TOWN OF CHARLOTTE
ZONING BOARD OF ADJUSTMENT
JAUARY 29, 2014

DRAFT

MEMBERS PRESENT: Ben Pualwan, Chair; Douglas Webster, Jonathan Fisher, Andrew Swayze, Frank Tenney.
ADMINISTRATION: Gloria Warden, Zoning Clerk.
OTHERS PRESENT: David Weinstein, Charles Russell, Ann Wittpenn, Claudine Safar, Hal Evans, Ben Durant, and others.

ITEMS HEARD:

- **Continuation: 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: 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 7:07 p.m.

CONTINUATION: 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, owner, appeared on behalf of the application.

STAFF NOTES
Mr. Pualwan reviewed staff notes. The request was first heard on 01/15/2014. A site visit was conducted on Sunday, 01/26/2014, at 3:00 p.m.

SITE VISIT:
Mr. Webster reported that Mr. Tenney, Mr. Swayze, Mr. Fisher and Mr. Webster attended the site visit. Mr. Weinstein and Ms. Hanley, owners, were present. The ZBA members inspected the interior and exterior of the existing building, said Mr. Webster.

Mr. Pualwan explained that Mr. Weinstein was still sworn in since this hearing was a continuation of a hearing from 01/15/2014. Any observations from the site visit would need to be discussed at this hearing to be considered by the ZBA, said Mr. Pualwan.

Mr. Swayze said that the applicant's three proposed significant changes were reviewed during the site visit, which included a roof over the porch on the east side of the structure,

the "bump out" addition, and a dormer. The new plans for the roof and dormer over the deck area were discussed, said Mr. Swayze.

APPLICANT COMENTS

Mr. Weinstein submitted a letter from Robin Coburn, Design Review Board member, to Mr. Weinstein. The DRB approved proposed changes/additions to the existing camp with the exception of a proposed roof over an existing deck of a storage area, said Mr. Weinstein.

EXHIBIT A: the ZBA accepted and marked the letter from Robin Coburn, Design Review Board member, to Mr. Weinstein as Exhibit A.

ZBA QUESTIONS/COMMENTS

Mr. Swayze asked what the DRB's objection was to the proposed roof over the deck area. Ms. Warden replied that as proposed it would increase the square footage allowed.

Mr. Weinstein said that the DRB objected to increase of square footage unless he could find an offset to the additional square footage. The roof over the deck could be reduced by 3' for a 30 square foot reduction.

Mr. Weinstein pointed to the front and back porches using the Listers' card camp foot print sketch. Anything over a room was a ceiling and not considered a 'deck'. He had pointed out the impervious deck material to the DBR during a site visit, said Mr. Weinstein.

Mr. Fisher said that there didn't appear to be any permit paperwork for that storage area. Mr. Weinstein replied no. In the DRB findings regarding the deck area the DRB called it a 'grey' area. There were no plans to enclose the porch if it was roofed over. The ZBA could make that a condition, suggested Mr. Weinstein.

Mr. Fisher stated that there have been a steady progression at the camps that these 'rooms' are roofed over, and then enclosed for bedrooms. That was a concern, said Mr. Fisher.

Mr. Fisher asked for clarification regarding a proposed walkway. Mr. Weinstein said that the walk out to the existing roof doesn't add to the square footage. The DRB said they had no problem with it, said Mr. Weinstein.

Mr. Pualwan read Town regulations, Table 2.7, Shoreland District, regarding alterations and Section 5.4(a), alterations or expansions related to a building footprint of a roof that doesn't exceed 7 percent of an area occupied. A question was the storage area 'deck' considered a roof and you walk on it. Was the room added by a previous owner, asked Mr. Pualwan.

Ms. Warden asked if the existing 280 square foot porch had no roof. Mr. Weinstein replied that there was no roof. The 1,572 square foot camp included the 280 square foot

porch, said Mr. Weinstein. Ms. Warden asked for clarification that the camp was 1,572 square feet and the two porches were a total of 595 square feet.

Mr. Tenney asked if the storage space below the porch and the porch itself could be considered as two stories. Ms. Warden said that calculated to a total of 2,185 square feet. Was that with the storage area included, asked Ms. Warden.

In response to a question of a foot print calculation for a 7 percent coverage, Ms. Warden said to take one story for a total of 1,440 square feet.

Mr. Weinstein said that he had calculated that the coverage was over. If the square footage was added up as 1,720 + 132 + 280 + 315, then it definitely was over, said Mr. Weinstein.

Mr. Pualwan said that the ZBA couldn't approve anything if the alteration, or expansion was over the 7 percent. Mr. Swayze said that he calculated it as 762 square feet as 7 percent of the lot.

Mr. Pualwan re-read the definition of alterations and gross floor area. There may be issues with the gross floor area given there was an increase of gross floor area, said Mr. Pualwan.

Mr. Tenney suggested that porches were not an increase in the gross floor area. But the balcony facing the lake would increase the gross floor area. The amended proposal includes a door to the balcony, said Mr. Tenney.

Mr. Fisher pointed out that the increased 18 square footage proposed on the bump out dining area would be offset by a reduction of the porch roof.

Mr. Pualwan asked what the dimensions of the new proposed porch upstairs were. Mr. Weinstein replied it was 15' across by 7.5' for 358 square feet.

Mr. Fisher asked the applicant to provide an over head view of the footprint.

Mr. Pualwan asked if there was anything regarding the definition of alteration related to a half circle porch that the ZBA needed to review.

Mr. Swayze asked if the ZBA ever reviewed a Conditional Use request for alterations of a camp that exceeded the 7 percent. Ms. Warden replied yes. Mr. Swayze asked what did the ZBA decide in those instances where they heard a case for alterations that were already over the 7 percent. Mr. Fisher said that it would take some research. The camps have existed for a long time and zoning regulations have changed over time. What might have been approved for camps over the 7 percent back then may have been governed by different regulations, explained Mr. Fisher.

Mr. Weinstein asked the ZBA to consider what public interest would be regarding either of the 2 changes. The camp was on its last legs. He was trying to make it nicer while maintaining its historic character, said Mr. Weinstein.

Mr. Pualwan asked if Mr. Weinstein wanted the ZBA to consider the design in part, or as a whole with the changes as proposed. Mr. Weinstein replied that he would want to proceed if the ZBA could get to a 'yes' with either one, or two of the changes.

Mr. Fisher said that he would like to see the whole walkway plan to make sure no more of the cedars would be lost when take the excavators went in and big stone were laid. Mr. Weinstein said that was one of the requirements he gave to Distinctive Landscaping. He didn't want the roots damaged and to minimize contact with the trees. He was not talking about digging down. There would be surface application of stone. All topsoil has been washed away, said Mr. Weinstein.

There was discussion regarding a proposal to cull one dead tree, a small tree next to that, and a suggestion to move the walkway further from the trees.

Mr. Fisher summarized that he would like to receive a more detailed plan with square footage noted, the size of equipment to be used around the trees, and an over head drawing of the foot print.

Mr. Weinstein said if the ZBA could not get to a 'yes' on the walkout that was OK. He would e-mail overhead views of the plans the next day and forward an e-mail from Distinctive Landscaping with a summary of the landscaping intent from Charlie Prout, said Mr. Weinstein.

Mr. Pualwan asked to have the materials by February 3rd then the ZBA would include that information in deliberations. The ZBA had 45 days from closing a hearing to render a decision, explained Mr. Pualwan.

MOTION by Mr. Fisher, seconded by Mr. Webster, to close the hearing regarding a request by David Weinstein and Erin Hanley, 2750 Thompson's Point Road, for Conditional Use approval for alterations to the existing structure; and that the applicant has until 02/03/2014 to submit further relevant drawings, or materials for the ZBA to take up in Deliberative Session as follows:

- **A more detailed plan with square footage noted.**
- **An over head drawing of the foot print.**
- **The size of equipment to be used around the trees.**

VOTE: 5 ayes; motion carried.

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.

Hal Evans and Ben Durant, owners, and Claudine Safar, attorney, appeared on behalf of the appeal application.

STAFF NOTES
Mr. Pualwan read staff notes. The hearing was first opened 01/08/2014, and continued to 01/15/2014. A site visit was conducted on 01/24/2014 at 4:30 p.m.

SITE VISIT:
Mr. Tenney reported that Mr. Pualwan, Mr. Fisher, Mr. Webster and Mr. Tenney attended the site visit. Mr. Evans, Mr. Durant, owners, Ms. Safar, attorney, and Mr. Russell, an abutting neighbor, were present. The ZBA inspected the barn and equipment in the barn. There was a discussion regarding boundary lines and the compost location. Equipment was examined. The ZBA members received a brief summary of the operation. They walked around the exterior of the barn, explained Mr. Tenney.

Mr. Durant said he had nothing to add regarding the site visit.

APPLICANT COMMENTS
Ms. Safar submitted three documents that included an affidavit signed by Tom Mansfield, an amended lease agreement, dated 01/29/2014.

EXHIBIT J, EXHIBIT K and EXHIBIT L, three submitted documents were accepted and marked as Exhibit J, Exhibit K and Exhibit L.

Ms. Safar explained that at the last two hearings the ZBA said they didn't know what was said when the applicants met with Tom Mansfield in July. Exhibit J explains what Mr. Mansfield contemplated, and answers that question. Exhibit J was a teleconference with Tom Mansfield that included the Town Attorney, Joe McLean. The affidavit was approved by Mr. McLean, and Mr. Mansfield signed the affidavit. The facts have not changed.

Ms. Safar read the affidavit document into the record. The conversation between Mr. Durant, Mr. Evans and Mr. Mansfield shows that Mr. Mansfield knew that grapes would be transported in from the Grand Isle farm by truck. Mr. Mansfield was given copies of the leases for the operation. Tom had seen the barn and was familiar with the location. He knew that no grapes were grown at the barn property, stated Ms. Safar.

Ms. Safar reviewed Exhibit K, a new lease between Mr. Evans and Mr. Durant related to planting grapes in the spring at the Charlotte barn location. It was important to note what Wendy Anderson was told when she rendered an opinion in response to Mr. Mansfield's e-mail. She was told that grapes came from offsite. She wasn't told there was a lease, or that grapes were grown on a farm in Grand Isle. Mr. Mansfield relied on Ms. Anderson's opinion. Mr. Mansfield had a visit from Charles Russell and that prompted Mr. Mansfield to contact Ms. Anderson. That was relevant evidence on why Mr. Mansfield made a reversal, said Ms. Safar.

Mr. Pualwan asked if any of this was supportive that Tom's July opinion was a formal opinion. Mr. Durant said it says we came to him for a determination and he rendered one. He didn't post it, but it was in writing. So, yes it does support it, said Mr. Durant.

Mr. Webster asked when the applicants started the first batch of wine. Mr. Durant replied that it was immediately after Mr. Mansfield issued a determination in July. They went and got Federal approval to ferment grapes into wine from the Alcohol, Tobacco, Tax and Trade Bureau and state approvals. In August they installed plumbing and electrical upgrades at the barn and moved the equipment in at the end of August. The grapes were trucked in and the process started in September, said Mr. Durant.

Ms. Safar said that once the Zoning Administrator (ZA) made a determination in July, the appellant's have spent $93,936.50 to get the operation up and going. They relied upon the ZA determination, said Ms. Safar. Mr. Evans stated that he also put in a lot of man hours in the operation as well. Mr. Durant said that the expenses also included the Town of Charlotte appeal fee.

Mr. Pualwan stated that the cost to the appellants was not relevant to the ZBA hearing. Ms. Safar replied that a decision was made; it was un-appealable, and therefore final. The appellants went forward upon the ZA determination, reiterated Ms. Safar.

Ms. Safar reviewed Exhibit K, an amended lease of the barn and 2.48 acres of land near the barn to plant grapes that included the area around the barn for composting. Ms. Safar read Section 1.02 of the lease to expand the lease for planting grapes. The ZBA could condition approval of the use as an agricultural use pending the planting of grapes, said Ms. Safar.

Mr. Swayze asked for clarification regarding a letter to the ZBA, dated 12/16/2013, that an administrative official of the Town that rendered a decision becomes final and can't be revoked. Does that mean in all aspects, asked Mr. Swayze. Ms. Safar replied yes. As per state statute 4465, said Ms. Safar. Mr. Swayze said that state statute is a body of law. Would you say that a ZA determination of an agricultural practice was outside his scope, asked Mr. Swayze. Ms. Safar replied it doesn't matter. Tom Mansfield relies on the Town zoning regulations that says if it was an agricultural practice then it was exempt from Town oversight. He could have said he needed to confer with the Department of Agriculture, but he didn't, said Ms. Safar.

Mr. Durant explained that he and Mr. Evans brought a copy of the AAP's to the July meeting with Tom Mansfield, and copies of the leases. It all was a part of the discussion. They didn't gloss over any issue and he understood that as per the affidavit he signed, said Mr. Durant.

PUBLIC COMMENTS

Ms. Wittpenn, an abutting neighbor, said that she was learning about what the Town zoning allowed versus agricultural practices. It was a question of the appeal of Tom Mansfield's decision. As a neighbor, she didn't know that anything was happening until

it happened. She wanted to make sure what was done was done right. When could she have appealed Mr. Mansfield's decision, asked Ms. Wittpenn.

Ms. Safar explained that Ms. Wittpenn could have appealed at any time once she became aware of the activity. She could do a late appeal. Lack of notice doesn't go to the issue of an appeal. As soon as someone becomes aware of something, then it was incumbent upon them to appeal at that time. People can't sit on their hands. Ms. Wittpenn could ask the court for a late appeal and the court would grant it, said Ms. Safar.

Mr. Pualwan said the Mansfield affidavit was submitted tonight. If Tom's July e-mail was intended as a formal decision would that be when the appeal period started, asked Mr. Pualwan.

Ms. Wittpenn explained that she did contact an attorney. He didn't tell her she could appeal prior times, but by being at the hearings she has a right to appeal a ZBA decision, said Ms. Wittpenn.

Mr. Durant said if this had been noticed and appealed it would have been better for us. Then they wouldn't have acted and spent $95,000 on the barn operation. He understood how the lack of an appeal hurts Ms. Wittpenn, but it hurts them too, said Mr. Durant.

Mr. Evans asked what's the different between seeing a notice on a crowded cork board in Town Hall versus viewing all the activity at the barn. There were power trucks, activity, and traffic going on, said Mr. Evans.

Mr. Pualwan asked if Exhibit K, a lease to plant grapes, was done make it fit into the ZBA interpretation of what was on site production. Ms. Safar replied that it was not a concession of a proper interpretation of what was on site. The applicants would plant and grow grapes at the barn if it made the ZBA happy, said Ms. Safar.

Mr. Pualwan reviewed the following two points:

- The applicants have submitted documentation regarding the "…more than 50 percent were principally produced on the farm" question.
- A question whether the activity fits an agricultural exemption of 'on site production'; if on site meant that produce was grown on site. The ZBA thinks the interpretation was 'produce grown on site.' The applicants have submitted an affidavit.

Mr. Fisher said that the 'more than 50 percent' information has been provided.

Mr. Webster asked what the time frame was for producing grapes at the Charlotte site. Mr. Durant replied that it would be two years before they would get a bumper crop. It wouldn't be as much as at the Grand Isle farm, said Mr. Durant.

Mr. Durant said that regarding the on site production of wine versus growing grapes on site, he recalled that Mr. Murphy stated at the last hearing that it was like processing a

product on the second floor of the Old Brick Store and calling it agriculturally exempt. The Evans' property was zoned agricultural, and producing wine was an agricultural practice. They would like to put in 2 acres of vines and grow grapes there. It would be a win-win, said Mr. Durant.

Mr. Pualwan asked what the estimated amount of grapes or volume would be from the Charlotte operation. He was getting to the $1,000 value of produce related to the relative value of the grapes, said Mr. Pualwan. Mr. Durant replied that at Grand isle he gets $80,000 value of grapes on 11-12 acres. In Charlotte it would be 2 acres at one-sixth the production. On a per acre yield you can get several tons of grapes per acre at $52,000 on the wholesale market. He could easily sell that to Shelburne Vineyards for that amount. One reason why they were not at 100 percent of their own grapes - it takes a lot of land, resources and time. We're talking about principally produced on the farm, clarified Mr. Durant.

Ms. Wittpenn asked why the appellants were seeking an agricultural exemption versus a Home Occupation. Mr. Pualwan pointed out that they have already gone over that. It was a part of the appeal of Tom Mansfield's reversal that they should apply for a Home Occupation. They were appealing based on that what they were doing was an agricultural exemption. It was something for the ZBA to consider, explained Mr. Pualwan.

EXHIBIT M, e-mails 01/28/2014, from Joe McLean to Diane Zamos, Department of Agriculture, were accepted and marked as Exhibit M.

Mr. Pualwan reviewed Exhibit M, an e-mail from Joe McLean to Diane Zamos, Agriculture Department, cc'd to Ms. Safar, Mr. Murphy, and Ms. Warden, dated 01/28/2014. It was a request for clarification of agricultural regulations and an e-mail chain initiated with Joe Mclean, said Mr. Pualwan.

Ms. Safar said she provided the facts to Mr. McLean as we believed it to be. Mr. Pualwan asked if this would be a more complete set of facts. The ZBA was waiting to hear back from Ms. Zamos, said Mr. Pualwan.

Ms. Safar said that Diane promised to respond to Joe in one week to ten days, and suggested an alternate proposal to close the hearing with the exception of Ms. Zamos' response. She thought the ZBA had heard enough information to come to a decision, said Ms. Safar.

Mr. Pualwan said that he didn't know when they would hear back from the Department of Agriculture. If the hearing was closed that might eat into the ZBA's ability to make a decision, and/or the ability for the public to react to the information, said Mr. Pualwan.

Charles Russell, an abutting neighbor, was sworn in.

Mr. Russell said that at the last hearing there was talk about sending a letter to the Department of Agriculture. His attorney, Liam Murphy, was not at this hearing. He would like to respond to the letter, or have Mr. Murphy at a hearing, said Mr. Russell.

Mr. Russell stated that Joe McLean asked the agency the wrong question. The revised lease was done so that if they grew grapes there then it was agricultural. The question Joe should have asked was if making wine in a building was an agricultural practice. The ZBA was asked to rule on Tom's ruling, not on later facts, said Mr. Russell.

Ms. Safar explained that the property owner has right to submit revised use at any time. Joe had asked her to write the out the facts, said Ms. Safar.

Mr. Russell said that he was not comfortable speaking to the ZBA since he was also a Selectboard member, which was why he hired Mr. Murphy to represent him.

Ms. Safar said that Mr. Russell was a represented party. Mr. Murphy's office could have sent another attorney in his place. His not showing up shouldn't affect her client, said Ms. Safar.

Mr. Pualwan said that he didn't know what the content coming back from the agricultural agency was, or if would raise further questions. He was disinclined to close the hearing, said Mr. Pualwan.

Mr. Fisher and Mr. Tenney spoke in support of waiting to hear back from the agricultural agency.

There were no further questions from the ZBA, or public.

Mr. Pualwan asked if there was any urgency for a decision. Ms. Safar replied that a decision now would minimize her client's expenses.

Mr. Evans said that if they were unable to continue doing business in Charlotte, then they needed to make changes to stay afloat. The longer it drags out the harder it was to do business, said Mr. Evans.

MOTION by Mr. Fisher, seconded by Mr. Webster, to continue the appeal hearing 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 to 02/12/2014, at 7:00 p.m.
VOTE: 5 ayes; motion carried.

ADJOURNMENT
The ZBA meeting was adjourned at 9:08 p.m.

Minutes respectfully submitted, Kathlyn Furr, Recording Secretary.
Minutes subject to correction by the Charlotte Zoning Board of Adjustment. Changes, if any, will be recorded in the minutes at the next meeting of the Board.