

Richmond Planning Board Public Hearing
Concurrent Planning Board Meeting
Town Hall
Minutes
April 17, 2018

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

Others present: Linda Morse (Rossiter Road), Ruth Bass (View Drive), Stevan Patterson (Shore Road), Patricia Saupé of Canaan Road, Thomas Grizey of Willow Road, and nineteen others (see Appendix 1)

Public Hearing

Mr. Vittori opened the public hearing on a Proposed Short-Term Room Rental By-Law Change at 6:31 P.M. He immediately recused himself from deliberations because he is in the hospitality business. He turned the meeting over to the Vice Chairman, John Hanson. A handout with background information and the language of the proposed by-law change was available at the door (see Appendix 2).

Before opening the floor to comments, Mr. Hanson reviewed the protocol for the evening: Speakers should identify themselves by name and address, direct their comments only to the chair, and try to keep comments short so that everyone would have a chance to speak. He then went over the handout to give background for the zoning change and explain the two categories into which rentals in Richmond generally fall, i.e., housing and hospitality/tourism

The principal use of a hospitality/tourism rental property is for business. He pointed out that Richmond by-laws allow the conversion of an existing house to a country inn but not the construction of a new inn. The accessory use of a house as a Bed and Breakfast requires a special permit from the Board of Appeals (ZBA). He said that the growing popularity of short-term rentals through such online websites as AirBnB and VRBO has created a new circumstance.

The proposed by-law change was intended to make clear what regulations Richmond homeowners must follow in future if they wish to begin renting out rooms or whole houses on a short-term basis. The application process for a special permit includes a public hearing at which neighbors may express concerns so that requirements specified in the permit for a particular location can fit the neighborhood. For those already in operation, any current use may be grandfathered because zoning is about the future and cannot be imposed retroactively. Nevertheless, owners would have to meet with the Zoning Enforcement Officer and prove that they had a lawful pre-existing business in order to be granted an exemption. Furthermore, grandfathering does not exempt existing businesses from health and safety regulations; they can also be cited under Section 4.7 at any time (see the end of Appendix 2).

Mr. Hanson then opened the meeting to questions and comments.

Dick Stover of East Road asked what would be the regulations for health and safety under the new changes?

Mr. Hanson replied those set by the Building Inspector, state law, building codes, and possibly the Board of Health.

Neal Pilson of East Road, speaking as a Selectmen, explained the Select Board had asked the Planning Board to look at short-term rentals. The practice of renting for over 30 days would be unaffected. For short-term rentals, if the owner is present, there is no change from current practice. The only thing changing is for when the rental is for thirty days at a time or less and the owner is not present.

Stevan Patterson of Shore Road said he though the new by-law would be unenforceable. How would you know whether visitors to the house of a second homeowner were guests or paying money?

In response, Tony Segal of Lenox Road said, by seeing how many homes are advertised on line.

Mr. Hanson said that the Planning Board had tried to think through such issues. He offered examples of the sort of things that were obviously allowable, e.g., lending a house to a friend or swapping houses for a vacation.

Mr. Patterson said that two hundred second homes are often empty in Richmond and asked how would we know if someone were there for a couple of weeks? Who would keep up?

Mr. Hanson replied that people who were running a business on line would advertise with claims that they were on top of safety and the host was providing something that the neighborhood is okay with. Those who were noncompliant would soon be out of business. When the state law requires taxes to be paid, the state will come down on noncompliance.

Mr. Patterson asked who would enforce the by-law? the Zoning Enforcement Officer?

Ms. Ellis said that there would always be people who would try to evade regulations. For instance, if you advertise on Air BnB and the host is supposed to be there, it is true that some prospective renters will call and say they don't want the host present. The owner agrees. That is difficult to enforce.

Mr. Hanson said that if you were a visitor in a house and could see the owners' stuff—furniture, children's photographs, and so on—then they had not vacated; the use of the house as housing would not have changed. Anyone who wanted to rent out and go away would not be out of compliance.

Harley Keisch of View Drive said that the phrase "detrimental to the neighborhood" left a lot of wiggle room because of its lack of specificity: one person's definition would not be the same as another's. He suggested that inclusion of a range of things that could be considered detrimental could save a lot of trouble later. Other municipalities are dealing with this issue because it is relatively new. In some cases, regulations have included that the town does not allow one-day rentals (much less one hour) and set limits on the length of stay. He asked whether Richmond wanted to set a minimum. One night is very transient and hard to keep accountable. That very day he had been picking up trash from his yard, as he has to do throughout the rental season. Renters leave out trash that attracts bears. They do not show a lot of responsibility. The longer the term of rental, the more likely they are to behave well. As many as ten cars are sometimes present at 200 View Drive.

Mr. Hanson replied that “not detrimental to the neighborhood” is standard zoning language. Its meaning is most often determined on a case-by-case basis at the public hearing required by the special permitting process. The neighbors come in and voice their concerns. As experience is gained, we see what some of the problems are which, in turn, helps with decisions; but the definition is deliberately left open to be determined case by case. In general, we have to expect that people will want to do the right thing and that owners are people who have a stake in being here.

Jane Howell of Yokun Road said that she and her family had had problems with the same house [200 View Drive]. The noise has been so loud that they had contacted the owner. She asked, how can you rely on a stranger to care about the neighborhood? She has concerns about strangers driving around the neighborhood unaware of the children and dogs that can be on the street. She would like to see limits set on the number of people allowed to stay.

Peter Cohen of Cone Hill Road, speaking as a member of the Board of Health, said that the swimming pool at the house does not conform to regulations.

A woman who did not identify herself said that water pressure in the View Drive neighborhood dropped whenever people were staying at the house. There is so much noise that she has to keep her windows closed. What was she supposed to do, call the State Police every weekend? What could be done about the drunks? Up to 26 people at a time have stayed there.

Mr. Hanson replied that what she was reporting were violations of Section 4.7 of the zoning by-law, which he had appended to the end of the evening’s handout. These complaints could be handled under current law.

Mr. Stover asked whether there was something the neighbors should do?

Mr. Hanson said that enforcement of zoning comes under the Board of Selectmen, and they are trying to enforce the law in this case.

Mr. Patterson commented that we all have neighbors who make noise on occasion, and sometimes we have to call the State Police. He then asked why the Board of Appeals was being made the Special Permit Granting Authority in this by-law change. Why not the Planning Board or Board of Selectmen?

Mr. Hanson replied that the logic was that we currently require applicants for special permits for bed-and-breakfasts and inns to get them from the ZBA. The rental of rooms is similar. They have had experience; and because they have done it, they will be getting better as more applications are made.

Mr. Hamilton said that he thought the Planning Board had done a good job of threading the needle between being over-restrictive and too lax. Nevertheless, he was concerned that the present situation on View Drive could be grandfathered, in which case he would put a For Sale sign out in front of his house. He moved to Richmond for the peace and tranquility. He serves on the Long-Range Sustainability Committee but unless something is done about the problem, frankly, he would not recommend that anyone move to Richmond.

Mr. Hanson replied that grandfathering is done case by case. By state law, zoning cannot require someone to get a special permit for a lawful use in existence prior to the change. A transition will

have to happen. If an owner is doing something legal, they might be granted an exemption. In future, a View Drive situation will not occur elsewhere in the town.

Mr. Hamilton asked whether there was something that could be done about the problem at 200 View Drive.

Mr. Hanson said that Section 4.7 could be invoked.

Mr. Hamilton said that Mark Pruhenski, the Town Administrator, had directed his group to the Planning Board.

Rick Bell asked whether, without this new bylaw, 200 View Drive should have needed a special permit?

Mr. Hanson replied that the existing by-law was unclear on that point.

Mr. Hamilton said that his group had been told in October 2017 that invoking Section 4.7 would be a roll of the dice.

Mr. Hanson said that there was now lots of testimony. In the past there had been two people, now there were ten. More people make a stronger case.

Ruth Bass of View Drive said that two things from the evening's proceedings needed correction. First, the owners' advertisement for 200 View Drive says that the house sleeps sixteen, not twenty-six, although there may have been an occasion when the larger number was accommodated. Second, it was not just two who complained. Twenty-three neighbors signed a petition because tons of people were using the house at one (as many as forty); those were friends who were using it for free. The Zoning Enforcement Officer investigated and said there was no violation. He did not speak to any of the twenty-three signatories.

Mr. Patterson said that he was on the ZBA at the time of that complaint. Ms. Bass and Andy Hochberg had said they were willing to defer discussion until after the investigation but had not come back.

Ms. Bass said that they had met with the owner and reached an agreement.

Mr. Hanson repeated that the by-law change was intended to prevent such problems in the future.

Ms. Bass said that she did not understand how it was possible to operate a business in a Residential/Agricultural zone. She asked what would happen if she opened a business not listed in the zoning by-laws.

Mr. Hanson said that home businesses might not require special permits but they would still have to meet health, safety, and other requirements. It would be decided case by case. They might be denied a permit because of past unacceptable behavior.

Penny Saupé of Canaan Road asked to move from the problem on View Drive to more general questions. If a person owned a house, stayed in it some of the time but rented out some of the time, what were the regulations? Could you live in it a month and rent it out eleven months? If you lived in it part of the year, but rented out short-term at other times, what were the regulations? Would the by-law be open to discussion before a vote at Town Meeting?

Mr. Hanson replied that the present draft was what the Planning Board proposed to present to the annual Town Meeting in May. Zoning is always the same; what is Residential/Agricultural remains Residential/Agricultural. The question was one of use. In this case, was a house used as a residence or used as a short-term rental business? It could be both: part of the year when you are gone, you could rent out short-term, but that in case you would need a special permit. You are suggesting that language be put in to specify when the requirement kicks in based on the amount of time a house is used for short-term rentals.

Dr. Segal asked what real enforcement power did the town have.

Mr. Hanson: There is a notification period with a fine per day if corrective action is not taken.

Dr. Segal asked whether action is taken by the court or by the Town

Mr. Hanson said that the Town imposes a penalty. The court enforces it if needed. In most cases, they take the corrective action.

Mr. Bell asked when state regulations were expected.

Mr. Hanson said, soon.

Ron Rutstein of Yokun Road asked whether a homeowner, when applying for an exemption, would have to have a public hearing or go one to one with the ZEO.

Mr. Hanson said that it would be up to the ZEO to decide how to get information.

Mr. Rutstein said that he was concerned that the ZEO had not talked to Ruth Bass's twenty-three signatories.

Mr. Pilson invited him to come to the Board of Selectmen.

The woman who did not identify herself asked how the neighbors could let the ZEO know of problems, e.g., the pool with no fence and the loss of water pressure in the neighborhood when the house at 200 View Drive is full.

Mr. Hanson said to go to the Board of Selectmen with violations of existing Section 4.7. He then asked whether anyone present represented homeowners with experience in short-term rental.

Mary Jane Piazza of East Slope expressed pleasure in her own experiences in using AirBnB as a traveler. She viewed it as a community in which people could visit others in their homes; she invited visitors into hers in the same spirit. She noted that there is a trend toward requests to rent a whole house. She rents only rooms, only on weekends, and only during the Tanglewood season. She remains in her house at all times during a rental. She said, "Am I in compliance with all health and safety regulations? I hope I am! I think the law should have muscle." She would like her renters to know her house has been checked out. In the event that a special permit is required, she wants to know what abutters will be asked. She suggested that perhaps owners should obtain a permit for each guest on the analogy of fire permits issued each time a property owner burns brush.

Molly Montemagni of Stevens Glen Road said she has owned seven houses in the Berkshires which she has rented out short-term. She said the case on View Drive sounded like an isolated case of bad management. As you dive deeper into how AirBnB operates, responsible users have many parameters to protect the neighborhood and property. She requires a \$1,000 deposit which she does not return if there has been a problem. There are ways to monitor behavior, and the rating system at the site gives owners incentives to ensure that guests behave well.

Mr. Hanson asked her for her opinion of the proposed by-law change.

Ms. Montemagni said that it seemed to be reasonable overall, but there was a potential for reaction to be overdone. She did not like to hear people say they did not want strangers in their neighborhoods.

Thomas Grizey of Willow Road said that there are ninety homes at Richmond Shores. Relatives and visitors come in; it's not a problem. In the last forty years, there had been only a couple of incidents of trouble. It sounded to him like a couple of houses are causing problems but he had not seen it at the Shores.

Mr. Hanson told of a homeowner who rents his house at the Shores short-term to help pay for it. He recently came to the Planning Board concerned that there was a plan afoot to outlaw short-term rentals. He was given a copy of the law. He said he was satisfied and did not come back.

Mr. Stover observed that these regulations were only for rentals of up to thirty days. If it is longer than thirty days, shouldn't that also be regulated.

Mr. Hanson said that if you rent for more than thirty days, that's housing. Short-term rentals of less than thirty days is hospitality/tourism.

The unidentified woman asked when does the number of people staying in house make it hospitality, the equivalent of a hotel or inn? If you are sleeping sixteen people, surely there is a difference from renting to four. Where do you draw the line?

Mr. Bell said a cap could be placed at the time of the application for a special permit. Parameters e.g., water use, would come out at a public hearing.

Mr. Hanson said that issuing a special permit allows for tailoring of requirements based on what people come in and say.

Mr. Keisch asked how the process would be paid for? Is this going to put the burden on the town—inspections, hearings, court cases? He wondered whether the full burden should fall on the town or on the businesses concerned.

Mr. Hanson said that there was a \$200 fee for the applications and fees for inspections. A litigant also incurs costs.

Mr. Pilson said that if a person goes to court, then the town bears the cost of defending its case.

Mr. Patterson said that Lenox had grappled with the issue of a zoning by-law to regulate short-term rentals in a long process. Then when the town counsel advised that existing businesses would have to be grandfathered and advised that the issue would be better handled by a town by-law than by zoning, the Lenox Planning Board withdrew its draft law for further consideration.

Mr. Hanson said that Lenox has a much bigger problem, with many times more existing rentals already available than Richmond. Maybe the Planning Board's approach was too simple; maybe we would have to consider whether more specifics need to be included. We won't know until the voters at Town Meeting vote on this proposed by-law change. Should short-term rentals be banned? Should we do nothing? Either of these approaches was an alternative but seemed unsatisfactory.

Mr. Rutstein said that he understood the fear of overregulation but at some point more specific regulations might become necessary.

Adeline Ellis advised those who were concerned about the house on View Drove to document everything, maintain photograph files, and get copies of police reports.

Holly Stover said that we all came to Richmond for its rural character, and these AirBnB's just keep growing and growing. What is happening to affordable housing? The owners are using our infrastructure and not contributing to the town, not participating.

Mr. Hanson said that presumes that the problem will get out of control. We're hanging a lot on the special permits.

Mr. Bell said that we now had the words for the draft of a by-law, we got some inputs, we may have to tweak the words, but we have taken the first steps toward more teeth as the Board of Selectman had asked. When the public hearing ended, the Planning Board would proceed.

An man who did not identify himself asked whether it would be useful to introduce the concept of a domicile vs. a residence. Legally, a person can have only one domicile but many residences.

Mr. Hanson said the Planning Board's approach was to focus on the use of a dwelling, not try to categorize owners. The Board might discuss how long you have to occupy a house to keep it a dwelling.

Mr. Stover asked how many short-term rental properties there were currently in Richmond.

Mr. Hanson said it was hard to say, but the best estimate was ten to fifteen whereas there were ten times that many in Lenox and Stockbridge.

The public hearing adjourned at 8:20 p.m.

Meeting

Upon adjournment of the public hearing, Mr. Vittori immediately opened the month's regular meeting of the Planning Board and invited anyone who wished to remain and listen to its deliberations to do so. Mr. Vittori again recused himself but was asked by Mr. Hanson to remain at the table.

1. After discussing points raised during the hearing, members jointly composed the following sentence to be added to the definition contained in the proposed Short-Term Room Rental by-law change: "This definition shall not apply to an owner-occupied single family dwelling temporarily vacated, for a total of 30 days or less, during a calendar year". It was also proposed that the phrase "number of occupants" be added to the list of criteria for special permits in 4.8.13.c. Mr. Bell moved that the two changes be added to the final version of the proposed zoning by-law change. Ms. Ellis seconded the motion. The four voting members approved. Mr. Hanson then moved that the Planning Board approve the proposed zoning by-law change entitled Short-Term Room Rental as amended and request that it be voted on at the Annual Town Meeting of May 16, 2018. Ms. Ellis seconded. The vote in favor by the four voting members was unanimous.
2. Mr. Vittori moved that the minutes of the March 12, 2018, meeting be approved without discussion. After being seconded, the motion carried unanimously.
3. Mr. Vittori introduced the issue of the lack of language in Richmond's by-laws concerning outdoor events at a winery, which had been raised by Mark Pruhenski, the Town Administrator, on April 15, 2015, forty-eight hours before the meeting. As the owner of an orchard at which outdoor events are held, Mr. Vittori again recused himself and Mr. Hanson again took the chair; but members agreed that since no deliberations leading to a decision would be undertaken, Mr. Vittori's informational input would be useful and Mr. Hanson asked him to remain at the table.

Mr. Hanson explained that when Christian Hanson (no relation) had applied for a building permit for a winery on State Road, he had included events such as weddings among the intended uses for the property. Town Counsel had advised that the intended uses of a winery with production, storage, tasting room, patio, and retail sales were permitted by right under Massachusetts G.L. c. 40A §3, but that a change to Richmond's Zoning By-Law Section 4.8A(7) would be necessary to permit commercial outdoor events unrelated to the sale of products grown on-site. After board members discussed other properties and events that might be considered when drawing up such a by-law amendment, it was agreed that it would be helpful to hear from Christian Hanson, Mr. Vittori, someone from Bartlett's Orchard, and perhaps representatives of other farms in town. As an action item, Mr. Hanson undertook to talk to Mr. Pruhenski about setting up such a meeting with Christian Hanson, preferably at the next regularly scheduled meeting of the Planning Board.

The meeting was adjourned at 9:40 p.m.

Respectfully submitted,
Katherine Keenum, Clerk.

Appendix 1

PLANNING BOARD ---- PUBLIC HEARING	
DATE: April 17, 2018	
ATTENDEES PLEASE SIGN IN BELOW	
NAME:	ADDRESS:
1. Peter Cotten	60 Craig Hill Rd
2. Ron Rutzstein	185 Yokun Rd
3. Jen Yohalem	185 Yokun Rd
4. Sally Hildebrandt	156 Yokun Rd.
5. Judy Hinkle	186 View Dr.
6. Tom Spee	156 Keswick
7. Marjorie Piazza	38 East Slope Rd
8. Harley Keisch	197 View Drive
9. John Mason	621 East Rd
10. Molly Montemagni	380 Stevens Glen Rd
11. Peter Krause	851 Lenox Rd
12. Miriam Krause	851 Lenox Rd.
13. Marsha Ritrosky	84 View Dr.
14. Myron Ritrosky	84 View Dr.
15. Holly Stover	705 East Rd
16. Richard K. Stover, Jr.	" " "
17. Tom Seyd	1220 LENOX RD
18. Mark Montemagni	380 Stephens Glen Rd
19. Casey Montemagni	380 Stephens Glen Rd
20.	

Appendix 2

Short-Term Rental Public Hearing

April 17, 2018

Background/ Summary

The Planning Board is considering the zoning change shown below to regulate short-term room rentals by owners who are not on site. The by-right rental of rooms by a resident family, currently allowed in all districts under Section 4.8 B 3a, will remain unchanged. Also unchanged is Section 4.8.3b which allows a bed and breakfast with a special permit from the ZBA. (see the Appendix for copies of these sections)

Rentals and zoning in Richmond

Rentals in Richmond generally fall into two categories: housing and hospitality/tourism. Rentals for housing typically are long term, with a lease, establishing the landlord and tenant relationship. Since renting a house for use as a residence does not alter the use, this type of rental is already permitted by zoning.

Rentals for hospitality/tourism alters the use. The use may be a principal use, as with hotels, motels or county inns or an accessory use in a dwelling by a resident living there. Richmond does not permit hotels and motels and only allows limited country inns with a special permit from the ZBA.

Massachusetts law recognizes the difference between housing rentals and hospitality/tourism rentals and taxes and regulates them separately.

Richmond voters have traditionally chosen to support zoning that limits and regulates hospitality/tourism rentals in their residential neighborhood because they value peace and tranquility and are concerned about increased traffic, noise and other activities that may be detrimental to the neighborhood.

Draft

Proposed Zoning Change:

Add definition:

Short-Term Room Rental Business: The rental of a dwelling, or rooms within a dwelling, or the rental of an accessory structure, or rooms within an accessory structure, by an absentee owner or investor-owner where the rental period is 1 to 30 nights and while the owner is also not dwelling on site. This definition shall not apply to an owner occupied single family dwelling temporarily vacated, for a total of 30 days or less, during a calendar year.

Add a new section as follows:

SECTION 4.8 TABLE OF USE REGULATIONS

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

13. Short-Term Room Rental Business SPA SPA SPA
provided that:

- a) The business passes an annual Safety inspection by the Inspector of Buildings.
- b) The business shall comply with all Town regulations and bylaws and Commonwealth of Massachusetts law, including all health and safety regulations.
- c) The Board of Appeals finds that the lot size, buildings, structures, off-street parking, number of occupants, and other facilities and equipment are adequate for the proposed use and that the operation of the business will not be detrimental to the neighborhood.

Appendix

The following section 4.8 B is copied from the current Zoning By-Law and will remain unchanged. It is provided here as background material so the new room rental regulations can be seen in contexts with the current regulations.

Existing room regulations: No changes proposed

Districts

Section 4.8 B. PERMITTED ACCESSORY USES

RA-A
RA-C SR COMM

3. Rental of rooms:

a) In a dwelling by a resident family, provided no separate kitchen facilities are maintained.

YES YES YES

b) The use of a dwelling by a resident family for the purpose of renting rooms and serving meals (including continental breakfast) to two (2) or more guests on a nightly or weekly basis provided no separate kitchen facilities are maintained.

SPA SPA SPA

SPA - Use which may be authorized by special permit from the Zoning Board of Appeals in accordance with the provisions of Section 6.3 herein.

4.7 Any use of land, buildings or structures which creates excessive and objectionable noise, fumes, odor, dust, electrical interference, light or undue traffic shall be prohibited in all districts.