



City of
Burlington, Vermont
645 Pine Street

Zoning Permit - COA Level I – Reasons for Denial

ZP #: 20-0792CA

Tax ID: 031-1-013-000

Issue Date: April 15, 2020

Decision: Denied

Property Address: 291 APPLETREE POINT ROAD

Description: After-the-fact patio removal and replacement with deck on different footprint.

Reason for Denial:

The applicant proposes replacing a lakeside patio with a deck that has a different footprint and encroaches closer to the waterfront. Table 4.4.5-3 sets a minimum waterfront setback of 75 ft from the ordinary high water mark (100' elevation) of Lake Champlain in the RL-W zone. Section 4.4.5 (d) (1) (B) (ii) allows for the averaging of waterfront setbacks based on neighboring principal structures within 150 ft of either side of a property. Averaging the waterfront setbacks of the two neighboring homes within 150 ft of the subject property (both sides) does not allow sufficient setback reduction for the new deck. According to the applicant, the pre-existing patio (per historic imagery) was removed in two portions in 2017 and 2018. The patio was within the 75 ft waterfront setback. The patio was nonconforming.

The applicant proposes replacing the patio with a deck that not only changes the footprint, but also encroaches closer to the ordinary high water mark of Lake Champlain – with a new setback of 28.5 ft from an existing lake wall. Sec. 5.3.5 (b) allows for nonconforming structures to *'be replaced by a new structure retaining the same degree of nonconformity as the original structure.'* The section continues: *'Zoning permit application for the replacement structure shall be completed within 1 year of demolition of the nonconforming structure; failure to do so shall result in the loss of the ability to retain the nonconformity.'*

The applicant states that the replacement decking and patio removal was conducted in two phases – in 2017 and 2018. More than 1 year has passed since the removal of the nonconforming patio, thus rendering the possibility of obtaining a zoning permit for its replacement void. Additionally, the replacement deck encroaches closer to the ordinary high water mark of Lake Champlain than the previous patio, thus increasing the nonconformity.

The new deck is in violation of Table 4.4.5-3 and Sec. 5.3.5 (b) of the Burlington Comprehensive Development Ordinance and cannot be approved.