

**TOWN OF CHARLOTTE  
ZONING BOARD OF ADJUSTMENT**

**In Re: Conditional Use Review of 2737 Lake Road**

**ZBA-14-09**

**OPINION**

**I. Introduction and Issues Presented**

On November 14, 2014, Christopher and Rebecca Fortin submitted an application for Conditional Use Review for a proposed Contractor's Yard/ Home Occupation III. The property is located at 2737 Lake Road. Public notice of the application was achieved by distributing the notice of hearing via The Citizen on November 27, 2014; posting the notice of hearing at the Town Hall, The Brick Store and Spear Street Store; and mailing a notice of the hearing to adjoining property owners. Notices were mailed to 1) Melanie Goodman & Timothy Hotaling (00009-2805); Kristen DeStigter, (00009-2579); Martha Ming & Jonathan Silverman (00009-2776); Kurt Fischer (00061-2467); and Margaret & Michael Russell (00009-2577).

The application was considered by the Zoning Board of Adjustment (ZBA) at a public hearing on December 16, 2014 and continued to January 21, 2015. The ZBA reviewed the application under the Charlotte Town Plan, 2013 and the Charlotte Land Use Regulations, 2010. Present at the hearing on December 16<sup>th</sup> were the following members of the ZBA: Frank Tenney, Chair; Andrew Swayze, Vice Chair; Jonathan Fisher; and Mathew Zucker. After reviewing all submitted documents, and the minutes of the previous hearing, ZBA member Douglas Webster joined the hearing on January 21, 2015.

**II. Site Visit**

A site visit was conducted at the property on December 13, 2014. The following people were present: Jonathan Fisher, ZBA; Frank Tenney, ZBA; Andrew Swayze, ZBA; Matt Zucker, ZBA; Britney Tenney, ZBA Clerk; Christopher Fortin; Rebecca Fortin; Michael Russell; Eric Silfen; Kristin DeStigter, and Jonathan Silverman.

### III. Evidence

During the course of the hearing, sworn testimony was taken from Michael Russell, Rebecca Fortin, Christopher Fortin, Ashley Robinson, Kristen DeStigter, Melanie Goodman, Jonathan Silverman, Liam Murphy, Steven Mack, and Martha Whitfield. The following application attachments and exhibits were entered into the record:

- A completed conditional use application and the following additional application attachments, submitted November 14, 2014:
  - A one page project description
  - Supplemental responses
  - Equipment schedule
  - Landscape plan
  - Site plan
  - High public value map
  - Proposed lighting models and manuals
  - List of adjoining land owners
- Exhibit A- an updated Site Plan, date stamped December 16, 2014.
- Exhibit B- a memorandum in support of application, submitted by Michael Russell.
- Exhibit C- a set of 3D views of the Fortin property from the different boundary lines.
- Exhibit D- 24 V.S.A 4470, submitted by Kristen DeStigter.
- Exhibit E- a set of photographs of the Fortin property, submitted by Kristen DeStigter.
- Exhibit F- a set of documents from the 2013 Fortin application, submitted Kristen DeStigter.
- Exhibit G- In Re Woodstock Community Trust & Housing VT PRD, Submitted by Michael Russell.
- Exhibit H- In re Appeal of Armitage et al., submitted by Michael Russell.
- Exhibit I- Supplemental Memorandum in Support of the Application, submitted by Michael Russell, date stamped 01/21/2015.
- Exhibit J- Two photographs of example cedar hedges located on Dorset Street, date stamped 01/21/2015.
- Exhibit K- Two photographs of example fuel bunker structures taken in Ferrisburgh, date stamped 01/21/2015.

- Exhibit L - Town Attorney's legal opinion, dated 01/16/2015, regarding the "Successive Application Doctrine".
- Exhibit M- Murphy, Sullivan, and Kronk letter, dated 12/12/2013, regarding a request by the Fortin's for a "wood processing facility" and aerial photos of the applicants' property, submitted by Liam Murphy.
- Exhibit N- A 2005 aerial photograph of the applicant's property, submitted by the applicant, illustrating the business use area.

Testimony from the applicants (and their legal counsel) provided the following information:

- Presently, the applicants are the only employees of their business. The applicants would like to have up to five employees, but expect to have two to three employees at one time
- Current and proposed on-site business related activities include:
  - Outdoor storage of a variety equipment related to the Contractor's Yard and several yards of compost, mulch, and topsoil
  - On-site fueling and maintenance of the equipment
  - Storage and use of a topsoil screener
  - Daily loading/unloading of trailers and trucks with landscaping equipment
  - Occasional bulk deliveries of mulch for redistribution to customer's yards
- The applicant's propose typical business operation hours of Monday-Saturday, 7:00 a.m. to 6:00p.m. Hours during snowplowing season are determined by the weather. The applicant's testified that the majority of business activities take place off-site.
- The applicant's testified that the business will generate no more than 20 trips per day and no more than an average of 12 per day for the year.

Testimony from the abutting property owners included:

- Complaint of the scale of the business given the rural/residential nature of the neighborhood.
- Concern that the business will continue to grow and remain unregulated.
- Frustration at a lack of enforcement of the home occupation standards spanning a decade.

- Fear that the landscape plan and increased screening will not mitigate the visual and noise impacts of the proposed Home Occupation III/ Contractor's Yard.
- Concern that the volume of vehicles and equipment on the property will not stay within what is outlined in the applicant's plans.
- Concern about potential devaluation of their property value given the scale of the applicants' proposed Home Occupation III/ Contractor's Yard.
- Fear that the executed Site Plan will not match the digital renderings provided by the applicants.
- Complaint that the new request violates the Successive Application Doctrine.

#### **IV. Findings of Fact**

1. The parcel is 5.91 acres and is owned by Christopher and Rebecca Fortin.
2. The parcel is located at 2737 Lake Road and is the Rural Zoning District.
3. The applicants are currently operating a landscaping and snow plowing business on the property as a Home Occupation I designation.
4. A Home Occupation I is an "allowed by right" use in the Rural District; however, it allows for no employment of anyone other than the residents of the property and does not allow for outdoor storage of business-related materials.
5. The current business has outgrown its Home Occupation I status and has been cited as in violation of the Charlotte Land Use Regulations. The applicants are applying for a Contractor's Yard/ Home Occupation III to bring the property back into compliance with the Charlotte Land Use Regulations.
6. Outdoor storage of business related equipment is only permitted as a Contractor's Yard. Under Table 2.5 (F)(4), a Contractor's Yard is only allowed as a Home Occupation III. A Home Occupation III requires Conditional Use Review under Section 5.4 and Site Plan Review under Section 5.5.
7. Over the last several years, neighbors have filed formal complaints regarding the noise, visual impact, and scale of the applicant's business.
8. The property is used for residential, business and agricultural uses. The uses and their proposed locations were reviewed by the ZBA at the site visit.

9. The applicant's revised Site Plan, submitted as Exhibit A, illustrates that the proposed Contractor's Yard will be confined to the center section of the property (located between the residential use and agricultural use).
10. According to the revised Site Plan, submitted as Exhibit A, the proposed business area is to occupy approximately 12.3% of the total lot (31,647square feet/257,440 square feet).
11. The applicant's Site Plan indicates that an implement storage area, compost area, topsoil area, mulch area, vehicle parking area, proposed new fuel bunker, existing garage, and existing shed are to be located in the proposed designated Contractor's Yard area.
12. The proposed specific implement storage areas, vehicle parking spaces, equipment storage areas, compost, topsoil, mulch, and compost storage areas are depicted on the application attachment labeled: Landscape & Lighting Plan, prepared by Ashley Robinson, revised November 4, 2014.
13. To mitigate the visual impact to adjoining property owners, the applicants propose increased tree and shrub screening on the property lines.
14. As part of this application, the applicants propose to rotate the existing salt shed, and construct a concrete fuel bunker, which will act as a visual and sound buffer on the southern property line. A berm with trees is proposed to be constructed from an existing mound of topsoil on the southern boundary line. The proposed screening, fuel bunker, and new salt shed location were viewed by the ZBA during the site visit. Proposed screening and structure locations are further detailed on the Site Plan (Exhibit A).
15. The applicants use 750 gallons of fuel on a weekly basis to fuel their equipment and vehicles. The proposed fuel-bunker will house one 500 gallon tank and one 260 gallon tank.
16. An 8,496 square foot agricultural building will be constructed on the east side of the existing garage. The applicant's propose that the building will serve as a visual and sound buffer on the southern property line.
17. The applicant's applied for a Home Occupation III/ Contractor's Yard in 2013. The ZBA ultimately denied the applicant's request in a decision dated May 9, 2014.

18. After seeking legal counsel, the ZBA has decided that the application does not violate the “Successive Application Doctrine”.

## **V. Conclusions of Law**

This application must comply with Table 2.5 and Sections 3.9, 3.10, 3.11, 3.12, 4.6, 4.11, 5.4, and 5.5. The provisions of these Tables and Sections not specifically addressed below are either inapplicable to this application or were not necessary for the Board to reach its decision.

### Table 2.5 Rural District:

Under Table 2.5, which governs Charlotte’s Rural District, a Contractor’s Yard is considered a Conditional Use allowed only as a Home Occupation III. A Home Occupation III requires both Conditional Use approval by the ZBA and Site Plan approval by the Planning Commission.

The Board concludes that the application conforms to all of the dimensional standards set forth in Table 2.5 (E). According to the revised Site Plan (Exhibit A); all structures will adhere to the District’s minimum 50 foot front, rear, and side setback. The applicants’ Site Plan indicates that the total building lot coverage is 5% and the total lot coverage is 20%. These percentages fit within the District’s standard, which allows for maximum building lot coverage of 20%, and maximum total lot coverage of 30%.

### Section 4.6 Contractor’s Yard:

*(1) The Planning Commission or Board of Adjustment may, as a condition of approval, require larger setback and buffer areas, and/or landscaping or screening as deemed necessary to protect neighboring properties, public rights-of-way, and water quality.*

While Section 4.6 allows the ZBA to evaluate the effectiveness of the Site Plan and sanction larger setback areas, the ZBA believes that the Planning Commission is better equipped to assess the effectiveness of the Site Plan during the required Site Plan review, governed by Section 5.5. The ZBA is choosing to focus on reviewing whether the *use* is permissible under the

Charlotte Land Use Regulations. With that being said, the ZBA requires that at minimum, the applicants implement the screening measures proposed in the Site Plan/ Landscaping Plan. The ZBA understands that the proposed agricultural building is not part of the Contractor's Yard business thus not included in this review; however, the building serves as a major screening factor on the south boundary line. The ZBA notes that the property directly to the south of the applicants' parcel is the most impacted by the applicants' operation. The ZBA believes that the applicants should submit an alternate screening plan for approval by the Planning Commission, in the event that the agricultural building cannot be constructed, or that the construction may be delayed for a lengthy period of time.

*(2) An associated accessory structure may include an office, garage, or other enclosed area for the storage of equipment and materials: The maintenance and repair of vehicles and equipment shall be conducted only within an enclosed building or designated yard areas.*

Implement storage and maintenance is proposed to take place in the existing storage building/ garage. The ZBA concludes that this building meets the definition of an associated accessory structure. Implements listed as stored indoors shall be stored indoors. A complete list of indoor and outdoor equipment storage can be found on the application attachment labeled: equipment schedule, which will be included as *Addendum A* in this decision. Outdoor storage of equipment and materials will be limited to what is currently listed on the Site Plan/equipment schedule. The bulk business activities, which are lawn care/ landscaping and snow removal, take place off-site. On-site business activities such as composting, are governed by Section 4.11 (C)(3), and shall remain contained to the area shown on the Site Plan (Exhibit A) or the area approved by the Planning Commission during Site Plan Review. The ZBA requires that at minimum, fencing be placed around the compost area as an additional screening measure.

*(3) The operation of the Contractor's Yard shall meet all performance standards under Section 3.12. The Board of Adjustment may, as a condition of approval, limit the hours of operation as appropriate.*

The ZBA understands that the highest noise levels associated with the business use will occur during the loading and unloading of equipment at the beginning and end of the day. The ZBA recognizes that morning and evenings hours are particularly sensitive for neighboring residences. To reduce the noise impacts, the ZBA will impose restricted business operation hours. Business hours shall be Monday through Friday 7:00 a.m. - 6:00 p.m. and Saturday 8:00 a.m. to 5:00 p.m. There shall be no business-related activities performed on Sundays. Operation hours during a significant snow event may deviate from the approved business hours. When running the topsoil screener, the applicants shall apply water when necessary to prevent dust that could impact neighboring properties.

*(4) There shall be no on-site storage of hazardous waste or materials. Fuel storage shall be limited to that needed for space heating and the operation of equipment and vehicles associated with the business, and meet the requirements of Section 3.10.*

As part of this application, a fuel bunker is proposed to be constructed for on-site fuel storage. On-site fuel would be used to fuel existing business equipment/vehicles. The ZBA finds that the on-site fuel storage meets the requirements of Section 4.6 (4), which allows for on-site fuel storage, but limits it to what is needed for space heating, and the operation of equipment/vehicles associated with the business. The applicants testified that they use 750 gallons of fuel per week to fuel their business equipment. The proposed fuel bunker will house one 500 gallon tank and one 260 gallon tank. The fuel-storage bunker must be maintained in conformance with State Rules and Regulations (i.e. VTANR Above Ground Storage Tank Rules, VT Division of Fire Safety Rules).

### Section 3.12 Performance Standards

#### Section 3.12 (1)

*Noise in excess of 70 decibels, or which otherwise represents a significant increase in noise levels in the vicinity of the use so as to be incompatible with the surrounding area.*

The applicants propose that the new agricultural building, fuel bunker, and rotated salt shed will serve as noise buffers to the Hotaling/Goodman property, located at 2085 Lake Road, at the southern property line. To reduce the noise impacts, the ZBA will impose restricted business operation hours. The ZBA identifies that the noise level in the vicinity varies due to active agricultural operations and increased traffic to the beach during the summer months. The ZBA believes that so long as the applicants are operating only within the approved hours, the business will not generate noise representative of a significant increase in levels in the vicinity.

*Glare, lumen, light or reflection which constitutes a nuisance to other property owners or tenants which impairs the vision of motor vehicle operators, or which is otherwise detrimental to public health safety and welfare.*

The applicants have supplied a lighting plan that indicates where lighting units will be placed on the property. All lighting shall be downward facing and shielded to avoid impact on neighboring properties.

Section 4.11 (C) Home Occupation III Standards.

*(1)The home business shall be conducted in the principal structure or an accessory structure by residents of the dwelling, and no more than nine (9) nonresident employees on-site at any time.*

The majority of the home business activities will be conducted off-site. Equipment storage and vehicle maintenance will occur in the existing garage. The compost operation will occur outside in an approved designated area, which is permissible under Section 4.11 (C). Screening for outdoor storage and activities will be assessed and may be modified by the Planning Commission. While a Home Occupation III allows for up to nine (9) employees, the ZBA may limit the number of employees at its discretion. The ZBA is limiting the applicants to three (3) nonresident employees for a total of five (5) employees.

*(5) The home business shall not generate traffic, including delivery traffic, in excess of volumes characteristic of other uses allowed in the district in which the home business is located.*

The applicants' propose that their business operation, which includes sporadic deliveries of materials, will not generate more than 20 business-related vehicle trips per day. While the Home Occupation III standards do not set an exact limit on the number business-related trips per day, a Home Occupation II, which is a less intensive business use, is permitted 20 business-related trips per day. The ZBA recognizes that traffic on Lake Road varies as delivery trucks, beach commuters, school busses, agricultural equipment, and landscapers serving other residences in the vicinity access Lake Road frequently. It for this reason, the ZBA has determined that 20 business-related trips per day is reasonable and will not create traffic volumes in excess of what is characteristic of Lake Road.

#### Section 5.4 Conditional Use Review

##### *(1) Character of the area affected.*

The ZBA understands that the purpose of the Rural District is to:

“...Support such development, which 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”.

While the purpose of the Rural District clearly desires to protect the rural character, The ZBA notes that the Charlotte Land Use Regulations, and more specifically, Table 2.5, allow for Contractor Yards as a Conditional Use in the Rural District. Furthermore, Section 5.3 of the current Town Plan specifically states that home businesses are encouraged. The Board feels that the configuration of this particular section of Lake Road is representative of many neighborhoods in the Rural District. The area where the applicant’s business is located is a mix of residential, large scale agricultural operations, and small scale agricultural operations, and other home occupations, including landscaping businesses. The leading factors in potential impact to the character of the area are noise, visual, and traffic related increases. The ZBA believes that these concerns can be addressed by the applicants’ Site Plan and the conditions imposed on the permit by the Board. The ZBA concludes that this particular configuration of residential, agricultural, and home-business activity is representative of the present and future goal of the Town Plan.

## **VI. Discussion**

The ZBA's concern in considering the current application is that the Town of Charlotte be able to balance the applicant's request with the interests of the surrounding community. To do so requires consideration of potential changes and unpredictable dynamics that will affect each individual property/business in the neighborhood and, as a result, the neighborhood as a whole. In this case, the ZBA has to consider the applicant's current and proposed business operations and the impacts from these operations (including traffic, visual impact on the neighborhood, and sound of operations, etc.).

In order to address these potential impacts, the ZBA has outlined a set of conditions that will broadly protect all parties' interests, to the best of the Board's ability.

The ZBA's goal, in applying specific conditions, is to ensure clarity around the key points that have raised concerns for the applicant and their neighbors. Additionally, the ZBA is hopeful that these conditions will provide an ongoing foundation for alignment between all parties' interests in a changing environment.

Some of the ZBA's conditions require timely action by the applicants (and enforcement direction to relevant agencies). While enforcement of these conditions is not within the purview of the ZBA, the Board believes they are a critical factor in the approval of the application -- and will communicate this to relevant agencies within the Town that are responsible for enforcement.

## **VII. Decision**

**Subject to the conditions set forth below**, the Zoning Board of Adjustment **approves** this application as documented and presented to the Board.

1. The applicants will have no more than three (3) nonresident employees, for a total of five (5) employees at any given time;
2. Business hours shall be no longer than Monday through Friday, 7:00 a.m. to 6:00 p.m. and Saturday, 8:00 a.m. to 5:00 p.m. Other than during a significant snow event, there

shall be no business-related activities performed on Sundays. Preparation for snow events must take place during regular business hours;

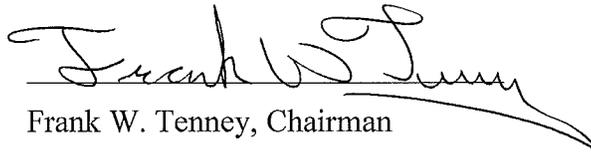
3. All equipment and commercial vehicles shall be parked in the designated parking areas in the screened business area. The Site Plan (Exhibit A) and parking areas shall be reviewed and approved by the Planning Commission during Site Plan Review;
4. All business activities shall comply with town regulation Section 3.12, Performance Standards, at all times;
5. Maintenance of all equipment and vehicles must take place within the garage and shop building;
6. There shall be no more equipment than what is listed on the equipment schedule and the equipment must be stored according to the equipment schedule. The equipment schedule is attached to this decision as *Addendum A*;
7. The ZBA requires that at minimum, fencing be placed around the compost area as an additional screening measure. The Planning Commission may review the need for additional fencing during Site Plan Review;
8. The ZBA requires effective opaque screening on the property lines. The ZBA requires the installation of trees at least 10 feet in height, from the average natural grade, and with sufficient girth to provide adequate screening. A replacement plan must be submitted and approved in the event that a specimen dies and must be exchanged. The effectiveness of the applicants' proposed screening shall be reviewed and approved by the Planning Commission;
9. All lighting shall be downward facing and shielded to avoid impact on neighboring properties;

10. Topsoil screening and composting are considered a business-related activities and shall only operate during the approved business hours. The applicants' shall add water when using the topsoil screener as to avoid dust that could impact neighboring properties. The compost operation must conform to the State Solid Waste Management Rules at all times;
11. Monitoring and review of the site by the Town Zoning Administrator will be completed at least twice per calendar year for the first three years, and then once per calendar year after that. Upon completion of a site visit, The Town Zoning Administrator shall complete a site visit report, which shall be added to the record.
12. Upon implementation of the Site Plan approved by the Planning Commission, a site visit must be conducted by the Town Zoning Administrator to ensure that screening was executed as approved;
13. Once approved, the landscaping plan must be executed within six months;
14. The applicants' must submit a contingency screening plan that will be approved by the Planning Commission in the event that the proposed riding area ( as presented in Exhibit A) cannot be constructed or completed in a timely manner;
15. All equipment in the business area must be stored at its retracted position at all times;
16. Pursuant to Section 4.6 (4), fuel storage shall be limited to that needed for space heating and the operation of equipment and vehicles associated with the business. The applicants shall be limited to the on-site storage of 750 gallons of fuel. The proposed fuel bunker shall house one 500 gallon tank and one 260 gallon tank. The fuel-storage bunker must be maintained in conformance with all State Rules and Regulations (i.e. VTANR Above Ground Storage Tank Rules, VT Division of Fire Safety Rules).

17. This approval is contingent upon Site Plan approval by the Planning Commission, governed under Section 5.5.

**Vote: 5 Ayes; 0 Dissents.**

Dated at Charlotte, Vermont, this 5<sup>th</sup> day of March, 2015



Frank W. Tenney, 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.*

CHARLOTTE ZONING BOARD OF ADJUSTMENT

APPLICATION FOR CONTRACTOR'S YARD AS A HOME OCCUPATION III

CHRISTOPHER AND REBECCA FORTIN

2737 LAKE ROAD

SCHEDULE OF EQUIPMENT

<b>Outside storage:</b>	<b>Inside storage:</b>
<i>Wheeled or tracked equipment:</i>	8: riding lawn mowers
1: 2½ ton dump truck	3: walk behind lawn mowers
4: 1 ton work truck	1: walk behind brush hog
2: Mini excavators	15: weed whackers and grass trimmers
1: Aerial man-lift	6: back-pack leaf blowers
4: equipment trailers	2: walk behind leaf blowers
2: Tractors	1: towed leaf vacuum
1: tow-behind wood chipper	1: truck-mounted leaf vacuum
<i>Implements:</i>	2: walk behind driveway and lawn sweepers
3: flail mowers	2: rototillers
2: brush hogs	1: bale mulcher
1: Harley rake	1: logging winch
1: rototiller	1: 3 point hitch mounted chipper
5: snow plows	Shop tools and maintenance equipment
2: sanders	
1: topsoil screener	