Residential Uses in the I/C District and PUD Revisions – Memo to the Selectboard – 2.1.24

Introduction

On 12.20.23 the Planning Commission approved a packet of amendments to the Richmond Zoning Regulations (RZR) for transmittal to the Selectboard for their public hearing and approval process. The amendments are designed to allow for some residential expansion in the Industrial/Commercial) Zoning District (I/C – section 3.7 of the RZR) while still preserving the commercial potential of that district. The mechanism is by way of the Planned Unit Development (PUD) procedure (section 5.12), which then also required some changes to create conformity. In addition, our work on the PUD section extended to the revision of the problematic "master development plan" language in this section. This memo describes the proposed amendments and the reasoning behind them. The packet also includes:

- A clean copy of the way the amendments will look in the RZR when approved
- The required Bylaw Amendment Report
- A full redline of the amended RZR

Background information on our current zoning document (RZR)

1) The I/C district exists in 3 sections (see attached map) – 2 sections are out near Exit 11, and the third is on Kenyon Rd. The northernmost section is bordered by Rt 117, Riverview Commons, the Jericho Town line and a portion of our Commercial (C) district, and is the area for which we propose expanding residential use. There are 8 lots in this section: 2 lots host businesses (J. Hutchins and Landshapes on one lot, and Patterson Fuel storage on another); then there is the Richmond recycling area; a swamp, and 4 residential lots. The existing residential lots are clustered near the Jericho line, and interest had been expressed by a property owner to add additional residences to this part of the district. This seemed reasonable to us as we are in a housing crisis, but we didn't want to throw the whole district open to residential use thus losing its future commercial potential.

A note about the other 2 sections of the I/C district: the eastern section, bordered by Governor Peck Road and I-89, has 4 lots – 2 are owned by GMP (with the solar array); one by Cleary Stone, and one by the Mobil station – and there is also the Park and Ride lot and portions of the highway (owned by the state of Vermont). The western section, located along Kenyon Rd, is a sand and gravel pit that is partly on the Conant Farm property and partly on the Eden Sand and Gravel property. These sections of the I/C district would only be impacted if there was a residential lot in existence there at the time of adoption of these amendments (which there is not at this time).

2) The Planned Unit Development of our current RZR (5.12) allows for development projects that allow for variations in the zoning standards of the underlying district in order to "promote the most appropriate use of land, to facilitate the adequate and economic provision of roads and utilities and to preserve the natural and scenic qualities of the open lands of the Town of Richmond." (5.12 – purpose). PUD's may have multiple buildings and uses, or multiple ownership of a single building, and may involve a single or multiple lots (5.12[a]). PUD's are authorized in state statute under 24 VSA 4417.

In our **current** ordinance, PUD's that contain commercial uses and/or dwelling units are allowed in the I/C district. PUD's that contain **only** dwelling units are called Residential PUD's, and these are also listed as being allowed in the I/C (in section 5.12). However, 5.12[c] has been interpreted to require that the uses allowed in a PUD are only the uses that are allowed in the underlying district, and "dwelling units" are **not** currently listed as being allowed uses in the I/C district (3.7.1 and 3.7.2). PUD's are an allowed use (3.7.2) but it is unclear if this section would allow for **Residential** PUD's. In addition, 3.7.2 restricts PUD's in this district to those that involve a single lot only, which does not seem support the general provisions of the PUD section (5.12), or meet our current needs. Our proposed amendments help to address these existing inconsistencies between sections of our zoning document.

The proposed amendments

The possibilities inherent in our current RZR led us to our current proposal: to allow residential development by way of the PUD provision in this district **only** on lots that are **already** residential. The remainder of the lots in the I/C will be able to have commercial or mixed use PUD's if they wish, but not Residential PUD's. As section 5.12 currently appears to allow Residential PUD's in the I/C (see #2 above) this "change" borders on being a clarification. The proposal meets our need to allow more housing while still preserving the commercial potential of the I/C district, and matches the type of provisions already listed for other situations and districts in section 5.12.

Proposed amendments to section 3.7

The amendments to this section are short and easily comprehended, and the Planning Commission has had no negative feedback on these:

a) the use category "dwelling unit(s)" is **added** to the list of permitted uses (3.7.2)
b) the use category "Planned Unit Development" is **expanded** to include those projects both with or without subdivision

Proposed amendments to section 5.12

The remainder of the proposed amendments have to do with the PUD section, which, in its current form, neither allows nor requires the change we wish to effect. In addition, this section has a number of ambiguities and inconsistencies that are in need of correction and may be a bit difficult to explain. These two factors required us to revise and reorganize a significant portion of the language throughout this section, and, while doing this, to revisit the problematic "Master Development Plan" language – which has been the only part of this amendment packet to arouse any interest. More on that later.

The key amendment for our purposes is to be found in 5.12.2[b], which proposes the following language: "**However, in the I/C District, a Residential PUD shall be allowed only on parcels that are occupied and solely occupied by a residence or residences prior to** _____*(date of adoption of these amendments)***."** As the Planning Commission was concerned that just allowing residential use in the <u>entire</u> I/C district would eventually remove any commercial potential, this solution seemed like a good compromise. We will continue to allow "mixed use" PUD's (consisting of various commercial uses +/- residential uses in the entire I/C district, but will require that the commercial use(s) occupy at least 50% of the building floor area, as is already required in the Village Commercial (V/C) and the Commercial (C) districts. There was no negative public feedback to any part of this portion of our proposal.

Most of the other changes to the PUD section can be considered "housekeeping." As you will see in the redline version of the proposed 5.12, some of the existing language has been clarified and some has been rearranged within the section to provide better "flow" and comprehensibility. For instance, we are proposing that a PUD that does not create a subdivision is not called a subdivision, even though the review process may be the same.

"Master Development Plan" amendments in section 5.12

This brings us to the proposed changes to the "Master Development Plan" (MDP) language that is currently found in 5.12 as well as in the Richmond Subdivision Regulations. These changes have been both supported and criticized, so you will need more familiarity with our reasoning on this item. At this time, we are proposing amendments only to the PUD section of the Zoning Regulations, as we came to agree with the criticism that we had inadequately warned changes to the Subdivision Regulations. The Planning Commission is currently working on a separate amendment packet that deals with the MDP in the Subdivision Regulations, and is beginning to grapple with development standards in the districts that would better serve the intent of this requirement.

The requirement for an MDP is found in section 5.12.4[c][viii] of the Zoning Regulations, along with references to it in other parts of 5.12 and the Subdivision Regulations. As we needed to work on section 5.12 for our original purpose, this seemed like a good time to address this issue that has been problematic for developers, DRB / Zoning Administrators, and neighbors to projects for some time. A "Master Development Plan" is currently required for all PUD projects (and subdivisions) in which no development is proposed for some portion of the lot; or for which "phased" development is proposed to occur sometime in the future with projected additional permitting. There are few specifics or standards associated with this MDP – all that is mentioned is that it will "conceptually" show future roads, future building areas, future open areas, and future uses on such remaining land." This lack of standards or what is meant by "conceptually" leaves a broad area of subjectivity for the DRB as to what is acceptable in an MDP and brings into question its ability to say something meaningful about the future. In addition, there are no restrictions on (or standards for) amending the MDP, so the plan may be changed at any point upon additional review. The review process is unpredictable for developers, administrators and project neighbors, and may promote false expectations in all parties as to what will happen in the future.

The intent of an MDP in the Act 250 process is to plan for the off-property impacts of large, phased projects whose scope is fully developed at the time of the original application, and for which numerous, clear development standards exist. For Richmond's projects, the presence of all of these factors is unlikely. Developers might wish to have an approved MDP in order to bind the Town to future permits. Neighbors might wish to have an approved MDP in order to feel that open land will remain open, but as the MDP can be amended, this latter cannot be guaranteed.

The Planning Commission feels that the whole of what can be legitimately assured is whatever is currently approved and permitted, and that all future development on the parcel will require further review and permitting – including public hearings -- when future approvals are sought. At that time, the cumulative effects of the current and previous phases will be considered; the neighbors will be able to weigh in, and the DRB can once again consider whether the new phase meets the natural resource protection (or other) standards. We are currently working on language for the Subdivision Regulations that would allow the DRB to request additional information about future

infrastructure in cases where the Town may be requested to take over such infrastructure, and to provide a more comprehensive set of natural resource protection standards that can be added to the Zoning Regulations which the DRB can use in their review. If a developer wishes to present several phases of a development for approval under a single permit, that could be allowed.

To avoid the claim that we have "weakened" our regulations by removing the MDP, and to satisfy our Town Attorney's concerns (which he has arrived at because of recent litigations), we have added language that we believe actually strengthens our ability to protect open space (the most common source of litigation and appeals relative to MDP's). To do this, we have added the concept of "critical permit conditions" to our Zoning Regulations, and the legal concept that goes by the name of the *Hildebrand / Stowe Club Highlands* test.* This language requires that the DRB identify which of the conditions they have imposed on a PUD are "essential" to the approval and will only be able to be changed (amended) with difficulty, under very specific circumstances. When we add specific natural resource standards to our regulations, we may consider making some or all of these automatically "critical permit conditions."

What is the status of the MDP between the time of its removal from the Zoning Regulations and its removal from the Subdivision Regulations?

In this interim period, the MDP requirement will remain in effect as all PUD's currently have to be processed through the Subdivision Regulations (RSR). The Planning Commission is hoping to complete its deliberations on the RSR within the next few months. What will change immediately upon approval of these amendments is the ability of residents of the I/C district to add additional residential lots, through the PUD procedure.

* Here is a simplified explanation of the *Hildebrand / Stowe Club Highlands* test, taken from the appeal of a denial to amend a permit in Stowe in 2012:

"In order to determine if it is appropriate under the circumstances to allow an amendment of a permit or an approval, the Board shall evaluate any amendment of a final approval and assess the competing policies of flexibility and finality in the permitting process. An amendment is considered a request to modify the project plans, exhibits, and/or representations by the applicant that led to the decision and which have been incorporated into the approval through a specific or general condition.

"In balancing the competing policies of flexibility and finality three kinds of changes (herein referred to as the *Stowe Club test*) justify altering a condition of a permit or approval These are:

A. Changes in factual or regulatory circumstances beyond the control of the permittee; or
B. Changes in the construction or operation of the permittee's project that were not reasonably foreseeable at the time the permit was issued; or
C. Changes in technology.

"Even when the Board finds such a change as described above, there are certain situations where an amendment may not be justified, for instance when the change was reasonably foreseeable at the time of the original permit or approva