

Town of Richmond
Planning Commission Meeting
AGENDA

Wednesday, September 1st, 2021, 7:00 PM
Richmond Town Offices, Third Floor Meeting Room
203 Bridge St., Richmond, VT 05477

This meeting is also accessible via Zoom:

Join Zoom Meeting: <https://us02web.zoom.us/j/88419874605>

Meeting ID: 884 1987 4605

Join by phone: (929) 205-6099

For additional information and accommodations to improve the accessibility of this meeting, please contact Ravi Venkataraman at 802-434-2430 or at rvenkataraman@richmondvt.gov.

1. Welcome, sign in and troubleshooting
2. Public Comment for non-agenda items
3. Adjustments to the Agenda
4. Approval of Minutes
 - September 1, 2021
5. Discussion on Williams Hill Road
6. Discussion on Vehicle Fueling Stations, Powered Vehicle Service, and Powered Machinery Service uses
7. Discussion on Nonconforming Uses and Structures
8. Discussion on September 15th Meeting Agenda
9. Other Business, Correspondence, and Adjournment

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6. Discussion on Vehicle Fueling Stations, Powered Vehicle Service, and Powered Machinery Service uses

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Richmond Planning Commission
REGULAR MEETING MINUTES FOR August 18, 2021

Members Present:	Lisa Miller, Dan Mullen, Chris Cole, Virginia Clarke, Jake Kornfeld, Mark Fausel
Members Absent:	Alison Anand, Joy Reap, Chris Granda
Others Present:	Ravi Venkataraman (Town Planner/Staff), Heidi Bormann, MMCTV

1. Welcome and troubleshooting

Virginia Clarke called the meeting to order at 7:03 pm.

2. Public Comment for non-agenda items

None

3. Adjustments to the Agenda

None

4. Approval of Minutes

Motion by Lisa Miller seconded by Dan Mullen, to approve the August 4, 2021 Planning Commission meeting minutes. Voting: unanimous. Motion carried.

5. Discussion and Finalization on Performance Standards, Nonconforming Lots, and Certificates of Occupancy

Clarke overviewed the discussion topic. Clarke explained that the purpose of the discussion today is to finalize the language and forward the proposed language to the Selectboard.

Clarke explained that the revisions to the state permit references to bring the zoning regulations into compliance with statute brought upon changes to the performance standards section. Clarke said that in this iteration of the Performance Standards document, the performance standards have been removed from the Conditional Use Review section and added under "Regulations for All Lots". Clarke explained that these performance standards should apply to all lots at all times, instead of only during the review of Conditional Use applications. Clarke said that the reorganization of the entire zoning regulations in order to make the entire document more legible is being looked into, and that the "Regulations for All Lots" section would eventually be a part of the development regulations for all uses and lots in town.

Clarke explained that the revisions to the certificates of occupancy section was also brought upon with

the revision to the state permit references in the regulations. Clarke added that the revision to the Certificates of Occupancy removes requirements for smaller projects.

Clarke also spelled out the changes in statute with nonconforming lots.

Miller asked if the commission can finalize the language even though the commission may have minor edits. Clarke affirmed.

Clarke reviewed the language in the present iteration of the proposed performance standards section. Miller asked for clarification between the standards for noxious gases and odors, and about inserting "beyond the lot line" instead of "at the lot line" for all standards. Cole said that not all noxious gases have odors. Cole said that he preferred "at the lot line" because it specifies that the activities are contained within the lot and would not encroach neighboring properties. Cole asked about what kinds of odors would be covered. Ravi Venkataraman said that the term "odor" in itself has a negative connotation. Dan Mullen said that from a court's perspective, "at the lot line" would be within reasonableness and better defined that "beyond the lot line", and that what is customary for the area would be taken into consideration. Clarke concurred that "at the lot line" works.

Clarke reviewed the proposed language for Certificates of Occupancy and for nonconforming lots. Cole asked hypothetically about adjacent small lots that could be in common ownership. Venkataraman explained that in theory, adjacent small lots under common ownership that were never developed were already merged during the state-wide consolidation efforts in the 1970s and 1980s, and that adjacent small lots that have individual water and wastewater systems would not be considered merged. Venkataraman said that the intent of the bylaw is for isolated undeveloped lots usually in rural districts that were never consolidated under common ownership at any point in time. Clarke asked about small lots on private community systems. Venkataraman said that lots on private community water and wastewater systems would have to meet the dimensional requirements under Section 4.6.1.2.

Motion by Cole, seconded by Miller, to approve the enclosed Municipal Bylaw Amendment Report and forward to the Selectboard proposed amendments to the following sections of the Richmond Zoning Regulations: Section 3.8.5, 4.6, 4.13, 5.2.1, 5.3.5, 5.6.2, 5.6.3, 5.6.4, 5.6.5, 5.6.6, 5.6.7, 5.6.8, 5.8. Voting: unanimous. Motion carried.

6. Discussion on Vehicle Fueling Stations, Powered Vehicle Service, and Powered Machinery Service uses

Clarke overviewed the discussion topic and the additional zoning regulations the commission will need to review--nonconforming uses and structures, and wetlands regulations. Clarke reviewed the proposed Vehicle Fueling Station definition, identifying the change in this iteration to require a level 3 charger instead of a level 2 charger because a level 3 charger would have more utility to users. Clarke said that considering current fuels, the list of fuels should suffice for now, and that the commission will need to address EV charging requirements for residential uses at a later time. Cole clarified the requirements for universal chargers and allowances for proprietary chargers, and raised discussion on why the proprietary charger allowances would be in place. Heidi Bormann said that when she was receiving

quotes for EV chargers, she was quoted \$150,000 to install a level 3 charger, and that the Town Center's level 2 charger costed \$20,000 to \$25,000. Mark Fausel said that in previous discussions the requirement was for one DC fast charger and was at a loss for where the rest of the draft language came from. Clarke said that the intent may have been to have the requirement for one DC fast charger that can universally charge electric vehicles and suggested removing the other allowances. Cole was concerned about requiring and allowing technologies that may soon become obsolete. Clarke asked about simplifying the language to require one DC fast charger that can charge any vehicle. Cole agreed. Cole said that based on conversations he has had on this subject, the cost for a DC fast charger ranges between \$30,000 and \$70,000, but that if three phase power is unavailable or if the substation cannot handle another three-phase connection, it's going to cost a lot of money in order to upgrade the utility to bring additional three-phase power in. Cole said that in past experience he faced difficulty with the possibility of installing a DC fast charger at the park and ride because three-phase power was unavailable. Cole said that the currently proposed substation upgrades may create more capacity for three-phase power. Clarke suggested inserting a caveat of where feasible to install a DC fast charger.

Miller asked about allowances for conventional gas stations. Cole said that with this proposed language, gas stations would need to install a DC fast charger. Venkataraman said that with the possible adoption of this language, current gas stations would be considered nonconforming uses and any new gas stations or redeveloped gas stations would have to adhere to the Vehicle Fueling Station definition.

Bormann noted that the quote for the level 3 charger on her property was because three-phase power was unavailable.

Cole asked about DRB processes if, hypothetically, the Mobil station is unable to install a DC fast charger. Venkataraman said that as presented Vehicle Fueling Stations would have to have a DC fast charger, that no waiver provisions are in the zoning, and that if the commission wants to put in a waiver provision, the process for it needs to be fully established. Clarke suggested including the waiver provision into the definition. Venkataraman said that it would be better if the waiver provision was in place under regulations for all lots or regulations for particular uses, and that the definitions section is not for defining permitting processes.

Fausel said that the commission should be mindful of cost considerations. Cole concurred. Clarke suggested that the commission reach out to Green Mountain Power about feasibility of installing a DC fast charger. Fausel agreed. Miller asked about requiring the installation of lines to make on-site EV charging possible in the future. Venkataraman said that the commission will need feedback from current gas station owners before it can proceed with the draft language, and that requiring the installation of electrical lines veers into building codes which is outside the scope of zoning. Cole recommended that Venkataraman reach out to Green Mountain Power about the capacity of the substation and the ability to install a DC fast charger.

Mullen said that the role of the commission is to set requirements and allow for the Selectboard and the town to decide on adopting the requirements the commission wants to set, and that with the market trends, gas stations would have to adapt to newer standards. Miller referenced the Town Plan action items regarding EV charging stations.

Clarke asked about the prepared foods as an accessory use allowance. Fausel said that having the underlying district determine allowable uses thereby requiring vehicle fuel sales and restaurant uses to apply as multiple uses on a single property. Fausel said that the discussion would need to be about allowing restaurants within the Gateway District and that the status quo would be less controversial.

Clarke transitioned the discussion to Powered Vehicle Repair and Powered Machinery Repair uses. Miller overviewed the aesthetic differences between the two uses. Clarke asked Bormann for comment. Bormann said she liked both definitions, had no major concerns, and praised Chris Granda for his work on the definitions. Clarke asked if Bormann could host both uses. Venkataraman said that it depends. Bormann asked if it would be easier to permit if the definitions were combined. Venkataraman said yes, it would be easier. Venkataraman said that if both Powered Vehicle Repair and Powered Machinery Repair were a singular use, the applicant would only have to fulfill the requirements for the single use, and that if both uses were separate uses, the applicant would have to undergo the PUD process and fulfill requirements for both uses. Bormann said her main concern was the listing of the use in the district Mann and Machine is located and that if the use is not listed, financing for future development projects become more difficult. Fausel noted the aesthetic differences between the uses and said therefore could foresee allowing the uses in different locations with different requirements.

Fausel said he was nervous about the sale and leasing of vehicles with the Powered Vehicle Service use. Clarke concluded that Fausel wanted to create three classifications--vehicle repair, vehicle sales, and machinery repair. Venkataraman said that the existing definition in the zoning regulations for vehicle sales is adequate. Clarke asked for Bormann's input. Bormann said that she occasionally sells vehicles but does not operate a dealership, and that she would appreciate the flexibility to sell vehicles on a smaller scope. Miller asked about the scale of Bormann's vehicle sales operations and said she was concerned about the scale of the vehicle sales portion of the use. Bormann said their sales operation is minor and discreet. Fausel acknowledged that Bormann's vehicle sales are consistent with accessory uses, said that the proposed definition opens up undue, adverse impacts, asked Venkataraman if vehicle sales is allowed in the Village Commercial District, and suggested curtailing the use by limiting the number of vehicle sales to two to four vehicles at a time. Venkataraman said that vehicle sales is not allowed in the Village Commercial District and is only allowed in the Commercial and Industrial/Commercial Districts. Bormann clarified that Mann and Machine is in the Commercial District. Cole asked about the concerns for vehicle sales in the location of Mann and Machine. Fausel said he was concerned about the loudness and garishness of auto sales uses. Venkataraman said that typically vehicle sales uses necessitates larger lots for storage. Bormann said that even though the use may be grandfathered, banks want to see if the use is allowed in the district with any financing application. Fausel called attention to the allowance for vehicle service in the Gateway District, which could expand to allowances for vehicle sales in the Gateway District. Bormann said she saw Fausel's suggestion of limiting the number of vehicle sales per year as a viable solution. Miller asked Venkataraman if the town could enforce standards limiting the number of vehicles on display for sales. Venkataraman said yes, such standards could be enforceable if quantitative standards are written into the regulations. Fausel suggested adding the limit to sales to four vehicles at a time. Miller pointed out that the powered vehicle service and powered machinery service uses are compatible. Clarke noted that no one had mentioned a location in which they prefer having a powered vehicle service use and not having a powered machinery service use or vice-versa, and recommended that more thought on these definitions is needed. Cole asked Bormann how many vehicles does she sell per year. Bormann said she

estimated four to five vehicles. Clarke said that more thought is needed for location and also A/R District allowances.

Cole asked if the proposed definitions would impact home occupations. Venkataraman said that the proposed definitions wouldn't constrict home occupations and cottage industries, and that the operation would be curtailed by the size and scale limitations of home occupations and cottage industries.

7. Discussion on September 1st Meeting Agenda

Clarke said that the following topics are slated to be on the September 1st meeting agenda: Williams Hill Road, Nonconforming uses and structures, wetlands regulations, and the proposed bylaw changes to the Town of Williston's regulations. Clarke said that the commission will eventually need to circle back to the ongoing zoning reform work and discuss possibilities for the Residential/Commercial District and areas south of the Winooski River. Miller said that additional comments from the Planning Commission may be needed for the Housing Committee's Town Plan goals report. Clarke said that more information about the Housing Committee's work is forthcoming.

9. Other Business, Correspondence, and Adjournment

Motion by Cole, seconded by Miller to adjourn the meeting. Voting: unanimous. Motion carried. The meeting adjourned at 9:01 pm.

Respectfully submitted by Ravi Venkataraman, Town Planner

TO: Richmond Planning Commission members
FROM: Cathleen Gent, Chair - Richmond Transportation Committee
DATE: August 27, 2021

RE: Transportation Committee Action RE: Williams Hill Class 4 Road

At the request of the Planning Commission, the Richmond Transportation Committee took up consideration of the Williams Hill Class 4 Road in light of an upcoming public hearing in September to be held by the Selectboard to discuss a request to discontinue that 0.7 mile Class 4 road segment.

The Richmond Transportation Committee discussed the Williams Hill Class 4 Road during the meeting of August 10, 2021. Here is a section of those approved minutes which include a formal motion that the Committee supports the public interest in keeping the Class 4 Williams Hill Road and opposes its discontinuation.

Williams Hill – Class 4 Road: Venkataraman briefly reviewed the memo he prepared for the Planning Commission regarding this matter. Committee members reviewed the Town highway map (from VTrans) and discussed the options that the Selectboard will consider as a result of the request to discontinue the 0.7 mile class 4 portion of Williams Hill Road. There was general agreement that the public interest is best served by maintaining the class 4 road section and that the town plan specifically encourages trails as a means to connect neighborhoods and provide non-vehicular methods of travel. *Motion made by Knowles, seconded by Damico, to send a letter to the Planning Commission and Selectboard advising that the Richmond Transportation Committee supports the public interest in keeping the Class 4 Williams Hill Road and opposes discontinuance of the Class 4 section of Williams Hill Road. Voting: Unanimous in favor of the motion.* After the vote, there was discussion about whether to take additional action as to making the Class 4 road into a legal trail. There was some agreement that could be taken up when the UPWP project for Phase 2 of the Bike and Ped master plan is taken up this fall.

For the record, I, along with Mark Damico, James Floyd, Jon Kart, and Allen Knowles were present at that meeting. Chris Cole (vice-chair) and Erik Filkorn were absent.

Thank you for inviting the Transportation Committee to provide input to the Planning Commission and for your attention to this matter.

CC: Ravi Venkataraman, Town Planner; Richmond Transportation Committee

MIDDLEBURY

Peter F. Langrock
Ellen Mercer Fallon
William B. Miller, Jr.
James W. Swift
Emily J. Josephson
Mitchell L. Pearl
Kevin E. Brown
Frank H. Langrock
Beth Robinson
F. Rendol Barlow
Devin McLaughlin

Wanda Otero-Ziegler
Erin E. Ruble

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REPLY TO:
Burlington Office

August 25, 2008

Mary Houle, Chair
Richmond Selectboard
Town of Richmond
203 Bridge Street
PO Box 285
Richmond, VT 05477

Re: Proposal by Wright Preston to Discontinue Class IV Section of Snipe Ireland Road

Dear Mary:

The Selectboard has requested my opinion as to the issues involved in Wright Preston's proposal to discontinue the Class IV section of Snipe Ireland Road, coupled by (i) conversion to a trail, or (ii) total relinquishment of all the Town's rights, but with the grant of an easement for a public non-motorized trail.

Ron has supplied me with an aerial photograph, which is attached, with superimposed names of the abutting property owners. They are: on the west, Wright and Lucinda Preston, and Preco, Inc., which I understand is a corporation the Prestons control; on the east, the Prestons, John G. Fletcher, III, and Douglas G. Fletcher (vacant parcel), John G. Fletcher, III (residence), Douglas G. and Melissa G. Fletcher (vacant parcel), and Wright and Lucinda Preston (large parcel containing their residence). The Class IV portion of Snipe Ireland Road extends to the Jericho town line, and then the road continues as a Class IV road in Jericho. From the Fletcher residence north, it is generally impassable except by four wheel drive vehicles.

I. Discontinuance.

The discontinuance of a town highway, whether Class III, or Class IV is controlled by 19 V.S.A. 708-711, and 19 V.S.A. 771. Briefly:

A. The Selectboard must hold a hearing and give 30 days notice to persons owning or interested in lands through which the highway may pass or abut, and, because the highway extends into Jericho, the Town of Jericho must also be notified (if Jericho were dissatisfied with

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the discontinuance, it could appeal to the State Transportation Board). The legal test is whether the discontinuance is consistent with the public good, necessity, and convenience of the inhabitants of the town.

B. Any person dissatisfied with the Selectboard's decision could appeal to superior court (although, as noted above, Jericho would need to appeal to the transportation board).

C. In this case, presumably the Prestons, who are supporting the discontinuance, and Prelco, their corporation, would support the discontinuance. Jericho's position at this point is unknown, as are the positions of the Fletchers, who abut on the east.

D. In the case of a total discontinuance, 19 V.S.A. 775 provides that the right of way belongs to the owners of the adjoining lands. If it is located between the lands of two different owners, it is returned to the lots to which it originally belonged if they can be determined, or if not, it is divided equally between the owners on each side.

E. 19 V.S.A. 717(c) addresses to some extent the issue of whether a total discontinuance (or conversion to a trail – discussed below) would landlock a person. Section 717(c) provides that:

A person whose sole means of access to a parcel of land or portion thereof owned by that person is by way of a town highway or unidentified corridor that is subsequently discontinued shall retain a private right of way over the former town highway or unidentified corridor for any necessary access to the parcel of land or portion thereof and maintenance of his or her right of way.

This might address any concerns of the Fletchers (and Prestons) as to being landlocked, although it would not address any issues with Jericho.

2. Conversion to a Trail.

Under 19 V.S.A. 775, the Selectboard could designate the proposed discontinued highway as a trail, "in which case the right of way shall be continued at the same width." In that case:

A. Since a "trail" does not fall within the statutory definition of "highway" – see 19 V.S.A. 302(a)(5) – "trails shall not be considered highways and a town shall not be responsible for any maintenance including culverts and bridges" – I believe that once a Class IV highway is discontinued and converted to a trail, if the Selectboard wished to reestablish the highway status, it would then need to go through the procedure for laying out a highway in 19 V.S.A. 708-711 – that is, demonstrating public good and necessity after hearing and notice to property owners and Jericho, and even payment of damages for the taking.

B. Under 19 V.S.A. 310(c), "a town shall not be liable for construction, maintenance, repair, or safety of trails." Therefore, I think it is safe to say that once a Class IV road is turned into a trail, the Town would have no liability if it just left it alone, and somebody were injured on it.

C. However, if the highway were turned into a trail, and thereafter the Town performed some activities on it by way of trail improvement, I think it would be subject to suit if someone were injured and claimed the improvements were negligently made and were dangerous. You would need to be sure the Town's insurance covered this potential liability.

D. While most of the statutes as to regulation of vehicles apply to "highways" (which do not include trails), 23 V.S.A. 3510 provides that municipalities have the power to adopt ordinances "for the purpose of regulating the time, manner, and location of operation of all terrain vehicles within their limits provided the ordinances do not controvert the provisions of this chapter [23 V.S.A. Chapter 31 pertaining to all terrain vehicles]." 23 V.S.A. 3210 provides the same authority as to snowmobiles. Therefore, I would think the Town could adopt an ordinance prohibiting all terrain vehicles and snowmobiles on a trail. However, there would be some attendant burdens of policing which the Town does not currently have.

E. Designation as a trail and prohibition of motor vehicles could not cut off the private rights of way of otherwise landlocked landowners under 19 V.S.A. 717 (c)

3. Total Discontinuance and Affording Town a Right of Way for Non Motorized Vehicles by Deed.

This is one of the alternative proposals put forth by the Prestons. My comments on this part of the proposal are as follows:

A. Assuming that the Selectboard could get through a discontinuance procedure without objection from abutting landowners or the Town of Jericho, then it would be possible to accomplish a total discontinuance and then have the grant of a "recreation path" by private conveyance from the landowners, assuming they all cooperated. This would require some fairly extensive title work, and to make sure that the pathway is properly laid out, all landowners having an interest and their mortgage holders join in the deeds, there is a survey, etc. The town should not bear this expense. Again, the Town would have new policing duties and the associated cost to prevent motorized use. Also, under a deeded recreation path easement, the Town would not have the protection of 19 V.S.A. 310 (c) against liability afforded for statutory "trails."

B. While the use of the right of way or recreation path could be limited to non-motorized vehicles, use, 19 V.S.A. 717(c) would still apply. That is, the rights of persons whose sole means of access to a parcel of land is by town highway could not be defeated and they would still retain their "private right of way" over the former town highway and recreation path for any necessary access. This issue would need to be explored in more depth before the Town became involved in the grant of the private recreation path.

4. Conclusion.

Right now, this portion of Snipe Ireland Road is a Class IV road, as to which the Town has no maintenance responsibilities. In the future, the Town might want to convert the road to a Class

Mary Houle, Chair
August 25, 2008
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III road, passable into the Town of Jericho. Were the Town to convert the Class IV road into a trail, or even into a dedeed recreation path, then at some future time, the Town would be in the position where it would need to start a new proceeding if it wanted to lay out a whole new Class III town highway. Therefore, the initial decision the Selectboard needs to make, as a matter of policy, is whether it wants to give up its current Class IV highway rights and go down the road of discontinuance or conversion to a non-motorized corridor.

Sincerely yours,



Mark L. Sperry
MLS:mns

c: Ron Rodjenski, Town Administrator
469037.1

RICHMOND SELECTBOARD
Approved + Signed

9/8/09

RECORDED

11/9/09

**TOWN OF RICHMOND
ORDINANCE GOVERNING USE OF
SNIPE IRELAND TRAIL**

THE SELECTBOARD OF THE TOWN OF RICHMOND HEREBY ORDAINS:

SECTION 1. AUTHORITY. This is a civil ordinance adopted under authority of 19 V.S.A. 304(5), 24 V.S.A. 2291(14), Sections 112-114 of the Richmond Town Charter, and 24 V.S.A. 1971.

SECTION 2. PURPOSE. The purpose of this ordinance is to prevent environmental damage and pollution caused by vehicular traffic and other activities on Snipe Ireland Trail. The operation of a motor vehicle on Snipe Ireland Trail in violation of this Ordinance, and other conduct prohibited by this Ordinance, are hereby deemed to constitute public nuisances.

SECTION 3. DEFINITIONS. For purposes of this ordinance, the following definitions shall apply:

a. *Motor Vehicle* shall include all vehicles, tractors, implements, and equipment propelled or drawn by power other than muscular power, including but not limited to non-highway recreational vehicles or "all-terrain vehicles" ("ATVs"), so called, but excluding from the definition of "motor vehicle" are the following: tractors and vehicles used solely for work on forestland or in maple sugaring operations, electric utility maintenance equipment, motorized highway and trail building and maintenance equipment, snowmobiles (but only when operated over adequate snow cover), implements of husbandry, Town of Richmond maintenance vehicles and equipment and vehicles used by persons in connection with private right of way rights pursuant to 19 V.S.A. § 717(c).

b. *Operate, operating and operated* as applied to motor vehicles shall include *drive, driving and driven* and shall also include an attempt to operate, and shall be construed to cover all matters and things connected with the presence and use of motor vehicles, whether they are in motion or at rest.

c. *Owner* shall include any person, corporation, co-partnership or association, holding legal title to a motor vehicle, or having exclusive right to the use or control thereof.

d. *Snipe Ireland Trail and trail* shall mean the town trail extending from the town line between Richmond and Jericho, identified by a stone monument with "TL" carved into it, and proceeding southerly in Richmond for approximately 947 feet to the northerly edge of the driveway of property now or formerly owned by John G. Fletcher, III.

e. *Selectboard* shall mean the Town of Richmond Selectboard.

SECTION 4. MOTOR VEHICLE OPERATION PROHIBITED. The operation of a motor vehicle is prohibited on the Snipe Ireland Trail (i) unless the operator of the

vehicle has a valid permit issued by the Richmond Selectboard, and (ii) unless the motor vehicle is being operated in accordance with any limitations in the permit.

SECTION 5. PERMITS, OTHER ACTIVITIES PROHIBITED.

a. Permits may be issued to persons who, in the judgment of the Selectboard, have a legitimate non-recreational need to operate a motor vehicle on the trail. To protect the trail, the Selectboard may include in any permit, limitations to specific uses and types of motor vehicles, and seasonal and other use limitations.

b. The only acceptable permit shall be one entitled "TOWN OF RICHMOND PERMIT TO OPERATE A MOTOR VEHICLE ON THE SNIPE IRELAND TRAIL" and signed by the Richmond Selectboard or its designee. There shall be two classes of permits: permits issued to residents abutting or persons owning property on the trail, and persons who are not residents abutting or owning property on the trail. The Selectboard may from time to time establish reasonable fees for issuance of permits. One copy of the permit shall be issued to the permittee and one copy shall be filed with the Richmond Town Clerk.

c. The Selectboard shall solicit the opinions of abutters to the trail, the Richmond Trails Committee and the Richmond Conservation Commission, who shall all have 30 days to respond, prior to approving any permit application to operate a motor vehicle on the trail.

d. Before issuing a permit to operate a motor vehicle on the Trail, the Selectboard shall make findings that issuance of the permit will be in the public good, necessity and convenience of the residents of Richmond.

e. Stone walls within the Trail right of way shall not be damaged or removed.

f. Trees within the Trail right of way shall not be damaged or removed without written permission of the Town's Tree Warden. Notwithstanding the above, the Richmond Trails Committee or its designee may cut and or remove trees within the actual path within the trail on an as needed basis without the Town's Tree Warden approval.

g. Permits shall be valid for residents abutting and persons owning property on the trail so long as they continue to be abutting residents or property owners. All other permits shall expire at the end of the twelfth month following the month of permit issuance, or such earlier expiration date, if any, stated in the permit.

SECTION 6. PENALTIES. A person who operates a motor vehicle on the Snipe Ireland Trail without a permit or who allows another person to operate a motor vehicle on the trail without a permit, or who operates or allows another person to operate a motor vehicle on the trail in violation of permit limitations shall be fined \$50.00 for each offense, with a waiver penalty of \$35.00. If the owner and the operator of a vehicle being operated without a permit or in violation of the permit limitations are not the same person, the owner and the operator shall each be liable for the fine of \$50.00 or the waiver penalty of \$35.00. The Selectboard may, after hearing, revoke a permit if the permittee is in violation of the permit limitations, apply for injunctive relief in the courts, and resort to any other legal remedy.

SECTION 7. DAMAGE TO TRAIL. A person shall not (i) injure or damage the trail or any of its components, including but not limited to signs, bridges, or culverts, or (ii) remove planks, posts, timber, stones, dirt, trees, or vegetation from the trail, or (iii) alter any stream or watercourse crossing or within the trail, or (iv) drag logs or timber or other objects on the trail surface. A person who violates this Section 7 shall be fined \$50 for each offense, with a waiver penalty of \$35.00. The Selectboard may, after hearing, revoke a permit if the permittee is in violation of this section. Additionally, a person who violates this section shall pay the Town its costs of repair or restoration to the condition prior to the damage, to be recovered in a civil action in the name of the Town. The Town shall be entitled to its reasonable attorneys' fees incurred in prosecuting such civil action.

SECTION 8. ENFORCEMENT OFFICERS. Enforcement shall be performed by the Town of Richmond Police Department or by any other Vermont law enforcement officer.

SECTION 9. SEVERABILITY. If any portion of this ordinance is held unconstitutional or invalid by a court of competent jurisdiction, the remainder of the ordinance shall not be affected.

SECTION 10. EFFECTIVE DATE. This ordinance shall become effective 60 days after its adoption by the Richmond Selectboard. If a petition is filed under 24 V.S.A. § 1973, that statute shall govern the taking effect of this ordinance.

Richmond Selectboard
By:

Sept 8, 2009
Date

K. Pate, Mayor
[Signature]
[Signature]
[Signature]
[Signature]
Signatures

RICHMOND, VT TOWN CLERK'S OFFICE
Received for record
November 9 A.D. 2009
At 8 o'clock 00 minutes AM
and recorded in Book 3 Page 83-86
of Highway Records.
Attest:
[Signature]
Town Clerk

02120

ADOPTION HISTORY:

1. Approved for publication of notice of public hearing and table of contents at Selectboard meeting held on AUGUST 3, 2009
2. Notice of Selectboard public hearing and table of contents published in the Burlington Free Press newspaper on AUGUST 14, 2009
3. Selectboard public hearing held on SEPTEMBER 8, 2009
4. Adopted by Selectboard at Selectboard meeting on SEPTEMBER 8, 2009
5. Effective 60 days after adoption on November 7, 2009, no petition for a vote on disapproval having been filed pursuant to 24 V.S.A. 1973 (if petition is filed, modify and recite further history of vote and results).

**TOWN OF RICHMOND
PERMIT TO OPERATE A MOTOR VEHICLE
ON SNIPE IRELAND TRAIL**

PURSUANT TO THE ORDINANCE GOVERNING USE OF SNIPE IRELAND TRAIL, the RICHMOND Selectboard hereby issues this permit to operate a motor vehicle (as defined in the Ordinance) on the Snipe Ireland Trail for the non-recreational purposes specified in Section C below to:

A. _____, a resident abutting or person owning property on the trail; such permit shall be valid so long as he/she is a resident abutting or person owning property on the trail; or

B. _____, a person who is not a resident abutting or person owning property on the trail.

C. Pursuant to Section 5 of the Ordinance, this permit is issued subject to the following limitations: _____

EXPIRATION DATE: _____, or the end of the twelfth month following the month of permit issuance, whichever is earlier. Example: A permit issued on November 6, 2009 would expire on the stated Expiration Date, or November 30, 2010, whichever is earlier. If no Expiration Date is stated, the expiration date would be November 30, 2010. Note: the foregoing is applicable only to a person who is not a resident abutting or person owning property on the trail. Pursuant to Section 5(g) of the Ordinance, a permit issued to a person who is a resident abutting or owning property on the trail shall be valid so long as the person continues to be an abutting resident or property owner.

Date of Issuance

for the Richmond Selectboard

Permit Fee: \$50.00 non-refundable application fee and \$50 fee if permit issued.
(These fees shall be assessed only to an applicant who is not a resident abutting or person owning property on the trail.)

Payable to the Town of Richmond; Submit Application to Richmond Selectboard, 203 Bridge Street, PO Box 285, Richmond, VT 05477

(The permittee may not transfer this permit.)
497753.2

TOWN OF JERICO
AN ORDINANCE REGULATING TRAVEL ON SNIPE ISLAND ROAD

SECTION 1. AUTHORITY. This is a civil ordinance adopted pursuant to the authority in 24 V.S.A. Chapter 59 and 19 V.S.A. Section 304 and Section 1110.

SECTION 2. PURPOSE. The purpose of this ordinance is to regulate and restrict vehicular traffic in order to protect and prevent damage to that portion of Snipe Island Road, (Town Highway No. 26) designated as a Class 4 Town Highway, and to preserve the surrounding area core habitat. The area covered by this ordinance begins approximately 0.7 of a mile south of the intersection with Nashville Road, and extends south to the Jericho-Richmond town line.

SECTION 3. DEFINITIONS. For purposes of this ordinance, the following definitions shall apply.

A. *Motor Vehicle* shall include all automobiles, trucks, motorcycles and motorbikes, tractors, implements, and equipment propelled or drawn by power other than muscular power, including, but not limited to, non-highway recreation vehicles or all terrain vehicles (ATVs, so called), but excluded from the definition of "motor vehicle" are the following: automobiles, trucks, tractors, vehicles and equipment used solely for forest management, logging, and maple sugaring operations; electric utility construction and maintenance equipment; motorized highway and trail building and maintenance equipment; snowmobiles when operated over adequate snow cover; implements of husbandry; and Town of Jericho maintenance vehicles and equipment.

B. *Operate or operation* as applied to motor vehicles shall also include an attempt to operate, and shall be construed to cover all matters and things connected with the presence and use of motor vehicles, whether they are in motion or at rest.

C. *Selectboard* shall mean the Town of Jericho Selectboard.

SECTION 4. ACTIVITY PROHIBITED. Except as otherwise specifically allowed herein, the operation of motor vehicles is prohibited on the Class 4 portion of Snipe Island Road.

SECTION 5. PENALTIES. A person who operates a motor vehicle on Snipe Island Road in violation of this ordinance, shall be guilty of a traffic offense under 23 V.S.A. Chapter 23, for which he or she shall be fined not more than \$100, and shall be liable to the Town of Jericho for all damages to the highway, to be recovered in a civil action, in addition to any fine.

SECTION 6. ENFORCEMENT. Enforcement of this ordinance may be performed by any Vermont law enforcement officer.

SECTION 7. POSTING. The Selectboard shall post copies of this ordinance in at least two public places in the Town of Jericho, and shall also erect signs which shall be conspicuously placed at each end of the affected portion of Snipe Island Road, giving notice that its use is restricted in accordance with this ordinance.

SECTION 8. SEVERABILITY. If any portion of this ordinance is held unconstitutional or invalid by a court of competent jurisdiction, the remainder of the ordinance shall not be affected.

R:\ghw\jericho\snipe island road ordinance



RE: Legal Trail to a Class IV Road? - ATTY CLIENT

John H. Klesch <jklesch@firmspf.com>
To: Ravi Venkataraman <rvenkataraman@richmondvt.gov>

Mon, Aug 23, 2021 at 2:51 PM

Ravi:

Once triggered either by a vote of the Selectboard or a petition by 5% of the voters, the process for taking up whether to reclassify a trail to a class 4 highway is the same as for discontinuing or reclassifying a highway – i.e., it is the same process the Town is observing for Williams Hill Rd presently. One difference is that, if the Selectboard votes to undertake the process, vs. a petition triggering it, there are many less hearing notices that must be sent out via certified mail (because all petitioners must be mailed notice). Let me know if you would like more detail on the process.

The other caveat is this advice assumes there will have been no change to the width of the ROW as part of a decision possibly reclassifying a town highway to a trail. If the ROW is narrowed during reclassification to a trail, then there might have to be a taking of private land to reconstitute a 3-rods wide corridor to upward-classify back to a town highway. It is hard to imagine a scenario where there would be a good reason to narrow a ROW width in connection with making a highway a trail.

Best wishes,

John

John H. Klesch
Stitzel, Page & Fletcher, P.C.
171 Battery Street
P.O. Box 1507
Burlington, VT 05402-1507
Telephone: 802-660-2555
Fax: 802-660-2552
jklesch@firmspf.com
Website: www.firmspf.com

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From: Ravi Venkataraman <rvenkataraman@richmondvt.gov>
Sent: Monday, August 23, 2021 12:07 PM
To: John H. Klesch <jklesch@firm SPF.com>
Subject: Legal Trail to a Class IV Road?

Hi John,

At a recent Planning Commission meeting, the commission had questions about the procedure for turning a legal trail into a Class IV road--under the hypothetical that if Williams Hill Road were to become a Legal Trail, how would the town revert it back to a Class IV road if the need arises. If you could provide details on the procedure, the process, and the requirements on the town to do, that'd be greatly appreciated.

Feel free to let me know if you have any questions.

Thanks,

Ravi

Ravi Venkataraman, AICP (he/him)

Town Planner

Town of Richmond

[203 Bridge St.](#)

[Richmond, VT 05477](#)

[office: 802-434-2430](#)

[cell: 802-448-0211](#)

<http://www.richmondvt.gov/>

To note: All emails, and any respective attachments to the Town may be considered public records and may be subject to disclosure under the Vermont Open Public Records Act.

Vehicle Fueling Station definition 8.25.21

7. Definitions

Vehicle Fueling Station -- Any building, land area, or other premises, or portion thereof, used for the retail dispensing or sales of liquid or gaseous vehicular fuels including gasoline, diesel, kerosene, ethanol, ammonia, methane (including natural gas), propane, or hydrogen. A Vehicle Fueling Station has at most two pumping islands allowing for a maximum of eight vehicles to receive liquid or gaseous fuel at one time. In addition, a Vehicle Fueling Station has at least one DC Fast Charger electric vehicle charging station with a Society of Automotive Engineers (SAE) Combo (also called CCS for “Combo Charging System”) connector for public use. Customary accessory uses for Vehicle Fueling Stations include the retail sales of vehicle accessories, food and beverages prepared for off-premises consumption, and other convenience store items. The free or retail dispensing of electricity as vehicle fuel within approved on-street or off-street parking spaces, or incidental to the use to a structure, shall not constitute a Vehicle Fueling Station –

Vehicle Fueling Station replaces: ~~**Automobile Service Station**—Any building, land area or other premises, or portion thereof, used for the retail dispensing or sales of vehicular fuels; servicing and repair of automobiles and light trucks; and including as an accessory use the sale and installation of lubricants, tires, batteries, and similar vehicle accessories. This definition does not include any other uses, such as restaurants, deli’s, car washes, etc. which may only be allowed under separate review and approval under these Zoning Regulations.—~~

DC Fast Charger – a battery charger designed for use with commonly available electric vehicles that are capable of receiving direct current (DC) electricity. The DC Fast Charger will comply with Society of Automotive Engineers (SAE) standard J1772 and Underwriters Laboratory standard 2251 and will be rated at a minimum of 50 kilowatts electric power output.

(this is a new definition)

[NOTE: In these early days of the rollout of the American electric vehicle charging infrastructure there are three competing connectors for DC Fast Chargers: Tesla, CCS, and CHAdeMO. Tesla is currently the most common due to its network of Supercharger DC Fast Chargers. CCS is the DC Fast Charger connector used by most of the rest of US electric vehicles and in Europe. CHAdeMO is a DC Fast Charger standard, established by Toyota, Nissan, Mitsubishi and other Japanese companies in 2010 and used by the Nissan Leaf which is now giving way to CCS. Teslas may also charge at CCS-equipped DC Fast Chargers with an adapter, and Tesla recently announced that it will open its Supercharger network to non-Tesla EVs this fall, again with an adapter.]

Powered Vehicles / Machinery / Equipment definitions 8.26.21

Powered Vehicle and/or Machinery Service: A commercial establishment, including land and buildings, for which the principal use is the repair and maintenance of powered vehicles and/or machinery. Accessory uses include rebuilding, reconditioning and body shop work; the sale and installation of parts and accessories, and the sale or leasing of no more than 4 vehicles at any one time.

(This definition replaces part of the ~~Automobile Service Station and Repair, Garage~~)

Powered Travel Vehicle or Marine Sales: A commercial establishment, including land and buildings, for which the principal use is the display, sale, rental or leasing of powered vehicles designed for the conveyance of travelers, or marine craft, as well as trailers and other wheeled products designed to be towed by vehicles. Accessory uses include sales and installation of parts, and repair of such vehicles and craft.

(This definition replaces ~~Automobile and/or Marine Sales~~)

Equipment Supply and Rental: The storage, warehousing and distribution of residential or commercial equipment used in the construction, repair or maintenance of buildings or property on a retail or rental basis.

(current RZR definition)

Notes:

Powered Vehicle/Machinery Service would apply to all powered vehicles (travel vehicles and equipment vehicles) and machinery. I think this is much a much simpler version, and the “no more than 4” limit gets at the fact that we don’t want outside storage of lots of vehicles in places where we might be ok with a repair facility. “More than 4” would be covered in the other two definitions listed here.

I understand “powered travel vehicle” to mean any vehicle whose primary function is to move people from here to there. This would include cars, pick-up trucks, passenger vans, RV’s, ATV’s, snowmobiles, motorcycles etc. This would NOT include bicycles (non-powered) or farming, construction, landscaping vehicles or any other equipment which has another primary function besides travel – These would be included (below) in the current RZR definition “Equipment Supply and Rental”

The chain saw repair businesses that I can think of are all home occupations, which would not be affected by these definitions. The repair garage as a business use is currently only in commercial districts, and we could keep this the same.

4.7 Nonconforming Structures

~~4.7 Nonconforming Structures~~

~~The following shall apply to all nonconforming structures, except for those within the Flood Hazard Overlay District, which also must comply with the provisions of Section 6.8 of these regulations:~~

- ~~a) May undergo normal repair and maintenance without a permit if such action does not increase the structure's degree of nonconformity~~
- ~~b) May be restored or reconstructed after damage to its prior condition from any cause provided that the reconstruction does not increase the degree of nonconformity that existed prior to the damage, and provided that a zoning permit is obtained within 12 months of the date the damage occurred.~~

~~A Nonconforming structure may be replaced or restored after damage or destruction by fire or other casualty, and expansion may be permitted as long as the noncompliance of any aspect of the structure is not increased; provided, however, that such replacement or restoration shall be substantially complete within 365 days of the date of the damage or destruction. The DRB may permit such extensions of the 365-day time period as may be equitable, if the lot owner is prevented from commencing or substantially completing construction due to circumstances beyond the lot owner's control. A damaged or destroyed Nonconforming structure which is not substantially replaced or restored in compliance with this section shall not thereafter be used and shall be removed.~~

~~4.8 Setback Modifications~~

~~**Purpose** – Richmond contains a large number of buildings that were built prior to the enactment of Richmond's Zoning Regulations and do not conform to setback and/or lot coverage requirements. Current zoning may prohibit even small increases in these buildings due to the restrictions on setbacks and lot coverage. Small increases in the size of these buildings may, in appropriate cases, be beneficial to landowners without adversely affecting neighbors or the interests protected by Richmond's Zoning Regulations. It is the purpose of this section to allow for such increases subject to conditional use review under Section 5.6, as needed to authorize the modification or waiver of district front, side and rear yard setback and lot coverage requirements in accordance with the Act [§4414(8)].~~

~~**4.8.1 Applicability** – The DRB may issue conditional use approval for the expansion of any nonconforming structure substantially completed prior to April 1, 1969 (an "existing building"). If lawful additions were made to any existing building after April 1, 1969, the term "existing building" shall include the original building and such additions. The conditional use approval~~

~~may allow expansion of an existing building to occur no closer than five (5) feet to any lot line or edge of a public or private right of way and increases in lot coverage as a result of the expansion by no more than 10% of the total ground area of the lot. (For example, if the lot is 8,000 square feet, conditional use approval could allow an increase of 800 square feet in lot coverage.)~~

~~**4.8.2 Selectboard Notification** – The Administrative Officer shall notify the Selectboard of applications to modify setbacks that are adjacent to land owned by the Town and Town rights-of-way whether held as a right of way or fee title, at the same time such application is referred to the DRB.~~

~~**4.8.3 Review Criteria** – Prior to issuing conditional use approval for the waiver or modification of setback and coverage requirements, the DRB must find that the proposed expansion:~~

- ~~a) is in compliance with conditional use criteria of these Zoning Regulations, including the general standards, specific standards and performance standards outlined under Section 5.6, and with state law, and~~
- ~~b) the structure must be found to be otherwise in compliance with these Zoning Regulations.~~

~~**4.8.4 Conditions of Approval** – The DRB may require design modifications, screening or other conditions to mitigate Undue Adverse Effects to adjoining properties or public rights-of-way.~~

~~**4.9 Nonconforming Uses**~~

~~A Nonconforming Use may continue to exist, subject to the following:~~

~~A Nonconforming Use shall not be changed to other than a permitted use. Any Nonconforming Use that ceases for 365 consecutive days shall not be permitted to resume, and intent to abandon the use shall be conclusively presumed for such non-use unless it qualifies under the “Adaptive Use” section (5.6.8) of these Zoning Regulations. If it can be shown that the usage has traditionally been intermittent, the historical rate will be used to assess abandonment and continued use.~~

~~Any increase or expansion of a Nonconforming Use may occur only after DRB approval. The DRB may approve increases in nonconforming uses that involve an increase of 25% or less in physical characteristics such as, but not limited to, square footage or traffic flow, after Conditional Use Review.~~

4.7.1 The regulations under this section does not construe or imply the permitting of the use of a structure declared unsafe by an appropriate governmental authority or the continuation of an establishment declared to be health hazard by an appropriate governmental authority.

4.7.2. Nonconforming structures may continue to exist unchanged indefinitely.

4.7.3. Nonconforming structures within the Flood Hazard Overlay District will also be subject to the regulations of Section 6.8.

4.7.4. Nonconforming structures may undergo normal repair and maintenance without a zoning permit provided that the structure's degree of nonconformity is not increased.

4.7.5. The Administrative Officer may approve the replacement, restoration, or reconstruction of a nonconforming structure after damage or destruction by fire, flood, collapse, explosion, or other similar casualty to its prior condition provided that:

- a) the reconstruction does not increase the degree of nonconformity that existed prior to the damage; and
- b) a zoning permit is obtained within 12 months of the date the damage occurred.

4.7.6. The Administrative Officer may approve the replacement, restoration, reconstruction, and expansion of a nonconforming structure for reasons other than damage or destruction provided that the structure's degree of nonconformity is not increased.

4.7.7. The Administrative Officer may approve the relocation of a nonconforming structure on the same property provided that the change in location of the structure does not increase the structure's degree of nonconformity.

4.7.8. The Development Review Board may grant Conditional Use Review approval to allow a nonconforming structure to extend, or further extend, into a buffer thus increasing its degree of nonconformity provided that the following conditions are met:

1. No part of the structure or any other impermeable surface will extend into the buffer further than one half (1/2) the required width of the buffer.
2. The need and justification for the buffer distance reduction must be provided in writing with the Conditional Use Review application.
3. The Development Review Board must find that the buffer reduction would not pose any adverse effects to adjacent properties, roads or rights-of-way.
4. The Development Review Board must find that, overall, the proposed land development, even with the proposed buffer reduction, will improve the quality and function of the natural resource that the buffer protects.

4.7.9 Any nonconforming structure shall be deemed discontinued by the Administrative Officer and may no longer be reoccupied if within a continuous period of 12 months any two of the following conditions occur:

1. The structure is unoccupied and not actively offered for sale or rent;
2. Regular maintenance of the structure is not performed; and

3. The structure is not served by activated utilities.

4.7.10. For the purpose of section 4.7, the phrase “degree of nonconformity” shall mean:

1. the square footage that the nonconforming structure’s footprint occupies within a required setback, or,
2. the square footage that the nonconforming structure’s footprint or any associated impervious surface occupies within a buffer, or,
3. the square footage by which the nonconforming structure exceeds any other required dimensional standard.

4.8 Nonconforming Uses

4.8.1 A non-conforming use may be continued indefinitely provided it remains unchanged.

4.8.2 The structure hosting a nonconforming use may undergo normal repair and maintenance without a zoning permit provided that it does not increase the degree of nonconformity of the use.

4.8.3. The Administrative Officer may approve the replacement, restoration, or reconstruction of a structure hosting a nonconforming use after damage or destruction by fire, flood, explosion, collapse, or other similar casualty to its prior condition provided that:

1. the reconstruction does not increase the degree of nonconformity of the use; and
2. a zoning permit is obtained within 12 months of the date the damage or destruction occurred; and
3. all other requirements of the zoning district in which the structure hosting+ the use is located are met.

4.8.4 A nonconforming non-residential use that ceases for 12 or more months shall be deemed discontinued by the Zoning Officer and shall not be permitted to resume. A residential use may be resumed within a legal, vacant structure at any time.

Definitions:

Setback - The distance from a Lot Line or, if applicable, the center line of an adjacent road the Road or Highway right of way, to the edge of any structure or building footprint on the lot, including the building footprint, edge of deck, cantilevered areas, but not including the roof overhang. However, the setback provisions of these Zoning Regulations do not apply to excluding fences or signs outside of a road right-of-way, except where specifically provided.

Buffer - ~~Undisturbed~~ a measured zone of naturally occurring vegetation between a natural resource--including but not limited to a wetland, river, stream pond or lake--and the edge of any

structure or impervious surface on the lot that protects the ecological functions of a natural resource and minimizes the impacts of adjacent land development and sources of pollution ~~which may be initially created and planted for screening or environmental purposes.~~

Impervious Surface - An area of ground which significantly restricts or prevents penetration of water, including such as but not limited to buildings, rooftops, pavement, paving stones and compacted gravel or dirt asphalt paving and concrete surfaces but not including a gravel or grassed surface.

Clean Revision

4.7 Nonconforming Structures

4.7.1 The regulations under this section does not construe or imply the permitting of the use of a structure declared unsafe by an appropriate governmental authority or the continuation of an establishment declared to be health hazard by an appropriate governmental authority.

4.7.2. Nonconforming structures may continue to exist unchanged indefinitely.

4.7.3. Nonconforming structures within the Flood Hazard Overlay District will also be subject to the regulations of Section 6.8.

4.7.4. Nonconforming structures may undergo normal repair and maintenance without a zoning permit provided that the structure's degree of nonconformity is not increased.

4.7.5. The Administrative Officer may approve the replacement, restoration, or reconstruction of a nonconforming structure after damage or destruction by fire, flood, collapse, explosion, or other similar casualty to its prior condition provided that:

- a) the reconstruction does not increase the degree of nonconformity that existed prior to the damage; and
- b) a zoning permit is obtained within 12 months of the date the damage occurred.

4.7.6. The Administrative Officer may approve the replacement, restoration, reconstruction, and expansion of a nonconforming structure for reasons other than damage or destruction provided that the structure's degree of nonconformity is not increased.

4.7.7. The Administrative Officer may approve the relocation of a nonconforming structure on the same property provided that the change in location of the structure does not increase the structure's degree of nonconformity.

4.7.8. The Development Review Board may grant Conditional Use Review approval to allow a nonconforming structure to extend, or further extend, into a buffer thus increasing its degree of nonconformity provided that the following conditions are met:

5. No part of the structure or any other impermeable surface will extend into the buffer further than one half (1/2) the required width of the buffer.
6. The need and justification for the buffer distance reduction must be provided in writing with the Conditional Use Review application.
7. The Development Review Board must find that the buffer reduction would not pose any adverse effects to adjacent properties, roads or rights-of-way.
8. The Development Review Board must find that, overall, the proposed land development, even with the proposed buffer reduction, will improve the quality and function of the natural resource that the buffer protects.

4.7.9 Any nonconforming structure shall be deemed discontinued by the Administrative Officer and may no longer be reoccupied if within a continuous period of 12 months any two of the following conditions occur:

1. The structure is unoccupied and not actively offered for sale or rent;
2. Regular maintenance of the structure is not performed; and
3. The structure is not served by activated utilities.

4.7.10. For the purpose of section 4.7, the phrase “degree of nonconformity” shall mean:

1. the square footage that the nonconforming structure’s footprint occupies within a required setback, or,
2. the square footage that the nonconforming structure’s footprint or any associated impervious surface occupies within a buffer, or,
3. the square footage by which the nonconforming structure exceeds any other required dimensional standard.

4.8 Nonconforming Uses

4.8.1 A non-conforming use may be continued indefinitely provided it remains unchanged.

4.8.2 The structure hosting a nonconforming use may undergo normal repair and maintenance without a zoning permit provided that it does not increase the degree of nonconformity of the use.

4.8.3. The Administrative Officer may approve the replacement, restoration, or reconstruction of a structure hosting a nonconforming use after damage or destruction by fire, flood, explosion, collapse, or other similar casualty to its prior condition provided that:

1. the reconstruction does not increase the degree of nonconformity of the use; and
2. a zoning permit is obtained within 12 months of the date the damage or destruction occurred; and

3. all other requirements of the zoning district in which the structure hosting+ the use is located are met.

4.8.4 A nonconforming non-residential use that ceases for 12 or more months shall be deemed discontinued by the Zoning Officer and shall not be permitted to resume. A residential use may be resumed within a legal, vacant structure at any time.

Definitions:

Setback – the distance from a lot line or, if applicable, from the center line of an adjacent road, to the edge of any structure or building footprint on the lot, excluding fences and signs.

Buffer -- a measured zone of naturally occurring vegetation between a natural resource-- including but not limited to a wetland, river, stream, pond or lake-- and the edge of any structure or impervious surface on the lot that protects the ecological functions of a natural resource and minimizes the impacts of adjacent land development and sources of pollution.

Impervious surface – an area of ground which significantly restricts or prevents the penetration of water, including but not limited to buildings, rooftops, pavement, paving stones and compacted gravel or dirt.