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**TOWN OF CHARLOTTE
ZONING BOARD OF ADJUSTMENT
JUNE 8, 2016**

DRAFT

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

Mr. Tenney reported that Mr. Fenn has provided a written and signed letter of representation from Paul Arthaud.

EXHIBIT F: the ZBA reviewed and accepted a written letter from Paul Arthaud authorizing Peter Fenn to represent him regarding 16-51-CU, a Conditional Use review application, dated 06/02/2016, and marked as Exhibit F.

EXHIBIT G: A copy of 2016 Vermont Planning and Development Laws, Chapter 117, T:24 §4414 Conditional Uses, starting on page 543, was reviewed and marked as Exhibit G.

48

49 **EXHIBIT H: A copy of 2016 Vermont Planning and Development Laws regarding**
50 **Variances, Chapter 117, T:24 §4469, starting on page 607, was reviewed and**
51 **marked as Exhibit H.**

52

53 Mr. Bennett asked the Zoning Clerk, Daryl Benoit, if the laws governing variances and
54 conditional uses co-exist. Mr. Benoit replied yes; the ZBA could apply one of the other.

55

56 Mr. Bennett asked if someone applied for a Conditional Use review then the Variance
57 conditions wouldn't apply. The variance issue hasn't been raised for some time. For
58 example, if an application was filled out incorrectly, can the Town deny it, or guide what
59 should apply, asked Mr. Bennett.

60

61 Mr. Swayze said that if it was a non-conforming structure then the Conditional Use
62 applies. Mr. Benoit said that a variance would apply if there was a hardship where a
63 structure couldn't be built. For example, a small lot with a steep slope. In this case there
64 is already an existing non-conforming structure, said Mr. Benoit.

65

66 In response to questions of conditional use versus variance review of existing non-
67 conforming structures, Mr. Tenney said that if a proposal couldn't comply with the
68 Zoning Bylaws, or a new structure on a small lot would need a variance in the Rural
69 District. If you can't build on a 100' wide lot then it is a variance review, said Mr.
70 Tenney.

71

72 Mr. Bennett asked if the neighbors had come to any agreement since the June 1st ZBA
73 meeting. Ms. Biebuyck said that she, her husband and Norman have talked. They have
74 not talked to Mr. Fenn, said Ms. Biebuyck. Mr. Fenn said that he has not talked to the
75 neighbors.

76

77 Mr. Fenn submitted a written schedule of tree removals as per the Deputy Tree Warden.

78

79 **EXHIBIT I: a written schedule for removal of trees as per the Deputy Tree Warden,**
80 **Mark Delenbeck, dated June 8, 2016, was reviewed and marked as Exhibit I.**

81

82 Mr. Fenn explained that he did not note existing trees on the site plan. Four trees marked
83 with an "*" were recommended for removal by the Deputy Tree Warden. He was
84 proposing to remove the following trees:

85 #1 and 2 were small hemlock's that would be on the edge of the new foundation of the
86 new construction. The Tree Warden said that the trees would not thrive; #3 is a diseased
87 beech that is dying and should come down; #4 is a diseased maple that threatens a power
88 line; #5 is a 5" beech that is diseased and dying; #6 is a 17" beech that is dying; # 7 and 8
89 are maple trees in the way of the new driveway and parking area; #9 are two small
90 maples that are stunted; and #10 is a maple next to the existing camp. He would replant
91 as many trees as removed. The area along the driveway has a hemlock hedge and he
92 would plant new trees and shrubs as appropriate. He was not proposing a planting

93 schedule. That would depend on his budget, sunlight and soils. Trees were needed for
94 privacy and there are a lot of trees left on the lot, said Mr. Fenn.

95

96 Mr. Fisher asked for the rational of a jog-out in the parking area. Mr. Fenn said that he
97 was trying to create a spot for the neighbors to park two cars and get in and out. He wants
98 to retain healthy trees next to the #9 tree, explained Mr. Fenn.

99

100 Mr. Fenn submitted colored photographs of the northern neighbor and trees, and the
101 existing driveway with storm runoff from the June 7th rain storm.

102

103 **EXHIBIT J: the ZBA reviewed and accepted 5 color photographs depicting the**
104 **northerly camp and the existing driveway, marked as Exhibit J.**

105

106 PUBLIC COMMENTS

107 Ms. Biebuyck asked if Mr. Fenn had contacted the state Department of Environmental
108 Protection regarding the shoreline. Mr. Fenn replied that there were no issues with a
109 deck, dock or stairs. A permit was not needed. That was not the purview of the ZBA, said
110 Mr. Fenn. Mr. Biebuyck stated that he would follow up on the need for a permit.

111

112 Ms. Biebuyck submitted a written position statement for ZBA review.

113

114 **EXHIBIT K: a written position statement from Valarie and J. C. Biebuyck, dated**
115 **June 8, 2016, was accepted and marked as Exhibit K.**

116

117 Ms. Biebuyck read the statement into the record related to the Charlotte Zoning Bylaws,
118 Shoreline Protection Act and Mr. Fenn's project. She can not support the project due to
119 impacts on neighboring properties, Section 2.7(f)(1) related to division of a lease hold,
120 Section 2.7(b) related to not increasing occupancy, a guest house/kids play house versus a
121 main camp, non-conformity related to increasing an existing footprint, adding decks and
122 a second story to a run-down guest camp, and Sections 3.8(b)(2) and (3), modification of
123 a non-conforming structure - repair or restoration of a damaged structure for "any cause".

124

125 Ms. Biebuyck said that most of the Flat Rock Road camps had double lots, except for her
126 lot. The Charlotte Deputy Tree Warden recommended cutting trees and the DEC might
127 over rule the Town in a review. As of today the DEC said that no one had contacted them
128 regarding the Fenn project. At a minimum he would need a letter of determination and if
129 there was a problem DEC said that would work with the developer. This process
130 shouldn't occur without the DEC review in parallel with the ZBA hearings, said Ms.

131 Biebuyck.

132

133 Mr. Tenney said that if this project went forward and was approved that was a 'local'
134 hurdle. The DEC was a 'State of Vermont' hurdle for the applicant to address. The ZBA
135 would leave it up to the developer to make sure all permits were in place before
136 construction, said Mr. Tenney.

137

138 Mr.. Tenney asked if it the proposal was for a 1,200 square foot camp. Mr. Fenn replied
139 no. The 1st floor footprint was 772 square feet with the deck, and a 2nd story at 224 square
140 feet for a total of 996 square feet, said Mr. Fenn.

141

142 Mr. Tenney asked if that size was consistent with the camps in the area. Mr. Swayze said
143 that in the letter Ms. Biebuyck was arguing the size, scale and placement of the proposed
144 structure would interfere with character of the area. If it was one story and not moving
145 closer to the Biebuyck camp would she feel that is out of the character of the area, asked
146 Mr. Swayze. Ms. Biebuyck replied that the regulations wouldn't prohibit a structure on
147 the same footprint. The Lot 128 camp is in disrepair. As per the regulations an owner
148 must repair, and maintain the camps within one year of damage, or they forfeit their
149 rights. On this lot he could plant trees to prevent erosion, but he is moving a driveway
150 and cutting trees. Subsection 3 versus 2, deals with repair of damage. He can't modify or
151 make it habitable, said Ms. Biebuyck.

152

153 Mr. Bennett said to assume the damage was from a fire or a tree falls on it. There would
154 be a time reference to go as per Section 3. A question is: the time frame a year late from
155 when. What's the date, asked Mr. Bennett. Ms. Biebuyck said if you look at specific
156 language of Section 3.8(b)(3), there is no definition of "cause". You can take the 'date' of
157 when Paul Arthaud purchased the property, suggested Ms. Biebuyck.

158

159 Mr. Fisher said that when Paul Arthaud purchased the property the guest house was in the
160 same condition then as now. The neglect has been at least 20 years, or back to 2003.
161 What led to the division of the lease by the Town, asked Mr. Fisher.

162

163 There was lengthy discussion regarding a history of the camps; when Mr. Arthaud rebuilt
164 the main camp in 2003 and did nothing with the falling down guest house; and if the
165 Town divided all double lots, or if it was done special for Paul.

166

167 Ms. Biebuyck said mistakes don't "run with the land". She thought the lots were divided
168 because Paul wanted to sell the camps. She was never noticed that the lots were to be
169 separated, said Ms. Biebuyck.

170

171 Mr. Bennett said he didn't think the lot history matters - it is done and is fact. The past
172 actions of the Town aren't part of the ZBA decision. The time the neighbors should have
173 acted was when the lots were separated, said Mr. Bennett. Mr. Biebuyck said the lot
174 shouldn't have been split. The DEC wouldn't let all the trees be cut, said Mr. Biebuyck.
175 Mr. Bennett said that Section 3 is remedial and doesn't apply.

176

177 Mr. Ernsting said that when he bought the property he paid \$500,000 for his lot and
178 camp. There was this shack on Lot 128. He talked to Paul and Paul said that you have to
179 build on the footprint, said Mr. Ernsting.

180

181 Mr. Ernsting submitted a foot print comparison of the proposed Fenn project
182 superimposed over the existing camp footprint.

183

184 **EXHIBIT L: a drawn footprint comparison of the existing camp and proposed**
185 **construction of 1012 Flat Rock Road, west view and south view, and a cover letter,**
186 **dated June 8, 2016, was accepted and marked as Exhibit L.**
187

188 Mr. Ernsting said that the proposal with covered decks and porch was equals a total of
189 1,073 square feet, which is 2.5 times the original footprint. This is out of portion of the
190 original guest house in size and closeness to the lot line. Guest houses are small in the
191 area, said Mr. Ernsting.
192

193 Mr. Tenney asked how large was Mr. Ernsting's camp, or for a normal structure in that
194 area. Mr. Ernsting replied 1,000 square feet.
195

196 Mr. Ernsting said that most everyone has double lots. In terms of size, small sized houses
197 are the "in" thing now and would fit there, said Mr. Ernsting.
198

199 Mr. Fenn said the proposed size was 772 square feet including the decks. The front deck
200 was not covered and it would be a one-bedroom camp. The 2nd story would be 224 square
201 feet. The proposal would be the smallest of the three camps. Most houses on Flat Rock
202 Road are huge; for example, the Bloch house. Size, scale and style are within the
203 character of the area. It is the same size lot as everyone else, said Mr. Fenn.
204

205 Mr. Bennett asked if there was no question that the proposed structure is bigger then the
206 original. Mr. Fenn replied yes; there is no question that it would be bigger than the
207 original.
208

209 **MOTION by Mr. Swayze, seconded by Mr. Bennett, to close 16-51-CU, a request for**
210 **a Conditional Use Review by Paul Arthaud/Peter Fenn for the demolition and**
211 **reconstruction of a camp at 1012 Flat Rock Road in the Shoreland Seasonal Home**
212 **Management District; the newly constructed camp will be larger and will involve**
213 **review as an expansion of a nonconforming structure (within setbacks).**

214 **DISCUSSION:**

215 **Mr. Benoit asked if the ZBA required further research on the footprint. Mr. Tenney**
216 **replied no.**

217 **VOTE: 4 ayes, 1 absent (Mr. Zucker); motion carried.**
218

219 Mr. Fisher explained that the ZBA had up to 45 days to issue a written decision. Mr.
220 Benoit said that the decision would be posted and the applicant would receive a certified
221 letter, and neighbors would receive a mailed letter.
222

223 Mr. Fenn asked who would write the decision. Mr. Tenney explained that the Zoning
224 Clerk wrote the letter with ZBA guidance.
225

226 **ADJOURNMENT**

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

228 **VOTE: 4 ayes, 1 absent (Mr. Zucker); motion carried.**
229

230 The ZBA meeting was adjourned at 8:10 p.m.
231
232 Minutes respectfully submitted, Kathlyn Furr, Recording Secretary.
233
234

DRAFT