

Town of Richmond
Planning Commission Meeting
AGENDA

Wednesday, February 2nd, 2022, 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/83503119719>

Meeting ID: 835 0311 9719

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
 - January 19th, 2022
5. Discussion regarding proposed wetlands regulations
6. Public Hearing – Proposed zoning amendments to wetlands, vehicle fueling station, and nonconforming structures and uses
7. Other Business, Correspondence, and Adjournment
 - Hearing notice for proposed zoning amendments from Town of Hinesburg: [Regulation Revisions | Hinesburg, VT](#)

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4. Approval of Minutes

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5. Public Hearing – Proposed zoning amendments to wetlands, vehicle fueling station, and nonconforming structures and uses

- Page 8: Memo on the Proposed Zoning Amendments and on the Public Hearing process
- Page 10: The draft zoning regulations annotated by Town Attorney Dave Rugh of Stitzel, Page and Fletcher, P.C.
- Page 21: Proposed zoning regulations as forwarded on January 5, 2022
- Page 28: Municipal Bylaw Amendment Report
- Page 30: Public Hearing Notice
- Page 31: Rationale for having municipal wetlands regulations, prepared by Virginia Clarke
- Page 33: Rationale for limitations on number of pumping islands for proposed vehicle fueling station uses, prepared by Virginia Clarke
- On separate standalone documents:
 - The draft zoning map forwarded for the Public Hearing prepared by CCRPC
 - The draft zoning map previously included in the January 5, 2022 meeting materials.

7. Other Business, Correspondence, and Adjournment

- Link to Town of Hinesburg website for proposed zoning amendments: [Regulation Revisions | Hinesburg, VT](#)

Richmond Planning Commission
REGULAR MEETING MINUTES FOR January 19, 2022

Members Present:	Virginia Clarke, Mark Fausel, Lisa Miller, Alison Anand, Dan Mullen, Joy Reap,
Members Absent:	Chris Cole, Chris Granda,
Others Present:	Ravi Venkataraman (Town Planner/Staff), MMCTV, Gary Bressor, Rod West, Kristen Hayden West, Bob Reap, Erin Wagg

1. Welcome and troubleshooting

Virginia Clarke called the meeting to order at 7:15 pm.

2. Public Comment for non-agenda items

None from the public. Ravi Venkataraman said that the Governor signed S.222 last night, which allows for public bodies to meet virtually without an in-person option until January 2023. Venkataraman suggested that the commission discuss whether it would like to hold public meetings without an in-person option in the near future.

3. Adjustments to the Agenda

Clarke suggested that the commission discuss S.222 and how the commission should hold meetings in the future under “Other Business”. Other members agreed.

4. Approval of Minutes

Alison Anand thanked Venkataraman for the accuracy and thoroughness of the minutes.

The commission accepted the minutes into the record as written.

5. Nomination of a Zoning Administrator

Clarke said that the current Zoning Administrator Keith Osborne is leaving the Town of Richmond on February 1st, and that the Town is in need of a person to fill the Zoning Administrator position. Lisa Miller asked for why Osborne is leaving the position and said that his leaving felt sudden. Anand said that after talking to Osborne, he said that he wishes he could stay with the Town and is leaving because of the wages. Miller expressed concern about a similar situation of a qualified professional leaving the Town because of compensation. Anand noted the importance of the Zoning Administrator job.

Clarke overviewed the statutory requirements for nominating and appointing a Zoning Administrator, and the fact that the Town can only have a Zoning Administrator and an Acting Zoning Administrator. Clarke noted that Venkataraman is the Town’s Acting Zoning Administrator. Clarke added that the Town has already employed Kayla Vaccaro to fill in as the Zoning Administrator until a permanent replacement for the Zoning Administrator position has been filled, and that the Town has advertised for

the Zoning Administrator position vacancy. Clarke said that the commission has to nominate Vaccaro to be the Zoning Administrator in order to prevent Venkataraman from doing the Zoning Administrator's responsibilities in addition to his own as the Town Planner. Clarke said that Vaccaro is aware that she will need to apply for the Zoning Administrator position in order to be the permanent, full-time Zoning Administrator. Clarke said that the Selectboard appointed Vaccaro as the Zoning Administrator during its January 18, 2022 meeting, and that per statute, the Planning Commission does not need to nominate the Zoning Administrator before the Selectboard appoints the Zoning Administrator.

Fausel asked if the Town normally hires a Zoning Administrator for a three-year term that becomes renewed. Venkataraman explained that the statutory aspects of the Zoning Administrator position are separate from the employment agreement the Town has with the Zoning Administrator, that the Zoning Administrator's term is renewed every three years per statute, and that the employment contract may not necessarily be connected to the term-based appointment of the Zoning Administrator per statute. Fausel asked if Vaccaro would be completing Osborne's term as the Zoning Administrator or if her term would be limited. Venkataraman said that typically for Zoning Administrators, terms are not continued upon, but instead created anew for every new Zoning Administrator; and that therefore Vaccaro's term as the Zoning Administrator would be a three-year term even though in her employment contract—which is separate from the statutory requirements—she will serve as the Zoning Administrator until mid-April. Fausel noted the oddity of the term requirement for a non-elected position.

Miller said she had concerns about entering into a similar situation with the Zoning Administrator leaving due to the pay scale, considering the upcoming planning items that will require a skilled Zoning Administrator. Venkataraman said that the Town has hired a consultant to conduct a comprehensive wage study across all departments, and that the consultant should have an update on the wage analysis in late February or early March.

Motion by Fausel, seconded by Miller, to nominate Kayla Vaccaro to serve as the Town of Richmond Zoning Administrator for a three-year term. Voting: 5-0 (Joy Reap abstained). Motion carried.

6. Discussion on the Gateway District

Clarke overviewed possible outcomes, the need for a bond vote, the postponement of setting the bond vote, the issues regarding the sizing of the infrastructure to serve potential future connections, and the issue of paying back the bond. Clarke noted the need to amend the Act 250 permit, and the need to amend the zoning to meet Criteria 9(L) of Act 250. Clarke said that the extension of water infrastructure is still up for discussion. Clarke overviewed the outreach schedule in February and March.

Clarke summarized the desired elements in zoning under Criteria 9(L). Clarke said that the name of the district will need to be discussed, because the name of the district will affect how the public perceives the district. Clarke said that the Town has applied for a grant with the Vermont Natural Resources Council to fund the development of visualizations for the proposed Gateway District. Clarke said that CCRPC is unable to provide assistance at this time. She added that the schedule is with respect to the overall plan of submitting an Act 250 application for the expansion of the system by the end of the summer.

Reap said that having consulted Venkataraman she will be participating in this discussion item as a member of the public, that in the past the commission required the commission member leave the meeting room and reenter the meeting room to recognize them as a member of the public, and that with

Zoom she will instead change her title to indicate that she is speaking as a member of the public.

Anand said that based on observation the amount of land for development in the Gateway is limited, that Reap's property has the best potential that she has concerns about the distance between possible developments and the interstate, that she would like more information about the cost of extending water and sewer infrastructure with the potential opportunity for future development in the area, that over time water and sewer service should be provided to the mobile home park. Clarke said that the water and sewer commission has kept water and sewer service to the mobile home park in the back of their minds for consideration. Clarke added that the Reaps have the option of extending the sewer line to their properties on their own, and that the commission has kept in mind the possibility for planned development in the area in past year.

Clarke overviewed the three possible scenarios for meeting Criteria 9(L). Miller asked about areas south of Route 2. Clarke said that areas south of Route 2 hasn't been contemplated because for the most part, these areas are in the floodplain. Anand asked if the lot lines shown in the map are current.

Venkataraman said that except for the Reaps' properties, the lot lines are current. Anand asked about how a road in Scenario #2 would be developed. Venkataraman said that the road would be developed over time whenever a property is redeveloped if an Official Map is in place, that the location of the road need not be exact, and that a conversation could occur with the Town and the developer on the placement of the road if the Official Map aspect is triggered. Dan Mullen asked about what "redevelopment" entails. Venkataraman said that the Town has control over when and how the Official Map is triggered, and would have control over the type of redevelopment that would trigger the Official Map requirements. Mullen asked if the development of infrastructure would be considered a taking. Venkataraman said that it wouldn't be considered a taking, that a conversation would occur between the Town and the developer, and that just compensation would have to be provided. Miller said that bisecting the lots with a road could make the area more developable from an aesthetic sense. Clarke said that the visualizations will help provide a sense of possible aesthetics. Clarke said that in her mind, the target for potential buildout should be 50 residential units, with the overall goal of establishing a walkable neighborhood connected to the village.

Rod West said that Scenario #2 with 50 residential units is impractical and poorly thought out, and that the area is not suitable for a neighborhood and that the area is too noisy. West noted that his property and his neighbor's property has wetlands. West noted that the cost burdens of the zoning requirements for infrastructure is placed on the future owner or renter of the residential unit, not on the developer.

Clarke noted that Kristen Hayden West wrote in the chat that the scenario maps do not show wetlands, and that the commission has maps of wetlands in the meeting packet and are considering natural resource constraints.

Reap said that she doesn't see how the creation of a road would help with internal circulation, that the roadway would be expensive considering the wetlands restrictions, and that the existing curb cuts would still be used.

Miller noted the current lack of demand for commercial spaces and the state's goal of encouraging the development of affordable housing wherever feasible.

Gary Bressor said that he liked Scenario #2 the best, that the area could transition towards orientation

toward a secondary road, and that the feasibility would depend on the allowable density for the area. Bressor said that the commission should consider planning for a sidewalk parallel to Route 2. Fausel said that in terms of practicality, users would more likely use a path parallel to Route 2 between the Village and the Park and Ride. Fausel also expressed hesitation about requiring the construction of a secondary road, and that he would want to encourage methods to share access points. Fausel said that the commission should consider implementing form-based zoning to maintain aesthetics along Route 2 and along I-89. Fausel said that the density allowance should be increased but not to the point in which the town creates an enclave of lower-cost housing units next to the highways. Mullen asked for clarification on the difference between Scenarios #1 and #2. Clarke said that with Scenario #1, the focus is on the possible establishment of different districts, that the focus on Scenario #2 was on the internal road, and that with Scenario #2 different districts may not necessarily be established. Clarke said that the residential component would involve increasing housing density, allowing smaller lots, allowing multifamily dwelling uses, and requiring landscaping and screening requirements from Route 2 and I-89.

Clarke asked about access to properties on interior lots while the road is being developed. Venkataraman said that the existing curb cut would be used, and that the property would be developed with spacing for the future road. Venkataraman added that in general for the road to be developed per an Official Map, there are a number of contingencies that the Town and developer would need to address.

Mullen said that if people are going to live in the area under consideration, Vtrans would need to install some form of sound barrier, and asked about Vtrans's standards for sound barriers. Clarke said that she has not looked into sound barriers yet and that she has considered landscaping requirements.

Fausel said that he had concerns about requirements to develop town infrastructure, that the commission should regard West's comments in the chat about the constraints on his and his neighbors' properties and about possibly scheduling a site visit, and that the commission should consider the impacts of a sound barrier on the viewscape. Bressor noted the location of houses between Jericho Road and the interstate, and the impact of good landscaping. Hayden West noted that impact of the interstate being above their property and how that affects the liveability of the properties in the Gateway, and said that a sound barrier wall in this location wouldn't be a practical solution because the location would still have noise impacts. Bob Reap said that the noise of the interstate from his shop is terrible and that he wouldn't want to live in that location.

Clarke said that the commission and the public will have to agree upon alternatives that will not lead to commercial strip development. West said that one could live in Gateway if they were to only be inside a house, that one wouldn't be able to be outdoors without being infringed upon, and that he and his family moved from his house on the Gateway to a house on Dugway Road in order to be able to spend time outside their house. West said that the eastern and western borders of his property are wetlands, and that one wouldn't be able to build a road through the property because of the wetlands. West also said that the proposed location of the path connecting the Gateway area to the schools is extremely steep. Miller asked West if his property could accommodate development with eight units per acre. West said he was not sure how one could get that kind of density, noting the pinch points and wetlands on his property.

7. Other Business, Correspondence, and Adjournment

Clarke overviewed the Town of Williston hearing notice.

Clarke asked the commission if it would like to hold meetings solely virtually or hybrid with the passage of S. 222. Miller suggested that meetings should be held in hybrid format if public hearings are on the agenda. Clarke asked if the commission had to decide if it wanted to hold all their meetings in a particular format, or if it could decide on the format a meeting-by-meeting basis. Venkataraman said that the commission can decide on a meeting-by-meeting basis. Fausel asked if the Zoom meetings use a local number for phoning in. Venkataraman said the phone-in number would be a long-distance number. Fausel suggested holding hybrid meetings for the public outreach sessions on the Gateway, and holding virtual meetings for regular business meetings.

Clarke asked about the feasibility of recordings. Venkataraman said that per the bill a recording has to be made available for the public under the virtual meeting option, that he is collecting a recording of the meeting at the moment that he will send to MMCTV the next morning, and that the current conditions would be how the virtual meeting would look because no one is in the meeting room except him. Erin Wagg of MMCTV said that the current system would be used to collect the recording for the virtual meeting.

Anand suggested holding hybrid meetings to keep options open.

Fausel asked about the items on the February 2nd meeting agenda. Clarke said that the public hearing on the zoning amendments to wetlands, nonconforming uses and structures, and vehicle fueling station uses will be on the agenda. Clarke said that Brandy Saxton may attend an upcoming meeting to discuss the housing study. Clarke said that for the second meeting in February, Gateway District residents and property owners will be invited to provide comments.

Clarke said that the upcoming meetings will be in hybrid format. Wagg noted the dangers of the coronavirus, and suggested holding virtual meetings to protect town staff. Venkataraman noted that the Selectboard meeting yesterday was slated to be held virtually pending the signing of S. 222, that town staff only heard about the passage of S. 222 a couple hours ago, and that other boards and committees like the Selectboard are considering meeting solely remotely. Clarke said that based on these comments, she is in favor of holding virtual meetings. Others agreed. Fausel suggested asking the Gateway stakeholders if they are able to participate via Zoom, and choosing a format depending on the responses.

Miller asked Venkataraman where one could find Zoom meeting information for upcoming meetings. Venkataraman pointed to the "Calendars" tab on the Town website, and suggested that people sign up for weekly updates on the Town website.

Fausel asked about the format for the next meeting. Venkataraman said that the next meeting will have to be hybrid because of the hearing notice, and that he encourages people to participate virtually for the sake of public safety.

Motion by Fausel, seconded by Anand to adjourn the meeting. Voting: unanimous. Motion carried. The meeting adjourned at 9:13 pm.

Respectfully submitted by Ravi Venkataraman, Town Planner

TO: Richmond Planning Commission

FROM: Ravi Venkataraman, Town Planner

DATE: January 28, 2022

SUBJECT: Proposed Zoning Amendments to Richmond Zoning Regulations

Enclosed for your consideration are:

- A markup of the draft zoning regulations annotated by Town Attorney Dave Rugh of Stitzel, Page, and Fletcher, P.C.
- The markup version of the draft zoning regulations you forwarded for the Public Hearing on January 5, 2022
- The draft zoning map, prepared by CCRPC, you forwarded for the Public Hearing on January 5, 2022 (on a standalone document)
- The Municipal Bylaw Amendment Report
- The Public Hearing Notice
- The draft zoning map previously included in the January 5, 2022 meeting materials. The Town Attorney recommends this version of rezoning rather than what was forwarded for the public hearing.
- Rationale for having municipal wetlands regulations, prepared by Virginia Clarke
- Rationale for limitations on number of pumping islands for proposed vehicle fueling station uses, prepared by Virginia Clarke

Items for Discussion

To summarize the Town Attorney's comments:

- Most of his comments have to do with semantics, affecting the wording of the regulations. Overall, these changes would not have drastic effects on how the regulations would be carried out.
- Some comments, such as changes to the definition of "Impervious Surfaces", are to make sure the draft zoning regulations are in alignment with statute
- One major comment has to do with the legal authority of the wetlands regulations itself. Under 24 V.S.A. §4414, municipalities may put in place shoreland regulations that would preserve and protect wetlands. But creating defensible decisions for regulating development within wetlands could be difficult, and municipal decisions that differ from ANR's determinations could be challenged in court.
- Another major comment relates to the rezoning of the Park and Ride. The Park and Ride is not on a standalone parcel. The Town Attorney suggests either rezoning the entire interchange, or leaving the Park and Ride as is. After reviewing the entire zoning regulations, I recommend leaving the Park and Ride as is.

Based on the comments from the Town Attorney and deficiencies I have identified, the following need to be discussed and addressed:

- The Town's need to regulate wetlands as well as its extent of ability to regulate wetlands

Planning Commission – 2/2/22 Meeting Materials

- The districts to include Vehicle Fueling Station uses and Powered Machinery/Repair uses

Public Hearing Process

For the public hearing, you should follow the following procedure:

1. Open the public hearing by a motion

Draft motion: I, _____, move to open the public hearing.

2. Introduce the items under consideration for the public hearing
3. Ask the public for comment
4. Ask Planning Commission members for comment
5. Close the public hearing by a motion

Draft motion: I, _____, move to close the public hearing.

After closing the public hearing, the Planning Commission may edit the draft amendments and the bylaw amendment report as needed based on the input provided.

When the Planning Commission has finalized the documents, it will need to approve the municipal bylaw amendment report and move to provide the proposed amendments for the Selectboard's consideration. The Planning Commission does not have a deadline after the public hearing to provide the documents to the Selectboard.

Depending on the degree of changes the Planning Commission makes to the draft zoning regulations—especially if parts of the Zoning Regulations other than what was listed in the public hearing notice are modified—another public hearing with a new hearing notice may be needed.

At this point, I do not recommend forwarding zoning amendments to the Selectboard for approval due to the outstanding issues that need to be addressed

The Draft Zoning Regulations annotated by Town Attorney Dave Rugh of Stitzel, Page, and Fletcher, P.C.

3.4 Gateway Commercial District (G)

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3.4.2 Allowable Uses Upon Issuance of Conditional Use Approval - The following uses, with accessory structures, may be allowed in the G District after issuance of conditional use approval by the DRB.

- a) Adaptive use as provided in Section 5.6.8.
- b) Amusement arcade.
- c) Artist/Craft studio.
- d) Automobile service station.
- e) Bank.
- f) Business yard.
- g) Catering service.
- h) Cemetery.
- i) Cottage industry as provided in Section 5.6.7.
- j) Day care center.
- k) Dwelling, single-family attached to a principal structure approved for a permitted or conditional use.
- l) Dwelling, two-family
- m) Dwelling, multi-family with three or four dwelling units.
- n) Educational or religious facility as provided in Section 5.10.4.
- o) Extraction of earth resources as provided in Section 5.6.6.
- p) Food processing establishment.
- q) Funeral parlor.
- r) Garage, repair.
- s) Group home, as provided in Section 5.11.
- t) Hotel or motel.
- u) Inn or guest house.
- v) Kennel
- w) Light Manufacturing.
- x) Multi-use commercial building with uses from this section or 3.4.1.
- y) Museum.
- z) Offices, Business.
- aa) Offices, Professional.
- bb) Personal services.
- cc) Planned Unit Development, which may be a Planned Residential Development, as provided in Section 5.12, if no subdivision of land is proposed (see Section 5.12.1).
- ~~ee~~dd) Powered Vehicle and/or Machinery Service
- ~~dd~~ee) Private club.
- ~~ee~~ff) Recreation, indoor or outdoor facility or park.
- ~~ff~~gg) Research laboratory.
- ~~gg~~hh) Retail business associated with light manufacturing with a maximum size of 3,000 square feet.
- ~~hh~~ii) Retirement community.
- ~~ii~~jj) State- or community-owned and operated institutions and facilities, to the extent allowed by Section 5.10.4.
- ~~jj~~kk) Tavern, provided that it is associated with an onsite distillery, brewery, or winery.

Commented [DWR1]: If you delete this, then you'll need to re-number the subsections. This also applies to Sections 3.6.2 and 3.7.2.

- ~~kk)ll)~~ Agriculture, silviculture and horticulture, as provided in Section 2.4.5.
- ~~mm)~~ Veterinary Clinics

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3.6 Commercial District (C)

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3.6.2 Allowable Uses Upon Issuance of Conditional Use Approval - The following uses may be allowed in the C District after issuance of conditional use approval by the DRB. Unless otherwise provided, only one principal use, with its accessory structures, may be approved on one lot:

- a) Adaptive use as provided in Section 5.6.8.
- b) Amusement arcade.
- c) Automobile and/or marine sales.
- d) ~~Automobile service station.~~
- e) Bank.
- f) Business yard.
- g) Car wash.
- h) Catering service.
- i) Commercial multi-use building.
- j) Distribution Center.
- k) Educational facility as provided in Section 5.10.4 .
- l) Equipment supply and/or rental.
- m) Extraction of earth resources as provided in Section 5.6.6.
- n) Funeral parlor.
- o) Garage, vehicle repairs and service.
- p) Group home.
- q) Hotel or motel.
- r) Light manufacturing
- s) Lumber yard / Building supply business.
- t) Planned Unit Development as provided in Section 5.12, if no subdivision of land is proposed (see Section 5.12.1).
- ~~uu) Powered Vehicle and/or Machinery Service~~
- ~~vv)~~ Private club.
- ~~w)w)~~ Recreation, indoor or outdoor, facility or park.
- ~~x)x)~~ Research laboratory.
- ~~y)y)~~ Restaurant, fast food or take-out.
- ~~z)z)~~ Retirement community.
- ~~aa)aa)~~ Rooming or boarding house.
- ~~bb)bb)~~ State- or community-owned and operated institutions and facilities, to the extent allowed by Section 5.10.4.
- ~~bb)cc)~~ Storage, outdoor as an accessory use to any permitted or conditional use.
- ~~dd)~~ Tavern.
- ~~ee)ee)~~ ~~Vehicle Fueling Station~~
- ~~dd)ff)~~ Veterinary Clinics
- ~~ee)gg)~~ Warehouse Use.
- ~~ff)hh)~~ Wholesale trade.
- ~~gg)ii)~~ Agriculture, silviculture and horticulture, as provided in Section 2.4.5.

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3.7 Industrial / Commercial District (I/C)

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3.7.2 Allowable Uses Upon Issuance of Conditional Use Approval - The following uses, with accessory structures, may be allowed in the I/C District after issuance of conditional use approval by the DRB.

- a) Adaptive use as provided in Section 5.6.8.
- b) Amusement arcade.
- c) Automobile and/or marine sales and/or service business.
- d) ~~Automobile service station.~~
- e) Commercial multi-use building
- f) Bank.
- g) Business yard.
- h) Communications, telecommunications, as provided in Section 6.12.
- i) Extraction of earth resources as provided in Section 5.6.6.
- j) Garage, vehicle repairs and service.
- k) Hotel or motel.
- l) Kennel.
- m) Light manufacturing.
- n) Lumber yard or building supply business.
- o) Mobile home sales business.
- p) Outdoor storage as an accessory use to in connection with any conditional or permitted use.
- q) Planned Unit Development as provided in Section 5.12, if no subdivision of land is proposed (see Section 5.12.1).
- q)r) ~~Powered Vehicle and/or Machinery Service~~
- r)s) Private club.
- s)t) Recreation facility, outdoor or indoor.
- t)u) Research laboratory.
- u)v) Restaurant, fast-food or take-out.
- v)w) Restaurant, standard.
- w)x) Retail business.
- x)y) Storage, indoor.
- y)z) State- or community-owned and operated institutions and facilities, to the extent allowed by Section 5.10.4.
- z)aa) Tavern.
- bb) Theater.
- aa)cc) ~~Vehicle Fueling Station~~
- bb)dd) Veterinary Clinics
- cc)ee) Agriculture, silviculture and horticulture, as provided in Section 2.4.5.

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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 do 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. Subject to Conditional Use Review, 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:

- a. The need and justification for the buffer distance reduction shall be provided;
- b. The buffer reduction will not pose any adverse effects to adjacent properties, roads or rights-of-way;
- c. Overall, the proposed land development, even with the proposed buffer reduction, will improve the quality and function of the wetland that the buffer protects.
- d. 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 containing a nonconforming use shall be deemed discontinued by the Administrative Officer and may no longer be reoccupied with the nonconforming use if within a continuous period of 12 months any two of the following conditions occur:

- a. The structure is unoccupied and not actively offered for sale or rent;
- b. Regular maintenance of the structure is not performed; and
- c. 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:

- a. the square footage volume that of the nonconforming structure's footprint occupies within a required setback, or,
- b. the height of a nonconforming structure above a maximum height.

Commented [DWR2]: I changed subsections 1 and 2 to subsections a and b to better mirror the formatting of neighboring provisions of the Zoning Regulations.

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Commented [DWR3]: Does this mean the permit has become final? If the zoning permit just has to be issued within one year, then we may want to clarify that the permit does not need to become final within that year. Assuming the intent is that the zoning permit just needs to be issued within 12 months of the date of damage, it may be better to write "a zoning permit is issued within 12 months...."

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Commented [DWR5]: This provision is problematic because 24 V.S.A. § 4412(7)(A) only authorizes provisions specifying the abandonment or discontinuance of a nonconforming use, not a nonconforming structure. Also, a regulation that requires the demolition of a structure for non-health and non-safety purposes exposes the Town to takings challenges under the 5th Amendment to the U.S. Constitution. With the addition of the phrase "housing a nonconforming use" might save this provision, but it's probably best if this is stricken and discontinuance is dealt with under § 4.8. We're happy to discuss this in more detail.

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Commented [DWR7]: Changed Subsection 1 to Subsection (a)

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- c. the square footage that the nonconforming structure's footprint or any associated impervious surface occupies within a setback or buffer, or,
- d. the square footage by extent to 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 containing 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 containing a nonconforming use after damage or destruction by fire, flood, explosion, collapse, or other similar casualty to its prior condition provided that:

- a. the reconstruction does not change, enlarge, expand, move or alter the nonconforming increase the degree of nonconformity of the use; and
- b. a zoning permit is obtained issued within 12 months of the date the damage or destruction occurred; and
- c. all other requirements of the zoning district in which the structure hosting+containing 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 regardless of the intent to resume the prior use, and shall not be permitted to resume. A residential use may be resumed within a legal, vacant structure at any time.

Commented [DWR8]: The meaning of this phrase is not clear. Perhaps the PC means to say, "does not increase the area occupied by the nonconforming use"? A nonconforming use is typically nonconforming because it's no longer allowed in the zoning district, and it really have a "degree" aspect to it. It's either nonconforming or it's an allowed use. We suggest altering this to say "provided the nonconforming use is not changed, enlarged, expanded, moved or altered."

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4.109 Noise

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4.110 Exterior Lighting

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4.1211 Height of Buildings and Structures

...

4.1312 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.

Commented [DWR9]: Are the provisions of the Setback Modifications, currently Section 4.8, being deleted?

4.13 Vehicle Fueling Stations. All Vehicle Fueling Stations must shall 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.

Commented [DWR10]: There is no statutory authority for the Town to require an EV charger that I'm aware of, and this could expose the Town to a "takings" claim. It would be better to incentivize the installation of an EV charging station, such as by allowing for an extra pumping island if an EV charging station is provided, under 24 V.S.A. § 4414(14).

Commented [DWR11]: An issue that often arises is whether seating is allowed in convenience stores for consumption of food sold on the premises. It may be a good idea to explicitly state that no tables or seating for food consumption is allowed, or alternatively, that a certain number of tables or chairs may be allowed.

5. PERMITS AND APPROVALS

...

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 and 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

...

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 Wetland and Buffer 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 adopted or amended.
- b) Constructed paths, trails and sidewalks that cross a wetland buffer for the purpose of public or private access or recreation, but 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.

Commented [DWR12]: “Feasible” is not a good standard because it is vague and arguably any alternative could be feasible; it just depends on how much the alternative costs. We suggest adopting a different standard, perhaps even saying “if there is no alternative on the subject property.”

Commented [DWR13]: Again, this is a vague standard. Another should be chosen.

Commented [DWR14]: See other comments

6.9.3.2 Conditional – The following wetland encroachments may be allowed upon issuance of a Conditional Use Approval Review 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 the purposes of this section 6.9.3 shall mean adding and/or removing any material, such as soil, sand, gravel, fill, wood, lumber, etc., 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.

Commented [DWR15]: Why is the Town trying to regulate wetland impacts? Why not just leave it to the State – i.e., if the applicant gets a CUD for an encroachment, arguably that should be sufficient. We suggest not substituting the municipality’s judgment for the State’s; otherwise, litigation is sure to result when the Town adopts a position that is in direct conflict with a State permit.

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:

1. 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;
2. A site plan indicating the location of the proposed land development in relation to the wetland.
3. A Vermont Agency of Natural Resources Project Review Sheet;
4. An erosion prevention and sediment control plan in accordance with the current Vermont Standards and Specifications for Erosion Prevention and Sediment Control;
5. If applying for a permit for an encroachment, substantive evidence that no other feasible alternative to the proposed encroachment exists;
6. 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.

...

7. DEFINITIONS

...

7.2 Specific

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

...

Accessory Electric Vehicle Charging Station – A structure 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.

...

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.

...

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.

...

Impervious Surface – Those manmade surfaces, including paved and unpaved roads, parking areas, roofs, driveways, and walkways, from which precipitation runs off rather than infiltrates. 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.

Commented [DWR16]: We suggest adopting the State’s definition in 12 V.S.A. § 1264

...

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.

...

Setback - The distance from a Lot Line or, if applicable, the center line of a the 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.

Commented [DWR17]: What about ground-level patios, short (>3’) retaining walls and parking lots? It would be good to specifically state whether setbacks apply to those.

...

Structure - An assembly of materials for occupancy or use, including, but not limited to, a building, mobile home or trailer or trailer, sign, wall, or fence, or storage tank for a liquid, oil, propane, or gas or other fuel 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.

Commented [DWR18]: This is in the statutory definition of “structure” at 24 V.S.A. § 4303(27) so we recommend it stay in the definition. If the Town wants to exempt RVs or travel trailers from setbacks, we suggest making that exemption explicit.

...

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. The presence of an Accessory Electric Vehicle Charging Station shall not alone render the use constitute a Vehicle Fueling Station.

...

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.

Draft Zoning Regulations, forwarded for Distribution

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:~~

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~~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.~~

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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.

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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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- 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.
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5. PERMITS AND APPROVALS

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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

...

~~6.9 Wetlands~~

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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;
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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.

...

7. DEFINITIONS

...

7.2 Specific

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

...

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.~~

...

~~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.~~

...

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.

...

~~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.~~

...

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. -

...

Setback - The distance from a Lot Line or, if applicable, the center line of a the 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.

...

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.

...

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.

...

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.

**Planning Commission Reporting Form
for Municipal Bylaw Amendments
(Modifications to parts of the Zoning Regulations to clarify development rights for
nonconformities, for properties within wetlands, and for EV charging)**

This report is in accordance with 24 V.S.A. §4441 (c) which states:

When considering an amendment to a bylaw, the planning commission shall prepare and approve a written report on the proposal. A single report may be prepared so as to satisfy the requirements of this subsection concerning bylaw amendments and subsection 4384 (c) of this title concerning plan amendments...The report shall provide:

(A) Brief explanation of the proposed amendment and...include a statement of purpose as required for notice under §4444 of this title:

This Planning Commission proposal modifies zoning regulations for nonconforming uses and structures, vehicle fueling station uses, electric vehicle (EV) charging stations, vehicle and machinery repair uses, and development within wetlands. The proposal includes the rezoning of two areas from the Gateway Commercial District to the Industrial/Commercial District. The proposal would clarify development rights for properties containing nonconforming uses and structures, and wetlands. The proposal would also further the Town's energy goals by stipulating EV charging station requirements for certain commercial uses.

And shall include findings regarding how the proposal:

1. Conforms with or furthers the goals and policies contained in the municipal plan, including the effect of the proposal on the availability of safe and affordable housing:

The Planning Commission concluded that the proposal conforms and furthers the goals contained in the municipal plan by promoting compliance with state statute. Specifically, the Planning Commission cited the following objectives from the 2018 Town Plan:

- Create clear guidelines and information resources for permit applicants, clarifying requirements and steps for permitting and approval.
- Support the installation of private and public electric vehicle (EV) charging stations in convenient locations. Consider installing one at the Town Center, the Park and Ride and along travel corridors.
- Consider requiring EV charging stations for new commercial development.
- Update zoning regulations to include language to clarify permitting requirements for new electric vehicle charging installations and support the ongoing development of this infrastructure.
- Encourage development that protects natural resources and preserves scenic and/or historic character of Richmond
- Utilize the best available science to inform the creation of supplemental land use regulations and maps that would further conserve or protect sensitive natural areas
- Review land use regulations to ensure compliance with all Vermont and federal regulations that provide surface water protection

2. Is compatible with proposed future land uses and densities of the municipal plan:

The Planning Commission concluded that the proposed new commercial uses and the proposed locations would be compatible with the 2018 Town Plan. The location of the proposed new commercial uses would be located within the following districts listed in the Future Land Use section of the 2018 Town Plan: Northwest Industrial-Commercial, Gateway, and Villages.

In addition, the Planning Commission concluded that the proposed rezoning of one parcel from the Gateway District to the Commercial/Industrial District would be compatible with future land uses specified in the 2018 Town plan.

Proposed amendments to regulations for nonconforming uses and structures and wetlands would not affect proposed future land uses and densities of the Town Plan.

3. Carries out, as applicable, any specific proposals for any planned community facilities:

The proposed amendments does not carry out any specific proposals for any planned community facilities. In addition, the proposed amendment does not conflict with any proposals for planned community facilities.

NOTICE OF PUBLIC HEARING

PURSUANT TO 24 V.S.A. §§4441 (d) AND §4444, THE TOWN OF RICHMOND PLANNING COMMISSION WILL BE HOLDING A PUBLIC HEARING ON WEDNESDAY, FEBRUARY 2ND, 2022, AT 7:00 PM, IN THE **RICHMOND TOWN CENTER MEETING ROOM AT 203 BRIDGE STREET** TO RECEIVE COMMENT REGARDING THE PROPOSED ZONING AMENDMENT:

PURPOSE: To modify zoning regulations for nonconforming uses and structures, vehicle fueling station uses, electric vehicle (EV) charging stations, vehicle and machinery repair uses, and development within wetlands

GEOGRAPHIC AREA AFFECTED: Town-wide

SECTION HEADINGS: Nonconforming Structures (Section 4.7), Setback Modifications (Section 4.8), Nonconforming Uses (Section 4.9), Vehicle Fueling Stations (Section 4.13), Requirements for Specific Structures (Section 5.10), Wetlands (Section 6.9), Definitions (Section 7), Town Zoning District Map (Appendix A1)

THIS MEETING IS ALSO ACCESSIBLE ONLINE VIA ZOOM:

Join Zoom Meeting: <https://us02web.zoom.us/j/83503119719>

Meeting ID: 835 0311 9719

Call in (Calling rates apply): 1 (929) 205-6099

THE FULL TEXT AND MAPS OF THE PROPOSED ZONING AMENDMENT ARE AVAILABLE FOR INSPECTION AT THE RICHMOND TOWN CENTER OFFICES PURSUANT TO 24 VSA §4441 AND THE TOWN WEBSITE. FOR MORE INFORMATION, PLEASE CONTACT THE RICHMOND PLANNING/ZONING OFFICE AT 802-434-2430 or rvenkataraman@richmondvt.gov.

POSTED: 01/12/2022

Wetlands – Rationale for having municipal wetlands regulations 1.26.22

The Planning Commission is proposing to amend the Wetlands Section (6.9) of our Zoning Regulations.

Why do we have wetlands regulations in our zoning document?

- Wetlands serve important ecological functions including flood mitigation, slowing of climate change, prevention of biodiversity loss and provision of natural amenities.
- The Richmond Town Plan lists protection of wetlands as a goal.¹
- State and federal permits are required for any development in Class I or Class II wetlands, but the decline in wetlands has continued in Vermont despite state and federal protections.²
- Having wetland regulations in our zoning regulations signals to developers and property owners that wetlands are important to us, and provides guidance early in the development process.
- There may be local wetlands that the state does not consider jurisdictional that we would like to have local control over protecting.
- Municipalities have the option of providing regulations in addition to state and federal regulations, and many municipalities have such regulations.³ The requirements of these regulations vary.

What are our current regulations?

The current Section 6.9 states:

“ No building, roadway or septic system shall be constructed within 100 ft of a Class I wetland and within 50 ft 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 ft of Class I and 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. “

- There is no option here for a property owner to connect two upland portions of a property bisected by a wetland without going through the cumbersome and time-consuming variance procedure after a denial by the Zoning Administrator. Most recent cases questioning the wetlands regulations in Richmond have been of this type.
- Several possible development scenarios, such as the construction of a trail, path or stormwater management facility that might impact a wetland or wetland buffer are not addressed in these regulations.
- There is no ability for the town to keep track of its wetlands independently of the state and federal permitting processes, which we, as a town, cannot require compliance with.

How do the proposed regulations differ from the current ones?

- Provision is made for crossing a wetland or wetland buffer by certain linear development activities (paths, trails, sidewalks, driveways, private roads and public utilities and stormwater facilities), but only if **there is no physically possible alternative to the crossing.**
- Provision is made for nonconforming structures that have historically encroached into a wetland buffer to undergo redevelopment. The Conservation Commission will assist in reviewing applications in this instance.

- An application procedure is provided that will ensure that the location and extent of any wetland on a property that is being developed, as well as the location of any proposed development activities relative to that wetland, is known to the town.
- Development review standards are provided by which the Zoning Administrator and the DRB can be assured that the ecological functions of the wetlands are protected.

Does this amended regulation achieve our goals?

- The Planning Commission finds that the amendment is a good compromise between protecting wetlands and property owners' ability to utilize their properties.

¹Natural Resources Goal 1 *“Protect priority natural areas in order to maintain the health and function of those areas and their ecosystem services.”* Wetlands are listed as a “conservation priority.”

²From the ANR Wetlands Program:

*“Wetland conservation and protection is aimed at preventing the loss of wetlands and the functions and values they provide. The United States lost over half of its wetlands since European colonization in the early 1600s, and Vermont lost as much as 35 percent. Until recently, wetlands were seen as obstacles to development, agriculture, and travel, and were systematically drained and altered. Conversion of wetlands was accepted practice as recently as the 1950s, and was even incentivized by government policies. In recent decades, the public has become more aware of the ecological, economic, and social value of wetlands, and the implications of their loss. Shifting cultural attitudes led to the establishment of federal and state regulations aimed at protecting wetlands and their functions. These policy changes slowed the rate of loss, but wetland acreage across the nation continues to decline (see the [US Fish & Wildlife Service’s Wetlands Status and Trends site](#) for more info). **State and federal regulations alone are insufficient to stop the decline; public involvement is needed to conserve and protect our remaining wetlands.**”*

³ Examples can be found in:

Williston, Underhill, Jericho, S. Burlington, Bolton, Westford, Shelburne, Winooski, Colchester, others

Vehicle Fueling Station – Proposed Rationale for Maximum of 4 Pumping Islands -- 11.7.21

In the course of updating and modernizing our vehicle fueling station definition and regulations, we have considered the issue of the number of pumping islands that might be incorporated into such a facility, and concluded that, for Richmond, the maximum number of islands should be four. The reasons for this fall into two categories: scale and energy transition.

Scale is relevant both in reference to the size of our region (Rt 2 corridor), our village, and to the size of the site. This location is not strictly “on” the interstate highway (I-89), although it is accessible from Exit 11, as is the Lucky Spot fueling station nearby on another state road, Rt 117. Fueling stations along Rt 2 between Richmond and Burlington, including at Exits 12 and 14, tend to have 2 – 4 pumping islands, generally in the stacked configuration (if 4). In this corridor, there are 2 stations with 5 pumping islands, both with 3 islands on one side of the convenience store building, and 2 on the other. This configuration reduces the massing effect which would occur if all islands were arranged together. These smaller stations along Rt 2 contribute to the sense that our region is a chain of villages linked by a local road to our small city. For those drivers that exit the interstate seeking fuel, they can feel that they are entering into the world of Vermont villages, even as they enjoy the proximity of the station close to the highway.

The section of Rt 2 between Exit 11 and Richmond’s downtown has long been fiercely protected by Richmond citizens from excessive commercialization. Commercial uses have been welcomed, but a maximum footprint size and other restrictions have attempted to prevent “strip development” in this area, and continue to create a village-scale, welcoming, entrance to Richmond from the north and west with a mix of local businesses and housing. We feel that permitting a fueling station that exceeds the size of others in this area does not contribute to the desired village “character of the area.”

The third point about scale is that the site itself is a small island created out of a wetland. The proposed design already pushes out into the wetland buffer and extends close to the edge of this island. This does not seem a suitable location for station that is a larger than usual for the region, with less of a buildable area.

The second category, energy transition, speaks to the fact that at the same time as this Mobil application is seeking approval for a 30% increase in gasoline pumping capacity, the state of Vermont is striving to reduce gasoline usage by electrifying a significant portion of our vehicle fleet. Currently, the transportation sector accounts for approximately 40% of greenhouse gas emissions in Vermont. The Global Warming Solutions Act, approved by the Vermont Legislature in 2020, mandates large greenhouse gas reductions by target dates of 2025, 2030 and 2050. The Climate Council is currently nearing completion of the first draft of the Vermont Climate Action Plan, mandated by the GWSA and due December 1, 2021, which includes, as a high priority, replacing a large portion of the cars on the road with electric vehicles. The LEAP modelling completed by the consultant (Cadmus) indicates that to meet the mandated goals, the EV share of automobile sales in Vermont needs to be 40% by 2025 and >80% by 2030. There is a serious commitment in this state to address the climate crisis, and even if we cannot get to these numbers, there will be, at the very least, significant movement in this direction.

The Mobil station applicant has clearly acknowledged this projected trajectory by committing to the installation of 3 DC fast charging EV chargers at the renovated station. As the Planning Commission has only recommended that a single fast charger be required at any new or renovated fueling station within Richmond, we applaud this applicant for thinking further ahead to this coming electrification. Since EV’s will be replacing gasoline vehicles, we feel that the need for additional gas pumping islands will decrease rather than increase over the next decade. The 8 pumps plus the 3 chargers will allow a total of 11 vehicles to be fueled at any one time, which is an increase over the current situation.