

RECEIVED FOR RECORD

This 27<sup>th</sup> day of December A.D. 2019  
at 11 o'clock 0 minutes A m and  
recorded in vol. 240 on page 541-546  
Attest Ch WBS LAB Town Clerk

Town of Charlotte

## Zoning Board of Adjustment

**In Re: ZBA-19-135-CU Conditional Use Review for C. Kimberly Smith (represented by Oakley Smith) to tear down and replace existing camp and construct a small storage shed located at 2588 Thompson's Point Road (Parcel ID: 00037-2588).**

### I. Introduction and Procedural History

On August 1<sup>st</sup>, 2019, the Oakley Smith submitted an application for conditional use review proposes to tear down and replace the existing camp; construct a small storage shed, a new dock, stairs to access it; and remove trees at 2588 Thompson's Point Road. Public notification was accomplished via the following: electronic posting of the notice on the Town website; publication in *The Citizen* newspaper August 14, 2019; and by posting hardcopies of the notice at the Town Office, the Brick Store, and Spear's Corner Store on August 14, 2019. Further notification was issued to the adjoining property owners regarding the public hearing by direct correspondence August 14.

The application was considered by the Zoning Board of Adjustment (ZBA) at the public hearing held on September 11<sup>th</sup>, after a site visit to the property was conducted. Present at the visit were the following members of the ZBA; Stuart Bennett, Lane Morrison, Jonathan Fisher, and Frank Tenney (Chair). Also present were Elizabeth Herrmann (consulting architect), Oakley Smith, and Daniel Morgan (Staff). The original hearing was continued to November 14<sup>th</sup>, 2019.

The ZBA reviewed the application under the Charlotte Land Use Regulations, 2016. Application materials included a signed application form; an application fee; list of adjoining property owners; existing and future floor plans; existing and future elevations plan; an overall site plan for property; and site photos.

The Design Review Committee reviewed and approved the updated plans on November 6<sup>th</sup>, 2019.

All application materials relevant to the project (including the report from the Design Review Committee) are posted on the Town of Charlotte Planning & Zoning Office website.

### II. Exhibits

The following exhibits were used for the decision:

1. Application Packet, including: 1. an application for review for the Shoreland Seasonal Home Management District; 2. a letter of approval from Carleton Kimberly Smith for Oakley Smith to represent her for the proceedings; 3. A Conditional Use Review Questionnaire; 4. Performance Standards Questionnaire.
2. Attachment A-100: Site Plan, Proposed
3. Attachment A-103: First Floor Plan
4. Attachment A-201: North Elevation
5. Attachment A-202: East Elevation

6. Attachment A-203: South Elevation
7. Attachment A-204: West Elevation
8. 1999-2016 Lister Card(s)
9. Zoning Board of Adjustment (ZBA) Minutes for the meetings held on 11 September and 14 November 2019.
10. Thompson's Point Design Review Committee (DRC) – "*Meeting with Oakley Smith at 2588 Thompson's Point Road*" - Design Review report for application ZBA-19-135-CU, dated 8/19/2020 (Sic).

### III. Standard of Review

The application requires review under the following sections of the Land Use Regulations for the Town of Charlotte (Approved March 1, 2016), hereafter referred to as the Regulations:

1. Chapter II, Section 2.3, Table 2.7: Application of District Standards – Shoreland Seasonal Home Management (SHM) Districts:
  - (A) Purpose.
  - (E) Dimensional Standards
  - (F) District Standards
  - (G) District Design Review Standards
2. Chapter III, Section 3.9 (B) Outdoor Lighting; General Standards
3. Chapter III, Section 3.12 (A) Performance Standards
4. Chapter III, Section 3.15 (G) Lakeshore Buffers

### IV. Findings and Conclusions of Law

At the Zoning Board of Adjustment hearing held on 11 September, the project proposal was revised by the applicant to exclude the construction of a new dock and the stairs to access it. The hearing was continued to 14 November 2019. The following Regulations were deliberated by the Zoning Board of Adjustment after the hearing was closed on 14 November 2019.

#### 1. Chapter II, Section 2.3, Table 2.7(A) and (G) – Shoreland Seasonal Home Management (SHM) Districts

**(A) Purpose.** The purposes of the Shoreland Seasonal Home Management District are (1) to protect and preserve, for seasonal residential use only, those areas of Thompson's Point that have been historically developed for seasonal residential use and have remained essentially unchanged over the years; (2) to protect the unique historic and physical character of these areas; (3) to protect the scenic beauty of the shoreland and lake, as viewed from the lakeshore and the water; (4) to protect the environmental quality of the area and the lake, and (5) to allow for 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*.

The Zoning Board of Adjustment finds that the size, scale, style, design and materials of the applicant's proposed building:

(1) Are not consistent and harmonious with existing structures, and with the overall historic and aesthetic character of Thompson's Point, and

(2) Are not consistent with the unique historic and physical character of Thompson's Point, and

(3) Are not consistent with the scenic beauty of the shoreland and lake, as viewed from the lakeshore and the water, and adversely affects the town's natural and scenic resources and properties and uses in the vicinity, and

**(G) District Design Review Standards.** Before granting conditional use approval for any alteration, expansion, demolition, or removal of any portion of any principal structure in this district, the Board of Adjustment shall seek the recommendations of the Design Review Committee, based on information found in the Historic Sites and Structures Survey for the Town of Charlotte, prepared by the Vermont Division for Historic Preservation, and the report titled "*A Natural and Cultural Resource Inventory and Planning Recommendations for Thompson's Point, Charlotte, Vermont*" (September 1990, as may be amended). Copies of both reports are available for review at the Planning and Zoning Office. In addition, the Committee's recommendation to the Board shall include its findings with regard to the following design review criteria:

- (1) The size, scale, style, design and materials of any structural alteration, expansion or replacement are consistent and harmonious with existing structures, and with the overall historic and aesthetic character of the area.
- (2) Natural features should be identified.
- (3) Alterations or additions to an historic structure shall preserve the historic appearance of the structure and not alter the structure's historic integrity.
- (4) Alterations to existing structures and new structures within the district shall be compatible with the visual elements of surrounding historic structures and the overall historic and aesthetic character of the area.
- (5) The demolition of structures of historic significance shall be discouraged

**(E) Dimensional Standards.**

1. The Maximum Height for the district allows the "*Lesser of 30 ft or 2 stories*" for a structure. By review of the photos included in the lister cards (**Exhibit 8** above) and during the site visit undertaken by the ZBA on 11 September 2019, **the ZBA observed the existing structure to be a one-story structure, 16'4" in height.** The first set of plans submitted for the 11 September ZBA hearing proposed a flat-decked roof with a height of 28'. Based on the recommendation of the DRC that a flat-roof is not within the character of the area (see **Exhibit 10** above), the ZBA concurred, and the applicant proposed new plans featuring a peaked-roof structure

with a non-conforming height of 30' 5 ¼" (see **Exhibit 4 -A-201**). This design is not in conformance with the district standard.

2. The existing footprint of the structure was reported by the applicant to be a 611 sq. ft. structure. Both the original and updated proposals proposed replacing the existing structure with a two-story 1,800 square foot (i.e. 900 square feet per story) structure; an increase of 294% from the existing structure. Therefore, ZBA finds that this increase in the footprint and the living area is not consistent with the "character of the area".
3. The alteration or expansion of an existing principal structure may be approved by the Board of Adjustment subject to conditional use review under Section 5.4, provided that:
  - (a) the building footprint which is covered by a roof (including covered porches and decks) does not exceed seven percent (7%) of the area of the leasehold it occupies; and
  - (b) the alteration or expansion is not for the purpose of increasing occupancy; and
  - (c) the applicant can demonstrate that all municipal and state regulations for sewage disposal are met for each structure altered or expanded including, where applicable, the Thompson's Point Wastewater System Sewer Ordinance. The ZBA finds that this proposed increase of building footprint would result in the structure exceeding seven percent (7%) of the area of the leasehold, based on the +/- 15681 sq. ft. figure presented.
4. The SHM district Minimum Side/Rear/Front Setback for the district is 50' to the property line. The district standard for Minimum Setback/Shore states as:

*"The alteration, expansion or repair of any structure shall not reduce the structure's existing setback distance from the shoreline (mean high water mark) as of the effective date of these regulations, nor increase the height of the structure so that it exceeds two (2) stories or 30 feet, whichever is less."*

The lot is approximately 100' wide. Therefore, the project comprising the 'proposed house' and the 'proposed accessory structure' does not conform to the SHM District standard, because both structures encroach further into the Shore and Sideyard Setbacks where their footprints and volume are increased, and the height of the 'proposed house' exceeds the district standard.

**3. Chapter III, Section 3.12 (A) Performance Standards**

No issues of concern have been identified regarding performance standards.

4. **Chapter III, Section 3.15 (G) Lakeshore Buffers** *"A vegetative buffer zone shall be maintained within 100 feet of the shoreline of Lake Champlain in order to minimize runoff and pollution, and to maintain bank stability and environmental quality. Within 100 feet of the shoreline, the following shall apply."*

1. There shall be no cutting or removal of trees or shrubs except with administrative review and approval by the Zoning Administrator such review will determine whether the proposed cutting or removal is in conformation with any approved wildlife habitat plan or shoreland management plan.
2. Limited pruning of branches of trees and shrubs is allowed to maintain cleared openings or views legally in existence as of the effective date of these regulations, such views or opening should not be enlarged except herein.
3. Nothing in this section shall prohibit the cutting and removal of storm-damaged, diseased or dead trees which pose a hazard as determined by the Zoning Administrator.
4. There shall be no dredging, draining or filling of land along the shoreline, or in wetland areas, and no cutting or removal of wetland vegetation shall be permitted, except in conformance with a shoreland management plan approved by the Board of Adjustment.

**5. Chapter V, Section 5.4 (C) – Conditional Use Review: General Standards**

In accordance with the Act [§4414(3)], the Board shall determine that the proposed conditional use shall not result in an undue adverse effect on any of the following:

- (1) **The capacity of existing or planned community facilities and services.** The Board shall consider the demand for community facilities and services that will result from the proposed development in relation to the existing and planned capacity of such services and facilities, and the adopted municipal capital budget and program currently in effect. The Board may request information or testimony from appropriate local officials to help evaluate potential project impacts on existing and proposed community facilities and services. Conditions may be imposed regarding the provision of services and facilities, and/or the timing and phasing of development in relation to anticipated municipal capital expenditures or improvements, to minimize any adverse impacts to community facilities and services.
- (2) **Character of the area affected.** The Board shall consider the design, location, scale, and intensity of the proposed development in relation to the character of adjoining and other properties likely to be affected by the proposed use. Conditions may be imposed as appropriate to ensure that the proposed development is compatible with the character of the area, as defined by zoning district purpose statements, and specifically stated policies and standards of the municipal plan. Conditions may be imposed as necessary to eliminate or mitigate adverse impacts, including but not limited to conditions on the design, scale, intensity or operation of the proposed use.
- (3) **Traffic on roads and highways in the vicinity.**
- (4) **Bylaws in effect.**
- (5) **The use of renewable energy resources.**

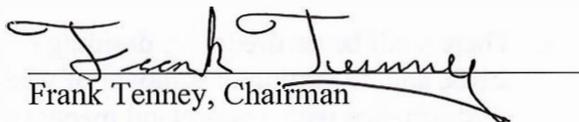
## VI. Decision and Conditions

A motion was made to approve the application ZBA-19-135-CU as presented to the Zoning Board of Adjustment (ZBA) with the following results:

Vote: 0 Yeas. 4 Nays. 1 Absent.

The Zoning Board of Adjustment (ZBA) hereby **DENIES** the application ZBA-19-135-CU.

Dated at Charlotte, Vermont this 26<sup>th</sup> day of December, 2019.

  
Frank Tenney, 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 latest date of signature below, pursuant to 24 V.S.A. Section 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.*

**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). To reopen a hearing on its own motion, the Board of Adjustment or Planning Commission must approve such a motion within the 30-day appeal period.*

- 1) In order to reopen a public hearing the Board or Commission must find that new evidence can be presented that could not have previously been presented which indicates a substantial change of conditions or circumstances, or that the prior decision was induced by fraud, surprise, error or oversight, or that an unintended negative consequence will result.*
- 2) The reopened hearing will be warned in accordance with Section 9.9(C).*
- 3) The submission of a request for reconsideration will terminate the running of the 30 day appeal period. A new 30 day appeal period will start after the Board or Commission either 1) decides to not reopen the hearing, or 2) votes to reopen and issues a reconsidered decision on the application. [Section 9.9 (4)(b)]*

### **Additional Regulations and Permitting**

The owner and his/her representatives shall abide by the practices in the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control (2006) as necessary to ensure that sediment and sediment laden water does not leave the project parcel. Contact 802.540.1748 for a hard copy or you may visit: <http://dec.vermont.gov/watershed/stormwater>.

There may be additional State of Vermont and / or federal permits or approvals needed for the proposed development or use. The applicant may contact the Agency of Natural Resources Permit Specialist at 802.477.2241 for further information.

