

Department of Planning and Zoning

149 Church Street
Burlington, VT 05401
Telephone: (802) 865-7188
(802) 865-7195 (FAX)
(802) 865-7142 (TTY)

David White, AICP, Director
Meagan Tuttle, AICP, Comprehensive Planner
Jay Appleton, GIS Manager
Scott Gustin, AICP, Senior Planner
Mary O'Neil, AICP, Senior Planner
Anita Wade, Zoning Clerk
Elsie Tillotson, Department Secretary



TO: Development Review Board
FROM: Scott Gustin
DATE: November 4, 2015
RE: 16-0405CA/CU; 38 Wright Avenue

Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: WRL Ward: 5S

Owner/Representative: Brovar Dev. / Kelli Brown

Request: Construct lakeshore seawall

Applicable Regulations:

Article 3 (Applications, Permits, & Project Reviews), Article 4 (Maps & Districts), Article 5 (Citywide General Regulations), Article 6 (Development Criteria & Guidelines)

Background Information:

The applicant is seeking approval to construct a seawall for shoreline protection. The seawall would be constructed of large boulders and would be keyed in below existing rip-rap along the property's lakeshore. As the seawall is located partially below the 102' elevation, it is subject to review under the flood hazard area regulations in addition to dimensional and design review standards. As required, the project is subject to review and approval by the State National Floodplain Insurance Program Coordinator at VT DEC. A copy of the application was provided to the Coordinator on September 30, but no response has yet been received. The Coordinator has 30 days to respond. Any comments received within the 30 day period will be incorporated into this approval.

Given this project's location along the Lake Champlain shoreline, review by the Conservation Board is required. That review will take place November 2, 2015. Any comments or recommendations from that Board will be forwarded to the Development Review Board for consideration.

Previous zoning actions for this property are noted below.

- 4/15/11, Approval to install replacement windows
- 7/12/76, Approval to construct a deck

Recommendation: Consent approval as per, and subject to, the following findings and conditions:

I. Findings

Article 3: Applications and Reviews

Part 5, Conditional Use & Major Impact Review:

Section 3.5.6 (a) Conditional Use Review Standards (as adopted by City Council 8.10.2015.)

Approval shall be granted only if the DRB, after public notice and public hearing, determines that the proposed conditional use and associated development shall not result in an undue adverse effect on each of the following general standards:

1. *Existing or planned public utilities, facilities or services are capable of supporting the proposed use in addition to the existing uses in the area;*

The proposed seawall will have no impact on existing or planned public utilities, facilities, or services. **(Affirmative finding)**

2. *The character of the area affected as defined by the purpose or purposes of the zoning district(s) within which the project is located, and specifically stated policies and standards of the municipal development plan;*

The subject property is within the waterfront residential low density zone. This zone is typified by single family homes, and, especially in this neighborhood, duplexes. The existing duplex use will remain unchanged. **(Affirmative finding)**

3. *The proposed use will not have nuisance impacts from noise, odor, dust, heat, and vibrations greater than typically generated by other permitted uses in the same zoning district;*

The proposed seawall is not expected to have any nuisance impacts. **(Affirmative finding)**

4. *The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street designations and capacity; level of service and other performance measures; access to arterial roadways; connectivity; transit availability; parking and access; impacts on pedestrian, bicycle and transit circulation; safety for all modes; and adequate transportation demand management strategies;*

The proposed seawall will have no impacts on traffic or other transportation matters. **(Affirmative finding)**

and,

5. *The utilization of renewable energy resources;*

No part of this request prohibits the use of wind, solar, water, geothermal or other renewable energy resource. **(Affirmative finding)**

and,

6. *Any standards or factors set forth in existing City bylaws and city and state ordinances;*

As the toe of the proposed seawall is at 98' elevation, a state shorelands permit is likely required. The city has partial delegation of the shorelands program, but only above the 100' elevation. It is the applicant's responsibility to contact the State of Vermont to inquire as to shoreland permitting requirements. **(Affirmative finding as conditioned)**

Article 4: Maps & Districts

Sec. 4.4.5, Residential Districts:

(a) Purpose

(2) Waterfront Residential Low Density (WRL)

The subject property is located in the WRL zone. This zone is intended primarily for low density residential development in the form of single detached dwellings and duplexes with consideration given to design review. The duplex use will remain unchanged. **(Affirmative finding)**

(b) Dimensional Standards & Density

No lot coverage information has been provided. Most of the seawall will be constructed where there is existing rip rap; however, a small portion at the southern end appears to extend beyond the existing rip rap. Therefore, lot coverage will increase slightly. Existing coverage appears to be about 18% based on lidar info. Proposed lot coverage information is required.

The seawall is located within the 75' lakeshore setback; however, walls (i.e. retaining walls and seawalls) are specifically allowed to encroach into setbacks per Sec. 5.2.5, *Setbacks*, (b) *Exceptions to Yard Setback Requirements*.

The seawall is well under the maximum allowable height of 35'. **(Affirmative finding as conditioned)**

(c) Permitted & Conditional Uses

The seawall is accessory to the duplex use. **(Affirmative finding)**

(d) District Specific Regulations

1. Setbacks

Not applicable.

2. Height

Not applicable.

3. Lot Coverage

Not applicable.

4. Accessory Residential Structures and Uses

Not applicable.

5. Residential Density

Not applicable.

6. Uses

Not applicable.

7. Residential Development Bonuses

Not applicable.

Sec. 4.5.4, Natural Resource Protection Overlay District:

(a) District Specific Regulations: Special Flood Hazard Area

(7) Special Review Criteria

A. The danger to life and property...

The seawall will be placed within the lakeshore flood hazard area. Lakeshore flood dynamics are unlike those of river flood dynamics. The water does not flow at perceptible speeds and is not subject to constriction. Placement of the seawall within the lakeshore flood zone will have no impact on flood heights or velocities. **(Affirmative finding)**

B. The danger that material may be swept onto other lands...

The new seawall will be constructed of large boulders and will be anchored into the ground along its base. There is little danger that the structure will be swept away by flood waters. **(Affirmative finding)**

C. The proposed water supply and sanitation systems...

Not applicable.

D. The susceptibility of the proposed facility and its contents to flood damage...

The seawall is a protective measure against flood damage to the property. The potential for flooding damage to the seawall itself is minimal. **(Affirmative finding)**

E. The importance of the services provided...

The seawall is of little importance to the Burlington community; however, it will provide substantial protection to the private property that it will be located on. **(Affirmative finding)**

F. The availability of alternative locations...

The point of the seawall is to protect the property from flood damage. Its placement within the flood zone is key to this function. It's location within the floodplain is acceptable. **(Affirmative finding)**

G. The compatibility of the proposed use with existing development...

Seawalls are commonplace along Burlington's lakeshore. **(Affirmative finding)**

H. The relationship of the proposed use to the Municipal Development Plan...

The Municipal Development Plan does not address seawalls. It does speak to the development pattern of single family homes and duplexes in the RL and WRL zones. The subject property contains a duplex. Insofar as homes along the lakeshore commonly have seawalls, the proposal can be found in compliance with the MDP. **(Affirmative finding)**

I. The safety of access to the property...

The new seawall will have no effect on the safety of access to the property during times of flood. **(Affirmative finding)**

J. The expected heights, velocity, duration, rate of rise...

The maximum regulatory flood elevation along the lakeshore is 102' above sea level. The seawall will have no impact on flood heights, velocity, duration, rate of rise, or sediment transport. **(Affirmative finding)**

K. Conformance with all other applicable requirements...

See Articles 4, 5, and 6 of these findings.

(c) District Specific Regulations: Riparian and Littoral Conservation Zone

The subject property is wholly affected by the Riparian and Littoral Conservation Zone (250' width from the 100' lakeshore elevation). This overlay zone limits the clearing of vegetation and new stormwater outfalls. No trees are to be removed as part of this proposal. Some scrub growth along the existing rip rap may be impacted but can be expected to regenerate. No new stormwater outfalls are proposed. As noted previously, the Conservation Board will review this project on November 2. **(Affirmative finding)**

Article 5: Citywide General Regulations

Sec. 5.2.3, Lot Coverage Requirements

See Sec. 4.4.5 (b) above.

Sec. 5.2.4, Buildable Area Calculation

Not applicable.

Sec. 5.2.5, Setbacks

See Sec. 4.4.5 (b) above.

Sec. 5.2.6, Building Height Limits

See Sec. 4.4.5 (b) above.

Sec. 5.2.7, Density and Intensity of Development Calculations

See Sec. 4.4.5 (b) above.

Sec. 5.5.1, Nuisance Regulations

Nothing in the proposal appears to result in creating a nuisance under this criterion. **(Affirmative finding)**

Sec. 5.5.3, Stormwater and Erosion Control

As more than 400 sf of earth disturbance is proposed, a "small project erosion control" plan is required. Such a plan has been submitted to the Stormwater Administrator and is pending approval. The approved plan and associated conditions will be incorporated into this permit approval. **(Affirmative finding as conditioned)**

Article 6: Development Review Standards

Part 1, Land Division Design Standards

Not applicable.

Part 2, Site Plan Design Standards

Sec. 6.2.2, Review Standards

(a) Protection of important natural features

The subject property is located along the Lake Champlain shoreline. The shoreline is an identified significant natural area. Much of the property is affected by the Natural Resource Protection Overlay District, specifically the riparian and littoral conservation zone, which stretches inland 250' from the 100' lakeshore elevation. As required, an erosion control plan has been provided for review by the Stormwater Administrator. Approval is pending. The Conservation Board will

review this project November 2. Recommendations of that Board will be incorporated into this Development Review Board decision. **(Affirmative finding as conditioned)**

(b) Topographical alterations

A fairly steep bank separates the lake from the house site and lawn areas. The slope will be largely unchanged with the new seawall installed at its base. Only limited backfill and grading is proposed. **(Affirmative finding)**

(c) Protection of important public views

Not applicable.

(d) Protection of important cultural resources

Not applicable.

(e) Supporting the use of alternative energy

Not applicable.

(f) Brownfield sites

Not applicable.

(g) Provide for nature's events

See Sec. 5.5.3.

(h) Building location and orientation

Not applicable.

(i) Vehicular access

Not applicable.

(j) Pedestrian access

Not applicable.

(k) Accessibility for the handicapped

Not applicable.

(l) Parking and circulation

Not applicable.

(m) Landscaping and fences

No new landscaping is included in this proposal. Much of the existing rip rap is vegetated with scrub growth. Following installation of the boulder seawall, this scrub growth can be expected to grow into the voids among the boulders. Deliberate landscaping commonly required for poured concrete seawalls is unnecessary for this stone seawall.

Note that, as part of construction of the boulder seawall, a small stone patio and access stair are also proposed. Both are located out of the lakeshore flood zone.

No new fencing is proposed. **(Affirmative finding)**

(n) Public plazas and open space

Not applicable.

(o) Outdoor lighting

Not applicable.

(p) Integrate infrastructure into the design

Not applicable.

Part 3, Architectural Design Standards

Sec. 6.3.2, Review Standards

Not applicable.

II. Conditions of Approval

1. **Prior to release of the zoning permit**, existing and proposed lot coverage shall be provided, subject to staff review and approval.
2. A state shoreland permit is likely required. It is the applicant's responsibility to contact the State of Vermont to inquire as to permitting requirements.
3. This approval incorporates timely comments and stipulations issued by the State National Floodplain Insurance Program Coordinator at VT DEC as related to this project.
4. The Applicant/Property Owner is responsible for obtaining all necessary Zoning Permits and Building Permits through the Department of Public Works as well as other permit(s) as may be required.
5. Standard permit conditions 1-15.

