STATE OF MAINE
SUPREME JUDICIAL COURT
Sitting as the Law Court

LAW COURT DOCKET NO. YOR-23-424

ROGER MOREAU
Plaintiff / Appellee

v.

INHABITANTS OF THE TOWN OF PARSONSFIELD
Defendant / Appellee

and

MICHAEL J. NELLIGAN
Party in Interest / Appellant

ON APPEAL FROM YORK COUNTY SUPERIOR COURT
DOCKET NO. AP-22-35

BRIEF OF PLAINTIFF / APPELLEE ROGER MOREAU

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INTRODUCTION

This case concerns Roger Moreau's ("Moreau") right to operate an automotive and small engine repair shop on his property located at 26 Reed Lane in Parsonsfield, Maine. Automotive and small engine repair shops are permitted in Moreau's district with site plan review. Michael Nelligan ("Nelligan"), Moreau's abutter, has opposed Moreau's permitting efforts since 2019. The parties have ping-ponged continuously between the Planning Board, Zoning Board of Appeals, and Superior Court for nearly five years. The Town has a long history with this project and these parties.

Nelligan most recently argued to the Board of Appeals that Moreau must expand and pave his pre-existing private road (Reed Lane), to change it from a 50-foot right-of-way with 15 feet of gravel surface to a 60-foot right-of-way with 30 feet of paved surface. The Planning Board twice concluded that Moreau does not need to expand or pave the roadway, and the Superior Court affirmed the decision of the Planning Board. That affirmance forms the basis of Nelligan's present appeal. Nelligan also argues that the Superior Court abused its discretion by permitting Moreau's appeal in the first instance and by including more materials in the record than Nelligan wanted.[1]

[1] Nelligan briefed a fifth issue involving collateral estoppel, which was not a basis for the Superior Court decision and is therefore not contested in the brief.

STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

Roger Moreau owns property located at 26 Reed Lane in Parsonsfield, Maine, also known on the Town of Parsonsfield Tax Maps as Map R19, Lot 44. (A. 55, 157, 162.) Moreau purchased the property in May 2012 with his wife, Jennie. (A. 182-83.) At the time, there was a small single-family residence on the property where he resided with his wife and children. (A. 157, R. 45.)[2] The parcel comprises approximately 12 acres and is in the Village Residential (VR) District (A. 157, 162.) When Moreau bought the property, it was accessed by a private right of way known as Reed Lane, the fee interest to which was owned by his abutter, Cynthia Wilson. (R. 18, 22.) Although the private way had been in existence as a gravel drive for many decades, "Reed Lane" was legally established in 1991 when the previous owner subdivided his land. (A. 182-83.) Reed Lane was originally undefined in width, (A. 190) but it is now a 50'-wide right of way / private road. (A. 41, 55.) Reed Lane currently serves two residences (Larry Tripp and Moreau's daughter)[3] and Moreau's automotive repair shop. (A. 41.) Reed Lane is approximately 500 feet long and leads from Maplewood Road to a dead end. (A. 41.)

[2] Citations to "R." are to the bound record on appeal submitted by the parties in the Superior Court in accordance with M.R. Civ. P. 80B. Reference is also made to videos of municipal meetings provided to the Superior Court beginning with "MVI_."

[3] Contrary to Nelligan's assertion, the property located at 478 Maplewood Road is not accessed by Reed Lane. (A. 41.) Harold Gilbert and Roger Moreau access their properties via driveways on Maplewood Road.

On June 26, 2019, at the behest of the Town, Moreau applied to the Parsonsfield Planning Board for Site Plan Review for an after-the-fact permit to operate an automobile, recreational vehicle, and small engine repair shop in the existing single-bay garage on the 26 Reed Lane property (as part of a home business). (A. 157-61.) Automotive and small engine repair shops are permitted in the VR District with site plan review. (A. 84.) In January 2020, the Planning Board denied Moreau's application on two grounds. (R. 21-22.) First, the Planning Board found that 26 Reed Lane was a "rear lot" under the Land Use Ordinance (LUO) because it was accessible only by a right of way that did not meet the width requirements (and therefore was limited to only a single use). (A. 78; R. 21-22.) The Planning Board also found that the Maine DOT required a permit for the change in use from residential to commercial, an expansion of the width of the right of way to twenty-two feet, and a paved entrance. (R. 21-22.)

Two months later, Moreau and his parents bought the abutting lot and fee interest to Reed Lane from his neighbor, Cynthia Wilson. She owned the "front" lot, also known as 570 Maplewood Road / Tax Map R19, Lot 42. (R. 41-42, 45.) Two months after that, in May 2020, Moreau reapplied for site plan review. (A. 162-77.) During the application process, Moreau acquired the required entrance permit from the Maine DOT for the operation of a commercial garage on Reed Lane. (A. 176-77; 185.) The DOT only required that the entrance or "curtain" be paved to a certain

width and did not require expansion of the right of way. (A. 176-77.)

As to the "rear lot" issue, Moreau argued to the Planning Board that he now had the required road frontage on Reed Lane because he was a common owner of the "front" lot and the "rear" lot (owning an undivided interest). (R. 40-41.) In September 2020, the Planning Board granted the application,[4] finding specifically that Moreau's purchase of the front lot gave him road frontage and finding specifically that Reed Lane was grandfathered from the Road Construction and/or Acceptance Standards set forth in the LUO. This was based in part on the advice of the Maine Municipal Association's legal counsel. (R. 46.)

On October 15, 2020, Nelligan appealed the decision of the Planning Board to the Zoning Board of Appeals ("ZBA"). The ZBA hears and decides administrative appeals from determinations made by the Planning Board on an appellate basis. (A. 107.) Nelligan cited many grounds for his appeal, but primarily the issue of whether Moreau's purchase of the "front lot" gave road frontage to the "back lot."[5] (R. 47-204; 211-21.) Moreau again argued that, as common owner of the front and back

[4] Rick Sullivan, Brendan Adelman, and Thelma Lavoie voted in favor. (R. 42.)

[5] Other issues on appeal included: that the Planning Board erred by treating the proposed repair business as a home occupation; that the Board erred in changing its determination that the property could now have two uses; that the CEO lacked certification and should therefore not have advised the Board regarding Moreau's application; that one of the Board members was ineligible to vote because she was not present for part of one meeting; that the Site Plan submitted by Moreau needed to be "to scale," and was not; and that Reed Lane needed to be expanded and paved. (R. 47-50.)

lots and fee owner of Reed Lane, he had the required road frontage.[6] (R. 205-10.) Nelligan urged the Zoning Board of Appeals to bifurcate the hearing upon advice of Town Counsel and only decide whether Moreau had the required road frontage based upon his purchase of the "front lot" and Reed Lane. (R. 211-15.) Ultimately, the Zoning Board of Appeals granted Nelligan's appeal because two adjacent lots with only one common owner but not identical ownership could not be treated as one parcel, so 26 Reed Lane was still limited to a single use under the LUO. (R. 222-49.) At that time, Reed Lane was still of undefined width. It therefore did not, by definition, meet any "width requirements." (A. 190-92.)

On February 22, 2021, Moreau resubmitted his application along with a "Site Plan and Private Way Plan of Reed Lane" by LaLonde Land Surveying, LLC, which showed the metes and bounds and location of Reed Lane and formally established it as a private road. (A. 178-93.) Shortly thereafter, Moreau submitted a Corrective Easement Deed (recorded in the York County Registry of Deeds in Book 18587, Page 502) confirming Reed Lane as a fifty-foot right of way with fifteen feet of gravel and a two-inch subbase, the minimum required under the "General Performance Requirements" Article II(6)(A) of the LUO. (A. 88, 190-93.)

Pursuant to Table 2 in Article II, Section 5 of the LUO, road frontage may be

[6] Moreau did not argue that the lots had "merged." (R. 232-37.)

established on a public or private road. (A. 87.) Moreau argued that 26 Reed Lane (Lot 44) was no longer limited to a single use under the LUO because the access road now *met* the minimum standards required under the General Performance Requirements. (R. 282-92.) Moreau asserted that a second use was now allowed because the LUO permits road frontage to be established on a private road, and because Reed Lane was established as a private road meeting the General Performance Standards set forth in LUO Article II, Section 6(A) (R. 276-97.)

Between March and July of 2021, the Planning Board held six meetings and accepted arguments and submissions from Moreau and Nelligan. (R. 269-470.) Nelligan was a vocal opponent to the project throughout. (R. 276-79; 305-67; 374-77; 380-87; 394-422; 448-70.) Nelligan argued, among other things, that the site of the existing garage / repair shop was too close to a neighbor's private drinking well in violation of 38 M.R.S.A. § 1393(1)(B)(3).[7] (R. 305-61.) To address this concern, Moreau agreed to re-site his automotive repair shop outside the 300-foot radius required by the statute at a location proposed by his surveyor, and he submitted a revised Site Plan and Private Way Plan.[8] (A. 193; R. 368-70.) Nelligan also alleged that a Planning Board member was biased, that the boundary survey that was

[7] This issue regarding the private well only became known when the survey was completed. (A. 193.)

[8] The original garage was lost to an accidental fire (from a spark from a wheel grinder) in the spring/summer of 2021. (R. 906.)

submitted was not signed and sealed, that the application was barred by *res judicata*, and that Reed Lane needed to be brought up to the industrial and commercial standards set forth in Article II, Section 6, Paragraph N and Table 5 of the LUO because the proposed new use was commercial in nature. (R. 305-49; 374-77; 400-22; 448-70.) Nelligan also repeatedly referred to Moreau's garage as "illegal" and referenced years' old stop work orders, arguing that they should preclude the Board from approving his application. (*See e.g.*, R. 375; 448-49; 482; *see also* Blue Br. 11-13.)

Moreau responded in writing to each argument made by his abutter. (R. 282-303; 362-66; 369-70; 381-87; 432-47.) Moreau reminded the Board that the MMA legal services Senior Staff attorney had already told the Board that Reed Lane did not need to be paved and expanded because (1) the LUO was not clear whether the industrial and commercial street standards applied to pre-existing rights of way, and (2) ambiguities are generally construed in favor of the property owner. (R. 435-36.) For these reasons, the MMA attorney was inclined to read the industrial / commercial standards as applying solely to new or proposed rights of way. (R. 435-36.)

On July 21, 2021, the Planning Board held a meeting at which it reviewed the application and submissions. (A. 194-98; R. 471-85.) The Board deliberated on the conditions of approval, and the Board heard argument from Nelligan's counsel that the project should not be approved because Reed Lane was not constructed to

commercial road standards (a sixty-foot wide right of way with a thirty-foot width of pavement). (A. 194-98; R. 472-85.)

Ultimately, the Planning Board granted the application again in a vote of four in favor, one against.[9] (A. 197-98; R. 472-88.) The Planning Board found that the proposed use would include a commercial auto repair business[10] and a residential dwelling. (A. 55-56.) It also found that the proposed auto repair shop was acceptable and in accordance with the Ordinance. (A. 55-56.) At the July 21, 2021 meeting, the Planning Board Chair specifically disagreed with Nelligan that the Ordinance required that Reed Lane be brought up to the commercial road standards. (A. 197.) However, the full board did not make such a finding or conclusion. (A. 194-98.)

On August 19, 2021, Nelligan filed his second appeal to the ZBA. (R. 489-580.) Nelligan appealed on approximately twelve issues—a mix of substantive, procedural, and due process issues. (R. 489-580.) His primary arguments, however, were whether the LUO required that access be provided by a 60-foot right of way

[9] Andy Yale, Allen Jackson, Sabine Beckwith and Thelma Lavoie voted in favor; Clifford Krolick abstained. (A. 198; R. 474-475.)

[10] Moreau does not operate an autobody shop, a used car shop, or a junkyard. (Blue Br. 11.) Nelligan's inclusion of years' old stop work orders in his Blue Brief (p. 11-12) serves only to cast aspersions on Moreau and were not properly for consideration to the Planning Board (or this Court) of the merits or legality of the use proposed in Moreau's application for an after-the-fact permit for an auto repair shop. Additionally, Moreau has not been operating his automotive repair shop without approval for nine years. (Blue Br. 13.) Moreau's project was approved by the Planning Board in the first instance on September 15, 2020. (R. 45.) It was approved by the Planning Board in the second instance on July 27, 2021 (A. 55.) It was re-approved by the Planning Board in the third instance on March 23, 2022. (A. 202.)

with 30 feet of improved surface and whether Moreau needed to subdivide 26 Reed Lane in order to have a second principal use. (R. 490.) The ZBA held a hearing on September 30, 2021, and both parties submitted both written and oral argument prior to and at the hearing. (R. 582-623; 626; meeting videos "21 09 30".) As to the road standards, Moreau argued that it was impossible to accept Nelligan's position because that would mean that no commercial uses would be allowed in the Town that were not accessed from a 30-foot-wide paved road. (Meeting videos "21 09 30" at 0:40:40-0:40:44.)

The ZBA voted to remand the matter to the Planning Board for further discussion on two issues. (A. 57.) Even though no facts had been presented to the ZBA by either party on this issue, the Board Chair was interested in whether the new garage had two bays or one. If it had two bays, ten parking spaces were required, not the five shown on the Plan. (A. 57; R. 488; 629; Meeting videos "21 09 30" at 0:53:14-0:53:20.) Second, the ZBA found "that the 50' right-of-way may not be consistent with the Town of Parsonsfield ordinances." (A. 57.) In its written decision remanding the matter to the Planning Board, the ZBA instructed that (1) the Site Plan "needs to be updated to show five (5) more parking spaces for the commercial two (2) bay garage; and (2) the Planning Board needs to further review the ordinances to determine if the 50' right-of-way is sufficient or if a 60' right-of-way is needed for new commercial use in the village rural district." (A. 57.) Before the

Planning Board could revisit the matter, Nelligan appealed to the York County Superior Court, which appeal was dismissed because the matter had not fully and finally been disposed of at the municipal level. (R. 672-82.)

Moreau submitted a new site plan showing five additional parking spaces, and the matter went back to the Planning Board in February of 2022. (A. 41; R. 683-88.) The Planning Board held a meeting on the remand on March 16, 2022. (A. 199-203.) Important to this appeal, the Board reviewed its prior decision from July 2021, as well as the ZBA decision from September / October 2021 remanding the matter back to it. (A. 199-203; R. 750-60.) The two issues on remand were reviewed, and the Board chair indicated that, indeed, the new Plan submitted by Moreau showed an additional five parking spaces. (A. 199; R. 750-60.)

The Board then addressed the issue of whether Reed Lane needed to be fifty feet wide with fifteen feet of gravel or sixty feet wide with thirty feet of improved surface. (A. 199-203; R. 750-60.) The Board chair directed the Board's attention to the "General Performance Standards" - Article II, Section 6, Paragraph A, Subsections 1 and 3 of the LUO, which provide that each lot must be provided with a right of access to the property from a public or private way and "all access roads new and existing must be constructed to a minimum width of twelve feet if serving one dwelling unit, and fifteen (15) feet if serving two or more dwelling units" and contain certain depths of gravel. (A. 199-200.) The Chair reviewed Article

II(6)(A)(4), which provides that all existing access roads need to be upgraded to the requirements in Subsection 3 for any new lot created. (A. 200-01.) The Board confirmed that Reed Lane was an existing 50-foot right of way, and 26 Reed Lane was identified as not being a "new lot" to which Subsection 4 applied. (A. 199-203.)

The Board then reviewed the "Street Design Standards" section that Nelligan identified to support his position. *See* Article II, Section N, Paragraph 4 (A. 200-02.) The Board determined that the industrial and commercial street design section did not apply, as the "application" paragraph of the street design section provided that the street design standards *only* "appl[y] to the construction and / or acceptance of new Town roads, streets, and ways and / or the major relocation or alteration thereof." (A. 89, 200, 202; R. 751.) The Board reasoned that, because Section N only "ha[d] to do with new subdivisions and new roads," and because Reed Lane was not a new street and not being changed, the industrial / commercial street design standards did not apply. (A. 200, 202.) The Board chair reiterated that he was looking at the LUO standards for existing roads and concluded that Reed Lane met the standards. (A. 200.) After additional discussion on the wording of the motion and findings of fact, the Board voted unanimously (3-0)[11] to stand by its original vote to approve the application as submitted with the same conditions as previously stated.

[11] Aaron Boguen, Andy Yale, and Allen Jackson voted in favor. (A. 202.)

(A. 58, 201-202; R. 750-52.)

On April 15, 2022, Nelligan filed his third appeal to the ZBA, presenting a smörgåsbord over a dozen issues for the ZBA's consideration.[12] In a written response, Moreau argued that the commercial street standards do not apply because (1) the commercial / industrial standards are in a section of the LUO that only applies to new roads and roads being offered for Town acceptance; (2) if the LUO is not clear on that point, ambiguities are to be construed in his favor (as the landowner) as advised by the MMA attorney; and (3) instead, the General Performance Standards apply, requiring only a fifteen foot wide gravel roadbed within a fifty-foot deeded right of way (R. 893-1004.)

On June 23, 2022, the ZBA held a two-hour and fifteen-minute public hearing, and both parties appeared and argued. (R. 1011-12; meeting videos MVI_0168, MVI_0169, MVI_0170.) Again, Nelligan's primary contention was that, because there was a new commercial use at 26 Reed Lane, the private road known as Reed Lane must be brought up to the industrial / commercial standards found in Article II, Section 6(N). (R. 806-24; Meeting video MVI_0168 at 0:03:04-0:14:57; 0:27:00-

[12] Issues raised by Nelligan in his third ZBA appeal included (1) that the Planning Board erred by not requiring Moreau to subdivide before approving site plan review; (2) that the Planning Board failed to consider all of the site plan review criteria; (3) that Moreau's application was barred by *res judicata*; (4) that a biased member was allowed to vote; (4) that due process was violated because an "uncertified" CEO advised the Planning Board; and (5) that the Planning Board erred in determining that the commercial road standards did not apply to an existing right-of-way because they only applied to streets within subdivisions. (A. 806-92.)

0:30:24; 0:34:00-0:35:37.) Moreau again argued that the commercial road standards in Article II, Section 6(N) are only applicable to the construction of new roads or roads being proposed for acceptance by the Town (per its own terms), neither of which was the case with Moreau's project. (R. 893-916; MVI_0168 at 0:14:57-0:25:45; 0:30:30-0:33:57.)

At a midpoint of the June 23rd meeting, the ZBA voted to grant the appeal as to one issue—determining that, in order for the permit to be granted, Moreau must bring the right of way up to commercial standards, and that the Planning Board erred by not requiring this. (A. 6, 10, 46-47; meeting videos MVI_0168, MVI_0169, MVI_0170.) On Moreau's urging, the Board then heard counsel for both parties argue several of the other issues presented in Nelligan's appeal. (A. 6, 10, 46-47; meeting videos MVI_0168, MVI_0169, MVI_0170.) When the Board decided to conclude the meeting for the evening, there were still issues identified in Nelligan's appeal that had not been presented or discussed. (A. 6, 10, 46-47; meeting videos MVI_0168, MVI_0169, MVI_0170.) Moreau asked the ZBA to be heard on all remaining issues because some of those same issues were contained in Nelligan's *second* appeal, which the ZBA had never resolved, and Nelligan simply copied and pasted them into his third appeal. (A. 6, 10, 46-47; meeting videos MVI_0168, MVI_0169, MVI_0170; R. 489-580.) Moreau sought to avoid those issues being "rinsed and repeated" in a fourth or fifth appeal.

At the end of the June 23rd meeting, the Board Chair queried, "do you want to return and just come back?" (A. 46; MVI_0170 at 0:15:00-0:15:05.) The members responded in the affirmative. (A. 46; MVI_0170 at 0:15:00-0:15:05.) The Town attorney stated that he would have a draft of the written decision for the Board to review shortly. (MVI_0170 at 0:15:05-0:15:10.) After the meeting adjourned, the ZBA secretary queried to the Chair, "so did you just reschedule to next month?" (MVI_0170 at 0:15:20-0:15:25.) He responded, "We're going to reschedule for. . . what's a good time?" (A. 10; MVI_0170 at 0:15:24.) The Board scheduled a second meeting on Nelligan's appeal on July 28, 2022. (A. 60.)

Despite the fact that the Board had "rescheduled" the meeting for July 28, 2022, the Town attorney circulated a draft decision on or about July 2, 2022. (A. 6.) Moreau and Nelligan submitted comments in the subsequent days (A. 6.) The draft was finalized shortly before the July 28, 2022 meeting. (A. 7.) Less than a week before the July 28, 2022 meeting, the Board posted an agenda. (A. 6.) The relevant portion of the Agenda read as follows: IV "Decision. (a) Chair and Board members review findings of fact; (2) conclusions." V. Chair signs administrative appeal form. (R. 1012.) Moreau submitted written objections to the proposed findings of fact at the onset of the July 28, 2022 meeting, alleging, *inter alia*, that several of the "findings" were either not supported by evidence in the record, were presented by the Appellant, or were not deliberated by the ZBA. (R. 1137-39.).

The Board reviewed Moreau's objections and the proposed findings of fact and conclusions of law drafted by Town counsel. (R. meeting video MVI_0176.) At the meeting on July 28, 2022, the ZBA adopted the findings of fact and conclusions of law (except for one non-substantive change), and reversed the Planning Board's approval of Moreau's application, concluding that a new business was required to have a 60' right-of-way built to commercial standards because there was a new commercial use, pursuant to LUO Article I, Section 6(D)(3) and E and Article II, Section 6(N). (A. 16; A. 60-63; R. meeting video MVI_0176.) And although not argued by any party, the ZBA also found that the auto repair business was not within the definition of accessory use to a residence, therefore the "Rear Lot" provision of the ordinance prohibited a second principal use. (A. 62.) Additionally, (again, although not argued by any party) the ZBA concluded that the "general structure of the LUO prohibits a second principal use of any lot (whether a rear lot or not)." (A. 62.) The ZBA concluded that the unheard issues presented in Nelligan's appeal (including an allegation of bias on the part of a Planning Board member and at least one alleged violation of due process) were in the nature of enforcement and were thus unappealable. (A. 63.) Moreau received the signed, written decision of the Zoning Board of Appeals on July 29, 2022. (A. 63.)

On August 2, 2023, Moreau submitted a written request for reconsideration to the ZBA pursuant to LUO Article VI, Section F alleging several errors, including

that the "rear lot" and "creating rear lots" provisions of the LUO were inapplicable and that two principal uses are, in fact, permitted by the LUO. (A. 64-67.) On August 4, 2023, the ZBA voted unanimously to deny Moreau's request for reconsideration, and Moreau received the denial on August 5, 2023. (A. 68.) The Board stated in its denial of Moreau's request for reconsideration that "the request was timely filed within ten (10) days of the signed decision." (A. 68.) On August 11, 2022, Moreau filed a Complaint for Review of a Governmental Action and a Motion for Enlargement of Time with the York County Superior Court because Nelligan and Parsonsfield took the position that the appeal was untimely. (A. 130.)

In his Motion for Enlargement of Time to File Appeal, Moreau argued that the appeal was timely filed because it was taken within fifteen days of the denial of his request for reconsideration pursuant to Title 30-A M.R.S.A. § 2691(3)(H), or, in the alternative, that there was good cause to extend the time period for filing the appeal pursuant to 30-A M.R.S.A § 2691(3)(G). (A. 45-54.)

The Superior Court granted Moreau's Motion to Enlarge, concluding that the appeal was untimely but there was good cause to extend the time for filing because: (1) at the June 23rd meeting, "the ZBA did not expressly represent that it was voting to dispose of all of the issues raised in Nelligan's appeal;" (2) the Town did not accurately inform Moreau in its denial of his motion to reconsider that the operative decision was the vote taken on June 23rd, and had Moreau not been misinformed, he

would have been within the forty-five day timeframe to file his appeal; (3) the actions taken by the ZBA following the June 23rd vote complicated the question of whether Moreau had notice of when the ZBA took action that triggered the appeal; (4) the Town "failed to provide Moreau a written decision within seven days of the ZBA's June 23rd decision, as required by Section 2691," instead sending it thirty-six days later; and (5) Moreau's appeal was filed only four days after the expiration of the forty-five day appeal deadline. (A. 5-11.)

Prior to the briefing deadline, a dispute arose between Nelligan and Moreau regarding the contents of the record, and the parties sought the Court's intervention. (A. 140-51.) Nelligan sought to exclude certain materials pre-dating Moreau's February, 2021 application. (A. 145-49.) Moreau sought to *include* relevant materials dating back to June 2019, when he first applied for Site Plan Review to the Town. He argued, *inter alia*, that the "record" comprised the entire Town file from when he first applied for site plan review in June of 2019; that the Court should have the benefit of reviewing the entire procedural history at the Town level (not some artificially excised portion of it); that his February 2021 application was a resubmission of his May 2020 application; and that typically when there are back to back submissions, the court has included previous materials as part of the record. (A. 140-44.)

The Superior Court ruled in Moreau's favor and permitted the inclusion of

select materials predating his February 2021 resubmission. (A. 12.) After briefing was complete, the Superior Court granted Moreau's 80B Petition (A. 13-27), and Nelligan timely filed this appeal. (A. 1.)

The Superior Court framed the dispute: "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.) The Court determined that "the plain language of the ordinance unambiguously provides that section 6(N) applies only to newly constructed roads or new acceptance of existing roads into the Town." (A. 21.) Additionally, the Court stated that if any ambiguity exists as to Section 6(N)'s application to Reed Lane, it "is resolved by the plain language of the overarching applicability of section 6: "[t]the following standards apply to all lots created and all land use activities undertaken." The Court concluded "that section 6(A), and not section 6(N) governs Reed Lane." (A. 21.) The Court also determined that the Planning Board did not err, abuse its discretion, or make findings unsupported by substantial evidence in concluding that Reed Lane was in compliance with section 6(A). (A. 22.)

The Superior Court also concluded that the provisions of the LUO applicable to "rear lots" and the creation of rear lots are inapplicable because (1) Reed Lane meets the minimum width requirements and is therefore not limited to a single use

and (2) Moreau is not creating a rear lot. (A. 23-24.)

Finally, with regard to Nelligan's argument that the Planning Board made insufficient findings of fact, the Court inferred from the record the subsidiary facts supporting the Board's conclusions because (1) the Board stated that Moreau's "proposed use was acceptable and in accordance with the Town of Parsonsfield Ordinances;'" (A. 56) (2) the Board also "made findings related to hours of operation, parking, hazardous materials storage, traffic, noise, and a decrease in the 'historical appeal;'" (R. 21-22, 45) (3) Moreau submitted a full boundary survey and geological surveys (A. 41, 186-87); and (4) the Board "had the benefit of counsel's detailed argument about each criterion in section 6." (R. 635-37, 729-38.)

The Superior Court held that the Zoning Board of Appeals erred in reversing the decision of the Planning Board and reversed the ZBA decision.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the Superior Court abused its discretion when it determined that there was good cause to grant Moreau's Motion for Enlargement of Time to File the Appeal.

2. Whether the Superior Court abused its discretion when it permitted the inclusion of materials in the Town file predating Moreau's February 2021 application for site plan review.

3. Whether the Planning Board correctly determined concluded that Reed Lane did not need to be brought up to commercial / industrial road standards.

4. Whether the Planning Board made adequate findings to support its grant of Moreau's application for site plan review.

5. Whether the Superior Court erred by determining that Nelligan was not collaterally estopped from raising the road standards issue on appeal

ARGUMENT

I. The Superior Court Did Not Abuse its Discretion when it Concluded that there was Good Cause to Grant Moreau's Motion for Enlargement of Time.

This Court reviews a trial court's decision on whether to grant or deny a motion for enlargement of time for abuse of discretion. *See Johnson v. Carleton*, 2001 ME 12, ¶ 10, 765 A.2d 571. *See also Tominsky v. Town of Ogunquit*, 2023 ME 30, ¶ 21, 294 A.3d 142 (stating, "we review the Superior Court's application [of the good cause exception] and apply an abuse of discretion standard to the court's determination of the existence of good cause and a clearly erroneous standard to the court's factual findings"). "The trial court's ruling is entitled to 'considerable deference because of its superior position to evaluate the credibility and good faith of the parties before it.'" *Dalton v. Quinn,* 2010 ME 120, ¶ 6, 8 A.3d 670 (citing *Gregory v. City of Calais*, 2001 ME 82, ¶ 9, 771 A.2d 383).

Title 30-A M.R.S.A. § 2691(3)(G) provides that the Superior Court may grant

extensions to the forty-five-day appeal period "upon a motion for good cause shown." The court can consider several factors when examining whether the good cause exception is applicable to a situation, including, whether the appellant received notice, the amount of time the appellant waited to file the appeal after obtaining actual knowledge, and whether the town violated its own ordinance. *Viles v. Town of Embden*, 2006 ME 107, ¶ 13, 905 A.2d 298. "Because the court uses its discretion in weighing the various factors and 'all the equities of the situation,' the abuse of discretion standard is the appropriate one to apply." *Id.* ¶ 11. The good cause exception exists "to ensure that justice is done when there are extenuating circumstances." *Brackett v. Town of Rangeley*, 2003 ME 109, ¶ 24, 832 A.2d 422.

Nelligan argues that the Superior Court erred when it found that good cause existed to permit Moreau's appeal, alleging that Moreau's confusion or simple lack of knowledge of *Beckford v. Town of Clifton* does not constitute good cause to file a late appeal. (Blue Br. 17-20.)

In this case, the ZBA and Town counsel *created* confusion as to when the clock started for an appeal by engaging in the following conduct: (1) continuing to hear argument from counsel for both parties on several of the more than a dozen issues raised in Nelligan's ZBA appeal *after* it had voted to reverse on the first issue (which occurred at a midpoint of the meeting); (2) concluding the meeting before all issues on appeal had been argued and deliberated, stating that the Board would

"return and come back" and "reschedule" the meeting for next month—which left the door open for advocacy regarding the remaining issues presented in Nelligan's appeal;[13] (3) stating in its August 5, 2022 decision denying Moreau's request for reconsideration that the request was "filed *timely* within *ten (10)* days" of the signed decision, pointing to the July 28, 2023 decision as the operative date; and (4) failing to provide its written decision to Moreau within the statutorily prescribed seven days.[14] (A. 10-11.)

For Moreau's part, he could have filed his 80B appeal within the deadline if the Town *had not stated* that his request for reconsideration filed on August 4th, 2022 was "timely." *See Brackett*, 2003 ME 109, ¶ 21, 24, 831 A.2d 432 (finding good cause when, among other things, the Town ignored the appellants' efforts to appeal the matter and violated its own ordinance as to process). Additionally, his appeal was filed a mere four days after the forty-five-day deadline. (A. 11.) *See Mad Gold LLC v. Sch. Admin. Dist. #51*, No. AP-17-34. 2018 Me. Super. LEXIS 27, at *7 (Feb. 2, 2018) (noting that, although the appellant did not appeal directly after he had

[13] Additionally, Town counsel sent a draft of the findings of fact and conclusions of law to Moreau's and Nelligan's counsel via email on or about July 2, 2022, and Moreau's counsel commented it in the following days. (A. 6.) *See Brackett v. Town of Rangeley*, 2003 ME 109, ¶ 21, 831 A.2d 432 (stating that the appellants did not spend the period between their notice of the town's decision "simply deciding whether to appeal and they *did* make their objections known to the town almost immediately").

[14] Article VI, Section 3(E)(4)(b) of the Town's LUO also requires the Town to mail or hand-deliver a statement of facts and conclusions regarding its decision on an appeal within seven days of that decision. (A. 110.)

received notice from the Town Manager, he "did not wait an inordinate time").

Unlike in *Beckford*, the ZBA here did not vote to grant Nelligan's appeal "in its entirety," resulting in a lack of clarity as to whether the ZBA was going to continue to hear argument and deliberate at its July 28th meeting. *Beckford v. Town of Clifton*, 2014 ME 156, ¶ 3, 107 A.3d 1124. Also unlike in *Beckford*, the ZBA here approved its written findings and conclusions thirty-six days after the vote, not *five* days after the vote. *Id.* ¶ 4.

Based on these facts and the factors set forth by this Court, the Superior Court concluded that the ZBA's actions and statements complicated "the question of whether Moreau had notice of when the ZBA took action that triggered the appeals period." (A. 10.) This Court should conclude that the Superior Court did not abuse its discretion when it determined that there was good cause to grant Moreau's motion to extend.

II. The Superior Court Did Not Abuse its Discretion when it Permitted the Inclusion of Materials Predating Mr. Moreau's February 2021 Application in the Record.

After a dispute arose between the parties regarding the contents of the record in the 80B appeal and submission of briefing by the parties, the Superior Court permitted the inclusion of materials in the record that were part of the Town's file but predated Moreau's February 2021 application.

Judgmental decisions, including procedural and evidentiary rulings, are

reviewed for an abuse of discretion or for "sustainable exercise of the trial court's discretion." *Bates v. Dep't of Behavioral & Development Svcs.*, 2004 ME 154, ¶ 38, 863 A.2d 890; *see also Stanton v. Strong*, 2012 ME 48, ¶ 8, 40 A.3d 1013. An appellant may demonstrate that the trial court abused its discretion if the trial court "exceeded the bounds of the reasonable choices available to it, considering the facts and circumstances of the particular case and governing law." *Sager v. Town of Bowdoinham*, 2004 ME 40, ¶ 11, 845 A.2d 567. Relevant here, "[d]etermination of the extent of the record needed on appeal must necessarily depend on the nature of the issues raised on appeal." *Springer v. Springer*, 2009 ME 118, ¶ 9 n.5, 984 A.2d 828.

Nelligan argues that the Superior Court "erred in deeming the record to include material that was submitted to the Planning Board in connection with Moreau's first and second site plan applications that was not otherwise resubmitted as part of the proceedings" in his February 2021 application. (Blue Br. 20-21.) Nelligan also alleges that, because the composition of the Planning Board had changed between 2019 and 2022, due process considerations are raised if new members of the Board make a decision that is not based on information in the record. (Blue Br. 21.)

The Superior Court did not exceed the bounds of reasonable choices available to when it allowed the inclusion of materials that *had* been submitted to the Planning

Board in conjunction with Moreau's applications in June 2019 and May 2020 (and were contained in the Town's file) but may not have been specifically *re*-submitted to the Planning Board as part of Moreau's February 2021 (re)application. Moreau's applications and supporting materials and arguments had been in front of the Parsonsfield Planning Board on a near-monthly basis since June 2019. Contrary to Nelligan's position, the "record" in this matter was the Town's file—all of it.[15] The record was not some excised portion of the Town file beginning on X date and ending on Y date. Failing to include relevant materials submitted through the course of this matter before the Planning Board would not have given the Superior Court an accurate and complete history of the project and the issues in the case as they were presented to the Planning Board over the three and a half years that parties were arguing their positions and from which the Planning Board made its findings and reached its conclusions.

Throughout the three-plus-year reapplication process, the applicant was the same; the property was the same; the request to operate an automotive repair shop was the same (although the garage needed to be rebuilt along the way and increased in size from a 627 sq. ft. garage with one bay to a 900 sq. ft. garage with two bays);

[15] Title 5 M.R.S.A. § 9059(4) provides: "*All material*, including records, reports and documents *in the possession of the agency* of which it desires to avail itself as evidence in making a decision, shall be offered and made part of the record. . . ." (Emphasis added.) Here none of the materials submitted to the Superior Court were "outside" the record.

several members of the Planning Board and ZBA were the same; and the dissenting abutter was the same. The Town had the benefit of over three years of submissions, site walks, hearings, and oral and written arguments on this single project. The Planning Board forewent a site walk and public hearing on the February 2021 application because it had already done two site walks and at least one public hearing.[16] (R.18, 45, 773, 911, 917, 920, 926.)

Had this been an application for site plan review for something besides the same automotive repair shop Moreau had been applying for or on a different lot, it would have made sense to limit the record on appeal to only those materials that were submitted as part of the new application. In this case, the Superior Court correctly included select materials germane to the appeal and to the project. The Superior Court could have reviewed *all* of the hundreds of pages submitted to the Planning Board and ZBA over the years because that is exactly what the Town had in front of it as it undertook its years' long review of Moreau's project.

Even *if* the Superior Court had abused its discretion in its inclusion of earlier materials, Nelligan does not identify anything that would have changed the outcome on appeal or identified any error that affected his substantial rights. Because there was competent evidence in the Town's record to support the Planning Board's

[16] The LUO does not require a site walk or public hearing for site plan review. (A. 97-106.)

findings (and therefore competent evidence in the record supporting the Superior Court's conclusions) this Court can determine that any error by the Superior Court was harmless error. *See* M.R. Civ. P. 61; *see also Shaw v. Packard*, 2005 ME 122, ¶ 13, 886 A.2d 1287 (stating "[a]ny alleged error of the trial court that does not affect the substantial rights of a party is harmless error and therefore must be disregarded").

Nelligan also raises a due process issue, alleging that, because the membership of the Board changed between 2019 and 2022, and the "new" members did not affirmatively state that they looked at the whole Town file, Nelligan's due process rights were violated. In support, Nelligan cites *Pelkey v. City of Presque Isle*, in which the court found a violation of due process because a board, without a meeting or hearing, issued after-the-fact findings of fact and conclusions of law after the court remanded. 577 A.2d 341, 342-43 (Me. 1990) At the time that board issued the findings and conclusions, only two of the members of the board had been present at the public hearing, and one of the three new members of the board had been a vocal opponent of the project. *Id.*

Unlike in *Pelkey*, here, the Board *held* meeting(s) after remand by the ZBA, and, although there were a few new members cycling in and out (including Moreau himself), some of the membership was the same almost the whole time. For example, one member of the Board, Andy Yale, was on the Board the entire time between June 2019 and March 2022 and voted to approve Moreau's application at least twice.

(A. 198, 202; R. 474-75.). Clifford Krolick and Thelma Lavoie were also on the Board between 2019 and 2021, and Thelma also voted to approve the application twice. (R. 42; 472-75.) Many members had a long history with Moreau's project, and the Board was not prohibited from factoring its own history with the project into its process and decision-making. There is nothing in the record to suggest that the members of the Board at any time during Moreau's application process were not well-informed of the project or the property and the issues raised in support or opposition thereof.

Ultimately, the Superior Court should not have been deprived of any of the materials that were available to—and were availed by—the Planning Board as it considered fully the parties' arguments in support of, and in opposition to, Moreau's application(s). This Court should determine that the Superior Court did not abuse its discretion by including relevant materials from the Town's file on this project from its inception to its conclusion.

III. The Planning Board Did Not Err When it Concluded that Reed Lane Did Not Need to be Brought Up to Commercial / Industrial Road Standards.

The third issue presented by Nelligan on appeal is whether Reed Lane—an existing private road—must be expanded and paved before Moreau can operate an automotive and small engine repair shop on his existing lot. This Court should conclude that it does not.

When a zoning board of appeals acts in an appellate capacity, the Court reviews the Planning Board's decision directly for "error of law, abuse of discretion or findings not supported by substantial evidence in the record." *Friends of Lincoln Lakes v. Bd. of Envtl. Prot.*, 2010 ME 18, ¶ 12, 989 A.2d 1128 (internal citation omitted). "Although interpretation of an ordinance is a question of law, [the Court] accord[s] 'substantial deference' to the Planning Board's characterizations and fact-findings as to what meets ordinance standards." *Bizier v. Town of Turner*, 2011 ME 116, ¶ 8, 32 A.3d 1048. "Substantial evidence exists when a reasonable mind would rely on that evidence as sufficient support for a conclusion; the possibility of drawing two inconsistent conclusions does not render the evidence insubstantial." *Adelman v. Town of Baldwin*, 2000 ME 91, ¶ 12, 750 A.2d 577. A court "will not substitute [its] own judgment for the Planning Board's judgment." *Id*. To vacate the Planning Board's findings, "the Plaintiff must demonstrate that no competent evidence supports the Planning Board's conclusions." *Id.* The interpretation of a local ordinance, however, is a question of law that the court will review *de novo*. *Aydelott v. City of Portland*, 2010 ME 25, ¶ 10, 990 A.2d 1024.

"A party asserting error in an administrative agency's findings or determinations has the burden of demonstrating that error. When . . . an appellant ha[s] the burden of proof on an issue, the appellant cannot prevail unless the appellant demonstrates that the record that was before the agency, and the

court below, compels the contrary findings that the appellant asserts should have been entered." *Quiland, Inc. v. Wells Sanitary Dist.*, 2006 ME 113, ¶ 16, 905 A.2d 806. (Internal citations omitted.)

Zoning ordinances are strictly construed. *See Grant v. Town of Belgrade*, 2019 ME 160, ¶ 14, 221 A.3d 112. The Court examines "an ordinance for its plain meaning and construe[s] its terms reasonably in light of the purposes and objectives of the ordinance and its general structure. If an ordinance is clear on its face [the court] will look no further than its plain meaning." (Internal citations omitted.) *Id*. Because they are in derogation of the common law, ambiguities in zoning ordinances must be construed in favor of the landowner. *Forest City, Inc. v. Payson*, 239 A.2d 167, 169 (Me. 1968).

1. The plain language of the Ordinance unambiguously provides that the commercial / industrial standards only apply to new roads or new acceptance of existing roads.

Nelligan argues that the Parsonsfield LUO requires that a new commercial use must be accessed by a way that meets the commercial access standards. (Blue Br. 22-24.) Contrary to his contention, the LUO does not state, explicitly or implicitly, that if there is a new commercial use on an existing lot accessed by an existing road, said existing road must be upgraded to meet industrial / commercial street standards.

There are two sections of the LUO that set forth requirements for access roads. The first is found in "General Performance Standards," LUO Article II(6)(A)(1)-(4).

(A. 88.) The second is found in the "Road Construction and / or Acceptance" LUO Article II(6)(N) (A. 89.) Nelligan identifies the second section to support his position that Reed Lane needs to be expanded and paved before the Town can grant Moreau approval to operate an automobile and small engine repair shop. However, Nelligan's position is unsupported by the plain language of that section. The second section—Road Construction and/or Acceptance standards for industrial / commercial use (60' ROW, 30' improved surface)—is triggered *only* in three circumstances:

- when a new road is being constructed, relocated, or majorly altered, LUO Art. II(6)(N) (A. 89);
- when an existing road is being proposed for acceptance by the Town (A. 89); and
- when a rear lot (meets dimensional requirements but lacks road frontage) is being created. LUO Art. 1(6)(E) (A. 88.)

That is the plain language of the Ordinance. It is the entire universe of situations to which the Industrial & Commercial Street Design Standards apply. The Planning Board concluded that none of these situations exist in this case. It is undisputed that no road is being constructed, relocated, or majorly altered. It is undisputed that Reed Lane is remaining *in situ* as where it has been for many years. Moreau is not proposing Reed Lane for acceptance. And no new lot has been or is being created,

rear or otherwise.[17]

In this case, where none of the triggering situations exist, the Planning Board correctly discarded Article II(6)(N) and correctly turned instead to the first section: Access to Lots found in the General Performance Standards of the LUO, Art. II(6)(A). (A. 199-202.)

2. Reed Lane is in conformity with the Ordinance.

Nelligan also contends that the LUO's requirement for "conformity" necessitates expansion of, and application of asphalt to, Reed Lane, otherwise a non-conforming use will be created. (Blue Br. 25-29.) Nelligan's argument fails for the following reasons. First, automobile repair shops are permitted in the Village Residential District, with site plan review. (A. 84.) The use, in and of itself, is not non-conforming. That there are no other commercial uses in the immediate area is of no moment. (Blue Br. 11.) Second, the lot itself is not nonconforming—it has frontage on a private road and meets all other dimensional requirements.[18] (A. 41;

[17] By its plain language and heading, LUO Article I(6)(E) only applies if a new rear lot is being created. (Blue Br. 27; A. 78.)

[18] Contrary to Parsonsfield's position (Town Br. 1, 3-14), Lot 44 is not a non-conforming lot as to road frontage because that portion of Reed Lane (a private road) fronting the subject parcel is over 200 feet long (A. 41). The LUO does not require that road frontage be established on a public road. *See* LUO Art. II, Table 2 (A. 87); LUO definitions: "frontage" makes reference to "road right of way"; "Right-of-way" makes reference to "private roads" and "private ways." (A. 116, 119.) *See also* LUO Art. 1(6)(E), providing that a new rear lot must have access at least 50 feet wide from a "state, town, **or private road.**" (Emphasis added.) If a new rear lot can be created as long as it has 50-foot wide access to a *private road*, the "frontage" the new rear lot would have would necessarily be *on* that private road.

87.) Third, Reed Lane currently conforms with the requirements set forth in the General Performance Standards – Access to Lots. (A. 88 - Art. II(6)(A)) because it is a fifty-foot right of way with a fifteen-foot gravel base.

Unlike the Road Construction and / or Acceptance section—which has application only in the situations enumerated in Section 1 herein—the General Performance Standards, by their plain and unmistakable language, apply in every other situation. Specifically, they apply to "all lots created and **all land use activities undertaken**. . . ." (Emphasis added.)

Nelligan points to the fact that the Planning Board only identified Sections 1 and 3 in its March 23, 2022 decision to approve Moreau's application, and, because Moreau proposes a commercial use (not a "dwelling unit"), the Planning Board clearly erred. (Blue Br. 23, 26-27.) However, such a crabbed reading of the Planning Board's written decision and Section 6, Paragraph A leads to an absurd result. As noted above, the flush language of Section 6 provides that the General Performance Standards apply to all lots created and all land use activities undertaken. Although Paragraph A does not specifically use the term "commercial use," it does use the term "principal structure," which necessarily includes something other than a dwelling unit.

Additionally, Subsection 4 makes clear that all existing access roads must be upgraded to meet the criteria in Subsection 3 for any new lot created, regardless of

the use to which the lot will be put. Although no new lot was created here, when Section 6, Paragraph A, Subsections 1 through 4 are read together, it should be reasonably concluded that these are meant to comprise the standards for access to lots for all existing roads, not just roads accessing dwelling units. The members of the Planning Board, as layman, may have only identified a portion of the operative subsections of Section 6, Paragraph A in their written decision, but they correctly identified Section 6, Paragraph A as setting the standards that apply to land use activities undertaken on lots accessed by an existing road.

Given that the Planning Board knew the project was commercial in nature, and given that the General Performance Standards apply to all land use activities undertaken (residential, commercial, industrial, and otherwise), the Planning Board did not err in its approval of Moreau's application because the existing access road (Reed Lane) met the criteria set forth in Section 6, Paragraph A. The Planning Board correctly concluded that Reed Lane *conformed* to the appropriate section of the Ordinance regarding access.

This Court has frequently stated that sections of an ordinance must be read as a whole so as to avoid an absurd result. *See Jordan v. City of Ellsworth*, 2003 ME 82, ¶ 9, 828 A.2d 768 (stating "the terms or expressions in an ordinance are to be construed reasonably with regard to both the objectives sought to be obtained and the general structure of the ordinance as a whole"); *see also Olson v. Town of*

Yarmouth, 2018 ME 27, ¶ 16, 179 A.3d 920 (stating "we must construe the terms of [the article] reasonably, by considering the purposes and structure of the Ordinance to avoid absurd or illogical results" and concluding that the plain language of the ordinance made clear that the section at issue only applied to new cell tower builds).

Reading the General Performance Standards section as only applying to access roads for dwelling units would lead to an illogical result because—noteworthy here—there would otherwise *be* no standards for existing access roads to existing properties proposed for any other use but residential. The Town could not have intended to leave a void in situations like this. And it could not be the Town's position that, whenever there is a new proposed commercial use on a property accessed by an existing road (for example a hair salon or an accounting firm), every existing road must be widened and paved first.[19]

One of the stated purposes of the Town's Land Use Ordinance is to maintain the rural character of the town and to "encourage the most appropriate use of land throughout the town by controlling building sites, placement of structures and land uses. . . ." (A. 75.) One of the purposes of Site Plan Review is to "maintain and protect the Town's rural character." (A. 97.) Requiring residents to upgrade existing

[19] The LUO does not by its plain language prohibit two principal uses on a single lot (except rear lots). The LUO is replete with references to two or more principal uses and clearly contemplates development of the same. *See e.g.* LUO Art. II(5) ("If more than one residential dwelling unit, principal governmental, commercial or industrial structure or use, *or combination thereof*, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use") (emphasis added); Art. II(6)(L)(2)(e); Art. II(8)(C)(3)(b); Art. II(8)(E)(5). (A. 87.)

access ways to thirty-foot wide paved ways for any new commercial use, no matter how small, is simply inconsistent with the stated purpose of maintaining the rural character of the Town and would impermissibly limit the Town's authority to control growth in the manner that it determines to be consistent with the Town's Comprehensive Plan.

Finally, should this Court determine that the LUO is in any way ambiguous regarding whether an existing access road must be expanded and paved when a new commercial use is proposed, such ambiguity should be resolved in favor of the landowner. *Moyer v. Bd. of Zoning Appeals*, 233 A.2d 311, 316 (Me. 1967) (holding that, because zoning ordinances are in derogation of private property rights, they are given strict interpretation and may not be extended by implication to limit a landowner's proposed use). This Court should, however, discern no error of law in the Planning Board's determination that the General Performance Standards, not the industrial / commercial standards, apply to Moreau's project and that Reed Lane met those requirements.

IV. The Planning Board Made Adequate Findings to Support its Grant of Mr. Moreau's Application for Site Plan Review.

This Court's review of municipal fact finding is deferential and limited to a determination of whether the facts are supported by "substantial evidence," *Friedman v. Pub. Util's Comm'n*, 2016 ME 19, ¶ 10, 132 A.3d 183, which is

comparable to the "clear error" standard when reviewing judicial fact finding. *Town of Eddington v. Emera Maine*, 2017 ME 225, ¶ 14, 174 A.3d 321. "Administrative agency findings of fact will be vacated only if there is no competent evidence in the record to support them." Alexander, *Maine Appellate Practice* § 458(e)(2) at 408 (6th Ed. 2022).

"When administrative agencies are required to make findings of fact to support a decision, the findings must be adequate to indicate the basis for the decision and to allow meaningful judicial review." *Carroll v. Town of Rockport*, 2003 ME 135, ¶ 27, 837 A.2d 148. If an agency's findings of fact are insufficient to apprise the appellate body of the basis of the agency's decision and whether it is supported by substantial evidence, the matter may be remanded to the agency for further findings of fact. *Christian Fellowship and Renewal Ctr. v. Town of Limington*, 2001 ME 16, ¶ 10, 14, 769 A.2d 834. However, a remand is unnecessary if "the subsidiary facts" are obvious or easily inferred from the record and the general factual findings. *Id.* ¶ 19.

Nelligan argues that the Planning Board did not make findings of fact on the site plan review criteria to allow for meaningful judicial review. (Blue Br. 29-33.) Both parties requested findings of fact on the site plan review criteria, and both parties submitted evidence and argument related to each criterium. However, the Planning Board was asked to determine whether Reed Lane needed to be expanded

and paved. (A. 57.) And whether Reed Lane needed to be expanded and paved was the issue Nelligan specifically asked the ZBA and the Planning Board to prioritize in his April 2022 appeal. (R. 806-25.) On that issue, the Planning Board executed its marching order and *made* specific findings of fact sufficient for meaningful judicial review. (A. A. 58-59; 199-203.) The Planning Board also ensured that the new site plan included the five additional parking spaces required by the Ordinance. (A. 58, 199.)

Regarding the remaining site plan review criteria, because the Town had years of history with the project, including several site walks, public hearings, and hundreds of pages of submissions by Moreau and Nelligan addressing, among other things, each criterium one by one, the Court should determine that there was substantial evidence in the record supporting the Planning Board's determination Moreau's project met the site plan review criteria. The Planning Board had, after all, approved the application on three separate occasions. (R. 45-46, A. 55-56; A. 194-202.) Nelligan raised every issue he could contrive in front of both the Planning Board and the ZBA for a period of years, and the Town read written argument and heard oral argument by the parties and their counsel dutifully almost every week. (*See generally* R. 18-1028.) At some point or another, enough information was provided to them by the parties and their counsel to make an informed decision Moreau's project met the requirements of the LUO.

This Court should conclude that the Planning Board's findings were not insufficient as to the primary issues raised by Nelligan in his ZBA appeal from which this appeal flows and permit now meaningful judicial review of the Planning Board's decision as to those issues. Second, this Court should conclude that the Planning Board, over the course of its history with the project, received sufficient information about the remaining site plan review criteria and made its determination to approve the application(s) based upon the information it received, and any failure to set forth in exhaustive detail its findings as to each of the enumerated criteria is, if error at all, harmless error. *See* M.R. Civ. P. 61.

CONCLUSION

The Planning Board was thorough in its years'-long review of, and expectations for, Moreau's project, and it did not err in its approval of Moreau's application. Automotive repair shops are permitted in the VR District. Reed Lane meets the General Performance Standards for Access. Because no new lot was being created, and no new road was constructed, moved, majorly altered, or proposed for acceptance, the Street Design Standards for industrial / commercial use did not apply. The Town also placed reasonable conditions on its approval of Moreau's application, such as the requirement for an annual inspection and reapplication for a permit every two years. (R. 761, 763.)

For these reasons stated herein, Appellee respectfully requests that this Court

affirm the decision of the Planning Board approving Moreau's application; conclude that the Superior Court's did not abuse its discretion in its determination of good cause for filing a late appeal; conclude no abuse of discretion in the Superior Court's inclusion of additional documents in the record, and conclude that sufficient subsidiary facts exist in the record to support the Planning Boards's approval of Moreau's application.

Respectfully submitted this ___ day of March, 2024.

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CERTIFICATE OF SERVICE

I, Jill S. Cramer, Esq. hereby certify that I have mailed a copy of Appellee's Brief via first-class mail postage pre-paid or email, as indicated below, to the following parties:

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