

Town of Charlotte Zoning Board of Adjustment
Conditional Use Review - **Findings and Decision**
In the matter regarding: Christopher and Rebecca Fortin, 2737 Lake Road
Application Number: ZBA-13-10

INTRODUCTION

On Oct 8, 2014, Christopher and Rebecca Fortin submitted an application for Conditional Use Review (under Section 2.3, Table 2.5 (D) 22) for property at 2737 Lake Road in the Rural Zoning District. The application is for Home Occupation III/Contractor's Yard for their business that has outgrown its Home Occupation I status and placed them in violation of Land Use Regulations.

The application was considered by the Zoning Board of Adjustment (ZBA) at a public hearing on Dec 16, 2013, continued on Jan 15, 2014 and Mar 26, 2014. The application is for a Home Occupation III/Contractor's Yard¹ and as such is reviewed for conformance with specific and general standards under sections 3.12, 4.11, and 5.4 of the Charlotte Land Use Regulations (2010) as well as the Charlotte Town Plan (2013).

EVIDENCE AND TESTIMONY PRESENTED

During the course of the hearing a number of exhibits were entered into the record. These exhibits provide documentation of:

- The dimensions of the lot and placement of buildings and other structures.
- Notices of violation from the Zoning Administrator to the applicants.
- Issues, concerns, and proposed remedies raised by the abutting neighbors to the South.
- Revised and additional application details and maps provided by the applicants.

A site visit conducted on Jan 26, 2014 revealed:

- The Board members who were present observed the current state of business operations, the outdoor storage of equipment, vehicles, and materials, the proximity and views of property boundaries and nearby houses.

Testimony during the hearing by the applicants established:

- The business employs as few as no (0) employees up to six (6) employees depending on the time of year and workload.
- The current and proposed uses include:
 - The outdoor storage of equipment such as 2 mini excavators, a wood processor, 6 trucks, 4 trailers, a topsoil screener, an aerial man lift, wood chipper, 3 tractors, fuel tank (500 gallon).
 - The on-site staging, fueling, repair and maintenance of said equipment.

¹ It should be noted that Table 2.5 (F)(4) specifically limits the consideration of a Contractor's Yard in the Rural District within the additional standards of Home Occupation III, a significantly more restrictive requirement than in some other districts.

- The outdoor storage of bulk materials including fire wood, logs, bark mulch, topsoil, compost, leaves, dirt, etc.
- The delivery, handling and distribution of said materials.
- Preparation for the workday begins early in the morning and often involves the fueling and running of equipment and power tools on-site.
- In the final revision to their application materials the applicants submitted a map indicating the physical on-site layout of their proposed operations. This map shows approximately 30 percent of the lot (1.76 of a total of 5.9 acres) would be used for business operations and the storage of materials & equipment.
- The marked-up, final version of the map indicates the location of a proposed six (6) foot high, 100+ foot long earthen berm intended to reduce the visual and noise impacts of their operation to their neighbor to the South. In addition, the applicant proposed planting saplings in an attempt to provide an eventual visual screen on all four sides of this area. The applicant indicated an unwillingness to use fencing for screening.

Testimony by the abutting neighbors to the South (and their counsel) reinforced the exhibits submitted for the record and included:

- Recognition of their neighbor's hard work and long hours.
- Ongoing disapproval of what they perceived as violations of the current Home Occupation I permit.
- Complaint of excessive, frequent, and untimely noise generated by the business.
- Complaint of the scale of the business given the rural/residential nature of the neighborhood.
- Complaint of glare associated with unshielded area lighting.

FINDINGS AND CONCLUSIONS

Based on the application, testimony, exhibits, and other evidence the Zoning Board of Adjustment makes the following adverse findings:

- Given the size and layout of the lot, its location in the Rural District², in combination with the scale and nature of the business activity in question, the Board finds this business activity is entirely unsuitable for its location.
- Not only do the measures proposed by the applicants fail to mitigate the concerns of the Board, the Board could not conceive of any conditions that it could impose that would adequately mitigate those concerns.
- Specifically, the applicants *failed to establish*:
 - Under 4.11(C)(2): *That the business shall be carried out primarily within the principal dwelling and/or accessory structure to the dwelling.* Even though the

² Table 2.5 lists the purposes of the Rural District to be "...(1) to protect important agricultural land and promote viable agriculture, wildlife habitat, productive woodland, natural areas, aquifers, scenic vistas and views, open spaces, and other significant natural, cultural and scenic resources identified in the Charlotte Town Plan; and (2) to allow for low density or clustered residential development in accordance with the capability of the land to support such development, that does not adversely affect the town's natural and scenic resources or properties and uses in the vicinity, and is compatible with the rural character of the town as expressed in the Charlotte Town Plan."

application is for a Contractor's Yard, in the Rural District, Contractor's Yards must still comply with all the standards required for Home Occupation III.

- Under 4.11(C)(3): *That there are clearly designated storage areas for the array of gear, equipment, vehicles, materials providing an effective or acceptable screen from public rights of way or neighboring properties.* Approximately 30 percent of this nearly 6 acre lot is designated for the business operation. The proposed bulldozed, 6-foot high, 100+ feet long earthen berm with trees on top is itself an uncharacteristic feature, nor would it ensure adequate visual (or noise) screening. The proposed use of saplings on their own as a screen on the other three sides of the operation would not be capable of providing significant screening until the saplings matured many years later.
- Under 4.11(C)(4): *That the size and scale of the bulk fuel tank use is characteristic of residential uses.* Although such bulk fuel tanks may be typically used for agriculture, industrial, or even other sizable Contractor Yard operations, the standard the Land Use Regulations requires us to consider in the Rural District for Home Occupation III is that which is "characteristic of residential uses (in terms of type and quantity)".
- Under 4.11(C)(5): *That the traffic generated by this business is characteristic of volumes characteristic for the district.* With the exception of some larger agricultural operations (which are exempt from these regulations), the daily volume of trucks and trailered equipment, employee vehicles, and delivery traffic during busy seasons clearly exceeds typical traffic in this district.
- Under 4.11(C)(6): *That the number of commercial vehicles parked on-site is acceptable.* The regulations permit the Board to limit the number of commercial vehicles that may be parked on-site. The Board feels that the number of commercial vehicles parked on this site is well in excess of what is appropriate for this residential location.
- Under 4.11(C)(7) & 5.4(C)(2): *That this business shall not change the character of the neighborhood/area.* The level of activity, visual impact, and noise generated by this business is on a scale that significantly changes and negatively affects the character of the neighborhood, unavoidably creating quality of life challenges for neighboring properties and is not consistent with the Rural District purposes.
- Under 5.4(D)(3) and by direct reference in that section, 3.12(A)(6): *That "glare, lumen, light or reflection" associated with this use/proposed use does not "constitute a nuisance to other property owners."*
- Under 5.4(D)(3) and by direct reference in that section, 3.12(A)(1): *That this activity does not generate "a significant increase in noise levels in the vicinity of the use so as to be incompatible with the surrounding area".* While Rural District residential areas have their share of lawn care noises, the regularity, range, and hours of equipment noise represents a significant increase from what there would be if this business were not located in this neighborhood.

DECISION

This application is deniable for any one of the adverse findings/conclusions indicated above. **The Zoning Board of Adjustment denies this application for conditional use.**

Vote: 5 in favor, 0 opposed, 0 absent

Dated at Charlotte, Vermont; May 9, 2014.

A handwritten signature in cursive script, reading "Benjamin Pualwan", written over a horizontal line.

Benjamin Pualwan, Chairman

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the Zoning Board of Adjustment. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.