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Charlotte Zoning Board of Adjustment
159 Ferry Road
Charlotte, Vermont 05445

June 8, 2016

Re: 16-51-CU Arthaud/Fenn 1012 Flat Rock Road

Gentlemen –

Thank you for giving us the opportunity to provide input on the proposed project to rebuild the dilapidated camp at 1012 Flat Rock Road.

After considering applicable regulations of the Town of Charlotte, requirements of the Vermont Shoreland Protection Act, and Mr. Peter Fenn's proposed project, we cannot find the proposed project acceptable even with the imposition of conditions to mitigate the infringement on our privacy and quiet enjoyment of our home adjacent to Lot 128.

This letter explains our position and issues with the project.

Summary

The proposed project cannot be executed in accordance with applicable Town of Charlotte Zoning Regulations. Separation of the dilapidated camp from the leasehold it previously shared with the main camp was prohibited by regulation and should not have been allowed. The reconstruction intends to increase occupancy of the nonconforming structure by converting it from its intended use as a guest house for the main camp on Lot 127 to a fulltime summer residence. Additionally, the work required to make the dilapidated camp on Lot 128 habitable is so extensive that the project must be evaluated under Charlotte Zoning Regulation §3(8)(B)(3) (which addresses repair, restoration, or reconstruction of a nonconforming structure) rather than §3(8)(B)(2) (which addresses modification of a nonconforming structure). Regardless of which regulation ultimately may be applicable, the proposed project satisfies neither as its approval would increase the nonconformity of a currently nonconforming structure. It is not appropriate for the Zoning Board of Adjustment ("ZBA") to use its discretion to permit the proposed changes given their negative impact on neighbors and habitat.

Evaluation of the project by the ZBA cannot occur in isolation from the Vermont Shoreland Protection Act administered by the Vermont Department of Environmental Conservation ("DEC"). The proposed project requires an application for a determination by the DEC as to whether it may proceed in compliance with the Shoreland Protection Act and whether a DEC permit is necessary. Any decision by the ZBA or a town official will be superseded by the

DEC and state law in the event of a conflict. It makes no sense for the ZBA to render a decision without the prior, or at least concurrent, involvement of the DEC.

Background

The camp on Lot 128 at 1012 Flat Rock Road is completely dilapidated and has been in that condition for many years. It is a large single room on one level that served as the guest house and children's play area for the main camp at Lot 127 for decades. Until recently, Mr. Paul Arthaud had owned both. He renovated the main camp at Lot 127 around 2003 and never undertook renovation of the dilapidated guest structure on Lot 128. Although the lease between the Town of Charlotte and the leaseholder requires that property on leased land be maintained in a safe condition, such has never been the case with the dilapidated camp on Lot 128 during the nineteen years that we have owned our camp. Mr. Arthaud sold the main camp on Lot 127 two years ago and is now trying to sell the dilapidated guest camp on Lot 128 to builder Peter Fenn. Mr. Fenn's purchase is contingent on getting permits to rebuild the nonconforming structure that is the dilapidated camp, including expanding its footprint, adding a second story, constructing two patios, relocating the driveway, creating a new parking area for Lot 127 and Lot 128, creating a new entrance path to Lot 127, adding a dock and stairs to access the lake, and removing trees.

Charlotte Zoning and Land Use Regulations

The dilapidated structure on Lot 128 exists in violation of Charlotte Zoning and Land Use Regulations and the lease between the leaseholder and the Town of Charlotte. Likewise, the proposed reconstruction violates Charlotte Zoning and Land Use Regulations.

Section 2.7:

Section 2.7 (F)(1) of the Charlotte Zoning and Land Use Regulations pertaining to the Shoreland Seasonal Home Management District of Thompson's Point states that "leaseholds shall be considered lots" and prohibits subdivision of leaseholds.

Until just a few years ago, current Lot 127 and current Lot 128 were part of the same leasehold subject to a single lease, which made sense as the camp on Lot 127 was the main house, and the camp on Lot 128 was the guest house. In apparent contravention of §2.7(F)(1), the Town of Charlotte allowed the leasehold to be split some time after 2003.

This severance has created an untenable situation for the dilapidated guest structure and neighboring properties particularly as a current proposal seeks to convert the guest camp into a fulltime summer residence. It makes no sense that significant infrastructure for the large main house on Lot 127 -- including the well, service transformer, electric meter, driveway, and parking area -- is located on Lot 128 upon which the dilapidated, uninhabitable camp sits, with the exception of the septic system. All of these were intended to be shared between Lots 127 and 128 as the single leasehold of main camp and guest camp. In fact, the only way this configuration makes sense is if the small dilapidated camp on Lot 128 is the guest house for the big main house on Lot 127 as part of the same leasehold, as was the case prior to the

Town's severance. The unauthorized severance has created a layout that is cumbersome and impracticable for two separate leaseholds, requiring cutting trees and removing vegetation that is necessary for erosion control in order to develop a new driveway, new parking area, and new entrance path in order for the guest house to be reconstructed as a fulltime summer residence.

Furthermore, when used as a guest house, the dilapidated camp on Lot 128 shared the dock and water access with the main camp on Lot 127. The proposal to convert the guest house to a fulltime summer residence places an additional strain on shoreline resources by calling for Lot 128 to install a new dock, stairway, and path to access Lake Champlain.

The severance also results in violation of Charlotte Zoning Regulation §2.7(7)(b).

Section 2.7(7)(b) requires that alteration of an existing principal structure cannot be "for the purpose of increasing occupancy." The camp on Lot 128, when habitable, was used as a guest house for periodic visitors to residents of the main camp on Lot 127. The Town of Charlotte allowed the leasehold of the main camp and the guest house to be split into two separate leases, but the guest house cannot be made habitable as a standalone fulltime summer residence without increasing the occupancy beyond that allowed by its original and intended use as a guest house.

The current proposal is to enlarge the square footage of the structure on Lot 128, including expanding its footprint and adding decks, porches, and a second story. The original square footage, which is no bigger than a large single-story room, was adequate as a guest house but not as a marketable and rentable fulltime summer residence. The changes clearly intend to increase occupancy in contravention of the regulation.

Section 3(8)(B)(3) and Section 3(8)(B)(2):

Charlotte Land Use Regulations §3(8) (B) (3) states that

Any structure . . . legally in existence as of the effective date of these regulations which does not comply with the requirements of these regulations . . . shall be considered a nonconforming structure. A nonconforming structure

(2) may only be structurally modified . . . in such a manner that will not increase the degree of noncompliance;

(3) may be repaired, restored or reconstructed after damage from any cause provided that the repair or reconstruction does not increase the degree of noncompliance which existed prior to the damage, is commenced within one year of the date of the event that led to the damage, and is substantially completed within two years of the damage or destruction.

[Emphasis supplied]

“Neglect” is a valid cause under the regulation as the regulation does not define what constitutes “cause” in the phrase “damage from any cause.” For example, it does not limit “cause” to a natural disaster such as a hurricane. It says “any cause.” The camp on Lot 128 requires extensive “repairing, restoring, or reconstructing” because of damage caused by years of neglect.

It is not necessary to assign a specific date to neglect that has destroyed the camp throughout the course of years. It is irrefutable that the camp at 1012 Flat Rock Road has existed in a condition requiring repair, restoration, or reconstruction for decades, including prior to the time that the current owner of Lot 128 assumed possession many years ago. The time within which to commence the repair, restoration, or reconstruction (one year), and the time within which to substantially complete such work (two years) has long expired.

The ZBA meeting held on June 1st included discussion of another Charlotte Zoning Regulation, §3(8)(B)(2), which deals with “modification” of a nonconforming structure. The camp on Lot 128 requires far more than a “modification.” It needs to be rebuilt to make it habitable. The required work is extensive and more aptly described as a “repair, restoration, or reconstruction” under §3(8)(B)(3) rather than a modification under §3(8)(B)(2).

Regardless of which section ultimately is deemed applicable by a court of competent jurisdiction, both sections prohibit expanding the nonconformity of an already nonconforming structure, which the proposed project is asking the ZBA to allow.

The ZBA should not use its discretion under Charlotte Zoning and Land Use Regulation §5.4(C)(2) to permit an expansion of the nonconformity, particularly given the reasons described below and Vermont’s Shoreland Protection Act.

Section 5.4:

In the ZBA’s conduct of a conditional use review and exercise of its authorized discretion to allow exceptions to the Charlotte Zoning and Land Use Regulations, §5.4(C)(2) requires the ZBA to determine whether the proposed project will have an undue adverse impact on any of five factors. One of these factors is the character of the affected area, including “the design, location, scale, and intensity of the proposed development in relation to the character of adjoining . . . properties likely to be affected by the proposed use.”

The camp at Lot 128, when habitable, existed as the guest house for temporary visitors to residents of Lot 127. It never was intended to be used as a fulltime summer residence.

The dilapidated camp on Lot 128 is in very close proximity to our camp on Lot 129. In fact, they are among the camps closest to each other on Flat Rock Road. This was not an issue when the structure on Lot 128 was used as a temporary and periodic guest house for the camp on Lot 127. It is an issue as the fulltime summer residence that is proposed.

The existing dilapidated camp violates the sideyard setback requirements of the current Charlotte Zoning and Land Use Regulations. In spite of the dilapidated camp's already close proximity to our camp on Lot 129 in violation of the sideyard setback requirements, the proposed plan intends for the new structure on Lot 128 to extend fourteen feet closer to our camp, places a new parking area for Lot 127 and Lot 128 on the side of Lot 128 that borders our property, and places a patio right next to our yard. These factors infringe not only on our privacy and quiet enjoyment of the home that we have occupied for nineteen summers, but also that of all neighbors in the vicinity on Flat Rock Road, including longtime leaseholders Avery Hall, Andrea Rogers, Sandy Jones, current owners of Lot 127 Norman Ernsting and Nina Cucchiari, and others and must be taken into account by the ZBA in deciding whether to permit an increase in the nonconformity now in existence, including making a periodic guest house into a fulltime summer residence complete with patios and a new driveway and parking lot.

In conducting a conditional use review under §5.4, the ZBA must also comply with §2.7(A), which states that the purposes of the requirements of the Shoreland Seasonal Home Management District are to

- (1) protect and preserve . . . those areas of Thompson's Point that have been historically developed for seasonal residential use and have remained essentially unchanged over the years;
- (2) to protect the unique historic and physical character of these areas;
- (3) to protect the scenic beauty of the shoreland and lake, as viewed from the lakeshore and the water;
- (4) to protect the environmental quality of the area and the lake; and
- (5) to allow for development which does not adversely affect the town's natural and scenic resources or properties and uses in the vicinity

The ZBA cannot act in contravention of these purposes by permitting a guest camp to be converted into a fulltime summer residence. The Shoreland Protection Act serves to expand upon these requirements.

The Vermont Shoreland Protection Act and the Department of Environmental Conservation

Since 2014, the Vermont Shoreland Protection Act, administered by the Vermont Department of Environmental Conservation, imposes specific requirements on new development within two-hundred-fifty feet of the shoreline in areas such as Thompson's Point on Lake Champlain in order to control erosion and reduce degradation of water quality, natural habitat, and wildlife. Vegetation Protection Standards govern trimming and cutting of trees within the Protected Shoreland Area. Undeveloped shoreland on existing small lots such as Lot 128 also must meet specific requirements for impervious area and for thinning and cutting trees in accordance with a point and grid system. The proposed project must be registered with the DEC and likely will require a DEC permit.

The ZBA cannot issue its decision in isolation from the DEC and the Shoreland Protection Act. The State may delegate enforcement of the Shoreland Protection Act to municipalities

with shoreland regulations that are as stringent as, or more stringent than, those promulgated by the State of Vermont. The State has not delegated such authority to the Town of Charlotte. Charlotte must defer to the DEC in the event of a conflict. For example, if the Charlotte Tree Warden or Assistant Tree Warden has authorized the cutting of certain trees, that determination will be superseded by a determination of the DEC if it is in conflict with the Shoreland Protection Act.

As of the time of this writing, it is not apparent if there has been an attempt by the owner of Lot 128, its potential owner, or the Town, to ascertain the position of the State with respect to this project.

Conclusion

Given its inconsistencies with and violations of Charlotte regulations and state law, and for the reasons described in this letter, we oppose the development even if conditions were imposed to mitigate its adverse impact. We respectfully request that the proposed project not be permitted.

Very truly yours,



JC and Valerie Biebuyck

