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To: Bradly Holt & Jason Pelletier
1931 Hillview Road
Richmond VT, 05477

Cc: David Kuack & Rebecca Butterfield
Sarah Volinsky & Nat Merrill

Re: Enforcement of Conditions of Zoning Permit 2021-83

On January 17, 2023 Bradley Holt, Jason Pelletier, David Kauck Rebecca Butterfield, Sarah Volinsky, and Nat Merrill (“Neighbors”) submitted a letter to the Richmond Selectboard regarding an access permit (Permit 21-17) and Zoning Permit 2021-83 for 2427 Hillview Road. This property is owned by Hillview Heights, LLC (Bob and Tammy Avonda are members of the LLC). The Neighbors are asking that the Zoning Administrator require the Avondas close a preexisting access on the property based on the conditions the Selectboard put on the access permit as well as conditions placed on Zoning Permit 2021-83, which were identical. This memo will briefly go over some of the permit history on 2427 Hillview Road, address the specific concerns of the Neighbors listed above, and provide my decision based on the Regulations. Note at the outset that the Zoning Administrator has no authority to enforce the conditions of Access Permit 21-17 since that permit was issued by the Selectboard and since the Zoning Administrator has limited jurisdiction as set out in 24 V.S.A. Chapter 117. That said, the Zoning Administrator can determine whether conditions of Zoning Permit 2021-83 were violated, and as noted above, the Zoning Permit’s conditions are identical to those on Access Permit 21-17.

Permit History

The Avondas applied for an access permit on August 19, 2021. The permit was intended to upgrade an existing agricultural access onto the Hillview Heights property. The access permit was approved on October 4, 2021, and assigned #21-17. The Selectboard put two conditions on the access permit. The conditions were that the access was for one primary and one accessory structure only and that the applicant had to close the second access. Hillview Heights then applied for a Zoning Permit. The Zoning Permit was assigned number 2021-83 and was approved on November 2, 2021. The permit was for the work to upgrade the driveway. The applicant noted that work on the driveway has not begun. They are anticipating starting in April or May of 2023, and notably, the Zoning Permit is valid through November 2, 2023. The Zoning Administrator also has the option to issue a one-time 12-month extension if an extension is requested before the permit expires.

Community Member Concerns

The above-mentioned Neighbors raised several issues in their letter. They appear to be primarily concerned with the fact that Hillview Heights is using a second access onto the property at 2427 Hillview Road. The Neighbors also contend that in state permit applications the Avondas have shown that the second access point being used will be a separate access drive to a new parcel of land to be created as part of a future subdivision. The Neighbors are also concerned that the Avondas could widen the second access.

Zoning Administrator Determination

At this time, I find that Hillview Heights (the Avondas) are in compliance with the Richmond Zoning Regulations. This decision is based on the following factors:

- Zoning Permit 2021-83 is valid until November 2, 2023, and Hillview Heights also has the option to request a one-time 12-month extension.
- This Zoning Permit was never appealed and is now final because the appeal period ended in mid-November 2021.
- As the work on the driveway that is the subject of Zoning Permit 2021-83 has not been completed Hillview Heights can continue to use the second access while construction to upgrade the primary access that is the subject of Zoning Permit 2021-83 because the improved, primary access cannot be used until construction is complete.
- As this second access is likely utilized to help facilitate construction of the upgraded primary access, it can continue to be utilized until the construction on the primary access is complete or the permit expires, whichever first occurs.
- Zoning Regulations Section 8.3.1 gives the Zoning Administrator the authority to determine if a zoning violation has occurred. This section provides, “The Administrative Officer shall institute in the name of the Town of Richmond any appropriate action, injunction or other proceeding to enforce the provisions of these Zoning Regulations, including conditions of approval” (Richmond Zoning Regulations PG. 108).
- The Zoning Administrator determines if there is a violation and then takes appropriate action to correct it. Unless appealed to the Development Review Board the Zoning Administrator is solely responsible for determining if a violation has occurred based on their interpretation of the Zoning Regulations.
- The Zoning Administrator cannot enforce the terms of, and has no jurisdiction over, access permits issued by the Selectboard under 19 V.S.A. Section 1111, such as, Access Permit #21-17.

In regards to a potential future subdivision, until Hillview Heights or the Avondas submit a subdivision application that is approved by the DRB and a survey plat mylar is recorded, no subdivision has occurred, and future, unapproved plans have no bearing on any local permits. Moreover, application materials used to obtain State permits have no impact on local permits as they are two separate processes.

Summary

At this time, it is my opinion that Hillview Heights is in compliance with the conditions laid out in Zoning Permit 2021-83. So long as the second access is closed by the time construction on the primary access is complete or the permit has expired, then Hillview Heights will remain in compliance. In addition, any information Hillview Heights or the Avondas may have used to obtain State permits has no impact on this determination. Hopefully, this helps to clarify the current situation.

Sincerely
Tyler Machia
Zoning Administrator