

## 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.-~~

4.7.1. 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:

1. the reconstruction does not increase the degree of nonconformity that existed prior to the damage; and
2. 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 wetland buffer thus increasing its degree of nonconformity provided that the following conditions are met:

1. The need and justification for the buffer distance reduction shall be provided;
2. The buffer reduction will not pose any adverse effects to adjacent properties, roads or rights-of-way;
3. Overall, the proposed land development, even with the proposed buffer reduction, will improve the quality and function of the wetland that the buffer protects, \_
4. The Richmond Conservation Commission shall provide a letter indicating that they have reviewed the application and are of the opinion that the conditions of 4.7.8 have been met.

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 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 4.8 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.~~

~~4.8.1. 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.~~

#### **4.409 Noise**

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#### **4.410 Exterior Lighting**

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#### **4.421 Height of Buildings and Structures**

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#### **4.4312 Performance Standards**

All uses in all districts, including nonconforming uses, shall meet the following performance standards at all times:

- a) No vibration resulting from the activities or use of a lot shall be measurable at the lot lines.
- b) No odors resulting from the activities or use of a lot shall be discernible at the lot lines.
- c) Smoke emissions from the activities or use of a lot shall not exceed number two (2) on the Ringelman Chart.
- d) No dust, dirt or fly-ash from the activities or use of a lot shall exceed two-tenth (0.2) grain per cubic foot of flue gas at a stack temperature of five hundred (500) degrees Fahrenheit.
- e) No noxious gases resulting from the activity or use of a lot shall be discernible at the lot lines.
- f) Hazardous materials and wastes shall be stored on and removed from a lot without causing a release or the threat of a release from a facility on a lot or on adjacent lots, and any such storage, use and/or removal shall protect the public health, safety, welfare and the environment. All uses shall comply with all federal and state laws, rules and regulations for the use, storage, transport, and disposal of hazardous materials and wastes.
- g) No use shall cause, create, or result in an undue adverse impact on municipal facilities and services.
- h) No heat shall be discernible at the lot lines.

**4.13 Vehicle Fueling Stations.** All Vehicle Fueling Stations must adhere to the following requirements and standards:

4.13.1. Vehicle Fueling Stations may have up to four pumping islands, allowing up to eight vehicles to receive liquid or gaseous fuels at one time.

4.13.2. All Vehicle Fueling Stations shall have 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.

4.13.3. 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.

## 5. PERMITS AND APPROVALS

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### 5.10 Requirements for Specific Structures

**5.10.1 Accessory Structure** - An accessory structure includes any structure that is customarily incidental and subordinate to the principal structure or use on a lot, including but not limited to, fences, walls, barns, sheds, greenhouses, gazebos, patios, accessory electric vehicle charging stations, and free-standing garages. Accessory structures (except for non-structural fences and walls which mark property boundaries, or enclose portions of the property, and are less than 6 feet high, as well as accessory electric vehicle charging stations) shall conform to the setbacks established in the applicable Zoning District, unless a greater setback is required by these Zoning Regulations.

**5.10.2 Seasonal Dwelling** - A “seasonal dwelling” or “camp” structure shall not be occupied more than 180 days in any one-year period. Camps which are pre-existing nonconforming structures or nonconforming uses shall be governed by Sections 4.7 or 4.94.8 of these Zoning Regulations. New camps and conversions of camps to single-family dwellings shall be permitted wherever single-family dwellings are permitted as long as all requirements for a single-family dwelling are met. Each camp which is converted to year-round single-family use shall be located on a separate conforming lot on which there is no other principal structure.

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## 6. SPECIAL ZONING REGULATIONS

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### ~~6.9~~ **Wetlands**

~~No building, roadway or septic system shall be constructed within 100 feet of a Class I wetland and within 50 feet of a Class II wetland. Classifications of wetlands are established by the State of Vermont.~~

~~In addition, no draining, dredging, filling, or alteration of the water flow shall occur within 50 feet of Class I and Class II wetlands, unless such use has been approved by the Vermont Department of Environmental Conservation’s Wetlands Section through the issuance of a Conditional Use Determination.~~

**6.9.1 Applicability.** No land development shall occur within a Class I or II wetland, or wetland buffer, except for the encroachments allowed under Section 6.9.3.

**6.9.2 Wetland Buffers.** All Class I and II wetlands shall be surrounded by a buffer of the following widths:

1. 100 feet for a Class I wetland;
2. 50 feet for a Class II wetland;

### **6.9.3 Allowed Encroachments.**

6.9.3.1 Permitted—The following wetland buffer encroachments may be allowed upon issuance of a Zoning Permit by the Administrative Officer.

- a) Stormwater management and treatment facilities that meet the accepted state sizing criteria and best management practices set forth in the Vermont Stormwater Management Manuals as most recently amended.
- b) Constructed paths, trails and sidewalks that cross a wetland buffer for the purpose of public or private access or recreation only if there is no feasible alternative to the crossing.
- c) Public or private roads or driveways that cross a wetland buffer for the purpose of providing safe access to a use only if there is no feasible alternative to the crossing.
- d) Utility lines, including telephone, cable, sewer and water that cross a wetland buffer for the purpose of providing or extending service, only if there is no feasible alternative.

6.9.3.2 Conditional – The following wetland encroachments may be allowed upon issuance of a Conditional Use Approval by the DRB.

- a) Constructed paths, trails and sidewalks that cross a wetland for the purpose of public or private access or recreation only if there is no feasible alternative to the crossing.
- b) Public or private roads or driveways that cross a wetland for the purpose of providing safe access to a use only if there is no feasible alternative to the crossing.
- c) Utility lines, including telephone, cable, sewer and water that cross a wetland for the purpose of providing or extending service, only if there is no feasible alternative

6.9.3.3 “Constructed” for this section shall mean adding and/or removing any material at the site of the crossing.

6.9.3.4 Conditional Use Approval may be granted for the reconstruction, replacement or relocation of nonconforming structures and existing impervious surfaces that encroach into a wetland buffer pursuant to Section 4.7.8.

### **6.9.4 Development Review Standards**

6.9.4.1 The proposed allowed encroachment must be designed to produce the least possible impact to the wetland or wetland buffer, and any incursions into a wetland shall have no or minimal impact to the functionality of the natural processes of the wetland. The encroachment shall be only to the minimum extent necessary to carry out the purpose of the development. “Least possible impact” shall include minimizing fill and impervious surfaces.

6.9.4.2 The creation of wetland crossings shall be installed in such a manner as to preserve hydrologic and ecological connectivity of the wetland, such as by means of a boardwalk or bridge over the surface of the wetland, or by culverts under the crossing that allow for the free flow of water.

6.9.4.3. The creation of new lawns or areas of pavement, including for parking, within wetlands or wetland buffers is prohibited, except as outlined in Section 6.9.3.3. Supplemental planting with appropriate native vegetation to restore and enhance the function of the wetland within the wetland and wetland buffer is allowed.

6.9.4.4. New on-site septic systems, including septic tanks and leach fields, are prohibited in wetlands and wetland buffers.

6.9.4.5. Storage of hazardous or other materials is prohibited in wetlands and wetland buffers.

**6.9.5 Application Requirements.** Applications for land development on a lot containing a known or suspected wetland, or wetland buffer, as indicated by the Vermont Significant Wetlands Inventory, the Wetlands Advisory Layers, or the Wetland Screening Tool shall provide the following:

- a) A wetlands delineation and assessment of the wetland prepared by a professional wetlands ecologist in accordance with the Vermont Wetlands Rules put forth by the Agency of Natural Resources;
- b) A site plan indicating the location of the proposed land development in relation to the wetland.
- c) A Vermont Agency of Natural Resources Project Review Sheet;
- d) An erosion prevention and sediment control plan in accordance with the current Vermont Standards and Specifications for Erosion Prevention and Sediment Control;
- e) If applying for a permit for an encroachment, substantive evidence that no other feasible alternative to the proposed encroachment exists;
- f) A permit obtained under these regulations for land development on a lot containing a wetland or wetland buffer shall not relieve the applicant of the responsibility to comply with all other state or federal regulations.

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## 7. DEFINITIONS

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### 7.2 Specific

For the purpose of these Zoning Regulations, certain words and terms are hereby defined as follows:

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**Accessory Electric Vehicle Charging Station** – A structure or device for the free or retail dispensing of electricity as vehicle fuel within an on-street or off-street parking space, or incidental to a residential or commercial building that does not dispense liquid or gaseous fuel.

**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.~~

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**Buffer** - ~~Undisturbed naturally occurring vegetation which may be initially created and planted for screening or environmental purposes; 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.~~

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**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, or successor standards, and will be rated at a minimum of 50 kilowatts electric power output.

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**Impervious Surface** - An area of ground which prevents or significantly restricts or prevents the 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.

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**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.

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**Setback** - The distance from a lot line or, if applicable, the center line of a road or highway right-of-way, to the edge of the building footprint or any structure on the lot, including the building footprint, edge of a deck or cantilevered areas, but not including the roof overhang. However, the setback provisions of these Zoning Regulations do not apply to fences, accessory electric vehicle charging stations, roof overhangs, or signs outside of a road right-of-way, except where specifically provided.

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**Structure** - An assembly of materials for occupancy or use, including, but not limited to, a building, mobile home or trailer, sign, wall, or fence, or storage tank for liquid or gas that is principally above ground, except a wall or fence on an operating farm. The term Structure also includes liquid and gas storage tanks that are principally above ground. The term structure does not include tanks that are fully underground, septic system components, or impervious surfaces such as driveways or parking areas. Unless otherwise specifically provided, (1) the term Structure does not include parking areas and driveways, (2) for purposes of determining setbacks, the term Structure does not include fences, except where specifically provided, and (3) for the determination of setbacks, septic systems shall not be considered structures and the setbacks shall be dictated by state law. See also Mobile Home, Recreational Vehicle.

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**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, but not limited to, gasoline, diesel, kerosene, ethanol, ammonia, methane (including natural gas), propane, or hydrogen, in addition to the retail dispensing of electricity as vehicle fuel. An Accessory Electric Vehicle Charging Station shall not constitute a Vehicle Fueling Station.

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**Wetlands** - Means those areas that are inundated by surface or groundwater with a frequency sufficient to support vegetation or aquatic life that depend on saturated or seasonally saturated soil conditions for growth and reproduction. Such areas include but are not limited to marshes, swamps, sloughs, potholes, fens, river and lake overflows, mud flats, bogs, vernal pools, and ponds, but excluding such areas as grow food or crops in connection with farming activities.

**Wetland Buffer** – The area contiguous to a wetland which serves to protect the values and functions of the wetland.