

**TOWN OF CHARLOTTE  
Zoning Board of Adjustment**

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<b>IN RE:</b>	)	<b>ZBA-13-01</b>
<b>Dick and Patricia Waters</b>	)	
<b>Bird Family Realty Trust</b>	)	
<b>908 Flat Rock Road</b>	)	
<b>Thompson's Point Lot #123</b>	)	
	)	

**OPINION**

**I. Introduction and Issues Presented**

This matter came before the Zoning Board of Adjustment (the "Board") on the Conditional Use application of Dick and Patricia Waters (the "Applicants") for leased property at 908 Flat Rock Road. Specifically, the application is to construct a retaining wall to support an eroded bank and to prevent further erosion of the bank. Based on the application, exhibits and testimony at the hearing<sup>1</sup> and a site visit<sup>2</sup> on April 17, 2013, the Board makes the following findings and decision in this matter.

**II. Findings of Fact**

1. Dick and Patricia Waters, Bird Family Realty Trust, are leaseholders of Thompson's Point Lot #123 at 908 Flat Rock Road. The lot is owned by the Town of Charlotte.  
  
The Applicants have authorized Norman LeBoeuf to represent them before the Board.
2. This parcel is located in the Shoreland Seasonal Home Management District.
3. Shoreline improvements are a Conditional Use in the Shoreland Seasonal Home Management District.
4. Photographs were submitted showing the erosion of the bank between the camp and the water. At the site visit the Board observed the extensive undermining of the embankment along the entire length of the property.

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<sup>1</sup> The following people attended and participated in the hearing process: Norm LeBoeuf, Alan Pidgeon

<sup>2</sup> The following people attended the site visit: Ben Pualwan, Jonathan Fisher, Frank Tenney, Doug Webster, Andrew Swayze, Gloria Warden, Norm LeBoeuf, Alan Pidgeon

5. Tree roots are exposed with the trees leaning toward the shore and if left unattended the embankment will eventually drop to the shoreline along with most if not all of the trees that presently define the edge of the embankment.
6. The proposed wall will be approximately 30 inches high plus a stone cap, the stone wall will be 55 feet long in the most severely impacted section of the embankment. The natural existing vegetation will be encouraged to cascade over the wall for a harmonious blend with the existing landscape as seen on the photos taken before the April 2011 high water event.
7. The northeast end of the embankment will be stabilized by the placement of natural riprap along the slope.
8. The Applicants received Selectboard approval for the seawall repair, on town owned land, at a regular Selectboard meeting on February 11, 1013.
9. The abutting property lessees, Michael and Susan Garner, 910 Flat Rock Road, Thompson's Point lot #124 submitted a letter to the Board (See Exhibit "A")  
  
In their letter the abutting property owners state "the rip rap wall will project about fifteen feet over the property line, or the extension of the property line toward the lake, between the two properties. We acknowledge the wall will cross over the line, and agree that the proposed locations of the wall is suitable to achieve the purposes of the project. We agree that the wall can be placed as proposed."

The Garners further noted their concern about erosion impacts in this area.

### **III. Discussion and Conclusions**

**Conclusions for Conditional Use.** The Zoning Board must review this application for Conditional Use Approval to repair the bank for shoreline stabilization under Table 2.7 of the Charlotte Land Use Regulations. The purposes of the Shoreland Seasonal Home Management District, as explained in Table 2.7, are –

- (1) To protect and preserve, for seasonal residential use only, those areas of Thompson's Point that have been historically developed for seasonal residential use and have remained

essentially unchanged over the years (2) to protect the unique historic and physical character of these areas (3) to protect the scenic beauty of the shoreland and lake, as viewed from the lakeshore and water (4) to protect the environmental quality of the area and the lake, and (5) to allow for development which does not adversely affect the town's natural and scenic resources or properties and uses in the vicinity, 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 2.7(D), this application must comply with Tables 2.7 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 2.7(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 Applicant testified that there are no wetlands, designated wildlife habitats or sensitive features located on the property. The purpose of this project is to repair the existing bank that has eroded.

Section 10.2 of the Land Use Regulations define Shoreline Improvement as—

Physical improvements located at or above the mean high water 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; manmade or improved beach areas; and retaining walls or other permanent stabilization measures.

To meet this definition the proposed wall must be functionally necessary as a stabilization measure.

The Board first finds the proposed project is located entirely above the mean high water (MHW) mark. The Board also finds this proposal to stabilize the bank qualifies as a shoreline improvement because of the damage caused by the bank eroding and the risk for additional erosion.

Under Section 3.12 performance standards must be met and maintained for uses in all districts, except for agriculture and forestry, as measured at the property line. In addressing these standards, the applicant states that all work will hopefully be able to be performed before the July/August moratorium is in effect. No extraordinary noise is anticipated beyond that of the

equipment required to move the rocks and materials. The remaining performance standards are not applicable to this project.

Under Conditional Use approval the Board must also look at Section 5.4 of the regulations. 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 Alan Pidgeon, PE, and Norman LeBoeuf the Board finds the scale of this project is the minimum to achieve the restructuring of the bank to maintain its safety and to prevent the entire bank and vegetation from continuing to erode away into the lake. The Applicants have made efforts to minimize the view of the stabilization efforts as seen from the lake by using rocks and stones selected to blend in with the natural colors of the shoreline in this area. The Board strongly encourages that every reasonable effort should be made to protect the scenic beauty of the shoreland and lake as seen from the lakeshore and water.

**V. Decision for Conditional Use.**

**On motion by Jonathan Fisher, seconded by Frank Tenney, the Board voted unanimously to approve the application for shoreline improvements 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 land use regulations.**

- 1. Construction on this project shall be completed in accordance with the dimensions of the drawing S1 Revised Seawall Design submitted with the application. Efforts detailed in the application and at the hearing intended to minimize the visual impact of the project shall be followed.**
- 2. Pursuant to Section 2.7(F)(6) no construction activity shall occur between July 1 and Labor Day.**

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. Erosion control measures are to be taken before, during and after the work is completed. The site of the work road is to be restored to its natural state and erosion control in place until stabilization has taken place.
5. There shall be no cutting of any live trees or shrubs unless first approved by the Tree Warden.
6. No pressure treated wood is allowed to be used in any part of the project.
7. The Applicants shall contact the Zoning Administrator for final inspection of the project to certify compliance with this decision.

Vote:   5   -in favor   0   -opposed

DATED THIS \_\_\_\_\_ DAY OF MAY 2013.

**CHARLOTTE ZONING BOARD OF ADJUSTMENT**

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**Benjamin Pualwan, 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.**