



TOWN OF RICHMOND

Planning and Zoning Office

203 Bridge Street, P.O. Box 285

Richmond, Vermont 05477



Development Review Board Meeting Minutes October 30, 2024

DRB 10-30-24 Meeting minutes

THIS MEETING WAS CONDUCTED AS A HYBRID MEETING, BOTH IN-PERSON AND REMOTE.

DRB Members Present: David Sunshine (Chair), Roger Pedersen, Padraic Monks, Matt Parisi

DRB Members Absent: Matt Dyer

Others in attendance: Chelsea Brooks, Trevor Brooks, Jason Pelletier, Bryan Carrier, PE, Jay McCormack, Bryan Comer, Candace Thorton, Edwin Thorton, Tyler Machis (ZAO), Keith Osborne (Planner).

Meeting commenced at 7:02 pm...

Sunshine - Good evening. Welcome to the second meeting of the development review board for the month of October. We have one item on the agenda – NOA APE 2024-01 FOR Chelsea Trevor Brooks.

They're appealing a permit granted to 1330, Jericho Road. They're appealing the decision of the zoning administrator to prove permit 2024, dash, six, seven, for a single-family home. So, the way, first of all, is there anybody on the board who has a conflict in any way with the applicants or any of the parties or the property.

Petersen – No

Parisi – No

Monks - No

Sunshine - okay, I will disclose that I am an abutting landowner to the appellant, but what is being discussed is the roadway and the job site, and I'm about a half a mile from there, the only thing I abut is the upper portion of the land of the owner, and I don't feel that that disqualifies me in any way. I have had no, no other contact as a landowner with them. As far as that goes, is there anybody that objects to that? Okay, let me first swear in everybody who's going to give testimony. Please raise your right hand. Do you swear or from to tell the truth, the whole truth and nothing but truth? I do. Okay, yes. So the way we're going to do this is, I would like the zoning administrator to describe the application itself. And, what you approved or didn't approve, but don't get into the facts of it, then

we will let the appellants state their case. We'll come back to you and also let the landowner, make any comments he wants to, and then we'll open it to the public. So why don't you so that we know? I think it'll be easier if you tell a little bit about the parcel and everything else, and then we'll let the appellants

Machia - the permit under question that's being appealed today permit 2024-67 which is a permit for a single family home. Home is roughly 900 square feet, give or take, it is located on a parcel 1330 Jericho Road. There is a second permit that's on that property is for the driveway, the perm that was pulled under permit. 2024-02 which is just for the driveway, the second permit. 2024-67 is for the single family home, which is the property that's under appeal. Permit 2024-02 was never appealed so and it was outside of any appeal period. 2024-67 was appealed inside of the 15 day appeal period. Do you want any more? Would you like any more

Sunshine - detail? No, let's go from there. So you folks are the appellants, so why don't you tell us what you're appealing and why?

C. Brooks - Sure, so focusing on the permit 2024-67 the appeal was of the zoning administrator's decision to issue that permit and the zoning regulations that we are kind of referencing and citing as to the reason why the zoning administrator should not have issued that permit are, I think most all of them were sent ahead of time. This document that I provided sort of just concludes them, but sort of primarily, the previous permit does not have. And I know this, this appeal is of permit. 2024-67 I'm not confused, 2024-02 has not been closed-out and does not have a certificate of occupancy. And per Richmond zoning, it states that a certificate of occupancy is required prior to use or occupancy of land when changes have been made and there's been additions and things like that. So that was part of this appeal that the permit 2024- 02 has not been closed out. And so then just continuing with this one seems inappropriate. The current permit, 2024-67 also includes land which we believe to be on steep slopes, and some areas potentially even exceeding developable slope, excessive percentages of 35% I We cite several different places for that, the USDA soil type of the area based on the soil evaluation that was provided shows soil type of one section, Um, low, it's, it's, it's specific, because the soil types are very specific. So m, capital M, lowercase E, large, large E, uppercase E, and that soil type per the USDA um hydraulic soil Reference Guide is slopes of 20 to 60% and so that's one place that we cite that that information, as well as the ANR Atlas map, the map that hangs in the zoning administrator's office also shows that all the area in this section of the parcel that's being proposed for The Home site is either 20% or 30 exceeding 35% grade. There's additionally a slope map in our town plan that shows the same thing. So, it's sourced from several different places, so sort of circling back to the non developable portions of the lot. So 35% slope is, according to Richmond zoning, a non-developable portion of a piece of land. Additional things that apply to this one are wetlands and streams.

So there are portions of the parcel that potentially contain wetlands. The reason that we brought that up, and the reason we feel it's relevant, is because we know that the state ecologist was on site and confirmed there to be some wetlands. We don't have knowledge of whether or not a wetland delineation was done. So we thought that should be brought to attention. The last thing in undevelopable portions of land is utility easements and rights of way. And in the zoning application for this permit, 2024, 67 the 2022 version of the zoning application was included. And in that zoning application, it requests a sketch or a plan. So a plan was submitted, and what's supposed to be included in that plan, purportedly for the purpose of determining whether there's undevelopable or

conflicts, is rights of way, setbacks, surface waters and wetlands. Um, existing structures and proposed structures, driveways, parking areas, existing and proposed utilities, existing and proposed water and wastewater systems. So the proposed utilities for the home site itself are not on the plan. Um, our utilities, which are further down the driveway that's already been constructed, they're not on the plan, and our um well, and that easement is nowhere, sort of listed in reference to any of this. Let's see. I don't know if I should just continue. I feel like I'm talking too much.

STOP AND VET WHOSE TALKING

Sunshine - Let me ask you a question. Are you saying that the steep slopes and wetlands, which you brought out, are on the building sites?

C. Brooks - The steep slopes? 100% yes, the building site is on steep slopes, I believe.

Sunshine - So, yes, do you know what the percentage of? So if you reference the ANR map, it's, it's exceeding 20 and 20%

09:53

C. Brooks - so I have here, just here, so I'm not a I'm not an engineer. Sorry. So I'm not an engineer, so I haven't, obviously, gone to the property and taken measurements, but I have

10:08

Sunshine - excuse me for these pictures that were in your packet, your appeal packet are, are these?

10:13

C. Brooks - These are not photos, because I didn't know how to like submit an exorbitant amount of photos. This is just a photo of the site as mapped out based on information that I know to be true, on elevations of where the home site is. Because if you go to the ANR map and you mark, you can mark elevation lines on the ANR map, and that's what I've that's what I've done to determine this. It's not just a shot in the dark, it's not just a guess. I've gone to the NR map, and I've done the LiDAR, the elevation overlay, and if you choose the elevations to which the home site is supposedly supposed to be located based on my knowledge of the parcel, because we have lived in our home for like, 13 years, and we have recreated on the parcel for most of that time, so we're familiar with the area and the land and the things that are on it. I don't this is not stuff that I submitted, but and so I don't know if you want me to show you or or mention it, but these, this is how I came to this determination, essentially, is that on the ANR slope map, you can click points and say, like, find, and when you, when I click points on that map that, according to the plans, appear to be the home site, the well and then the septic, they are the lowest number I could come up with as a slope was 20.

The other areas are 24 at the home site. But if you extend out to where the septic is going to be, it grows even higher in elevations.

So let's see. So that's where I come to that conclusion. The Wetland piece that you asked about, Mr. Sunshine, that is, I don't know 100% for certain. So the reason I bring up wetlands is because I know that there are wetlands on the parcel. There's wetlands around my Well, my spring that's on the parcel, or the spring that I have water rights to.

Sunshine - Um, so when you saying parcel, are you referring to the building site, the parcel, or the 92 acres, the whole parcel, okay

C. Brooks - yes.

Parisi - And to, and to just be clear, the building site itself, where the building is, that has been determined to be over 35% the actual spot where the building is being built,

C. Brooks – where the house? Well, you'll get we'll get to, okay, yes, the house itself. No, I don't believe that to get over 35% I don't even believe any of the actual this little, this little nook that they've tucked in the house and the well and septic, I don't believe that to be over 35% kind, part of where the part of where the driveway runs that they've already installed that did cut through areas that appear to exceed, based on all this resources available to the general public, the driveway that run around to coming up to the parcel this, this winding, winding thing, the parcel, the home site, if that's, I don't know, I don't know what boundaries we're going to consider the home site, because, according to the zoning administrator, like when I mentioned utilities, he said, Well, when you apply for a house site permit, installing utilities to serve that house site are just presumed right. Because, like, how are you going to have a home site and no utilities, unless, I guess that's your style of living. And so those weren't on the plans. So similarly, to have a home site, like, he wouldn't apply for this house permit and not have a way to get to it, right? So, like, that's where I don't under. Like, I'm I am trying to keep this, however, very specific to the home site, because as as the zoning administrator has pointed out, the driveway permit was not appealed because we did not we I had no idea had been applied for, but that's irrelevant to to this. Um, okay, so, um, this plan that you are currently looking at was submitted with the home site, with the building permit for the home site. And this plan is, if you I don't know what's on it, if you can zoom out. So this is an epsc plan generated by O'Leary and Burke associates. And so this plan was again submitted with the home site, which again, kind of brings into the whole picture, the driveway, the winding driveway, because, as I know, that is not this permit. This piece of information was submitted with the permit, and therefore it's part of the permit. Now, just because it was submitted with it, it's part of the information that he's affirming to be true. It's part of the. Information you know that's submitted down at the bottom of the parcel. That is, as you can see, my name on it. This is mine and my husband's piece of land. The limits of disturbance on this come into the five foot no build zone, they exceed it. And so the reason that five foot no build zone is being brought up here while the home site itself obviously does not exceed the five foot build no build zone, it's back in the woods. The middle of this epsc plan with this permit can very easily be presumed to be a sort of modification or sort of cancel out the rules of that other one. I don't we bring this up because I don't want any sort of gray areas being being hashed out. And if this permit 2024-67 stays in play. Then Then the answer for us to be sorry the no build zone was violated because it's shown on the CPSC plan and the DRB thought that was okay, so that's why we bring up the no build zone.

Sunshine - What? When you say no build zone, what are you referring to?

C. Brooks – So in the high density residential districts, there is a five foot no build zone this parcel, and exception for that,

T. Brooks - not for driveways, not for driveways, only for fences. That's how it appears.

Sunshine - We'll get to you. Yeah, that's the way you're interpreting specifically lists driveways.
Sunshine - Sorry, please answer my question. That's the way you're interpreting it, that it's just for fences, for driveways, correct?

C. Brooks - Okay, and I'll speak to that. There is an exception to the five foot no build zone for driveways, and it is only in the town's right of way. So in the town's right of way, that five foot no build zone, they're like, whatever it's all right away, I guess, right, you can make that decision. But it is not. There's no, as far as I can tell. There's no waiver beyond that. And so there the items that more specifically, again, it's hard to delineate, because this plan was submitted with the permit application, but more specifically to the home site permit application, there's just some misrepresentations that are included with the application. For example, if I believe it to be true, how it's been presented by the zoning administrator, for example, the permit navigator that was submitted with the home site application is permit navigator ending in number 5903, that permit navigator was created all the way back in January, and it was actually created on the premise of it being land clearing activity, not a home site, not the installation of a home. I actually went on to the state permit navigator myself and completed the permit navigator as if it was me doing this work, putting in a home, and it is far different than what was proposed to the town the yeah, there's also a page missing from the one in the town. And again, I don't know if that was missing on submittal or if it was just missing in the stuff posted to the town website,

Machia - I can real quick to that it was when I went to copy it in it just didn't copy. Missed all the pages. So is that available? Yes, I actually brought a hard copy of it. I have it as well.

18:45

C. Brooks - So additional things that I so So, sir, again, this was primarily for my own organization as well. This epsc plan being submitted with this home site, again, it implies that this is how it's how it's going to be that this is how it's going to be done. And the fact that this driveway was already permitted implies that, like they did that, right, too, but the home site, none of it's sort of been done per any of these plans the applicants. So Tyler, I believe, reached out to the applicants engineering firm regarding slopes. The applicants engineering firm came back with an explanation of the house. The house itself is on a piece that is under 20% that information was gleaned from elevation readings taken by Justin Willis and. And not their own. Also, those aren't publicly available elevation readings, and so that information can only be presumed to be true, because this engineer has said it's true. Which one would I would like to think that the engineer is responding and acting with integrity? However, the fact that they've more than once drafted plans that violate town zone zoning knowingly makes me think, no, this engineer is not being truthful. They're giving the town zoning administrator the answer that will allow their client to proceed with their project.

T. Brooks - So the original plan that was approved for the town of the driver was also 24 feet wide the whole length. But this driveway plan that's attached to the house appears to be 12 and a half feet wide, which is not what in the driveway is not constructed at either of those widths. At current it's wider in some areas. A lot of the 24 feet are wider, and then it narrows at some point, but it doesn't match this plan or the original plan, which is why we would like that part of it to be resolved and figure out what's the driveway actually going to be. Which plan is it supposed to match? Because this one's different than the other one significantly, and this one does have limited disturbance added to it, which the original plan did not have. And so if we accept this as like being part of the overall plan for this house and driveway that's attached to it, then does that add in that now that no build zone can be violated because this is now added new limited disturbance. What's the width of the driveway

supposed to be this one or the original one? And like I said, we do recognize the fact that this is a home permit, but this was submitted with it. I'm not the one bringing up this driveway. The applicant submitted this information with the driveway. If the only reason would be because this is how he plans to build it, right? No and no. Other explanation makes sense, because an an epsc plan wasn't required to be submitted with home site.

22:02

Parisi - This is the as built driveway currently?

T. Brooks - No,

Machia - I'm not sure if the chair wants me to I'm trying to be the process that he's Yeah, let's wait.

C. Brooks - while he's while he's signing that additional things that are that are referenced to the town zoning is performance standards. So in the town zoning regulations, it says no use shall cause, create or result in undue adverse impact on municipal facilities and services. So my concern for the the project as a whole, and now the home site, just adding to the to this mix, is the is a lot of our concern, and where this, this whole thing, where we started researching this came up with the impact the town and the state and the environment. We raised our concerns with Tyler. I actually specifically said to him, this is going to ruin our town infrastructure, like, look at all this flooding that's come in the past, and it's just going to happen again. And he said, that's for us to deal with. That's for us to worry about. But then the home site was approved without anything else, sort of being held sort of accountable, or to certain standards. The performance standards that I try to suggest are being broken, or things that are against undue adverse impact on the town is that storm water is running into the town ditch and clogging it up. I looked, I I've watched the most recent Select Board meetings where we're approving hundreds of 1000s of dollars in gravel to fix these things. It's time. It's money that town ditch was not clogged with silt before this project began. And the more disturbance that happens this home site, specifically, the more disturbed soil there is, the more rain run water runoff there is, the more it's going to adversely affect the town infrastructure and my own land, if we are being completely honest. So that is, yeah, another reference to the town zoning. And just to be clear, this concern and the storm water runoff that we have observed was not only from the July flooding. It started before that, long before that, and it will just continue, because it's going unchecked at the town and the state level. Unfortunately, a piece of zoning that I'm unclear on. Um, is how our town zoning sort of works with state permitting. Right on the zoning application, it says local, state and federal regulations may apply to projects and additional local state and federal permits may be required. It is the applicant's responsibility to acquire additional local state and federal permits. It goes on to state. If the regulations are not as restrictive as Richmond zoning regulations, then ours take precedence, and the more restrictive of the rules will apply. So this is on our permit application. There's also references to state permitting in our zoning regulations, where it says, When applicable, a recipient has to receive state permits. There's references to this in federal statutes that say our zoning administrator should be sending a letter when they send a permit approval that tells the applicant you have to begin construction. I don't believe that that's something that our zoning administrator sends in this letter based on the letter that I read, and unfortunately, this is just leading to these things like this performance standard. It's leading to adverse effects on the town. It's leading to adverse effects on the joining landowners. And so I'm unclear as to if that's truly a violation of our zoning regulations, because it did not appear to say anywhere explicitly, you have to have these permits in hand before just proceeding. But one would assume, if it says in the application you're responsible for getting state permits, that you

would follow the rules of those state permits, right, that you would get those state permits before you begin construction. And so that, again, I'm not certain if it's a zoning violation directly, certainly a sort of ethical dilemma.

T. Brooks - Um, there are also no current state permits issued. There's still a pending stormwater construction permit that has not been issued, that was applied for. And while that's not town but that's permit that's required

C. Brooks - the CC RPC and our town plan and everything that has to do with zoning and planning, not just at our town level, but at the state level. Is focusing on the fact that, like, we have to work together to deal with some of these problems. We're seeing it at the Select Board level with storm water. I'm not going to get into it. It's not sort of the same thing here. But yeah. So finally, our zoning regulations say that the administrative officer, the zoning administrator, shall administer these zoning regulations. Literally, they don't have the power to permit land development which is not in conformance with these zoning regulations. So that, in and of itself, is why we've submitted this appeal. We don't believe that this application, as it's submitted, this project, as it's done and being done, are in conformance with our zoning regulations. Therefore, we don't think Tyler has the authority to issue this permit, because he doesn't have the authority to issue a variance for the no build zone. He doesn't have the authority to say, Sure you can, you can build on slopes 20% and greater like so that's where this sort of circled around too, I guess. Um, so that's, I think, the appeal, and our reasons for appeal and our references to the zoning regulations, that's the sort of conclusion and summary of them. I think that's what you want from me right now. I don't want I don't think you want me to proceed into conclusions or relief for things that we'd like to seem done, but I think now is where your appeal is.

Sunshine - your appeal. I mean, we either, we either grant the appeal or deny the appeal. Yes, we have no further power.

C. Brooks - So, I mean, the DRB does have the power to issue conditions and.

Sunshine - And only on, only if, on an application in front of us. In front of us now is an appeal. You're appealing a decision of the zoning administrator, so our, what we can do is decide whether you are correct or not correct. Okay, thank you for that clarification, but I appreciate your uh, introduction and we'll go forward, but you will have a chance to rebut anything that you wish. Okay. Thank you. Tyler?

Machia - yep, so there's a couple things here, and unfortunately, we do have to decouple right, the work that was permitted with the driveway and the work that was permitted with the home. They're two separate permits, again, as I first laid out, one of them is was 2024, dash, oh, two. None of it was appealed. So anything having to do with the driveway is not really germane to the appeal at hand, because it's an entirely separate permit, and you can't go after it after the fact to do it. And if you read Keith, if you could pull up the Sony permit I issued. And this might also get to some of, actually, Chelsea's concerns. If it's the first no second one down, yep. And that right there, the the appeal letter. I note there clearly so to get to Chelsea's question as to whether or not I'm approving an alternate driveway plan with this home permit, if you read the conditions, this is prior or to prior to to or in conjunction with obtaining a certificate of occupancy for this permit, you must obtain a certificate of occupancy for permit, 2024 dash oh two. So permit, 2024-02 is for the driveway. So if, when I go to approve the CO for 2024-02, if what's there doesn't match the plans that were

submitted for 2024-02 that would be a violation of the zoning. Then the applicant at that point would have to apply for another zoning permit to reflect the as built condition of the driveway. So if it deviates from permit 2024-02 you're not getting a CO for 2024-67 which is why the focus of my review wasn't on the driveway because if the draw a was already permitted B,

Sunshine - so you haven't granted a CO, for any, any of them.

Machia - And they're two separate permits. They have their own separate timelines, their own separate CEOs, right? Which is not uncommon. I have had people pull permits quite frequently to do site work, which include driveways, utilities and those sorts of things. If, let's say, if an applicant is unsure of what they want, they know they want to build. They don't know what they want to build yet, but they want to do something, people will pull permits. Do site work frequently. That happens all the time, and generally, what I will do is a condition of getting a CEO for the let's say, if they ultimately go to build a home, is that I would look back and see if they had any site work permits, and I would tie that in as a condition of approval for for for the single family home. So if the issue is what is shown on here, and I'm not entirely sure that is the case, that it deviates from what was originally shown on the driveway, if that is, in fact, an issue, then it'll be dressed then. And Keith, if you could pull up 2024-02, the permit letter for 2024-02 also is going, that's that No, but it's relevant. So the if you pull that up, it's the Yeah, and the my appeal letter should be in there. Yep. So I believe it's going to be, you're going to have to resubmit an as built letter with that stating that it was built to the plans as submitted. So if that doesn't have, if that letter doesn't say what was built, it what's there matches what was pulled the permit for. He's not getting a co to close that out, and we'll have to pull an as built. Let's deal with that.

Sunshine - Let's go back to 2024-67 because that's really what we're looking at here.

Machia - I have some responses. I kind of tried to break out Chelsea's requests into kind of, that's what I'd like, two separate ones. So number one, so David, do you want to do questions as we go?

Monks - the driveway. Does the CO need to be issued before they use the driveway?

Machis - Um, I would say no, because typically with that is he's not using it yet because the home isn't constructed. So in order to use it right, the it's being approved for a particular use, which is occupancy for a single family home. There is no single family home there yet. So essentially, I treating it more or less like a construction access as well. In order to be able to build the home, you have to be able to access the property. So it's not. Uncommon to have a secondary access, or a construction access while you are working, while you're working on a while you're working on something, really what I would care about as at the end, right? If I go up and all of a sudden, there's a whole other if they say, I approve you for one driveway, if I show up and there's a driveway and there's some other, like access road that hasn't been closed out that you put there to build the other driveway. I would say you couldn't get the CEO on that until it was ultimately finished. They care more about what the finished product is at the end than rather than the method of construction, because, again, the site work is typically assumed in the permit. If you're getting a permit for a single family home, you have to actually go be able to build said single family home. You don't have to pull a separate permit for cutting down the trees or pulling the stumps or doing any of that other stuff. It's baked into the permit. So does that answer your question?

Monks - Sort of so if someone builds it, gets a permit for a driveway. We without a house would they never need a co

Machia - depends on what they've pulled it for. I mean, I would typically require a CO for the driveway, something to close out that particular permit. In most cases, if it was small, maybe not like, if it was like, let's say if this lot directly abutted the road right, and we're talking a driveway that's 20 or 40 feet, and there's not really slopes. I may not require CO for that, something of this length, I definitely would require CO for just given the scale of it.

Monks - Thank you.

Pedersen - I have a question. Were...Do I have to ask them Tyler? Or can I ask them what they happen? Let me work on Tyler for a while. So here's the question, Tyler, we can come back to the Welcome back to them. That's fine. The they have asked for. One of her their requests is that, is that the zoning, the permit for the home be not granted until the permit for the driveway has been resolved, and you've said that that's not going to happen. You answered that. Is that correct?

Machia - Yeah, what I've essentially said is that I've kind of done it, but I've done it on

Pedersen - Well, the question is, did you do it or not? Yes or No,

37:20

I have not issued a CO for the driveway,

Pedersen - and you will not issue a CO for the house until you've issued a CO for the driveway. Is that correct?

Machia - That is correct.

Pedersen - Okay, stop right there, right? And then they've also asked for some other stuff, a stormwater construction permit, a stormwater operational discharge permit, and any wetland delineation permits that may be required for the state. Is that normal?

Machia - I have no jurisdiction over that.

Pedersen - So you don't control that. And so whether that's done or not done has nothing to do with your issuance of a CO for the driveway.

Machia - I have zero control.

Pedersen - Let me just go on one further. We also requested the extreme slope was created the property line, violating the note, the other things that they've asked for in their in their request, the way I read it, you don't really have any control over this, because you can only deal with the the permit application for the driveway that is in front of you. Is that correct?

Machia - That is correct, right?

Pedersen - So the way I read this, and I may be wrong about this, but the way I read this, in the items that are listed here as the relief that they want us to grant, you have agreed and stated that there will be no CO for the house unless, until there's a CO for the driveway. And the other things that they've asked for are not either in our control or your control. Is that correct?

Machia - That is my understanding. What

Pedersen - are we doing here?

Sunshine - We didn't we're hearing an appeal.

Pedersen - Yes,, but I'm saying, What? What? What request can you make that are within our power

Sunshine - we can decide on. And okay, when we deliberate over Sure. I don't think that's fair to the applicant.

Machia - So I'll take it from the top. I'll try and be brief. So I just kind of broke these out in a broader, kind of thematic. I know the baseball games on today, I'm so concerned about that. I'm just the applicant. So noted that as not you know, the concern was like, oh, 20% slope. So it's important to remember, there you can build on 20% slopes, right? You just need to have an ens plan so, but if you go and look at the email from the engineer, and I do have to take experts at their word when they testify or they submit evidence on my behalf or on an applicant's behalf. This is a they're not lying to me. That's a license issue.

Sunshine - This is a licensed engineer.

Machia - And they. Percent. So Brian curry, or PE from a Larry Burke and Associates, which is an engineering firm, indicated that the home site, which is what I would typically look at, is not on slopes that are greater than 20% now I understand that the appellants may not agree with that determination, but this is what was submitted. It was submitted by an engineer, I have to take them, more or less at at their word. And as far as, like, the ANR permit, navigator and stuff, well, I do often use that, and I will sometimes use that for site plans, for like, smaller projects like ADUs, or things that I don't really need, full scale, full blown planes for none of that stuff is to scale, and oftentimes is inaccurate in terms of where property boundaries are and things like that. And even like the slope thing, that is a tool that's not done to scale. And if you were to actually have to, and if you call A and R, they would tell you that if you would have to actually go hire a private engineer to come out and actually make a determinant. This is a to give you a layman, a rough idea of, are there problems? And then you take that and do the actual work that hires somebody to really get into the nuts and bolts, because that would always take precedent over what's on the what's on the website. So again, so taking over. So there's that issue going on. To number two, it's like when the driveway, the discrepancy between, you know what they feel, the driveway plans, as they appear on the zoning permit, versus the driveway plans as for the plans to the driveway again, aren't really relevant to what we're dealing with, because we're only looking at 2024-67 and I also did, in a roundabout way, address their principal concern, which is the driver, the discrepancy, potential discrepancy, between the two, by noting that 2024-02 is the plan for the driveway. And if that's what, if I go to look at 2024-02, if that's not what's there, he's not getting a CO for that. Therefore won't get the CO for 2024-67

Sunshine - How do you interpret 3.2 point four, sub e as far as the exception for the no build zone?

Machia - So I wouldn't the idea that it only applies to the town's right of way doesn't make much sense.

Sunshine - that says adjacent to the right of way? It doesn't say in the right away. Yeah. So

Machia - basically, if that is the only way to access the lot, and if you allow driveways, as it clearly does here, except we're adjacent to the public, private right of way, providing access to the lot, logically, you may have to go further than the town's right of way to keep access to the lot. So by allowing the driveway there, you are allowing associated work with that driveway. Now it doesn't give you right to work on somebody else's property. But that also, I wouldn't necessarily also get involved in that, because that's more of a civil matter, right between if, well,

Sunshine - I guess my question is, this subsection is a no build zone of five feet of any lot line. Do you interpret the exception to accept this portion of the driveway from a no build zone?

Machia – Yes, I do. Now it wasn't initially the case, and I kind of gone back and forth with that. And that's kind of the nature of zoning. Is that sometimes you read something one way, and I did clearly, and I communicated that to Chelsea and other people that I thought I'd initially made a mistake, but going back and rereading it, and I also, you know, ran it over with a few other people just to see, like, if I was missing something, it says by Logically, if you allow a driveway to access the lot, you would have to allow the work to construct the driveway, which would include grading or other things. Otherwise you couldn't put the driveway in. So it'd be like saying you can put the driveway, but you can't do any of the work to put the driveway. And doesn't make much sense. And to be clear, I don't think this is a very well, particularly well written section of the regs, but you know, we're it does lend itself to, I think, justifiable confusion.

Sunshine - So going back to my original question, do you consider this portion of the driveway to require a no build to incorporate or not incorporate a no build?

Machia - So I would consider, I would say, it's in compliance.

Monks - Where is the where it encroaches within five feet? Where is that relative to the town highway?

Machia - Um, if you Keith, if you could pull that back up, yeah, just pulling up. The plan for the driveway to be clear, the driveway itself is outside of the five foot No, build.

Machia - No, that's the epsc. It's yeah, but if you zone in,

Monks - you can still see it still shows the driveway, yeah, but this is different, because the driveway is different size here.

C. Brooks - Yeah, this is not what he's talking about, about what he jerky. Go

Parisi - this particular just to be clear here, this is the driveway permit you This is the site plan of the driveway permit that you approved. Okay, right?

Machia - So the driveway itself is not inside of the five foot no build. What is inside of the five foot no build is the cut on the bank there to get the driveway in. Now, again, if you allow the driveway because that's the only way to access, you would have to allow the work to construct a driveway because it's the only way to access the lot. Otherwise you you're allowing the driveway, but not allowing the driveway, which doesn't seem to make much sense, you'll

Monks - So okay, so it's, it's within five feet, just looking at those grading contours from the cut up to 20.

So I don't know the exact limits of disturbance, but where does it, where does it start exceeding five feet? You know, Todd, to my knowledge, the driveway does not exceed five feet. But I say the limits of disturbance because the it's no build includes grading.

Machia - It would be at the earliest point down there. So, like, right? We're in a butt meets the road.

Monks - Okay? So I, you know, it looks like it's clearly there's grading within five feet here where, yes, and then I take and then it tapers off the further back you go. Do we know how far back? But I don't particularly, do we

Parisi - Do we know this is actually, do we know those grading lines on there right now showing the change in elevation, I should say the topography lines there are those as is or as completed. They

Machia -are going to be as completed.

Parisi - So these dark, just so we're clear here, right?

Machia - These are as it stands now, or as completed. These are going to be as as completed. This is, this was so this, when this was a virgin site that was not like that, as is, I don't right now. But again, that's going to be required to get a co to close that out, okay,

Pedersen - but, but this is what was approved. That is what was approved.

Osborne - This is as designed

Machia - Now again, this permit is valid for up to three years. Um, he does have to get a co within that, and he would have to get a CEO again before he could use this as a driveway to service the home. Did we

Parisi - have emergency is that part of the permitting for you that you deal with our local emergency services? Um,

Machia - to be fair, it's, yeah, you're, you're supposed to get feedback. Typically, I will be honest, it's oftentimes quite difficult. Or,

Parisi - No, I, I'm, I'm talking about the fire chief and or if this is the only way to access that product, is the only and that house is built. In theory, emergency vehicles are going to have to access this property.

Machia - And which is why it said it would have to be, it would have to meet the driveway standards, which is typically 12% slopes, all that other stuff. I approved it, I believe, for a 24 foot width through its entire length. So again, if it, if this doesn't match what's actually there, he's going to have to pull NAS built permit to reflect that, and again, I would probably put a condition on it that he would have to get a CO to close out the driveway prior to him being able to get the CO or that house. That's how I would typically handle that. You want me to keep going on my list, please. David, so the next one, she mentioned kind of some state investigations and stuff like that. Again, I have no jurisdiction over state permits. And to be fair, it is confusing. There is a reference in there saying that you have to get permits. The only one I can require you to get is a wastewater permit, which I do have. And again, I apologize I didn't realize this till after the fact that for whatever reason, this didn't copy into the scan file that I had, there

Sunshine – Was there a wastewater permit? It's right here. What is it? It is number WW, dash four, dash 6187, and why is that? And that will, if you pull that up, that will have contour lines,

Machia - yeah, on the plan submitted by probably Justin Willis, which, again, the only thing I look at or have jurisdiction over, is, you have to give me this. I can't look at any of the information that was submitted with it. I have no jurisdiction over whether or not it whatever they use to get that permit. That's only for this,

Parisi - because I don't have a thought. Me that in front of me, just, just to be clear, the permit, the application set a one bedroom one and a half bath house. No, yes, this is the permit. And that's a that is for one bedroom one of the half bath

Machia - house. Um, again, look at the particulars on it. Because, again, what I just simply knew is you have to give me a copy of the permit I generally, because I don't have jurisdiction over them, I usually will only be in issues if I need to double check and make sure that you have some fixed capacity. So again, state permit needed. So 5.2 point 1d, basically, the only hard requirement for state permits is that wastewater permit, which was submitted. Anything else we'll typically do is I'll use that ANR permit navigator result. Ultimately, though, it is up to the applicant to get any state permits that they need to get. It does not absolve submitting that to me, does not absolve them from having to get state permits. And that's quite clearly spelled out. But again, I don't have any jurisdiction over that. It's my job to inform the applicant that they may need to get state permits, and then if they get them, great. If they don't, that's their problem. But I don't have any jurisdiction over that. Um, are

Parisi - we going to hear from the Yes? Okay, so that

51:19

Machia - takes us into the request that 20, 2467 2024 67 be denied until the CO for 20 2402 is obtained. They are two separate permits, and I kind of already did deal with that issue, because I baked it into approval for the zoning permit. Um, requesting that the grading line be remediated. Basically, the part of the driveway wasn't appealed, so I can't go back and we have no it's not at all germane to what we're looking at today. Requested the applicant build a fence along the property

line. I can't compel, I don't believe we can compel an applicant to do work on somebody else's property. Um, if the applicant, you know, we make the there's an argument as to whether or not we could do it on the applicant's property, but I don't know, as if, and again, the driveway is not subject to the appeal.

Sunshine - I mean, up till now, of this, the the appellants bringing this appeal, otherwise, this particular project would not come before this board.

Machia - That's correct. No, this is just a single family home. There are some things that make this a little weird again, the length of the driveway, okay,

Sunshine - I understand that. My question was, we would not be hearing this

Machia - It's a permitted use. Okay, yeah. As far as the email or some of the email responses, which was the last submittal there plans for 2024-67 don't ask 20 2402 again, I think I've addressed that at this point. Regardless of what was shown on 2026 I'm operating under the impression that the only driveway plans that we're operating on for 2024, dash up to and that's what I'm going to hold the applicant to. Erosion control plans were not followed. Again. That was the applicant, to my knowledge, hasn't built the house yet, so there's no erosion control plans for me to go check. So once you know, once the permits valid, again, I'll be able to go up and check and make sure that erosion control and silt in this in the silt fencing is installed. If it's not, the applicant's going to have to install that the development on slopes greater than 20% again, I think we touched on that. The thing, I A engineer's opinion, is going to take precedence over publicly available data on ANR, because, again, it's not the scale. It's not intended for that use. It's intended to be a tool to guide, as a way to indicate to somebody they may need more stuff. Um, applicant had a CO at least he had an our permit navigator. I think I built that no build zone we touched on. And as far as 412 like impact on state or town facilities, nobody from the town has reached out to me and indicated they had a problem. Neither the road Foreman issues there. So I believe that there was an issue on town infrastructure. The town would get involved. And nobody's to this point. And again, let me see here. And as far as the wetlands and other issues, again, that's outside of the scope of this permit, which is just the house site. So if you pull up the site plan for the home, it's just around the location of the home itself. So that takes me through my comments,

Sunshine - any questions of the board of the Tyler? No. So does the board have any questions of the appellants before we go on to the landowner?

Parisi - Yeah, I think, I think the thing here I would get at is what would ultimately, what do you. Guys see as a resolution? There's a lot of there's a lot of questions here. But ultimately, this started based on my understanding of discrepancies with the initial driveway right and in the initial approach of the driveway, what would be, what would you guys see as a resolution that would you would be okay with, notwithstanding all the other potential state violations, because those aren't our purview.

T. Brooks - So the main reason that we're concerned about, like the no build zone and the excavation right up through the five feet, like right up to the power line on our property, is that Tyler issued a letter to us when we said, hey, they were in the no build zone. And that went back and forth with the engineer, which Tyler has, the emails that might be submitted where they said that those lines were not actual limits of disturbance. They were contour lines. It just shows it's going to

slope there. And then Tyler said that he called the engineer, and then they said that they were limited disturbance. And we asked Tyler to issue a like, give us something that we can appeal about this. And then the letter for the that about this is in here, and it's different than what we discussed with Tyler before, which it says, yes, it's in the no build zone. He won't be able to leave it like this. If he does, he'll have to change it so he won't be able to leave it like this. And that's what the appeal letter said. But it's like, I can't tell if he's going to leave it like this till he says he's done. And so we're like, well, we don't really ultimately care, like, when it gets fixed, as long as it gets fixed, because it's very steep and like, right, I'm sure drops off, like, 16 feet down. Sorry, so, the new plan shows limited disturbance right up along the area that was disturbed, which this plan didn't show and that what Tyler letter to us said that it didn't show disturbance that so can't leave it like this, but like, I don't want it to be, but now Tyler says that this does show disturbance, which is not what the letter we didn't appeal. So that's like, one of our concerns.

C. Brooks – So essentially, the this was appealed because I still, regardless of the driveway, like I said that, I it came up because it's on the epsc plan that was submitted with this 2024, 67 permit. It, I can see somebody circling back and saying, I'm going to, I'm, if you don't, let me leave this as is, I'm going to sue the town. Because I submitted this permit, the zoning administrator accepted it, the DRB approved it. You know, maybe you, you go, you know, you don't disallow this permit, if you approve this permit, and those epsc plans...appeal. My point is that, if you, if you, if you don't uphold the appeal, is that, how to word it? Grant the appeal. Grant the appeal. If you don't grant the appeal, then that permit is approved, as it was. The epsc plans are part of that permit submission. Those epsc plans show five foot, no build zones, and so that's why it circles back to that. I understand that was the original driveway, but it's coming up now because it was a different plan, an epsc plan submitted with the 2024, 67 the reason that I feel that the CEO should be issued now is like, what the heck are we waiting for? The zoning regulations say it has to be Tyler's saying it doesn't like, oh, the five foot no build zones allowed because it's because it's a driveway that's going in. We assume they have to dig for a driveway. Well, yeah, we do. Tyler didn't even know what those lines and the plan met originally. He thought they were ditching when I first went to him, and I said, No, sir, they have dug a 20 foot hole near my property. And he said, Well, I didn't realize that. And so he didn't think this is what was going to happen. So his presumed construction and presumed digging to put in a driveway, he didn't think it was going to be this, if he had, I think he would have referred it to you.

Parisi - So the ultimate resolution, so just to get back to it, the ultimate resolution for you would be for the original plan for the driveway.

59:00

C. Brooks - Should be done before this permit is for the house. Site is, is on if,

Parisi - if he doesn't get a CEO for the driveway, he can't access the house, sell the house, use the house, or whatever.

C. Brooks - Yeah, but you see where, where I'm like, that's

Parisi - just saying, ultimately, though you want is, you want it to look the way it does on this plan. Well, I want

C. Brooks - it was it was approved,

Monks - but this is the way it was approved, right? This is the oh two, but there's no detailed plan on, like, what's actually going to be there. It's just like, it's going to slope here if you get down to the driveway.

59:35

C. Brooks - Is this? This the zoomy, outiest that it gets. I'm sorry, the I'm sorry. I I wonder if you can see it on this. Probably you can't. Okay, so it's really, can you zoom into the O'Leary Burke thing in the corner? Yep. Hey, That makes sense. There you go. It's very hard to read. See the box that's checked. It says preliminary. These plans were never intended to be used to install a driveway. I spoke with this engineer myself, who's an intern. Who's an intern,

Sunshine - let's, let's not talk about, well, I

1:00:24

C. Brooks - mean, I'm being asked, like, what's the ultimate goal? So the goal here is that this driveway be gets done correctly, and that would would include either a certificate of occupancy gets issued for as built as this plan shows, or a new permit needs to be submitted for the driveway so that it's built in that manner, at which point we have the opportunity to appeal the permit if they try to encroach on the five minute build zone, or all these different things like you're saying, yes, the house site is not going to be able to be accessed unless this is certificate of occupancy is approved. But that's just so backwards. If these things were submitted together in this excessively long driveway. It also says that you have to comply with the town's public works back public work specifications, which for driveways. The Public Works specifications are pretty narrow. It just says, like you have to have the entrance to the town roadway be correct. However, in the Public Works specifications, it also says, if you are putting in a new storm sewer or storm I can't remember how it's worded, essentially ditches, right? Like a storm water system that's going to run into the town. It says that that needs all sorts of approval, which includes things that potentially also then go to the DRB and the Select Board. And so the the the application of this driveway, separate from this permit, separate from, as you saw, the wastewater permit, is for a six bedroom home. I don't know who we're fooling here, like more things are planned. And so it's just, I've spoken to multiple engineers. I've hired an engineer and paid my good money.

Sunshine - Let's not discuss third party discussions, because they're hearsay. Okay,

C. Brooks - we included the engineer's letter, and I did include the engineer's letter that the one that I hired, which he did you help with anything to Tyler. So, Tyler hadn't seen it. this is just a way to get things pushed through at the zoning administrative level that maybe wouldn't have, that maybe would have come in front of the DRB, and you would have perhaps had some more questions, right? Like, and not just allowed this in such a manner that, like, oh yeah, we're going to presume that that digging is going to happen for the driveway. We're going to presume all these things Tyler and his sorry, I'll that was my answer to your question. I won't expand on things that Tyler said, because I'm only answering your question right now. So

1:02:51

Sunshine - any other questions, just one project.

Pedersen - So if, if you let me just make sure I understand what you're saying. You said that that you would be satisfied if, if the driveway complied with the driveway that was approved on the on the application. Is that correct?

C. Brooks - Yes, right.

Pedersen - But are you also saying that the application was deceptive because it wasn't correct, and that this drawing, for example, is not so you're saying that the had you known or had the applications been presented correctly, then it shouldn't have been approved

C. Brooks - correct. There were misrepresentations ,thought I was answering them all this other stuff.

Pedersen - I'm just trying to determine what it is that that will make you happy and that we can deal with and and if you're saying that that this application and what was approved was approved incorrectly then you're you're asking us to disapprove the application, but yet you say that if the application of the driveway is built to the specifications that are set out in the application, you would be satisfied. So I'm confused.

C. Brooks - I know that's confusing, and it's because, essentially, you disapproving this application, as Tyler has told to me many times in my in my communication with him, that's not going to happen, because he approved it and we did not appeal it in the appeal period, because I didn't know it had been done. I had

Pedersen – forget the reasons

C. Brooks - so, so, but when I say I'll be satisfied with this driveway built as is. It's because it's not built as as is. It's because I know the facts to be true in that this is not built as is on the original pan nor the currently submitted epsc plan with 2024, 67

Pedersen - If it is built in accordance with this the original application that was approved, will that satisfy you? That's my question.

T. Brooks - we just we open Tyler's letter when he said that he wouldn't issue the no build zone violation until he said that he was done the driveway, and then he wouldn't be able to leave it as is, because it violates the no build zone. And so like that. That was our that's our concern with that part. I know. Sorry, I got off topic, yeah, from the

C. Brooks - clear, because it's about as clear as the plan is. My answer is yes and no, yes. I guess I would be satisfied if it was built as is, because as is, it doesn't violate the five foot no build zone because there are no limits of disturbance on this plan, and Tyler is not allowed to approve anything that doesn't you can't

Sunshine - just tell us your appeal. Don't tell us what Tyler can or can't do.

C. Brooks - Well, my appeal is that he's not. That's my why I'm appealing. Appealing is that his ability to approve something that violates town zoning,

Sunshine - okay, but it's up to the board to decide whether it did or didn't.

Monk - Can we open the wastewater? No, let's

Sunshine - go on to the let's, let's give a chance to the landowner. Do you have anything you want to say

1:06:14

Currier – Bryan Currier, Larry Burke, civil Associates representing Jay McCormick, the landowner. I just go through Ivan John, So I've been jotting down notes as we've been going. So sorry if it's stuff that was mentioned early on, but so as mentioned that USDA soil mapping was used to determine soap slope as well as public information, I would say the USDA soil mapping, if it's stated 20 to 60% widely, widely inaccurate, that's well known. The ANR Atlas is getting you closer, though it's not as good as a ground Topo survey. The ground Topo survey was completed by Justin Willis. We were sent the shots taken from that survey. That's the basis of the screenshot I sent Tyler. That shows that the two closest points with the biggest elevation districts across the house site were measured at 19 and a half percent. All right, so it was very close to 20% so what we did do was we included an erosion control plan with the building permit application. Reason being is we knew there's a high likelihood that we would be in front of you folks. And also, you know, being half a percent is awfully close, right? So we included an erosion control plan, plan that was elective for the town process. We are applying for a State Construction general permit. It has passed through public notice. We hope that it will be issued in short order. But the reason that that plan was submitted was not to change the driveway design. That's not why we're here tonight. It was provided as an erosion control plan in case the board wasn't comfortable with it being half a percent, less than 20% but the only difference, my understanding, is that you're required erosion control plan. So I think that's moved either way. I think we comply the WW permit issued for a six-bedroom home. I'd say it's common practice to over design a septic system. Just because the WW permit is issued for a six-bedroom home does not give Jay the right to build a six-bedroom home. He would have to apply for another building permit, likely for an addition, or that allocation could be used for adu or some other use. It just requires amendments, but it's awfully tough to dig up a mound, Increase, trenches, increase, pump stations get bigger, septic tanks after the fact, after it's been done. So is there future planning in mind? Certainly, for that site, it's being contemplated now. Is it just smart planning? Yes, from our perspective. Wetlands have also been noticed or mentioned. So we have met the wetland district ecologist and Mike Adams, the Army Corps of Engineer representative. They both walked the site Tina Heath. Notice one area that she wanted further looked at. So we hired Evan Fitzgerald from Fitzgerald environmental to delineate the wetland. It was very small and was not considered a jurisdictional wetland. So we have no issues with wetlands on the site from the state of Vermont or the Army Corps of Engineers regarding streams that keeps getting

Sunshine - when you say site, are you, you're referring to the building lot within the

Currier - building lot and the limited disturbance, okay, yeah, they walked the whole property. So it wasn't just this one spot. They walked the entirety of the property, alright? So it was a you. Appellants here. So this was in response to a complaint that was filed. So when a complaint is filed, they have to go out visit the site. It was during driveway construction, so they looked at the property

and its totality, or at least where development was being proposed, so no issues with the wetland folks from the state or federal level streams. As far as erosion control goes, the state stormwater program relies on a and our atlas for mapping of streams. They don't just look at low areas where water happens to flow during high rate events. So there's no map streams on the property that are within the limit of disturbance or within a buffer requirements. The utility easements were discussed. We have been showing a shallow well on the property that the appellants have water rights to. I have not seen a plat with a designated easement on how they are supposed to access to maintain that water right. But that well has been shown on plans submitted.

n

Sunshine - Do you know if that well is being used?

1:11:14

Currier - We don't, at this point, my assumption is that it's not, though the WW permits that were filed do designate a well shield around the shallow well, and we are honoring it as is it? As if it is potable, though my assumption is that it is not. So I'd also like to say that the appellant's mentioned that the that our firm knowingly submitted falsified information. I think that's a very strong statement, and I think it's inappropriate. I just like it on the town record that that is not true. I think that's over the line. The five-foot build zone. It's been a lot of no build zone. There's been a lot of construct conversation about that tonight. And I just like to reiterate, and I believe the board is in agreement that that issue is not part of the appeal that's in front of you today. That's part of a driveway from a separate building permit application that's not or hasn't been appealed. Was warned based on state statute, was not appealed in that months ago. That's really all I had

Sunshine - Any questions of the board of this witness, yes,

Monks - when did construction of the driveway start?

Currier - February, February or March of this year? Okay,

Monks - so to date, there you did not in receipt of construction stormwater permit.

Currier - So the construction general permit, we applied months ago for the driveway. It was hit public notice, but we reapplied to include the house site. So it was implied. It was applied for months ago, but it was re reviewed, re noticed, and has gone through a second, 30 day public notice period, and we hope that it issues soon.

1:13:31

Monks - The answer to that would be, then, no, you do? You did you do not have a permit

Currier - currently? No,

Monks - are there any is any of the construction that's taken place land development been in areas with slopes in excess of 35%

Currier - My understanding is that the driveway is not part of this appeal. I did not run a slope analysis to determine if slopes greater than 30% were impacted as part of the driveway, because we don't know. I'm not certain,

1:14:15

Monks - and it seems pretty clear but has there been construction within five feet of the property boundary.

Currier - Yes,

McCormack - one thing, one thing I'd like to mention about the the five foot no build zone is that before we did any construction, I had Chelsea and Trevor come out to the property line, and I had O'Leary Burke stake out the property line, and I had white spray paint, and we spray painted the line together, and they were very aware that we were going to be cutting from the property line down. And Trevor even said at one point that it would be okay if we shaped the slope from his land onto my land. What. We didn't do we just, we stayed on our side. But at one point that was a verbal thing where he was like, Oh yeah, if you want to shape it down, like it was a very friendly neighborly thing where, like, I kept both of my neighbors, you know, up to date on what was going on. And we looked at, I think I I might have my ex. I was talking to my excavator. He said he might have taken some pictures of us out there spray painting the line.

Monks - So it's like, it wasn't really, I mean, not, not to cut it. It's kind of neither here nor there. What you agreed to is

McCormack - just, yeah, no, I'm just saying that. Like, initially it wasn't even a problem. Like they were like, Oh yeah, that's good.

1:15:41

Sunshine - Okay, I'll open it to the public. You sure have a question?

1:16:17

Thornton - My name is Edmund Thornton. I'm on the map as an abutting land owner, actually just off of this slope here. I'm over here. We can see it on one of the other malls. So the erosion control for that area you're you were only worried about it on your property, not abutting properties. My understanding was it's not, it's supposed to affect abutting properties as well.

Currier - So erosion control would have been silt, fence, topsoil, seed and mulch in that area,

Thornton - which failed,

1:17:09

Currier - if you're talking about in regard to the July storm of this summer, we did experience a few very heavy rainfalls while we were under construction, I think is well known in the town of Richmond.

Thornton - So is that going to be addressed? It should be addressed. Yes.

Sunshine - Any other questions for the public? The applicant, the appellants. Do you have some rebuttal?

C. Brooks - Yes, I'll try to stay organized. I don't have a pen, so I wasn't taking notes. But my closest, most recent, my memory is, is the comments made by Mr. Courier, and he stated that they used elevation shots done by Brian courier, I just not by Justin Willis. I'm sorry. He's Brian career, and I agree those are legitimate and accurate things. That would be the most accurate thing to base this on. However, the permit is not only for that tiny little house. The permit is for also this. This like it includes the whole home.

Sunshine - Which permit are we talking about? This?

C. Brooks - 2024-67 it's for the single family home. But again, as Tyler says, It's presumed with a single family home, you're going to put in a septic, you're going to put in a well, you're going to put in utilities. And so when he responded to Tyler with this shot, it's somewhere in here. It's a little picture of the house, okay, so it's a little picture of the house, and it shows the two elevation lines. It actually shows a line in between them as a diagonal line, which my algebra skills are, that the hypotenuse of a triangle is longer than a straight line between two lines. So that leads me to think is this longer distance because he did a diagonal line at the house site, and not a straight line among those two elevation points. Furthermore, the house site is not the only spot on this. The house site, if you do the math, actually comes out to 19.56% and all of the areas around the home site are more steep than the home site itself. If you look on the LIDAR map, the little yellow dot is the home site. All around it is orange and red. Anything further I do? Okay, well, I'll think about it. You want to go ahead?

T. Brooks - Can I. Guess I knew I wanted to bring up something on this. But when you bring up the waste, like, the picture of the site with the waste bar that shows the contour lines around the house, the that one right there, yeah, yeah. So if you just look at, you know, where the house is, and the leech field and everything that's covered, so where the house is, like, the actual like distance there. Okay, so if that's pretty close to 20% then that that's, you know, how spaced out those lines are everywhere else around it, like, except for the access of the road, like, where the leach field actually is, and then everything going down to it, the lines are closer. So it's if that's 19.5% you then, like everything else, is probably well over 20 the rest of the way which the development would be excavation to build these, put all these facilities in which then would be over 20% just require additional planning.

C. Brooks - And Mr. Courier says that he anticipated this appeal, and the fact that the DRB might be uncomfortable with this home site not being under 20% because again, 19.56 is very close. And as you can see, all of the lines, all the elevation lines around just that tiny spot where the house is are closer, therefore steeper. So his statement, sorry, you're right. His statement is that as a preemptive thing, they submitted the epsc plan, because that's what the town would have required if it was over 20% so you can't argue. Well, okay, maybe you can. My opinion is that you can't argue that this epsc plan is both relevant and irrelevant. Either it is or it isn't, and if it is, that's where I say the the driveway doesn't match what's built. And also those five foot no build zone violations are on that epsc plan that we'll

1:21:50

Sunshine - we're only talking about Dash-67 Yeah,

1:21:55

C. Brooks - the epsc plan was submitted with Dash 67

1:21:59

Sunshine - all our focus is the house site.

Machia - David, if I, if I could. And I think the reason why I accepted the EPS plan, and only thing I accepted the EPS plan was for erosion and sedimentation control. It was not for the driveway. And I think that was quite clear from my permit letter, which said that 2024-02 is the plan for the driveway, right? I was only looking at this for erosion, sedimentation, the

Machia - So, so another, another reason that it's important to me that the CEO is issued, as it says in zoning, that a certificate of occupancy from the administrative officer is required prior to the use or occupancy of any land. It doesn't say the use of the driveway. It doesn't say the use of the driveway to reach the house. It says the use of the land now that the driveway is no longer in construction, it's being used. So I argue that that per zoning, that certificate of occupancy cannot wait until they apply for a certificate of occupancy for 2024 dash, 67 At which point, yeah, okay, 2024-02 also has to be done, and it becomes a mess because none of it is built as is. The other reason that's important to me, and I find it very relevant, is that should Tyler go to do the inspections for the certificate of occupancy on 2024 dash? Oh, two things weren't done as they said they were done. It's just a it's just evidence to Tyler in his future decision making that wait, things weren't done as they say. They're done right? So like he's assuming that people who are in certain positions are telling the truth and they're the highest authority on this thing. But that's partially what got us into this mess.

1:24:07

Sunshine - Bryan, yeah, just real quick, I

Currier - just say that. You know, it's being argued that we shouldn't have voluntarily given Tyler the ability to enforce erosion control as part of this bill. I just don't agree with that. Okay,

Sunshine - any other questions to the board by of any of the parties

Parisi - is there a when, when the the topo was done on site? I'm asking Brian here, you guys did just the building. You did not do the septic tank and or the leech field. Were they not installed yet?

Currier - They're not installed yet, but the topo survey encompassed the entire building area, but

Parisi - including them. So like including the leech field and, yeah, you

Currier - just clarify on that. So the topographic work was done by Justin Willis.

Sunshine - That's correct, is Justin a PE?

Currier - He's not, and I'd like to specify the existing topography was done by Justin Wallace as part of a wastewater treatment land use a licensed site designer. You do not need to be a professional engineer to do it right. There was lots of talk about relying on PE we've had OPR complaints as part of this application already by the applicant. So I'd just like to be clear about the involvement of the existing topography.

T. Brooks - This one also says grading plans by others. So it wasn't which I guess, if this is Justin's plan. I don't know who the others are, but he's referring to, like, right next to the house, it says that,

1:26:10

Sunshine - well, but this is your plan, right?

Currier - No, this plan was done by Justin Willis. This plan was done by Justin. Okay, that's correct. So

as part of this application, Tyler looked for the land to the landowner for a statement that would say that the driveway being constructed here as part of this build would be done in accordance with the sections of which is just a little white section, that's right, just that little piece, a little spur to connect it to bring it down to the house.

Machia - And that email is noted in the, sorry, just the horseshoe right there a little white. See a little white, Keith, if you could use the cursor by the 20 point oak tree. And yeah, that's a driveway. That's the parking area. And yeah. And on the back of the email, the email noted, good morning, Tyler. Tyler, the driveway shown on the attached plan is approximately 15 feet wide, 40 feet long. The driveway will be constructed less than the 12% and will be in accordance with Section 6.2 of the Richmond zoning regulations.

C. Brooks - Um, sorry, I'm, can I say something,

Machia - and to be, to be to be fair, like I said, and you know, I'm not going to sit here and tell anybody that I'm I'm perfect, and I will definitely say that this one, as in hindsight, like I said, there are definitely things that I would do differently, and I have actually implemented some internal changes, because I've kind of result of the process and how it's gone, because I think it's been, it's been problematic, I think for everybody kind of involved. And I feel like, you know, like there's definitely things that I can do to improve it, and I am taking steps to do that. But that being said, these I held the applicant to the same standards that I would hold anybody building a house. And, yeah, there are some things that are unusual about the site, the length of the driveway. Other things which, in my normal processes, hadn't been an issue, they were an issue in this one clearly, hence why we're here tonight, and it has led to, and Keith could probably speak that too, some internal stuff, that things like this aren't going to be happening again. Let's put it that way.

Sunshine - let's, let's, let's stay with this, anything else from anybody on the board? No, okay, I'd entertain a motion to close the hearing and go into deliberative session.

Monk - So moved

Sunshine - second, yes, all in favor, aye. Okay, so we will go into delivery session. We have still 45 days right to make a decision, and I'm sure we'll reach it sooner, and you'll be you'll be notified.

C. Brooks - Can I ask? So this is done, this is closed. Can I ask kind of related, but also different, question is that okay?

Sunshine - Can I ask you? I can answer it. Okay? So

C. Brooks - while a permit is being appealed, it's not active. So during this appeal period, it wasn't an active permit, work has been happening. We let Tyler know. He said, Well, there's a process for filing a violation, and it's like, he sort of laid out this process that wasn't in our town zoning and also isn't in state regs. He said there's like an unofficial warning, then an unofficial letter, then an official certified letter, at which point they have seven days to fix it. But if zoning, if DRB, sides with Jay on the DRB meeting. It's not going to matter anyway, but that's not really true, because you have

Monks - sorry if I can interrupt, I would just move that. I feel like we closed the hearing, and it seems, you know, to germane.

Sunshine - I appreciate that's something I can even answer. Okay, it's it's not. This board doesn't do this. This board simply make. Decisions and applications in front of us. Okay?

Parisi - I think the one bit of advice we could give you is, no, it's not a no. I mean, it's not advice. Well, the town zoning administrator will tell you, yeah, you can still appeal above us if you don't.

Machia - It is complicated. I know. The unofficial warning is it based on advice from the town attorney, which is basically, you The first goal is to get somebody to come into compliance voluntarily. So how I've handled and judgment in the past, that's kind of operating assumption. That's why I'm doing it that okay, alright, so no, you won't find the unofficial one in there, because it's not part of it. So after the unofficial goes, then we go into formal which will follow the process as late knowledge,

Sunshine - but we thank you all and do our best to render a decision.

Gallery - Thank you. Thank you. Thank you.

1:31:25

Tony, um, David, there is the other business that was added to there. I'm not sure if you wanted to handle that.

Sunshine - It's the other business, which was the after the,

Sunshine - well, it's talking about that. That's right.

Machia - You have to read. You have to, you know, I added it to the agenda. It was added to the to the agenda. Well,

Parisi - wait a second, does this have to be part of the public hearing then?

Machia - Well, it would, yes, that part of it's public, yeah. And then we need to have the public for the other business part, yeah, yeah. But, like, you don't necessarily need to have the public here for but you can't pick them out.

Sunshine - just, we just need to deal with just administrator, okay,

1:32:03

Machia - they don't have to be warned. There's no warning involved. It's a it's a question, it's a process question, but it does have to be on the record.

Sunshine - So in front of us is a considerate Thank you. Representative Chelsea request to reconsider and reopen the hearing that we had for Matt. So I'd entertain a motion to reconsider and reopen this hearing.

Machia - There is some process stuff too. I do think, I think part of the ethics policy you guys have to disclose that Matt's a member of the board and kind of like what you did, and feel that you guys can represent it, you know, adjudicate it kind of fairly. Matt can't vote on whether to reopen it, and he has to recuse himself from voting on it. That's part of the issue.

Sunshine - Is there anybody who has okay a conflict with our consideration of, of considering, to reconsider and reopen this hearing?

Parisi - Yes, I do,

Sunshine - and you will have to recuse yourself, and you gotta go sit over there. Everybody else is okay with it. Yes, I'd entertain a motion. I'll put out a motion to reconsider and reopen to hear that, grab that.

Do I have a second?

Monks - Sorry, I was a little confused on the process. I just sort of took it that this was on the agenda. What are we actually answering whether? Okay, so

Sunshine - Where's where's the request? There has been an objection to the way in which Matt's appeal is Matt's application was handled because we failed to consider whether someone had a conflict, and Matt, because it was the first hearing, and Matt wasn't sitting here when I opened the meeting, I considered Matt not on the board at that time, that decision by me has been objected to and to satisfy that we are being asked to reconsider and reopen that hearing

Machia - it's in the ethics policy of the issue,

Monks - and then reopening it. Do we rehear it, or do we just acknowledge the

1:34:33

Machia - Can I speak to the Can I speak to the some of the legalities of it?

Pedersen - So, What? What? What is the answer to to Patrick's question, isn't it that we don't have to do anything, except,

Sunshine - once I reopen it, we can handle it however we feel the board feels is correct,

Pedersen - and the way the board feels is correct is, is that include notices? And yeah, we have to re notice. We'll have to, yeah, set. Set at a minimum of 15 days in advance.

Pedersen - Once we reopen it, then we're opening the whole Yes, the whole process. Yes. Can
1:35:15

Pedersen - So if we decide not to reopen

Machia – correct.

Sunshine - Then someone, whoever is objecting, can appeal beyond us, I imagine, I don't know what their rights are.

Machia - Well, it's be a violation of, you know, the town's, you know, town's ethics policy.

Sunshine - Well, no, it would be, it would be someone's argument that that's true, correct,

Pedersen - true. It would have to be it would have to be adjudicated. That's correct. Okay, thank you.

Sunshine - And I don't even know where, without thinking about it for a while, how that would be adjudicated, I know exactly how it would be adjudicated,

Pedersen - Tyler wait a minute, Okay, can we vote on this? Sure? All right,

all in favor. No comments, no, you can't. Okay,

1:36:14

Pedersen - I'll reluctantly say yes,

Sunshine - and I'll vote yes,

Monks - yes.

Sunshine - Okay, done, done.

Machia - We do have to continue it to a date certain. So the issue is we're inside to rewarn it. Yeah, no, but I have to, we have to set the date for when. I have to set the date for

Sunshine - not a continuation. Though you're, you're going to open a new hearing, yeah, so I don't think we have to continue it. No, I think you need to decide, or the board needs to decide when you want to hear it, which would be, I imagine, the next opportunity you have. I mean, out of fairness to Matt, the next opportunity you have where you could warn it with enough time, it

1:36:53

Machia - would be in December at this point, because we're inside of the 50 days, the day 15, we don't care the day is the day is day 15 for I'm trying to say,

Pedersen - Yeah, Tyler, we don't care.

Machia - Okay, fair enough. I'll set it though.

1:37:09

Pedersen - Have we satisfied all of our requirements?

Machia - believe you have. I mean, the only other housekeeping we don't have to do it now is just make sure we sign. I got copies of the ethics policy if you don't have them, and signature pages if you haven't signed it,

Sunshine - okay, let's go into deliberative session. Can we excuse you people? Please,

1:39:03

Sunshine -We're back on the record and coming out of Deliberative session and the matter in front of us is the appeal. All in favor of denying the appeal, say aye.

Monks – Aye

Pedersen – Aye

Parisi – Aye

Sunshine - Aye

Sunshine – that is all four so that is unanimous... Put forward a motion to adjourn the meeting...

Motion approved...

Respectfully submitted by K. Osborne 11/4/2024