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**TOWN OF CHARLOTTE
ZONING BOARD OF ADJUSTMENT
FEBRUARY 19, 2014**

DRAFT

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

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ADMINISTRATION: Gloria Warden, Zoning Clerk.

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OTHERS PRESENT: Liam Murphy, Chris Fortin, Rebecca Fortin, Gerald Bouchard, Tim Hotaling, Jeannine McCrumb, Michael Russell, Margaret Russell, and others.

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ITEMS HEARD:

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- **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.**

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CALL TO ORDER

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Mr. Pualwan, Chair, called the meeting to order at 7:05 p.m.

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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.

Chris Fortin and Rebecca Fortin, owners, appeared on behalf of the application.

STAFF NOTES

Mr. Pualwan reviewed staff notes and noted that the hearing was continued from December 16, 2013 and January 15, 2014.

Mr. Pualwan said that a letter from Martha Whitfield and Jonathan Silverman, dated 02/16/2014, regarding the application was received.

EXHIBIT H: the letter from Martha Whitfield and Jonathan Silverman, dated 02/16/2014, was accepted and marked as Exhibit H.

Michael Russell, Margaret Russell, adjoining neighbors, and Jeannine McCrumb, Zoning Administrator, were sworn in.

APPLICANT COMMENTS

Ms. Fortin submitted a copy of a Natural Resources atlas map of the subject property, noting the location of the horse pastures, material storage area, parking area, existing house and garage, a 60' right-of-way, walking path and property boundaries. A run-in shed for the horses was done last year. Trees on the property were shown as red lines on the map. A proposed material storage area was shown in grey, explained Ms. Fortin.

47 ZBA QUESTIONS/COMMENTS

48 Mr. Fisher asked if the map measurements were accurate enough that it could be used as
49 a scale. Ms. Fortin replied yes.

50

51 Ms. Fortin pointed out the location of the existing contractor yard area and a burn pile in
52 the horse pasture.

53

54 Mr. Fisher asked if the current contractor yard was 50-60 percent of the lot. Ms. Fortin
55 replied that she didn't compute the size of the area. Mr. Fortin said that it was almost 100
56 percent of the lot. Ms. Fortin clarified that the whole area was not used all the time. They
57 would like the right to use the lot for a contractor's yard. For example, at times they
58 would dump top soil, said Ms. Fortin.

59

60 **EXHIBIT I: the submitted Natural Resources map, large and small views, were**
61 **accepted and marked as Exhibit I.**

62

63 Mr. Pualwan asked if the whole grey area on the map was proposed as a contractor's yard
64 area. Mr. Fortin pointed out a proposed nine car parking area, a section for a burn pile,
65 and an extra area for dumping materials if needed. A lawn area was included in case he
66 wanted to park a truck on the lawn, said Mr. Fortin.

67

68 Ms. McCrumb, Zoning Administrator (ZA), said that she had asked the applicants to
69 terminate use of the log processor until a determination was issued. The applicant was
70 allowed to process the logs currently on site now, said Ms. McCrumb.

71

72 Mr. Pualwan asked if going forward the wood processing would be confined within the
73 grey area. Mr. Fortin replied yes. He wanted to use space on the lawn to park a truck, and
74 continue to pile brush in the horse pasture, said Mr. Fortin.

75

76 Mr. Tenney asked if Mr. Fortin would continue the wood processing use on site if it was
77 allowed. Mr. Fortin pointed out a current wood pile on the property.

78

79 Mr. Pualwan said that the application indicated that the Fortin's would have wood
80 processing on the property. Mr. Fortin explained that he had been selling fire wood for 10
81 years. He didn't have wood processing equipment then. He would like to have it on site,
82 said Mr. Fortin.

83

84 Mr. Pualwan said that the machinery was clearly visible from the road. Was the business
85 semi-screened, or completely screened from the neighbors, asked Mr. Pualwan. Mr.
86 Fortin replied that he didn't know. There were few trees on his property. There was no
87 screening in the field, said Mr. Fortin.

88

89 Mr. Pualwan asked what activity took place in the mornings. Mr. Fortin explained that
90 there was a 500 gallon gas tank 40' from the garage. Equipment was fueled in the
91 mornings before it was sent off site, said Mr. Fortin.

92

93 Mr. Fisher stated that as per Section 4.6, Contractor's Yard, there was "...no on site
94 storage of hazardous material." Was the 500 gallon volume needed, asked Mr. Fisher.
95 Mr. Fortin replied yes.

96

97 PUBLIC COMMENTS

98 Mr. Murphy expressed concern that the Fortin business had been in violation of Town
99 regulations for many years. The Town has not addressed those violations. Now there was
100 a full blown contractor's yard with on-going activities. The Town has not implemented
101 any enforcement to have the Fortin's to stop those activities. Could the ZBA impose
102 conditions on the application, such as screening, reduced noise and reduced impacts on
103 neighbors. If those conditions weren't met and it was 10 years later, could a future ZBA
104 enforce those conditions. What could, or not be there. There were trucks, log piles, and
105 piled materials now, said Mr. Murphy.

106

107 Mr. Murphy noted that the regulations allowed for 30 percent lot coverage. The proposed
108 grey area shown on the site map was more than 30 percent. The application submitted
109 was not complete. There was concern that the Fortin's were operating a contractor's yard
110 without a permit. The Fortin's have dumped logs on site and the Town has allowed them
111 to continue to process the logs. The focus should be on the impact to the houses next door
112 and across the street. The Fortin's activities should be pushed to the north side where
113 there were fields. The driveway could go on the north side of the house. Hours of
114 operations should be imposed - such as 7:30 a.m. for starting equipment, fueling, or
115 dumping of materials. Currently it starts at 6:30 a.m., including Saturdays and Sundays
116 and goes on late at night, said Mr. Murphy.

117

118 Mr. Murphy suggested that the Fortin's could place screening along the entire south
119 boundary with an earthen berm planted with trees to reduce the noise, and to screen the
120 activities from neighbors and the road. The nature of 'uses' should be clarified - was it a
121 lawn care business. The Fortin's have expanded the lawn care business to include
122 excavators, trucks etc. The ZBA should limit the uses and areas for those uses. People
123 shouldn't be rewarded for violating the Town regulations by approving permits after the
124 fact, said Mr. Murphy.

125

126 Ms. Fortin said that some of the early morning activity was taking care of her animals.

127

128 Mr. Fortin said that when he purchased the wood processor, Tom Mansfield said it was
129 business as usual until the business was shut down. Jeannine McCrumb, the new ZA, has
130 shut the business down, said Mr. Fortin.

131

132 Mr. Hotaling stated that this Sunday the Fortin's started operating the wood processor at
133 7:45 a.m. He called Ms. McCrumb and registered a complaint. If he mowed his lawn
134 occasionally at 7:45 a.m. then that was normal occasion activity in a rural area. The
135 Fortin's noise making equipment was oriented on his side of the Fortin property. The
136 Fortin's could change the location and orientation to the other side of their property to
137 address sound and noise. Also putting in a berm that absorbed sound would accomplish
138 noise reduction. This was not the appropriate place for this scale of business. Visually,

139 the Fortin's have not planted any trees or vegetation for screening the business. The
140 Town didn't require any screening for the secondary structure when that was approved.
141 He respected the Fortin's desire to work from home. However, the Fortin's business
142 affected him and his home value. You could research the Town records for the number of
143 Town letters sent to the Fortin's over the years, stated Mr. Hotaling.

144

145 Mr. Pualwan reviewed that the ZBA heard applications and either approved, or denied
146 the applications. It was the ZA who enforced Town regulations. Town bylaws for a Home
147 Occupation Level III were the standards for an applicant to meet. The ZBA would
148 consider relevant conditions based on the standards, clarified Mr. Pualwan.

149

150 Mr. Russell, abutting neighbor, asked if the ZBA was addressing the character of the
151 neighborhood area, which was a rural residential district. Running a lawn mower was a
152 character of the rural area. He was an adjoining landowner and could help the Fortin's out
153 if the Fortin's needed to acquire more land. He had been in Tim Hotaling's kitchen while
154 the Fortin's worked and could hear the noise levels. There were ways to measure dB
155 levels if sound was an issue, said Mr. Russell.

156

157 Mr. Russell said that the site map showed a 60' right-of-way he owned and hadn't used
158 much. He was working on an agreement with Kimble Brook Farm to use the right-of-way
159 for heavy farm equipment in order to avoid using his driveway, said Mr. Russell.

160

161 Ms. Russell said there was also potential for a Charlotte trail with a 10' wide easement.

162

163 Mr. Pualwan read the Home Occupation Level III standard, (c) (3), regarding location,
164 screening of designated storage areas and landscaping. The Fortin's field boundary was a
165 large area to screen. Would it be hard to accomplish, asked Mr. Pualwan. Mr. Fortin
166 replied that he could plant trees along the boundary.

167

168 There was discussion regarding a visual screen, and location of a 4-6' high berm with a
169 double row of cedar/pines trees planted on the top along the north side of the Fortin
170 property to address noise.

171

172 Mr. Murphy used a photograph of the Fortin property to point out a position on the
173 northerly side of the driveway, and suggested Mr. Fortin could move the business activity
174 behind the house and storage building. Material could be stored behind the house. A
175 'box' area could be created on the east and north of the equipment building and
176 everything could be done within that 'box'. A berm could go between the equipment
177 building and house, suggested Mr. Murphy. Mr. Fisher said that if a berm was put on the
178 south side of the property it would need to stay out of the 60' right-of-way.

179

180 Mr. Russell asked if the horse run-in shed could be moved to the other side.

181

182 Mr. Pualwan cautioned that the ZBA could approve or deny an application with
183 conditions. The ZBA didn't design what could be done, said Mr. Pualwan.

184

185 Mr. Fortin said that he had talked to Jeannine McCrumb about that. If he had an idea to
186 the ZBA would approve a permit then he would do “x, y and z”. Mr. Tenney said that the
187 ZBA was not telling Mr. Fortin what he had to do. He was asking if Mr. Fortin was
188 willing to consider relocating the horse building and the whole operation to the north. Mr.
189 Fortin replied that it was do-able.

190

191 Ms. Russell pointed out that there was another neighbor that could be affected by moving
192 the operation to the north, and that person was unable to attend this meeting.

193

194 Mr. Hotaling asked if the ZBA could establish criteria, or guidance for screening. Mr.
195 Pualwan replied yes.

196

197 Mr. Hotaling suggested using an expert to design sound mitigation of the noise. Moving
198 the noise to the north side away from his property sounds do-able, said Mr. Hotaling.

199

200 Mr. Pualwan said there were more issues than meeting dB levels. The applicant had to
201 meet the Home Occupation standards to ensure minimal impacts. It was a valid concern if
202 a neighbor was at the meeting, or not. The ZBA was concerned regarding the property
203 values of neighbors. Regard experts, the ZBA could approve/deny an application with
204 conditions. Could the applicant keep his activities to the north, asked Mr. Pualwan. Mr.
205 Fortin said he could limit the business activities to the north side and into the pasture. He
206 had a pile of dirt stored on the south side of the property that could become a berm, said
207 Mr. Fortin.

208

209 Mr. Fisher suggested creating a rectangular ‘box’ versus a ‘box with a jog’ for the
210 contractor yard. Mr. Fortin said that he could come off the back corner of the garage and
211 use the whole back side on the north and include the current parking area. He could
212 continue to plant trees to the north where there were some trees now, said Mr. Fortin. Mr.
213 Fortin drew an area for his business activities in pencil on the site map.

214

215 Mr. Murphy suggested putting a berm closer by the garage. The further away a berm was
216 the less it would deflect sound. At a previous hearing the northerly neighbor said she
217 didn’t have a problem except the applicant should place a screen along her driveway, said
218 Mr. Murphy.

219

220 Mr. Pualwan called a deliberative recess.

221

222 The ZBA recessed at 8:10 p.m. and reconvened the hearing at 8:28 p.m.

223

224 Mr. Fisher asked Jeannine McCrumb if the action was against the wood processing
225 activity, or the expanded lawn business. Ms. McCrumb replied that the current action was
226 for the wood processing activity. The former ZA’s action was for the past activity, said
227 Ms. McCrumb.

228

229 Mr. Russell said that while the ZBA was recessed he had proposed to Mr. Murphy and
230 the applicant to request a continuance for 30 days to allow the parties to sit down and

231 revise the proposal. The applicant would come back with a plan to comply with the
232 neighbor's and ZBA's concerns, suggested Mr. Russell.

233

234 Mr. Pualwan said it was good to have a consensus between neighbors. The burden was on
235 the applicant to meet the bylaw standards for the neighborhood, for the activity, and for a
236 residential use scale. It was not an agricultural use, or a light industrial use, clarified Mr.
237 Pualwan.

238

239 Mr. Fisher noted that the current application was lacking in details that the ZBA required.
240 Mr. Pualwan reviewed that the applicant could amend the application. The ZBA could
241 consider a continuation, or to close the hearing. It was a burden on all parties to schedule
242 multiple continuations, said Mr. Pualwan.

243

244 **MOTION by Mr. Webster, seconded by Mr. Fisher, to continue the hearing**
245 **regarding a request of Christopher and Rebecca Fortin, 2737 Lake Road, for a**
246 **conditional use approval for a Contractor's Yard allowed as a Home Occupation III**
247 **to March 26, 2014 at 7:00 p.m.**

248 **AMENDED by Mr. Webster, seconded by Mr. Fisher, to give the applicant an**
249 **opportunity to revise/amend the application that meets the letter of the bylaws, to be**
250 **submitted by March 19, 2014.**

251 **VOTE and the amended motion: 4 ayes, 1 absent (Mr. Swayze); motion carried.**

252

253 **ADJOURNMENT**

254 The ZBA meeting was adjourned at 8:40 p.m.

255

256 Minutes respectfully submitted, Kathlyn Furr, Recording Secretary.

257

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

260