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January 16, 2015

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

Zoning Board of Adjustment
Town of Charlotte
P.O. Box 119
Charlotte, VT 05445

Re: Fortin Application

Dear Zoning Board of Adjustment Members:

I am writing in connection with your request regarding the above-referenced matter. Specifically, you have asked whether the most recent application from the Fortins (hereinafter "Applicants") for their property located at 2737 Lake Road (hereinafter the "Property") constitutes a successive application.

The successive-application doctrine represents an implementation of issue preclusion, as adapted to the specific context of multiple zoning applications. *In re Woodstock Community Trust and Housing PRD*, 2012 VT 87, 192 Vt. 474, 479. Issue preclusion serves to prevent the relitigation of issues that have already been settled in a previous action. *Id.* The successive-application doctrine¹ provides that a zoning board may not entertain a second application concerning the same property after a previous application has been denied unless a substantial change of

¹ There is a statute that gives the Zoning Board of Adjustment the authority to deny, without hearing, an application where the Board "considers the issues raised . . . have been decided in an earlier [application] or involve substantially or materially the same facts by or on behalf of that [applicant]. See 24 V.S.A. section 4470(a). However, this option is only available within ten days of the date of the filing of a complete application. See *id.* Thereafter, the Board still may deny an application as a successive application, but first must hold a hearing on the application.

conditions has occurred. *See In re Armitage*, 2006 VT 113, 181 Vt. 241, 244 (citing *In re Carrier*, 155 Vt. 152, 158 (1990)). Applicants, who bear the burden of demonstrating a change of conditions or circumstances, satisfy this requirement when a revised proposal addresses all concerns that prevented approval of the prior application. *See Armitage* at 244.

The Applicants previously proposed to add wood processing to an existing landscaping business use. Specifically, the application proposed to use approximately 30% of the 5.9-acre lot for the business operations and for the storage of equipment and materials such as logs, mulch and compost. The proposed plan did not clearly define either the locations or limits of the parking areas, the storage areas or the landscaping. This application was reviewed as a Home Occupation III/Contractor's Yard and conditional use. The Zoning Board of Adjustment denied the application because generally, the business activity and noise levels, number of commercial vehicles, and traffic generated would have been in excess of levels acceptable under the Land Use Regulations for the Town of Charlotte, and because the proposal did not provide adequate visual or noise screening to mitigate the adverse impacts of the proposal. *See the Findings and Decision* dated May 9, 2014, in Application number ZBA-13-10.

The Board now has before it the Applicants' application for approval of a lawn care and snow plowing business (hereinafter the "Business") as a Contractor's Yard/Home Occupation and conditional use. The application does not include a proposal to process logs into firewood. The plans reduce the area dedicated to the Business to a little over 12% of the 5.9-acre Property. The plans clearly delineate the limits of the area proposed to be dedicated to the Business and its location relative to the residential structure and agricultural uses also on the Property and to the adjacent properties. The plans also clearly delineate the locations of the structures, parking spaces, areas for storage of equipment and materials, and existing and proposed trees. A number of the proposed trees are located so as to provide both visual and noise screening of the Business from neighboring properties. Overall, the second application includes significantly more detailed information about the various aspects of the Business, its operations, and attempts to mitigate the adverse impacts of the Business.

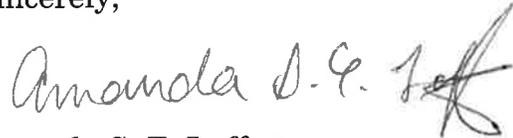
Based on these descriptions of each of the applications, it appears that the changes to the first application are adequate to constitute a substantial change of conditions. *See In re Woodstock Community Trust and Housing PRD*, 2012 VT 87, 192 Vt. 474, 482. Because there are both substantial changes and significantly more information in the second application, it would be difficult to argue that the

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Applicant is attempting to relitigate issues that the Board already has settled in its decision on the first application. *See id.* at 479. For these reasons, we do not consider the second application to be a successive application. Instead, the Zoning Board of Adjustment may consider the second application on its merits and determine if it complies with, among others, Sections 4.6, 4.11 and 5.4 of the Land Use Regulations.

We hope this letter is responsive to your questions. Please feel free to call with any additional questions. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Amanda S. E. Lafferty". The signature is written in a cursive style with a large, stylized initial "A".

Amanda S. E. Lafferty

ASEL/gc