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**TOWN OF CHARLOTTE
ZONING BOARD OF ADJUSTMENT
JANUARY 8, 2014**

DRAFT

MEMBERS PRESENT: Ben Pualwan, Chair; Frank Tenney, Douglas Webster.

ABSENT: Jonathan Fisher, Andrew Swayze.

ADMINISTRATION: Gloria Warden, Zoning Clerk.

OTHERS PRESENT: Charles Russell, Gerald Bouchard, Liam Murphy, Ann Wittpenn, Claudine Safar, Courtney Butler, Hal Evans, Chrissy McCaulty, Ben Durant, and others.

CALL TO ORDER

Mr. Pualwan, Chair, called the meeting to order at 7:12 p.m.

APPEAL OF HAL EVANS, 181 WINDSWEPT LANE, OF THE ZONING ADMINISTRATOR'S DECISION THAT A PERMIT FOR A HOME OCCUPATION IS REQUIRED BECAUSE THEIR BUSINESS DOES NOT QUALIFY AS AN ACCEPTED AGRICULTURAL PRACTICES EXEMPTION. PROPERTY LOCATED IN THE RURAL ZONING DISTRICT.

Hal Evan, owner, Ben Durant, East Shore Vineyard LLC, and Claudine Safar and Courtney Butler, attorneys representing Mr. Evan and Mr. Durant, appeared on behalf of the application.

STAFF NOTES

Mr. Pualwan reviewed staff notes, and explained the process for establishing Interested Party status.

The following were sworn in: Ben Durant, Claudia Safar, Ann Wittpenn, and Liam Murphy.

APPLICANT COMMENTS

Ms. Safar reviewed the appeal as follows:

- On July 11, 2013, the Zoning Administrator (ZA), Tom Mansfield had met with Mr. Evans and Mr. Durant regarding activities and a barn lease related to winery production. The ZA had determined that the activity was qualified as an accepted agricultural practice and was exempt from Town regulations.
- The wine production activity qualified as an agricultural exemption was in writing in an e-mail and constituted as an administrative opinion. This was considered a final determination that couldn't be reversed by a later following letter from the ZA.
- The Evans barn was built in October 12, 2012. It wasn't for a wine production purpose at that time.
- The ZA issued a letter, dated October 9, 2013, to Mr. Evans that he thought he was wrong and the applicant needed to apply for a Conditional Use permit.

- 46 • Mr. Evans appealed that reversal that the activity didn't qualify as an agricultural
47 use. The wine production activity does qualify as an agricultural use under state
48 law can't be subject to town regulations under 24 VSA 4413(d).
- 49 • The Environmental Court determined that a Zoning Administrator could not
50 reverse a decision without the court doing it.
- 51 • AAP's were defined as "...on-site storage, production, or sale..." in control of
52 "the farm". The product in this case was grapes grown on 'the farm' and
53 processed in leased barn space for the production of wine. The barn lease was
54 between Mr. Evans and East Shore Vineyard.
- 55 • There was guidance for accepted agricultural practices under ACT 250 related to
56 produce of more than 51 percent grown or produced 'on the farm'.
- 57 • The Ochs court decision regarding cultivation of apples from leased land and
58 processed on the farm land determined that leased land qualified as 'on the farm'.
- 59 • 'On the farm' lands were under the control of the East Shore Vineyard, LLC and
60 were exempt from Town oversight.

61

62 Ms. Safar asked the ZBA to reverse the ZA determination.

63

64 ZBA QUESTIONS/COMMENTS

65 Mr. Pualwan asked if the Ochs decision clarified the processing of cider from apples
66 grown on a farm that included leased property. Ms. Safar replied yes. There was an ACT
67 250 determination that interpreted the language for leased land under the control 'of the
68 farm'. In this case, East Shore Vineyard LLC was 'the farm'. Key was if an activity could
69 occur on site at a leased property off site of 'the farm', said Ms. Safar.

70

71 Mr. Pualwan asked if the off site barn leased by East Shore Vineyard was then considered
72 a part of 'the farm'. Ms. Safar replied yes. East Shore Vineyard, LLC, has a property
73 interest in the Evans barn via the lease, explained Ms. Safar.

74

75 Mr. Pualwan asked if there were zero grapes grown on the 181 Windswept property. Ms.
76 Safar replied correct.

77

78 Mr. Pualwan asked if East Shore Vineyard grew at least 65-70 percent of the grapes used
79 in the activity. Ms. Safar replied yes. Wine production happened at the leased land, said
80 Ms. Safar.

81

82 Mr. Durant explained that the 12 acre Grand Isle East Shore Vineyard, LLC farm has
83 been owned by his family for many generations. He has a long term lease from his father
84 for the vineyard there and East Shore Vineyard was his company, said Mr. Durant.

85

86 Ms. Safar pointed out that wine production began at the leased facility upon reliance of
87 the ZA's original letter. Mr. Durant said that the wine process started at the end of
88 August, 2013. The first production was almost completed when the ZA's reversal notice
89 was received. Wine production activity was a low impact activity. There were no
90 byproducts, and a steam cleaning process was used to clean equipment. He wants to be a
91 good neighbor, said Mr. Durant.

92 Mr. Pualwan asked if the ZA had said Mr. Durant would need a Home Occupation from
93 the first would Mr. Durant have objected to applying for a permit. Mr. Durant stated that
94 wine production was an agricultural use and he didn't need to apply for a Home
95 Occupation. He didn't like to be subjected to regulations that didn't apply. He has gone
96 through a process, applied to the ZA and the ZA agreed with us. He had discussed the
97 barn lease with the Town Attorney in person and the Town Attorney advised him that the
98 barn lease was not too strong. He has known Hal Evans all his life and they had written a
99 lease between two friends. The Town Attorney said that the lease didn't qualify. He paid
100 an attorney to write a legal lease, said Mr. Durant.

101

102 Mr. Pualwan explained paperwork and documentation required for a level of formality.
103 Tom Mansfield said that with new information from the Department of Agricultural he
104 had expressed a different determination, noted Mr. Pualwan.

105

106 PUBLIC COMMENTS

107 Ms. Wittpenn, an abutting neighbor, explained that when Mr. Evans first applied for a
108 barn permit it was to house animals and equipment. She had questions regarding the
109 current use related to the amount of waste water produced and where it was going. The
110 Evans' mound system was located on her property. A driveway easement to the Evans'
111 went across her property and she had concerns related to traffic volumes to the barn. If
112 wine making was an agricultural use would there be wine tours, tastings, restaurants, and
113 more traffic. It was a change in the flavor of the rural neighborhood. She didn't see a
114 zoning permit for change of the use of the barn. She raised questions/concerns with the
115 ZA and was told that East Shore Vineyard was an agricultural use, said Ms. Wittpenn.

116

117 Ms. Safar said that the applicant would be happy to discuss Ms. Wittpenn's issues with
118 the neighbors. Those issues were not a part of the appeal to the ZBA, said Ms. Safar. Mr.
119 Evans stated that no water from the barn went into the mound system.

120

121 Mr. Pualwan clarified that the issue before the ZBA was if the ZA determination of a
122 Home Occupation Level II was valid, or not. If the ZBA decision was no, then the ZBA
123 process was done. If yes, then it was up to the landowner to apply, said Mr. Pualwan.

124

125 Mr. Durant said that the issues raised by Ms. Wittpenn would not occur. There were no
126 plans for a tasting room, tours, or retail sales at the leased barn. The highest impact to
127 neighbors occurred during the moving in process. The plan was to use the barn for wine
128 production for the next five years, and then the production process would be moved to the
129 Grand Isle farm. He was only processing grapes into wine at the barn. The one East Shore
130 Vineyard employee that went to the barn facility two times per week was the vineyard
131 manager. During the 6 week crush period he was at the barn with the vineyard manager.
132 The manager was employed full time at the Grand Isle farm. He used steam to clean the
133 equipment, which was water heated to 400 degrees. The waste water created by the steam
134 went into the atmosphere; not into the septic system. No chemicals or soap was used to
135 clean equipment. He used a Silverado truck and trailer to bring grapes from the Grand
136 Isle farm to the barn. There were 6 grape harvests this year and there were 8 truck trips to
137 the barn facility. Nothing was going out from the barn yet. The wine would be bottled at

138 the barn and taken out by the Silverado truck. Grape waste consisting of stems and skin
139 was composted. The vineyard manager, a UVM graduate in waste management, oversaw
140 the composting process, said Mr. Durant.

141

142 Ms. Wittpenn stated that she had seen more vehicles going to the barn than just a
143 Silverado. Mr. Durant explained that his vehicles included a CRV, Volvo, Silverado or
144 Land Rover.

145

146 Hal Evans was sworn in.

147

148 Mr. Evans said many of the vehicles that were seen were his own personal cars since his
149 family lived on site. There were family friends that helped out during the wine production
150 process. Traffic was a separate issue and was being worked out with Charles Russell. He
151 has friends come to his property outside of the winery use. He plays poker in the barn
152 upstairs. The machinery involved in the wine production was located on the barn first
153 floor, said Mr. Evans.

154

155 Mr. Durant explained the crush process and equipment used that included a stemmer and
156 wine press, which made a quiet whirring noise. A pressure washer no longer in use was
157 his personal equipment that made less noise than a 6 hp lawn mower, said Mr. Durant.

158

159 Mr. Evans said he understood that the ZBA hearing was to determine if wine production
160 at the leased barn qualified as an agricultural use. The other issues raised were
161 neighborhood issues. East Shore Vineyard LLC didn't plan to use the barn for more than
162 5 years. He would make sure to mitigate impacts related to traffic and noise. He could put
163 in writing that there would be no retail sales or limit the number of vehicles, said Mr.
164 Evans.

165

166 Ms. Wittpenn said she was advised to have "no retail, no restaurants, no wine tasting, or
167 tours" put in a written decision.

168

169 Ms. Wittpenn asked if the applicant would have more U-haul trucks coming in again. Mr.
170 Durant explained that was just for moving the equipment in. The 18-wheeler bringing in
171 the equipment got stuck and he felt bad that it happened. He cared about the
172 neighborhood, said Mr. Durant. Mr. Pualwan pointed out that those issues were not
173 germane to the appeal before the ZBA.

174

175 Ms. Safar reiterated that the applicant request was to reverse the ZA decision. Regarding
176 the neighbor's request for a written statement, the ZBA should be careful what language
177 was used in the determination. Agricultural use was determined as per the AAP's,
178 clarified Ms. Safar.

179

180 Ms. Wittpenn asked for clarification of a letter, dated February 14, 2009, to East Shore
181 Vineyard. Ms. Safar replied that the letter was the Attorney General's office response to a
182 question from East Shore Vineyard asking if wine making qualified as an agricultural
183 use.

184

185 Mr. Murphy, attorney representing Charles Russell who is an abutting neighbor, said that
186 questions before the ZBA was what was an accepted agricultural use exempt from town
187 regulations, what was “the farm”, and what was “produced on the farm” defined as. The
188 Ochs decision involved an orchard that brought in apples from other farms to be
189 processed on the Ochs farm. The Evans appeal was saying that a lease for ‘portion of a
190 barn’ was a part of ‘the farm’. Saying that the lease of any building constitutes a ‘farm’
191 makes no sense. If someone rented a building and brought in \$1,000 worth of produce did
192 not make that a farm. The Ochs case was a different, said Mr. Murphy.

193

194 Mr. Pualwan said that East Shore Vineyard was growing grapes on the Grand Isle farm.
195 Mr. Murphy pointed out that the application included a lease for a portion of a barn. If
196 Mr. Durant leased all the land and produced grapes there then it was a farm. At first the
197 barn lease was just an agreement between friends, noted Mr. Murphy.

198

199 Mr. Pualwan asked if Mr. Murphy was saying that if the applicant had leased land with
200 vines and brought in grapes from elsewhere it was a farm. Mr. Murphy replied yes. If the
201 grapes were grown on that farm. Were grapes grown on the Grand Isle farm - on the East
202 Shore Vineyard website it indicated that grapes are brought in from elsewhere, such as
203 New York. Mr. Durant was representing that he was growing 60 percent or greater of his
204 produce on his property. Regarding the previous ZA decision, there was a problem in
205 identifying in the e-mail if the ZA had issued an enforceable decision. A decision has to
206 be in writing and posted within 15 days. If the June ZA e-mail was posted for public
207 review then it would be final. It was not clear if the ZA knew that grapes were coming to
208 the barn from off site. When the Town makes a decision of a non-jurisdiction it should
209 still post it so that neighbors could determine if they wanted to file an appeal, or not. The
210 ZA asked the state for clarification of the agricultural use of the leased situation
211 following concerns expressed by neighbors, and that was why he came back with new
212 decision in September, said Mr. Murphy.

213

214 Mr. Murphy suggested that the applicant should work with neighbors to address concerns
215 regarding access and other issues, which were not before the ZBA. Ms. Safar said she
216 would be happy to talk with her clients regarding a private neighborhood agreement. The
217 point regarding posting of a non-jurisdiction decision doesn’t invalidate the original ZA
218 decision. Posting a notice was a process to allow neighbors to appeal a decision even if
219 late in the process. The courts have addressed the notice issue, said Ms. Safar.

220

221 Mr. Pualwan said that Tom Mansfield provides opinions when asked all the time. It was
222 not clear in this situation if Tom was making a decision on the same thing. A question
223 was if he had issued a formal decision. Not all correspondence had been documented,
224 said Mr. Pualwan. Ms. Safar said that there was an e-mail from the ZA. That was a
225 document where the advice he dispensed became formal.

226

227 Ms. Safar read an e-mail from Mr. Evans to Mr. Mansfield and cc’d to Mr. Durant, dated
228 July 10th, 3:35 p.m., into record that included a reply from Mr. Mansfield, dated July 11th
229 regarding the intended use of barn to process grapes into wine.

230

231 **Exhibit A: the ZBA reviewed, accepted and entered the July 10, 3:35 p.m. and July**
232 **11th reply e-mails between Mr. Evans and Mr. Mansfield, cc'd to Mr. Durant, as**
233 **Exhibit A.**

234

235 Ms. Safar said that when you look at the October 9th reversal notice, Mr. Mansfield
236 doesn't say he found something else, or new. Mr. Mansfield said he was asked by
237 "interested parties" to verify his determination. He's just saying he was wrong, said Ms.
238 Safar.

239

240 Ms. Safar read an e-mail from the Department of Agriculture, dated September 10, 2013,
241 which was a response to Tom Mansfield's email, dated September 5, 2013. Tom
242 Mansfield's question didn't address the fact that the leased barn space was a part of 'the
243 farm', clarified Ms. Safar.

244

245 Mr. Webster asked what square footage of the barn was used in the wine processing. Mr.
246 Evans replied that the existing barn was 36' x 52' and the operation used 1,500-1,600
247 square feet of the first floor to house the tanks and processing equipment. The upstairs
248 was used for other purposes. He parked his cars at his home, or barn at times, said Mr.
249 Evans.

250

251 Mr. Webster asked if the barn dimensions were included in the documents. Mr. Evans
252 replied no.

253

254 Mr. Pualwan asked for clarification of an October 26th e-mail from Mr. Evans to Mr.
255 Mansfield. Mr. Durant said that it was a response to show that even if the grapes were not
256 grown on site at the barn, grapes were grown at the Grand Isle farm and that 60-70
257 percent of the grapes were grown there, and that the barn used was a part of the farm.

258

259 Ms. Safar said the ZA received some pressure from neighbors regarding the ZA decision,
260 which prompted the ZA to contemplate his decision at that time. The October e-mail was
261 a response that the ZA had made the right decision originally. To address Mr. Murphy's
262 point regarding an 'on the farm' decision and barn - the farm was in Grand Isle where
263 there was a LLC. The leased barn space was under the control of the LLC and considered
264 part of 'the farm', said Ms. Safar.

265

266 Mr. Pualwan said it was question - were greater than 51 percent of grapes grown on 'the
267 farm' and if there could be a leased facility off site. Ms. Safar stated that dairy farms
268 operated with owned farms and leased farms all the time. For example, if cows were
269 grazed or milked on one separate lot across the road, and the milk taken to a second
270 separate lot for processing it is still 'the farm' and could be can regulated using the
271 AAP's, said Ms. Safar.

272

273 Mr. Pualwan asked what does off site mean for processing. Mr. Durant replied that off
274 site meant that a business grows all grapes off site. It was land controlled by the LLC
275 entity, said Mr. Durant.

276

277 Mr. Pualwan read language in the regulations related agricultural purposes for ‘on site’ as
278 ‘for storage, processing, or sale.’ Mr. Durant said that talks about property, for example;
279 a barn, or a vineyard, or a store in a barn.

280

281 Mr. Murphy pointed out that ‘the farm’ was in Grand Isle. A question was if the Charlotte
282 processing center was part of ‘the farm’, or not. In the Ochs case the court said that
283 exemptions should be read narrowly. The ZA decision should go through the public
284 process so all the issues, traffic, impacts, etc., could be discussed, said Mr. Murphy

285

286 Mr. Durant said regarding Mr. Murphy’s statement that the leased barn was not part of
287 the farm – it was a part of our farm. The AAP’s definition was “...land controlled by the
288 LLC...” for making wine from grapes, said Mr. Durant.

289

290 Mr. Pualwan reiterated the question of what was the ‘on site’ definition, and ‘greater
291 than 51 percent’ definition. Grown on ‘the farm’ was different from ‘on site’ processing.
292 It needs clarification, stated Mr. Pualwan.

293

294 Ms. Safar said that was what Ochs case says: any property the farm owns, whether
295 leased, or not. It was the ‘on site’ storage, processing, or sale” of agricultural products.
296 The leased barn was for processing and storing of an agricultural product, said Ms. Safar.

297

298 Mr. Murphy said the Ochs decision was related to bringing apples onto the Ochs farm
299 where they processed apple products. The questions were if you could have a processing
300 facility on leased land, and if you were taking product off the farm for processing. The
301 Town Attorney should be consulted, said Mr. Murphy.

302

303 Mr. Durant pointed out that Shelburne Vineyards went through the same process when
304 they built a facility on Route 7. Their grapes came from leased land and were processed
305 at the Route 7 facility where no grapes were grown at the time. It was similar to what we
306 were doing, said Mr. Durant.

307

308 Mr. Murphy stated that Shelburne Vineyard was not agriculturally exempt. They applied
309 for a permit for processing at the Route 7 facility, said Mr. Murphy. Ms. Safar said the
310 AAP’s were written so that you could figure if it was an agricultural exempt facility for
311 the activity.

312

313 Courtney Butler was sworn in.

314

315 Ms. Butler said it was clear that the exemption applied to the property, which was the
316 barn. The barn was ‘on site’ for processing the grapes, which was the use. Mr. Pualwan
317 reiterated that it was not clear what was meant by ‘on site of your farm’ for processing.

318

319 Ms. Safar said if the Ochs case found that that apples would have to be processed where
320 the apples were grown, then the Ochs’ would not have been granted an exception.

321

322 Mr. Tenney asked before the Ochs leased the land where were they growing and
323 processing the apples. Adding leased land may have enhanced an existing apple operation
324 that had its own apples trees, suggested Mr. Tenney. Ms. Safar read the court findings of
325 the cultivation of apples and onsite storage and processing of apples. The court said it
326 didn't matter, said Ms. Safar.

327

328 Mr. Pualwan said the September 18th e-mail from Tom Mansfield to Hal Evens
329 referenced input received from the Department of Agriculture regarding the
330 correspondence from September 10th e-mail from Wendy Anderson related to on site,
331 grown on the farm and the greater than 51 percent produced on the farm, said Mr.
332 Pualwan. Mr. Durant asked Mr. Pualwan to read the ZA's question to Ms. Anderson. It
333 was a leading question – that the grapes came from off the farm, said Mr. Durant.

334

335 Mr. Durant read the definition of an 'on the farm' term. Mr. Pualwan said that it was a
336 question of the definitions of 'on site' and 'off site'. Where was the documentation that
337 greater than 51 percent was produced by the farm. He would like to focus what the 'on
338 site' language referred to, said Mr. Pualwan.

339

340 Ms. Safar said that in order to make sense you have to think of the barn as 'off site'. If it
341 was on the Grand Isle farm, then would you agree that it was on site, asked Ms. Safar.

342

343 Ms. Safar said that 'the farm' included the place where grapes grew, or other land where
344 the grapes were. Storing and processing was the other place where the grapes were, said
345 Ms. Safar. Mr. Durant clarified that if it was leased by 'the farm', then the lease portion
346 was considered as part of 'the farm'.

347

348 Mr. Webster asked if all the facts had been submitted for consideration.

349

350 Mr. Pualwan reviewed that documentation was needed to establish that greater than 51
351 percent of the grapes were grown 'on the farm'; the ZBA would consult with the Town
352 Attorney regarding definitions of what was 'on site' or 'off site'; and would continue the
353 appeal hearing to a future date.

354

355 **MOTION by Mr. Webster, seconded by Mr. Tenney, to continue the appeal of Hal**
356 **Evans, 181 Windswept Lane, of the Zoning Administrator's decision that a permit**
357 **for a Home Occupation is required because their business does not qualify as an**
358 **accepted agricultural practices exemption to Wednesday, January 15, 2014, at 7:30**
359 **p.m.**

360 **VOTE: 3 ayes, 2 absent (Mr. Fisher, Mr. Swayze); motion carried.**

361

362 **ADJOURNMENT**

363 The ZBA meeting was adjourned at 8:50 p.m.

364

365 Minutes respectfully submitted, Kathlyn Furr, Recording Secretary.

366

367 *Minutes subject to correction by the Charlotte Zoning Board of Adjustment. Changes, if any, will be*
368 *recorded in the minutes at the next meeting of the Board.*

369