

TO: Richmond Selectboard

CC: Richmond Planning Commission

FROM: Ravi Venkataraman, Town Planner

DATE: February 12, 2021

SUBJECT: ANR Wetlands Permit for Richmond Mobil Station project

The purpose of this memorandum is to inform you that:

- The owners of the Richmond Mobil gas station have applied for a State of Vermont Agency of Natural Resources (ANR) wetlands permit to redevelop the site for a revamped gas station;
- The public comment period for the draft state wetlands permit is now open and the public may enter comments through the ANR Environmental Notice Bulletin: <https://enb.vermont.gov/?id=9549>;
- The Planning Commission is not inclined to amend the Town Zoning Regulations to allow for development per the proposed plans after conversations with the Richmond Mobil project team, ANR staff, the Conservation Commission and the public, as well as correspondence with the Army Corps of Engineers.

In their redevelopment plan, the owners of the Richmond Mobil station plan to remove the existing building and gas pumps, and build a new, larger building with additional gas pumps and more parking. The owners of the Richmond Mobil station are also proposing site improvements, including drainage management, landscaping, wastewater systems, to coincide with the expansion of the existing gas station.

Currently, in the Zoning Regulations under Section 6.9:

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.

Areas within 100 feet of a Class I wetland and within 50 feet of a Class II wetland are considered part of the wetland buffer. There are no identified Class I wetlands within town. I do not have enough data to provide a precise number for the amount of Class II wetlands within town.

The Planning Commission held discussions with the Richmond Mobil owner and project team, and the public about amending this section to allow land development within wetlands and wetland buffers during the November 4, 2020 and January 20, 2021 meetings. The commission discussed amending this section with representatives from the Richmond Conservation Commission on November 18, 2020. In addition, ANR Wetlands Ecologist Julie Follensbee gave a presentation to the Planning Commission on the function of wetlands and the state wetlands permitting process during the December 16, 2020 Planning Commission meeting.

After reviewing the information presented by the Richmond Mobil project team, ANR, the Conservation Commission and public, as well as how nearby municipalities regulate development within wetlands (A spreadsheet I prepared comparing how nearby towns regulate development within wetlands is enclosed for your consideration), the Planning Commission concluded that it would not

advocate amending the Zoning Regulations to allow for the scale of development the Richmond Mobil project team is proposing within the wetland buffer. The commission is considering zoning amendments that would establish a permitting process for minor development within wetlands and wetland buffers, such as road crossings or force mains, if no viable alternatives for access is possible on the property. This consideration would be consistent with State Wetland Rules and regulatory allowances for development within wetlands in nearby municipalities.

The public comment period for the draft state wetlands permit ends on March 4, 2021. Anyone may submit comments via the State Environmental Notice Bulletin website.

Permitting processes at the state level are separate from permitting at the local level. The general rules are that Planning and Zoning does not influence state permitting processes and the state does not influence Planning and Zoning's review of local permit applications.

Thus, the town is not obligated to issue permits for projects the state has permitted. For this issue specifically, local zoning regulations to preserve and protect the function of wetlands are allowed under 24 V.S.A. §4414. Also, under 24 V.S.A. §4413:

if any bylaw is enacted with respect to any land development that is subject to regulation under State statutes, the more stringent or restrictive regulation applicable shall apply

Per statute, municipalities have the right to enact bylaws that are more restrictive than state regulations for development within wetlands. Presently, the Town's Zoning Regulations are more restrictive than the state's regulations for development within wetlands.

Please don't hesitate to contact me if you have any questions.

Municipality/Agency	Class II Wetland Buffer	Development Allowed Within Buffer	Development Allowed Within Wetland	Permitting Process	Notes
State Of Vermont	50 feet	Yes	Yes	General Permit, or Conditional Use Permit requirement	ANR is more likely to issue permits for development for crossings (roadway, infrastructure line) at the narrowest portion of the wetland. ANR conducts on-site inspections prior to the issuance of any permit to determine ways to prevent development within the wetland and/or curb impacts within wetlands.
Richmond	50 feet	No	No	None	Permitting process for variance requires an appeal of a ZA's action in order for a DRB to grant a variance per 24 VSA 4469. The DRB may grant Conditional Use approval for dredging, draining, filling and alteration.
Williston	50 feet	Yes	Yes	*Discretionary permit process	Specifically, crossings are allowed if no alternative is available.
Underhill	50 feet	Yes	No	Zoning Permit, or Conditional Use then a Zoning Permit depending on land development	The most allowed is crossings into wetland buffers. Crossings across wetland buffers requires Conditional Use Review.
Jericho	50 feet	Yes	Yes	Conditional Use Review then Zoning permit	Specifically, crossings are allowed in conformity with State Wetlands Rules.
Essex Town	50 feet	No	No	Variance	Uses may be allowed on properties partially within a wetland. But structures are only allowed only if it fulfills the variance criteria pursuant to 24 VSA 4469.
South Burlington	50 feet	Yes	Yes	Conditional Use Review then Zoning permit	Applies to all encroachments. State Wetland Rules apply.
Hinesburg	50 feet	Yes	Yes		Hinesburg is silent on local permitting and regulations regarding wetlands. The bylaw defers to the State Wetland Rules on regulations.
Bolton	50 feet	Yes	Yes	Conditional Use Review then Zoning permit	Specifically, crossings are allowed.
Westford	Undefined**	Yes	Yes	Zoning Permit, or Conditional Use then a Zoning Permit depending on land development	Specifically, the DRB may grant Conditional Use Review for crossings if no alternative is available.
Shelburne	Undefined	No	No	Variance	Shelburne allows for dredging and alteration of water courses via an administrative process. Shelburne bylaws provides a variance process per 24 VSA 4469 for relief from bylaw requirements for reasonable use of the property
Waterbury					My read-through of their regulations didn't lead me to any conclusions about development within floodplains. I will have to contact their Planning and Zoning office for more information.
Winooski	50 feet	Yes	Yes	DRB Review	Winooski discourages development within wetlands but allows for wetland crossings. Review is folded into the DRB review process, but does not specify which permitting process
Colchester	50 feet	Yes	Yes	DRB Review	Colchester allows for encroachment within wetlands and wetland buffers in coordination with state approvals. Colchester does not specify which DRB permitting process.
Montpelier	50 feet	Yes	Yes	Waiver from the DRB and then Zoning Permit	Zoning permits for development within wetlands are conditioned upon the submission of a wetlands permit prior to the start of construction.

Gray items are municipalities with regulations comparatively as strict as Richmond.

*Williston's permitting process is unique. It folds all the DRB review processes (Conditional Use, Site Plan, Subdivision, etc) into a singular Discretionary Permit process. Applicants are required to file an Administrative Permit (i.e. Zoning Permit) after the DRB Discretionary Permit process and approval.

**Westford's Water Resources Overlay District includes land within 100 feet of a Class I and/or II wetland