

Town of Richmond
Planning Board Public Meeting
December 12, 2023, 6:30 PM Taylor Van Brocklin Building
FINAL as REVISED

Members Present:

Doug Smith (Chairman)
Jed Butterfield (Vice Chairman)
Lisa Traeger
Kim DeMasco
Joe Norman (Alternate)
Lloyd Condon (Alternate)
Doug Bersaw (Selectman's Rep)

Members Absent

Kathryn McWhirk (Secretary)
Stacie Maillet
Karen O'Brien (Alternate)
William Daniels (Alt. Selectman's Rep)

Public: Antoinette Cincotta.

Meeting called to order at 6:47 PM.

Norman seated for McWhirk.

Condon seated for Maillet.

Chairman Smith explained a concern was raised about the process used by the board in coordinating the "structure" definition as requested by the board in their 11/7/23 meeting. The board authorized one member to compile a definition and gather additional input from other members and present the results to the board at the next scheduled meeting. By asking the board input outside of the meeting was the board in violation of RSA 91A? The concern was that that more than one member worked on the proposed "structure" definition Zoning Ordinance changes. The member coordinating the board suggestions then proposed using the term "building" rather than the "structure" definition to amend the zoning ordinances. The board discussed and agreed to this proposal at the 11/21/23 meeting. The Chair directed the LUA to submit a letter to the NHMA for review and comment. As all the suggestions were discussed and rectified by the members at the next meeting. The perceived violation was mute per the NHMA. (See attachment)

1. Public:

2. Mail:

3. New Business:

a. Conservation Commission to address WCD:

4. Old Business:

a. Minutes of November 7, 2023: final version.

Motion made by Bersaw to accept the minute as presented. Seconded by Traeger. All in favor. None opposed. Motion carries.

Minutes of November 21, 2023: draft

Changes were made to the November 21, 2023 minutes with final revision for next meeting.

b. Definition of Structure: Requested by Zoning Compliance Officer

Proposed Zoning changes page 2 under THREE, under Building at 1709. Concern was raised that solar arrays were not included in the definition of building. Discussion resulted with an understanding more information was needed, and that this topic should be included in the Master Plan rewrite.

Proposed Zoning changes page 1, under ONE, to delete article 406 Other Uses, more specifically 406.1. To delete under Article 17 Definitions, more specifically 1733 House of Worship. Both clearly mention Houses of Worship. The ordinance could be changed if the House of Worship was removed and replaced with a general term to encompass any large groups meeting on a regular schedule.

Both sections are illegal and should be removed to come into conformity with the State of New Hampshire RSA 674:76. AS changed in 2022 by the State.

Motion made by Bersaw to delete Article 406 and Definition 1733. Seconded by Traeger. All in favor. None opposed. Motion carries.

Bersaw referenced the Richmond Excavation Regulations, under Section III: Definitions, more specifically, S. MINOR TOPOGRAPHICAL ADJUSTMENT means a one-time removal of earth from the site of less than 1,000 cubic yards that is exclusively necessary to change the physical configuration of the land for a specified use or situation.

Article 6, under 603 Uses Permitted. (additions are in bold)

In the Wetland Conservation District, no use is permitted that would result in the erection of any **building** or alter the surface configuration through excavation **or** fill, **except for normal landscaping and minor topographical adjustments**, or that is not otherwise permitted by the Zoning Ordinance except the following permitted uses:

Discussion resulted in a suggestion to have normal landscaping in and remove minor topographical adjustment until further refinement of that definition as it pertains to wetland conservation district.

Richmond Excavation Regulations, under Section III: Definitions, more specifically, T. NORMAL LANDSCAPING means the on-site alteration and contouring of the land exclusively devoted to improving the functional utility and planting of the grounds.

The discussion of 603 will be carried over until our next meeting.

Traeger submitted additional changes in her Summary of Changes. The board was asked to review the changes to discuss at the next meeting.

c. **Master Plan:** Copies for review by the board.

d. **Land Use Assistant guidelines.**

5. Other:

Motion made by Bersaw to adjourn. Seconded by Traeger. All in favor. None opposed. Motion carries. Meeting adjourned at 9:10 PM.

Respectfully submitted.

Kandace Mattson

Attachments

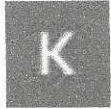
1. NHMA reply December 11, 2023.
2. Proposed Zoning changes for ballot 2024.

Richmond Planning Board Procedural question

Inbox

Search for all messages with label Inbox

Remove label Inbox from this conversation



Kandace

Dec 11, 2023, 10:39 AM (13 days ago)

Mattson <mattson.kim@gmail.com>

to legalinquiries, Doug

Good morning, Land Use Assistant for Richmond, NH. Our next board meeting on 2024 Ballot questions will be held December 12, 2023, it would be great to hear from you by the afternoon of December 12th. Thank you.

I have a procedural question for you. The Richmond Planning Board has been working on Zoning changes for the 2024 ballot.

In their November 7, 2023, meeting the board voted on a definition from another town to use as a boiler plate.

A full board member suggested that a definition is created and be sent around to all the members of the board for their input. He could take the suggestions and bring them to the next meeting to work on.

There was a motion made, seconded and unanimous approved by the board.

The board member worked and sent his updated definition to all the board members to allow input for the next meeting. Several members gave input, but the member took one comment and created 5 pages of changes to the Zoning Ordinances. He came to the next meeting with his new revised changes, He did not bring or share the input from the members that sent their ideas to him regarding the original definition.

The board did not authorize the member to create 5 pages of changes only to work on the definition of structure. The Vice Chairman asked if he received his suggestion and others from the board. The member said yes, he received a few but he received one provocative suggestion which created the 5 pages he presented to the board.

The board by majority voted to move forward with the 5 pages.

After all of that, if this is questioned in the future could there be a procedural conflict since the original motion voted to include opinions from the board? Especially, since the Vice Chairman questioned not reading what was submitted by other members? Just don't want to get through this and have a question called as to why the voted motion wasn't done the way the board asked for it to be done.

As always, thank you for your opinion.

Regards,

Kim (Kandace) Mattson

Land Use Assistant

Richmond, NH



Legal Inquiries

to me

Dec 11, 2023, 3:59 PM (13 days ago)

Hello Kim,

It sounds like you are dealing with a bit of a complicated situation. I think, that based on the information you provided, there isn't much else that can be done at this point. The planning board member may have overstepped by going beyond the scope of what he was originally authorized to do, however it sounds like the board has ratified his actions by voting in favor of the proposed amendments. The bigger concern here may not be the end result, that being the 5 pages of amendments, but rather the potential RSA 91-A violations that occurred to get to this point. It sounds like there may have been substantive communications between less than a quorum of the members of the Planning Board exchanged outside the confines of a public meeting. This is, in and of itself, a violation of the Right to Know law. When a public body votes to allow one member to create a draft document outside of a public meeting, under no circumstances should that person then begin soliciting more information or discussing the substance of the document outside of a public meeting with other members of the board. The reason for this is because that is how you end up in this exact situation, where not only has there been a violation of RSA 91-A but other members of the board have been left out of the discussion about official board business.

My suggestion would be to have this member disclose any and all extraneous communications he had about the document at the next public meeting. They should testify to exactly what was discussed and how they came to their decisions in a public forum so that minutes can be taken and so the public and the rest of the planning board can hear for themselves how these amendments came to be. After an open discussion on this topic, the board can then decide whether or not they still want to vote to adopt the new proposal.

Jonathan E. Cowal, Esq.

Municipal Services Counsel

NH Municipal Association

25 Triangle Park Drive

Concord NH 03301

Tel: (603) 224-7447

Email: legalinquiries@nhmunicipal.org

2024 Proposed Zoning changes

NOTES

Potential deletions ~~struck out~~.

Potential additions in bold italic.

Comments underlined.

ONE

Delete Article 406 - illegal according to RSA 674:76 - definition 1733 also. Section 674:76

674:76 Religious Use of Land and Structures. – No zoning ordinance or site plan review regulation shall prohibit, regulate, or restrict the use of land or structures primarily used for religious purposes; provided, however, that such land or structures may be subject to objective and definite regulations concerning the height of structures, yard sizes, lot area, setbacks, open space, and building coverage requirements as long as said requirements are applicable regardless of the religious or non-religious nature of the use of the property and do not substantially burden religious exercise.

Source. 2022, 291:1, eff. July 1, 2022. ^[L]_[SEP]

TWO

202.1 C - Wetlands Conservation District (Article 6): All land areas within ***twenty-five (25)*** ~~seventy-five (75)~~ feet, as measured by horizontal distance, of the high water mark of any pond, stream, brook, or wetland and areas identified and delineated as poorly drained or very poorly drained soils by the Cheshire County Conservation Districts Soil Survey of Cheshire County, New Hampshire, completed in 1989. (See map.)

THREE

Change the definition of Building at 1709. Building – Any structure having a roof supported by columns or walls and intended ***or used*** for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or materials of any kind or nature, ***including containers larger than 100 square feet used for the storage of commodities or other materials, and in-ground swimming pools.***

This would not include above ground pools, solar arrays, fabric/pole garages, etc. or most other things that the definition of structure would include - unless they are attached to a building.

If this does not pass then all proposed changes in FOUR and FIVE would still apply to the definition above minus the changes proposed in bold italics.

FOUR

Delete the word ~~structure~~ from Article 602.1 and Article 603 and Article 604.2 and replace it with the word ***building***.

602.1 To prevent the development of ***buildings*** ~~structures~~ and land uses on naturally occurring wetlands, which would contribute to pollution of surface and ground water by sewage or any other pollutants, or cause damage to abutter's property.

603 Uses Permitted In the Wetland Conservation District no use is permitted that would result in the erection of any ***building*** ~~structure~~ or alter the surface configuration through excavation or fill, except for normal landscaping and minor topographical adjustments, or that is not otherwise permitted by the Zoning Ordinance except the following permitted uses:

604.2 The undertaking of a use not otherwise permitted in the Wetland Conservation District which may include the erection of a ***building*** ~~structure~~, dredging, filling, draining, or otherwise altering the surface configuration of the land, if it can be shown that such proposed use will not conflict with the purpose and intention of Section 602, and if such proposed use is otherwise permitted by the Zoning Ordinance. Proper evidence to this effect shall be submitted in writing to the Board of Adjustment and shall be accompanied by the findings of a review by the Richmond Conservation Commission of the environmental effects of such proposed use upon the wetlands in question. [Rev- March 12, 1996]

FIVE

Other places where the use of the words building or structure should be changed.

1203 Building Permits Required A building permit shall be required prior to the erection, addition, alteration, relocation or conversion to apartments of any building ~~or structure~~ or portion thereof. Building permits are not required for detached ~~structures~~ *buildings* with a floor area equal or less than one hundred (100) square feet. It shall be unlawful for any person to commence work for the erection, addition, alteration or relocation of any building ~~or structure~~ until a permit has been approved and issued by the Selectmen. No building permit shall be required for normal maintenance activities, minor repairs and minor alterations that do not structurally alter or change a building ~~or structure~~. No building permit shall be issued for a lot with a private septic system until an approved septic system permit has been obtained from the NH Water Supply and Pollution Control division. [Rev- March 12, 1996]

1203.1 Application for a building permit: All applications for building permits shall be accompanied by plans and submitted by the owner or his agent, and shall show: [Rev- March 14, 2000]^[SEP]A. The actual shape and dimensions of the lot to be built on;

B. The size and location on the lot of the building(s) ~~or structure(s)~~ to be erected or altered;

C. The location of all setback lines- front, side and rear;^[SEP]D. The location of all septic system facilities and well(s) dimensions to setbacks; [Rev- March 14, 2000]^[SEP]E. The location of wetlands and surface water; and [Adopted March 11, 1997] F. Multi-family dwellings, conversion to multi-family dwellings, cluster developments of more than two dwelling units and structures associated with special exceptions require site plan review and approval by the Richmond Planning Board before issue of a building permit. [Adopted March 11, 1997]^[SEP]G. Dimensional floor plan. [Adopted March 14, 2000]

1203.2 All buildings *and* building components ~~and structures~~ shall comply with the State Building Code, and the State Fire Code. The construction design, ~~structure~~ maintenance and use of all buildings ~~or structures~~ to be erected and the alteration, renovation, rehabilitation, repair, maintenance, removal or demolition of all ~~structures and buildings~~ previously erected shall be governed by the provision of the State Building Code according to State Law RSA 155-A: 2. The standards including definitions established by the most recent entity the Life Cycle Code, NFPA Doc. shall take precedence over all standards in the State Building Code relative to means of egress. All new buildings shall conform to the requirements of the State Fire Code. [Rev- March 14, 2006]

1204 Occupancy Permit

317.7 The commonly owned open space shall not be used for any ~~structure~~ **building** with the exception of a common approved septic system. Recreational areas, trails or paths are permitted. A private non-profit organization consisting of all landowners shall be established by the developer to manage, maintain, support, and finance necessary actions to the common facilities and common area of the cluster and enforce any covenants. [Adopted March 14, 2000] [Rev-March 14, 2006]

317.10 All other provisions of Article 4 and Article 3 shall apply except that the setback from the front property line shall be a minimum of 40 feet. In the case of a cluster utilizing a common septic system, a minimum of 10-foot setback from the side and rear property lines and 40 feet from the front property line are required for any **building** ~~structure~~. The common septic system must be a minimum of 75 feet from any dwelling unit. [Adopted March 14, 2006]

An approved occupancy permit shall be required before any new dwelling *or* building/~~structure~~ or existing dwelling *or* building/~~structure~~ that has been structurally altered can be occupied. The occupancy permit shall be applied for, by the owner or his agent when the construction for which a building permit was issued has been completed. The occupancy permit shall be issued within ten (10) days after the erection or alteration of the dwelling *or* building/~~structure~~, or portion thereof, has been completed and after an inspection by a member of the Richmond Fire Department designated by the Board of Selectman showing that it is in conformance with accepted fire safety standards. [Rev- March 12, 1996]

1204.1 Occupancy permits are required for the following:

- A. The occupancy of a new building ~~or structure~~.
- B. The occupancy of any existing building that has been structurally altered or relocated.
- C. The change in the use of an existing building ~~or structure~~.
- D. Any change in the use of a nonconforming use *or building structure*.

404 Permitted Accessory Uses

404.3.4 The accessory dwelling unit must be located in the primary *dwelling structure* or in an addition to the primary *dwelling structure*. [Rev-March 14, 2006] [Rev-March 12, 2013]

1758 Ruins – Any *building structure* that has collapsed for any reason, has burned, or is damaged beyond repair and is uninhabitable.

No final vote was made on 1758 Ruins.

1760 Setback – The distance from a property line to a building, ~~structure~~, or other feature. [Adopted March 12, 2013]

No final vote was made on 1758 Ruins or 17690 Setback.

Definition of Solar arrays

Dec. 12 Two proposed changes:

ONE

Shall the Town Delete Article 406

406.1 Houses of Worship. Notwithstanding any other provision of this Ordinance, houses of worship, (see definition 1627) shall be permitted by right in an area along the major highways in Richmond, NH, Routes 119 and 32, all buildings and infrastructure, including parking and impermeable surfaces shall be located on land within 500 feet of the said highways' rights-of-way [Adopted March 11, 2011])

and definition 1733

(1733 House of Worship – A building set apart for public worship, a venue for any religious group than can provide written documentation (501 (c) (3)) that the US Internal Revenue Service has determined that it qualifies for the tax exempt status as a religious organization. Dwellings for residential purposes as a principal use do not qualify as a house of worship even if religious instruction is provided there because such instruction is considered incidental to the principal use of the structure.)

from the Zoning Ordinance?

TWO

Shall the Town change Article 603 of the Zoning Ordinance from:

603 Uses Permitted

In the Wetland Conservation District no use is permitted that would result in the erection of any structure or alter surface configuration through excavation of fill, or that is not otherwise permitted by the Zoning Ordinance except following permitted uses:

to:

603 USES PERMITTED

In the Wetland Conservation District no use is permitted that would result in the erection of any **building** or alter the surface configuration through excavation *or* fill, **except for normal landscaping**, or that is not otherwise permitted by the Zoning Ordinance except the following permitted uses: