

TOWN OF LUDLOW PLANNING BOARD  
MINUTES OF THE MEETING OF  
December 7, 2017

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TOWN OF LUDLOW

**PLANNING BOARD MEMBERS**

- Joseph Queiroga – Chairman (Present)
- Raymond Phoenix – Vice Chairman (Present)
- Christopher Coelho (Present)
- Kathleen Houle (Present)

Meeting began at 7:00 p.m. in the Selectmen's Conference Room

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**CONTINUED PUBLIC HEARING – SPECIAL PERMIT & SITE PLAN – John Garcia (Royal Coach Limousines LLC) – 720 Chapin Street (Assessors' Map 11D, Parcel 102A)(operating a limo service and park limousines in an Agricultural Moderate Density District)**

**ANR – John & Melissa Garcia, Trustees of 716 Chapin St. Realty Trust – 720 Chapin St. (Assessors' Map 11D, Parcel 102A)(proposed private way located at the rear of #716 Chapin St. and the end of Victor St.)**

**SEE ATTACHED MINUTES**

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**PUBLIC HEARING – SPECIAL PERMIT/HOME OCCUPATION – Stephen P. Nodurf – 7 Circuit Avenue (process paperwork for self defense business – Pioneer Valley PDR)**

**SEE ATTACHED MINUTES**

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**SITE SKETCH & ANR – Colvest/Ludlow, LLC (CVS Pharmacy) – 451 Center Street (Assessors' Map 12-C, Parcel 75-1)(Join land acquired from Big Y to the approved site plan. Construct a retaining wall at the back of the property)**

*Peter Lapointe was present for the appointment.*

Mr. Phoenix asked, in reference to the ANR, if Parcel 1, which is getting absorbed into the parcel owned by CVS, already exists as a separate parcel from Big Y. Mr. Lapointe said that it is not an existing separate parcel at this time, but they have entered into a purchase & sale agreement to buy said parcel. Mr. Phoenix asked where the ANR is to separate the parcel from Big Y's property. He noted that you can't take in a piece of property that's still part of something else unless it's being separated off, and that all of the Big Y property is not shown on the ANR plan. Mr. Phoenix also remarked that the signature of Big Y is not on the application, even though they still own the parcel. He explained that Parcel 1 does not exist until an ANR is done to separate the parcel off of the remaining land owned by Big Y.

Mr. Phoenix: So, on the ANR, I'm gonna make a **MOTION** that we deny the ANR on the grounds that the Parcel 1 does not exist as its own parcel, and that we have no authority from the Minutes of December 7, 2017

current owner of Parcel 1, being Big Y Foods, who is the owner of record, who has a site plan approved that includes that as part of their site plan, and that we need to get that cleared up before we even begin to contemplate approving an ANR for Parcel 1.

Mr. Queiroga: Why do we need to deny it when he's pulling it back?

Mr. Phoenix: Because we ---. We have two choices; we can either approve or we can deny. And we have 21 days from the date that it's applied for to do one of those, otherwise it is approved automatically.

Mr. Lapointe: It's an approval not required document, so if it's you're not gonna concur, we put it in a holding pattern and bring it back.

Mr. Phoenix: No, no.

Mr. Coelho: Can he just withdraw without prejudice?

Mr. Phoenix: It doesn't really matter. I don't think denial's gonna attached prejudice anyways, because we have to either approve or deny. Those are our two choices and they have to be done within twenty days of submittal, otherwise it is automatically approved. We have no third option. So, there's a motion right now to deny it.

Ms. Houle: I will **SECOND** it. I can understand Ray's problem, because Big Y did not cut that off before they --- their property. Unfortunate that we can't just --- just have them take this back and not act on it, you know, without prejudice on it.

Mr. Phoenix: And before we actually have a vote, just as discussion, I would again point out that if this motion fails, we can conceivably revisit the exact same motion, but with only four members currently existing on the Board, if the vote comes down two to two, then we're constructively approving this twenty-one days after it's been submitted, whatever that date was. So, it's really a thumbs up or thumbs down on whether this is a legitimate thing. ---

Mr. Queiroga: There's nothing that prohibits them from coming back?

Mr. Stefancik: No, they can come back. They can resubmit a new ANR plan, and take of what they have to with the Big Y.

Mr. Coelho: Mr. Chairman, we have a motion and a second. We're compelled to call a vote.

Mr. Queiroga: Yes. Please, let me have the roll call.

Mr. Phoenix: It's not a special permit, it's an ANR. We don't need roll call unless you want to.

Mr. Coelho: You just got to call the vote.

Mr. Queiroga: Just call the vote ---.

Mr. Coelho: ---

Ms. Houle: Motion is to deny. Correct Mr. Chairman?

Mr. Queiroga: All in Favor to deny?  
**4-0 in Favor.**

Mr. Phoenix advised Mr. Lapointe that he needs an ANR separating the parcel off, and if that's submitted in tandem with the same plan being resubmitted, he thinks the Planning Board could look at it as being part of a pair and not have to worry about the adequacy of a way because it's being absorbed into something else. Mr. Phoenix also noted that, alternatively, as long as Town Counsel's ok with it, Planning could take one plan submitted by both parties, but that he would want to get a green light from Town Counsel before they do that.

Mr. Lapointe was in agreement to having a continuance to another meeting to resubmit the site sketch along with revised ANR plans.

Mr. Phoenix: I'll make a **MOTION** to continue the public hearing on the issue of the site plan amendment until the 7:00 p.m. slot on January 11<sup>th</sup>.  
**SECOND** Ms. Houle.  
**4-0 In Favor.**

*Mr. Lapointe will come back on January 11, 2018 at 7:00 p.m. to resubmit the site plan and ANR.*

*Documents included: Master application; Plan of Land in Ludlow, Massachusetts, surveyed for Colvest/Ludlow, LLC, owner: Big Y Foods, Inc. (Date: October 5, 2017, Revised: November 28, 2017); Proposed Retail Harding @ Center St. – Ludlow, MA, Proposed Layout & Landscape Plan (4/6/99)*

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**ANR – Deanna Bingham – 7 & 11 Nash Hill Road (Assessors' Map 9, Parcels 77 & 77A)  
(Change property line to include accessory sheds with 7 Nash Hill Road)**

*Deanna Bingham was present for the appointment.*

Ms. Bingham explained that she is doing the ANR to move the lot line to include the two sheds from #11 Nash Hill down to #7 Nash Hill.

*Mr. Phoenix read the ANR checklist:*

- 1. Property owner's name, date of plan, and scale of plan.*
- 2. A space for endorsement by the Planning Board.*
- 3. The names of all abutters.*
- 4. The lines of existing streets, ways, property lines, and easements. Indicate whether streets and ways are public or private.*

5. *The approximate distance from the property to the nearest street intersection, town line, or other definable physical feature.*
6. *Sufficient data to determine the location and length of every property boundary line in the new parcel and to establish these lines on the ground. Indicate the area of the new parcel.*
7. *The location of all property corner monuments and whether they were found or set.*
8. *The location, frontage, and area of the land remaining in the original parcel after establishing the new parcel.*
9. *The north arrow for bearing system used on the plan and whether it is true, magnetic, or assumed north.*
10. *The location of all existing buildings and the distance from the existing buildings to the new property lines.*
11. *If a building lot is intended, the frontage requirement at the setback line must be shown.*

SUBMISSION: Two (2) Mylar's plus four (4) sets of prints (dark line on white background) shall be submitted to the Board for endorsement.

Mr. Phoenix: I'll make a **MOTION** to endorse the ANR as submitted.  
**SECOND** Mr. Coelho.  
**4-0 in Favor.**

*Documents included: Master application; Subdivision Approval Not Required Plan, Nash Hill Road Ludlow, MA, owned by Deanna Bingham (November 14, 2017)*

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**APPOINTMENT – Mike Gagnon – Eversource Energy – Chapin Street Solar Project**

*Mike Gagnon – Milone & McBroom, William Blanchard – Project Manager – Eversource Energy, Mark Kasinskas – Burns & McDonnell, & Christopher Reinö – Burns & McDonnell were present for the appointment.*

Mr. Gagnon explained that they would like to amend the approved site plan that was dated May 5, 2017. He noted that they revised the location of the service interconnection from the new solar facility down to the point where it will interconnect with the grid on Chapin Street. He mentioned that on the previous drawings, they had shown the interconnection pole line to be along the westerly side of the WMECO right-of-way, however, subsequent to the approved site plan, Eversource's transmission engineers evaluated the conditions out there, particularly with respect to the "maze" of power lines that cross Chapin Street, and found that it was not possible because of the high voltage transmission lines that cross Chapin Street. He noted that there would be too much of a conflict, and that it's not permissible by code because there wasn't enough clearance that could be gained by doing that.

Mr. Gagnon remarked that what they are proposing as the revised site plan, is to show the new interconnection line along the easterly side of the current WMECO right-of-way. He said that the overhead service will actually be strung on new utility poles, approximately 130 feet apart, with the poles themselves being about 45 feet high. He stated that that service will be carried from the solar facility overhead along the easterly side of the right-of-way, with the final connection being on Chapin Street. Mr. Gagnon commented that the work that's going to be required in order to accommodate the new interconnection will include some additional clearing, with all existing brush and trees cut to grade, stumps being left in place, and everything being chipped. He said that there will be a little bit of a buffer between the right-of-way and the limit of clearing. Mr. Gagnon explained that there will be eight new gap poles, located approximately 130 feet apart.

Mr. Stefancik noted that this will be the second amendment to the site plan. He also asked the Board if they want the abutters contacted for this amendment. The Board agreed that the change could be done as a site plan addendum, but that a public hearing could be required, and that all of the abutters would be notified. Mr. Phoenix mentioned that any issues that have already been discussed and addressed as part of the prior public hearings, should not be included in this new public hearing.

Mr. Phoenix **MOVED** to waive a full registered site plan in favor of an amendment that will be submitted, however, we will not be waiving the public hearing on this matter.

**SECOND** Mr. Coelho.

**4-0 in Favor.**

*Eversource will be submitting the paperwork so that a public hearing can be held on January 11, 2017.*

*Documents included: Site Layout & Grading Plan (Sheets LA-1 & LA-2), Eversource Solar - Ludlow 72 Solar Facility, Chapin Street Ludlow, Massachusetts (June 27, 2017; REV Interconnection Layout 11/17/17)*

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**ANR – Edward Godin – Center Street (Assessors' Map 24, Parcels 60C & 60D)  
(Combine parcels 60C & 60D into one lot (Lot 2A))**

*Edward Godin was present for the appointment.*

Mr. Godin explained that he is doing the ANR because he would like to create two building lots that he can sell.

*Mr. Coelho read the ANR checklist:*

- 1. Property owner's name, date of plan, and scale of plan.*
- 2. A space for endorsement by the Planning Board.*
- 3. The names of all abutters.*

4. *The lines of existing streets, ways, property lines, and easements. Indicate whether streets and ways are public or private.*
5. *The approximate distance from the property to the nearest street intersection, town line, or other definable physical feature.*
6. *Sufficient data to determine the location and length of every property boundary line in the new parcel and to establish these lines on the ground. Indicate the area of the new parcel.*
7. *The location of all property corner monuments and whether they were found or set.*
8. *The location, frontage, and area of the land remaining in the original parcel after establishing the new parcel.*
9. *The north arrow for bearing system used on the plan and whether it is true, magnetic, or assumed north.*
10. *The location of all existing buildings and the distance from the existing buildings to the new property lines.*
11. *If a building lot is intended, the frontage requirement at the setback line must be shown.*

SUBMISSION: Two (2) Mylar's plus four (4) sets of prints (dark line on white background) shall be submitted to the Board for endorsement.

*Mr. Phoenix left the room at 8:43 p.m.*

Ms. Houle: Mr. Chairman, I **VOTE** to endorse the ANR submitted by Edward Godin for property on Center Street, parcels 60C and 60D, which is combined into Lot 2A.  
**SECOND** Mr. Coelho.  
**3-0 in Favor.**

*Mr. Phoenix returned to the meeting at 8:45 p.m.*

*Documents included: Master application; Plan of Combined Lots – Center St., Ludlow, MA – For: Edward R. Godin, Center Street Ludlow, MA. (July 27, 2017)*

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**Discussion – Committee Assignments (Capital Planning – needed for December 21, 2017 meeting)**

Mr. Stefancik explained that Mr. Minnie was assigned to the Capital Planning Committee, and that another Board Member would need to be assigned for the December 21, 2017 meeting where the new proposed school building and senior center will be discussed.

Mr. Coelho: I'll make a **MOTION** to appoint Ray to the Capital Planning Committee until March.

**SECOND Ms. Houle.**  
**4-0 in Favor.**

*Mr. Phoenix will temporarily be assigned to the Capital Planning Committee until the March 2018 elections.*

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**Discussion – Motion for Sovereign Health Building – 14 Chestnut Place**  
*(from 11/9/17 meeting)*

Mr. Phoenix said that in reference the former HealthSouth Building, that there is a plan forthcoming, but that discussion on that property did contemplate, to some extent, a little bit of leeway with the regulations. He explained that he had made a motion at the last meeting that failed.

Mr. Phoenix: So, I **MOVE** that given the lack of a plan all these years, as was committed to by the property owners of the old HealthSouth Building, that any leniency or leeway that was prior contemplated in relation to the site, be taken off the table, and that they need to come in with a plan that meets all of the criteria that everyone needs to meet. And I think I'll just leave the motion at that.

**SECOND Ms. Houle.**  
**4-0 in Favor.**

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**Discussion – Adopt Personnel Policy Handbook**

Mr. Stefancik explained that the Human Resources Director asked that all the boards adopt the personnel policy. The Planning Board Members requested a copy to review before adopting it.

*Mr. Stefancik will make sure that the Board Members get a copy of the Personnel Policy for review before it is adopted.*

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**Discussion – Board of Selectmen Meeting – December 12, 2017 @ 6:30 p.m. – Planning Board Member Appointment**

Mr. Coelho noted that he can't make the meeting, but the remaining Board Members confirmed that they will be attendance.

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**Discussion – Housing Production Plan / DLTA Assistance Program – PVPC**

Mr. Stefancik said that Ellie Villano, Town Administrator, told him that the Planning Board could do a request for quotes, but that they would have to take the lowest bidder on those quotes. He mentioned a few prospects that the request could be sent to. Mr. Stefancik also mentioned

that he just received a *Solicitation for District Local Technical Assistance (DLTA) Program Projects for FY 2018* from the Pioneer Valley Planning Commission, and that they do housing production plans. Mr. Coelho said that he wants this plan to be a little more competitive. Mr. Phoenix remarked that in reference to the PVPC, he doesn't have a great deal of confidence in the ability to turn out documents that are specifically tailored to one community, and that community's assets and needs. He said that he thinks that the PVPC's strength is functioning as a regional organization, and that the Planning Board should try and tap them in that capacity as much as possible, instead of having them write local regulations.

Mr. Phoenix: Well, I'll go this far, I will make a **MOTION** that we follow the appropriate process for requesting quotes from these entities, and that anyone that we don't specifically solicit, if it is in accordance with the provisions of this process, that we accept those quotes, but that we specifically solicit from people that we've already had identified to us as being qualified and/or appropriate people to solicit from, and that we acknowledge that PVPC is probably not one of the entities that we feel is appropriate for this particular use at this time.

Mr. Coelho: **SECOND** for discussion.

Mr. Queiroga: Ok.

Mr. Coelho: My qualification, as far as what I feel is gonna be a qualified applicant is somebody that can prove to me, almost regardless of cost, that this plan's been implemented successfully in other communities. That's what I'm gonna go on the record as calling qualified.

Mr. Phoenix: I would even go so far, and this is something I was thinking about, asking people in the community that have paid for the housing production plan, whether they feel that it is a valid plan in their community.

Mr. Coelho: I think that we can make that part of our exploratory process, sure.

Mr. Phoenix: Because if the community doesn't feel that it's an appropriate plan that is either implemented or at least actionable, and it is to the benefit of the community and money well spent, then that certainly means that it's a qualified entity in my mind.

Mr. Coelho: Right, exactly, yup.

Mr. Stefancik: And this would be done after we receive the quotes and you interview the candidate, interview the people who submitted the quotes?

Mr. Phoenix: ---

Mr. Coelho: --- process.

Mr. Phoenix: Well, I would say we start with, you've got some people that have been already nudged in front of you.

Mr. Stefancik: Correct.



Mr. Phoenix: Use your judgment as the Town Planner, as far as who you are aware of, that you think would be appropriate to solicit for quotes in accordance with the motion. Then whatever quotes we get in by whatever deadlines are established by the process, we go forward at that point through the process, whether the process says we decide whether they're qualified before we talk to them, or we talk to them first. We'll work the policy the way it's written. I think that's the fairest way to go about it, but I'm comfortable with you using your judgment on the front end.

Mr. Stefancik: Ok, I mean, just throwing out there too, I know in the past if we do ask for quotes, it doesn't mean that they're gonna give us one either, so.

Mr. Phoenix: Fair enough.

Mr. Coelho: That's fine. But let's just get the ball rolling, really.

Mr. Stefancik: Yeah, definitely.

Mr. Coelho: I mean we've been talking about it for about a year now. You guys need to sign these.

Mr. Phoenix: So, there's a motion.

**SECOND** Mr. Coelho.

**4-0 in Favor.**

*Mr. Stefancik will send out quote requests for the housing production plan.*

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**File Mail Item #112 - Notice of Decision – Ludlow Board of Appeals – 40-42 Hubbard Street**

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### *Consent Agenda:*

*The Board approved the Consent Agenda under unanimous consent.*

- ◆ FILE Mail Item 115. - Legal Notices from surrounding communities
- ◆ APPROVE/SIGN Minutes of October 12, 2017, October 26, 2017, & November 9, 2017
- ◆ APPROVE Change of Occupancies:
  - Jeffrey Roberts (Ludlow Printing) – 44 Sewall Street
- ◆ APPROVE/SIGN Amendments to Development Agreement, and Stormwater Management Operation, Maintenance and Inspection Agreement for Sunset Ridge f/k/a Cislak Drive Extension

File Mail Item #113 - Notice of Decision – Ludlow Board of Appeals – 58 Beachside Drive

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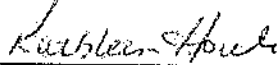
File Mail Item #114 - Letter from Justin Larivee, Building Commissioner re: 350 West Street #25 - condemn mobile home until structural inspection

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Mr. Phoenix: **MOVE** to adjourn.  
**SECOND** Ms. Houle.  
**4-0 in Favor.**

Meeting adjourned at 9:02 p.m.

APPROVED:

  
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Kathleen Houle, Secretary

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(All related documents can be viewed at the Planning Board Office during regular business hours.)

TOWN OF LUDLOW PLANNING BOARD  
CONTINUED PUBLIC HEARING – ZONE CHANGE  
720 Chapin Street (Assessors' Map 11D, Parcel 102A)  
John Garcia (Royal Coach Limousines LLC)  
(operating a limo service and park limousines in an  
Agricultural Moderate Density District)  
December 7, 2017

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PLANNING BOARD MEMBERS

Joseph Queiroga – Chairman (Present)  
Raymond Phoenix – Vice Chairman (Present)  
Christopher Coelho (Present)  
Kathleen Houle (Present)

*Hearing began at 7:01 p.m. in the Selectmen's Conference Room.*

*The public hearing was continued from November 9, 2017.*

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*In attendance: John Garcia, Tony Goncalves, Michael Pietras, attendees.*

Mr. Queiroga: We have, for your notification there Ray, this is the special permit, which I think you already looked at right? Ok.

Mr. Phoenix: --- 'cause the one on the computer didn't have the seal, so I was getting nervous.

Mr. Queiroga: Ok.

Mr. Goncalves: Next year they're coming out with that one, smell, touch, feel.

Mr. Pietras: We have one in color that may be easier to follow. It's a pretty busy plan if you guys. I figured it'll jump out a little easier ---. Would you like one?

Mr. Coelho: No, me and Kathy share and save a tree.

Ms. Houle: ---

Mr. Queiroga: Let's start with, we sent this out to the appropriate parties in Town? And do you have copies of the responses?

Mr. Pietras: No.

Mr. Queiroga: Ok, I'm sure ...

Mr. Pietras: I had got Doug's original, or a copy of Doug's response for this, and then I have had conversations with Jim Goodreau with DPW, but...

Mr. Queiroga: Ok, let me read these into the record.

Mr. Pietras: Sure.

Mr. Queiroga: If you need any copies we'll make them for you. We've reviewed the site plan for Victor Street prepared by Engineering and Land Solutions dated November 28<sup>th</sup>, and have the following comments: *Contractor must obtain a construction within the public way permit for all work within the public way including, but not limited to, the roadway entrance, underground utilities with the public way including, but not limited to, sanitary sewer, storm drainage, water and gas service. A sanitary sewer connection fee shall be established by the Board of Public Works at, based on the square feet plus 50 cents per square foot, that's \$1,500 plus a \$50 inspection fee. Again, these are all...*

Mr. Pietras: Standard conditions.

Mr. Queiroga: ...standard, and when needed. *Sanitary force main lateral will be the responsibility of the applicant from the building all the way to the connection with the existing manhole. Please provide information showing the stormwater infrastructure sufficient in handling the increased flows from development. 4. Required Site Plan Contents Subsection o., some of the additional requirements need to be submitted if not waived by the Planning Board. Driveway construction will be difficult. It will be difficult to maintain stability in proposed driveway due to the steep slope at the end of Victor Street. The proposed construction of the driveway appears to require encroachment on public lands. Encroachment is in the 50 foot buffer. Do you agree with that?*

Mr. Pietras: No, I was just on site with Roger, I believe, last Thursday, and the roadway is in. The whole path is there.

Mr. Queiroga: Ok, and...

Mr. Pietras: I mean, no pavement, but all the base material's down.

Mr. Queiroga: Ok, we'll get to that then. *Driveway construction methodology and Conservation Commission requirements shall be provided. Ok, this is from the Conservation: Must file with Conservation for work done near wetlands end of Victor Street. Ok, no surprise there. And from the Planning Board: Applicant is asking for waivers. He needs to sign the waiver request form. Do you have one?*

Mr. Stefancik: It's right in ---.

Mr. Queiroga: That's in here, ok. *The right of way will need to separate out with monumentation shown. The parcel is a private right-of-way. ANR plan to be forthcoming. And I believe that's today, right?*

Mr. Pietras: Yes, that was submitted.

Mr. Queiroga: Ok, as per requested, the public hearing has been continued, that's already not needed. Do you all have the same things in front of you that I have here? Ok, no other, I don't think there's any other letters coming in. Ok, these are all past things on file. Ok, so, Mike, where do you want to start before I speak?

Mr. Pietras: Just to recap the project; there's an existing 3,000 square foot structure on the property labeled as existing barn on the plan.

Mr. Queiroga: Yeah.

Mr. Pietras: The total lot size for that portion is just shy of 2.4 acres. Mr. Garcia does have frontage on Victor and Chapin Streets. When we last seen you folks, we were talking about the possibility of a drive access off Chapin, but that was determined that couldn't happened due to Town Counsel, I guess, gave some past case law that we couldn't come through residential land.

Mr. Queiroga: Yeah, that seems to be consistent case law on that issue.

Mr. Pietras: And so, we altered the plan to show all of the infrastructure and utilities coming off Victor Street where they're already existing and stubbed to allow the potential of development on this site. There's a plan from 1952, I believe, that shows the original subdivision of Victor Street and calls out the private, or the future street at the end of Victor which Mr. Garcia owns. So, within that...

Mr. Queiroga: It actually goes to the other side of Victor Street too, right?

Mr. Pietras: Exactly. He owns...

Mr. Queiroga: All the way to...

Mr. Pietras: Yup.

Mr. Pietras: ...he owns from east to west.

Mr. Queiroga: Ok.

Mr. Pietras: Within the proposal, we've sized the drainage water, you know, the storm drainage system to handle the added infiltration from the parking lot, is consistent with our zoning regs. required for parking for this site. It's actually much larger than Mr. Garcia will hold for employees, but it does show everything that's consistent with the Bylaw. Water and sewer are both shown on the plan, that's why the color one's probably easier to follow for that. The sewer should be a green forced main. To the, we're looking to go into a pump chamber, which is indicated as the 1,000 gallon pump chamber, and then it would proceed through a forced main to an existing sanitary sewer manhole at the end of Victor. The water actually sits, currently, on Mr. Garcia's property. So, the tap would be on his property at the end of Victor to the house, we're calling for inch and a half service, just due to the distance to maintain pressures. Propane is shown off to the southern side of the building to supply heat --- gas. And we've introduced proposed planting. You'll see there's a proposed planting area called out to the western side of the parking lot as well as proposed arborvitae to block the second property there, or depends, if you're coming into Victor, the third property there. Any lights that may be produced, we call out five to six foot arborvitae to be planted, so that neighbor should not experience nighttime glazing. Within that, the plan, as presented in front of you, meets the zoning bylaws, and to proceed with Mr. Garcia's goals of using this piece, probably the best fit for this property.

Mr. Queiroga: Before I, I want to ask my members of my Board to give me a chance for about five minutes to just, 'cause I have to organize things in a way that's comfortable for me, and this has been going on for a while.

Mr. Pietras: Sure.

Mr. Queiroga: And, but I just want to ask you, John, what is your plan to do with that building at this point in time?

Mr. Garcia: Well it depends, if I can put the limo service there to park the cars there, I'd have the limo service there.

Mr. Queiroga: That would be your plan?

Mr. Garcia: Right.

Mr. Queiroga: Ok. The, just, I went back to even before that, but I went back specifically to when our inspector Brien Laporte gave you the permit to build this building, the 50 x 60 building, which was built in 2008, if my memory serves me correct. The, and it was stated right on that permit, which there are copies of here, that to be used for service or warehousing which falls within the AMD approved uses. In addition, he was given another permit by Brien to erect a six foot high fence, I would assume, on the, bordering the vegetated area?

Mr. Garcia: It was gonna be around the whole property.

Mr. Queiroga: Around the whole property, ok.

Mr. Goncalves: Which Conservation has approved, also.

Mr. Queiroga: Which Conservation has approved. So, in trying to get to where I feel comfortable in talking about it, some of these things, you guys will have to bear with me. This lot exists already, and the building exists already, and the use being proposed is allowed within an AMD zone. There has been some, at the request of my request, and then followed up, Doug sent an email to our town attorney, in which he basically; *are going to discuss the board on which (way) they want to proceed with the right-of-way parcel, whether they would approve an ANR or a definitive subdivision plan, which would be overkill for a private driveway, that would provide no utilities for now, or no access for anyone but Mr. Garcia and his business, would not even be able to be built to roadway standards as Conservation will dictate the design of the roadway being near the wetlands.* The, our attorney Rebecca, then goes on in answer to his request: *that the Ludlow Zoning Bylaw defines frontage as that portion of a lot fronting upon a street. A street is a public way or a way opened to the public use, or other right-of-way giving access to the lot. A street shall include the entire right-of-way based on these definitions. It appears that a frontage requirement can be met when it is measured along a right-of-way giving access to the lot, and that a private way would qualify. I did not see in the Bylaws the process by which the Town (through its Planning Board) authorizes and sets the adequacy standards for a private way. Based on our conversation, it seems though, you have a good handle on that. If you want to look further, please call me so I can better understand your thoughts.* There was a case that she made reference to which is the Harrison case, prohibiting landowners access Victor: *I did not read the Harrison case as prohibiting the landowners from Victor Street. In the Harrison case, the portion of the lot that was being accessed for industrial purpose was, in my*

*understanding, entirely surrounded by residentially zoned property. Here, on the other hand, the AMD portion of 720 Chapin Street directly abuts the street. Since the AMD district allows the business use, the landowner's access from Victor Street should be allowed and I don't think the applicant has the same issue that the landowner in Harrison had. In addition, which I found this interesting as I was looking in our Bylaws, one of the most interesting aspects of the ANR process, if not the subdivision control law, is the vital access standard. The necessity that the Planning Board determines that vital access exists to the lot shown on the plan, before endorsing an ANR plan is not expressly stated in the subdivision control law. The vital access standard as evolved from court decisions. The decisions have been concerned as to whether proposed building lots have practical access, and have focused on the following two issues; adequacy of the way in which proposed lots front, and adequacy of access from the way to the building portion of the lot. So, to summarize, I agree that access to this property built on AMD land cannot be done through the Residency A when one reads the past court cases. That it would be fair to applicant and to the Town that --- approve a private access through his 50 foot access on the public way, with a frontage of 200 feet. Before we go any further, I'd like to get any questions, any comments that members of my Board might have.*

Mr. Phoenix: So, I'm just trying to follow along here. I've got an email chain that the top date appears to be October 26, and then there's correspondence from Town Attorney November 7<sup>th</sup>.

Mr. Queiroga: Yes.

Mr. Phoenix: Where was that last part that you were reading coming from, or was that your thoughts?

Mr. Queiroga: --- but he can give you the original dates.

Mr. Phoenix: But was this your thoughts or?

Mr. Queiroga: My thoughts, yeah, absolutely.

Mr. Phoenix: Have we gotten anything from Town Counsel since the things that I have in the folder here?

Mr. Stefancik: No, nothing recently.

Mr. Queiroga: When was the last one, the 30th?

Mr. Stefancik: Yeah, they were right or at or around the time of the last time we had a public hearing.

Mr. Goncalves: November 30, Doug, or October ---?

Ms. Houle: No, I think it was the 10<sup>th</sup>.

Mr. Stefancik: No it wasn't --- early November, late October.

Mr. Goncalves: ---

Ms. Houle: The 10<sup>th</sup> I think.

Mr. Queiroga: Yeah we started...

Ms. Houle: I wasn't here.

Mr. Queiroga: ...doing our homework on this a while ago, a while back.

Mr. Phoenix: I got it right here.

Mr. Queiroga: It was in the file. You got it there?

Mr. Phoenix: Yeah, it's this one here.

Mr. Queiroga: You also have the site plan issue, right? Ok, I did see one thing there that'll have to be changed.

Mr. Pietras: What's that?

Mr. Queiroga: That line needs to be a solid line.

Mr. Goncalves: For the ANR?

Mr. Queiroga: It needs to be a solid line ...

Mr. Phoenix: For what?

Mr. Queiroga: ...in this, 'cause that's gonna be on the, that line on the ...

Mr. Goncalves: It's not on the ANR. It's not solid?

Mr. Stefancik: On the ANR it's solid, on the site plan it's not a solid line, but ---

Mr. Goncalves: So, the site plan probably has to be approved subject to the ANR? ---

Mr. Pietras: Well we call out that it's gonna be a line created ...

Mr. Queiroga: It's a line created?

Mr. Pietras: ...by the plan, 'cause we're not representing the survey of it ---

Mr. Goncalves: The ANR ---, yeah.

Mr. Phoenix: Well if, depending on how things go forward from tonight, let's assume best case scenario at the moment, assuming the ANR gets approved, which I don't see any reason why that wouldn't, 'cause I think by statute that meets our requirements, and then assuming that we as a Board act favorably, or are inclined to act favorably on this site plan, it should be indicating all the lines as they are after the ANR because we certainly can't approve it prior to the ANR. So, we won't be able to act on a plan that's showing a line that's not correct. But...



Mr. Pietras: Yeah, and I kind of just foreseen it as it could be acted on, and then the ANR, because it calls out, it's the same exact line Roger has --- plan.

Mr. Goncalves: ---

Mr. Pietras: And I understand what you're saying, but...

Mr. Goncalves: It's a dotted line now...

Mr. Pietras: Yeah.

Mr. Goncalves: ...and it's gonna have to be a solid line, so it's almost like the chicken or the egg.

Mr. Pietras: Exactly, what comes first?

Mr. Phoenix: So, the thing is, we flat out, or cannot, approve it prior to the ANR, 'cause we're still back at the same point we were last week or last meeting.

Mr. Pietras: Yup.

Mr. Goncalves: The ANR will be a solid line. The plan will have to be based on that solid line of the ANR.

Mr. Queiroga: ---

Mr. Goncalves: You know, if you're so inclined, and we were to get favorable approval on the site plan...

Mr. Queiroga: ---

Mr. Goncalves: ...then it would be a revision to the site plan and --- the ANR.

Mr. Phoenix: Well we could probably, for something that's that minor, I think we could probably get away with doing approval subject to.

Mr. Queiroga: Yeah.

Mr. Goncalves: Twenty day appeal period, we get the solid line --- time.

Mr. Phoenix: You wouldn't even need to do that, it'd just be approval subject to. You just wouldn't get anything back signed till we get the plan with the...

Mr. Goncalves: The solid line.

Mr. Phoenix: So, that's assuming that we go down that road, which would be kind of a nice change of direction from how ---.

Mr. Goncalves: I'll miss you guys.

Mr. Phoenix: You find all the fun ones. I'm sure you'll be back Tony. I still have a small sticking point, and I'm hoping that it can be cleared up fairly simply.

Mr. Queiroga: Let it out, you'll feel better.

Mr. Phoenix: You know, as I've kind of been saying all along, in principal I think this is a good fit for what's there. My concern comes in, going to the email chain that we have here, have we gotten anything in, in response to what you sent Rebecca, as Town Counsel, November 7<sup>th</sup> at 4:45 p.m., because I don't really see a response to that one. I see earlier things in this thread, but nothing since.

Mr. Stefancik: No, I've verbally been talking to her and telling her that solutions, it sounded like she didn't have an issue going the way we were going with doing the ANR.

Mr. Phoenix: Ok, well the ANR is fine, and that takes care of one of the things here. But, which one was it? I think it was in...

Mr. Goncalves: Well, just below that, that there, doesn't it look like the response from Doug, and it might have been just copied on, it's: *Hi Rebecca, thanks for your help, Doug*; and then this is all Rebecca in response to this.

Mr. Phoenix: Let me go back to that one, because I just switched over. There was the November 7<sup>th</sup>, 4:45 from Doug, and then below that is the November 7<sup>th</sup>, 1:40 from Town Counsel that proceeded his message.

Mr. Goncalves: Well, that was 1:40 from her.

Mr. Phoenix: Yes,

Mr. Goncalves: Ok.

Mr. Phoenix: But, going to the October 26<sup>th</sup>, 3:53 from Town Counsel: *Therefore, yes, I think combing the lots and getting the zone changes would be an alternative option for the owners. If that change was made, the driveway could then be routed so that it comes off of Chapin Street, not Victor Street, getting the zone changed to accommodate the business use now could preclude the owners from subdividing the property in the future. If the subdivision causes the business portion to not be in compliance with zoning requirements, alternatively, and as discussed, the owners could not decide to combine the two parcels and instead just seek a zone change along with a variance for the insufficient frontage. Additionally, there may be additional buffer requirements, so on and so forth. So, in either of those scenarios that she laid out there, she was talking about requiring a zone change.*

Mr. Queiroga: Yeah, which is something.

Mr. Phoenix: Have we seen anything that has come from her that indicates that this can go forward without that, since she said this? That's where my question comes in. 'Cause I know we've tried doing the zone change on this. I think the zone change would be appropriate, but it seems that Town Meeting does not agree with us.

Mr. Queiroga: Right, and now this was November 7<sup>th</sup>. You were quoting from October 26<sup>th</sup>?

Mr. Phoenix: Well, that's why I'm trying to figure out what we have that's the most recent on that subject.

Mr. Gonçalves: Yeah, what happened after that Tuesday 4:40 email? Would it, so that's different than what you have dated there? Alright, so this is Rebecca at 1:40, and it says *Hi Doug*. This one here.

Mr. Phoenix: Yup, Hi Doug, McNeil versus Town of Avon, that's the 1:40.

Mr. Gonçalves: That's not what's after the November 7<sup>th</sup> on the other page. So, if you go back to this one with Joe's handwriting on top, right? This one here, it's a totally different conversation after that. It's not the same as the 1:40 on the other email.

Mr. Phoenix: Is that this one?

Mr. Queiroga: Yes.

Mr. Gonçalves: Yeah. You see that's totally different than what the 1:40 was written on this one.

Mr. Queiroga: Well, --- cut and paste.

Mr. Phoenix: Yeah, this is literally cut and pasted on here ---.

Mr. Gonçalves: Right I know, but it's not the same thing as the 1:40 email on the same day that you referred to, that you have on the other page.

Mr. Phoenix: So, where did that come from?

Mr. Queiroga: This, I just, what you gave me is what I worked off of, put my thoughts together.

Mr. Stefancik: ---

Mr. Queiroga: And if you have the full ones, but this is November 7<sup>th</sup> at 4:45 p.m.

Mr. Pietras: Well is the question, --- how the Planning Board could allow the ---?

Mr. Gonçalves: It might be easier if you look at it here.

(multiple people talking about location of email)

Mr. Gonçalves: --- he's talking about before your 4:40 here, but this here isn't the same thing, and it's from her to you. But, it's not this email, the 1:40, so this is a different date that you copied on. So, is it missing the top that has all this information?

Mr. Queiroga: Yeah.

Mr. Gonçalves: 'Cause I'm figuring if you copied it here, it must have been after that November 7, 4:40 email.

Mr. Queiroga: And this came after, too.

Mr. Goncalves: 'Cause that was your question Ray, is there something after that 4:40 November 7th email?

Mr. Phoenix: Right.

Mr. Goncalves: And what's down here that was clipped on doesn't sound like it's the same conversation, but it came sometime, and it looks like it's, it's much more after that other one because it talks about new things that weren't discussed before.

Mr. Queiroga: In any case, while Doug goes and gets the original, and I was trying to put together my thoughts on this, and she is, on November 7th did express that she thought that this would be a good way to go, and as you can see there ---.

Mr. Goncalves: That's this over here, and this? It's totally different.

Mr. Phoenix: Ok, I found that excerpt. That is from the 1:40 email that she had sent. That was in the "Hi Doug, McNeil v. Town of Avon", the one that starts that way.

Mr. Queiroga: And it was further down?

Mr. Phoenix: Yeah, that's paragraphs three and four.

Mr. Goncalves: Ok, I see it.

Mr. Queiroga: 'Cause the other one really didn't apply here.

Mr. Goncalves: We're good Doug.

Mr. Phoenix: I found it.

Mr. Goncalves: So, the first two, the first two paragraphs were clipped out with the copy you made.

Mr. Queiroga: Ok, what other things are, Ray, are?

Mr. Phoenix: Well hang on, 'cause I'm trying to reread this.

Mr. Queiroga: Is that the same as this?

Mr. Phoenix: Yeah, that's those two paragraphs, there is that.

Mr. Queiroga: Yup, 'cause the rest, the other two really didn't apply.

Mr. Phoenix: It, maybe it's just me, but it's also a little bit, trying to think of the right word to use here...

Mr. Queiroga: Confusing?

Mr. Phoenix: No, it puts an asterisk in my brain when I'm going through this, and the last thing in this chain of conversation that we have in writing was asking for a comment from Town Counsel, and I don't see anything back in writing from Town Counsel.

Mr. Queiroga: ---

Mr. Phoenix: That's a little bit awkward for me.

Mr. Queiroga: --- phone calls back and forth between her and Doug.

Mr. Phoenix: No, I get that.

Mr. Queiroga: 'Cause I would ask him a question, and he says let me check.

Mr. Phoenix: I get that, but we've got an awful lot of stuff that people took the time to put in writing, and then it got left off with a question with no response.

Mr. Coelho: Where are we hanging ourselves up right now as far as with this plan being approvable?

Mr. Phoenix: Well first of all, if we assume the ANR is endorsed, because we haven't run the checklist and actually made a vote on it, but I think that's a fair assumption. Once that happens, they then have frontage on Chapin Street, which is of sufficient length. They don't, however, have frontage that actually allows them access to the property for the purpose that they're looking to do because you can't traverse that property for a use that's not allowed on that property. But, they have access through the private way in the back, which then makes me question why we necessarily need the ANR in the front, but it's one thing after another. So, if we consider the private way in the back to be adequate access, then we can probably go forward, is what I'm thinking. It's kind of a grey area for me, but I think that might be allowable. But, the question is...

Mr. Coelho: I think the historical intent of that driveway probably allows us to say that that's adequate access.

Mr. Phoenix: The thing is, we then have to determine how are we going to define adequacy of a way in relation to a site plan, when normally we only contemplate that in relation to, is there adequate access on an adequate way to grant an ANR, which is irrelevant in this because they have adequate access on an adequate way on Chapin Street to be able to combine the properties. They're not separating the lots.

Mr. Pietras: Well, under...

Mr. Queiroga: On that issue, you're beating a dead horse because they ruled that, in various cases, that you can't traverse to get to this allowed use, you can't go through Residency A...

Mr. Phoenix: Right.

Mr. Queiroga: ...because of the split situation.

Mr. Goncalves: You can't go, I know what Ray is thinking, I think he's saying that that Harrison Case says you can't go through the Residence A to get to the back because of the use difference...

Mr. Queiroga: Correct.

Mr. Goncalves: ...but you can still use that as if the ANR wasn't, didn't make sense because you're turning a private way into a lot, you can still access from Victor Street because Harrison actually says where there's monuments of a defined street, regardless of the size, if it's efficient access, then that's what you use to come in where you're not disturbing any other use.

Mr. Phoenix: Which combining the lots isn't gonna hurt anything anyway, but I just, I want to make sure that we're careful with how we go forward if, because this hinges right now on whether we consider that private way to be adequate access for the purpose of the site plan regardless of the ANR, I think.

Mr. Queiroga: Well, we've had...

Mr. Phoenix: That's why I was kinda hoping to have direct guidance from Town Counsel on that because it's kind of one of those, you know, legal issues.

Mr. Goncalves: For the frontage?

Mr. Phoenix: Adequacy of the way, which we don't have clearly defined in our standards because we don't normally have to contemplate that with a site plan. The only time in, that I can recall in my time on the Board, where we've really had to look at whether something was adequate way or not, was in conjunction with splitting lots as part of an ANR. So this is, like I said, you bring us the fun ones, you really do.

Mr. Goncalves: We learn every time.

Mr. Pietras: Within the Subdivision Control Law under Section 81W, the Board can waive any -

Mr. Phoenix: That's under subdivision, that has nothing to do with site plan.

Mr. Pietras: Oh yeah, on the frontage side of it.

Mr. Phoenix: We cannot waive anything under site plan unless specifically allowed to in the Zoning Bylaw.

Mr. Goncalves: But if you waive the ANR, now the site plan is based on the signed ANR, then maybe whatever it is that the hang up is, goes away?

Mr. Phoenix: Not really, because you still can't traverse that lot for the back purpose.

Mr. Queiroga: Ok.

Mr. Goncalves: ---

Mr. Phoenix: So, I'm inclined to say that if we're careful with how we approve it, we can probably get away with approving this with the private way being your access. I think we can probably get away with it. It's just...

Mr. Goncalves: I think if we read this attorney's thing, I think she goes there a couple times without saying exactly that. She's kinda leaving it up to you guys.

Mr. Phoenix: That's why I was just kinda hoping that there was a little bit more guidance from her that I could defer to. I mean, I'm comfortable with what you guys are looking to do there. I'm trying to project out for, you know, let's say 10, 20 years down the road when Mr. Garcia decides that he wants to be doing something else, someone else wants to take over, how's it gonna look at that point?

Mr. Goncalves: The kids are taking over, right?

Mr. Garcia: Your kids?

Mr. Goncalves: No, yours. ---

Mr. Queiroga: Let me try to focus on here so we can move on. The necessity that the Planning Board determines, the vital access exists to the lot shown on plan before endorsement. An ANR plan is not expressly stated in the Subdivision Control Law. This vital access, which is...

Mr. Phoenix: But that, again, that's talking about subdivision control which doesn't have to do with site plan.

Mr. Queiroga: This is not talking about that.

Mr. Phoenix: You just said subdivision control.

Mr. Queiroga: Listen, this is a building that was put in here in 2008 with the proper permit, in a...

Mr. Goncalves: AMD.

Mr. Queiroga: ...AMD Zone, and that getting access to it is subject to our agreement within aspects, but it's his right to get access to this. Ok, especially when you got off a public way, you got a 50 foot. We dealt with the public way on, what was the name of that street-off of Center Street?

Mr. Stefancik: Pell Street.

Mr. Queiroga: Yes.

Mr. Stefancik: And it's a private way. That was a private way.

Mr. Queiroga: And there was another one.

Mr. Stefancik: Avelino Way Subdivision with the street stub for a future roadway.

Mr. Queiroga: Yes. ---

Mr. Stefancik: That was ANR'd out...

Mr. Queiroga: Yeah.

Mr. Stefancik: ...to give the land to two abutting neighbors.

Mr. Queiroga: We dealt with those issues before, and it's within our purview.

Mr. Phoenix: Again, we've dealt with those in relation to subdivision control, which you just read subdivision control. Right now I'm not worried about subdivision control, I'm worried about site plan. I'm worried about zoning, not subdivision.

Mr. Goncalves: But that one here Doug, that ---

Mr. Phoenix: To move things forward a little bit at least, can I suggest that we run the ANR checklist. We act on the ANR. We ask for public comments, see where we're at on that. We can run the checklist formally on this, and then we can just have a couple bullet points, whatever it is that we need to finish discussing instead of having a lot of open ended things before we even do any of that. Does that sound like it makes sense?

Mr. Queiroga: Yeah, do we have the ANR checklist here on this...

Ms. Urban: It's with the plans.

Mr. Queiroga: It's with the plans?

*Mr. Phoenix read the ANR checklist:*

1. *Property owner's name, date of plan, and scale of plan.*
2. *A space for endorsement by the Planning Board.*
3. *The names of all abutters.*
4. *The lines of existing streets, ways, property lines, and easements. Indicate whether streets and ways are public or private.*
5. *The approximate distance from the property to the nearest street intersection, town line, or other definable physical feature.*
6. *Sufficient data to determine the location and length of every property boundary line in the new parcel and to establish these lines on the ground. Indicate the area of the new parcel.*
7. *The location of all property corner monuments and whether they were found or set.*
8. *The location, frontage, and area of the land remaining in the original parcel after establishing the new parcel.*
9. *The north arrow for bearing system used on the plan and whether it is true, magnetic, or assumed north.*



10. *The location of all existing buildings and the distance from the existing buildings to the new property lines.*

11. *If a building lot is intended, the frontage requirement at the setback line must be shown.*

SUBMISSION: Two (2) Mylar's plus four (4) sets of prints (dark line on white background) shall be submitted to the Board for endorsement.

Mr. Phoenix: So with that done, I'm gonna make a **MOTION** in the standard form to endorse the ANR.

**SECOND** Mr. Coelho.

**4-0 in Favor.**

**Roll call vote: Mr. Phoenix – yes; Mr. Coelho - yes; Ms. Houle – yes; Mr. Queiroga – yes.**

Mr. Queiroga: Ok, that takes care of the ANR.

Mr. Coelho: --- coordinating this meeting Mr. Chairman, you shouldn't be playing with papers. That's for us plebes at the end of the table to do.

Mr. Queiroga: So, we have now the, this is the two copies?

Mr. Pietras: Yes, yup.

Mr. Phoenix: Do we have the site plan checklist?

Mr. Queiroga: Is that in the, in here?

Ms. Urban: ---

Mr. Queiroga: Pardon me?

Mr. Gonçalves: In the folder.

Mr. Queiroga: It's in the folder, on this one?

(conversation regarding location of checklist)

Mr. Phoenix: Ok, so we actually have three checklists to run; for site plan, special permit, and business in the Agricultural Moderate Density Overlay District. So let's start with site plan. I'll just go through these quickly, 'cause we're already running late for other things. I don't want to do a continuance if we don't have to, but I don't want people to have to wait. So we're looking for a seal to start with.

*Mr. Phoenix read the Required Site Plan Contents Checklist:*

#### **7.1.5 Required Site Plan Contents**

*All site plans shall be prepared by a person or persons registered under the Massachusetts General Laws of the Commonwealth of Massachusetts to practice architecture and/or engineering, and land surveying and shall show*

*the seals of the architect and/or engineer, and land surveyor. All site plans shall be on standard 24" X 36" sheets at a scale of 1 inch equals 40 feet, with additional narrative as necessary. (Amended 1/25/99)*

*All site plans shall also include the property owner's names, date of plan, and scale of plan; and a space for endorsement by the Planning Board (3" X 5") (Added 10/2/06)*

*a. Provision for adequate drainage of surface water from paved areas. Use of landscaped areas to provide such drainage in order to relieve storm drainage systems is encouraged. The piping for the storm water drainage systems shall be designed using the ten (10) year storm curve for parking area drains and the twenty-five (25) year storm curve for culverts over existing natural waterways and retention areas.*

*b. Existing and proposed vegetation. Such vegetation shall be indicated by:*

*(1) Type and location (whether woods, brush, shrubs, etc.)*

*(2) Number of plants (if appropriate)*

*c. Existing natural features such as wetlands, rock outcroppings, slopes, hills, etc.*

*d. Pedestrian facilities, if any, including walks, plazas, benches, etc.*

*e.1. Parking spaces and circulation area for automobiles as well as the location of landscaped areas within them. Existing and proposed curb cuts shall be indicated together with approval for such cuts from the appropriate town or state agency. The number of spaces shall be in accordance with Section 6.4.2 of the bylaw.*

*e.2. All parking areas shall be paved and noted on the site plan as "to be paved," with the type of pavement to be used.*

*e.3. Area where deliveries will be made on site.*

*f. Existing and proposed fencing to be used to buffer abutting residential dwellings and/or districts from the intended development (if appropriate). Section 3.0.4 of this bylaw.*

*g. Existing natural features and vegetation to be retained shall be so indicated. Due regard shall be shown for all existing vegetation and natural features which, if preserved, will add attractiveness and value to the development.*

*h. The location and type of monumentation at all property corners shall be shown and maintained.*

*i. Existing and proposed elevations and contours. The contour interval shall be two (2) feet or any interval which adequately depicts the grading.*

*j. All existing and proposed utilities, and to include utilities with easements.*

*k. All site plans required herein shall display names of all abutters.*

*l. All existing and proposed sidewalks and curbing.*

*m. Landscaping Requirements*

*(1) Required landscaping shall be provided as set forth in Table 3.*

*(2) Buffer strips required by Table 3 shall be reserved exclusively for plantings, pedestrian facilities such as benches and walkways, required fences, necessary traffic control signs and those free standing signs which conform to the requirements of Section 6.5.2e of this bylaw.*

*n. The plan shall also include a chart showing the following information:*

*(1) Area of lot.*

*(2) Area and size of building.*

- (3) Maximum area of building to be used for selling, offices, business, industrial, or other uses, if applicable.
- (4) Maximum number of employees, where applicable.
- (5) Maximum seating capacity, where applicable.
- (6) Maximum sleeping capacity, where applicable.
- (7) Number of parking spaces required for the intended use, based on Section 6.4.
- (8) Number of parking spaces existing at the site (including street parking adjacent to site).
- (9) Number of trees and/or shrubs.
- (10) Number of trees and/or shrubs shown on plan.

Mr. Phoenix: I'm gonna hold off on o. because I believe we have a waiver request on that, that we can get to in a moment. Switching over to the business in the Agricultural Moderate Density Overlay District:

Mr. Phoenix read the Business in the Agriculture Moderate Density Overlay District Checklist:

**BUSINESS IN THE AGRICULTURE MODERATE DENSITY OVERLAY DISTRICT -  
CHECKLIST**

Special Permits for business uses in the AGRICULTURE MODERATE DENSITY OVERLAY DISTRICT, if consistent with this bylaw in all other respects, shall be granted only if the Planning Board determines that the proposal's benefits to the Town or vicinity will outweigh any adverse effects, after consideration of the following:

- a. The proposal will be located near uses which are similar to the proposed use or, if not, the nearby uses will be ones likely to benefit from rather than be damaged by having the proposed activity nearby.
- b. Public water supply will be available or will be made available without increased cost to the Town and serving this use at this location will pose no problems which are unusual.
- c. If the proposed project will employ more than 10 full-time people, then public sewer will be available or will be made available without increased cost to the Town and serving this use will pose no problems to the Town which are unusual.
- d. The proposal will not cause environmental stress from erosion, siltation, ground water or surface water contamination, or habitat disturbance on the site.
- e. The proposed activity will contribute to the diversity of services available to the Town.
- f. Any retail services will be designed to serve the Town's population rather than a larger region.
- g. The proposal will add little to traffic congestion, considering the location, the number of trips likely to be attracted, and any special access provisions committed (e.g. bike storage facilities, employee ridesharing) and uses with an average number of 100 trips generated per day per 1,000 square feet of gross floor area.
- h. The proposal will pose no environmental hazard because of use or storage of explosive, flammable, toxic, or radioactive materials.
- i. The proposal will not result in air pollution or excessive noise.

- \_\_\_j. Scenic views from public ways and other developed properties will be considerably treated in the design of the site.
- \_\_\_k. Topographic change will be in keeping with the surrounding topography.
- \_\_\_l. Removal of existing trees or other important natural features will be avoided.
- \_\_\_m. Pedestrian movements within the site and to other places will be well provided for.
- \_\_\_n. Vehicular movement within the site will be safe and convenient, and arranged so as to not disturb abutting properties.
- \_\_\_o. Visibility of parking and service areas from public streets will be minimized through facility location and the use of topography and vegetation. (Amended 10/2/06)
- \_\_\_p. Potential disturbances such as noise, glare, and odors will be effectively confined to the premises through buffering or other means.
- \_\_\_q. Water quality will be protected through appropriate location and design of disposal facilities in relation to water bodies and site geology.
- \_\_\_r. One driveway per business shall be permitted as a matter of right. Curb cuts shall be limited to the minimum width for safe entering and exiting, and shall in no case exceed twenty-four (24) feet in width.
- \_\_\_s. Scenic views from public ways and other developed properties will be considerably treated in the design of the building(s).
- \_\_\_t. Primary exterior materials will match the appearance of materials commonly found on existing buildings within the Town.
- \_\_\_u. Domestic scale will be maintained in the building(s) design through massing devices such as breaks in walls and roof planes and through the design of architectural features.

*Mr. Phoenix read the Special Permit Criteria Checklist:*

### **SPECIAL PERMIT CRITERIA**

- a. The proposal is suitably located in the neighborhood in which it is proposed and/or the total town, as deemed appropriate by the Special Permit Granting Authority;
- b. The proposal is compatible with existing uses and other uses permitted by right in the same district;
- c. The proposal would not constitute a nuisance due to air and water pollution, flood, noise, dust, vibrations, lights, or visually offensive structures and accessories;
- d. The proposal would not be a substantial inconvenience or hazard to abutters, vehicles, or pedestrians;
- e. Adequate and appropriate facilities would be provided for the proper operation of the proposed use;
- f. The proposal reasonably protects the adjoining premises against any possible detrimental or offensive uses on the site, including unsightly or obnoxious appearance;
- g. The proposal ensures that it is in conformance with the sign regulations of the bylaw. (See Section 6.5)
- h. The proposal provides convenient and safe vehicular and pedestrian movement within the site, and in relation to adjacent streets, property or improvements;

- i. The proposal ensures adequate space for the off-street loading and unloading of vehicles, goods, products, materials, and equipment incidental to the normal operation of the establishment or use;
- j. The proposal provides adequate methods of disposal and/or storage for sewage, refuse, and other wastes resulting from the uses permitted or permissible on the site, and methods of drainage for surface water;
- k. The proposal ensures protection from flood hazards, considering such factors as the following: elevation of buildings; drainage, adequacy of sewage disposal; erosion and sedimentation control; equipment location; refuse disposal; storage of buoyant materials; extent of paving; effect of fill, roadways or other encroachments on flood runoff and flow;
- l. The proposal is in general harmony with the general purpose and intent of this bylaw;
- m. The proposed use complies with any and all additional Special Permit Criteria or special use regulations imposed on individual uses in Section VI of this bylaw.

Mr. Phoenix: Which that brings us back to o. Additional Requirements. Do we want to act on the waiver before we run through that portion? You got the waiver request or is that here in the file?

Mr. Queiroga: It is signed, it's there. It's in the file. 1, 2, 3, & 4?

Mr. Goncalves: 2 is on the plan.

Mr. Phoenix: 1, 2, 3, & 5 is what you've got circled. Which would be they're looking to waive:

*o. Additional Requirements: All site plans need to have the following information unless waived by the Planning Board:*

*(1.) Lighting Plan with Luminaire Schedule, prepared by an engineer.*

*(2.) Elevations showing the front, rear, and sides of the building design.*

*(3.) Signage design with dimensions and locations.*

*(5.) Traffic Study.*

Mr. Phoenix: And they're including *(4.) Area where snow will be stored.* That's correct?

Mr. Goncalves: Yeah, it's on the plan, the snow storage.

Mr. Phoenix: So now, as far as the lighting plan with luminaire schedule, are you changing any of the lighting on the site?

Mr. Goncalves: No, whatever's on the building now.

Mr. Phoenix: And the elevations, that's all staying as is?

Mr. Goncalves: All staying as is.

Mr. Phoenix: Signage design is ...

Mr. Goncalves: There's one small sign, maybe 18 x 24? That's about it. I mean, it would be probably, you know, the size of a campaign sign.

Mr. Pietras: Almost --- size, a little larger.

Mr. Phoenix: Traffic study, as I mentioned before, we discussed that in other sessions of this and ---.

Mr. Goncalves: Four to six trips a week.

Mr. Phoenix: Hard to get much more minimal than that. So, with that in mind, I'd make a **MOTION** to grant the waiver of 1, 2, 3, & 5, under 7.1.5.0, considering that it is in the best interest of the Town and neighborhood to grant the waiver at this time.

**SECOND Ms. Houle.**

**4-0 in Favor.**

**Roll call vote: Mr. Phoenix -- yes; Mr. Coelho - yes; Ms. Houle -- yes; Mr. Queiroga -- yes.**

Mr. Phoenix: Ok, so now with that, we can say those ones are waived, and that leaves area where snow will be stored ---.

Mr. Goncalves: It's in the parking lot, just about the parking lot on the right side.

Mr. Phoenix: So we've resolved all of the checklists, we've resolved the waiver, we resolved the ANR, so it's just that one question of adequacy that's left as far as I'm aware, that and public comment.

Mr. Queiroga: Once the ANR's been approved --- that one line has gotta be changed to solid line.

Mr. Pietras: Sure.

Mr. Queiroga: On the ...

Mr. Pietras: Yup.

Mr. Queiroga: It is on your ANR.

Mr. Pietras: Oh no, I understand, and we can change it, but what we have on the plan is indicated as a property line, so technically it is correct.

Mr. Queiroga: Ok, so ...

Mr. Pietras: You know what I mean?

Mr. Goncalves: --- for this, there was another name on ---.

Mr. Pietras: But we'll change the solid or however the Board wants it ---.

Mr. Coelho: You gotta open it up to the public.

Mr. Queiroga: Yup.

Mr. Coelho: Specifically, that's the entire hinge of this thing in my mind right now.

Mr. Queiroga: Is, I am gonna open it up to the public. Is there anybody here that wants to comment on this application? Peter? Ok.

Mr. Phoenix: So, Doug, on the adequacy issue, what was the, since it seems like it switched to verbal communication after that email that I've been looking at, what was Town Counsel's stance on whether or not that way is considered adequate for this purpose?

Mr. Queiroga: Can I read something from our attorney?

Mr. Phoenix: Sure.

Mr. Queiroga: Turning to the other issue we discussed yesterday, the Ludlow Zoning Bylaw defines frontage as that portion of a lot fronting upon a street, and it goes on. A street shall include the entire right-of-way based on these definitions. It appears that a frontage requirement can be met when it's measured along a right-of-way giving access to the lot, and that a private way would qualify.

Mr. Phoenix: For the purpose of giving frontage, not necessarily for giving access on an adequate way. I'm asking about adequate way, I'm not asking about frontage. I'm confident that we have frontage on this property.

Mr. Goncalves: You guys --- set the adequate standards for a private way.

Mr. Phoenix: That's why I said I think we can probably get away with doing it. I'm just asking if we'd gotten anything from Town Counsel on that issue of adequacy of this private way.

Mr. Stefancik: No, nothing...

Ms. Houle: Written.

Mr. Stefancik: ...nothing written. She was aware that we could create the frontage, but it would be up to you to determine the adequacy of the way. And she was aware that this would not be a full roadway, that this would be a driveway, that there were Conservation issues, that if this went to be, if you made this --- go through subdivision rules and regulations, they would have to be coming in asking for a list of waivers because you wouldn't be, a cul-de-sac would be an overkill. It would be a dead end street. It's only serving...

Mr. Phoenix: --- the depth would be kind of overkill ---.

Mr. Stefancik: ...it's only serving Mr. Garcia and his property. As long as you feel that Fire and Police can make it to here. He's having limousines going up and down the property. I think there's a lot of things pointing that this is specific to his use. There's no reason that Fire and Safety can't get there. And even if there's the front side of the property, too, that can be accessed as well. I mean, he's not utilizing the Residential A portion because he can't, but if an emergency vehicle had to go over the front portion, there's still that as a worst case scenario.

Mr. Queiroga: What...

(multiple people talking)

Mr. Goncalves: It's not that deep, the lots that are on Victor Street are 90 feet, the building's 20, you're 110 feet from the public way, which is much further than a lot of driveways in this town when you start getting out a little bit.

Mr. Queiroga: Just ask one question...

Mr. Goncalves: The lots are 90 deep.

Mr. Queiroga: We got our 50 foot right-of-way ...

Mr. Phoenix: I think I know how I can do this ---.

Mr. Queiroga: ...and I've been there many times now, and what is the adequacy that we would need, because obviously they're not gonna go 50 feet wide.

Mr. Stefancik: Correct.

Mr. Queiroga: --- 16 or 24 ...

Mr. Phoenix: I think I've got this covered.

Mr. Queiroga: Ok.

Mr. Phoenix: Let me make a motion. I think we've got a way forward here pretty easily.

Mr. Queiroga: Ok, yup.

Mr. Phoenix: I'm gonna make a **MOTION** in the standard form to approve the special permit, at this point, for the proposal that we have in front of us for Mr. Garcia, with the additional understanding that the special permit is granted for this purpose only, and that any other purpose would need to come in, in front of the Planning Board, any enhancement of the degree of the use would need to bring it back to the Planning Board to have the adequacy of access reviewed.

Mr. Goncalves: Perfect.

**SECOND Mr. Coelho.**

**4-0 in Favor.**

**Roll call vote: Mr. Phoenix – yes; Mr. Coelho - yes; Ms. Houle – yes; Mr. Queiroga – yes.**

Mr. Phoenix: So, with that said, I'm gonna make a **MOTION** in the standard form to approve the site plan for Mr. Garcia as proposed, with the understanding that there is a condition that before signing and returning the plan to Mr. Garcia, we get the plan back with a solid line in replace of the dashed line, as discussed during the hearing.

**SECOND Ms. Houle.**

**4-0 in Favor.**



Mr. Phoenix: And with that, I'll make a **MOTION** to close the public hearing.  
**SECOND** Ms. Houle.  
**4-0 in Favor.**

*The public hearing was closed at 7:56 p.m.*

APPROVED:

*Kathleen Houle*

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Kathleen Houle - Secretary

SU

Documents: Master application; abutters list; Emails from/to Tony Goncalves and Tim Brennan-PVPC re: zoning setback questions (10/25&26/17); Emails to/from Doug Stefancik and Rebecca M. Thibault, Esq. re: split lot zoning (8/09/17 - 10/26/17); Comments from Town Boards/Departments; Board of Appeals- Notice of Decision- Variance - 720 Chapin Street (withdrew without prejudice); Administration of the Government - Part I, Title VII - Chapter 41 - Section 81R; Site Plan - 720 Chapin Street / Victor Street Ludlow, Mass. for John & Melissa Garcia - (owners)(April 25, 2016); Request for continuation letter from John Garcia (11-9-2017); Response email from Rebecca M. Thibault re: 720 Chapin Street (November 7, 2017); Private Way Plan of Land in Ludlow, MA prepared for John & Melissa A. Garcia Trustees of 716 Chapin Street Realty Trust (Owners)(Dec. 7, 2017); Proposed Plot Plan w/Proposed Conditions, Victor Street Ludlow, Mass. for John & Melissa Garcia - (owners)(Rev. 4/21/2016); Proposed Plot Plan w/Proposed Conditions, 720 Chapin Street / Victor Street Ludlow, Mass. for John & Melissa Garcia - (owners)(Rev. 4/21/2016); Waiver request (12-7-17)

*(Documents pertaining to this hearing are available for viewing in the Planning Board Office during regular business hours).*



**TOWN OF LUDLOW PLANNING BOARD**  
**PUBLIC HEARING – HOME OCCUPATION/SPECIAL PERMIT**  
7 Circuit Avenue – Stephen P. Nodurf  
(process paperwork for self defense business – Pioneer Valley PDR)  
December 7, 2017

RECEIVED  
TOWN OF LUDLOW  
2018 JAN 31 A 8:41  
TOWN OF LUDLOW

**PLANNING BOARD MEMBERS**

Joseph Queiroga – Chairman (Present)  
Raymond Phoenix – Vice Chairman (Present)  
Christopher Coelho (Present)  
Kathleen Houle (Present)

*Hearing began at 7:58 p.m. in the Selectmen's Conference Room.*

---

*In attendance: Stephen Nodurf, Carol Nodurf, attendees*

Mr. Queiroga read the legal notice, gave Mr. Nodurf a copy of the invoice from Turley Publications, and reviewed the application. The legal notice included the description of: Home Office – process paperwork for self defense business (Pioneer Valley PDR).

Mr. Queiroga: Ok, tell us, if you will, what your plans are, what you'd like to get done there.

Mr. Nodurf: I just really need an address to use, a mailing address and some place to do paperwork, like small home office, size of my kitchen table. Everything else is done, any training would be done off site. Right now I'm using Crossfit Echo's facility on Center Street to do training. This will allow me to train in other areas and have stuff forwarded to me. --- equipment, I got to have some place to send it, and that would be my house, and I need a special permit to do that, so here I am applying for a special permit.

Mr. Queiroga: Ok.

Mr. Phoenix: Just to run through the other information that we have that came in with this: total area of home and other buildings housing occupation, 960; area to be used is 24; zero non-resident employees; no signage, customers at the house, deliveries unlike a normal residence or changes that would make it look less residential; and vehicle is a personal vehicle 2015....

Mr. Nodurf: Hyundai Veloster.

Mr. Phoenix: There we go. And we also do have the waiver request has been signed and submitted to us for the full site plan down to a sketch and photos. Based on what we've heard tonight, I would start by making a FINDING that this certainly sounds like it's a suitable home occupation under the Bylaw.

**SECOND Ms. Houle.**

**4-0 in Favor.**

Mr. Phoenix: And I'll also **MOVE** that we grant the waiver, as requested, of the full site plan down to a sketch and photos prepared by the applicant.

**SECOND** Mr. Coelho.

**4-0 in Favor.**

Mr. Queiroga: Should we go right to the checklist?

*Ms. Houle read the Home Occupation Criteria Checklist:*

## **HOME OCCUPATION CRITERIA CHECK LIST**

1. Such use is clearly secondary to the use of a premises for dwelling purposes.
2. The use is pursued by a member of the family residing in the dwelling with not more than two non-resident employees.
3. No trading in merchandise is regularly conducted except for products made on the premises or of parts or other items customarily maintained in connection with, and incidental to, such merchandise.
4. No external change is made which alters the residential appearance of the building on the lot.
5. All operations, including incidental storage, are carried on within the principal or accessory building, and that there is no outward evidence that the premises are being used for any purpose other than residential (except for an accessory sign or vehicle as hereinafter permitted.)
6. The proposed accessory use would be suitably located in the neighborhood in which it is proposed. The use shall not be characterized by outward manifestations (such as traffic generation, noise, public service and utility demand, etc.) not unlike those dwelling units in the particular neighborhood in which the dwelling is located.
7. Only one vehicle parked on the property may be a commercial vehicle and of not more than 10,000 pounds G.V.W. (Gross Vehicle Weight). In all, the total number of vehicles parked on the property during business hours should not exceed by more than two (2) the number of vehicles parked during non-business hours.
8. In all Residence and Agriculture districts, the use will be reasonably compatible with other uses permitted as of right in the same district and with adjoining uses.
9. The use will not constitute a nuisance by reason of an unacceptable level of air or water pollution, excessive noise or visually flagrant structures and accessories, and the use is not a serious hazard to abutters, vehicles or pedestrians.
10. Adequate and appropriate facilities will be provided for the proper operation of the proposed use, including special attention to safe vehicular circulation on the site and at the intersection with abutting streets.
11. The occupational use shall not occupy more than the equivalent of twenty-five percent (25%) of the total gross floor area of the residential structure plus other accessory structures housing the occupation or not more than 500 square feet of gross floor area, whichever is less.
12. In connection with a home occupation there shall be no display visible from outside the building other than an identification sign not larger than two (2) square feet in area and shall not be lighted.
13. Adequate off-street parking for employees and customers shall be provided and must be screened from view from the roadside and from the neighbor.

Ms. Houle read the Special Permit Criteria Checklist:

## SPECIAL PERMIT CRITERIA

- a. The proposal is suitably located in the neighborhood in which it is proposed and/or the total town, as deemed appropriate by the Special Permit Granting Authority;
- b. The proposal is compatible with existing uses and other uses permitted by right in the same district;
- c. The proposal would not constitute a nuisance due to air and water pollution, flood, noise, dust, vibrations, lights, or visually offensive structures and accessories;
- d. The proposal would not be a substantial inconvenience or hazard to abutters, vehicles, or pedestrians;
- e. Adequate and appropriate facilities would be provided for the proper operation of the proposed use;
- f. The proposal reasonably protects the adjoining premises against any possible detrimental or offensive uses on the site, including unsightly or obnoxious appearance;
- g. The proposal ensures that it is in conformance with the sign regulations of the bylaw. (See Section 6.5)
- h. The proposal provides convenient and safe vehicular and pedestrian movement within the site, and in relation to adjacent streets, property or improvements;
- i. The proposal ensures adequate space for the off-street loading and unloading of vehicles, goods, products, materials, and equipment incidental to the normal operation of the establishment or use;
- j. The proposal provides adequate methods of disposal and/or storage for sewage, refuse, and other wastes resulting from the uses permitted or permissible on the site, and methods of drainage for surface water;
- k. The proposal ensures protection from flood hazards, considering such factors as the following: elevation of buildings; drainage, adequacy of sewage disposal; erosion and sedimentation control; equipment location; refuse disposal; storage of buoyant materials; extent of paving; effect of fill, roadways or other encroachments on flood runoff and flow;
- l. The proposal is in general harmony with the general purpose and intent of this bylaw;
- m. The proposed use complies with any and all additional Special Permit Criteria or special use regulations imposed on individual uses in Section VI of this bylaw.

Mr. Queiroga: That being said, I'm going to open it up to the public. Anybody here who has, doesn't look like it. I know you're not Peter, right?

Mr. Phoenix: Peter's against everything.

Mr. Queiroga: Ok, at this time...

Mr. Phoenix: I'll make a **MOTION** in the standard form to approve the Special Permit Home Occupation as it has been proposed.

**SECOND** Mr. Coelho.

**4-0 in Favor.**

**Roll call vote: Mr. Phoenix – yes; Mr. Coelho - yes; Ms. Houle – yes; Mr. Queiroga – yes.**

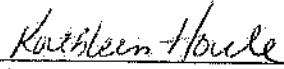
Mr. Phoenix: **MOVE** to close the public hearing.

Mr. Queiroga: Pardon?

Mr. Phoenix; **MOVE** to close the public hearing.  
**SECOND** Ms. Houle.  
**4-0 in Favor.**

*Hearing ended 8:05 p.m.*

APPROVED:

  
\_\_\_\_\_  
Kathleen Houle, Secretary

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Documents: Master application; abutters list

*(Documents pertaining to this hearing are available for viewing in the Planning Board Office during regular business hours).*