

**Town of Charlotte  
Zoning Board of Adjustment**

**In Re: 16-39-CU Conditional Use Review for Restless Native Inc. representing Melinda Wetzell Kogut, Robert Kogut, Geraldine Wetzell, and Rolf Wetzell for construction of a shoreline improvement (retaining wall) at 575 Hills Point Road**

**I. Introduction and Procedural History**

On March 11, 2016, Michael Scott of Restless Native Inc. and representative for Melinda Wetzell Kogut, Robert Kogut, Geraldine Wetzell, and Rolf Wetzell, submitted an application for conditional use review for the construction of a retaining wall. The project property is located at 575 Hills Point Road in the Shoreland Zoning District. Public notice of the application was achieved by posting of the notice at The Brick Store, Town Hall and Spear Street Store; mailing to adjoining property owners on March 25, 2016; and publishing in The Citizen on March 24, 2016<sup>1</sup>. Notices were mailed to the applicant, Hills Point Association c/o David Watts (00034-0543), Mendelsohn (00034-0608), Larson (00034-0558), and Lighthall (00034-0613).

The application was considered by the Zoning Board of Adjustment (ZBA) on April 6, 2016. A site visit to the property occurred prior to the hearing. Present at the hearing(s) were the following members of the ZBA: Frank Tenney, Chair; Andrew Swayze; and Stuart Bennett. Applicant representative Mike Scott and the following neighbors participated in the hearing: Mary Tang (819 Hills Point Road), David Watts (494 Hills Point Road), and Gregory Smith (724 Hills Point Road). Kurt Wetzell, brother of Melinda Wetzell, also participated in the hearing.

The ZBA reviewed the application under the Charlotte Town Plan, 2016 and the Charlotte Land Use Regulations, 2016. During the course of the hearing(s) the following exhibits were submitted to the ZBA:

- Application materials including a signed application form; letter of authorization from property owners; list of adjoining property owners; a narrative of the project from Mike Scott; a plot map showing location of the proposed wall, existing structures, grade, elevations and approximate location of septic field; a cross section of the proposed wall; and application fee.

These exhibits are available at the Charlotte Planning & Zoning Office.

**II. Findings**

Based on the application, testimony, exhibits and other evidence, the Zoning Board of Adjustment makes the following findings:

- a. The applicant seeks conditional use approval to construct a retaining wall (aka seawall). The wall will be approximately 3 feet wide, 100 feet long and 3 feet in height. It will be situated at the 104 foot elevation contour and will be flush with or slightly lower than the existing bank (lawn area) at 107 foot elevation contour. The wall will be constructed of Panton Stone boulders. Two-inch crushed drain stone will be used as a base material for the wall. Stairs and a boat ramp will be constructed within the wall. No portions of the stairs or ramp will extend

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<sup>1</sup> Due to a publishing error, the initial request for legal notice was not advertised March 17, 2016. A subsequent notice was published on March 24, 2016 and there were no concerns raised during the hearing.

- farther towards the lake than the base of the wall. The subject property is a 0.99-acre parcel located at 575 Hills Point Road in the Town of Charlotte (M31B50L07).
- b. The property is located in the Shoreland District as described on the Town of Charlotte Zoning Map and in the Town of Charlotte Land Use Regulations, 2016.
  - c. Conditional use approval is requested for the project as a shoreline improvement as that term is defined in Chapter X of the Land Use Regulations. The application requires review under the following sections of the Regulations:
    - Section 2.3 / Table 2.6 Shoreland District
    - Section 3.15 Lakeshore Buffers
    - Section 5.4 (C) Conditional Use Review General Standards
    - Section 5.4 (D) Conditional Use Review Specific Standards
  - d. Chapter II, Section 2.3, Table 2.6 (F)(6) states "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."
  - e. Chapter II, Section 2.3, Table 2.6 (F)(9) stipulates that the uses subject to conditional use review in the Shoreland district will not:
    - i. cause unsafe or unsanitary conditions on land or on the water
    - ii. result in accelerated erosion, sedimentation or water pollution
    - iii. adversely impact wildlife habitat areas
    - iv. interfere with existing public lake access, or scenic views of the lake as designated in the town plan and
    - v. result in significant visual impacts as viewed from the lake and from adjoining property owners.
  - f. Chapter III, Section 3.15 (G) requires maintenance of a 100 foot vegetated buffer zone measured inland from the mean high water mark defined as 98 feet above mean sea level. The regulations further stipulate that within the 100 foot buffer, the following shall apply:
    - i. 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 conformance with any approved wildlife habitat plan or shoreland management plan.
    - ii. 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 openings or views shall not be enlarged except as allowed herein.
    - iii. Nothing in this section shall prohibit the cutting and removal of storm-damaged, diseased or dead trees which pose a hazard as determined by the Zoning Administrator.
    - iv. 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 Board of Adjustment.
  - g. Chapter V, Section 5.4 (C) stipulates that a proposed conditional use shall not result in an undue adverse effect on any of the following:
    - i. The capacity of existing or planned community facilities and services.
    - ii. Character of the area affected.
    - iii. Traffic on roads and highways in the vicinity.
    - iv. Bylaws in effect.
    - v. The use of renewable energy resources.

- h. Chapter V, Section 5.4 (D) states that the Board may consider the following and impose conditions as appropriate to reduce or mitigate any adverse impacts from the proposed development:
  - i. Conformance with the Town Plan.
  - ii. Additional restrictions – for example, increased buffers and setbacks or reduced lot coverage, to avoid or mitigate impacts to adjoining property owners or significant natural, cultural or scenic features in the vicinity of a project.
  - iii. Performance Standards (Section 3.12) – noise; vibration; smoke, dust, noxious gases or other forms of air pollution; releases of heat, cold, moisture, mist, fog or condensation; electromagnetic disturbances or electronic transmissions or signals; glare, lumen, light or reflection; liquid or solid waste or refuse; or undue fire, safety, explosive, radioactive emission or other hazard.

### III. Conclusions of Law

The proposed development meets the requirements of Section 2.3 / Table 2.6 Shoreland District, Section 3.15 Lakeshore Buffers, Section 5.4 (C) Conditional Use Review General Standards, and Section 5.4 (D) Conditional Use Review Specific Standards.

- a. The Board finds that the project as proposed will not:
  - i. cause unsafe or unsanitary conditions on land or on the water
  - ii. result in accelerated erosion, sedimentation or water pollution
  - iii. adversely impact wildlife habitat areas
  - iv. interfere with existing public lake access, or scenic views of the lake as designated in the town plan and
  - v. result in significant visual impacts as viewed from the lake and from adjoining property owners.

There are no mapped wetlands or wildlife habitat on the project property. There is a stream located on the property to the south (owned by Homeowners Association). This stream flows from a wetland complex that is located on the east side of Hills Point Road.

- b. There will be no cutting of trees or shrubs within the buffer zone as no vegetation other than grass exists within this area of the property at this time. The property owner as well as property owners to the south should consider establishing a vegetated buffer along the shoreline and along the stream. Vegetated buffers and the organic material layer that they produce absorbs and filters water more readily than lawn area. Buffers can be established to avoid and / or minimize impacts to scenic views.
- c. There will be no dredging, draining or filling of land along the shoreline except for the limited cut and fill associated with the construction of the retaining wall.
- d. The project will not result in the need for additional facilities or services as it does not result in increased occupancy of the property.
- e. The project will not have an adverse impact on the character of the area. The wall will be constructed of Panton boulders which were chosen to blend into the shoreline reducing visual impacts from the lake. The wall has also been designed to have a finished height at or slightly above the existing grade of the property.
- f. The project will not result in additional traffic as it does not result in increased occupancy of the property.
- g. The project is in conformance with municipal bylaws and ordinances currently in effect.
- h. The project does not interfere with the sustainable use of renewable energy resources on the applicant's parcel or on adjoining parcels.

- i. The project is in conformance with the Town Plan.
- j. The project will not impact significant natural, cultural or scenic features and thus, no additional restrictions are required.
- k. The use of the property for a single-family dwelling will not change and thus, consideration of the performance standards is unnecessary for this project.

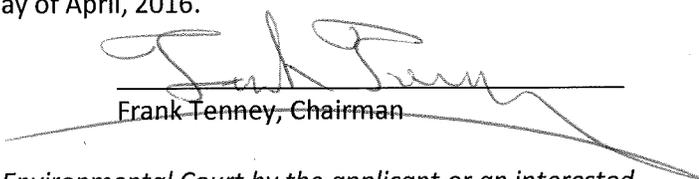
**IV. Decision and Conditions**

Based on the foregoing Findings of Fact and Conclusions, the Zoning Board of Adjustment approves the application for construction of a shoreline improvement at 575 Hills Point Road subject to the following conditions:

- a. The owner and his/her representatives shall abide by the practices in the Vermont DEC Standards & Specifications for Erosion Prevention & Sediment Control (2008) as necessary to ensure that sediment and sediment laden water does not leave the project parcel. Contact 802-540-1748 for a hard copy or go to the web:  
[http://vtwaterquality.org/stormwater/htm/sw\\_cgp.htm](http://vtwaterquality.org/stormwater/htm/sw_cgp.htm).
- b. There may be State of Vermont and / or federal permits or approvals needed for the proposed development or use. Please contact the Agency of Natural Resources Permit Specialist at 802-477-2241 for more information.

Vote: 3 Ayes, 2 Absent.

Dated at Charlotte, Vermont this 19<sup>th</sup> day of April, 2016.



Frank Tenney, 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 latest date of signature below, pursuant to 24 V.S.A. Section 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.*