TOWN OF LUDLOW PLANNING BOARD
MINUTES OF THE MEETING OF
September 14, 2023

PLANNING BOARD MEMBERS

Raymond Phoenix – Chairman (Present) (7:02 p.m.)
Christopher Coelho – Vice Chairman (Present)
Joseph Queiroga (Present)
Joshua Carpenter (Present)
Joel Silva (Present)
Kathleen Houle, Associate Member (Absent)

The meeting began at 7:01 p.m. in the Selectmen's Conference Room.

Mr. Coelho acted as Chairman until Mr. Phoenix joined the meeting at 7:02 p.m.

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PUBLIC HEARING – Special Permit / Home Occupation – Marcelo Sousa – 38 Cypress Street (Assessors' Map 15A, Parcel 429) (home office for house painting business)

SEE ATTACHED MINUTES

PUBLIC HEARING – Special Permit / Home Occupation – Joshua Block – 45 Hunter Road (Assessors' Map 17D, Parcel 34F) (home-based communications consulting)

SEE ATTACHED MINUTES

Ralph Capua – Development Agreement Extension

Ralph Capua was present for the discussion.

Mr. Capua explained that he has a subdivision located off of Chapin Street called Santina Drive and that he's looking to make a two-year development agreement due to the fact that the subdivision just got recently energized. He said that he wouldn't have been able to sell lots because the electric company just gave him transformers three months ago.

Mr. Coelho mentioned that he would like to make sure that the erosion controls are being maintained.

Mr. Queiroga: I'll make a **MOTION** to approve the delay for two years and that it, what else do we need in there?

Mr. Phoenix: Well, to agree to the two-year submittal, to approve the extension, and that it be conditioned on getting the updated form from the applicant.

Mr. Queiroga: So, we need the new application form?

Mr. Phoenix: Yeah, just a new one of these and then we can sign off on it.

Mr. Queiroga: The same, just change the dates on it?

Mr. Phoenix: Yeah.

Mr. Queiroga: Ok, what else do we need?

Mr. Phoenix: I think that's it.
SECOND Mr. Coelho.

Mr. Phoenix: I hear a motion made and seconded, just to clarify one last time, this is to go forward with this as two years instead of six months, to approve that request and then to have that be conditioned on receiving the updated form and signing it at that time. Is that everyone's understanding of the motion?

Mr. Silva: Can I add something? Just to, the environmental erosion controls need to be updated from what's there right now for the extension of the.

Mr. Phoenix: I think we can probably back up a little bit, is the mover and the seconder ok with having that part of the motion or do we just want to move forward with the motion as made?

Mr. Queiroga: I have no problem with it.

Mr. Coelho: And that's that erosion controls and whatever be maintained.

Mr. Silva: Correct, because they've been there for a while, just update them for the next, for the extension.

Mr. Coelho: I'm fine with that.

Mr. Phoenix: So, on that motion, all those in favor?
5-0 in Favor.

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Continued Discussion/Decision – Special Permit / Site Plan – 590-596 (0) Center Street (Assessors' Map 16B, Parcels 116 & 116A) JLL Real Estate, LLC (Redevelopment of site into a self-storage facility in an Agricultural Moderate Density Overlay District)

Town Counsel Attorney Steve Chaplin was present for the discussion.

Mr. Phoenix read the remaining items for discussion that were tabled from the last Planning Board meeting of August 24, 2023, from the following checklists: Business in the Agriculture Moderate Density Overlay District Checklist, and Special Permit Criteria.

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.

d. The proposal will not cause environmental stress from erosion, siltation, ground water or surface water contamination, or habitat disturbance on the site.

h. The proposal will pose no environmental hazard because of use or storage of explosive, flammable, toxic, or radioactive materials.

s. Scenic views from public ways and other developed properties will be considerately treated in the design of the building(s).

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;

d. The proposal would not be a substantial inconvenience or hazard to abutters, vehicles, or pedestrians;

f. The proposal reasonably protects the adjoining premises against any possible detrimental or offensive uses on the site, including unsightly or obnoxious appearance;

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 said that he feels that the Board needs to come to a consensus as to what direction this needs to go, either that none of the criteria are issues, or that there are still some remaining issues and that action needs to be taken to look at denying, and then ask to craft a motion that will be made to ensure that it's being made as correctly as possible. The Board agreed that the following checklist items are still questionable: Business in the Agriculture Moderate Density Overlay District Checklist: a; and Special Permit Criteria: a, d, l.

Mr. Phoenix: I would entertain a MOTION to find that based on the discussions that we have had and the information that's been presented to us, that this particular matter does not satisfy business in the Agricultural Moderate Density Overlay District, a., as well as Special Permit Criteria a, d, and l.
Mr. Carpenter: **SO MOVED.**
SECOND Mr. Queiroga.
3-2 in Favor.
Roll call vote: Mr. Silva – no; Mr. Carpenter – yes; Mr. Phoenix – yes; Mr. Coelho no; Mr. Queiroga – yes.

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Attorney Chaplin noted that a decision will be drafted for a future meeting when a vote is taken.

Documents included: Business in the Agriculture Moderate Density Overlay District Checklist; 7.1.5 Required Site Plan Contents; Special Permit Criteria

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PUBLIC HEARING – Proposed Zoning Bylaw Amendments

SEE ATTACHED MINUTES

CONSENT AGENDA:

The Board approved the Consent Agenda under unanimous consent.

- FILE Mail Item 50. - Legal Notices from surrounding communities
- APPROVE/SIGN Minutes of June 22, 2023 & August 24, 2023
- APPROVE Change of Occupancy:
  - Michelle Vargas – 118 Sewall Street (from clothing store to eyelash services)

File Mail Item #51 – Notice of Decision – Zoning Board of Appeals – 632 Moore Street

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File Mail Item #52 – Legal Notice – Zoning Board of Appeals – 601 Center Street

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Mr. Carpenter: **MOTION** to adjourn Mr. Chairman.
SECOND Mr. Coelho.
Mr. Phoenix: Motion to adjourn is always in order and not debatable.
5-0 in Favor.

Meeting adjourned at 9:08 p.m.

APPROVED:

Joseph Queiroga, 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
PUBLIC HEARING – SPECIAL PERMIT / HOME OCCUPATION
38 Cypress Street – Marcelo Sousa
(home office for house painting business)
September 14, 2023

PLANNING BOARD MEMBERS

Raymond Phoenix – Chairman (Present) (7:02 p.m.)
Christopher Coelho – Vice Chairman (Present)
Joseph Queiroga (Present)
Joshua Carpenter (Present)
Joel Silva (Present)
Kathleen Houle, Associate Member (Absent)

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The hearing began at 7:01 p.m. in the Selectmen's Conference Room.

Mr. Coelho acted as Chairman until Mr. Phoenix joined the meeting at 7:02 p.m.

In attendance: Marcelo Sousa, attendees

Mr. Coelho read the legal notice, advised the public that the cameras are recording, and gave the applicant a copy of the Turley Publications invoice. The legal notice included the description of: home office for house painting business.

Mr. Queiroga informed Mr. Sousa in Portuguese that he needed to pay the bill for Turley Publications.

Mr. Coelho: I think I'm gonna demote you, Joel's gonna start translating. He's a little more direct.

Mr. Silva informed Mr. Sousa in Portuguese that he needed to pay the bill for Turley Publications.

Mr. Sousa responded in Portuguese.

Mr. Coelho: Mr. Chairman, I kept your seat warm for you and I'd gladly give it back to you.

Mr. Queiroga: This gentleman only speaks Portuguese.

Mr. Coelho: We explained the Turley check that was necessary, and I'm having Joel as a translator.

Mr. Phoenix: Ok.

Mr. Coelho: So, fortunately, we have that ability.

Mr. Phoenix: Hi there. Did we read in the?

Mr. Coelho: Yes.

Mr. Phoenix: Ok. My apologies for being late, I had to come from another meeting around the corner. So, this is for a special permit for a home office for a house painting business. To begin with, you covered all the basics, right?

Mr. Coelho: We got through the Turley Invoice.

Mr. Phoenix: Ok, so, we do have cameras and things that are recording. They are cameras that are recording, so don't be surprised by that. It is going out live online and being recorded for posterity. We don't normally get other comments from other boards on these, and I don't believe I saw any in the online version of the packet. Is that correct?

Mr. Stefancik: That's correct.

Mr. Phoenix: Ok. Before we go any further on the stuff in here, if the applicant would just like to describe what you're looking to do at the property.

Mr. Coelho: Mr. translator.

Mr. Silva: I'm sorry, what?

Mr. Coelho: You playing candy crush over there?

Mr. Silva: I'm sorry.

Mr. Phoenix: I'm asking for a description of what the applicant would like to do at the property.

Mr. Silva: You caught me off guard right now. So, I have to read through it. So, the homeowner wants to change --- office for a painting business.

Mr. Coelho: We kind of like it in their own words.

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TOWN OF FLORIDA

Mr. Silva: Home office ---. That's it. (*spoke to applicant in Portuguese*). Pretty much that's what it is. There's no materials involved. There's no customers or employees in and out. And it's strictly just to run the invoices, that's it.

Mr. Phoenix: Ok, and from our home occupation supplement sheet we have the total area of home and other buildings used at 1,848. The area to be used for the home occupation is 100 square feet. Pretty much going along with what we just heard, no nonresident employees, no planned signage for the business, no customers at the house, no deliveries unlike a normal residence, no changes that would make it look less residential, and the vehicle that would be used is a Ford Edge with the GVW of 5,320 which comes in below our 10,000 pound GVW. Beyond that we do have a signed request for a waiver of the full site plan in favor of a sketch and photos as prepared by the applicant. And I believe I saw those as part of the packet. We have a picture showing the front of the property as well as the area where work's gonna be done. If anybody wants to see those pictures, I've got them in the packet. Would anyone care to make a motion on our standard finding or a motion on the waiver as requested?

Mr. Coelho: Mr. Chairman.

Mr. Phoenix: Mr. Coelho.

Mr. Coelho: I'll **MOVE** to find that the home office for, to facilitate the painting business at 38 Cypress Street for Mr. Sousa is…

Mr. Phoenix: A suitable home occupation under the bylaw?

Mr. Coelho: …is suitable under the bylaw and I will make a **MOTION** to waive the site plan because he has pictures and a brief sketch.
SECOND Mr. Carpenter.
5-0 in Favor.
Roll call vote: Mr. Silva – yes; Mr. Carpenter – yes; Mr. Coelho – yes; Mr. Queiroga – yes; Mr. Phoenix – yes.

Mr. Phoenix: So basically, we found that what the applicant's looking to do is a legitimate use on the property. We are going to open things up for comments and questions in case anyone has anything that needs to be answered before we determine if this specific instance is gonna be allowed or if any additional requirements need to be put on it. Does anyone from the public have anything that they would like to add or ask at this time? Hearing nothing, is there anything else from the Board? Did you just want to check in with the applicant, see if he has any questions for us before we make a motion?

Mr. Silva asked the applicant in Portuguese if he had any questions.

Mr. Sousa answered in Portuguese.

Mr. Silva: He's all good.

Mr. Coelho: Mr. Chairman.

Mr. Phoenix: Mr. Coelho.

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Mr. Coelho: I **MOVE** to approve the special permit under 7.o.4 a-m and the home occupation under Sections 6.21-6.2.13. for Mr. Sousa at 38 Cypress Street with the restriction that the permit run with the applicant and not with the property.
SECOND Mr. Queiroga.
5-0 in Favor.
Roll call vote: Mr. Silva – yes; Mr. Carpenter – yes; Mr. Coelho – yes; Mr. Queiroga – yes; Mr. Phoenix – yes.

Mr. Phoenix: Is there a MOTION to close the public hearing?
Mr. Carpenter: **SO MOVED.**
SECOND Mr. Coelho.
5-0 in Favor.
Roll call vote: Mr. Silva – yes; Mr. Carpenter – yes; Mr. Coelho – yes; Mr. Queiroga – yes; Mr. Phoenix – yes.

The public hearing ended at 7:08 p.m.

APPROVED:

Joseph Queiroga, Secretary

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TOWN OF LUDLOW

Documents: Master application

(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 – SPECIAL PERMIT / HOME OCCUPATION
45 Hunter Road – Joshua Block
(home-based communications consulting)
September 14, 2023

PLANNING BOARD MEMBERS

Raymond Phoenix – Chairman (Present)
Christopher Coelho – Vice Chairman (Present)
Joseph Queiroga (Present)
Joshua Carpenter (Present)
Joel Silva (Present)
Kathleen Houle, Associate Member (Absent)

The hearing began at 7:11 p.m. in the Selectmen's Conference Room.

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In attendance: Joshua Block, attendees

Mr. Phoenix read the legal notice, advised the public that the cameras are recording, and gave the applicant a copy of the Turley Publications invoice. The legal notice included the description of: home-based communications consulting.

Mr. Phoenix: Again, with home occupations, usually we don't have comments from other boards, and again, I don't recall seeing anything in particular on this one. First thing, I think, that kinda makes sense, is could you just describe for us what you're looking to do for a business at the property?

Mr. Block: Sure, it's a communications consulting business, all done online on my computer. I have no in person clients, no vehicle, no packages, nothing beyond sitting at my desk.

Mr. Phoenix: Ok, and I do have the home occupation supplement sheet here. The total area of home and other buildings housing the occupation is 1,988 square feet, you're looking to use about 30 of that. No non-resident employees, also no to planned signage for the business, customers at the house, deliveries unlike a normal residence, and changes that would make it look less residential. Additionally, no commercial vehicle for the business. I also do have the signed waiver request of a full site plan in favor of a sketch and photos as prepared by the applicant which we do have, I believe, in the folder. We have both the front of the house and the working area that you're looking to use. Does anyone from the Board have any comments or questions at this time?

Mr. Coelho: What kind of communications are you consulting for?

Mr. Silva: That's what I was gonna ask,

Mr. Block: My background is in media strategy, speech writing, web development, I've done podcast productions, so really the ---.

Mr. Coelho: Ok, so you're not talking about tower design stuff like that.

Mr. Block: No, it's all writing.

Mr. Coelho: Ok.

Mr. Phoenix: With that, do we have anyone that would care to make a finding and or a motion on the waiver as requested?

Mr. Coelho: Mr. Chairman.

Mr. Phoenix: Mr. Coelho.

Mr. Coelho: I'll **MOVE** to find that the home office to facilitate the home-based communications consulting business as described by Mr. Block at 45 Hunter Road is a suitable home occupation under the bylaw.
SECOND Mr. Queiroga.

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Mr. Phoenix: Motion's made and seconded on the finding. And that's just on the finding?

Mr. Coelho: And I'll also **MOVE** to waive the site plan for Mr. Block at 45 Hunter Road in favor of the sketch and photos to be prepared by the applicant since it is relation to a home occupation and doing so is consistent with the purpose and intent of the zoning bylaw.

Mr. Phoenix: And is the second good with that as well?
SECOND Mr. Queiroga.
5-0 in Favor.
Roll call vote: Mr. Silva – yes; Mr. Carpenter – yes; Mr. Coelho – yes; Mr. Queiroga – yes; Mr. Phoenix – yes.

Mr. Phoenix: So just like with the other one, that's essentially saying that this does fit under one of the categories that is doable as a home occupation and that you don't have to get a surveyor to come out and do the whole big plan on everything for you. From here, I'd again like to open it up for any comments or questions from the public. If anybody has anything, I would just ask that you state your name and address for the record and address whatever you have through myself as the chairman. Does anyone have anything at this time? Hearing nothing, I'm gonna go back to the Board for one more round. Does anyone from the Board have anything? Do we have a motion on the matter at hand and possibly to close the public hearing along with it?

Mr. Coelho: Mr. Chairman.

Mr. Phoenix: Mr. Coelho.

Mr. Coelho: I **MOVE** to approve the special permit under 7.o.4 a-m and the home occupation under Sections 6.21-6.2.13. for Mr. Block at 45 Hunter Road with the restriction that the permit run with the applicant and not with the property.

Mr. Phoenix: And possibly to close?

Mr. Coelho: And to close the public hearing.

SECOND Mr. Carpenter.
5-0 in Favor.
Roll call vote: Mr. Silva – yes; Mr. Carpenter – yes; Mr. Coelho – yes; Mr. Queiroga – yes; Mr. Phoenix – yes.

The public hearing ended at 7:17 p.m.

APPROVED:

Joseph Queiroga, Secretary

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TOWN OF LUDLOW

Documents: Master application

(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
Proposed Zoning Bylaw Amendments
September 14, 2023

PLANNING BOARD MEMBERS

Raymond Phoenix – Chairman (Present)
Christopher Coelho – Vice Chairman (Present)
Joseph Queiroga (Present)
Joshua Carpenter (Present)
Joel Silva (Present)
Kathleen Houle, Associate Member (Absent)

The hearing began at 8:23 p.m. in the Selectmen's Conference Room.

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In attendance: Attorney Steve Chaplin – Town Counsel

Mr. Phoenix read the legal notice and advised the public that the cameras are recording. The legal notice included the description of: Proposed zoning bylaw revisions to include the following: SECTION III: GENERAL USE REGULATIONS 3.0 GENERAL REGULATIONS delete 3.0.2 Existing Uses Not Affected. Delete 3.0.3 Obstruction at Street Intersection and replace with Visibility at Street Intersections and Driveways Street Entries with new text and Figure 1. Amend 3.0.4 Fences, adding in "excluding shrubs/shrubbery" and "All chain link or cyclone fences shall be installed with the barbed edge face down" and deleting crossed out text. SECTION IV: DIMENSIONAL AND DENSITY REGULATIONS: 4.0 GENERAL DIMENSIONAL REQUIREMENTS by adding "*For further clarification see Definitions Section X." Add Diagram 4.0.1and Diagram 4.0.1.1 to Section 4.0.1. Add Diagram 4.0.7 and Diagram 4.0.7.1 to Section 4.0.7. Add Diagram 4.0.8 to Section 4.0.8. 4.4 MILL REDEVELOPMENT DISTRICT (MRD) Bylaw 4.4.10 Site Plan Approval Process by deleting from a.1. "and one member" and "of the Board of Public Works."
SECTION VI: SPECIAL LAND USE REGULATIONS, 6.12 SINGLE-FAMILY DWELLINGS ON ESTATE LOTS 11. Estate Lot Example by deleting existing Diagram and replace with new Diagram. SECTION VII: LAND USE REVIEW METHODS: 7.1 SITE PLAN APPROVAL 7.1.3 Exemptions from Site Plan Approval c. by changing "use" to "occupancy" and adding in "The application will require a sign-off from the Building Commissioner, to ensure that the change will comply with the Massachusetts State Building Code." SECTION VIII: ADMINISTRATION: 8.1 ENFORCEMENT 8.1.1 remove "Inspector" replace with "Commissioner or their designee, hereafter referred to as the Building Official." Remove "He" replace with "The Building Official" remove "of which" replace with "that" and remove "all respects in." Section 8.1.3 remove "Inspector" replace with "Official." 8.2 CONDITIONS OF CONSTUCTION. 8.2.1 and 8.2.2 Remove and replace entire sections. Remove DIAGRAMS from BACK OF BOOK: TABLE OF CONTENTS: And remove DIAGRAMS 1, 2, 3, 4 and 5 in back on the Zoning Bylaw. SECTION X: DEFINITIONS delete the existing Diagram references from FRONT YARD, FRONTAGE, LOT WIDTH, REAR YARD and SIDE YARD and replacing with new Diagram section numbers. Add SECTION XI: Moratorium on Large-Scale Solar Battery Storage and Large-Scale Battery Storage.

Mr. Phoenix: Ok, so we talked about some of these things informally before. A lot of these came out of that discussion that we had with the Building Inspector. I think in broad strokes we're clearing up language to make sure that things are a little bit more precise. Taking out a couple ambiguities and we're also adding in some additional diagrams and putting those in line with the sections that they refer to instead of putting them all at the end of the book which is convenient for people that needed to print these things out in probably the 90's more so than it is for people reading it today. I think that's kind of the summary of most of what we're doing. There is one glaring exception to that, that we can talk about I think after those. On Article 11:

ARTICLE 11: ZONING BYLAW AMENDMENT—VISIBILITY AT INTERSECTIONS

To see if the Town will vote to amend the Zoning Bylaws of the Town of Ludlow SECTION III: GENERAL USE REGULATIONS: 3.0 GENERAL REGULATIONS: by removing 3.0.2 Existing Uses Not Affected and 3.0.3 Obstruction at Street Intersection and replacing it with 3.0.3 Visibility at Street Intersections and Driveways Street Entries and adding Figure 1 Diagram.

~~3.0.2 Existing Uses Not Affected~~

~~This bylaw shall not apply to existing buildings or structures, nor to the existence of any building or structure or of land to the extent of that use at the time of the adoption of this bylaw.~~

~~3.0.3 Obstruction at Street Intersections Within that portion of any lot at a street intersection which lies between the street line joining parts on each street line, 25 feet from the intersection of such street lines, no fence, wall, temporary sign, hedge, shrubbery or other obstruction to vision in excess of three (3) feet in height above the adjacent level shall be permitted. See Diagram #3. (Amended STM 10/4/21)~~

3.0.3 Visibility at Street Intersections and Driveways Street Entries

a. In all zoning districts, no fence, structure, or planting shall be erected or maintained that is higher than 3 feet above grade, within a clear sight triangle formed by connecting two points measured 25 feet from the intersection of the edge of the street pavement. See Figure 1 below.

b. In all zoning districts, no fence, structure, or planting shall be erected or maintained that is higher than 3 feet above grade, within a clear sight triangle formed by connecting two points measured along a driveway and the intersecting street. The point along the driveway shall be located 10 feet from the edge of the street pavement, measured along the driveway. The point along the street shall be located 25 feet from the edge of the driveway pavement or covering measured along the street. See Figure 1 below.

EXCEPTION: Mailboxes higher than 3 feet may be located at the ends of driveways, provided that the mail box and supporting structure is no larger than 10 inches in width along the front facing edge and 20 inches in length along the side facing edge.

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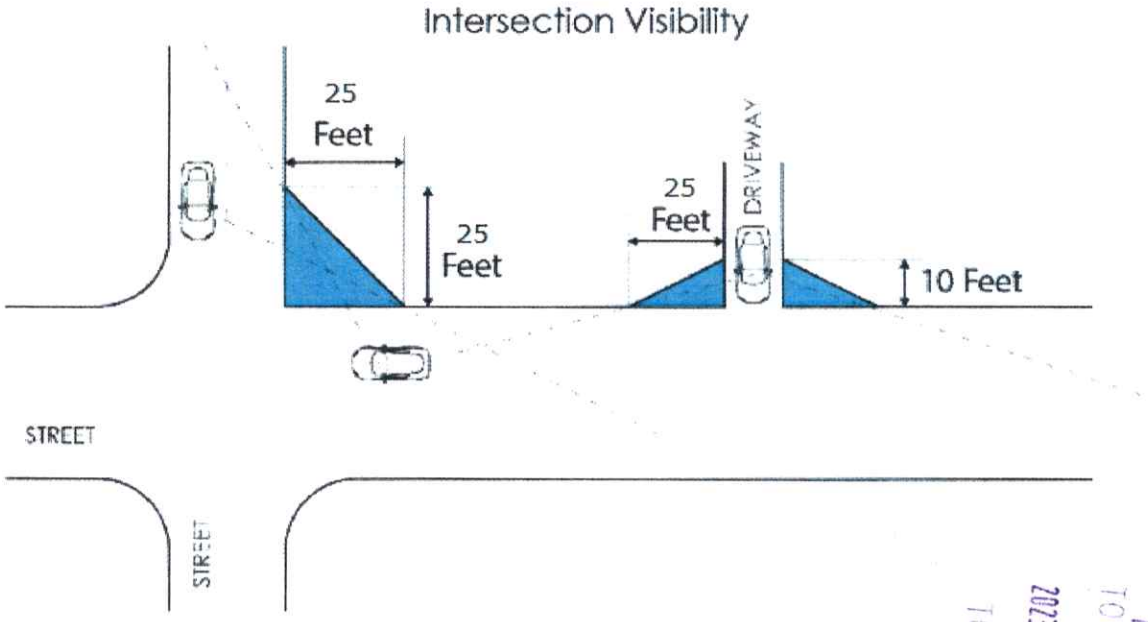


Figure 1.

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Pass any vote or take any action relative thereto. Submitted by the Planning Board. Two-thirds vote is required.

Article 11 Explanation: The existing sections 3.0.2 conflicts with Massachusetts General Law Chapter 40A Section 7, regarding non-conforming uses. The non-conforming use must have been in existence for an uncontested period of 10 years before it can be deemed as pre-existing non-conforming. M.G.L. chapter 40A section 6 will protect any currently existing structures or conditions that may be different from any new bylaw changes being made.

This article would also remove and replace Section 3.0.3 with new language and diagram to clarify street intersection and driveway visibility and to accommodate mailbox locations. This is a basic safety issue especially for driveways in congested areas. The old language did not address the ends of driveways which has caused dangerous conditions. When driveways are obstructed by neighboring shrubs, fences or overly large mailboxes, a dangerous condition is created for vehicles attempting to pull out of their driveway into traffic. The spirit and details of the old bylaw have been preserved with regard to street intersections and corner lots. The diagram inline with the text offers additional clarity.

Mr. Phoenix: Just as a matter of housekeeping, we don't really have anyone left in the room other than Town Counsel and people that are making sure that the cameras and microphones are working and our own staff. But, for all of the invisible friends that might be in the room, we do have cameras and microphones that are doing those things which cameras and microphones are most well known for doing. So, I guess, be aware. So, on this one, again, this is the obstructions at street intersections. We did talk about some of this as well and there was verbiage added regarding mailboxes so that mailboxes would still be ok within those areas as long as they meet specific criteria. Again, for anyone that's a little bit stale on what we're doing here tonight, or

anyone who's playing the home game along with us, generally what we end up doing in these hearings is come up with a vote on how we're going to recommend the action be taken at town meeting which generally takes the form of a motion to recommend approval at town meeting or a motion to recommend disapproval at town meeting, or more specifically usually, postponement. And that's pretty much the two states that we tend to come out of these hearings with. So, I'm gonna say we can do this either on each one or on the whole thing. Given that I think at least one of these is gonna be a little bit odd, I'm gonna ask for motions on each of these individually. We don't need a roll call on them, so I don't think it's gonna be a huge inconvenience unless any of the board members disagree with that.

Mr. Carpenter: I think the only one is the moratorium, right?

Mr. Phoenix: I believe that's my guess. So, on this visibility at intersections, 1. do we have a motion either to recommend approval at town meeting or to recommend postponement?

Mr. Coelho: I'll make a **MOTION** to recommend approval.
SECOND Mr. Carpenter.

Mr. Silva: I just have a question on this intersection visibility.

Mr. Phoenix: Yes.

Mr. Silva: So, let's take an example over there on East Street for instance, parking, so if a car parks 25 feet legally to where this schematics work, that cuts the visibility.

Mr. Phoenix: That's a whole separate concern beyond.

Mr. Silva: --- that's what I'm trying to get, ok so that's a different?

Mr. Phoenix: Yeah.

Mr. Silva: Parking on the street.

Mr. Phoenix: Correct. This is just for the way that the lot would be constructed and what can be in that area.

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TOWN OF LUDLOW

Mr. Silva: If somebody parks in front of the house and all that, so that's ok, thank you.

Mr. Phoenix: And just, I know we kind of had the motion, but just to elaborate with our official explanation in case somebody wants to have this adjusted prior to town meeting, I suppose we can go over this. *The existing sections 3.0.2 conflicts with Massachusetts General Law Chapter 40A Section 7, regarding non-conforming uses. The non-conforming use must have been in existence for an uncontested period of 10 years before it can be deemed as pre-existing non-conforming. M.G.L. chapter 40A section 6 will protect any currently existing structures or conditions that may be different from any new bylaw changes being made. This article would also remove and replace Section 3.0.3 with new language and diagram to clarify street intersection and driveway visibility and to accommodate mailbox locations. This is a basic safety issue especially for driveways in congested areas. The old language did not address the ends of driveways which has caused dangerous conditions. When driveways are obstructed by neighboring shrubs, fences or overly large mailboxes, a dangerous condition is created for*

vehicles attempting to pull out of their driveway into traffic. The spirit and details of the old bylaw have been preserved with regard to street intersections and corner lots. The diagram in line with the text offers additional clarity. Does that help Joel?

Mr. Silva: Yes.

Mr. Phoenix: So, on the, I believe the motion had a second so I'm gonna ask for a vote on that motion. All in favor of recommending approval?
5-0 in Favor.

Mr. Phoenix: Number 12:

ARTICLE 12: ZONING BYLAW AMENDMENT—FENCES

To see if the Town will vote to amend the Zoning Bylaws of the Town of Ludlow SECTION III: GENERAL USE REGULATIONS: 3.0 GENERAL REGULATIONS: by removing Section 3.0.4 Fences in its entirety and replacing it with new section to read:

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~~3.0.4 **Fences**~~
~~Fences shall not exceed four (4) feet in height across the front yard setback portion of any lot perimeter; shall comply with the provisions of Section 3.0.3 of the Zoning Bylaws; and shall not exceed six and one-half (6 ½) feet in height on the remainder of the lot perimeter. No fence more than one-quarter solid shall be erected across the front line, and closer to the street than the setback requirements of the primary building. All fences must be at least six (6) inches from any lot line and must be erected so that the less appealing or post side shall face inward, and chain-link or cyclone fences shall have the barbs face down. A fence height greater than six and one-half (6 ½) feet may be permitted if authorized by the Board of Appeals after a Public Hearing. Shrubs and/or shrubbery shall not constitute the meaning of a fence for the purpose of this provision. (Amended 10/05/20 STM)~~
~~Fences located on land zoned Industrial A and C shall not exceed 6½ feet in height across the front yard setback portion of the lot; and no fence more than one-quarter solid shall be erected across the front line and closer to the street than the setback requirements of the primary building. Shall comply with the provisions of Section 3.0.3 of the Zoning Bylaw. (Added 10/3/11 & Amended STM 10/4/21)~~

~~a. Shrubs Used for Screening/Fencing (added 10/6/03)~~
~~Shrubs used for screening/fencing shall not exceed three (3') feet in height across the front yard setback portion of any lot. No restriction on height on the remainder of the lot perimeter. Shrubs do not require a building permit.~~
~~All fences and shrubbery must comply with Section 3.0.3 Obstruction at Street Intersections, and Section 4.0.8 Corner Lots.~~

~~b. Jersey Barriers are prohibited from being used as fences to divide property~~
~~lines in all zoning districts. (Added 5/9/11)~~

~~Fences shall not exceed four (4) feet in height across the front yard setback portion of any lot perimeter, shall comply with the provisions of Section 3.0.3 of the Zoning Bylaws; and shall not exceed six and one-half (6 ½) feet in height on the remainder of the lot perimeter. No fence more than one-quarter solid shall be erected across the front line, and closer to the street than the setback requirements of the primary building.~~

3.0.4 **Fences**

Fences shall not exceed four (4) feet in height across the front yard setback portion of any lot perimeter, shall comply with the provisions of Section 3.0.3 of the Zoning Bylaws; and shall not exceed six and one-half (6 ½) feet in height on the remainder of the lot perimeter.

All fences, excluding shrubs /shrubbery, must be at least six (6) inches from any lot line and must be erected so that the less appealing or post side faces inward. All chain link or cyclone fences shall be installed with the barbed edge face down. (Amended 10/05/20 STM)

Jersey Barriers are prohibited from being used as fences to divide property lines in all zoning districts. (Added 5/9/11)

Pass any vote or take any action relative thereto. Submitted by the Planning Board. Two-thirds vote is required.

Article 12 Explanation: The first section remains unchanged from the original language. By removing the section on Shrubs in subsection (a) and adding a few exclusions to the main paragraph, the entire meaning of the bylaw is clarified. This promotes understanding and allows for effective enforcement without changing the intended meaning of the bylaw.
The existing language " No fence more than one-quarter solid shall be erected across the front line, and closer to the street than the setback requirements of the primary building." conflicts with the setback requirements of the rest of the fence bylaw as stated in the first sentence. This made enforcing the old bylaw challenging if not impossible. The visibility intended by "one quarter solid" is not necessary if the rest of the fence bylaw is observed. It also restricts stone walls which are popular and if under 4 feet, pose no threat to public safety.
There is no need to mention the appeals process as it is clearly defined in all notices of violations as well as in the Enforcement Section of the Bylaw 8.1. It is redundant.

Mr. Carpenter: Mr. Chairman.

Mr. Phoenix: Mr. Carpenter.

Mr. Carpenter: I **MOVE** to recommend approval of Article 12 to town meeting.
SECOND Mr. Queiroga.
5-0 in Favor.

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Mr. Phoenix: Article 13:

ARTICLE 13: ZONING BYLAW AMENDMENT—DIMENSIONAL REQUIREMENTS

To see if the Town will vote to amend the Zoning Bylaws of the Town of Ludlow SECTION IV: DIMENSIONAL AND DENSITY REGULATIONS: 4.0 GENERAL DIMENSIONAL REQUIREMENTS: by adding * For further clarification see Definitions Section X and adding in corresponding diagrams 4.0.1, 4.0.1.1, 4.0.7, 4.0.7.1 and 4.0.8.

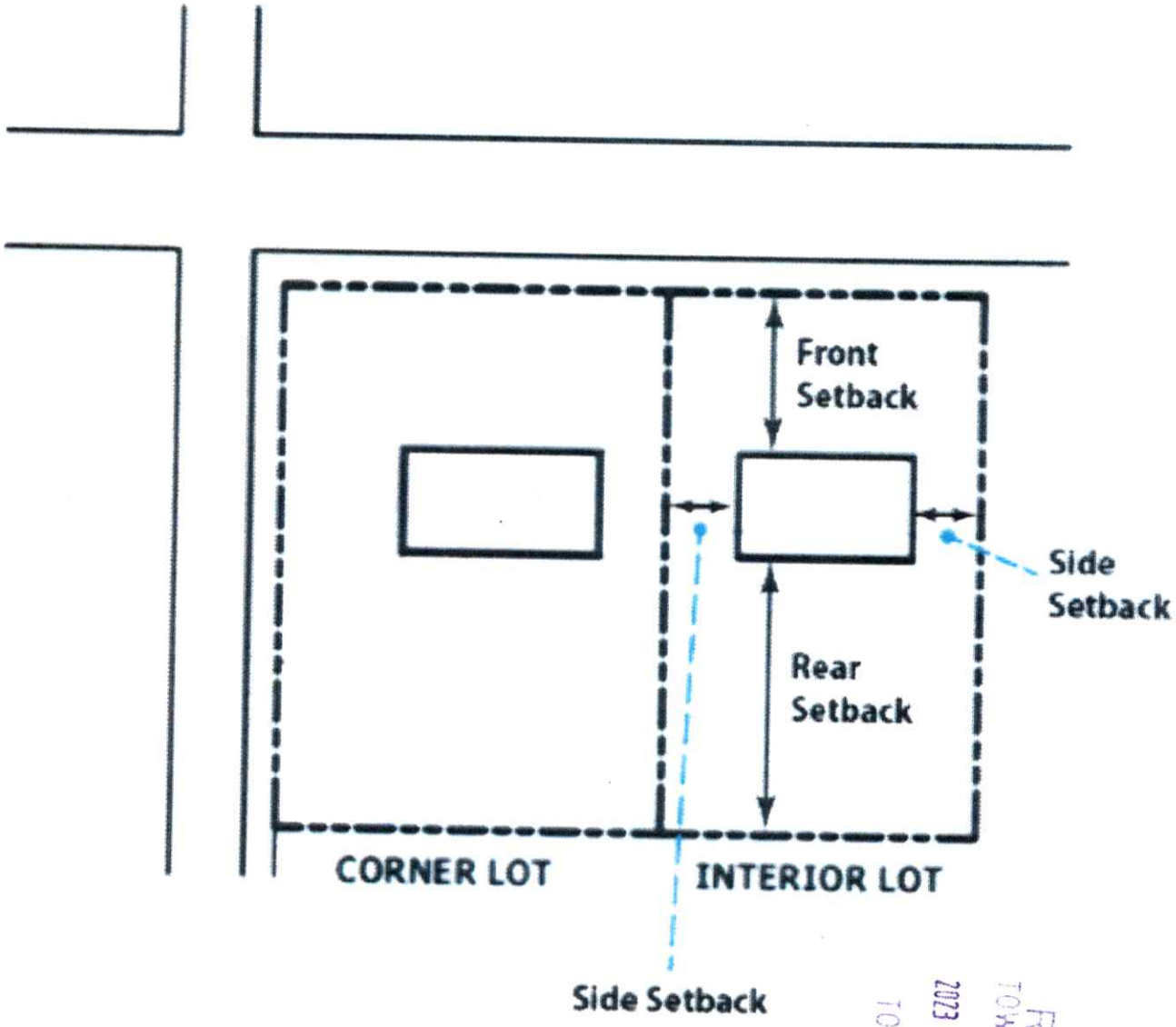


Diagram 4.0.1

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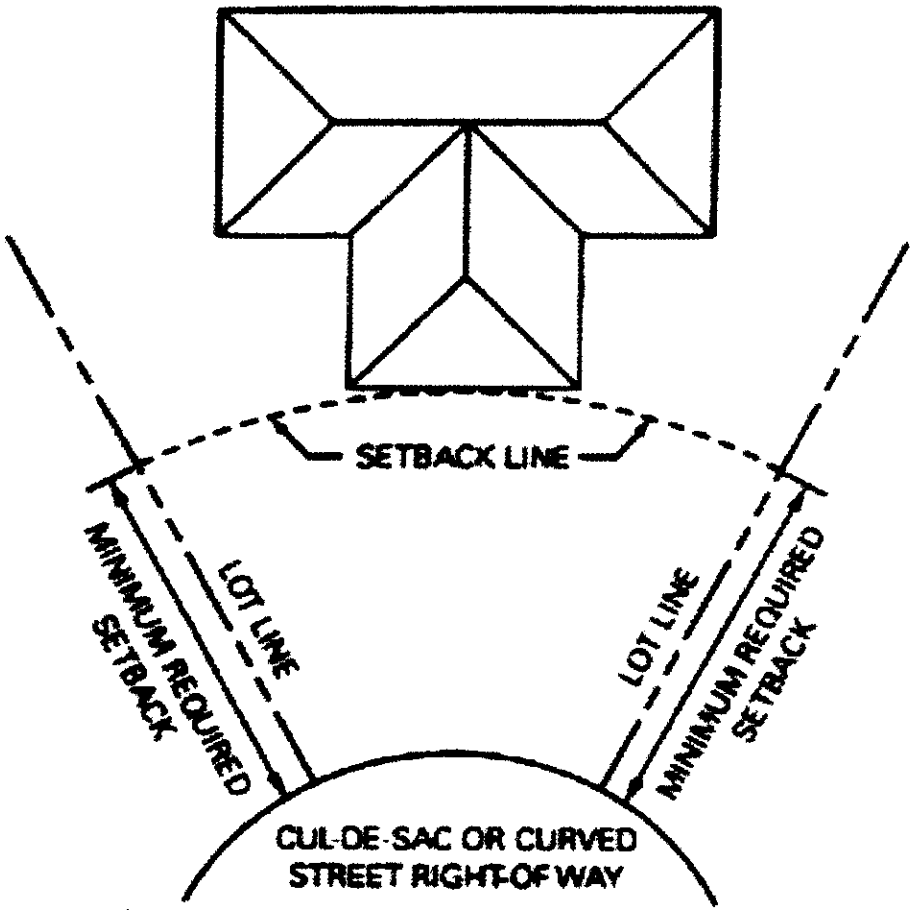


Diagram 4.0.1.1

4.0.7 **Front Yards:** With the exception of subdivisions, buildings or structures need to be located only as far back from the street as the average of the FRONT YARD depths of the buildings or structures nearest on either side and within the same block and district, or within five hundred (500) feet, whichever is the lesser distance.

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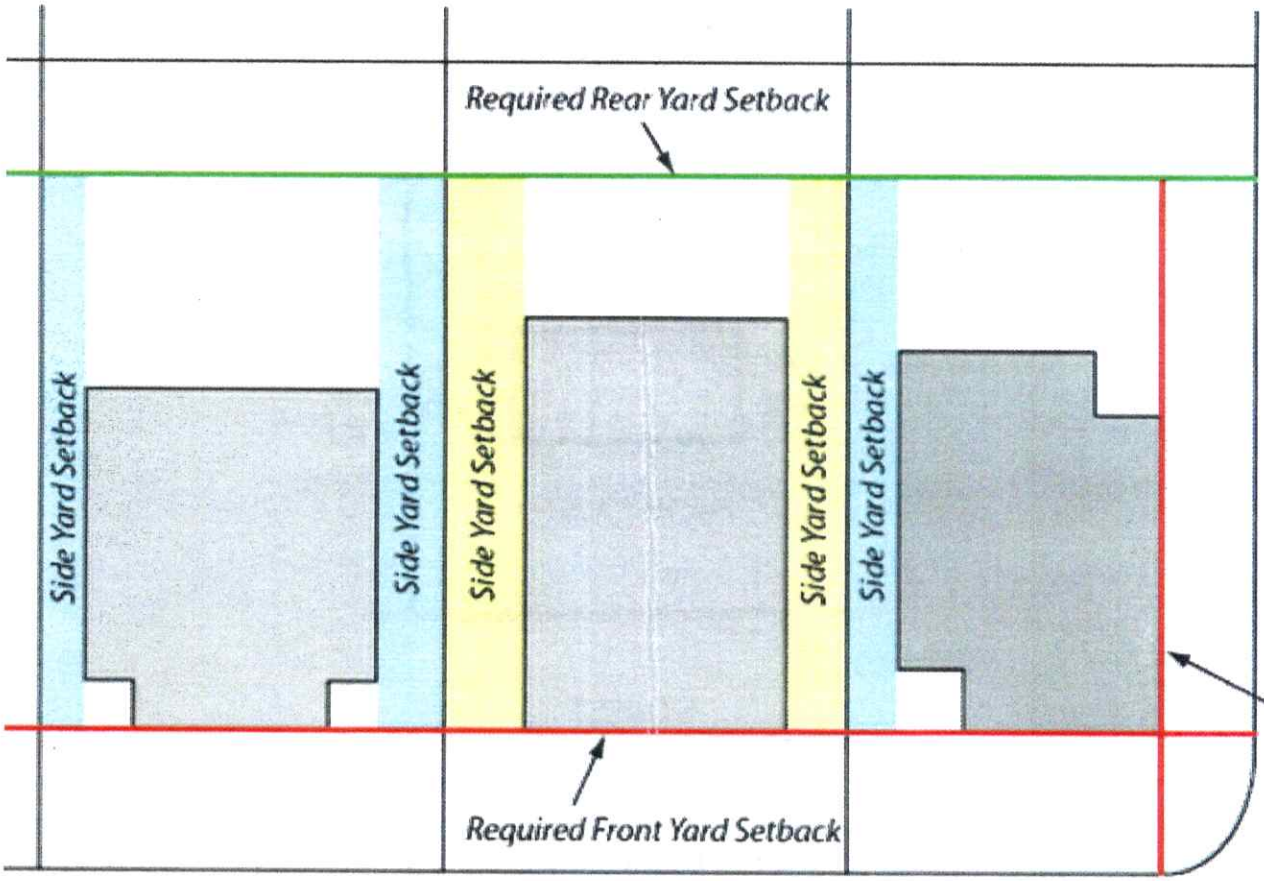


Diagram 4.0.7

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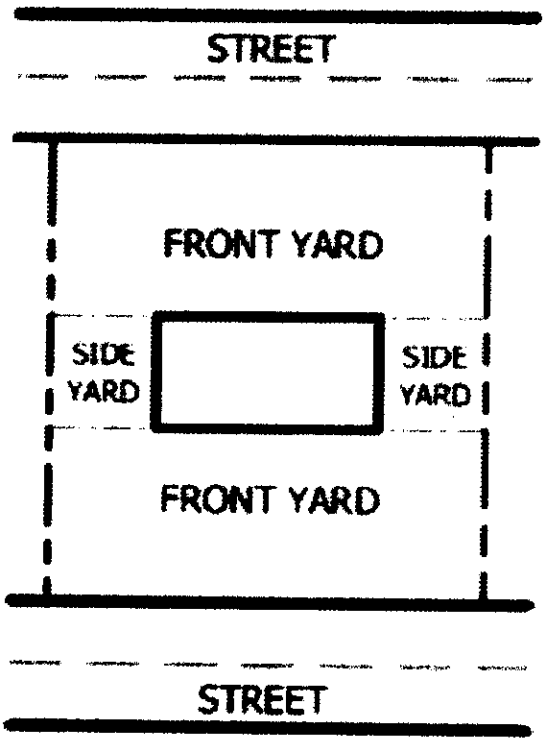


Diagram 4.0.7.1

4.0.8 **Corner Lots:** In any Residence District, Agriculture, or Agriculture Moderate Density District, the buildings or structures on LOTS having FRONTAGE on two streets may only be located as near to the street lines as the minimum FRONT YARD depths required on each street, except that the buildable width of such lot need not be reduced to less than twenty-six (26) feet. No accessory building on a corner LOT need be placed further from the street line than the FRONT YARD depth provisions for the district.

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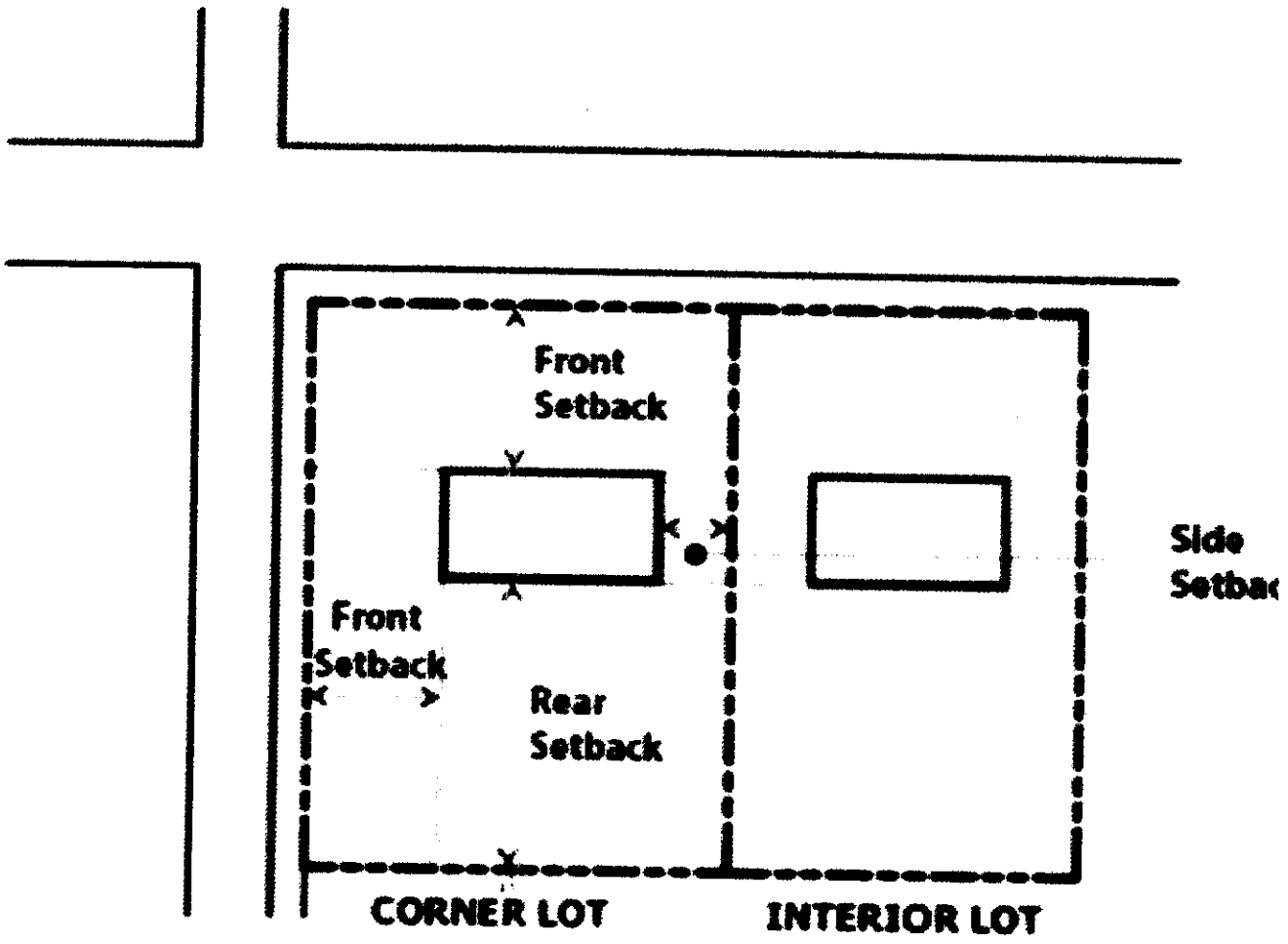


Diagram 4.0.8

Pass any vote or take any action relative thereto. Submitted by the Planning Board. Two thirds vote is required.

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Article 13 Explanation: Adding Diagrams to Section IV with a reference to SECTION X Definitions will add clarification to this section making it more user friendly. The Diagrams are currently located at the back of the Zoning Bylaw which is cumbersome. Adding diagrams in line with the text that they refer to allow the reader to understand the language more easily without hunting for the visual example. The current diagrams are also either overly simplistic or too detailed.

Mr. Phoenix: I really hope I don't have to explain the diagrams at town meeting. I can just say as included in the warrant 'cause otherwise I'm gonna go insane.

Mr. Carpenter: Mr. Chairman.

Mr. Phoenix: Mr. Carpenter.

Mr. Carpenter: I **MOVE** to recommend approval of Article 13 to town meeting.
SECOND Mr. Queiroga.
5-0 in Favor.

Mr. Phoenix: Article 14:

ARTICLE 14: ZONING BYLAW AMENDMENT—ADMIN REVIEW COMMITTEE MEMBERSHIP

To see if the Town will vote to amend the Zoning Bylaws of the Town of Ludlow SECTION IV: DIMENSIONAL AND DENSITY REGULATIONS: 4.4 MILL REDEVELOPMENT DISTRICT (MRD) Bylaw 4.4.10 Site Plan Approval Process, by removing from a.1. "and one member" and "of the Board of Public Works" to read as follows:

4.4.10 **Site Plan Approval Process**

a. Following the issuance of a Special Permit for a MRD Comprehensive Plan but prior to issuance of a building permit for each particular project in the Mill Redevelopment District that consists of the construction of a new structure, the project proponent shall receive site plan approval/disapproval from the Administrative Review Committee. The Administrative Review Committee shall have as its voting members the following:

1. The Director of Public Works, ~~and one member~~ or designee ~~of the Board of Public Works~~
2. Building Commissioner, or designee
3. Town Planner, or designee
4. Two members or designees of the Planning Board
5. Fire Chief, or designee
6. Police Chief or designee
7. One member or designee of the Conservation Commission
8. One member or designee of the Historical Commission. (Added 10/5/15)

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Pass any vote or take any action relative thereto. Submitted by the Planning Board. Two-thirds vote is required.

Article 14 Explanation: The Board of Public Works has been dissolved, and the DPW Director or their designee are appropriate officials to serve on the Administrative Review Committee.

Mr. Phoenix: I would also note that this does, I believe, return us back to an odd number. I think we had talked about that before. Do we feel that that should be in the explanation as well or are we good with just the way that it is?

Mr. Carpenter: I could take it or leave it.

Mr. Phoenix: Then why don't we leave it the way that it is instead of trying to modify things at this point. That can always be brought up as part of discussion, if necessary, I suppose.

Mr. Carpenter: Mr. Chairman.

Mr. Phoenix: Mr. Carpenter.

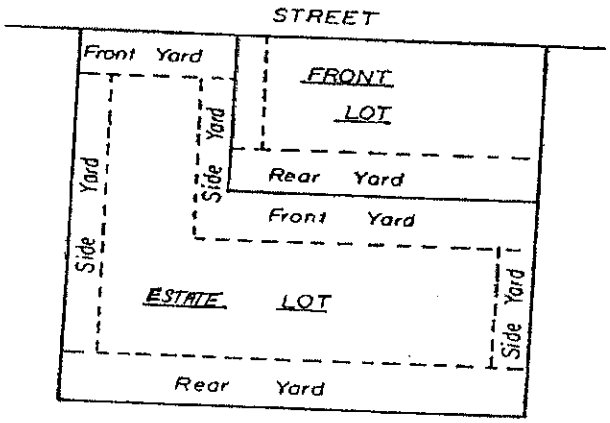
Mr. Carpenter: I **MOVE** to recommend Article 14 for approval to town meeting.
SECOND Mr. Queiroga.
5-0 in Favor.

Mr. Phoenix: Article 15:

ARTICLE 15: ZONING BYLAW AMENDMENT—SETBACK DIAGRAM REPLACEMENT

To see if the Town will vote to amend the Zoning Bylaws of the Town of Ludlow SECTION VI: SPECIAL LAND USE REGULATIONS 6.12 SINGLE-FAMILY DWELLINGS ON ESTATE LOTS 11. Estate Lot Example: Replace existing diagram with new diagram.

Diagram



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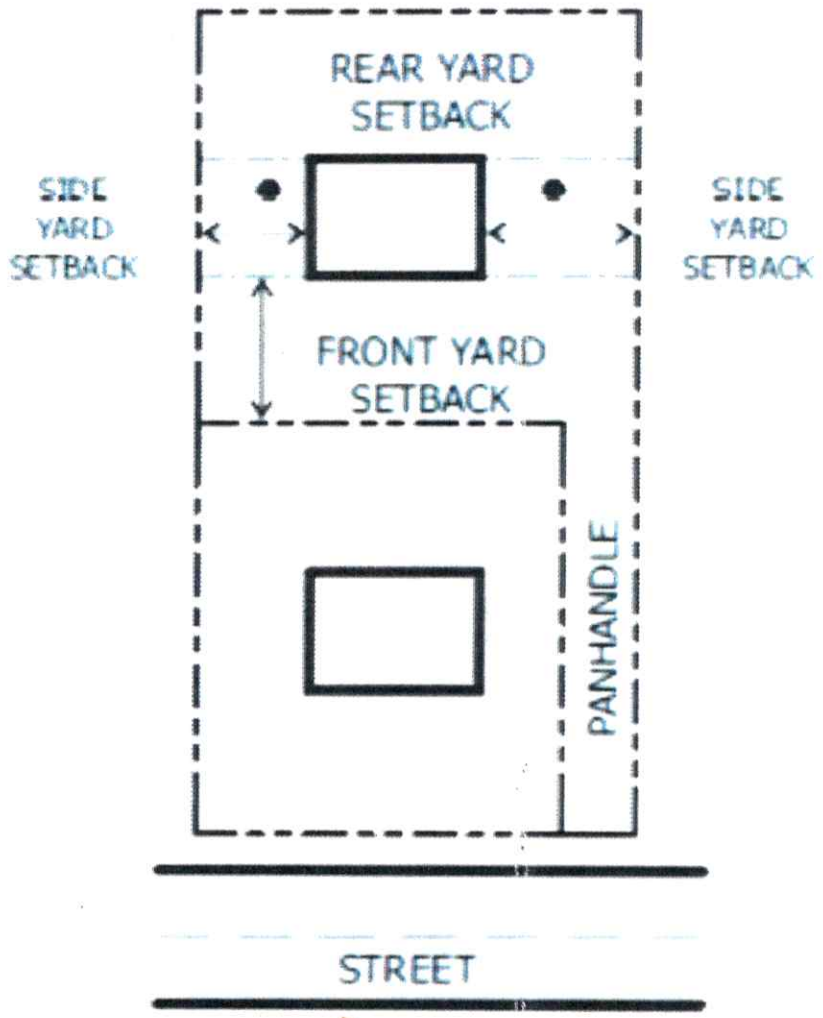


Diagram 6.12

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Pass any vote or take any action relative thereto. Submitted by the Planning Board. Two-thirds vote is required.

Article 15 Explanation: *Adding new Diagram to Estate Lot Bylaw, to replace the existing Diagram for clarification.*

Mr. Carpenter: Mr. Chairman, I **MOVE** to recommend approval to town meeting.
SECOND Mr. Coelho.
5-0 in Favor.

Mr. Phoenix: Article 16:

ARTICLE 16: ZONING BYLAW AMENDMENT—SITE PLAN APPROVAL PROCESS

To see if the Town will vote to amend the Zoning Bylaws of the Town of Ludlow SECTION VII: 7.1 SITE PLAN APPROVAL: 7.1.3 Exemptions From Site Plan Approval c. by replacing "use" with "occupancy" and adding language to include a sign-off from the Building Commissioner for code compliance.

7.1.3 **Exemption From Site Plan Approval**

Site plan approval shall not be required for:

a. The construction or enlargement of any single family dwelling; or

b. any building used exclusively for agriculture, horticulture, or floriculture.

c. No site plan approval shall be required in those instances where a lawful ~~use~~ occupancy change is proposed, and no physical changes (other than signs) will occur to the site or building exterior, and where no new or additional requirements of the Zoning Bylaw must be met for the proposed ~~use~~ occupancy. In the above case (c. only) the Planning Board will only require a "Change of Occupancy" application with the application fee in force at the time.(Added 10/7/96) The application will require a sign-off from the Building Commissioner to ensure that the change will comply with the Massachusetts State Building Code.

Pass any vote or take any action relative thereto. Submitted by the Planning Board. Two-thirds vote is required.

Article 16 Explanation: By affording the Building Commissioner an opportunity to review the application for code compliance, the applicant will avoid confusion later when applying for a building permit. Changing the occupancy of a building can trigger expensive code changes that prospective business owners must be made aware of prior to an investment in a particular property.

Mr. Carpenter: Mr. Chairman, I **MOVE** to recommend approval to town meeting.
SECOND Mr. Coelho.
5-0 in Favor.

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Mr. Phoenix: Article 17:

ARTICLE 17: ZONING BYLAW AMENDMENT—REFERENCE CHANGES

To see if the Town will vote to amend the Zoning Bylaws of the Town of Ludlow SECTION VIII: ADMINISTRATION: 8.1 Enforcement and 8.2 Conditions of Construction by changing "Building Inspector" to "Building Commissioner" and "Building Official" and adding new language pertaining to surveys.

8.1 **ENFORCEMENT**

8.1.1 This bylaw and any amendments thereto, shall be enforced by the Building ~~Inspector~~ Commissioner or their designee, hereafter referred to as the Building Official. ~~He~~ The Building Official shall issue no permit for the erection or alteration of any building or part thereof, plans and specifications and intended use ~~of which~~ that are not in ~~all respects in~~ conformity with the provisions of this bylaw. With each application for a permit to build or alter, there shall be filed a plan showing the lot and the location of a building thereon.

8.1.2 No building shall be occupied until a Certificate of Occupancy has been issued by the Building ~~Inspector~~ Commissioner where required.

8.1.3 The Building ~~Inspector~~ Official shall issue a cease and desist order on any work in progress or on the use of the premises, either of which are in violation of the provisions of this bylaw.

8.2 **CONDITIONS OF CONSTRUCTION**

8.2.1 To accomplish the purposes set forth in Section I of this bylaw as well as the specific goals of this paragraph, no building permit for the construction of new dwellings shall be issued until a ~~plot plan showing that all property corners are bounded or pinned, existing and proposed grading, proposed building location, and all utilities certified by a person or persons registered under the General Laws of the Commonwealth of Massachusetts to practice architecture, engineering and/or land surveying~~

legal survey, conducted by a registered design professional licensed in the State of Massachusetts, has been submitted to the Building Official as part of the application. ~~for said building permit and approved in writing by him.~~ The survey must include all property corners bounded or pinned, existing and proposed grading, as well as all accessory structures and utilities. The survey must be stamped and signed by the surveyor.

8.2.2 In the case of additions to existing structures or the construction of accessory buildings, a ~~plot plan will not be required unless, in the opinion of the Inspector of Buildings, there may be a conflict in property line locations~~. survey may be required at the discretion of the Building Official if there is a question or conflict in property line locations. The survey must include all property corners bounded or pinned, existing and proposed accessory structures and utilities including septic locations. The survey must be stamped and signed by the surveyor. In all other cases, an informal plot plan showing the locations of all structures on the lot and property setbacks may be required at the discretion of the Building Official.

If a Plot Plan is required, the plot plan shall be prepared by a Registered Professional Engineer and/or a Registered Land Surveyor and submitted to the Building Official as part of the application for a building permit.

Pass any vote or take any action relative thereto. Submitted by the Planning Board. Two-thirds vote is required.

Article 17 Explanation: In addition to correcting inappropriate language, these changes allow the Building Official to exorcise appropriate discretion regarding the need for a

legal survey or a more informal plot plan sketch. Each Building permit must be considered on a case-by-case basis.

Mr. Carpenter: Mr. Chairman, I **MOVE** to recommend approval once exorcise is grammatically correct.
SECOND Mr. Coelho.

Mr. Phoenix: Again, this is to recommend approval and to amend the explanation to just change that word to the correct one. For my benefit, do we still have time before that goes out for the information packets?

Mr. Stefancik: I have to have everything to Marc tomorrow, so I can take care of that.

Mr. Phoenix: Ok.

Mr. Coelho: The power of the bylaw compels you.

Mr. Phoenix: I believe that might be the line of the night, Chris.

Mr. Coelho: I'm good for something.
5-0 in Favor.

Mr. Phoenix: Article 18:

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ARTICLE 18: ZONING BYLAW AMENDMENT—REPLACING DIAGRAMS

To see if the Town will vote to amend the Zoning Bylaws of the Town of Ludlow by deleting Diagram 1, Diagram 2, Diagram 3, Diagram 4, and Diagram 5 and removing from Table of Contents: BACK OF BOOK: DIAGRAMS.

Pass any vote or take any action relative thereto. Submitted by the Planning Board. Two-thirds vote is required.

Article 18 Explanation: New diagrams are being added to the Zoning Bylaw and will replace the existing diagrams in the back of the Zoning Bylaw. New Diagrams will be located in Section VI.

Mr. Phoenix: Before you do that, I would like to ask that if we are inclined to recommend approval that we include a fail safe in that in case the other articles do not pass at town meeting, that in the case that the other articles that insert those diagrams get denied, that we recommend a postpone on this one. Would anyone care to make a motion on this?

Mr. Carpenter: I **MOVE** to recommend approval. I don't know how you want to word this here.

Mr. Phoenix: How about this, I'll entertain a MOTION to recommend approval to town meeting on Article 18 as long as the relevant articles inserting those diagrams have also passed town meeting. If those have not, that the Planning Board recommendation be to postpone action.
Mr. Carpenter: **SO MOVED.**
SECOND Mr. Coelho.

5-0 in Favor.

Mr. Carpenter: Alright, 19.

Mr. Phoenix: Yeah, we got a short one after this, but 19's the next one in line here.

ARTICLE 19: ZONING BYLAW AMENDMENT—TEMPORARY MORATORIUM ON BATTERY STORAGE

To see if the Town will vote to amend the Zoning Bylaws of the Town of Ludlow by inserting Temporary Moratorium on Large-Scale Solar Battery Storage and Large-Scale Battery Storage to Section XI:

11.1 .1 PURPOSE:

The regulation of large-scale battery storage facilities raises complex legal, planning, and public safety issues, and the Town needs time to study and consider their regulation and address these issues.

The Town intends to adopt a temporary zoning moratorium on the use of land and structures in the Town for large-scale battery storage and large-scale solar battery storage facilities so as to allow the Town to address the effects of such structures and uses in the Town, and to enact bylaws in a manner consistent with sound land use planning goals and objectives. During the moratorium, the Town will undertake a planning process to evaluate the impacts of large-scale battery storage facilities on the health, safety, and welfare of Town residents and to consider appropriate amendments to its Zoning Bylaws to address said impacts, in accordance with state and federal law.

Battery storage utilized for small solar projects (and have a capacity that is complimentary to a solar array that produces no more than 100kW of electricity) are exempt from this moratorium.

11.2.1 DEFINITION:

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A large-scale solar battery storage facility shall mean a facility, including all structures and components used in connections therewith, used to store energy produced by a solar system or systems having a total rated nameplate capacity of greater than 100kW, whether such facility may be accessory to other use, including a solar system, or is a separate land use.

A large-scale battery storage facility shall mean a facility, including all structures and components used in connection therewith, used to store energy produced by natural gas plants, petroleum fired-generation, or to other non-solar electrical systems, whether such facility may be accessory to other use, or is a separate land use.

11.3.1 TEMPORARY MORATORIUM:

For the reasons set forth above and notwithstanding any other provisions of the Zoning Bylaw to the contrary, the town hereby adopts a temporary moratorium on the use of land or structures for large-scale solar battery storage and large-scale battery storage

facilities in Town. The moratorium shall be in effect through October 31, 2025 or the date on which the Town adopts amendments to the Zoning Bylaw regulating large-scale solar battery and large-scale battery storage facilities, whichever occurs earlier. During the moratorium period, the Town shall undertake a planning process to study, review, analyze and address what revisions to the Zoning Bylaw relative to large-scale solar battery storage and large-scale battery storage facilities are needed or desirable to allow for and regulate such uses consistent with protecting the town's natural resources and furthering its planning goals.

Pass any vote or take any action relative thereto. Submitted by the Planning Board. Two-thirds vote is required.

Article 19 Explanation: The moratorium period will allow the Town to undertake a planning process to study, review, analyze and address what revisions to the Zoning Bylaw relative to large-scale solar battery storage and large-scale battery storage facilities are needed or desirable to allow for and regulate such uses consistent with protecting the town's natural resources and furthering its planning goals. The moratorium shall be in effect through October 31, 2025 or the date on which the Town adopts amendments to the Zoning Bylaw regulating large-scale solar battery and large-scale battery storage facilities, whichever occurs earlier.

Mr. Phoenix: I don't know if everyone on the board saw the correspondence earlier. I don't know if I seen all of it. I know I saw some, and I'm certain that the people playing the home game have no idea what I'm talking about. So, I could paraphrase some of this, but I believe I have two people in the room who were first or second party instead of just fly on the wall during that conversation. Would either of you care to elaborate on where we're at on this?

Mr. Stefancik: Yeah, Marc had Town Counsel look at this and this came up, the moratorium as a possible issue. Some communities have approved them, but some have also had been turned down by the AG's office, so it's kind of been red flagged a little and counsel has also said that these may be protected by the Dover Amendment which kind of allows things like hospitals and daycares, you can't zone them out. You have to find a way to accommodate them within reason.

Mr. Phoenix: Which I think is the general direction that we would be inclined to try and go anyway. I mean, there was a time when we really didn't want to have cell towers because, you know, who cares about those people with cell phones, I guess. I don't know. I don't know if that was also under the Dover stuff when that became you kind of have to let those in, if not, it was probably something similar?

Atty. Chaplin: I can't speak to cell towers. I can speak to these batteries. They are encompassed within solar. So, the Dover Amendment does protect certain educational agricultural uses since 1985 it's protected solar, so this is covered. I think what's helpful are examples, so I don't know how much of the correspondence, I'm also sort of a fly on the wall.

Mr. Phoenix: Ok, I saw there were two documents that were attached that were decisions, one that was an eight pager where I believe the AG's office was saying this is ok because they're explaining what they're trying to do, and then a ten pager that said this ain't that great because they're not really telling us what's going on. I think that was the way that I read it, but I didn't go through all 18 pages, I read kind of the synopsis toward the beginning of both of those.

Atty. Chaplin: Ok, I think it's, I think that's on the right track, but I think it's a little different than that.

Mr. Phoenix: Ok.

Atty. Chaplin: So, you had one moratorium in Medway that was a 19 month moratorium that was approved. You had one that amounted to I think it was one year, 11 ½ month moratorium in Carver that was rejected by the Attorney General. And in both cases, so anyway, let's kind of back up. What's the rule? What's the standard you have to get by in order for the Attorney General to approve this? So, the standard is, there has to be articulated evidence of a public health safety or welfare concern sufficient to impose the moratorium or to deny the solar use. So, in the case of Medway, they articulated, you know, public safety concerns with some detail, but they also had two independent consultants already working on investigating what, you know, what the concerns were, what the possible solutions were, what the workarounds were. That was already in process. So, in Carver, there was a general statement of the same kinds of concerns, but the study wasn't yet under way. And so, the difference, and I'm boiling down 28 pages of single-spaced Attorney General decision into one sentence, but the difference seemed to be that the study was already under way, you know, those two outside consultants with, becoming sort of aware of not only what the potential issues are, but how those played out in the particular community, what the potential workarounds were.

Mr. Phoenix: So, let me ask this, knowing the town the way that I do, my expectation would be that we are less inclined to hire consultants to perform that kind of work than we are to go kind of crib off of somebody else's work that they've already paid consultants to do and say well these other places across the state that have had these issues, have comeback and said these are the issues that are concerning and this is how you mitigate those and then we just kind of copy and paste that into our bylaw. I think that's kind of the general way that we would tend to go on something like that, rather than outlaying money to hire the consultants and do that directly for us.

Mr. Silva: Use somebody else's work.

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Atty. Chaplin: So, I'm not entirely, if the question to me is whether that will pass muster, I'm not entirely confident that it will. I believe, and I'm pulling out my laptop to pull out that Medway decision, but I think one of the instructions at the end of the Attorney General decision was to work with town counsel to make sure you implement the suggestions of the consultant. So, I think at a high level, I think that's a good starting point to look to what other communities have done, but it, and I'm trying to read the tea leaves here, but obviously this is an issue that the Attorney General, solar is something that in Massachusetts is very much being pushed forward. So, that's the landscape that we're dealing with.

Mr. Coelho: My question is how come this Dover didn't apply to medical marijuana as well for the government to remain consistent?

Atty. Chaplin: It's not listed in the statute. I don't know, you'd have to ask your state representatives and senator.

Mr. Coelho: It's very easy for us to apply a moratorium to things that aren't being pushed down our throats, but things that we have general concerns about safety we can't put a moratorium on?

Atty. Chaplin: I think that's true, yeah. I think you have to have like specifically articulated concerns about safety and you have to have some process in place to be actively investigating that.

Mr. Phoenix: Well, I would say going back to…

Mr. Coelho: Interesting.

Mr. Phoenix: …the conversation here for anyone that hasn't seen it.

Atty. Chaplin: I've got it right here.

Mr. Phoenix: We've got from Marc Strange to our office as well as to Leslie: *I went through the warrant articles with Brian Winner today and he wanted to convey that the AG's Office looks skeptically upon any battery storage moratorium. Battery storage now enjoys "Dover" protection, which means there's a strong presumption that battery storage should be allowed by right on the same level of schools, hospitals, and churches. So, Brian's advice is that we be able to illustrate the following: What is the harm in allowing them to be permitted now that creates a need for the moratorium; and 2. What specifically are we going to do during the moratorium in terms of planning and action.* I have a hard time with that word specifically because I think we have more of a general idea, but the response that came from Leslie I think was fairly comprehensive. *(Mr. Phoenix read the email from Leslie Ward dated September 14, 2023).* I think that's most of what I had seen in the thread other than those attachments. I don't know if there are more beyond that.

Atty. Chaplin: I saw that ---.

Mr. Phoenix: Ok, so, this was brought to us by Leslie, so for the most part we're gonna be more or less on the same page as her as far as the types of things that we'd be looking to do during the time of the moratorium. My question I guess would then come down to, with this being on the warrant, we can adjust what is in the supporting documentation. It's trickier to adjust the actual warrant article when this ends up. If town meeting passes it and it goes to the AG's Office for review, is the AG's Office, in your experience, inclined to look at other documentation along with the article or just the article in isolation?

Atty. Chaplin: In at least the Carver case, they looked to prior votes the town had taken, so I ---.

Mr. Phoenix: Ok, so that didn't need to specified in the bylaw text itself saying hey we've got consultants, yada, yada, yada as part of our moratorium?

Atty. Chaplin: That's a great question, and I don't want to pretend to know it for sure, but the sense I got, let's see, alright so in the Medway one that passed, there was a preamble ok, there was a preamble that was referencing a prior vote taken by the town. So, I don't believe our text doesn't have a preamble, no, so it's outside the text. But, that information about the outside consultant wouldn't have been in the text. So, to answer your question, yes, the Attorney General will look at the text and will look at the intended circumstances as well. Now whether those intended circumstances are gonna carry the day, we won't know until we try.

Mr. Phoenix: Ok. So, I would think we have a couple possible paths forward if our intention is to have a moratorium. One is that we continue forward with what we have and try and make

sure that the supporting documentation has the best case possible for why we're looking to do this and what we're planning on doing in the meantime which would probably need to be largely elaborated on by Doug and Leslie.

Atty. Chaplin: Leslie probably.

Mr. Phoenix: More than likely, yeah. And going along that path, that can either pass town meeting or not. If it doesn't, town meeting shooting it down does that put a delay on us being able to put it back to town meeting?

Atty. Chaplin: That I don't know off the top of my head.

Mr. Phoenix: So, that's a possibility. If town meeting supports it and it goes to the AG and the AG shoots it down, I don't believe there's any delay on us being able to bring it back to town meeting, correct?

Atty. Chaplin: Not that I'm aware of.

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Mr. Phoenix: The other path is we recommend postponement at town meeting and we take the bylaw under advisement, we work with Doug and Leslie, possibly revise the text of what we're submitting in its entirety, maybe, again, crib off of something that's already passed and then bring that to town meeting either in the spring or next fall.

Atty. Chaplin: That's true, and what you could do in the interim, or what Leslie can do in the interim, is the steps she's now saying she intends to take, she can start down that path and the case would conceivably be more substantial in spring.

Mr. Phoenix: So, the risks that we have are if town meeting doesn't approve it, there may be a delay between then and when we could bring another moratorium to town meeting. If town meeting approves it and the AG says no, then we're left exactly where we are right now, and we can bring it back later. If we do the postponement, the risk is that between now and when it goes back to town meeting, somebody could come in with one of these plans in which case we would need to look at it without the benefit of additional regulations, criteria, etcetera being in place.

Atty. Chaplin: That's correct. So, I had not reviewed the bylaw for this particular --- protected years, so.

Mr. Phoenix: So, it would just end up coming in under by right I would assume, the site plan would still hold, same as for solar fields and other similar things, they still need to do a site plan and then as long as it meets the criteria for the site plan, whether we think that there's other stuff going on or not, would then need to approve. So, if something comes in between October and May, that's the situation we would be in. But there's no guarantee that going forward with it as it exists is going to A. pass town meeting and B. pass the AG's office. So, it's a matter of which dice do we feel more comfortable rolling. My understanding is no one has heard any rumblings of one of these projects being in the works. Is that correct?

Mr. Stefancik: I have had at least one person or people have asked about these and what the process would be for the town and listening to what counsel says, it would be site plan approval either way.

Mr. Carpenter: Or --- sending it to town meeting and then getting it denied there and we, did you say we have to wait again for it to come back if it's denied at town meeting?

Mr. Phoenix: We might. That seems to be an unclear point at this moment.

Atty. Chaplin: We could definitely look into that and get back to you on that if that's the.

Mr. Carpenter: What's the Dover protection, is that only for those uses listed or is it like?

Atty. Chaplin: Yeah, that's right. In the statute, if you fall within the different, not all the uses within the statute get treated exactly the same way, but it's in broad brush strokes it's an exemption from zoning. Essentially, the legislature has identified certain types of uses and it limits planning boards who make zoning bylaws from regulating those uses except in very specific narrow ways. Solar's a little different than education, a little different than daycare, a little different than agricultural, but broadly speaking it's a very similar concept.

Mr. Phoenix: But is wildly consistent with the zoning enabling act better being labeled the zoning disabling act.

Atty. Chaplin: I haven't heard that one, but certainly section three's a pretty broad exception.

Mr. Phoenix: So, what's...

Mr. Coelho: I think we should support our building commissioner, inspector.

Mr. Carpenter: I have no problem going to town meeting with it, it's just we're gonna have to have something behind it for support and is that enough time, because when's town meeting? Five weeks away? That's the only thing ---.

Mr. Coelho: And even if it gets shot down by the AG and somebody builds one and it ends up being a big problem, we can tell the state we told you so. Not that that helps.

Atty. Chaplin: Yeah, maybe the optics are ---, but your end result ends up being about the same, right?

Mr. Phoenix: The only way that things would be different is if it passes and gets a thumbs up.

Atty. Chaplin: That's right.

Mr. Carpenter: --- send it.

Mr. Coelho: Full send.

Mr. Carpenter: Ok, there you go.

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Mr. Phoenix: Ok, so just to be clear, it sounds like I'm probably gonna be hearing a motion to recommend approval of Article 19 at town meeting with the understanding that there will be work put in between now and then to increase the amount of background information of what would be the reasoning and the process that would be gone into during the period of the moratorium.

Mr. Carpenter: **SO MOVED.**
Mr. Coelho: **SECOND** for discussion.

Mr. Phoenix: Sure.

Mr. Coelho: Doug, is that something you can sharpen the pencil on, right?

Mr. Stefancik: Yeah, we would send the article the way it is, but then for town meeting we would have additional background information.

Mr. Phoenix: Which we're not gonna be able to get out to Marc by tomorrow, but we can certainly have that on the stage available for people to pick up at town meeting.

Mr. Carpenter: That's scary.

Mr. Coelho: Ok, I just wanted to get an administrative consent that we can really do this as best as we can.

Mr. Carpenter: Full send Chris, full send.

Mr. Phoenix: Well, I would say also it's, you know, if this is something that Leslie brought to us…

Mr. Coelho: --- support her.

Mr. Phoenix: …I'm sure that she's gonna be, you know…

Mr. Coelho: I feel we need to support her.

Mr. Phoenix: …I agree, and I think that she's gonna be putting in the work to try and make it as acceptable to the AG as we can possibly make it, so. So, with that, all those in favor?
5-0 in Favor.

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Mr. Phoenix: Number 20:

ARTICLE 20: ZONING BYLAW AMENDMENT—REPLACING DIAGRAM REFERENCE NUMBERS

To see if the Town will vote to amend the Zoning Bylaws of the Town of Ludlow SECTION X: DEFINITIONS: by deleting the current Diagram numbers in the following definitions: Front Yard, Frontage, Lot Width, Rear Yard, and Side Yard and replacing with the new Diagram Section Numbers.

FRONT YARD: A space across the full width of the lot and extending from the front line of the building located on such lot to the front line of such lot. ~~(See Diagram 1)~~ (See Diagram 4.0.1& 4.0.1.1 & 4.0.7 & 4.0.7.1 & 4.0.8)

FRONTAGE: That portion of a lot fronting upon a street to be measured continuously along one street line between its side lines and their intersection parallel with the street line. The required

frontage shall extend from the street line to the required setback line. Frontage shall provide both rights of access and potential vehicular access across that lot line to a potential building site. ~~(See Diagram 1)~~ (Amended 10/97&10/01) (See Diagram 4.0.1 & 4.0.1.1 & 4.0.7 & 4.0.7.1 & 4.0.8)

LOT WIDTH: The straight line distance between lot sidelines measured parallel to and the front yard setback distance (depending on the zoning) from a straight line connecting the intersections of the road line with the lot sidelines. If the line connecting the intersections of the road line with the lot sidelines crosses the road line at any point, the lot width line shall be measured by the front setback distance (depending on the zoning) from the point within the lot on the road line which is farthest from the line connecting the intersections of the road line and lot sidelines. ~~(See Diagrams #4 & #5)~~ (Amended 1/25/99) (See Diagrams 4.0.1.1 & 4.0.7)

REAR YARD: A space across the full width of a lot, and extending from the rear of the building located on such lot to the rear line of such lot. ~~(See Diagram 1)~~ (amended 10/1/01) (See Diagram 4.0.1 & 4.0.8)

SIDE YARD: A space extending from the front yard to the rear yard between a building and the adjacent side of the lot on which said building is located ~~(See Diagram 1)~~ (See Diagram 4.0.1 , 4.0.7, 4.0.7.1 & 4.0.8)

Pass any vote or take any action relative thereto. Submitted by the Planning Board. Two-thirds vote is required.

Article 20 Explanation: Replacing the old diagram references numbers with the new diagram references to Section IV for efficiency and ease of use.

Mr. Phoenix: I would just say strike the "s" off the word references in the first part of the sentence because I think it should be diagram reference numbers. Beyond that, does anyone have anything that's a concern with this one? It's kind of housekeeping.

Mr. Carpenter: Mr. Chairman I **MOVE** to recommend approval with the change to references to reference.
SECOND Mr. Queiroga.

Mr. Phoenix: Can I just ask that a caveat be put on this one again, that if the relevant other sections have not passed, that we instead recommend postponement?

Mr. Carpenter: I amend my motion to that.

Mr. Phoenix: Second's good with that too?

Mr. Coelho: --- first rodeo. Second good with that?

Mr. Queiroga: Yeah.
5-0 in Favor.

Mr. Phoenix: I'll entertain a MOTION to close the public hearing.

Mr. Carpenter: **SO MOVED.**

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SECOND Mr. Coelho.
5-0 in Favor.

The public hearing ended at 9:04 p.m.

APPROVED:

Joseph Queiroga, Secretary

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Documents: Proposed Zoning Bylaw Amendments – Articles 11 – 20; Email from Marc Strange re: Solar Battery Storage Moratorium (September 13, 2023); Email from Leslie Ward re: Solar Battery Storage Moratorium (September 14, 2023); Email from Marc Strange re: Solar Battery Storage Moratorium (September 14, 2023); The Commonwealth of Massachusetts Office of the Attorney General re: Medway Special Town Meeting of November 15, 2021 – Case #10409 Warrant Articles #9, 10, 11, 12, and 13 (Zoning) (May 17, 2022); The Commonwealth of Massachusetts Office of the Attorney General re: Carver Annual Town Meeting of April 12, 2022 – Case #10526 Warrant Articles #10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 26, and 38 (Zoning) Warrant Articles #28 and 29 (General) (November 14, 2022)

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