

## Department of Planning and Zoning

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**TO:** Development Review Board  
**FROM:** Scott Gustin  
**DATE:** December 5, 2017  
**RE:** 17-1150CA; 3163 North Avenue (amendment)

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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: RL-W Ward: 7N

Owner/Applicant: John Shappy

**Request:** Amend permit approval for concrete pad and deck within lakeshore and wetland buffer to include an existing seawall.

### **Applicable Regulations:**

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

### **Background Information:**

The applicant is seeking to amend a recent zoning permit approval for an existing concrete pad and deck along the lakeshore to also include an existing seawall. The applicant mistakenly did not include the seawall in the prior application materials. No new construction is proposed. The only change incurred in this amendment is inclusion of the seawall in the site plan.

The Conservation Board reviewed this amendment at their November 6, 2017 meeting and recommended approval as is. The Board considered impacts to the lakeshore buffer and wetland buffer affecting this parcel and determined little in the way of impacts. The applicant has also reviewed the proposal with the State Wetlands Office. As the seawall extends below the 102' elevation into the Special Flood Hazard Area, review under Sec. 4.5.4 (f) *Special Flood Hazard Area* is necessary. A copy of the amendment was forwarded to the state's River Corridor and Floodplain Protection Program as required on October 24, 2017. No comments from this state office were received within the 30-day comment period.

Previous zoning actions for this property are noted below:

- 9/19/17, Approval for concrete pad and deck within lakeshore and wetland buffer

**Recommendation:** Consent 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) Residential Low Density – Waterfront (RL-W)***

The Residential Low Density –Waterfront (RL-W) district is intended primarily for low-density residential development in the form of single detached dwellings and duplexes with consideration given to design review. The district is typically characterized by a compact and cohesive residential development pattern reflective of the respective neighborhood’s development history. The use of the property, for seasonal lakeshore access, is effectively accessory to the property owner’s nearby single family dwelling. **(Affirmative finding)**

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

Inclusion of the seawall with the concrete pad and deck increases lot coverage to 13.6%, well below the 35% maximum permissible.

The concrete pad is 55’ from the 100’ elevation along the lakeshore. The 55’ setback is acceptable under Sec. 4.4.5 (d) 1 B (ii) which allows averaging the waterfront setback of existing principal structures within 150’ of the subject property. In this case, the existing primary structure to the north is also setback 55’ from the 100’ elevation. The seawall is allowed to encroach into the lakeshore setback.

At 10% of the lot width, a ~3’ side yard setback applies. The structures are set back 6’ or more from the nearest side property line. The front yard setback is based on the average of neighboring properties +/- 5.’ In this case, there is just one neighboring property with a building on it. That building is setback 21’ from the front property line. The pad included in this application is set back 35’ from the front property line. Insofar as no building is included in this proposal, and the pad is set behind the front yard setback so as to avoid conflicts with front yard parking restrictions, its location is acceptable.

The deck appears to be about 5’ tall and is well under the 15’ accessory structure height limit. The seawall is up to 4’ tall and is also well under the 15’ accessory structure height limit. **(Affirmative finding)**

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

As noted before, the site features are effectively accessory to the property owner’s nearby residence. **(Affirmative finding)**

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

See Sec. 4.4.5 (b) above.

### ***Sec. 4.5.4, Natural Resource Protection Overlay District***

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

This application entails no tree clearing or new stormwater discharges. The Conservation Board reviewed this application August 7, 2017 and as amended November 6, 2017 and recommended approval as is. **(Affirmative finding)**

#### ***(d) District Specific Regulations: Wetland Conservation Zone***

This application pertains to site improvements within the city's 100' wide wetland buffer zone. The minimal site improvements are located within existing cleared lawn area. The Conservation Board found wetland impacts to be minimal and recommended approval of the application as is. **(Affirmative finding)**

***Sec. 4.5.4, Natural Resource Protection Overlay District:***

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

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

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

The seawall has no perceptible impact on flood heights or velocities. **(Affirmative finding)**

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

The seawall consists of large concrete slabs (from former sidewalks) set into the ground. Flood velocities are typically not problematic along the lakeshore. Flood waters rise and then fall. Velocity is a danger within the floodway that follows the river corridor. There is little danger that the concrete will be swept away. **(Affirmative finding)**

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

There are no existing or proposed water or sanitation systems. **(Not applicable)**

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

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

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

The seawall is of little importance to the Burlington community; however, it provides substantial protection to the private property that it is located on. **(Affirmative finding)**

**F. The availability of alternative locations...**

The point of the seawall 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 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 improvements accessory to the owner's nearby single family home. Insofar as properties 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 seawall has 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 seawall has no impact on flood heights, 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.

***Sec. 4.5.6, Mouth of the River Overlay District***

While the subject property is included within this overlay district, none of the provisions pertain to the application. (**Not applicable**)

**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 to the subject property.

***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***

(**Not applicable**)

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

(**Not applicable**)

**Article 6: Development Review Standards:**

***Part 1, Land Division Design Standards***

***Sec. 6.1.2, Review Standards***

Not applicable.

***Part 2, Site Plan Design Standards***

***Sec. 6.2.2, Review Standards***

Most of the criteria under this section do not pertain to the permit request. The site improvements are minimal, involve no buildings, and serve to provide seasonal lakeshore access to the property owner and to protect the lakeshore from erosion. As noted in Article 4 above, the site improvements are dimensionally compliant. The most significant considerations as to natural resource impacts have been considered by the Conservation Board and have been found to be

acceptable. No earthwork, new construction, or utility work is included in this application.  
**(Affirmative finding)**

***Part 3, Architectural Design Standards***

***Sec. 6.3.2, Review Standards***

**(Not applicable)**

**II. Conditions of Approval**

1. Standard Conditions 1-15.
2. Per Sec. 4.5.4, (f) 8, construction within the Special Flood Hazard Area is subject to the following 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.
  - 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:
  - (i) Not applicable.