

12.20.23 meeting minutes

Meeting conducted remotely

Members present: Alison Anand, Virginia Clarke, Mark Fausel, Chris Granda, Adam Wood

Members absent: Joy Reap, (vacancy)

Others present: Keith Osborne (Richmond Director of Planning and Zoning), Josi Kytte (Buttermilk), Brendan O'Reilly (Buttermilk), Bill Eschholz, Gabe Firman, Bradley Holt, Katie Mather, Lisa Miller, Gretchen Paulson, Jason Pelletier, Joanne Ranney, Trum Rittling, Connie Van Egan

### **1. Welcome**

Clarke opened the meeting at 7:02 PM and welcomed members and guests.

### **2. Review and adjust agenda**

As no changes were suggested to the agenda, the meeting proceeded with the published agenda.

### **3. Public comment on non-agenda items**

Granda reflected on the recent flooding event, calling into question the designation of "100-year flood" as it was the third flooding of this magnitude in 6 months.

### **4. Review minutes of 12.6.23 meeting**

As there were no corrections or additions, the minutes were accepted into the record as written.

### **5. Discuss information received during the public hearing of 12.6.23 on amendment proposals for "Residential uses in the I/C district via the PUD process, and PUD revisions"**

Clarke began the discussion by a brief description of the points made at the public hearing and her summary of the issues raised: first, that no one had objections to the language allowing residential uses in the I/C only on pre-existing residential lots, and only via the PUD process. Secondly, that the only objections raised to the PUD revisions were in relation to the removal of the Master Development Plan (MDP) language from the PUD section of the Richmond Zoning Regulations (RZR). The three objections raised here were 1) that misrepresentation of facts was not adequately addressed by our regulations or by the DRB; 2) that the PC failed to adequately notify the public about changes that were being proposed to the Richmond Subdivision Regulations (RSR); and 3) that the MDP language should be strengthened rather than removed.

Clarke then addressed each point: 1) misrepresentation is addressed in sections 5.3.3 and 8.4.3 of the RZR and that this appears adequate. As far as the DRB's appreciation of misrepresentation regarding any application, that is out of the control of the Planning Commission (PC) and should be addressed directly to the DRB. 2) lack of proper notification that changes to the Subdivision Regulations were being proposed. Clarke stated that she and Osborne felt that this was a valid concern, and even though there was no intent to conceal, as it was mentioned in the published Bylaw Amendment Report. They recommended the following action to correct this: removal of any reference to the Subdivision Regulations from the current amendment packet while continuing to propose removal of this language from the Zoning Regulations. This action would be immediately followed by the PC initiating a public hearing process (properly warned) to remove this language from the Subdivision Regulations.

In response to a question from Fausel, Clarke confirmed that this strategy proposes removing the MDP language from the PUD section of the RZR, and that the PC's motion on 10.18.23 didn't appreciate the fact that this language also occurs in the RSR, so didn't specifically supply new language for that document at that time. So we are essentially dividing this action into two steps. Fausel agreed that the current language is "toothless," but moved ahead to point 3) by questioning whether we should instead just leave the current MDP language in place for now and then have a more complete conversation about whether taking it out or strengthening is the way we want to go.

Clarke responded that that would require preparation of another document as returning the MDP language to what it is currently would require a number of changes and would take some time. She re-summarized that the fact that we had to open up the PUD section to align it with the proposed changes to the I/C was a good opportunity to correct a provision (the MDP) that has increasingly come to be seen as ineffective and problematic, and added that the addition of the "critical permit conditions" language is an attempt to strengthen and better define important features of "remaining land." She asserted that even with expanded MDP language there can be no absolute certainty about maintaining open space into the future unless there are stronger standards in the underlying districts that the DRB would have to consider, or the land is legally permanently conserved. Fausel responded to that by saying he was concerned that pushback to the language removing the MDP might delay the adoption of this packet at the Selectboard (SB) level, and delay the implementation of allowing residential PUD's in the I/C, and that that would undermine our primary goal with this packet. Clarke asked for other commissioners to weigh in.

Wood offered the following: in his mind, removing the MDP language is the correct path forward as it is "toothless" yet gives the neighbors a false sense of certainty. Removing this from the RZR is what the PC had intended to do, and he agreed that we may not have warned the subdivision part adequately. Having a discussion about removing it from the RSR would be warranted. He added that he didn't quite understand the goal of the critical permit conditions language, as he feels that everyone should be held to the regulations as they are written throughout the zoning regulations, and that density, setbacks etc would likely govern the constraints. Clarke responded that the town attorney had recommended the critical permit condition language because this helps to identify permit conditions that should be held to a higher standard of importance in case an application is brought to amend them, and this is of particular importance in cases involving open space. Wood added that it seemed like it would be more important to have really strong underlying standards in the zoning regulations, especially around constraints regarding open space. But, he added, he wouldn't want people to get the idea that amendments could be entirely prohibited, because that is unlikely to be the case.

Clarke talked about the concept of having stronger natural resources protections standards in the regulations. She said we would have to address these, especially when we come to updating the A/R district. Areas such as wetlands, wildlife corridors, critical habitats and forest blocks are generally required to be protected by the state, but each municipality has to incorporate particular protections into their own regulations. These then would be the other items that might be critical permit conditions which we could make difficult to amend. Wood concurred with this.

Anand offered that given the recent flooding, we should still continue to be particularly cautious about adding any buildings to the floodplain or in areas that flood. Clarke concurred that preventing building in areas that flood might end up being a critical permit condition. Granda felt that Wood had covered his questions, but asked Bradley Holt if he found the strategy for proceeding as outlined acceptable. Holt said he preferred leaving the current language as is and reconsidering the whole issue (RZR and RSR) in a

single package. Granda then asked Clarke for her reasons, on the other hand, for proposing removing the MDP language from the RZR now, and then looking at the RSR later.

Clarke responded that she felt that we should try to make forward progress on an issue that our zoning department felt was unworkable, and on which we have not heard any actual suggestions about how expanded language would actually solve the problem of providing certainty for the neighbors. She added that the town attorney had also worried about developers having a vested interest in an MDP that at a future time may not receive approval, so they might also have unfulfillable expectations. The experience in Richmond has been that it's not useful to set the future in stone, but to take each application for further development on its own merits. Granda replied that in principle he supports removing regulations that are not demonstrably useful or beneficial, so if the PC wished to proceed as proposed, he would generally support that.

Anand proposed asking Holt what the neighbors (in the case with which he is involved) do or don't want. Holt responded that the "ask" is not to guarantee certainty about the future, but to require greater accountability. He suggested a scenario in which a developer did not disclose plans for phased development and purposefully evaded, or misrepresented, future development plans, and the DRB and Zoning Administrator ignored this possibility. He stated that he is looking for some acknowledgement that this is a problem. Anand offered that in the older areas of town that were developed before there were cars, our road infrastructure may not be adequate. She also thought we might be encouraging development in places that could then suffer natural disaster damage, and that we shouldn't be doing that. Clarke reminded folks that each new "phase" would have to come in for permitting, public hearings etc. either to amend the prior permit or the MDP or both.

Lisa Miller suggested that perhaps we should be documenting the "character of the neighborhood" by photos or pictures, which might be more effective than words. She thought this might be particularly effective for following subsequent phases of a project, so that the changes to a landscape could be visualized. Clarke suggested that photos might suggest different "character" to different observers, and that it would still require a subjective decision on the part of the DRB to say that this is or isn't something we want to preserve. Miller suggested seeking assistance in this endeavor.

Granda expressed discomfort with Holt's suggestion that town government should be in the business of regulating intent and predicting the future, which puts town government in a difficult position, but he was sympathetic with Holt's desire to prevent developers from circumventing the planning process. He wondered if there are specific criteria that could be put in place to prevent "piecemeal" development. Osborne responded that he disagreed with Holt's characterization of "piecemeal" development, and said that as a zoning administrator his job was to follow the regulations as written for each instance of development. Clarke put in that one gets permits for a proposed project, then get more permits if, subsequently, further development is proposed, and that the term "piecemeal development" doesn't really have legal standing. She apologized for seeming to speak for Osborne. Osborne added that the effort here was to make regulations that could be realistically followed, and that replacing the undefined language of the MDP with the more specific critical permit conditions is a good faith effort to put in parameters that can actually be followed.

Holt had some final comments. He feels that it is useful to require developers to go on record with their future plans, and that having to state these plans may make them less likely to plan them in the first place. His second point was to encourage the PC, if the MDP language is removed from the Zoning Regs,

to go into a hearing on removing the MDP language from the Subdivision Regs with an open mind and to recognize that the partial protections given to the PUD section by adding the “critical permit conditions” language are not currently present in the RSR. Wood commented that he agreed with many of Holt’s points, but wanted to push back against the idea that we have no constraints against “piecemeal” development. He argued that this position is just wrong, as exemplified by his experience living in a town where there were no regulations outside of state wastewater rules and Act 250. In Richmond, we have a Town Plan and Zoning Regulations which all act as constraints on “piecemeal” development which he sees as just a series of mostly small changes, carried out mostly without a cohesive plan. And these town documents, which show what we wish to accomplish, have input from everyone in town who wishes to participate.

As there were no further comments, Clarke outlined the possible next steps: approve the current documents for transmittal to the SB; continue this discussion at our next meeting and work up some new documents leaving the MDP language as is or new documents including changes to both the RZR and the RSR. Fausel proposed that we go forward with the current documents allowing the residential uses in the I/C, removing the MDP language and adding the Critical permit condition language to the RZR, followed by a process of coming up with some language for the RSR that strengthens the intent that the MDP language has tried to implement. He referenced the long timeline that any other course of action would entail. Clarke confirmed that Fausel wished to move the current documents forward. Wood concurred with Fausel that he wished to move the I/C and PUD amendments on to the SB, and table future subdivision revisions for a later date. A motion was made by Wood and seconded by Fausel to approve the documents for transmittal to the SB as presented at the December 20 PC meeting, tabling any references to the Subdivision Regulations. Clarke added that this packet includes a mini redline and clean copies of the amendments to the RZR, and a bylaw amendment report. As there was no further discussion, a vote was taken and the motion approved 5-0.

#### **6. Discuss Buttermilk information from 11.15.23 and 12.5.23 regarding increasing housing density at the Creamery project**

Josi Kytle from Buttermilk started the discussion by briefly reviewing the history of residential density requirements at the Creamery. Stages included: 0 allowed units; clean-up of brownfield for \$1.5m; interim zoning with 45 residential units allowed; then permanent zoning also with 45 units. The next step was discussions with previous planner Ravi Venkataraman, which suggested that 85-90 units were needed to offset costs of affordable units. With recent increases in building costs of 30% this long term number ballooned to 125 units. Recent SB discussions have focused on “section 8” housing (perpetual affordable housing for very low income developed by non-profits) but Kytle wondered whether Richmond’s needs included housing that was just affordable and “workforce housing” which she feels are closely related and that they can provide. Kytle also mentioned the summary of the current tenants at the Creamery -- a diverse group of folks in their 20’s, 30s and 40’s and 3 children -- that she submitted for the packet. Clarke then asked Kytle to speak about the short term goal they had also presented, since neither Buttermilk nor Richmond know what conditions will be like in the 15 year time frame proposed for the 125 units.

Kytle then described that the next step for them was to get building 2 built, which, she asserted, is not possible under current zoning and market conditions. She proposed reducing the amount of required commercial space to 2,000 – 3,000 square feet, which might include a gym and smaller services such as a café or office space; and increasing the total number of units to 55 (up from 31). Brendan O’Reilly restated a summary of these needs. Granda then asked about the current and possible future “affordable” units, which Kytle said were below 80% AMI. She clarified that these were not “section 8”

units, as Buttermilk cannot access tax credits and other kinds of incentives that a non-profit could, thus there would be no paperwork or income monitoring for perpetual affordability. Kytile said that she and Ravi had had long conversations with Vermont Housing Finance Agency and that none of the state or federal programs would work for a small project in a small town that lacks public transit and other amenities for this type of housing. She said the agency recommended that in order to have units that were affordable, Buttermilk's best bet is to increase density to offset costs. Granda summarized that the approaches that were previously successful in Richmond (Richmond Terrace and Borden St) are not available to Buttermilk because it is not a 501C3 non-profit like Cathedral Square or Champlain Housing.

Clarke then summarized the discussion by saying that this is an important discussion, as Richmond has been talking about adding more housing, and here we have a developer who is currently active and would like to add more residential units. She suggested that we should be looking at the short term, and leaving it up to future Planning Commissions to assess the impacts of buildings 1 and 2, and the market and other conditions and make future decisions about additional residential units at that time. She asked the PC to seriously consider adding density, reducing the commercial requirement and the parking requirement, which Act 47 will reduce automatically anyway. If we wish to have an impact on building 2, we will need to make these decisions sooner rather than later. We could also consider the NDA (Neighborhood Development Area) program if we feel we can make this into an attractive residential neighborhood. Clarke said that Buttermilk needed a serious commitment to consider these things before they could move forward. Granda said there was not enough time tonight to make a commitment, and Clarke agreed that it would have to be taken up at the PC's next meeting. A few comments from the public were taken.

Katie Mather said she would return with her comments when we had more time to discuss this, but she suggested that we needed to be very careful about increasing density in this area for a variety of reasons such as traffic, the river and the character of the town. Gabe Firman of the Hatchet and Big Spruce restaurants offered that many of his 40 employees would like to live in Richmond but couldn't due to a lack of housing especially affordable housing. He finds it very disheartening to have the same endless conversation with various boards, and feels that it is indeed possible to maintain the character of the town while putting more units at the Creamery, which is actually out of the floodplain. He praised Buttermilk for their experience with smart growth and communities, and said he really hoped we would work on an accelerated timeline to make this happen.

Clarke then asked the PC to read the documents and think about what kinds of information would be needed from Buttermilk to help us think about this: drawings of the building footprint or the proposed parking? An idea of where the new units could be fitted into the existing floor plan? She suggested sending along any requests for information to Osborne, who can pass them along to Buttermilk. This will be taken up again at our next meeting, which is January 3, 2024. As the time was now 9:00 PM, Granda moved to adjourn, seconded by Fausel. As there were no objections, the meeting was adjourned at 9:02. Happy Holiday wishes were exchanged along with gratitude to all for participating!

Submitted by Virginia Clarke