

## Department of Permitting & Inspections

Zoning Division  
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**TO:** Development Review Board  
**FROM:** Scott Gustin  
**DATE:** March 22, 2022  
**RE:** ZP-22-12; 48 Sunset Cliff Road

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**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: 4N

Owner/Applicant: Mort & Nurit Zachter / Michael Koch

**Request:** Demolish existing residence and reconstruct seawall.

### **Applicable Regulations:**

Article 4 (Maps & Districts), Article 5 (Citywide General Regulations), Article 6 (Development Criteria & Guidelines), Article 9 (Inclusionary and Replacement Housing)

### **Background Information:**

The applicants are seeking approval to demolish and to replace an existing seawall with a new seawall. This work will extend slightly onto the adjacent 42 Sunset Cliff Road property and will require a separate zoning permit for that property.

The applicants are also seeking approval to demolish the existing single family home on the property. A replacement home is anticipated in the future but is not included in this application.

The Conservation Board reviewed this application February 7, 2022 and recommended approval of the application as presented. The Board conditioned their recommendation on the understanding that they will review the proposed new home construction when that application is filed.

There are no previous zoning actions for this property.

**Recommendation:** Certificate of appropriateness approval as per, and subject to, the following findings and conditions:

### **I. Findings**

#### **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. Upon removal of the residence, the property will be vacant for a period of time until a new home is permitted and constructed. **(Affirmative finding)**

***(b) Dimensional Standards & Density***

Residential density will drop to 0 dwelling units on this 0.71 acre lot.

Lot coverage will drop from the existing 21%. Lot coverage resulting from demolition is not noted and must be. Obviously, it will drop and will be below the 35% limit.

Setbacks will essentially be eliminated with the demolition of the residence. The seawall is an allowed encroachment into the lakeshore setback.

Building height limits are moot with the demolition of the residence. **(Affirmative finding as conditioned)**

***(c) Permitted & Conditional Uses***

The property will become vacant with no primary use. A replacement residence is anticipated in the future. **(Affirmative finding)**

***(d) District Specific Regulations***

***1. Setbacks***

No setback encroachment is sought under this criterion. **(Not applicable)**

***2. Height***

No height bonuses are being sought. **(Not applicable)**

***3. Lot Coverage***

No lot coverage bonuses are being sought. **(Not applicable)**

***4. Accessory Residential Structures and Uses***

None are proposed. **(Not applicable)**

***5. Residential Density***

Residential density will drop to vacant. **(Not applicable)**

***6. Uses***

No neighborhood commercial use is included in this proposal. **(Not applicable)**

***7. Residential Development Bonuses***

No development bonuses are being sought. **(Not applicable)**

***Sec. 4.5.4, Natural Resource Protection Overlay (NR) District***

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

The subject property is affected by the Riparian and Littoral Conservation Zone (250' width from the 95.5' lakeshore elevation). This overlay zone limits the clearing of vegetation and new stormwater outfalls. No tree removal is noted on the project plans, and the required "low mow"

zone is depicted along the property's shoreline. No new stormwater outfalls are proposed. The required stormwater measures and erosion prevention and sediment control plan have been provided to the city's stormwater program for review and approval. **(Affirmative finding)**

***(f) District Specific Regulations: Special Flood Hazard Area***

***(7) Special Review Criteria***

**A. The danger to life and property...**

The seawall is located 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. The proposed construction 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 proposed work will consist of poured concrete and will be anchored into the ground along its base and into the ledge behind it. 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 proposed work is a protective measure against flood damage to the property. The potential for flooding damage to the new stone is minimal. **(Affirmative finding)**

**E. The importance of the services provided...**

The proposed work 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 proposed work 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 of stone and/or concrete 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 lakeshore reinforcements. It does speak to the development pattern of single family homes and duplexes in the RL and WRL zones. The subject property presently contains a detached single family dwelling and is anticipated to have one in the future. 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 proposed work 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 proposed construction will have no impact on flood heights, velocity, duration, rate of rise, or sediment transport. **(Affirmative finding)**

**K. Conformance with all other applicable requirements...**

The Vermont Agency of Natural Resources has reviewed and commented on this application as required. No concerns were expressed as to the suitability of the seawall within the lakeshore flood zone. See also Articles 4, 5, and 6 of these findings. **(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. 5.5.2, Outdoor Lighting***

**(Not applicable)**

***Sec. 5.5.3, Stormwater and Erosion Control***

As more than 400 sf of earth disturbance is proposed, a “small project erosion control” form has been provided. As noted above, it has been provided to the city’s stormwater program for review. It has been approved. **(Affirmative finding)**

**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 north of Appletree Point. 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 95.5' lakeshore elevation. A new low-mow area will be established along the property's lakefront as required. Discussion at the Conservation Board meeting addressed potential for a "greener" design than poured concrete – such as large stone intermixed with vegetation. The project engineer felt strongly that wave action at this site would quickly undermine something other than the solid wall that is proposed. The wall will tie into adjacent concrete seawalls. As noted above, the Conservation Board voted to recommend approval of the project. **(Affirmative finding)**

*(b) Topographical alterations*

Much of the lot is flat but drops steeply towards the lakeshore along its western boundary. Existing topographic conditions will remain largely unchanged. **(Affirmative finding)**

*(c) Protection of important public views*

**(Not applicable)**

*(d) Protection of important cultural resources*

The home to be demolished is not included in an historic register. Its removal will not adversely affect building's wealth of historic sites and structures. **(Affirmative finding)**

*(e) Supporting the use of alternative energy*

**(Not applicable)**

*(f) Brownfield sites*

**(Not applicable)**

*(g) Provide for nature's events*

**(Not applicable)**

*(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, fences, and retaining walls*

No new landscaping is proposed or required with this application. There is no detail as to the finished appearance of the seawall. According to the profile plan, the wall will be 8' tall. Walls over 5' tall must include textured surfaces, terracing, and/or vegetation to avoid long monotonous expanses. Terracing would entail a substantial design change. Finishing the concrete wall with a

textured, exposed aggregate surface and/or planting vines to climb the seawall could address this standard. **(Affirmative finding as conditioned)**

*(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)**

**Article 9: Inclusionary and Replacement Housing**  
***Sec. 9.2.2, Applicability***

The existing single family home will be demolished. While replacement with a new single family home is anticipated, it is not included in this application. Housing replacement is applicable to the loss, demolition, or conversion to a nonresidential use of any housing unit in the city unless specifically exempted. See Sec. 9.2.10, Exemptions, below.

***Sec. 9.2.5, Housing Replacement Requirement***

Housing replacement can be addressed in one of three ways. It can be addressed with new construction of a comparable dwelling unit. It can be addressed via conversion of existing non-residential space to a comparable dwelling unit. It can also be addressed by payment of a subsidy into the city's Housing Trust Fund to enable creation of affordable housing within the city. Anticipated housing replacement in this case is development of a new home to replace the demolished one. **(Affirmative finding as conditioned)**

***Sec. 9.2.10, Exemptions***

Loss or conversion of a dwelling unit to a nonresidential use lasting less than one year is exempt from the housing replacement requirements of Sec. 9.2.5. Demolition is not noted in this exemption. As such, housing replacement applies.

The applicants intend to replace the demolished home with a new home on the same property. So long as that new home is permitted and constructed prior to the 3-year expiration of this demolition permit, no additional housing replacement requirements apply. In the event that a new home is not permitted and constructed on this property prior to expiration of this demolition permit, the housing replacement requirements of Sec. 9.2.5 must be addressed within 1 year of expiration of this demolition permit.

## **II. Conditions of Approval**

1. **Prior to release of the zoning permit**, revised plans shall be submitted, subject to staff review and approval. Revisions shall include:
  - a. Post-demolition lot coverage square footage and percentage; and,

- b. Detail as to landscaping and/or exterior finish of the concrete seawall addressing the standards of Sec. 6.2.2 (m), *Landscaping, Fencing, & Retaining Walls*.
- 2. **Prior to release of the zoning permit**, zoning application for the adjacent property at 42 Sunset Cliff Road shall be filed for the seawall construction extending onto that property.
- 3. Demolition of the existing home requires addressing the housing replacement standards of Article 9. Construction of a replacement home on the property within the 3-year span of this demolition permit satisfies housing replacement. In the event that this does not occur, then the housing replacement requirements of Sec. 9.2.5 must be addressed within 1 year of expiration of this demolition permit.
- 4. **Special Flood Hazard Areas** conditions:
  - C. All development:
    - (i) New construction and/or substantial improvements to structures shall be reasonably safe from flooding and be:
      - 1. Designed and adequately anchored to prevent flotation, collapse, or lateral movement during the occurrence of the base flood;
      - 2. Constructed of materials resistant to flood damage;
      - 3. Constructed by methods and practices that minimize flood damage; and
      - 4. 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;
    - (ii) All development shall be designed to minimize flood damage to the proposed development and to public facilities and utilities;
    - (iii) All development shall be designed to provide adequate surface drainage to reduce exposure to flood hazards;
    - (iv) All new construction and substantial improvements that have fully enclosed areas below the lowest floor shall:
      - 1. Be solely used for parking of vehicles, storage, or building access, and such a condition shall clearly be stated on any permits; and,
      - 2. 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;
    - (v) All necessary permits shall be obtained from those governmental agencies from which approval is required by federal or state law.

5. 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.
6. The Applicant/Property Owner is responsible for contacting the VT Department of Health about pre-demolition lead and asbestos assessment of the building.
7. Standard permit conditions 1-15.