From: Bob Heiser,
To: PC Chair Virginia Clarke, K. Oborne and T. Machia
Date: Sunday August 4 at 10:48AM

Dear Richmond Planning Commission Members:

I appreciate your giving me the opportunity to speak at your meeting on July 10th. I would like to express my continued concern with the proposed changes to the Flood Hazard Overlay District (FHOD) regulations and suggest alternatives below. I am very thankful for the generosity of time and politeness of the Planning and Zoning staff to make sure I understood the issues and for hearing my concerns and my perspective. Thank you for your consideration of these thoughts and suggestions.

First, I understand from public communications from the Planning Commission to the community (Front Porch Forum post, agendas, the current Planning Commission website regarding current projects) that the task at hand for the Planning Commission is to "see what can be done with our zoning regulations to allow us to move the playground structure up onto the "grassy knoll" (where the bandshell is) to keep it from getting damaged repeatedly by flooding events as happened in 2023." I expressed my concern at the July 10th meeting (while we were receiving heavy rainfall that led to yet another historic flooding) that the proposed changes went far beyond that objective, and had the result of enabling new structures and improvements in the floodway, and that I feel it was shocking and disheartening for the Town to push to weaken our floodplain zoning to increase its ability to develop its own parcel in the floodway, using public funds, in ways that would be in direct conflict with the stated goals of our current Floodplain Hazard Overlay District, and that would accelerate floodwaters and increase the potential for loss of property and expenditures both on its property, adjacent properties, and downstream.

I was heartened to see in the latest draft zoning changes, that the proposed addition of a new conditional use for a New Recreational Area with Structures in the floodway was abandoned and that there is now an "x" in that box. I was also heartened to hear that the Three Parks Committee has, as of July 25th, changed course and voted unanimously at its most recent meeting that it will not be recommending a paved path in Volunteers Green. They also stated clearly that they were not proposing a basketball court. Yet, I feel the current proposed changes to zoning still lead to much less clarity, thereby facilitating the potential for the very improvements that a small group of people has been pushing for in Volunteers Green (such as a paved path and basketball courts) and are much more complex than necessary to solely enable the movement of the playground (and other structures) in Volunteers Green, as is the stated objective.

The current proposed changes newly define "On Ground Improvements," separate from structures, as man-made impervious surfaces with examples that include a walkway (so a paved path) and a paved playing court—the very improvements being pushed for in Volunteers Green by a small group of people. This new definition alone appears to move things like a paved path and paved court out of the definition of "Structure," which are clearly restricted in the floodway, to now uncertain treatment or being enabled. An "Outdoor Recreational Area with Structures" is then defined as including On-Ground Improvements. Existing "Outdoor Recreational Area with Structures" are then enabled to be "improved" in the newly added Section 6.8.16 (j). Does this mean that new on-ground improvements are allowed in existing Outdoor Recreational Areas with Structures? I've heard interpretations that it does not, but it is certainly unclear in the proposed language as On-Ground Improvements have no other mention in the proposed FHOD language. Similarly, a new class of "recreational structures" is defined and has no other mention except for exempting them from the need for a No Rise Certification if moved. Does "improving" an existing Outdoor Recreational Area with Structures as newly enabled in

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6.8.16 (j) include adding new Recreational Structures within the existing area? The proposed regulations are silent on that question. These newly created uncertainties and complexity are unnecessary to achieve the stated objective.

I want to step back and suggest that I think the existing regulations as written would enable the movement of structures in Volunteers Green, and if there is disagreement to that position, one or two sentences would make it clearly possible without all this added complexity and resulting decrease in clarity (particularly involving the very structures that have been promoted in Volunteers Green).

In our current FHOD, Structures are defined in a way that would clearly include the playground structure, swing sets, picnic tables, etc. That is, "an assembly of materials for occupancy or use…". A Nonconforming structure is defined as, "a Structure or part of a Structure that does not conform to these Zoning Regulations but was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of these Zoning Regulations…," which clearly includes things like the existing playground structure in Volunteers Green, the existing swing sets, the existing picnic tables, etc. Section 6.8.15 on Nonconforming Structures and Uses specifically says that the DRB, after public notice and hearing, "may approve the repair, *relocation*, [emphasis added] replacement, or enlargement of a Nonconforming Structure within the jurisdiction of the Flood Hazard Overlay District." The intent here is clearly to enable the DRB, after a public hearing, to approve the relocation of a nonconforming structure within the FHOD. There would therefore need to be a very clear conflict elsewhere to override the very clear intent of this section. I understand that it is the opinion of the Planning and Zoning office that the problem is that the use of these nonconforming structures is "An Outdoor Recreation Area with Structures," which is not permitted in the FHOD and therefore a non-conforming use, and that any structure that contains a legally nonconforming use cannot be relocated per sections 4.8.2 and 4.8.3. There are two counterintuitive leaps of logic here necessary to override the clear intent of relocating nonconforming structures in Section 6.8.15, which I will outline below, and even if there is continued disagreement about these jumps in logic, the addition of a simple sentence or two can clearly enable the desired intent of moving structures within Volunteers Green without unnecessarily adding complexity and new uncertainty regarding new hardened surfaces and structures (as the new proposed language does).

If I were to suggest that the "use" of the swing sets in Volunteers Green were outdoor recreation, you might think this a logical statement, as I think most any passerby would if asked the same question. If I were to suggest that the "use" of the swing sets were, "An Outdoor Recreation Area with Structures," that might strike you as a forced and incomprehensible sort of reasoning, but that is the first leap of logic necessary to override the clear intent of being able to move structures in Section 6.8.15. I don't think we need to make that unintuitive interpretation when there is an absolutely defensible and rational interpretation: namely that the current use of the slides, swing sets, monkey bar structures is "outdoor recreation." But if we, for some reason, move past that defensible, logical interpretation that would be in the direction of supporting the clear intent of Section 6.8.15, we would still need to make another leap of logic to override the intent of 6.8.15.

Section 4.8.2 and 4.8.3 deal with structures "containing" nonconforming uses. So, we first need to accept, which is hard to do, that the swing sets "contain" a use of "An Outdoor Recreation Area with Structures," which is a non-conforming use. But if we do, then Section 4.8.2 and Section 4.8.3 are clearly enabling certain things without a permit and by administrative approval, both understandably in very limited situations because they are not heavy on process (like a public notice, a hearing, a DRB

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ruling). As I will outline below, these Sections are not restricting other approvals through other means with greater process. Section 4.8.2 clearly states that the swing sets can undergo normal repair and maintenance *without a permit*, [my emphasis added] provided that the structure is not moved (or altered in other ways listed). This section is clearly giving authority to maintain a structure containing a nonconforming use *without a permit* in very limited ways, which is understandable given no permit is needed. Section 4.8.3 says that the Administrative Officer can approve the replacement or reconstruction of a structure containing a nonconforming use that is damaged or destroyed, as long as it (among other things) is not moved. This section is clearly outlining certain limited circumstances that the rebuilding of a structure containing a nonconforming use can be approved *by administrative approval*, not by needing to go to the DRB or having a public hearing. Because these are authorizing things that can be done without a permit or simply by administrative approval, they are understandably limited by very specific constraints, including that they cannot be moved. So, we now have to make the assumption that these two sections that are clearly authorizing things with limited or no process and no public involvement in very limited instances, also *mean,* though do not actually *say*, that they also restrict the DRB from approvals under a more thorough process, in this case approving the movement of a non-conforming structure after a public hearing as clearly enabled in Section 6.8.15. Again, this is an unnecessary, unintuitive assumption in the direction of overriding section 4.8.15's clear intent.

It is frustrating that the clear intent of 6.8.15 is being interpreted to be overridden by making these two counterintuitive leaps of logic, leading to unnecessary revisions of zoning regulations in ways that add complexity and increased uncertainty regarding new paved infrastructure and structures in the Floodway. Even if we were forced to live by these two unfortunate interpretations without further reconsideration and discussion (which I strongly encourage), we still would have the option to add a simple sentence to make the movement of structures by the DRB after a public hearing possible. I would propose something along the lines of:

6.8.15(e) Nonconforming structures in an Outdoor Recreation Area will be considered to have the use of "outdoor recreation," which is a conforming use in the FHOD.

- or –

Move the sentence, "The general provisions of Section 4.7 and 4.8 shall also apply," from the beginning to the end of Section 6.8.15 and change it to, "The general provisions of Section 4.7 and 4.8 shall also apply, though nothing in Sections 4.8.2 or 4.8.3 shall limit the ability of the DRB to make approvals following public notice and hearing as outlined above in this Section 6.8.15."

I believe that either of these simple additions would serve to clarify that the relocation of existing structures in Volunteers Green can be approved by the DRB after public notice and a hearing, in a way that is consistent with the purposes of the FHOD and the intent of Sections 6.8.15 and 4.8, without adding significant complexity and uncertainty regarding new structures or paved infrastructure or introducing new terms that are not clearly governed elsewhere in the FHOD regulations, as the current proposed changes do. I respectfully request that you remove all the current suggested language changes and replace them with one of these simple solutions to address this challenge.

Thank you for considering these thoughts and suggestions.
Sincerely,
Bob Heiser