

TOWN OF LUDLOW PLANNING BOARD
PUBLIC HEARING – ACCESSORY APARTMENT/SPECIAL PERMIT
18 Pond Street – Dean Dandy
(Transferring ownership of existing accessory apartment)
January 25, 2018

PLANNING BOARD MEMBERS

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

Hearing began at 7:09 p.m. in the Selectmen's Conference Room.

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2018 FEB -9
11:00 AM
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In attendance: Dean Dandy, attendees

Mr. Queiroga read the legal notice and reviewed the application. The legal notice included the description of: transferring ownership of existing accessory apartment.

Mr. Queiroga: I think I've come in and looked at this. Why don't you tell us what's happening there?

Mr. Dandy: Two years ago, my wife moved out for, we got divorced. Six months after that, her mother, who lived in the apartment, and I had the permit for originally, moved out. So, now my son has moved back to my house, and my son had moved into the apartment. So, I want to redo it for my son.

Mr. Phoenix: So, all of the conditions, the physical conditions of the building, the access, all of those things, that's all gonna stay exactly as it has been?

Mr. Dandy: Yup, it's the same as it was, it's just that I really don't need to live in a 3,500 square foot house by myself.

Mr. Phoenix: Still not looking to put up any signage, advertising the accessory apartment or anything?

Mr. Dandy: No, my son, what I'm offering is my son, I'm giving him a couple of years. Hopefully, he can save some money to buy a house, so. He's 26, has two jobs. So, no change, no anything, just kind of that way he has his own apartment. He used to live in the house with us, but.

Mr. Coelho: And these things are tied to an individual person that lives there, or just --- in general?

Mr. Stefancik: Well see, his wife applied for this ...

Mr. Dandy: Yup.

Mr. Stefancik: ...his ex-wife applied for this special permit...

Mr. Dandy: She signed the paperwork the first time I came here and did it.

Mr. Stefancik: ...and --- she was on all the paperwork, and he was not until it transferred over, and then because ...

Mr. Queiroga: --- transfer to his name, and then it has to be somebody that's related to him.

Mr. Dandy: Right.

Mr. Coelho: Right, right.

Mr. Stefancik: Because she's not on the deed.

Mr. Dandy: So, that's what changed. She originally signed the permit even though we both did it.

Mr. Stefancik: --- lapsed ---.

Mr. Dandy: But now that we're divorced and her mom moved out, I'm kind of redoing it for my son.

Mr. Coelho: So this is ---

Mr. Dandy: Yup.

Mr. Queiroga: Yes, and there is, if you want to --- the, while I read some of these... No comments from Board of Health. This is a statement, more or less, what he just asked us to do to switch it. And assess information on the house, and...

Mr. Coelho: The original checklist is complete?

Mr. Queiroga: That's correct, and did Justin have any comments on this?

Mr. Stefancik: No.

Mr. Queiroga: No? Ok, so he was fine with it.

Mr. Phoenix: At any point where the change is made to be able to discontinue the use or has everything stayed the same?

Mr. Dandy: Stayed the same, 'cause after she left two years ago, and her mom left six months after that, I was in the house alone, but now I let my son move back in.

Mr. Phoenix: Ok, but I'm just saying, none of the utilities got stopped or anything like that?

Mr. Dandy: Nope.

Mr. Phoenix: That's all still...

Mr. Dandy: No, no, yup. The apartment stayed empty, and it stayed the same. It was me living in the house alone. So, nothing's changed, but now he's moved back in.

Mr. Phoenix: Ok.

Mr. Queiroga: Ok, should we break Ralph in on one of the?

Mr. Phoenix: That was a nice move Joe. To start with, under Accessory Apartment Conditions...

Mr. Phoenix read the Accessory Apartment Conditions:

ACCESSORY APARTMENT CONDITIONS:

- The accessory apartment will be a complete, separate housekeeping unit that functions as a separate unit from the original unit.
- Only one apartment will be created within a single family home.
- The owner(s) of the residence in which the accessory apartment is located shall occupy at least one of the dwelling units on the premises.
- The additional unit shall be occupied only by a family member. For purposes of this article, family member shall be defined as one of the relatives of the home owner or spouse as follows: mother, father, sister, brother, son, daughter, uncle, aunt, grandmother, grandfather and/or their spouses.
- The accessory apartment shall be designed so that the appearance of the building remains that of a one-family residence as much as feasibly possible. In general, any new entrances shall be on the side or rear of the building. Any exterior changes made must conform with the single family character of the neighborhood.
- The accessory apartment shall be clearly a subordinate part of the single family dwelling. It shall be no greater than eight hundred (800) square feet nor have more than (1) bedroom.
- There shall be provided at least two (2) off-street parking spaces for the principal dwelling unit, and at least one (1) off-street parking space for the accessory apartment. Parking spaces shall be located to the side or rear of the structure, and behind the front yard setback required for the zoning district.
- For dwellings to be served by on-site septic system, the owner must obtain a letter from the Board of Health that the existing sewage disposal system is adequate for the proposed accessory apartment, before a special permit can be obtained.

Mr. Phoenix: On that one, do we have a new letter from them, or are we able to still reuse the old one?

Mr. Stefancik: The certified letter?

Mr. Phoenix: The Board of Health's letter.

Mr. Queiroga: ---

Mr. Stefancik: The Board of Health? No, they have, it's public water and public sewer.

Mr. Dandy: Public water and public sewer I have.

Mr. Queiroga: Excuse me a second, you took over ownership of the house, right?

Mr. Dandy: Yes.

Mr. Queiroga: Ok.

Mr. Dandy: I refinanced and I paid her off. It's all in my name.

Mr. Queiroga: Ok.

Mr. Phoenix:

- Dwellings must be in existence, and not substantially altered for a period of three (3) years prior to the filing of the conversion permit.
- There shall be no lodgers in either the original dwelling unit or the accessory apartment.
- The construction of any accessory apartment shall require a building permit.
- The temporary special permit for an accessory apartment in an owner-occupied, single-family dwelling shall terminate upon the sale of the property or transfer of the title of the dwelling, or removal from the dwelling by reason of health or death of the occupant of the accessory unit.
- The owner(s) of the altered dwelling will dismantle the cooking facilities for the accessory apartment and restore the dwelling to a single-family residence upon sale or transfer of title of the dwelling, or removal from the dwelling by reason of health or death of the occupant of the accessory unit, unless a new special permit is obtained within three (3) months after the happening of any of the above events.
- The new owner(s) must apply for re-approval of a special permit for an accessory apartment in an owner-occupied, single-family dwelling and shall submit a notarized letter of application stating that he/she will occupy one of the dwelling units and the additional unit will be occupied by a family member as defined in Section 6.6.3 d. The notarized letter shall state that the original conditions at the time of the original application remain unchanged. Minor changes may be approved without a hearing from the Planning Board.
- Upon receiving a special permit, the new owner(s) must file on the subject property, a Declaration of Covenant at the Hampden County Registry of Deeds. A time-stamped copy of the recorded Declaration of Covenant shall be provided to the Planning Board and the Building Department.

Mr. Queiroga: Is that typing small or is it just my eyes getting worse?

Mr. Phoenix: Yes.

Mr. Queiroga: Yes to both?

Mr. Phoenix: Yeah.

Mr. Queiroga: Ok. You're on Ralph.

Mr. Quiterio 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: Ok.

Mr. Phoenix: Once we go through all of the extensive public comment that I think we're about to hear, I have a motion ---.

Mr. Queiroga: Why don't we open it up, and do our due diligence. Anybody here for the, to make comments on this particular special permit? That notwithstanding...

Mr. Phoenix: I'll make a **MOTION** in the standard form to approve the accessory apartment special permit, for Mr. Dean Dandy at 18 Pond Street.

SECOND Mr. Coelho.

4-0 in Favor.

Roll call vote: Mr. Quiterio – yes; Mr. Phoenix – yes; Mr. Coelho - yes; Mr. Queiroga – yes.

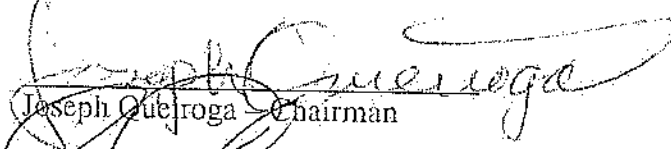
Mr. Phoenix: **MOVE** to close the public hearing.

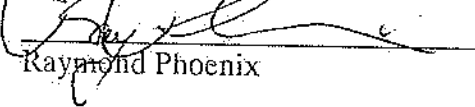
SECOND Mr. Coelho.

4-0 in Favor.

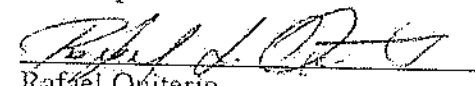
Hearing ended at 7:20 p.m.

APPROVED:


Joseph Quejroga - Chairman


Raymond Phoenix

Christopher Coelho


Rafael Quintero

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Documents: Master application; abutters list; Comments from Town Boards/Departments

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

Public Hearing – Dandy
January 25, 2018

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**TOWN OF LUDLOW PLANNING BOARD
MINUTES OF THE MEETING OF
January 25, 2018**

RECEIVED
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11:04 AM
2018 FEB -9 A 8-47
TOWN OF LUDLOW

PLANNING BOARD MEMBERS

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

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

ANR – Armand Deslauriers – Parker Lane Subdivision (Assessors’ Map 30, Parcel 112)

The appointment was cancelled by Mr. Deslauriers.

Review 2017 Annual Town Report

The Board did not see any problems with the draft of the Planning portion of the Town Report.
(motion below)

Discussion - Fee Structure

Mr. Stefancik mentioned that on the budget memo from Kim Collins, Town Accountant, it was noted that they are asking town departments to review their current fee structures and implement fee increases where possible.

Mr. Stefancik said that he will inquire with surrounding towns to see what they are charging for fees. Mr. Phoenix remarked that it has been 11 years since the fees have been revised.

The discussion will be tabled until the March 22, 2018 meeting.

Documents included: Memo from Kim Collins, Town Accountant re: FY19 Budget; Ludlow Planning Board Fees (effective May 17, 2007)

**PUBLIC HEARING – SPECIAL PERMIT/ACCESSORY APARTMENT – Dean Dandy -
– 18 Pond Street (Assessors’ Map 12B, Parcel 157)
(transferring ownership of existing accessory apartment)**

SEE ATTACHED MINUTES

Review 2017 Annual Town Report (cont.)

Mr. Phoenix: I'll **MOVE** that we forward the Annual Town Report for submission to the Board of Selectmen or the Clerk's Office, whoever that needs to go to.

SECOND Mr. Coelho,

4-0 in Favor.

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Discussion – Housing Production Plan

Mr. Stefancik said that he received a response and proposal from Karen Sunnarborg in regards to the Housing Production Plan for the Town of Ludlow. He remarked that the Board has two weeks to review the proposal before making a decision. He also noted that no other responses have been received, and that the deadline to submit was today at 4:00 p.m.

Documents included: Proposal from Karen Sunnarborg (January 24, 2018)(20 pages)

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Mail Item #09 - Notice of Cease & Desist Order at 658 Center Street from Justin Larivee, Building Commissioner

Mail Item #10 - Response to Cease & Desist from Armando M. Nunes – 658 Center Street

Mr. Queiroga read the Cease & Desist letter from Justin Larivee (Mail Item #9) that stated that Mr. Nunes must cease & desist the storage of all construction equipment related materials as well as dumpsters from the site at 658 Center Street. The letter also noted that the property is not zoned for industrial use, and that Mr. Nunes is also in violation of the site plan filed with the Planning Board. Mr. Stefancik remarked that Mr. Larivee also submitted photos.

Mr. Queiroga then read the response letter from Mr. Nunes (Mail Item #10) which stated that he is requesting that the Board reprimand the enforcement officer for this abuse of power, the wasting of Town time and resources, a clear misunderstanding of and misrepresentation of the bylaws with which he has been tasked to enforce as the enforcement officer. Mr. Nunes also requested in the letter that the Board review if another inspector or individual be appointed as the Zoning Enforcement Officer as precedent has been set by other municipalities in the Commonwealth to separate the Building Official and the Zoning Enforcement Officer.

Mr. Nunes explained that he has two dumpsters located on the property, which are there for the tenants of the property, and have been there for the past four years. He added that the trucks that are parked in the back are used to haul the dumpsters. Mr. Nunes said that the storage container on the property is used to hold his wife's dance studio props. He then presented the Board with copies of invoices and paid check stubs from L & E Gomes for a parcel of real estate that has

been rented for a number of years to store his dumpsters. Mr. Nunes remarked that there has never been any intention to store dumpsters at this parcel.

Mr. Coelho asked if the dumpster location was called out on the site plan. Mr. Phoenix said that he did not see that noted on the plan. He stated that the site plan notes that the parking spaces noted on the site plan states: existing 58, required 58. Mr. Nunes remarked that an amendment was done to the site plan, and that there are an additional 7-8 parking stalls, plus 3, for a total of 10-11 additional paved parking spaces. Mr. Stefancik remarked that the addendum could not be located in the file.

Mr. Stefancik said that the property is zoned Business B.

Mr. Nunes commented that the parking spaces are based on the total square footage of the building.

Mr. Coelho remarked that the dumpsters are an easy fix, whether it's through an addendum to call them out, but that having three commercial trucks there is something that's a little more in the grey area. Mr. Nunes responded by saying that in a business zone, a business is supposed to be established there, and if that business owns a vehicle, it has to be registered as a commercial vehicle if it's used for commercial purposes. He added that if Mr. Larivee is correct in this, then no business in the Town of Ludlow can park a commercial vehicle on their property. Mr. Phoenix remarked that he agrees with those comments, and that he agrees with Mr. Coelho that they can probably clear up, at least, the dumpster issue by doing an amendment to the plan, along with the total number of parking spaces. He also mentioned that for home occupations/home businesses, where people are going to have a vehicle over 10,000 lbs, the Planning Board tells them to find a business somewhere in Town that's willing to let them use their lot to park their business truck, so that it's not at their personal property. Mr. Phoenix added that if this is an instance where he is parking his own business vehicle on his own business property that that would seem like that would be even less of a problem. He noted that if the size of the vehicle is a nuisance to the area, or a safety issue, that would get handled under a different umbrella.

Mr. Nunes commented that the two white trucks (shown in the photo) have a GVW of 42,000 lbs, and 66,000 lbs. He noted that the black truck in the photo is no longer on the property. Mr. Nunes remarked that the cease & desist points to an industrial use. He then read the definition of industrial use from the Commonwealth's Tax Definitions: industrial use is an establishment that is engaged in basic processing, reduction, or destruction of materials predominantly from extracted raw materials and uses engaged in the storage, warehousing, distribution resulting. He then said that he is not processing anything at all.

Mr. Nunes asked the Planning Board to review the cease & desist order because he believes that it is a false claim against him, and that he would like it terminated.

Mr. Phoenix asked Mr. Nunes if received a first and second warning notice before he got a cease and desist. Mr. Nunes responded that he did not receive any prior letters or phone calls from the Building Inspector.

Mr. Phoenix remarked that the Planning Board has a path forward on some of this, but that it's not going to change what the Building Inspector's saying on a cease & desist. He also said that he thinks that there is a huge problem with procedure, and with an even standard for everyone across the board in all cases unless there's an imminent danger to life and limb. He thinks that they may need to get someone from the Selectmen or the Selectmen's Office to come in as the Building Inspector's boss, along with the Building Inspector to discuss this process with the Planning Board because it isn't acceptable the way that people in this Town are being treated.

Mr. Phoenix: Unless anyone disagrees with what I was saying, I guess I'll make a **MOTION** that we send a letter to the Board of Selectmen stating that we have some concerns, specifically over this Cease & Desist, and the protocol and policies and procedures that are used, and that we would respectfully request that someone or someones representing that Board, as well as the Building Inspector, help enlighten us as to how this process was actually a fair process as it would be applied to anyone and everyone else in the Town.

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

Mr. Queiroga: Go ahead.

Mr. Coelho: Doesn't the Selectmen's Office have a liaison to the Planning Board?

Mr. Queiroga: They do.

Mr. Phoenix: They do. I don't know who it is at the moment. I can't keep track ---.

Mr. Coelho: Regardless of who it is, that should be the person ---.

Mr. Stefancik: Could be Carmina. I'm not sure.

Mr. Queiroga: Could be Carmina?

Mr. Coelho: That should be the person that attends, right?

Mr. Queiroga: Yeah.

Mr. Phoenix: Well unless, like I say, maybe they want to send Ellie, whoever it is. But, I think, ultimately, we, as the government, are responsible to the taxpayers, to the voters of this Town, and I think that there's a certain amount of insulation that some local officials have because they're not elected officials, they're appointed. They're overseen by other appointed. I think that in some cases it's good that they're insulated so that they're not subject to political whims, but it also means they're not accountable to the same standard as everyone else, and I think that that accountability still needs to exist.

Mr. Queiroga: Would you like to amend your motion to include, to either the Board or it's designee to come in?

Mr. Phoenix: I think that's what I said. I said to have them send a person or persons.

Mr. Queiroga: Ok.

Mr. Coelho: My second still stands regardless of who they send.
4-0 in Favor.

Mr. Phoenix: We can't do anything about the Cease & Desist itself, but I would also make a **MOTION** to find that, based on the facts as we've discussed them tonight, as they've been explained to us, and as we've seen through photographic evidence and Google Maps, and the plans in front of us, it would appear that it would be appropriate for a site plan amendment to be made for the piece of property, which would show the additional parking that is available on site, that which would show the dumpsters that have been on site for a number of years, and which would also show the storage container that's being used for equipment for that business.

Mr. Queiroga: For the dance studio.

Mr. Phoenix: And that any other issues incidental to this situation could be discussed at the time that we're reviewing that plan when it comes in.
SECOND Mr. Coelho.
4-0 in Favor.

The Board advised Mr. Nunes that the amendment does not have to be prepared by a land surveyor.

Mr. Nunes asked the Board if they could, in their memorandum to the Selectmen, ask that they consider suspending any penalties until this matter is resolved.

Mr. Phoenix: I'll make a **MOTION** that in the letter that we send to the Selectmen, we request that, to whatever extent possible, the fines not be applied until after we've had an opportunity to discuss this matter with the Zoning Enforcement Officer.
SECOND Mr. Coelho.
4-0 in Favor.

Documents included: Mail Item #09 - Notice of Cease & Desist Order at 658 Center Street from Justin Larivee, Building Commissioner; Mail Item #10 - Response to Cease & Desist from Armando M. Nunes - 658 Center Street; Copy of Ludlow Bylaws Section 3.3.2 District Specific Accessory Use Regulations For All Residential Districts; Section 2.2 General Terms Defined, page 33; Property Type Classification Codes (June, 2016) Division of Local Services - MA Department of Revenue (8 pages); Town of Ludlow Table of Principal Uses (pages 2-11); Plan of Land 656-658 Center Street - Ludlow, MA - owned by NX2, LLC. Prepared for Armando Nunes (11/28/12) (Site Plan #SM-0523)

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File Mail Item #08 - Letter from Justin Larivee, Building Commissioner re: Inspection of dismantled in-law apartment at 242 James Street
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Consent Agenda:

The Board approved the Consent Agenda under unanimous consent.

- ◆ FILE Mail Item 11. - Legal Notices from surrounding communities
- ◆ APPROVE/SIGN Minutes of December 7, 2017
- ◆ APPROVE Change of Occupancies:
 - Umit Baytemur (Ludlow Pizza) – 257 Fuller Street
 - Kieu Nguyen (Kieu's Nails Artist) – 115 Sewall Street

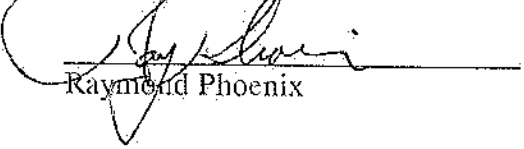
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Mr. Phoenix: **MOVE** to adjourn.
SECOND Mr. Coelho.
4-0 in Favor.

Meeting adjourned at 8:00 p.m.

APPROVED:

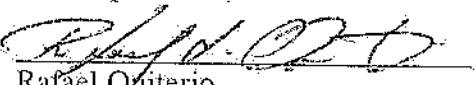


Joseph Queiroga – Chairman



Raymond Phoenix

Christopher Coelho



Rafael Quiterio

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