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**TOWN OF CHARLOTTE
ZONING BOARD OF ADJUSTMENT
AUGUST 19, 2015**

DRAFT

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

ADMINISTRATION: Britney Tenney, Zoning Clerk.

OTHERS PRESENT: Katelyn Ellerman, Liam Murphy, Kristen DeStigter, Michael Russell, Rebecca Fortin, Christopher Fortin, Jonathan Silverman, Tim Hotaling.

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:

- **7:15 PM: ZBA-15-02, Appeal by Kristen DeStigter of the Zoning Administrators interpretation of Section 4.11(A)(1) Home Occupation I. The property with respect to which the appeal is taken is owned by Rebecca and Christopher Fortin and is located at 2737 Lake Road.**

CALL TO ORDER

Mr. Tenney, Chair, called the meeting to order at 7:10 p.m.

ZBA-15-02, APPEAL BY KRISTEN DeSTIGTER OF THE ZONING ADMINISTRATORS INTERPRETATION OF SECTION 4.11(A)(1) HOME OCCUPATION I. THE PROPERTY WITH RESPECT TO WHICH THE APPEAL IS TAKEN IS OWNED BY REBECCA AND CHRISTOPHER FORTIN AND IS LOCATED AT 2737 LAKE ROAD.

Kristen DeStigter, appellant, and Liam Murphy and Katelyn Ellerman, Murphy, Sullivan and Kronk attorneys, appeared on behalf of the appeal.

STAFF NOTES

Mr. Tenney reviewed staff notes.

The following were sworn in: Katelyn Ellerman, Liam Murphy, Kristen DeStigter, Michael Russell, Christopher Fortin, Rebecca Fortin, Tim Hotaling, and Jonathan Silverman.

APELLANT COMMENTS

Mr. Murphy said that a Home Occupation I business could only have employees that were the owner(s) of the dwelling, and occurred within the dwelling or accessory structure. The Zoning Administrator (ZA) ruled that the Fortin's could have two trucks and two trailers parked outside of an accessory structure. A question was how to rule if the trucks and/or trailers were used partially for personal use or used in the business. What was the basis for the ZA ruling; was it precedent setting, and what was considered indoors, or outdoors. The equipment stored within the building was not an issue; it was

48 the outside commercial trucks and trailers. The Fortin's have always pushed the
49 boundaries of what was permitted and have expanded their business from lawn care to a
50 contractor's yard over 10 years. There had been no enforcement by the Town in the 10
51 years. The question came about since the Fortin's were exploring a Home Occupation I
52 permit if they can't do a Contractor's Yard, explained Mr. Murphy.

53

54 Mr. Murphy reiterated that a Home Occupation I business has to occur inside a building
55 as per state statutes. If the Fortin's were allowed to store equipment outside, then would
56 they store mowers and other equipment on the trailers next, asked Mr. Murphy.

57

58 Mr. Murphy submitted a series of color photographs taken at the Fortin's property for
59 ZBA review.

60

61 Mr. Murphy said that the color photographs showed vehicles, piles of stone, mulch, snow
62 plows, and various other equipment related to a so-called Home Occupation I business. It
63 was all stored outside. It was not occurring inside an accessory building, said Mr.
64 Murphy.

65

66 Mr. Murphy reviewed three distinct activities engaged by the Fortin's:

67

- 68 1. The house and personal use vehicles.
- 69 2. Farm use, such as cattle and farm equipment.
- 70 3. A commercial business that was to be inside, but was outside.

71

72 Mr. Murphy said that the Fortin's say the trucks and trailers were personal use, but were
73 used in their business as a commercial use. Trucks could be a partial personal use; to be
74 driven back and forth from home to jobs, or for commercial use. The Fortin's were now
75 expanding to parking trailers outside. A concern was the 6 snow plows stored outside as
76 shown in the photographs. The farm equipment could be used in an agricultural business
77 and used in a commercial business too. The appellant was asking where the line was
78 drawn between a permitted Home Occupation I use versus personal use in the zoning
79 regulations. Is it in writing where the ZA said that the Fortin's don't need a permit for
80 outdoor equipment storage, asked Mr. Murphy.

81

82 The ZBA reviewed 18 color photographic copies as submitted.

83

84 **EXHIBIT A: the ZBA accepted and marked an e-mail from the ZA, dated**
85 **04/09/2015, regarding the ZA's interpretation of Section 4.11(A)(1) Home**
86 **Occupation I related to parking two trucks and two trailers at the Fortin's property,**
87 **as Exhibit A.**

88

89 **EXHIBIT B: the ZBA accepted and marked 18 color photographic copies of**
90 **outdoor equipment and structures located at the Fortin's property submitted by**
91 **Liam Murphy, dated 08/19/2015, and taken on 06/01/2015.**

92

ZBA QUESTIONS/COMMENTS

93 Mr. Tenney stated that the registered vehicles were trucks with the Fortin's company
94 name lettered on the vehicles and were commercial vehicles. He was unfamiliar with the
95 rule for personal vehicles, said Mr. Tenney. Mr. Murphy said that the Fortin's could store
96 the trucks in a garage on the property, or inside an accessory structure. In a photograph
97 the truck on the right was clearly commercial, and the truck on the left could be personal
98 and commercial use. There was the same concern with the trailers. It was unknown if the
99 Fortin's wrote off the trucks as a business expense, said Mr. Murphy.

100
101 Mr. Tenney reviewed that when the Fortin's applied for a Home Occupation III permit it
102 was to address the vehicles outside. Mr. Murphy said that the Fortin's seems to be a way
103 of getting around having to apply for a permit. If the ZA had said the trucks were
104 personal, then OK. But the trailers too were questionable. The Fortin's should not be able
105 to re-start a process of pushing the boundaries like they have over the last 10 years, said
106 Mr. Murphy.

107
108 Mr. Russell stated that the discussion was not pertinent to the Home Occupation III
109 application. They were not here for that. The Fortin's have withdrawn the request for a
110 Contractor's Yard. They have a site outside of Town. Their plan was based on the ZA's
111 ruling of what could be parked outside consistent with a Home Occupation I, which was
112 that if no equipment or material was on the trucks or trailers then they could be outside.
113 We are here to review the ZA's e-mail of what's acceptable, said Mr. Russell.

114
115 Mr. Russell read a copy of a Notice of Appeal, #6, that was the basis of an additional
116 argument of a determination of what's allowable, #5, and #3(b). The ZA should be asked
117 for a clarification of the e-mail, which was why we are here, said Mr. Russell.

118
119 Mr. Russell reviewed questions to consider as follows:

- 120 • If the appeal was proper. An appeal could only be done if the appellant was an
121 'interested' person, and could demonstrate that as a immediate neighbor was
122 impacted 'physically' and 'environmentally' if the impacts were not consistent
123 with town zoning, or regulations.
- 124 • The ZA's decision says the two trucks and two trailers didn't impact visually or
125 environmentally on Kristen DeStigter.

126
127 Mr. Russell submitted a copy of §4465, Appeals of Decision of an administration officer
128 for ZBA review.

129
130 **EXHIBIT C: the ZBA accepted and marked a copy of §4465, Appeals of Decision of**
131 **an Administration Officer as Exhibit C.**

132
133 Mr. Russell read an appeal of Janet Herrick for a child care business, as a Home
134 Occupation case, and §4406, page 1 and 2, related to current governing state statute
135 language. The Supreme Court said that the language doesn't limit use or activity to the
136 inside a building. Ms. Herrick's business occurred inside a home and on a deck attached
137 to the building. A question was how to limit a lawn care business operating out of a home
138 and operated offsite. In the Robert Griffin case, the court recognized it was a Conditional

139 Use. Conditions can be placed on that, except a truck and trailer was allowable. The ZBA
140 authority doesn't enter into .

141

142 Mr. Russell submitted a copy of §4406, page 1 and 2, related to the Robert Griffin court
143 case.

144

145 **EXHIBIT D: the ZBA accepted and marked a copy of the Janet Herrick appeal,**
146 **dated 10/14, 1999, as per the Supreme Court, 742A.2d 75 (VT1999) as Exhibit D.**

147

148 **EXHIBIT E: the ZBA accepted and marked a copy of the Robert and Muriel**
149 **Griffin case, dated 07/26/2006, as per the Supreme Court, Nos. 05-240, 05-360**

150

151 There was a brief discussion regarding the use of a three-quarter ton truck as a
152 commercial vehicle versus as a personal vehicle.

153

154 Mr. Russell reiterated that this hearing was related to issues of the ZA decision as per the
155 e-mail. The photographs Mr. Murphy submitted to support the Home Occupation III
156 application. The Fortin's were moving their 'contractor's yard' to a property located in
157 Ferrisburgh. The Fortin's want the ability to load their lawn care equipment at their
158 property as a Home Occupation I, clarified Mr. Russell.

159

160 Mr. Murphy said that since 2007 to now the Town had refused to enforce conditions of a
161 Home Occupation I, which was why we are here. A Home Occupation I did not allow for
162 employees and no equipment stored outside. The concern was that a lack of enforcement
163 would go another 10 years, said Mr. Murphy.

164

165 Mr. Murphy said regarding the 'interested person' standing, Ms. DeStigter was impacted
166 visually by a neighbor's business activities. The noise/sound issues were an
167 environmental issue. Someone can't plant a ring of trees around a property and argue that
168 the activities couldn't be seen or heard. There were special state statutes regarding day
169 care centers that would protect them; the language says you can't prohibit a home
170 occupation. The Fortin's want to operate a Home Occupation without a permit, and the
171 conditions to do so say that it had to be indoors. Regarding the Griffin case, the home
172 occupation was a minor portion of the property. The two submittals were mixing and
173 matching and didn't have anything to do with Charlotte. The Fortin's can do a Home
174 Occupation I without a permit, but must keep it indoors. Everything in these photographs
175 was related to the lawn care and snowplowing business on their property. All the pieces
176 of equipment were related to the business, stated Mr. Murphy.

177

178 Mr. Fortin said that he could provide a list of 37 other similar businesses in Charlotte
179 doing the same thing. He was asking for two trucks and two trailers outside, said Mr.
180 Fortin.

181

182 Mr. Tenney said that it was up to the applicant to keep to the conditions and the ZA to
183 enforce the conditions. Mr. Murphy pointed out that as per the state statutes the business
184 has occur indoors.

185

186 Mr. Tenney reviewed that if the Fortin's operate as a Home Occupation I and they go
187 outside of the limits of what was allowed, then it was up to the ZA to enforce the
188 conditions, not the ZBA, said Mr. Tenney. Mr. Murphy replied that the Fortin's were
189 trying to short circuit the permit process. As a lawn care business there were trucks,
190 trailers and snow plows stored outside, and the ZA says it was OK. The ZA files a notice
191 of violation, and the ZBA provides guidance. In court the towns have made similar
192 provisions. The ZBA should make a determination on the limits of a Home Occupation I,
193 said Mr. Murphy.

194

195 Mr. Zucker said the issue centers around the ZA decision that "...two trucks with trailers
196 that each of the Fortins drives to and from "work" each day would not, on their own,
197 constitute outdoor storage that exceeds the limits of a Home Occupation I..." and "...
198 does not apply to any equipment or landscaping materials that the trucks and/or trailers
199 may carry and/or transport...". Mr. Murphy replied that two trucks with trailers driven
200 from home to a work site doesn't constitute a commercial use. What is not understood is
201 how trailers in a commercial use only can be stored outdoors, said Mr. Murphy.

202

203 Mr. Russell suggested that it was similar to a person with an electrical business, or a work
204 trade, would park his truck and trailer in his yard. Mr. Tenney said that an electrical
205 business could have more than one truck or trailer. For example, there could be multiple
206 trailers depending on use. There could be post hole digger. Determining what was a
207 registered road vehicle was tricky. He agreed it was difficult to keep someone to a certain
208 number of vehicles, said Mr. Tenney.

209

210 Mr. Murphy said that it was in the photograph of the truck and trailer. At issue was when
211 the person has multiple trailers and other equipment used in a business. It was a question
212 of what was personal use versus commercial use. It was a slippery slope to allow outside
213 storage, said Mr. Murphy.

214

215 Mr. Zucker said that the ZA wrote in the e-mail that if the two trucks with two trailers
216 were used to store equipment or materials on the trailers, then it violates the ruling. Mr.
217 Murphy pointed out that the two trucks were clearly business trucks. Mr. Tenney pointed
218 out that some people do have a one-ton dump truck and that was their only truck. Mr.
219 Murphy said that the Fortin's all have cars parked at the property. The issue was the two
220 trucks with trailers. This was where the 'line drawing' comes in, said Mr. Murphy.

221

222 Ms. Fortin stated that some of the cars belonged to their two college kids.

223

224 Ms. DeStigter asked the ZBA to set boundaries. There was a big trailer and the Fortin's
225 do store equipment on it. There was a history of 10 years of violations. It would be
226 reasonable for the Fortin's to move all their equipment off site. She was offended with
227 Mr. Russell's statement that the Fortin's were not impacting her property. Visually she
228 could see the Fortin's yard from every window on her second story house. She didn't
229 want to prohibit the Fortin's from their business. There were tractors and other equipment
230 that didn't belong in a residential neighborhood, said Ms. DeStigter.

231

232 Mr. Tenney said that Ms. DeStigter was asking the ZBA to prohibit the Fortin's from
233 conducting business. He hears her saying she wants restrictions due to the last 10 years.
234 The ZBA has to base a decision on what testimony was presented, what to uphold, not up
235 hold, or adjust it, explained Mr. Tenney.

236

237 Mr. Fisher pointed out that the previous ZA was not an enforcer. It wouldn't take another
238 10 years since the Town now has improved enforcement, said Mr. Fisher. Ms. DeStigter
239 replied that there was no enforcement improvements.

240

241 Mr. Murphy reiterated that a Home Occupation I must be occupied within an accessory
242 structure. The Fortin's can't say they were withdrawing the other application for a
243 permit. The ordinance in place was the focus of the appeal, said Mr. Murphy.

244

245 Mr. Fisher asked the Fortin's if there was a level of compromise, or room to store larger
246 of vehicles inside. Mr. Russell replied that the Fortin's want the ZBA to deliberate on the
247 ZA determination of the e-mail. He didn't think the ZBA could help with a compromise
248 in this situation. The day care and Home Occupation state statutes were separate statutes,
249 and the court has made rulings, said Mr. Russell.

250

251 PUBLIC COMMENTS

252 Mr. Hotaling, a neighbor to the south of the Fortin property, said that it would be
253 instructive for the ZBA to inform themselves on the history of past violations. In attempt
254 to find a compromise related to the Home Occupation III application, the ZBA had set
255 conditions for screening, etc. of the visual magnitude of the equipment, material piles,
256 compost piles, going on for 10 years. This was a good opportunity for the Fortin's not to
257 plant trees. The Fortin's have made very little effort to find a compromise with the
258 neighbors. The conditions set for a Home Occupation III condition use did help, but this
259 doesn't help, stated Mr. Hotaling.

260

261 Ms. Fortin said that they have tried to work with the neighbors. They were here today
262 because a neighbor appealed the Home Occupation III permit, said Ms. Fortin. Mr. Fortin
263 stated that they spent \$20,000 for an architect to design screening and noise abatement.

264

265 Mr. Hotaling said that it was not just about a small business in Town. It was property
266 values and living peacefully. It was not waking up early to sounds of big equipment
267 starting up. The logging and wood processing business was the limit. Let's compromise
268 to a scale that would work, suggested Mr. Hotaling.

269

270 Mr. Murphy noted that both parties spent May-July in efforts to present different plans.
271 The parties couldn't see eye-to-eye with no agreement, said Mr. Murphy.

272

273 Mr. Silverman, neighbor, said that there were different interpretations of 'physical' and
274 'environmental' effects on a neighbor. The Fortin's look at and extend the interpretation
275 of those words. The 'environment' goes beyond the property boundaries of just one
276 person. He has had many visitors to his property that have questioned him regarding the

277 Fortin's and what business they did. It was a strong message to him, that the Fortin's had
278 expanded beyond a lawn care business. He want the Fortin's to succeed. Their expansion
279 was beyond what was esthetically appropriate for the neighborhood, said Mr. Silverman.
280

281 Mr. Fisher asked if the Fortin's environmental case date coming up soon. Mr. Russell
282 replied on Friday. That case didn't have anything to do with this. The ZBA should
283 deliberate on the ZA's e-mail, said Mr. Russell.
284

285 **MOTION by Mr. Fisher, seconded by Mr. Zucker, to close ZBA-15-02, Appeal by**
286 **Kristen DeStigter of the Zoning Administrators interpretation of Section 4.11(A)(1)**
287 **Home Occupation I related to a property owned by Rebecca and Christopher Fortin**
288 **and is located at 2737 Lake Road.**

289 **VOTE: 3 ayes, 1 absent (Mr. Swayze); 1 seat vacant; motion carried.**
290

291 **DELIBERATIONS**

292 The ZBA members entered Deliberative Session at 8:13 p.m.
293

294 **ADJOURNMENT**

295 The ZBA meeting was adjourned at p.m.
296

297 Minutes respectfully submitted, Kathlyn Furr, Recording Secretary.
298
299