

8.21.24 meeting minutes

This meeting was conducted remotely.

Members present: Alison Anand (joined meeting at 8 PM), Ian Bender, Virginia Clarke, Mark Fausel, Chris Granda

Members absent: *none (two vacancies)*

Others present: Keith Osborne (Director of Planning and Zoning), Tom Astle (MMCTV), Gary Bressor, Bob Heiser, Jessie Heiser

1. Welcome

Clarke opened the meeting at 7:03 PM and welcomed members and guests.

2. Review agenda

There were no adjustments to the agenda, so the meeting continued with the posted agenda.

3. Public comments on non-agenda items

There were no comments.

4. Review minutes of 4.7.24 meeting

There were no corrections, additions or comments to the minutes, so they were accepted into the record as written.

5. Discuss draft #7 of proposed amendments to the Flood Hazard Overlay District (FHOD)

Clarke reviewed the task that the Selectboard (SB) had set for the Planning Commission (PC) following the “Volunteers Green Summit” held a few months ago. This was to figure out if (and how) the Richmond Zoning Regulations (RZR) could be changed to allow Tyler Machia, the Zoning Administrator (ZA) to approve moving the playground and the restroom from their existing location in the floodway up onto the grassy knoll, which is not currently allowable. Clarke, Osborne and Machia considered various strategies, and also consulted Kyle Medash, The state’s District of Environmental Conservation Floodplain Manager for our region. Clarke summarized the approach that seemed most workable, which is to consider the park and its structures as a pre-existing, nonconforming use, and then revise the FHOD nonconforming use subsection to allow for relocation of parts or structures of the park. The whole park would be considered a recreational facility containing existing structures. She said additional goals were to avoid altering other sections of the RZR, and to avoid negatively affecting residents who currently live within the FHOD. She also said they wanted to avoid increasing the flood hazard in the floodway in any way or adding maintenance costs to the Town by placing any additional structures into the floodway. She then reviewed the proposed document, including the following:

1) revisions to RZR sections 4.7 and 4.8 to completely separate nonconforming uses or structures that occur in the FHOD from those occurring elsewhere, and have such uses be regulated ONLY by section 6.8 (FHOD section).

2) changes to the definitions in section 6.8, including lumping all accessory structures, including minor ones, under the definition “accessory structures;” and lumping both nonconforming structures and nonconforming uses under a single definition “nonconforming structures or uses.” The latter definition is revised to accept all preexisting nonconforming structures or uses unless evidence to the contrary is presented showing that they were in violation when they were created. She also suggested there might be an easier way to understand the definition of “existing structure.”

3) changes to the “use/activity” table (Figure 6.8-1), including removal of the lines relating to “minor accessory structures,” as we had removed that definition; the suggestion that the DRB rather than the ZA should approve new parking area/driveways in the floodway; and the removal of the line “new recreation areas without structures,” for which there is currently no definition and it’s hard to know what would fall under this category. Bob Heiser questioned whether this latter was eliminating a use that ought to be available to the town in the future and thought that it should be allowed at least in the non-floodway floodplain. Clarke suggested that a definition would have to be created if this were to be left in the table. Osborne thought this might only be relevant to a public recreational space, but not likely to a private recreational area without structures. Fausel felt that removing the line from the table indicated that there would be no regulatory oversight over such an area, which he would be in favor of. Clarke said they would consider this question for the next draft.

Fausel then initiated a discussion on the concept of “minor accessory structures” by bringing up the examples of picnic tables and trash cans, and what the difference in regard to the ordinance might be of a picnic table or trash can fixed to the ground by a post versus one that is free standing. Osborne said perhaps that explains why there was a 500sf size limit for minor accessory structures, which might then need less regulation. Pre-existing ones would, of course, be allowed to continue. Fausel wondered about new such items, would they be allowed? Clarke wondered if they would be increasing the flood hazard if they were in the floodway. Bender asked if bringing in new fill for the baseball fields would be allowed, if “new fill” was not allowed in the use table. Osborne felt this would constitute repair or maintenance of a damaged pre-existing nonconforming use and so would be allowed.

Moving on to the sections that presented the same information as the table but in list form, Clarke said the goal here was to make the list and the table consistent with each other. She said that that the main part of this project was to revise section 6.8.15, which regulates nonconforming structures in the FHOD. Items a), b) and c) (see draft in meeting materials) were taken from 4.7 and 4.8. In item d), which relates to conditional use approval by the DRB, the word “relocation” was added to allow for the movement of the recreational structures from one part of the floodway to another, as long as the degree of flood hazard is not increased, and the nonconformity is not enlarged or expanded. The other subsections of d) were left as they are currently. Heiser brought up the point that not allowing enlargement of a nonconforming structure restricted residents of the FHOD from an

activity they are currently allowed and might want to do, especially if it's in the floodplain but not the floodway. Osborne responded that in the table this is allowed in the floodplain, so perhaps there is a conflict between the table and the wording in the list. Clarke and Osborne agreed that maybe a distinction should be made between the floodway and the floodplain relative to enlarging pre-existing nonconforming structures. This will be considered in the next draft.

Moving on to section 6.8.16, "development standards", Clarke confirmed with Osborne that these standards apply only to new development unless they specifically state that they apply to pre-existing nonconformities. Subsections b) through e) are the same as current. Section 6.8.16(f) does specifically refer to pre-existing, nonconforming, non-residential structures, so there would be a question whether these requirements would apply to the playground or restroom structures if they are being relocated or replaced. The question also arose as to what the "footprint" of a structure such as the playground consists of, as the ZA's definition of "enlargement" is "enlargement of the footprint." In answer to Bressor's question about the restroom, Clarke thought that a handicapped ramp would use up some of the footprint, so the restroom itself might have to be smaller. There was further discussion about whether the "minor accessory structures" language might be used to clarify some of these issues, as Osborne suggested. Bressor suggested that a small restroom be installed up near the fire hydrant on the grassy knoll, representing ½ of the footprint of the current restroom, and then leave the other ½ of the restroom footprint where it is or somewhere else in the floodway. He suggested that language could be inserted allowing for all or just part of a structure to be relocated.

Fausel commented that the focus on relocating the playground was too narrow, and that a lot of time had been wasted not looking at more of a loosening of the FHOD regulations to allow some additional improvements to be made to the park. He expressed frustration with the limited scope and slowness of this work and felt that the ARPA money might be lost. Bressor said he was not clear whether farm fences, or a fence around the playground, would be considered structures and allowed by the ZA. Osborne said most Ag activities were exempt from zoning, and Clarke said that the ZA had said a fence around the playground would be allowed, but that this would have to be double checked before we approve the amendments. Bressor suggested that small posts should be allowed as well as other "de minimis" structures. Anand commented on the concerns she has for flooding in general and thought we should avoid doing things we might have to revisit if or when the floodplain actually gets larger. Heiser explained his interpretation of 6.8.15 (c) would be as a contrast to 6.8.15(a), and that nonconformities that were health hazards were not allowed to continue in that state (unchanged) indefinitely. He also said that, in general, he appreciated the current approach. Clarke said that she and Osborne and Machia would look at all the comments made at this meeting and come back with a new draft for the next meeting.

6. Continued discussion of the density bonus plan

Clarke opened this discussion with a report on her conversation with Alex Weinhagen, the Hinesburg Planner. She said that Hinesburg's trajectory towards inclusionary zoning had been different from Richmond's, and that the optional density bonus idea was perhaps a better entry into world of regulating affordable housing. Weinhagen said that robust language supporting inclusionary zoning was needed in our Town Plan, which was also mentioned by Taylor Newton from CCRPC. Newton said inclusionary zoning is mostly used by larger towns, but that numerous towns in VT use a density bonus scheme. Clarke also suggested that a compromise for our divided PC might be to abandon the idea of just increasing the base density, but also to abandon the idea of mandating inclusionary zoning – just offer increased density through bonuses. In answer to a question from Anand, she explained that inclusionary zoning required that some units in a project be “true affordable” units, and also that Act 47 now requires municipalities to give projects that are developing 20% of their housing units as affordable units the bonus of a 40% increase in density which may include one additional floor over the maximum height for the district. This is a route that Buttermilk could take now to obtain greater density, but, Clarke said, she feels that they will not do this because it requires them to develop 12 affordable units, and they have said they don't want to build true, income-sensitive affordable housing.

Clarke said the density bonus scheme offers a smaller version of that idea, with 3 or 4 additional market-rate units being offered for the creation of one “true affordable” unit. This would be optional, and if elected would take them to a density of 20-21 U/A (up from 15 U/A). She said it was based on the idea from the new statute, but that it is hard to know if the incentive is inviting enough to attract Buttermilk or other developers. There was further discussion about this idea, and then the discussion moved to offering density bonus market-rate units for the other benefits the PC has discussed – senior or adaptable housing and provision of public parking. Bender suggested that Buttermilk might not appreciate the requirement that all density increase comes in the form of density bonuses, and Fausel suggested that the bonuses be made as inviting as possible. Clarke reiterated that Buttermilk might not accept the bonuses and just stick with their 31 units, but that this might make those people who didn't really want any increase in density happy. In that case, they would likely just make their 31 units larger to fill the available space. Granda, Fausel, Anand and Bender found this strategy acceptable as a possible way forward. Clarke said that she would present a draft at the next meeting with the basic concept discussed tonight of removal of the commercial requirement; base density kept as currently, and density bonuses offered for increasing the density to include true affordable housing, senior/adaptable housing, and public parking.

7. Other business and updates

Clarke reported that she would be presenting the VRN's packet of amendments to the SB on Tuesday, Sept 3rd, so that they could prepare for their public hearing process. The PC's next meeting will be on Sept 4th.

8. Adjourn

As there was no further discussion, Granda motioned to adjourn, seconded by Anand and Bender. There was no objection, so Clarke ended the meeting at 9:10 PM.

Minutes submitted by Virginia Clarke