN APPROVAL IS INCOMPLETE.

Only if you find that Mr. Moreau has met his burden to show a substantial change in conditions occurred between now and his last application do you then take up whether Mr. Moreau's has met his burden to present a complete application. Parsonsfield Land Use and Development Ordinance (revised Sept. 8, 2018) (hereinafter "Land Use Ordinance"), Art. III, Sec. 4(B) ("The Code Enforcement Officer shall make an initial determination of the

completeness of the application, which is then subject to the determination of the Planning Board.”). To make that determination you must compare Mr. Moreau’s Third Application dated February 22, 2021, to the requirements stated on the application itself and in Article III, Section 5. We have undertaken that analysis below, and set forth why Mr. Moreau’s Third Application is far from complete.

Mr. Moreau’s lot size is more than twelve (12) acres, but the size of the proposed development site is significantly smaller (though no site plan has yet been provided showing the bounds of the 12 acre parcel and within the bounds the area to be developed and used). The proposed new commercial use, an Auto Repair Shop, seeks to legitimize in part what at the site is an illegal auto repair garage/junkyard, located on and surrounded by what is otherwise residential property. It is imperative that a complete site plan be presented detailing where cars will be parked or stored. This will allow anyone looking at the plan to determine, if approved, whether (1) Mr. Moreau is locating his Auto Repair Shop activities outside of the area as shown on the site plan, and (2) otherwise continuing what has been the illegal operation of a junkyard and auto salvage operation, both of which are prohibited at the site.

And right now, with the presented plan before you, the plan does not even show the boundaries of 26 Reed Lane, a basic prerequisite before taking up any site plan application.

This need for the required detail is apparent from the following: There have been over 6 Stop Work Orders issued to Mr. Moreau over the last 5 years telling him it is illegal for him to be operating any commercial enterprise on the property, including a junk yard which consists of more than 2 vehicles which cannot pass the Maine State inspection requirements in their existing condition. See Tab F. For whatever reason Mr. Moreau ignores these orders.

Mr. Moreau was so ordered by the Select Board back on September 19, 2019, through a Stop Work Order to “stop work on all vehicles not registered to the residence” unless and until he has obtained final Planning Board approval. Subsequent orders to Mr. Moreau came on March 14, 2020, from the CEO, and again by the Select Board on May 12, 2020, which stated:

“This is your last notification; any documented notice of violation will result in this matter being handed over to the Town’s Attorney for appropriate legal action. (Fines range from \$100 to \$2,500 per day.)”

Despite numerous Notices and Stop Work Orders from the Town regarding his illegal junkyard operation and illegal auto repair activities at 26 Reed Lane, Mr. Moreau ignored and continues to ignore the Town Ordinances. Mr. Moreau continues to accumulate on his property a number of vehicles (more than 3) visible from Mr. Nelligan’s property in various states of disrepair along with a growing tire dump.³

³ On May 5, 2015 Mr. Moreau obtained a building permit at 26 Reed Lane to build a 20’ by 30’ garage to be used as “storage.” See Tab H. He then proceeded illegally to use the garage for a commercial endeavor and to use his property as a junk yard.

Planning Board
April 21, 2021

Because of Mr. Moreau's past illegal actions, it is doubly important that this Board require that Mr. Moreau submit a complete application before proceeding to conduct a site visit and hold a public hearing.

That calls for this Board to review the Ordinance's requirements for a site plan application and to compare those requirements against Mr. Moreau's Third Site Plan Application. If you do that - painstaking as it may be - it is clear that Mr. Moreau's application is incomplete, and you should not proceed further until it is made complete.

Further, any proposed commercial use in a Village Residential zone should be "appropriate for a village area" and "compatible with the Village District," the purpose of which is to "preserve the historic villages in Parsonsfield and to promote the traditional village atmosphere that is common to New England towns." Art. II, Sec. 1 (A)-(B).

To summarize, the Proposed Use requires Site Plan Review. **It is not a Permitted Use but only a use that is allowable if the applicant can meet the specific site plan standards that are intended to protect nearby property owners from activities not suitable at the specific proposed location.** Per Table 1 in the Land Use Ordinance Article II, "Auto Rec. Vehicle, Small Engine Repair Shop" to be allowed at a location in the Village Residential District must meet site plan standards. Land Use Ordinance, Art. II, Sec. 4 (Table of Permissible Uses); Art. III, Sec. 2. This requires an individualized determination based on the character of the proposed location.

Mr. Moreau's Third Application for Site Plan Approval dated February 22, 2021, is incomplete for the following reasons:

REGULATORY PURPOSE:

The purpose of the Town's Ordinance, among other purposes, is to promote the health, safety, and general welfare of the residents, to encourage the most appropriate use of land throughout the Town, to promote traffic safety, to promote the coordinated development of land, to protect and foster existing village and neighborhood areas, to maintain the rural character of the Town. Land Use Ordinance, Art. I, Sec. 3.

The purpose of Site Plan Review is to (A) provide a level of municipal review that would not otherwise occur for projects that could adversely impact abutters or properties in the project area and the Community as a whole; (B) maintain/protect the Town's rural character and natural resources by requiring that structures and other alterations on or to the land are sited and developed in accordance with certain standards, and (C) promote and protect the health, safety and welfare of the Townspeople. Land Use Ordinance, Art. III, Sec. 1.

At least thirteen (13) items in the Site Plan Application (*roughly 40% of the application*) are incomplete or have not been provided. Note 7 on the Site Plan and Private Way Plan of Reed Lane, dated March 10, 2021, also states that the plan is INCOMPLETE.

Exact Nature of Proposed Use: Needs to be clarified based on past consistent and illegal use as Automobile graveyard/recycling business and junkyard (*operating outside of local regulations and State Law since 2015*). The non-conforming use of land and buildings appears to have increased from roughly 6 to 20 vehicles on-site from 2015 to 2018 (*historical satellite imagery*). Land Use Ordinance, Art. I, Sec, 6(B)(4)(a) & (b).

Junkyards: A site exposed to the elements, which is used for the storage and sale of second-hand products or materials, or for the storage of two (2) or more automobiles or trucks, which cannot pass the Maine State inspection requirements in their existing condition. Land Use Ordinance, Appendix A, Sec. 2 Definitions (Junkyards).

Automobile graveyard: "Automobile graveyard" means a yard, field or other outdoor area used to store 3 or more unregistered or uninspected motor vehicles, as defined in Title 29-A, section 101, subsection 42, or parts of the vehicles. 30-A M.R.S. § 3752(1). "Automobile graveyard" includes an area used for automobile dismantling, salvage and recycling operations. *Id.* Vehicles must be removed from the site within 180 calendar days of its receipt to avoid being classified as an Automobile Graveyard. 30-A M.R.S. § 3752(1)(A).

Automobile recycling business: "Automobile recycling business" means the business premises of a dealer or a recycler licensed under Title 29-A, sections 851 to 1112 who purchases or acquires salvage vehicles for the purpose of reselling the vehicles or component parts of the vehicles or rebuilding or repairing salvage vehicles for the purpose of resale or for selling the basic materials in the salvage vehicles, as long as 80% of the business premises specified in the site plan in section 3755-A, subsection 1, paragraph C is used for automobile recycling operations. 30-A M.R.S. § 3752(1-A).

The current non-conforming use of land and buildings above are consistent with the definition of a junkyard automobile graveyard, and automobile recycling business – and not as of auto repair shop.

Existing Use of Site: A Single Family Residence, unpermitted automobile graveyard/recycling business and junkyard (non-conforming uses of the land and buildings).

Applicability: This application applies to any proposed use listed in the Table of Permissible Uses which requires Site Plan Review.

Junkyard is "N" in the Land Use Ordinance as PROHIBITED in the V/R District (Land Use Ordinance, Art. II, Sec. 4 Table 1). The proposed use is **NOT APPLICABLE** for a Site Plan Review because zoning explicitly prohibits it.

Auto Repair Shop in the Land Use Ordinance is only allowed if all site plan standards are

met. Land Use Ordinance, Art. II, Sec.4, Table 1.

The Site Plan Content Application **DOES NOT** include the following required exhibits and information:

GENERAL SUBMISSION INFORMATION:

2.c Boundaries of all contiguous property under control of owner/applicant regardless of whether all or part is being developed at this time (**NOT complete - all that is shown is the right of way, the bounds of the subject parcel are not shown. Required to show the specific area designated for the proposed Auto Repair Shop**)

EXISTING CONDITIONS:

2.f Bearings and distances of all property lines of property to be developed and source of information (**NOT complete – NOT shown**)

2.g Location and size of any existing sewer and water mains, culverts and drains that will serve the development whether on or off the property, along with the direction of existing surface water drainage across the site. (**Sheet drainage and direction of surface area flow are NOT shown for the parcel, existing subsurface wastewater tank not shown**)

2.m Location, front view, and dimensions of existing and proposed signs (**Dimensions and lighting NOT shown, setback not shown, sight distances not shown.**)

PROPOSED DEVELOPMENT ACTIVITY:

2.o Location of all building setbacks, yards and buffers, required by this or other Town Ordinances

(*screening and buffers required in municipal regulations and per State Law are NOT shown) including a least a 300 foot setback from wells located on other property per 38 M.R.S. § 1391 et seq. and Chapter 700 of DEP Regulations "Wellhead Protection: Siting of Facilities that Pose a Significant Threat of Drinking Water."

2.q Location and dimensions of proposed driveways, parking and loading areas, and walkways
(*violates screening and buffering in municipal regulations)

2.r Location and dimensions of all provisions for water supply and wastewater disposal **NOT Shown (*Per State Law, 38 M.R.S. § 1391 et seq. and Chapter 700 of DEP Regulations "Wellhead Protection: Siting of Facilities that Pose a**

Significant Threat of Drinking Water” for the siting of an auto repair shops need to show the location and dimensions of all private and public water supplies within 300 feet of an automobile graveyard/recycling business or junkyard and/or auto repair facility in order to show that the new use is not located within 300 feet of a water supply)

- 2.s Direction and route of proposed surface water drainage (NOT shown for parcel to be developed with new use of Auto Repair Shop)
- 2.t Location, front view, and dimensions of proposed signs (Dimensions, setbacks and lighting NOT shown)
- 2.u Location and type of exterior lighting (NOT provided)
- 2.v Proposed landscaping and buffering (Buffering and screening per local ordinances and State Law are NOT shown)
- 2.w Demonstration of any applicable State applications, or permits which have been or may be issued (NOT provided –38 M.R.S. § 1391 and Chapter 700 of DEP Regulations “Wellhead Protection: Siting of Facilities that Pose a Significant Threat of Drinking Water.” Complete copy of MDOT permit not submitted).
- 2.x Schedule of construction, including anticipated beginning and completion dates (NOT provided)

Approval Criteria In approving site plans, in order to approve of the site plan, the Planning Board shall consider criteria as listed in the Land Use and Development Ordinance Site Plan Review article.

A site plan application must be denied if it is unable to meet one or more of the performance standards.

Article II, Section 6 - GENERAL PERFORMANCE REQUIREMENTS:

E. Buffers/Screening: A natural vegetation or a landscaped buffer strip at least twenty-five (25) feet wide is **REQUIRED** to visually screen the uses to the extent practical. Where no natural vegetation can be maintained or due to varying site conditions, the landscaping may consist of fences, walls, tree plantings, hedges or a combination thereof. (*Subsection 1*). The emergency vehicle turn-around as proposed IS

NON-CONFORMING with respect to the performance requirements of the *Parsonsfield Land Use & Development Ordinance*, and the required 25 foot buffer is

NOT reflected in the submitted site plan.

E. Buffers/Screening: Contiguous visual and security screening barriers around the perimeter of the parcel is REQUIRED (excluding the driveway) are required per the Parsonsfield Land Use & Development Ordinance, to address off-street parking & loading, exposed salvage and refuse activities, and potential hazards to children (*Subsection 2.a, 2.c., and 2.d.*). The required physical screening for child safety is **NOT** reflected in the site plan.

H. Glare and Illumination: **NO INFORMATION HAS BEEN PROVIDED** on considering and preventing glare from vehicular movements in and out of the facility during the automobile salvage operation, or additional lighting that may be installed for the commercial-industrial operation (garage) and associated signage for the use.

J. Landscaping: Subsection 1 & 2 – The first fifteen (15) feet from the edge of the ROW is to be green strip consisting of lawn, garden, and landscaped shrubbery. Where green strips are required by the Town of Parsonsfield, the plot plan shows parking spaces and an emergency turn-around which make both **NON-CONFORMING**. The emergency turn-around also conflicts with **Section E**.

The emergency vehicle turn-around and 5 parking spaces (required for a 1-bay garage) as proposed on the plot plan **ARE NON-CONFORMING** with respect to the performance requirements of the *Parsonsfield Land Use & Development Ordinance*, and the required 15 foot landscaping buffer is **NOT** reflected in the site plan.

K. Noise Abatement: Has the applicant ever performed a **NOISE STUDY** of the operation to assure the Planning Board of **55 Dba** or less during working hours? Five years of test data should be available during the non-conforming and unpermitted use of land and buildings. The buffers and screening required in sections E and J (*that have not been identified in the plot plan*) are meant to support nuisance mitigation, and no burden of proof has been provided that this commercial/industrial use can meet that residential requirement.

L. Off-Street Parking and Loading: The five (5) parking spaces as proposed are **NON-CONFORMING** and need to be relocated away from buffering and screening requirements in E & J. (3.c.iii)

L. Off-Street Parking and Loading: In unpaved areas, provisions must be made to identify the five (5) parking spaces, and to provide wheel stops to prevent damaging landscape buffers and screening. (3.c.vi and 3.c.viii)

N. Road Construction and/or Acceptance: **NON-CONFORMING**.

MEDOT Access Permit 28428 Entrance ID#1 dated August 18, 2020 is classified as "an

entrance to
Commercial/Industrial"

Art. II, Sec. N(4)(d) requires the centerline of the roadway must be at the centerline of the right-of-way. **NOT Shown**

Art, II, Sec. N. Table 5 shows for a new commercial use the minimum right of way width must be 60' with the minimum pavement width of 30" a month among other requirements. **NOT Shown**

Art. II, Sec N(g) requires a sight distance of 375' based access by recreational vehicles and posted speed. **NOT Shown**

P. Signs: The proposed sign is **NOT** depicted 15 feet from the front yard lot line, and the applicant did **NOT** provide dimensions or intended illumination required by the Ordinance for a sign that could potentially be argued to be a 200 SF sign and 20 feet high. The sign at Maplewood, since the rear lot has no frontage on Maplewood, should be restricted to 6 square feet.

Q. Soil and Water Quality Protection: Water Quality Degradation (Subsection 4) Since drainage of surface water was not shown, the applicant does not have a State mandated junkyard permit, no approval has been provided by the DEP, water bodies and wells within 300 feet are not shown on the plan, and there is no plan on fluid removals and storage submitted, this section is **INCOMPLETE and NON-CONFORMING**

S. Street Access and Driveways: NON-CONFORMING

MEDOT Access Permit 28428 Entrance ID#1 dated August 18, 2020 is classified as "an entrance to **Commercial/Industrial"**

Art. II, Sec. N(4)(d) requires the centerline of the traveled way must be at the centerline of the right-of-way. **NOT Shown**

Art. II, Sec. N. Table 5 shows for a new commercial use the minimum right of way width must be 60' with the minimum pavement width of 30" a month among other requirements. **NOT Shown**

Art. II, Sec. N(g) requires a sight distance of 375' based access by recreational vehicles and posted speed. **NOT Shown**

Art. II, Sec. 7 – Building Code: This section is in violation of State Law and **CANNOT** be applied to intended structures for the proposed use. State law supercedes and application is devoid of required building plans for new use even if in existing structure.

Art. III. Sec. 5 – Site Plan Review Application:

General Submission Information (Art. III, Sec. 5(A)(5) – INCOMPLETE

**Existing Conditions (Art. III, Sec. 5(B)(1) -
INCOMPLETE**

Existing Conditions (Art. III, Sec. 5(B)(8) - INCOMPLETE

**Proposed Development Activity (Art. III, Sec. 5(C)(1) – INCOMPLETE (green strips,
vegetated buffer, safety screening omitted)**

Proposed Development Activity (Art. III, Sec. 5(C)(4) – INCOMPLETE (Not compliant with
30-A 3751 – 3760 and 38 1391/Chapter 700, must identify private water sources within
300 feet of the parcel*)**

**Proposed Development Activity (Art. III, Sec. 5(C)(5) – INCOMPLETE (Surface runoff not
shown/provided)**

**Proposed Development Activity (Art. III, Sec. 5(C)(6) – INCOMPLETE and in ERROR
(*Location and Dimensions of proposed sign(s)*)**

**Proposed Development Activity (Art. III, Sec. 5(C)(7) – INCOMPLETE (*Locations and types of
exterior lighting*)**

**Proposed Development Activity (Art. III, Sec. 5(C)(8) – INCOMPLETE and
CONFLICTING (*Landscaping and Buffering*)**

Proposed Development Activity (Art. III, Sec. 5(C)(9) – INCOMPLETE (State required
applications and permits - 30-A 3751 - 3760*)**

Proposed Development Activity (Art. III, Sec. 5(C)(10) – INCOMPLETE (*Construction Schedule*)

As overview and analysis of the essential elements of a complete application details, given that 40% of the Site Plan Application is missing or incomplete and the applicant is unable to meet nine (9) performance standards of the Town, no reasonable person can find that Mr. Moreau has met his burden to present to this a complete application.

IV. ADDITIONAL STATE LAW CONCERNS

In addition to the issues discussed above, there are State regulatory requirements that are applicable and must be met in order for the Planning Board to determine whether the proposed new use meets all current standards and does not adversely affect abutting landowners and the health, safety, and welfare of the Town.

Reed Lane is substandard in terms of adequate design and safety to support the proposed commercial new use, specifically, the lack of properly acknowledging abutting water bodies and private water supply sources within 200 to 300 feet respectively frustrates State law (meant to monitor "encroachment" and protect water quality), and screening and buffering is substantively deficient. These need to be addressed in the best interests of the citizenry.

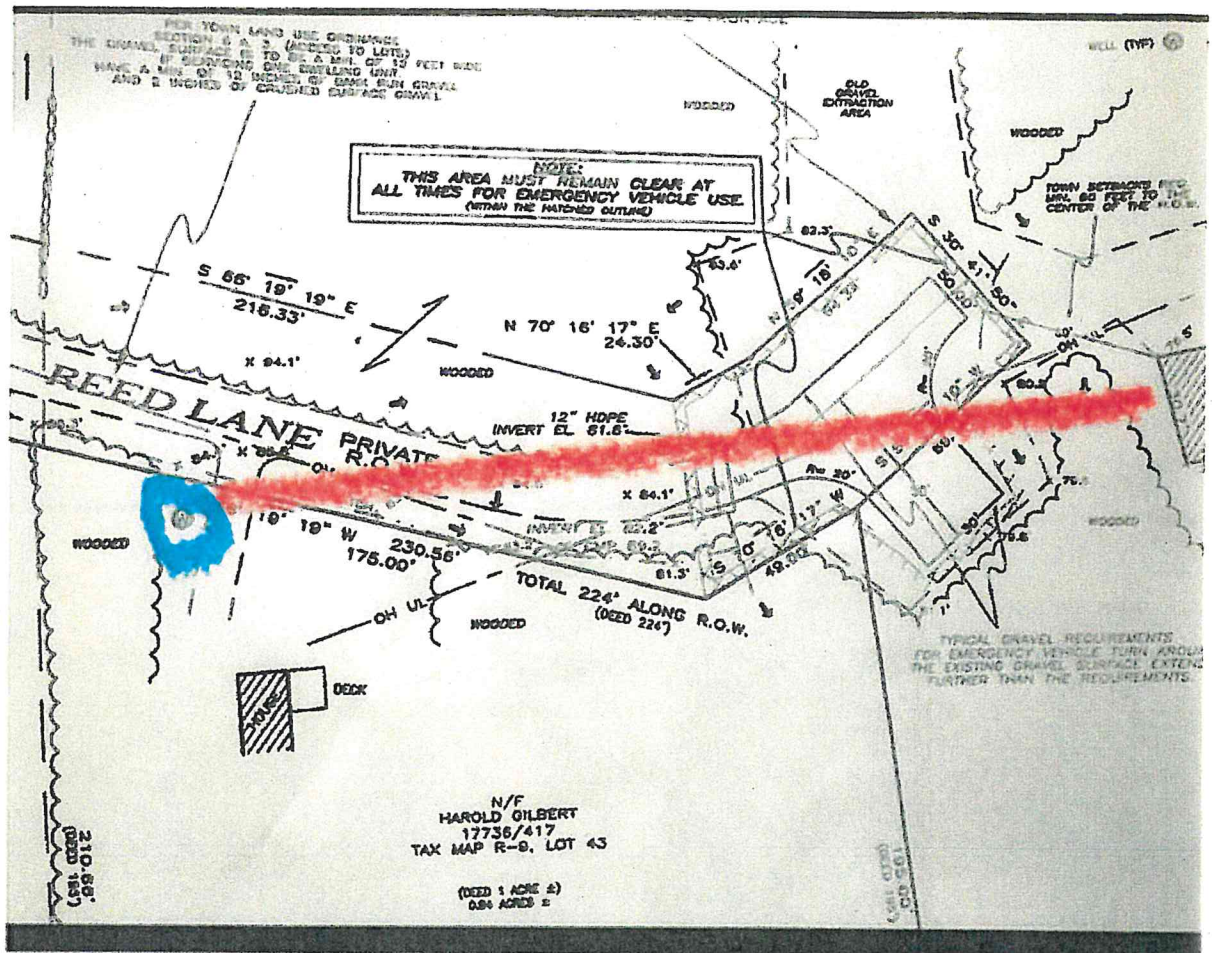
In addition to the significant amount of incompleteness and omissions in the proposal, the applicant should have to prove that he has a viable business model, identify all private wells on and within 300 feet of the parcel, identify water bodies on and within 200 feet of the parcel, prove tracking of all removals, storage, and disposal of hazardous fluids, batteries, and mercury switches, prove tracking of all titles and bill of sales for vehicles entering and exiting the parcel.

Re-permitting annually allows the municipality to re-inspect annually to assure that there is no encroachment of the use on the water supplies of abutting property owners, that buffering and screening measures are maintained, that the road design is meeting safety and operational standards, and to verify log records of bills of sale/titles and fluid, battery, mercury switches removal, storage and proper disposal are being kept properly.

17 M.R.S. §2802 in the criminal code is applied for violations of these State laws.

Regardless, given that junkyards are prohibited in the V/R district, and given the illegality of operating as such, stipulations need to be in place regarding the number of vehicles stored or cycling through the "Auto Repair Facility" the applicant is claiming that he wants to add as a new use, to prevent an auto graveyard/recycling operation from ever being inadvertently created.

Finally, Mr. Moreau's proposed new Auto Repair Shop appears to be located within 300 feet of what is apparently a private drinking water well. It appears that the well on the Gilbert property as depicted on the supplied Right of Way survey and using the scale on the survey is clearly located within 300 feet of the proposed Auto Repair Shop.

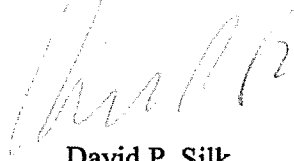


If that well on Gilbert's property is a private drinking water well, it is clear that under State law, 38 M.R.S. § 1391 et. seq. and DEP Regulations, Chapter 700, Wellhead Protection: Siting of Facilities that Pose a Significant Threat to Drinking Water, Mr. Moreau's proposed Auto Repair Shop cannot be approved. See 38 M.R.S. § 1391(1)(B)(3) (unless the well only serves the property on which the facility is sited, a person may not install in a wellhead protection zone "[a]n automobile body shop or other automobile maintenance and repair facility.")

Therefore, I respectfully suggest the Planning Board table any action on Mr. Moreau's Third Application for Site Plan Approval dated February 22, 2021, until Mr. Moreau shows that the above cited State law somehow does not apply to his Auto Repair Shop.

Planning Board
April 21, 2021

Sincerely,



David P. Silk

Enclosures

- TAB A: January 12, 2021 transcript of Yale statements at ZBA Meeting
- TAB B: March 16, 2021 Atty. David Silk letter to Parsonsfield Planning Board
- TAB C: Planning Board's Findings of Fact and Conclusions dated September 15, 2020
- TAB D: Mr. Moreau's sketch submitted with his Second Application for Site Plan Approval
- TAB E: Sept. 2, 2020 Atty. Jill Cramer letter to Parsonsfield Planning Board
- TAB F: January 13, 2020, the Planning Board decision denial of Mr. Moreau's First Application for Site Plan Approval
- TAB F: Five (5) Stop Work Orders issued to Mr. Moreau by the Town and CEO
- TAB G: Mr. Moreau's approved application for building permit of a 2 car garage on slab for "storage" use dated May 15, 2015

Copy to (w/encls.): Michael Nelligan
David A. Lourie, Esq., Town Attorney
Jill S. Cramer, Esq.

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David P. Silk, Esq.
dsilk@curtisthaxter.com

May 18, 2021

VIA EMAIL: planning@parsonsfield.org
Town of Parsonsfield
Planning Board
634 North Road
Parsonsfield, ME 04047

**RE: Roger Moreau's Third Site Plan Application dated
February 22, 2021**

Dear Planning Board Members:

I represent Michael Nelligan.

At your last meeting I requested that you do three things. **First** determine whether Mr. Moreau's Third Site Plan Application dated February 22, 2021 is substantially different from his second site plan application dated May 7, 2020. **Second**, vote on whether Board Member Yale should be recused due to his bias. **Third**, actually review the requirements in the Ordinance for an application to be deemed complete and determine whether Mr. Moreau's third site plan application is in fact complete. Those tasks remain.

Note the plan Mr. LaLonde has presented most recently dated 5-5-21 is not a Site Plan. A basic item of any site plan is a plan showing the bearings and distances of all property boundary lines for the property to be developed. See Ordinance Art. III, A.5 and B.1. Mr. Lalonde's survey just shows the location (boundaries) of the right of way as described in a deed. While easy to do, Mr. Lalonde has for whatever reason decided not to show the property lines of Mr. Moreau's rear lot.

As a result, he does not show for example where the 26 Reed Lane boundary property line runs for the full length along its northerly, westerly, and southerly bounds. This is very simple for him to do. At a minimum he should depict on his stamped plan all the property lines of 26 Reed Lane. The Board cannot do your job without an accurate Site Plan of 26 Reed Lane.

The applicant has now conceded that his Third Site Plan Application showing the present illegal auto salvage and repair shop located within 300 feet of a private drinking water well is illegal under State law. Mr. Moreau now concedes that he has been operating in violation of State law too (as well as the Ordinance) for over 5 years. That the Code Enforcement Officer and Select Board have allowed an illegal use to occur for over five years is not a basis for the Board to refuse to apply State law and the Ordinance as written.

Since the last meeting the Town attorney has weighed in.

By letter to the Planning Board dated May 14, 2021 Attorney Lourie attempts to provide guidance on whether Mr. Moreau's every changing application meets certain threshold issues. Leaving aside for the moment that Mr. Moreau is now presenting a proposal that materially differs from what he has requested in his permit application dated February 22, 2021, Attorney Lourie's advice to you is to reject the application before you because Mr. Moreau again is proposing something that is not allowed under applicable law.

Mr. Lourie says that the Planning Board can only approve one principal use at 26 Reed Lane. Since 26 Reed Lane has an established residential use, there is no way a commercial use, such as an auto repair shop, can be established as an accessory use on the lot. That is because a commercial use cannot be deemed an accessory use to a residential use because a commercial auto repair shop use is not "customarily both incidental and subordinate to" a residential use. Ordinance, Appendix A, Definitions.¹

That being the case, Mr. Lourie then advises the Board as follows: **"If so, Moreau must divide his lot into 2 or more lots if he is to enjoy the benefit of approval of the commercial uses he has requested, as well as continue the existing residential use."**

Mr. Moreau has not presented in any shape, manner or form a site plan application premised on the division of 26 Rear Lot into 2 lots.

So your task this Wednesday evening, like it was at last meeting, is to again find that the applicant's proposal as presented is not allowed. Counting the well head issue, this will be the FOURTH time the applicant has been told that what he is proposing for this site will not work. Mr. Moreau should look for another site to locate his illegal junkyard, salvage yard and auto repair shop.

If the Board proceeds further, my letter to the Board dated April 21, 2021 spells out why Mr. Moreau's Third Site Plan Application is not substantially different than his Second Site Plan

¹ "Principal Use: The primary use to which the premises are devoted."

"Accessory Use or Structure: A use or structure that is customarily both incidental and subordinate to the principal use or structure on the same lot. The term "incidental" in reference to the principal use or structure means both: a) subordinate and minor in significance to the principal use or structure, and b) attendant to the principal use or structure. Such accessory uses, when aggregated, must not subordinate the alleged principal use of the lot."

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Application. The facts and law spelled out in my April 21, 2021 letter are an additional and independent reason why you should not hear Mr. Moreau's Third Site Plan Application.

The Board also must act and decide whether to remove Board Member Yale for bias. My letter dated April 21, 2021 spells out why the Board should do so. In addition, his comments at the last Planning Board meeting, when he arrived more than 45 minutes into the consideration of Mr. Moreau's permit application, and show even more how he has prejudged this matter.

Among other statements made Mr. Yale (AY below) after his late arrival (AJ = Allen Jackson, Vice-Chair):

AY: **I got to say that I think this town is running very perilously close to harassing a citizen.**" [Referring to Mr. Moreau who has been operating illegally an auto junkyard, salvage and repair shop for over five years after mispresenting his intent in 2015 to the then Town CEO David Bower when he obtained a building permit for a residential garage]

AJ: I do not want to ever be perceived as harassing any citizen of this community.

...
AY: I can understand the completeness and those three concrete issues, um, from what I've seen so far, Mr. Moreau will address them...

AJ: Okay

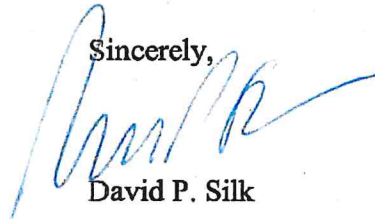
AY: He's addressed everything else and we can proceed along that line.
I do not want to see somebody railroaded out of his livelihood.

It clearly appears Board Member Yale believes that Mr. Moreau has some inalienable right to do whatever he wants on his land regardless of what the Ordinance enacted by the Citizens of Parsonsfield requires. Mr. Yale certainly can hold whatever beliefs he wants but that is not the oath he took when he took his seat on the Planning Board. And Maine law is clear, anyone appearing before a board like a Planning Board is entitled to decision makers who are free of biases.

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Our comments here relate to these preliminary matters only. If notwithstanding Attorney Lourie's advice, the Board moves forward to determine whether Mr. Moreau's Site Plan Application is complete, it must then schedule a site visit and a public hearing. If and when that occurs we will show that this application does not meet, and cannot meet, the substantive requirements of the Ordinance.

Sincerely,

A handwritten signature in blue ink, appearing to read "David P. Silk", is written over the typed name.

David P. Silk

cc: Michael Nelligan (mjnelligan@hotmail.com)
David A. Lourie, Esq., Town Attorney (david@lourielaw.com)
Jill S. Cramer, Esq. (jcramer@bourqueclegg.com)

March 16, 2022

ANALYSIS OF APPLICABLE STANDARDS

The following is a recitation of the **Parsonsfield Land Use and Development Ordinance, Revised September 8, 2018, with Attorney Cramer Letter to the Parsonsfield Planning Board Chair and Board (Oct. 12, 2021) statements**, and my responses in bold. My statements are based on my observation of Mr. Moreau’s activities over the last 6 years at 26 Reed Lane; all of which have negatively impacted my use and enjoyment of my residential property.

Article III, Section 6.A-Q:

Section 6. Criteria for Review and Approval of Site Plans and Subdivisions

In approving site plans and subdivisions within the Town of Parsonsfield, the Planning Board shall consider the following criteria and before granting approval shall make findings of fact that the provisions of this Ordinance have been met and that the proposed development will meet the guidelines of Title 30-A, M.R.S.A., Section 4404, as amended, which include the following:

A. Aesthetic, Cultural, and Natural Values

The proposed activity will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas, or any public rights for physical or visual access to the shoreline.

Atty Cramer: “Mr. Moreau's automotive repair shop will not have an adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat, rare or irreplaceable natural areas, or any public rights or visual access to the shoreline. This property is not located near any waterbodies, and the garage the (sic) Mr. Moreau will operate is a modest 30 x 30 two-bay garage.”

The Applicant’s proposed commercial auto repair and service shop, 26 Reed Lane, has had and will continue to have an adverse effect on the scenic, aesthetic and historical sites of Maplewood in the VR District. The Applicant’s property contains freshwater wetlands, namely a stream which flows through a culvert into an unmapped pond to the rear of the garage, to Moulton Brook and then ultimately joins the Little Ossipee River.¹ There is, as well, an abutting spring fed pond which abuts the Applicant’s property to the northeast. The commercial 30 by 30 two bay garage the Applicant will now operate in is fifty (50) percent larger than the previous one destroyed by fire on October 8, 2021. There is now an additional five

¹ Attorney Cramer letter to Town of Parsonsfield Planning Board (Oct. 21, 2021, at p. 6): “This property is not located near any water bodies.” This is not a correct statement.

(5) parking spaces being added for a total of now ten (10). The notion that the Applicant's commercial auto repair and service garage, affiliated parking and access to, is now somehow modest and fits within the character of the area is absurd.

B. Conformity with Ordinances and Plans

The proposed activity conforms with this Ordinance, other duly adopted ordinances, including the Subdivision Regulations of the Town of Parsonsfield, and the Parsonsfield Comprehensive Plan.

Atty Cramer: "Mr. Moreau's proposed automotive repair shop conforms with the Town of Parsonsfield Zoning Ordinance, as it is specifically allowed in the Village Residential District."

The Applicant's proposed commercial auto repair and service shop has continually deviated from and violated the Town of Parsonsfield Land Use and Development Ordinances. These deviations have occurred since the 2015 building permit for the "storage garage" to include numerous Stop Work Orders and Junkyard violations. The Applicant was in violation of the Parsonsfield Ordinances for approximately four (4) years prior to the first site plan review in August 2019 up until the present. The application is not in conformity with the Comprehensive Plan. See III.6.B (Conformity with [Parsonsfield Comprehensive] Plan). A copy is attached. In addition is not a permitted use, as part of the use requires a Special Exceptions permit and the other aspect requires Site Plan Review, the whole purpose of which is to determine whether the use is compatible with the surrounding properties in the proposed location.

C. Erosion

The proposed activity will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.

Atty Cramer: "Mr. Moreau's operation of his two-bay garage will not cause any unreasonable soil erosion or reduction of the land's capacity to hold water such that a dangerous or unhealthy condition might result. Mr. Moreau is proposing no new uses that will impact water flow and soil erosion."

As Parsonsfield's natural landscape is converted to commercial uses both the quantity and quality of surface water runoff changes. These land use changes increase the quantity and rate of runoff and decrease the quality of the run-off. The Commercial Auto Repair Garage with now 2-bays and 10 parking spaces is a new use. With this new use come new impervious areas such as over 1600 sq. ft. of new parking, 900 sq. ft. of new roof area and a 600 sq. ft. slab of the previously burned garage. As well, there is the current emergency turnaround and increased road length which also contributes additional run-off. There has been no analysis of showing compliance with this standard.

D. Financial Burden on Town

The proposed activity will not cause an unreasonable financial burden on the Town for provision of public services and facilities.

Atty Cramer: "No public services or facilities are required for Mr. Moreau's automotive repair shop."

The Town has already sent 4 stop work orders, allowed an illegal use to take place in a wellhead protection zone, and has spent thousands of dollars on legal fees all arising from Mr. Moreau's illegal activities.

E. Financial and Technical Ability

1. Financial Capacity

The applicant has adequate financial resources to construct the proposed improvements and meet the criteria of the Land Use and Development Ordinance. When the applicant proposes to construct the building as well as any subdivision improvements, the applicant shall have adequate financial resources to construct the total development. In making the above determinations, the Planning Board shall consider the proposed time frame for construction and the effects of inflation.

Atty Cramer: "Mr. Moreau has the means to build the 30' x 30' garage he proposed on the Plan, and its construction is in progress at this time."

The proposed development requires much more than simply erecting a building. Applicant has not addressed this standard.

2. Technical Ability²

In determining the applicant's technical ability, the Planning Board shall consider the applicant's previous experience, the experience and training of the applicant's consultants, engineers, architects and contractors, and the existence of violations of previous approvals granted to the applicant.

Atty Cramer: Did not address

Compare to Applicant's actual use.

The Applicant stated to the Planning Board, April 21, 2021, that he is and has been operating in his auto repair garage, three (3) months after his permit was revoked

² Parsonsfield Land Use and Development Ordinance (pg.101), Technical Ability Omitted by Applicant.

by the Parsonsfield ZBA.³ No letters of compliance from the CEO or Selectboard regarding Stop Work Orders and Land Use Violations have been brought forth by the Applicant. The Applicant, again at the ZBA Hearing of September 30, 2021, continued to operate in the garage located in a wellhead protection zone and eight (8) days later the building was destroyed by fire. A Certificate of Occupancy Permit for a Change in Use from a "Storage Garage" to a Commercial Auto Repair Garage was never acquired by the Applicant. *See* Article V.4.D.

In addition, the Plan you approved last July required that no vehicles be parked or stored in the emergency turnaround. He has not followed that condition.

The Plan also required that he operate as he specifically represented in his application from 8 to 5 Monday through Friday only. "Mr. Moreau States there will be no exterior lighting other than his home porch light and his business hours are by appointment 8am-5pm Monday through Friday." Planning Board Minutes: Site Walk- November 2, 2019 (pg.2). "[T]he proposed business hours were to be Monday through Friday from 8:00 am to 5:00pm." Notice of Decision and Finding of Fact: Parsonsfield Planning Board, September 15, 2020 (pg. 1). This he has not done so as he routinely operates on weekends.

It is not clear if has installed the outside concrete pad for storage of hazardous waste. And cars have been stored in locations other than shown in the plan. And he caused the building to be burn down when he used a flame near a gas tank that ended up exploding.

Given this prior experience which you must consider including repeated prior violation and acts, failure to do what he said he would do, no fair and impartial person could conclude Mr. Moreau meets this standard.

F. Flood areas

The proposed use is not in a flood-prone area.

Atty Cramer: "The proposed use is not in a flood-prone area."

The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance. The attorney says so is not evidence showing compliance with the standard. The fact is, where some of the parking is shown the area is subject to flooding from the nearby water course.

G. Freshwater Wetlands⁴

³ Planning Board Minutes (Apr. 21, 2021): "Sabin Beckwith asked what is currently happening at the property. Mr. Moreau is currently working".

⁴ 38 M.R.S. § 480-B (Definitions):

All freshwater wetlands within the proposed site have been identified on maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district.

Atty Cramer: "There are two low-lying areas where runoff from M. Nelligan's pond collects and another low-lying area near H. Gilbert's property. It is unknown if these low-lying areas would be considered freshwater wetlands by the Maine Department of Environmental Protection, but more information can be provided if the Board requires." (emphasis added)

See Section 6.A, above. The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance. The applicant has not so demonstrated.

H. Groundwater

The proposed activity must not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.

Atty Cramer: "The proposed activity will not adversely affect the quality or quantity of groundwater. Proper storage containers for the storage of chemicals and waste currently exist and will continue to be utilized to protect against groundwater contamination. One of the conditions of approval was that Mr. Moreau would purchase and site a secondary storage container, and he has one lined up."

Again the applicant has been operating illegally since last July and now you are told he eventually will "line up" a secondary storage container. This shows again why the applicant cannot meet the technical ability. He decides to operate for over six [6] months without a secondary storage container. This is crazy.

The proposed commercial auto repair and service garage will, if not already since being illegally in operation since 2016, adversely affect the quality and quantity of groundwater. To date, no permit has been produced by the Applicant for a secondary storage container required by the Maine Department of Environmental Protection. Auto Repair Garages, Automotive Junkyards, Automotive Used Car Sales and Service Stations, all operated by the Applicant over the past six (6) years,

2-C. Forested wetland. "Forested wetland" means a freshwater wetland dominated by woody vegetation that is 6 meters tall, or taller.

* * *

4. Freshwater wetlands. "Freshwater wetlands" means freshwater swamps, marshes, bogs and similar areas that are ... (B) Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils;...

are a threat to groundwater. Some examples of these adverse effects on groundwater include but are not limited to:

Ignitable Hazardous Waste
Gasoline
Degreasers, engine cleaner
Antifreeze, Ethylene glycol
Brake fluids
Lead-acid batteries

Solvents,
Used oil
Used Oil Filters
Waste Tires
Contaminated Rags and Wipes
Mercury

I. Municipal Solid Waste Disposal

The proposed activity will not cause an unreasonable burden on the municipality's ability to dispose of solid waste if municipal services are to be utilized.

Atty Cramer: "No municipal services are to be provided to the site."

So where is the solid waste going? There is not plan provided. The reality is the Applicant has been using the current Residential Waste Disposal for a Private Commercial Business. Applicant has not met this standard. He has not presented any plans to show how waste products generated from the business will be disposed.

J. Municipal / Public Water Supply

The proposed activity will not cause an unreasonable burden on an existing public water supply, if one is to be used;

Atty Cramer: "No public water is servicing the site or is proposed to service the site."

K. Neighborhood Compatibility

1. The proposed activity will be compatible and sensitive to the character of the site and neighborhood relative to land uses, scale, bulk and building height, neighborhood identity and historical character, and orientation on the lot.
2. The proposed activity maximizes the opportunity for privacy by the residents of the immediate area.
3. The proposed activity ensures safe and healthful conditions within the neighborhood.
4. The proposed activity will minimize any detrimental effects on the value of adjacent properties.⁵

Atty Cramer: "The proposed use is compatible with the site and neighborhood relative to land uses, scale, bulk and building height, neighborhood identity and historical character, and orientation of the lot. Automotive repair shops are specifically allowed in

⁵ Parsonsfield Land Use and Development Ordinance, Article III.6.K (p. 102).

the Village Residential district. The garage is just over 900 square feet, it is a two-bay garage, and the surrounding area is a mixed-use district, with residential, commercial, and light industrial uses. A mom-and-pop auto shop fits right in with the neighborhood character, and it is located well several hundred yards off the main road and well outside of the historic Village district. It is also two football fields' length away from Mr. Nelligan's residence."

To characterize this 30 by 30 2 bay commercial auto repair and service garage with 10 parking spaces as somehow being compatible to the VR District is simply not credible. The footprint of the facility is far greater than 900 square feet and far greater than of any residence. The neighborhood character is all residential. The surrounding area is currently all residential use with the exception of Maplewood Cemetery which is a far cry from a "mixed-use" district. Contrary to the above statement, the Applicant's proposed commercial "endeavors" are definitively in the VR District, not well outside. As well, all industrial uses are prohibited in the Village Residential District.

1. The proposed activity is incompatible and insensitive to the character of the site and neighborhood relative to land uses [Residential] including scale, bulk and building height, neighborhood identity and historical character, and orientation on the lot. As to orientation, the two-bay garage directly faces abutters property, M. Nelligan, and is 210 feet or 77 yards from said southerly property line. There is no natural screening or buffering during the months from November through June. No buffer or screening will deter the associated noise of a Commercial auto repair garage.

2. The proposed and often illegally operated Commercial Auto Repair Garage has obliterated any notion of privacy at 550 Maplewood Road for the past six (6) years. The current and past commercial use of 26 Reed Lane has specifically interfered with the use and quiet enjoyment of said abutting property. This is exacerbated by the negligent and willful disregard of Towns Land Use Ordinances by the Applicant. Ms. Wilson has told you she was forced to move and sell due to this use. The MDOT classifies the private road now as Commercial Entrance.

3. Hard to say the proposed activity ensures safe and healthful conditions within the neighborhood: Fire on October 8, 2021. Placement of facility in well head zone. Refusal to install secondary storage container.

4. The proposed activity will have a detrimental effect on the value of the property at 550 Maplewood Road. There is constant noise during the day well in excess of the ambient back ground noises in this village residential district. Cars, tow trucks and flat breads and service vehicles come and go all day. No residential sue in the neighborhood has anywhere near this amount of traffic. In the summer with windows open the noise is even worse. It greatly disturbs my enjoyment of my property. Cindy Wilson already said enough, moved away and sold her property due to the impact Moreau's operations had on her property. I estimate my property

has lost half of its value due to Mr. Moreau's commercial activities. It is clear that now doubled in size proposed 2-bay, 10 parking space commercial use greatly negatively impacts the residential character of the neighborhood.

L. Pollution

The proposed activity will not result in undue water or air pollution. In making this determination, the Planning Board shall consider at a minimum:

1. The elevation of the land above sea level and its relation to the flood plains;
2. The nature of soils and subsoil and their ability to adequately support waste disposal;
3. The slope of the land and its effect on effluents;
4. The availability of streams for disposal of effluents;
5. The applicable state and local health and water resource rules and regulations; and
6. The impact of phosphorous export and other pollutants on water bodies.

Atty Cramer: "The proposed use will not result in undue water or air pollution—there will be no liquid or aerosol pollutants discharged."

See Sections 6.C, G, H, above. The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance. He has offered no plan on storage and containment of oil and other fluids that are handled. Is there a drainpipe in the 2-bay garage and if so, where does it go? If not, what happens will spills?. What about spills from cars stored on the property? There has already been one fire.

M. River, Stream or Brook

Any river, stream or brook within or abutting the proposed project has been identified on maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38, M.R.S.A. Section 480-B, Subsection 9, or as amended.

Atty Cramer: "No rivers, streams, or brooks are within or about the site."

See Section 6.A, above. See also Official Zoning Map Town of Parsonsfield (Sept. 12, 2009). Moulton Brook is identified on Applicant's property. 38 M.R.S. §480-B. 9. So this standard has not been met.

N. Sewage Disposal

The proposed activity will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.

Atty Cramer: "No municipal sewage services are provided to the parcel."

"The proposed activity will provide for adequate sewage waste disposal..." No Adequate Sewage Waste Disposal Provided for New Commercial Use/Principal Use by Applicant. This standard not met.

O. Storm Water

The proposed activity will provide for adequate storm water management.

Atty Cramer: "No changes in condition are proposed to the site, and storm water is adequately managed with the existing culverts and drainage."

Dramatic changes in conditions to the proposed site have occurred; a new 900 sq. ft. garage, over 1600 sq ft of new parking, an emergency vehicle turnaround and increased access surface. None of these items have been addressed by the applicant.

See Article II.6.Q.3 (Storm Water Management) (p. 38) (emphasis added) as follows:

The following standards shall apply to all development activities that require site plan review:

- a. **All new construction and development, whether or not served by a storm water collection and transportation system, must be designed to reflect or resemble, as nearly as possible, natural runoff conditions in terms of volume, velocity and location of runoff.**
- b. **Prior to the initiation of any construction or development, an evaluation must be made of pre-development and post-development peak storm water runoff rates. Such evaluations must be based on a 24-hour for 2-year, 10-year, and 25-year recurrence interval storm, and estimates of peak storm water discharge and volume must be completed using Urban Hydrology for Small Watersheds, TR-55, Soil Conservation Service, June 1986 Edition, or the most current edition.**

P. Sufficient Water

The proposed activity has sufficient water available for the reasonably foreseeable needs of the project.

Atty Cramer: "The proposed use has sufficient water available for the reasonably foreseeable needs of the project. Mr. Moreau has engaged in the repair of vehicles and

small engines on site for many years, and his well water system has met what few water needs his business requires.”

Location of proposed well and waste disposal system not provided for new commercial/principal use. The Applicant *has engaged* in the repair, sale and junking of vehicles on the site for some years, illegally with **NO PERMIT. There have been at least 4 Stop Work orders.**

Q. Traffic

The proposed activity will not cause unreasonable burdens on public streets or roads either existing or proposed.

Atty Cramer: “The site is accessed by a private road, and Mr. Moreau's operation of his small auto repair shop will not cause unreasonable burdens on public streets or roads. Anticipated additional traffic flow will be minimal.”

See MEDOT Access Permit 28428 (Aug. 18, 2020), classified as “An Entrance to Commercial/Industrial” And 10 required parking spaces plus employee parking so not credible to say minimal traffic.

Change in Use.⁶ A change in activity occurring on the property accessed by the entrance that will result in...(b) an increase in daily traffic. Examples include change in use ...(c) from residential use to commercial use.

See also Site Distance, Larger Vehicles (tow trucks, flatbeds, recreational vehicles) two lane traffic, -

PARKING :

Relative to the wellhead protection zone, the proposed parking is part of the business and in fact the applicant proposes to store vehicles to be repaired in the parking area. The area occupied and used by the auto repair and service business must be entirely located outside of the wellhead protection zone. The storage of to be repaired or serviced vehicles with leaks within the zone is not allowed. You cannot approve of the Plan given it shows a portion of the business operations within the zone.

⁶ Maine Dept. of Transp., Highway Driveway and Entrance Rules, 17-229 C.M.R. ch. 299 (Part B) § 1.1.

Cramer to Sullivan 1

Town of Parsonsfield Planning Board

April 15, 2021

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As for the dimensional requirements set forth in Table 2, the Private Way Plan establishes that all requirements are met, as well as the five parking space minimum required for automotive repair shops.

Article II. Section L.3.c.iv.

3. Parking Lot Design Criteria (Not applicable to single- or two-family dwellings)

c. Minimum Parking Requirements

iv. Parking stalls and aisle layout *must* conform to the design standards in Table 3:

TABLE 3
Parking Design Standards

<u>Parking Angle</u>	<u>Stall Width</u>	<u>Skew Width</u>	<u>Stall Depth</u>	<u>Aisle Width</u>
90°	9'-0"	NA	18'-5"	24'-0"
60°	8'-6"	10'-5"	18'-0"	16'-0" one way
45°	8'-6"	12'-9"	17'-5"	12'-0" one way
30°	8'-6"	19'-0"	17'-0"	12'-0" one way

See:

Roger K & Jennie A Moreau Private Way Plan
York County Registry of Deeds
Book 418 Page 9 Rec. Date: 08/21/2021
Michael D. Lalonde, PLS 2055

Proposed Parking Area
5 Space (10' x 16')
To Meet Requirements

1 Cramer Letter to Rick Sullivan, April 15, 2021, (pg.8)

Article II. Section L.3.c.ix.

All non-residential uses *must* provide at least one (1) parking space for each employee on the largest work shift. In addition, parking spaces must be provided to conform to the number required in Table 4.

Employees 1

Technician (2 records) [hide](#)

Name	Issue Date	License Number	License Expiration Date
JOSEPH L. MOREAU	10/13/2020	TEC24633	12/07/2022
LARRY C. REED	10/13/2020	TEC24636	12/07/2022

Joseph L. Moreau
License Number: TEC24633

Larry C. Reed
License Number: TEC24636

1 See: <https://www.pfr.maine.gov/ALMSOnline/ALMSQuery/SearchIndividual.aspx>

Article II.6.E.

E. Buffers/Screening

The following regulations regarding buffers apply to multi-family residential, commercial, industrial, institutional or other non-residential structures or uses:

1. No such buildings or uses may be established or abut a residential, agricultural, institutional, public or recreational use, unless natural vegetation or a landscaped buffer strip at least twenty-five (25) feet wide is provided to visually screen the uses to the extent practical. Where no natural vegetation can be maintained or due to varying site conditions, the landscaping may consist of fences, walls, tree plantings, hedges or a combination thereof.

2. Natural landscape features must be maintained wherever possible to provide a buffer between the proposed development and incompatible abutting properties. When natural features such as topography, gullies, stands of trees, shrubbery, or rock outcrops do not exist or are insufficient to provide a buffer, other kinds of buffers must be utilized. The buffering must minimize the adverse impacts on adjacent properties (including public roads) and must meet the following standards:

a. Outdoor off-street parking and loading spaces must be effectively screened from view by a continuously landscaped area not less than six (6) feet in height and fifteen (15) feet in width along exterior lot lines adjacent to single-family residential properties, except that driveways must be kept open to provide visibility for entering and exiting.

b. To prevent confusion, particularly at night, buffers must be provided along interior roads running parallel to roads exterior to the site.

c. Exposed storage and waste disposal areas, sand and gravel extraction operations, and areas used for the storage or collection of any articles of salvage or refuse must have sufficient setbacks and screening, such as a stockade fence, a wooden or masonry screen or a dense, evergreen, hedge that is six (6) feet or more in height so that they do not adversely affect other land uses and properties in the area.

d. For any use or area presenting a potential safety hazard to children, physical screening and/or barriers sufficient to deter small children from entering the hazardous area must be provided and maintained in good condition.

Article II.6.L.

L. Off-Street Parking and Loading

1. Basic Design

Off-street parking is required for all new, enlarged, or remodeled uses in Town, including change of uses, unless otherwise approved by the Planning Board. No parking space may serve more than one use, unless the approved by the Planning Board in accordance with subsection 2(e) below. Spaces must be arranged so vehicles can be turned around within such area and are not required to back into the street or road.

2. Multi-Family Residential, Commercial, Industrial and Institutional Development.

Development in any district may not be extended, and no structure may be constructed or enlarged, unless off-street vehicular parking is provided in accordance with the following requirements:

- a. Access points from a public road to commercial and industrial operations must be located as to minimize traffic congestion and to avoid generating traffic on local access streets of a primarily residential character.
- b. All parking areas and driveways must have a gravel sub-base at least twelve (12) inches in thickness and two (2) inches of finish gravel or bituminous concrete, and shall have appropriate bumper or wheel guards where needed.
- c. Required off-street parking for all land uses must be located on the same lot as the principal building or facility, unless otherwise approved by the Planning Board.
- d. Loading facilities must be located entirely on the same lot as the building or use to be served. Trucks, trailers, and containers for loading or storage may not be located upon any Town way. Loading facilities must be designed so that they do not interfere with customer traffic flows and parking.
- e. The joint use of a parking facility by two or more principal buildings or uses may be approved by the Planning Board where it is clearly demonstrated that said parking facilities will substantially meet the intent of the requirements by reason of variation in the probable time of maximum use by patrons or employees of such establishments.

Article II.6.L.

3. Parking Lot Design Criteria (Not applicable to single- or two-family dwellings)

a. Vehicular Entrance and Exit

i. Entrances and exits must be clearly identified by the use of entrance and exit signs, curb cuts, and landscaping.

ii. Entrance and exit design must be in conformance with the standards for street access and driveways.

b. Interior Vehicular Circulation

i. Major interior travel lanes must be designed to allow continuous and uninterrupted traffic movement.

ii. Enclosures, such as guardrails, curbs, fences, walls and landscaping, must be used to identify circulation patterns of parking areas and to restrict driving movements diagonally across parking aisles, but not to reduce visibility of oncoming pedestrians and vehicles.

iii. Entrances and exits must be designed to allow adequate stacking of vehicles without restricting interior vehicle circulation lanes.

c. Minimum Parking Requirements

i. Access to parking stalls may not be provided from any public way or from major interior travel lanes serving fifty (50) or more vehicles.

ii. Parking areas must be designed to permit each motor vehicle to proceed to and from the parking space provided for it without requiring the moving of any other motor vehicles.

iii. All parking spaces and access drives must be at least ten (10) feet from any side or rear lot line, except where additional requirements apply in the buffering and screening section of this Ordinance.

Article II.6.L.

v. In paved parking areas, painted stripes must be used to delineate parking stalls. Stripes should be a minimum of four (4) inches in width. Where double lines are used, they should be separated a minimum of one (1) foot on center.

vi. In unpaved parking areas, provisions must be made to delineate the parking spaces.

vii. In aisles utilizing diagonal parking, arrows must be painted on the pavement to indicate proper traffic flow.

viii. Bumpers and/or wheel stops must be provided where overhang of parked cars might restrict traffic flow on adjacent through roads, restrict pedestrian movement on adjacent walkways, or damage landscape materials.

ix. All non-residential uses must provide at least one (1) parking space for each employee on the largest work shift. In addition, parking spaces must be provided to conform to the number required in Table 4.

None of the above standards are met. This is just parking never reviewed by PB.

It is the applicant burden to meet all of these standards. Failing to meet anyone means the application must be denied. That is what the Ordinance says. I respectfully suggest that that is the case here.

Thank you. /s/ Michael Nelligan

Parsonsfield Comprehensive Plan | 1990

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The historic village development pattern, which remains largely intact, is one of the assets of Parsonsfield. Each village area has unique characteristics which additional research would clarify. Public education on historic and natural resources fosters a greater appreciation of these special features which give character to Parsonsfield.

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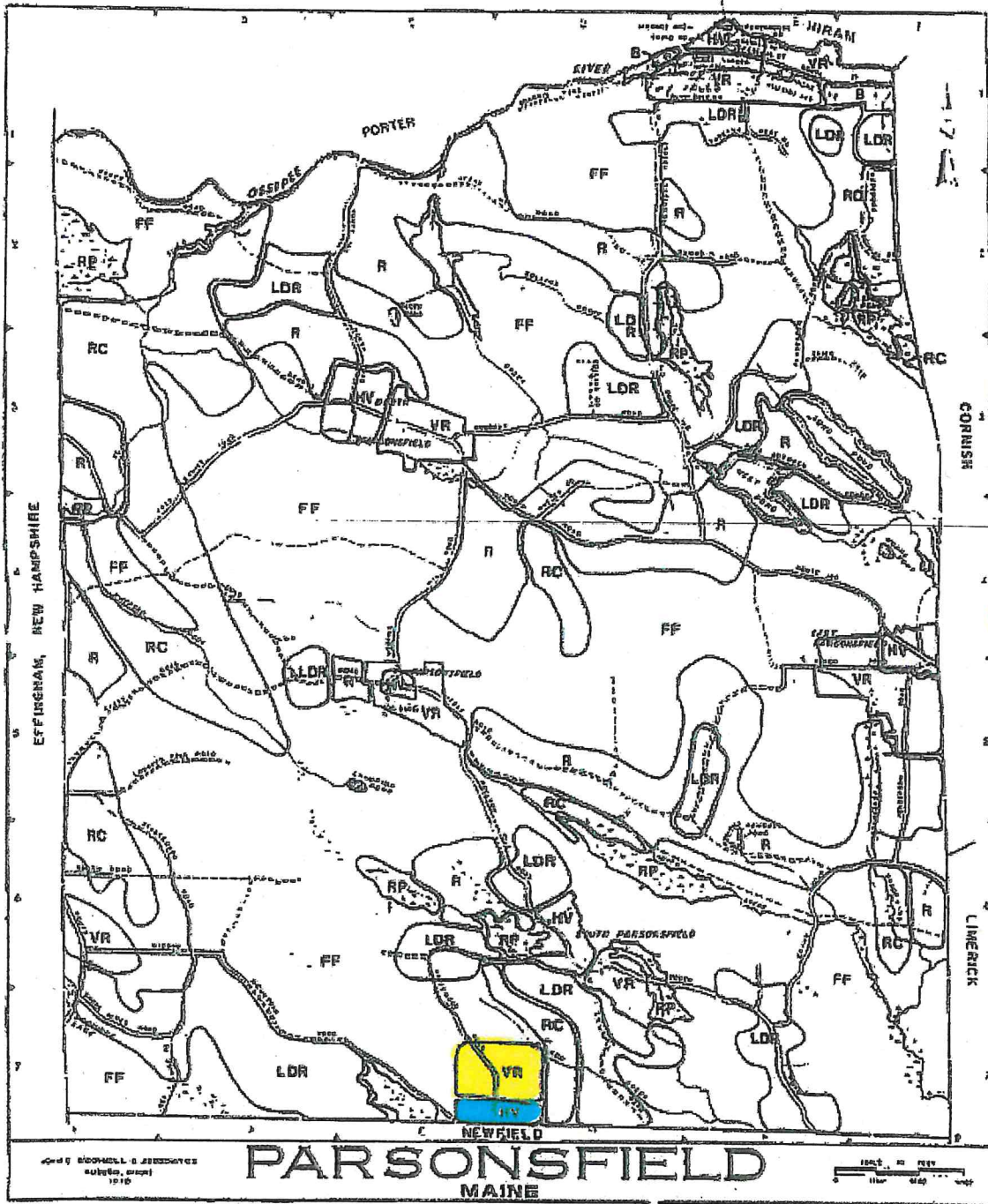
Future Land Use and Growth

The map on the following page is a conceptual map which expresses the future direction of the community. It is not a zoning map which should be drawn to specific lot lines, roads and topographic features. It is a land use planning map. It is based on the existing development patterns; the soil suitability for low density development; the need to protect aquifers, soils subject to flooding, and other natural resource conditions; and the existing road pattern.

There are six historic village areas, two of which have more business uses. This plan recommends that they be called Historic Villages in keeping with their traditional development. In the future, the Town may decide to designate them as official Historic Districts with appropriate regulations if additional protection is needed. The Town may designate additional historic areas or sites such as the Route 160 area west of East Parsonsfield, the North Road area east of North Parsonsfield and the South Road area east of South Parsonsfield.

Each general area is generally described in terms of future land use.

FUTURE LAND USE CONCEPT



- RP Resource Protection
- RC Natural Resource Conservancy
- FF Forest/Farm
- R Rural
- LDR Low Density Residential
- VR Village Residential
- BV Historic Village
- B Business

Maplewood. This historic village is on the Newfield border and Maplewood Road. There are about a dozen houses on the Parsonsfield side and a grange and cemetery. The grange appears to need work. There are additional houses on the Newfield side. Land to the west has hydric soils and to the northwest is Wiggin Mountain. Most of this land is suitable for forestry and some farming. There is a sizeable area of land west of Maplewood along the Newfield border which may be suitable for low density residential development.