

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

**TOWN OF CHARLOTTE
ZONING BOARD OF ADJUSTMENT
DECEMBER 16, 2014**

DRAFT

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

ADMINISTRATION: Britney Tenney, Zoning Clerk.

OTHERS PRESENT: Ashley Robinson, Michael Russell, Robert Mack, Chris Fortin, Becky Fortin, Kristin DeStigter, Justin Bora, Steve Mack, Jeff Hall, Melanie Goodman, Jonathan Silverman, Dale Knowles, Eric Silfen, and others.

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.

AGENDA:

ZBA-14-09: Conditional Use review for a Contractor's Yard/Home Occupation III for the Fortin property located at 2737 Lake Road. The property is located in the Rural District.

CALL TO ORDER

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

ZBA-14-09: CONDITIONAL USE REVIEW FOR A CONTRACTOR'S YARD/HOME OCCUPATION III FOR THE FORTIN PROPERTY LOCATED AT 2737 LAKE ROAD. THE PROPERTY IS LOCATED IN THE RURAL DISTRICT.

Ashley Robinson, Landscape Designer, Michael Russell, attorney, Chris Fortin and Becky Fortin, owners, appeared on behalf of the application.

STAFF NOTES

Mr. Tenney reviewed staff notes, and that a site visit was conducted on Saturday, December 13, 2014.

SITE VISIT:

2737 Lake Road, Rural District, Fortin Property, Saturday, December 13, 2014.

Present: Jonathan Fisher, Frank Tenney, Andrew Swayze, Matt Zucker, ZBA members, and Britney Tenney, ZBA Clerk. Christopher & Rebecca Fortin, property owners, Michael Russell, owner representative, Jonathan Silverman, and Eric Silfen & Kristin DeStigter, adjoining neighbors, were also present.

The ZBA members viewed areas where new screening is proposed to be planted, viewed the proposed contractor's yard, agriculture, and residential areas, and observed areas for proposed parking. The ZBA observed where a new fuel bunker is to be placed and where a current salt shed is proposed to be relocated and the area where a new enclosed riding arena is proposed. The property was viewed from the front, rear, and side boundary lines.

48

49 APPLICANT COMMENTS

50 Mr. Russell reviewed a written Memorandum in Support of Application, date-stamped
51 received 12/16/2014, and explained that the Fortin's have operated a lawn care and snow
52 plowing business from their home since 1992. A 2013 wood processing Home
53 Occupation III application was denied. The present application was a different
54 application from 2013. Ms. Robinson, Landscape Designer, has modeled proposed
55 improvements, said Mr. Russell.

56

57 Ms. Robinson narrated proposed changes as depicted on 3-D computer generated site
58 plans as follows:

- 59 • First view - looked at the property from the west as it presently exists. The
60 current business, agricultural, and residential areas were pointed out.
- 61 • Second view – looking west from Lake Road showed the residential house, an
62 agricultural structure in the property's back, and existing screening trees and
63 shrubs.
- 64 • Third view - south and east showed an existing garage/shop, proposed
65 agricultural structure, and existing salt/sand shed, which would be relocated, and
66 fuel bunkers.
- 67 • Fourth view – looking southwest from the DeStigter house showed proposed
68 screening to hide the Fortin business from the DeStigter home.
- 69 • Fifth view – looking from Lake Road south and east showed proposed added
70 screening to hide the business areas and to block views going further north along
71 Lake Road.

72

73 Mr. Russell pointed to the locations of the DeStigter, Goodman, and Silverman properties
74 in relation to the Fortin property on a site map. The Fortin property was bounded by three
75 active agricultural uses that included land leased by Robert Mack, the DeStigter's
76 property and the Russell's own agricultural uses. The open Goodman property abuts the
77 Fortin property. The Fortin business was a commercial use on the edge of a sparsely
78 populated residential area, stated Mr. Russell.

79

80 Mr. Russell noted that the existing salt/sand shed would be relocated closer to the
81 existing garage/shop. Screening would be planted to the southeast corner of the subject
82 property with additional plantings along the front on Lake Road. A large agricultural
83 structure was under construction and would provide screening of the property to the
84 south, explained Mr. Russell.

85

86 Mr. Russell reviewed references to language and goals in the Town Plan; balancing rights
87 of a property owners versus adjoining property owners based on the Town's public
88 interest; the Fortin's lawn care and snow plowing businesses as a critical local
89 commercial business; over-lapping regulations that included Sections 2.5(f)(4) related to
90 a Contractor's Yard – Home Occupation III, or adaptive use; 4 standards for a Home
91 Occupation use; Section 4.6 related to hazardous waste/materials and
92 vehicular/equipment fuel as an exception of a hazardous material as per Home
93 Occupation I and II permits; and up to 9 employees allowed under a Home Occupation

94 III permit. The Fortin's said that they might have up to 5 employees during the summer
95 months. The proposed and existing screening would protect the adjoining neighbors from
96 the Fortin's business. The ZBA was allowed to consider what was there as a business and
97 if it fits with the character of the neighborhood, said Mr. Russell.

98

99 ZBA QUESTIONS/COMMENTS

100 In response to a question regarding the equipment schedule submitted, Mr. Fortin
101 explained that the number of trucks on the property included back up snow plow trucks,
102 and extra lawn mowers in case of breakdowns. Not all the equipment was used at the
103 same time. Both he and his wife drove the snow plow trucks in winter, said Mr. Fortin.

104

105 Mr. Russell reviewed the eight Performance Standards. Sound/noise generated by the
106 business would be mitigated by the screening. The other standards don't apply. Currently
107 there were two motion lights on the building that complied with regulations, said Mr.
108 Russell.

109

110 Mr. Tenney asked for clarification of the lights location. Mr. Russell pointed to the lights
111 using Sheet 2 of the site plans.

112

113 Mr. Fisher asked if trees would be planted on an existing dirt pile. Mr. Russell replied
114 that the proposed trees would be planted on a berm running behind the salt shed and fuel
115 bunker. The 3-D images presented a 'flattened' view that did not really represent the
116 topography of the property, said Mr. Russell.

117

118 Mr. Fisher asked if the trees would grow well in the soil types on the property. Mr.
119 Russell pointed to soil types utilizing a soil overlay map. The berm and tree heights
120 would be clarified on the site map via notes, said Mr. Russell. Mr. Fortin said that trees
121 planted on top of the berm would be out of any wet soil conditions.

122

123 Mr. Tenney asked for clarification of the business parking plan. Mr. Russell explained
124 that the summer employees would park in the business parking area. There were no
125 winter employees. The parking area would be used to pile snow and materials in winter,
126 said Mr. Russell.

127

128 Mr. Tenney noted that the 3-D model didn't show where people would park, or if trucks
129 or trailers would be parked there.

130

131 Mr. Swayze asked for clarification regarding Home Occupation III, Standard 7, character
132 of the neighborhood. For example; if a change in neighborhood character assessment
133 should be made as if the applicant hadn't been there for 40 years and it was a green field.
134 Does the length of use enter into play - if the business was already occurring was that a
135 change of character of the neighborhood, asked Mr. Swayze. Mr. Russell replied that the
136 ZBA had a lot of latitude to look at the district. The Purpose Statement and Town Plan
137 language addressed 'character of a neighborhood' related to the Town vision, property
138 rights of an owner and Town public interests. The neighborhood feels like a working
139 landscape. This neighborhood does not have curbing or manicured lawns, for example. It

140 was important to consider the immediate area surrounding the property. The ZBA could
141 abstract how this area compares to other areas in Charlotte, Chittenden County, or
142 Vermont. There was no clear legal guidance on how to define it, said Mr. Russell.

143

144 Mr. Zucker asked for clarification of the nature of the Fortin business in context of the
145 application presented as a growth of an existing business and expansion of the property
146 and equipment used. It sounded like the business had grown over the course of years.
147 With the changes proposed was there excess capacity to continue to grow, or would the
148 business outgrow the property, asked Mr. Zucker. Mr. Russell said that a measure of
149 growth was the number of employees. The Fortin's scaled back the number of employees
150 when the ZBA denied a prior 2013 application. There were as many as 5 employees – 3
151 employees were viable for the current business, said Mr. Russell. Mr. Fortin reiterated
152 that in winter it was just him and his wife, and maybe one other person.

153

154 Mr. Tenney briefly reviewed that the prior 2013 application was for a Home Occupation
155 III wood processing business that was denied.

156

157 Mr. Russell said that in 1982, or earlier, the Fortin's needed a Conditional Use approval
158 for a home occupation. In 1992 the Home Occupation regulations and zoning had
159 changed to include various levels. A Home Occupation I didn't require a permit. Home
160 Occupations II and III do. The Fortin's were saying that they had a prior Home
161 Occupation, stated Mr. Russell.

162

163 Mr. Zucker asked if the Fortin's were planning future growth of the business. Mr. Fortin
164 replied that he was not planning on more growth. With the 3 employees the business was
165 doing well. He was allowed a maximum of 5 employees as per the regulations, said Mr.
166 Fortin.

167

168 Mr. Russell said that the applicant has submitted an equipment schedule, a parking plan
169 and a screening plan with the application. The ZBA should make enforcement and
170 compliance feasible. If there were any future changes to the business the applicant could
171 ask for a modification, said Mr. Russell.

172

173 Mr. Fisher asked if the Fortin's would be taking on clients for the riding arena. Where
174 would horse clients park, asked Mr. Fisher. Mr. Russell pointed out that a permit was not
175 required for an agricultural use. Ms. Fortin stated that she was not taking on an
176 agricultural business, or clients. Mr. Russell said that it was a personal use riding arena.

177

178 Mr. Swayze asked if there was an example of a Charlotte property that utilized screening
179 from a street view. Ms. Robinson replied that Steve Denton, Spear Street, screened his
180 commercial business from the road, or Precourt off Greenbush Road. Arborvitae used for
181 hedges were common hardy evergreens that grew quickly, explained Ms. Robinson.

182

183 PUBLIC COMMENTS

184 Ms. DeStigter, neighbor located on the north and east of the Fortin property, said that
185 while the Fortin's were hard working people, she also has worked hard to have a home in

186 Charlotte. It felt like her property rights were violated as well. The ZBA had voted
187 unanimously against the Fortin's Home Occupation III, Contractor's Yard application for
188 a wood processing business last spring, said Ms. DeStigter.

189

190 Ms. DeStigter read the ZBA Findings of Fact and denial for the 2013 application and 24
191 VSA 4470, appeals for reconsideration doctrine, into the record, and said that this was the
192 same application. Based on the doctrine there has to be a change in zoning bylaws or in
193 the neighborhood in order to reconsider a denied application, stated Ms. DeStigter.

194

195 **The ZBA accepted and marked the following submittals as exhibits:**

196

- **Exhibit A - a revised site map for the Fortin application, dated 12/16/2014.**

197

- **Exhibit B – Memorandum of Support, dated stamped 12/16/2014.**

198

- **Exhibit C – four colored 3-D drawings showing views from the surrounding properties.**

199

200

- **Exhibit D - §24 VSA 4470 regarding successive applications.**

201

202 Ms. DeStigter submitted several photographs taken on the day of the ZBA site visit.

203

204 Ms. DeStigter pointed out that there was no precedent for a Contractor's Yard in a
205 residential area. The 1996 Town letters to the Fortin's stated that the Fortin's were out of
206 compliance with their business. Approval of the current application would allow a Home
207 Occupation III as a new precedence in Town where residents were not following the
208 rules. She has submitted photographs showing vehicles on the Fortin property. She has
209 talked to the Fortin's regarding their front and back yard appearances. Things have not
210 changed, stated Ms. DeStigter.

211

212 Ms. DeStigter thanked Mr. Russell for hiring a landscape designer, but the 3-D images
213 did not capture the Fortin's property. The large trees depicted don't exist; the existing
214 trees were scraggly and far apart. She planted a line of arborvitae as shown in the
215 submitted photographs. The maximum height was 8', which was mildly screen but you
216 can easily see activity at the Fortin's, the backyard and all the trucks. The photographic
217 views were taken from her house, said Ms. DeStigter.

218

219 Mr. Tenney said that 24 VSA 4470 was for a reconsideration of an application decision
220 within 30 days of a denial. This was a new application, said Mr. Tenney. Ms. DeStigter
221 said that the state statute arose during a conversation with an attorney.

222

223 Mr. Silverman, neighbor, said that he has lived in the area longer than anyone else. He
224 has seen changes over time; for example, there was a trailer on the Fortin property
225 originally. He has seen the Fortin's business grow. There was no model in Charlotte for
226 this situation and as a neighbor he has to think of the esthetics and the community.
227 Regarding Mr. Zucker's question on growth of the business - when does it stop, or end. If
228 approved does a Contractor's Yard Home Occupation III permit go with the property
229 beyond the Fortin's ownership, asked Mr. Silverman. Mr. Tenney replied yes. The permit
230 would run with the property. For example, if there was a store on the property and it was
231 sold then a new owner had the right to operate a store, explained Mr. Tenney.

232

233 Mr. Silverman said that the Fortin's claim to want to keep the business small with a
234 maximum of 3-5 employees. He understood that the bylaws allowed up to 9 employees.
235 Does that mean that a new owner could have 9 employees, asked Mr. Silverman. Mr.
236 Tenney replied that if the permit was approved and there was a change to 9 employees
237 then the property owner would need to appear before the ZBA for a new permit. The
238 ZBA could condition approval that there could be no more than 3-5 employees and the
239 applicant would need to re-apply if they wanted more employees, suggested Mr. Tenney.

240

241 Mr. Swayze suggested conditioning the schedule of equipment as well.

242

243 Mr. Silverman asked how the landscaping plan would be enforced if the application was
244 approved. Mr. Fisher said that the Zoning Administrator would enforce the conditions of
245 the permit.

246

247 Ms. Goodman, neighbor, asked why this was considered a new application versus the
248 2013 application. Mr. Swayze replied that the 2013 application was for a wood
249 processing business. This application was to expand an existing lawn mowing/snow
250 plowing business and to correct a compliance issue, clarified Mr. Swayze.

251

252 Ms. Goodman said that for a point of clarification, the last decision denied a wood
253 processing expansion. Nothing else cited by the ZBA has been changed or resolved.
254 Enforcement needs to be addressed, stated Ms. Goodman.

255

256 Mr. Russell said that there was a common misunderstanding regarding the term
257 'precedent'. The ZBA was hearing evidence and making a decision based on the
258 testimony at this hearing. People were rightly concerned that the ZBA and ZA decisions
259 would allow similar operations in Town. It was prudent not to address that in open
260 session. There are differences between this new application and the 2013 application. The
261 ZBA understands that and could approve the new application with conditions if
262 necessary. Wood processing was not a part of this application. The business area was
263 smaller with a less intensive use. The Town told the Fortin's they had to apply to come
264 into compliance. In conversations with the ZA the Fortin's were urged to submit a new
265 application with documentation of the proposal. During the site visit it was noted that
266 there would be no clients on site. All operations of the business were off site except
267 storage of equipment and materials, said Mr. Russell.

268

269 Ms. Goodman asked if the ZBA would look at the proposed plan versus what was
270 proposed previously. Mr. Fisher replied that was considered a de novo application – a
271 new process.

272

273 Ms. DeStigter submitted documents from 1996 and forward regarding the Fortin issues.

274

275 **The ZBA accepted and marked the following as exhibits:**

276

- **Exhibit E – four photographs submitted by Ms. DeStigter, dated 12/13/2014.**
- **Exhibit F – documents from the 2013 Fortin application hearing.**

277

278

279 **MOTION by Mr. Fisher, seconded by Mr. Swayze, to continue the hearing**
280 **regarding ZBA-14-09, a Conditional Use review for a Contractor's Yard/Home**
281 **Occupation III for the Fortin property located at 2737 Lake Road to January 21,**
282 **2015, at 7:30 p.m.**

283 **VOTE: 4 ayes, 1 absent (Mr. Webster); motion carried.**

284

285 **ADJOURNMENT**

286 **MOTION by Mr. Fisher, seconded by Mr. Swayze, to adjourn the meeting.**

287 **VOTE: 4 ayes, 1 absent (Mr. Webster); motion carried.**

288

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

290

291 Minutes respectfully submitted, Kathlyn Furr, Recording Secretary.

292

DRAFT