

Richmond Planning Board Meeting
Town Hall
Minutes
July 30, 2019

Members present: Douglas Bruce, Richard Bell, John Hanson (Chairman), Katherine Keenum

Member absent: Peter Lopez

Other present: Neal Pilson, Richmond Board of Selectmen; Marc Volk, Foresight Land Services, Pittsfield; Justin Codwise, Richmond resident; Alisha Deane, Richmond resident

I. Introduction

Mr. Hanson opened the meeting at 6:35 P.M. by announcing that it was being tape recorded and would be conducted formally. Speakers would be recognized by the chairman and were asked state their names each time they spoke to help with identification.

He explained that applicants for building projects on Dublin Road and at Fire House Lane had been asked to come back to this special meeting so that the Board could vote again on site plans which had been reviewed and approved at the regularly scheduled monthly meeting on July 8, 2019. An official complaint had been lodged about whether items on the agenda of the previous meeting had been properly posted and it might take several meetings to resolve the issue. The night's first goal was to make sure that the applicants' projects were not delayed by any uncertainty over the validity of the original votes. The applicants should not have had to go through this twice and the Board wanted to make sure the situation did not happen again.

The Board was looking on the complaint as an opportunity to improve its own performance and to improve other parts of the Town government as they interface with the public and the Planning Board. There was a lot of fragmentation and lack of communication even on basic projects like the building of a single-family dwelling. The process should be efficient. In the last couple of years, things had broken down and were not working as they should. For the good of the community, there was need for things to improve.

The applications would be reviewed completely from the beginning. He asked Mr. Codwise to come forward and start by saying when he had first learned that he needed to come before the Planning Board.

II. Repeat Votes on Two Site Plan Applications

1. Mr. Codwise said he was looking to build a 1,500 square-foot house with a two-bay garage at 1013 Dublin Road. The address had been assigned since the July 8th meeting. His first knowledge that he needed to go to the Planning Board had come on July 3rd around 6:30 or 7:00 P.M. at the Pittsfield Airport car show, when he was talking to Ray Hanson, the chairman's brother. John Hanson had been attending the same show and had confirmed that he needed a site plan review.

Mr. Hanson said that he remembered asking Mr. Codwise whether the Building Inspector had told him he needed to go before the Planning Board. Mr. Codwise had said, no he had not.

Mr. Codwise said that prior to purchasing the Dublin Road property, he had reached out to the Richmond Building Inspector to verify that it was a legal building lot. There had been a little confusion about the deeds or the plot plan; that's why there was no address assigned at the time. At the air show, Mr. Hanson had told him that he needed to come before the Planning Board and that there would be a meeting on the night of July 8th.

Mr. Hanson said that he had asked Mr. Codwise whether he had a site plan and, if not, to bring a drawing or whatever he could to the July 8th meeting and the Board would see what they could do for him. They would decide then whether they could review the application.

Mr Codwise continued: On Friday, July 5th, he had reached out to Foresight and, believe it or not, by 3:30 that afternoon they had the plans in his hands for presentation on July 8th. The site plan being presented on July 30th was an update with more detail; it reflected that a well permit had been obtained [see Appendix 1].

Mr. Volk came forward and explained that the septic system was still being worked on. He pointed out the setbacks and showed that they conformed to zoning. The driveway was gravel; the steepest grade was 6.0 % and that was just coming off the road; the rest was level. Mr. Hanson asked whether there were any wetlands. Mr. Volk confirmed that there was wetland on the property but not on the building lot, which met the Richmond requirement of a 200-foot setback from a wetland. Mr. Bruce asked about the width of the curb cut and was told that the existing cut was twelve feet and would remain so after it was shifted slightly south. Mr. Bell inquired about drainage for the driveway when it rains. Mr. Volk said they had discussed this with the Highway Department; he explained the swales that were designed to handle runoff. Mr. Bell had questions about zoning for the driveway grade and suggestions for alterations to handle storm water. Mr. Hanson said the zoning restriction he was citing applied only to common driveways, and Mr. Volk explained why the suggested alterations would only make things worse. He said that the Highway Superintendent had come to Foresight and they had discussed all the problems and possibilities for handling run-off and this was what they had agreed to; Mr. Codwise had his driveway permit. Mr. Codwise said he had a well permit from John Olander.

Mr. Hanson entertained a motion to approve the site plan. Mr. Bell seconded. The vote was unanimous 4-0.

While the Board took up the next item on the agenda, Mr. Codwise filled out a new Site Plan Review form for the Board members to sign.

2. Mr. Hanson called on Mr. Volk to present the site plan for a garage to be built at 35 Fire House Lane [see Appendix 2]. Mr. Pilson asked to be allowed to look on as well and was given permission. Mr. Hanson explained that the plan before the Board was one that he had discussed with Mr. Volk on the morning of July 8, 2019, and included on the revised agenda for the meeting that evening as an item that could not have reasonably been anticipated 48 hours in advance. At that time, the Board of Appeals (ZBA) had already scheduled a public hearing on the project for the night of July 31, 2019, to review applications for variances.

The first was a use variance because Town Counsel had advised that a fire department was not a permitted use under the Richmond Zoning By-Law. The second was needed was due to the fact that the plan did not meet zoning requirements for a setback from the property line. In

conversation with Mr. Volk on the morning of July 8th, Mr. Hanson had discussed whether site plan approval by the Planning Board was also required and it was decided that an application should be made that evening. On the evening of July 8th at the Planning Board meeting, Mr. Volk had appeared and brought along Eric Smith, the Deputy Fire Chief. On the present evening [July 30, 2019] Mr. Volk would carry on as the sole representative of the project.

Mr. Hanson said that on July 8th, Mr. Smith had told the Board that the RVFD was a private, non-profit organization; it would build the garage with its own funds and rent the space to the Town for storage of fire engines owned by the Town. Mr. Smith had also said that the fire department would not use the building for any of its own purposes; it would be used exclusively for the storage of Town equipment. Mr. Hanson asked Mr. Volk if this was correct. Mr. Volk said that he could not be sure that the RVFD would not store any of its own purchased equipment in the proposed garage; but as they had discussed, the purpose of the building was to store Town-owned fire trucks. Mr. Hanson observed that the building would be used 24/7 for the storage of the trucks. Mr. Hanson gave as his opinion that this would be a municipal use because use depends on the renter, not the landlord, and that in the Zoning By-Law municipal use is by right with a Planning Board site plan approval.

Mr. Pilson asked whether there was precedent from the other RVFD building on the site. Mr. Volk said that he didn't know. Mr. Hanson said that he didn't want to go there because that was a separate issue. Mr. Pilson said that the principal use of the new building was to store the trucks and given the size of the trucks, that a huge percentage of the space would be occupied by Town apparatus. The upstairs of the other building was used by the RVFD for their own purposes and that was not a Town use, but the new building would be for storage only. Mr. Bell asked whether the RVFD was going to take all their fire trucks out of the existing building and put them in the new garage, that is, were we just transferring equipment from one storage area to another and, if so, what might they do with the existing space? Mr. Hanson said that plans for the old building did not matter in determining the use of the new building. Mr. Volk said that a recently purchased fire truck would not fit into the old space because it was too high and too wide. Mr. Pilson said that was correct. Mr. Bell asked whether the Town was considering buying another new truck. Mr. Pilson said, yes, that they had recently bought a smaller one than a truck now being contemplated, but he did not see the relevance of the question. Mr. Hanson said that the focus should remain on the use of the proposed new building. If a bank owns a building and rents it to a liquor store, it doesn't matter who the landlord is, the use is for a liquor store; so in this case, the use is for the Town of Richmond, which is a municipal use and that's why he believed a site plan approval was required. The Zoning By-Law said that a municipal use building was by right but required a site plan review by the Planning Board. Mr. Pilson that what had been represented to the Board of Selectmen was that almost the totality of the new building would be put to a municipal use.

Mr. Hanson made a motion that the Planning Board considered the use of this proposed building to be a municipal use. Mr. Bell seconded. The motion carried by a vote of 4-0.

Mr. Hanson said that the next question was whether the Board wished to look at the application some more. He said to Mr. Volk that it was clear from the application that a variance for setbacks was necessary. Mr. Volk said that in previous discussion with the ZBA, it had been determined that two variances were needed. Mr. Hanson and Mr. Volk agreed that it was entirely up to the ZBA whether they wished to consider a municipal use variance. Mr. Hanson went on to say that in conversation on the morning of July 8th on the larger picture of how Foresight and the RVFD had arrived where they were, he had realized that they [Foresight and the RVFD] should have gotten an opinion from the Building Inspector on the variances required and if the Building

Inspector needed an opinion from the Town Counsel, then the Building Inspector was supposed to get it. It was not supposed to come from the chairman of the ZBA. The chairman of the ZBA was supposed to stay independent of this process.

Mr. Volk said, “You folks need to work with your building inspector to make sure he is giving sound advice because there’s lots of projects in Richmond going on that my clients—that he’s just not giving good advice.” He added that it was not unusual for him to go to Planning Boards for guidance on zoning law and ask what sections should they be looking at. He liked to clarify things ahead of time so that Foresight didn’t come in with an application citing 4.8 when it should be 4.9, which could require a re-application; it just streamlined things. He thought the town of Richmond needed to work with their building inspector or create a zoning enforcement officer as they had had in the past.

Mr. Hanson asked Mr. Codwise to come forward because he had had recent experience of the entire process and could tell the Board about it. Mr. Codwise said that so far his experience with the different departments throughout the town, it was just very hard to find everyone on the same page or following the same guidelines. “In regards to the building inspector, for insulation I had to inquire about the energy efficiency rating; the answer I got was that the gentleman really didn’t care. The reason I was asking was the modular company had asked whether there were guidelines it should meet.” Mr. Hanson said there was a code. Mr. Codwise said, correct, and he had not been given the right answer; he had to go research it himself. Going back to the driveway permit, he had submitted the application, the check was cashed, and three weeks later, still no permit. Another application sat on a desk for ten days and missed the posting deadline for the next Board of Selectmen’s meeting, so Mr. Codwise believed there were several departments in town could improve in the way they conduct business. Mr. Hanson said that one problem was one too many and unfortunately the Planning Board contributed to his bad experience two weeks ago. The Board wanted to improve things and that was why he wanted Mr. Pilson to hear about the problems, too. Mr. Codwise said that it certainly was discouraging having to do some of the legwork.

While a photocopy of a signed site plan approval was being made for Mr. Codwise, Mr. Volk said that the Conservation Commission had seen the RVFD plan, and he showed where shrubs would be planted and how drainage would be handled.

Mr. Hanson said that on the question of the RVFD site plan itself, determination had been made that approval was required from the Planning Board. He entertained a motion that the Board approve the plan on condition that the ZBA issue a variance on the setbacks. Mr. Bruce so moved. Ms. Keenum seconded. The motion carried by a vote of 4–0.

III. Two requests for comments from the ZBA

1. Mr. Hanson said that the next item on the agenda was a request for comment from the ZBA on the Fire Department variances. He suggested that the Planning Board should have no comment except that he would report to the chairman of the ZBA that we had signed a site plan approval conditional upon the ZBA’s granting a variance on setbacks. Mr. Bell suggested that a response on use might be needed, too. Mr. Hanson said that the vote earlier in the evening which determined the Fire Department to be a municipal use was sufficient and would be part of the public record. Mr. Volk said that he would be at the ZBA’s public hearing and could tell them the outcome of this night’s vote. Mr. Hanson said that he did not want to withhold information from the ZBA but he did not want to interfere in their deliberations on use especially when Town

Counsel was giving them a different opinion. He thought it would not be a good idea for him to go the public hearing and participate because he could not speak for the Planning Board. Mr. Bell asked whether it would be a good idea for Ms. Keenum to prepare minutes from this night's Planning Board meeting to present at the ZBA hearing the next night. Ms. Keenum said that, no, it would not and it would not be possible. [Laughter.] She said that she would be attending as an abutter. Mr. Volk said the it should be sufficient if he went to the hearing and represented what had happened at the Planning Board meeting.

Mr. Hanson entertained a motion that the Board provide no comment on the variance for the Fire Department building project except to say that the Planning Board had approved a site plan conditional on approval of a variance on setback. Mr. Bruce so moved. Mr. Bell seconded. The motion carried unanimously, 4–0.

2. Mr. Hanson said that the Board also had a request from the ZBA for comment on a special permit for the Richmond Highway Department to remodel an existing building with a non-conforming use. This was the building out behind the post office. Mr. Volk said that it was also a Foresight project. Mr. Hanson explained to him that it was the Board's standard approach not to comment on special permit applications because we did not have access to input from the abutters and other findings, which was the primary purpose of a special permit. **He called for a motion authorizing him to inform the chairman of the ZBA that the Planning Board had no comment. Mr. Bruce so moved. Mr. Bell seconded. The motion carried unanimously by a vote of 4–0.**

At the conclusion of this discussion, all members of the public had departed.

IV. Resolution of a Potential Issue with following the Open Meetings Law at the Planning Board Meeting of July 8th

To open discussion of the official complaint filed by Mr. Bell under the Open Meetings Law (OML) [see Appendix 3], Mr. Hanson said that he would be following a prepared outline because the OML form specified a process for handling a complaint. It was important that everything be done with transparency and accuracy. Everything must also be documented as completely as possible because eventually the Board must report to the Attorney General . No discussions were allowed outside posted public meetings. For this reason, Mr. Hanson had been unable to answer questions from Mr. Pilson earlier but had invited him to attend tonight's meeting.

Mr. Hanson said that under the OML procedure, the first action on this complaint must be taken at a Planning Board meeting, and that was what we were here for. He hoped to report progress toward resolution in fourteen days to the complainant. Resolution might take more meetings and it was possible that Town Counsel would have to review the response.

Mr. Hanson said that there was no intention of blaming or threatening anyone. The process he was going to go through very deliberately, step by step, was intended to make improvements. The complaint had resulted from a difference of opinion on how to interpret details of the OML, not about whether to follow the law. At the meeting of July 8th, the Board had made an effort to resolve issues; maybe if there had been more discussion at that time, perhaps complaint could have been avoided; but we were where we were and would move on from here.

The complaint used the draft minutes of the July 8th meeting, which must be reviewed for completeness and accuracy as part of the night's proceedings. There had been omissions. Ms. Keenum asked to have it noted that what she had sent out at the request of the Town Clerk was a very rough draft. Ordinarily she would have gone over the draft again with her notes and asked for clarifications before sending it out, but she was constrained by the timing once a request had been made. She agreed that there had been omissions and corrections were needed.

Mr. Bell said that in his opinion he had not officially complained to the Attorney General's Office. He had only asked them for a ruling because he thought the chairman was going to talk to Town Counsel. Mr. Hanson stopped him and said that he was getting ahead of the step-by-step process. Mr. Bell repeated that he had not used the complaint form until Mr. Hanson told him he had to; in e-mailing the Attorney General's Office, he had only sought a way in. Mr. Hanson said, no, he had made a complaint [see Appendix 5], and it was important now to establish exactly what had happened. He wanted to make note of any place the Board thought its process could be improved because that's what we really wanted to accomplish.

Mr. Hanson recommended that the night's meeting proceed by establishing points of agreement by unanimous consent. If anyone thought a point needed to be voted on, he wanted that person to raise a hand; but he wanted to go through sets of points as a kind of information gathering on what members could agree on. By that process, the following points were established

Points of Agreement The Open Meetings Law

1. Everyone had read the complaint.
2. Everyone had read what the complaint asked for as a resolution.
3. We had resolved one of the issues by re-voting the agenda items of July 8, 2019.
4. In regard to the OML requirements for posting notice of a meeting and an agenda:
 - a) Forty-eight (48) hours meant two business days.
 - b) Weekends and legal holidays were not counted in those two days.
 - c) For a 6:30 P.M. meeting on Monday, the agenda must be posted by 6:30 P.M. on the Thursday of the week before.
 - d) If Thursday was a holiday, then the agenda for a 6:30 P.M. Monday meeting had to be posted on Wednesday by 6:30 P.M.
 - e) Mr. Hanson's agreement with the Town Administrator and the Town Clerk since he had taken over as Chairman from John Vittori has been that the Town Clerk needed a one-day lead time to post notices or agendas. That is, a notice received by the close of business at 4:00 P.M. on one day should be posted by the close of business the next day. Typically, it was. Sometimes it was slower; it was never faster. Mr. Bell said that sometimes if the Board of Selectmen wanted a posting urgently, it could be done. Mr. Hanson said he was not saying fast turnaround was impossible, only that it was not in his agreement and had not been his experience—including when he tried to get revisions of tonight's meeting posted. (Mr. Bell had objected that the original agenda did not make clear enough to the public what was at issue nor did a revision of that agenda. Four hours after the first revision, Mr. Hanson had sent a second revision to the new Town Clerk; he asked her to post it and to e-mail him the date and time of the posting. She had not responded. He was proposing the procedure as an improvement to be discussed later. He had visited Town Hall and spoken to the interim Town Administrator about it,

but he wished to point out that he could not guarantee the actions of others. Mr. Bell suggested follow-up phone calls after an e-mail was sent to ensure that the staff carried out requests.)

- f) Given a one-day lead time and the fact that Thursday, July 4th, was a holiday, the deadline for sending in a revised agenda for the July 8th meeting would have been 4:00 P.M. Tuesday, July 2nd.
- g) A notice of the meeting and the first agenda for the July 8th meeting had been sent on July 1st and posted on July 2nd.
- h) The revised agenda for the meeting of July 8th was not drawn up until Friday, July 5th, too late to be posted two business days in advance of the Monday, July 8th, meeting.
- i) Town Hall was closed on Friday, July 5th even though it was not a legal holiday.
- j) On his complaint form, Mr. Bell used the date and time of an e-mail sent by William Martin, Chairman of the ZBA (Tuesday, July 2, 2019, at 10:16 A.M.) to claim it would have been possible for Mr. Hanson to post a revised agenda on July 2nd or 3rd. Mr. Hanson said that in a conversation, Mr. Bell had claimed that Mr. Martin's e-mail would have been in the Planning Board Chairman's in-box on July 2, 2019, and would have impacted all four items on the agenda for July 8th.
- k) Mr. Hanson disagreed with Mr. Bell's claim. He maintained that the time line on which the communication came to his attention did not reasonably allow the revised agenda to be posted. Wrangling ensued about what could or could not have been done, but no one disputed that Mr. Bell's and Mr. Hanson's positions were as stated.

Having established these points of agreement, Mr. Hanson read aloud the following paragraph from the *Open Meeting Law Guide* issued by the Office of Attorney General, Maura Healey (October 6, 2017):

If a discussion topic is proposed after a meeting notice is posted, and it was not reasonably anticipated by the chair more than 48 hours before the meeting, the public body should update its posting to provide the public with as much notice as possible of what subjects will be discussed during the meeting. Although a public body may consider a topic that was not listed in the meeting notice if it was not anticipated, the Attorney General strongly encourages public bodies to postpone discussion and action on topics that are controversial or may be of particular interest to the public if the topic was not listed in the meeting notice.

He said that he wanted to focus on the phrase "reasonably anticipated" and go through what happened keeping that criterion in mind. He then resumed establishing points of agreement by turning to specific cases.

Points of Agreement: Codwise site plan review

- 5. In regard to the site plan application from Justin Codwise:
 - a) Mr. Hanson's notes show that he had first talked to Mr. Codwise on the evening of Thursday, July 3rd, and he wanted to make sure the minutes reflected that. Mr. Bell said that he thought that one was probably okay. Mr.

Hanson said that his notes showed that Mr. Bell had said so on July 8th and he would bring up the point later in the discussion.

- b) Tonight, Mr. Codwise confirmed the date and place of their first meeting. Mr. Hanson had known on July 8th that they had met at an event at the Pittsfield Airport and held a private conversation; but since Mr. Codwise had not volunteered the information at that time, Mr. Hanson had not asked him to reveal it. Mr. Hanson added that he remembered asking Mr. Codwise at the airport whether the building inspector had told him to come before the Planning Board because in four recent cases, the applicant for a building permit had not been told. Mr. Hanson did not believe applicants or the chairman should have to reveal details of their private lives. He said he had not seen the e-mail of July 2nd until late Wednesday, July 3rd and thought it was something he would have to deal with later but he did not think he should have to explain how he managed his e-mail.
- c) Mr. Hanson had notified Board members of the Codwise application in an e-mail of Friday, July 5th that read: "We will discuss the attached applications from the ZBA and a site plan for a new house on Dublin Road." The July 2nd date of the e-mail from Bill Martin concerning the ZBA was irrelevant to the Codwise case.
- d) The Codwise application for a site plan review of a single-family dwelling was not controversial.
- e) Mr. Hanson said he believed that the Codwise application was rightly discussed under Item 3 of the posted agenda for July 8th: "Other items not reasonably anticipated by the Chair 48 hours in advance of the meeting." Mr. Bell agreed in hindsight that the vote was correct, but he did not know how to revise the complaint. Mr. Hanson said they would have to find a way when they reported to the Attorney General's Office.
- f) All members agreed that it was a reasonable conclusion that the Board's action in regard to the Codwise application on July 8, 2019, was not in conflict with the OML.

After these points of agreement had been established, there was further general discussion. Mr. Bell called for numbering revisions of agendas clearly, and Mr. Hanson noted down that Mr. Bell wanted "rev control" and more communication. Mr. Hanson asked whether, as guidelines, it was also reasonable to expect that the chairman, whoever it was, should not be asked to justify the actions of his private life and that as a general rule if he said that he had not read an e-mail or anticipate an item 48 hours in advance, then he should be taken at his word. Mr. Bell noted that, like most people on Richmond's boards and committees, Planning Board members were using their private e-mail addresses for e-mail exchanges. He said he was going to recommend that all Planning Board members and everyone else in Town government be required to get Town e-mail accounts. Then if something popped up, the recipient would see immediately that it was town business and not just some private e-mail. Mr. Bruce said that the suggestion assumed everyone had wi-fi access at all times, but he did not; his work took him into the field and he could not check frequently. Yes, we were elected officials, but that did not carry an obligation to check e-mails every single day. "Here, here," said Ms. Keenum. To the point about when the chairman read his e-mail, Mr. Bruce said the if he said he read it on a particular date, then that was it; we were done unless Mr. Bell wanted to challenge him to a dual over his word of honor. Mr. Bell said that most people had mobile phones and checked their mail frequently. Ms. Keenum replied that she and Mr. Bruce were two members of the Board who did not have smart phones and did not check their mail often. Mr. Bell repeated that most people did. Mr. Bruce said that it was not reasonable to require members to acquire phones; it might be reasonable to require them to check

e-mail once a week or something but not several times a day. Mr. Hanson agreed that power outages, holidays, and other interferences could prevent people from checking their e-mail even though he generally did.

Mr. Hanson then turned to the e-mail trail of the exchanges he had had with Mr. Martin of the Board of Appeals (ZBA) (Appendix 4). It showed that Mr. Hanson had spoken by telephone with Mark Volk of Foresight Land Services on the morning of July 8th. He explained that he had wanted to learn why the RVFD would be seeking a variance for use. Mr. Bell asked what had Bill Martin been talking about on July 2nd if not the site plan. Mr. Hanson replied that Mr. Martin had been talking about requests for comment from the Planning Board on the variance and special permit applications. It was his discussion with Mr. Volk on July 8th about “municipal use” which led to Mr. Hanson’s to believe that the new garage was such a use, as a club room with ping-pong tables, for instance, would not be, and that therefore a site plan review was needed. He suggested that Mr. Volk appear before the Planning Board that night [July 8th], and it was a good thing that Eric Smith had come along because he could answer many of the questions that Mr. Hanson had restated tonight. Mr. Hanson said that he believed that the project was for the good of the community; site plan reviews were routine and must be approved if they met zoning requirements; a public hearing on the RVFD project at which townspeople could voice opinions was scheduled for July 31st. The hearing had been posted in the Berkshire *Eagle* and abutters and surrounding towns had been notified so the Planning Board was not hiding anything from the public by taking up the site plan review as a topic not reasonably anticipated forty-eight hours in advance of the meeting. For all these reasons he believed the Board had done the right thing on the evening of July 8th. Mr. Bell countered that the Board should have given guidance on the site plan review that night and continued the item until the next meeting. Mr. Hanson pointed to the e-mail exchange of July 8th again and made the point that Mr. Martin was fine with having the site plan application go forward that night. The Board always had the discretion to delay; but when the town’s Deputy Fire Chief was before the Board with a request on which it could act and said that he did not want to get caught in an approval loop, then it was right to act. Mr. Bell objected to people being able to come forward at the last minute and expect to have their applications acted on instantly. Mr. Bruce said that a chairman had discretion about what to put on the agenda as unanticipated items. He and Mr. Bell would have delayed, but Mr. Hanson was the Chairman and it was his decision. Mr. Hanson said that in any case there were two separate issues: should a case be heard for information and should it be acted on. Mr. Bell said that the OML prohibited discussion outside a public meeting; Mr. Hanson said that his e-mail to Mr. Martin on municipal use was not about the site plan but about the Zoning By-Law’s definition and the possible need to change the law because Ms. Goodman’s opinion was that a fire department was not a permitted use at all. That the town could not have a fire department was troubling. Mr. Bruce said that now he understood. Mr. Bell said that, in order to prevent bias, the OML prohibited discussion outside of meetings and the expression of any opinions in e-mails. Ms. Keenum liked to send out her positions ahead of time in writing, but they should be brought to the meetings only. Mr. Hanson said that was why he did not talk to Town Counsel or respond to Mr. Bell.

Points of Agreement: RVFD site plan review

6. Summary in regard to the site plan application from the RVFD
 - a) Mr. Hanson learned on July 8th that a site plan approval would be sought by the RVFD that evening.
 - b) Mr. Hanson notified the Planning Board members of the application by e-mail that morning.
 - c) This application for a site plan review could not have been anticipated 48 hours ahead of the meeting.

- d) The Board concluded that this was a municipal use requiring a site plan approval. It was appropriate at least to discuss the application at the meeting.
- e) The Attorney General strongly encourages public bodies to postpone discussion and action on topics that arise less than forty-eight hours before a meeting if they are controversial, but there was nothing controversial about the proposed building.
- f) It was Mr. Bell's opinion then and now that the vote should have been put off.
- g) **The vote did take place on a routine matter and it was reasonable to conclude that the action taken by the Board to approve the RVFD application conditional on a variance from the ZBA by a majority vote of 4-1 on July 8th was not in conflict with the OML.**

Mr. Hanson observed that there had been a difference of opinion about what should be done and proposed that the way to resolve the issue for the future was to devise a procedure on postings and agendas. Mr. Bell then brought up the question of whether the new members were adequately informed on the OML when they voted. Had they been certified? Mr. Bruce said that he had taken the on-line conflict-of-interest course required and turned in his certificate. Mr. Hanson interrupted to say that this question was not part of Mr. Bell's complaint. Mr. Bell agreed it was not part of the complaint but said that it was part of the fact finding on whether the new members were qualified to make a decision on the OML. It would be easy to go to the Town Clerk to find out whether they had turned in the form. Mr. Hanson said that he did not believe there was anything in the OML about what a board member had to do in order to be able to vote. **Mr. Hanson said that he wanted to move on by saying that everyone could agree that the difference of opinion could be resolved by putting a procedure in place. No one objected**

Mr. Hanson then said it was time to turn to the ZBA request of comment on the Highway Department Special Permit Application, but first he wanted to go back to the variances for the Fire Department garage. He said that on July 8th he had been authorized simply to send an e-mail reporting that the Board had approved a site plan for the RVFD conditional on the ZBA's approval of a setback variance. In that e-mail report, he had made no comment on the use variance. He said that he could find nothing in the minutes about whether the Board had even discussed a use variance. He wondered whether anyone remembered; he himself thought we had not. Mr. Bell thought we had although it was not in the minutes. Mr. Hanson thought that there had been no discussion and no vote; but that as a courtesy, the ZBA should have been informed that we would make no comment on use.

Mr. Hanson and Mr. Bell returned to the questions of whether the request for comment could have been put on a revised agenda before the 4th of July holiday and when Mr. Hanson had read the e-mail of July 2nd. Mr. Bell said that he had seen the e-mail on July 2nd and so could Mr. Hanson. Mr. Hanson asked whether Mr. Bell was saying that he had been lying. Mr. Bell said that Mr. Hanson should not take it personally. He added that if Mr. Martin had thought the issue was important enough, he would have telephoned. Mr. Hanson moved on to say that on this line item [the Richmond Highway Department special permit], we had made no recommendation and taken no action. Mr. Hanson and Mr. Bell next disagreed on how a report on a resolution of the OML complaint would circulate. Mr. Hanson said that if Mr. Bell had no issues left, then he could withdraw his complaint at the meeting. What he was asking was whether it was reasonable for this line item to be brought up. The Board was supposed to comment on the special permit application. Did Mr. Bell believe it reasonable for the item to appear on a revised agenda as an unanticipated item since Mr. Hanson had not read the e-mail in time to post it forty-eight hours in advance? Mr. Bell asked what if the e-mail had come on June 25th? Mr. Hanson replied, what if it

had? He could not answer the question because he did not live in a hypothetical world, he lived in a real world and in that real world he had not opened the e-mail in time to give a one-day lead for posting a revised agenda forty-eight hours ahead of time although he had gone to Town Hall on Saturday, July 6th, to try to post it with as much time as possible. He asked whether Mr. Bell thought he was making it up or making excuses? Mr. Bell said it was reasonable to believe most people would have seen a July 2nd e-mail in time. Mr. Bruce said that the chairman's discretion must be respected. Mr. Bell finally said that maybe, if the Board could agree on a procedure, then he could withdraw the complaint. Mr. Hanson said that the Board could not decide on a procedure that night but could agree to draw one up; he cautioned that it would then have to be run by Town Counsel. Mr. Bell then reiterated his belief that the Board should use Town e-mail addresses so that they become a matter of public record so that if, say, Rick challenged John, then someone would go through all of John's e-mails to see whether he really did say such-and-such on a given date." Mr. Hanson said that he did not want to discuss e-mail addresses that night but to wrap up the meeting.

Mr. Hanson asked whether the members present agreed that he had not had the ability to get the requests from the ZBA for comment posted on a revised agenda forty-eight hours ahead of the July 8th meeting. Mr. Bruce and Ms. Keenum audibly agree; Mr. Bell did not audibly disagree.

The next question was whether the Board acted on a request for comment on special permit applications that required a use variance. Did we put it off, did we not act, was it overcome by events? Mr. Hanson said that his belief was that it was overcome by events because we voted on a site plan and did not really respond the request for comment on a variance for use. Mr. Bruce agreed. Ms. Keenum agreed. Mr. Bell said that he was not sure.

Mr. Hanson suggested that if Mr. Bell came to the conclusion that there had been no breach of the OML, he should withdraw his complaint.

V. The minutes of the meeting on July 8, 2019

Mr. Hanson produced a print-out of the DRAFT minutes for July 8, 2019, with proposed changes in red. The Board used this document and Mr. Hanson's copy of the July 8th agenda with his notes on it to review the minutes. Members generally agreed to Mr. Hanson's proposed modifications; in the few instances when they did not, Mr. Hanson struck out his new wording. This working document will be filed at Town Hall with the dossier for the meeting of July 8, 2019.

In the course of the discussion, Mr. Bell said that he had had no problem with any of the material presented at the July 8th meeting, only with the posting of the agenda. Mr. Hanson had recorded Mr. Bell as saying that the Codwise application was probably okay, and then voting no. He had put an exclamation point in his notes by that item. Mr. Bell said he should have abstained instead of participating in the vote. Mr. Hanson said that he considered Mr. Bell's "no" votes an informal complaint and that's how he handled it from there on. He could not talk to Mr. Bell because he did not want to appear to be working out a deal behind the scenes. Likewise, he did not consult with Town Counsel because he did not want to discuss the matter without going to the full board. The only thing he could have done was ask TC for an interpretation of the OML. There was no way he could ask Town Counsel to judge what the Board had done—we did not even have minutes. All he could have asked was what does the OML mean when it says that the chairman will decide on whether to add unanticipated items to the agenda. Mr. Bell said he had thought Mr. Hanson was going to talk to Town Counsel. Mr. Hanson conceded that he had said that, but

afterward he thought it was pointless since he could not ask any meaningful question. Mr. Bell said if Mr. Hanson had consulted Town Counsel, he would not have complained; but he had waited seven days without hearing and so he proceeded. Mr. Bell and Mr. Hanson discussed what would satisfy Mr. Bell, what he should put in a message if he decided to withdraw his complaint, and what would happen next.

Eventually, it was agreed by unanimous consent that the Clerk should revise the minutes and submit them to a vote at the meeting of the Board on August 12, 2019.

VI. Proposed Meeting Notice and Agenda Posting Procedure

The last item on the revised agenda for the evening's meeting was "Review Proposed Meeting Notice and Agenda Posting." Mr. Bell had received a copy of Mr. Hanson's proposal by e-mail. Ms. Keenum and Mr. Bruce had not. Mr. Hanson summarized it as prescribing what has to be in a meeting notice; a requirement that the Town Clerk report when it was posted; a requirement for the Chairman to look at the bulletin board outside Town Hall to confirm that its posting. The proposed procedure also laid out rules for unanticipated agenda items, including rules for what the Board can discuss and rules for what it can act on. Mr. Hanson and Mr. Bell discussed the special difficulties presented for rules to govern ANR approvals. Owing to the lateness of the hour and the inability of Mr. Bruce and Ms. Keenum to participate in the discussion, the item was continued until the next regularly scheduled Board meeting on August 12, 2019.

Adjournment

The meeting adjourned at 9:26 P.M.

Respectfully submitted,
Katherine Keenum, Clerk

Appendix 1: Codwise Site Plan Application

**FORESIGHT
LAND SERVICES**

ENGINEERING · SURVEYING · PLANNING · ENVIRONMENTAL SERVICES
Division of Brown Associates, Inc.

Robert E. Hoogs
Steven A. Mack, P.E.*
Marc S. Volk

**RICHMOND PLANNING BOARD
SITE PLAN APPLICATION 6.10
Justin Codwise
1013 Dublin Road**

Introduction

Justin Codwise is the owner of the above noted property. The existing zoning of the property is within the RA-C. The applicants are requesting from the Planning Board a Site Plan Review under 6.10 in accordance with Section 4.8 under the Table of Use Regulations 1. One Family Dwelling.

The applicant proposes a single family house site meeting applicable setback requirements. The site will be developed a septic system well and drive.

Applicant also requests under 6.10.2 that the Planning Board waive any technical requirements as may be required as this request is for a relatively simple application

6.10.4 Approval Criteria

1. The proposed plan provides adequate access to the structure for fire and service equipment and adequate provisions for utilities and stormwater.
2. a) The plan minimizes volumes of cut and fill, does not involve any removal of stone walls, the development area is not within jurisdictional wetland areas, the stormwater mitigation is proposed as sheet flow. water and air pollution will not be a factor.
b) The proposed structure and site development is in harmony with the surrounding structures and does not block scenic views
c) The project proposes a new septic system that will be submitted to the Richmond BOH and has adequate access and egress
d) The project through is in compliance with the Zoning By-law.

The applicant proposes the construction of a new single family home and associated site work that will maintain the look and character of the existing area. For all of the reasons set forth above, the applicants request that Site Plan Approval be granted by the Richmond Planning Board.

Very truly yours,
Foresight Land Services, Inc.

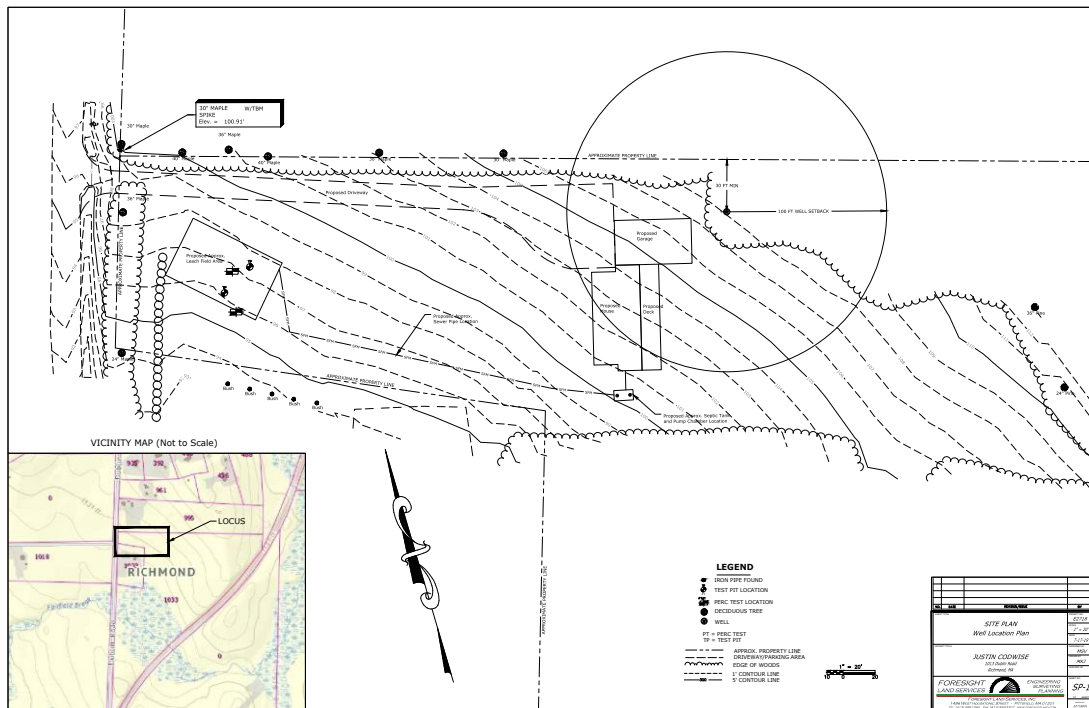
Marc S. Volk
Vice President
& Senior Environmental Analyst

Jackson T. Alberti
Environmental Analyst

File: E2716

*Professionals Registered in Massachusetts and New York**
Foresight Building · 1496 West Housatonic Street · Pittsfield, MA 01201 · Tel (413) 499-1560 · Fax (413) 499-3307
South County Tel (413) 528-8822 · Conn. Valley Tel (413) 736-4601
Email: info@foresightland.com · website: <http://www.foresightland.com>

Appendix 2: Codwise Site Plan



Appendix 2: RVFD Garage Site Plan Application

FORESIGHT LAND SERVICES



ENGINEERING · SURVEYING · PLANNING · ENVIRONMENTAL SERVICES
Division of Brown Associates, Inc.

Robert E. Hoogs
Steven A. Mack, P.E.*
Marc S. Volk

RICHMOND PLANNING BOARD SITE PLAN APPLICATION 6.10 35 Fire House Lane

Introduction

The Richmond Volunteer Fire Department (RVFD) are the owners of property at 35 Fire House Lane, (Assessor's Map 408, Lot 11'). The property and existing zoning is within the Commercial Zone District. The applicants are requesting from the Planning Board a Site Plan Review under 6.10 for a Municipal Use for a new building to be built by The Trustees of the Richmond Volunteer Fire Department, Inc. The use is the storage of Town owned fire Trucks within a privately owned (RVFD) structure. Application is also being requested to the Zoning Board of Appeals under Section 4.8 under the Table of Use Regulations a Variance and Section 5.6 Table of Dimensional Requirements.

The applicant, The Trustees of the Richmond Volunteer Fire Department, Inc., is proposing the construction of a new 50' x 80' steel garage building on a concrete slab foundation. The department currently struggles to fit all of the necessary emergency equipment into the garage on site, which creates a hazardous working environment and could slow down the department's response time in the event of an emergency. Additional work includes paving of two areas, for emergency vehicle maneuverability at the proposed garage, adjacent to the proposed building and Fire House Lane.

RVFD owns property at 35 Firehouse Lane that consists of the property on the east side of Firehouse lane that contains the current fire house, that contains all fire equipment downstairs and meeting space upstairs, the lot is approximately 0.25 AC. RVFD also owns property on the west side of Firehouse Lane that currently contains a pavilion building and is approximately 0.53 Ac. The western parcel also is used for outside storage of vehicles by the RVFD and the Richmond DPW. The site also is used for storage of implements and for other material storage. The Existing RVFD fire house is very limited in space and is limiting the upgrades to emergency vehicles. The 50'x 80' vehicle storage building is proposed to redistribute the emergency vehicles and allow the possibility of vehicle upgrades.

The applicant has received a Order of Conditions (OOC) from with the Richmond Conservation Commission for work within 100 feet of Bordering Vegetated Wetlands and the 200 foot River front area from a perennial stream west of the proposed site.

The application requests a Site Plan approval under 4.8 Table of Use Regulations 3. Municipal or Government use allowing the use of Town owned Fire Equipment Storage. The use is an essential service required for the Safety of the Town of Richmond and is in harmony with the services provided in the neighborhood.

Applicant also requests under 6.10.2 that the Planning Board waive any technical requirements as may be required as this request is for a relatively simple application

6.10.4 Approval Criteria

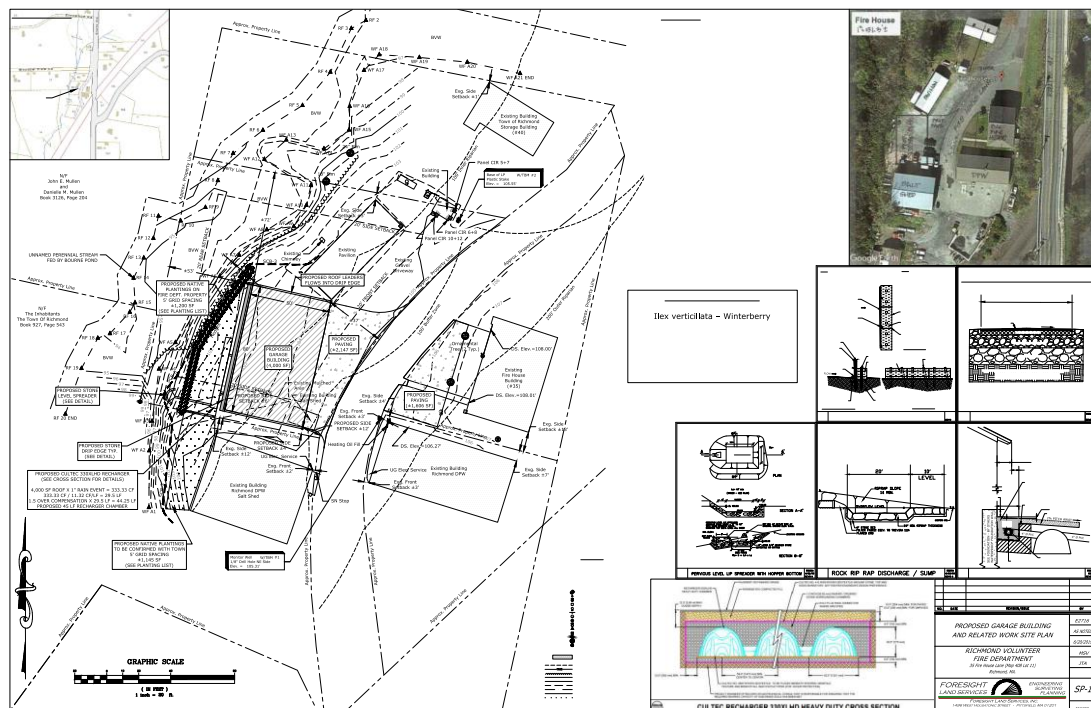
1. The proposed plan provides adequate access to the structure for fire and service equipment and adequate provisions for utilities and stormwater.

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Foresight Building · 1496 West Housatonic Street · Pittsfield, MA 01201 · Tel (413) 499-1560 · Fax (413) 499-3307

South County Tel (413) 528-8822 · Conn. Valley Tel (413) 736-4601

Email: info@foresightland.com · website: <http://www.foresightland.com>



Appendix 3: OML Complaint Form dated 7-17-19 by Mr. Bell



The Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place
Boston, Massachusetts 02108

OPEN MEETING LAW COMPLAINT FORM**Instructions for completing the Open Meeting Law Complaint Form**

The Attorney General's Division of Open Government interprets and enforces the Open Meeting Law, Chapter 30A of the Massachusetts General Laws, Sections 18-25. Below is the procedure for filing and responding to an Open Meeting Law complaint.

Instructions for filing a complaint:

- o Fill out the attached two-page form completely. Sign and date the second page. File the complaint with the public body within 30 days of the alleged violation. If the violation was not reasonably discoverable at the time it occurred, you must file the complaint within 30 days of the date the violation was reasonably discoverable. A violation that occurs during an open session of a meeting is reasonably discoverable on the date of the meeting.
- o To file the complaint:
 - o For a local or municipal public body, you must submit a copy of the complaint to the chair of the public body AND to the municipal clerk.
 - o For all other public bodies, you must submit a copy of the complaint to the chair of the public body.
 - o Complaints may be filed by mail, by email, or by hand. Please retain a copy for your records.
- o If the public body does not respond within 14 business days and does not request an extension to respond, contact the Division for further assistance.

Instructions for a public body that receives a complaint:

- o The chair must disseminate the complaint to the members of the public body.
- o The public body must meet to review the complaint within 14 business days (usually 20-22 calendar days).
- o After review, but within 14 business days, the public body must respond to the complaint in writing and must send the complainant a response and a description of any action the public body has taken to address the allegations in the complaint. At the same time, the body must send the Attorney General a copy of the complaint and a copy of the response. The public body may delegate this responsibility to an individual member of the public body, its counsel, or a staff member, but only after the public body has met to review the complaint.
- o If a public body requires more time to review the complaint and respond, it may request an extension of time for good cause by contacting the Division of Open Government.

Once the public body has responded to the complaint:

- o If you are not satisfied with the public body's response to your complaint, you may file a copy of the complaint with the Division by mail, by email, or by hand, but only once you have waited for 30 days after filing the complaint with the public body. Mail may be sent to: The Division of Open Government, Office of the Attorney General, One Ashburton Place - 20th Floor, Boston, MA 02108. Emails may be sent to: openmeeting@state.ma.us.
- o When you file your complaint with the Division, please include the complaint form and all documentation relevant to the alleged violation. You may wish to attach a cover letter explaining why the public body's response does not adequately address your complaint.
- o The Division will not review complaints filed with us more than 90 days after the violation, unless we granted an extension to the public body or you can demonstrate good cause for the delay.

If you have questions concerning the Open Meeting Law complaint process, we encourage you to contact the Division of Open Government by phone at (617) 963-2540 or by email at openmeeting@state.ma.us.



OPEN MEETING LAW COMPLAINT FORM

Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Please note that all fields are required unless otherwise noted.

Your Contact Information:

First Name: Richard Last Name: Bell
Address: 99 Jolindy Road
City: Richmond State: MA Zip Code: 01254
Phone Number: 413-698-3497 Ext. _____
Email: rickbell100@gmail.com
Organization or Media Affiliation (if any): Richmond Planning Board member

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

☐ Individual ☒ Organization ☐ Media

Public Body that is the subject of this complaint:

☒ City/Town ☐ County ☐ Regional/District ☐ State

Name of Public Body (including city/town, county or region, if applicable): Richmond Planning Board, Richmond MA

Specific person(s), if any, you allege committed the violation: John Hanson, chairman of the PB

Date of alleged violation: 7/8/19

Description of alleged violation:

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

Three items were added to the agenda at the PB meeting which were not on the PB agenda posted on 7/1/19. At the beginning of the meeting I informed the PB chairman that there may be a potential issue with the three added new agenda items that were not publicly posted. The PB chairman felt that the non-posted items were urgent and insisted on allowing them at the PB meeting even though the 48 hour OML posting requirement appeared not to be met — he said he tried to post on Saturday 7/6/19, but the Town Hall was closed. An email was sent to the PB chairman John Hanson (jhanson1@berkshire.rr.com) on 7/2/19 am from the ZBA chairman William Martin (WEM@martinoliveira.com) for two of the non-posted agenda items. So there was a possibility that these agenda items could have been posted on 7/2/19 or 7/3/19, before the Holiday. The ZBA chairman's email dated 7/2/19 (see exhibit 1 in attached draft PB minutes) state that the ZBA hearing can be continued if his requested timeline cannot be met — these agenda items were #2 and #4 in the draft PB minutes. Notification to the PB chairman of the other non-posted agenda item #1 (in the draft PB minutes) occurred on 7/5/19, which could be considered "not reasonably anticipated by the Chair 48 hours in advance of the meeting." I voted No for all three non-posted agenda items, but in hindsight should have abstained instead. I insisted that Town Council be informed of the OML concern and inform the PB chairman if a re-do of the non-posted agenda items should be required and the previous voting results be considered void. I do not know the status of this. See the attached draft 7/8/19 PB minutes for further details, as well as a copy of the posted agenda.

What action do you want the public body to take in response to your complaint?

Note: This text field has a maximum of 500 characters.

Review the Open Meeting Law requirements regarding the time period of posting agenda items; re-consider my complaint at the 7/8/19 PB meeting for acting on non-posted agenda items; and schedule a PB meeting to re-process the agenda items that did not follow the OML posting requirements.

Review, sign, and submit your complaint**I. Disclosure of Your Complaint.**

Public Record. Under most circumstances, your complaint, and any documents submitted with your complaint, is considered a public record and will be available to any member of the public upon request.

Publication to Website. As part of the Open Data Initiative, the AGO will publish to its website certain information regarding your complaint, including your name and the name of the public body. The AGO will not publish your contact information.

II. Consulting With a Private Attorney.

The AGO cannot give you legal advice and is not able to be your private attorney, but represents the public interest. If you have any questions concerning your individual legal rights or responsibilities you should contact a private attorney.

III. Submit Your Complaint to the Public Body.

The complaint must be filed first with the public body. If you have any questions, please contact the Division of Open Government by calling (617) 963-2540 or by email to openmeeting@state.ma.us.

By signing below, I acknowledge that I have read and understood the provisions above and certify that the information I have provided is true and correct to the best of my knowledge.

Signed: Richard C. Bell

Date: 7/17/19

For Use By Public Body
Date Received by Public Body:

For Use By AGO
Date Received by AGO:

Appendix 4: E-mail correspondence pertaining to a Site Review for a garage to be built by the Richmond Volunteer Fire Department (appears as Exhibit 1 in the minutes for July 8, 2019)

From: jhanson1@nycap.rr.com
 Sent: July 8, 2019 at 10:42 AM
 FW: RE: ZBA Applications - Richmond Fire Department and Richmond Highway Department
 To: Rick Bell <rickbell100@gmail.com>, "kkeenum@nycap.rr.com" <kkeenum@nycap.rr.com>, "pedro@thefieldhousecannan.com" <pedro@thefieldhousecannan.com>, "dougbruce@yahoo.com" <dougbruce@yahoo.com>, "jhanson1@berkshire.rr.com"

Board Members

In my opinion the Richmond Fire Department provides one of the most basic needs of Town government and is in fact a municipal use and permitted under our current By-Law. It is hard to believe we allow this building if it were to grow and sell marijuana but not to house vehicles and equipment purchased by the Town. Why has our By-Law been wrong for 65 years and nobody noticed? If this legal opinion is correct, we will need to make a zoning change.

Yes, I believe a variance for the setbacks required.

Katherine. please have extra copies of the site plan application.

See you all tonight.

John

 From: "William E. Martin"
 To: "Marc Volk", "jhanson1@berkshire.rr.com"
 Cc: "Richmond Administrative Assistant (adminasst@richmondma.org)", "Eric Smith"
 Sent: Monday July 8 2019 9:28:47AM
 Subject: RE: ZBA Applications - Richmond Fire Department and Richmond Highway Department

That is a fine, but I spoke with Beth Goodman (Town Counsel) and we both think a variance is required because the Fire Department is an independent non-profit entity and not part of the Town government.

It can't hurt to have both approvals.

Thanks.

WEM

From: Marc Volk <mvolk@foresightland.com>
Sent: Monday, July 08, 2019 9:22 AM
To: William E. Martin <WEM@martinoliveira.com>; jhanson1@berkshire.rr.com
Cc: Richmond Administrative Assistant (adminasst@richmondma.org)
 <adminasst@richmondma.org>; Eric Smith <ericsmith@heritagecutter.com>
Subject: RE: ZBA Applications - Richmond Fire Department and Richmond Highway Department

Bill and Eric

I just spoke to John Hanson of Planning Board. He is of opinion that Firehouse is allowed as use (municipal) with Site Plan approval. I replied Foresight submitted ZBA variance request with guidance and confirmation of ZBA, setback distances and use and that Richmond VFD is private

and private funds are being used for construction. Planning board is meeting tonight at 6:30 and John has recommended that the project get represented at the meeting and that PB can issue Site Plan Approval tonight (pending all agree). I can be at meeting at 6:30 and can bring Plan and describe project. Eric if you can make the meeting that would be great.

Project is still scheduled for ZBA hearing for both variance for use and setbacks though.

Marc S Volk

FORESIGHT LAND SERVICES

1496 West Housatonic Street

Pittsfield, MA 01201

Phone: 413-499-1560 (Ext. 114)

Fax: 413-499-3307

Email: mvolk@foresightland.com

<http://www.foresightland.com>

From: William E. Martin [<mailto:WEM@martinoliveira.com>]

Sent: Tuesday, July 02, 2019 10:57 AM

To: Lisa Peltier; Marc Volk

Cc: William E. Martin

Subject: Fw: ZBA Applications - Richmond Fire Department and Richmond Highway Department

FYI

WEM

From: William E. Martin

Sent: Tuesday, July 2, 2019 10:16 AM

To: Howard Greenhalgh; Ina Wilhelm; Peter Killeen; Richard Stover; Richmond Town Administrator; Wendy Laurin; William E. Martin; Richmond Town Clerk

Cc: ronsan@nycap.rr.com; Townadmin@richmondma.org; jhanson1@berkshire.rr.com; rwmanz413@yahoo.com; nealhp@aol.com; a.hanson@richmondma.org

Subject: ZBA Applications - Richmond Fire Department and Richmond Highway Department

Here are the applications for the Richmond Fire Department and Highway Department.

If possible, I would like to have the hearings on July 31st at 7:00PM and 7:30PM, with site visits at 6:30PM.

In order to meet that deadline, we will need comments of the Boards sooner than usual. If that presents a problem, we can continue the hearings.

We will need to mail the notices to the abutters by July 17th, but I would like them to go out by July 12th - Marie - can you handle that? Our Rules say the Notice should go to abutting towns too - I am not really sure why.

I will draft the legal notice for posting and publication. I can send it to the Eagle to be published on July 16th and 23rd.

Anything else we need to schedule the hearings?

Can the members of the ZBA all reply to confirm they can open the applications and are available on July 31st?

Thank you and Happy 4th.

William E. Martin
MARTIN & OLIVEIRA, LLP
THE CLOCKTOWER
75 South Church Street; Suite 550
Pittsfield, Massachusetts 01201
Direct Dial Number: (413) 347-8962
Telephone Number: (413) 443-6455, Extension 115
Facsimile Number: (413) 445-5883
Cell Number: (413) 441-3317
Email Address: WEM@martinoliveira.com

NOTICE

No attorney client relationship is created by this email alone nor can any contract be created or modified by this email absent a separate document properly executed by or on behalf of the contracting parties. The information contained in this email message is or may be attorney privileged and confidential information intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any use; dissemination, distribution, or copying of this communication is strictly prohibited. If you received this communication in error, please notify us immediately by return email. Thank you.

Appendix 5: E-mails concerning Mr. Bell's Complaint that the OML had been Broken

From: jhanson1@nycap.rr.com

FW: Potential Issue with following the OML at a recent Planning Board Meeting

To: "kkeenum@nycap.rr.com" <kkeenum@nycap.rr.com>,
 "pedro@thefieldhousecannan.com" <pedro@thefieldhousecannan.com>,
 "dougrbruce@yahoo.com" <dougrbruce@yahoo.com>, Rick Bell
 <rickbell100@gmail.com>, "jhanson1@berkshire.rr.com"
 <jhanson1@berkshire.rr.com>, "TownAdmin@richmondma.org"
 <TownAdmin@richmondma.org> Cc:

Board Members

I am scheduling a Planning Board meeting for July 29, 2019 at 6:30 pm to resolve the alleged OML violation. We have 14 business days to meet on this but I would like to meet before July 31 so we can take new votes on the disputed agenda items. Please let me know ASAP if you are available. We could also meet on July 30.

I will have the meeting notice and agenda posted as soon as the date and time are confirmed. Well in advance of the 48 hour notice requirement.

Rick: The OML violation reporting process clearly states that the required form be used (see attachment) and that the Planning Board be given a chance to resolve the complaint before it goes to the AG. Please file the required form with me and copy the Town Clerk as is also required and has not been met.

John Hanson, Chairman
 Planning Board

 From: "Rick Bell"

To: openmeeting@state.ma.us

Cc: "Richmond Town Administrator", "John Hanson", "Bill Martin @ work"

Sent: Tuesday July 16 2019 3:03:29PM

Subject: Potential Issue with following the OML at a recent Planning Board Meeting

Office of Attorney General,

I would like to bring to your attention a possible issue with following the OML at the 7/8/19 Planning Board Meeting, held in Richmond, MA. Three items were added to the agenda at the PB meeting which were not on the PB agenda posted on 7/1/19. In my mind there is a question of not meeting the required 48 hours OML posting requirement.

Details:

- . At the beginning of the meeting I informed the PB chairman that there may be a potential issue with the three added new agenda items that were not publicly posted.
- . The PB chairman felt that the non-posted items were urgent and insisted on allowing them at the PB meeting even though the 48 hour OML posting requirement appeared not to be met — he said he tried to post on Saturday 7/6/19, but the Town Hall was closed.

An email was sent to the PB chairman John Hanson

(jhanson1@berkshire.rr.com) on 7/2/19 am from the ZBA chairman William Martin (WEM@martinoliveira.com) for two of the non-posted agenda items. So there was a possibility that these agenda items could have been posted on 7/2/19 or 7/3/19, before the Holiday. The ZBA chairman's email dated 7/2/19 (see exhibit 1 in attached draft PB minutes) state that the ZBA hearing can be continued if his requested timeline cannot be met — these agenda items were #2 and #4 in the draft PB minutes.

Notification to the PB chairman of the other non-posted agenda item #1 (in the draft PB minutes) occurred on 7/5/19, which could be considered “not reasonably anticipated by the Chair 48 hours in advance of the meeting.”

- . I voted No for all three non-posted agenda items, but in hindsight should have abstained instead. I insisted that Town Council be informed of the OML concern and inform the PB chairman if a re-do of the non-posted agenda items should be required and the previous voting results be considered void. I do not know the status of this.
- . See the attached draft 7/8/19 PB minutes for further details, as well as a copy of the posted agenda.

