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**TOWN OF CHARLOTTE
ZONING BOARD OF ADJUSTMENT
NOVEMBER 16, 2016**

DRAFT

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

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

OTHERS PRESENT: Lisa Hudgin, Bonnie Heaslip, John Heaslip, Elizabeth Clark, Peter Schubart, Cheryl Gouchoe, Pam Baldwin, Clyde Baldwin, Wendy Pierce, Steve Epstein, Frank Gouchoe, Rick Flood, Scott Hardy, Lila Sunderland, Tenna Flood, Peter Post, Michael Lazar, Tom McAuliff, Claudia Barber, Janella Pennington, Marc Cole, Meg Walker, Peter Walker, Scott Bowen, Kendra Bowen, Clark Hinsdale III. Suzanne Hinsdale, Gerald Bouchard, Betsi Oliver, Lane Morrison, Bonnie Sogoloff, Hayes Sogoloff, Seth Zimmerman, Chris VonTrapp, Colin Doris, Steve Foster, Jen Whalen, T J Whalen, Toni Sunderland, Lara Hutchin, Amanda Phillips, Chris Ekman, Ted Fisher, Mary Fisher, Evan Waldon, Julie Liver, Diane Chang, Mike Frost, Karen Frost, Marc Stein, Rachel Stein, 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.

SITE VISITS:

6:00 PM ZBA-16-149-CU – 20 Baldwin Road, Charlotte, VT

6:30 PM ZBA-16-150-CU – 4206 Mt Philo Road, Charlotte VT

AGENDA:

- CONTINUATION: ZBA 16-133-CU: Conditional Use/Adaptive Reuse Review for Courtney Roman (representative for Scott Hardy) to reuse the historic barn at 783 Mt. Philo Road as a seasonal event venue. The property is located in the Rural District.
- ZBA-16-149-CU: Conditional Use/Adaptive Re-use Review for Paulette and James Thibault to raise the roof on two sections of a house; to construct a 10’x12’ back deck and a 10’x44’ front porch; and to replace the existing garage with a 10’x18’ carport. The property is located in the Rural District.
- ZBA-16-150-CU: Conditional Use application for Robbie Hall to build a backyard deck that will connect another existing deck to an existing porch. The property is located in the Rural District.

CALL TO ORDER

Mr. Tenney, Chair, called the meeting to order at 7:08 p.m.

CONTINUATION: ZBA 16-133-CU: CONDITIONAL USE/ADAPTIVE REUSE REVIEW FOR COURTNEY ROMAN (REPRESENTATIVE FOR SCOTT HARDY) TO REUSE THE HISTORIC BARN AT 783 MT. PHILO ROAD AS A

47 **SEASONAL EVENT VENUE. THE PROPERTY IS LOCATED IN THE RURAL**
48 **DISTRICT.**

49 The applicant, Courtney Roman, did not appear.

50

51 STAFF NOTES

52 Mr. Tenney, Chair, reviewed staff notes.

53

54 APPLICANT COMMENTS

55 In lieu of applicant testimony, Mr. Swayze briefly reviewed a summary of hearings held
56 to date:

- 57 • The Conditional Use application is for an adaptive reuse of a history structure
- 58 • The ZBA has completed a site visit, a hearing, a second site visit for a sound test,
59 and a continued hearing to November 16, 2016
- 60 • The subject property consists of two 5-acre lots for residential development
- 61 • The current application seeks to re-combine the two 5-acre lots and adapt the
62 existing barn for an event venue
- 63 • No re-zoning is required

64

65 ZBA QUESTIONS/COMMENTS

66 Mr. Tenney noted that the ZBA had requested additional information from the applicant
67 at the November 2, 2016 hearing, which has been submitted as subsequent information.

68

69 **EXHIBIT B: the ZBA reviewed and accepted applicant subsequent information**
70 **consisting of four photographs, and a description of a lighting plan, and a plan for**
71 **three exterior doors and the interior of the barn, and marked the submittals as**
72 **Exhibit B.**

73

74 PUBLIC COMMENTS

75 Mr. Hinsdale asked if the Exhibit B items are posted on-line so that the public can view
76 it. Mr. Tenney replied yes.

77

78 Mr. Zucker said that the public attending the hearing also want to submit information
79 regarding preservation of the character of the area.

80

81 Mr. Tenney reviewed a witness oath process for those wishing to speak and establish
82 'interested party' status.

83

84 The following were sworn in:

85 Donna Lisa Hudgin, Clark Hinsdale III, Scott Bowen, and Chance Kardimon.

86

87 Mr. Tenney reported that 30 letters/e-mails have been received from neighbors and
88 concerned citizens regarding the application as follows: Clark Hinsdale III, Arlene
89 Marks, Tenna Flood, Michael Lazar, Bonnie and Hayes Sogoloff, Margaret Foster,
90 Thomas McAuliff, Davidson, Bonnie and John Heaslip, Chance and Lila Sunderland,
91 Toni Sunderland, Claudia Barber, Richard Junge, Ellen Coggan, Steven Epstein, Lisa

92 Hudgin, a second letter from Arlene Marks, Ted Fisher, Kathy and Peter Post, T J
93 Whalen, Sue Schemerhorn, and Elizabeth Clark.

94

95 Mr. Tenney asked if the ZBA members had any further questions or comments.

96

97 Mr. Fisher reviewed that the ZBA had asked/suggested to the Roman's conduct a more
98 formal sound study and submit better sketches of the barn exterior. Also, there is a
99 conflict between the Planning Commission Sketch Plan notes related to an entrance on
100 the east side of the barn, and testimony the ZBA heard regarding an entrance on the west
101 side, road side, of the barn, said Mr. Fisher.

102

103 Mr. Lazar offered to do a sound study using Top Hat Entertainment on a quiet night, no
104 rain and he would record it. He would notify his neighbors. The study would be
105 subjective, said Mr. Lazar. Mr. Zucker replied that a subjective sound study doesn't
106 advance the issue. The ZBA had requested that the applicant do a formal sound study by
107 a sound engineer as was done at the Varney Farm hearing, said Mr. Zucker.

108

109 Mr. Bennett said that the ZBA applies 30 separate criteria when considering an
110 application, such as "no use under normal conditions or ...noise levels over 70 dBs that
111 may be incompatible with the area." Mr. Lazar said that the applicant stated that there
112 would be no air conditioning. He could do a metered sound study on a quiet evening,
113 suggested Mr. Lazar.

114

115 Ms. Hudgin asked what options the neighbors had. For example, the Old Lantern
116 application is under appeal, said Ms. Hudgin. Tenney said that the Old Lantern
117 application was different and the use is grandfathered. If it was a Conditional Use
118 application then it can not be anymore non-conforming then it was. Neighbors have the
119 right to make sure an applicant operates under the conditions stated in an application
120 approval. Any violations should be brought to the attention of the Zoning Administrator
121 (ZA), who is the Enforcement Officer. Once the ZBA approves an application then the
122 ZBA is done. The ZA acts upon violations, reiterated Mr. Tenney.

123

124 Mr. Sunderland said that the applicant has verbally stated that the number of events will
125 change from 60 to 20. Does that need to be in writing, asked Mr. Sunderland. Mr. Tenney
126 explained that verbal testimony can be considered. The ZBA will look at that testimony
127 to quantify how that fits into the character of the neighborhood. An approval would be
128 conditioned regarding the stated number of events, for example, and there are other
129 conditions that can be imposed, said Mr. Tenney. Mr. Swayze noted that conditions are
130 usually more restrictive.

131

132 Mr. Bowen said that traffic on Mt Philo Road is a concern. There have been two
133 accidents within the last four months, said Mr. Bowen. Mr. Tenney said that traffic
134 information was submitted during the hearings. It is up to the applicant to present all
135 information. An application could be denied if there is not enough information presented,
136 said Mr. Tenney.

137

138 Mr. Benoit clarified that Town staff had provided the traffic information that is based on
139 CCRPC data. Traffic on Mt Philo Road is recorded as 1,500 cars per day and at a 59 mph
140 85 percentile speed, said Mr. Benoit.

141

142 Mr. Hinsdale read his written letter into the record related to adaptive reuse of historic
143 structures, applying Town regulations, such as Section 5.4.2, that measure impacts and
144 undue adverse impacts, a related application for the Varney barn on Route 7, and
145 associated residential impacts regarding the two projects.

146

147 Mr. Heaslip said that Ms. Roman said that an event would start at 2:00 p.m. and end at
148 9:30 p.m. Is that when a party would start, or the caterer would begin setup. He was a
149 caterer and had to set up in the early morning, said Mr. Heaslip. Mr. Tenney said the
150 ZBA could condition actual events times, or services also.

151

152 Mr. Lazar read a petition into the record signed by 72 persons in opposition to the event
153 barn.

154

155 **EXHIBIT D: the ZBA accepted a Petition Declaration in Opposition of the Event**
156 **Barn at 783 Mt Philo Road, with signatures, marked as Exhibit D.**

157

158 Mr. Tenney asked if there is any new information to present.

159

160 Mr. Kardimon, an abutting neighbor at 768 Mt Philo Road, read a written letter, now
161 marked as Exhibit C, into the record.

162

163 Mr. Hinsdale said that people live in Charlotte for the open spaces, a community
164 supportive of conservation, and good schools. When the Sogoloff's purchased part of the
165 Collette farm the owners asked to keep the barn and house together. It was a complicated
166 deal. The Sogoloff's chose a like-minded community and built a beautiful facility and
167 trusted that the landowners would keep the house and barn areas together. Lila and
168 Chance bought the house across the road and it was represented that the two lots were
169 zoned residential lots. Simply stated this was farm that was subdivided, permits were
170 approved and representations made, clarified Mr. Clark.

171

172 Ms. Sogoloff, Cedar Spring Morgan Horse Farm owner and abutting neighbor, thanked
173 the neighbors for their overwhelming response. The old barn and house were to be kept
174 intact and she understood that it wouldn't be developed. An event barn would impact her
175 property. Horses are unpredictable. They could be spooked and run through fences. There
176 is a Connecticut vicious horse case where a father allowed his child to pet a horse over a
177 fence without the horse owner's permission. The child was bit and the horse owner was
178 taken to court, found liable and had to pay damages. This could happen to her easily. She
179 could not guarantee her horses wouldn't do that. She trains and raises Morgan and
180 Saddlebred horses. The young stock requires specific training. Noise, music and event
181 activities are a concern for the safety of her staff. She has beginner children riding and
182 they could be endangered. She has trained these horses for 35 years in Essex. Large

183 commercial development drove her away. This is a safety issue and an event barn is not
184 compatible with the neighborhood, said Ms. Sogoloff.

185

186 Mr. Bennett explained that the Conditional Use process gives the ZBA considerable
187 control and more input versus a single family residential application on 5 acres. Ms.
188 Sogoloff said that she would require extra fences to keep people away from her pastures.
189 A question is if the event barn could be profitable with 20 events per year. If something is
190 built in the area that is compatible with her then she would be happy with that. Her
191 concerns are loud parties, noise, and drunken people climbing the fences, said Ms.
192 Sogoloff.

193

194 Mr. Stein asked what the best procedure to oppose the application is. Mr. Tenney
195 explained that attending the ZBA hearing and giving testimony is the first step. Next, you
196 can appeal a ZBA decision to the Environmental Court, and the court will hear the
197 testimony all over again. A ZBA decision is based on the Zoning Bylaws. There is a fee
198 to submit an appeal to the court. You can represent yourself, or with an attorney, said Mr.
199 Tenney.

200

201 Mr. Lazar asked if there is a separate level review at the Planning Commission. Mr.
202 Tenney replied yes. It is the same process. The ZBA and Planning Commission don't
203 have to be heard in parallel. If the ZBA approves an application and the Planning
204 Commission has not you appeal the ZBA decision. If the Planning Commission approves
205 a site plan then you can appeal that. Planning Commission and the ZBA applications are
206 not combined for this application. The ZBA reviews the use, and the Planning
207 Commission reviews site plans, said Mr. Tenney.

208

209 Ms. Flood asked if the ZBA denies the application would that halt the Planning
210 Commission review. Mr. Tenney replied not in the eye of the Town. It may with the
211 applicant, said Mr. Tenney.

212

213 Mr. Tenney asked if there is any new factual testimony from the audience. The applicant
214 is not in attendance and has not heard the concerns. If not, then the ZBA will close the
215 hearing, explained Mr. Tenney.

216

217 Ms. Hudgin said that there is a letter from a neighbor of the Old Lantern. She heard Mr.
218 Tenney said that the Old Lantern application was granted under different zoning
219 regulations, said Ms. Hudgin. Mr. Fisher replied yes. The Old Lantern is an entirely
220 different application and the use was grandfathered. The Edgewater Center, LLC
221 application was heard under the same zoning regulations as the Roman application, said
222 Mr. Fisher.

223

224 Mr. Benoit explained that a ZBA decision will be posted on the Town website, and
225 abutting neighbors are sent decisions in writing. Mr. Benoit asked the four abutting
226 neighbors to leave their addresses on the sign-in sheet.

227

228 Mr. Tenney explained that the ZBA has 45 days to render a written decision once the
229 hearing is closed.

230

231 Ms. Flood asked if the applicant could only work on the barn construction from 2:00
232 p.m.-9:00p.m.

233

234 Mr. Ekman asked if the hearing is closed, does it mean that closes evidence as well, or
235 could the applicant submit more information.

236

237 Mr. Walker asked if site plan complaints go the Planning Commission. Mr. Tenney
238 replied yes.

239

240 Mr. Benoit said that people can access the following on the Town website: the zoning
241 application that is linked to the Planning Commission Sketch Plan letter to the applicant,
242 and details of the site plan review. The Planning Commission Chair signed the Sketch
243 Plan letter, explained Mr. Benoit.

244

245 Ms. Clark said that she can see the properties southeast of barn next to the Sogoloff's
246 where farmer's, tractors create deep ruts and mud. How can 150 cars park on 1 acre in a
247 muddy field, and where will the septic go, Asked Ms. Clark. Mr. Tenney clarified that
248 only 80 cars will park on the parking lot, and the septic is located across the road on a
249 neighbor's land as per the deed. The applicant will use the approved septic for two
250 residential houses for the barn, said Mr. Tenney. Mr. Benoit said that peak hour septic
251 usage is as per state guidelines.

252

253 Mr. Tenney said that the ZBA is in receipt of all the information the applicant presented
254 and would make a decision based on that assuming the application hearing is closed.

255

256 Ms. Phillips said that she read the on-line application, which gives "approximate"
257 estimates to questions. Are specific answers to those questions in the hearing minutes,
258 asked Ms. Phillips. Mr. Tenney replied that the minutes of hearings are posted on the
259 Town website, and there is an audio recording. The ZBA in its decision will state the
260 number of events per year, per week.

261

262 Ms. Heaslip asked if the ZBA could regulate overflow parking, which might be on the
263 side of the road. Mr. Tenney replied that the ZBA would stipulate only parking on-site in
264 the parking lot. He didn't think the Town would allow on the road parking, said Mr.
265 Tenney. Mr. Benoit stated that the Planning Commission wouldn't allow it.

266

267 Ms. Hudgin asked if the applicant is approved for 20 events per year, could they come
268 back to increase the number later. Mr. Tenney explained yes, the applicant would need to
269 come back with a new application.

270

271 **MOTION by Mr. Bennett, seconded by Mr. Swayze, to close the hearing regarding**
272 **ZBA 16-133-CU, a Conditional Use/Adaptive Reuse Review request by Courtney**

273 **Roman (representative for Scott Hardy) to reuse the historic barn at 783 Mt. Philo**
274 **Road as a seasonal event venue.**

275 **VOTE: 5 ayes; motion carried.**

276

277 **ZBA-16-149-CU: CONDITIONAL USE/ADAPTIVE RE-USE REVIEW FOR**
278 **PAULETTE AND JAMES THIBAUT TO RAISE THE ROOF ON TWO**
279 **SECTIONS OF A HOUSE; TO CONSTRUCT A 10'X12' BACK DECK AND A**
280 **10'X44' FRONT PORCH; AND TO REPLACE THE EXISTING GARAGE WITH**
281 **A 10'X18' CARPORT. THE PROPERTY IS LOCATED IN THE RURAL**
282 **DISTRICT.**

283 Paulette and James Thibault, owners, did not appear.

284

285 STAFF NOTES

286 Mr. Tenney, Chair, reviewed staff notes.

287

288 Mr. Tenney reported that a site visit was conducted this date. The Thibault's were not
289 present.

290

291 APPLICANT COMMENTS

292 None.

293

294 ZBA QUESTIONS/COMMENTS

295 None.

296

297 PUBLIC COMMENTS

298 None.

299

300 **MOTION by Mr. Tenney, seconded by Mr. Bennett, to continue ZBA-6—16-149-**
301 **CU to November 30, 2016 at 7:30 p.m.**

302 **VOTE: 5 ayes; motion carried.**

303

304 **ZBA-16-150-CU: CONDITIONAL USE APPLICATION FOR ROBBIE HALL TO**
305 **BUILD A BACKYARD DECK THAT WILL CONNECT ANOTHER EXISTING**
306 **DECK TO AN EXISTING PORCH. THE PROPERTY IS LOCATED IN THE**
307 **RURAL DISTRICT.**

308 Susan Hall and Robbie Hall, owners, appeared on behalf of the application.

309

310 STAFF NOTES

311 Mr. Tenney, Chair, reviewed staff notes.

312

313 Susan Hall and Robbie Hall were sworn in.

314

315 Mr. Benoit handed out copies of a tax delineation map, dated May 8, 1968, by Priscilla S.
316 Spear, in Vol. 30, page 19-A, and noted that the tax map is not a complete drawing. A
317 survey showing all the lot lines has not been found at this time, said Mr. Benoit.

318

319 APPLICANT COMMENTS

320 Mr. Hall said that all his neighbors accepted an existing fence line as the back boundary,
321 and pointed out a fence line on a site map drawing.

322 ZBA QUESTIONS/COMMENTS

323 There was lengthy discussion regarding the location of an actual back boundary line, a
324 brief history of the original subdivision, and the existing house orientation that is not
325 parallel to the boundary lines. Mr. Fisher suggested that the applicant might consider
326 modifying the application with the correct boundary lines, or the applicant could reduce
327 the dimensions/angle of the proposed deck.

328

329 Mr. Swayze said that as per the Zoning bylaws for a conditional use, the ZBA can
330 approve a deck even though it doesn't meet the setbacks, but can't approve a deck that
331 goes over a lot line. The actual distances were needed from the property lines, stated Mr.
332 Swayze.

333

334 Mr. Fisher said the lot line might be closer to 12' versus 16' if the line moves easterly at
335 the corner. Mr. Zucker said a concern is if a future person moves into the house and
336 objects to where the deck is.

337

338 Mr. Bennett said that there must be a final Plat Mylar filed with the Town for the
339 subdivision. Mr. Benoit explained that he could only find the tax delineation map dated
340 May 8, 1968, by Priscilla S. Spear, in Vol. 30, page 19-A.

341

342 Mr. Tenney suggested approving the application that the deck "could be no closer than
343 26' from the property line". The applicant can shape the deck to fit what is approved, said
344 Mr. Tenney.

345

346 Mr. Bennett suggested that the deck could only go out 14' from the edge of the existing
347 house.

348

349 Mr. Benoit noted that the easement restrictions are documented in the 1989 deed to the
350 Hall's. The original subdivision was from 1972 when the lots were extracted from a
351 larger farm. The 1968 survey drawing is not complete in the Town records.

352

353 Mr. Swayze asked if the surrounding lots are developed where the porch is proposed.

354 Mr. Tenney said yes. At the site visit he noticed a house in the back through woods about
355 100'.

356

357 Mr. Fisher asked if the subdivision lots were 2 acres each. Mr. Hall replied yes; about 2
358 acres \pm .

359

360 Mr. Zucker said a concern is if you ever sold the property and a survey was needed, and it
361 was found that the boundary line was violated.

362

363 Mr. Fisher said that a porch could be no closer than 26' to the rear boundary line, or a
364 variance would be needed. The submitted drawing is not accurate, and the rear line isn't

365 parallel to the house, said Mr. Fisher. Mr. Hall has agreed that the line is off a few feet.
366 The hearing should be continued to the next ZBA meeting on November 30th, suggested
367 Mr. Fisher.

368

369 Mr. Benoit explained that he had found a written description with meets and bounds in
370 the deeds. It says the lot is 290' deep and 300' long starting with frontage on Mt Philo
371 Road. The House is at an angle to the back property line. What the applicant wants to
372 build is not parallel to the back property line. The applicant may need to survey the lot in
373 order for the ZBA to make a decision, said Mr. Benoit. Mr. Fisher noted that Mt. Philo
374 Road is a 4-rod road.

375

376 Mr. Benoit said that staff would try to find more information in the Town records.

377

378 A copy of the deed was given to the applicants.

379

380 Mr. Swayze said that it appears that you are using land you may not own and need to
381 figure that out.

382

383 Mr. Benoit pointed to the tax map and said that it appears that there are two corner
384 pins/pipes and the applicant could use those points to extract the lot line locations. It
385 might be possible to find all four monumentation corners and that would give the
386 orientation, said Mr. Benoit.

387

388 PUBLIC COMMENTS

389 None.

390

391 **MOTION by Mr. Fisher, seconded by Mr. Zucker, to continue the hearing for ZBA-**
392 **16-150-CU, Conditional Use application request by Robbie Hall to build a backyard**
393 **deck that will connect another existing deck to an existing porch to November 30,**
394 **2016 at 7:45 p.m.**

395 **VOTE: 5 ayes; motion carried.**

396

397 **ADJOURNMENT and DELIBERATIVE SESSION**

398 **MOTION by Mr. Bennett, seconded by Mr. Swayze, to adjourn the meeting and**
399 **enter Deliberative Session.**

400 **VOTE:**

401

402 The ZBA meeting was adjourned and the Board entered Deliberative Session at 8:55 p.m.

403

404 Minutes respectfully submitted, Kathlyn Furr, Recording Secretary.

405

406

407