

11.6.24 meeting minutes

This meeting was conducted in-person at the Town Center and via Zoom.

Members present: Alison Anand, Ian Bender, Virginia Clarke, Mark Fausel

Members absent: Chris Granda, (*two vacancies*)

Others present: Keith Osborne (Director of Planning and Zoning), Tom Astle (MMCTV),
Christy Witters, Tess Storrs, Jeanne Agner, Fran Thomas

1. Welcome

Clarke welcomed members and guests and opened the meeting at 7:05 PM.

2. Review agenda

As there were no adjustments to the agenda, the meeting proceeded with the posted agenda.

3. Public comment on non-agenda items

Fausel said he appreciated the Planning Commission (PC) recruitment post in the Front Porch Forum.

4. Review minutes of 10.16.24 meeting

As there were no additions or corrections to the minutes, they were accepted into the record as written.

5. Review revisions to the Village Residential Neighborhoods North and South Zoning Districts (VRNN and VRNS) as requested by the Selectboard (SB) on 10.7.24

Clarke introduced this item by reviewing the changes mandated by Act 181 that state that duplexes and 3-4 multi-family dwellings must be permitted on any lot that a single-family house would be permitted on, if located in a district served by municipal water and sewer, and that no extra land would be required. Since this law went into effect on June 17, 2024, our zoning administrator will have to adhere to this mandate no matter what our regulation states regarding density. Previously, in 2023, Act 47 went into effect, which states that in W&S districts a minimum density of 5 U/A must be allowed with a minimum lot size of 0.2 A. We incorporated that mandate into the VRN's, and now we are required to add the new requirements from Act 181.

Fausel commented that this appears to mean that a 3-4 unit building could be developed on a 0.2A lot, creating an actual residential density of 20 U/A – this is a shock. Guest Christy Witters agreed with Fausel, stating that the language between Acts 47 and 181 is not consistent, and while she appreciates the legislature's intent to increase housing, especially in the more densely developed areas, she believes that these edits are going to cause unintended consequences. If the intent is to allow 20 U/A, she believes that should be clearly stated. She continued that, as a resident of the VRNN, she lives on a smaller lot in one of the few middle-income homes, and with this mandate the neighborhood is being

converted into investment properties rather than owner-occupied residences. She questioned whether this was indeed the intent of the changes between Act 47 and Act 181. Clarke added that the state and the regional planning entities are moving towards getting rid of density altogether, and that these changes might be moving us in that direction. Clarke suggested that we might want to talk to our state rep, Jana Brown, about bringing our concerns to the legislature. Bender asked if there were any other avenues for addressing Witters's concerns. Osborne felt it might need to be re-legislated to be changed, as it is now an enacted law. A general discussion then ensued about the ambiguity of calling a 3-4 dwelling unit building "1 dwelling unit" as we have proposed; how such a building could even fit on a 0.2A lot; how many parking spaces would be required etc. Osborne added that we had received confirmation from the state that the "clarifying correction" was indeed intended. Bender asked if other towns were raising red flags about this issue. Osborne said perhaps from some smaller towns at the regional level, but that there hadn't been much talk about it so far.

Fausel questioned what the statute was actually saying, but Clarke read from the meeting memo the exact language from the statute that stated that "no additional land can be required" for the 3-4 unit building beyond what is required for the single-family dwelling. Fausel felt this was ludicrous. Witters reiterated her concerns about the whole neighborhood being turned over to investors, which, she said, is already happening to some degree. Anand expressed concerns about encouraging development in the face of increasing flooding events, and said she was willing to go to the statehouse to express her concerns about this. Bender wondered who at the statehouse was actually behind this. Clarke thought that ACCD (Agency of Commerce and Community Development) had a hand in it, and there were some champions in the legislature who were very focused on increasing housing. Witters suggested that maybe this mandate was more suitable for larger lots or development areas, but not so much our small village lots, and that she would also like to talk to the legislators. She also suggested we not put it in our ordinance until we have more information.

Osborne responded to a question from Bender about waiting before sending this back to the SB, by saying that since it is in the state law, it would have to be administrated that way whether or not we have it in our ordinance. Clarke felt it was more transparent to let people know that this was now the law, by putting it in our ordinance. She said she brought up specifically about the 20 U/A with the SB, but their instructions were to put it in our ordinance, so that's what she thinks we should do unless or until the law is changed. Fausel felt that even though he didn't agree with this change being required of us we should do as the SB had directed, and also that there were other good things about these new districts that we ought to finalize. Anand reiterated her concerns that Montpelier might not be aware of how vulnerable Richmond is to flooding, and that adding more density just puts more people onto insufficiently permeable soils.

Bender asked Witters how much additional density she'd be ok with. Witters said she thought a duplex on a single-family lot, and 5 U/A with minimum lot size of 0.2A , made

sense to her, just not the 3-4 unit building on the 0.2A. Clarke recommended approving the amendments, but also working on a parallel track to speak with Jana and then the legislature.

A second change made to the amendments involved dropping the age requirement (age 55) and the word “elder” from the “elder care facility” definition, and instead just listing its component parts, namely” assisted living,” “ hospice,” and “nursing home” to avoid illegally practicing age-discrimination. This resulted from a conversation with Bard Hill. These facilities are most often utilized by older people in any case. Clarke then reviewed the changes that would need to be made to Section 6.14, “Residential Density,” to align with Act 181 as has been discussed earlier in the meeting. Fausel then made the motion to send the document back to the SB with the Act 181 changes they directed us to align with, along with the change to remove any age reference to facilities for assisted living, hospice and nursing home. Clarke seconded the motion. Bender and Anand voted affirmatively after being assured that Clarke would shortly contact Jana Brown on this issue and set up a meeting for all interested parties to present our concerns. Clarke and Fausel also voted to approve the motion, so the motion was approved.

6. Review public input from Flood Hazard Overlay District (FHOD) public hearing and proposals for accommodating requests

Clarke opened the discussion with a review of the requests made by the Three Parks Committee at the public hearing: allow for the bandshell to be replaced with a similar structure that is not a bandshell; allow for a fence around the playground; allow for accessibility to structures on the plateau including a relocated restroom, and allow for soccer and other sport goals to be placed in the floodway. She said she and Keith had worked with the definitions and nonconformities sections (6.8.4 and 6.8.15) to address these requests. The bandshell was re-defined as an “open air recreational structure,” which will allow it to be rebuilt as a pavilion if that is the wish of the committee and/or residents. The use of this nonconforming structure remains the same, i.e. an open sheltering recreational structure. A definition was also inserted for ‘playground structures” which will allow the zoning administrator to assign a category to the component parts of the playground, rather than to the whole playground area, and also states that there may be a fence around the entire area.

Definitions were also introduced for “footprint of a structure” to clarify that concept. Sport goals were included in the definition of “incidental structures” that had been introduced previously. Three Parks Committee member Jeanne Agner asked if we had considered how signage might be allowed. Clarke and Osborne thought that small informational signs might be included in the incidental structures definition. Osborne mentioned other types of signs in the “signs” section of the ordinance that we could look at. A final new definition added was “degree of flood hazard” as this term is used in other parts of the FHOD, and is something that should not be increased in the floodway.

In the “Nonconformities” section (6.8.15), which was employed to allow for relocation of existing structures from one part of the floodway to another (an action not previously allowed), the DRB subsection was broken down into floodway, and non-floodway floodplain (6.8.15 [d] and [e]). This was to allow for structures to be enlarged (under DRB discretion) only in the non-floodway portion, and not in the floodway itself as this would increase the degree of flood hazard in the direct path of the flood water. Fausel asserted that increasing the size was potentially allowable, a point which Clarke disputed. Fran Thomas, a member of the Three Parks Committee, said that she thought the revisions to the definitions would be adequate to allow the Parks Committee to do what they wished, including things that they would not be allowed to do under the current regulations. Thomas also supported having the ability to put up or replace a sign, and also to place a portable toilet down near the baseball fields after relocating the restroom building up onto the plateau. Clarke said she thought these items could be incorporated into the “Incidental structures” category. The large “Volunteers Green” stone sign could likely be relocated under the DRB’s portion of the nonconformities section (6.8.15 [e]). Clarke continued with a review of new items in 6.8.15[e], which would allow the DRB to approve “reasonable” features for accessibility, and for a safety fence around the playground, as long as these structures were the minimum needed to achieve the intended purpose. She cited passages from the ADA that made provisions for situations in which a full degree of accessibility could not practicably be achieved. She added that all of these changes still had to be approved by the Agency of Natural Resources (ANR) before being adopted.

Thomas said she thought we were headed in the right direction, and, in response to a question from Bender, said her initial reaction to the changes was that they would allow the Three Parks Committee to achieve its goals. She said they weren’t entirely sure what they wanted to recommend, but that these amendment changes gave them a lot more flexibility. There was some discussion about accessibility to the current bandshell, if this structure were to remain, and it remained unresolved as to how this could be achieved. Thomas said she would continue to look at this proposal, but that it seemed to do a good job in addressing the Committee’s concerns. Jeanne Agner added that she understood the “reasonable” ADA language, but hoped there would be a way to access the current bandshell if that were to be preserved. Witters asked whether fill could be removed from one area of the floodway and relocated to another area so there was no net increase in fill, for example to make a ramp to the bandshell. Osborne responded that this request would be situational, and that since adding fill was prohibited in general in the floodplain template, he couldn’t answer that question without more information, and he and Clarke agreed that they didn’t want to open the door to unintended consequences by just allowing it. Osborne mentioned the “LOMA – F,” a letter of map revision that might deal with this question, and Clarke added that the PC is trying to minimize the cost of engineer or hydrologist certifications for this relocation project. Clarke suggested that the Three Parks Committee study the proposed changes, the PC work on remaining items such as signage and fill for ramps, and we reconvene at our next meeting to, hopefully, finalize our recommendations for the SB, and, as Osborne mentioned, for ANR approval.

7. Updates and other business

- PC meeting dates for December and January were discussed. The November 20th meeting is scheduled, with further FHOD and Jolina Court density bonus program discussions planned. We will meet Dec 4th as regularly scheduled. December 18th might be lacking a quorum, so other dates such as 12/10, 11 or 12 were mentioned. The first January meeting would be 1/1/25, so likely a no-go. We could meet 1/7, 8, or 9 during the week prior to our regular 1/15 meeting. Bender said he could do any of those dates. More discussion on these dates to follow.
- Biofinder workshop on January 9 on Zoom at 7 PM, arranged by the Conservation Commission. Clarke requested another PC member besides herself to attend if possible, as this tool will be important for our work on the Agricultural/Residential District.
- Plans to send out a letter to the various committees to report in on the “Action” items assigned to them in the 2018 Town Plan in preparation for Town Plan update work to be carried out by the PC in 2025. There were no objections to Clarke sending out this letter.

8. Adjourn

As there was no further discussion, Bender motioned to adjourn, seconded by Anand. There were no objections, so the meeting was adjourned at 9:10 PM. Clarke thanked everyone for attending.

Minutes submitted by Virginia Clarke