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**TOWN OF CHARLOTTE  
ZONING BOARD OF ADJUSTMENT  
JUNE 1, 2016**

**DRAFT**

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

**ADMINISTRATION:** Daryl Benoit, Town Planner / Zoning Board Staff.

**OTHERS PRESENT:** Valarie Biebuyck, J. C. Biebuyck, Peter Fenn, Norman Ernsting.

*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:**

- **16-51-CU: Continuance for the Conditional Use Review for Paul Arthaud/Peter Fenn for the demolition and reconstruction of a camp at 1012 Flat Rock Road in the Shoreland Seasonal Home Management District. The newly constructed camp will be larger and will involve review as an expansion of a nonconforming structure (within setbacks).**

**CALL TO ORDER**

Mr. Tenney, Chair, called the meeting to order at 7:01 p.m.

**16-51-CU: CONTINUANCE FOR THE CONDITIONAL USE REVIEW FOR PAUL ARTHAUD/PETER FENN FOR THE DEMOLITION AND RECONSTRUCTION OF A CAMP AT 1012 FLAT ROCK ROAD IN THE SHORELAND SEASONAL HOME MANAGEMENT DISTRICT. THE NEWLY CONSTRUCTED CAMP WILL BE LARGER AND WILL INVOLVE REVIEW AS AN EXPANSION OF A NONCONFORMING STRUCTURE (WITHIN SETBACKS).**

Peter Fenn, potential owner, appeared on behalf of the application.

**STAFF NOTES**

Mr. Tenney, Chair, reviewed staff notes.

**ZBA QUESTIONS/COMMENTS**

Letters were received from adjoining neighbors to the Arthaud camp that included:

- Valarie Biebuyck, dated 05/18/2016
- Nina Cucchiari and Norman Ernsting, dated 05/18/2016

**EXHIBIT B: the letter from Nina Cucchiari and Norman Ernsting, 1002 Flat Rock Road, dated 05/18/2016, was reviewed and accepted as Exhibit B.**

**EXHIBIT C: the letter from Valarie Biebuyck, dated 05/18/2016, was reviewed and accepted as Exhibit C.**

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46  
47

48 Norman Ernsting, Valarie Biebuyck, J. C. Biebuyck, and Peter Fenn were sworn in.  
49 Mr. Tenney explained that normally the adjoining property owners are informed via  
50 letters regarding the hearing process, which was not done. The hearing was continued and  
51 a second site visit was held at 6:00 p.m. this date, said Mr. Tenney.

52  
53 Ms. Biebuyck said that she received notice this morning that the June 1<sup>st</sup> site visit was  
54 cancelled. Mr. Ernsting said that he received notice this afternoon it was on again. Mr.  
55 Benoit explained that there was a mix-up and the site visit warning didn't make it on the  
56 agenda.

57  
58 Ms. Biebuyck said that it has been a frustrating process. She has submitted a written letter  
59 outlining a chronology of events. It was accepted that Mr. Benoit is a new Town  
60 employee. She had asked for another site visit at the last hearing, which was noted in the  
61 meeting minutes, said Ms. Biebuyck.

62  
63 **EXHIBIT D; a letter, dated June 1, 2016, from J. C. and Valarie Biebuyck**  
64 **regarding a chronologic order of information that they were given.**

65  
66 Mr. Tenney noted that the ZBA had asked Mr. Fenn to provide a letter signed by Paul  
67 Arthaud giving Mr. Fenn permission to represent the land owner, which has not been  
68 received yet. Mr. Fenn said that he had asked Paul Arthaud to send a letter. Mr. Arthaud  
69 sent it to Nancy Jenkins. According to Jeannine McCrumb, the former Zoning  
70 Administrator, an e-mail that Mr. Arthaud had sent to the Town was sufficient, said Mr.  
71 Fenn.

72  
73 Mr. Fisher explained that an e-mail was not sufficient and there was no authorization yet.  
74 The hearing could proceed, but can not be closed without that legal permission, said Mr.  
75 Fisher. Mr. Fenn stated that the ZBA would receive it tomorrow.

76  
77 **APPLICANT COMMENTS**

78 Mr. Fenn reported that he met with his neighbors at the site visit this evening. They went  
79 over the camp boundaries, the proposed new driveway and changes, a new path easement  
80 to the camp, and a new parking area. The path easement went from Norman's camp to  
81 Lot 127 from Lot 128. A proposed patio location was discussed, and proposed water  
82 access. Val said water access may need a state permit for temporary stairs and docks.  
83 Jeannine McCrumb told him that she felt it didn't need state permits, said Mr. Fenn.

84  
85 **PUBLIC COMMENTS**

86 Ms. Biebuyck explained that Shoreline Protection Act, July 2014, has specific  
87 requirements regarding stairs, docks and water access. Concerns were related to shoreline  
88 erosion and encroachment. As per the DEC, people have to declare whether they need a  
89 permit, don't need a permit, or if the project falls in between that, said Ms. Biebuyck. Mr.  
90 Fenn stated that he wouldn't buy the property if there was no water access.

91  
92 Mr. Tenney said that there was nothing in the application regarding proposed water  
93 access, or stairs, so that was not before the ZBA at this time. Mr. Fenn said that he didn't

94 add that as a part of the application. He might put in stairs and docks sometime in the  
95 future, said Mr. Fenn.

96  
97 Mr. Swayze said that the ZBA has seen a number of applications that go through review  
98 in a parallel process. Mr. Tenney said that usually state permits were received before an  
99 application comes before the Charlotte ZBA. Mr. Fenn replied that applying for a state  
100 permit is a nightmare process. He wanted to get a camp building permit after the current  
101 application was approved by the ZBA, said Mr. Fenn.

102  
103 Ms. Biebuyck said the state has delegated administration of the law to shoreline towns.  
104 Charlotte was not one of those towns, said Ms. Biebuyck.

105  
106 Mr. Fisher said that if the applicant decided to put in stairs to make sure they would not  
107 be affected by ice or high water. As per the application site map there is 100' of lake  
108 frontage, said Mr. Fisher. Mr. Ernsting clarified that the map says it is 100' of lake  
109 frontage, but it is more like 70'. Mr. Fenn stated that the lease says it is 100' of frontage.  
110 Lake frontage is Town property and doesn't apply, said Mr. Fenn.

111  
112 Mr. Fisher clarified that the Town recognizes a mean high water mark of 98'.

113  
114 Mr. Biebuyck said that for the record he was requesting that the state permits be obtained  
115 first. Mr. Ernsting concurred.

116  
117 Mr. Bennett said that the ZBA does not have anything to do with other jurisdictions. That  
118 is up to the applicant to do, said Mr. Bennett. Mr. Fenn reiterated that he decided to start  
119 at this point. He was not starting the building permit process until he had application  
120 approval, said Mr. Fenn. Mr. Tenney stated that anything that needs to be received before  
121 this application goes through is up to the applicant to get. The ZBA was only looking at  
122 the building of the camp, driveway and cutting some trees, clarified Mr. Tenney.

123  
124 Ms. Biebuyck said the applicant was cutting some big trees near the driveway marked by  
125 the Tree Warden that looked like good trees. Could the trees stay if the driveway was re-  
126 routed, asked Ms. Biebuyck. Mr. Tenney explained that the Tree Warden was responsible  
127 for determining which trees stayed or were cut. Approval could be conditioned with the  
128 Tree Warden determination, said Mr. Tenney.

129  
130 Mr. Fenn said the trees were marked by the Tree Warden. He didn't want some of the  
131 trees removed - only those that will die or need to be removed due to the driveway  
132 location. He had asked the Tree Warden if he needs to do anything else regarding the  
133 trees and the Tree Warden said no, said Mr. Fenn.

134  
135 Mr. Fisher suggested that the abutters could talk to the Tree Warden directly. Larry  
136 Hamilton was the Tree Warden, or the deputy Tree Warden. The trees to be cut should be  
137 marked on the site plan. Details to note are: the tree is a '10 inch birch,' or 'hemlock' so  
138 we know which ones are in the driveway. The details can be added in the ZBA decisions

139 which one have to be taken down and make a choice where the driveway needs to go,  
140 said Mr. Fisher.

141

142 Mr. Fisher said that at the May 4<sup>th</sup> hearing it was noted that septic approval was needed.  
143 Mr. Fenn said he talked to the Town Administrator, Dean Bloch, who said it was fine for  
144 a one bedroom design. Dean researched the issue and spoke with Steve Williams, the  
145 Thompson's Point Wastewater system manager. It was fine for a shower, toilet, kitchen  
146 sink, outside shower, etc., said Mr. Fenn.

147

148 Mr. Bennett asked Mr. Ernsting if this was the camp that was moved. Mr. Ernsting  
149 explained that it wasn't on the other lot; it was moved forward. Mr. Biebuyck said that it  
150 was closer to Lot 129 and served as a guest cottage. Mr. Bennett asked if there were two  
151 cottages on Lot 128. Mr. Biebuyck said that the Town allowed Paul to move it and  
152 pointed out the original location and a new location on the site plan.

153

154 Mr. Bennett asked if both camps were seasonal. Mr. Biebuyck replied yes. One was a  
155 main camp and one as a guest camp. At some point the lease was separated. He has been  
156 there for 20 years and it was always a guest camp, said Mr. Biebuyck.

157

158 Mr. Bennett asked if the camp was 'within the character of the area.' Mr. Fenn replied  
159 that it is a simple cape with a small dormer on the side. The new camp would have  
160 shingle siding, a partial standing seam metal roof and shingle roof. It will be two story  
161 camp with one bedroom on the 2<sup>nd</sup> floor and a lower 8/12 pitch to the roof. The  
162 construction would be similar to surrounding camps with decks, said Mr. Fenn.

163

164 Mr. Bennett asked if it was a seasonal camp the same as the Biebuyck and Ernsting  
165 camps. Mr. Biebuyck replied yes.

166

167 Mr. Bennett asked if there were any agreements between neighbors. Mr. Biebuyck  
168 clarified there is an easement and new parking area. He had questioned the location of the  
169 easement and wanted it moved away from our camp, and they did that, said Mr.  
170 Biebuyck.

171

172 Mr. Tenney said that the old driveway would be returned to a vegetated state, except for a  
173 small portion as a patio, and asked for clarification of the patio location as shown on a  
174 site map. Mr. Fenn pointed the patio location on the site map.

175

176 Mr. Swayze asked if Paul Arthaud was the property owner. Mr. Fenn replied yes. He was  
177 in the process of buying the property from Paul. If the Town denies the application then  
178 he would not purchase the property, said Mr. Fenn.

179

180 There was further discussion regarding trees to be cut for a new driveway. Mr. Fisher  
181 said that if the trees were cut preemptively that would cause issues. Mr. Fenn noted that  
182 Paul was the property owner and he could cut trees at anytime.

183

184 Ms. Biebuyck said that the ZBA was a separate agency than the state. The land owner  
185 couldn't cut any of the trees in the shoreline without that state permit, said Ms. Biebuyck.  
186 Mr. Tenney said that applied if it was within the first 100' and these trees weren't.

187  
188 Mr. Fenn said the proposed camp square footage is 772 on the first floor. The existing  
189 camp is 456 square feet, more or less. Mr. Tenney pointed out that as per the Listers'  
190 records the existing camp was 368 square feet and 16 square feet for a porch.

191  
192 Mr. Bennett read zoning regulations regarding lot coverage. The application indicates  
193 that the proposal does expand the footprint of the existing structure, said Mr. Bennett. Mr.  
194 Fenn replied that the current lot coverage is 15 percent. The regulations say it should be  
195 10 percent or less. The proposal is bringing it to a little more than 10 percent. He has  
196 reduced the camp as small as he could even with a shared driveway. It does bring it closer  
197 to 10 percent, said Mr. Fenn.

198  
199 Mr. Bennett asked why the footprint is expanding and increasing the non-conformance.  
200 Mr. Fenn explained that it was a small lot and he can't have a 16' wide camp.

201  
202 Mr. Bennett asked if it was fair to say that nothing had happened there for 20 years. Mr.  
203 Ernsting and the Biebuyck's replied right.

204  
205 Mr. Bennett asked if the Charlotte Zoning Regulations recognized five criteria as per the  
206 state for a variance. Mr. Tenney read Charlotte Zoning Regulations, page 28, regarding  
207 structure modifications. Mr. Bennett pointed out that under Section 5.4(d)(2), the ZBA  
208 could approve the increase, or make it tighter.

209  
210 There was ZBA discussion regarding non-conformity, increasing or decreasing non-  
211 conformity, and review under 'character of the neighborhood' criteria. Mr. Biebuyck said  
212 that Section 5.4 (d)(2) was one of the issues. In the ZBA minutes there was talk about the  
213 side yard setbacks and how close the new home would be to our home, said Mr.  
214 Biebuyck.

215  
216 Mr. Tenney said that Section 3.8(b)(2) says the ZBA can increase non-conformance. Mr.  
217 Biebuyck replied that he was asking the ZBA not to do that. Mr. Tenney said that some  
218 Thompson's Point camps are on, or over boundary lines, which could be the 'character of  
219 the area.' He was not saying the ZBA would do that, clarified Mr. Tenney.

220  
221 Mr. Biebuyck said that what Mr. Fenn is proposing is a lovely building, and he agrees  
222 with it. He doesn't like the proximity to his camp. The 'character' was that of a guest  
223 house. The proposal is three times the size of the existing camp. He doesn't want the  
224 proposed porch coming 14' closer to his house. The porch could be put toward the road  
225 instead and that would be better for us, said Mr. Biebuyck. Mr. Fenn stated that a porch  
226 toward the road would put the view over the driveway.

227  
228 **EXHIBIT E: the ZBA reviewed and accepted submitted specifications consisting of**  
229 **7 pages of drawings drawn to scale for 1012 Flat Rock Road, dated 05/16/2016.**

230

231 There was further discussion regarding a proposed porch that would be 30' at the widest  
232 point facing the lake. Mr. Tenney asked if the original building was within the new  
233 footprint. Mr. Fenn said the existing camp is 16'X23' shown as a cross-hatch section on  
234 the site plan. The widest point was 14' which is a screened-in porch. He added square  
235 footage of the new screened-in porch and deck. It is a one bedroom camp, said Mr. Fenn.

236

237 Mr. Fisher asked if the original building was centered on the lot. Mr. Biebuyck replied  
238 that the camp was skewed toward his side of the lot. Mr. Fenn said it is 52' on one side  
239 and 40' on the other.

240

241 Mr. Fisher asked if it would work to shift the proposed camp toward Mr. Ernsting's side.  
242 Mr. Fenn noted that there was a septic and line there. Most of the social activity would  
243 face the lake, not to either side, said Mr. Fenn.

244

245 Mr. Tenney clarified that it is a 14' porch now. There was 30' from one side and 54' from  
246 the other if the 14' wide enclosed porch is on the south side, said Mr. Tenney. Mr. Fenn  
247 said the dimensions are correct on the map as 32' to Norman's camp not 52. It is 52' to  
248 the Biebuyck's camp. There is additional space going to the north to 38'. The other side  
249 would be 32'. So it is roughly centered on the lot, said Mr. Fenn.

250

251 Mr. Swayze asked if the non-conformity is the structure to the property lines. Mr. Tenney  
252 replied yes. Most of the camps on Thompson's Point are within setbacks, said Mr.  
253 Tenney. Mr. Swayze suggested that to balance things and the character of the  
254 neighborhood the ZBA should look where other structures are on lots. Mr. Fisher replied  
255 that the ZBA has done both. Mr. Tenney said each camp is unique.

256

257 Mr. Biebuyck said that would help us if the camp is centered more. The porch encroaches  
258 too much on us and should go on the west side, or other side, or not there at all. He has  
259 suggested a berm with trees between the lots. Peter went to the Design Review Board and  
260 the Board didn't like it. Planting hemlocks would help. The proposed parking area could  
261 go closer to Norman and Nina's side to serve both homes. The point is that no one has  
262 been living there and he was trying to help make something better, said Mr. Biebuyck.  
263 Mr. Tenney said that Norman and Nina have been using that driveway all along and can  
264 continue to do so.

265

266 Mr. Fenn said that changing the driveway requires more trees cutting. Reducing the  
267 driveway reduces the lot coverage. Cars would use a shared driveway. He didn't want to  
268 clear cut the front lawn. There isn't room to further extend the driveway. The Biebuyck's  
269 suggestions were a bad design choice, said Mr. Fenn.

270

271 Mr. Tenney reiterated that the ZBA can not design things, and explained setback, scale,  
272 etc.

273

274 Mr. Bennett said that his concerns were the Vermont state statutes appeal process. VSA  
275 24 Title 117, Section 4965 criteria related to a variance have higher standards. A question  
276 is the justification to increase the non-conformity, said Mr. Bennett.

277

278 Mr. Tenney explained Section 9.7, page 113, Zoning Bylaws, Variance and 5 criteria as  
279 outlined in state statutes. Mr. Fisher pointed out that the Zoning Bylaws were rewritten 5  
280 years ago and things came in as a Conditional Use.

281

282 Mr. Bennett said that as he interprets it the ZBA is being asked to review the application  
283 under Conditional Use. He thinks Peter Fenn's application should be for a Variance, and  
284 it is totally discretionary. If we go by the 5 criteria we can grant it if the following facts  
285 are found - unnecessary hardship was not created by the applicant, for example. Why  
286 isn't the ZBA looking at as a Variance. The proposed building would increase in non-  
287 conformity and is discretionary, said Mr. Bennett.

288

289 Mr. Swayze asked if this is a Conditional Use, or Variance. Mr. Fenn replied that all  
290 buildings on Thompson's Point historically violate all the criteria.

291

292 Mr. Bennett said that the Conditional Use standard, Section 5.4(d)(2), 'shall comply' can  
293 make it stricter. Mr. Fisher said the standards got amended.

294

295 Mr. Bennett suggested consulting with the Town Attorney regarding where a variance  
296 applies, or not. He doesn't see how any buyer of a property can change what is there.  
297 Approving an application just because the bylaws are wrong and allows increased non-  
298 conformity and then it is appealed. He is saying let's apply a variance now, said Mr.  
299 Bennett.

300

301 There was further discussion regarding Zoning Bylaws related to Section 5.4 to allow  
302 non-conforming structures and increased non-conformity by the ZBA. Mr. Bennett asked  
303 what happened to the variance section, or does it not matter. Mr. Tenney said that a  
304 property owner was allowed to build something on a lot.

305

306 Mr. Bennett said, for example, a lot is 70' wide and nothing existed. The lot is creating  
307 the hardship. A structure could be made the least non-conforming as possible, suggested  
308 Mr. Bennett. Mr. Fisher suggested that since the building was not used in 25 years it is an  
309 abandonment issue. Mr. Swayze said the building maintains its footprint portion. Mr.  
310 Bennett said that the original footprint could be used, just go up 2-3 stories. There is an  
311 existing structure on the lot, said Mr. Bennett.

312

313 Mr. Fisher pointed out that 20 years ago the Town wouldn't allow any changes to the  
314 camps, except maintenance. Mr. Bennett said that as the regulations were redrafted the  
315 ordinance gives the ZBA discretion. If a lot was 30' wide and was washing away due to  
316 mother nature then you could move the camp. That is the hardship. A question is how  
317 does an application like Mr. Fenn's relate to what's happening down there. Point is, if  
318 anyone decides they don't like the proposal then they can appeal it, said Mr. Bennett.

319

320 Mr. Biebuyck asked for clarification regarding the proposed height of the new camp. Mr.  
321 Tenney noted that there was a 4' slope front to back. The chimney height did not count.

322

323 Mr. Bennett asked if there were any noise concerns regarding the use. Mr. Ernsting said  
324 that neither he nor Mr. Biebuyck rent out the camps. A concern regarding rentals is that  
325 there could be different people there. We like our privacy, said Mr. Ernsting.

326

327 Mr. Tenney noted that performance standards were handled by the Zoning Administrator.  
328 Residential use on a normal basis doesn't fall under the ZBA review. Issues such as  
329 noise, lights, etc., could be brought up later, said Mr. Tenney.

330

331 Mr. Swayze said that rental use, or owner occupied does not figure in unless it ties into  
332 the 'Character of the Neighborhood.' Lots of camps are rented, said Mr. Swayze. Ms.  
333 Biebuyck pointed out that it was in the lease that owners must make sure that tenants  
334 don't cause issues.

335

336 In response to a ZBA question, Mr. Ernsting and Mr. Biebuyck said that issues of  
337 concern were lighting, camp size, nonconformity, height, and a request for a buffer of  
338 trees, such as hemlocks.

339

340 Mr. Tenney asked if Mr. Fenn would plant anything along the new driveway. Mr. Fenn  
341 replied that he didn't want to plant grass. The area is shaded and he could plant some  
342 trees. He wants a garden path where the driveway was, and he intended to replant there,  
343 said Mr. Fenn.

344

345 Mr. Fenn explained that the new house would be higher than what was there. It would be  
346 raised by 1' in front. The outer portion of the building would be on piers and a cement  
347 foundation for a small basement for mechanicals if there was no ledge. Norman's camp  
348 has a full foundation and grass around it. He didn't want that, said Mr. Fenn.

349

350 Mr. Ernsting asked Mr. Fenn why not keep the easement and use it sparingly. Park up the  
351 hill, suggested Mr. Ernsting. Mr. Fenn said that it would bother him having someone  
352 walk through his property. Norman agreed with Paul that is the best situation. It would be  
353 better for someone to walk around the side away from social areas. He was open to  
354 working with Norman to establish privacy, said Mr. Fenn.

355

356 Mr. Biebuyck reiterated that adding hemlock trees 6' high and 6' apart along the  
357 driveway would create a buffer.

358

359 Ms. Biebuyck said that to define 'community' regarding rental properties on Flat Rock  
360 Road - the four camps there haven't ever rented and she has been there for 19 summers.  
361 That is the 'community'. She does know that other parts of Thompson's Point rent, said  
362 Ms. Biebuyck.

363

364 Mr. Tenney clarified that the application is for approval of a camp for residential use.  
365 Rent is not part of what the ZBA was looking at, stressed Mr. Tenney. Mr. Swayze

366 suggested that if it was an unusual use, not a residential use, and how esthetically it fits  
367 into a neighborhood. A rental piece could fit in, said Mr. Swayze. Mr. Bennett noted that  
368 Mr. Fenn was asking for a residential use on the application.

369

370 Mr. Tenney said that additional testimony could be submitted in a written statement of  
371 what (you) would like. Go by the Zoning Bylaws. The ZBA accepts all information in  
372 order to make an informed decision. The hearing could be continued, or submit  
373 statements to Daryl Benoit any time, said Mr. Tenney .

374

375 Mr. Ernsting asked for a copy of the Variance criteria. Mr. Tenney said it was available  
376 on-line Town website, Zoning Bylaws, page 13.

377

378 Mr. Tenney explained that the ZBA has a 45 day period to issue a decision once a hearing  
379 was closed.

380

381 **MOTION by Mr. Fisher, seconded by Mr. Bennett, to continue 16-51-CU, request**  
382 **for a Conditional Use Review for Paul Arthaud/Peter Fenn for the demolition and**  
383 **reconstruction of a camp at 1012 Flat Rock Road in the Shoreland Seasonal Home**  
384 **Management District; the newly constructed camp will be larger and will involve**  
385 **review as an expansion of a nonconforming structure (within setbacks), to June 8,**  
386 **2016, at 7:00 p.m.**

387 **VOTE: 4 ayes, 1 absent (Mr. Zucker); motion carried.**

388

389 The ZBA asked Mr. Fenn to provide a site plan marked with the trees to be cut, plantings,  
390 or other details of what he wants.

391

392 Mr. Fenn said that he would contact Nancy Jenkins regarding the signature from Paul  
393 Arthaud.

394

395 **ADJOURNMENT**

396 **MOTION by Mr. Fisher, seconded by Mr. Bennett, to adjourn the meeting.**

397 **VOTE: 4 ayes, 1 absent (Mr. Zucker); motion carried.**

398

399 The ZBA meeting was adjourned at 9:15 p.m.

400

401 Minutes respectfully submitted, Kathlyn Furr, Recording Secretary.

402