

TO: Planning Commission

FROM: Ravi Venkataraman, Town Planner

DATE: January 14, 2021

SUBJECT: Wetlands Discussion

For your consideration, enclosed are:

- A discussion document prepared by Virginia Clarke
- A table comparing wetlands regulations with the state and nearby municipalities I prepared
- My correspondence with the Army Corps of Engineers, describing their jurisdiction and permitting process
- Army Corps of Engineers Permitting Documents
- ANR Wetlands Ecologist Julie Follensbee's slide deck she presented to you during the December 18, 2020 Planning Commission Meeting
- Flowcharts showing the permitting processes for Conditional Use Review, Site Plan Review and Zoning Permits
- Site plans, and building renderings the Richmond Mobil team presented to you during the November 4, 2020 Planning Commission meeting
- A table comparing wetlands regulations with the state and nearby municipalities the Richmond Mobil team prepared.

This memo includes additional following topics you will need to take into account:

- Permitting requirements
- Limits on Local Regulations
- Variances

Permitting Requirements

I'm sure all of you already know this, and I may be stating the obvious. But I want to make sure we're all on the same page.

Applicants undergo both DRB review and administrative review, if their proposal requires DRB review. DRB review and approval provides authorization to an applicant to apply for a zoning permit. DRB review does not authorize land development in itself.

Additional information on the permitting process for Conditional Use Review, Site Plan Review, and Zoning Permits can be found in the enclosed flowcharts.

Every municipality in Vermont has almost the same permitting process as Richmond does. State statute has defined these permitting terms (Conditional Use Review, Site Plan Review, Appeals, Variances) and its processes. And Vermont is a Dillon's Rule state, meaning that municipalities can only do what is explicitly enumerated in statute. Anything not stated in statute is not allowed.

Some municipalities may call the DRB permitting processes a different term--like Williston and their Discretionary Permit process. But the processes in these municipalities still include Conditional Use Review, Site Plan Review, Subdivision Review, Appeals, and Variances as defined by the state.

Municipalities differ in application requirements per permitting process, land use limitations, and the permitting process land development triggers. But municipalities generally do not differ in the overall permitting processes.

Limits on Local Regulations

The current Zoning Regulations state requirements for state permits in order to allow land development. But per state statute, I am unable to enforce these regulations.

Under 24 V.S.A. §4449 (emphasis added):

Beginning October 1, 2010, any application for an approval or permit and any approval or permit issued under this section shall include a statement, in content and form approved by the Secretary of Natural Resources, that State permits may be required and that the permittee should contact State agencies to determine what permits must be obtained before any construction may commence.

State statute does not explicitly allow municipalities to require state permits before applicants can pull any permit (DRB or administrative); therefore, such a requirement is not allowed. The most I can do is advise and recommend--maybe even give a soft push by asking for a Project Review Sheet. There are a few exceptions, like development within floodplains and energy code requirements. But I cannot withhold zoning permits (certificates of occupancy are permits) or a referral to the DRB for review because an applicant does not have a state permit.

Variances

Under 24 V.S.A. §4469, variances are granted for structures only if all of the following requirements are met:

- (1) There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions, and not the circumstances or conditions generally created by the provisions of the bylaw in the neighborhood or district in which the property is located.*
- (2) Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the bylaw, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.*
- (3) Unnecessary hardship has not been created by the appellant.*
- (4) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.*
- (5) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan.*

From my understanding, the goal of this state statute is to allow for reasonable use of a property if regulations and natural constraints beyond the property owner's control prevent reasonable use.

I do not recommend calling allowances you may propose for development within wetlands a variance. Depending on the property and the development proposed, a variance per state statute may not be warranted.

If you do consider any allowances for development within wetlands, I recommend you consider it within the framework of Zoning Permit, Conditional Use Review, or Site Plan Review processes.