12.20.23 meeting memo from the chair

Agenda #5

Here are some points that I took away from the public hearing. These, and others, are open for discussion :

1) No one offered any objections to the "Residential uses via PUD in the I/C district" amendments. One PC member spoke in support.

2) The only item in the amendment packet to which there was any objection was the removal of the "Master Development Plan' language from wherever this language occurs, which is currently in the Zoning Regs (RZR) and the Subdivision Regs (RSR). The PC approved the removal of this language at our 10.18.23 meeting. (3 public hearing guests had issues with this – all 3 are involved as neighbors in current "cases"). One PC member spoke in support; one had somewhat mixed comments (also involved as a neighbor in current case).

3) Opponents' points:
A. Misrepresentation of facts as per 24 VSA 4470a is not adequately addressed in the RZR; DRB not observing "red flags" of misrepresentation/inconsistency in application(s)
B. Lack of PC transparency as changes to the RSR were not specifically mentioned in notices;
C. MDP language should be strengthened, not removed; problem with "unscrupulous developers"; this was really the substantive issue of the complaints, with the subtext being that neighbors are entitled to more protection from any development involving a PUD or a Subdivision

4) Here is my take on the above points:

A. There is no validity to this point. "Misrepresentation" is already prohibited in section 5.3.3 and 8.4.3 of the Zoning Regulations and we have no control over DRB's actions and interpretations.

B. Keith and I agree with Bradley Holt that the proposed changes to the Subdivision Regulations were not adequately warned. There was no intent to conceal; subdivision changes were mentioned in the Bylaw Amendment Report. However, we feel that this needs correcting to protect us from a procedural challenge. Here's our suggestion:

Remove any references to the Subdivision Regs from amendment packet while continuing to remove the MDP language from PUD section of RZR and approve for transmittal to the SB (see attached drafts). This carries out our primary goal of allowing additional housing in the I/C district and our secondary goal of revising the PUD section including the removal of the problematic MDP provision. This revision to the original proposal would be covered by "information derived from the public hearing" (that we had inadequately warned changes to the RSR).

However, this does not remove the MDP language from the Subdivision Regs, which needs to happen to remove the ambiguity of having these two sets of regulations now be in conflict. So, we suggest proposing a quick turn-around "packet" for public hearing consisting of an amendment to remove the MDP language from the Subdivision Regs (see attached). This could easily be prepared for a vote at our next meeting from the work we have already done. We think a month or two delay before the two documents are re-aligned would have minimal effect.

The only other option seems to be to add the appropriate warnings about proposed changes to the Subdivision Regs to the existing packet and re-warn the whole packet for another public hearing.

This has the disadvantage of stalling further progress on the Donovan/Beal request. It would be good to move this packet along in sooner rather than later.

C. This leads us into point C (above).

It seems to me that this is the perfect opportunity to remove the troublesome yet ineffective MDP language from both the Zoning Regs and the Subdivision Regs as we had agreed to do at our 10.18.23 meeting. As we have had to do some revising of the PUD section anyway to align it with the changes we are proposing for the I/C district, why not use this moment to reset expectations about what can be guaranteed about the future, and at the same time get rid of a provision that our DRB and P&Z staff find unworkable. I, personally, do not feel we have heard any convincing arguments to suggest that even an expanded MDP will guarantee the outcomes that neighbors desire. As an MDP can be amended at any point, future development of open space cannot be prevented short of putting a permanent easement on it, or using some other legal tool to prohibit property owners from exercising their right to develop their property within the regulations. Proper permits and amendments must be acquired of course, but at each amendment, neighbors will once again be able to weigh in at a public hearing. As Keith would like to remind you, all permit conditions are legally binding unless amended. It is up to our DRB to impose fair and legal conditions, and for our Zoning Administrator to enforce them. We can, however, add the "critical permit condition" language to make some conditions more difficult to amend than others, and we can also add standards for identifying critical permit conditions into each district as applicable.

Agenda #6.

Buttermilk is looking for greater residential density. They would need some zoning changes for this. Additional units would help with our housing shortage. Here are some discussion points:

1) JC density currently 15 U/A developable. They have 3 A developable land out on a 6 A lot. So, they are allowed a total of 45 A. They have built 14 Dwelling Units (DU) in building 1, and are approved for 31 DU for building 2. They are requesting an additional 24 DU for building 2, for a total of 55 DU in building 2, and an overall total of 69 DU for both building 1 and 2.

2) VD density is 24 U/A developable. There is virtually no undevelopable land in the VD. If we matched this density for JC (24 U/A) they could have a total of 72 DU. This would accommodate their building 2 request.

3) Listing density as "U/A developable" is a way that is not used in any of our other zoning districts besides JC and VD (recommended by Jess Draper). Density is usually just "U/A" (total acres of the lot). If we altered JC density to "U/A" they would be allowed 15 U/A for a total of 6 A = 90 U. This would also accommodate their building 2 request. They would still not be able to build on the undevelopable 3 A portion, so the 90 DU's would be on the developable 3 A.

4) Buttermilk say they cannot build building 2 with current commercial and parking requirements for economic reasons. They would like to reduce the commercial requirement to a lesser area and more neighborhood-friendly uses. What would this look like? Building 2 currently requires commercial for the whole ground floor.

5) Parking requirement will be reduced by Act 47, and will be reduced further if we lower the commercial requirement.

6) “In perpetuity affordable” is not possible economically for them. They say no lenders will give them loans for this situation. As a number of their units will be small (studios and 1 bedrooms) the rent will be relatively affordable for those units, similar to building 1 which has some “workforce” or relatively affordable units at 60% AMI. Please see AMI charts Here (2022 State) and Here (2023 Housingdata.org).

7) If we allow additional DU’s, can we make this more like a “neighborhood” and an attractive place to live? What are some amenities that could be offered? More greenspaces and sidewalks should be discussed and quality of life amenities to include walking trails, gardening and/or recreation fields in the riverside 3 A considered; adherence to the requirements of the Flood Hazard Overlay District (FHOD) §6.7 is a given. They will need to adhere to our Multifamily Housing Development Standards §6.13. Could the Neighborhood Development Area program be used? Buttermilk would apply, but the Town of Richmond would have to support. This saves them permitting fees and theoretically reduces the cost of the units.

8) If we remove the MDP language as we are proposing currently, we will only be facilitating building 2. Future Planning Commissions will have to decide, if ever, to grant more residential density based on conditions then. There will be no guarantee for Buttermilk or for neighbors that there will or won’t be more DU’s allowed in the future – this would necessitate future zoning changes.