



**MEMORANDUM**

**TO:** Regulatory Programs Committee  
**FROM:** Richard Weber – Deputy Director, Regulatory Programs *REV*  
**DATE:** September 29, 2017  
**RE:** Variance Request P2017-0032, DelVecchio and Cale

**RELEVANT FACTS AND BACKGROUND**

Kimberley DelVecchio and Randall Cale (“applicants”) have requested a variance to construct a retaining wall on a 0.58± acre parcel located in the Town of Essex, Essex County, on the shoreline of Lake Champlain. The owner of the property is Kimberly A. DelVecchio as Trustee of the Kimberly A. DelVecchio Revocable Trust. The property is located in an area classified Rural Use, and is subject to a 75-foot setback from Lake Champlain for all new accessory structures and principal buildings greater than 100 square feet in size.

The variance site is located in the Whallon Bay portion of Lake Champlain where the shoreline runs west and east and is subject to wind and substantial wave action from the north. This wave action has resulted in continuous shoreline erosion of the variance site that has increased as shoreline vegetation and the current retaining wall on the variance site have deteriorated.

The variance site is developed with a pre-existing single family dwelling and garage, and the applicants dwelling is approximately 7 feet from the top of the eroding bank at its closest point. There is a lawfully-existing rock retaining wall structure in the same vicinity as the proposed retaining wall that is approximately 1,029 square feet in footprint measured in plan view and 5 feet in height. The existing retaining wall structure is in disrepair and is not providing adequate protection for the shoreline, dwelling and garage. The ongoing shoreline erosion threatens the foundation of both the dwelling and garage.

The applicants’ proposal involves the replacement and expansion of the existing rock retaining wall structure within 75 feet of the mean high water mark of Lake Champlain with a new rock retaining wall structure. The existing and proposed structures are both 100± feet long. However, the new structure will be approximately 1,905 square feet in footprint, 876 square feet larger than the existing structure. The new structure will also be approximately 6 feet in height and will extend 9.5± feet closer towards Lake Champlain than the existing structure.

The applicants originally proposed a larger retaining wall, along with two concrete retaining walls. Through the application process, the footprint and design of the retaining wall was minimized such that the final proposal includes only one natural boulder retaining wall at the minimum size and shape necessary to stabilize the shoreline. The amount of material required to construct the retaining wall has been reduced to only that necessary to maintain a stable slope. The applicants also evaluated alternatives which would not have required a variance. The options to replace the existing wall in kind or construct a smaller wall were rejected because the ongoing erosion would not be eliminated and the shoreline would not be stabilized as the existing retaining wall has not adequately protected the shoreline. Due to the substantial wave energy on the project site, non-jurisdictional vegetative plantings or other methods would not provide enough protection to eliminate the ongoing erosion and sedimentation.

The adjoining property to the east of the variance site is developed with a 325-foot long boulder retaining wall. The proposed retaining wall will likely help to protect the west end of this existing retaining wall from shoreline erosion. The adjoining property to the west does not show severe erosion problems, and the proposed retaining wall is not expected to change the prevailing wave patterns to the west or transfer the impact of the wave energy to the adjoining shoreline.

Staff review indicates that the proposed replacement retaining wall will be larger and more visible from the lake than the existing retaining wall. The vegetation that currently exists will remain undisturbed, except for the clearing authorized in the Project Plans. The seasonal shrub vegetation in the vicinity of the mean high water mark of Lake Champlain will be replaced by planting live cuttings and live stakes within the proposed retaining wall.

### **STAFF ANALYSIS**

In determining whether to grant a variance, the Agency must consider the criteria set forth in 9 NYCRR § 576.1. It is staff's opinion that this application is approvable under these criteria.

The applicants are seeking to protect the shoreline and existing structures on the variance site. The applicants purchased the property in 2013, and the single family dwelling and garage were already on the site. The erosion of the shoreline of the variance site has occurred naturally as a result of the wave action of Lake Champlain. The existing retaining wall on the site has not been substantial enough to prevent shoreline erosion, and shoreline erosion has increased as the existing retaining wall and shoreline vegetation have deteriorated. It is apparent that the existing shoreline will continue to fail due to the natural wave action at the variance site, and if measures are not taken to stop the ongoing shoreline erosion and stabilize the shoreline in the vicinity of the dwelling and garage, the foundation of those structures will be compromised.

Staff review indicates that although the proposed retaining wall will be larger and more visible from the lake than the existing retaining wall, the water quality of Lake Champlain and the quality of the shoreline will be protected. Water quality will be protected as the proposed retaining wall will stabilize the shoreline and stop the ongoing erosion. The quality of the Lake Champlain shoreline will be protected because the retaining wall will be constructed using natural boulders that will be sized and placed to minimize impacts to aesthetic resources, while providing for a stable slope. The proposed planting plan will help mitigate visual impacts of the retaining wall, and conditions related to vegetative cutting will also help to mitigate any potential impacts to the aesthetic character and shoreline quality of Lake Champlain.

The harm resulting from denial of the variance request would be continued erosion of the applicants' shoreline and the potential that the foundations of their dwelling and garage would continue to be structurally compromised. Under the circumstances, staff believes it would be reasonable for the Agency to find that the adverse consequences to the applicants resulting from denial of this variance request are greater than the public purpose sought to be served by the shoreline restrictions.

Based on its analysis of the applicants' proposal, staff recommends that the Agency approve the requested variance as described in the draft Order.