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**TOWN OF CHARLOTTE
ZONING BOARD OF ADJUSTMENT
JAUARY 15, 2014**

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MEMBERS PRESENT: Ben Pualwan, Chair; Douglas Webster, Jonathan Fisher, Andrew Swayze, Frank Tenney.

ADMINISTRATION: Gloria Warden, Zoning Clerk.

OTHERS PRESENT: Liam Murphy, Erin Hanley, David Weinstein, Charles Russell, Gerald Bouchard, Liam Murphy, Claudine Safar, Hal Evans, Ben Durant, Patrice Machavern, and others.

ITEMS HEARD:

- **Request of David Weinstein and Erin Hanley, 2750 Thompson’s Point Road for Conditional Use approval for alterations to the existing structure. Property is located in the Historic section of Thompson’s Point and is in the Shoreland Seasonal Home Management District.**
- **Continuation: request of Christopher and Rebecca Fortin, 2737 Lake Road, for a conditional use approval for a Contractor’s Yard allowed as a Home Occupation III, property located in the Rural Zoning.**
- **Continuation: 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.**

CALL TO ORDER

Mr. Pualwan, Chair, called the meeting to order at 7:04 p.m.

REQUEST OF DAVID WEINSTEIN AND ERIN HANLEY, 2750 THOMPSON’S POINT ROAD FOR CONDITIONAL USE APPROVAL FOR ALTERATIONS TO THE EXISTING STRUCTURE. PROPERTY IS LOCATED IN THE HISTORIC SECTION OF THOMPSON’S POINT AND IS IN THE SHORELAND SEASONAL HOME MANAGEMENT DISTRICT.

David Weinstein and Erin Hanley, owners, 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: David Weinstein and Erin Hanley.

APPLICANT COMENTS

Mr. Weinstein briefly reviewed that the former Reed camp, which was the second to last camp on Thompson’s Point Road, was modest in design and construction. The 1,500 square foot camp was built in 4-5 phases in an “L” shape. Two of the “L” sections had

47 steep roofs, small windows, and the shed was on the road side. The structure needs a lot
48 of maintenance and structural improvements, such as sono-tubes under the shed/porch
49 areas. The side oriented to the shore line had only one window, said Mr. Weinstein.
50

51 Mr. Weinstein referred to the Conditional Use application related to a rendering of the
52 existing camp, a proposed addition of a shed dormer across the front of the structure with
53 2 over 2 windows in keeping with the existing window design and a 3/12 slope. The
54 existing dining room would be expanded by 15 square feet to fill in a 'notch' in the
55 building created by an old cedar tree stump. The DRB suggested that 15 square feet be
56 given up elsewhere, which he was willing to do. A covered porch was proposed over an
57 existing utility room. A landscaping plan by Distinctive Landscaping has been submitted,
58 explained Mr. Weinstein.
59

60 Ms. Hanley said that the covered porch roof would look like the historical roof in keeping
61 with the character of the building.
62

63 Mr. Weinstein explained proposed stone steps going up the hill on the north side would
64 replace a gravel walkway, and would connect to a stone walkway on the camp's west
65 side. Trees to be cut included one tree in front of an existing porch stairway and a dead
66 tree within a cluster of trees. The porch stairs would be replaced and moved more to the
67 middle of the porch. He would consult with a tree arborist regarding removal of a second
68 tree that might be compromised within that cluster of trees. A chain link fence would be
69 replaced with a double loop wire fence, said Mr. Weinstein.
70

71 ZBA QUESTIONS/COMMENTS

72 None.
73

74 **MOTION by Mr. Fisher, seconded by Mr. Webster, to schedule a site visit for**
75 **Sunday, January 26, 2014, at 3:00 p.m. at the Weinstein and Hanley Thompson's**
76 **Point camp, located at 2750 Thompson's Point, and to continue the hearing**
77 **regarding a Conditional Use application for alterations to the existing structure,**
78 **located in the Historic section of Thompson's Point and the Shoreland Seasonal**
79 **Home Management District, to Wednesday, January 29, 2014, at 7:00 p.m.**

80 **DISCUSSION:**

81 **In response to ZBA questions, Mr. Weinstein said that the DRB was fine with the**
82 **proposed dormer. Regarding the dining room 'notch' the DRB was concerned that**
83 **the additional 15 square feet would put the design over the allowable square footage.**
84 **He proposed to take 15 square feet off a back porch eave to offset the added 15**
85 **square feet. The DRB had no concerns regarding the proposed bay windows, said**
86 **Mr. Weinstein.**
87

88 **Mr. Fisher asked if the boundary pins had been located. Mr. Weinstein replied that**
89 **they could not find any of the property pins.**

90 **VOTE: 5 ayes; motion carried.**
91
92

93 **CONTINUATION: REQUEST OF CHRISTOPHER AND REBECCA FORTIN,**
94 **2737 LAKE ROAD, FOR A CONDITIONAL USE APPROVAL FOR A**
95 **CONTRACTOR'S YARD ALLOWED AS A HOME OCCUPATION III,**
96 **PROPERTY LOCATED IN THE RURAL ZONING.**

97 Mr. Pualwan noted that the Fortin's had requested a continuation of the application
98 hearing. The applicant's have submitted additional material that included a completed
99 Home Occupation III application and a completed Conditional Use review application.
100

101 **EXHIBIT F and G: the ZBA accepted and marked a completed Home Occupation**
102 **III application as Exhibit F, and a completed Conditional Use review application as**
103 **Exhibit G.**

104
105 **MOTION by Mr. Pualwan, seconded by Mr. Fisher, to continue the request by**
106 **Christopher and Rebecca Fortin for a Conditional Use for a Contractor's Yard**
107 **allowed as a Home Occupation III, located at 2737 Lake Road, to Wednesday,**
108 **February 19, 2014, at 7:00 p.m., and to schedule a site visit on Sunday, January 26,**
109 **2014, at 3:45 p.m.**

110 **VOTE: 5 ayes; motion carried.**

111
112 **CONTINUATION: APPEAL OF HAL EVANS, 181 WINDSWEPT LANE, OF**
113 **THE ZONING ADMINISTRATOR'S DECISION THAT A PERMIT FOR A**
114 **HOME OCCUPATION IS REQUIRED BECAUSE THEIR BUSINESS DOES**
115 **NOT QUALIFY AS AN ACCEPTED AGRICULTURAL PRACTICES**
116 **EXEMPTION. PROPERTY LOCATED IN THE RURAL ZONING DISTRICT.**
117 Hal Evan, owner, Ben Durant, East Shore Vineyard LLC, and Claudine Safar, attorney
118 representing Mr. Evan and Mr. Durant, appeared on behalf of the application.
119

120 **STAFF NOTES**

121 Mr. Pualwan reviewed staff notes.

122

123 Mr. Pualwan reviewed a written letter from Ann Wittpenn, dated January 9, 2014, that
124 explained her absence at the continued hearing, and a request for notices to be sent to her.
125

126 **EXHIBIT B: the ZBA accepted and marked the letter from Ann Wittpenn, dated**
127 **January 9, 2014, as Exhibit B.**

128

129 Ms. Safar submitted four documents for ZBA review.

130

131 **EXHIBIT C: the ZBA accepted and marked a copy of the Ochs decision as Exhibit**
132 **C.**

133

134 **EXHIBIT D: the ZBA accepted and marked a copy of the Moore decision as Exhibit**
135 **D.**

136

137 **EXHIBIT E: the ZBA accepted and marked an affidavit signed by Mr. Durant that**
138 **addressed the percentage of grapes grown on the East Shore Vineyard farm and**
139 **used in the production of winemaking as Exhibit E.**
140

141 **EXHIBIT F: the ZBA accepted and marked a calculation table related to the**
142 **percentage of grapes grown on the East Shore Vineyard farm and used in the**
143 **production of winemaking as Exhibit F.**
144

145 Mr. Pualwan explained a swearing in process for establishing Interested Party status.
146

147 The following were sworn in: Robert S. Livingstone, Patrice Machavern.
148

149 APPLICANT COMMENTS

150 Ms. Safar explained the relevance of the four submitted documents as follows:

- 151 • The Ochs decision that was discussed at the 01/08/2014 ZBA hearing directly
152 spoke to the issues.
- 153 • The Moore court decision of July, 2013, involved a family that subdivided a
154 family farm into several different parcels among themselves. One brother built a
155 pipe organ restoration business on a 10 acre parcel. The issue was if the
156 production facility on the 10 acre parcel that consisted of a saw mill, kiln, etc, was
157 a farm structure. The court found that it did constitute a farm structure and was
158 exempt. Neighbors had claimed that the cutting and milling of wood was a
159 manufacturing business and was not farming. The lower and Supreme Court
160 found that the enterprise was an exempt farm practice.
- 161 • Mr. Durant had cited ACT 250 related to the language of ‘greater than 50
162 percent.’ East Shore Vineyards grew more than 51 percent of the grapes used in
163 the business of making wine.
- 164 • The table submitted demonstrated the relationship of the ‘greater than 51 percent’
165 to percentage of grapes grown, types of grapes used, and percentage used in the
166 production process.
167

168 ZBA QUESTIONS/COMMENTS

169 Mr. Fisher asked if the last year’s numbers noted in the table were for the 2013 harvest.

170 Mr. Durant replied yes; for 2013. He didn’t prepare numbers for 2012, which were
171 processed at Shelburne Vineyard’s Route 7 facility. Over 50 percent of his grapes used
172 were grown on the East Shore Vineyard property for 2012 as well. The calculations for
173 the table were based on measurements from last week. As per the note on the table the
174 Vermont grapes from ‘on the farm’ were harvested in September, said Mr. Durant.
175

176 Mr. Durant explained how a sediment layer and a “rack off” tank process related to loss
177 of volume. He said that they were ready to rack off the New York grapes. Currently the
178 Vermont grapes were calculated at 51.4 percent, which should be as low as the volume
179 goes, said Mr. Durant.
180

181 Mr. Pualwan asked what activity was done at the Evan’s barn versus at the Shelburne
182 facility. Mr. Durant explained that the processing at the Shelburne facility last year was

183 same process done at the Charlotte barn. They moved the operation to Charlotte at the
184 end of August. He had made a deal of an alternating proprietorship with Shelburne
185 Vineyard. He used their facility as if it was his own and used Shelburne Vineyard's
186 stemmer and other equipment. At the barn he installed the plumbing, electrical, and
187 purchased equipment as needed. High pressure steam was used for cleaning the
188 equipment at 400 degree psi. That translated into the use of one-half gallon of water per
189 hour. The steam was vented to the atmosphere. No soap or chemicals were used. They
190 composted the stems and skins. Following the ZA approval they had received notice that
191 they didn't need further approvals from the Town. They went through the state and
192 federal approval process to make sure they did things legitimately. They spoke with
193 Spencer Harris regarding any issues as well. Nothing went into the septic system so there
194 were no issues, said Mr. Durant.

195

196 Mr. Pualwan asked what processing was involved at the barn. Did the grapes come in, get
197 processed, bottled and removed from the barn, asked Mr. Pualwan. Mr. Durant explained
198 that the grapes were trucked in using a Silverado 1500 truck and trailer. The bins used
199 were 5'x5'x5' cubes that held up to one ton of grapes. Heavy duty plastic was used to
200 keep seepage under control. A propane fork lift was used, which was quiet to operate, to
201 unload and move the bins. The crusher/de-stemmer hopper equipment was more than 6'
202 tall. It crushed, removed stems and then fed the mashed grapes into the hopper at the
203 bottom. The mass was pressed for juice that was captured into a catch pan. The juice was
204 fed into a tank. After the crush the juice in the tank had yeast added to ferment into
205 alcohol. There were augers in the crusher and hopper that pumped the juice into the tank,
206 said Mr. Durant.

207

208 Mr. Tenney asked how many bins were on the truck. Mr. Livingstone said that up to six
209 on the truck/trailer. There were six harvests done, but only one trip had six bins, clarified
210 Mr. Livingstone. Mr. Durant said that New York grapes from the Finger Lakes region
211 were trucked up Route 22A. There were three outside deliveries from New York. The
212 bins were unloaded from the trailer onto a 20'x15' cement pad outside the barn where the
213 crusher was located, said Mr. Durant.

214

215 Mr. Fisher asked what the process was once the grapes were pressed into juice. Mr.
216 Durant explained the fermenting process for reds, whites and rosé varieties. The whites
217 and rosé would launch, or be bottled, in February/March. Regarding a neighbor's concern
218 that they would have a cellar wine at the barn – he has a Church Street, Burlington, shop
219 where they sold the wine, which was their public space. Robert has a house and a 24'x24'
220 wine cellar where wine was stored in Grand Isle. They hand applied the bottle labels in
221 Charlotte, said Mr. Durant.

222

223 Mr. Fisher asked how cost effective it was to bring grapes to Charlotte for processing
224 versus at a local Grand Isle barn. Mr. Durant explained that when he purchased the
225 business from Robert, his father-in law, Hal became his partner. Hal had built a barn,
226 which was mostly completed last January. They were paying too much at Shelburne and
227 Hal's barn was empty, said Mr. Durant. Mr. Evans explained that they were paying a per
228 bottle fee 'rent' to Shelburne Vineyard when they were processing wine at Shelburne. He

229 wanted to use his barn and save on the 'rent'. He was an investor and was receiving a
230 decent rate for the barn space, said Mr. Evans.

231

232 Mr. Pualwan asked if Hal took part in the wine making process. Mr. Evans replied yes.
233 He helped during the harvest season, and the wine making process, said Mr. Evans.

234

235 Mr. Pualwan asked if there was only one vineyard employee. Mr. Durant explained that
236 Peter was the vineyard manager. Robert helped out as well, but was not an employee,
237 said Mr. Durant.

238

239 Mr. Livingstone said that he was the vineyard founder. Ben took the vineyard over. He
240 was not an employee, but liked to help out. It was a labor of love. He started the vineyard
241 as a legacy. He retired at age 63 and started the business with the idea that someone in the
242 family would take it over, explained Mr. Livingstone.

243

244 Mr. Durant explained Peter's role as vineyard manager. Peter was finishing his plant and
245 soil science major at UVM. Peter worked two mornings per week at the barn, and left by
246 10:00 a.m. Peter was full time at the Grand Isle vineyard. Peter was doing the winter
247 pruning of the vines currently, said Mr. Durant.

248

249 Mr. Pualwan asked if Peter checked what other people did at the barn time-wise. For
250 example; when the grapes arrived to when it left in bottles, said Mr. Pualwan. Mr.
251 Livingstone replied that Peter spent 65 percent of the time at the vineyard and 35 percent
252 at the barn. Everyone else were volunteers, said Mr. Livingstone.

253

254 Mr. Pualwan asked how much of the work Peter did at the barn versus what the
255 volunteers did. Mr. Durant said Peter did 60-70 percent of the work at the barn. Peter was
256 the day-to-day person. Hal did some of the work as needed, said Mr. Durant.

257

258 Ms. Safar asked what relevance the work schedule was to the issues. Mr. Pualwan replied
259 that the issues were complex and he was struggling with the interpretation. He consulted
260 with the Town Attorney and statewide. The issue of control came up, such as the
261 percentage of control, percentage of grapes, and the process to understand if it was
262 agricultural production, said Mr. Pualwan.

263

264 Ms. Safar said that the question of control was an issue addressed in the Ochs case that
265 the farm had control over what went on at the farm. Mr. Pualwan clarified that it was a
266 question of who was in control of day to day operations at the site. He wanted to make
267 sure the ZBA had enough information for Deliberative Session, said Mr. Pualwan.

268

269 There was discussion regarding a day time site visit proposed for Sunday, January 26.

270 Mr. Murphy asked that a site visit be done in daylight so that the ZBA members could
271 view the impact to neighborhood.

272

273 Mr. Swayze noted that in the Moore case, page 3, Section 12, practice associated with
274 farming, it talked about wood production as a practice associated with farming. What was

275 the argument here - the pressing of grapes was associated with the growing of grapes,
276 asked Mr. Swayze. Ms. Safar said that the ZBA should look to exempted agriculture as
277 defined in the AAP's., which had 11 criteria, said Ms. Safar.

278

279 Ms. Safar read Section 3.2 of the AAP's, Subsection G, a barn was a farm structure, and
280 Section 2.06, the AAP definition of a farm structure. Under (i), the "...sale of \$1,000 or
281 more of agricultural products..." met the test of "principally produced." "Principally
282 produced" was not in the zoning regulations. It was in ACT 250. That means 'greater
283 than 50 percent.' Mr. Durant has submitted an affidavit that greater than 51percent of the
284 grapes were produced on the farm. The question here was the barn a part of the farm. As
285 long as it was owned, or leased and under the control of the farmer, or LLC, it was a 'part
286 of the farm.' The courts have said that it was good enough. There were no restrictions
287 that said you have to have it all on one parcel, for example. You have the Ochs decision.
288 Moore was an example of 'on site' 'off site' and if it was just manufacturing going on
289 site. It was a question of what was 'the farm', said Ms. Safar.

290

291 Mr. Pualwan questioned if the leased property with pressing of grapes into wine was 'on
292 the farm'. Ms. Safar read from the Ochs cast related to a production facility on leased
293 property. The court was saying that anything leased was 'on the farm'. You have to get to
294 'on the farm' to get to principally produced, said Ms. Safar.

295

296 Mr. Pualwan said it was a question of the 'on site' of farming, or leased property on its
297 own that was not being farmed. Was the 'on site' requirement met - that was the
298 question, said Mr. Pualwan.

299

300 Mr. Tenney said that as per the Ochs case, paragraph 4, the Ochs' have a total of 300
301 acres, of which they were operating a 150 acre orchard. They have an orchard and a
302 facility for the packing and processing of apples. This was way we're going - that the
303 operation has to all be on one site, said Mr. Tenney. Ms. Safar replied that it doesn't
304 matter. The Moore case says he was not growing anything on his 10 acre parcel. He was
305 not growing trees, or cutting trees. He was manufacturing and producing and the court
306 said that was good enough, said Ms. Safar.

307

308 Mr. Pualwan suggested that the ZBA schedule a site visit to 181 Windswept for Monday,
309 January 27, 2014, at 4:30 p.m.

310

311 Mr. Pualwan said that the Town Attorney was consulted and there were letters/e-mails
312 from Wendy Anderson, Department of Agriculture that said farming would need to be
313 done on site to be exempt. What Ms. Anderson wrote was not a ruling. The ZBA would
314 request a formal ruling on the issue from the Department of Agriculture to be used as
315 guidance, said Mr. Pualwan. Ms. Safar stated that the ZBA could not make a ruling. They
316 have operative law from two Supreme Court opinions. Anderson was a state employee
317 and could not make a ruling, said Ms. Safar.

318

319 Ms. Safar said that she would like to have time to present the argument to the ZBA
320 members that missed the 01/08/2014 hearing. In the Moore case it was Justice Wright of

321 the Supreme Court that made the rulings. The Agency of Agriculture took no position in
322 Moore. The Department of Agriculture was not a precedent making authority, but the
323 court was. The Department of Agriculture could have disputed the ruling since July when
324 the Moore case was heard, but didn't, said Ms. Safar.

325

326 Mr. Murphy read the Moore decision related to three siblings that jointly managed farm
327 properties as a whole. All the properties constituted 'the farm'. It was not a separate
328 parcel. There were no cases similar to this where the processing facility was separate
329 from 'the farm'. Moore was producing a product for 'on the farm' use only. The Ochs
330 orchard produced products using 60-70 percent of their own apples. 'The farm' was the
331 property and orchard with the processing facility located on it. The ZBA should ask Joe
332 McLean to read Moore and Ochs. The answer was not clear, said Mr. Murphy. Ms. Safar
333 said she disagreed. You have to look at the logical extension of the proposition. For
334 example, you have a cattle farm with one parcel across a road for grazing cows and a
335 separate second parcel on the other side of the road where the cows were milked. The
336 point was that nothing else went on at the second parcel except for milking. What if the
337 parcel was one lot down, or three lots down, from the milking parlor and was no longer
338 adjacent. It all was under the control of the farmer. You were saying if part of the
339 operation was not next door, then it was not farming, said Ms. Safar.

340

341 Mr. Pualwan said his question was a lease and how it played a part in the agricultural
342 practice. Can you use produce on leased land. Regarding the parcel across road, down the
343 road, or across town you would have to make the argument that it was all one operation.
344 No evidence has been presented where a lease was used to produce a product from what's
345 grown elsewhere and not produced on the leased land, said Mr. Pualwan.

346

347 Mr. Evans asked what a lease had to do with what's grown. They were using his barn to
348 save on paying rent elsewhere, said Mr. Evans. Mr. Pualwan explained that you were
349 allowed to use leased farm properties to produce a greater than 50 percent of a product.
350 He couldn't see that a leased barn could be used for on site processing. It doesn't have
351 anything to do with affordability, said Mr. Pualwan.

352

353 Ms. Safar read the ACT 250 exemption. To define an agricultural use you have to follow
354 the AAP's, stated Ms. Safar.

355

356 Mr. Swayze said that he would like to review the ZBA meeting minutes from January 8
357 to get up to speed. It seems like the applicant has gone through a process and got some
358 flip flop advice/answers, said Mr. Swayze. Mr. Evans said that they went forward with
359 their operation upon the basis on a finding after consulting with the ZA. They took it in
360 good faith that they qualified as an exempt agricultural practice. They planned to grow
361 grapes on the Charlotte property in the future. He was invested in part ownership of the
362 business. He wanted to be good a neighbor. They were just following the rules, said Mr.
363 Evans.

364

365 Mr. Pualwan said that there were questions of just what was asked of ZA by the
366 applicants. There was no written record of that conversation, said Mr. Pualwan.

367

368 Ms. Safar asked if the ZBA had asked Tom Mansfield what was discussed, or said. She
369 had explained that the argument was the reliance of a ZA decision that was final and
370 unapproachable. The ZA decision was never revoked. For further discussion, what was
371 the ZBA role and position of what the ZA said – if his e-mail was formal, asked Ms.
372 Safar.

373

374 Mr. Pualwan said that the ZBA had no bias regarding agriculture, or wine making. No
375 appeal before this Board has been overruled in the past. He would like to review case
376 law, seek further evidence, and consult with the Town Attorney, said Mr. Pualwan.

377

378 Mr. Durant asked the ZBA to include the ZA and ask Tom to testify that in July they
379 went to Tom and told him what they were doing. They had asked how to go through the
380 process, and what was needed, said Mr. Durant. Mr. Pualwan said it was not uncommon
381 to go to Tom to get advice. They could ask Tom to come back, said Mr. Pualwan.

382

383 Ms. Safar said that it was later that the ZA was influenced by the opinion/position of
384 neighbors, which prompted him to send that October letter. She would like time to work
385 with neighbors to resolve those issues, said Ms. Safar. Mr. Pualwan said that the
386 neighbors' issues were not relevant to the ZBA hearing.

387

388 Ms. Safar said she objected to the ZBA going and getting evidence to bring to a hearing.
389 That would be seeking ex parte evidence. The ZBA can't go and seek outside evidence
390 and make a ruling. The ZBA was a quasi-judiciary body and your job was to take
391 evidence presented at the hearing, said Ms. Safar.

392

393 Mr. Murphy asked for time to comment.

394

395 Mr. Swayze asked what impact a continued hearing would have on their business. Mr.
396 Evans said that they were not crushing now, but had wine sitting in tanks. Mr. Durant
397 said that if the hearing was pushed out to the spring and they couldn't bottle the wine that
398 would put them out of business. Ms. Warden said the applicant didn't have to stop the
399 operation if they applied for a Home Occupation.

400

401 Ms. Safar said that the letter received from Tom did not call for the applicants to stop
402 operations. The applicants have conditional approval. The applicants have expressed
403 interest in planting grapes at the Evans property. The ZBA could say they were exempt as
404 long as they planted grapes within the next six months, suggested Ms. Safar.

405

406 Mr. Pualwan said that he would like to come to a final determination versus finding a
407 date down the road. The hearing could be continued to January 29. He would know if a
408 request for a formal opinion was needed after the site visit, said Mr. Pualwan.

409

410 Mr. Durant asked if the ZBA would be satisfied if he planted grapes on the Evans
411 property. Planting was normally done in the spring, which could be by Memorial Day,
412 said Mr. Durant. Mr. Pualwan said it was not clear if that was relevant. How many grape

413 vines could be planted, asked Mr. Pualwan. Mr. Durant explained that 750 plants per acre
414 could be planted. Mr. Evans said that there were a couple of acres with suitable soil. He
415 would need to discuss how that would impact a neighbor who grazed cows, said Mr.
416 Evans.

417
418 Mr. Pualwan asked if the applicant's contention was that the wine making activity
419 qualified as 'processing' under the AAP's. Mr. Durant replied that generally processing
420 was preparing a product for market as per the AAP's. Ms. Safar said that the barn was a
421 farm structure as per AAP's.

422
423 Mr. Pualwan asked if there was air conditioning, or climate control in the barn. Mr.
424 Evans replied that one half of barn was heated, but where the tanks were was not heated,
425 or cooled. There was no air conditioning, said Mr. Evans.

426

427 PUBLIC COMMENT

428 Mr. Murphy said he was representing Charles and Julia Russell who were abutting
429 neighbors, and summarized:

- 430 • That the ZA's decision related to an agricultural exemption that may or may not
431 have been made, was not formal, not posted, neighbors were not informed, and
432 therefore not binding.
- 433 • There were concerns regarding a cement pad outside of barn where de-stemming,
434 crushing and composting of grapes occurred.
- 435 • The lease says it was for 'part of barn', which was not detailed.
- 436 • At issue was what constituted 'the farm'.

437

438 Mr. Murphy asked the applicant what percentage of the grapes came from the Little
439 Sister's Vineyard. Mr. Durant replied about 20 gallons. Mr. Murphy said that the Little
440 Sister's Vineyard was a related vineyard where they buy grapes and could impact the
441 greater than 51 percent definition, said Mr. Murphy. Mr. Durant said he would
442 recalculate the percentage, but it wouldn't impact the amount of grapes grown on the
443 farm.

444

445 Mr. Murphy expressed concern that the AAP's were being pushed to the extreme to make
446 the leased portion of a barn as part of 'the farm'. They were bringing in a portion of
447 grapes grown on a leased farm in Grand Isle. For the record, he was submitting copies of
448 all four Ochs cases. The cleanest decision was the Environmental Board's decision, said
449 Mr. Murphy.

450

451 **EXHIBIT G: the ZBA accepted and marked the four submitted Ochs cases as** 452 **Exhibit G.**

453

454 Mr. Murphy said that the East Shore Vineyard website stated that they do bring in grapes
455 from other grape growing farms. Listed was the Little Sister Vineyard in St Albans, VT,
456 said Mr. Murphy. Mr. Murphy submitted a copy of the East Shore Website pages for
457 ZBA review.

458

459 **EXHIBIT H: the ZBA accepted and marked the pages of the East Shore Vineyard**
460 **website as Exhibit H.**

461

462 Mr. Durant said he had recalculated the use of grapes grown on the East Shore Vineyard
463 farm at 51 percent. This was the lowest that the percentage would go, stated Mr. Durant.

464

465 Mr. Murphy said every case presented has a processing facility on the real farm. The
466 term, ‘principally produced’ on the farm hasn’t been decided. Regarding ex parte
467 evidence – the ZBA could seek an opinion of their own regulations, which was not
468 evidence. It was an acceptable practice, and was what the applicant did, said Mr. Murphy.

469

470 Mr. Livingstone said that regarding Mr. Murphy’s comment related to owned land and
471 leased land. In Grand Isle there was a farmer with a farm and leased land. That farmer
472 takes his heifers to the leased farm. Farmers don’t always own all the land being farmed,
473 said Mr. Livingstone.

474

475 Mr. Livingstone said that he owns the farm that was leased to Ben Durant and Hal Evans.
476 Hal Evans owns the Charlotte barn, said Mr. Livingstone.

477

478 Ms. Machavern, an abutting neighbor, said she would be out of town and would miss the
479 site visit and hearing. She has lived 27 years on a lot within a four lot subdivision of the
480 Lavallette farm. All the lots were on a shared driveway. Does the ZBA look at impacts to
481 the neighborhood when they reviewed applications, asked Ms. Machavern. Mr. Pualwan
482 explained that this was an appeal of a ZA determination that the applicant needed to
483 apply for a Home Occupation. Depending on if the ZBA finds to uphold the ZA
484 determination then that process would accept those concerns. It would not go before this
485 Board. If the determination was over ruled and the practice qualified as an agricultural
486 exemption, then the Town had no jurisdiction, said Mr. Pualwan.

487

488 Ms. Machavern said that she was notified as an abutter. The names and address were
489 incorrect, said Ms. Machavern.

490

491 Ms. Warden said Tom’s letter explained that the applicant would need to apply for a
492 Home Occupation, which would be heard by the ZBA. Agricultural exemptions would go
493 before the new ZA, Jeannine McCrumb, said Ms. Warden.

494

495 Mr. Murphy submitted a copy of a lower court Moore case that included more detail of
496 the land situation and processing of lumber products.

497

498 **EXHIBIT I: the ZBA accepted and marked the submitted lower court decision of**
499 **the Moore case as Exhibit I.**

500

501 **MOTION by Mr. Fisher, seconded by Mr. Webster, to continue the appeal of Hal**
502 **Evans, 181 Windswept Lane, of the Zoning Administrator’s decision that a permit**
503 **for a Home Occupation was required because their business does not qualify as an**

504 **Accepted Agricultural Practices exemption to Wednesday, January 29, 2014, at 8:00**
505 **p.m., and to schedule a site visit for Monday, January 27, 2014, at 4:30 p.m.**
506 **VOTE: 5 ayes; motion carried.**

507

508 **ADJOURNMENT**

509 The ZBA meeting was adjourned at 9:20 p.m.

510

511 Minutes respectfully submitted, Kathlyn Furr, Recording Secretary.

512

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

515

516

517