

**Town of Charlotte
Zoning Board of Adjustment**

In Re: Conditional Use Review to Construct 400'+/- Long Stone Retaining Wall Ranging in Height from 8.5' to 12' to Stabilize Shoreline at 208 Holmes Road in the Town of Charlotte (M33B50L03).

I. Introduction and Procedural History

On October 25, 2018, Jack Milbank of Civil Engineering Associates submitted a conditional use application on behalf of Stephen Hendrickson to construct an approximately 400' +/- long retaining wall at 208 Holmes Road. The proposed wall will range in height from 8.5' to 12'. Much of the damage occurred during the historic 2011 storm. Neighboring and nearby properties at 210 Holmes Road and 362 Holmes Road have seawalls.

The public hearing took place on November 28, 2018 at 7:00 PM at the Town Offices at 159 Ferry Road in the Town of Charlotte, Vermont. Public notification was accomplished via the following: electronic posting of the notice on the Town website; publication in *The Citizen* newspaper November 8, 2018; and by posting hardcopies of the notice at the Town Office, the Brick Store, and Spear's Corner Store on November 2. Further notification was issued to the adjoining property owners regarding the public hearing by direct correspondence on November 2. Present at the November 28 public hearing were Zoning Board of Adjustment (ZBA) members Frank Tenney (Chair), Stuart Bennett, Jonathan Fisher, and Andrew Swayze. Also present were Jack Milbank and ZBA staff Aaron Brown.

Three site visits occurred before the hearing. Zoning Administrator Brown visited the site with Milbank October 25. Milbank also led site visits with zoning board members November 8 and 17.

II. Exhibits

The following exhibits were used for the decision:

1. Zoning Board application
2. Performance and conditional use questionnaires
3. Property Owner Authorization Letter
4. Basis of Design Letter
5. Abutting Neighbors list
6. Sheet C1.0: Proposed Conditions Site Plan
7. Sheet C2.0: Cross Sections
8. Sheet C2.1: Cross Sections
9. Sheet C3.0: Erosion Control Specifications and Details
10. Photographs of existing conditions

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(D)** – Application of District Standards; Shoreland District (SHR); Conditional Uses
2. **Chapter II, Section 2.3, Table 2.6(F)** – District Standards; Shoreline Improvements
3. **Chapter III, Section 3.12(A)** – Performance Standards
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:

A. The applicant seeks to construct a 400' shoreline stabilization project, which triggers conditional use review.

1. **Chapter II, Section 2.3, Table 2.6 – Shoreland District (F)(6)** exempts shoreline improvements from setback requirements, but says they *“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 adverse impacts and obstructions to adjoining shoreland areas.”*

The board finds that the purpose of this project is to prevent further erosion of an already severely damaged shoreline. It will tie into a neighboring seawall, which will provide that parcel with additional bank stabilization. The engineering schematics show plans to minimize surface runoff, channeling, and soil erosion.

2. **Chapter II, Section 2.3, Table 2.6 – Shoreland District (F)(9)**

The Board finds that:

- a. The proposed use will not cause unsafe or unsanitary conditions on land or on the water;
- b. The proposed use will not result in accelerated erosion, sedimentation, or water pollution;
- c. The proposed use will not adversely impact wildlife habitat areas;
- d. The proposed use will not interfere with existing public lake access, or scenic views of the lake as designated in the town plan; and
- e. Visual impacts, as viewed from the lake and from adjoining properties, are minimized.

The project has been deemed a Low Risk Site under the State of Vermont's Erosion Prevention and Sediment Control standards (see Sheet C3.0). The Board finds that it

will likely improve safety, have no effect on sanitation or pollution, and prevent erosion and sedimentation. The project will not impact public lake access.

Civil Engineering Associates has proposed several visual impact mitigation measures. The wall will tie into a neighboring seawall, feature neutral-colored quarry stone, and ultimately improve shoreline vegetation.

IV. Conclusions of Law

Chapter III, Section 3.12 (A) – Performance Standards

The Board finds no known performance standard concerns.

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:

- a. *The capacity of existing or planned community facilities and services;*
 - The Board finds no known adverse impacts with planned facilities or services.
- b. *Character of the area affected;*
 - The Board finds no known adverse impacts to the character of the area. The applicant proposes to use stone with a natural appearance and to backfill portions of the seawall to allow the bank to return to a vegetated state. The proposal will tie into a neighboring seawall. The site plan details how to wash vehicles and machinery to prevent tracking mud onto surrounding roads and property.
- c. *Traffic on roads and highways in the vicinity;*
 - The Board finds no adverse impacts on traffic. Construction vehicles will move materials from an easier access point at the Tiller residence at 362 Holmes Road and travel approximately 1000 feet down the shore.
- d. *Bylaws in effect;*
 - The Board finds no known non-conformance issues with other Town Bylaws.
- e. *The use of renewable energy resources;*
 - The Board finds no undue adverse effect on renewable energy resources.

V. Decision and Conditions

Subject to the conditions set forth below, the Zoning Board of Adjustment APPROVES application ZBA-18-195-CU as presented:

1. Construction of this project shall be completed in accordance with the dimensions of site plan sheets C 1.0, C 2.0, C 2.1, C 3.0.

2. The proposed backfill shall be seeded and planted in accordance with any landscaping plan approved by the State Shoreland Division in association with the Department of Environmental Conservation Shoreland Determination.
3. The applicant is permitted to use geocell technology for top soil control.
4. Pursuant to Section 2.7(F)(11), erosion control measures are to be taken before, during, and after the work is completed. 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 visit: <http://dec.vermont.gov/watershed/stormwater>.
5. Pursuant to Section 3.1(B), all construction waste and extraneous debris and trash on the Hendrickson shore shall be disposed of according to Chittenden County Solid Waste Management District Standards.
6. It is the applicant's responsibility to adhere to all local and State regulations, including but not limited to the Vermont Shoreland Protection Act.
7. Upon completion of the project, Civil Engineering Associates shall certify to the Zoning Administrator that the project was constructed in accordance with the permitted design and all conditions of the permit were met.

Vote: 5 Ayes (1 in absentia). 0 Nays. 1 Absent.

Dated at Charlotte, Vermont this 10th day of December, 2018.


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 above, pursuant to 24 V.S.A. Section 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.

Reconsideration: *At the request of the applicant or interested parties, or on its own motion, the Board of Adjustment or Planning Commission may reopen a public hearing for reconsideration of findings, conclusions, or conditions of the decision. A request by the applicant or interested parties must be submitted to the Planning and Zoning Office within the 30-day appeal period in accordance with Section 9.6(B).*

Additional Regulations and Permitting

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.