

CHARLOTTE TOWN CLERK'S OFFICE

RECEIVED FOR RECORD  
This 18th day of October A.D. 2016  
at 3 o'clock 45 minutes P m and  
recorded in vol. 275 on page 441-445  
Attest: [Signature] Town Clerk

Town of Charlotte  
Zoning Board of Adjustment

**In Re: ZBA-16-123-CU Conditional Use Review for Thomas C. and Michalle A. Tiller for the renovation and a small addition to an existing house located at 362 Holmes Road in the Town of Charlotte (M33B50L07).**

**I. Introduction and Procedural History**

On September 21, 2016, Dave Marshall, on the behalf of Thomas C. Tiller, Jr. (the property owner) submitted an application for conditional use review for a renovation and a small addition to the existing house (not removal and reconstruction) consistent with the requirements for setbacks from the Lake. The design was changed from a previous Conditional Use application approval (ZBA-15-08-CU), which was granted for the demolition and replacement of the house. The property is located within the Shoreland District on Holmes Road.

Public notification was accomplished via electronic posting of the notice on the Town website; publication in "The Citizen" newspaper for the week of August 22<sup>nd</sup>; and by posting hardcopies of the notice at the Town Office, the Brick Store, and Spear's Corner Store on August 17. Further notification was issued to the adjoining property owners regarding the public hearing by direct correspondence at least 15 days prior to the public hearing held on September 21 at the Town offices at 159 Ferry Road in the Town of Charlotte.

The application was considered by the Zoning Board of Adjustment (ZBA) at the public hearing held on September 21, after a site visit to the property was conducted beforehand. Present at the visit were the following members of the ZBA; Jonathan Fisher, Stuart Bennett, Andrew Swayze, and Frank Tenney (Chair), Property owner Thomas Tiller, Jr., Property owner representative Dave Marshall, and Charlotte Town staff Daryl Benoit were also present during the visit.

The ZBA reviewed the application under the Charlotte Land Use Regulations, 2016. Application materials included a signed application form; an application fee; list of adjoining property owners; existing floor plans; a proposed main floor and basement plan; a second floor and attic plan, an elevations plan; an overall site plan for property; a partial site plan which focuses on the main house; and an amended Cover Letter dated August 11, 2016 (updated from a cover letter submitted on February 9, 2016 for the previous Conditional Use approval for ZBA-15-08-CU).

All application materials relevant to the project are posted on the Town of Charlotte Planning & Zoning Office website at the following link: <http://bit.do/cruLP>.

**II. Standard of Review**

The application requires review under the following sections of the Land Use Regulations for the Town of Charlotte (Approved March 1, 2016):

1. Chapter II, Section 2.3, Table 2.6(E) – Application of District Standards; Shoreland District (SHR); Dimensional Standards
2. Chapter II, Section 2.3, Table 2.6(F)(9) – Application of District Standards; Shoreland District (SHR); District Standards
3. Chapter III, Section 3.8 (B)(2) Nonconforming Structures
4. Chapter III, Section 3.15 (G) Lakeshore Buffers
5. Chapter V, Section 5.4 (C) General Standards

### III. Findings

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

1. The applicant seeks conditional use approval for the renovation and a small addition of an enclosed porch on the western side a nonconforming five-bedroom structure located at 362 Holmes Road.
2. The current structure is nonconforming because it does not meet the 150' lakeshore setback requirement. The structure's closest distance from the lakeshore has been measured to be 128' from the mean high-water mark. The structure conforms to all other setback requirements.
3. The application cover letter (dated August 10, 2016) states that the proposed project "seeks approval for the conversion of an existing 150 SF porch into two levels of heated space" on the western side of the structure (within the lakeshore setback) according to drawing number C1.1 submitted as part of the application, which would increase the degree of non-conformance. However, according to the ZBA minutes of September 21, 2016, the applicant representative David Marshall had stated that "the porch and open deck will remain the same, and on the same footprint. There will be material replacement only." Therefore, the project would not increase the degree of non-conformance.
4. The lakeshore setback will remain unchanged after completion of the proposed project.
5. The proposed structural addition of a porch on the eastern side is outside of the non-conforming setback area and therefore does not increase the level of non-conformance.
6. Upon completion of the project the property would have a Total Building Coverage of 1.2% (which conforms to 5% parcel coverage) and a Maximum Lot Coverage of 3.6% (which conforms to 10% parcel coverage).
7. Although it is not stated within the application, the roof of the proposed structure will retain its existing height from the existing grade of 28' 10" according to David Marshall as stated in the ZBA minutes of September 21, 2016.
8. The drawing C1.0 of the applicant's site plan stipulates the relocation of the current wastewater system, which is located within the lakeshore setback (west of the current

structure) to a permitted location to the southeast of the existing barn outside of the lakeshore setback (estimated to be about 500' away from the lake).

#### IV. Conclusions of Law

1. **Chapter II, Section 2.3, Table 2.6 (E)** requires the following dimensional standards:  
The current structure is nonconforming because part of it does not meet the 150' lakeshore setback requirement. The structure's closest distance from the lakeshore is the west side which has been measured to be 128' from the mean high-water mark as shown on C1.1 Partial Site Plan. Therefore, the west side of the structure within the 150' setback is nonconforming. The structure conforms to all other setback requirements.
2. **Chapter II, Section 2.3, Table 2.6 (F)(9)** requires the following standards:
  - (a) **The proposed use will not cause unsafe or unsanitary conditions on land or on the water;**  
The applicant is in the process to obtain the necessary wastewater permit to relocate the existing wastewater system to a location (previously stated) outside of the lakeshore buffer.
  - (b) **The proposed use will not result in accelerated erosion, sedimentation or water pollution;**  
The property's existing retaining wall will assist in the prevention of erosion.
  - (c) **The proposed use will not adversely impact wildlife habitat areas;**  
There is a "Threatened or Endangered Species" along the southern end of the property. The applicant has stated that he wishes to preserve the area of the habitat.
  - (d) **The proposed use will not interfere with existing public lake access, or scenic views of the lake as designated in the town plan;**  
There appears to be no additional encroachment within the lakeshore buffer. The application proposes to preserve the existing vegetation along the shoreline.
  - (e) **Visual impacts, as viewed from the lake and from adjoining properties, are minimized.**  
The proposed renovation should not have any impact on scenic views. The visual design of the house will be changed from a 1980s "farmhouse" to a traditional "coastal" style.
3. **Chapter III, Section 3.8 (B)(2) Nonconforming Structures.** *"may undergo routine maintenance and repair, provided that such action does not increase the degree of noncompliance, unless approved by the Board of Adjustment in association with conditional use review under Section 5.4. . . any structural alteration which extends the footprint, height or volume of a structure within any required setback or above the*

*required maximum height (i.e. the amount of encroachment), shall be considered to increase the degree of noncompliance.”*

The proposed new structure does not increase the degree of non-conformance.

4. **Chapter V, Section 5.4 (C) General Standards** stipulates that a proposed conditional use shall not result in an undue adverse effect on any of the following:
  1. The capacity of existing or planned community facilities and services;
    - There is no undue adverse effect
  2. Character of the area affected;
    - The style of the proposed structure is within the character of neighborhood. The proposed porch to be built on the eastern side of the house does not significantly alter the footprint of the house, nor does it impact the view from Lake Champlain. The proposed structure complies with the Shoreland (SHR) zoning district standards.
  3. Traffic on roads and highways in the vicinity;
    - There is no undue adverse effect
  4. Bylaws in effect;
    - There is no non-conformance issues with other Town Bylaws.
  5. The use of renewable energy resources;
    - There is no undue adverse effect on renewable energy resources.
5. **Chapter III, Section 3.15 (G) Lakeshore Buffers** states: *“A vegetative buffer zone shall be maintained within 100 feet of the shoreline of Lake Champlain in order to minimize runoff and pollution, and to maintain bank stability and environmental quality. Within 100 feet of the shoreline, the following shall apply.”*
  1. 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 conformation with any approved wildlife habitat plan or shoreland management plan.
  2. 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 views or opening should not be enlarged except herein.
  3. 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 Zoning Board of Adjustment.

#### V. Decision and Conditions

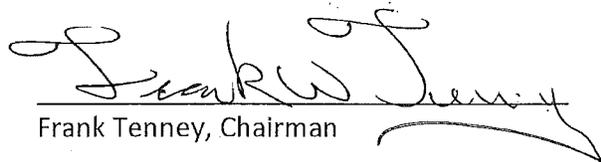
Motion to approve Tiller application as presented (ZBA-16-123-CU) of 362 Holmes Road under the condition(s).

- a. The screened porch and open deck on the west side of the structure will remain the same size, and on the same footprint, except that the porch will be enclosed. The upper deck will remain open.

**Vote: 4 Yeas. 1 Absent.**

The Zoning Board of Adjustment (ZBA) hereby approves the application (modified with the considerations noted in the ZBA minutes of September 21, 2016) for the renovation and a small addition of an enclosed porch on the western side of the 362 Holmes Road structure.<sup>1</sup>

Dated at Charlotte, Vermont this 13<sup>th</sup> day of Oct, 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.*

**Additional Regulations and Permitting**

The owner and his/her representatives shall abide by the practices in the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control (2006) 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 you may visit: <http://dec.vermont.gov/watershed/stormwater>.

There may be additional State of Vermont and / or federal permits or approvals needed for the proposed development or use. The applicant may contact the Agency of Natural Resources Permit Specialist at 802.477.2241 for further information.

---

<sup>1</sup> Zoning Board of Adjustment - Application for Thomas Tiller, Jr. (September 2016), Town of Charlotte, Vermont. <http://bit.do/cruLP>

