

## Department of Permitting & Inspections

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### MEMORANDUM

To: Development Review Board  
From: Ryan Morrison, Associate Planner  
Date: January 22, 2020  
RE: 20-0575CA; 116 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.**

**File:** ZP20-0575CA  
**Location:** 116 Sunset Cliff Road  
**Zone:** RLW **Ward:** 4N  
**Date application accepted:** December 11, 2019  
**Applicant/ Owner:** Bill Hayes / Margaretta and Roderick Egger  
**Parking District:** Neighborhood  
**Request:** Construction of a replacement seawall.

#### **Applicable Regulations:**

Article 2 (Administrative Mechanisms), Article 4 (Zoning Maps & Districts), Article 5 (Citywide General Regulations), Article 6 (Development Review Standards)

#### **Background:**

- **Zoning Permit 94-234;** fenestration and door changes to the south and east elevations of the existing single family residence. Approved November 23, 1993.
- **Zoning Permit 97-595;** renovations to the existing single family residence including building out the entire second floor of the structure, and installation of a fence along the lake frontage of the property (75 ft). Approved July 10, 1997.
- **Zoning Permit 98-136;** amend previously approved renovations and expansion of the existing single family residence to include a porch and additional living space along the front elevation. Approved September 18, 1997.
- **Zoning Permit 99-215;** amend previously approved renovations to the existing single family residence to include a rear shed addition and additional living space over the garage and new shed. Approved October 22, 1998.
- **Zoning Permit 05-047CA;** proposed third story addition and window changes to the existing single family home. Approved August 3, 2004.
- **Zoning Permit 06-496CA;** renovate lakeside façade of existing home and expand deck. Approved February 6, 2006.
- **Non-Applicability of Zoning Permit 14-0823NA;** line existing chimney with sealant, no exterior changes. Approved March 19, 2014.

#### **Overview:**

The applicant is seeking approval to replace a failing concrete seawall with a rip rap seawall. The existing wall was constructed approximately 60 years ago, and is in disrepair with broken parts in the lake and other parts falling over. The new rip rap wall will have pervious voids in it that will allow water to move through it to increase its longevity. As the seawall is located below the 102' elevation, it is subject to review under the special 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, Rebecca Pfeiffer, at VT DEC. A copy of the application was provided to the Coordinator on December 18, 2019. As of the preparation of this report, no response has been provided. Should a response be received by the DRB public hearing date, the conditions and/or recommendations within should be incorporated into the decision.

Given the project location along the Lake Champlain shoreline, review by the Conservation Board is required. That review occurred on January 6, 2020, and the Board voted unanimously (7-0-0) to support the project as proposed.

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

## **I. Findings**

### **Article 2: Administrative Mechanisms**

#### **Section 2.7.8 Withhold Permit**

**Per this standard**, the applicant is required to close out all zoning permits issued after July 13, 1989 prior to issuance of a Certificate of Occupancy for this permit. Immediate review indicates there are 6 zoning permits associated with the property that have not been issued Certificates of Occupancy. See attached list for guidance on open permits. **Affirmative finding as conditioned.**

### **Article 4: Zoning Maps and Districts**

#### **Section 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 existing single family residence will remain unchanged. **Affirmative finding.**

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

The existing lot coverage is 16.2%, significantly less than the 35% maximum allowance. The proposal will result in no increase in lot coverage.

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.**

##### **(c) Permitted and Conditional Uses**

The seawall is accessory to the single family 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.

**Section 4.5.4 Natural Resource Protection Overlay District:**

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

**(4) Requirements**

1. *Any land disturbing activities (i.e., vegetation has been removed, or the landscape has been graded or filled resulting in bare soil surfaces) shall include a stormwater management, erosion prevention and sediment control plan pursuant to the requirements of Sec. 5.5.3 to be reviewed by the conservation board and approved by the city engineer.*

*In making determinations and decisions required herein, the city engineer shall consider the requirements of the most recent State of Vermont Stormwater Management Rules and Guidance document. The city engineer shall require the best practicable means be used to manage stormwater, prevent erosion, and control sedimentation. The city engineer is hereby authorized to develop performance standards to ensure conformance with these state stormwater management rules;*

The project will result in 1,000 sf of land disturbance. Due to the size and location of the seawall, a stormwater management plan is not necessary. The applicant has, however, submitted an erosion prevention and sediment control (EPSC) plan, which is currently under review by the stormwater program manager. It will need to be approved prior to the start of construction. The Conservation Board also reviewed the EPSC as part of their overall project review, held January 6, 2020. The Board voted unanimously to support the project.

**Affirmative finding.**

2. *Agricultural and silvicultural activities shall follow Best Management Practices for the Protection of Water Quality;*

Not applicable.

3. *Installation of any seawalls, rip-rap or other shoreland retention structures shall be submitted for review by the conservation board who shall consult with the city engineer prior to issuance of a recommendation to the DRB; and*

As noted above, the Conservation Board reviewed the application on January 6, 2020, and voted unanimously (7-0-0) in support of the project as proposed. The wall will be reviewed by the city engineer or designee prior to construction via the building permit process. **Affirmative finding.**

4. *No new stormwater outfall shall directly discharge into any surface water without approval and implementation of a stormwater management plan approved by the city engineer.*

No new stormwater outfall is included in this proposal. **Affirmative finding.**

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

**(7) Special Review Criteria**

- A. *The danger to life and property due to increased flood heights or velocities caused by encroachments;*

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 on to other lands or downstream to the injury of others;*

The new seawall will be constructed of Type III rip rap stone with pervious voids in it to allow water to move through it. Behind the rip rap stone will be 2-3" stone backing. There is little danger that the structure will be swept away by flood waters. **Affirmative finding.**

- C. *The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions;*

Not applicable.

- D. *The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;*

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

- E. *The importance of the services provided by the proposed facility to the community;*

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 not subject to flooding for the proposed use;*

The point of the seawall is to protect the property from flood damage. Its placement within the flood zone is key to this function. Its location within the floodplain is acceptable.

**Affirmative finding.**

*G. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;*  
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 single family residence. 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 in times of flood or ordinary and emergency vehicles;*  
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, and sediment transport of the floodwaters expected at the site; and*  
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 of this ordinance.*  
See Articles 2, 3, 4, 5, and 6 of these findings.

## **Article 5: Citywide General Regulations**

### **Section 5.2.3 Lot Coverage Requirements**

See Sec. 4.4.5 (b) above.

### **Section 5.2.4 Buildable Area Calculation**

Not applicable.

### **Section 5.2.5 Setbacks**

See Sec. 4.4.5 (b) above.

### **Section 5.2.6 Building Height Limits**

See Sec. 4.4.5 (b) above.

### **Section 5.2.7 Density and Intensity of Development Calculations**

Not applicable.

### **Section 5.5.1 Nuisance Regulations**

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

### **Section 5.5.3 Stormwater and Erosion Control**

The applicant has submitted an erosion prevention and sedimentation control plan for the project. The site contractor will install EPSC measures to keep everything onsite. The Conservation Board reviewed the project and has recommended approval as proposed. The Stormwater Program

Manager is currently reviewing the EPSC plan and construction may not commence until it is approved. Due to the size and location of the project, a stormwater plan is not necessary.

**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. The shoreline is identified as a 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. As required, an erosion control plan is under review by the stormwater program manager and must be approved prior to the start of construction. The Conservation Board reviewed this project on January 6, 2020. The Board voted unanimously to support the project as proposed.

**Affirmative finding.**

*b) Topographical Alterations*

A fairly steep bank separates the lake from the house site and lawn area. There will be some excavation of the slope, enough to accommodate the new seawall. **Affirmative finding.**

*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*

Not applicable.

*l) Parking and Circulation*

Not applicable.

*m) Landscaping and Fences*

No new landscaping is included in this proposal.

*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**, the applicant shall confirm the vertical elevation datum used for the site plans (i.e. NGVD 1929 or NAVD 1988)
2. **Prior to release of the zoning permit**, the applicant shall delineate the boundary of the FEMA Base Flood Elevation (BFE) on the site plan for reference. The BFE for Lake Champlain is 101.6' (NAVD) or 102' (NGVD).
3. **Prior to the start of construction**, the associate EPSC plan shall be approved by the Stormwater Program Manager.
4. All permits issued after July 13, 1989 shall be closed out with issuance of Final Certificates of Occupancy prior to request for a FCO for this development. See attached list for guidance on open permits.
5. In all **Special Flood Hazard Areas** (including Floodway areas) such conditions require that:

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.
- 6. Construction hours shall be limited to Monday – Friday from 7:30 AM – 5:30 PM. Saturday construction may occur as allowed by the DRB. No construction activity on Sunday.
- 7. Any proposed alteration or enlargement of seawall and/or the staircase will be subject to DRB review and approval.
- 8. 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.
- 9. Standard Permit Conditions 1-15.