

**TOWN OF NEW BOSTON
NEW BOSTON ZONING BOARD OF ADJUSTMENT
Minutes of 2019**

November 19, 2019

The meeting was called to order at 7:00 p.m. by Zoning Board of Adjustment Chairman David Craig. Present were Vice Chairman Ken Clinton, regular members Michael Dahlberg and Anthony Olivier and alternate member Wayne Charest. Also present were Zoning Board Clerk Nadine Scholes and Planning Coordinator Shannon Silver. Absent was regular member Doug Martin.

The Chairman opened the Public Hearing.

The Chairman noted that the minutes from the February 19, 2019, April 16, 2019 and May 21, 2019, meetings, need to be approved. He asked if the Board had reviewed the minutes and if there would be any changes. The Board did not have any changes to the minutes.

Ken Clinton **MOVED** to approve the Zoning Board of Adjustment meeting minutes of February 19, 2019. Michael Dahlberg seconded the motion and it **PASSED** unanimously.

Michael Dahlberg **MOVED** to approve the Zoning Board of Adjustment meeting minutes of April 16, 2019. Anthony Olivier seconded the motion and it **PASSED** unanimously.

Michael Dahlberg **MOVED** to approve the Zoning Board of Adjustment meeting minutes of May 21, 2019. Ken Clinton seconded the motion and it **PASSED** unanimously.

The Chairman noted that the Planning Coordinator, Shannon Silver, had explained that all applications would need to first be reviewed for potential for Regional Impacts. The Zoning Board determined that neither application would have potential for Regional Impacts.

KOHLER ENVIRONMENTAL, LLC (APPLICANT)
THE PETER A. MORGAN REV TRUST 12/22/87 (OWNER)
Application for Appeal from an Administrative Decision
Location: Greenfield Road
Tax/Map Lot #7/75
Residential-Agricultural "R-A" District

Present in the audience was Richard Kohler.

The Chairman read the public hearing notice. He explained that he does know Richard Kohler on a personal level but does not feel that his personal relationship would affect his ability to act impressionably on the application. He asked if anyone would

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prefer he abstained to prevent any conflict. There were no concerns with the Chairman acting on the application. Anthony Olivier noted that he was a direct abutter and recused himself. The Chairman asked if the applicant would like to proceed with only four voting board members. Richard Kohler said yes.

Richard Kohler explained that the 5 acre property is owned by Peter Morgan, Tax Map/Lot #7/75, located on Greenfield Road. The property has several hundred feet of frontage along the Class V and the Class VI portion of Greenfield Road. The appeal to the administrative decision is relative to the setbacks. The owner would like to take advantage of a accessory dwelling and given the position of the existing home and topography to the west he would like to construct the structure as close as possible to the right of way.

Richard Kohler explained that through discussions the 50' setback on a Class VI road was found to be a bit of a gray area. His intention for the hearing request was to seek clarification on minimum front setbacks on Class VI roads. He noted that per Zoning, on Class VI roadways frontage cannot be considered as legal frontage for subdivision or and/or minimum frontage for residential uses. He interpreted that if the frontage was located on the Class VI portion, would that be subject to the 50' setback requirement.

Richard Kohler noted that the Code Enforcement Officer / Building Inspector was unsure on how to interpret the rule himself and explained that the request for appeal is based on the ambiguity of applying the 50' front setback along roads that are not considered frontage, and that the setback, in such cases, should default to the 20' side and rear setback requirement so long as the minimum frontage requirement along the Class V portion is met.

Michael Dahlberg noted that he thought the standards under the Front Yard Regulations and Exceptions, Section 208.2, were clearly written, as follows, 'A. Any lot line contiguous to a street or road, including Class VI roads, is deemed to be a front lot line; except that, where a lot is a corner lot or otherwise has multiple lot lines continuous to a street, the lot shall be required only to have one front yard for the purposes of these regulations.' Michael Dahlberg believed that under this standard, the lot line in question, even though it is on a Class VI road would be deemed the front lot line and the 50' setback would be required.

The Board discussed further and recommended an application be submitted as a Variance because Class VI roads are included under the Dimensional Requirements standards in the Zoning Ordinance, Section 208.2. The Board noted that this application would be withdrawn without prejudice.

Richard Kohler thanked the Board for their time and recommendation.

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**PROLINE POWERSPORTS, LLC (APPLICANT)
636 NORTH MAST ROAD, LLC (OWNER)**

Application for Special Exception - Add Vehicular Sales to the existing Vehicular Parts & Service business

Location: 636 North Mast Road

Tax/Map Lot #3/150

Small Scaled Planned Commercial "COM" District

Present in the audience were William Lambert, abutter Audrey Anastasia and Police Chief Jim Brace.

The Chairman read the public hearing notice.

Michael Dahlberg disclosed that he had worked with William Lambert in the past but there is no connection with this particular property and/or application. There were no objections to Michael Dahlberg sitting as a voting member for said hearing.

William Lambert explained that he recently purchased the said property and was under the impression that the property was already approved for sales. He noted that he had no interest in selling cars or even motorcycles, he would like to sell side by sides, 4 wheelers, trailers and snowmobiles. William Lambert pointed out on the existing site plan where he would like to display the items for sale. The Chairman asked if any new structures would be added. William Lambert replied no. The Chairman questioned if historically sales had been conducted at this location. William Lambert said that the last owner had some sales but never had the units displayed for sale.

William Lambert noted that he had already contacted State DOT and they had come out to mark the setback for sales to be displayed on Route 114. Michael Dahlberg asked the Planning Coordinator if a Site Plan application would be required with the Planning Board. She replied yes, if the Zoning Board approved the Special Exception for the added use.

The Chairman asked how many units maximum would be on display for sale at any given time. William Lambert said that would depend on the success but estimated around 20 to 30 units.

Ken Clinton asked if the units would be new or used. William Lambert replied that all units for sale would be used.

The Chairman asked if any additional signage would be added. William Lambert said no.

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Ken Clinton asked if there are any existing violations on file for the existing property use. The Planning Coordinator, Shannon Silver replied no.

Ken Clinton noted that with going over the criteria for a Special Exception he believed that all the items were met on the application. He agreed that a Non-Residential Site Plan Review application would be required for the site specifics. Ken Clinton noted that the State would have the driveway requirements for the site.

The Chairman opened for public comment.

Audrey Anastasia, 614 North Mast Road, noted that she had lived in her home for 31 years. She went over her top 5 concerns, #1 - Noise, #2 - Wetlands, #3 - Light Pollution, #4 - Revenue, and #5 - Property Value. She noted that noise from the vehicles and motorcycles is extremely loud and had increased drastically over the past year. The police have been notified and involved. The Chairman asked how and when did the police get involved. Audrey Anastasia replied that she had notified the police because the noise had become a nuisance. The Chairman asked what the resolution was. Audrey Anastasia explained that there were no resolutions, the situation was handled through discussions. She continued with #2 - Wetlands, there could be some impacts on the wildlife found in the wetlands behind the property because there had been trees cleared. The Chairman asked William Lambert to speak on the tree clearing. William Lambert said that he had trimmed some limbs that were hanging onto the backside of his building but other than that he had not cut down any trees. Audrey Anastasia said that she still believed some trees had been cleared between her property line and the abutting property, she could never see the building before and now she can see it from her backyard. The Planning Coordinator noted that there is no woodland buffer shown on the current site plan but explained that there is an easement shown for the power lines and the power company can clear out trees at any time within that easement. William Lambert said that he had only trimmed some trees on the backside of the building and he was unsure about the tree clearing between the properties.

The Chairman asked the Police Chief Jim Brace to elaborate on the issues mentioned. Chief Jim Brace, 83 Styles Road, said that the police had been called numerous times and have had discussions. He noted that William Lambert had indicated he rented for 4 years from the previous owner but recently purchased the property in June. The Chairman asked William Lambert if he had total control over the property. William Lambert said he controlled the property for the last 3 years but before that there had been other renters because there are 3 units within the building. The Chairman asked if the police were called in the past 3 years. Chief Brace said yes, and the most recent conversation he had with Audrey Anastasia, around the end of September, early October. At that time he went and spoke with a woman named 'Janelle' regarding the concerns with the property. Chief Brace noted that he would be concerned mostly with the criteria

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that the use would not impact the residential properties in the area because there are test drives happening on the property, which Janelle confirmed that the units would be tested in the parking lot area in front of the building. Chief Brace noted that these test drives or possibly someone other than a customer was riding around on a 4-wheeler after business hours. He said that he lives in the area and he could hear the noise from his house on Styles Road. There are also burnout marks in the parking lot and out onto Route 114. There had been many issues from 2015 to present but there had been no formal complaint issued or ever brought to the Planning Board, these issues were handled through conversations, but the Chief was very concerned that the issues would only just continue and increase with sales.

William Lambert said that he was unaware of the abutters complaints and he would have stopped the excessive noise sooner, but there would always be some noise expected with the nature of the business. Whether a customer wants to test drive a unit before purchasing or a unit is in for service, he could not stop all the noise. The Chairman asked if there was an offsite testing area that could be used. William Lambert said no.

Audrey Anastasia continued with concern #3 - Light Pollution and noted that this has become a big issue with new LED lighting and she had to purchase new blinds/shades for her home to keep out the light from vehicles coming onto the property. She believed that the light pollution into her home would only get worse if an expansion were approved.

Next was concern #4 - Revenue, Audrey Anastasia noted that she was a writer and works from home but because the noise has become such a problem she cannot work from home any longer.

Finally #5 - Property Value, her property value could be impacted because there is no way that you can hang out outside and invite company over because the noise and profanity has become so loud and obnoxious.

Audrey Anastasia stated that her quality of life has already been affected by the business conducted next to her home and adding vehicular sales would for sure increase the issues that already exist.

The Planning Coordinator noted that there are 3 separate units in the building that are approved on the site plan, which unit B had been approved for RV Sales back in 1996 but not specific to where the units would be displayed.

Michael Dahlberg mentioned that the use is permitted with a Special Exception and the Zoning Board, along with the Planning Board would have the right to approve the use with conditions.

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The Chairman asked what the current hours of operation are. William Lambert replied Monday, Tuesday and Friday's hours are 9 a.m. to 5 p.m., Wednesday and Thursday 9 a.m. to 7 p.m. and Saturday 9 a.m. to 2 p.m. The Planning Coordinator explained that these hours are much less than what is approved on the current site plan, and different hours for all 3 units. Now that Proline is occupying the entire building, all the units could be combined into one unit on a new site plan with the same approved uses and hours of operation.

The Chairman asked if the property had any complaints and/or violations on file that the Board should know about. The Planning Coordinator said there had been a signage issue back when Ed Hunter was the Building Inspector but that had since been rectified.

Michael Dahlberg opined that the Zoning Board should separate the permitted use with the Special Exception approval and let the Planning Board work out the operation standards and any issues with the site plan. The Chairman respectfully disagreed with Michael Dahlberg and noted that he believed the Zoning Board had concurrent jurisdiction over the site operations. He said that the Board can address some of the issues without micromanaging the site plan.

Ken Clinton noted that the Zoning Board has jurisdiction over the Zoning Ordinance and reported violations to the Zoning Ordinance, he read 'Section 206.1 (C) Existing Violations. No permit shall be issued for a special exception for a property where there is an existing violation of this Ordinance unless the granting of the special exception will correct the violation.' He noted that the property does not have any violations. If the Zoning Board had issues with the operation the Planning Board will be able to restrict the use with the site plan approval and then if the property is not operating properly and has a violation issued, the site plan and special exception permit can be revoked.

Ken Clinton stated that he would be in favor of granting the special exception based on the criteria noted on the application.

Michael Dahlberg said he preferred to see an updated existing condition plan to be able to make a decision. This would clarify what is there now and if anything should be increased, (i.e. buffers) to protect the abutting residential properties.

Chief Brace asked if the site plan currently allowed vehicles to be displayed for sales on the front lawn because there are some units on display now and have been displayed throughout the summer.

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The Chairman asked William Lambert to explain why there are currently units displayed for sale. William Lambert replied that he was under the impression that the property was already approved for sales and his attorney told him that the site plan from 1996 did not restrict him to display in a specified area. The Chairman asked when did William Lambert figure out that he had to get a special exception for sales. William Lambert said that he was notified by the State when they sent the Town the confirmation that the property was approved for this use. The Planning Coordinator said that she could have signed off on the one unit approved for sales, but the existing site plan would not allow displaying units on the road, so William Lambert decided to come get the approval and combine all 3 units in the building into one unit. The Chairman explained that any units currently on display for sales should be removed immediately. The current site plan does not specify a display area and would not be allowed to display units unless the area is shown and approved on a site plan by the Planning Board. William Lambert said that his attorney, Thomas Quinn, had told him that he had the right to display units out on lawn after he reviewed the 1996 site plan, but he wanted to be in compliance and get the Town's approval on an updated site plan.

The Chairman closed the public hearing and entered into Board deliberations.

Ken Clinton said that he believed the applicant met the general provisions to be able to grant the special exception. He would like to propose some conditions but felt that the Planning Board could cover the specifics. He does not feel the existing conditions plan would be necessary to make a decision on the special exception.

Michael Dahlberg agreed with Ken Clinton but in lieu of an existing conditions plan the Zoning Board asked that the Planning Board be sure that buffers are required especially between the residential abutters. He also believed that test drives should only be allowed during certain times of the day. Anthony Olivier and Wayne Charest agreed that the Planning Board could determine the conditions.

The Chairman noted that he was not in favor of granting the special exception for expansion based on the question if the criteria is being met with the character of the area being affected and the fact there is already a problem with noise, granting the special exception would only increase the issues. The Chairman asked that there are specific conditions when the motion is made to protect the abutters concerns.

The Board discussed and agreed on the conditions with the approval of the special exception.

Michael Dahlberg **MOVED** to grant the Special Exception to add the permitted use for Vehicular Sales with the conditions below, to the existing Vehicular Parts & Service business, on property located at 636 North Mast Road, Tax

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Map/Lot #3/150, in the Small Scale Planned Commercial
“COM” District.

CONDITIONS:

1. The applicant shall forthwith apply for a Non-Residential Site Plan Review with the Planning Board, prior to a permit to operate the added use for Vehicular Sales being issued by the Building Department.
2. There shall be no test drives allowed before 9:00 a.m., Monday through Saturday, after 4:00 p.m., Monday through Friday, and after 1:00 p.m. on Saturday. No test drives shall be allowed at any time on Sunday.
3. There shall be no test drives, no running or testing of repairs and no parking of vehicles for sale allowed on the southeast side of the building, specifically between the abutting residential property, Tax Map/Lot #3/69.
4. There shall be a necessary suitable screening buffer demonstrated, maintained and shown on the Site Plan between the abutting residential properties to reduce noise and light glare.
5. The applicant shall demonstrate that no headlights from any vehicle can reach the abutting residential home and if this would occur, the applicant will need to install an additional suitable buffer.

William Lambert noted that it would be difficult to not allow test drives after a specific time and asked if test drives could be allowed during his normal business hours.

Ken Clinton amended condition 2. on the previous
MOTION as follows:

2. There shall be no test drives allowed before 9:00 a.m., Monday through Saturday, after 7:00 p.m., Monday through Friday, and after 2:00 p.m. on Saturday. No test drives shall be allowed at any time on Sunday.

Michael Dahlberg asked for there to be no test drives allowed after 6 p.m. on any day, he believed that was a standard time to stop business operations to protect residential properties next to commercial properties.

Ken Clinton amended condition 2. on the previous
MOTION as follows:

2. There shall be no test drives allowed before 9:00 a.m., Monday through Saturday, after 6:00 p.m., Monday through Friday, and after 2:00 p.m. on Saturday. No test drives shall be allowed at any time on Sunday.

Anthony Olivier seconded the amended motion and it
PASSED with a majority vote.

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The Chairman said that the special exception had been granted and the next step would be for William Lambert to submit a Site Plan Application with the Planning Board. William Lambert said that he would use Meridian Land Services to create the site plan and he would submit an application as soon as possible.

The Planning Coordinator noted that Nadine Scholes had done some research on surrounding town's fee schedules for Zoning Board applications. The Board had been provided the suggested increases for Zoning Board application fees. The application fee was increased from \$50 to \$125, added the fee for the public hearing notice and increased letter fee from \$8 to \$10 per letter. Increasing the fees would offset the cost to the Town. The Board agreed that applicants should be charged what it costs the Town to schedule the hearings, sending the abutters letters and notice in the local paper for an application with the Zoning Board.

The Planning Coordinator noted that the fee schedule should be part of the Rules of Procedure for the Zoning Board and a Public Hearing would be needed to adopt the increase for the application fees.

Michael Dahlberg **MOVED** to adjourn at 9:04 p.m.
Anthony Olivier seconded the motion and it **PASSED**
unanimously.

Respectfully submitted,
Nadine Scholes, Zoning Board Clerk

Minutes Approved: 1/21/2020