

**TOWN OF CHARLOTTE  
Zoning Board of Adjustment**

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**IN RE: Kinloch Corporation**            )  
    **William M. Barlow, President**    )  
    **2 Wings Point**                    )  
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**ZBA-13-02**

**OPINION**

**I. Introduction and Issues Presented**

This matter came before the Zoning Board of Adjustment (the “Board”) on the Conditional Use application of Kinloch Corporation, represented by William M. Barlow “Applicant” and President of Kinloch Corporation. The parcel is located at 2 Wings Point Road. The application is to rebuild a lake front cottage that was destroyed by fire July 4, 2012 and expand the original footprint of the cottage 6 feet to the east and 6 feet to the south; and to relocate the existing septic tank and leach field farther away from the shore frontage to the southeast. Based on the application, exhibits including photographs of the original structure and the remains after the fire, testimony at the hearing<sup>1</sup> and a site visit<sup>2</sup> on April 17, 2013, the Board makes the following findings, conclusions and decision in this matter.

**II. Findings of Fact**

1. William Barlow is President of the Kinloch Corporation owning the parcel of land identified as 2 Wings Point.

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<sup>1</sup> The following participated in the hearing: William Barlow, Dale Knowles

<sup>2</sup> The following attended the site visit: William Barlow, Allison Barlow, Sarah Bridgeman, Ben Pualwan, Doug Webster, Jonathan Fisher, Frank Tenney and Gloria Warden

2. The parcel is approximately 24.1 acres and is located in the Shoreland District established by the Charlotte Land Use Regulations adopted November 2, 2010.
3. The original structure was destroyed by fire on July 4, 2012, the original structure did not meet the setbacks for the District making it a nonconforming structure. According to Section 3.8 of the Land Use Regulations in this district a nonconforming structure states in part “may only be structurally modified or moved in a manner that will not increase the degree of noncompliance, unless approved by the Board of Adjustment in association with conditional use review under Section 5.4”.
4. Approximately 20 trees were damaged or completely destroyed by the fire.
5. The requested expansion to the original cottage footprint will add to the volume of the structure in non-compliance of the setbacks.
6. The proposed expansion will be approximately 41-42 feet from the mean high water, not any closer to the lake than the original cottage.
7. The expansion will not increase the number of rooms but will increase the size and capacity of the rooms.
8. The existing septic tank location is not compatible with the proposed expansion.

### **III. Discussion and Conclusions**

**Conclusions for Conditional Use.** The Zoning Board must review this application for Conditional Use Approval to enlarge a nonconforming structure under Table 2.6 and

Sections 3.8 and 5.4 of the Charlotte Land Use Regulations. The purposes of Shoreland District, as explained in Table 2.6, are—

- (1) To protect the scenic beauty, environmental qualities and recreational opportunities of Lake Champlain and its shoreline, as viewed from both the lakeshore and the water
- (2) to minimize runoff pollution and maintain bank stability by maintaining a vegetated buffer within 100 feet of the shoreline, and
- (3) to allow residential and limited commercial development that is consistent with these aims and is compatible with the rural character of the town as expressed in the *Charlotte Town Plan*.

(Emphasis in original). Under Section 3.8—

**(B) Nonconforming Structures.** Any structure, or portion thereof, legally in existence as of the effective date of these regulations which does not comply with the requirements of these regulations as adopted, or as subsequently amended, shall be considered a nonconforming structure. A nonconforming structure may continue to be occupied indefinitely in accordance with the Act [4412(7)], subject to the following limitations. A nonconforming structure:

(2) may only be structurally modified or moved in a manner that will not increase the degree of noncompliance, unless approved by the Board of Adjustment in association with conditional use review under Section 5.4. For purposes of these regulations, any structural alteration which extends the footprint, height or volume of a structure within any required setback or above the required maximum height (i.e., the amount of encroachment), shall be considered to increase the degree of noncompliance. Any structural alteration of a nonconforming structure which extends the footprint, height or volume of a structure outside of any required setback or below the required maximum height shall not be considered to increase the degree of noncompliance.

(1) 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 (2) years of the damage or destruction in accordance with Section 3.1. The Board of Adjustment may, on appeal, grant a one (1)-year extension to this deadline upon a determination that the delay was unavoidable and that the owner had acted to substantially complete the repair, restoration or reconstruction within the initial one (1)-year period. A

non-conforming structure in the Flood Hazard Overlay District must meet the standards of Section 5.6.

As a Conditional Use this application must comply with Tables 2.6 and Sections 3.8, 3.12, 3.15, and 5.4. The provisions of these tables and sections not specifically addressed below are either inapplicable to this application or were unnecessary for the Board to reach its decision.

The Applicant is proposing to enlarge the footprint of the original structure with a six foot expansion to the south and a six foot expansion to the east of the original footprint. This expansion will not be any closer to the lake than the original structure. The expansion will not increase the number of rooms but will only increase the size of the rooms.

Under Table 2.6(F)(9)—

For uses in this district subject to conditional use review under Section 5.4, the Board of Adjustment shall also find that:

- (a) The proposed use will not cause unsafe or unsanitary conditions on land or on the water;
- (b) The proposed use will not result in accelerated erosion, sedimentation or water pollution;
- (c) The proposed use will not adversely impact wildlife habitat areas;
- (d) The proposed use will not interfere with existing public lake access, or scenic views of the lake as designated in the town plan; and
- (e) Visual impacts, as viewed from the lake and from adjoining properties, are minimized.

The Board of Adjustment may require for approval the submission of erosion control and/or shoreland management plan, prepared by a qualified professional, which identifies potential adverse environmental or visual impacts and associated mitigation measures. Such measures may be incorporated as a condition of approval.

The Applicant is also proposing the move the septic tank 25'-30' to the southeast corner of the proposed new building as shown on Sheet 8 and the septic and leach

field would parallel the shoreline 36' further from the lake. The Board indicated the Applicant should contact the Charlotte Septic Officer regarding the septic system plan because the Zoning

Board does not approve septic systems. The Board is concerned with erosion and the proximity of the existing septic system to the bank could create unsafe or unsanitary conditions on the land and into the lake.

Under Section 5.4 Conditional Use Review the Board will only review the sections that apply to this application. The use of the building is residential and used as a seasonal cottage, this application will not change the use and will not have an adverse effect on existing community facilities, character of the area, traffic on roads or the use of renewable energy resources. Under 5.4(C)(4)—

The Board shall determine whether the proposed development conforms to other municipal bylaws and ordinances currently in effect, including but not limited to road, water or wastewater ordinances. The Board shall not approve a development that does not meet the requirements of other bylaws and ordinances in effect at the time of application.

The Board concludes that in order to allow for an expansion of this nonconforming structure a septic consultant will need to review the site to be able to determine that the grade to the existing field and a connection as shown will function properly to treat the wastewater from this cottage. The leach field should also be located and staked to prevent damage from construction equipment. The septic consultant should also recommend proper placement of the new septic tank.

**V. Decision for Conditional Use.**

The Board concludes that this request (subject to the Conditions of Approval, *infra*) conforms to the General and Specific Standards of the Land Use Regulations for Conditional Use. This request is APPROVED with the following conditions and limitations.

**Conditions of approval.** The Board attaches the following conditions and safeguards that it deems necessary to implement the purposes of the land use regulations.

1. Construction on this project shall be completed in accordance with dimensions not to exceed those in the submitted drawing: Kinloch Cottage, Proposed Plans for Rebuild, Proposed rebuild plan #1 or Proposed rebuild plan #2. Limited to single story structure, height not to exceed 18 feet above grade.
2. Efforts detailed in the application and at the hearing intended to minimize the visual impact of the project shall be followed. Replanting of the damaged trees should be done as soon as possible to prevent further damage and erosion to the bank.
3. An engineer or septic consultant to be contacted to assure the existing system is functioning and was not damaged by the fire or heavy equipment and also, that the location and grade of the new septic tank connection will function properly to treat the wastewater from this cottage in compliance with the wastewater rules.
4. If Condition #3 is not satisfied there must be an approved septic system designed by Applicant's engineer and approved by the Town Septic Consultant prior to issuance of a building permit. This design must meet acceptable State standards for wastewater. [NOTE: . If Condition #3 is satisfied and approved by the Town's septic consultant, Condition #4 is not applicable.]
5. Applicant is responsible for obtaining any/all local and state permits.
6. Pursuant to Section 9.9(E)(5) this permit shall expire two years from the date of issuance if development has not commenced within that time.
7. Erosion control measures are to be taken before, during and after the work is completed.
8. There shall be no cutting of any live trees or shrubs unless first approved by the Tree Warden.

Vote:   5   -in favor   0   -opposed

DATED THIS   30th   DAY OF MAY 2013.

**CHARLOTTE ZONING BOARD OF ADJUSTMENT**

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**Jonathan W. Fisher, Vice Chairman**

**THIS DECISION MAY BE APPEALED TO THE VERMONT ENVIRONMENTAL COURT BY THE APPLICANT OR AN INTERESTED PERSON WHO PARTICIPATED IN THE PROCEEDING, SUCH APPEAL MUST BE TAKEN WITHIN 30 DAYS OF THE DATE OF THIS DECISION, PURSUANT TO 24 VSA § 4471 AND THE VERMONT RULES FOR ENVIRONMENTAL COURT PROCEEDINGS.**