

February 15, 2024

Richmond Planning Commission -

We wanted to follow up on the last Planning Commission Meeting held on Feb 7, 2024.

After the January 17th meeting, we were hopeful as it appeared the committee was finally agreeing to remove the long-standing barriers to enable us to provide additional housing at the Creamery. As per the Chair's post on Front Porch Forum, removing 'regulations that impair the creation of additional housing' is a key strategy of the Planning Commission. The emerging proposal for property on Jolina Court was simple, viable, achieved the town plan, and was mutually beneficial. It would have allowed us to provide us a range of housing types in the next 2-3 years.

Yet, a new concept emerged from the Feb 7th meeting – 'asking' us to sell part of our property to a 3rd party before *any* progress would be allowed. This is a significant departure from the recent discussions and creates a large new barrier. It is inverse to the stated PC strategy. Notably, this new path was suggested by a competitive landlord and developer. It was presented with biased misrepresentation of history.

This yet another example of the unethical approach to discussion and decision-making about the Creamery and our organization has occurred consistently for the past 5 years. We have highlighted to leadership both recently and historically (in 2019&2020 to the SB Chairs). Specific examples on the disregard to facts and clear bias were shared with demonstration on how they were impacting discussions and affecting decisions. This approach is in conflict with the Richmond's Code of Ethics which is a binding regulation for Planning Commission.

The pattern was on display last week. We ask the committee to review evidence - here and via an abundance of public documents - and hold individuals accountable for their contributions:

- The genesis of our current discussions has been forgotten and was wrongly conveyed. In Summer 2023, Richmond SB discussed affordable housing options and the document presented had errors on our interest and history on affordable housing. In Sept 2023, we sent a note to the Town and the Housing Committee to ask for a retraction (that request was denied). The Zoning Director asked us to present a proposal to offer housing that is affordable at the Nov 15th 2023. We updated a 2022 proposal to provide 'housing that is affordable' for consideration. That was the start of this round of discussions. We did not come to the PC and request removal the commercial requirement alone to build market rate apartments as was referenced by a committee member. That idea was suggested up by a PC committee member in the December 2023 meeting. Therefore, we included in our proposal options in Jan but noted it was not our recommendation as it didn't for a realistic path to provide 'housing that is affordable' which was a goal of the SB and community (and humanity).
- Several committee members and community members stated or inferred: 'Buttermilk has been given a lot and the town hasn't gotten a lot back.' This comment is both inaccurate and displays significant bias. In 2014, the town created zoning to attract a developer. As a potential developer, we evaluated the costs of the brownfield clean up in 2015, it required more housing to offset the costs

of the clean-up, or the project was not viable. In Sept 2015, the Town changed the zoning to 45 residential units (maintain unrealistic commercial requirements) to encourage us to proceed with purchase and clean up. Without that change, we would not have with purchased the property nor taken on the risk and cost of the clean-up. It took us 3 years, significant funding and risk but we cleaned up the brownfield (the fastest the State had seen). When the Interim Zoning had expired in 2018 and the property reverted to all commercial, we went through 20 months of discussions with the PC and SB in 2019-2020 so we could proceed with another building and create the income necessary to repay the costs of the clean up. During those discussed, we lobbied for more residential density including density bonuses for solar, parking and others. We were denied (despite the PC support the density bonuses). The 45 units remained the cap from 2015 to today – 9 years later. Also, we lobbied for a significant reduction in the commercial barrier and only a small adjustment was made. Even then, we warned that barrier would prevent progress. Since, other zoning has been passed to increase costs and complexity for any developer in Richmond. So, since amendments in 2015 pre-purchase, we have not received any viable changes to allow for progress – barriers remain. To recap, the town changed zoning to attract the developer, the developer delivered on its promises and the town has since created barriers to prevent us from proceeding with income producing units granted in 2015 (pre-purchase). Despite this, we cleaned up your brownfield, provide net zero housing and commercial space, we provide ample FREE parking and are large contributors to your taxes, water, and sewer base. Most would consider that is ‘a lot’. If there have facts counter to this, please provide or cease in this biased opinion.

- The concept of partnering with an affordable agency at the Creamery is not new. The Town Zoning Admin (Jess Draper) in the summer of 2019 – after similar conversations with the SB and PC – tried to organize a 3-way meeting with the Town and Champlain Housing Trust (CHT) to explore and learn about the options. In good faith, we were open to exploring and encouraged the meeting. Yet, the meeting never occurred. Based on our understanding, CHT was not interested in the project as Richmond lacked the infrastructure & social services and CHT’s project pipeline wouldn’t enable a productive discussion. So, the misrepresentation in the Feb 7th by committee member that concept of affordable housing ‘didn’t go over that well’ to us was inaccurate. See appendix for evidence.
- Similarly, density bonuses for affordable housing, solar, senior, parking etc were explored by the PC during the 20-month discussions. We were in support and provided input on what would be required to achieve such bonuses and considerations for other zones. At that point of drafting (May 2019), we were already achieving solar and parking bonuses designed by the PC. None of these density bonuses were put forward in a final draft to the Selectboard or town. The Selectboard did not want any additional residential beyond the approved original zoning (45 units). They blocked the density bonuses. They wanted commercial – which we argued was unrealistic and unviable. Therefore, the statement by a committee member on Feb 7th that we ‘were not interested’ in density bonuses is inaccurate. The appendix has one of the many emails from 2019 with our support. Many public documents and meetings are available to confirm.
- There were several comments inferring that we are not compliant with our current permits or ‘we have not upheld’ our agreements or commitments. We reviewed. There is only one thing we are aware of ‘screening of the trash’. (Note: we are planning to redo that area to provide new green space adjacent to building #1 as per our latest permit. It was agreed that the trash screening should be done, logically, with that redevelopment of the green space. That was part of our recent permit.) That small requirement is not visible, nor impact the public. Beyond this detail, we are unaware of

any agreements that have not been fulfilled. Therefore, we asked the Zoning Director to provide a list of these outstanding items. Keith stated, on Feb 9, 2024, 'you are **not** in violation'. So, either provide a list of outstanding requirements and permit references, or cease from that claim.

- Since 2017, we have a legally binding lease with the railroad for a small sliver of land. This lease took significant time and cost to obtain, and we pay annually for the lease. It is a legally binding and entitles us for use of this property at our full discretion. Currently, we use this land *along with our owned property* to offer parking to our tenants, our neighbors and the community at large. We offer for *free* as a service to the community. We have sole discretion on how to use this leased land and can adjust it at any point. A committee member inferred that the property is not ours to use or that others had right to use our leased land without permission. That is not accurate. It is our leased or owned land and *only* can be used with our permission.
- Parking for Blue Seal Building Tenants. As a good neighbor, we have provided parking to the Blue Seal tenants on our owned and / or leased property. The agreement with Detlev (the historic owner of the Blue Seal Building) was for 2 spaces. In the Jan 7th meeting, it was mentioned that there were 12 spaces for the Richmond Community Kitchen – that is not accurate. There is no legally binding agreement about 2 spaces. Yet, we have offered parking spaces and maintain spots for free for years. And we know that the neighbors use more and that is *ok for now*. If any neighbor is requiring additional spaces, we would consider but would require lease and fees to manage. Importantly, that agreement will have to consider their contribution to future traffic studies or mitigation costs that might be required by the Town.
- Asphalt integrity on our property. We are well aware that the paving in one small section of on our owned or leased property is flawed. There is a known and permit related reason for this flaw. There are plans to fix it when logistically viable and required to do so... yet why is paving on our private property of concern to the Planning Commission? It is private land. Where is it stipulated that the PC has jurisdiction over the status of private roads or infrastructure when it is complaint with permits?
- At the end of the meeting, *finally*, a few members remembered some positive value of our ownership of the Creamery parcel. Brownfield clean up and significant tax income. As a reminder, for over 20 years the Creamery sat abandoned and as a contaminated site it was risk to the Richmond community. The past owner refused to do anything. It took 5 years and significant costs – a large amount not funded by grants – to clean up Richmond's brownfield. Our costs were financed and we are still paying. We have yet to turn a profit or pay ourselves. As this project contained significant cost and risk, others (including local developers) were not interested. We took it on and were successful (according to the State, EPA and HUD). It is clean and now viable for re-development. So, yes, we believe the brownfield clean up was a significant value, along with taxes, housing that is affordable, commercial space, in a net zero building with abundant FREE parking should be remembered and highlighted. Moreover, are you holding other landowners to the same level of value to Richmond? We have participated in many SB and PC meetings and there seemingly is a different set of standards.
- We are an LLC – limited liability corporation – focused on providing net zero development. As per our operating agreements and incorporation documents, we are *legally required* to make decisions in the best interest of our shareholders and organization. We have never been a non-profit. Despite that, we cleaned up Richmond's brownfield, offer housing that is affordable in a net zero building with ample parking.

- The committee questioned the interest and livability of small units based on their own experience. We urge caution. Our micro studios (that is what we call them) are some of our most popular. A few tenants have been residents for several years. They are carpenters, divorced parent's sharing a house with kids (bird nesting), they are nurses, they are medical students. They are not transient homeless residents as was speculated in the meeting.
- Our current affordable units are not just small studios as stated. We also have a small 2 bedrooms that are affordable according to the 2023 standard – one 2 bed unit is \$1,860 which with utilities is 70% AMI for Chittenden County. Perfect for young professionals sharing. Again, these units are very popular and have low vacancy.

On Feb 7th, led by the inaccuracy in the above and championed by a competitive landlord/developer, the Planning Commission changed course and disregard the Chair's memo. Based on this significant change, the Zoning Director asked our thoughts on the concept: selling part of our land to a 3rd party agency to enable any future progress on our property. Here is our opinion:

- Unrealistic zoning has blocked progress and housing for years. We are not able to actualize the originally promised 45 units due to unviable zoning. This concept is a giant new barrier.
- Based on history and experience, the concept is not viable. We are legally required to make the best decisions for our organization and it is unlikely to be worth considering. Plus, we doubt the interested in a 3rd party. Unlike the 2019 good faith attempts, we are not able nor willing to invest our time or good intentions on an unlikely concept. (If you proceed without us, please forward the findings and as required by our fiducial responsibility, we will review.)
- Our trust or faith in Richmond is very low. No matter our support, we will be blamed and ridiculed for any outcome. So, we are not interested in exploring out of good faith or mutual respect.
- If the PC is now prioritizing Section 8 or senior housing over 'housing that is affordable' or workforce house, ask the developers and landowners that presented the concept or others that were present to sell their land to an agency. If they can make the economics work, great.

Where does this leave our discussions about providing more housing at the Creamery?

We encourage you to return to a simple, mutually beneficial, viable plan that is grounded in fact:

- Remove barriers of JC Zoning on Building #2.
 - Eliminate the long standing unrealistic commercial burden.
 - Match residential density zoning to Village Downtown to allow for affordable units where the parking is abundant.
- Allow for review & evaluation of future buildings based on community needs & market conditions.
- Ensure the committee is 'fair, impartial and responsible' as required by the Code of Ethics.

We do hope to make progress with Richmond and build the much-needed housing in Building 2. We want to partner to make Richmond the 'Brooklyn of Burlington' and support smart growth and opportunity for existing and new residents.

Brendan O'Reilly and Josi Kytle
Buttermilk LLC

APPENDIX

Item #1: Emails exchange with Jess Draper about CHT meeting in July 2019

Begin forwarded message:

From: Josi Kytte <josikytle@gmail.com>
Subject: Re: Affordable Housing
Date: July 24, 2019 at 8:14:05 AM CST
To: Jessica Draper <jdraper@richmondvt.gov>

Good Morning!

Totally up for that. Including other developers too. Got nothing to hide.. just to learn. Why don't we ask CHT to suggest dates and times for next week.. and if they have any friendly developer that they would recommend that we talk with.

Also.. I had a thought yesterday about housing and an argument that our current proposal is needed and justified. These apartments might not be 'affordable / low income' housing.. please note that they never were suppose to be.. as per the original discussions with the SB in 2016, they were requested to be 'at-market' apartments - not low income. So based on responses to date, that was a right call. At market apartments that are accessible and affordable (to some) are needed in Vermont and in Richmond.

We have a list of +50 people right now for the 14 units. Since early 2019, we have been communicating both prices and floor plans (e.g. unit sizes) - <https://www.richmondcreamery.com/residential>. So about 50% of applicants expressly understood size and rent... and were interested. Originally, I wanted to make sure people were under no misunderstanding of rents and / or sizes upon application. I expected that this would deter people... but it doesn't seem to have. Applications continue to come in.

Also this week I have included questions about 1) where they are living currently and 2) profession. I am going out to that list this week to 1) to get more information 2) communicate the next steps (e.g. I get loads of questions on timeline) and 3) ask for support on August 5th.

So on affordable / low income housing, my social ethical personality fully wants to support.. and I want to know more. But we do need to balance what the market wants too. There is just need for housing across all segments.

I will call you a bit later.. working on some other stuff.

Best,
Josi

On Jul 24, 2019, at 9:55 AM, Jessica Draper <jdraper@richmondvt.gov> wrote:

So I chatted with Bard, and he said that if we're having trouble scheduling a discussion with Champlain Housing as a large group of subcommittee, that it would be okay in his opinion for it to be a meeting between you, CHT, and maybe just me from the town. If you want to reach out to them on your own you could as well. I was also thinking that it may be possible to contact other developers that have had to meet those affordability regulations in towns like Winooski and Burlington? I don't know if that's crossing boundaries to talk to other developers, but they can probably communicate the positives and negatives better since they've been in your shoes...just a thought. Kinda brainstorming here since 8/5 is coming up quickly.

Let me know what you think-

Jess

Jessica Draper
Town Planner
Town of Richmond

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PLEASE NOTE MY NEW EMAIL ADDRESS: jdraper@richmondvt.gov

Item #2: Richmond Code of Ethics.

As download from here: <https://www.richmondvt.gov/ordinances-policies>

Code of Ethics

Section 1 Declaration of Policy

APPLICABILITY

The provisions of these rules, known as the **Town of Richmond Code of Ethics**, shall apply to all public officials of the Town of Richmond.

POLICY STATEMENT

The proper operation of democratic government requires that all public officials be fair, impartial, and responsive to the needs of the people and each other in the performance of their respective functions and duties. Accepting a position, as a public official, carries with it the acceptance of a public trust that the official will work to further the public interest. Maintaining that public trust is critical to the continued operation of good government. In addition, public decision-making should be open and accessible to the public at large. To preserve this public trust, there are five principles to which public officials should adhere:

- A. A public official should represent and work towards the public interest and not towards private/personal interests.
- B. A public official should accept and maintain the public trust (i.e., must preserve and enhance the public's confidence.)
- C. A public official should exercise leadership and should demonstrate behavior that reflects the public trust.
- D. A public official should recognize the proper role of all government bodies and the relationships between the various government bodies.
- E. A public official should always demonstrate respect for others and for other positions.

In recognition of these principles, this **Code of Ethics** is hereby established for all public officials of the Town of Richmond, Vermont.

Item #3: Emails exchange with Jess Draper about Density Bonuses – May 2019

From: Jessica Draper jdraper@richmondvt.gov 
Subject: Re: Density bonuses
Date: May 13, 2019 at 5:25 PM
To: Josi Kytte josikytle@gmail.com
Cc: Brendan O'Reilly brendan@gristmillbuilders.com, Colin Moffat colin@gristmillbuilders.com

JD

Hi Josi,

I was out for most of the day today, but I will be around tomorrow. There is a good chance they are not going to move forward with the rest of the village on Wednesday, but are continuing to work on Jolina. They discussed the possibility of building the bonuses into the Jolina court regulation, so that we could eliminate the parts that were written to make it expandable to the greater village areas. They also this morning decided to propose reducing the parking bonus to 2:1 instead of 4:1 and change the base to 12/acre with a 60% bonus, which would give you about 36 base and up to 22 bonus units. The full commission hasn't considered any of this yet, this was just in subcommittee. The energy one is definitely still being contemplated, the subcommittee is working with Efficiency VT to out what might be more universally applicable. I think they could be persuaded to get rid of the first floor requirement on the ADA as well.

I definitely understand yours and Colin's concerns, let me know when you have time to talk tomorrow.

Jess

Sent from my iPhone

On May 13, 2019, at 5:23 PM, Josi Kytte <josikytle@gmail.com> wrote:

Hi Jess -

As per my voicemail, I would love to chat about the below. Please don't send to anyone until we discuss.

We have been digging into the practicalities of these density bonus and applying to our real life example... If these density bonuses go forward as is, it will impact our ability to proceed. I need more time to work this through and talk with Brendan but hopefully the below provides some thoughts or more information... We fully love your support and guidance so lets figure out what is best.

Unit Value - I heard that the proposal for the studio to one bedroom to be valued at 1/2 was relected. This is a shame as we the max cap of 60. that

... decision incentives developers to approach units like precious commodities and to maximize the \$ we would get against any unit. For example: for a one bedroom the rent per month would be \$1,258 (e.g. we would want to maximize the Affordability bonus) whereas for a 3 bedroom we could get closer to +\$2,800 for the same 'unit'. That is a \$1,600 difference per month or nearly \$19K per annum. Yes, we would be using more square feet of our available space but that is not a constraint based on the density allowable for our lot. So based on the current proposal, we are likely to explore larger residential units to improve our cash flow and reduce our unit requirement.

Affordability

- Please note historically the discussion with the town was not about low income housing as a need but affordable at market housing. The use of the 80% AMI level is essentially low income / government funded housing. There is significant grants and other programs that we investigated for low income in the past but collectively (with the town) decided that was not what is necessary for this development. With this bonus requirement, we would have to reopen those discussions Section 8 etc.
- To maximize the density bonus here we would have to build 13 apartments which is 20% of the total volume of units in the development. Some of our units are affordable and achieve that level.. but the fact that we would have to perpetually offer those at that rate would significantly impact the appraisal and the financing. I have put in a call to our bank to get details but.. it will have an impact on the pro forma.
- Based on my current projects on rent, only the efficiency units, maybe a few one bedrooms, would be inline with that level now. But offering 2 bedroom is totally un-economical or affordable for us. We would be losing circa btw \$300-700 per month per unit if we made it affordable. On 20% of our total volume.. that would impact our revenue significantly. Again, this will impact our financing.
- So by this proposal the only 'affordable' units would be efficiencies and small 1 bedrooms.

Elderly/ADA

- To maximize the bonus we would have to install 14 units at garden/first floor level. The two ADA we have already built will not count (e.g. not garden level). So we would have to build 14 additional. So basically, the first floor of the building #2 would be 100% ADA and largely be studios as that is what will fit and based on the bonus what we are encouraged to do. The top floors would

on the bonus what we are encouraged to do. The top floors would be larger units so that we can improve the cash flow and mitigate the reduction in income. From a community building perspective, I do not think that is what is a best way to design a well rounded community.

- The non-elevator access regulation is ridiculous. The power supply issue is a non-issue. 2 sources right on Bridge St. say power has gone out less than 5 times in the last year and only briefly, could probably get hard data on that.. but haven't had time.
- Some of the potential tenants that are elderly that have contacted us, want 1-2 bedrooms and REQUESTED top floors. So these individuals would be taking other apartments but be servicing the elderly need we all know is there. I think this stipulation is pigeon-holing the elderly... especially as its on an illogical power issue.
- Plus the Ground/street level stipulation not fair to rest of district as it limits this bonus to buildings with split levels.

Parking:

- We find the 4 to 1 parking bonus unfair to us and unachievable to others. No other property owner has the space to do it so this has been written for us alone.
- To get the 3 allowable units we would have to build and perpetually provide access for 14 parking spaces. But we have to balance this need with our existing commercial and residential tenants parking requirements and our developable site. The only feasible place these parking spaces can go is in the floodplain behind the Town Building. We think that we should talk about that parking option more strategically and collaboratively. We have always supported that idea but the inclusion in this way strong arms us.
- The handicap parking is not practical as handicap parking must be by the building.. so it will be premium space. Plus with the 14 units in building #2 for ADA, we will need every spot surrounding the building to service those individuals.
- We need to talk about this...

Energy

- Again this is written for us alone. Unfair to others. Others will struggle to finance and to have space to achieve. This is very cost prohibitive. A 25 KW project costs \$250K+ for 2 bonus units.
- Did you consider other building requirements that are more cost effective for others and something we are already doing? Air sealing, insulation, HRV, etc. Of course, we are doing these things already but at least others should be allowed and encouraged. As

of now, others will not even consider.

I have to run to another meeting but as per my voicemail, I would love to chat about these before you send. Also I want to get Brendans input but he hasn't be available today.

Thanks!
Josi

Josi Kytle

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<https://www.richmondcreamery.com/>

On May 10, 2019, at 6:00 PM, Gristmill <colin@gristmillbuilders.com> wrote:

I was wrong about how easily you could achieve the maximum density bonus, I missed that you need 2 ADA base units to get 1 bonus unit.

As it's written you could use density bonuses to get 60 total apartments. Assuming you want to use them all asap, that would mean 46 in building 2. So, one configuration could be: top 2 floors with 16 apts. each and ground floor with 14 (plus "garden" level commercial)

In this configuration you would need:

- 13 units (across building 1 and 2) to be "affordable", giving you 13 bonus units that also must be affordable (this means lots of small 1 bed/eff.)
- 14 ADA units on the ground floor giving you 7 bonus units
- The solar array as planned (bldg 1, carport, and bldg 2) give you 7