Town of Charlotte
Zoning Board of Adjustment

In Re: ZBA-16-51-CU Conditional Use Review for Paul Arthaud for the demolition and reconstruction of the structure at 1012 Flat Rock Road on Thompson's Point in the Town of Charlotte (M41B50L36).

I. Introduction and Procedural History

On 11 April 2016, Peter Fenn, on the behalf of Paul Arthaud (the property owner) submitted an application for conditional use review for the demolition and reconstruction of the derelict structure on Lot 128 within the Shoreland Seasonal Home Management (SHM) Zoning District on Thompson's Point. The proposed structure would increase the *Maximum Building Coverage* by **265 ft²**, and decrease the *Maximum Lot Coverage* by **561 ft²**.

Due to a changeover in staff, public notice was not achieved until prior to the 1 Jun 2016 hearing. Notification was made with the abutting landowners regarding the public hearing by direct correspondence, and via electronic posting of the notice on the Town website, and hardcopy posting of the notice at Town Office, the Brick Store, and Spear's Corner Store on 27 May 2016.

The application was considered by the Zoning Board of Adjustment (ZBA) on 4 May, 18 May, 1 Jun, and 8 Jun 2016. A site visit to the property was conducted before the 4 May 2016 hearing. Present at the visit were the following members of the ZBA: Jonathan Fisher, Andrew Swayze, and Frank Tenney (Chair); Property owner representative Peter Fenn; and Charlotte Town staff Daryl Benoit were also present during the visit. An additional site visit to the property was conducted before the 8 Jun 2016 hearing. Present at that visit were the following members of the ZBA: Stuart Bennett and Jonathan Fisher; Property owner representative Peter Fenn; Abutting property owners: Valerie and JC Biebuyck, Nina Cucchiari, Norman Ernsting; and Charlotte Town staff Daryl Benoit were also present during the visit.

The ZBA reviewed the application under the Charlotte Land Use Regulations, 2016. Application materials included a signed application form (which, included a proposed building profile); an application fee; list of adjoining property owners; a site plan, site photos; and twelve exhibits;

EXHIBIT A: A single black and white photographic copy showing the existing house and garage was reviewed and accepted as Exhibit A *(submitted 4 May 2016)*.

EXHIBIT B: A letter from Nina Cucchiari and Norman Ernsting, 1002 Flat Rock 42 Road, dated 05/18/2016, was reviewed and accepted as Exhibit B *(submitted 1 Jun 2016)*.

EXHIBIT C: A letter from Valerie Biebuyck, dated 18 May 2016, was reviewed and accepted as Exhibit C *(submitted 1 Jun 2016)*.

EXHIBIT D: a letter, dated 1 Jun 2016, from J. C. and Valerie Biebuyck regarding a chronologic order of information that they were given *(submitted 1 Jun 2016)*.

EXHIBIT E: the ZBA reviewed and accepted submitted specifications consisting of 7 pages of drawings drawn to scale for 1012 Flat Rock Road, dated 16 May 2016 *(submitted 1 Jun 2016)*.

EXHIBIT F: the ZBA reviewed and accepted a written letter from Paul Arthaud authorizing Peter Fenn to represent him regarding 16-51-CU, a Conditional Use 42 review application, dated 2 Jun 2016, and marked as Exhibit F *(submitted 8 Jun 2016)*.

EXHIBIT G: A copy of 2016 Vermont Planning and Development Laws, Chapter 117, T:24 §4414 Conditional Uses, starting on page 543, was reviewed and marked as Exhibit G *(submitted 8 Jun 2016)*.

EXHIBIT H: A copy of 2016 Vermont Planning and Development Laws regarding Variances, Chapter 117, T:24 §4469, starting on page 607, was reviewed and marked as Exhibit H.

EXHIBIT I: a written schedule for removal of trees as per the Deputy Tree Warden, Mark Delenbeck, dated 8 Jun 2016, was reviewed and marked as Exhibit I *(submitted 8 Jun 2016)*.

EXHIBIT J: the ZBA reviewed and accepted 5 color photographs depicting the northerly camp and the existing driveway, marked as Exhibit J *(submitted 8 Jun 2016)*.

EXHIBIT K: a written position statement from Valerie and J. C. Biebuyck, dated 8 Jun 2016, was accepted and marked as Exhibit K *(submitted 8 Jun 2016)*.

EXHIBIT L: a drawn footprint comparison of the existing camp and proposed construction of 1012 Flat Rock Road, west view and south view, and a cover letter, dated 8 Jun 2016, was accepted and marked as Exhibit L *(submitted 8 Jun 2016)*.

Application materials relevant to the project are posted on the Town of Charlotte Planning & Zoning Office website at the following link: http://is.gd/umUeuD.

II. Standard of Review

The application requires review under the following sections of the Land Use Regulations for the Town of Charlotte (Approved March 1, 2016):

1. Chapter II, Section 2.3, Table 2.7(E) – Application of District Standards; Shoreland Seasonal Home Management District (SHM); Dimensional Standards
2. Chapter III, Section 3.1 – Repair of Damaged Structures; Demolition
3. Chapter III, Section 3.8 (B)(2) Nonconforming Structures
4. Chapter V, Section 5.4 (C) – Conditional Use Review; General Standards
5. Chapter V, Section 5.4 (D) – Conditional Use Review; Specific Standards

The application has been reviewed under the following sections of the Charlotte Town Plan (Amended March 1, 2016):

1. Chapter IV, Section 4.5.4 – The Lake and its Shoreline; Thompson's Point
2. Chapter V, Section 5.7.1(2) – The Lake and its Shoreline; General Policies

III. Findings

Based on the application, testimony, exhibits and other evidence, the Zoning Board of Adjustment makes the following findings:

1. The applicant seeks conditional use approval for the demolition and replacement of a nonconforming uninhabitable seasonal dwelling on Thompson's Point Lot 128 with a new and larger structure that would have a *Total Building Coverage* of 657 ft^2 (which conforms to 3.01% of parcel coverage). The proposed *Maximum Lot Coverage* would total 1,671 ft^2 (and would conform to 7.67% of parcel coverage).
2. The current structure on Lot 128 has a *Total Building Coverage* of 392 ft^2 (conforming to 1.8% of parcel coverage). However the *Maximum Lot Coverage* is currently 3,794 ft^2 (which is a non-conforming 10.24% of parcel coverage).
3. The current structure has additional non-conformity due to its 32' setback from the abutting boundary of Lot 127 to the south. Furthermore, the proposed structure would would reduce the current 52' setback to 40' from the boundary of Lot 129 to the north (1046 Flat Rock Road). This triggers a Conditional Use review.
4. The replacement structure is proposed to have a second story added that would increase the height to 23' (or to 25' if including the height of the chimney), and would therefore retain dimensional height conformity of 30' or less for the SHM zoning district.
5. The proposal includes removal of the existing gravel driveway on the north side of Lot 128 and replacing it with a new and smaller parking area, which would be located closer to Flat Rock Road and away from the 100' shoreline buffer where the current driveway partially crosses. The new driveway would be shared with the abutting neighbors on Lot 127 to the south via a right-of-way access path, which traverses the two lots.
6. The proposal includes the removal of five trees that are either dying, or could potentially cause damage to the camp or surrounding powerlines. Each of the trees have been assessed by the Town Deputy Tree Warden and are recommended for removal.

IV. Conclusions of Law

1. **<u>Chapter II, Section 2.3, Table 2.7 (E)</u>** requires the following dimensional standards:
    1. Minimum Side/Rear/Front Setback: 50':
       The proposed structure <u>would conform</u> to current land use regulations for;
       * 65' frontage/road setback to the west.
       * 110' rear setback to the east (to the mean high watermark of Lake Champlain).

       The proposed structure <u>would not conform</u> to current land use regulations for;
       * 30' side setback from the adjacent lot to the south (Lot 127).
       * 40' side setback from the adjacent lot to the north (Lot 129).
2. **<u>Chapter III, Section 3.8 (B)(2) Nonconforming Structures.</u>** *"may only be structurally modified or moved in a manner that will not increase the degree of noncompliance,*

unless approved by the Board of Adjustment in association with conditional use review under Section 5.4. . . any structural alteration which extends the footprint, height or volume of a structure <u>*within*</u> *any required setback or above the required maximum height (i.e. the amount of encroachment), shall be considered to increase the degree of noncompliance."*

The proposed new structure <u>increases the degree of noncompliance</u> because:

1. The current structure is <u>non-conforming</u> due to its 32' setback from the abutting boundary of Lot 127 to the south. Furthermore, the proposed structure would <u>reduce</u> the current 52' setback to 40' from the boundary of Lot 129 to the north (1046 Flat Rock Road).
2. The proposed structure also increases the volume of the current structure within the setback.

3. **<u>Chapter V, Section 5.4 (C) General Standards</u>** stipulates that a proposed conditional use shall not result in an undue adverse effect on any of the following:
   1. The capacity of existing or planned community facilities and services.
      - No undue adverse effect
   2. <u>Character of the area affected</u>.
      The style of the proposed structure is within the character of the Thompson's Point neighborhood. This is affirmed by the Thompson's Point Design Review Committee report from 27 May 2016, which states: *"the plans for the building were appropriate for the site."* Although there are examples of main houses with smaller guest cabins, the 2014 divided property lease does not accommodate for a new structure in such close proximity to existing property lines. As this would adversely affect the neighbors, the ZBA finds that the scale and density of proposed structure <u>does not fit within the character of area</u>.
   3. Traffic on roads and highways in the vicinity.
      - No undue adverse effect
   4. Bylaws in effect
      - There is no non-conformance with other Town Bylaws.
   5. The use of renewable energy resources.
      - There is no undue adverse effect on renewable energy resources.

4. **<u>Chapter V, Section 5.4 (D) Specific Review Standards</u>** states that the Board may consider the following and impose conditions as appropriate to reduce or mitigate any adverse impacts from the proposed development:

   2. **Additional Restrictions.** *"All conditional uses shall comply with the dimensional, density, siting and associated standards for the district(s) in which the use or development is located, including overlay districts, however the Board may require increased setbacks and buffers, or reduced lot coverage or densities of development to avoid or mitigate adverse impacts to adjoining properties or significant natural, cultural or scenic features in the vicinity of the site."*

   The proposed structure <u>does not comply</u> with required setbacks since it would reduce the current 52' setback to 40' from the boundary of Lot 129 to the north

(1046 Flat Rock Road). The ZBA will not alter the zoning district dimensional standards.

5. **Chapter IV, Section 4.5.4 The Lake and its Shoreline; Thompson's Point** cites: *"The 1999 Lake and Shoreline Committee reviewed the report and updated Thompson's Point information. It found that seasonal use only with no further camp development continues to be appropriate."*
6. **Chapter V, Section 5.7.1(2) The Lake and its Shoreline; General Policies** states that *"In the Shoreland Seasonal Home Management District, seasonal housing may be maintained, managed, and altered in accordance with land capability and the scenic and historic character of the shoreline, but additional units will not be permitted in this area due to fragile environmental conditions, impervious surface conditions and lack of Town services."*

V. Decision and Conditions

Motion to approve Arthaud Application of 1012 flat Rock Road as presented.

Vote: *4 Nays. 1 Absent.*

The Zoning Board of Adjustment (ZBA) hereby denies the current application in its entirety for the demolition and reconstruction of the 1012 Flat Rock Road structure[1] as the proposed structure would increase the level of noncompliance with the standards referenced above.

Dated at Charlotte, Vermont this 12th day of July, 2016.

Frank Tenney, Chairman

This decision may be appealed to the Vermont Environmental Court by the applicant or an interested person who participated in the proceeding. Such appeal must be taken within 30 days of the latest date of signature below, pursuant to 24 V.S.A. Section 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.

Additional Regulations and Permitting

The owner and his/her representatives shall abide by the practices in the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control (2006) as necessary to ensure that sediment and sediment laden water does not leave the project parcel. Contact 802.540.1748 for a hard copy or you may visit: http://dec.vermont.gov/watershed/stormwater.

[1] Zoning Board of Adjustment - Application for Paul Arthaud (April 2016), Town of Charlotte, Vermont, page 11. http://is.gd/umUeuD

There may be additional State of Vermont and / or federal permits or approvals needed for the proposed development or use. The applicant may contact the Agency of Natural Resources Permit Specialist at 802.477.2241 for further information.