CHARLOTTE ZONING BOARD OF ADJUSTMENT
APPEAL TO ZONING ADMINISTRATOR (ZA) DETERMINATION
FINDINGS OF FACT AND DECISION

In Re: ZBA-18-154-AP Appeal related to the Zoning Administrator's determination that Condition #4 of ZBA-15-07 (involving adequacy of screening) has been met for the Coyle property located at 529 Church Hill Road in the Rural (RUR) zoning district in the Town of Charlotte.

I. Introduction and Procedural History

On August 28, 2018, Andrew Swayze (a nearby resident to the property owners) submitted an appeal to the determination of Zoning Administrator (Aaron Brown) that the specified screening installation located at 529 Church Hill Road meets the requirements of Condition #4 of the Zoning Board of Adjustment decision *ZBA-15-07*.

Public notification was accomplished via electronic posting of the notice on the Town website, publication in *The Citizen* newspaper October 4, 2018, and by posting hardcopies of the notice at the Town Office, the Brick Store, and Spear's Corner Store on September 28, 2018. Further notification was issued to the adjoining property owners regarding the public hearing by direct correspondence on October 4, 2018.

A site visit to the property took place at 6:30 PM prior to the public hearing and was attended by ZBA commissioners: Frank Tenney (Chair), Matt Zucker, Stuart Bennett, Jonathan Fisher, and Andrew Swayze (the appellant and recused ZBA commissioner); the property owner Patricia Coyle and her representative Chris Coleman (Coyle's son, representative, and resident of 527 Church Hill Road); and Charlotte Planning & Zoning staff Daryl Benoit (ZBA Staff/Town Planner) and Aaron Brown (Charlotte Zoning Administrator).

The public hearing was held at the ZBA meeting on October 24, 2018 at 7:01 PM. Present at the hearing were the following ZBA commissioners: Frank Tenney (Chair), Matt Zucker, Stuart Bennett, and Jonathan Fisher. Additional participants included: Daryl Benoit, Aaron Brown, Patricia Coyle, Chris Coleman, Andrew Swayze, et al.

II. Exhibits

The following exhibits were marked and considered:

1. A detailed application "Appeal of Zoning Administrator Questionnaire" (ZBA-18-154-AP);
2. Zoning Board of Adjustment Minutes of the meeting held October 24, 2018;
3. ZA Memo to Zoning Board of Adjustment Re: ZBA-18-154 Swayze Appeal (September 28, 2018);
4. Appeal Letter from neighborhood resident Andrew Swayze to ZA; (August 28, 2018);
5. ZA Reconsideration that Condition #4 of ZBA-15-07 has been met (August 14, 2018);
6. Legal Opinion and weigh-in of Previous ZA Rheaume (August 14, 2018 and December 14, 2016);
7. ZA Warning Letter to address Violation of Condition #4 of ZBA-15-07 (August 8, 2018);
8. Complaint Letter to ZA from neighborhood resident Andrew Swayze (August 8, 2018);
9. ZA Warning Letter to address Violation of Condition #4 of ZBA-15-07 (December 15, 2016);
10. ZA Warning Letter to address Violation of Condition #4 of ZBA-15-07 (August 11, 2016);

11. Decision ZBA-15-07-CU: Initial Decision (October 16, 2015);
12. Reconsidered Decision ZBA-15-07-CU: (December 17, 2015);

III. Findings

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

1. On **October 16, 2015**, Zoning Board of Adjustment issued a decision (*ZBA-15-07*) approving the construction of an accessory dwelling on 529 Church Hill Road by the applicant Patricia G. Coyle. The decision had five conditions. Condition #4 required screening of the property.

2. On **December 9, 2015,** a Zoning Board of Adjustment hearing was held at the request of the applicant to reconsider the screening requirement in Condition #4 of ZBA-15-07.

3. On **December 17, 2015**, the Zoning Board of Adjustment issued a reconsideration of the 16 October 2015 decision. The revised decision had five Conditions. The revised Condition 4 changed the screening requirement to read:

   "4. Pursuant to Section 5.4 (2), the Applicant shall retain the existing natural screening along Church Hill Road, and install coniferous plantings of at least 4 feet in height above natural grade, with the intent that the plantings will grow to at least 10 ft in height when mature. The Applicants shall select tree species that would be expected to grow to ten feet in height within five years. The plantings shall be situated to provide adequate screening from Church Hill Road. Plantings shall be installed within seven months of this decision and shall be replaced in the event that a specimen dies."

4. On **August 11, 2016**, Charlotte Zoning Administrator Joe Rheaume issued a warning letter to the applicant that the project was out of compliance with Condition #4 because the plantings did not "adequately screen" the structure. He gave the applicants until **September 11, 2016** to comply, or some enforcement measures would be taken.

5. On **December 15, 2016**, ZA Rheaume issued another warning to the applicants stating that the project remained out of compliance with Condition #4 since the screening was inadequate. However, because of the onset of winter, ZA Rheaume set a deadline for the applicants to replace the inadequate plantings by **May 15, 2017**.

6. On approximately **May 2017**, ZA Rheaume verbally approved applicant Coyle's new plantings. However, ZA Rheaume did not record any documentation of this decision, either within the parcel file or the land records.

7. On **November 16, 2017**, ZA Rheaume left his position with the Town of Charlotte.

8. On **August 8, 2018** a neighborhood resident Andrew Swayze requested the new ZA Aaron Brown to determine if the screening was compliant with Condition #4.

9. On **August 8, 2018**, ZA Aaron Brown also visited the site and subsequently notified the applicants that the screening was inadequate was not in compliance with Condition #4.

10. On **August 13, 2018**, the applicants raised the issue that ZA Brown's predecessor Rheaume had verbally approved the plantings/screening.

11. On **August 14, 2018**, ZA Brown confirmed former ZA Rheaume's approval by correspondence.

12. On **August 14, 2018**, ZA Brown reversed his **August 8, 2018** finding of inadequate screening. The basis for this reversal was **1.** Former ZA Rheaume's screening approval had not been appealed (as per 24 V.S.A. § 4472), and **2.** The Town attorney advised him that the Town could not require plantings to grow to a specific height in a specific time, but could require plantings of a specific height at planting, and that dead ones be replaced.

13. On **August 28, 2018**, the neighborhood resident Andrew Swayze appealed ZA Brown's **August 14, 2018** decision and former ZA Rheaume's determination that specified screening installation located at 529 Church Hill Road meets the requirements of Condition #4 of decision ZBA-15-07.

14. On **October 24, 2018** the Zoning Board of Adjustment conducted a site visit, and the following was observed:

    The facts showed that the plantings were clearly less than the specified height of 4 feet, and were set so far apart as to not adequately screen the property as contemplated in Condition #4 of the **December 17, 2015** decision (ZBA-15-07).

IV. Conclusions of Law

Based on the foregoing Findings of Facts and subsequent deliberative process, the Zoning Board of Adjustment finds:

1. The applicant has not complied with Condition #4 of the **December 17, 2015** decision (ZBA-15-07).

2. The Town has the authority to continually review and enforce permit compliance.

3. The Zoning Administrator, or the Zoning Board of Adjustment on appeal, may address and decide the issue of compliance.

4. This process of evaluating compliance can continue indefinitely, and may produce different results depending on the facts each time the compliance issue is raised.

V. Decision and Conditions

Based on the foregoing Findings of Fact and Conclusions of Law, the Zoning Board of Adjustment makes the Motion to uphold the Zoning Administrator Aaron Brown's decision dated August 14, 2018.

Vote: *0 Ayes. 4 Nays. 1 Recused.*

This decision (ZBA-18-154-AP) overturns ZA Brown's August 14, 2018 decision to uphold ZA Rheaume's approval that was confirmed by correspondence on August 14, 2018 (see **Exhibit 6** above).

This decision (ZBA-18-154-AP) further upholds the original Condition #4 of the Reconsidered decision ZBA-15-07, and is subject to the following additional conditions:

1. So as to conform with the December 17, 2015 decision (ZBA-15-07), the property owner shall install plantings consistent with Condition #4 of that decision no later than June 30, 2019.
2. The plantings shall be coniferous and at least 4 feet in height above natural grade.
3. The plantings shall be verified by the Zoning Administrator by July 1, 2019.
4. Plantings shall be replaced in the event they die or are damaged

Dated at Charlotte, Vermont this 5th day of December 2018.

Frank Tenney, Chairman

Reconsideration: At the request of the applicant or interested parties, or on its own motion, the Board of Adjustment or Planning Commission may reopen a public hearing for reconsideration of findings, conclusions, or conditions of the decision. A request by the applicant or interested parties must be submitted to the Planning and Zoning Office within the 30-day appeal period in accordance with Section 9.6(B) of the Regulations.

Appeals: Decisions of the Zoning Board of Adjustment and Planning Commission may be appealed to the Vermont Environmental Court by the applicant or an interested person who participated in the proceeding. Such appeals must be taken within 30 days of the date that the permit is issued, pursuant to 24 V.S.A. Section 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.