

**TOWN OF CHARLOTTE  
ZONING BOARD OF ADJUSTMENT**

**In Re: Conditional Use Review of 362 Holmes Road**

**ZBA-15-08**

**OPINION**

**I. Introduction and Issues Presented**

On September 21, 2015, David Marshall, from Civil Engineering, on behalf of Thomas and Michelle Tiller, submitted an application for Conditional Use review for a proposed alteration to an existing non-conforming structure. The house is located at 362 Holmes Road. Public notice of the application was achieved by distributing the notice of hearing via The Citizen on October 8, 2015; posting the notice of hearing at the Town Hall, The Brick Store and Spear Street Store; and mailing a notice of the hearing to adjoining property owners. Notices were mailed to 1) John & Nancy Barnes (00041-0210), 2) Hilary Maslow (00041-0359, 3) Peter & Leigh Phillips (00236-0316), and 4) Edward Amidon & Louise McCarren (00239-0449).

The application was considered by the Zoning Board of Adjustment at a public hearing on October 28, 2015. The Zoning Board reviewed the application under the Charlotte Town Plan, 2013 and Charlotte Land Use Regulations, 2010. Present at the hearing were the following members of the Zoning Board: Frank Tenney, Chair; Jonathan Fisher, and Andrew Swayze.

The Zoning Board of Adjustment closed the hearing on the October 28, 2015. On November 10, 2015, David Marshall, the designated co-applicant, requested reconsideration to add the review of a proposed accessory structure greater than 2,000 square feet in size. Reconsiderations are governed by Section 9.9 (4) (B) of the Charlotte Land Use Regulations. Public notice of the reopened hearing was achieved by distributing the notice of hearing via The Citizen on December 19, 2015; posting the notice of hearing at the Town Hall, The Brick Store and Spear Street Store; and mailing a notice of the hearing to adjoining property owners listed above. The reopened hearing was held on December 9, 2015. Present at the reopened hearing were the following members of the Zoning Board: Frank Tenney; Chair, Jonathan Fisher, Mathew Zucker and Andrew Swayze.

## **II. Meeting Attendance**

The following participated in the hearing: David Marshall and Chris Quinn, From Red House Builders.

## **III. Evidence**

During the course of the hearing sworn testimony was taken from David Marshall and Chris Quinn. The following exhibits were entered into the record:

- A completed conditional use application form, received September 21, 2015.
- A list of abutters with addresses
- A completed State Shoreland Permit with attachments
- A set of site plans (CSK-1, C1.3, C3.0 C3.1 and A.20)
- Blasting protocol document
- Exhibit A- revised plan sheets (C1.0, A2.3, A2.3B, A5.3, A5.3A, A5.3B, A.53C, “easterly view” & “westerly view” ortho photos, and a northern elevation of the barn with proposed colors).

## **IV. Findings of Fact**

1. The property is located at 362 Holmes Road and is owned by Thomas and Michelle Tiller.
2. The parcel is 23.2 acres in size and is located in the Shoreland District.
3. The current residence is considered non-conforming because it does not meet the required 150ft setback from the lake. At its closest point, the existing house is located 128ft from the lake (as measured from the mean high-water level).
4. The Applicant proposes to reconstruct the existing house further from the lake, but proposes to locate new decking up to the existing 128ft setback. Overall, the amount of building footprint within the setback will be reduced.
5. In addition to removing and reconstructing the primary structure, the Applicants are proposing to construct a 3,236 square foot accessory “barn” to be used as a shop/ office area.
6. Pursuant to Section 4.18, accessory structures with a footprint over 2,000 square feet in size and over 25ft in height, require Conditional Use approval.

7. The accessory barn will contain a bathroom but the Applicants are not proposing to use any portion of the accessory structure as an accessory dwelling. The bathroom in the proposed structure was included in the Wastewater permit, which was issued November 6, 2015.
8. The proposed accessory barn structure exceeds the 50' required setback in the Shoreland District.
9. As measured from the average natural grade to the peak of the roof, the structure will be 28'-10". The design also includes a cupola that would extend 9.18ft above the roof peak. The maximum height allowed in the Shoreland District is 30ft.
10. The proposed residence will feature a relocated garage, which will be situated south of the existing garage. Several large trees within the building footprint of the new garage will have to be removed. These trees located in the proposed garage footprint are positioned outside of the town's 100ft vegetative lakeshore buffer.
11. One lilac bush located within the 100ft vegetative buffer is proposed to be removed and relocated. The lilac bush was approved for relocation by Mark Dillenbeck, the Deputy Tree Warden.
12. The proposed structure will be just under the 30ft height maximum allowed in the Shoreland District. The chimney cap will extend slightly above the 30ft height restriction. As provided in Section 3.5 chimneys may extend up to 5ft above the height limit before requiring additional permitting.
13. The primary structure will feature a dark colored granite base with earth tone wood siding. The proposed accessory barn will be a typical "barn red" and will feature a gray-toned metal roof.

## **V. Conclusions of Law**

### Table 2.6 Shoreland District:

The proposed primary structure will maintain its current lake setback of 128ft. Due to the proposed construction of the accessory barn, the southern setback will be decreased to 213ft, and the eastern setback will be reduced to 366ft. With the relocation of the attached garage, the northern setback from the lake will increase from 128ft to 145ft.

The maximum building lot coverage allowed in the Shoreland District is 5% and the maximum total lot coverage allowed is 10%. As proposed, the project will have only a small impact on lot and building lot coverages on the 23.2 acre lot. The total building lot coverage will increase to approximately 1.2%. The total lot coverage will be approximately 3.6%.

According to the Town Plan, there is “supportive habitat” located to the south of the proposed house location. The Applicant is proposing to keep this habitat area undisturbed.

There will be no further encroachment to the public beach easement located on the north side of the property. The existing garage is being removed, which will reduce the setback from the lake on the north side of the house. 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. The relocated structure will be situated to take advantage of existing views. The house is situated near the middle of the property and exceeds setback standards from neighboring property lines. The proposed accessory barn will be sited on the south end of the property and will exceed the setback standards.

### Section 3.5 Height Requirements

Under Section 3.5, Subsection (B), the following accessory structures to a residential or public use require a zoning permit if, when mounted or installed, they will exceed five (5) feet in height above the maximum height in the district or, if mounted on a roof, five (5) feet in height above the highest roof surface:

- (1) Radio antennas,
- (2) Flag poles,
- (3) Satellite dishes less than three feet in diameter,
- (4) Rooftop solar collectors,
- (5) Chimneys and weather vanes.

The Zoning Board notes that cupolas are not directly addressed in Section 3.5. In this particular application, the proposed cupola will not be used as habitable space, and will primarily function as an aesthetic component, and to provide ventilation for the barn. For these reasons, the Zoning Board concludes that it is appropriate to treat the proposed cupola as a “chimney” under Section 3.5.

### Section 3.8 Existing Non-Conforming Structures

Non-conforming structures may only be modified or moved in a manner that will not increase the degree of non-compliance, unless approved by the Board of Adjustment in association with this Conditional Use review process. It is the Applicant's intent to relocate and rebuild the existing nonconforming structure further 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, triggering the need for Conditional Use review.

### Section 3.12 Performance Standards

The Zoning Board has reviewed the application under the performance standards described in Section 3.12 and has determined that the project will not violate any of these standards.

### Section 5.4 Conditional Use Review

The Zoning Board has reviewed the application under the Conditional Use standards prescribed in Section 5.4 and has determined that the project will not violate any of these standards.

## **VI. Decision**

Subject to the conditions set forth below, the Zoning Board of Adjustment **approves** this application as documented in the plans labeled CSK-1, C1.3, C3.0 C3.1, A.20, C1.0, A2.3, A2.3B, A5.3, A5.3A, A5.3B, and A.53C.

1. As provided for in Table 2.6 (F) (9), erosion control measures shall be taken during excavation and construction of the proposed project to mitigate sediment runoff into the lake.
2. No portion of the proposed primary structure, including the proposed attached retaining wall on the north side of the house, shall be closer to the lake than the existing 128ft setback, as measured from the 98ft mean high-water mark.

3. A revised "CSK-1" plan showing the proposed attached retaining wall, shortened to the 128ft mean high-water mark setback, shall be submitted at the time a building permit is applied for.
4. If blasting is required, the applicant shall notify the Town of Charlotte at least 24 hours before blasting occurs, so that neighbors can be warned.
5. Pursuant to Section 3.1(B), immediately following any demolition, all materials shall be disposed of according to Chittenden Solid Waste District Standards.
6. There shall be no cutting or removal of trees or shrubs with the 100ft lakeshore vegetative buffer without the consent of the Charlotte Tree Warden.
7. The Zoning Board of Adjustment approves the proposed 9.18ft high cupola, as long as it is not accessible for habitable use, and is used for ventilation purposes.
8. It is the Applicant's responsibility to adhere to all local and State regulations, including, but not limited to, the Vermont Shoreland Protection Act.

**Vote: 4 Ayes; 1 Absent.**

Dated at Charlotte, Vermont, this 23<sup>rd</sup> day of December, 2015.



Frank Tenney, Chairman

*NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the Zoning Board of Adjustment. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.*