

TO: Richmond Selectboard

FROM: Ravi Venkataraman, Town Planner

DATE: April 29, 2022

SUBJECT: Update on Review of Proposed Zoning Amendments to Vehicle Fueling Station uses

During the April 25, 2022 Selectboard meeting, the Selectboard asked the Planning Commission and town staff to gather more information about “Ability to Serve” letters from Green Mountain Power (GMP). Information about “Ability to Serve” letters and recommendations on how the Selectboard should proceed are below.

“Ability to Serve” Letters

I spoke to John Fiske, Director of Engineering at GMP, Josh Castonguay, VP, Chief Innovation and Engineering Executive at GMP, and Kim Jones, Manager of Transmission and Distribution Planning at GMP, on April 27, 2022 to get more information about “Ability to Serve” letters.

They pointed out the following about “Ability to Serve” letters:

- GMP issues "Ability to Serve" letters and "Conditional Ability to Serve" letters. They do not issue denial letters. Kim Jones added in her 30+ years of experience, she's only experienced one situation in which they considered denying service, and instead requested conducting a deeper study of the issue. Instead, GMP calls "Ability to Serve" letters "not a yes or no" but an indication of what it takes to make the project possible.
- The "Ability to Serve" letter indicates that GMP can provide service without any need to make infrastructural improvements.
- The "Conditional Ability to Serve" letter indicates that GMP can provide service if certain improvements are made. The cost of these improvements can be carried out by the customer, it can be shared with GMP and the customer if the project is mutually beneficial, or it can be completely taken on by GMP depending on the nature of the project.
- This "Conditional Ability to Serve" letter lists the improvements that would need to occur. After reviewing the list of improvements, the customer has the option of pursuing the project with the necessary improvements. If the customer chooses to move forward, GMP and the customer will work with a designer. The cost of the project will be determined once the project is designed.
- “Ability to Serve” letters are valid for 2 years.
- With DC fast chargers, GMP would either issue an "Ability to Serve" or "Conditional Ability to Serve", with the latter having variation based on the location of the project and the infrastructure in the project vicinity.

Based on this information, “Ability to Serve” letters do not appear to be effectively used to determine the feasibility of the project. The Town could exempt projects that receive a “Conditional Ability to Serve” letter, but based on my conversation with GMP, it seems that at this point all projects involving DC fast chargers will most likely receive a “Conditional Ability to Serve” letter.

Recommendations on the Selectboard’s Possible Actions

Based on the information at my disposal, I would recommend that the Selectboard consider the following options:

1. Adopt the proposed zoning amendments as presented by the Planning Commission; or
2. Amend the proposed zoning amendments by removing the clause requiring all vehicle fueling station uses to install a DC fast charger, and adopt the proposed amended zoning amendments.

Regarding option 1, based on discussions during the public hearing on April 25, 2022, clarification is needed about the existing gas stations in town and their rights. Further clarification is provided below.

In addition, I have heard of another option for action from Selectboard member Jeff Forward to require vehicle fueling station uses only in the Industrial/Commercial (I/C) District to have DC Fast Charger. I do not recommend this action because of the legal ramifications. Further details about this option and my rationale are below.

Clarification on the Rights of Existing Gas Stations in Town

Please note: This proposal is not a mandate that would require all existing gas stations in town to have DC fast chargers.

All of the existing gas stations in town would be allowed to remain in perpetuity as-is.

If an existing gas station would like to repair, replace, or rehabilitate the buildings and structures on site, they may pull a zoning permit do so—per the proposed zoning amendments to nonconforming uses—as long as they do not expand the degree of nonconformity. This means that they would not be allowed to expand the convenience store on site or add a fueling pump.

If an existing gas station would like to expand by adding square footage to the respective convenience stores, fueling pumps, or seating within the convenience store, the gas station would have to come into conformance with the Zoning Regulations in effect.

Conformance in general can mean one of the following:

- Undergoing Conditional Use Review in order to become a vehicle fueling station use (proposed Sections §3.6.2 and §3.7.2) and meeting all the standards for vehicle fueling station uses, including installing a DC fast charger;
- Requesting from the DRB via Conditional Use Review the allowance for a use that the DRB finds is substantially similar to a use specifically mentioned as being allowed in the Zoning District the gas station is located in (Section §2.4.1). This could allow existing gas station owners to expand their operations and circumvent the DC fast charger requirement, if the DRB finds that the applicant's proposed use and vehicle fueling stations are substantially similar.
- Converting the gas station into a use that is allowed within the Zoning District via the required respective permitting pathways.

To note: The Cumberland Farms gas station in Richmond Village would only be allowed to convert the gas station into a use that is allowed within the Zoning District. Gas stations are currently not allowed in the Village Downtown Zoning District—the district the Cumberland Farms gas station is located—and the zoning district does not list any uses that would be materially or arguably similar to a gas station. The current proposal does not suggest any changes to the Village Downtown Zoning District.

Furthermore, with Conditional Use Review, the DRB must find that the proposed land development must not have an undue adverse impact on the following (Section §5.6.2):

- a) The capacity of existing or planned community facilities;

- b) The character of the area affected, as defined by the purpose or purposes of the zoning district in which the project is located and with specifically stated policies and standards of the Richmond Town Plan;
- c) Traffic on roads and highways in the vicinity;
- d) Bylaws and ordinances then in effect; and,
- e) The utilization of renewable energy sources.

Conditional Use Review also requires review from the Richmond fire department (Section §4.12), and, in this context, review from local utilities to make sure that the proposed development does not have an undue adverse impact on existing community facilities.

If an applicant wants to improve and expand an existing gas station in town, I would suggest to the applicant that they fulfill the requirements for vehicle fueling station uses in order to advance the goals of the Town Plan but I would review all of these options with the applicant.

Alternative to Require Vehicle Fueling Stations in the I/C District to have a DC Fast Charger

Selectboard member Jeff Forward suggested setting zoning regulations in which only vehicle fueling station uses in the Industrial/Commercial District would be required to install a DC fast charger. In this suggestion, vehicle fueling station uses in all other districts would not be required to install a DC fast charger.

In the proposed zoning amendments, vehicle fueling stations would be allowed in the Industrial/Commercial District and the Commercial District with Conditional Use Review. Currently, there is one gas station in the Commercial District (the Lucky Spot) and one proposed to be included in the Industrial/Commercial District (the Mobil station) as part of this proposed zoning amendment.

Through zoning, the town can establish zoning districts, prescribe allowed uses per district, and set standards for specific uses, among other aspects. When the town places standards on specific uses based on location, it has to make sure that a basis for such a regulation exists in the Town Plan, and that the regulation is not so narrow in scope that it disproportionately affects one property with a particular use compared to all the properties with the same use in town.

If the zoning regulations are so narrow that it is evident that the regulations target specific properties, one could argue that the regulations are spot zoning—giving a particular property owner a disproportionate advantage compared to its neighboring property owners without basis in the Town Plan—or a regulatory taking—removing property rights from a particular property without just compensation to the property owner. Regulatory takings include permanent physical occupation of a portion of the property by a government without just compensation (like installing a utility pole without paying the property owner for siting the utility pole) and requirements that are disproportionate to the impact (such as requiring a property owner to build a sidewalk for public use through their property without an adequate policy basis and just compensation).

Neither the Town Plan nor the Zoning Regulations specify exact locations for the installation of future EV chargers.

In addition, the property owners of the Mobil gas station have expressed interest multiple times in public meetings in establishing a vehicle fueling station use.

Therefore, Selectboard member Forward's suggestion is legally problematic because one could argue that this is a regulatory taking. On its face, based on the facts at hand, this suggestion for zoning regulations would effectively require one property owner to provide a DC fast charger without a valid nexus in the Town Plan and without just compensation. While theoretically, more vehicle fueling station uses could be developed in the

Industrial/Commercial District over time, the immediate impact would be on one property owner and, in the present context, the proposed regulation would be read as targeting a specific property owner.

The energy section of the Town Plan does include the objectives of requiring EV charging stations for new commercial development and supporting the development of EV charging stations along travel corridors. Both CCRPC and DHCD indicated that EV charging stations can be required as a standard for specific uses. However, considering how broad the Town Plan speaks about EV charging stations, CCRPC and DHCD's broad guidance, as well as the context of Richmond, putting in place regulations that are narrower than a town-wide standard for a specific use may be legally problematic.

Next steps

The Selectboard may choose to:

1. Adopt the proposed zoning amendments as presented by the Planning Commission; or
2. Amend the proposed zoning amendments by removing the clause requiring all vehicle fueling station uses to install a DC fast charger, and adopt the proposed amended zoning amendments.

Either option is within scope of the hearing held on April 25, 2022 and can be carried out by the Selectboard during its May 2, 2022 meeting.

If the Selectboard would like to amend portions of the Zoning Regulations that were not included in the public hearing notice—parts of the Zoning Regulations other than Sections 2.4.2, 3.3.2, 3.4.2, 3.5.2, 3.6.2, 3.7.2, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 5.7.7, 5.10, 6.8.15, 6.9, 7, and Appendix A1—it must warn another public hearing.