

Richmond Planning Board
Town Hall

PUBLIC HEARING
February 14, 2022
Minutes

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

Also present: Katherine Buttolph, Joanna Stengle, Mike Harke, Rebecca Augur, Ken Kelly, Laurence Cohen, Peter Sheffer, John Ryan, Claudia Ryan, Susan Lockwood, Doug Munson, Toddy Munson, Bob Youdelman, Kerry Hamilton, Ruth Bass, Grace Mason, Jayne Merrick, John Mason, John Keenum, Sandra Kimple, Marissa Hatch, Phil Monne, John Ahern, Martine Carroll, Linda Morse, Dorothea Greene, Ed Bernstein, Donna Bernstein, Ronald Barron, Ina Wilhelm, Wendy Laurin, Jen Morse, Bill Martin, Jeff Morse, Peter Lochery, Jeffrey Caligari, Ronald Veillette, Laura Persily, Ann McDonald, Glenn Novak, Sarah Novak, Melanie Masdea-Dignum, Alex Sabo, Susan Sabo, Catherine Malinowski, Jami Grossman, Ira Grossman, Jenny Hansell, Mark Bobrowski, Lauren Broussal, Buzz Donovan

John Hanson called the hearing to order at 6:00 P.M.

I. Purpose of the Public Hearing

Mr. Hanson stated that the purpose of the hearing was to further the process of getting a proposed zoning bylaw amendment onto the warrant for the Annual Town Meeting in May. Amendments to the *Zoning Bylaw* require a sponsor, which can be one of the town boards. In this case, the sponsor is the Planning Board.

A zoning amendment can also be sponsored by an individual who owns property that will be affected by the proposal or by a number of citizens who sign a petition. In either of these cases, the proposal is submitted to the Board of Selectmen, which then must refer it to the Planning Board to schedule and hold a Public Hearing.

This year the deadline for notifying the Board of Selectmen of the intention to submit a proposed amendment is March 7, 2022. Final wording is not due until April.

At the present time, Richmond is in the unusual position of having three submittals on the same topic with the same title, "Recreational, Educational and Research Use of Open Space and Conservation Land."

1. The Planning Board met on January 10, 2022. It notified the Board of Selectmen of its intent to submit a zoning bylaw amendment on January 11, 2022, thus assuring that it would qualify to be placed on warrant. At the same time, Mr. Hanson initiated the process of posting the necessary notifications for scheduling the required public hearing. After tonight's hearing, the Board would write a report to be sent to the Selectmen.
2. Six residents of Perry's Peak Road notified the Board of Selectmen on January 12, 2022, of their intent to submit a bylaw amendment; theirs thus also qualified to be placed on the warrant.

3. A third amendment was submitted by initiative petition on January 20, 2022, thus assuring that it qualified to be placed on the warrant. It had the exact same wording as the one submitted by the residents of Perry's Peak Road and was signed by twenty-seven people.

This night's hearing concerned only the first proposal. At its regular monthly meeting later in the evening, the Planning Board expected to schedule another public hearing to consider the second and third proposals. In order to schedule a public hearing, the Board must publish the wording of a proposed amendment, notify neighboring communities, and place legal notices in the newspaper according to a legally prescribed timetable. The second and third proposals had not been received by the Planning Board in time to be included in tonight's hearing, so they would have to be addressed separately. Mr. Hanson suggested that the sponsors might wish to consider withdrawing either the second or third proposal because if they later wished to make final changes in the wording, all six for #2 or all twenty-seven for #3 would have to agree.

II. How zoning works and how this amendment fits into the Zoning Bylaw

Mr. Hanson began discussion of the first proposal by explaining how zoning works and how this amendment fitted. He said that zoning regulates the uses to which land is put, such as farming, or the structures built on it. Zoning is only one piece of the picture. Not all activity on the land is regulated by zoning—Town bylaws and State laws are better at regulating behavior. When someone is trespassing, creating a public nuisance, or damaging private property, you call the police not the Zoning Enforcement Officer (ZEO). Zoning is mostly about permanent uses and structures. In contrast, much outdoor recreation is transitional: people engage in activities for short periods and usually alone or in small groups. Although some limitations and regulations are needed, they can be more permissive than the rules and regulations governing buildings because such recreation has no lasting effect on the land itself.

So why are we doing this? For two hundred and fifty years and the sixty-eight years since the Zoning Bylaw was first written, people in Richmond have engaged in transient outdoor recreation without question. Last year, however, there was a case in which a violation of zoning was alleged for hiking at Hollow Fields. The ZEO investigated and found no violation. In June 2021, however, the Board of Appeals (ZBA) ruled that hiking is not allowed in Richmond because the *Zoning Bylaw* does not say that it is permitted. That case, which is now in litigation, sent a up a red flag. When you have a conflict between the ZEO and the ZBA, it indicates a lack of clarity in zoning. The Planning Board said, let's make it clear and show what the voters want.

At Mr. Hanson's request, Mr. Bruce distributed copies of the "Notice of a Public Hearing: Proposed Amendments to the Zoning Bylaw" to attendees (see Exhibit 1).

Mr. Hanson went on to say that zoning has a structure. He would go over the proposed amendment point by point and explain how what is here is driven by that structure. He would then go back over it to allow questions and comments to be addressed to the Board from the floor. He asked that there be no discussion among attendees.

III. The proposed amendment

The *Zoning Bylaw* now contains thirteen sections. The Board proposed adding a **Section 14**. Its stated **purpose** would be to: "Provide for the recreational, educational and research use of open space and conservation land." The proposed amendments to Section 4.8.A and 4.8.B would be placed in the new section. In addition, Sections 4.9 and 4.10, which had set moratoria on marijuana establishments, were now outdated and would be deleted as housekeeping measures to clean up the bylaw.

Definitions

Mr. Hanson read aloud the proposed definitions in Exhibit 1. He explained that they would be a legal part of the new Section 14 but would apply only within it; they were not universal. After reading them, he called for any questions from the floor.

The first questions concerned **Conservation Land** and **Open Space**.

Mr. Veillette suggested putting in the state definition of "conservation land." Mr. Hanson replied that the proposed shorter definition applied only to this section and was sufficient for the purpose. Mr. Veillette asked for clarification of what "open space" had to do with "conservation land." Mr. Hanson replied that after gathering and analyzing a lot of data on property in Richmond, the Board realized that in addition to the properties owned by the Richmond Land Trust and the Berkshire Natural Resources Council or privately owned land under conservation restrictions, a lot of the remaining land zoned residential was not actually being used for dwellings. That is, above and beyond the two-and-a-half acres that made up a building lot or the part of a parcel where the house, garage, and other outbuildings were concentrated, many people owned properties with a lot of undeveloped open land. In some cases, lots backed up to each other and were used by neighbors together. We don't want zoning to stand in the way of landowners who want to open their property to other people. Under the state's Chapter 61B you can get a tax break for opening land to public access. That state program requires that you open a minimum of five acres—that is, you can't just open a half acre and get the tax break. As you'll see, we used that five-acre figure in our proposal for accessory use.

Mr. Youdelman asked how does one designate land as open. Mr. Hanson replied that in Massachusetts, land is presumed to be open unless posted. The "presumption of openness" is not a zoning matter, it's state law.

Mr. Hanson noted that in addition to residential property, there is a lot of agricultural land in Richmond on which there are few buildings and little farm activity. This is another kind of land where recreation can take place.

He added that the Board recognized that, for the good of the land and the good of the neighbors, reasonable limitations had to be placed on what was allowable. What people did on their own land or invited friends over to enjoy was their private business. But if land was open to the public, then there had to be rules for permitted recreation. The Board had listed common activities that were low in impact and dispersed over the property as permitted recreational uses on land open to the public. It had to be free of charge and non-motorized. Residents don't want people showing up with lots of mechanized equipment—so only hiking, hunting, fishing, that sort of thing would be permitted. In addition, we wanted to say that educational and research activities for people who want to learn about the natural world or for children in school would be permitted by right.

The definition of **Recreational Event** drew much discussion of group size and who would be required to get a permit.

Ms. Hansell asked was there a number that would define how many people should be considered a group for a "recreational group event"? A hundred? fifty? ten? three or four? Mr. Hanson replied that we had not specified a number nor does Chapter X, Section 9, of Richmond's *General Bylaws* (see Appendix 1). When a bunch of people came together for a recreational event, we wanted them to go to the Board of

Selectmen as they always have done for special cultural, educational, and fund-raising events. For one thing, we want to make sure that public safety is protected.

Ms. Hansell said that it would be helpful if the bylaw clarified the size. Is the distinction clear enough between three or four people doing something together and the size needed for a permit? Mr. Hanson said a permit was not required for a small group that naturally shows up. Ms. Hansell said what about a hiking group that may have a mailing list and send out messages to which a few people respond by showing up; we don't want to leave the regulation so vague that such a group might need a permit. Mr. Hanson said that what the group should do was call the Board of Selectmen and ask whether a permit was needed.

Ms. Broussal suggested that the bylaw could specify that named events, e.g., Reach the Beach, would require a permit.

Mr. Martin identified himself as Chairman of the Zoning Board of Appeals but said that he was speaking for himself. He asked where the term "Recreational Event" was used? Rick Bell replied in Section 4.8.8.18a, where it says "recreational events shall require a permit from the Board of Selectmen under Chapter X, Section 9 of the Town By-Laws." Mr. Martin said that in that case, the term should be capitalized as it was in the definitions. Mr. Hanson said we could fix that. Mr. Martin then asked was a special permit not required? Mr. Hanson said, no, just as it was not in Section 9. Mr. Martin said that he found the lack of precision troubling. If there is a sign-up sheet at Miraval and a bus arrived, whether it carried three people or twenty, would that activity force the Selectmen to issue a permit? This language says "shall require a permit." Mr. Hanson said that perhaps the wording should be "shall apply for a permit," in which case, the Selectmen would exercise their discretion as they always have done. Mr. Martin asked whether this applied to any group? Mr. Bruce said, not to three people showing up together. Mr. Martin said that he found the phrase "other similar activities" imprecise. He said he questioned whether group recreational events were similar to hikes. He encouraged the Board to be meticulous in its definitions.

Ms. Hansell asked whether it would be the landowner or the sponsor of an event who would be responsible for getting the permit. Mr. Hanson said the landowner or someone authorized by the landowner to use the property. Ms. Hansell said that landowners don't always get informed of activities planned by others. If a hiking group plans an event, would it be the group or the landowner that was responsible for handling a permit? Mr. Hanson said that if an event doesn't use more town resources than are usually provided, then Section 9 does not require a permit.

Ms. Mason expressed concern that Miraval, for instance, might be required to apply for a permit for uses of properties they make today with little impact. Ms. Carroll thought the proposed language was too broad and should be tied to the use of town resources. Mr. Bell summarized by asking what, in other words, is the trigger point that requires a permit. Can we put a number on it? We don't want unnecessary applications.

Ms. Mason commented that it's a wonderful thing that people in town walk together and it would be terrible if they couldn't just do something spontaneous. Mr. Hanson agreed and said the proposed amendment would not stop such normal activities.

Mr. Munson asked who determined when Town resources were used. Was it after the fact? The requirement for a permit seemed burdensome to the Board of Selectmen.

Mr. Martin said that it seemed an onerous position for the Board of Selectmen to have to issue all the special permits needed. Several voices corrected, Not a special permit!

Mr. Hanson added that the Selectmen already handled the events permits in question. Mr. Bell read the first sentence of Section 9 of the *Town Bylaws* (see Appendix 1). Mr. Hanson noted that Section 9 says only that an event may require a permit. It is vague. He said that the question had arisen at a Board meeting whether we should ask for a change in Section 9 to include the word *recreational* along with the words *special cultural, educational, or fund raising event*; but that would require an additional bylaw change so we decided to include it here.

Mr. Munson asked: If the Planning Board doesn't say what size, then are private groups responsible for a permit? Is my extended family? What kind of organization that is sponsoring an event should have to get a permit?

Mr. Martin asked whether anybody had a limit on the size group that could go onto property at the same time? 200? 100? 50? What about several groups of ten each that arrived separately?

Mr. Bell said that the COVID pandemic had triggered greater use during 2019.

Mr. Donovan rose to say that on East Road there can be from twenty to thirty people a day walking, and residents are delight to see them, from mothers pushing baby carriages to eighty-year-olds. The more this gets defined and regulations are put on people, it's going to destroy the flavor of the town. We should realize how lucky we are and not start defining so much that people have to ask, do I need a permit?

Mr. Bell said that town roads were not part of the discussion since they were not covered in zoning.

Mr. Hanson said that in the proposed bylaw amendment almost everything is by right, but events that attract a lot of people do need some regulations. You can't charge a fee, we don't want commercial events. You can't bring in a motorized vehicle. Properties are open by right, yes, and recreational use *per se* does not require a permit. But at some threshold an event can create a public nuisance and there are safety issues. That's why we included language that references Section 9.

Ms. Bass asked whether the Board of Selectmen should put a number in their bylaw?

Mr. Hanson said it was a great point, but the Planning Board did not want to direct the Selectmen to rewrite a Town Bylaw.

Mr. Monne said that 50 people coming on a bus rather than 45 in cars would have less impact.

Ms. Lockwood said that if no numbers are given in the bylaw, then people won't know whether they need a permit or not. And it was worth asking whether it was a matter of the number of people or the number of vehicles.

Mr. Hanson said that we could leave out reference to a recreational event altogether. The Planning Board had not begun with one; it had been added late; and we could go back to a simpler version of the bylaw.

Mr. Harke asked, What if a group charges a fee for people who sign up for one of their events—if they bring the group to a property in Richmond, is that allowed?

Mr. Hanson: Yes. The fee would not apply to the use of the land.

Mr. Bruce: The by-law only requires that the landowner not charge a fee.

Discussion turned to the definition of a **Parking Lot** and the clause setting out the requirements for it as a use of land.

Mr. Lochery said, Let's be pragmatic. It's largely a matter of parking spaces. If fifty cars go to Pittsfield State Forest, there's plenty of parking. If fifty cars go to Hollow Fields, it's a problem.

Mr. Hanson replied that Section 6.6. of the *Zoning Bylaw* states that a parking lot site plan must be approved by the Board of Selectmen (see Appendix 2). The impact of having too many cars is taken care of by the requirement that the parking area be large enough for the maximum expected use.

Mr. Martin: Why not go to the ZBA for a special permit? We're not that busy. Why should it go to the Selectmen who are?

Mr. Hanson: It goes to the Selectmen because all parking lots are regulated by Section 6.6.

Mr. Martin: What about Balderdash? Doesn't it have a special permit for a parking lot?

Mr. Hanson: The parking lot is part of Balderdash's special permit for farm functions.

Mr. Martin: You could draft this bylaw so that special permits for these parking lots go to the ZBA.

Ms. Broussal said that the proposed bylaw is not intended to restrict use but rather to ensure that land may be used for recreation.

Ms. Mason: I applaud the Town of Richmond for how well its zoning is planned. Just because one committee is not busy is not a reason to change. If parking is by the Selectmen, then that's the way it should stay.

Principal and Accessory Uses

There being no further questions on the definitions, Mr. Hanson turned to the clauses delineating Principal and Accessory Uses.

He read the proposed clause for **recreation** as a permitted **principal** use of open space and conservation land (see **Section 4.8.A.18a** of Exhibit 1). He added that we don't want recreation to be commercialized and we don't want it to be destructive to the land or the neighbors. The same language, he said, is given in a second clause (see **Section 4.8.A.18b** of Exhibit 1) for **education and research** as a **principal** use because the structure of the *Zoning Bylaw* forced the language to be repetitive. It was used again in a third clause that allowed **recreation** as an **accessory** use on land where a dwelling is the primary use (see **Section 4.8.B.18a** of Exhibit 1). Finally a fourth clause (see **Section 4.8.B.18a** of Exhibit 1) allowed for certain kinds of **accessory structures**.

He then opened the hearing to questions and comments on each from the floor.

Mr. Martin said that he was now speaking for the ZBA and requested that this night's hearing be continued and not closed until the Public Hearing on the other two proposed by-law amendments for recreation on open space was held and that no report be made to the Selectmen after this night's proceeding. He asked that a combined report follow after the later hearing.

Mr. Hanson replied that the Board had finished the work of this hearing and must report to the Selectmen within twenty-one days.

Mr. Martin repeated for the record that the ZBA requested that the hearing be continued and no report made.

Dr. Sabo expressed gratitude that the Planning Board was trying to return Richmond to the normal way things were before the Hollow Fields brouhaha.

Ms. Morse stood to address the room and said that she wanted to clear one thing up, that the residents of Perry's Peak Road were not against hiking. What they were against, she said, were things that had been happening—dogs on the loose, knocked-down fences, people parking on their property, drunks coming to the door. For nine years, they had suffered a loss of privacy. When someone in the back of the room started to respond, Mr. Hanson held up a hand and reminded the audience that there was to be no discussion among attendees.

He asked whether anyone had further changes to suggest. **There being none, he called for a motion to close the Public Hearing. Ms. Keenum so moved. Mr. Bell seconded. The motion carried unanimously by a vote of 5–0.**

Mr. Hanson told attendees that they were welcome to stay for the regular meeting of the Planning Board, which was scheduled for 7:30 P.M.

The hearing closed at 7:25 P.M.

Exhibit 1: Proposed amendments to the Zoning Bylaw

TOWN OF RICHMOND
PLANNING BOARD
NOTICE OF A PUBLIC HEARING
PROPOSED AMENDMENTS TO THE ZONING BYLAW

The Planning Board, pursuant to the provisions of Section 5 of Chapter 40A of the Massachusetts General Laws, will conduct a public hearing on Monday, February 14, 2022, at 6:00 pm at Town Hall, 1529 State Rd., to consider the following amendments to the zoning bylaw:

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 to attract 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.

DISTRICTS

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 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.

DISTRICTS

Section 4.8 B. PERMITTED ACCESSORY USES RA-A
 Continued: 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 Agricultural Land, or Conservation Land, under Section 14, for accessory structures such as temporary shelters, informational bulletin board, parking lot, and restrooms. Yes No No

Other Zoning Changes

Delete: The following sections entirely:

Section 4.9 Temporary Moratorium on Medical Marijuana Treatment Centers

Section 4.10 Temporary Moratorium on Marijuana Establishments

The complete texts of these amendments are available in the office of the Town Clerk, Monday-Thursday,
8:30 am-4:00 pm.
Friday, 8:30 am- 12:30 pm

John Hanson, Chairman
Richmond Planning Board

Appendix 1: Section 9 of the Richmond *Town Bylaws*

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.

Appendix 2: Section 6.6 of the Richmond Zoning Bylaw

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.