

Zoning Board of Adjustment

Tiller - Conditional Use Review

ZBA- 15-08

Scheduled: October 28, 2015

General information:

Applicant	David Marshall (Thomas & Michalle Tiller)	
Application #:	ZBA- 15-08	
Parcel I.D	00041-0362	M33B50L07
Status of Applicant	Designated Co-Applicant	
Requested Action	Conditional Use Review – Pre-existing nonconforming Structure	
Purpose	Applicant is seeking Conditional Use to modify an existing non-conforming structure.	
Existing Zoning	Table 2.6 Shore Land District	
Location	362 Holmes Road	
Size	23.2 acres	
Existing Land Use	5-bedroom Home	
Surrounding Land Use	Shoreland, residential, agriculture	
Recent Permitting History		
Applicable Regulations	Charlotte Land Use Regulations (2010), The Charlotte Town Plan & Vermont Shoreland Stabilization Act.	

Overview:

The applicant is seeking conditional use approval to reconstruct/relocate a pre-existing nonconforming residence. The structure is nonconforming because it does not meet the 150ft lakeside setback. The applicants will be reconstructing the house further from the lake, but the new front decks will still be within the lake setback. Overall, the amount of square footage within the lake set back will be reduced. The current lake setback (128ft) will remain unchanged. The current septic system, which is located on the lakeside of the house, will be relocated farther from the lake.

Standards that Apply:

Table 2.6- Shoreland Seasonal Home Management District (Page 16)

Setbacks. The proposed structure will maintain its current lake setback of 128ft. The existing southern boundary will be slightly decreased due to the addition of the attached three-car garage, but the setback will remain significantly greater than the 50ft minimum for the district (> 400ft to southern property line). According to the plans, there appears to be no encroachment to the northern property line where a public beach easement exists (>400ft to northern property line). The rear setback will decrease slightly, as the house is being relocated further from the lake (>400ft to rear property line).

Height. The structure is proposed to be just under the 30ft height maximum. The chimney cap is proposed to extend slightly above the 30ft height maximum. Chimneys are excluded from height requirements (see Section 3.5).

Building Lot Coverage & Lot Coverage. According to the applicant's application, the total building lot coverage will be 1.2%. The total lot coverage will be 3.6%. The maximum building lot coverage allowed is 5% and the maximum total lot coverage allowed is 10%.

(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;
The construction of a residential structure is a standard use in this district. The applicants have applied for a wastewater permit to relocate the existing 5-bedroom system.

(b) The proposed use will not result in accelerated erosion, sedimentation or water pollution;
The applicants are proposing to move the house back from the lake. The parcel has an existing retaining wall to help prevent erosion.

(c) The proposed use will not adversely impact wildlife habitat areas;
The area where the house will be located is already disturbed by human use and there is . According to the VT ANR. There are no mapped significant habitat blocks on the parcel other than a "significant wildlife community" that runs south along the steep shoreline. According to the Town Plan, there is "Supportive Habitat" to the south of the house. The applicant is proposing to retain this habitat area.

(d) The proposed use will not interfere with existing public lake access, or scenic views of the lake as designated in the town plan;

There appears to be no further encroachment to the public beach easement located on the north side of the property. The house is being moved back from the lake and the existing vegetation along the lakeshore is being preserved. The proposed house should not have any more of an impact on scenic views as the existing structure.

(e) Visual impacts, as viewed from the lake and from adjoining properties, are minimized.
The house is situated near the middle of the property and exceeds setback standards from neighboring properties. The Zoning Board should ask what type materials and what colors the proposed structure will feature.

Section 3.15(G) Lakeshore Buffers (Page 35)

Lakeshore Buffers. A vegetative buffer zone shall be maintained within 100 feet of the shoreline of Lake Champlain in order to minimize runoff and pollution, and to maintain bank stability and environmental quality. Within 100 feet of the shoreline, the following shall apply:

- (1) There shall be no cutting or removal of trees or shrubs except with administrative review and approval by the Zoning Administrator such review will determine whether the proposed cutting or removal is in conformation with any approved wildlife habitat plan or shoreland management plan.**

According to the applicant's plans, several trees located behind the existing structure will have to be removed to make room for the house relocation. The trees located behind the house are outside of the Town's required 100ft vegetation buffer and outside of the 150ft setback. According to the application, the applicant will not disturb any vegetation located between the shoreline and the house structure. The State manages impermeable surfaces and semi-impermeable surfaces within

250ft of the lake. The applicant's clearing plan will be reviewed through the state permitting process.

- (2) Limited pruning of branches of trees and shrubs is allowed to maintain cleared openings or views legally in existence as of the effective date of these regulations, such views or opening should not be enlarged except herein.**

The applicant is relocating the house in order take the best advantage of the existing "limited" views.

- (3) There shall be no dredging, draining, or filling of land along the shoreline, or in wetland areas, and no cutting or removal of wetland vegetation shall be permitted, except in conformance with a shoreland management plan approved by the Zoning Board of Adjustment.**

The applicant has not proposed any dredging, draining or filing between the lake and the existing structure.

Section 3.8 Nonconforming Structure

B) Nonconforming Structures. Any structure, or portion thereof, legally in existence as of the effective date of these regulations which does not comply with the requirements of these regulations as adopted, or as subsequently amended, shall be considered a nonconforming structure. A nonconforming structure may continue to be occupied indefinitely in accordance with the Act [4412(7)], subject to the following limitations. A nonconforming structure:

(2) may only be structurally modified or moved in a manner that will not increase the degree of noncompliance, unless approved by the Board of Adjustment in association with conditional use review under Section 5.4. For purposes of these regulations, any structural alteration which extends the footprint, height or volume of a structure within any required setback or above the required maximum height (i.e., the amount of encroachment), shall be considered to increase the degree of noncompliance. Any structural alteration of a nonconforming structure which extends the footprint, height or volume of a structure outside of any required setback or below the required maximum height shall not be considered to increase the degree of noncompliance.

The applicants plan to relocate the existing nonconforming structure and move it back from the lake. The relocated structure will maintain the nonconforming lake setback, as the applicant plans to construct decking up to the existing 128ft setback. Areas of the house footprint are being moved out of the setback, but the existing decking will be expanded within the setback. Technically, there will be a net decrease in the amount of building footprint within the setback, but an expanded deck will be added within the 150ft setback.

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- The capacity of existing or planned community facilities and services – Does not apply to construction of single-family dwelling.
 - Character of the area affected – The aesthetics of the alterations and cohesiveness of the proposed alteration must be reviewed. Proposed colors and materials should be discussed at the time of the hearing.
 - Traffic on roads and in vicinity – Again, no proposed increase in occupancy thus no increase in traffic.
 - Bylaws in effect – Table 2.6, Section 3.15, Section 3.8, Town Plan, and VT Shoreland Protection Act.
 - Use of renewable energy resources – A large portion of the 23 acre lot will remain open and should not impede the future use of renewable energy resources.
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- Conformance with the Town Plan – the project will not adversely affect natural, cultural, or scenic features as outlined in the Town Plan.
 - Additional Restrictions – I do not suggest any additional restrictions.
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Additional Staff Notes:

The applicant has stated that they don't believe blasting will be necessary but if it is, they have provided their blasting protocol document. If blasting ends up being necessary, I would recommend adding the condition that the applicant provides notice to the town before initiating blasting. The protocol as written requires notification of abutters who are within 400ft of the blasting activity. All neighbors are located outside of the 400ft blasting radius. I would confirm that any blasting would occur outside of the 100ft lake buffer.

Public Notice: Public notice will be achieved by publishing a notice of hearing in The Citizen on October 8, 2015. In addition, a copy of the notice will be mailed to adjoining landowners, posted to the Town Website, and posted at The Old Brick Store, Spear's Store, and Town Hall.

Exhibit List (to date):

Completed conditional use application (Submitted September 15, 2015)
List of abutting property owners
Shoreland Permit
Site Plan
Preliminary Elevations
Blasting Protocol