

Richmond Planning Board
Public Hearing followed by Meeting
Town Hall
Minutes
September 6, 2018

Members present: Rick Bell, Adeline Ellis, John Hanson (Chairman), Katherine Keenum, John Vittori (Vice Chairman)

Others present: Joseph McGovern, CEO, Boys and Girls Club of the Berkshires; John Donna, Chairman, Boys and Girls Club of the Berkshires; Tim Armstrong, Hill Engineers, Dalton, Mass.; Neal Pilson, Richmond Board of Selectmen; Carl Foote, Branch Farm, Richmond; Ron Veillette, Conservation Commission, Richmond; Pete Killeen, Branch Farm, Richmond; Ken Kelly, Richmond; Richard M. Dohoney of Donovan O'Connor, & Dodig, LLP, Pittsfield; Mark Fowler, Richmond; Christian Hanson, Balderdash Cellars, Richmond

Public Hearing

At 6:30 P.M., Mr. Hanson opened the **Public Hearing on a proposed subdivision of the Boys and Girls Club of the Berkshires** that would allow the club to sell an existing house on its property. He called on Mr. Armstrong to give a brief summary of the plan.

Mr. Armstrong showed the audience a site plan and explained that the subdivision would create two lots. Lot 1 contains 0.72 acres at 36 East Beach Road and the house occupied by the late James Mooney; it would be merged into the Richmond Shores (RS) zoning district. Lot 2 contains the rest of the club, which is zoned Residential/Agricultural-C (RA-C).

Mr. Hanson said that the Planning Board had received written comments from three other town boards:

- The **Board of Health** had made no objections and noted that the house is served by the municipal sewer system with a grinder pump and has a potable water well on site (see Exhibit 1).
- The **Board of Selectmen** supported the application but would like the property owners to be aware that the home will now be billed as a separate sewer user (see Exhibit 2).
- The **Conservation Commission** wrote that the subdivision plan should acknowledge the fact that 90% of the new house lot would be in the 200-ft. buffer zone of Richmond Pond and noted that the shore front of the new lot included areas of Estimated Habitat of Rare Wildlife and that the shore front and approximately 50% of the lot are also a Priority Habitat of Rare Species (see Exhibit 3).

Mr. Hanson explained that the three communications in Exhibits 1–3 would be included as an appendix to the subdivision and would be recorded as part of the deed at the Registry of Deeds. He gave copies to the clerk to be entered into the record

Mr. Hanson said that a letter received from Ken Kelly would be attached to the minutes of this public hearing (see Exhibit 4). To a question about the betterment fee and annual payments for the sewer in Mr. Kelly's comments, Mr. Donna answered that a separate betterment fee for Jim

Mooney's house had been paid by the club at the time of the hook-up and that Mr. Mooney had kept up the annual payments regularly.

Ms. Ellis asked what the costs were. Mr. Donna said \$29,000 per betterment and hundreds of dollars each year.

Mr. Foote asked whether the .7-acre lot would be a non-conforming lot.

Mr. Hanson said that it would not be, because it would become part of the RS district where the acreage requirement is .25 acre. He explained that the Planning Board had not been able to approve the club's original request for an ANR subdivision within the RA-C district because, although there was plenty of land surrounding the house for a 2.5-acre lot, there was not enough road frontage for the required 250 feet. The Board had therefore recommended the two-step process of, first, subdividing the land to supply the borders needed for a zoning change, and, second, seeking the zoning change to place the lot in RS at a Town Meeting. His recommendation for that evening would be for the Board to approve the application contingent on approval of a zoning change at Town Meeting.

Mr. Killeen asked how the private roads in Richmond Shores could provide frontage.

Mr. Hanson replied that private roads are recognized by the town as providing frontage but the upkeep is private.

Mr. Foote asked whether the new owner would have to become a member of the Richmond shores Association and pay their dues toward the upkeep of the road.

Mr. Hanson said that the rules and regulations of the association were for them to determine. It was not a question relevant to the application for a subdivision.

Mr. Donna volunteered that the Boys and Girls Club has been paying a membership annually and so did Mr. Mooney.

Mr. Kelly read his comment that claimed it was his understanding that the Town of Richmond had required the club to pay for only one of six betterment fees when the club was experiencing financial difficulties (see Exhibit 4).

Mr. Donna replied that there were negotiations at the time whereby the club gave the town easements and allowed a treatment plant on the property as a quid pro quo.

Mr. Kelly asked whether the more flexible zoning parameters applied in RS would be applied to other properties around the pond.

Mr. Hanson replied that the creation of the RS zone brought many of the non-conforming cottages in the neighborhood into compliance with town zoning. There were no "flexible parameters" being applied. All that the Board was saying was that the existing Mooney house belonged in RS.

Mr. Kelly asked about new homes.

Mr. Hanson said that the subdivision application concerned only this house.

Mr. Veillette asked whether there was any reason not to make the lot 2.5 acres.

Mr. Donna said that they did not want the lot to encroach on the club's access to the beach, but they had made it larger than the minimum required in RS.

Mr. Armstrong repeated that there was not enough road frontage for a RA-C lot.

Mr. Veillette asked whether approval would be setting a precedent for future subdivisions.

Mr. Hanson said it would not. He then made a motion to close the meeting. Ms. Keenum seconded. The motion was approved unanimously.

Meeting

Mr. Hanson immediately opened the meeting for Planning Board business. He invited members of the audience to remain as observers, which they all did.

1. The first item of business was consideration of the plan for the **subdivision of the Boys and Girls Club**.

Mr. Hanson read out the "Definitive Plan Approval" that would be signed after a vote by the Planning Board (see Exhibit 5). He held up a copy of the Richmond Zoning Map to show the audience the small change that would be needed to transfer the new lot to the RS district. He said that the second public hearing required for a zoning change had been scheduled and duly advertised for September 17, 2017. If there was no objection at the second hearing, the Planning Board would recommend the zoning change to a Special Town Meeting scheduled for October 30, 2017. If the zoning change failed at that meeting, it could be brought up again at the annual Town Meeting or at another Special Town Meeting up to September 6, 2019. If the change carried and a subsequent owner wished to subdivide the property further, then the process, including public hearings, would have to be repeated because the "Definitive Plan Approval" specifies that the "Proposed new .72 acre lot shall not be further subdivided."

Mr. Pilson asked whether the wording should read, "Not further subdivided *by right*." Mr. Hanson replied that no subdivision was "by right," that even an ANR was not by right, although it was hard not to approve.

Mr. Veillette said that the Conservation Commission would have a problem with any further subdivision. Mr. Hanson replied that if the Planning Board received a request for a subdivision, the application would have to be considered but would not have to be approved. Other boards would have the opportunity to comment.

Pointing out that "Definitive Plan Approval" under consideration was conditional, Mr. Bell asked to have the subsequent steps described. Mr. Hanson said that after approval of the voting change at a Town Meeting, the Planning Board would vote a final approval at its meeting on November 5, 2017, after which there was a twenty-day waiting period before the subdivision took effect.

Mr. Bell made a motion to approve the submitted definitive plan for a subdivision of the Boys and Girls Club. Ms. Keenum seconded. The motion carried 5-0.

2. The second item of business was discussion of a **new by-law regarding events on farms**. Mr. Vittori recused himself and sat in the back of the room without participating in the discussion. Mr. Hanson announced that on September 17, 2018, there would be a public hearing on the proposed Farm Function Zoning Change and changes to [Chapter IX] Section 9 of Richmond's Town By-Laws. He said that the Board would like to hear inputs from anyone in the remaining audience who wished to speak.

Mr. Dohoney said that he represented Erena Langley and Mark Fowler of 482 Canaan Road in Richmond, which abuts a farm. His clients did not object to the concept of the proposed changes but wished to make some comments and requested that a vote be deferred until the regular Town Meeting in May 2019 in order to give them time to talk about the proposal, which had only recently come to their attention.

Mr. Hanson replied that the Board had been working on it for months and that it had been duly posted on agendas for the meetings. The timing of hearings on three issues on September 17, 2018, and the timing of the Special Town Meeting were being driven by the need to complete action on a marijuana by-law by the end of the year.

Mr. Dohoney said that his clients had concerns about the 100-foot setbacks for functions and wished to see a minimum of 500 feet. He also said that the mechanism of a special permit would be preferable to an events permit. He said that what was being proposed was an intense commercial use in a residential neighborhood. His clients now had a good neighbor but they were worried about what the next owner might do.

Mr. Hanson replied that people in the town wished to preserve open space and help farmers to succeed as the alternative to housing developments on large tracts of land. That was why they had voted for the Right to Farm, which allows for the noise, odors, dust, and fumes incidental to farming and for farm equipment on the roads. The ability to hold functions as an accessory use was one way to help them stay in business. The Board had been careful, however, to prohibit loud events, such as motorcycle races because the peace and quiet of neighborhoods was of benefit to the whole community.

Mr. Dohoney asked why the Board had chosen an events permit instead of a special permit. Mr. Hanson replied because it provided flexibility in setting the criteria in each case and also carried an end date after which it would have to be renewed. Mr. Bell drew an analogy to the town's recently approved by-law on short-term rentals and pointed out that, once granted, a special permit was permanent and went with the property; it would be transferred to new owners. Mr. Dohoney recommended a durational limit in a special permit.

Mr. Fowler said that as he understood the matter, in the event that a special permit holder violated the permit, a complaint could be made to the Zoning Enforcement Officer who would then be compelled to investigate and make a report in writing within 14 days whereas there was no enforcement for an events permit. Mr. Hanson said that if noise was excessive, the police could be called; and they could issue an immediate cease-and-desist order. Furthermore Section 9 of Richmond's General By-Laws explicitly stated that failure to comply with local, state, federal and permitting requirements could result in revocation of the events permit. The fine for violations was \$100. Mr. Dohoney said the fine was too low to be a deterrent for a business.

Asked what his main concern was, Mr. Fowler said noise. On a hot day when he had to have the windows open during his children's naps, if there was music from an event next door, they could not go to sleep. After considerable discussion of the problems of dealing with noise, the difficulty in practice of writing legislating against it, and the frustrations involved in enforcing zoning violations, Mr. Hanson invited Mr. Fowler to return on September 17th to comment further at the public hearing. He said that the Board welcomed input from the public but had received little so far and he wished now to hear from Christian Hanson.

Mr. Christian Hanson said that he wanted to be a good neighbor, that it was important to his business. He liked it that the Board of Selectmen could add site-specific requirements to events permits. He could probably meet a setback of 200 feet but not 500 feet.

Mr. Fowler said that if noise was not foreseen by the selectmen in granting an events permit, then he could have loud music next door for two years. Mr. John Hanson said that that was also true with a special permit and would be true forever.

Mr. Dohoney asked whether a motion to recommend action would be made at the end of the September 17th hearing. Mr. Hanson said that a Planning Board meeting would follow the hearings, and at that meeting a vote would almost certainly be taken. Mr. Fowler objected that most people find out about a change when they were notified. Mr. Hanson replied that there was no notification to abutters for a zoning change because it was town-wide. The Farm Events By-Law Change had been under discussion since March and was for the benefit of the whole town.

Mr. Dohoney said that his clients were concerned that the purchaser of the property next door might buy it to use as a major events center. Mr. Hanson replied that it had to be primarily a farm because events permits would be issued only as an accessory use.

Mr. Dohoney asked whether changes could be made from the floor at the Special Town Meeting. Mr. Hanson said that that would be up to the moderator but only minor changes were generally entertained because voters had to have issues clearly laid out ahead of time.

3. Mr. Hanson reported to the Board members that he had added the phrase "Marijuana Establishment" to Section 4.8.A.16.e. to the **Marijuana Zoning By-Law Draft** in addition to the changes approved at the last Board meeting in order to bring it into conformity with 4.8.A.16.a–d. If the measure failed at the Special Town Meeting on October 30, 2018, the next step would be to seek an extension of the moratorium until the next Town Meeting. He had thought that the December 2018 deadline was final, but other towns had been granted extensions.
4. After a brief discussion of four queries from Mr. Bell, Mr. Hanson made a motion to **approve the minutes of August 13, 2018**, as is. Ms. Ellis seconded. The motion carried 4–0, with Ms. Keenum abstaining.

The meeting adjourned at 8:30 P.M.

Respectfully submitted,
Katherine Keenum, Clerk

Exhibit 1: Report from the Board of Health in an e-mail from Mark Pruhenski to John Hanson

John,

Please see the below email from John Olander. -m

Mark A. Pruhenski
Town Administrator
1529 State Road
Richmond, MA 01254
413.698.3882

On Aug 24, 2018, at 12:42 PM, John Olander <boh@richmondma.org> wrote:

Mark:

Could you please refer this to the Planning Board? John Hanson said send an email, however I have no email address for the Planning Board.

The Board of Health has reviewed, at its August 1, 2018 meeting, the proposed subdivision of the single-family and land house owned by the Boys and Girls Club of Pittsfield at the end of East Beach Road. The Board of Health has no objection to this proposed subdivision, noting that the house is served by the municipal sewer system with a grinder pump, and has a potable water well on site.

Regards,

John Olander, agent
Richmond Board of Health

John Olander, agent
Richmond Board of Health
1529 State Rd.
Richmond, MA 01254
413-230-4941

Please be advised that the Secretary of the Commonwealth has determined that all email messages and attached content sent from and to this email address are public records unless qualified as an exemption under the Massachusetts Public Records Law (MGL c.4 § 7(26)).

Exhibit 2: Report from the Board of Selectmen in an e-mail dated August 25, 2018, from Mark Pruhenski to John Hanson

Hi John,

The BOS met last Wednesday August 22nd and reviewed the subdivision request from the Boys and Girls Club. The board was supportive of the application, but would like the property owners to be aware that the home will now be billed as a separate sewer user and that they should contact our Treasurer/Collector to investigate what fees will be associated with the debt service (betterment) on the new EDU if/when the home transfers ownership.

Thank you! -m

Mark A. Pruhenski
Town Administrator
1529 State Road
Richmond, MA 01254
PH. (413) 698-3882



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Exhibit 3: Report of the Conservation Commission

Subject: 341 Boys Club Road / East Beach Rd subdivision-ConCom

August 24, 2018

John Hanson, Chairman
Richmond Planning Board
Town Hall,
1529 State Road
Richmond, MA 01254

John

The Richmond Conservation Commission has reviewed the subject application and has the following comments:

1. Although no changes to the subject house and property are proposed at this time, the subdivision plan should acknowledge the fact that approximately 90% of new lot would be in the 200ft buffer zone of Richmond Pond. This would, under the Richmond Wetland Bylaw, General Bylaws, Section XII, require a permit for any construction, land disturbance, or removal of vegetation within the 200ft buffer zone.

In addition, In Accordance with Mass GIS data mapping as of 24 August 2018:

2. The shore front portion of the new lot includes areas of Estimated Habitat of Rare Wildlife which is protected under the Massachusetts Natural Heritage of Endangered Species Program (NHESP) and would require a project review.
3. The shore front portion and approximately 50% of the new lot is also a Priority Habitat of Rare Species and any projects would require NHESP review.

Sincerely yours,

Ronald Veillette & Freya Segal

Co-Chairs, Richmond Conservation Commission

CC: Sheply Evans, Conservation Commission Agent

Exhibit 4: Letter from Ken Kelly

September 6, 2018

TO: Richmond Planning Board

These comments relate to the Thursday, September 6 hearing before the Planning Board of the request from The Boys & Girls Club of the Berkshires (Camp Russell) to split off a 0.70 acre parcel including the home formerly occupied by Jim Mooney.

I am in support of this action, even though it may violate the Town's minimum acreage requirement. But since such zoning requirement was recently amended for the Richmond Shores Community, this may comply with the new zoning parameters for Richmond Shores if it becomes part of Richmond Shores Community as a conforming lot, or it may become a non-conforming lot as an independent cottage.

But I support the proposed "split off" action only under the following condition:

- The sellers or purchasers of the property must pay the Town of Richmond the full sewer betterment fee, plus accrued interest for their hookup from the time of installation of the sewer system. (My understanding is that when the sewers were installed, Camp Russell had 6 hookups, but were only asked by the Town to pay one betterment fee, as the Boys & Girls Club at that time was in financial difficulty and the Town didn't want to push them into bankruptcy or foreclosure. Now, in fairness to all the rest of the homeowners on the sewer line, this "split off" property must pay the betterment fee.)

I would also request a clarification of how this action at Camp Russell might set Planning Board precedent for or impact similar "carve-up" actions that might ultimately be proposed around the pond. Examples might include:

- Would "non-compliant" parcels in Whitewood or land in the former Camp Marion White property that are not yet developed (i.e. no home or cottage on them) likely be granted approval to build on a smaller lot than normally required?
- Would an independent cottage (my own) that has an undeveloped field of 2 acres above it likely be allowed to build a home or cottage on that portion of our property as an exception? (We have no current plans to do so, but it would be helpful to know if zoning parameters may be changed.)
- If there was a proposal (from Branch Farm) to dissolve the current Branch Farm Condominium arrangement, changing things from where all the land is currently jointly owned, to an arrangement wherein each of the current 10 already built cottages would have a specified & surveyed portion of that parcel, would that likely be approved, even if most or all of the carved-up parcels did not meet the minimum acreage requirement?
- Are the more flexible zoning parameters recently applied to Richmond Shores still under consideration for Camp Russell, Branch Farm, independent cottages, Whitewood and the former Camp Marion White property?

I would suggest that any new homes constructed around the pond require 2.5 acres.

Ken Kelly, on behalf of Kelly Properties Nominees Trust (76 Lake Road Ext.)

Mailing address: 74 King William Road, Lenox, MA 01240

Email: kkelly@utica.edu Cell: (413) 329-9678

Exhibit 5: Planning Board Decision Form

Decision of Planning Board

Town of Richmond, Massachusetts

Definitive Plan Approval

The Planning Board convened a public hearing on September 6, 2018 on the Application for Approval of Definitive Subdivision Plan filed by the Boys and Girls Club of the Berkshires, Inc.

The Selectmen, the Board of Health, and the Conservation Commission have reviewed the application and offered the comments shown in appendix A.

At its public meeting held on September 6, 2018, the Planning Board voted on the approval of the Definitive Subdivision Plan. The Planning Board hereby approves the Definitive Subdivision Plan, including all the proposed waiver of Subdivision requirements, subject to the following conditions (this approval shall be recorded at Berkshire Middle District Registry of Deeds and so noted on the Definitive Subdivision Plan):

The Subdivision Plan is approved with the following conditions:

1. The proposed new .72 acre lot is added to the SR district by a zoning change to the Richmond zoning map. The zoning change shall be approved at a Town meeting no later than September 6, 2019.
2. The proposed new .72 acre lot shall not be further subdivided.
3. The East Beach Road shall always be a private road, and shall never be maintained by the Town.

IN WITNESS WHEREOF the Richmond Planning Board has executed this Approval as a sealed instrument on September 6, 2018.

RICHMOND PLANNING BOARD

By _____
Chairman
