

Richmond Development Review Board
 REGULAR Meeting
 UNAPPROVED MINUTES FOR NOVEMBER 11, 2015 MEETING

Members Present:	David Sunshine, Chair; Matt Dyer, Ian Bender, Roger Pederson
Others Present:	Niels Rinehart, Zoning Administrative Officer, Ruth Miller for MMCTV Comcast 15; see attached list

Sunshine opened the meeting at 7:05 PM and reviewed the agenda.

Sunshine opened the PUBLIC HEARINGS

First Hearing:

60 Wolf Lane – Application #15-100, Applicant Michael Sipe for Conditional Use and Site Plan Review for the construction of a barn/workshop and for permitting of photography business as a cottage industry at parcel WF0060 located within the Agricultural/Residential Zoning District.

Michael Sipe discussed the extensive research conducted into the history of the development including the covenants and the engineering plans locating the relationships between the force main, the field road, and the pedestrian easement.

Sunshine explained that the Board had questions from the last meeting as to what the applicant was proposing and what restrictions might exist on the proposed construction.

Sipe responded that what the town has on file does not appear to limit the envelope to agricultural development. He continued that they had also located the force main and explained that given its location, driving over the force main would not create an impact. In addition he said that the pedestrian easement lies on top of the force main and so therefore he did not think that the location of the road in relation to the force main would present a problem.

Sunshine asked if Sipe was confident that the force main was safe at a depth of 6 feet.

Sipe responded that vehicles drive over the force main every day and that they have engineering plans indicating how deep the force main is. He also explained that the location of the field road and the pedestrian easement had been an issue at the last meeting. Sipe said that they had located plans that indicated that the pedestrian easement and the field road do not overlap but rather run parallel and so are therefore not competing.

Sunshine asked Sipe if they were planning to construct the studio within the building envelope.

Sipe said that no, that there were two building envelopes and that they were proposing to build in each of them.

Ian Bender asked Sipe to locate where the proposed structure would be built. Using the plat map, Sipe indicated to the Board where the proposed structure would be located.

Sunshine asked about the location of Lot 7 in relation to Lot 8 and Matthew Dyer asked for the location of the original septic.

Sipe indicated where the septic lines run and explained that there are two different septic systems in existence.

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2 Roger Pedersen asked if Sipe was proposing to construct a separate septic system for the proposed
3 building and asked Sipe to verify if the access to the proposed building was off of Wolf Lane or the
4 field road.

5
6 Sipe said that yes, there are constructing a separate septic system and that the field road will provide
7 access, via Wild Apple Lane.

8
9 Sipe provide extensive pictures to provide a visual tour of the property and the location of the
10 proposed construction.

11
12 Pedersen asked who else uses the field road.

13
14 Sipe responded that no one uses it currently and that it was built as a road complete with culverts.
15 Sipe also presented an engineering plan illustrating the location of the force main.

16
17 Pedersen asked for clarification concerning the chronology of the Declaration of Covenants, asking if
18 the covenants subsequent to the first covenant modified the first covenant.

19
20 Sipe, referencing the Wild Apple Lane covenants, explained that Wild Apple Lane residents have a
21 right to use the field road to gain access to their septic field.

22
23 Dyer asked for clarification on what chronology was being proposed for the construction of the barn
24 and the house. He asked what Sipe's plan was and how flexible they were.

25
26 Sipe explained that they are hoping to build the studio barn first and proposed that the permit to
27 construct the barn be conditional on the house being built within a set period of time. He asked that
28 since it would be difficult to manage two construction projects simultaneously, if they could have a
29 six-month grace period between the two construction projects. They want to build the barn/studio first
30 since its completion is more pertinent to getting themselves situated. In addition they need to wrap-up
31 selling their home in Burlington and it would be nice to have the time during the summer to do that.

32
33 Sunshine responded that the proposed structure has to be accessory to a primary residence.

34
35 Sipe asked what would constitute a reasonable beginning to the construction of the primary residence
36 and an acceptable level of commitment, such as clearing the lot and drilling the well.

37
38 Sunshine repeated the problem that they are applying for a building permit for the barn/studio as an
39 accessory use, but if the primary house doesn't exist then it isn't accessory use. He continued that if
40 the Board grants a permit now, it would be contingent on the Sipes having a primary residence in
41 place. Or, the Board could not grant the permit now and wait until the house is there and then grant
42 the permit.

43
44 Sipe explained that not having the permit for the barn/studio would leave them exposed. He asked
45 what sort of an arrangement would be reasonable.

46
47 Sunshine asked if they could build the barn and call it their house.

48
49 Sipe responded by asking what would their exposure then be. They would like to settle the
50 construction of the studio first and then begin building the house. Sipe followed up by asking if those
51 were their only two options.

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2 Sunshine suggested that they could build the barn, call it their house, and then switch.

3
4 Sipe asked if that would not leave them exposed as well since then they could be questioned about
5 building an accessory structure to what was then their primary house. He followed by saying that the
6 easiest way for them to proceed would be to build the studio/barn and then the primary house. Sipe
7 suggested that the Board condition the granting of the permit to build the studio/barn with the
8 requirement that they begin construction on the house, including getting the permit for the primary
9 house, clearing the lot, etc.

10
11 Sunshine said the ordinance was clear and that they did have much room to maneuver. The ordinance
12 says that a cottage industry is to be located in an accessory structure.

13
14 Sipe asked if they couldn't build the studio and then call it their house.

15
16 Sunshine said that they could get creative but that such arrangements were between the applicant and
17 the Zoning Administrator.

18
19 Bender asked why not just proceed with the construction by the book.

20
21 Sipe responded by asking if the applicant would need to have a completed house before constructing
22 an accessory?

23
24 Bender said that in his opinion they should have a house in-place, but that it's open to interpretation
25 as to what exactly that means. He said that he felt they were complicating the issue more than they
26 needed to by trying to get everything.

27
28 Sipe said that for them, it would be much simpler if they could build the barn/studio first even if the
29 interpretation is more complex.

30
31 Bender said that it would be good for the Sipes to take a step back and be willing to compromise.

32
33 Sipe asked if the Board was asking for willingness to compromise with the town ordinance and
34 Bender explained that no, he meant with their timeline.

35
36 Sunshine explained that the Board has trouble compromising with the ordinance since doing so would
37 go against the ordinance.

38
39 Dyer suggested that the Board approve the application but make the approval contingent on the
40 primary house being build.

41
42 Sipe responded to say that such an arrangement would provide them with the assurance that they
43 needed.

44
45 Bender asked for clarification on the length of the appeal period if the Board issued a permit with
46 such an arrangement.

47
48 Sunshine said the appeal would be 30 days and Dyer said that then the applicant would be protected.

49
50 Sunshine commented that such an arrangement seems like the best compromise since it would keep
51 the board within the ordinance.

1
2 Sipe responded that the compromise would add complexity to their plans but that they would be able
3 to move ahead knowing that they would not be at risk of having the rug pulled out from under them.
4

5 Bender asked if the Board had any issues with disregarding past DRB decisions and covenants, citing
6 Findings of Fact #5 from the 2006 DRB decision that listed the building envelope for agricultural use
7 only. He asked if this decision was superseded because of how the lots were then realigned.
8

9 Dyer explained that there was a 2008 decision.

10
11 Bender said that he was concerned that someone might come back and accuse the Board of
12 unlawfully sweeping away a decision made by a previous DRB.
13

14 Sipe explained what he believed was the background to the decision regarding the building envelope
15 in the expanded portion of Lot 8. He said that he believes a neighbor to the west named David Hill
16 had been concerned about visual impacts from potential construction within the expanded portion of
17 Lot 8. The concerns were therefore aesthetic. Sipe said that he has spoken with Hill and that Hill was
18 fine with the proposed construction. Sipe continued, explaining that the agricultural restrictions are
19 not on the 2006 map, nor are these restrictions listed in the map on file with the town.
20

21 Sunshine asked if Sipe had spoken with his neighbors, in particular with Alena Jensen. Sipe said that
22 yes, they have spoken with her and have invited her to visit their studio in Burlington.
23

24 Dyer said that the question should really come down to how strict is the definition of 'agricultural use
25 Only'. Bender asked if the Board is seeking to conclude that the 'agricultural use only' restriction no
26 longer applies to this envelope.
27

28 Sipe said the restrictions are not listed on the plat that is on file. He also explained that their plan is to
29 use the structure as a barn as well, saying that they are working with a farmer named John Hayden to
30 plant an orchard and berry bushes. They also plan to use the field for haying and clover. So therefore,
31 Sipe explained, the proposed structure will have agricultural uses as well.
32

33 Pedersen expressed a concern that the Board would be permitting a commercial use within a
34 residential area. He said that he could not find any prohibition against commercial use but expressed
35 concern that the Board would open a Pandora's Box by letting a commercial use take place within a
36 residential area. Bender and Sunshine explained that the application is for a cottage industry and that
37 the State says that towns cannot zone against home occupations. Richmond has extended that ruling
38 to cottage industries. The decision depends on what industry the applicant is proposing.
39

40 Sipe asked for clarification as to when they can build the studio versus the building. Sunshine replied
41 that this decision was up to the Zoning Administrator in determining the building permit.
42

43 *Dyer made a motion to continue deliberation session seconded by Pedersen. All in favor, so voted.*
44

45 *Sunshine made a motion to approve the October 14, 2015 minutes seconded by Pedersen. All in favor,*
46 *so voted.*