

Department of Planning and Zoning

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MEMORANDUM

To: Development Review Board
From: Ryan Morrison, Associate Planner
Date: October 3, 2017
RE: ZP18-0222CA; 2-14 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.

File: ZP18-0222CA

Location: 2-14 King Street

Zone: DW-PT **Ward:** 3C/5S

Date application accepted: August 25, 2017

Applicant/ Owner: Lake Champlain Transportation Company

Request: Removal of 5,000 gallon partially underground fuel tank, piping, and 3 concrete islands for dispensers. Installing a 10,000 gallon above ground fuel tank with a concrete pad, anchor bolts, new piping, and 3 islands for dispensers. Also, install 12 concrete filled bollards surrounded by a wooden fence.

Applicable Regulations: Article 2 (Administrative Mechanisms), Article 4 (Zoning Maps & Districts), Article 5 (Citywide General Regulations), Article 6 (Development Criteria & Guidelines)

Background:

- Zoning Permit 17-0974CA/CU; Install exterior removable deck panels and retractable awning. Remove three windows in front of building. Approved May 23, 2017.
- Zoning Permit 16-0808CA/CU; Replace ticket booth, flood plain area. Approved March 7, 2016.
- Zoning Permit 13-1051NA; Replace existing painted mural on western wall of Woodbury building with new painted mural. Approved May 2013.
- Zoning Permit 12-0968SN; Installation of one parallel, non-illuminated sign for the Lake Monsters Team Headquarters. Approved April 2012.
- Zoning Permit 11-1054NA; Repair of building due to flood. Approved June 2011.
- Zoning Permit 10-0482CA; Add trussed gable roof over top of existing flat roof section of Ferry Office. Siding to be T111 to match existing. Approved November 2009.
- Zoning Permit 08-532CA; Convert 1,120 sf +/- of retail space to office space. Approved February 2008.

- Zoning Permit 05-412CA; Roof renovations to create 3/12 pitch roof over flat roofs. Approved February 2005.
- Zoning Permit 04-483; Installation of ticket window. Approved April 2004.
- Zoning Permit 03-515; Phase 1 of COA 03-034 / ZP# 03-328. Excavate sandy gravel mix in parking area. Excavate and install five 20 ft tall pole lights with shoe box style 150-watt metal halide fixtures. Install new sur pac crushed stone to replace gravel mix. Approved May 2003.
- Zoning Permit 03-328; Replace existing café and grill building (Breakwaters) with new 6,870 sf building with 3 ft high seawall base and an increase in seating for café and grille use. Approved February 2003.
- Zoning Permit 01-321; Installation of three signs for the existing maritime museum. One sign – a new face in an existing internally illuminated rooftop mounted frame; one non-illuminated parallel sign, measuring 10' x 12'; and one non-illuminated freestanding sign as entry gate to the museum. Approved February 2001.
- Zoning Permit 01-317; Change of use from vacant commercial (boat storage and lumber warehouse) to Lake Champlain Maritime Museum. No exterior changes proposed; boat reconstruction conducted within existing structure. Approved February 2001.
- Zoning Permit 01-103; Installation of a non-illuminated historical interpretive marker (Steamboats and Shortcuts), 2' x 3', at the King Street ferry dock. Approved August 2000.
- Zoning Permit 00-502; Change of use from a portion of the existing retail space into a convenience food/Creemee stand at the existing ferry dock structure. Proposal includes replacing the existing t1-11 with vinyl siding and replacing the chain link fencing with 5' Stockade style fencing. Approved May 2000.
- Zoning Permit 99-555; Amend previously approved ZP #99-348 for 5 finger docks, to include a marine gas float extension. Approved June 1999.
- Zoning Permit 99-348; Installation of five (5) finger docks along the west side of the existing King Street ferry dock facility. Approved February 1999.
- Zoning Permit 96-196; Installation of vertical metal siding to match existing on the open end of the maintenance shed. Proposal includes installation of two overhead garage doors. Approved October 1995.
- Zoning Permit 94-200; Construction of a 20' x 20' single story unheated storage shed, sided with T1-11, for the existing Lake Champlain Transportation Company. Approved.
- Zoning Permit 92-254; Construction of a handicapped accessible bathroom, with ramp, as an addition to the existing ferry terminal and office. Approved April 1992.
- Zoning Permit 91-354; Construction of a 12' x 16' structure to house refrigeration and freezer units directly in front of The Crossing's restaurant. Materials to match existing. Approved May 1991.

Overview: The applicant seeks approval to remove an existing 5,000 gallon fuel tank and its associated piping and concrete dispenser islands, and replace it with a 10,000 gallon, above

ground fuel tank. The project will have an associated concrete pad, anchor bolts, piping, and 3 dispenser islands. 12 concrete bollards and a wooden fence are also proposed to surround the tank.

The site is located within the Special Flood Hazard Area (SFHA), Zone AE – base flood elevation 102’ above sea level. The elevation at the existing fuel tank is approximately 98’ above sea level. This application is subject to review under the SFHA 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 1, 2017. A response has not yet been received. Any comments received within the 30 day review period will be incorporated into this approval.

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

I. Findings:

Article 2: Administrative Mechanisms

Part 7: Enforcement

Sec. 2.7.8, Withhold Permit

Nineteen zoning permits have been approved for the subject property. Less than half have final certificates of occupancy. Per this criterion, all prior zoning permits requiring certificates of occupancy must be closed out with final certificates of occupancy prior to closing out this new zoning permit. **(Affirmative finding as conditioned)**

Article 4: Zoning 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 DW-PT zone. This zone 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. Strong emphasis is placed on enhanced public access to the lakeshore. The overall use of the property is consistent with the intent of the underlying zone, and fuel tanks serve an integral function for daily operation. **(Affirmative finding)**

(b) Dimensional Standards & Density

Table 4.4.1-1 Dimensional Standards and Intensity

Commercial density/intensity limitations are not applicable as they are based on the floor area ratio of a structure. The fuel tank has no floor area.

Property line setbacks are not applicable here as the fuel tank is located in an area of the property that borders the Lake Champlain shoreline and the ferry queue lines (not a public street). However, a shoreline setback is applicable – see Sec. 4.4.1 (d) 5 below. Additionally, the height

of the replacement fuel tank will be far below the 35 ft height maximum. Finally, the underlying zone allows for 100% lot coverage. **(Affirmative finding)**

(c) Permitted and Conditional Uses

The fuel tank is accessory to the existing, permitted ferry terminal use. See Sec. 4.4.1 (d) (2) (b) below. **(Affirmative finding)**

(d) District Specific Regulations

1. Use Restrictions

No ground floor residential uses are being sought. **(Not applicable)**

2. Public Trust Restrictions

(b) Permitted Uses: Maple to Main Street

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 are uses permitted in the DW-PT district between Maple Street and Main Street. The associated fuel tank is a permitted use. **(Affirmative finding)**

3. Facades and Setbacks on Side and Rear Property Lines

No reduced setbacks are being sought. **(Not applicable)**

4. Building Height Setbacks

No exceptions to the building height setbacks are proposed. **(Not applicable)**

5. Lake Champlain Waterfront Setback

The existing, partially underground fuel tank is approximately 9 feet from the Lake Champlain shoreline, well within the 50 ft setback from the Lake Champlain mean high water mark. The replacement tank will maintain the same setback as existing. **(Affirmative finding)**

a. Additions to Existing Structures

Where a structure, existing as of the effective date hereof, encroaches into the required waterfront setback, no additions to or replacement of that structure may further encroach into the required setback beyond the footprint of the existing building.

While the project is a complete replacement, not an addition to the existing fuel tank, the replacement fuel tank will maintain the same setback from the high water mark as the existing fuel tank, approximately 9 ft. **(Affirmative finding)**

b. Averaging of Setbacks

If the waterfront setback of principle structures on adjacent lots, existing as of the effective date hereof, within a distance of one hundred fifty (150) feet on either or both sides of a lot encroaches into the waterfront setback, the required setback may be reduced to the average setback of such structures.

Due to the shape and orientation of the subject property, there are no adjacent properties from which to take an average building setback and apply it to the fuel tank setback. However, the existing marina building immediately adjacent to the existing fuel tank encroaches further toward the waterfront. **(Affirmative finding)**

6. Residential District Setback

No residential districts about the subject property. **(Not applicable)**

7. Development Bonuses/Additional Allowances

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

Sec. 4.5.4, Natural Resource Protection Overlay District:

(f) District Specific Regulations: Special Flood Hazard Area

3. Permitted Uses in Special Flood Hazard Areas (including Floodway areas)

A. All those permitted open space uses as listed in Section 4.5.4(f).2 above shall be permitted in the Special Flood Hazard Areas.

B. All other uses permitted in the underlying zoning district are permitted only upon review and approval by the DRB as per subpart 7 below.

As stated in Sec. 4.4.1(d).2 above, facilities for transporting pedestrians and vehicles upon Lake Champlain by ferry and cruise vessels, including necessary docks, wharfs, maintenance facilities, administrative offices, etc. are permitted within the Maple to Main Street section of the DW-PT zoning district. **(Affirmative finding)**

7. Special Review Criteria

A. The danger to life and property...

The replacement fuel tank (27' 3" x 91") will occupy less area than the current partially underground fuel tank. The applicant intends to anchor the new tank to prevent potential flotation during a flooding event, in accordance with NFIP (National Flood Insurance Program) standards. Under NFIP requirements, all new construction and substantial improvements, both elevated and floodproofed, be adequately anchored to prevent flotation, collapse, or lateral movement during flooding events. While the underlying concrete pad will encompass a larger area, it will be on the existing grade and will not create danger to life and property. The associated fuel dispensers, bollards, and fence will need to be anchored to the ground. Electrical supply will be require to be designed and/or located to prevent water from entering or accumulating within the components during flooding events. **(Affirmative finding as conditioned)**

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

See Sec. 4.5.4 (f) (7) (A) above. It is a specific NFIP requirement that new construction and/or substantial improvements to structures be designed and adequately anchored to prevent flotation, collapse, or lateral movement during the occurrence of a flooding event. **(Affirmative finding as conditioned)**

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

No new water supply or sanitation systems are proposed. **(Not applicable)**

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

See Sec. 4.5.4 (f) (7) (A) above. The fuel tank itself is water resistant. **(Affirmative finding)**

E. The importance of the services provided...

The proposed fuel tank replacement will continue to play a vital role in the overall operations of the Lake Champlain ferry terminal. **(Affirmative finding)**

F. The availability of alternative locations...

Almost the entire property is located within the SFHA. The location of the fuel tank and dispensers are specifically needed to be near the waterfront. Building within the SFHA is acceptable as long as the requirements of this section, as well as those of the NFIP, are met. **(Affirmative finding)**

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

The proposal is to replace an integral part of an historic Lake Champlain ferry terminal. This terminal has been a staple of the area since the early-1800s, and will remain so well into the future. **(Affirmative finding)**

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

Insofar as Lake Champlain transportation facilities are a permitted use in the DW-PT zone, and insofar as the replacement fuel tank will be constructed as required by floodplain regulations, the proposed tank can be found in compliance with the Municipal Development Plan. **(Affirmative finding)**

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

The property is generally between the 98' and 102' contour lines. Development already extends across this elevation range throughout the site. The existing, partially underground, fuel tank is approximately 98 ft above sea level. A significant flood could result in inundation of a few feet, so emergency vehicle access to all areas of the property could prove difficult; however, the replacement fuel tank is not creating a situation that does not already exist. Emergency vehicle access to this site during times of flooding is via King Street. King Street rises in elevation steadily as one travels eastward from the subject site. **(Affirmative finding)**

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

The maximum regulatory flood elevation along the lakeshore is 102' above sea level. High-velocity wave action could pose a threat to the integrity of the fuel tank, dispensers and fence, and as such, should be examined as part of an engineer's or architect's evaluation of the structure. 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 as a result of lake flooding is minimal. In an effort to avoid the harmful effects of flood waters at the site, the applicant proposes to provide anchoring to prevent transport of the materials in case of a flood event. **(Affirmative finding as conditioned)**

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 Sec. 4.4.1 (b) above.

Sec. 5.2.4, Buildable Area Calculation

Not applicable.

Sec. 5.2.5, Setbacks

See Sec. 4.4.1 (d) (5) above.

Sec. 5.2.6, Building Height Limits

See Sec. 4.4.1 (b) above.

Sec. 5.2.7, Density and Intensity of Development Calculations

See Sec. 4.4.1 (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

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

Sec. 5.5.3, Stormwater and Erosion Control

The existing fuel tank is surrounded by asphalt. The new tank will situate itself on a new concrete pad, and continue to be surrounded by asphalt. The project will not result in new impervious surfaces. **(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

Nothing about the site will change considering this is a replacement project. **(Affirmative finding)**

Part 3, Architectural Design Standards

Sec. 6.3.2, Review Standards

(a) Relate development to its environment

1. Massing, Height, and Scale

The replacement fuel tank (27' 3" x 91", 8' 6" tall) will have a near identical appearance to the other existing above ground fuel tank located within a few feet to the south. **(Affirmative finding)**

2. Roofs and Rooflines

Not applicable.

3. Building Openings

Not applicable.

(b) Protection of important architectural resources

There are no historic structures on or near the subject property. **(Affirmative finding)**

(c) Protection of important public views

The replacement tank will be 8' 6" in height. Important public views will not be impacted. **(Affirmative finding)**

(d) Provide an active and inviting street edge

Not applicable.

(e) Quality of materials

The tank will be made of a mild carbon steel. The dispensers have cabinet panels that are galvanized steel and supports that are galvanized steel. The proposed fence will be constructed out of wooden fir slats. **(Affirmative finding)**

(f) Reduce energy utilization

Not applicable.

(g) Make advertising features complimentary to the site

No advertising features are included with the proposal. Not applicable.

(h) Integrate infrastructure into the building design

The new tank will be screened by an 8' tall solid wood fence. **(Affirmative finding)**

(i) Make spaces safe and secure

The new tank will be protected by surrounding concrete bollards and a wooden fence. **(Affirmative finding)**

II. Conditions of Approval

1. Per **Section 2.7.8, Withhold Permit**, all zoning permits issued after July 13, 1989 must be closed out (issued a Certificate of Occupancy) prior to issuance of a Final Certificate of Occupancy for this permit. See attached permit list.
2. This approval incorporates timely comments and stipulations issued by the State National Floodplain Insurance Program Coordinator at VT DEC as related to this project.
3. 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 state or federal permit(s) as may be required, and shall meet all energy efficiency codes as required.
4. Special Flood Hazard Area Conditions as per Sec. 4.5.4 (f) 8:
In all Special Flood Hazard Areas (including Floodway areas) conditions require that:
 - 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 be obtained from those governmental agencies from which approval is required by federal or state law.
- D. Residential Development:
- (i) Not applicable
- E. Non-Residential Development:
- (i) 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.
- F. Water Supply Systems:
Not applicable.

- G. On-Site Waste Disposal Systems:
Not applicable.
- H. Recreational Vehicles:
Not applicable.
- 5. Standard permit conditions 1-15