

TOWN OF PARSONSFIELD ZONING BOARD OF APPEALS

ADMINISTRATIVE APPEAL
MICHAEL NELLIGAN
MAP R 19, LOT 44
26 REED LANE
PROPERTY OWNED BY ROGER MOREAU

January 12, 2021 – 3:00 p.m.

1.) Call to Order:

Chairman Jim Baron called the meeting to order at 3:00 pm.

Present: Jim Baron (Chair), Don Murphy, George Stacey, Recorder Desirae Lyle, Michael Nelligan

Guests Present: Town Attorney David Lourie, Selectman Harvey Macomber, Code Enforcement Officer (CEO) Jesse Winters, David Silk – Attorney for Mr. Nelligan, Roger Moreau, Jill Cramer – Attorney for Mr. Moreau, Claire, Joseph and Jennie Moreau, Jeff Wright, Rick Sullivan, Andy Yale, Clifford Krolick, Corey Lane (of Porter).

Opening remarks

Jim Baron made a motion to open the meeting. Motion was seconded by George Stacey.

2.) Determine Quorum

This is a three member board with all members present; therefore, it was determined that a quorum was present which allowed the Public Hearing to proceed

3.) Determine Conflicts of Interest.

This was discussed during the Public Hearing proceedings.

4.) Summarize Nature of Appeal/Complaint:

a.) Review Application for Administrative Appeals

The application was reviewed at the December 1, 2020 Zoning Board of Appeals meeting. At that meeting the Board voted unanimously that the application was complete.

5.) Hearing notices sent out:

a.) Public Postings:

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Notice was posted on the Town of Parsonsfield's website.

a. Parties to the Action:

- a.) Appellant(s): Michael Nelligan
- b.) Parsonsfield Planning Board (PB)

b. Testimony:

a.) Appellant(s)

Testimony from Mr. Nelligan's attorney occurred throughout the Public Hearing proceedings.

b.) Supporters/Opponents

Testimony from Mr. Moreau's attorney occurred throughout the Public Hearing proceedings.

Town Attorney David Lourie reminded the Board that this is not an evidentiary meeting, no new evidence can be submitted for the Boards review. It is a hearing which is required by the ordinance where you can hear from the public This is a review of the Planning Board decision. 'The parties have agreed, and I recommend to the Board that they separate it's hearing or hearings in this matter and first today hear only the issue of the joinder or merger of the lots. The question is whether the Moreau activity on the second lot, what was the rear lot is that of a rear lot anymore, having acquired an interest in the front lot. It is clear that Mr. Moreau, I think it is conceded that Mr. Moreau has an interest in both lots. The question is whether under the ordinances, does what was a rear lot remain a rear lot subject to the restrictions of development and use of the back lots or not. That is the issue which the Board is going to deal with or at least hear today and make a decision on that, hopefully.'

Andy Yale, 'You just mentioned that no new evidence can be presented today. At the last meeting this Board had on this matter none of this was presented or considered. Question for you to clarify, is how are you going to consider a new issue today? The two items presented at the last meeting were that a member of the Planning Board

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was late and that the Code Enforcement Officer was not certified at the time he inspected. This is a new issue.’ Mr. Lourie replied, ‘It’s not a new issue, the issue was before the Planning Board, but the status of these lots was an issue before the Planning Board in terms of Site Plan Review. First of all, later on, if it is decided that this Board can yield with both of these lots being one, the question is, is that what the Site Plan actually does, and does it meet the ordinance requirements? That is an issue for another day. The issue today is whether we are dealing with one lot or two lots under the ordinance. There are particular rules under the ordinance that usually apply in the case of non-conforming lots and if two small lots are not big enough and not conforming on their own under the ordinance, under certain circumstances those lots become joined as a matter of law, other circumstances they do not. One of those is if they come under common ownership then they can be joined for some purposes or are necessarily joined. The ordinance speaks to merger, that occurs as a matter of law when certain criteria are met, it does not really contemplate an owner putting together, or does not specifically deal with the situation we have here, where a single person has assembled two lots and he has an interest in each of those lots and under those circumstances are they joined together for the purposes of restrictions. If it is still a rear lot then there are certain very strong, limitations on the use of it and the access to it. If it has become a single lot, then the restrictions are inapplicable.’ Andy Yale, ‘I understand all that. I was on the Planning Board when this was addressed. What I don’t understand is where this question is rising from. It was not addressed at the primary, first meeting of this (Appeals) Board for this appeal. Who’s bringing this question? At the first meeting of the Appeals Board, which I was not at, I understand that they dealt with the issue of...’ Jim Baron, ‘Excuse me at the first meeting of the Appeals Board was just to see if the application was complete. There were some issues raised, but it wasn’t whether or not the application was complete. We could talk about the different issues all day long, but here we are just going to stick to one issue.’

David Lourie stated, ‘Usually the appellant will go first.’ Mr. Lourie asked the attorney for each party if they had anything to add to what he just said regarding the status of the matter being addressed today. ‘I understood we were all in agreement on this, but I’d like you to confirm that on the record.’ Attorney Jill Cramer noted, ‘I happen to agree with the gentleman, I think he said his name was Andrew, that at least the component of this unreserved, because it wasn’t brought before the Board, the Planning Board, not necessarily this Board. But I would also argue that it was not included with his letter of appeal either, but I’m happy to argue that at a later time. To the extent that I have stipulated to the issue as you framed it for the ZBA (Zoning

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Board of Appeals) today, I can't walk that back.' David Lourie, 'I'm sorry what issue were you saying was not preserved?' Ms. Cramer, 'The issue of road frontage you had in your statement to the ZBA because the applicant now owns the front lot this gives road frontage to the rear lot. It seems like a road frontage issue and when it's my turn to speak I will have a bit of a discussion on the fact that the road frontage issue per se was not in front of the Board to be considered in the first place.' Mr. Lourie, 'I understand what you're saying, we shouldn't take any more time splitting legal issues, which I could do, and I'm sure David will do. Let's hear from the appellant first.'

Attorney David Silk, representing Michael Nelligan, introduced himself, 'I just want to make sure that today we are addressing the issue that the Planning Board made an error when they found that the applicant now owns the front lot thus giving the road frontage to the rear lot. Other issues that have been raised like: whether the application was complete, whether they properly made factual findings, whether they properly applied the other Site Plan standards, whether there were due process violations due to Mr. Winters being involved in this process. No one is waiving those issues; those issues are for a second day depending upon how this Board addresses the threshold issue.' David Lourie, 'Well you are correct the issue or question is because this appeal is in fact whether the Planning Board erred making that finding, and I guess I was jumping to the consequence of that finding which is whether we are dealing with one (1) lot or two (2).' Mr. Silk, 'I just wanted to make it clear that we weren't waiving any other issues, we are just doing this for the convenience of the Board, because you've been given two hundred and eighty (280) pages of a record, you've been given a number of issues and it seemed like they were the threshold issues. That if these two (2), the front lot and the rear lot, I'll give you a copy of the tax map, did not merge under the ordinance then the PB was wrong, we'd argue and that ends the case you don't have to decide anything else. I just want to make sure that I'm not waiving any right by not going into these other grounds, that we're going to come back another day if in fact the Board finds that the PB finding was correct and legally there was somehow a merger. One other preliminary issue, we, being attorney Cramer and myself, have received an email from attorney Lourie yesterday, I think it was a reminder from him to the Board members that because you sit as Appeal Board members here any decision you make has to be based on the material that is supplied to you in the record, and by what's provided to you by the public, whether it's the attorneys that are here today, and that you're not supposed to have any discussions about this case with other towns people whether it's Mr. Winters or Mr. Moreau a

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Board member, a Select Board member. Mr. Lourie wasn't clear, at least to me, as to whether you've had any discussions outside of a public hearing, or visited the site, Mr. Moreau's property, or Reed Lane or had any discussions with anyone. I need to know because there are a number of cases that I'm going to tell you about and certain due process rights that my client has and also Mr. Moreau has to make sure that when you act here today you are acting based on information that you are getting in public and from the record before you and if there is something else happening the parties have a right to know that before we go forward. I'm not accusing you of any wrongdoing, but attorney Lourie raised the question in email yesterday and invited me to ask you that question just to make sure the record is clear whether there has been any, what we call, ex parte contacts with Mr. Moreau, Mr. Winters, visiting the site or with anybody else in the town. So, I will ask, with Mr. Lourie's permission, I would like some indication on the record if any of that has happened.' Mr. Lourie, 'There is no problem with him asking, and in fact it is a good thing for you to disclose contacts that you have had with Mr. Winters, who for the record was the apparent Code Officer during this time, he wasn't necessarily certified at the time, but the legal consequences of that have little or no relevance to your hearing. Usually, Mr. Winter's, as CEO would be a party to the action before the Board, but because he took no action on this application, we are deciding on a PB decision. Mr. Winters is not technically a party to the Board, and what he has said to you or told you before has no evidentiary effect. You (the Board) are here to discuss if the PB properly decided that the back lot no longer fits the back lot description. So, if you would disclose if you spoke to Mr. Moreau or Mr. Nelligan outside of the public hearing, or anybody else about this particular project, if you've been out there to the site, that should be disclosed and what date any of that happened. Just so everyone knows on the record what happened.'

Don Murphy stated that he has not been to the site, nor has he spoken to anyone regarding this case, he has read all the material presented to the Board and attended the preliminary meeting to discuss the structure of the Board. Jim Baron stated that he has not been to the site, he has spoken to Mr. Winters but not regarding this case. Mr. Stacey stated that he has not visited the site or spoken to anyone regarding this case.

David Silk was satisfied with the Board's answers, thanked them, and continued. 'As attorney Lourie said you are not sitting anew, you not making this decision based on your own view of the facts, you're here to see if the PB made an error of law or made a finding that is not correct or not supported by what's in the record. That's why you

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have a two hundred and eighty (280) page record. You have the appeal that I filed on behalf of Mr. Nelligan. I don't know what else you have in front of you, if you have any letters from Ms. Cramer or anything like that has come in recently. I don't know that, I haven't gotten a copy of that, but if you do let me know. What I would like to do today I'd give an overview, briefly to cover the bases, of why we think that the PB was wrong to say that Mr. Moreau owned the front lot, and as a result of owning the front lot the rear lot had sufficient road frontage to allow for a second use on the back rear lot.' Mr. Silk gave the Board an enlarged copy of the tax map that is in the record (NOTE: The enlarged tax map will be included with the ZBA file for this application). 'This will give you a sense of where everyone is. The area outlined in yellow is the rear lot which is the lot on which Mr. Moreau proposes to locate the auto repair business and is the lot that already has an existing residential dwelling unit. That is lot 44, and the reason it is considered a rear lot is you can see where Maplewood Road is, and it doesn't have any frontage on Maplewood Road. The same thing with lot 43 which is the Gilbert lot, that's also a rear lot, it doesn't have any frontage on Maplewood Road. Mr. Nelligan, you can see is abutting the property, and the lot in blue on the tax map is lot 42, is the lot owned by Claire and Joseph Moreau as well as Mr. Moreau. That's were we are, and when we talk about the rear lot and the front lot, and I'm sure attorney Cramer will do the same, we are talking about lot 44 being the rear lot and we're talking about lot 42 being the front lot. This tax map is in the record, but I blew it up (enlarger it) so you have a much better sense of seeing what it is. Also, in the record, so the first issue is, does Mr. Moreau own the front lot, and that was what the Planning Board found. They said that now Mr. Moreau owns the front lot he has sufficient frontage for the rear lot. I want to show you the deeds and see who owns the front lot and the rear lot, these are in the record as well.' Mr. Silk handed the Board copies of the deeds for both properties. 'As you can see in the bottom corner there is an R191, so it's in the record, I'm not giving you anything new. What's significant here is the deed for the front lot is to three (3) individuals, to three (3) owners, Claire and Joseph Moreau as well as Roger Moreau. The deed to the rear lot, again this is in the record, is to Roger Moreau and his wife Jennie Moreau. So, there is no factual issue on who owns what lot, we know there are three (3) owners of the front lot and (2) owners of the back lot. The issue becomes whether Mr. Moreau owned the front lot for purposes of merging the front lot with the back lot. The Ordinance requires that in order for there to be a merger there needs to be common ownership between the owners of one (1) lot and the owners of another lot. I can give you the sections of the Ordinance so you can look at it. The Ordinance says it has to be in the same owner or owners in order for the lots to merge. The rear lot is a nonconforming lot because it does not have

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adequate road frontage, that's why it's a rear lot, it's not conforming because it's not on a public road. LUO Section 6. D. 1. c. *"If two or more contiguous lots or parcels of record are in the same single or joint ownership on or after the effective date of this Ordinance (or applicable amendments) and these lots do not individually meet the dimensional requirements, if one or more of the lots are vacant or contain only an accessory structure, then the lots must be combined, to the extent necessary, to meet the dimensional requirements for newly created lots."* This means they have to have identical owners, they have to be common owners, which means that if Mr. Moreau owns the front lot with his parents and he owns the back lot with his wife, you don't have identical owners, you don't have the same joint ownership of both lots, so they don't merge, they can't merge. In this situation there is a house on the front lot, there is a house on the back lot, so we go to LUO Section 6. D. 2. Built Lots the second paragraph says: *"If two or more contiguous lots or parcels of record are in the same single or joint ownership on or after the enactment (or applicable amendment) of this Ordinance and 1) if either or both of these lots do not meet the dimensional requirements of this Ordinance, and 2) if a principal use exists on each lot, the nonconforming lots may be conveyed separately or together in accordance with the State Minimum Lot Size Law and State Plumbing Code."* The key thing here is that it uses the phrase same single or joint ownership. Again, same single or joint ownership means that you have identical names on the deeds, identical, they match, they are the same. Given the deeds I've given you, which are in the record for the front lot and the rear lot, the Planning Board made a mistake when they said that Mr. Moreau's ownership of the front lot resulted in a merged back lot so to give the rear lot frontage from the front lot to allow a second use. There was no merger of those lots. You might ask yourself; how did they go astray? We gave you thumb drives I don't know if you've had a chance to look at them yet, there was a public hearing in July and the Planning Board had another meeting on August 18, 2020. At that meeting they were given the deed to the front parcel and because the Planning Board had previously denied the identical Site Plan Application a year earlier, they were trying to figure out, why is this different? The reason they denied it a year earlier was because if you have a rear lot without adding the frontage you only have one (1) use you can't have two (2). Because Mr. Moreau is proying to add a second use, a commercial use to that rear lot, you couldn't do it, that's what the Planning Board had said back in 1999. And so, Mr. Moreau was trying to find a way around that, and said if he owns the front lot it's no longer a rear lot because, they are combined I have frontage on Maplewood Road. Again, if you look at his site plan application it didn't show one (1) big lot, it showed the front lot and the back lot, it's not under common ownership and the

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Planning Board was confused. Here are some of the statements that they made at the August 2020 meeting. Tom Winters asked, "So, it's a contiguous piece of a single owned property?" Another Board member said, "So there would become an alteration of the deed?" Another Board member said, "So it's a single use lot now? The whole thing now is a single use lot?" And so, they somehow thought that because Mr. Moreau is a co-owner of the front lot that somehow merged the rear lot with the front lot. He is a co-owner of the front lot, he owns it with his parents, and he's a co-owner of the rear lot he owns it with his wife. Being a co-owner does not result in a merger under the ordinance. To be a merger under the ordinance it has to be in the same single or joint ownership. I have here a letter that spells this out, it was written primarily for attorney Lourie, but it spells out what I just said in case you're reviewing this later on (NOTE: This letter will be included with a copy of these minutes.) I would like to say one other thing there was some discussion before the Planning Board about Mr. Moreau somehow acquiring a right-of-way, that there was a purchase and sale agreement to acquire the right-of-way. When we talk about the right-of-way, we're talking about a fifteen (15) foot dirt road that serves both of those rear lots the Nelligan rear lot and the abutters rear lot. There's no purchase and sale agreement in the record, that's the first issue and I'm not sure what that means. Second, I guess the notion is that somehow if the rear acquired the fee interest, do you know what it means when you say a fee interest? When you have a right-of-way there's somebody that owns the dirt, and there's somebody that has a right to pass over it. If you have a rear lot you may or may not own the dirt, but you have in your deed the right to get to your lot. You may own the dirt too, but that's how you get to and from your lot. There was suggestion made that somehow if Mr. Moreau, as a rear lot owner owned the right-of-way, which by that I mean owned the fee as opposed to having the right to pass over it, that would no longer make the rear lot a rear lot because it would be fifteen (15) feet of right-of-way connecting to Maplewood Road in the deed, "Oh I've got fifteen (15) feet of frontage on Maplewood Road". The reason the rear lot is a rear lot, because it doesn't have adequate road frontage, and for a single family residence you need a hundred (100) feet of road frontage. Even if, and it's not in the record, but even if he had the fee, the dirt and owned it, again there's no purchase and sale agreement, no description, it wouldn't make any difference, because if you look at his sketch plan on page 17 the right-of-way is only fifteen (15) feet wide, or twenty (20) feet wide. It's not a hundred (100) feet wide and so it's still a rear lot that's accessible only by the right-of-way, and when the ordinance uses the word right-of-way, accessible only by right-of-way, they're not talking about whether you own the dirt, the fee, or if you just have the right to pass over it. The definition in the ordinance for right-of-way is just how you

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come and go to get to a back lot. You may hear about that, to me it's a non-issue because Mr. Moreau's rear lot is going to stay a rear lot unless and until he gets a hundred (100) feet of frontage, and unless those lots actually merge under the ordinance, which means they have to be in the same ownership. There's no merger here, the Planning Board was led astray, they somehow thought that because Mr. Moreau had an interest in the front lot and the back lot that he could take some of the frontage from the front lot and use it for the back lot. We're saying that that is wrong, he needed to have more than just an interest in the front lot. The lots have to merge, they have to be in the same ownership, or there have to be deeds saying they are all one (1) lot, you don't have that and therefore the rear lot didn't acquire a hundred (100) feet of frontage, it is still a rear lot. As still being a rear lot, what the Planning Board said back in 1989 still holds, which is, under the ordinance you can only have one (1) use and he is proposing to add a second use. And so, we respectfully submit that on this issue the Planning Board made a mistake, they made a factual mistake in suggesting that a merger, the deeds show there's no common ownership and two (2), because there's no common ownership there's no way you can take the frontage on Maplewood that runs along the front lot and attribute that to the rear lot.'

The Board invited Ms. Cramer to speak next.

Attorney Jill Cramer introduced herself as Mr. Moreau's attorney. 'First of all, I'd like to bring this back to twelve minutes ago, when the Town's attorney said, on the record, that the ordinance does not contemplate the issue that is in front of the Board today. That whether or not the front lot can use the road frontage of the front lot for the purposes of the back lot, to take the back lot out of rear lot status only allowing for a single use. It's not in the ordinance. This Board today, I want to start out with the standard that you're looking at, that this Board today is looking at this from an "appellate" standard, this is different from "de novo" standard. You are not looking at this with fresh eyes, your job today is to determine whether or not the Planning Board really screw up. Did they whiff the ball? In order to do that you have to decide that what they did was contrary to specific provisions of the ordinance or contrary to the facts presented. Your own attorney, the Town attorney, said that it's not in the ordinance, whether or not you can use the road frontage from the front lot for rear lot purposes. I'm going to talk a little more about that in a bit, but your job is to give the benefit of the doubt to the Planning Board, to their decision making to their fact finding. Your job isn't to overlook what they've done, to start from scratch on this issue, you need to give them the benefit of the doubt. I'd like to flag that for everybody, this is an

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appellate standard, you have to give them the benefit of the doubt, and unless they did something that was contrary to a specific provision of the ordinance you can't reverse it, it says that in the zoning ordinance itself. We just heard a lot from attorney Silk about this one (1) discreet legal issue, that's why we're all here today, but I have a hard time, I'm not sure if you have made it through all two hundred and seventy to eighty (270-80) page submission. There is a record, a Planning Board record somewhere, and I can assure you that the purchase and sale was in it, I don't have a copy of it, but I know my client did provide it to the Planning Board. That was the purchase and sale for the fee interest, the dirt, to the right-of-way. I think that there's been an administrative problem with the Planning Board, I'm not sure it's with you, if you get a chance to read it, but we can't look at this discreet legal issue in a vacuum. This application process has been a year and a half for Mr. Moreau. He has done everything that the Town has asked him to do. The Planning Board met on this application on nine (9) separate occasions, there were two (2) site walks and one (1) public hearing. Mr. Moreau has spent a ton of money on legal fees, application fees, he's lost wages because he wasn't allowed to work. He has had increase travel expenses because he needed to work offsite. He isn't planning on building a big subdivision, creating a meth lab, a six thousand (6,000) foot mansion or a pot grow operation. He isn't building anything, he isn't expanding anything, he isn't changing anything, he just wants to fix cars in the garage that was already on his property. It's a single bay garage, he's a solo guy, working by himself. The roads the same, the buildings are the same, the garage has been there forever, I don't know about forever, he could tell you. Auto repair shops are specifically allowed in the Village Residential (VR) District, I know we'll hear more about that during the second part of this hearing. But just a little bit of history, yes, he first applied for this in June of 2019 after four (4) Planning Board meetings the Planning Board denied the application because 26 Reed Lane, where he was residing at the time lacked road frontage and was accessible only by a right-of-way, it didn't meet the width requirements. The definition of rear lot says, "*A rear lot (lacks frontage) that meets size requirements but is accessible only by a right-of-way that does not meet the width requirements may be used for a single dwelling or other single permitted use provided that the right-of-way existed at the effective date of this Ordinance or amendment, and that a wider right-of-way cannot be negotiated with abutting landowners*". His problem at the time was that his abutter, Cynthia Wilson, wouldn't let him widen the right-of-way, and so he solved that problem, as attorney Silk talked about. He bought Cynthia Wilson's property, that's the front lot, lot 42. And he reapplied, there was a substantial change in circumstances, so he reapplied to operate his automotive garage, automotive repair

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shop that's allowed in the district, he reapplied for the permit. The Planning Board had five (5) more meetings about it, a public hearing, and another site walk. Ultimately, we are here today because the Board granted his application. Attorney Silk mentioned earlier that the right-of-way under the ordinance definition means just a road to come and go, it could be a public way it could be a private way, for lawyerly purposes we generally think of it as an easement, someone has the right to go across your land to get to their house or whatever they're doing back there, logging, whatever. At the time Mr. Moreau applied for his first application he only had the right to use the Reed Lane, Cynthia Wilson owned the fee interest in it, she owned the dirt under the road, he bought the property, he bought the road. Attorney Silk is arguing that because Mr. Moreau owns the front lot with his parents and the back lot with his wife that he doesn't somehow own the whole thing, he has an undivided interest in the whole property, he also owns the road. He owns it as a front lot owner, he's executed a purchase and sale as a back lot owner, although I think that's a distinction without a difference, he owns the road. It will be my argument today to you that he has road frontage because he owns the road, Reed Lane is close to one thousand (1,000) feet long or more, well over the hundred (100) feet required under the ordinance. So, he has road frontage, he owns the road. Whether or not the Planning Board made its determination based upon road frontage on Reed Lane or whether or not it applied the road frontage from the front lot which has over a hundred (100) almost two hundred (200) feet of frontage. He has an undivided interest in the whole thing, he doesn't have to ask his wife if he can go on the back lot or his parents if he can go on the front lot. He can kick off trespassers or evict squatters, he can do whatever he wants on that property, walk his dog, whatever, its his, its his property. So, he reapplies as you know, that's why we're all here today, to the extent that the Board would have been concerned about the different combination of owners, I think we addressed that with the purchase and sale agreement. Again, we are looking at the road, does he have road frontage, that's the topic of discussion today, does he have road frontage? He owns the road he has road frontage, that's my position. It doesn't say anywhere in the ordinance that the front lot owner, Mr. Moreau, can't use the frontage of the front lot for the back lot purposes, but even if he couldn't he owns the road, it could be frontage from Reed Lane or it could also include road frontage if we're looking at Reed Lane as it intersects with Maplewood Road, there's frontage there, I think twenty four (24) feet or more. The zoning ordinance specifically allows the Planning Board to reduce frontage requirements, if it wants to, assuming all of the other provisions of the ordinance are met. The Planning Board could have, and maybe it even did implicitly reduce the road frontage requirements based upon the situation, we're not quite sure, because they

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didn't state on the record. But it had the authority to do that, it still has the authority to do that. So, if this Board decides to kick this back down for further reconsideration, all the Board needs to say is we're reducing the road frontage requirement. The Planning Board also specifically reached out, not as to the road frontage issue but as far what the width of the right-of-way needs to be. The Planning Board asked the MMA (Maine Municipal Association) attorney, and this is in the record too on page R178, they were asking the question about, could this guy have a dual use on the back lot, the right-of-way is only approximately fifteen (15) feet wide, the natural dirt is only fifteen (15) feet wide, let me clarify. The Planning Board reached out to MMA, the question was, the Planning Board essentially asked the MMA attorney what would the minimum right-of-way width be? In this case it's fifteen (15) odd feet, they specifically asked: the application is for a change of use from a single use residential dwelling to a dual use of residential dwelling and automotive repair shop, the section of the ordinance is unclear if it's solely for new streets, rights-of-way or would apply to a right-of-way under a change of use. And so, they indicate in their Table 5, minimum right-of-way width for industrial commercial use is sixty (60) feet. The MMA attorney wrote back to them, and I'll paraphrase here for sure, that answer is on page R81, the width of the driveway is grandfathered. So, our discussion today is about whether or not the back lot, lot 44, is a rear lot under the ordinance, and for that to be true, the lot meets the size requirements, which it does, only accessible by a right-of-way, if we're thinking about it as an easement, it's not an easement anymore because Mr. Moreau owns it. And it doesn't meet the width requirements, it doesn't need to according to the MMA attorney, it's grandfathered. The width of it is grandfathered. So far as I know the challenger hasn't presented any information that the MMA has rescinded its opinion on the matter. Right there the Planning Board did exactly what it needed to do, is it a rear lot? It's not an easement anymore, it doesn't need to be sixty (60) feet or whatever the ordinance says for commercial use, and the MMA attorney didn't say anything about whether or not they could have dual uses, but it was indicated in the Planning Board's email to them, so, presumably they looked at that issue. So, at least according to the MMA attorney it's grandfathered whether it's twelve (12) feet, fifteen (15) feet or fifty (50) feet. The other issue as far as the right-of-way goes, there's a ton of small legal issues that attorney Silk and I could melt our brains on for sure, but he owns the easement, he owns the fee interest, he can determine whatever width he wants to of the right-of-way. In fact, I brought with me today a corrective easement deed, if the Planning Board or the Zoning Board of Appeals determines to send it back down to the Planning Board, Mr. Moreau can execute a corrective easement deed indicating what width the right-of-way is, he can make it fifty (50) feet, he could make it sixty (60) feet,

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he owns it so he can do basically whatever he wants with it.’

Attorney David Lourie asked to interrupt. ‘This is something new that you are raising, and so I’m going to throw it back to you. If someone owns the property and owns the easement they are merged, they become one and the same, the easement disappears, it’s a matter of property law, isn’t it? So, you can’t really have the situation you’re talking about, he can only have one or the other he can’t have both.’

Jill Cramer, ‘That’s the thing, attorney Silk talked a bunch about merger, and I don’t think we really need to go there, I don’t think he’s wrong.’ Mr. Lourie, ‘That was ordinance merger I’m not talking about real property merger. If I own property, I can’t both own the property and own the easement over my own property.’ Ms. Cramer, ‘Right and to attorney Silk’s credit and I also identified this early on myself, that there are two (2) combinations of owners and so technically Roger and his wife have a purchase and sale to buy the dirt, but they also have an easement over the property that’s owned by Roger and his parents.’ Jim Baron asked, ‘He has twelve (12) feet of right-of-way is what your saying? If he wants to make it thirty (30) he can make it thirty (30).’ Ms. Cramer replied, ‘He can establish the dimensions of the easement.’ Mr. Baron, ‘But he doesn’t own that property?’ Ms. Cramer, ‘He does!’ Mr. Baron, ‘He owns the property, but he also owns the dirt, so then we would need a deed for the dirt, don’t we? Do we have that deed?’ Ms. Cramer, ‘I actually did a deed for the dirt, and seeing where this went today, you guys have the option of sending this back down to the Planning Board. I don’t know whether you have the authority to deny the application, I would recommend if you do anything with it, just to say that the road frontage issue, and I’d like to talk a little more about this, it wasn’t necessarily before the Board to begin with, but if you were going to remand to the Board for reconsideration Mr. Moreau should be able to take resubmit or take corrective action to fix the problem. He’s been working for a year and a half to fix the problem. I actually drew up a deed, I have it here today, everybody’s here who would sign it, putting everything in common ownership, if that’s what needs to get this project done.’ Mr. Lourie, ‘That would be new evidence and the ordinance defines property in terms of lots, by what’s recorded in the registry of deeds, so it wouldn’t make a difference if they signed it today.’ Ms. Cramer, ‘Well if they become in common ownership...’ Mr. Lourie, ‘I don’t want to get into a debate with you, I’m sorry, we should hear from everyone else before we get into an argument about this. I would say however that before I interrupted you that if I said that the ordinance didn’t deal with this issue, I was misstating it because it doesn’t do it expressly, ok I think there are certain provisions in

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the ordinance that will have to be looked at by the Board.’ (**Recorder’s Note:** At 52 minutes into the recording, Mr. Lourie spoke about lot definitions and the ordinance. Mr. Lourie was very muffled for the next minute.) Mr. Lourie continued, ‘Another situation we talked about was lot merger definition, which may or may not apply in this case. I think that when they drafted the lot merger provision, I don’t think they were thinking about the situation where an owner wanted to combine his property, they were thinking more about the situation where the owner didn’t want to, but the law was going to require it, to eliminate a nonconforming lot. That was what I think the intent of that section was, and that may be relevant anyway to this situation where the owner wants to combine the properties, but what I was trying to get at before was I don’t think that was why they put it in there, I think they put it in there to force properties to come together to be more conforming. However, it may be applicable to the situation, the definition of a lot, again the lot of record is, for the purpose of figuring out what is conforming and nonconforming, what was grandfathered or what wasn’t grandfathered and that’s why they put that into the ordinance. But what is a lot, it is not said in particular in this ordinance, is what I was getting at before. It doesn’t define lot, unfortunately.’

Jill Cramer stated, ‘I think that just helps the Zoning Board of Appeals, again...’ Mr. Lourie interrupted, ‘They have to come up with an interpretation of the ordinance whether it helps them or hurts them.’ Ms. Cramer continued, ‘These guys don’t have to do that, all they have to determine is did the Planning Board mess up and acted, made a decision that was contrary to the specific provisions of the ordinance. If there is no specific provision on this, I submit to you that you can’t say that the Planning Board messed up. That notwithstanding attorney Silk’s pointing to this built lot section of the Land Use and Development Ordinance on page ten (10), you guys got a highlighted copy, this refers to structures, this refers to land that is being conveyed. It doesn’t address issues of adding a second use on a property, it just doesn’t say that. As I said he’s not building anything, expanding anything, or developing anything, he’s not conveying anything, what he is doing is already in an existing building, accessible by an existing right-of-way, and so honestly, I don’t think this built lot, forced merger provision applies. But that can be for the lawyers to argue. The other thing I wanted to touch briefly on, as far as the road frontage goes, which we’re all talking about today, we have the MMA opinion it hasn’t been rescinded. We have his Department of Transportation permit for a commercial use on that property, that was submitted to the Planning Board prior to the public hearing on the 18th of August. This is the issue that I don’t think is unreserved today, it’s hard to tell that we’re talking about the built

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space requirement, but attorney Silk mentioned them early, and mentioned a hundred (100) feet of road frontage per the built space requirement that's on page 20 of the Zoning Ordinance. I've been assisting Mr. Moreau since the time he submitted his second application and just last Friday was the first time I've heard anybody had a problem with the road frontage, the built space requirements, and the road frontage in the ordinance. Attorney Silk has written three (3) letters to the Planning Board, Michael Nelligan has submitted additional materials, all complaints about this project, I don't remember seeing in any of them a question or a concern about how much road frontage you needed to have. If that were the issue the Planning Board never had the chance to address it so, how could they possibly have screwed it up? Nobody brought it to their attention and as I said they have, in the ordinance they have the opportunity to reduce road frontage if they want to if all of the other provisions of the ordinance have been met, nobody gave them the chance to do that. So, I don't think it's appropriate for this Board to reverse them on an issue that they never had the opportunity to look at because nobody brought it to their attention. I think that argument is unreserved, and by that, I mean it's too late to bring it up now, the Planning Board didn't have a chance to look at it, you can't just bring up an issue for the first time in front of the Zoning Board of Appeals, you can't do it in the Superior Court either, there's case law on that, I'd be happy to provide that for you. I know that we're not allowed to bring forward new evidence, I think this Board has the authority to either say that Planning Board made a clear error either acting contrary to a specific provision of the ordinance or contrary to the facts presented to it. And you could reverse the decision of the Planning Board. This Board also has the authority to remand it back to the Planning Board for further findings, and as I said I have drafted some corrective instruments that could solve the road frontage problem, the second half of this hearing notwithstanding, Mr. Moreau should be afforded the opportunity to resubmit, to try to fix the issue that the Planning Board has. This guy needs to make a living, he's not asking to do anything outside the bounds of his own property, it's in a single bay garage. He's worked really hard to get there, he's a decent guy, he's only looking for the ability to make a living and he should be afforded the opportunity to do that. The Town of Parsonsfield already decided that an auto repair shop is allowed in the Village Residential (VR) District. And so, to the extent that this Board is considering doing anything with this case besides affirming the decision of the Planning Board, I suggest to you that he should have the opportunity, the Planning Board should have the opportunity to look at the road frontage issue and Mr. Moreau should have the opportunity to fix it. I think Mr. Moreau wanted to say something.' Mr. Moreau, 'No, I'm good.' Ms. Cramer finished, 'I'll not go out of order, you guys are in

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charge of your meeting.’

Jim Baron asked, ‘What did DOT (Department of Transportation) say about the width of the road.’ Mr. Moreau replied, ‘They said it was fine the way that it was. The width is thirty (30) feet at the apron and the actual width of the road is around twenty (20) feet. We are talking about the road, Reed Lane, that leads to the garage.’ George Stacey asked, ‘How do we determine how wide the right-of-way is, by what’s already fixed? It says that there’s a right-of-way in the deed, but it doesn’t say that it’s a thirty (30) foot or forty (40) foot or a fifty (50) foot right-of-way.’ Ms. Cramer replied, ‘That’s what I brought with me, a corrective easement deed establishing that the right-of-way, the right-of-way...’ Mr. Stacey interrupted, ‘It looks like he has the opportunity to change it because his name is on the deed. But it hasn’t been done.’ Ms. Cramer, ‘I have it with me, we could sign it right now.’ Mr. Stacey, ‘But now it’s after the fact.’ Ms. Cramer, ‘Establishing the width of the right-of-way.’ Mr. Stacey, ‘Yes if that was the problem.’ Mr. Moreau, ‘There was nobody, the Planning Board, the Town, the DOT, nobody had said that anything had to be done to the right-of-way, other than what was existing. It was grandfathered, it had the aproned out frontage that I needed.’ Mr. Stacey, ‘Except what it says in the planning book (Land Use Ordinance). I mean you can’t just have a path and call it a right-of-way.’ Mr. Lourie, ‘Yes, probably there has to be a determination, but that would be an issue for another day. For this Board right-of-way is largely irrelevant.’ Mr. Stacey, ‘Even if you can solve it, it’s beyond us, you can’t say you can do it today. It could be done tomorrow, and you could go to the Planning Board again.’ Mr. Lourie, ‘The only issue for today, I thought it was agreed, was whether the Planning Board erred in determining that this was a back lot under the ordinance, that’s what’s before us.’ Ms. Cramer, ‘I think you have to break down what’s a rear lot, and that’s what I’ve tried to do. A rear lot doesn’t have frontage, it’s accessible only by a right-of-way that doesn’t meet the width requirements. I think the MMA’s opinion settled it as to the width requirements. I’m trying to touch on the other issues, the other things that make it a rear lot.’ Mr. Stacey, ‘Our Town ordinances come first or the MMA?’ Jim Baron, ‘Everyone has an opinion George.’ Ms. Cramer, ‘The Planning Board got a legal opinion on that, the MMA looked at and analyzed, the ordinance and provided an opinion to the Planning Board. So, again you’re looking at whether or not the Planning Board made a mistake. They acted upon the advice of an attorney, a municipal attorney.’ Mr. Lourie, ‘MMA said that they thought it was grandfathered and therefore, they didn’t get into the question of what the ordinance said.’ Mr. Moreau, ‘They didn’t dissect anything, no.’

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Attorney Silk asked to clarify a few things. ‘The DOT permit, not that it matters, the DOT permit just for the entrance width where the end of the right-of-way meets Maplewood Road has nothing to do with anything other than that apron, that’s what that’s for. Second, I think it makes sense that we step back and look at what Mr. Moreau presented to the Planning Board. He didn’t present a site plan that showed just one (1) lot, he showed a site plan with a rear lot separate and distinct from the front lot. This is a blow up of his site plan, this is what he presented to the Planning Board and you can see none of the setbacks are measured properly from the front lot, it’s all based on what’s in the rear lot. That’s what he submitted, and to say today that he was submitting this all as one (1) and that’s what the Planning Board was reviewing, it wasn’t what he submitted. This is the second time we’ve been here, and I know that attorney Cramer’s trying to make it seem that Mr. Moreau has been put through some type of unfairness because he’s here a second time. He may be here a third time. There were five (5) stop work orders issued against Mr. Moreau before he even went to the Planning Board. The point is both parties here have been put through the ringer, and the reason we’re here is that he came back to the Planning Board, the first time before the Planning Board, the Planning Board said it’s a rear lot you can only have one (1) use because you don’t have the required road frontage. The road frontage is one hundred (100) feet, that’s what the required road frontage is for a lot in the VR zone. So, he came back a second time and said it’s different now I have an ownership interest in the front lot, so now I have the frontage. I just explained to you why he doesn’t have the ownership interest, a sufficient unity of title with the back lot to merge the two (2) together. If at some point he goes back to the Planning Board and the two (2) lots are combined into one (1) that’ll be another issue for the Planning Board to wrestle with and whether that gives him enough frontage to add a third use. That’s not before you right now, we’ll deal with that in due course. What’s before you right now is the Planning Boards finding that because he had an ownership interest in the front lot somehow that gave the rear lot sufficient road frontage to add a second use. And let me just be clear here, there’s some discussion about change in use and grandfathering, the ordinance says, once this ordinance was adopted any time you have a new use you have to bring it, you have to be in conformity with the ordinance. On the very first page of the ordinance Article I, Section 5 “...no building, structure or land shall hereafter be used or occupied...except in conformity with all of the regulations herein specified...” And then later on under dimensional, there’s some notion of waiving the road frontage requirement, and that’s not before you, but this is what it says on page 20, this is under dimensional requirements “If more than one residential dwelling unit, principal governmental, commercial or industrial structure or

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use, or combination thereof, is constructed or established on a single parcel...” If you already have a residential dwelling unit and you’re adding a commercial use “...*all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.*” So, if he’s going to add a second use, there’s no issue here, he’s got a house on the rear lot. There’s no issue he’s adding a second use, he’s got to meet all of the dimensional requirements for that second use. He doesn’t have a hundred (100) feet of road frontage for an additional commercial use for the rear lot. The ordinance says I can’t add an additional use on a nonconforming rear lot, because of that frontage you can still have one (1) use. That’s what the Planning Board told him a year ago because you’re proposing two (2) uses you can’t do it; you can only have one (1) use. And that still holds true today, he can’t have two (2) uses back there without meeting all of the dimensional requirements of the ordinance, that’s what I just read to you on page 20. Again, that’s not the underlying issue for you right now, we can get into that if we have a phase 2, but right now the only way he can try to convince the Planning Board that somehow he had frontage from Maplewood or somehow it was no longer a rear lot was that these lots have merged and I read to you, you can watch the video of what happened on August 18, 2020, the Planning Board got confused I read to you some of the statements made by the Planning Board members. The Planning Board members said wait you mean this is now all one (1) lot, this is all now combined as one (1) lot? And it wasn’t, but somehow, they thought that because he now had an interest in the front lot and an interest in the back lot, they became one (1). They didn’t, they made a mistake, I’m not blaming anybody, there’s a lot of moving parts here, a lot of things going back and forth. They had the deeds in front of them, you can look at the deeds in the record there’s no common ownership, there’s no merger, he doesn’t have any basis to claim the frontage anywhere to add a second use on the lot. And so, we think that would decide this case without getting into the merits of all these other issues that are out there, and we’re happy to go there down the road if we need to, but I just want to say it’s a relatively speaking today, never use the word simple, but it’s a narrow issue today. If you look at Mr. Lourie’s memo and the issue is, did the Planning Board make an error when they said that because the applicant now owns the front lot this gives road frontage for the rear lot? That’s the issue, and we respectfully submit that the lots never merged, and with the lots never merged there is no way he could have acquired any road frontage, and that was the basis for the Planning Board’s findings. It wasn’t anything else, that’s what they said, we deal with what they said they did, not what they may have said they did.’

Andy Yale asked to speak, ‘As a citizen of Parsonsfield, not so much as a member of

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the Planning Board, which I also am. We have home rule here, we have citizen boards, we have a set of ordinances, the ordinances are designed as a guidance and a spirit behind them. We also have a comprehensive plan which is supposed to take precedence over the ordinances. The ordinances exist to implement the comprehensive plan. The comprehensive plan states that we can have traditional uses, only the traditional uses in Parsonsfield, it's always been some kinds of vehicle repair shop going back to the day of blacksmith shops and if you look around there are many small shops in Parsonsfield like Mr. Moreau's. His repair shop is a permitted use in the Village Residential section, the arguments that they are bringing against it are arguments that can be demolished very easily by certain changes. The deeds exist one (1) way now they can easily modify them to make them one (1) lot. What I suggest to you is that the tone of their arguments is that they are going to litigate this no matter what. Mr. Silk said he's here a second time, he can easily be here a third time. We're citizen boards, we're supposed to serve the citizens of this town and support the Constitution which decrees the right to life, liberty, and the pursuit of happiness. I don't want to make too much of a filibuster, but I think you see what I'm getting at. You the chairman just said, everyone has an opinion. I don't think this should be settled as a lawyer thing, but as a commonsense thing. The gentleman has done everything that was required of him, the Board first turned down his application based on the ordinance. Why in the second case when they approved it would you assume that the Board was not taking due diligence? That's all I have to say, thank you.'

Cliff Krolick spoke, 'I'm an alternate on the Planning Board. Mr. Lourie you're the town lawyer correct?' Mr. Lourie, 'Correct.' Mr. Krolick, 'You said earlier that at the time when this issue came up in front of the Planning Board that the CEO checked the property, and he wasn't certified at that time.' Mr. Lourie, 'I said that his role is irrelevant to this proceeding, whether he was properly certified or not, it's irrelevant to this proceeding.' Mr. Krolick, 'For legal purposes we, the Planning Board, have been laboring for the past over two (2) years, two and a half (2.5) years working with what we assumed was a legal CEO, had all the certifications and everything. And you did mention after you said it was irrelevant that now he's certified, I also heard that. Are you going to state for the record that you know that our CEO is certified? Because I still don't know.' At this point Mr. Lourie and Mr. Krolick talked over each other making the recording intelligible. Mr. Krolick, 'You can't certify that he has all of the certifications yet, to be a legal CEO. Because you did mention he wasn't at the time.' Mr. Lourie, 'I don't really want to get into it because I only have the information second

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hand. My understanding is that he has some of his certifications but not necessarily all of his certifications and it's an ongoing discussion between the Selectmen and Mr. Winters.' Jim Baron, 'Mr. Krolick we have a narrow issue before the Board.' Mr. Krolick, 'I understand that, but you're working with Planning Board issues, one issue if Mr. Moreau's issue and the CEO that we have been working with for two (2) years wasn't certified until very recently, it effects everybody, the whole Town, doesn't it?' Mr. Baron, 'It does, but that's not the issue we have.' Mr. Krolick, 'I understand.' Mr. Lourie, 'It's an issue for a different Board.'

Jill Cramer, 'I just wanted to touch a couple of things that attorney Silk said. He quoted to you very specifically the Zoning Ordinance page 20, Table 5 about the dimensional requirements for road fronts of one hundred (100) feet. As I mentioned earlier, if you go down to note 4 that the Planning Board can reduce the road frontage requirements if all of the other provisions of the ordinance have been met.' Mr. Lourie, 'We're not dealing with, they did not do that.' Ms. Cramer, 'I think it could be implicit that they did it. Did they write that in their findings? No, they did not.' Mr. Lourie, 'If they decide to waive any requirements, and they'd only waive certain requirements, they have to make findings in favor of exercising that discretion, and we don't have that before us. The Board doesn't have that before it today, so I think we're proceeding with the understanding, and I thought it was clear, maybe we digressed somewhat, but the understanding was that we are going to deal with, there are enough issues here that we could go on forever, but we are going to try to get through one issue at least tonight. Because, if in fact the Planning Board did err in no longer treating this property as a being a back lot, then you don't have to go through all those issues right now. You could come back with your new easement deed or whatever else you want to do. You'd have to do a new application if this Board reverses this unless they send it back for findings. They can reverse and you can reapply again.' Ms. Cramer, 'I honestly don't think he needs to reapply; I think this Board has the authority to send it back for further reconsideration. I don't see that Mr. Moreau is prohibited from correcting any issues that were before... What your proposing is to send it back to the Planning Board to write new findings.' Mr. Lourie, 'No, I'm saying they can only send it back for new findings, otherwise they decide whether the Board properly decided it or did not properly decide it.' Ms. Cramer, 'Yes, the ordinance says that you have to find that the Board made a decision that was contrary to specific provisions of the ordinance. Again, I don't think that's true, though my point number two (2) we're talking about road frontage issues. I don't know why we're going from Maplewood is the only road you can have road frontage on, it could be Reed Lane as

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well, which gives him road frontage. But again, the Planning Board didn't have the opportunity to go through this analysis process because nobody brought this up. Attorney Silk wasn't at the August or September Planning Board meetings, nor the public hearing. If you're considering asking them for further findings, I think Mr. Moreau should have the opportunity to present other evidence, additional evidence, new evidence on those specific issues. He shouldn't have to submit an application for the third time.' Jim Baron, 'Ms. Cramer, I differ with you on that, I've seen in our ordinances where a rear lot is always a rear lot until it becomes a public road, if it's a public road you can do whatever you want on it, but because he has a right-of-way it's still a rear lot. Ms. Cramer, "Well, right-of-way, attorney Silk pointed out earlier that in the definitions of the ordinance it's says it's basically any road, anything you use to get from point a to point b. We typically think of it as an easement, but the ordinance definition says it's any road, and the fact that on page 20 it says that you can use a public or private road for road frontage purposes.' Mr. Baron, 'Is it a private road?' Ms. Cramer, 'Yes, I mean he owns it, I don't think the Town plows it, I don't think it's ever been accepted.' George Stacey, 'It isn't in his name solely. If it were in yours and your wife's names it wouldn't be an issue. If you get that on a piece of paper, you have all the owners. You've said you'll do it, but until you do it's not done.' Ms. Cramer, 'We could do it right now. My third quick point is attorney Silk mentioned earlier that the Planning Board, at least on the record, during their meetings, appeared to be, I paraphrase again attorney Silk, confused about the front lot, the back lot, if it meets the road frontage, the ownership of the lots and whether or not they had merged or not, they didn't use the word merged. But, in a letter dated September 2, 2020, and that's in the record too, I clarified the point of the ownership of the lot and I don't think at the meeting on the 15th (September) when they approved Mr. Moreau's application that they were confused any longer about who owned what and who had any right, title and interest to the road and the front lot and the back lot. That issue was clarified for them, I believe in my brilliantly worded letter dated September 2, 2020. Again, to the extent that we're saying that the Board was confused, I at least made every attempt to clarify the issues of ownership for them.'

Jim Baron asked if there were any other questions. Mr. Baron stated, 'We have this, it is the right-of-way issue, you have another person now who owns the roadway. But that roadway has never been settled as to how wide it is, if it needs a separate deed and how long it's going to be, if that's the case if it's going to be a separate deed. If that happens then you also have a house on that front lot, then you're going to have to worry about if you have the proper distance from the right-of-way to the house. There

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are issues and none of them can be settled until we have deeds, otherwise it's all conjecture.' Jill Cramer, 'By deeds, what do you mean by that?' Mr. Baron, 'It would need to say the road is this wide and it belongs to...' George Stacey, 'Who measures the road? It doesn't have to belong to him it just has to be a deeded right-of-way, correct?' Mr. Moreau, 'It's in the deed for the back lot that it's deeded to us.' Ms. Cramer, 'As a back lot owner he has a deeded right-of-way.' Mr. Stacey, 'Everyone keeps asking how wide, or the roads only twelve (12) feet wide, which is maybe wide enough, but I'm not sure. Most back lots have a fifty (50) foot right-of-way, that's what would be required now.' Ms. Cramer, 'This one was made in 1933, I haven't been to the Registry of Deeds to look at it. As far as I can determine it has never been defined, but we are prepared to define it to whatever width it's required to be.' Mr. Lourie, 'You can address that issue if you like, as I said before the width of the right-of-way is irrelevant to what's going on here and the question is whether the Board is dealing with one (1) lot or two (2) and if the Planning Board determined that the requirements for a back lot or the restrictions on a back lot don't apply anymore because Mr. Moreau bought the front lot. The question is whether they were right or wrong including the back lot under this ordinance. I think the applicable provisions are under the definitions section and anything else you would want to identify would be the applicable provisions in the ordinance. They're saying because it doesn't say specifically what happens in a situation that the Planning Board didn't necessarily interpret them correctly.' Ms. Cramer, 'They analyzed the ordinance as best they can and upon some advice from MMA, whether you think that was relevant or not, the crux of the issue is whether it's a rear lot or not. A rear lot has a definition which included the components that I discussed earlier.' Mr. Lourie, 'You're saying that the question is whether it's still a rear lot.' Ms. Cramer, 'If it's a rear lot you can't have a second use, if it's not then he can.' Mr. Lourie, 'The question in determining whether it's a rear lot is whether it now has frontage.' Ms. Cramer, 'The frontage plus the width of the right-of-way, the rear lot definition includes doesn't have frontage and insufficient width of the right-of-way.' Mr. Lourie, 'But the right-of-way doesn't have a definition.' Ms. Cramer, 'But rear lot does, and right-of-way does have a definition listed, any road.' Mr. Lourie, 'You're saying that the right-of-way is undefined in terms of it's width.' Ms. Cramer, 'In the deed, yes, the chain of title that's true.' Mr. Lourie, 'Actually, there's some old case laws that I recall dealing with an easement which was not sufficiently defined so that it could anywhere on the property, this was back in the 1820's and the court said that...' Ms. Cramer interrupted, 'He's not proposing to change the earth of the easement, what he would be proposing is to define it's metes and bounds, the width of it, which he's able to do because he owns it, he can do whatever he wants to

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it.’ Mr. Lourie, ‘In the future, not tonight.’

Jim Baron asked again if there were any other questions or comments. Mr. Baron noted, ‘One issue I have is that there are no boundaries, everything, the site plan doesn’t show any real boundaries, it’s not to scale, so that’s tough to look at. And because there are no boundaries anywhere as far as the road, where there’s frontage, what isn’t frontage, it’s undefined, and it’s hard to go further with this without these undefined things. Mr. Lourie, ‘Excuse me, Jill, aren’t you saying that the distance along Maplewood Road now meets the frontage requirement, isn’t that what the Planning Board decided and now the issue is whether the Planning Board was correct in saying that the two (2) lots taken together now have sufficient frontage along Maplewood Road. That’s the question that’s proposed for tonight’s appeal.’ Mr. Baron, ‘That’s what I understood.’ Ms. Cramer, ‘Does it have sufficient frontage, is that your question? To meet the Zoning Ordinance, yes it does. In fact, I had them measure it, I don’t know if it made it on the site plan or not, it’s two hundred and eighteen (218) feet from his side boundary to Reed Lane.’ Mr. Lourie, ‘So the question is whether that counts as road frontage for the back lot as well. The Planning Board said it did and the question is whether the Board of Appeals see the ordinance that way. Are you going to sum up or do you want to ask someone to make a motion?’ Mr. Baron, ‘There’s no more discussion, everyone has said their piece?’

Don Murphy made a motion to end the discussion on this matter. It was seconded by George Stacey. Motion carried with all in favor.

c. Board Discussion:

a.) Q&A by Board

This occurred throughout the Public Hearing proceedings

b.) Cross examination

This occurred throughout the Public Hearing proceedings

c.) Rebuttals

This occurred throughout the Public Hearing proceedings

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d. Decision:

a.) Chair summarizes discussion

This occurred during the public hearing portion of the meeting.

b.) Each ZBA Member states his reasons for concluding that the appeal should / should not be approved.

Attorney Lourie explained to the Board what options they have for motions. The Board can grant the appeal and state why they are granting the appeal if they choose to go that route.

c.) Chair and Board Members review Findings of Fact

This occurred during the decision process.

10.) Motion

Jim Baron made a motion to grant the appeal stating that the two lots in question are separate lots, until they become under full ownership they should be treated as separate lots, so the back lot is still a rear lot.

The motion was seconded by Don Murphy.

11.) Vote

The motion was carried with all three members in favor.

12.) Minutes

Jim Baron read aloud the minutes from the December 1, 2020 Zoning Board of Appeals meeting. Jim Baron made a motion to approve the minutes from the December 1, 2020 meeting as read. Motion was seconded by Don Murphy. Motion carried with all in favor.

14.) Adjournment

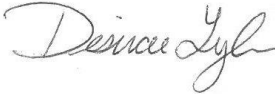
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Jim Baron made a motion to adjourn. Motion was seconded by George Stacey. Motion carried with all in favor. The Public Hearing was adjourned at 4:38 p.m.

Respectfully submitted,



Desirae Lyle
Zoning Board of Appeals Executive Secretary

APPROVED BY:

Jim Baron, Board Chair

Don Murphy, Board Member

George Stacey, Board Member