

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

November 16, 2021

The meeting was called to order at 7:02 p.m. by Zoning Board of Adjustment Chairman David Craig. Present were regular members Michael Dahlberg and Anthony Olivier. Also present was Planning Coordinator Shannon Silver. Absent were Kenneth Clinton, Wayne Charest and Lorraine McKim.

Approval of the minutes of August 17, 2021 and October 19, 2021 unanimous.

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

MICHAEL A. HALVATZES (OWNER)

Application for a Special Exception for the removal of earth products

Tax Map/Lot #10/70-1

Residential & Agricultural “R-A” District

Chairman David Craig advised that they were continuing the meeting from October 19, 2021. David Craig stated this is an application for a gravel pit off Lyndeborough Road, this is a request for a Special Exception in the RA District, advised that they had started last time and got a bit way-laid by a mention in the hydrogeologic evaluation that this particular property was subject to an Overlay Zone Ordinance – Groundwater Resource Conservation District. David Craig stated that there are a whole bunch of requirements for properties in the Overlay District, and when the Board looked at the permitted uses and prohibited uses, what concerned him was that even if they grant the Special Exception, excavation is not permitted unless there is a corresponding 155E permit, conditional use permit, all issued by the Planning Board. David Craig stated he personally was uncomfortable granting a Special Exception, only to run into another provision of the Ordinance that says that even with the Special Exception it is a prohibited use, unless there is additional process. David Craig stated this Board made a request of the Planning Board to look at these issues, and we suggested that a Joint Hearing might be appropriate so that all this could be addressed at once. David Craig advised that he did watch the Planning Board meeting, he was not particularly thrilled with some of the comments that he heard at the meeting, particularly comments that were directed at this Board; he felt that was inappropriate. David Craig stated that his understanding was that the Applicant does not want to do a joint hearing at this time, simply because the cost involved in preparing the material for the 155E, that is his understanding. David Craig stated as he read further in preparing for this he noticed they also have another prohibition in the Overlay District that they run into, which is in Section F that says that if a use is allowed by Special Exception in the underlying district, our Board [the Zoning Board] must also, in written finding of facts, also determine some other things, and those are all

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1 laid out in that provision of the Ordinance found on Page 33 of our current 2020 Ordinance.
2 David Craig stated that in addition to those written findings of fact, there is a provision at the
3 very end of this that says “prior to rendering a decision on an application for a Special Exception,
4 the Zoning Board of Adjustment shall request from the Planning Board and the Conservation
5 Commission opinions as to whether the proposed use is consistent for the purposes of this
6 Article”. David Craig stated that is a mandatory provision on this Board; they may have their
7 opinion, they may think what they want, but before they can issue a Special Exception they need
8 separate input from the Conservation Commission and the Planning Board. David Craig stated
9 that he feels badly that the Applicant is getting bounced around before the Board, and that this is
10 a bit of a ping/pong game here; he stated he would simply say that they, as the Zoning Board, did
11 not write this, it’s their role to follow the terms of the Ordinance, and do their jobs and do what
12 the Ordinance requires us to do. David Craig advised that it is pretty clear to him that as he reads
13 this Overlay District as a whole that this is meant to be very restrictive, this is meant to have lots
14 of review from lots of people before this use can actually occur, if this was written with intent to
15 create lots of regulatory hurdles, mission accomplished. David Craig stated they can’t, even if
16 they were inclined to do so, they can’t issue a decision tonight, and stated that he is aware that
17 Attorney Hollis is very well aware of this, and that he [Attorney Hollis] could let them know
18 what he thinks procedurally should happen. David Craig asked Shannon if there was anything
19 else that the Planning Board wanted them [Zoning Board] to know about this. Shannon Silver
20 stated no, and advised that Applicant that they could forward with getting those opinions, and
21 then, if the Applicant so chooses, coming back; she stated what she can tell them is there are
22 going to be some changes made to the Zoning Ordinance that will go to Town vote in March,
23 and that of course, would have to pass, but that is going to be happening, so hopefully in the
24 future it prevents this type of situation from happening, and that she knows the Applicant is the
25 first one coming through this, the other pits were grandfathered in, they had to go through the
26 permitting process but did not have to come in as a new pit. Michael Dahlberg asked if they
27 submit to the Planning Board before the Zoning petitions are posted, they come with the old
28 regulations. Shannon Silver stated yes. David Craig stated Attorney Hollis will walk us through
29 this, and help us to better understand this, and walk us through what they [Applicant] would like
30 to do.

31 Attorney Hollis then addressed the Board, stating for the record his name is Morgan Hollis, he is
32 an attorney with Gottesman & Hollis, 39 East Pearl Street, Nashua, and he is representing the
33 Applicant, Michael Halvatzes. Attorney Hollis stated he believes the Chairman has captured
34 most of the concerns they [Applicant] have identified, they recognize they are the first applicant
35 under this process, and recognize that the Town is struggling just as they [Applicant] are, and
36 that we [Board and Applicant] are all trying to do the best they can, so they [Applicant] don’t
37 hold it against anyone here [Board], they [Applicant] just want to try and get a process going,
38 and his reading of it is that the Ordinance is set up to essentially allow a Special Exception,
39 provided they meet a series of conditions, and there are two categories, there is the Special

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1 Exception criteria, the general Special Exception criteria, and then there is the special criteria
2 under the Overlay District for Special Exceptions, so there are two different criteria you have to
3 meet, and then of course it says you can only do this as long as you are going to get conditional
4 approval from the Planning Board, so they would obviously have to go to the Planning Board
5 even if they got a Special Exception. Attorney Hollis advised that as David Craig mentioned
6 there is an unusual provision which requires under Section F that prior to rendering a decision on
7 an application for a Special Exception, “the Zoning Board shall request from the Planning Board
8 and the Conservation Commission opinions as to whether the proposed use is consistent.”

9 Attorney Hollis stated he would note at the end of the Section, which starts with, under F, it
10 starts with “in the case of any use which may be allowed under Special Exception in the
11 underlying Zoning District”, and that would be this use in the RA District, “it must be found by
12 the Zoning Board in written findings of fact four specific things”, he stated then it goes on to say
13 “the Zoning Board may require the Applicant for a Special Exception provide data or reports
14 prepared by a professional engineer or a qualified groundwater consultant to assess any potential
15 damage to the aquifer, the Zoning Board of Adjustment may engage such professional assistance
16 as it requires to adequately evaluate such reports”, and he stated then at the very end, “prior to
17 rendering a decision on an Application the Zoning Board shall request from the Planning Board
18 opinions.” Attorney Hollis then stated he feels it is not crystal clear as to the steps in the process,
19 but he thinks what they have [Board and Applicant] evolved to is the best process for the
20 Applicant is that they [Applicant] come to the Zoning Board, they submit an application for the
21 Special Exception, which they have done, that the Zoning Board receives the Application, and
22 then his opinion is before the Zoning Board hears it, or the Applicant presents it, the Zoning
23 Board sends it out to the Planning Board and the Conservation Commission to say we have this
24 Application before us, do you want to weigh in on your opinion, and that would allow them to
25 also say we’d like to hear from an expert, you all might decide you want to hear from an expert,
26 as is allowed in the previous paragraph, they [Applicant] obviously have their expert reports, but
27 that way the Application is in, it’s now being routed at the request of the Zoning Board to both
28 the Conservation Commission and the Planning Board for their opinion as to whether this use
29 that is presented in the Application and with all the various documents they [Applicant] have
30 submitted does, in fact, is, in fact, consistent with the purpose of the Article. Attorney Hollis
31 went on to say because if their opinions come back, that would be part of the record before you
32 [Board] and they [Applicant] of course would want to be heard on that, whether it’s good or bad,
33 and he thinks as mentioned before the Hearing started, to present it once, and then go out to the
34 Planning Board and Zoning Board, then present it twice after they [Planning Board] rendered an
35 opinion, perhaps with different Board members, he thinks it is probably an inordinate amount of
36 time to spend that the Zoning Board and the Applicant need to spend. David Craig stated that
37 Attorney Hollis just stated go out to the Planning Board and Zoning Board, did he mean the
38 Conservation Commission. Attorney Hollis clarified that it would go out to the Planning Board
39 and Conservation Commission and then back to the Zoning Board. Attorney Hollis then stated

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1 that what they would like to do is ask if the Zoning Board would send the Application, along
2 with the reports submitted, the plans submitted, out to the Planning Board and Conservation
3 Commission for their opinion in accordance with this Section. David Craig clarified before they
4 [Zoning Board] hear it for a Special Exception. Attorney Hollis stated so this would be
5 continued to a date certain again, and they would be back, hopefully at the next meeting, when
6 you get these opinions, he does not know when the Planning Boards meets between now and the
7 next Zoning Board meeting, but he leaves that to Shannon to work out, but he thinks they need to
8 set a date certain. David Craig clarified that the [Applicant] would like them to have formal
9 input from the Planning Board and the Conservation Commission, have that in front of them
10 while he [Applicant] makes his presentation on the Special Exception itself. Attorney Hollis
11 stated he thinks it only makes sense, and that then they can answer to that too, for example, if the
12 Planning Board stated we have the hydrogeological report, but we have questions about it –
13 A,B,C... if they knew that, then their [Applicant] expert could come forward and answer them,
14 and that goes to your [Board] ability to determine 1,2,3,4...so he thinks, as David Craig stated, it
15 was intended to have multiple layers, it just wasn't, because they [Applicant] are first, the
16 process wasn't particularly detailed, but he thinks now that they have all had an extra month to
17 go through this and heard from both bodies, he thinks we're all on the same page, so it would
18 their request of the Zoning Board that they table it to a date certain, and that you send it out to
19 both the Planning Board and the Conservation Commission for their opinions of fact by that date,
20 he stated he does not know whether...he asked Shannon if she knew when the dates for the
21 Planning Board and the Conservation Commission are. Shannon Silver stated Planning Board is
22 next week, and she thinks the Conservation Commission will meet again before the December
23 meeting here [Zoning Board], she feels the issue here is she thinks the December meeting falls
24 during when the Chairman is gone away. David Craig stated it depends on the date, which is
25 December 21, and he will be away. Discussion was held about it being Christmas week, and
26 having a short Board. David Craig stated the other thing that gives him pause is that Planning
27 Board and the Conservation Commission may need some time to digest reports and things like
28 that, he doesn't know how quickly they [Planning Board and Conservation Commission] are
29 going to be able to give them us [Zoning] their thumbs up or thumbs down on it. Attorney Hollis
30 asked when the January meeting is. David Craig stated the January meeting is January 18.
31 Attorney Hollis stated that this their request, and he is happy to answer questions, they are
32 prepared to go forward if the Board doesn't want to do that, but he thinks it makes the most sense
33 from everyone's perspective. Discussion amongst the Board members was that it made sense to
34 them to proceed as the Applicant stated. Michael Dahlberg remarked that on the plans that they
35 have in their possession now do not show any grading on what the tops of the berms would be,
36 final grades for the sound attenuation. Jim Metropoulos, Civil Engineer with -----, stated that
37 he could provide that information, what they have tried to do is put together information, they
38 have tried to tell a story to the Zoning Board in the form of phased plans and how this property
39 could be worked, he stated he would happy to do a revision to that with a couple of spot

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1 elevations in the phases, he advised one of the challenges in this process is that under 155E of
2 New Boston's regulations and under the State's regulations there are some very detailed plans
3 and that work has yet to be done, its storm water studies, grading plans, erosion control plans,
4 it's a lot of time and money to get to that level, and traditionally they don't spend that day one in
5 the Zoning process, that comes with the Planning process, but the gentleman has asked for some
6 spot elevations to help understand grades, he is happy to provide that in a revision to this Zoning
7 set, to kind of tell the story at this point, but clearly as we process through the process on
8 grading, on detail of erosion control, there would be all kinds of information. Michael Dahlberg
9 stated what he is looking for a couple of cross sections, they don't have to be anything that is
10 highly detailed, but just like three cross sections [at this point the engineer approached the Board
11 and Michael physically indicated what he was talking about on the plan], one for the Nick Strong
12 property to the east, across the river and opposite one of the houses there, that way we can see
13 where the house sits, he is not looking for any fine finished grades. Attorney Hollis stated some
14 idea of the height. Michael Dahlberg stated slope, trees, house, and he thinks it would behoove
15 the Applicant to have that to show the abutters, he said he can read plans, but he feels if you have
16 a cross section that shows A,B,C, and he thinks people can understand it better. David Craig
17 stated Mike may be able to read plans but he is not sure he can, so the more information you
18 [Applicant] can provide the better, and they [Applicant] know the drill, they [Board] are
19 concerned about noise, hours of operation, lighting, what equipments being used there, all the
20 normal things that go into a Special Exception, but now we have a Special Exception plus,
21 because of this Overlay District and the additional findings, anything you can give us that helps
22 better educate them about those things is most appreciated, and he understands the concern that
23 you don't want to spend all the money up front at this point in the process, but whatever they can
24 do to help them [Board] understand it is appreciated. Attorney Hollis stated that they are not
25 necessarily opposed to a joint meeting, one of his thoughts was that when they come back for the
26 next Zoning meeting, when they come back with all this information, if the Planning Board upon
27 their review of the Application feels it doesn't want to render an opinion until it hears
28 everything, there could be a joint meeting just for that purpose, it doesn't have to be a joint
29 meeting for the purpose we want approval on our conditional use at the same time as we get the
30 Zoning approval, because in order to do the conditional use they really have to go through the
31 full nine yards of plan and submission under the earth excavation permit process, and the 155E,
32 so he asked Shannon if she could relay that to the Planning Board and if they want to come to the
33 meeting or have a joint meeting, and maybe the Chairman would allow that. David Craig stated
34 he is all in favor of that, they had done joint hearings in the past, that they are a much more
35 efficient way of knocking several months off the process. Michael Dahlberg stated that is why
36 the Board [Zoning] came up with the suggestion last month. David Craig stated he is not sure
37 the Planning Board is fully aware of all the provisions of this Ordinance, because he didn't hear
38 any discussion at their meeting, and he got the distinct impression that they did not want to do a
39 joint hearing, they just wanted Zoning to hear our Special Exception, rule on it, then it would go

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1 to the Planning Board and Zoning is out of it, but he stated unfortunately that is not the way the
2 Ordinance is drafted. Attorney Hollis stated hopefully the next meeting Shannon will have a
3 discussion and they [Planning Board] will either have an opportunity to issue an opinion back to
4 you [Zoning] or they can come and there can be dialog at that point. Jim Metropoulos stated or
5 not, the way it reads you have to make the request, it doesn't necessarily mean they [Planning
6 Board] have to respond to it. Michael Dahlberg stated it says "we shall request", if they
7 [Planning] choose not to respond... David Craig stated he understands what Jim Metropoulos is
8 saying, but he would like a response, even if the response is we [Planning] would like more time,
9 he would like a response.

10 Michael Dahlberg made a **MOTION** to send a formal letter request to the Planning
11 Board and the Conservation Commission pursuant to the provisions of Section F under
12 Groundwater Resource Conservation District for their input, specifically their opinion as
13 to whether the proposed use is consistent with the purpose of this Article and would like
14 this opinion before the January 18 meeting of the Zoning Board, Anthony Olivier
15 seconded the motion, and it **PASSED** unanimously.
16

17 Michael Dahlberg made a **MOTION** to continue the matter to January 18 at our regular
18 scheduled meeting, Anthony Olivier seconded the motion, and it **PASSED** unanimously.
19

20 David Craig stated they are continued until January 18, and advised the Applicant that he feels
21 the burden the Applicant has is to educate the various Boards as to the details of this Ordinance
22 and what has to happen here, procedurally, and again, they [Zoning Board] does not write this
23 stuff. Attorney Hollis stated he understands that, and asked Shannon if she thinks it would be
24 appropriate for them [Applicant] to come to a meeting to present between now and January they
25 would be happy to do that, present what they are going to do so they [Planning] can see it, and
26 the same with the Conservation Commission, they may have enough stuff, but it seems to him
27 the Conservation Commission in particular may want to hear from them [Applicant]. Shannon
28 Silver stated she would expect they [Conservation] would want to attend that meeting in January,
29 so you can probably expect them.

30 Applicant thanked the Board and left the meeting.

31 There was no other business to review, and the meeting adjourned at 7:26 p.m.
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33

34 Respectfully submitted,
35 Lorraine McKim
36
37

Minutes Approved:
February 15, 2022