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To: Julian Portilla

RE: Answers to your Questions

Hello Julia thank you for the questions. As you know this is a complex topic so I will try and answer your questions in some detail. I also watched the recording of your meeting so I will also try and include answers to the questions that were raised there.

### Question 1. Requiring Site Plan Approval:

During your meeting several people asked why I was requiring you to go before the DRB for Site Plan Approval. This is a complicated question to answer but I will attempt to do that here. My decision to require you to go before the development review board is based on the following:

- A. On June 10, 2020 the DRB approved a conditional use application to change the use of the land from agricultural/ forest to outdoor recreation.
- B. This change in use requires conditional use approval by the Development Review Board.
- C. Condition 4 of this decision notes that the DRB approves all future land development unless the Zoning Administrator determines that the project needs further DRB approval.
  - a. This gives the Zoning Administrator (i.e.me) the authority to require your project to come back to the Development Review Board if it is deemed necessary.
- D. I have determined that your project needs to go back to the Development Review Board to amend your site plan for the following reasons:
  - a. Conditional use review is Covered by section 5.6 of the Richmond Zoning regulations.
  - b. Section 5.6.3 notes that conditional use review also requires Site Plan approval.
  - c. Site plan approval is covered by Section 5.5 of the Richmond Zoning Regulations.
  - d. Section 5.5.5 notes that the Zoning Administrator shall determine if an amendment to an approved site plan is major or minor.
    - i. Minor amendments are those which **do not involve** changes to approved curb cuts, internal traffic or **pedestrian circulation patterns** (i.e., Trails), landscaping or screening.
    - ii. Major Amendments are all other than Minor Amendments shall require the submittal of a revised site plan to the DRB for review.
  - e. I have concluded that your project is a major amendment based on the following:
    - i. Condition 3 of your June 10 2020 decision notes that your project shall be developed according to the site plans submitted with the application.
    - ii. The Arrowood report was never mentioned in the initial application nor was it ever submitted to get any approval for trails.

- iii. The narrative for your application notes in the phase 1 trail section that the application was only for a limited section of trails, approximately .8 miles in length. None of the proposed trails mentioned in the Arrowood report were ever reviewed or approved by the Development Review Board.
- iv. Section 5.5.3 Subsection vi. notes that the DRB has to approve the location of trails.
- v. Since you are proposing changes to pedestrian walkways and circulation the trail network rises to the level of a major amendment.

Given the above I consider your proposed trail network a major amendment to the site plan and requires approval by the Development Review Board.

## **Question 2. Site Plan Review Requirements**

As far as who is responsible for preparing the materials for site plan approval that would be on the applicants. So in this case your committee would more than likely be responsible for ensuring that you have all of the information required for site plan approval. The relevant sections for site plan approval are 5.5, 4, 6.1 and in your case 6.11 if you are proposing development on slopes that are over 20%. Section 6.11 notes that any land development occurring on slopes of over 20% shall provide engineered plans for erosion control. The specific requirements for site plan review are noted in sections 5.5.2 and 5.5.3. The following are some of the major sections:

- A. Unless waived by the DRB for good cause a site plans shall be prepared by a professional engineer, planner, or architect.
  - a. The Arrowood report appears to be prepared by an ecologist which is not listed as one of the approved professionals to prepare a site plan unless the DRB decides to waive that requirement.
    - i. You can request a waiver from this requirement in your application.
    - ii. I would also make my own recommendation to the DRB as to whether or not the board should waive that requirement.
- B. Section 5.5.3 Subsection vii. notes that trails are required to be shown on a site plan.

Based on this you are responsible for preparing the application and making sure that you have all the required information. If you would like a waiver you will need to make the argument why you should not have to meet this requirement. However, given what I have seen thus far I would more than likely recommend to the board that your plan set be prepared by one of the above-mentioned professionals. The reason for this is as follows:

- A. You are proposing trails on slopes greater than 20% which require them to be professionally engineered anyway.
- B. The sheer size and complexity of the project merits the involvement of a professional
  - a. I would be willing to consider a compromise to have the town engineer review the Arrowood report and determine if the information is enough to ensure compliance with the town regulations. However, if he determined that the information provided was insufficient then I would recommend that the site plan be prepared by a professional listed above.

In summation, it is on the applicant to ensure that they have provided all the necessary information. I cannot prepare the application for you. Given the nature of the work and the

requirements in the zoning regulations listed above I am going to require you either have the site plan done by one of the professionals noted above or have the town engineer review the report and plan sets. The board could decide to waive this requirement but that is my recommendation.

### **Question 3. Act 250, State Requirements, and Precedents**

The topic of Act 250 and other state requirements came up during your meeting and was noted in your email. In short, I have no jurisdiction over the Act 250 process and have no authority to enforce any Act 250 requirements. I do have some authority over wetlands if they are class 1 or 2 as is noted in section 6.9.2. You would have to have approval from the Vermont Wetlands Program to build in a class 2 wetland.

In summation, you are responsible for ensuring that you are in compliance with any state requirements. However, as a local Zoning Administrator I have no jurisdiction over any state process, Act 250 or otherwise. Each municipality has jurisdiction over its own regulations and is unique to each town. Therefore, each town is responsible for administering its own regulations, what other towns choose to do or not do has no bearing. Also, the Regional Planning Commissions have no jurisdiction over local zoning regulations. Their role is to provide technical support as needed.

It is important to point out that precedent does not matter in zoning. Each case is unique and judged on its own merits regardless of how similar another case may seem. I am aware that there are private trails that may be accessed by the public all throughout Richmond. As to whether or not these trails should require permits if they are meant to be accessed by the public at large then I believe the answer to that is yes. Andrews Community Forest is approved for outdoor recreation that requires conditional use review and an approved site plan a zoning permit will be required for any trail construction.

### **Question 4. Land Use Issues**

The last question was regarding logging and forest management practices. Section 3.1.1 allows for accessory agriculture silviculture and horticulture on a property with another use. Section 7 defines Accessory Uses as a use or structure on the same lot with and of a nature which is customarily incidental and subordinate to the principal use. I see the logging of this property as an allowed accessory use and is exempt from zoning per Section 5.1.1.

### **Conclusion:**

Based on the above I have concluded that the best course of action is to require you to come before the board to amend your site plan. The trail network you are proposing in the Arrowood Report is a major amendment to the site plan approved by the Development Review Board. Unless waived by the Development Review Board you are required to have a site plan prepared by a registered land surveyor, professional planner, engineer, architect or landscape planner. Any trail located on a slope that is 20% or more shall require engineered plans.

Sincerely  
Tyler Machia  
Zoning Administrator