

Department of Planning and Zoning

149 Church Street
Burlington, VT 05401
<http://www.burlingtonvt.gov/PZ/>
Telephone: (802) 865-7188
(802) 865-7195 (FAX)

David E. White, AICP, Director
Meagan Tuttle, Comprehensive Planner
Jay Appleton, Senior GIS/IT Programmer/Analyst
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Ryan Morrison, CFM, Associate Planner
Layne Darfler, Planning Technician
Anita Wade, Zoning Clerk



MEMORANDUM

To: Development Review Board
From: Ryan Morrison, Associate Planner
Date: July 18, 2017
RE: ZP17-1024FC/CU; 128 Lakeside Avenue

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: ZP17-1024FC/CU

Location: 128 Lakeside Avenue

Zone: ELM **Ward:** 5S

Date application accepted: April 27, 2017

Applicant/ Owner: Fortieth Burlington, LLC

Request: Install a new fence on the east side of an existing parking lot, partially located within the Wetland Conservation Zone.

Applicable Regulations: Article 3 (Applications, Permits, & Project Reviews), Article 4 (Zoning Maps & Districts), Article 6 (Development Review Standards)

Background:

- Zoning Permit 90-162; Renovations to existing building to allow crane equipment to operate within. Renovations to façade, with new treatment and height increases on south side specifically for the cranes. Approved April 1990.
- Zoning Permit 91-034; Install 13.2KV service entrance to main plant. 17ft x 73ft concrete vault for new equipment. Pad to be brick faced on east side. Overall height to be 14ft. Approved July 1990.
- Zoning Permit 92-127; Reside existing 12' x 14' shed adjacent to boiler room and chimney with wood clapboard siding. Approved October 1991.
- Zoning Permit 92-156; Installation of 31' high filter structure on a concrete pad in the interior corner of the north side of building 22. Existing 32' high demister exhauster to be removed. Approved October 1991.
- Zoning Permit 92-198; Replacement of glass doors with turnstyles faced with clear lexan in the existing personnel entrance at general electric. Mass remains the same, with all work being performed on the existing asphalt and concrete surface covering. Approved December 1991.
- Zoning Permit 94-079; Landscape and handicap access improvements to the existing visitor entry at Martin Marietta Plant. Approved August 1993.

- Zoning Permit 94-196; Installation of a non-illuminated freestanding sign for the existing Martin Marietta Plant. Sign to be an element of the handicapped accessible courtyard fencing. All other signs to be removed from the plant, with this being the only sign for the site. Approved October 1993.
- Zoning Permit 01-455; Rehabilitation to the existing office and light manufacturing plant, which include the demolition of the rear sawtooth structure and miscellaneous site improvements. Approved June 2001.
- Zoning Permit 01-455A; Phase 1 of COA 01-032; demolition of the rear sawtooth building and site improvements to facilitate the rehabilitation of the existing manufacturing plant. Approved June 2001.
- Zoning Permit 03-151; Installation of approximately 358 linear feet of 8' high dark brown chain link fence with vinyl slats. Approved September 2002.
- Zoning Permit 04-147; Expansion of building 21, at the Innovation Center of Vermont, and associated site modifications. The proposed addition will have a total square footage of 14,880, including the first floor (10,444 sf) footprint with a mezzanine (4,316 sf and an additional 120 sf anticipated on the mezzanine level). Approved August 2003.
- Zoning Permit 06-078CA; Installation of new windows on east façade, third and fourth floors – continuation of work from COA 01-032 and ZP #01-455. Approved August 2005.
- Zoning Permit 07-215CA; Add 12' x 24' storage shed. Approved September 2006.
- Zoning Permit 08-133CA; Installation of 12 panel antennas above the elevator machine room on the roof of this building. Addition of a 12' x 30' equipment shelter. Approved August 2007.
- Zoning Permit 08-327CA; New generator and associated exterior pad, 11' x 5' footprint. Approved October 2007.
- Zoning Permit 09-449SN; Freestanding sign for General Dynamics, reusing existing sign structure in same location. 92" x 72" high (46 sq ft). Approved December 2008.
- Zoning Permit 09-666CA; Permanent placement of two storage containers within existing fenced compound. Approved April 2009.
- Zoning Permit 11-0578CA; New windows, vestibule and ramp associated with change of use (approx. 5,300 sq ft) from office to medical offices. Approved January 2011.
- Zoning Permit 11-0636CA; Install eight skylights in roof of building 15. Approved March 2011.
- Zoning Permit 11-0661CA; Install two rooftop units on building 15 for medical offices. Exterior gas meter to be installed on north side of building. Approved March 2011.
- Zoning Permit 11-0783CA; Removal of small brick addition; return to grass. Sidewalk, slab, condensing unit to be removed. Windows to be re-installed, sills repaired. Approved April 2011.
- Zoning Permit 11-0976CA; New RTV unit on roof, new intake, new skylights, remove two existing wood structures. Approved May 2011.

- Zoning Permit 12-0612CA; Construct new accessory shelter structure on west side of property. Approved December 2011.
- Zoning Permit 12-1177CA; Install condenser on ground on west side of building and new hood exhaust vent on roof. Approved June 2012.
- Zoning Permit 13-0744CA; Install new window in existing infilled second floor window opening to match existing windows. Approved February 2013.
- Zoning Permit 13-0769SN; Replace existing freestanding directory sign with new larger directory sign for the Innovation Center of Vermont. Approved March 2013.
- Zoning Permit 13-0984CA; Installation of radio antenna on building rooftop with associated cable. Approved May 2013.
- Zoning Permit 13-1304CA; Renovation of building 21 to become all office space, removal of overhead doors, new windows and replacement windows and new mechanical equipment. Approved July 2013.
- Zoning Permit 14-0235CA; Install metal egress stair on north side of building. Approved September 2013.
- Zoning Permit 14-0649SN; Install new parallel sign for Dealer.com. No illumination included. Approved December 2013.
- Zoning Permit 14-0907CA; Install two ground mounted electric vehicle charging stations at rear of 128 Lakeside Avenue building. Approved April 2014.
- Zoning Permit 15-0060CA; Remove plywood and install windows in existing openings on toilet tower. Approved July 2014.
- Zoning Permit 15-0261CA; Temporary placement of zero energy mobile home replacement unit/Efficiency Vermont. Approved August 2014.
- Zoning Permit 15-0626CA; Installation of new windows and skylights for existing commercial space. Approved November 2014.
- Non-Applicability of Zoning Permit 15-0940NA; Replacement sign, no change in size or materials, for UVM Medical Center Community Health Improvement. Issued April 2015.
- Zoning Permit 17-0619CA; Parking control gate at east and west drives for Fortieth Burlington LLC. Approved December 2016.

Overview: The applicant seeks approval to construct an 8 ft tall, +/- 130 ft long fence along the east side of an existing parking lot. To the east of the parking lot is a swath of land approximately 30' wide, and a salt storage building on the adjacent DPW property (645 Pine Street). Within this area is a man-made ditch. The purpose of the fence is to replace a dense, tall Arborvitae hedge that provided visual screening. A portion of the proposed fence is situated within the Wetland Conservation Zone associated with a wetland on the adjacent DPW property.

The property currently contains a mix of office and institutional uses, with an accessory parking lot of significant size (approx. 720 spaces). Eastern portions of the existing parking lot encroach into the subject Wetland Conservation Zone. The wetland itself, has been designated as a Class

Two wetland, which has a 50-foot buffer, per State regulations. Sec. 4.5.4 (b) (2) CDO designates uplands within 100 feet of a wetland as a Wetland Conservation Zone, and subject to the regulations of Sec. 4.5.4 (d) – District Specific Regulations: Wetland Conservation Zone. The wetland report prepared by Oakledge Environmental Services, Inc. states that the northern tip of the fence will be located approximately 100 feet from the wetland boundary at its closest point. Conditional use review of this proposal is triggered solely due to the wetland.

The Conservation Board reviewed this application on July 10, 2017 and voted 6-0 to recommend approval of the project as proposed. The applicant’s wetland consultant noted that an on-the-ground assessment indicated that the fence may actually be just beyond the 100’ wetland buffer boundary.

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

I. Findings:

Article 3: Applications, Permits, and Project Reviews

Part 5, Conditional Use & Major Impact Review

Sec. 3.5.6, Review Criteria

(a) Conditional Use Review Standards

1. *Existing or planned public utilities, facilities or services are capable of supporting the proposed use in addition to the existing uses in the area;*

The proposed fence will not increase existing demands on community utilities, facilities or services. **(Affirmative finding)**

2. *The character of the area affected;*

The Enterprise Light Manufacturing (ELM) zone dominates the surrounding area. Existing development in the area is consistent with the purpose of the zoning district, which is intended to be the primary commercial/industrial center of Burlington. The proposed fence will not change the existing use of the property, nor will it alter the character of the neighborhood. **(Affirmative finding)**

3. *The proposed use will not have nuisance impacts from noise, odor, dust, heat and vibrations greater than typically generated by other permitted uses in the same zoning district;*

Nuisance impacts will remain unchanged. **(Affirmative finding)**

4. *Transportation system capable of supporting the proposed use;*

Transportion system impacts will remain unchanged. **(Affirmative finding)**

5. *Utilization of renewable energy resources;*

Not applicable.

6. *Bylaws then in effect;*

As conditioned, the project complies with all applicable bylaws. **(Affirmative finding)**

(c) Conditions of Approval

In addition to imposing conditions of approval necessary to satisfy the General Standards specified in (a) or (b) above, the DRB may also impose additional conditions of approval relative to any of the following:

1. Mitigation measures, including but not limited to screening, landscaping, where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area.

The proposed development is not expected to generate offsite noise or glare. **(Affirmative finding)**

2. Time limits for construction.

The fence will be constructed in a single phase within the standard 2-year time frame. Therefore, no phasing schedule or special time limits on construction are needed. **(Affirmative finding)**

3. Hours of operation and/or construction to reduce the impacts on surrounding properties.

No hours of construction are noted in the application. Days and hours of construction are limited to Monday – Friday 7:00 AM – 5:00 PM. Saturday construction within those hours may be allowed upon request to the DRB. No construction activity on Sunday.

(Affirmative finding as conditioned)

4. That any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions; and,

Any future enlargement or alteration of the fence will be reviewed under the zoning regulations in effect at that time. **(Affirmative finding as conditioned)**

5. Such additional reasonable performance standards, conditions and safeguards, as it may deem necessary to implement the purposes of this chapter and the zoning regulations.

To be addressed in conditions of approval

Article 4: Zoning Maps & Districts

Sec. 4.4.3, Enterprise Districts:

(a) Purpose

(1) Light Manufacturing (ELM)

The subject property is located in the ELM zone. This zone is the primary commercial/industrial center of Burlington, and is intended primarily to accommodate enterprises engaged in the manufacturing, processing, distribution, creating, repairing, renovating, painting, cleaning, or assembly of goods, merchandise, or equipment without conflict from interspersed residential uses. This district is intended to ensure that sufficient land area is appropriately designated within the city to provide an adequate and diversified economic base that will facilitate high-density job creation and retention. The existing mixed use of the subject property fits within the purpose of the underlying zone. The proposed fence will not change the use of the property.

(Affirmative finding)

Sec. 4.5.4, Natural Resource Protection Overlay District:

(b) Areas Affected

2. *A Wetland Conservation Zone which consists of wetlands and a corresponding upland buffer area for the following areas:*

A. Uplands within 100 feet of all wetlands depicted in Map 4.5.4-1, Natural Resource Protection Overlay District except in cases where the State of Vermont has established greater buffer zone width.

According to Map 4.5.4-1 and the City's GIS mapping, the proposed fence location is within the mapped Wetland Conservation Zone. As a result, construction of the fence is subject to the review criteria of Sec. 4.5.4 (d) – District Specific Regulations: Wetland Conservation Zone.

(Affirmative finding)

(d) District Specific Regulations: Wetland Conservation Zone

(4) Conditional Uses

Except where noted herein, all uses permitted or conditionally permitted in the respective underlying zoning district, including the list of activities below, may be approved within a wetland and its buffer zone after review and approval pursuant to the Conditional Use Review provisions of Article 3 and subject to the requirements and limitations set forth below under Subpart 6 below.

A. The construction of buildings or other structures, and roads, parking areas or other impervious surface.

An approximate portion of the proposed fence lies within the Wetland Conservation Zone, and is subject to conditional use review. See Article 3 above. **(Affirmative finding)**

(6) Criteria for Review

In granting, denying, or conditioning any permit involving a wetland, vernal pool or respective buffer zone, the DRB, in consultation with the conservation board, will consider the project's impact on the functions and values of the wetland, and the measures that the applicant has incorporated into the project to avoid and minimize impacts. The DRB shall only approve a project having an impact on a wetland or wetland buffer zone if an applicant can demonstrate that any adverse impact is de minimus on the significant functions and values of the wetland including:

The proposed fence is not located in the actual subject wetland, nor is it, as the applicant states, within the State regulated 50-foot buffer. According to Map 4.5.4-1 – Natural Resources Overlay District, and the City's GIS program, a portion of the fence is located within the Wetland Conservation Zone, which consists of any area 100 feet upland of a recognized wetland. The applicant states that the GIS mapping of the subject wetland is not entirely accurate, and that it is actually located further to the north, which pushes the boundary of the Wetland Conservation Zone to the north as well, resulting in the applicant's conclusion that, if anything, only an approximate portion of the northern tip of the fence may lie within the Wetland Conservation Zone. However, a new delineation was not conducted and therefore, the applicants are pursuing the conditional use permit to allow the fence.

A. Water storage for floodwater and stormwater;

The only ground disturbance will result from excavation for the fence posts, and the design of the fence itself will allow floodwater to pass, although at a slightly reduced rate, should there ever be flooding. No adverse impacts to floodwater and stormwater are anticipated.

(Affirmative finding)

B. Erosion and sedimentation control through binding and stabilizing the soil or shoreline;
The very minor ground disturbance (postholes) will not create erosion or sedimentation runoff that will negatively affect the wetland and its functions. **(Affirmative finding)**

C. Surface water and groundwater protection, including sediment and toxicant retention, nutrient retention and transformation, and groundwater discharge and recharge;
The fence is not anticipated to negatively impact surface and ground water protection. **(Affirmative finding)**

D. Fisheries habitat;
The applicant states that fisheries habitat is either absent or would be affected de minimis as a result of the new fence. It is clear that the fence location is outside the actual wetland, and its State regulated 50 ft buffer. **(Affirmative finding)**

E. Wildlife Habitat;
The applicant states that the wetland contributes to wildlife habitat due to its proximity to the Barge Canal wetland located a short distance to the north. The proposed fence will locate between a large mixed-use development and the adjacent DPW complex, an area unlikely of supporting wildlife habitat or a corridor. **(Affirmative finding)**

F. Examples of natural community types that are exemplary, rare, or make an important contribution to the natural heritage of Burlington and Vermont;
The wetland consultant notes that the wetland does not have any exemplary natural community types. Further to the south, where the fence is proposed, there is even less likelihood of there being exemplary natural community types. **(Affirmative finding)**

G. Habitat for rare, threatened and endangered species;
There are no identified rare, threatened or endangered species on the property. **(Affirmative finding)**

H. Education and research in natural sciences;
The fence will not be a detriment to any potential education or research in natural sciences. **(Affirmative finding)**

I. Recreational and economic benefits; and
The area of the proposed fence has no recreation or economic benefits. **(Affirmative finding)**

J. Open space and aesthetics.
The fence will not be a detriment to the area's aesthetics as it will provide a visual barrier between the subject property and the adjacent salt storage building on the adjacent property. **(Affirmative finding)**

In addition, the review of a project involving a wetland or wetland buffer zone shall also be subject to the following requirements and limitations:

K. 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;

As the proposal will not exceed 400 sf in ground disturbance, an EPSC plan is not required.

(Affirmative finding)

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

The proposal is not subject to the requirements of Sec. 5.5.3. **(Affirmative finding)**

M. No installation of docks, rip-rap or other shoreline stabilization features shall be installed without review approval by the city engineer;

Not applicable.

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

Not applicable.

O. Stormwater management, erosion, and sedimentation control plans shall be submitted for review by the conservation board who shall consult with the development review board and city engineer prior to issuance of a recommendation to the city engineer who shall render a final decision on such plans.

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 and control erosion and sedimentation and the city engineer is hereby authorized to develop performance standards to ensure conformance with these state stormwater management rules.

The Conservation Board reviewed the application on July 10, 2017, and voted unanimously (6-0) to approve the application as proposed, based on the appearance that only an approximate portion of the northern tip of the fence may be located within the Wetland Conservation Zone. Due to the minimal ground disturbance for the post holes, the Board had no concerns for the fence. **(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

(m) Landscaping and Fences

Fences may be placed within a required setback along a property line, but shall be setback sufficiently to provide for the maintenance of both sides of the fence without entering onto the adjacent property and shall present a finished side to the adjoining property and public street.

As a condition of approval, the fence will need to be setback sufficiently from the property line to provide for the maintenance of both sides without entering onto the adjacent property, and it will need to present a finished side to the adjoining property. **(Affirmative finding as conditioned)**

Part 3: Review Standards

Not applicable.

II. Conditions of Approval

1. The fence shall be setback sufficiently to provide for the maintenance of both sides without entering onto the adjacent property.
2. The fence shall present a finished side to the adjoining property.
3. Days and hours of construction are limited to Monday – Friday 7:00 AM – 5:00 PM. Saturday construction within those hours may be allowed upon request to the DRB. No construction activity on Sunday.
4. Any future enlargement or alteration of the fence shall be reviewed under the zoning regulations in effect at that time.
5. The Applicant/Property Owner is responsible for obtaining all necessary Building Permits through the Department of Public Works as well as other state or federal permit(s) as may be required.
6. Standard permit conditions 1-15.

