

**TOWN OF CHARLOTTE
ZONING BOARD OF ADJUSTMENT**

In Re: Conditional Use Review of 910 Flat Rock Road

ZBA-14-08

OPINION

I. Introduction and Issues Presented

On October 29, 2014, Norman LeBoeuf, on behalf of Michael Garner and Susan Bayer, submitted an application for conditional use review for a proposed retaining wall. The camp is located at 910 Flat Rock Road. Public notice of the application was achieved by distributing the notice of hearing via The Citizen on November 13, 2014; 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) Bird Family Realty Trust (00025-0908) and Margaret Clark, (00025-0912).

The application was considered by the Zoning Board of Adjustment (ZBA) at a public hearing on December 3, 2014. The ZBA 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 ZBA: Frank Tenney, Chair; Andrew Swayze, Vice Chair; Jonathan Fisher; Douglas Webster; and Mathew Zucker.

II. Site Visit

A site visit was conducted at the property on November 30, 2014. The following people were present: Frank Tenney, Andrew Swayze, Jonathan Fisher, Mathew Zucker and Britney Tenney. Norman LeBoeuf, the designated co-applicant, was unable to attend.

III. Hearing Attendance

The following participated in the hearing: Norman LeBoeuf, the designated co-applicant of Michael Garner and Susan Bayer.

IV. Evidence

During the course of the hearing, sworn testimony was taken from Norman LeBoeuf, and the following exhibits were entered into the record:

- A completed conditional use application form, submitted October 29th, 2014
- A list of abutters with addresses
- A personal statement from Michael Garner and Susan Bayer
- A written history/ scope of the proposed shoreline project
- Photographs of the embankment after the high water event
- Photographs showing the proposed natural stone wall and replacement vegetation
- Project location map
- Design plan prepared by Engineers Constriction, Inc.

V. Findings of Fact

1. Michael Garner and Susan Bayer are leaseholders of Thompson's Point Lot #124 located at 910 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. The parcel is located in the Seasonal Home Management District. Shoreline improvements are a conditional use in the Seasonal Home Management District.
3. The applicant submitted photographs depicting the erosion of the bank between the camp and water. The ZBA observed the erosion during the site visit.
4. The applicant's design plan illustrates four trees that are proposed to be removed. The trees have been affected by erosion and are located in the path of the retaining wall. These trees were observed by the ZBA during the site visit.
5. The proposed wall will be approximately 85ft long and 36 inches tall including a stone cap. At the west end of the proposed wall, a natural riprap stone feature will be placed along the slope of the embankment for a distance of about 25ft.
6. The proposed wall will be approximately the same height and will be faced with the same Corinthian Seam Face Granite as the recently completed Waters wall to the

immediate west (908 Flat Rock Road). The height and stone facing of the neighboring Waters wall was observed by the ZBA at the site visit.

7. The applicants received Selectboard approval for the retaining wall, on town owned land, at a regular Selectboard meeting on October 20, 2014.
8. The applicants received confirmation of Shoreland Registration from the State Watershed Management Division on November 7, 2014.

VI. Conclusions of Law

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.

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 ZBA has determined that the wall is appropriately sited to prevent further erosion of the impaired embankment. No natural features, designated wildlife habitats, or sensitive features were identified as being impacted by this project.

Section 3.12 Performance Standards

The ZBA has reviewed the application under the performance standards described in Section 3.12 and has determined that the project should 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 Norman LeBoeuf, the Board finds that the scale of this project is appropriate to prevent further erosion of the bank. The applicants have selected natural looking rock, and will encourage vegetation to grow around the wall, in an effort to achieve a structure that will match the Thompson's Point shoreline. The retaining wall and riprap will be a visual continuation of the existing wall at the Waters camp. 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.

Section 10.2 Definitions

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.

The ZBA finds that in order to meet this definition, the proposed wall must be functionally necessary as a stabilization measure. As documented in the application, and as witnessed at the site visit, the ZBA has determined that the current state of the embankment requires stabilization to prevent further erosion.

VII. 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 on this project shall be completed in accordance with the dimensions of the wall design plan 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.
5. There shall be no cutting of the trees marked for removal without first consulting with the Town Tree Warden.
6. No pressure treated wood is allowed to be used in any part of the project.
7. It is the applicant's responsibility to adhere to all local and State regulations, including, but not limited to, the Vermont Shoreland Protection Act.
8. The applicants shall contact the Zoning Administrator for final inspection of the project to certify compliance with this decision.

Vote: 5 Ayes; 0 Dissents.

Dated at Charlotte, Vermont, this 19th day of December, 2014.


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.