

Richmond Planning Board Meeting
Town Hall
Minutes
January 10, 2022

Members present: Richard Bell, Douglas Bruce, John Hanson (Chairman), Katherine Keenum, Peter Lopez

Also present: Richmond residents Rebecca Augur, Pat Callahan, Ira and Jami Grossman, Sally Hildebrandt, John Keenum, Susan Lockwood, Jeff and Jen Morse, Neal Pilson, Arti Roots Ross; Jenny Hansell (Berkshire Natural Resources Council)

John Hanson called the meeting to order at 6:30 P.M.

While Mr. Bruce handed out copies of "Zoning of Open Space and Conservation Land – Draft –rev4" to members of the public (see Exhibit 1), Mr. Hanson explained that it was an updated version of a proposed zoning by-law amendment which the Planning Board had been working on since July 2021. It incorporated changes resulting from discussion at the Board meeting of December 13, 2021. Because all Board deliberations were in public, he said, this meeting would be the first time members had been able to discuss the revisions among themselves. He would therefore ask members of the audience to hold their comments on each item until after initial discussions.

1. The first change was the addition of a new Section 14 to Richmond's *Zoning By-Law* just as Sections 12 and 13 had been added for regulation of marijuana and solar panels respectively. The new section would allow definitions to be gathered and understood in the context of the proposed regulations for the recreational use of open space and conservation restricted land. The new section would require renumbering in the final draft. He asked whether there were any questions from the Board. Hearing none, he asked for questions from the floor. Hearing none, **the addition of Section 14 was accepted.**

2. The first proposed definition to be added to Rev4 was for a Recreational Event:

The use of Open Space Residential Land, Open Space Agricultural Land, or Conservation Land, open to the public, for group activities promoted by the owner or other organization, intended to attract increased public participation.

Ms. Keenum suggested dropping the words *intended* and *increased* as superfluous. Messers Bell, Bruce, and Lopez concurred. When Mr. Hanson asked whether there were any comment from the floor, Ms. Lockwood said that she had only recently learned about the new by-law, that her family had lived in Richmond a long time and always allowed walking on their land; she believed that access to land in Richmond should not be limited to the 1% who could afford large properties. Mr. Hanson agreed and said that if she followed along through the entire proposal she would see how the Planning Board was working to retain access to open space. Hearing no other comment, **the Board agreed by consensus to drop the words *intended* and *increased* from the definition of Recreational Event.**

3. The second proposed definition to be added was for a Parking Lot. It included and the following language:

The use of land for a parking lot shall meet the following requirements:

- a) The applicant shall submit an application for site plan approval under Section 6.6 of this By-Law
- b) The application shall include an impact study of expected vehicle traffic, intensity of use, visitors per day and other data relevant to the proper regulation
- c) Hours of operation shall be limited to the following
 - January thru March, 9:00 am to 5: pm
 - April thru September, 9:00 am to 7: 00 pm
 - October thru December, one-half hour before sunrise to one-half hour past sunset

Mr. Bruce observed that the definition contained no size threshold. Discussion of this point included the example of Canyon Ranch's needing to know how many people might be allowed to come as a group on a bus. It was agreed that it would be hard for the by-law to quantify a permissible number of people or number of vehicles for all locations in town. It was agreed that the size of the parking lot would in any case be up to the Selectmen under Section 6.6, which Mr. Hanson read aloud (see Appendix 1). No change was made to requirement (a)

On the question of an impact study, Ms. Keenum asked whether it was appropriate to require an impact study for parking lots at recreational sites if they were not required elsewhere. Mr. Hanson asked Mr. Pilson whether the Board of Selectmen ordinarily requested information on the impacts of a proposed parking lot. Mr. Pilson replied that they always asked about expected numbers, increase in traffic, and so forth. Mr. Bell said that the proposal did not require an engineering study. Mr. Bruce concurred. From the floor, Ms. Ross asked whether an impact study would include sound? She objected to noise coming from a wedding at the Inn at Kenmore Hall. Mr. Hanson explained that Richmond has a noise ordinance, but its enforcement is not part of zoning. **No change was made to requirement (b).**

On the question of hours, Ms. Keenum said that she did not want to say whether they were appropriate for Hollow Fields, but she did think it wrong to codify hours for all sites in future. She gave two examples where parking lots might be built in the foreseeable future: first if the Audubon Society built a trail around the beaver pond at Tracey Brook, the other at the 122-acre field on Sleepy Hollow and Dublin Roads which had recently been donated by Randy Nelson. Birdwatchers would want to go to both at dawn and dusk; and if a trail were put in around the Nelson property, joggers might want to use it before and after work. Messers Bell, Bruce, and Lopez agreed. From the floor, Ms. Callahan said that she also wanted to ensure that a presumption that the specified hours were appropriate to Hollow Fields would not be baked into thinking about the issue. **With Mr. Hanson's concurrence, requirement (c) was deleted entirely.**

4. To the proposed clause that would make recreation on open space and conservation land a permitted principal use, Rev4 added a requirement: "**recreational events shall require a permit from the Board of Selectmen under Chapter X, Section 9 of the Town By-Laws**" (see Section 4.8.A.18.a in Exhibit 1 below). Mr. Hanson explained that this would force recreational events in the new Article 14 into Chapter X, Section 9 (see Appendix 2). Ms. Keenum asked whether specific language about recreation should be sought in the general by-law; Mr. Hanson and Mr. Bell assured her it was unnecessary.
5. To the proposed clause that would make recreation a permitted accessory use of open space and conservation land, Rev4 added a requirement: "**any Open Space Residential Land, that is open to the public, has a minimum total lot area of 5 acres or more.**" (see Section 4.8.B.18.a in Exhibit 1 below). Mr. Hanson noted that members of the Board had previously expressed doubts about adding minimum acreage requirements to the zoning of open space and conservation land. He

explained that he had taken the five-acre figure from the Commonwealth's Chapter 61, which offered a tax break to landowners who made a minimum of five acres open to the public. Ms. Keenum said that this was different because no benefit was being offered to landowners, Mr. Bruce pointed to the danger of unintended consequences, offering as an example the possibility that a trail connecting two large pieces of land might need to cross a corner of a smaller property. From the floor, Ms. Ross said that in areas where most lots are two-and-a-half-acre neighbors might object to having an abutter open land to the public. **Mr. Bell proposed leaving the acreage requirement in the draft to be presented at the public hearing so that the Board could hear what the people had to say before deciding whether to retain or drop it, and members agreed.**

6. Although the only addition to the section on the permitted accessory structures were the words **under Section 14**, discussion turned briefly to whether anything more needed to be said about regulating restrooms. It was agreed that they were the responsibility of the Board of Health. (See Section 4.8.B.18.b in Exhibit 1 below).
7. Mr. Hanson explained that the last two proposed zoning changes—**the deletion of Sections 4.9 and 4.10 from the Richmond's Zoning By-Laws**—were essentially bookkeeping (see Exhibit 1 below) to removed temporary moratoria that had been superseded by the permanent Section 12. He said hearings on these proposals will have to be held in future.
8. Following up on previous discussions of a **"presumed openness" in Massachusetts law**, Mr. Bruce reported that he had asked a knowledgeable agent at MassWildlife about the legal basis for the presumption that people have the legal right to cross open land which has not been posted by the owner. The agent replied with two citations, to M.G.L. ch.3§36 (hunting) and M.G.L. ch.266§120 (general trespassing) in which trespass is defined in terms of breaking a stated prohibition. In other words, land is open by default. Posting is a trespassing issue, said Mr. Bruce, not a zoning issue.

Mr. Hanson said that the Board wanted to make it clear that our proposed by-law will not open land that is posted. Mr. Bruce added that in the by-law land open to the public must be without fee for non-motorized, low-density, and low-impact use.

Mr. Morse said that there was a distinction between open land and inviting or promoting use as part of commercialization. Mr. Hanson said that if no fee was charged, then a use was not commercial. Mr. Morse disagreed in the case of a business model that depends on getting as many people as possible onto a site. Mr. Bell asked him whether there was any change he would make to the proposed by-law amendment. Mr. Morse replied that he would write the law differently. Mr. Hanson asked whether he would object to a state park or a town park in town. Mr. Morse said, no. Mr. Hanson said that Richmond had no parks and had relied on the model of allowing organizations like the Richmond Land Trust to preserve open space in town; it saved the taxpayers money, but required management essentially as a park by an organization like the BNRC.

Ms. Augur said that she lived near the fire tower and often refers friends to it for the wonderful views, but during COVID there had been an influx of people and we needed to be cognizant of what's happening on roads. Mr. Hanson said that he hoped there would be a reset as the town thought about the use of open space; too many people at once would degrade trails, and there were limits on what a small town could tolerate. The purpose of the by-law was to make clear through sensible rules what can be allowed; it was up to the voters to decide. Ms. Augur agreed that Richmond is a beautiful town and we want people to come and feel welcome.

9. Mr. Bruce proposed that cultural sites—that is, those like the Richmond Furnace, manmade artefacts, not natural features—be included in the by-law. Mr. Hanson objected that we were on too tight a schedule to be raising a new category, and Mr. Bruce acquiesced.
10. Mr. Hanson turned to a schedule for the next steps in taking the proposed by-law amendment to the Annual Town Meeting (see Exhibit 2). He said that there was a March 7th deadline for submitting an article to the Board of Selectmen, but final wording does not have to be sent to the Town Administrator until April. Mr. Hanson asked for a motion to submit an article with tonight's changes to the Board of Selectmen on the schedule laid out.

Mr. Bell said we should first vote to delete the to delete two words in the definition of Recreational Event and to the hours in the definition of a Parking Lot. **He so moved. Mr. Lopez seconded. The vote to approve was unanimous (5–0).**

Mr. Hanson then called for a motion instructing him to move forward with submitting the article on the schedule before the Board. Ms. Keenum so moved. Mr. Lopez seconded. The vote to approve was unanimous (5–0). Mr. Hanson undertook to prepare a draft of the proposed by-law with the changes and proceed according to the schedule.

11. **Mr. Hanson called for a motion to approve the minutes for December 13, 2021. Mr. Bell so moved. Mr. Bruce seconded. The vote to approve was unanimous (5–0).**

12. Mr. Bell suggested that, based on his research, the Board might need to revisit an ANR subdividing land on which the Richmond Congregational Church and Town Hall stood. He offered explanations based on anomalies he detected in the pertinent deeds and a site plan, which he said could affect a Boundary Agreement and Easement Agreement that would be before the Selectmen at their next meeting. Mr. Hanson said that it was not up to the Planning Board to verify the work of licensed surveyors. The other members declined to pursue the matter.

The meeting adjourned at 8:25 p.m.

Respectfully submitted,
Katherine Keenum, Clerk

Exhibit 1:

Zoning of Open Space and Conservation Land – Draft –rev4

Add:

Section 14

Recreational, Educational and Research Use of Open Space and Conservation Land

Purpose: Provide for the recreational, educational and research use of open space and conservation land

Definitions:

Conservation Land

Land permanently restricted to limit residential or commercial development of the land or to limit the number of residential or commercial building lots permitted in any sub-division of the land.

Open Space Residential Land

Land exceeding the minimum lot size for a single family dwelling or two family dwelling, or land not used for a dwelling, or structures accessory to a dwelling, that is preserved or maintained in an open condition, including gardens, fields, pastures, forests, wood lots, orchards, lawns, and other similar uses.

Open Space Agricultural Land

Land used for agricultural, horticulture, or floriculture as a principal or accessory use that is preserved or maintained in an open condition, including, fields, pastures, forests, wood lots, orchards, gardens, and other similar uses.

Open Space and Conservation Recreation

The use of Open Space Residential Land, Open Space Agricultural Land, or Conservation Land, open to the public, for hiking, snow shoeing, backpacking, hunting, fishing, bird watching, photography or other similar recreational activities.

Open Space and Conservation Education and Research

The use of Open Space Residential Land, Open Space Agricultural Land, or Conservation Land, open to the public, that may include guided tours, for the observation and study of wildlife, plants, flora, geology, and other natural features.

Recreational Event

The use of Open Space Residential Land, Open Space Agricultural Land, or Conservation Land, open to the public, for group activities promoted by the owner or other organization, intended to attract increased public participation.

Parking Lot

The use of land for the construction of a parking lot.

1.0 Parking Lot Requirements for this section

The use of land for a parking lot shall meet the following requirements:

- a) The applicant shall submit an application for site plan approval under Section 6.6 of this By-Law
- b) The application shall include an impact study of expected vehicle traffic, intensity of use, visitors per day and other data relevant to the proper regulation of Parking Lot size and use at the proposed site.

- c) Hours of operation shall be limited to the following:
 January thru March, 9:00 am to 5: pm
 April thru September, 9:00 am to 7: 00 pm
 October thru December, one-half hour before sunrise to one-half hour past sunset

	<u>DISTRICTS</u>
Section 4.8 A. PERMITTED PRINCIPAL USES	RA-A
Continued:	RA-C SR COMM

18a) Open Space and Conservation Recreation: Yes *Yes* *Yes*
 The use of land, ***under Section 14***, for Open Space and Conservation Recreation, provided that t no fee is charged, no off-highway motorized vehicles are permitted, and ***recreational events shall require a permit from the Board of Selectmen under Chapter X, Section 9 of the Town By-Laws.***

18 b) Open Space and Conservation Education, and Research: Yes *Yes* *Yes*
 The use of land, ***under Section 14***, for Open Space and Conservation Education and Research, provided that no fee is charged , and no off-highway motorized vehicles are permitted.

	<u>DISTRICTS</u>
Section 4.8 B. PERMITTED ACCESSORY USES	RA-A
<u>Continued:</u>	RA-C SR COMM

18. Open Space and Conservation Recreation: Yes *Yes* *Yes*
 a) The use of land, ***under Section 14***, for Open Space and Conservation Recreation, provided that no fee is charged, no off-highway motorized vehicles are permitted and any ***Open Space Residential Land, that is open to the public, has a minimum total lot area of 5 acres or more.***

. b) The use of Open Space Residential Land, Open Space Yes No No
 Agricultural Land, or Conservation Land, ***under Section 14***, for accessory structures such as temporary shelters, informational bulletin board, parking lot, and restrooms.

Other Zoning Changes

Delete:

Section 4.9 Temporary Moratorium on Medical Marijuana Treatment Centers

Section 4.10 Temporary Moratorium on Marijuana Establishments

Exhibit 2: Schedule for sending the proposed by-law change to the Board of Selectmen

Schedule				
<u>Milestone</u>	<u>Date</u>	<u>Time</u>	<u>Location</u>	<u>Action</u>
PB Meeing	1/10/2022	6:30 PM	Town hall	Board
Notice to BOS	1/12/2022			Chairman
Send out Notices	1/17/2022			Town Clerk
Post Notice	1/17/2022		Town hall	Town Clerk
Send Eagle Notice	1/13/2022			Chairman
First Eagle Notice	1/19/2022			Eagle
2nd Eagle Notice	1/26/2022			Eagle
Post PB Agenda	2/8/2022		Town hall	Town Clerk
Public Hearing	2/14/2022	6:00 PM	Town hall	Board
PB Meeing	2/14/2022	7:30 PM	Town hall	Board
Continue Hearing, if needed	2/21/2022	6:00 PM	Town hall	Board
PB Meeing, if needed	2/21/2022	7:00 PM	Town hall	Board
Send Warant to BOS	3/2/2022			Chairman

Appendix 1: Current Richmond Zoning By-Law 6.6

Off-Street Parking and Loading

An off-street parking area in accordance with a Site Plan approved by the Board of Selectmen shall be provided for any public use hereafter established or expanded. The parking area shall be adequate in size for the maximum use of the proposed facility; shall be suitably surfaced, and shall be attractively screened from any abutting residential use or district. The term public in this section shall include any use by a business, professional or private organization.

Appendix 2: Richmond General By-Laws

CHAPTER X (MISCELLANEOUS PROVISIONS), SECTION 9.

Any person or organization that seeks to conduct a special cultural, educational, , or fund raising event, such as but not limited to, art shows, auctions, festivals, bazaars, community picnics, breakfasts, dinners, concerts, dance events, or similar events may be required to obtain approval from the Board of Selectmen if such event is to be held on or affect town streets, sidewalks, or property or require services beyond those the town provides its citizens under normal everyday circumstances. The Selectmen may require a public hearing to consider any application filed under this section and any permit issued may include conditions relating to hours of operation, attendance, public safety, traffic control, parking, noise, odor, lighting, impact on the neighborhood and on municipal facilities, and a requirement that the applicant post a bond. Any person or organization granted a permit under this section shall comply with all other local, state, federal licensing or permitting requirements for said event. Failure to obtain any required licenses or permits shall result in the revocation of the permit granted under this section and a fine of \$100.