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VIA EMAIL: parkarchitecture@gmail.com
Mr. Paul Simon
Park Architecture
3 School House Lane, Suite #1
Etna, NH 03750

Re: Northfield Savings Bank, Site Plan Application #SP2023-01, Richmond, VT

Dear Paul,

Thank you for sending along Zoning Administrator Machia's most recent staff notes on the above-referenced application. I had a chance to review the comments along with Mr. Carroll's presentation on behalf 45 Bridge Street. After reviewing the ordinance and doing some legal research, I offer the following opinion regarding the issues being raised, particularly whether the concerns fall within the purview of Development Review Board's ("DRB") review.

At the outset, I fully agree with Mr. Machia's conclusion that the four issues raised by 45 Bridge Street do not fall within the limited scope of a zoning review pursuant to section 5.5.3 of the Richmond Zoning Regulations. 45 Bridge Street is possibly stating claims against the Bank's landlord related to easement rights, nuisance, and/or trespass related to parking in a right-of-way and existing water runoff. As Mr. Machia notes, these concerns are civil matters between neighboring landowners that would not be part of a site plan review. There may or may not be a remedy for the concerns, but this is the wrong forum. I note this is a frequent occurrence in zoning cases, in which a neighbor attempts to resolve what are properly considered to be property disputes in the context of a zoning review. Neither the DRB nor the Environmental Division have authority to act on such claims, which are beyond their jurisdiction, so the claims are uniformly rejected. A land use panel simply cannot decide property rights or rule on trespass claims.

In a case on point, and very close to home, there is a recent decision involving 45 Bridge Street asserting essentially the same or similar claims against 39 Bridge Street in an Environmental Division zoning appeal. Judge Walsh refused to entertain 45 Bridge Street's nuisance and easement rights requests because they were outside the court's jurisdiction. *In re Nakatomi Plaza CU/Site Plan Application*, Decision on the Merits, Dk. No. 21-ENV-00115 (Jan. 3, 2023), attached hereto. The holding on easement and trespass issues was very clear:

> The Environmental Division has limited and specific jurisdiction and private property rights are not within our jurisdiction, but rather lie within the Civil Division. If Appellant seeks to pursue a private property right, that needs to be taken up within the Civil Division.

Id. at 18 (citations omitted).

Similarly, two of the four issues raised here relate to claims of a blocked right of way, which include a request for an alternative access through the bank property. On the question of easements, the Vermont Supreme Court has been clear that the zoning authorities have no power to define easements or require the transfer of property rights. *In re Woodstock Cmty. Tr. & Hous. Vt. PRO*, 2012 VT 87, para. 40-41, 192 Vt. 474 ("[The] Environmental Division does not have jurisdiction to determine private property rights."). A zoning authority can, for example, evaluate a right-of-way's width for compliance with municipal regulations, but it cannot issue rulings to determine the use or what rights the respective owners of the dominant and servient estates possess. *See Nordlund v. Van Nostrand*, 2011 VT 79, para. 13; *In re Nakatomi Plaza CU/Site Plan Application*, Decision on the Merits, Dk. No. 21-ENV-00115 (Jan. 3, 2023). This would include authorization of 45 Bridge Street to tow cars or be provided with an alternate access. The DRB has no authority to mandate such things.

With respect to stormwater flowing off the property, the Court also ruled it was confined to the application in front of it, and so Judge Walsh refused to entertain questions of pre-existing stormwater/drainage concerns unrelated to the application. Like here, the stormwater was associated with a previously approved project that had not been appealed. The Court held that 24 V.S.A. section 4472, which bars zoning issues from being relitigated, closed the door on the issue and it could not be raised in the context of a subsequent application unless the new proposal exacerbated the perceived problem. The Court put it bluntly that it "cannot consider any alleged stormwater impacts from these previously approved improvements." *In re Nakatomi Plaza CU/Site Plan Application*, *supra* at 9-10.

Our proposed plans include an impervious area/volume that is less than the predevelopment conditions, as noted in Mr. Machia's supplemental comments. The plan L102 demonstrates that the post-development conditions include a reduction in impervious coverage, which do not exacerbate the existing situation. Reflecting the Court's reasoning, section 6.1.6(c) of the ordinance states that:

> All parking areas and associated roadways shall be designed and constructed with detention devices, such as, but not limited to overland grassed and/or stone lined swales, detention basins, and settling ponds, in order to assure that the post development peak flow stormwater volumes from such parking areas and roadways <u>do not exceed the predevelopment quantities</u> based on the run-off from a twenty-five year, twenty-four hour storm event.

Read in the context of Judge Walsh's ruling, "predevelopment quantities" are defined by the pre-existing conditions of the prior TD Bank development, which are outside the scope of this application. Bottom line, there is no increase in impervious area here compared to the

previous/existing condition and therefore no volume increase or directional change that would implicate section 6.1.6(c).

I note that Mr. Carroll also referred vaguely to a number of terms, such as non-conforming lots or structures, inferring concepts of abandonment or some other legal consequence of the purported circumstances. I do not see any significance in the claims as a lawful, pre-existing structure is not considered abandoned by a change in tenants, especially if the tenant, like NSB, is an allowed use. Moreover, structures are not considered as abandoned simply because of non-use, but more by their destruction, which takes into account other considerations such as being located in a flood zone. To the extent that the lot is non-conforming in terms of lot coverage, the only issue is whether the nonconformity is being increased by the new use. In this case, the nonconformity is being reduced, so the references are red herrings.

I hope this answers your questions. Please contact me with any further clarification or comments. I will be available at the hearing to answer any questions the DRB may have on the matter, but I fully agree with the zoning administrator's assessment.

Cordially yours,

PAUL FRANK + COLLINS P.C.

Mark H. Hall

Mark Hall

MGH:jtg

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