

TOWN OF KILLINGTON PLANNING COMMISSION
Minutes from the Meeting of September 7, 2022

Public meeting held at the Public Safety Building and remotely via Zoom teleconference

PRESENT:	Jennifer Iannantuoni, Chair	START:	7:02 p.m.
	Vince Wynn*	ADJOURN:	8:55 p.m.
	Young Namkung*		(computer crashed)
	Ricky Bowers		
	Jim Haff, Zoning Administrator (arrived at the meeting @ ~7:09 p.m.)		
	Daryl Arminius, Planner		
	Lisa Davis-Lewis, Planning Consultant		

GUEST ATTENDEES:

Ed Bove, Rutland Regional Planning Commission
Jim Vandebosch (property owner of 1967 US Route 4)
Dennis Volante (property owner of 1967 US Route 4)
Sarah Hewitt (representative of the tenant at 1967 US Route 4)
Andrew Gieda (arrived at the meeting @ ~7:53 p.m.)

*Participants who attended via *Zoom* teleconference

1. Open Meeting

Jennifer Iannantuoni, Chair opened the meeting at 7:02 p.m.

2. Approval of Agenda

The Chair requested a motion to approve the meeting agenda as may be amended. Lisa Davis-Lewis requested the addition of the FY2023 Municipal Planning Grants to the agenda. Jennifer agreed to add the item to ‘**Updates and Reports**’, after the LHMP item. Vince Wynn motioned to approve the agenda with this amendment and Ricky Bowers seconded. Motion passed unanimously.

3. Approval of Minutes

The Chair requested a motion to approve of the Draft minutes from the **August 17, 2022** PC meeting as may be amended. Young Namkung motioned and Jennifer seconded. Jennifer indicated that she did not have any changes and asked if Young had any suggested edits for the minutes. None were offered. She called for a vote to approve the minutes with no amendments. Motion passed unanimously.

4. Citizen Input

Jim Vandebosch and Dennis Volante, the owners of 1967 US Route 4 (a commercial building located across from the post office) claimed that they were told by Jim Haff to attend the meeting to discuss their potential tenant who wishes to open a botox facility. They claimed they were told to apply for a variance because Jim (in the capacity of ZA) feels the proposed use is considered to be ‘Medical’, which is not allowed within the zoning district. Jennifer informed the guests that the PC does not approve variances;

such is done with the DRB. Jim Vandebosch responded that they are attending the meeting to be educated and to hear any insight that the PC may have pertaining to their grievance; as they have multiple vacancies, they are taxpayers, and that the PC exists to make the Town more livable. Jennifer responded that the PC updates the town plan, which advises the uses for each district. However, the ZA determines what use is compliant according to the bylaws and is advised by the town attorney. The PC is currently undertaking an update to the zoning bylaws anticipated to take several years. The DRB is the authority that evaluates zoning permits. Nevertheless, the PC may be advised to make bylaw changes, but that will require considerably more time than a development review proceeding with the DRB.

Jim Vandebosch said that the applicant Amy (proprietor of “Stay Beautiful Vermont”) is not at this meeting, but Sarah Hewitt (her representative) is in attendance. Jim reported that the applicant has signed a lease with himself and his partner Dennis to move into their building on October 1st, 2022, has submitted her zoning application about a month ago to the Town, and only last week they were told that they cannot proceed with the project due to the current zoning regulations. They wish to know what can be done to allow a viable business into a building that has been empty for five (5) years. Jennifer asked Ed Bove for his opinion on the matter and introduced him to the guests.

Jim Haff (the ZA) entered the meeting and fielded the question. Some time ago, Amy called the P&Z office to request a sign permit. After the ZA found out what type of business the sign was to be permitted, he determined there would also be required a change of use permit (i.e. Site Plan Review) that would change the site from a former real-estate office into a hair salon. He explained that there is a precedent for a change of use permit that has been applied to other businesses in town and had asked Amy to come see him to overview her project. She stopped by two weeks later and was forwarded a Site Plan Review permit application form. The ZA stated that he had asked Amy if the services on her current website were the same as those planned for the new site. She affirmed that they were, but there would be added *IV Hydration* and “other IV stuff”. Last week she submitted an incomplete application form and expected to receive a permit on the spot, adding that she had already given up her previous commercial location in Mendon to begin operating her new office the next day. The ZA said he told her that the permitting process does not work that way, as he has thirty (30) days to refer to the DRB a complete application for a site plan review [see [24 VSA § 4448](#)], which is required to be warned for a public hearing. He nevertheless told the applicant that he would try to have her application processed this week. After indicating that ‘Medical’ is not an allowed use within the district, the ZA said that the applicant then claimed the property owners told her she could undertake the project. Jim Vandebosch (the property owner) refuted this statement. The ZA added that Chet Hagenbarth (the Town Manager) had then instructed the property owners that they should come to the next PC meeting to see if they would change the zoning to allow the use. Discussion ensued amongst the meeting attendees on whether (or not) the ZA had told the property owners not to attend the PC meeting, for which there was no resolution. The Chair halted the discussion and asked the ZA if the use is not allowed, could the DRB grant a variance. Discussion ensued amongst the meeting attendees on the topic of granting variances and the

difficulty in obtaining them. The Chair suggested having the medical use question put before the Town attorney. Ed Bove indicated that there is a ‘Medical’ definition in the bylaws on page 6:

“Medical: This term shall mean a licensed medical doctor, doctor of dental surgery, or doctor of medical dentistry.”

The topic of discussion reiterated what would be required to approve the application with the DRB (e.g. wastewater & potable water supply permitting; fire safety inspection results; and a complete site plan review application included with maps and floor plans). Further discussion disabused notions that the property already has the total required parking for the proposed development, as such is based on the total number of employees, etc. Jennifer indicated that as an allowable use, ‘Personal Services’ could start on day one of a ZA approval. The ‘Medical’ use is only allowed within the Ski Village II zoning district (i.e. “Ramshead” – Vermont Orthopedic Clinic). She continued that the PC has been updating the regulations for businesses’ concerns and would put this issue on the list to consider for ongoing bylaws changes. However, such a change would not occur by the applicant’s deadline of October 1st. The ZA explained to the property owners that Amy has had the form to submit with the instructions for six (6) weeks. He has also been attempting to find out how the ‘Medical’ use fits into the ‘Commercial’ district standard and made the distinction that the DRB approves the application, not the ZA.

The next available date that the DRB could hear the proposal is the third (3rd) Thursday in October (i.e. 20 Oct 2022), where in the interim, notices for the public hearing will be sent out to all of the neighboring properties at least fifteen (15) days in advance of the hearing. According to the ZA, there are still a lot of unanswered questions for the permit application. The Chair encouraged the property owners to have Amy reach out to complete her application as soon as possible, adding that she can understand their frustration and will have the Town attorney contacted. The ZA stated that he already has a call in with the attorney on the matter.

Discussion then ensued amongst the meeting attendees reiterating the amount of time that it could take to deliberate changing the allowed uses within the district, from the first public hearing with the PC up to the possible adoption by the Selectboard. The new rules are enforceable up to 150 days following the first public hearing notice (before their adoption) [see [24 VSA § 4449](#)]. Daryl Arminius informed the property owners that in the event the DRB does not approve their tenant’s Site Plan Review permit; and if the PC and the Selectboard do not adopt an allowable use for the district; they (the property owners) have a right to petition to change the regulations if they collect signatures from at least five percent (5%) of the electorate in town [pursuant to [24 VSA § 4441, 4442](#)]. The ZA explained to the property owners that once the petition goes to the Selectboard, they have forty-five (45) days to act on it before deciding whether it goes before the Town to vote next March at Town Meeting Day. Discussion continued further regarding the substantial time and expense of upgrading wastewater and water supply systems to meet their intended use.

Sara Hewitt asked how the regulations would be applied if the medical portion of the business “were to be mobile” and not based out of the building. The ZA answered that zoning regulations preclude the advertisement of another business which is not part of the building. Ed Bove clarified that off-premise signs are illegal in Vermont. The Chair asked if the IV Hydration service requires licensure. Sarah responded affirmatively and stated that she is a nurse anesthetist (CRNA). The ZA said he still does not know if Amy had called the health inspector (e.g. Robert Manfredi) for the business. The property owners stated that the last tenant in the building was a tattoo artist that left their used needles behind after vacating and that they had to take the refuse to Rutland themselves. The ZA thanked them for doing so. The Chair stated that the PC is currently in progress of passing other zoning regulations, but the medical issue will be considered in future amendments. The property owners asked what their next step was. The ZA answered that he expects to hear from the attorney soon and will get back to Amy to prompt her to complete her Site Plan Review application. The property owners Jim Vandenbosch and Dennis Volante left the meeting at 7:50 p.m.

5. Updates and Reports

- **Future Zoning Bylaw Updates to consider: *Affordable Housing, Subdivision Regulations, Height Dimensional Standards, et al.*** –

The Chair requested staff to input on the items. Lisa Davis-Lewis said that she and Ed had met to formulate ideas for affordable housing. She said that the zoning regulations have recently increased multi-family units from 1 per 10,000 sf up to 1 per 6,500 sf. However, she asked that if someone wants to develop an affordable housing project, would the PC be interested in allowing the developer to further increase the allowable density. Discussion concluded that inclusionary zoning should not be the method for the Town to increase affordable housing. Davis-Lewis stated that Ed Bove had an idea that affordable housing could be made a Conditional Use (CU) permitting process. First, affordable housing would have to be defined in the regulations; likely using the federal definition invoking some percentage of ‘Area Median Income (AMI)’. Then a determination would need to be made for a standard percentage of a housing project, say twenty-five percent (25%) as eligible for an additional density bonus. The DRB could then determine whether it would be appropriate to grant a CU permit for the project. Davis-Lewis concluded that this is the ‘cleanest way’ to undertake this. Andrew Gieda arrived at the meeting during this discussion at ~7:53 p.m.

The Chair asked each commissioner to weigh-in, and all concurred that affordable housing is a priority to address. Vince Wynn stated that the devil is in the details in how to determine an appropriate amount of density. Jennifer asked Ed if he could provide models of density bonuses. He responded affirmatively with the caveat that they would be his own creation, because he has not seen this done as a CU before. Towns within the Rutland region are not giving density bonuses for affordable housing. Where the larger municipalities in the State are tackling affordable housing via compulsory inclusionary zoning regulations, Jennifer stated that she would prefer to make it incentive-based.

Vince asked Ed if there is a legal distinction between workforce housing and affordable housing. Jim Haff answered that a staffer for Bernie Sanders stated that there is not; Workforce, Affordable, and Market-Rate Housing are synonymous. Davis-Lewis stated that it is 30% of the AMI. Discussion ensued amongst the meeting attendees on efforts covering density bonuses (e.g. controversially removing all dimensional requirements) and multi-family housing allowances around the nation (e.g. dedicated land in Steamboat Springs, CO and Middlebury College, VT; the redeveloping Water Slide World property at Lake George, NY; and failed development incentives in San Jose, CA), and the types of systems in place to ensure housing units remain at the market-rate (e.g. adding a condition to permits, writing it into a deed for owner-occupied units, monitoring rental units, conveying the property to a housing trust, etc.). Sarah Hewitt left the meeting during this discussion at ~8:07 p.m. Ed suggested that the PC possibly consider removing all district density standards for proposed affordable housing projects, except setbacks and height; whatever the site may hold.

Davis-Lewis and Bove discussed height standards from the State (i.e. VT ACCD's Zoning for Great Neighborhoods – *“Enabling Better Places: A Zoning Guide for Vermont Neighborhoods”*). Bove stated that within a PUD, the regulations allow a building to extend to a height of seventy feet (70’). However, within a non-PUD commercial district, the height limit is thirty feet (30’). He thinks that with height regulations (in **Section 426** on page 56), the C, B, and CB zoning district standard could increase to a forty-seven foot (47’) height at five (5) stories, or at sixty-eight feet (68’) high. This would match the PUD’s current standard and eliminate some confusion.

Daryl Arminius discussed developing subdivision regulations in-house to breakaway from the historical standard of using Act 250 to do the heavy lifting for any subdivision application proposing six (6) or more lots. Jim stated that the Town attorney didn’t realize that the Town does have bona fide subdivision regulations until recently, after having a conversation with Kim Lutchko, the coordinator for the District Environmental Commission (for District 1 - Rutland County) to affirm this was so and forwarded it to the Town attorney. Jim expressed concern that developing these regulations will complicate the adoption process of the three sets of bylaw amendments that the Selectboard are planning to deliberate, once the STR bylaw amendments are forwarded to them (after the PC’s 21 September public hearing). He feels further amendments should be given a break. After a lengthy discussion, the PC concurred.

Ed Bove shared that where **24 VSA § 4418** outline what constitute complete subdivision regulations for municipalities (which Killington does not currently have), the Town does have enough of the regulations within the PUD and Site Plan Review chapters of the current zoning regulations to meet the criteria of the statute. Ed felt that a new subdivision chapter could simply apply the existing language. The statute does not indicate whether this would be legal, but he feels this might be a question for the attorney. Daryl added that items such as conditioned adjustment to plats, boundary adjustments, or controlling for irregular lots are not addressed in the regulations. These elements would need to be added. Ed concurred, adding that perhaps any subdivision for greater than three (>3) lots might be subject to boundary adjustments. Jim referenced a

letter from the Town attorney that cites the NRB Streamlined Review Process, which states the four items that must be provided for review. Ed recognized this from work he had to do in the Town of Pawlet and read the items off for the record:

1. Town copies of the subdivision bylaws, or if elected, a unified bylaw.
2. A copy of the Clerk's certificate.
3. A copy of the written Planning Commission Report, and
4. The certification from the Regional Planning Commission (RPC) that it reviewed the bylaws and they conform with Chapter 117.

Jim forwarded the list from the town attorney to members of the PC and the Selectboard. The Chair proposed to continue with discussions on future bylaws amendments at a PC meeting next month.

- VOREC Grant – Davis-Lewis stated that construction work has already commenced, but the State is still not billable. She relayed that Sarah had reached out to the State to notify them that costs have increased and if they would possibly make any adjustments. The State didn't have an answer. Jennifer stated that the construction seems to be making good progress. Davis-Lewis agreed, but said that the Town is running a bit of financial risk with the project. Sarah and the Recreation Committee are managing the project and Killington Mountain Bike Club have expressed confidence that the requirements are being met.
- TA Grant – The preapproved consultant ranking forms are underway for completion by Young (PC), Daryl, Devon (RRPC), Sarah (recreation), and Chet utilizing the VTrans "At-the-Ready" approval process for a hopeful consultant selection estimably within the next month.
- Local Hazard Mitigation Plan (LHMP) – Davis-Lewis shared that there was a meeting for the Planning Team last week. One more meeting will be held at the end of September. She said that Steffanie Bourque from RRPC wanted to present at the second PC meeting in October (this will be a joint Selectboard / PC meeting). However, Davis-Lewis will not be there. She didn't think it would be a problem because after the public hearing is closed, there will be a public comment period. After which the plan should be completed by November. The Town paid RRPC for their assistance, but the Town has not been yet able to obtain reimbursement from the State. After review comments have been processed, the Selectboard will adopt the plan.
- Municipal Planning Grant (MPG) – Davis-Lewis overviewed the notice recently received from the State (ACCD) that initiated the FY2023 cycle of funding. There is a maximum of \$26,000 per project with a 10% local match. The application deadline is December 1st. The award date would be by the end of January 2023. The completion date is November 24, 2023. In review of the kinds of projects recently awarded, it appears there are a lot less municipal plans that were funded. Ed concurred, saying that MPG has moved away from this tradition to more master planning work or special projects. Davis-Lewis said

that the Town probably does not need the MPG to undertake the Town Plan because the funding has already been programmed into the budget. Daryl asked if the RRPC had been contracted to draft the Town Plan. Ed answered in the affirmative, adding that it was arranged prior to the zoning bylaw contract, but it has since expired. Amanda O'Connor, a former employee of the RRPC has already completed a good portion of work on the chapters. Ed suggested that the Town could apply for funds to restart the work. Davis-Lewis suggested applying for recreation facility project. Ed said that the Town's current plan is set to expire in 2023, so an MPG-funded effort is cutting it a bit close. However, enough of the work has been completed to possibly get it adopted quickly. He felt other types of plans would be more competitive. Jennifer felt Sarah should be approached to work with the PC on the recreation idea.

6. Commissioner's Concerns

Jennifer asked Jim if there was any further response regarding the Kokopelli Inn. Jim requested going into executive session to deal with real estate and legal issues. Jennifer asked Andrew if he had any public comment, as he had missed that portion of the meeting. He had none.

7. Executive Session

Andrew exited the meeting, and the PC went into executive session. Soon afterward, the computer crashed and so the quorum was lost, as two of the Commissioners were in attendance remotely. No action was taken.

9. Next Meeting: September 21, 2022 @ 7:00 p.m.

10. Adjourn – There was no official adjournment.

Respectfully submitted

Daryl Arminius,
Planner for the Town of Killington, Vermont