

**STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
Docket No. YOR-23-424**

ROGER K. MOREAU,

Plaintiff-Appellee

v.

TOWN OF PARSONSFIELD, MAINE

Defendant-Appellee

And

MICHAEL J. NELLIGAN,

Party-In-Interest/Appellant

**On Appeal from a Judgment of the Superior Court
(York County)**

**BRIEF OF APPELLEE
THE TOWN OF PARSONSFIELD**

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I. TABLE OF AUTHORITIES CITED

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II INTRODUCTION

Appellee the Town of Parsonsfield supports the Appeal filed by Party-in-Interest Michael J. Nelligan (“Nelligan”) from the Judgment of the Superior Court reversing the Decision of its Zoning Board of Appeals (“the ZBA”).

The Town played an insignificant part in the Superior Court proceeding as it believed that the ZBA’s Decision reversing the Parsonsfield Planning Board’s (“the Board”) approval of a new and second use sought Appellee Roger K. Moreau (“Moreau”) for his nonconforming lot would necessarily be affirmed.

The ZBA Decision merely enforced an *express limitation* in Parsonsfield Land Use Ordinance (“LUO”) Article I § 6.D.3 *to the single use* of lots non-conforming to *frontage requirements* in the zoning district in which they are located, where the Board had authorized an additional use of Moreau’s VR District Lot that lacked the 100’ of frontage required by the LUO. Although the 80B Record was voluminous, and Moreau raised many theories for *why* he should be allowed to use his non-conforming home Lot for more than accessory uses, the Town was surprised by the 80B Decision that his back lot, served only by a fifty foot wide right of way (giving it at most 50’ of frontage along Maplewood Road, *if* Moreau has the fee interest in Reed Lane) could be deemed *conforming*, where the *least frontage* required in any zoning district in the Town is a hundred feet.

This Brief is limited to the legality of the Board Approval of the *additional automotive repair shop use* of the Moreau Lot, non-conforming as to *frontage* (the only issue addressed by the ZBA, whose decision the Town requests that this Court reinstate.) The failure of the Board to address *a threshold issue* (the *limitation on Moreau's non-conforming lot to a single land use*¹ which was called to the attention of the Board to be addressed prior to the more complicated review of the Moreau site plan Application², and ignored by that Board.

Appellee Town's Brief therefore discusses only non-compliance of the Board's *change of use* Approval with LUO Article I § 5's Requirement of Conformity, and legal error in the 80B Decision, which deemed the Moreau Lot *conforming* when it did not meet the standard for frontage on a public road in the Village Residential District (or any other District) shown on Article II, Table 2.

Review for compliance with Article I (both as a practical matter, and as an issue of law) makes unnecessary consideration of the dispute as to the applicable

¹ **“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....”**
[emphasis added] See, Memorandum dated May 14, 2021 attached as an Addendum.

² The Town agrees with the arguments advanced in the Nelligan Brief (as to other errors in the Board site plan approval reinstated by the 80B Decision.) The Town concurs in Nelligan's Arguments that the approved site plan does not comply with the *standards* of LUO Article III, but is particularly concerned with the Court's substitution of Article III standards for a greater *frontage requirement* in Article II.

standard detailed in the Nelligan Brief, or technical error in the site plan Approval.³

The Town submits that consideration of error as to the Board's *site plan* Approval is a distraction where the unlawfulness of the group of additional new uses permitted in the District being authorized by the Board makes reinstatement of the ZBA Decision appropriate in a simple affirmation.

III PROCEDURAL HISTORY AND STATEMENT OF THE FACT

1. FACTUAL STATEMENT

The dual approvals by the Board legalized Moreau's on-going *automobile repair and small engine* activities, which use will be additional to Moreau's existing residential use of the Lot. The Approval noted that the new use was permitted in the VR District, but made no finding regarding the non-conformity of the Moreau Lot being non-conforming as to the *frontage* requirement (minimum 100' distance along a public road) of LUO Article II, Table 2 for the Village Residential District where the Moreau Lot is situated. There may be *some*

³ The Town will reference the 100' minimum *frontage* throughout this Brief, as there is no need for this Court to address whether Table 2 actually required 100' of frontage per use, in which case the Moreau Lot should have been required to have an additional 100' of frontage (i.e. 200'.) This clarification is necessary to avoid any claim of collateral estoppel should Moreau again seek to merge his back lot with the front lot, as he did in his first Application which failed due to failure of unity of title.

ambiguity as to this requirement created by the Note (and footnote to it) discussed hereinafter requiring construction under zoning rules promoting legislative intent to restrict the use of back lots without reasonable *frontage* on a public road to a *single land use*. The *frontage* required in the VR District is less than that required in any district listed on Table 2.

Article I § 5 of the LUO requires *conformance of all land use activities to the LUO*; prohibits approval of new or increasing non-conforming conditions; but allows the establishment of new uses in strict compliance with certain exceptions in LUO Article I § 6. The listed § 6 exceptions are designed (and limited to) avoiding taking claims depriving an owner of *all beneficial use* of any lot made non-conforming by inability to meet LUO requirements for use. It must be noted that the Moreau Lot already enjoys *a single family dwelling use* comparable to that enjoyed by Nelligan and other property owners in the District, whether their lots were conforming or non-conforming, so there is no taking claim or constitutional right involved in this Appeal.

The Parsonsfield Planning Board approved Moreau's Site Plan and Change of Use Applications together. While the automotive repair shop is a permitted use in the underlying Village Residential Zoning District, it is not allowed as a new and additional use of Moreau's non-conforming residential back lot. The Board's *findings and conclusions* do not explain why the new use on Moreau's non-

conforming lot conforms to the LUO, excepting that it was listed as a permitted use in Article II, Table 1 in the VR District in which the lot is situated. Nor did the Board address the Moreau Lot's nonconformity as to *frontage* required by Table 2.

A. 55-56

The ZBA reversed, finding the new use would constitute a second principal use of Moreau's *back, or rear lot*, which was non-conforming due to its lack of the required 100' of frontage on any public road⁴, and therefore not within the exception of Article I § 6.D.3 claimed by Moreau.⁵ A. 60-64 Although Nelligan requested it, the ZBA declined to review the Approved Site Plan, as unnecessary in view of its reversal of the approved *change of use*. A timely appeal resulted in a Rule 80B Decision reinstating the Approval on the basis that the Moreau Lot is conforming as to *frontage* as the LUO was construed by it.

2. PROCEDURAL HISTORY

⁴ Frontage, Road: The horizontal, straight-line distance between the intersections of the side lot lines with the road right-of-way. Road: **An existing state, county, or town way or a street dedicated for public use and shown upon a plan duly approved by the Planning Board and recorded in the York County Registry of Deeds.** Also, a road dedicated for public use and shown on a plan duly recorded in the York County Registry of Deeds prior to the establishment of the Planning Board and the grant to the Planning Board of its power to approve plans. The term "road" does not include those ways that have been discontinued or abandoned. (Parsonsfield Definitional Ordinance.)

⁵ LUO Article I § 6.D.3 is an exception to Article I §§ 5 and 6 which prohibit the creation of new nonconformities, including new uses of non-conforming lots.

The Town adopts the procedural history in the Nelligan Brief.

III STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Did the Board fail to require conformity of the use proposed for Moreau's non-conforming lot, as required by LUO Article I § 5?
2. Did the ZBA err in enforcing Article I § 6.D.3's limitation to a *single use* on Moreau's Lot which was non-conforming in *frontage*?
3. Did the Court apply the Rules of Construction applicable to zoning conformity in relying upon Article III site plan road construction standards to determine the Moreau Lot's conformity as to frontage in the VR District?

IV SUMMARY OF ARGUMENT

This Court reviews the Board's Findings and Decision directly under the same deferential standards for 80B Review, without deference to the ZBA or Superior Court Decisions.

The 80B Decision erred in borrowing road width standards from Article III to determine conformity to Article II requirements, and in failing to construe any ambiguity as to Article II standards required by the LUO liberally in favor of promoting conformity, and strictly against creating new nonconformity as to the Moreau Lot, as will occur if the 80B Decision is affirmed. The 80B Decision

apparently imported a 50' *frontage requirement*⁶ for the Moreau Lot (designed for Article III road construction) in *substitution* for the minimum *frontage* requirement of 100' in Article II Table 2 where Article III is designed to provide standards for development *additional to the minimum requirements* in Article II.

The 80B Decision creates a new non-conformity as to the use of the Moreau Lot not only with regard to the *frontage* requirements in the VR District, but throughout the Town. The 50' frontage deemed *conforming* is only half the smallest *frontage requirement* anywhere in the Town of Parsonsfield! See, A.87, Article II, Table 2 requirements of frontages of between 100' to 250' along public streets in every zoning district.⁷

The Board Decision ignored the Article I conformity issue after approving the site plan. The Board failure to consider conformity, including the *limitation* on the number of uses applicable to the Moreau Lot which is non-*conforming* as to *frontage* alone was reversible error.⁸ Moreover, any zoning ambiguity as to the

⁶ Even the possible 50' of frontage (where 50'-wide Reed Lane meets Maplewood Road) is *frontage* along Maplewood Road *if* there is merger between Reed Lane and the Moreau Lot, which is subject to substantial doubt.

⁷ If the logic of the Decision applied in future, it could effectively reduce all road frontage requirements in the Town as to non-conforming lots to 50', or allow multiple land use activities on any lot (large or small) with little road frontage throughout the Town. The reduction would be far greater if Table 2 is construed to establish *per use* minimums in each District, as argued by Nelligan.

⁸ The Moreau Lot has *at most* fifty feet (50') of frontage along Maplewood Road, where a minimum one hundred feet (100') of frontage is required in the VR

frontage required by Article II Table 2 by Moreau's new use must be resolved to promote conformity with required frontages in the VR District and throughout the Town.

As no exception to the conformity requirement of Article I § 5 applies, the Board lacked the power to approve Moreau's *change of use*, and the ZBA Decision reversing the Board Approval of a *new additional use* on Moreau's non-conforming back lot must be reinstated.

V ARGUMENT

Standard of Review

The Town adopts the statement in Appellant's Brief as to the standard of review in this Court. Although this Court reviews the Board Approval directly, Appellee Town's Brief necessarily addresses the erroneous conclusion of the Superior Court *that the Moreau Lot is conforming to the LUO*, and urges the Court to affirm the ZBA Decision where no deference is accorded either the ZBA Decision or the 80B Judgment, neither of which accorded the primacy due the

District. As the Moreau Lot is non-conforming as to *frontage*, *the only exception available* is limited to a single use. The automotive repair use approved by the Board is an additional, new, and second use of the non-conforming Moreau Lot, and is not within any exception of Article I § 6.

principle of Conformance due under Article I § 5 *promoting conformity* in applying and construing the LUO.⁹

Argument

The Board's erroneous approval first Moreau's *site plan, and then of his change of use* of his non-conforming lot, put the cart before the horse. A.55 The 80B review of the Board's Decision went down the same rabbit hole,¹⁰ and then considered an inapplicable *exception* before the Rule. The Town submits that the Rule 80B review gave short shrift to the conformity requirement in reaching the erroneous conclusion that *the constraints in exception sub-§ 6.D.3* (limiting use of the Moreau back, or rear lot) were irrelevant, *but not because Moreau was seeking*

⁹ One could speculate as to whether, had the Board or the Superior Court used Article I § 5 (and the preamble to Article I § 6) as their starting point in considering the appropriateness of the new and additional use was proposed for the Moreau Lot, which lacked the 100' minimum frontage specified by Article II, Table 2 (considered to be non-conforming as to frontage), either the Board, or the reviewing Court would not have fallen into the trap set by Moreau's dual applications for site plan and change of use approval in that order into which they fell. Had they not first considered Moreau's technical compliance with LUO Article III site planning requirements, before considering the threshold issue of whether a new principal use could be added to Moreau's existing residential use of his non-conforming lot in light of LUO Article I's requirement of conformity to the 100' dimensional requirement of Article II, Table 2 governing uses in the VR District.

¹⁰ See, Decision [III Discussion of the Applicable Ordinance Provisions:] "The parties principally dispute which provisions of the LUO govern the site plan application for 26 Reed Lane, including **(1)** what is required of the access road and **(2)** whether the LUO's nonconformance provisions apply." (A.19)

a prohibited second use, but because the Lot was *conforming*, although it was still lacking the minimum 100' of *frontage* along a *road*, as defined in Appendix A.

A.22¹¹

There may be some ambiguity (as to the requirement of *frontage*) created by the Note in Article II, Table 2 (Dimensional Requirement's) inclusion of *private roads*. Ambiguity also exists due to Table 2 (footnote #3's exception for *rear lots*, which the Moreau Lot may or may not be.) Additional ambiguity may have been injected by the use of the *undefined* term *rear lot*, as used in LUO exceptions, and the conflicting definitions of *road*, *right of way*, and *frontage* in LUO Appendix

A. Definitions A.116 - 119:

Frontage. Road: The horizontal, straight-line distance between the intersections of the side lot lines with the road right-of-way.

Right-of-way: All public or private roads and streets, state and federal highways, private ways (a/k/a public easements), and public land reservations for the purpose of public access, including utility rights-of-way.

Road: An existing state, county, or town way or a street dedicated for public use and shown upon a plan duly approved by the Planning Board and recorded in the York County Registry of Deeds. Also, a road dedicated for public use and shown on a plan duly recorded in the York County Registry of Deeds prior to the establishment of the Planning Board and the grant to the Planning Board of its power to approve plans. *The term "road" does not include those ways that have been discontinued or abandoned.*

¹¹ The Decision recites Article I § 5, discusses one of its exceptions before concluding that Article I, and its exceptions and their limitation to a *single use* of the Lot are irrelevant, because *the Moreau Lot was conforming!*

Despite these ambiguities, legislative intent is clear, and the ambiguities are all resolved against Moreau's second principal use of his lot, and in favor of promoting conformity pursuant to the *special rules of construction* governing zoning ordinances adopted by the Law Court in Town of Windham v. Sprague, 219 A.2d 548 (Me. 1966.) That case, and several thereafter quoted from 101 C.J.S.

Zoning § 182:

"The spirit of the zoning ordinances and regulations is to restrict rather than to increase any nonconforming uses, and to secure their gradual elimination. Accordingly, **provisions of a zoning regulation for the continuation of such uses should be strictly construed, and provisions limiting nonconforming uses should be liberally construed.**" [emphasis added]

Accord, Day v. Town of Phippsburg, 2015 ME 13, ¶ 15, 110 A.3d 645¹², and cases too numerous to list.

Article I §§ 5 and 6¹³ of the LUO appear in most, if not all Maine zoning ordinances expressly or implicitly, requiring agencies and the courts

¹² ¶15] "To resolve this ambiguity, we consider relevant zoning objectives and the purposes served by the inclusion of grandfather clauses in zoning ordinances." **The policy of zoning is to abolish nonconformi[ties] as speedily as justice will permit.** *Town of Windham v. Sprague*, 219 A.2d 548, 552-53 (Me. 1966). In light of this policy, zoning provisions that restrict nonconformities are liberally construed, and **zoning provisions that allow nonconformities are strictly construed.**"

¹³ **Section 5. Conformity Required** Except as hereinafter specified, 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

to promote *conformity* in their administration and construction of their zoning. Approval of Moreau’s increase in the nonconformity of his Lot (by adding a second use) is barred not only by the Article I Section 5, but also by **the preamble to LUO § 6** list of exceptions, which provides that “**a non-conforming condition shall not be permitted to become more non-conforming...**”

The Moreau Lot is Non-conforming as to Lot Frontage.

The Board made the following factual findings, to which deference is accorded in this 80B proceeding:

“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 Town’s 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). [Emphasis added]

altered except in conformity with all of the regulations herein specified for the district in which it is located, unless a variance is granted. All lots created shall be in conformity with all regulations herein specified for the district in which it is located. **Section 6. Non-conformance** It is the intent of this Ordinance to promote land use conformities, except that non-conforming conditions that existed before the effective date of this Ordinance or amendments thereto shall be allowed to continue, subject to the requirements set forth below. Except as otherwise provided in this Ordinance, a non-conforming condition shall not be permitted to become more non-conforming.

The Board noted that: “Auto, Rec. Vehicle, Small Engine Repair Shop” is among the permitted uses in the VR District. However, the Board made no finding of fact to which deference is applicable, as to whether “Auto, Rec. Vehicle, Small Engine Repair Shop” could be added as a second principal use of the Moreau Lot. The ZBA’s appellate review dealt only with whether the second use was within the only arguable exception to § 5 (as everyone believed the Moreau Lot non-conforming as to *frontage* per Table 2 prior to the Rule 80B Decision.)

The Town submits that the Rule 80B Decision is mistaken, and that LUO Article I § 5 controls in the absence of an applicable § 6 exception.¹⁴

LUO Article I § 6.D.3 is the only exception arguably applicable to the Moreau Lot to the blanket prohibition on the creation or extension of non-conformities in Article I §§ 5 and 6, although the limitation to *a single use*

¹⁴ The 80B Decision quotes Article I, Section 5, but holds it irrelevant because the Court mistakenly concluded that the Moreau Lot was or had now become conforming. (Decision is not 100% clear as to *why*. At the risk of speculation, in light of the intentionally voluminous 80B Record, the Court may have been confused after reviewing Moreau’s improvement of Reed Lane meeting disputed Article III standards, and Moreau acquired the fee in Reed Lane. Confusion may have been due to Reed Lane’s width, or the creation of the *pot handle lot* discussed *infra*, or otherwise.) The Board made no finding regarding the conformity requirement. While the absence of such finding might otherwise have justified remand to the Board, no remand *is required* where the 80B Record contains no evidence that could have supported a finding of conformity, and the Town has no wish to see another ping pong match between its Boards for unnecessary findings.

necessarily excludes Moreau's new second use, and would seem to put Board Approval of the Moreau application for *change of use* beyond the power of the Board to grant, although there may be some ambiguity due to the use of the undefined terms *single use* and *rear lot*.

The limitation to a single use (in the Article I § 6.D.3 *exception*) is central to that exception, and must be given effect. (Compare the absence of a definition of the term *single use* in the LUO Appendix A, to the definition of the term *principal use*¹⁵), and the use (and non-use of *single use* and *principal use* elsewhere in the LUO, especially Article I sub-§ 6.D.2) reflect the intentionality and centrality of the limitation to a *single use* in Article I sub-§6.D.3.)

The *Town of Windham v. Sprague Rule* requires that limitations on exceptions to conformity must be *broadly* construed. This limitation is consistent throughout those LUO provisions governing changes in non-conforming use.

Exception § 6.B.3 governs exchanges and changes in non-conforming uses.¹⁶ However, the § 6.B.3 *exception* implies the replacement of a single use with a different single use - consistent with the § 6.D.3 *exception* to a *single use*.

Moreau's so-called *change of use* does not include a swap. Moreau does not plan

¹⁵ "Principal Use: The primary use to which the premises are devoted." A. 119

¹⁶ "3. Change of Use An existing nonconforming use may not be changed to another nonconforming use **unless the proposed use is equally or more appropriate in the district than the existing use....**" A. 76

to eliminate his *single* family dwelling use, only to add his new use to it, *as a principal and not an accessory use to his home*. Thus, the *single use limitation* in the exception is applicable. The Court should note that this limitation is part of the general scheme of limitation on back lots and other exceptions to the Rule of Conformity, which limitations are to be read broadly in favor of promoting *conformity*. See, Gensheimer v. Town of Phippsburg, 2007 ME 85 [12], 926 A.2d 1168, where the Court reiterated the general rule:

“Non-conforming uses are subject to separate and more stringent land use standards than are permitted uses. Section 12 of the Ordinance is entitled "Non-conformance," and sets out in its purpose subsection that "[i]t is the intent of this Ordinance to promote land use conformities, except that non-conforming conditions that existed before the effective date of this Ordinance shall be allowed to continue, subject to the requirements set forth in this section."

The Town urges this Court to reinstate the Decision of the ZBA (reversing the planning board approval of Moreau's change of use) which had allowed Moreau to add a new commercial land use to this non-conforming residential rear lot which continues to lack street frontage.

The Court's reasoning as to *why* Reed Lane or the Moreau Lot is in conformity with the required *frontage* in the VR District is somewhat unclear, as the Rule 80B Decision spends more time discussing the exceptions to the conformity rule, than on the Rule itself, which it finds inapplicable, but depends in

part for its construction of the LUO upon its construction of the term *rear lot* in an exception which it determined to be inapplicable.

“This Court concludes that section 6, subsections D(3) and E of article I are not applicable in this case. Subsection D(3)'s plain language indicates it applies to rear lots with access roads that do not meet the minimum width requirements, and requires such lots to be used for a single permitted use. Whether Reed Lane is a "rear lot" under this subsection is ultimately irrelevant because, *as explained above, the right of way meets the minimum width requirements, and thus it is not constrained by subsection D(3).*”

Which minimum width requirements Reed Lane meets must be those in Article III (site plan) A.21-22.¹⁷ These requirements are discussed at the end of the Court’s site plan review and in the Nelligan Brief.

Article III was intended to amplify, and cannot modify or diminish dimensional requirements of Article II as the Article III standards will create new

¹⁷ “While the parties primarily dispute the applicability of section 6(A), and not whether Reed Lane meets the standards under that provision, this Court must also determine whether the Board erred in concluding that Reed Lane in fact met the requirements of section 6(A). Respecting Reed Lane's compliance with section 6(A), the Board found that the right of way (1) is fifty feet wide, (2) is an existing private way, (3) provides sufficient access to the lot, (4) has proper drainage ditches and culverts, and (5) provides sufficient turnaround space for emergency vehicles. (R. 762.) The site plan that the Board reviewed supports these findings. (R. 753-54, 761.) Moreover, it was reasonable for the Board to rely on the site plan to reach its conclusions. *See Ouellette*, 2022 ME 42, 1 20, 278 A.3d 1183. Therefore, according appropriate deference to the Planning Board's determination, this Court concludes that the Board did not err, abuse its discretion, or make findings unsupported by substantial evidence when it concluded that Reed Lane complied with section 6(A).”

non-conformities throughout the Town, where the 100' frontage required in the VR District is the smallest of the various frontages required in the various zoning districts listed in Article II, Table 2, which range from 100'-250' in length. *See*, A.87. The Decision will create new ambiguity and a new non-conformity on the Moreau Lot as *it will be deemed conforming* with a lesser frontage than every other conforming lot in the Town. That this conclusion is mistaken is inescapable. Moreau's Lot is subject to the 100' frontage requirement of Table 2. The Lot *is non-conforming*, and is subject to Article I, § 5 in the absence of an exception under § 6, which the Court found inapplicable (even without discussing its *single use limitation*.) This Court must reverse where zoning ambiguity as to *frontage* must be resolved against Moreau construction of the LUO Table 2, both due to the structure of the LUO as a whole, and to promote conformity with required minimum frontage requirements throughout the Town.

Whether Moreau's Lot is a *rear lot* or not, the 80B Record shows that neither Reed Lane, nor the original Moreau Lot, nor the merged *pot handled lot*¹⁸ has the required *frontage* on Maplewood Road.

¹⁸ In a prior applications for legalization, Moreau tried to make his lot conform to the 100' VR lot frontage requirement by merger of his back lot with the front lot. Moreau recently acquired the fee interest in the 50'-wide Reed Lane, apparently creating a pot handle lot. It is unclear whether this smoke and mirrors confused the Court where the handle of the pot is only 50' in width, and the VR District requires 100' of road frontage.

VII CONCLUSION AND STATEMENT OF RELIEF REQUESTED

The Board erred when it put the cart before the horse (first approving Moreau's Applications for *Site Plan*, and only later considered his proposed *Change of Use* A.157-162) The Board made no findings with regard to its non-conformity to VR frontage requirement of 100'.

The 80B Review of the Board's actions also looked first at Article II for permitted uses and Article III (Site Plan), and only later at Article I (Conformity) and its exceptions almost as an afterthought, thereby yielding a result contrary to the expressed intent of Article I § 5 of the LUO to prohibit new uses on non-conforming lots, except as expressly provided by the exceptions in § 6.

The Court need only focus on the fact that the Moreau Lot has only ½ the required frontage on Maplewood Road to conclude that the 26 Reed Street Lot is non-conforming; that reversal of the 80B Decision was incorrect in concluding that the Moreau lot is conforming; making it unnecessary to wade into the voluminous 80B Record detailing Moreau's attempts to legalize his new uses.¹⁹

The Moreau Lot lacks the required 100' of frontage on Maplewood Road in the VR District. The *change of use* allowing the additional *auto repair, etc.* is

¹⁹ This Court wisely refused to allow Moreau to enlarge the Appendix, which would have only muddied the issues, as it did in the Superior Court, as reflected in the voluminous 80B Record.

prohibited either by the *single use limitation* of sub-§6.D(3) and/or by Article I § 5.)²⁰

The Town asks that this Honorable Court reverse the Rule 80B Decision of the Superior Court, and instruct that Court to affirm the Decision of the Parsonsfield Zoning Board of Appeals,²¹ and dismiss Appellant Moreau's 80B Appeal.

Dated:

Respectfully submitted

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²⁰ "Except as hereinafter specified, 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....."

²¹ There is no need for a Remand by the Superior Court for additional findings, as the 80B Record is sufficient as to the facts, and reversal of the Board's Approval *for error of law* in approving Moreau's Change of Use. The Town is concerned that a further remand for action or findings by the Board may result in further ping pong between two independent statutory administrative boards.

CERTIFICATE OF SERVICE

I, David A. Lourie, Attorney for the Appellant in the above matter, hereby certify that I have forwarded on this same date or earlier to by mailing by First Class U.S. mail postage prepaid two (2) copies each of Appellants' Brief addressed as follows:

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ADDENDUM Memorandum of Town Attorney to Planning Board,
Threshold Issues dated May 14, 2021