

**TOWN OF NEW BOSTON
NEW BOSTON ZONING BOARD OF ADJUSTMENT
Minutes of 2020**

January 21, 2020

The meeting was called to order at 7:00 p.m. by Zoning Board of Adjustment Chairman David Craig. Present were 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 were Vice Chairman Ken Clinton and regular member Doug Martin.

The Chairman opened the Public Hearing.

The Chairman noted that the minutes from the November 19, 2019, meeting, 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.

Wayne Charest **MOVED** to approve the Zoning Board of Adjustment meeting minutes of November 19, 2019. Anthony Olivier seconded the motion and it **PASSED** unanimously.

The Chairman questioned if the increased application fees would need to be accepted at a noticed Public Hearing. The Planning Coordinator, Shannon Silver noted that a Public Hearing would have been necessary if the application fees were included as part of the Zoning Board's Rules of Procedure, but the fees are only included in the Zoning Board Application Instructions. She explained that normally application fees are part of the Rules of Procedure as a standalone document but that was not the case and the Board could accept the fees without a Public Hearing being required.

The Chairman noted that he thought the revised application fee shown, \$200, was more than what he thought the Board had discussed. Shannon Silver and Nadine Scholes explained that the \$200 application fee included the \$125 for the application, plus the \$75 fee charged to publish the Public Hearing Notice in the local paper. The Planning Coordinator, Shannon Silver said the fees could be broken up and listed separately if the Board preferred.

The Chairman asked if the Board of Selectmen would need to first discuss, review and/or approve the increased fees. The Planning Coordinator, Shannon Silver explained that the Board of Selectmen could be notified that the application fees for Zoning Board applications had been increased but he would be in favor of increasing the fees since the current fees had not covered the actual cost to prepare and process an application.

The Chairman asked if the Board had any comments.

Michael Dahlberg said the current application fees are much lower than all other similar sized towns in the area. The Chairman said that he was in favor of the increased fees, they appear to be reasonable and if the fees are in line with other towns. The Board agreed to the increased fees.

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Michael Dahlberg **MOVED** to accept the increased application fees for all Zoning Board applications going forward. Wayne Charest seconded the motion and it **PASSED** unanimously.

**KOHLER ENVIRONMENTAL, LLC (APPLICANT)
THE PETER A. MORGAN REV TRUST 12/22/87 (OWNER)**

Application for a Variance

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. If anyone preferred he abstained to prevent any conflict, he would. There were no concerns with the Chairman acting on the application. Anthony Olivier noted that he was a direct abutter and recused himself.

Richard Kohler explained that the Board had suggested to withdraw the first application that was submitted without prejudice for 'An Appeal to an Administrative Decision' and apply for a 'Variance'. The 5 acre property is owned by Peter Morgan, Tax Map/Lot #7/75, and located on Greenfield Road. The Variance request is relative to the required front setback. The owner would like to construct an accessory dwelling structure, not attached and not to exceed 1000 sq. ft., proximally to the pre-existing, non-conforming, garage structure at the 20' side setback along the Class VI portion of Greenfield Road. The property has almost 250' of frontage along the Class V and over 500' of frontage located on the Class VI portion of Greenfield Road.

Richard Kohler noted that the Variance would be needed to allow the construction within the front setback under Article II, Section 208.4 & Section 204.4, for minimum lot requirements.

The Chairman asked if it were known when the existing, non-conforming garage was built. Richard Kohler was unsure. Michael Dahlberg believed the existing garage pre-dated Zoning, it already existed when the lot was surveyed back in 1987.

Richard Kohler read the application criteria required to granting a Variance, as follows:

This Application for a Variance is for the construction of an Accessory Dwelling unit on that portion of the subject property fronting on a Class VI Road as specified in Article II, Section 208.2, and, within the specified Front Yard setback per Article II, Section 204.4.

Facts in support of granting the Variance:

1. Granting the Variance would not be contrary to the public interest:

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The proposed use will be residential and consistent with other uses in the area pre-dating current Zoning. The proposed use will not be contrary to the public interest and granting the Variance will not unduly conflict with the objective of the ordinance to preserve rural character. There should be no diminution of surrounding property values.

2. If the Variance were granted, the spirit of the ordinance would be observed because:
Similar uses exist on abutting properties and the proposed structure will be consistent with those uses and the position of the structures within the subject & abutting properties. The proposed structure will be 'more nearly conforming' and less visible than the existing garage structure it is intended to relate to.

3. Granting the Variance would do substantial justice because:
It will allow the landowner to make improvements to his property in a way that most reasonable interact with the existing structure, are more nearly conforming and prevent the sprawling of development within the parcel.

4. If the Variance were granted, the values of surrounding properties would not be diminished:
The proposed use will be consistent with existing uses. The proposed structure will not create a nuisance, density or conflict with the spirit and objective of the ordinance.

5. Literal enforcement of the provision of the ordinance would result in an unnecessary hardship.

A. For purposes of this paragraph unnecessary hardship mean that, owing to special conditions of the property that distinguish it from other properties in the area.

1. No fair and substantial relationship exist between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

The objective of the ordinance is to preserve 'rural character'. Application of the provision in this unique circumstance provides no fair & substantial support of the intent. The proposed use will be within an obscured area from the public's view along the Class VI frontage of the subject lot.

-and-

ii. The proposed use is a reasonable one because:

The location of the proposed structure will be more reasonably placed proximal to the existing non-conforming structure to which it is intended to be associated with.

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B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only, owing special condition of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a Variance is therefore necessary to enable a reasonable use of it.

The juxtaposition of the existing garage structure, Class VI portion of Greenfield Road and associated drainage create a unique situation that preclude a reasonable alternate location for the proposed structure other than proximal to the existing garage structure to which is shall be associated. The proposed structure shall respect a 20' setback distance from the frontage on the Class VI portion of Greenfield Road and be more nearly conforming than the existing garage.

The Chairman asked the Board if there were any other questions or concerns.

Wayne Charest asked if it would be possible to obtain a driveway permit on the Class VI road. Richard Kohler explained that the existing garage has an existing driveway that would be used, with a walkway connecting the accessory building to the driveway.

Michael Dahlberg **MOVED** to grant the Variance, to allow the construction of an accessory dwelling, at the 20' side setback, along the frontage of the Class VI portion of Greenfield Road, for the property owned by Peter Morgan, Trustee, of The Peter A. Morgan Rev Trust 12/22/87, located at 118 Greenfield Road, Tax Map/Lot #7/75, in the Residential-Agricultural 'R-A' District. Wayne Charest seconded the motion and it **PASSED** unanimously.

There was not other business to review.

Michael Dahlberg **MOVED** to adjourn at 7:26 p.m.
Anthony Olivier seconded the motion and it **PASSED** unanimously.

Respectfully submitted,
Nadine Scholes, Zoning Board Clerk

Minutes Approved: 05/19/20