

This 18<sup>th</sup> day of April, A.D. 2018

at 11 o'clock &amp; minutes 11

recorded in vol. 232 on page 659-662

Attest: *Christina* Town Clerk**CHARLOTTE ZONING BOARD OF ADJUSTMENT  
CONDITIONAL USE REVIEW  
FINDINGS OF FACT AND DECISION**

**In Re: ZBA-17-165-CU Conditional Use Review Conditional Use application for the construction of additions on the building within the setback on the property located at 701 Hills Point Road in the Town of Charlotte (M30B50L07).**

**I. Introduction and Procedural History**

On November 14, 2017, Eli Lesser-Goldsmith submitted an application for conditional use review to undertake modifications to the house located at 701 Hills Point Road, including; 1. A second story that will increase the volume within the southern side setback; 2. The enclosure of the center breezeway into a mudroom, and; 3. The increase of the footprint of the reconstructed garage, which encroaches further into the northern side setback, triggering a Conditional Use Review. The property is located within the Shoreland (SHR) Zoning District.

The public hearing took place on December 13, 2017 at 7:00 PM at the Town Offices at 159 Ferry Road in the Town of Charlotte, Vermont. Public notification was originally accomplished via electronic posting of the notice on the Town website; publication in "The Citizen" newspaper on November 30, 2017; posting hardcopies of the notice at the Town Office, the Brick Store, and Spear's Corner Store; and by direct correspondence to adjoining property owners on the same date.

A site visit was conducted at the property by the Zoning Board of Adjustment (ZBA) at 6:00 PM, just prior to the public hearing. Present at the site visit were the following members of the ZBA; Frank Tenney (Chair), Jonathan Fisher, Matt Zucker, and Stuart Bennett. Also in attendance were Daryl Benoit (ZBA Staff), the applicant Eli Lesser-Goldsmith, and neighbor Roger Binkerd.

Present at the December 13<sup>th</sup> public hearing were the following members of the ZBA; Frank Tenney (Chair), Jonathan Fisher, Matt Zucker, Stuart Bennett, and Andrew Swayze. ZBA staff, the applicant Eli Lesser-Goldsmith, and neighbors Roger Binkerd and Gregory Smith were also present during the hearing.

The Zoning Board of Adjustment (ZBA) denied the application on January 24, 2018. The applicant appealed the decision to the Environmental Division of the Vermont Superior Court (Docket No. 16-2-18 Vtec), which was subsequently remanded to the ZBA on February 15, 2018.

A public hearing was held on March 28, 2018 at 7:00 PM at the Charlotte Town Offices to reconsider the January 24, 2018 decision. Public notification was once again undertaken via electronic posting of the notice on the Town website; publication in "The Citizen" newspaper on March 8, 2018; posting hardcopies of the notice at the Town Office, the Brick Store, and Spear's Corner Store on March 9, 2018; and by direct correspondence to adjoining property owners on March 13, 2018.

Present at the March 28<sup>th</sup> public hearing were the following members of the ZBA; Frank Tenney (Chair), Jonathan Fisher, Stuart Bennett, Matt Zucker, and Andrew Swayze. Also in attendance at the hearing were; ZBA staff; the co-owner of the 701 Hills Point Road property, Portia Senning and her attorney Chris Roy; residents of Hills Point Road, Dean Freeman and Leslie Tucker; and Planning Commissioners Peter Joslin and Gerald Bouchard.

## II. Exhibits

The following exhibits were utilized for the decision:

1. Survey map;
2. Side elevations;
3. Floorplan with additions (indicating shift of structure toward the lake and the removal of lakeside deck) and installation of pillars within the side setback (and possibly within the lakeshore setback);

## 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), hereafter referred to as the Regulations:

1. Chapter II, Section 2.3, Table 2.6 - Application of District Standards; Shoreland District (SHR);
2. Chapter V, Section 5.4 (C) – Conditional Use Review; General Standards

## III. Findings

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

1. The lakeside deck encroaches into the lakeshore setback. The deck will be removed.
2. The new roof drip edge and supporting pillars on the south side of the new house will not encroach into the southerly side yard setback further than the southerly-most side of the existing house.
3. The new roof drip edge and supporting pillars on the west side of the new house will not encroach into the lakeshore setback more than existing the lakeside deck.
4. The existing house has 3 bedrooms. There shall be no more than 3 bedrooms in the new house.
5. The exiting garage encroaches into the northerly side yard setback. The proposed relocation of the north wall of the garage will create an increased encroachment of two (2) feet into the northerly side yard setback.
6. The breezeway will be enclosed.
7. The following describes the Shoreland District within Chapter II, Section 2.3, Table 2.6(A) of the Regulations;

“The purposes of the Shoreland District are: (1) to protect the scenic beauty, environmental qualities and recreational opportunities of Lake Champlain and its shoreline, as viewed from both the lakeshore and the water (2) to minimize runoff pollution and maintain bank stability by maintaining a vegetated buffer within 100 feet of the shoreline, and (3) to allow residential and limited commercial development that is consistent with these aims and is compatible with the rural character of the town as expressed in the Charlotte Town Plan.”

The Character of the Area is reflected by the residential use and building styles on Hills Point Road. Hills Point Road is predominantly a residential use. The predominant feature of the residences on Hills Point Road is a non-reflective exterior surface as viewed from the lake.

#### IV. Conclusions of Law

##### **Chapter II, Section 2.3, Table 2.6 – Shoreland District (E) Dimensional Standards:**

1. Minimum Side/Rear/Front Setback (from ROW): 50' / Lakeshore: 150' (from MHW):

The lakeshore setback of the house (existing deck) is currently about 170' from the lakeshore (unable to determine the exact MHW mark). The proposed increase of the main house would be slightly further away from the shoreline than where the deck currently stands. However, the proposed south-most pillars may be within the Lakeshore setback.

The current southern side setback is about 36' from the property line. About half of the proposed 2nd floor square footage would be constructed within the setback, increasing the volume within it.

The existing garage is about 28' from the northerly property line, an encroachment of 22 feet into the side yard setback of 50 feet. The proposed garage would encroach an additional two feet into the northerly side yard setback.

2. Maximum Height 30' – Lesser of 30' or 2 stories:

The proposed addition will stand at a 25' 3" height to the top of the roof, and therefore meets the district standard.

3. Maximum Building Coverage (5%) / Lot Coverage (10%):

As the lot is about 1.01 acres with a single family dwelling. The improvement increases the building footprint to about **3,200 sq. ft.** The proposed structure would slightly exceed the district standard at ~7.3% *Maximum Building Coverage*.

The current amount of impervious surface exceeds 0.2 acres, already exceeding the *Maximum Lot Coverage*. The lakeside deck would be removed, but the house would increase in size. Therefore, there would be a moderate increase in the non-conforming Lot Coverage.

**Chapter V, Section 5.4 (C) – Conditional Use Review; 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 are no known adverse impacts with planned facilities or services.
2. Character of the area affected;
  - Referring to Finding 7 above (Section 2.3, Table 2.6(A) of the Regulations), the *Character of the Area* is reflected by the residential use and building styles on Hills Point Road. Hills Point Road is predominantly residential.
  - The predominant feature of the residences on Hills Point Road is a non-reflective exterior surface as viewed from the lake.
3. Traffic on roads and highways in the vicinity;
  - There are no known adverse impacts.
4. Bylaws in effect;
  - There are no known non-conformance issues with other Town Bylaws.
5. The use of renewable energy resources;
  - There are no undue adverse effects on renewable energy resources.

#### V. Decision and Conditions

Motion to approve the application (ZBA-17-165-CU) was made:

**Vote: 5 Ayes. 0 Nays. 0 Absent.**

The application is APPROVED with the following conditions;

1. The new structure shall be no more than two feet closer to the northerly property boundary than the existing structure.
2. The proposed house shall not have more than 30.7 % glass on the exterior wall facing the lake.
3. The proposed house shall use a type of glass on the lakeside exterior wall that minimizes the reflective surface of the glass as viewed from the lake.
4. All non-glass materials on the lakeside exterior wall of the house shall be of natural non-reflective materials.
5. The applicant shall make reasonable efforts to reduce the light emitting from the house at night as viewed from the lake.
6. The screened porch shall remain screened and shall not be enclosed by glass or other materials.
7. The existing lakeside deck encroaches into the lakeshore setback. The existing deck will be removed.
8. The detached shed on the northwest of the existing house shall be removed.
9. The new roof drip edge and supporting pillars on the south side of the proposed house shall not encroach into the southerly side yard setback further than the southerly-most side of the existing house.
10. The new roof drip edge and supporting pillars on the west side of the proposed house shall not encroach into the lakeshore setback more than existing the lakeside deck.
11. The existing house has 3 bedrooms. There shall be no more than 3 bedrooms in the proposed house.
12. The breezeway in the proposed house shall be enclosed.
13. The proposed house shall be built as represented in the exhibits submitted by the applicant.
14. Pursuant to Section 3.1(B) of the Regulations, immediately following demolition, all materials shall be disposed of according to solid waste district standards.
15. Outdoor lighting shall be kept to a minimum and permanent outdoor lighting fixtures shall be downward-shielded and will not direct light upward or onto adjacent properties.

Dated at Charlotte, Vermont this 17<sup>th</sup> day of April 2018

  
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Frank Tenney, Chairman

**Appeals:** Decisions of the Zoning Board of Adjustment and Planning Commission may be appealed to the Vermont Environmental Court by the applicant or an interested person who participated in the proceeding. Such appeals must be taken within 30 days of the date that the permit is issued, 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.