

submitted a letter stating they understood and are in favor of the project described in the plans submitted with the application and identified as “Proposed Bank Stabilization, 124 Field Farm Rd, Charlotte, Vermont 05445, Proposed Conditions Site Plan, Nov. 8, 2011, drafting number C1.0 last revision 6/27/12”.

5. The proposal is to build a three foot high sea wall with Panton blue quarry stone to match the existing aesthetics.
6. In addition to the bank stabilization, this project also proposes to convert an existing structure that was previously a pump house into a gazebo using an existing concrete foundation.
7. The owners of these parcels have submitted written authorization to have Jeffrey Olesky, P.E. from Civil Engineering Associates (“CEA”) submit the application and represent them before the Board.
8. The entire project is above the 98 feet Mean High Water (“MHW”)
9. The application was received and deemed complete on July 11, 2012. A hearing was properly warned and posted for August 13, 2012.

III. Discussion

Conclusions for Conditional Use. The Zoning Board must review this application for Conditional Use approval for the construction of a stone sea wall on Fields Farm Road under Table 2.6 of the Charlotte Land Use Regulations. The purposes of the Shoreland District (SHR), as explained in Table 2.6, are –

(1) to protect the scenic beauty, environmental qualities and recreational opportunities of Lake Champlain and its shoreline, as viewed from both the lakeshore and the water (2) to minimize runoff pollution and maintain bank stability by maintaining a vegetated buffer within 100 feet of the shoreline and (3) to allow residential and limited commercial development that is consistent with these aims and is compatible with the rural character of the town as expressed in the *Charlotte Town Plan*.

(Emphasis in original). As a conditional use, as defined under Table 2.6(D), this application must comply with Tables 2.6(D), (F) and Sections 3.12, 3.15, and 5.4. The provisions of these tables and sections not specifically addressed below are either inapplicable to this application or were unnecessary for the Board to reach its decision.

Under Table 2.6(F) (6) –

Shoreline improvements are exempt from shoreline setback requirements, but shall be sited and designed to avoid wetlands, designated wildlife

habitat, and other sensitive shoreline features; shall minimize surface runoff, channeling and soil erosion; and shall avoid adverse impacts and obstructions to adjoining shoreland areas.

The applicant testified that there are no wetlands, designated wildlife habitats or other sensitive features located on the property. The purpose of this project is to construct a retaining wall to prevent runoff and soil erosion and integrate with the adjacent property owners' shorelines.

The applicant is proposing a blue Panton stone wall approximately three feet in height. The wall is shown to run the entire length of this parcel's shoreline as well as extending onto the property to the North. In reviewing the design, the Board finds it appears that the proposal as submitted will not affect wetlands or wildlife in the area. To be exempt from shoreline setback requirements, however, the project must meet the definition for shoreline improvement. The Land Use Regulations define Shoreline Improvement as:

Physical improvements located at or above the mean high water mark within the shoreline area which are intended to provide access to public waters or to prevent shoreline erosion, including permanent docks, stairways and fishing piers; boat hoists, boat houses, launches and ramps; man-made or improved beach areas; and retaining walls or other permanent stabilization measures.

Section 10.2. To meet this definition the proposed retaining wall must be functionally necessary as a stabilization measure. The Board finds that the wall qualifies as such a "Shoreline Improvement" based on the evidence presented during the hearing.

Under Conditional Use approval the Board must also look at Section 5.4 of the regulations. Under Section 5.4(C) (2) The proposed retaining wall must be compatible with the character of the area affected—

The Board shall consider the design, location, scale, and intensity of the proposed Development in relation to the character of adjoining and other properties likely to be affected by the proposed use. Conditions may be imposed as appropriate to ensure that the proposed development is compatible with the character of the area, as defined by zoning district purpose statements, and

specifically stated policies and standards of the municipal plan. Conditions may be imposed as necessary to eliminate or mitigate adverse impacts, including but not limited to conditions on the design, scale, intensity or operation of the proposed use.

The Board finds the scale of the project is appropriate.

Under Table 2.6(F) (9) for uses in this district subject to conditional use review under Section 5.4 the Board of Adjustment shall also find that:

- (a) the proposed use will not cause unsafe or unsanitary conditions on land or on the water;
- (b) the proposed use will not result in accelerated erosion, sedimentation or water pollution;
- (c) the proposed use will not adversely impact wildlife habitat areas;
- (d) the proposed use will not interfere with existing public lake access, or scenic views of the lake as designated in the town plan; and
- (e) visual impacts, as viewed from the lake and from adjoining properties, are minimized.

The applicant stated the purpose of this project is to reduce soil erosion, sedimentation and water pollution. It is expected that it will improve the safety and sanitary conditions of the land and lake. The material selected is in natural stone shape and in a color that will blend with the existing shoreline. Section (e) requires the Board to look at visual impacts, as viewed from the lake and from adjoining properties. The Board finds that visual impacts as viewed from the lake will be minimized by the short height and color of the proposed sea wall. The Board finds that this will help to minimize the visual impact as seen from the lake. Table 2.6(F)(9)(e) (see sheet C1.0)

The Applicant is proposing to demolish the existing “pump house” structure and replace it with a gazebo on the same foundation. The Board suggests keeping the height of the gazebo as low as possible and to be natural wood and earth tones in color to blend with the shoreland.

Decision for Conditional Use.

On motion duly made and seconded, the Board voted to approve the application for the sea wall as shown on sheet C1.0 and dated Nov. 8, 2011 last revision 6/27/12 JSO with the following conditions.

Conditions of approval: The Board attaches the following conditions and safeguards that it deems necessary to implement the purposes of the bylaws.

- 1. The wall will have no encroachment below the 98 feet MHW.**
- 2. As soon as practical after the construction of the wall, the area, including the temporary access/construction road, is to be replanted and restored to a vegetative condition that will prevent further erosion and runoff.**
- 3. Pursuant to Section 3.1(B), immediately following any demolition, all materials shall be disposed of according to solid waste district standards.**
- 4. The new wall is to be constructed as shown on plans “Mary Anne Martin, Proposed Bank Stabilization, Proposed Conditions Site Plan, C1.0 and Proposed Cross Sections Plan C2.0 dated Nov. 8, 2011 last revision 6/27/12”**
- 5. No lighting is approved for this project.**
- 6. Gazebo foundation is not to exceed the existing “pump house” structure footprint, and the height, width, and depth are to not exceed the dimensions depicted in the Selin & Selin architect’s scale drawing presented to the board with the application.**

Vote: 4 – in favor, 0 – opposed, 1 –absent (Tenney)

DATED THIS _____ DAY OF AUGUST 2012.

CHARLOTTE ZONING BOARD OF ADJUSTMENT

JONATHAN W. FISHER, VICE CHAIRMAN

THIS DECISION MAY BE APPEALED TO THE VERMONT ENVIRONMENTAL COURT BY THE APPLICANT OR AN INTERESTED PERSON WHO PARTICIPATED IN THE PROCEEDING. SUCH APPEAL MUST BE TAKEN WITHIN 30 DAYS OF THE DATE OF THIS DECISION, PURSUANT TO 24 VSA § 4471 AND THE VERMONT RULES FOR ENVIRONMENTAL COURT PROCEEDINGS.