

Department of Permitting & Inspections

Zoning Division
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TO: Development Review Board
FROM: Ryan Morrison, Associate Planner
DATE: October 6, 2020
RE: 21-0266CA; 1 King Street

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: DW-PT

Ward: 3C/5S

Owner/Applicant: Lake Champlain Transportation Company

Request: Construction of a 608 sf building with accompanying 571 sf deck to replace an existing structure.

Applicable Regulations:

Article 4 (Maps & Districts), Article 5 (Citywide General Regulations), Article 6 (Development Criteria & Guidelines), Article 8 (Parking)

Background Information:

The applicant is seeking to replace an existing fuel control building and attached deck with a larger building and attached deck on an existing asphalt surface. The new building is intended to enhance marina operations and dock related retail operations.

The property sits within the Special Flood Hazard Area. This location triggers review under the SFHA criteria of Sec. 4.5.4. Project plans have been provided to the state floodplain coordinator. No comments have yet been received. Any comments received within the 30-day comment period will be incorporated into this permit.

Previous zoning actions for this property:

- 5/19/20, Approval for the construction of a shed to house a commercial ice machine.
- 8/6/19, Approval for site modifications to accommodate vehicular and pedestrian flow for the ferry basin.
- 12/4/18, Approval to relocate 2 loading ramps.
- 11/7/18, Approval for after the fact paving of gravel areas
- 10/5/17, Approval for replacement fuel tank and islands for dispensers
- 5/23/17, Approval for renovations to restaurant
- 3/7/16, Approval for replacement ticket booth
- 4/27/12, Approval for Lake Monsters Team Headquarters sign
- 6/10/11, Non-app issued for post-flood damage repairs
- 11/30/09, Approval for trussed gable roof
- 2/19/08, Approval for conversion of retail to office space

- 2/17/05, Approval for roof renovations
- 4/13/04, Approval to install ticket window
- 5/27/03, Approval for sur pac and parking lot lighting installation
- 2/21/03, Approval to replace existing restaurant building with larger restaurant building (not acted upon)
- 2/22/01, Approval for Maritime Museum sign
- 2/22/01, Approval to change use to museum
- 8/18/00, Approval to install an interpretative marker
- 5/1/00, Approval to change portion of retail space to creemee stand
- 6/3/99, Approval to amend prior approval for 5 finger docks with marine gas float
- 2/18/99, Approval to install 5 finger docks
- 10/10/95, Approval to install vertical metal siding on maintenance shed
- 10/29/93, Approval for construction of a 20' X 20' storage structure
- 4/9/92, Approval to construct HC accessible bathroom with ramp
- 5/9/91, Approval to construct new structure containing freezer and refrigeration units

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

I. Findings

Article 4: Maps & Districts

Sec. 4.4.1, Downtown Mixed Use Districts

(a) Purpose

(4) Downtown Waterfront – Public Trust District (DW-PT)

The subject property is located in the Downtown Waterfront – Public Trust (DW-PT) District. This district is intended to enhance and diversify commercial and residential development in the downtown waterfront area, and to increase access, utilization, and enjoyment of the lakeshore by the community. The ferry company is consistent with this intent, and this additional accessory structure will provide a needed convenience for operations. **Affirmative finding.**

(b) Dimensional Standards & Density

The existing fuel control shed will be replaced with a larger marina operations building and attached deck – with a larger footprint that further encroaches into the 50 ft waterfront setback. Section 4.4.1 (d) (4) (c) allows for such setback encroachments for ‘lake excursion facilities’. See below. The new building will locate on existing asphalt surface, so there is no increase in lot coverage. Up to 100% lot coverage is permissible in this zoning district. Maximum height allowance in the DW-PT zone is 35 ft – the new building will be approx. 21 ft in height.

Affirmative finding.

(c) Permitted & Conditional Uses

See (d) 1 (B) below.

(d) District Specific Regulations

1. Use Restrictions

A. Permitted Uses: North of Main Street

Not applicable

B. Permitted Uses: Maple to Main Street

Only the following uses are permitted within that portion of the Downtown Waterfront – Public Trust District located north of the centerline of Maple Street extended north to the centerline of Main Street extended:

(i) Facilities for transporting pedestrians and vehicles upon Lake Champlain by ferry and cruise vessels, including necessary docks, wharfs, maintenance facilities, administrative offices, gift shops, snack bars and related parking facilities...

The ferry company is a permitted use within the Maple to Main Street section of the DW-PT zoning district, and the proposal is part of the overall ferry company operation. **Affirmative finding.**

C. Other Regulations in Effect

Not applicable.

2. Public Trust Restrictions

The subject property is located within that area of the DW-PT: Maple to Main Street. The ferry company is a permitted use and will remain unchanged. **Affirmative finding.**

3. Facades and Setbacks on Side and Rear Property Lines

Not applicable.

4. Lake Champlain Waterfront Setbacks

A. Additions to Existing Structures

Not applicable.

B. Averaging of Setbacks

There are no other buildings on the property, nor on adjacent properties, that can be included in an average setback determination. **Not applicable.**

C. Permitted Encroachments

The DRB may approve one or more of the following within the required waterfront setback: structures such as walkways, planters, benches, fountains, public art, sitting walls and other improvements which will enhance the pedestrian environment and enjoyment of the waterfront; and public marinas, public recreational piers, ferry docks, lake excursion facilities, and open-air markets, provided pedestrian circulation is not unreasonably impaired.

While there is no definition of ‘lake excursion facilities’ in the CDO, the proposed building will serve the overall ferry/marina use of the property. The building will have an open-concept, dock-related retail service for boating accessories, gas sales, etc., plus a staff break room. This particular use of the new building appears to fit the mold of a ‘lake excursion facility’ because it caters to boaters and ferry staff – however since there is no actual definition of the term, the DRB should consider whether or not this is the case.

The proposed building will replace the existing fuel control building. With regard to the waterfront setback, the degree of nonconformity will increase as a result of the proposal. Pedestrian circulation should not be unreasonably impaired since the footprint of the structure will not affect the established walkway between it and Spot On The Dock, as well as other access points for pedestrians near the structure. **Affirmative finding should the DRB agree.**

5. Development Bonuses/Additional Allowances
Not applicable.

Sec. 4.5.4, Natural Resource Protection Overlay District:

Almost the entire site is located within the Special Flood Hazard Area (at or below the 102' elevation). As a result, the following criteria apply:

(f) District Specific Regulations: Special Flood Hazard Area

(7) Special Review Criteria

A. The danger to life and property...

The new building will be constructed on piers which will allow for floodwaters to pass below the first floor. The first floor elevation will be at 104' – two feet above the Special Flood Hazard Area. With this type of elevated construction, there will be little to no effect on flood heights or velocities. **Affirmative finding.**

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

If properly anchored/secured, the building will be in little danger of being swept away during times of flooding. **Affirmative finding.**

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

No changes to water and sewer systems are proposed. **Affirmative finding.**

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

Given its low elevation adjacent to the lakeshore, the property has been flooded a number of times. The base floor elevation of the building will be at 104' – two feet above the base flood elevation of 102', so the structure and contents within should be relatively safe from flood damage. The building will be securely anchored to prevent flotation, collapse, or lateral movement. **Affirmative finding.**

E. The importance of the services provided...

No new use is proposed. The ferry company will remain. As noted above, the ferry company is consistent with the intent of this DW-PT district. **Affirmative finding.**

F. The availability of alternative locations...

As noted above, no new use is proposed. The ferry company is logically located along the lakeshore. The new building will locate on existing asphalt surface, well within the confines of the existing ferry facility. **Affirmative finding.**

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

As previously noted, the ferry company is consistent with the intent of the DW-PT zone. **Affirmative finding.**

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

No new use is proposed. The ferry company use strengthens the working waterfront and contributes to the vitality of the downtown waterfront called for in PlanBTV: Downtown and Waterfront. **Affirmative finding.**

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

While almost the entire property is within the Special Flood Hazard Area, access to it remains accessible from King Street during flood events. No changes in access are proposed. **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 velocity of flood waters along the lakeshore is not problematic. Water is more or less stationary as it rises and falls. The duration of flooding and the rate of its rise depend entirely on spring snowmelt and precipitation events. The lake has risen above 102' just once on record (spring 2011). Sediment transport is insubstantial. Sediment transport is associated with moving waterways such as rivers. With the new building being elevated on piers, it should not create any new impact on flood height, 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.

Article 5: Citywide General Regulations

Sec. 5.2.3, Lot Coverage Requirements

See Article 4 above.

Sec. 5.2.4, Buildable Area Calculation

Not applicable in the DW-PT zone.

Sec. 5.2.5, Setbacks

See Article 4 above.

Sec. 5.2.6, Building Height Limits

See Article 4 above.

Sec. 5.2.7, Density and Intensity of Development Calculations

See Article 4 above.

Sec. 5.5.1, Nuisance Regulations

Nothing in the proposal appears to constitute a nuisance under this criterion. **Affirmative finding.**

Sec. 5.5.2, Outdoor Lighting

Lighting information has not been included in the application and will need to be. The applicant will have to submit lighting spec sheets and update the plans to show the locations of all exterior light fixtures for staff review and approval. **Affirmative finding as conditioned.**

Sec. 5.5.3, Stormwater and Erosion Control

While the building will locate on an existing hard surface and no new lot coverage will occur, there will be earthwork that exceeds 400 sf. As a result, an Erosion Prevention and Sediment Control plan, and a stormwater plan, will need to be submitted to the Stormwater Program Manager for review and 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, but it's downtown location means it is not included in the lakeshore buffer. Almost the entire site is affected by the Natural Resource Protection Overlay District, specifically the special flood hazard area.

The proposal results in no new lot coverage, with the new building locating on top of an existing asphalt surface. **Affirmative finding.**

b) Topographical Alterations

Not applicable.

c) Protection of Important Public Views

Not applicable.

d) Protection of Important Cultural Resources

Not applicable.

e) Supporting the Use of Renewable Energy Resources

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

The plans indicate an exterior lift for handicap access to the new building. **Affirmative finding.**

l) Parking and Circulation

Not applicable.

m) Landscaping and Fences

Not applicable.

n) Public Plazas and Open Space

Not applicable.

o) Outdoor Lighting

See Sec. 5.5.2.

p) Integrate Infrastructure into the Design

Not applicable.

Part 3, Architectural Design Standards

Sec. 6.3.2, Review Standards

(a) Relate development to its environment

1. Massing, Height, and Scale

The new building will locate on an existing asphalt surface within the existing ferry property. While quite visible from the adjacent marina (docks), it will be consistent in size, height, and architectural style with several other buildings on the property. **Affirmative finding.**

2. Roofs and Rooflines

The shallow gable roof will maintain a similar roofline with that of other buildings on the property. **Affirmative finding.**

3. Building Openings

Building openings will be uniform in nature throughout, and will provide a welcoming building façade. Spec sheets for the windows and doors have not been submitted and will need to be for staff review and approval. **Affirmative finding as conditioned.**

(b) Protection of important architectural resources

Not applicable.

(c) Protection of important public views

Given the somewhat low building height (approx. 21 ft), no negative impacts to views are anticipated. **Affirmative finding.**

(d) Provide an active and inviting street edge

Not applicable.

(e) Quality of materials

The applicant indicates that the building will be sheathed in cement board siding and metal roofing. The specific window type (material) has not been identified and will need to be. The applicant will need to provide this information to staff for review and approval. **Affirmative finding as conditioned.**

(f) Reduce energy utilization

The new building will be subject to the commercial energy efficiency standards of Burlington and the State of Vermont. **Affirmative finding as conditioned.**

(g) Make advertising features complimentary to the site

No advertising is included in the application. Should new signage be proposed, a separate sign permit will be required. **Affirmative finding as conditioned.**

(h) Integrate infrastructure into the building design

The plans indicate no exterior infrastructure (mechanical units, utility connections, etc.). If these are proposed, the plans shall be updated to show the location of such infrastructure, along with screening measures. **Affirmative finding as conditioned.**

(i) Make spaces safe and secure

Based on the elevations provided, there will be two lockable doors for the building. There is ample room around the building to provide adequate access for emergency vehicles. **Affirmative finding.**

Article 8: Parking

Table 8.1.8-1 Minimum Off-Street Parking Requirements

The property is located within the Multi-Modal Mixed Use Parking District. This recently created district removes minimum parking standards for all uses within. Therefore, the proposal triggers no additional parking requirement. **Affirmative finding.**

II. Conditions of Approval

1. **Prior to the release of the zoning permit**, the applicant shall submit spec sheets for the proposed windows, doors, exterior light fixtures, siding, and roof to staff for review and approval.
2. **Prior to the release of the zoning permit, if applicable**, all exterior mechanical units and utility connections shall be identified on revised plans and screening shall be provided – for staff review and approval.
3. **Prior to the release of the zoning permit**, an Erosion Prevention and Sediment Control plan, including a stormwater plan, shall be submitted to the Stormwater Program Manager for review and approval.
4. New construction and/or substantial improvements to structures shall be reasonably safe from flooding and be:
 - i. Designed and adequately anchored to prevent flotation, collapse, or lateral movement during the occurrence of the base flood;
 - ii. Constructed of materials resistant to flood damage;
 - iii. Constructed by methods and practices that minimize flood damage; and
 - iv. Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or

- located so as to prevent water from entering or accumulating within the components during conditions of flooding;
5. All development shall be designed to minimize flood damage to the proposed development and to public facilities and utilities;
 6. All development shall be designed to provide adequate surface drainage to reduce exposure to flood hazards;
 7. All new construction and substantial improvements that have fully enclosed areas below the lowest floor shall:
 - i. Be solely used for parking of vehicles, storage, or building access, and such a condition shall clearly be stated on any permits; and,
 - ii. Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Such designs must be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria: A minimum of two openings of two walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters;
 8. All necessary permits shall be obtained from those governmental agencies from which approval is required by federal or state law.
 9. All new construction and substantial improvements for nonresidential purposes shall have the lowest floor, including basement, elevated one foot or more above the base flood elevation. Existing non-residential structures may be flood proofed where designed to be watertight to one foot or more above the base flood elevation, with walls substantially impermeable and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A permit for a proposed building to be flood proofed shall not be issued until a registered architect or engineer has reviewed the structural design, specifications and plans and has certified that the design and methods of construction are in accordance with meeting the provisions of this subsection.
 10. New signage will require a separate sign permit.
 11. The Applicant/Property Owner is responsible for obtaining all necessary state and federal permits.
 12. 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, and shall meet all energy efficiency codes of the city and state as required.
 13. Standard permit conditions 1-15.