

This 10<sup>th</sup> day of December A.D. 20 15  
at 9 o'clock 0 minutes 0 m and  
recorded in vol. 221 on page 343-346  
Attest [Signature] Town Clerk

ZONING BOARD OF ADJUSTMENT

**In Re: Conditional Use Review of 210 Holmes Road**

**ZBA-15-12**

**OPINION**

**I. Introduction and Issues Presented**

On November 2, 2015 Civil Engineer Associates Inc., on behalf of John and Nancy Barnes submitted an application for Conditional Use Review for a proposed stone retaining wall on the lakeshore. The house is located at 210 Holmes Road. Public notice of the application was achieved by distributing the notice of hearing via The Citizen on November 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. Notices were mailed to Steven Hendrickson (00041-0187); Hilary Naud (00041-0187); Hilary Maslow (00041-0359); Nicolaas Van Der Kloot (00041-0188), and Thomas Tiller (00041-0362).

The application was considered by the Zoning Board of Adjustment at a public hearing on November 24, 2015. The Zoning Board reviewed the application under the Charlotte Town Plan, 2013 and the Charlotte Land Use Regulations, 2010. Present at the hearing were the following members of the Zoning Board: Frank Tenney, Chair; Andrew Swayze, Vice Chair; Jonathan Fisher; and Matthew Zucker.

**II. Site Visit**

A site visit was conducted at the property on November 22, 2015. The following people were present: Frank Tenney, Jonathan Fisher, Matthew Zucker, and Jack Milbank, representative from Civil Engineering Associates, Jack Barnes and Nancy Barnes.

**III. Hearing Attendance**

The following participated in the hearing: David Marshall, representative from Civil Engineering Associates, and John Barnes.

**Evidence**

During the course of the hearing, sworn testimony was taken from David Marshall and John Barnes, and the following exhibits were entered into the record:

- A completed conditional use application form, dated November 24, 2015.
- A list of abutters with addresses

- Estimated fill quantities, received November 24, 2015.
- A set of site plans (C 1.0, C1.1, C1.2, C1.3, C 2.0), received November 24, 2015.
- Photographs depicting a similar wall design constructed in Colchester, VT.

**IV. Findings of Fact**

1. The property is owned by John Barnes Trustee and Nancy Barnes Trustee and is located at 210 Holmes Road.
2. The parcel is located in the Shoreland District. Retaining walls are considered a shoreline improvement in this district and require Conditional Use approval.
3. The ZBA observed erosion along the shoreline at a site visit held at the property on November 22, 2015.
4. The proposed retaining wall will range from 4ft in height to 10ft in height. Plan numbers C1.1 & C1.2 depict the varying heights of the wall by section. The retaining wall will be approximately 450ft in length.
5. The proposed wall will be constructed from large Whitcomb Quarry rock, which is yellowish-pink in color. The rock was selected to blend into the natural shoreline.
6. The existing sub-base of the shoreline will be used as a foundation for the large Whitcomb stones to be stacked. The sub-base will be keyed and the Whitcomb rocks will be set into the notches to provide stability to the wall. The south end of the proposed wall will tie into the existing ledge.
7. The retaining wall will be constructed of Whitcomb rock, with filter fabric, shot rock fill, and general fill. This design allows for water to pass through the wall but prevents sediment from being carried into the lake.
8. An approximately 6ft wide gravel ramp will be constructed so that the materials can be brought down the steep embankment for construction.
9. Several trees along the shoreline were damaged by the erosion. Trees on the south end of the proposed wall will be removed to construct the ramp. These trees will be replaced in kind with 2" specimens.
10. The Applicant is working with the State Shoreland Division on implementing an approved planting plan. The slope of the wall will be reseeded. The reseeding specifications can be reviewed on site plan page C2.0.
11. All proposed construction is to take place above the 98ft contour.

## V. Conclusions of Law

This application must comply with Tables 2.6 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.

### Table 2.7 Seasonal Shoreland Management District:

Under Table 2.7(D) 6 Shoreline Improvements (F) (11)—

Shoreline improvements are exempted 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 impacts and obstructions to adjoining shoreland areas.

The Zoning Board has determined that no natural features, designated wildlife habitats, or sensitive features will be impacted by this project. The wall has been designed to protect an area of the shoreline which is highly susceptible to erosion. A similar retaining wall has been constructed at the Tiller property to the south.

### 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

Under Section 5.4(C) (2) the proposed stabilization measures 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.

Based on the site visit, and the testimony of David Marshall, the Board finds that the scale of this project is appropriate. The Applicant has selected natural looking rock in an effort to achieve a structure that will match the Lake Champlain shoreline. The property to the south has constructed a similar retaining wall in efforts to prevent further erosion of their property. The Zoning Board strongly encourages that every reasonable effort should be made to protect the scenic beauty of the shoreline as seen from the lakeshore and water.

**VI. Decision**

**Subject to the conditions set forth below**, the Zoning Board of Adjustment **approves** this application as documented in the building plans and presented to the Board.

1. Construction of this project shall be completed in accordance with the dimensions of site plan sheets C 1.0, C1.1, C1.2, C1.3, and C 2.0, submitted by Civil Engineering Associates.
2. The proposed backfill shall be seeded and planted in accordance with a landscaping plan approved by the State Shoreland Division in association with the Vermont Shoreland Permit.
3. Pursuant to Section 9.9(E) (5) this permit shall expire two years from the date of issuance if development has not commenced within that time.
4. Pursuant to Section 2.7 (F) (11), erosion control measures are to be taken before, during, and after the work is completed.
5. Pursuant to Section 3.1(B), immediately following any demolition, all materials shall be disposed of according to the Chittenden Solid Waste District Standards.
6. 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 <sup>9<sup>th</sup></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.*