

**TOWN OF NEW BOSTON
NEW BOSTON ZONING BOARD OF ADJUSTMENT
Minutes of 2021**

1

2 **October 19, 2021**

3 The meeting was called to order at 7:00 p.m. by Zoning Board of Adjustment Chairman
4 David Craig. Present were regular members Michael Dahlberg, Anthony Olivier, Kenneth
5 Clinton, Alternate Lorraine McKim. Also present was Planning Coordinator Shannon Silver.
6 Absent was Wayne Charest.

7 **Approval of the minutes of August 17, 2021 unanimous.**

8 Chairman David Craig also reminded the Members that pursuant to RSA36:56 to make a
9 determination whether the nature and scope of any of the proposed applications might have an
10 impact beyond the borders of New Boston. He asked if anyone had any concerns about our
11 current application that we are going to be dealing with tonight, having regional impact or local
12 effects. Alternate member Lorraine McKim asked if it would be prudent to hear the second
13 matter first as it seems to be pretty straight forward. David Craig agreed, and said he would
14 withdraw the question regarding the first matter. David Craig stated that they have a letter from
15 Sean & Kristen Mitchell regarding an application heard a couple of months back, and asked if
16 the Mitchells were present.

17 David Craig opened the Public Hearing.

18 **LETTER RECEIVED FROM SEAN & KRISTEN MITCHELL, RE: CASE NO. 2021-3,**
19 **VARIANCE FOR THE BOARD'S REVIEW AND DISCUSSION.**

20

21 Present in the audience were applicants, Sean & Kristen Mitchell. David Craig stated if
22 he recalled they had required a plan. Applicant advised it was a survey of the property line.
23 David Craig stated what they granted was an approval with conditions that the approval was
24 granted for the replacement of an existing shed within the twenty foot set-back, the replacement
25 shed shall not be any closer to the property line than the existing shed, or at least five feet from
26 the property line, whichever is found to be greater. David Craig stated they did not have
27 accurate measurements as to where the existing shed was located. Applicant stated that he had a
28 measurement, but he believes it did not seem accurate to the Board. David Craig stated that the
29 Board granted the application with the specific condition that the Applicant was responsible for
30 having the property line surveyed, not the full property, just the property line and the distance to
31 the existing shed. David Craig asked if that has happened. The Applicant stated it has not, that
32 he has been trying to find land surveyors, and been told the job is either too small, or they are
33 understaffed, or it is going to cost around \$1500 to have someone come out. David Craig stated
34 that is what the Applicant outlined in his letter of September 2, the job was too small, the

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1 company is too busy, cost was out of his price range, or company was understaffed. David Craig
2 asked the Applicant what it was he was now asking the Board to do. Applicant stated he talked
3 to his neighbor. David Craig reminded the audience that they need everyone to identify
4 themselves so they have a good copy for the record. Applicant stated his name is Sean Mitchell
5 and he lives at 250 Middle Branch Road. Abutter Donnie ---- stated he lives at 244 Middle
6 Branch Road. Applicant stated he was hoping to find a different solution to the line, instead of
7 spending \$1500 to have it surveyed, and he figured with his neighbor they could work something
8 out and move on. Abutter stated he is right next door and he has absolutely no objection with the
9 Applicant having his shed, he stated it is on his property and he (Abutter) has the tree line in
10 between, and it effects him in no way whatsoever, and that he has no objections to his neighbor
11 putting the shed there. David Craig stated our concern is putting the shed where, that is what the
12 Board is trying to figure out, that they granted the application with a specific condition that the
13 Applicant be no closer than the existing shed, but we don't have an accurate measurement, which
14 is why we imposed the condition that we did, so you are asking us to waive that condition. The
15 Applicant stated that he is not asking that, he feels it was a fair assessment; he is just trying to
16 avoid the fee to have someone come out to survey it because it would be 50% of the cost of the
17 shed just to get a line surveyed while he and his neighbor are on good terms. Ken Clinton asked
18 if they could close for a minute, Chairman agreed. Ken Clinton stated there are two items here,
19 there is the request to amend the decision, but the other part is the procedure to consider, and he
20 stated he is not sure what the actual procedure is to properly have a discussion on changing the
21 condition of the variance the Board had granted, because it was subject to a particular condition.
22 Ken Clinton stated while he understands the request, and it may have merit, he doesn't know that
23 it is something they can have a conversation on and make a decision tonight. David Craig stated
24 without re-notice and without formal notice. Ken Clinton stated he appreciates the letter and
25 understands where the Applicant is coming from, by the same token we just can't have a
26 previous applicant who has a decision come in one month, six months, eight months down the
27 road, this is really an informal conversation at this point to see how to best handle your request,
28 he stated that he is not saying that he is for or against it, he is just saying that he doesn't know
29 how to best handle your request, that while a shed is a fairly small item, if it was a much larger
30 item he feels that the Board would not just have an informal discussion, that the Board can
31 consider the Applicant's letter but that he does not feel they can act tonight, Michael Dahlberg
32 agreed. The Applicant asked what would be the next step for him. David Craig stated the
33 Applicant would need to talk to Shannon about giving formal notice to everyone that is entitled
34 to formal notice, that it is almost like going back, not going back to the beginning but going back
35 procedurally to where they were the last time, he stated that he knows it is a lot of hoop jumping,
36 but that is what we need to do, and stated that it does not mean that we are okay with that, that he
37 remembers a lot of discussion and debate on this matter, and he will speak for himself only that
38 he is very reluctant to revisit a condition that was thoroughly discussed at the time simply based
39 on "it costs a lot more than we thought it might", and that he feels it is important to have accurate

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1 measurements for something like this, and without knowing where the existing shed is, and
2 having that documented before the existing shed comes down, he is personally not comfortable
3 with waiving that. David Craig advised the Applicant that he is welcome to go through the
4 process and formally notice everyone and that the Board will get him on as a formal Agenda
5 item, but advised the Applicant that he needs to give the Board some real substance on this. The
6 Applicant asked to be clear what the Chairman meant by substance. David Craig stated he did
7 not know, Michael Dahlberg stated that he did not know how they could grant a Variance on a
8 setback, on a dimensional setback to a property line without knowing where the lot line is, and
9 what the dimension to the shed is, he advised this is law, this is an ordinance, and they can't just
10 one day we're going to do this and the next day change our minds, this has to be across the board
11 for everybody, and one of the things we require is a certified plot plan. The Applicant stated he
12 understands and that he does not want to waste the Board's time, and he wants to be clear on
13 what the next steps are. Michael Dahlberg suggested he call a local surveyor to see if he can
14 come out and just take a couple of measurements on that line, based on the one that is already
15 there and give the Board a sketch. The Applicant asked if they knew of anyone that he had
16 worked with before, anyone locally, and Michael Dahlberg stated Earl Sanford, and that if the
17 Applicant can get that done quickly and easily he would not have to come back to the Board, that
18 it would be administrative, that Shannon would be able to look at the plan, see Earl's stamp, see
19 the dimension and say you're good to go, and that the Applicant could probably do that without
20 spending a lot of money. The Applicant thanked the Board and the Applicant and the Abutter
21 left the meeting.

22 David Craig stated they would now move on to the first item on the Agenda.

24 **MORGAN A. HOLLIS, ESQ. (APPLICANT/AGENT)**

25 **MICHAEL A. HALVATZES (OWNER)**

26 Application for a Special Exception for the removal of earth products

27 Tax Map/Lot #10/70-1

28 Residential & Agricultural "R-A" District

30 David Craig stated before they get into the merits of the case, he would like to go back to
31 the RSA 36:56 issues, and asked the Board if anyone had any concerns that this would impact
32 regional impact or cross town borders, as opposed to just local impact within the town of New
33 Boston. Michael Dahlberg asked if they could hold off on that until they look at the traffic
34 report. David Craig agreed. Ken Clinton advised at this time he needs to recuse himself as he
35 has a relationship with the Applicant, and the particular property. Michael Dahlberg advised that
36 in the interest of full disclosure, he actually looked at surveying the property for Mr. Halvatzes
37 when he was with his former company, and although he has not met Mr. Hollis in person he has
38 communicated by email dozens of times, and he has also done surveying work on the property to

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1 the east for Mrs. Strong and his realtor is in the northwest corner of the property. He stated he is
2 not going to recuse himself as he feels he can be independent and objective, that he has no
3 current jobs in the property, but wanted to state his relationships. David Craig stated he too
4 needs to make a disclosure, he saw a name on the list of surrounding properties in one of the
5 reports that is a personal planning client of his, a totally unrelated matter and he feels he can be
6 objective, and he is not going to recuse himself but wanted to disclose that. Michael Dahlberg
7 stated that they also do not have 5 members sitting, so the Applicant has the option of tabling the
8 hearing until there are 5 members sitting on the Board. David Craig stated he is sure that
9 Attorney Hollis is aware that whenever you have a smaller group your burden becomes that
10 much higher because you don't have much room with a dissenting opinions, so it's particularly
11 key when we only have 3 Board members, tonight we have 4, but he advised the Applicant that
12 he certainly has the option to continue this for a particular time if he would like to try to get a full
13 Board. The Applicant (Morgan Hollis) advised he wanted to continue. David Craig advised this
14 is an application for a Special Exception to allow earth removal, in accordance with Section
15 204.4 of the Ordinance and Attorney Hollis is here on behalf of Mr. Halvatzes, Tax Map/Lot
16 #10/70-1 in the RA District, and stated that this is not 155E permit, that is a separate procedure.
17 Attorney Hollis said that was correct. David Craig advised Attorney Hollis that they would let
18 him present his application and all the materials he has provided, and David Craig advised that
19 what they were going to do procedurally open this up to, once they hear from the Applicant they
20 will open it up to direct notice abutters who might have something they would like us to know
21 about this project or any concerns, or your support, one way or the other. David Craig also
22 advised once they do that they will make sure that the Board knows what they are looking at
23 here, and they will open it up for any more general comments, [HICCUP HERE IN THE
24 STREAMING] and then close the meeting for debate. [MORE BREAKS IN THE
25 STREAMING]...

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27
28 Present in the audience were the Applicant/Agent Morgan A. Hollis, Esq.

29
30 Applicant/Agent Hollis started his presentation identifying the property as Tax Map/Lot
31 #10/70-1 and is off of Lyndeborough Road, zoning is R-A, Residential-Agricultural, and is
32 approximately 45.5 acres of land. Applicant stated the entrance to the property itself if you were
33 heading from Rt. 13 down Lyndeborough Road, right now the bridge is under construction so the
34 brook that goes through there is immediately after the bridge, so up to a week ago you couldn't
35 get through there unless you went all the way around the other side, coming from Francestown
36 Turnpike. Applicant stated the property is vacant right now and consists of a varied topography,
37 and if you were to walk it you would notice a fairly significant hill area in the center of the
38 property and then slopes backward to the Piscataqua River, and the objective is to remove the
39 hill and level the area, and end up with his client's house on one part of it and then something

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1 else in the future, the rest of the property when it's done, so that is called excavation of earth
2 materials, and under your ordinance if you want to excavate earth materials in the RA Zone you
3 can do so as a permitted use but you must obtain a Special Exception first from this Board.
4 Applicant stated so they start off that it's permitted but they need to meet certain criteria, and his
5 job tonight is to convince you that we have met all the criteria. David Craig then stated to the
6 Applicant that he saw something in the hydrogeologic evaluation that caught his eye, and asked
7 the Applicant did he see correctly that this property is subject to an Overlay District. Applicant
8 stated that it is in an Overlay District, but he believes it is the Planning Board that makes the
9 decision if that applies. David Craig stated that is what he wanted to know, because when he
10 looked at the Overlay District in preparing for this, the excavation of earth materials is
11 prohibited. The Applicant stated if it is deemed by the Planning Board to be in the Overlay
12 District. David Craig stated what he saw in the report is that there is a recommendation that it
13 not be deemed to be in the Overlay District. The Applicant stated they would have to go there
14 (Planning Board) and if they do not decide in their favor they would have to come back to the
15 Zoning Board for a Variance, but the first step is to see if they can excavate materials. David
16 Craig asked the Applicant if the Overlay District is, according to our current Ordinance is this
17 property in that Overlay District. The Applicant stated that theoretically it is capable of being
18 subject to the Overlay District, which he understands is determined by whether or not it is in an
19 aquifer impact area, and that is why they had the hydrogeological study done, to determine if it
20 does in fact impact the area, and so the determination gets made by the Planning Board. David
21 Craig stated that is where he is a little confused on the procedure, he stated right now this is
22 designated as part of the Overlay District, and so what the Applicant is asking to do is prohibited
23 in the Overlay District unless you convince the Planning Board that it shouldn't be in the
24 Overlay District. The Applicant agreed. David Craig then stated that it strikes him that the
25 Applicant should be in front of the Planning Board before the Zoning Board. The Applicant
26 stated that is a determination that only the Town can tell us, his view when he was approached
27 about the application was that if they can't get a Zoning Special Exception then the process of
28 going to the Planning Board where you would normally present your site plan, your subdivision
29 plan, in this case it's going to be a proposal to subdivide it as well into two lots, you wouldn't do
30 all that engineering work until you knew whether or not you could excavate. David Craig stated
31 his concern is that when they have two ordinance provisions, one that would allow something
32 and one that prohibits it, you're asking us to address the Special Exception, but even if they
33 granted the Special Exception what you're asking to do is prohibited by the Ordinance, and in his
34 view he thinks they may have the procedure backwards. David Craig stated if the Applicant can
35 present his report to the Planning Board, and they determine that it either is or isn't in that
36 district that determines your next procedure, you're either here asking us for a Variance or you're
37 here asking for a Special Exception, it strikes him that even if they love everything presented
38 here tonight and grant the Special Exception it is still prohibited under the express terms of the
39 Ordinance, and that concerns him, he is not sure that he is comfortable doing a Special

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1 Exception. Shannon Silver advised that she feels it is a bit of a procedural hiccup, for the fact
2 that once the Special Exception is granted for this the next step is going to be going to the
3 Planning Board for a CUP Permit to excavate. David Craig asked about the CUP Permit.
4 Shannon advised it is a Conditional Use Permit, and the Planning Board is the regulator of earth
5 removal, they have certain earth removal regulations, the Applicant then needs to come to the
6 Planning Board and meet all that criteria to get the permit, without the permit they are not doing
7 anything. David Craig stated he understands that, but the Ordinance states this is prohibited in
8 this District, unless there is a determination that the hydrogeology suggests otherwise, and that
9 they could grant a Special Exception, the Planning Board could grant a 155E Permit, it is still
10 prohibited under the terms of the Ordinance until there is a determination that the Overlay
11 District doesn't apply. The Applicant stated that his view was that if in fact we needed to go in
12 that direction and the Planning Board said that they are going to determine that it is in the
13 Overlay District, then they would have to apply for both a Variance and a Special Exception, that
14 you can't just have a Variance in the Overlay and ignore the Special Exception, so in his mind he
15 was ticking off the Special Exception first, but that they are amenable to going either way with
16 whatever is comfortable for the Zoning Board. David Craig said he personally would like to see
17 this continued until you have a determination from the Planning Board or whoever makes that
18 decision because if they are going to have to hear a Variance request he would like to hear
19 everything at the same time. The Applicant asked if he could do an informal poll of the Board as
20 to their thoughts on the matter. David Craig asked the Board if there were any questions or
21 comments. Lorraine McKim asked for a further explanation of the Overlay District, David Craig
22 said he is not personally familiar with it, didn't even think of it until he read the report and saw
23 the Applicant had recommended that the Planning Board remove this from the Overlay District,
24 his first thought was what does the Overlay District allow and not allow, so he turned to page 34
25 of the Ordinance and went through the list and it said earth removal was prohibited, so we have a
26 recommendation that the Planning Board remove it from the Overlay District, but its prohibited,
27 so we could grant the Special Exception all we want, so unless and until the Planning Board or
28 whoever has that authority to hear that issue and make that determination he thinks our Special
29 Exception is irrelevant, and what Attorney Hollis is saying if they got a negative decision on that
30 they would probably have to come back here for a Variance, so he would just as soon have all of
31 the Zoning Board's process all at once. Anthony Olivier stated he prefers to hear it all at once,
32 Lorraine McKim stated she thinks it's premature to do this now. David Craig stated that is why
33 he raised the issue, and he didn't want to do that to the Applicant at the end of his presentation.
34 Michael Dahlberg stated that there are two things in our water resource conservation district, one
35 is the removal of a parcel or at least where the expiration is going to occur from the aquifer in the
36 Overlay District, and then 204.7-D Permitted Uses it does say expiration of sand or gravel,
37 except when conducted in accordance with the permit issued by or pursuant to 155E in the Town
38 of New Boston, Earth Removal Regulations, in a Conditional Use Permit, he thinks at a
39 minimum it needs to be removed from the groundwater resource conservation district. The

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1 Applicant asked if the Board would entertain a request to table this, and asked Shannon when the
2 Planning Board meets. Shannon stated the Planning Board will meet next Tuesday, and she may
3 be able to do something informally to have this discussion with them, as it would be part of the
4 CUP, they are not going to go through the CUP process first, because the Applicant does not
5 have the Special Exception. The Applicant stated that is why they went the Special Exception
6 first, if we can get on there and have a discussion. Michael Dahlberg stated that he thinks that
7 make sense as the Overlay District does exist, and he thinks they have to do that first. The
8 Applicant stated that is fine, and they may get a lead from them, he was asking that he can know
9 if they can table to a date certain, whether it would be one month out or two months out, rather
10 than reapply. Shannon stated the Planning Board meets next Tuesday, she will get the Applicant
11 on to have an informal discussion with them, and then the Zoning Board could table this until
12 their next regular meeting of November 16. The Applicant stated if they don't have an answer
13 by then he would write a letter requesting a further continuance, David Craig said he is available
14 for the next meeting on November 16. Shannon advised the Applicant the Planning Board is
15 October 29, and she would be in contact with the Applicant tomorrow to give him a better time
16 frame. The Applicant stated he is formally requesting a continuance. David Craig asked if
17 someone would make a Motion.

18
19 Michael Dahlberg made a **MOTION** to continue the matter to November 16 at our
20 regular scheduled meeting, Lorraine McKim seconded the motion, and it **PASSED**
21 unanimously.

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24 There was no other business to review, and the meeting adjourned at 7:27 p.m.

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27 Respectfully submitted,
28 Lorraine McKim

Minutes Approved:
November 16, 2021