
Bradley Holt

1931 Hillview Road
Richmond, VT 05477

21st January 2024

To: Selectboard

Jay Furr, Chair
Bard Hill, Vice Chair
David Sander
Jeff Forward
Lisa Miller

Cc:

Josh Arneson, Town Manager

Dear Town of Richmond Selectboard:

During your January 16th, 2024 meeting I shared my concerns related to your consideration of approval of two Access Permits, a hammerhead turnaround, and a road name for the proposed Hillview Heights subdivision. As I shared during your meeting, I am not opposed to the landowner building a subdivision on their property. However, I did highlight numerous areas in which the applications before you fail to comply with our Town's regulations and I am opposed to the landowner building a subdivision that does not meet our Town standards. This letter is in response to your request for me to put my comments in writing.

Access Permit Application for the Proposed Lots 1 & 2

Section 6.2.1 e) of the Richmond Zoning Regulations states: "The intersection of the driveway to the public or private road shall conform to the standards in the Public Works Specifications. The driveway shall meet the Vermont Agency of Transportation's B-71 Standards for construction."

The VTrans B-71 driveway standard requires a minimum intersection sight distance of 390 feet for a 35 mph road (the speed limit on Hillview Road). Note that the Highway Foreman cites a 385 foot sight distance requirement. The difference between 385 feet and 390 feet is immaterial to my concerns and appears to be attributable to a discrepancy between the Town's Rural Road Specifications and Standards adopted in 2016 and the latest VTrans B-71 driveway standard.

It is important to note that in the Subdivision application, the applicant claimed only to be able to achieve 250 feet of sight distance, not 385 feet or 390 feet as required. My concerns with the claimed 250 foot sight distance are twofold.

One, a sight distance of only 250 feet presents a safety hazard as it is significantly shorter than the 385 feet specified in the Town's Rural Road Specifications and Standards or the minimum intersection sight distance of 390 feet required by the VTrans B-71 driveway standard for a 35 mph road. Simply placing an advance warning sign, as indicated in the Subdivision application, is not sufficient to mitigate this unsafe condition. An advance warning sign provides no mitigating benefit to vehicles exiting the access, and only limited mitigating benefit to vehicles approaching the access.

Two, it is doubtful that the terrain and topography afford even the stopping sight distance of 250 feet claimed within the Subdivision application. Vehicles approach this driveway while coming around a blind curve along an upward-sloping hillside which obstructs the line of sight. I find it highly unlikely that the claimed stopping sight distance of 250 feet is accurate. The Subdivision application shows 900 square feet of trees and brush to be cleared to provide the claimed sight distance of only 250 feet. As the Highway Foreman noted in the Access Permit application, the required sight distance should be confirmed once the trees are cleared.

Further, if the homeowner association fails to keep the trees and brush cleared then once the vegetation grows back, which will happen quite quickly as the line-of-sight only clears the upward-sloping hillside by less than 18 inches (according to the engineering diagrams included in the Subdivision application), the sight distance reduces to only 175 feet (this is the sight distance indicated within the Subdivision application without clearing the trees and brush).

The Selectboard should deny the Access Permit application for the proposed Lots 1 & 2 driveway as nowhere does the applicant claim to be able to achieve the sight distance of 385 feet specified in the Town's Rural Road Specifications and Standards or the minimum intersection sight distance of 390 feet required by the VTrans B-71 driveway standard for a 35 mph road and Section 6.2.1 e) of the Richmond Zoning Regulations. Alternatively, I ask the Selectboard to consider adding the following conditions on any approval of the Access Permit for the proposed Lots 1 & 2 driveway:

- The required sight distance of 390 feet must be confirmed by the Highway Foreman after the trees and brush are cleared in order for the Access Permit to be valid.
- A maintenance agreement must ensure the required sight distance of 390 feet is properly maintained.

Access for the Proposed Lot 3

You heard during your meeting that the applicant believes that they do not need an Access Permit for the proposed Lot 3. As such, there is no Access Permit application before you for this lot. The applicant's rationale is that this is a pre-existing access. However, when this Selectboard approved Access Permit #21-17 (an access point at the same location as the Access Permit application before you for the proposed Lots 4–7) you put two conditions on your approval:

- “For access to one primary and one accessory structure only. Applicant must reapply before this access may be used to serve additional structures.”
- “Land owner must close any pre-existing access.”

Any pre-existing access, including the access for the proposed Lot 3, was closed by this Selectboard when you voted to approve Access Permit #21-17. The lack of any enforcement action on associated Zoning Permit #2021-83 to physically block this access does not change the fact that this Selectboard's previous action already closed the pre-existing access for the proposed Lot 3. See the memo on enforcement of conditions of Zoning Permit #2021-83 from Zoning Administrator Tyler Machia on or about January 31st, 2023. I ask the Selectboard to reiterate your previous condition that this pre-existing access has already been closed and compel the applicant to seek an Access Permit for the proposed Lot 3.

Section 6.2.1 b) of the Richmond Zoning Regulations requires residential driveways to have a 12 foot minimum width. The driveway that is proposed to serve Lot 3 is currently less than 12 feet wide and therefore does not meet our Town's minimum driveway width standard. The width of this proposed Lot 3 driveway currently seems to be somewhere between 8 and 10 feet, based on observation and measurements taken utilizing data from the Vermont Agency of Natural Resources.

Note that the applicant refuses to acknowledge the patently-obvious fact that their Subdivision application shows a plan to widen the proposed Lot 3 driveway to 12', and that this widening is contrary to the assertions in their application for Individual Wetland Permit #2021-221 that the driveway would not need to be widened.

The fact that the applicant plans to widen the proposed Lot 3 driveway is important because this driveway bisects a Class II wetland. Section 6.9.2 of the Richmond Zoning Regulations states: “No land development shall occur within a Class I or II wetland, or wetland buffer, unless approved or exempted by the Vermont Wetlands Program.” Widening the proposed Lot 3 driveway to 12' represents several hundreds of additional square feet in Class II wetland buffer disturbances beyond what is permitted, plus the impacts of shoulders grading down to the surrounding wetlands. The applicant's claim within their Subdivision application that “a state wetland permit has been issued for the proposed impacts” is simply untrue, and is easily provable as false.

Basic analysis of the Partial Wetland Exhibit document included in Individual Wetland Permit #2021-221 demonstrates that the approved existing wetland buffer disturbance of 4,154sf along the 378' length of the driveway within this existing wetland buffer disturbance could not possibly be more than 11' of permitted existing wetland buffer disturbance along the length of the driveway. These measurements and the math are quite simple and inarguable ($4,154\text{sf} \div 378' = 10.9'$). The wetland disturbances of widening the proposed Lot 3 driveway to 12' have not been approved by the Vermont Wetlands Program. When I raised this point during the wetlands permitting process the applicant was adamant that they had no plans to widen this driveway.

Let's be clear that the applicant's plan to skim off "encroaching grass," install "top dressing," and "reclaim" the driveway with new stone in order to meet the 12' minimum driveway width requirement is a plan to widen the driveway. The "encroaching grass" is part of the surrounding Class II wetland and any driveway that is "reclaimed" will come from the surrounding Class II wetland. The applicant claimed during your meeting to have emails from the Vermont Wetlands Program approving their plan. I find it highly unlikely that the Vermont Wetlands Program would approve of any construction activity not explicitly included in a permit, and even if they did then any statement of approval outside of a permit would hold no legal authority.

Additionally, Section 6.9.3 of the Richmond Zoning Regulations requires a 50 foot buffer surrounding Class II wetlands. The applicant's plan to widen the driveway to 12' would not only result in unpermitted wetland disturbances, but this newly-developed driveway would also have no wetland buffer at all. While a pre-existing driveway with no wetland buffer may be allowable, certainly new construction should not be allowed that does not meet the Town's 50 foot Class II wetlands buffer requirement.

Access Permit Application for the Proposed Lots 4–7

This Access Permit application in particular makes a mockery of our Town's Zoning and demonstrates contempt for this Selectboard's authority. In late 2021, the landowner applied for Access Permit #21-17 at this same location, claiming that the Access Permit was for a single-family home. Across two Selectboard meetings, and after public comments and discussion around numerous concerns related to, and evidence of, piecemeal development, the Selectboard put two conditions on their approval of Access Permit #21-17. Those conditions were:

- "For access to one primary and one accessory structure only. Applicant must reapply before this access may be used to serve additional structures."
- "Land owner must close any pre-existing access."

These conditions can also be found referenced in associated Zoning Permit #2021-83. The landowner has evaded the Selectboard's condition to close any pre-existing access for over two years by not completing the work of upgrading the driveway and

access road. In the meantime, the developer has represented this road as a “previously approved road to be constructed” in conjunction with their subdivision plans to State permitting authorities, the Development Review Board, and even in the applications now before this Selectboard while failing to mention that this approval was explicitly made only for a single-family property and not for a subdivision as implied.

According to the memo to this Selectboard on enforcement of conditions of Zoning Permit #2021-83 from Zoning Administrator Tyler Machia on or about January 31st, 2023, even though there is another access point on the property, the landowner is in compliance with these conditions so long as the second access is closed by the time construction on the primary access is complete or the permit has expired. Since receiving the Access Permit and associated Zoning Permit, the landowner has not invested any work, time, or expenditures into the project of upgrading this driveway. The driveway and access road have remained unimproved this entire time.

Just this past October our Zoning Administrator issued a one-time 12-month extension of the associated Zoning Permit #2021-83, even though the applicant failed to demonstrate a good faith intent to presently commence upon the permitted use. In fact, we appealed this Zoning Permit extension to the Development Review Board.

Astoundingly, the landowner applied for this new Access Permit that is before you just over a week after the Development Review Board heard our appeal of the driveway permit extension, no longer even bothering to maintain the pretense that they intended to upgrade the driveway and access road for a single-family residence as they claimed to this Selectboard over two years ago and had claimed to our Zoning Administrator as recently as October through their request for an extension.

Note that the proposed Lots 4–7 road is also not in compliance with Section 6.9.3 of our Zoning Regulations as there is no 50 foot wetland buffer as required where this road crosses a Class II wetland shortly before the proposed hammerhead turnaround. The landowner improved this section of driveway in July of 2021 without any State or Town permits under the guise of “ag maintenance” (as represented to Keith Osborne when he was Zoning Administrator). This work was done within what the developer knew at the time was a Class II wetland, and only later did the developer seek after-the-fact wetland permitting for this work in conjunction with their subdivision plans. While the pre-existing and more narrow “gravel field drive” with no wetland buffer may be allowable, new construction on this road to improve and widen it to 24’ should not be allowed as it does not meet our Town’s 50 foot Class II wetlands buffer requirement.

The Selectboard should deny the Access Permit application for the proposed Lots 4–7 road based on the landowner’s misrepresentations related to this road. Per 24 V.S.A. § 4470a: “An administrative officer or appropriate municipal panel may reject an

application under this chapter, including an application for a telecommunications facility, that misrepresents any material fact.” The application before you falsely claims that this road is a “previously approved road to be constructed” as part of the applicant’s subdivision plans. The Selectboard should also deny the Access Permit application for the proposed Lots 4–7 as the road does not comply with Section 6.9.3 of our Zoning Regulations. If the Selectboard chooses to approve this access, I ask you to consider adding the following condition on any approval of the Access Permit for the proposed Lots 4–7 road:

- Approval is for access to one primary and one accessory structure only on each of only four lots and the applicant must reapply before this access may be used to serve additional structures on additional lots.

Approval of a Hammerhead Turnaround

Section 600.6 of the Richmond Subdivision Regulations states: “Dead end roads shall terminate in a circular turnaround with an outside radius of not less than sixty feet approved by the DRB or in a hammerhead approved by the Selectboard.” You can see quite plainly on the site plan that this proposed hammerhead turnaround is not situated at the road’s dead end point, as required by the Subdivision Regulations governing the Selectboard’s approval. If you look at the site plan, you can see that the proposed Lots 4–7 road continues on past the Lot 7 driveway entrance to the Lot 6 driveway entrance and then on to the “field drive.”

The right-of-way over the proposed Lot 7 to benefit the proposed Lots 4, 5, and 6 continues past the currently-proposed hammerhead turnaround to the beginning of the “field drive.” The hammerhead turnaround is clearly not at the end of the road and therefore does not comply with our Subdivision Regulations.

The Selectboard should seek clarity from the applicant if the road terminates at the currently-proposed hammerhead turnaround, at the start of the field drive (which is where the right-of-way over the proposed Lot 7 to benefit the proposed Lots 4, 5, and 6 ends), or somewhere along the field drive where there are proposed utility lines and a transformer with no clear purpose. These utility lines and the transformer along the “field drive” can be seen most clearly in the Grading Plan for the proposed Lot 6 (page 6 of the Avonda Site Plan document), and are also visible on the Master Site Plan page.

The Selectboard should seek to understand why the applicant chose to terminate the road at the currently-proposed location and not at an earlier point, such as at the proposed Lot 4 driveway intersection. This would have enabled the developer to narrow the Class II wetland crossing and minimize the wetland disturbance.

Approval of the “Hillview Heights Way” Road Name for the Road to Serve the Proposed Lots 4–7

On September 19th, 2023 Tyler Hermanson from the State of Vermont Enhanced 911 Board sent an email to our Zoning Administrator in which he said about this proposed road name: “Plausible to do this being off Hillview Rd. Probably not the most ideal, but would only work because [it’s] off of this road. Ideally it would be unique [entirely] to town/zipcode. This would be up to your selectboard, if they wanted this name, or something more unique. I may suggest [getting] at least one more [option] [in case] your SB wants to go with something more unique.”

I would ask the Selectboard to review this memo if you have not already. Based on the conversation during your meeting it seems that there are other communications on this topic that were not included during the Subdivision review. I would ask the Selectboard to also review these communications. It seems concerning to have two very similar road names—“Hillview Road” and “Hillview Heights Way”—connecting to each other and it’s unclear if the applicant has proposed a backup name.

Sincerely,



Bradley Holt