

MEMORANDUM

TO: Richmond Development Review Board (DRB)

FROM: Ravi Venkataraman, Town Planner

DATE: October 8, 2020

SUBJECT: Regarding Application 2020-106 for the October 14, 2020 DRB meeting

Background

Following the September 9, 2020 DRB meeting, the DRB evaluated the materials and testimony submitted to the record. The board concluded that additional information is needed in order to render a decision. The DRB decided to reopen the hearing with the following information be provided for the record:

- Additional information on the ownership of the lot not owned by your client created via a subdivision in 2008
- Information on whether the property owner of said lot was approached by the appellant
- Information on the status of the Class II wetlands, including:
 - Why and how the wetlands were classified as Class II wetlands?
 - Was the classification of the Class II wetlands a recent development?
 - Did the property have any wetlands--specifically Class II wetlands--at the time the lots were subdivided in 2008?
- Additional information on whether all possibilities for access were explored

Materials added to the record

In response to the DRB's request for additional information, the appellant submitted the following items for the record:

- Correspondence from Kevin T. Brennan, Brennan Punderson & Donahue, PLLC, responding to the DRB's request for additional information, dated and received October 7, 2020
- Correspondence from Evan P. Fitzgerald, Fitzgerald Environmental Associates, LLC, responding to the DRB's request for additional information, dated October 3, 2020 and received October 7, 2020
- #2020-357 Wetland Classification Report, dated June 29, 2020 and received October 7, 2020
- Map of subject property with wetlands identified from Vermont Agency of Natural Resources, received October 7, 2020
- Draft Individual Wetland Permit and Determination from Vermont Agency of Natural Resources regarding the subject property, received October 7, 2020
- This memorandum prepared by Ravi Venkataraman, Town Planner for the October 14, 2020 DRB meeting

Variance Criteria

Under Richmond Zoning Regulations Section 8.4.5, the DRB may grant variances and render a decision in favor of the appellant only if all of the following facts are found:

- a) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of Lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of these Zoning Regulations in the neighborhood or Zoning District in which the property is located.
- b) That because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these Zoning Regulations and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- c) That the unnecessary hardship has not been created by the appellant.
- d) That the variance, if authorized, shall not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use of development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare.
- e) That the variance, if authorized, shall represent the minimum variance that shall afford relief and shall represent the least deviation possible from these Zoning Regulations and from the Town Plan

To note: The scope of the application pertains only to the subject property in question, 640 Palmer Lane. Based on the zoning regulations currently in effect and the present conditions of the subject property, staff concludes that reasonable use of subject property can be achieved. Current use of the subject property is undefined. However, observations indicate that the travel trailer permitted in 2013 is being used as a seasonal dwelling pursuant to Richmond Zoning Regulations Section 7. Enabling the appellant to build a driveway on the subject parcel would allow access to a parcel the appellant owns within the Town of Hinesburg. Determining reasonable use of a property located within the Town of Hinesburg is not within the purview of this hearing and the Richmond DRB, let alone the Town of Richmond itself.

Basis of Zoning Administrator's Decision

Per Richmond Zoning Regulations Section 6.9 (emphasis added):

No building, roadway or septic system shall be constructed within 100 feet of a Class I wetland and within 50 feet of a Class II wetland. Classifications of wetlands are established by the State of Vermont.

The zoning regulations do not include a definition for “roadway”. When interpreting zoning regulations, the Zoning Administrator interprets the plain and ordinary meaning of the ordinance (In re Appeal of Trahan, 2008 VT 90, 184 Vt. 262). For terms that are not defined in the ordinance, the Zoning Administrator may obtain the plain and ordinary meaning of the term from a dictionary definition (Franks v. Town of Essex, 2013 VT 84, 194 Vt. 595). Merriam-Webster Dictionary defines a “roadway” as:

the strip of land over which a road passes.

The zoning regulations does include a definition for “road” under Section 7.2 (emphasis added):

A way for vehicular traffic, whether designated as a Road or Highway, road titled to town in simple fee, town rights-of-way, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, lane, or otherwise.

In addition, the zoning regulations includes the following definition for “driveway” per Section 7.2 (emphasis added):

An improved surface for vehicular access to no more than three (3) lots.

Thus, the Zoning Administrator concluded that a driveway is a type of road, and that a roadway includes driveways based on the plain and ordinary meaning of the terms. Based on the data from the Vermont Agency of Natural Resources, the Zoning Administrator found that the proposed location of the driveway would be located within a Class II wetland buffer. Therefore, the Zoning Administrator determined that the applicant’s request for a permit could not be issued for a driveway within a wetland buffer.

The Town Attorney also confirmed that this interpretation would be the correct application of the zoning regulations. The Town Attorney’s opinion affirming the Zoning Administrator’s interpretation of the regulations is enclosed for your consideration.

Procedural Information and Draft Motions

Should the DRB conclude that additional information is necessary, staff recommends that the board continue the application prior to moving into deliberative session.

If the DRB decides to close the application by moving into deliberative session, the following draft motions have been provided to facilitate action:

Motion to uphold Zoning Administrator’s determination

I, _____, move to uphold the Zoning Administrator’s determination that a driveway is a roadway and therefore cannot be constructed in the appellants’ proposed location pursuant to Section 6.9.

OR

Motion to overturn Zoning Administrator’s determination

I, _____, move to overturn the Zoning Administrator’s determination for the following reasons:

- 1. [placeholder]*
- 2. [placeholder]*

Motion to grant variance request

I, _____, move to grant the appellant’s variance request based on the following findings:

- 1. [placeholder for findings under criteria (a)]*
- 2. [placeholder for findings under criteria (b)]*
- 3. [placeholder for findings under criteria (c)]*
- 4. [placeholder for findings under criteria (d)]*

5. *[placeholder for findings under criteria (e)]*

OR

Motion to deny variance request

I, _____, move to deny the appellant's variance request based on the following findings:

1. *[placeholder for findings under criteria (a)]*
2. *[placeholder for findings under criteria (b)]*
3. *[placeholder for findings under criteria (c)]*
4. *[placeholder for findings under criteria (d)]*
5. *[placeholder for findings under criteria (e)]*