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August 19, 2021

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

RE: Appeal of Planning Board 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)

Dear Members of the Zoning Board of Appeals:

I represent Michael J. Nelligan of 550 Maplewood Road in Parsonsfield. He owns land that directly abuts 26 Reed Lane and is and has been for over 6 years now adversely impacted by Mr. Moreau's long standing illegal commercial activities undertaken at 26 Reed Lane. Other than when Mr. Moreau took steps to prevent 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.

A copy of the Planning Board's July 21, 2021 Decision is behind **Tab A** and draft Minutes (the only minutes available at this time) of the Planning Board's July 21, 2021 meeting is behind **Tab B**.

This is the now the second administrative appeal from a Planning Board's attempt to find anyway to approve a new commercial use or uses<sup>1</sup> at 26 Reed Lane, a rear lot including an Auto, Recreational Vehicle and Small Engine Repair ("Auto Repair Business")<sup>2</sup>. As detailed below, the Planning Board committed numerous errors of law, abused its discretion and failed to make required findings. The Planning Board violated due process. And the entire process was tainted by the CEO's impermissible involvement given he is not certified in Land Use Planning under 30-A M.R.S. § 4451 and thus had no right or interest to be involved in the site plan review process. All this is set forth below.

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<sup>1</sup> A commercial use under the Ordinance, Appendix A, Definitions (Sept. 8, 2018), page A-3 is defined as "[a]ny activity carried out for pecuniary gain."

<sup>2</sup> The Ordinance defines an "Automobile Repair Shop" as "[a] business engaged in general automotive repair, engine rebuilding, and/or automotive parts replacement." See Ordinance (Sept. 8, 2018), Appendix A, Definitions, page A-2.

Board members will recall last January 2021 you voted unanimously to reverse the Planning Board's September 15, 2020 vote to approve Roger Moreau's Second Site Plan application on the basis that the Planning Board had been mistakenly led to believe that 26 Reed Lane, a rear lot, had merged with a front lot, and therefore was no longer a nonconforming rear lot. A copy of your January 2021 decision is behind **Tab C**.

We are back again before you and, once again, we ask this Board to apply the Ordinance as written. The Ordinance plainly and unmistakably says that when an applicant proposes a new use, they must meet all of the standards applicable to that new use.

Leaving aside all of the procedural errors that occurred below, and the lack of necessary positive findings, there are two basic threshold legal issues presented:

**(a): whether for the proposed commercial use, an auto repair business (as well as an Auto Service Station) to be sited on 26 Reed Lane, a rear lot, does the Ordinance require that access be provided by a 60-foot right of way with 30-feet of improved surface and**

**(b): whether as a new principle use to be sited on 26 Reed Lane does the applicant need to create a separate lot or lots by subdividing 26 Reed Lane to obtain site plan approval?**

To save the parties considerable time and expense, and as it did in hearing at the last appeal when this Board took up first and decided that the Moreaus were wrong to claim the lots had merged, when the Board meets to decide whether this appeal is complete, and prior to scheduling a public hearing, the Board should vote to bifurcate this appeal, and have the public hearing be limited to the parties and the public addressing, and the Board deciding, the above two issues.

If the Board decides as it should that the Ordinance requires for a new commercial use or uses that access be by a 60-foot right of way with 30-feet of improved surface, it is clear the Planning Board legally erred in approving the Moreaus' Third Site Plan Application. There is no dispute that the approved plan only shows a 50-foot-wide deeded right of way with on average about 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.

Similarly because the new commercial uses(s) were not shown as being placed on a separate lot of record, this Board can decide whether the Planning Board legally erred in approving the Moreaus' Third Site Plan Application.

If this Board decides the Planning 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 here failed to review, discuss, consider, or find that the applicants demonstrated compliance with the following standards:

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 Moreaus' 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 Station<sup>3</sup>, 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).

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<sup>3</sup> 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.

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 decision and deny Mr. Moreau’s February 22, 2021 Third Site Plan Application to site one or more new commercial use(s) at 26 Reed Lane, a rear lot.

What follows is a list of additional issues for appeal. 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 and July 15, 2021.

**I. Based on administrative res judicata which bars the filing 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, 2012.**

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).<sup>4</sup> “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).

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 Moreaus’ Third Application for Site Plan Approval 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

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<sup>4</sup> 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) 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).

Application. The Planning Board failed to provide any justification for ignoring this rule of law.<sup>5</sup>

**II. 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 D** and May 18, 2021 behind **Tab E**. 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:

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).

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<sup>5</sup> 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). 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.

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.

**III. 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, the 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. 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 Use Planning (including site plan review) participated in the site plan review process.

**IV. 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."). To make that determination the Planning Board had to compare the Moreaus' Third Application dated February 22, 2021, 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 (copy attached behind **Tab D**) 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 were in fact creating a new lot, by lease or otherwise, and with a new lot, whether all applicable code and statutory setbacks 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.

**V. The Planning Board never reviewed the application against what the Ordinance requires (and thus did not make any finding(s) that the applicants met their burden to show that their application met the Ordinance standards) and therefore the Planning Board's July 21, 2021 decision must be reversed.**

As set forth above, 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.

**VI. The 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 and 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 Member 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:** <sup>6</sup>

"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:** <sup>7</sup>  
Yes, Mr. Silk.

**Attorney Silk:**

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...

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<sup>6</sup> Planning Board Meeting Video, 2 of 3, April 21, 2021 at 06:00

<https://www.youtube.com/watch?v=1FCIJEV4E4>

<sup>7</sup> Planning Board Meeting Video, July 21, 2021 at 25:45 <https://www.youtube.com/watch?v=D4bR82LOILo>

**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.<sup>8</sup>

*"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."*<sup>9</sup>

*"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."* *In Re: Villeneuve*, 709 A.2d 1067 (Vt. 1998).<sup>10</sup>

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." 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.

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<sup>8</sup> Site Plan Review Handbook: Maine State Planning Office, 1997 (pg. 29)

<sup>9</sup> Manual for Local Planning Boards: A Legal Perspective, MMA-February 2017 revised edition (pg.17)

<sup>10</sup> Ibid, (pg.17)

- 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.<sup>11</sup>

The Planning Board's decision must therefore be reversed.

**VII. 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 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]).

Of most significance is the requirement in the Ordinance that any new commercial use be served by an access way 60-feet wide with 30-feet of improved surface. It is undisputed that the Moreaus' Third Application for Site Plan Application in whatever version presented (the actual site plan was constantly amended) never proposed or showed a 60-foot right of way providing access to the proposed new commercial use(s) to be sited on some portion of 26 Reed Lane, a rear lot with an existing residential use. On July 21, 2021, the Planning Board had no legal basis to approve the site plan as presented.

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<sup>11</sup> 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).

**1. To meet all of the current standards for a new commercial use at 26 Reed Lane accessed by a private right of way, the Site Plan had to show a 60 foot right of way with a 30-foot travel lane.**

26 Reed Lane is a Rear Lot under the Ordinance. This Board has already so correctly ruled and that ruling was binding on the Planning Board. That Mr. Moreau has obtained a corrective deed showing now a 50-foot-wide right of way over the front parcel (so-called "School House Lot"), to access 26 Reed Lane, instead of an undefined right of way as shown in his earlier submissions, does not change 26 Reed Lane status as a Rear Lot. All that is changed is 26 Reed Lane is now benefited by a 50-foot deeded right of way instead of a right of way of undetermined dimensions.

By acquiring and showing a 50-foot deeded right of way over the School House Lot only means that 26 Rear Lane is no longer limited to use as a single dwelling or other single permitted use. *See* Ordinance Art. I, Sec. 6(D)(8). But it is still a Rear Lot because it lacks frontage on a public road or a private road as part of an approved subdivision.

If more than one residential dwelling unit, principal governmental, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use. Ordinance, Art II, Sec. 5 at p. 20.

When the new use is commercial, as proposed here, with at least one commercial use (Auto Repair Shop) being expressly proposed, and several others presently illegally in use that Mr. Moreau remains less forthcoming about, current standards require a 60-foot right of way with a 30-foot travel lane.

**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'
Minimum Shoulder Width	4'	3'	9'
Minimum Grade	1%	1%	1%
Maximum Grade	8%	8%	5%
Minimum Center Line Radius without super elevation(Banks)	280'	280'	400'
with super elevation(Banks)	175'	175'	300'
Minimum Tangent Between Reverse Curves	100'	100'	200'
Roadway Crown	1/4"/ft.	1/4"/ft.	1/4"/ft.
Shoulder Crown	3/4"/ft.	3/4"/ft.	3/4"/ft.
Minimum Angle of Street Intersections <sup>1</sup>	75°	75°	90°
Maximum Grade w/in 75' of Intersection	3%	3%	3%
Maximum Negative Grade at Cul-De-Sac	4%	4%	3%
Minimum Turning Radii at Intersections	25'	25'	30'
Minimum Sidewalk Width	5'	5'	8'

Mr. Moreau’s counsel admitted that the Ordinance current standards for a private right of way providing access to a commercial use are a 60-foot right of way with a 30-foot travel lane. See Attorney Cramer letter to Planning Board dated April 15, 2021, at page 7 (“The commercial and industrial use standards require 30 feet of pavement on a 60- foot right of way”). Because Mr. Moreau is only showing a 50-foot right of way with a 12-foot-wide traveled way, the Ordinance did not permit the Planning Board to approve the application.

This remains so regardless of whether the Moreaus show a lease area of the rear lot (thereby creating a new rear lot) for the commercial use(s), subdivides, or seeks to place the use on the lot as depicted on the most recent plan. The Subdivision Ordinance (*see* below) also requires for a street serving a commercial use a 60-foot right of way with a 30-foot travel lane.

Table 12.2-3. Street Design Guidelines

Description	Type of Street				
	Arterial	Collector	Minor	Private Rights-of-Way	Industrial/Commercial
Minimum Right-of-Way Width	80'	50'	50'	50'	60'
Minimum Traveled Way Width	44'	24'	20'	18'	30'
Minimum Width of Shoulders					
(each side)	5'	3'	3'	3'	9'
Sidewalk Width	8'	5'	5'	N/A	8'
Minimum Grade	.5%	.5%	.5%	N/A	.5%
Maximum Grade*	5%	6%	8%	8%	5%
Minimum Centerline Radius					
without superelevation	500'	280'	280'	175'	400'
with superelevation	350'	175'	175'	110'	300'
Roadway Crown**	½"/ft	¼"/ft	¼"/ft	***	¼"/ft
Minimum angle of street intersections****	90°	90°	75°	75°	90°
Maximum grade within 75 ft. of intersection	3%	3%	3%	N/A	3%
Minimum curb radii at intersections	30'	25'	20'	N/A	30'*****
Minimum r/o/w radii at intersections	20'	10'	10'	10'	20'

\* Maximum grade may be exceeded for a length of 100 feet or less.

\*\* Roadway crown is per foot of lane width.

\*\*\* Gravel surfaces shall have a minimum crown of ¼ inch per foot of lane width.

\*\*\*\* Street intersection angles shall be as close to 90° as feasible but no less than the listed angle.

\*\*\*\*\* Should be based on turning radii of expected commercial vehicles, but no less than 30 feet.

2. Because the application was for a commercial use and the Plan as approved does not show 60-foot right of way with a 30-foot travel lane, this Board must reverse the Planning Board July 21, 2021 decision.

Any way one looks at it, current Ordinance standards require when a commercial use is to be accessed by a private right of way, the private right of way must be 60-foot-wide with a 30-foot travel lane. The Planning Board ignored the Ordinance.

In her letter dated to the Planning Board June 28, 2021, at page 8, Mr. Moreau's counsel cited a twenty-year-old Superior Court decision, *Morton v. Fraser*, No. CV-89-88, 1990 Me. Super. LEXIS 80 (Apr. 17, 1990), and as she did with the lot merger advice, gave to the Planning Board misleading guidance.

She claimed in her letter (which is in the record) that the case she cited says a private right of way--from a public road over a front lot to a rear lot--can satisfy road frontage requirements. Then she claimed that because the 50-foot deeded right of way serving the rear lot had sufficient frontage, the Moreaus did not have to provide a 60-foot deeded right of way across the School House (or front lot) accessing the new commercial use located on the rear lot.

What Mr. Moreau's counsel failed to tell the Planning Board is that the Maine Supreme Court subsequently said that the Superior Court in that case she cited was WRONG to say that a private right of way can satisfy road frontage requirements. In fact, the Maine Supreme Court said just the opposite. That court said an interior private right of way cannot possibly serve as road frontage because road frontage must be on a public right of way. *Morton v. Schneider*, 612 A.2d 1285, 1287 (Me. 1992) ("It is clear that the measure of frontage is intended to be the distance along public rights-of-way."). The Court said one cannot consider a private right of way in an interior lot as road frontage for purposes of satisfying the road frontage requirement in a zoning ordinance.

The applicants' counsel also stated that Article II, Section 6(A)(3) allows the applicants not to have to meet current access standards when adding a new commercial use. That section is irrelevant. First what is proposed is a new commercial use on a rear lot served by a private right of way. Ordinance Article II, Section 6, General Performance Requirements, Section A subsection 3, by its terms only applies to dwelling units. It states:

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

A. Access to Lots

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.<sup>12</sup>

What this all shows is that as with the merger contention, the contention here that the new commercial use at the rear lot somehow does not need to comply with the Ordinance provision that requires a 60-foot wide right of way with 30 feet of improved surface is utterly without merit.<sup>13</sup>

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<sup>12</sup> 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). New Proposed to serve at least one (1) Commercial Use 26 Reed Lane (Rear Lot)

<sup>13</sup> She like the Planning Board also ignored Article II, Section 5, Dimensional Requirements; "Unless otherwise permitted by this Ordinance, lots and structures must meet or exceed the requirements as set forth in Table 2. Dimensional requirements for Shoreland Districts are set forth in Table 2A in section 8. Any lot created by any means must have a minimum lot width and a minimum lot depth so that a



**VII. The Planning Board erred when it failed to identify use proposed and when it failed to require a subdivision of the rear lot shown on a standalone site plan.**

The Town Attorney Lourie provided procedural guidance to the Planning Board in his letter dated May 14, 2021 (copy behind **Tab E**). His advice should not have been ignored.

Among other items, he noted that “several of the proposed new uses appear to be prohibited” unless they meet the Special Exception standards. Since Mr. Moreau proposes to service vehicles, sell tires, provide oil changes and State inspection services, as well as repair vehicles, he must also meet the Special Exception standards applicable to an Auto Service Station. The applicants did not submit any of the required information necessary for the Planning Board to decide whether the applicants has met their burden to show they can meet those standards.

He also said “[I]t appears likely” that the Planning Board cannot approve more than one use on the Rear Lot and that 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.

This the applicant did not do. The Planning Board erred when it approved the submitted plan on July 21, 2021.

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. Had the Planning Board followed proper procedure due process rights would not have been violated. But at the applicants’ urging, there was a rush to just approve what was submitted.

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 provided to the Planning Board, but the Board of Appeals may receive and consider written or oral arguments.

Attached hereto is an index of what we understand to be the record of the proceedings before the Planning Board. The administrative assistant to the Planning Board and to this Board will physically assemble the record and shall transmit to the Board of Appeals all of the papers constituting the record of the decision being appealed from. Ordinance, Art. VI, Sec 3(C)

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rectangle the size of the minimum lot frontage by the minimum lot depth as specified in Table 2 can be enclosed within the lot boundaries.

If more than one residential dwelling unit, principal governmental, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.

I look forward to appearing before you at the hearing regarding this appeal. I expect to present to you written and oral arguments at that time.

We look forward to presenting our appeal to you.

Sincerely,

A handwritten signature in black ink that reads "David P. Silk" followed by a stylized flourish.

David P. Silk

Enclosures:

Appeal Application

Check

Planning Board Index of Record

Tab A - Planning Board's July 21, 2021 Decision

Tab B - Minutes (Draft) of July 21, 2021 Planning Board meeting

Tab C - ZBA January 2021 decision granting Nelligan's first appeal

Tab D - Curtis Thaxter LLC Letter of April 21, 2021

Tab E - Curtis Thaxter LLC Letter of May 18, 2021

Tab F - Town Attorney Lourie letter of May 14, 2021

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

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

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**Allen Jackson, Chair**

## NOTICE OF DECISION

The Zoning Board of Appeals of the Town of Parsonsfield, after hearing held January 12, 2021 of the appeal of Michael Nelligan from the Planning Board approval of the Site Plan proposed by his abutter Roger Moreau, granted the Nelligan Appeal, and now makes the following findings of fact and conclusions of law through its Chair, subject to ratification of the Minutes of the January 12, 2021 meeting at a subsequent meeting of the Zoning Board of Appeals.

Procedural status: Prior to the January 12, 2021 hearing Counsel for the parties agreed that the Board hearing on the Nelligan Appeal would be bifurcated, with the hearing of January 12, 2021 limited substantially to the question: *“Whether the Planning Board erred in its factual and legal conclusion that: “Because the applicant now owns the front lot (R. 19/lot 42) this gives road frontage to the rear lot.”*

Findings:

- (1) Appellant is the owner of an abutting property with standing to appeal the Moreau site plan.
- (2) Appellant’s appeal from the Planning Board decision is timely.
- (3) Applicant has an ownership interest in two abutting lots, one of which is nonconforming as to street frontage.
- (4) The only relevant evidence in the Record concerning Applicant’s interest in the lots (and possible merger of the front and rear lot) is two recorded deeds to the Applicant, one in joint tenancy with the Applicant’s wife and the other in joint tenancy with the Applicant’s parents, considered by the Planning Board;

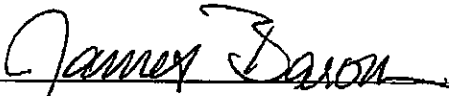
- (5) Although the Applicant has an undivided interest, a right to apply for site plan approval of either lot, and has the right to use the entirety of each of these lots, Applicant's ownership interest in the two lots is not identical.
- (6) Where an Applicant attempts to sever two such lots by conveyance of either lot such conveyance does not violate the lot merger provisions of the Land Use Ordinance where the ownership interest of the grantor in each is not identical.
- (7) The Parsonsfield Zoning Ordinance prohibits the establishment of a second use on a rear lot.
- (8) The Moreau Site Plan proposes more than one use of a rear lot.

Conclusions:

1. There is no substantial evidence supporting the Planning Board finding that "Because the applicant now owns the front lot (R. 19/lot 42) this gives road frontage to the rear lot."
2. The Planning Board erred in construing the Ordinance in holding that two adjacent lots are treated as one for the purposes of site planning pursuant to the Parsonsfield Land Use Ordinance, where ownership of Record of those adjacent lots is not identical;
3. The Moreau rear lot remains nonconforming as to road frontage.
4. This Appeals Board construes the lot merger provisions of the Land Use Ordinance to not be applicable to site plan approval where the ownership interest of the Applicant in each lot is not identical, and severance (or "demerger") would be allowed in the case of an out-conveyance of either.
5. The Planning Board erred in approving a site plan where the proposed use of Applicant's rear lot would violate the Land Use Ordinance.

The Nelligan Appeal was GRANTED.. The Decision of the Planning Board of September 15, 2020 is Reversed.

The January 12, 2021 decision was a Final Decision of the Board of Appeals. Any Appeal from that Decision must be filed with the Superior Court within 45 days of the vote.

  
James Baron, Chairman

**CURTIS THAXTER**  
ATTORNEYS AT LAW

ONE CANAL PLAZA, SUITE 1000, PO BOX 7320, PORTLAND, ME 04112-7320  
TEL: 207.774.9000 • FAX 207.775.0612 • www.curtisthaxter.com

David Silk  
[dsilk@curtisthaxter.com](mailto:dsilk@curtisthaxter.com)

April 21, 2021

HAND DELIVERED

[planning@parsonsfeld.org](mailto: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.

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 use<sup>1</sup>. 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

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<sup>1</sup> 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.<sup>2</sup>

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

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<sup>2</sup> 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

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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.<sup>3</sup>

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<sup>3</sup> 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.

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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.

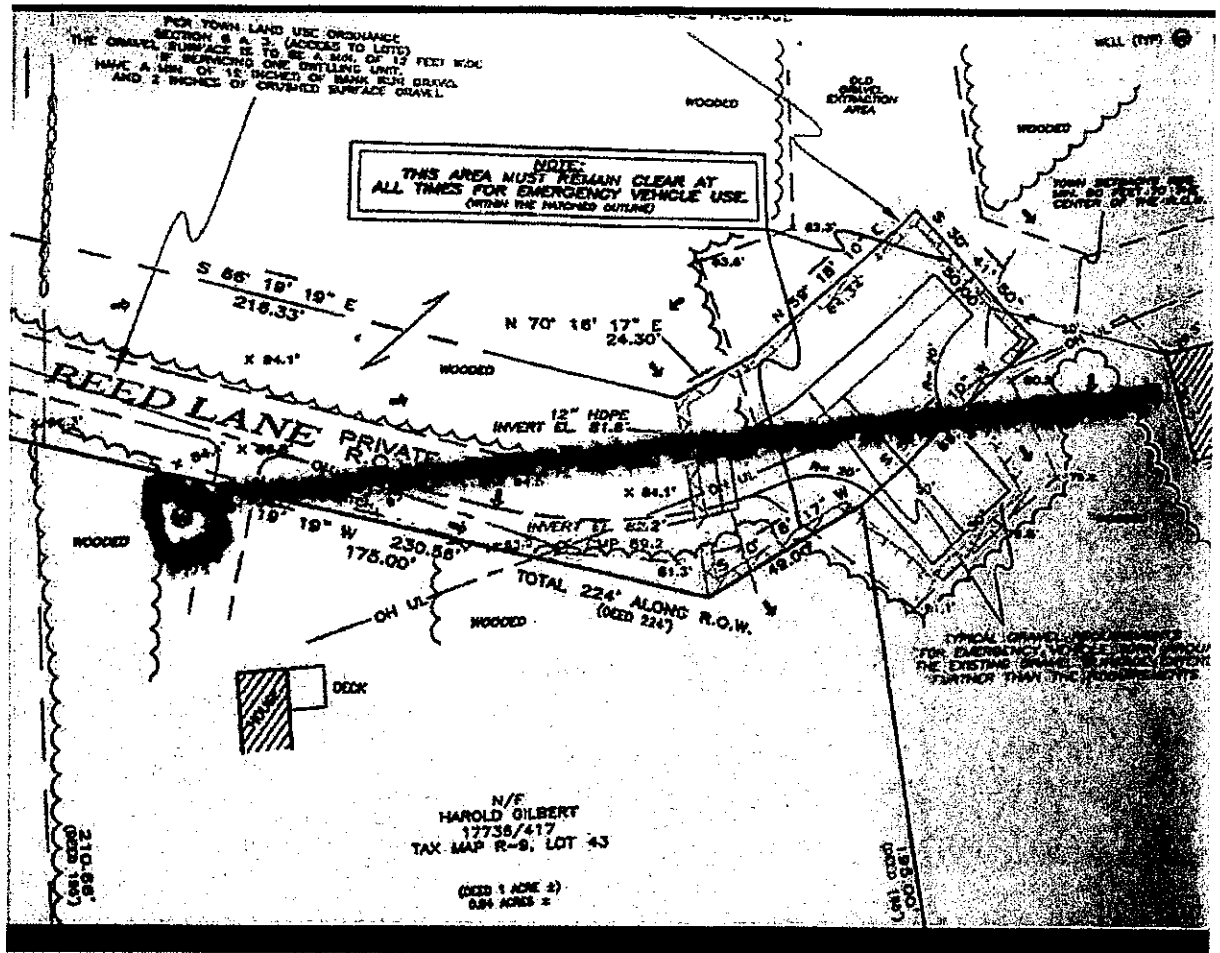
In addition to the significant amount of incompleteness and omissions in the proposal, the applicant should have to prove that he has a viable business model, identify all private wells on and within 300 feet of the parcel, identify water bodies on and within 200 feet of the parcel, prove tracking of 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.

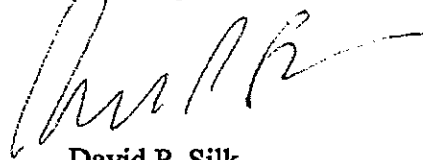


If that well on Gilbert’s property is a private drinking water well, it is clear that under State law, 38 M.R.S. § 1391 et. seq. and DEP Regulations, Chapter 700, Wellhead Protection: Siting of Facilities that Pose a Significant Threat to Drinking Water, Mr. Moreau’s proposed Auto Repair Shop cannot 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.

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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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Parsonsfield Zoning Board of Appeals  
Public Hearing  
Nelligan v. Parsonsfield Planning Board  
January 12, 2021

Andy Yale

Yeh, um, I want to speak as a citizen of Parsonsfield, not so much as a member of the Planning Board, which I also am.

We have home rule here. We have citizen's boards. We have a set of Ordinances.

The Ordinances are designed as guidance; they have 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.

Comprehensive Plan states that we can have traditional uses. One of the traditional uses in Parsonsfield has always been some kind a vehicle repair shop going back to the day of blacksmith shop 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.

Arguments that they're bringing against it are arguments that can demolished very easily by certain changes.

The deeds exist one way now they can easily modify them to make that one lot.

What I suggest to you is that the tone of their arguments is that they're going to litigate this no matter what. Mr. Silk said he's here a second time he can easily be here a third time.

For citizen boards we're supposed to serve the citizens of this town and support the constitution which decrees the right to life, liberty and pursuit of happiness.

Parsonsfield Zoning Board of Appeals  
Public Hearing  
Nelligan v. Parsonsfield Planning Board  
January 12, 2021

**Andy Yale**  
(cont.)

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 everybody's got an opinion. I don't think this should be settled as a lawyer thing but a common sense thing.

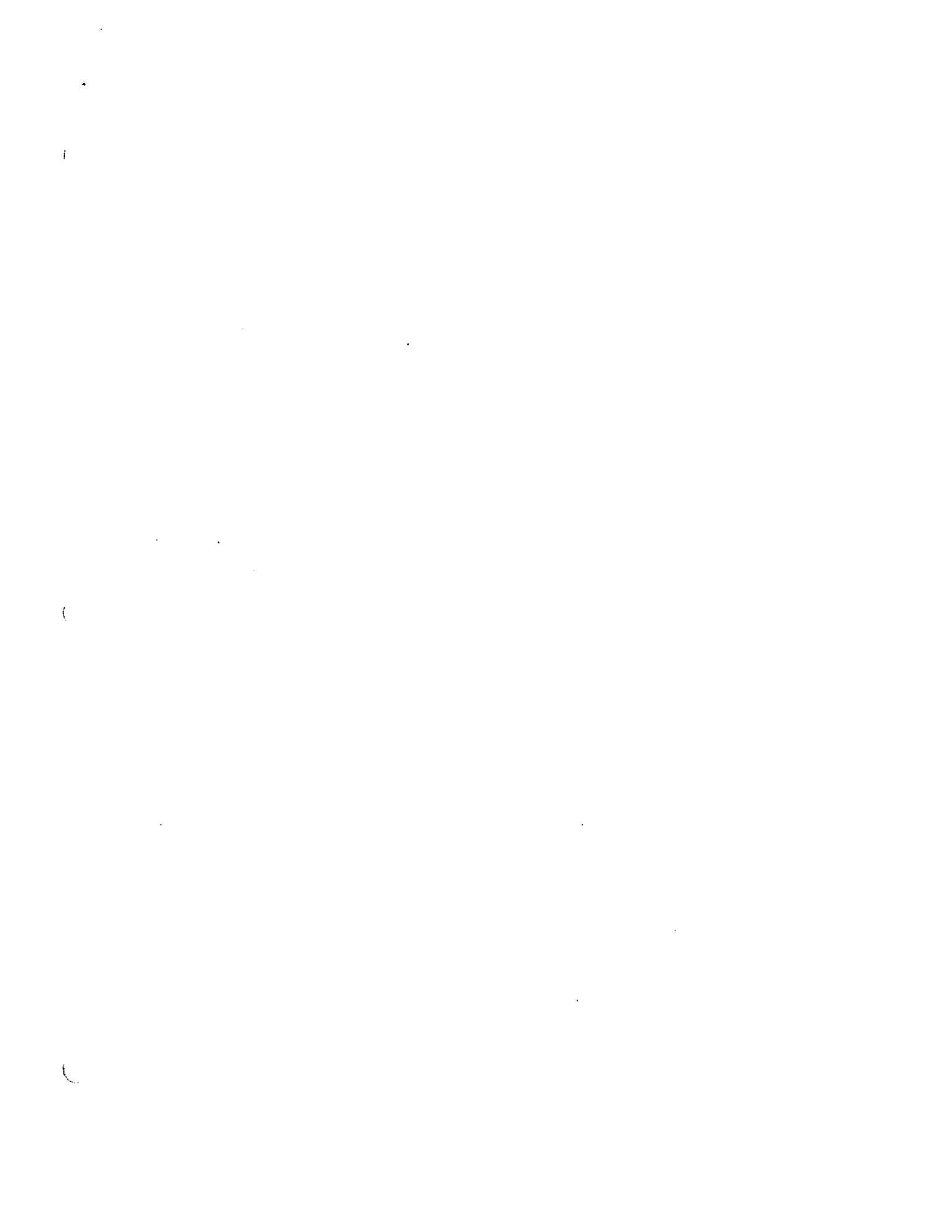
The gentleman (*Moreau*) has done everything that was required of him.

The Board first turned down his application based on the Ordinance.

Why in the second case where they (*Planning Board*) approved it, would you assume that the Board was not taking due diligence.

That's all I got to say





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

March 16, 2021

**HAND DELIVERED**  
Town of Parsonsfield  
Planning Board  
634 North Road  
Parsonsfield, ME 04047

**RE: Roger Moreau's Third Application for Site Plan Review, 26 Reed lane**

Dear Planning Board Members:

I represent Michael Nelligan an abutter to 26 Reed Lane. For the reasons stated below, before you take up Mr. Moreau's Third Application for Site Plan approval, you must first determine whether you should even hear the application. Specifically you should hold a hearing to determine whether Mr. Moreau can meet his burden to show that there has been a substantial change of condition from his most recent application. If he cannot meet that burden, then you must not take up the third application.

Consideration of the merits of Roger Moreau's ("Mr. Moreau's") most recent application for site plan review (the "Application"), his third, is improper unless he demonstrates a substantial change of condition has intervened that warrants yet a third submission. Indeed, Mr. Moreau for a third time seeks approval to use the rear lot (R.19/Lot 44) located at 26 Reed Lane as an "auto, recreational vehicle, and small engine repair shop." The Parsonsfield Zoning Board of Appeals (the "ZBA") already considered the merits and denied this request on January 12, 2021 because "the proposed use of Applicant's rear lot would violate the Land Use Ordinance."

Nothing has intervened between the ZBA's final decision that would affect the merits of Mr. Moreau's reapplication for site plan review. The facts, circumstances and legal arguments remain unchanged. For the reasons set forth below, as an initial threshold matter, you must either determine Mr. Moreau's Application is "substantially different" from his previous application or decline to consider it.

**I. Administrative res judicata prohibits repeatedly filling applications for projects which have already been denied**

The doctrine of res judicata prevents “the relitigation of claims that were tried or *could have been tried* between the same parties or their privies in an earlier suit on the same cause of action.” *Town of Boothbay v. Jenness*, 2003 ME 50, ¶ 20, 822 A.2d 1169 (internal quotation marks and citation omitted) (emphasis in original). The doctrine applies with equal force to administrative proceedings as it does to an adjudication in a court. *Id.* This doctrine – known as 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).

Under Maine Law, in order for res judicata to apply to administrative proceedings, the proceeding must include the “essential elements of adjudication.”<sup>1</sup> The Law Court has informed landowners that a board is not required to entertain a reapplication for a variance or a conditional use permit when the first application was denied “unless a substantial change of conditions ha[s] occurred or other considerations materially affecting the merits of the subject matter ha[s] intervened between the first application and the subsequent application.” *Silsby v. Allen’s Blueberry Freezer, Inc.*, 501 A.2d 1290, 1295 (Me. 1985). 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). The justification is as follows:

The reasons underlying the rule consist in providing finality to proceedings before the appellate zoning authority, giving protection to the integrity of the zoning plan, 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 property owners the harassment which repetitive variance requests would undoubtedly generate.

*Id.*

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<sup>1</sup> 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) 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); *Town of Boothbay*, 2003 ME 50, ¶ 21 & n. 6, 822 A.2d 1169 (listing essential elements for purposes of administrative res judicata).

As discussed below, this doctrine applies with equal force to subsequent applications for site plan review. When a planning board receives a second application (or in this case a third), it is the planning board who is initially tasked with determining whether the new application is substantially the same from the earlier application.

Because Mr. Moreau seeks approval for the exact same proposed use – a use the ZBA already decided was in conflict with the Ordinance – the Planning Board should not consider the merits of Mr. Moreau’s Application without first determining that circumstances have changed or the Application is substantially different than the previous one. In other words, if “the requested relief in both applications is substantially the same” any reconsideration will ultimately be barred by administrative res judicata. *Id.*

## II. Administrative res judicata applies to reapplications for site plan review

The doctrine is equally applicable to Mr. Moreau’s reapplication for site plan review.<sup>2</sup> While the Law Court has not had the occasion to enforce the rule against a second application for site plan review, the court has examined it in the context of repeated applications for a building permit. *See Lentine*, 559 A.2d at 78 n. 4.

In *Lentine*, landowners applied to the Town of St. George’s planning board for a permit to build a wharf on their waterfront property. After the planning board approved the first application, a group of abutters reversed the decision before the zoning board of appeals. A second, similar application was then filed, and denied. The board of appeals affirmed the planning board’s decision. The Law Court addressed the Town’s contention that res judicata precludes the planning board’s consideration of the second application, but (citing *Silsby*) explained that, “[b]ecause the Planning Board and Board of Appeals handled the second application on its merits, they by implication decided that it was an application substantially different from the first application, thereby avoiding the doctrine of administrative res judicata.” *Id.* (finding no clear error or abuse of discretion with that determination).

*Lentine* stands for the proposition that administrative res judicata is not limited to applications for a variance or conditional use permit. Indeed, the Maine Superior Court appropriately considered its relevance in the context of repeated applications for site plan review. *See Arundel Lodge #76, A.F. & A.M., v. Town of Kennebunkport*, No. AP-16-0017, 2017 WL 1398187 (Me. Super. Ct. Feb. 17, 2017); *Hodson v. Town of Hermon*, No. AP-9901, 1999 WL 35298234 (Me. Super. Ct. Dec. 21, 1999) (*vacated, remanded on jurisdictional grounds*, 2000 ME 181, 760 A.2d 221) (dismissed for failure to exhaust administrative remedies).

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<sup>2</sup> Consistent with the Maine Municipal Association’s interpretation: “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) (citing *Silsby*, 501 A.2d 1290, 1295 (Me. 1985)).

Town of Parsonsfield  
Planning Board  
March 16, 2021

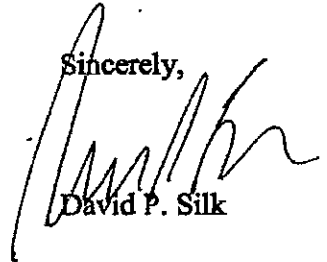
In *Hodson v. Town of Hermon*, an applicant's first site plan application was denied, and was not appealed. *Hodson*, 1999 WL 35298234, at \*1. The applicant then resubmitted a "new" application, which the planning board approved. Abutters appealed to the courts and argued that the second application 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 needed 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 . . ." *Id.* at \*\*2-3.

### III. Conclusion

For the foregoing reasons, the doctrine of administrative res judicata bars consideration of Mr. Moreau's reapplication (his third) for site plan review. It is improper for the Planning Board to consider the merits of the Application unless Mr. Moreau demonstrates there has been a "substantial change of conditions" "or other considerations materially affecting the merits of the subject matter." In other words, Mr. Moreau is precluded from again requesting approval for the same project if the proposed use, facts and circumstances remain the same.

Thank you for your time.

Sincerely,



David P. Silk

ALL-STATE® LEGAL 800-222-0010 80311 RECYCLED



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

September 15<sup>th</sup>, 2020

Roger Moreau  
26 Reed Ln  
Parsonsfield, ME 04047

**RE: Notice of Decision and Finding of Fact**  
**26 Reed Lane, Map: R19 / Lot#44**  
auto, rec, vehicle & small engine repair shop

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 use the existing garage, located at the residence of 26 Reed Lane, for an auto repair shop/ business. The applicant purchased the front lot on Map R19 / Lot# 42 gaining access and road frontage to the right of way 26 Reed Lane. The existing garage is a 20-foot by 30-foot building with a single bay to conduct vehicle repairs. The business operator/owner would be Mr. Moreau himself and the proposed business hours were to be Monday through Friday from 8:00 am to 5:00 pm. The commercial use of this property was to be designated to the garage and parking space made available for customers. Parking was proposed on both sides of the driveway at the driveway entrance, both spaces being approximately 60 feet by 60 feet to allow for parking space. A hazardous material storage shed was proposed to be built on top a concrete slab to the right of the garage for storage of used motor oil.

The location of the property is identified on Assessor's 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, Rec, Vehicle and Small Engine Repair Shop. The property is currently used as a residence and accessed by a right-of-way off Maplewood Road. Maplewood Road is also a state aide road that requires a Maine DOT permit for a change of use which was permitted by ME DOT on August 18<sup>th</sup>, 2020.

The above described site plan review application was received by the planning board on May 7<sup>th</sup>, 2020. A site walk was held on August 1<sup>st</sup>, 2020. A public hearing was held on August 18<sup>th</sup>, 2020. Other landowners abutting the property conveyed to the planning board their concerns both in writing and verbally in public meetings. Some concerns included, but are not limited to, increased traffic along the right-of way, noise levels generated by the proposed business and a decrease in the

historical appeal of the village residential area. Other abutters noted on record their support and approval for the project.

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. Because the applicant now owns the front lot (R19/lot 42), this gives road frontage to the rear lot.
- Maplewood Road is a State Aide road and requires a permit to be issued in accordance with Maine DOT. A signed permit was submitted on August 18<sup>th</sup>, 2020. After legal review from Maine Municipal Association, it was determined that the right of way (26 Reed lane) was grandfathered from Article II, Section 6, S, iv (page 40) and Article II, Section 6, N regarding the right of way.
- The right of way is now deeded under the applicant who also owns the parcel located on Map R19 / Lot# 42. There were no concerns from an abutter who share the right of way.

Therefore, the Parsonsfield Planning Board completed their review of this application on September 15<sup>th</sup>, 2020 and voted unanimously to approve the application by vote of 3-0

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.

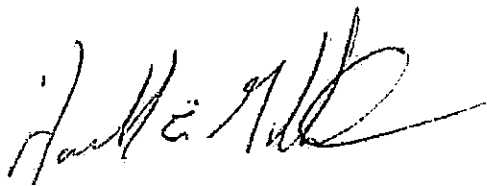
Respectfully,  
Lindsay Gagne,  
Parsonsfield Planning Board Administrative Assistant

*For Chairman Rick Sullivam*



To Whom it may concern  
I Roger Korman Do Agree  
to Be responsible for all  
and any Maintenance on  
reed lane in parsonfield, me  
for all foreseeable future,

Roger Korman

8/17/20 

Dear Lindsay,

With respect to the ordinance's requirement for a maintenance agreement for common driveways, inasmuch as the driveway in question predates the ordinance and no changes are proposed to it, in my opinion this driveway is "grandfathered."

With respect to the ordinance's minimum width requirement for rights of way serving industrial and commercial uses, I agree with you that it is unclear whether this applies to preexisting rights or way. Since ambiguities in land use ordinances are general construed in favor of property owners and against municipalities, however, I am inclined to read this requirement as applying solely to new or proposed rights of way, not to preexisting rights or way.

I hope this advice is helpful, Lindsay.

Best regards,

**Richard P. Flewelling, Senior Staff Attorney**  
**Legal Services Department**  
**Maine Municipal Association**  
60 Community Drive, Augusta, ME 04330  
1-800-452-8786 (In-state)  
207-623-8428  
FAX 207-624-0187  
[legal@memun.org](mailto:legal@memun.org)

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**From:** [planning@parsonsfield.org](mailto:planning@parsonsfield.org) [<mailto:planning@parsonsfield.org>]  
**Sent:** Sunday, August 23, 2020 4:11 PM  
**To:** Legal Services Department <[legal@memun.org](mailto:legal@memun.org)>  
**Subject:** Parsonsfield - Right of way - maintenance agreement

Hello,

The planning board is reviewing a site plan review application form for a change of use for vehicle, auto repair shop. The parcel in question is currently accessed by a right-of-way that is shared among three parcels, two of which the applicant is the property owner. The board is seeking some guidance on two items: (This [Link](#) should take you to the Town of Parsonsfield ordinance)

Under the Parsonsfield Land Use and Development Ordinance: Article II, Section 6, S, iv (page 40) states "All lots using common driveways must provide a driveway maintenance agreement to be reviewed and approved by the town attorney at the expense of the applicant"

There are no proposed changes at this time to this right-of-way and it has been in use well before this ordinance went into effect. Is the applicant required to adhere to this process? (attached is the proposed driveway maintenance agreement submitted by the applicant)

In addition, under the town's ordinance: Article II, Section 6, N "road construction and/or acceptance" Table 5 - Street Standards.

This application is for a change of use from a single use of residential dwelling to a dual use of residential dwelling and auto repair shop. This section of the ordinance is unclear if it is solely for new streets/right-of-ways or would apply to a right-of-way under a change of use. Under Table 5 : "Minimum Right-Of-Way Width" , " Industrial & Commercial" the minimum requirement would

be 60-feet. Because this is a change of use consisting of a commercial business, is this requirement applicable to the application.

Thank you for any information you can provide,

Best regards,

Lindsay Gagne  
Planning & Appeals Board  
Administrative Assistant  
634 North Rd  
Parsonsfield, ME 04047  
[www.parsonsfield.org](http://www.parsonsfield.org)  
(207)-625-4558  
(207)-625-8172 (Fax)

Under Maine's Freedom of Access ("Right to Know") law, all e-mail and e-mail attachments received or prepared for use in matters concerning Town Business or containing information relating to Town business are likely to be regarded as public records which may be inspected by any person upon request, unless otherwise made confidential by law. If you have received this message in error, please notify us immediately by return email. Thank you for your cooperation



Janet F. Mills  
Governor

## Maine Department of Transportation

### Driveway/Entrance Permit

Bruce A. Van Note  
Commissioner

<b>Permit Number: 28428 - Entrance ID: 1</b>		<b>LOCATION</b>	
<b>OWNER</b>		Route:	<b>C321N, Maplewood Road</b>
Name:	<b>Roger Moreau</b>	Municipality:	<b>Parsonsfield</b>
Address:	<b>570 Maplewood Road</b>	County:	<b>York</b>
	<b>Parsonsfield, ME 04047</b>	Tax Map:	<b>R19 Lot Number: 42, 44</b>
Telephone:	<b>(207)793-4575</b>	Culvert Size:	<b>inches</b>
		Culvert Type:	<b>N/R</b>
Date Printed:	<b>August 18, 2020</b>	Culvert Length:	<b>feet</b>
		Date of Permit:	<b>August 18, 2020</b>
		Approved Entrance Width:	<b>22 feet</b>

In accordance with rules promulgated under 23 M.R.S.A., Chapter 13, Subchapter I, Section 704, the Maine Department of Transportation (MaineDOT) approves a permit and grants permission to perform the necessary grading to construct, in accordance with sketch or attached plan, an Entrance to **Commercial Industrial** at a point **234 feet North from Mountain Road**, subject to the Chapter 299 Highway Driveway and Entrance Rules, standard conditions and special conditions (if any) listed below.

Conditions of Approval:

This Permittee acknowledges and agrees to comply with the Standard Conditions and Approval attached hereto and to any Specific Conditions of Approval shown here.

(G = GPS Location; W = Waiver; S = Special Condition)

G - THE ENTRANCE SHALL BE LOCATED AT GPS COORDINATES: 43.674850N, -70.911040W.

S - In the town of Parsonsfield on the easterly side of Maplewood Road, the centerline being approximately 234 feet northerly of the centerline of Mountain Road and approximately 13 feet northerly of utility pole 89.

S - The entrance shall be paved, at a minimum, from the edge of the existing highway pavement to the edge of the highway right-of-way / owner's property boundary.

Approved by: *Anthony Fontaine* Date: 8-18-2020

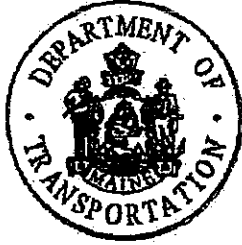
#### STANDARD CONDITIONS AND APPROVAL

1. Provide, erect and maintain all necessary barricades, lights, warning signs and other devices as directed by MaineDOT to properly safeguard traffic while the construction is in progress.
2. At no time cause the highway to be closed to traffic
3. Where the driveway is located within a curb, curb and gutter, and/or sidewalk section, completely remove the existing curb, curb and gutter, and/or sidewalk as may be required to create the driveway and restore drainage. All driveways abutting sidewalk sections shall meet the requirements set forth in the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12131 et seq.
4. Obtain, have delivered to the site, and install any culverts and/or drainage structures which may be necessary for drainage, the size, type and length as called for in the permit pursuant to 23 M.R.S.A. Sec. 705. All culverts and/or drainage structures shall be new.
5. Start construction of the proposed driveway within twenty-four (24) months of the date of permit issuance and substantially complete construction of the proposed driveway within twelve months of commencement of construction.
6. Comply with all applicable federal, state and municipal regulations and ordinances.
7. Do not alter, without the express written consent of the MaineDOT, any culverts or drainage swales within the MaineDOT right of way.
8. File a copy of the approved driveway permit with the affected municipality or LURC, as appropriate within 5 business days of receiving the MaineDOT approval.
9. Construct and maintain the driveway side slopes to be no steeper than the adjacent roadway side slopes, but in no case to be steeper than 3 horizontal to 1 vertical, unless the side slope is behind existing roadway guardrail, in which case it shall be no steeper than 2 horizontal to 1 vertical.
10. Notify the MaineDOT of a proposed change of use served by the driveway when increase in traffic flow is expected to occur. This does not exempt the need for obtaining a Traffic Movement Permit (TMP) if trip generation meets or exceeds 100 passenger car equivalents (PCE) during the peak hour of the day.
11. Construct or implement and maintain erosion and sedimentation measures sufficient to protect MaineDOT facilities.
12. Driveways shall be designed such that all maneuvering and parking of any vehicles will take place outside the highway right-of-way and where vehicles will exit the premises without backing onto the highway traveled way or shoulders. All driveways will have a turnaround area to accommodate vehicles using the premises.
13. Closing any portion of a highway or roadway including lanes, shoulders, sidewalks, bike lanes, or ATV access routes is not permitted without MaineDOT approval.

#### FURTHER CONDITION OF THE PERMIT

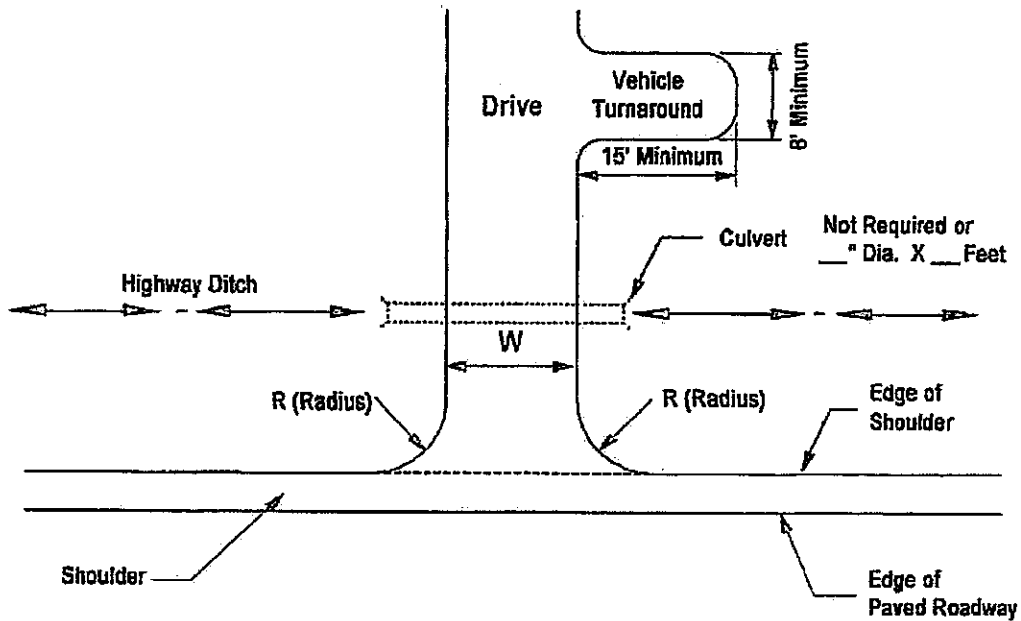
The owner shall assume, the defense of, and pay all damages, fines, and penalties for which he/she shall become liable, and shall indemnify and safe harmless said Department, its representatives, agents and employees from liability, actions against all suits, claims, damages for wrongful death, personal injuries or property damage suffered by any person or association which results from the willful or negligent action or inaction of the owner/applicant (agent) and in proceedings of every kind arising out of the construction and maintenance of said entrance(s), including snow removal.

Nothing herein shall, nor is intended to, waive any defense, immunity or limitation of liability which may be available to the MaineDOT, their officers, agents or employees under the Maine Tort Claims Act or any other privileges and/or immunities provided by law. It is a further condition that the owner will agree to keep the right of way inviolate for public highway purposes and no signs (other than traffic signs and signals), posters, billboards, roadside stands, culvert end walls or private installations shall be permitted within Right of Way limits.



State of Maine  
Department of Transportation  
**Entrance / Driveway Details**

PLAN

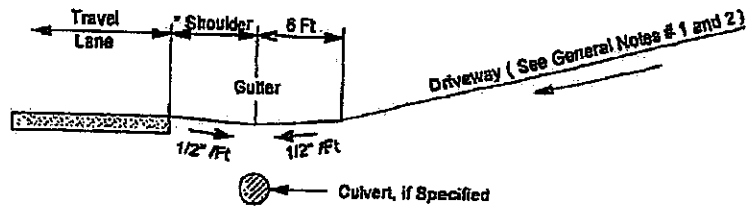


GENERAL NOTES -

1. ALL RESIDENTAL OR COMMERCIAL DRIVES WITH 10% GRADE OR MORE SLOPING DOWN TOWARDS THE HIGHWAY SHALL BE PAVED TO THE RIGHT OF WAY LINE, AS A MINIMUM, INCLUDING SHOULDER, IF GRAVEL AND HAVE DITCHES TO CONTROL RUNOFF.
2. DRIVES SLOPING TO THE HIGHWAY SHALL BE CROWNED ( 1/2" PER FT. MINIMUM ).
3. TO THE MAXIMUM EXTENT PRACTICAL, THE ENTRANCE MUST BE CONSTRUCTED PERPENDICULAR TO THE HIGHWAY AT THE POINT OF ACCESS. EXCEPT WHERE CURBING EXISTS OR IS PROPOSED, THE MINIMUM RADIUS ON THE EDGES OF THE ENTRANCE MUST BE 10 FEET OR AS OTHERWISE REQUIRED AS SHOWN.
4. ENTRANCES/DRIVEWAYS WILL BE BUILT WITH AN ADEQUATE TURN-AROUND AREA ON SITE TO ALLOW ALL VEHICLES TO MANUEVER AND PARK WITHOUT BACKING ONTO THE HIGHWAY. THIS TURN-AROUND SHALL BE AT LEAST 8 FEET WIDE BY 15 FEET LONG.
5. ENTRANCES/DRIVEWAYS AND OTHER ASSOCIATED SITE WORK WHICH DIRECTS WATER (RUNOFF) TOWARD THE HIGHWAY MUST BE CONSTRUCTED, CROWNED STABILIZED AND MAINTAINED WITH MATERIALS AND APPROPRIATE TEMPORARY/PERMANENT EROSION CONTROL MATERIALS IN ACCORDANCE WITH MDOT BEST MANAGEMENT PRACTICES.
6. THE PROFILE OF THE ENTRANCES MUST COMPLY WITH THE DETAILS SHOWN ON PAGE 2.

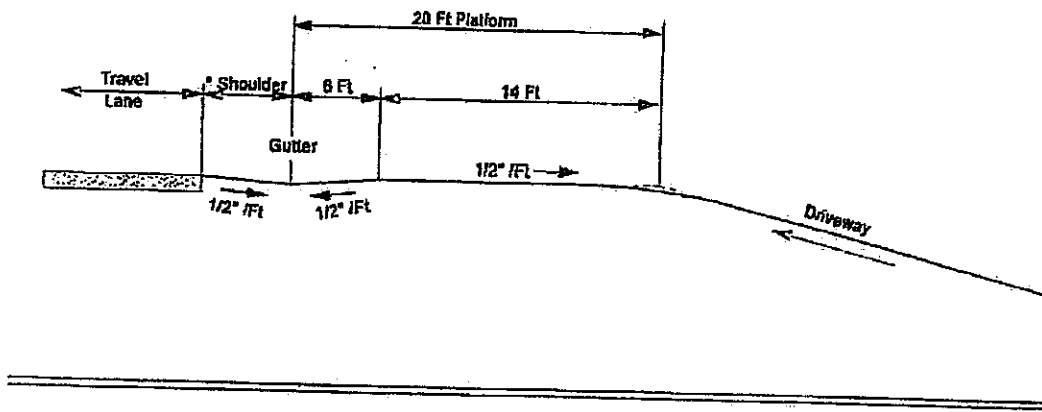
# MDOT Entrance / Driveway Details, Continued

## PROFILE Details

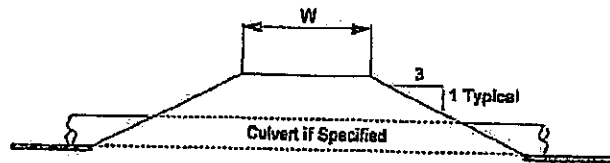



**NOTE :**

Grade of Existing Shoulder Should Be Maintained To Create A Gutter With a Minimum Of Three Inches Below The Edge Of Traveled Way.  
\* Distance Of The Gutter From The Edge Of Traveled Way Should Be The Same As Existing Shoulder Or A Minimum Of 4 Feet.

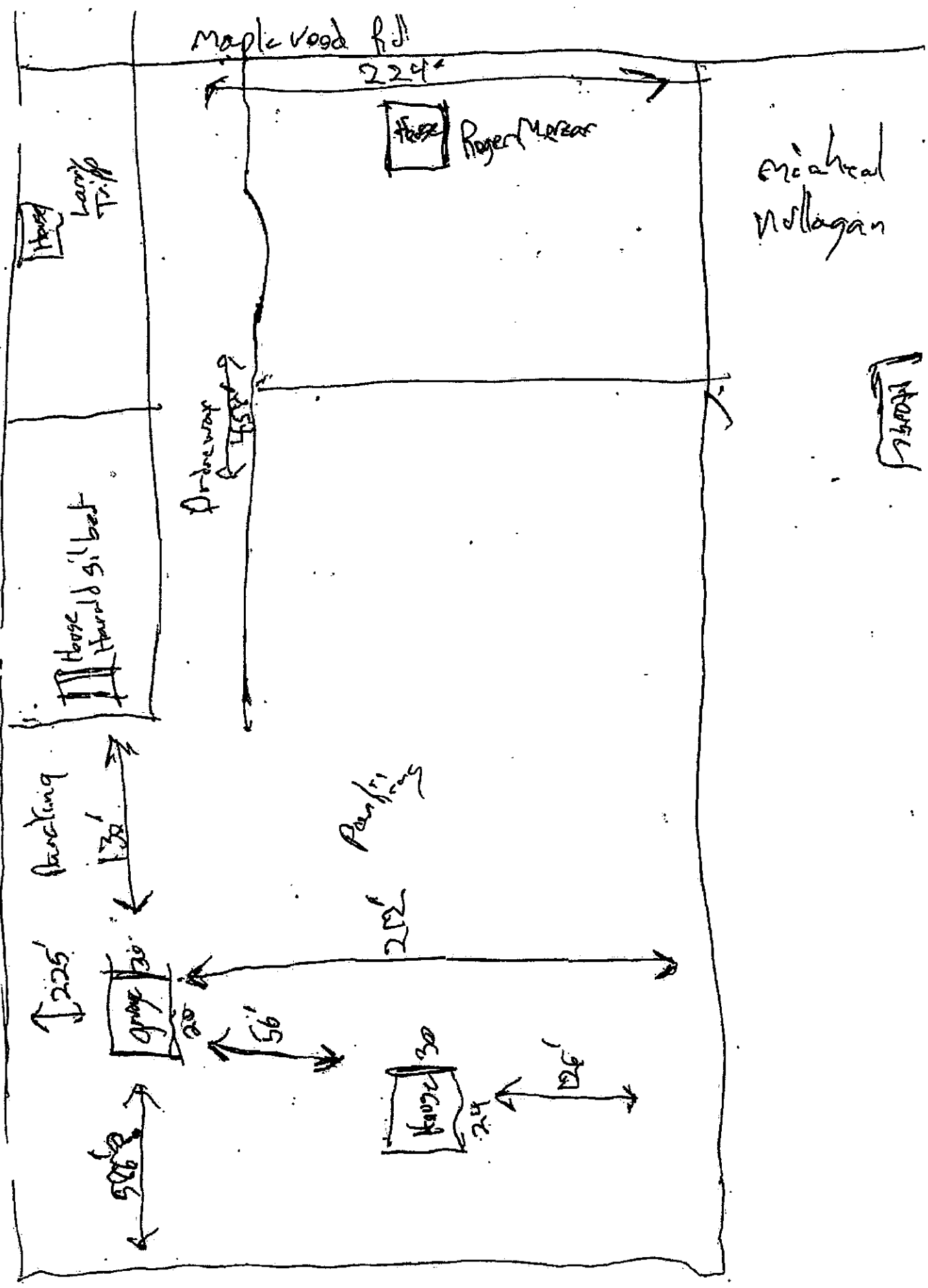


## Driveway Cross Section



ALL-STATE® LEGAL 800-222-6510 ED611 RECYCLED 







**BOURQUE CLEGG CAUSEY & MORIN LLC**

ATTORNEYS AT LAW  
[www.bourquetclegg.com](http://www.bourquetclegg.com)

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TELEPHONE (207) 324-4422  
FAX (207) 324-8558

BRADLEY C. MORIN  
CHRISTOPHER R. CAUSEY  
JILL S. CRAMER  
COLIN B. REILLY

RONALD D. BOURQUE, Of Counsel  
KENNETH R. CLEGG (1944-2003)

September 2, 2020

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

Re: Roger Moreau Application for Site Plan Review/R19-44

Dear Mr. Sullivan:

I represent Roger Moreau, who has submitted an application for site plan review to operate an automobile, recreational vehicle, and small engine repair shop on his property located at 26 Reed Lane in Parsonsfield, further identified on the Town of Parsonsfield Tax Map R19, Lot 44. This lot is in the Village Residential zone.

The Planning Board has asked me to clarify my statements during the public hearing on August 18, 2020 regarding the use of and access to the premises.

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 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.

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 (R19-042) (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.

Maine case law establishes that a property interest is created when a purchase and sale agreement for the purchase of property is executed. Specifically, the Maine Supreme Judicial Court has stated that “a person who has executed a contract for the purchase of property has a sufficient right, title or interest in that property to seek municipal approval for the development of property.” *Tomasino v. Town of Casco*, 2020 ME 96, ¶ 11 (citing *Murray v. Inhabitants of the Town of Lincolnville*, 462 A.2d 40, 41, 43 (Me. 1993)).

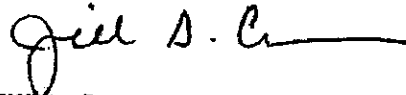
In this case, when the Back Lot owners executed the Purchase and Sale Agreement for purchase of Reed Lane, they collectively established sufficient right, title and interest in Reed Lane to give the Back Lot the necessary access to Maplewood Road and to establish that the Back Lot is not “*only* accessible 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 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.

*Town of Parsonsfield Planning Board*  
*September 2, 2020*  
*Page | 3*

I hope this letter clarifies my statements made at the recent public hearing. If the Board or the Town's attorney/MMA wishes to speak with me, I would be happy to answer any additional questions and provide any additional information. Thank you for your consideration.

Kindest regards,



Jill S. Cramer

[jcramer@bourqueclegg.com](mailto:jcramer@bourqueclegg.com)

JSC/

cc: Roger Moreau



**BOURQUE CLEGG CAUSEY & MORIN LLC**

ATTORNEYS AT LAW  
[www.bourqueclegg.com](http://www.bourqueclegg.com)

949 MAIN STREET  
POST OFFICE BOX 1068  
SANFORD, MAINE 04073  
TELEPHONE (207) 324-4422  
FAX (207) 324-9556

BRADLEY C. MORIN  
CHRISTOPHER R. CAUSEY  
JILL S. CRAMER  
COLIN B. REILLY

RONALD D. BOURQUE, Of Counsel  
KENNETH R. CLEGG (1944-2003)

September 2, 2020

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

Re: Roger Moreau Application for Site Plan Review/R19-44

Dear Mr. Sullivan:

I represent Roger Moreau, who has submitted an application for site plan review to operate an automobile, recreational vehicle, and small engine repair shop on his property located at 26 Reed Lane in Parsonsfield, further identified on the Town of Parsonsfield Tax Map R19, Lot 44. This lot is in the Village Residential zone.

The Planning Board has asked me to clarify my statements during the public hearing on August 18, 2020 regarding the use of and access to the premises.

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 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.

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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.

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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 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.

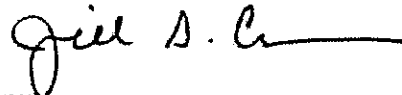
To summarize, Mr. Moreau has taken two actions to remove the Back Lot from “rear lot” status (which would deprive it of multiple uses): (1) he purchased the Front Lot, giving him, as a common owner, road frontage and access; and (2) he entered into a purchase and sale for Reed Lane itself, giving the 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.



*Town of Parsonsfield Planning Board*  
*September 2, 2020*  
*Page | 3*

I hope this letter clarifies my statements made at the recent public hearing. If the Board or the Town's attorney/MMA wishes to speak with me, I would be happy to answer any additional questions and provide any additional information. Thank you for your consideration.

Kindest regards,

A handwritten signature in black ink that reads "Jill S. Cramer". The signature is fluid and cursive, with a long horizontal line extending to the right.

Jill S. Cramer

*[jcramer@bourqueclegg.com](mailto:jcramer@bourqueclegg.com)*

JSC/

cc: Roger Moreau

ALL-STATE LEGAL 800-222-0810 FOS11 RECYCLED

# TOWN OF PARSONSFIELD

Planning Board

634 North Rd Parsonsfield, Maine 04047

(207)-625-4558 FAX: (207)-625-8172

[planning@parsonsfeld.org](mailto:planning@parsonsfeld.org)

January 3<sup>rd</sup>, 2020

COPY

Roger Moreau  
26 Reed Ln  
Parsonsfield, ME 04047

**RE:** Notice of Decision and Finding of Fact  
26 Reed Lane, Map: R19 / Lot#44  
auto, rec, vehicle & small engine repair shop

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 use the existing garage, located at the residence of 26 Reed Lane, for an auto repair shop/ business. The existing garage is a 20-foot by 30-foot building with a single bay to conduct vehicle repairs. The business operator/owner would be Mr. Moreau himself and the proposed business hours were to be Monday through Friday from 8:00 am to 5:00 pm. The commercial use of this property was to be designated to the garage and parking space made available for customers. Parking was proposed on both sides of the driveway at the driveway entrance, both spaces being approximately 60 feet by 60 feet to allow for parking space. A hazardous material storage shed was proposed to be built on top a concrete slab to the right of the garage for storage of used motor oil.

The location of the property is identified on Assessor's 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, Rec, Vehicle and Small Engine Repair Shop. The property is currently used as a residence and accessed by a right-of-way off Maplewood Road and is considered to be a non-conforming rear lot of record as described in the Land Use Ordinance; Article 1, Section 6, Sub-Section D, Paragraph 3 "Rear Lots". Maplewood Road is also a state aide road that requires a Maine DOT permit for a change of use. This would also require the right-of-way to be widened to at least 22 feet and paved, if permitted by Maine DOT.

The above described site plan review application was received by the planning board on July 17<sup>th</sup>, 2019 and reviewed by the board on August 20<sup>th</sup>, 2019 at which time it was voted by the board the application was incomplete and a letter was addressed to the applicant identifying necessary documents and information requested by the board. On September 10<sup>th</sup>, 2019 the applicant submitted additional information in response to the board's request in which the board reviewed with the applicant on October 15<sup>th</sup>, 2019 and also approved the application as complete. A site walk was held by the board on November 2<sup>nd</sup>, 2019. The board continued its review of the application on November 20<sup>th</sup>, 2019 and again on January 7<sup>th</sup>, 2020. Other landowners abutting the property

conveyed to the planning board their concerns both in writing and verbally in public meetings. Some concerns included, but are not limited to, increased traffic along the right-of way, noise levels generated by the proposed business and a decrease in the historical appeal of the village residential area. Of another concern from an abutter, they have affirmed to the board they will not grant permission to widen the existing right-of-way, which passes through their property, to meet Maine DOT requirements, if it were permitted by Maine DOT.

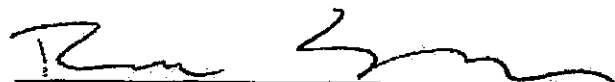
Based on the above finding of fact, the Parsonsfield Planning Board makes the following conclusions:

- The proposed use would include both a commercial business of an auto repair shop and the residential dwelling of the property/business owner. In accordance with the Parsonsfields Land Use and Development Ordinance under the Table of Permissible Uses this would construe as two uses. One as a single-family dwelling and another as an auto, rec, vehicle, small engine repair shop. Under Article 1, section 6, sub-section D, paragraph 3 "rear lots", the provision explains the following: A rear lot 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, and that a wider right-of-way cannot be negotiated with abutting landowners, and that all other provisions of this ordinance can be met.
- Maplewood Road is a State Aide road and requires a permit to be issued in accordance with Maine DOT due to the change of use from residential to commercial. This would also require the right-of-way to be widened to a minimum of 22 feet and paved to at least the edge of the highway right-of-way, if permitted by Maine DOT. The existing right-of-way was measured to be of varying widths along the length of the right-of-way from the entrance off Maplewood Road leading to Mr. Morean's driveway. These measurements were recorded by the planning board while conducting a site walk and varied from 10 feet to 14 feet in width.
- Widening the right-of-way would include negotiation from abutting landowners, of which an abutter has expressed to the board their concerns and indifference to extending the right-of-way to meet minimal width requirements.

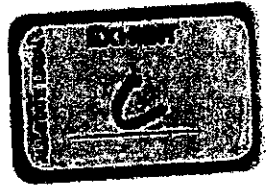
Therefore, the Parsonsfield Planning Board completed their review of this application on January 7<sup>th</sup>, 2020 and voted unanimously to deny the application.

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,  
Lindsay Gagne,  
Parsonsfield Planning Board Administrative Assistant

  
Planning Board Chair, Richard Sullivan





**TOWN OF PARSONSFIELD**  
Code Enforcement Office  
634 North Road  
Parsonsfield, Maine 04047  
207-625-4558 FAX: 207-625-8172  
[CEO@parsonsfeld.org](mailto:CEO@parsonsfeld.org)

Roger K. Moreau  
Jennie A. Moreau  
28 Reed Lane  
Parsonsfield, Maine 04047

February 15, 2018

I visited your property at 28 Reed Lane, Map R19, Lot 44 on February 9, 2018. The following was noted:

There are about 15 vehicles visible from the front of the lot  
There is a vehicle carcass stripped of body parts  
You stated that you are no longer selling vehicles  
You stated that there were people living out back

While the state may allow any number of antique vehicles (your words), the Town has the following restriction:

*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.*

Junkyards are not allowed in the zone that your property sits. This means you may not have more than one vehicle that won't pass inspection. My check for this is appropriate tread on the tires and glass and body parts intact. If there are any suspension pieces or exhaust parts hanging, that would also fail my check.

I will visit your site in the next few weeks to verify that you are in compliance with this requirement.

There is also an issue with the living quarters out back. The only living structure that was there for the 2010 revaluation was your house. I need to inspect whatever is there, and see what needs to be done about that.

Feel free to contact me if you have any questions.

David F Bower  
Code Enforcement Officer

cc: Selectmen, Planning Board

**TOWN OF PARSONSFIELD**

**Code Enforcement Office**

**634 North Road**

**Parsonsfield, Maine 04047**

**207-625-4558 FAX: 207-625-8172**

**CEO@parsonsfeld.org**

**Roger K. Moreau  
Jennie A. Moreau  
28 Reed Lane  
Parsonsfield, Maine 04047**

**May 31, 2018**

**I visited your property at 26 Reed Lane, Map R19, Lot 44 with Deputy Cyr on Saturday, May 26, 2018. While you did not answer the door, the following was noted:**

**There are about 10 vehicles visible from the front of the lot  
There is a vehicle carcass stripped of body parts  
There were 3 trailer carcasses and some associated siding and insulation  
A pile of tires was visible from the dooryard**

**You are still running a junkyard, and hauling vehicles in to be worked on. Both of these activities are illegal.**

**As it appears that you are disregarding our previous conversations and State law and Town zoning, you are to IMMEDIATELY STOP ALL WORK ON AND THE DISMANTLING OF ANY VEHICLE, as of 4pm on Monday, June 4, 2018.**

**No hauling vehicles in is allowed. No work on vehicles in your garage is allowed. No dismantling of vehicles is allowed.**

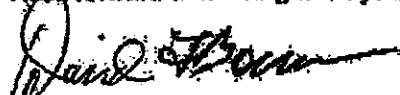
**ABSOLUTELY NO WORK ON ANY VEHICLE!**

**Please note that fines of up to \$2,500 per day are allowed for zoning violations. If you disregard this notice, the Town will be forced to assess fines. If you neglect to pay the fines, you will be prosecuted in court under the Rule 80K statute and Title 30-A, MRSA, Section 4452 of the State of Maine.**

**You will need to contact the Selectmen to set up an appointment with them to discuss future options. You also need to contact me to let me know how, when and where you will be disposing of the junk vehicles, tires, and other junk on your property. I will need to do a walkthrough of your property to see what other issues there may be.**

**If you dispute this order, you have 30 days from the date of this letter to appeal the order to the Zoning Board of Appeals. Failure to appeal within the 30 day period may preclude you from contesting these violations in court if the Town proceeds with an enforcement action.**

**I look forward to hearing from you.**



**David F Bower  
Code Enforcement Officer**

**cc: Selectmen, Planning Board, Deputy Cyr**

TOWN OF PARSONSFIELD  
Code Enforcement Office  
601 North Road  
Parsonsfeld, Maine 04047  
207-834-2804 FAX: 207-835-8172  
jwilson@parsonsfeld.org

\*\*\*\*\* STOP WORK ORDER \*\*\*\*\*

NAME: Roger Moreau  
ADDRESS: 26 Road LN Parsonsfeld ME 04047  
DATE: 9/12/19

DESCRIPTION OF WORK THAT MUST BE STOPPED:

Immediately stop all work on vehicles other than registered to the residence. This includes dismantling or repairs to any vehicle not owned by resident (Roger Moreau)

This stop work order is in effect until Planning board Approval.

J. Wilton  
James Wilton  
Code Enforcement Officer

9/12/19  
DATE

cc: Selectman, Planning Board  
Edward J. Bowen



**March 14, 2020**

**Roger Moreau  
26 Reed Ln  
Parsonsfield, ME  
04047**

**Dear Mr. Moreau**

**It has come to my attention that you have not followed the stop work order issued on 09/12/2019 (see attached copy)**

**Continuing to operate a junk yard or auto rec vehicle small engine shop can constitute a violation of both state and local law and could subject you to fines from the date of the stop work order, ranging from \$100 to \$2500 per day, per violation in addition to the towns reasonable attorney's fees and cost.**

**I will revisit this issue in 5 days (03/19/2020) if I find that you are still in violation I will be forced to turn this matter over to the town attorney.**

**You have the right to appeal this notice of violation to the town of Parsonsfield Board of appeals. Any such appeal must be formally filed with the town no later than (30) days from the date of this letter.**

**Sincerely  
Jesse Winters  
Town CEO**

Town of Parsonsfield  
634 North Road  
Parsonsfield, Maine 04047  
Telephone 207-625-4668  
Email: [Selectmen@Parsonsfield.org](mailto:Selectmen@Parsonsfield.org)

May 12, 2020

Roger Moreau  
26 Reed Lane  
Parsonsfield, Maine 04047

Dear Mr. Moreau,

It has come to the Selectboard's attention that, with a few exceptions, you have continued to disregard the Town's Stop Work Order issued on September 12, 2019. (Attached)

Your original application for a site plan review was denied by the Planning Board on January 7, 2020. This action meant the Stop Work Order continues to be in effect after the denial.


Subsequently, your continued work on unauthorized vehicles is in direct violation of this order, and subject to daily fines.


Your application for a new site plan review has been scheduled by the Planning Board for June 2, 2020. Until that decision is made, **STOP WORKING ON VEHICLES THAT ARE NOT REGISTERED TO YOU.** If the Planning Board denies your application the Stop Work Order remains in effect.

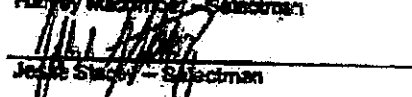
This is your last notification; any documented notice of violation will result in this matter being handed over to the Town's Attorney for appropriate legal action. (Fines range from \$100 to \$2,600 per day.)

Please follow these guidelines!

Sincerely,

  
Edward I. Bower Jr., Selectman, Chairman

  
Henry McArthur, Selectman

  
Jesse Stacy - Selectman

CC: Michael Natigan  
David Birk  
David Lotzke  
Jesse Winters



TOWN OF PARSONSFIELD, MAINE  
Application for Building Permit

PARSONSFIELD BUILDING PERMIT # 1073

*Roger Moreau*  
5/5/15

Type of Structure: Garage

To the Building Inspector, Parsonsfield, Maine:

The undersigned hereby applies for a permit to erect, alter or install the following building, structure or equipment in accordance with the Laws of the State of Maine, the building code of the Town of Parsonsfield and any plans and specifications submitted herewith, including the following specifications:

Location: 26 Reed Ln Zoning District: VR Map: R19 Lot: 44  
Size of Lot: 12.0 acres Setbacks Req'd: Front: ~~50~~ Side: 10' Back: 25' High Water: 100'  
Applicant's Name: Roger Moreau Phone: 793-4575

Address: \_\_\_\_\_ Email: \_\_\_\_\_

Contractor's Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Email: \_\_\_\_\_

Architect's Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Email: \_\_\_\_\_

Proposed use of building: storage No. Families: \_\_\_\_\_

Other buildings on lot: \_\_\_\_\_ No. of attached sheets: \_\_\_\_\_

Estimated project cost: 6,000 Total Permit Fee: 145.00

Description of Present Buildings to be Altered

Material: \_\_\_\_\_ No. Stories: \_\_\_\_\_ Style of Roof: \_\_\_\_\_ Roofing: \_\_\_\_\_

Last Use: \_\_\_\_\_ No. of Families: \_\_\_\_\_

Description of New Work

Construct 20'x30' 2 car garage on slab

Any structure erected, remodeled, altered or moved under permission granted by this permit must conform to all provisions of the Building Code in effect for the Town of Parsonsfield on the date of this permit, unless permission for non-conformance has been granted by the Planning Board or Zoning Board of Appeals.

**PERMITS ARE NOT TRANSFERRABLE. PERMIT FEES ARE NONREFUNDABLE.**

Signature of Applicant: *Roger Moreau* Date: 5/5/15

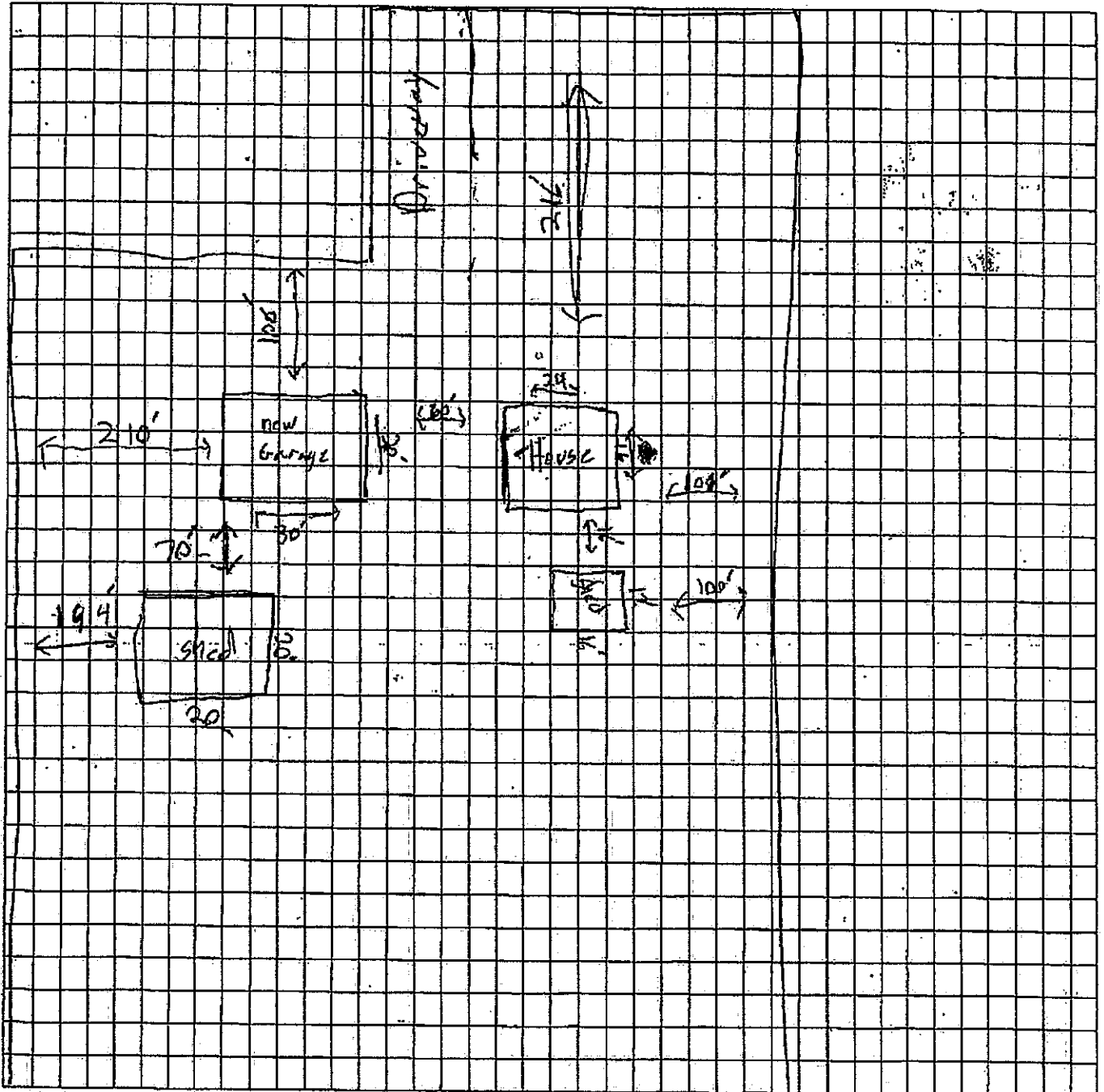
Town of Parsonsfield

PLOT PLAN

Map/Lot: R19/44  
Permit No: \_\_\_\_\_

Signature: *Ben Moran*

Location and detail MUST be correct, complete and legible.  
Use this form, or your own form, to draw the exact shape of your lot and mark the boundary lengths. Next show all present and proposed buildings in their correct location on the lot and show their dimensions and setbacks from lot lines. You are responsible for any errors in dimensions and measurements.



12 Acres + or -

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

May 18, 2021

**VIA EMAIL:** [planning@parsonsfield.org](mailto: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.<sup>1</sup>

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

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<sup>1</sup> "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."

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 misrepresenting 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

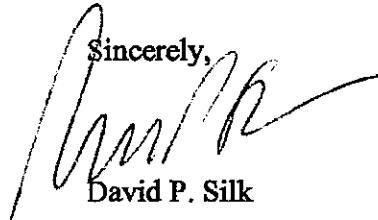
AY: He's addressed everything else and we can proceed along that line.  
**I do not want to see somebody railroaded out of his livelihood.**

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.



Town of Parsonsfield  
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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,  
  
David P. Silk

cc: Michael Nelligan ([mjnelligan@hotmail.com](mailto:mjnelligan@hotmail.com))  
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May 14, 2021

To: Parsonsfield Planning Board  
From: David A. Lourie, Town Attorney  
Re: Threshold Issues in Moreau New Site Plan Application Review

It has come to my attention that there may be several threshold procedural and/or jurisdictional issues confronting the planning board in your review of the amended Moreau site plan application at your next meeting. It is appropriate for me to volunteer advice to the planning board as to these threshold legal issues of a procedural or jurisdictional nature following failure to determine the *completeness* of the Moreau Application at your last meeting. I will attempt to avoid addressing factual and legal issues prior to hearing to the extent possible.

1. Completeness. I understand that the entire last meeting of the board was devoted to the issue of completeness, that no decision as to completeness was reached, and that the next meeting will again address the issue. Pursuant to 1 M.R.S. § 302 as amended, the finding of completeness is seldom of legal significance. The determination of “completeness” merely sets the stage for a board’s “first substantive review”, which will usually establish the date of vesting of “grandfathered” rights in the Applicant as to subsequent changes of law. Any review for *completeness* is usually *nonsubstantive*. Problems with the substance of the plan (e.g. whether a well or septic is properly sited or the use is prohibited) no matter how well-founded are not relevant, as completeness review merely compares the applicant’s submissions to the *submission requirements* of the Ordinance. It is in the nature of a checking of the boxes for each required submission, even if the board believes that the substance of every submission is inadequate (e.g. deed conveys inadequate rights, the survey is inadequate, or a required set back from a well is not met.) Members having particular concerns *can* flag matters of concern for later substantive review so that the applicant can adjust the proposed plan, but inadequacy of any submission is seldom the basis for delay or denial of the application as being incomplete.
2. Consideration of New Proposed Uses. If complete, the board can begin consider the merits of the application. 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 district<sup>1</sup>, and then whether

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<sup>1</sup> 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

it is allow as a permitted<sup>2</sup> use upon what has been determined by the ZBA to be a rear lot<sup>3</sup> benefitted by Art. I § 6. D.3<sup>4</sup> 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*<sup>5</sup> or an *accessory use*<sup>6</sup> to the existing residential use of the Moreau Lot<sup>7</sup>, and whether the Applicant has met the *special exception* criteria as to the use if required by the district regulations.

3. Existing Violations. I understand that one or more member may have questioned the legal status of existing uses on the Moreau Lot at the last board meeting. Existing or past violations are matters for CEO and/or Select Board consideration in the exercise of their

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that can be legally established on this lot along with the existing residential use consistent with applicable Zoning Ordinance limitations and Definitional Ordinance.)

<sup>2</sup> If the board determines that each of the uses requested are allowed, it may be required to determine which of these uses will be the *principal use*, and which will be *accessory*, if it determines that the intent of the Ordinance is to allow the creation of only one “principal use” of a lot, (see Definition Ordinance and various ordinance provisions.)

<sup>3</sup> This is not Mr. Moreau’s first application to this board for the same relief. The appeals board vacated the approval of a Moreau site plan for the same uses on this lot. A Decision of the ZBA usually bars an applicant from seeking the same relief on the same facts, or relitigating any fact *actually decided* in the prior proceeding. These finality rules are applied *sparingly* in land use decision-making due to the frequency of changes in fact or in law. I recommend that the board respect those material facts actually found the ZBA in reversing the prior Approval. (That the prior deed did not effectuate a merger of the front and back lots, and that the Moreau Lot remains a “rear lot”, with a right of way that limited the rear lot to one use under Art. I § 6.D.3. The new easement cures the easement width problem identified in the ZBA Decision, but it not necessarily permit the new uses proposed due to ambiguity in Art. I § 6. D.3, and other provisions of the Zoning Ordinance. When the board reviews the new application it should determine whether Art. I §6. D.3 is applicable to this nonconforming rear lot which now has a right of way of sufficient width, and the consequences of such change upon the new uses requested.

<sup>4</sup> Article II § 5 requires all lots “must have a minimum lot width and a minimum lot depth so that a rectangle the size of the minimum lot frontage by the minimum lot depth as specified in Table 2 can be enclosed within the lot boundaries”, and Table 2 requires a “Minimum road frontage; of 100’ along a public or private road, except for lawfully created rear lots.) See, also, Art. I § 6.D.3. Rear Lots 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, and that all other relevant provisions of this Ordinance can be met.

<sup>5</sup> “Principal Use: The *primary* use to which the premises are devoted.”

<sup>6</sup> “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.”

<sup>7</sup> References herein to Art. I § 6. D.3 assume that the Moreau Lot was created prior to the Ordinance creating the nonconformity. I have requested the CEO and Clerk to advise as to the date that the rear lot was created, the date it was first built upon, and the date(s) on which the provisions requiring lot frontage along a public street, and those governing use of rear lots and their grandfathering (nonconformity) were enacted. Hopefully, these dates can be determined prior to a hearing on the merits, and once known, the board may be able to determine the applicability of Section 6 (Non-conformance) D.3. In the absence of evidence to the contrary, the board may presume that that the existing lot is a lawful nonconforming lot.

*prosecutorial discretion* whether before and after action by the board. The existing violations (reflected in outstanding stop work orders issued) should not be a factor in how the board moves forward if the board determines that the Application will legalize the continuation of that existing use,<sup>8</sup> it will then be the province of the Select board to determine what penalty if any is to be paid for past violation(s.)

Respectfully submitted,

/s/

David A. Lourie, Town Attorney

Cc: Jill Cramer, Esq.  
David Silk, Esq.  
Selectmen

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<sup>8</sup> Article II § 4 Table I prohibits Automotive Body Shops in the VR District, but allows Auto, Rec. Vehicle, Small Engine Repair Shops, and Automotive Service Stations, subject to Site Plan Review, AND special exception permits for uses otherwise allowed. However, it 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.