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**Town of Charlotte**  
**DEVELOPMENT REVIEW BOARD**  
**Meeting Conducted At Town Hall and via Teleconference**  
**January 12, 2022**

***DRAFT - Minutes subject to correction by the Development Review Board***

**Development Review Board Commission:** Lane Morrison (Chair), Charles Russell (Vice Chair), JD Herlihy, Gerald Bouchard, Christina Asquith.

**Staff:** Larry Lewack, Town Planner; Danielle Atherton, Recording Secretary

**OTHERS:** Bryan Jackson, Frank Tenney, Paul Plante, John Moore, Deb Smith, Jen Montgomery

***Posted Agenda:***

7:00 PM Call to Order; changes to agenda (if any)  
7:05 PM Public Comment (not pertaining to pending applications)  
7:10 PM DRB-21-240-SK, Caneel LLC - Jackson – Sketch Plan & waiver review for proposed 1-lot subdivision amendment at 120 Elcy Ln.  
7:40 PM DRB-21-277-SK, Horsford – Sketch Plan & Conditional Use Review of Subdivision Amendment for proposed single residence on Lot 1 at 1033 Converse Bay Rd.  
8:10 PM Deliberative Session: on DRB-21-240-SK, Caneel LLC – Jackson; and DRB-21-277-SK, Horsford  
8:55 PM Other Business: review & approve minutes from Jan. 5 meeting  
9:00 PM Adjourn

**CALL TO ORDER:** Lane Morrison called the meeting to order at 7:05 p.m.

**Public Comment:** (there was none)

**DRB-21-240-SK, Caneel LLC - Jackson – Sketch Plan & Variance review for proposed 1-lot subdivision amendment at 120 Elcy Ln.**

Larry Lewack gave a brief overview of how this application arose & why a subdivision amendment is needed. It's before us due to the builder's error in constructing southwest corner of the house within the setback. House location was not inspected before foundation was poured; corner of house sits 4.7 feet into 50 ft. setback on lot 6. DRB has authority to waive dimensional standards for subdivision lots per Sec. 6.2 of the LURs. To accommodate this error, applicant Bryan Jackson is requesting to decrease required rear lot setback from 50 ft. to 40 ft. He seeks a waiver for 10 ft., so building envelope would extend just 40 ft. from the rear property line & fully enclose the house.

Applicant Bryan Jackson was then sworn in under oath. Christina Asquith asked why this issue wasn't brought up before foundation was poured. Larry noted the Planning & Zoning office was very short-staffed at the time (last winter) & it's if the builder called for an inspection, staff did not follow through. We only found out about this when the owner contacted us for the 'as built' inspection last spring. Jackson said that after construction, the state was notified of a possible violation of wetlands for work that was done without his knowledge or consent. A wetland ecologist was hired to assess the situation. The wetland inspection found he was building on a previously undocumented class 2 wetland area. An after-the-fact state wetland permit was determined necessary to authorize the wetland encroachment of the house & driveway, which was later approved by ANR.

51 Gerald Bouchard asked if he considered buying 10 ft. of land from his neighbor? Jackson  
52 stated he proposed this, but his neighbor declined. JD Herlihy asked Mr. Jackson if he attempted to  
53 contact the zoning office. Jackson deferred to Larry. Larry stated he didn't recall, but it was possible  
54 since there was chaos in the zoning office at that time. Jackson himself did not attempt contact, but  
55 deemed that to be the responsibility of the builder. Board questioned why a 10 ft. waiver is  
56 requested; 5 ft should suffice. Jackson said 10 ft. recommendation came from the Town Planner.

57 Charles Russell suggested the Board modify the building envelope to match approved wetland  
58 encroachment, as indicated on the ANR site plan. Larry noted this would constrain future owners  
59 from the possibility of building accessory structures in some of the dry areas of the site. JD Herlihy  
60 proposed that the Board instead just move the western edge of the building envelope another 10 ft. to  
61 the west. Charles agreed & asked if the Board could waive Sketch Plan review now & consider this as  
62 a Final Plan application? Larry noted Mr. Jackson has already paid the full fees & has been waiting for  
63 this decision since last summer. He said the Board can consider this a Final Plan hearing & move to a  
64 decision following closure of the hearing.

65

66 **MOTION by Charles Russell, seconded by JD Herlihy to close this hearing and to start**  
67 **deliberative session. VOTE: 5-0 in favor, approved.**

68

#### 69 **Deliberative Session:**

70 Christina Asquith suggests we allow a waiver without changing the building envelope. JD  
71 Herlihy noted this approach (subdivision amendment to modify the approved building envelope) is  
72 required. We can either deny the request, or change the building envelope. There was agreement  
73 that the town has some culpability and the Board supports the request to move the building envelope  
74 10 ft to the west. Charles Russell read Section 6.2 waiver authority. He believes approving this would  
75 have had no impact on neighbors, or future subdivisions, and is compliant with the Town Plan  
76 standards. Christine says she is concerned about setting a precedent if we agree to do this. It was an  
77 error on builder's behalf, however it is not good practice to reward a builder's error. This kind of  
78 error will be avoided for future projects, since Zoning Administrator will be available to do pre-  
79 construction site inspections. Christina noted the letter from neighbor which states the history of  
80 property has been unfortunate, and requests approval so the lot can be sold & new owners can move  
81 in. *Next step:* Larry will draft & circulate a written decision for Board members to review &  
82 comment. Deliberations will close when written decision is approved and signed.

83

#### 84 **DRB-21-277-SK, Horsford – Sketch Plan & Conditional Use Review of Subdivision**

##### 85 **Amendment for proposed single residence on Lot 1 at 1033 Converse Bay Rd.**

86 John Moore is representing applicant Susan Horsford. Mr. Moore was sworn in under oath.  
87 Sue Horsford is requesting to modify a previously approved lot on the west part of her 103-acre  
88 parcel to sell as a building lot. Larry Lewack explained this lot was originally subdivided in 2010, but  
89 the Planning Commission required the owner to return for approval of any development. The  
90 original application, presented in a Sketch Plan review last summer, included many of the same  
91 elements of the current plan. However, the applicant changed their mind & came back with an  
92 alternate plan to add 4 more acres from Horsford's Lot 2, so that Lot 1's driveway would not require a  
93 ROW easement to cross Lot 2. The current request is to expand Lot 1 to 24.6 acres, and construct a  
94 house, accessory dwelling and a driveway there. Thus, this is a combination of a Subdivision  
95 Amendment, Boundary Adjustment, and Conditional Use application (required because the proposed  
96 accessory dwelling is not attached to the house).

97 Septic permit for this development has already been approved, and a highway access permit  
98 for the driveway's connection to Converse Bay Rd. is pending.

99 Neighbor Deb Smith asked if the subdivision included the field area. She wants to make sure  
100 the proposed driveway hugs the tree line, and that the buyer can't move the driveway into the field.

101 Larry clarified they are bound to follow this design, if it's approved. If a buyer wants to make any  
102 changes to this design, they would need to apply for another subdivision amendment. Another  
103 neighbor, Jen Montgomery, informed the board she did not receive any written notice of this meeting.  
104 Both neighbors were sworn in under Oath.

105 Christina Asquith asked if this applicant is getting a "pass" on the 2010 PC requirement to set  
106 aside open space if the land is subdivided. She suggested it would be better if we required protection  
107 of open space now, before the land is sold. Larry noted the 2010 decision said open space protection  
108 would only be required in the event either lot were subdivided further, but that is not what it being  
109 proposed now. All conditions from the 2010 decision still stand, and are binding upon current and  
110 future owners. When the board approves a subdivision, it is recorded to land records so this would  
111 be very clear when a title search is done in regards to what is possible in developing this land. Larry  
112 also noted over 1/3 of the Lot 1 land is a mix of wetlands and forest habitat, which would likely be  
113 conserved if a future owner wanted to subdivide with a PRD design. Gerald Bouchard asked about  
114 road frontage for this lot. Larry confirmed is 557' to the west and 372' to the south. Gerald pointed  
115 out this lot meets all zoning district dimensional standards and is not proposing a new subdivision,  
116 thus there is no basis for the DRB to require land conservation as a condition of approval.

117 Gerald asked about water supply. JH Herlihy pointed out an approved well is shown on the  
118 plans & is included under the approved wastewater permit. He asked if this could be accepted as the  
119 final plan, or if anything is missing from this application. Larry noted we usually require a letter from  
120 the CVFRS chief documenting their ability to serve the dwellings, based on the driveway design. He  
121 noted the driveway already includes a turnout mid-way along its length & a circular turn-around at  
122 the house site, to accommodate emergency vehicle access. Conditions could include obtaining that  
123 CVFRS letter, and obtaining a Highway Access Permit from the Selectboard.

124 Re: the proposed accessory dwelling unit (ADU), the Board reviewed section 5.4 Conditional  
125 Use Review criteria from the staff report. Discussion if there needs to be a height limit set for the  
126 ADU. Larry noted compliance with height limits would be addressed later, within the context of a  
127 zoning permit application. Final ADU design needs to be compliant with size limits, which are  
128 unknown until we get a plan for the primary dwelling. This can be addressed administratively.

129 Larry says this started as a simple subdivision amendment, now it's that, plus a boundary  
130 adjustment and conditional use. He believes this application is complete except for the two items  
131 noted above, thus we can waive this as a 2<sup>nd</sup> Sketch Plan and consider this instead as a Final Plan  
132 application and hearing. Applicant has already paid the full fees required for Final Plan review.

133 **MOTION by JD Herlihy to waive Sketch Plan review, consider this application as a Final**  
134 **Plan for a Subdivision Amendment, Boundary Adjustment and Conditional Use review, and**  
135 **close the hearing. 2<sup>nd</sup> Charles Russell. VOTE: 5 ayes, motion approved.**

136

137 **Deliberative Session:**

138 Larry Lewack noted the written decision will reference the 2010 requirement for Open Space  
139 conservation if this lot were proposed for a PRD subdivision in the future. Charles Russell asked that  
140 this point be echoed in the Findings section of the decision. They will need to provide the Access  
141 permit for the driveway, and an 'Ability to Serve' letter from CVFRS prior to filing their final plat  
142 mylar. No vote is taken at this point. Larry will draft the decision & circulate it to members soon.  
143 Members should respond directly to Larry & he will produce a marked-up draft including all edits.

144

145 **Review and approve draft meeting minutes:**

146 **MOTION by JD Herlihy to approve DRB meeting minutes for January 5, 2022, as presented. 2<sup>nd</sup>:**  
147 **Gerald Bouchard. VOTE: 5 ayes; motion carried.**

148

149 **Request for legal advice on application of standards:**

150 Charles Russell wants to seek advice from the town attorney to give the DRB guidance about  
151 how to understand and apply the 'no undue adverse impact' standard. He described some of legal  
152 precedents which have successfully challenged DRB decisions in other towns. He is concerned that  
153 LUR's definition of 'undue adverse impact' is so vague that it would not withstand a legal challenge.

154 Lane Morrison suggested that, due to the late hour, it would be helpful if Charles wrote up a  
155 specific request which could be sent to the town attorney for a response. This response will be  
156 shared with DRB members & discussed at a later date. Ultimately, any change to the LURs will have  
157 to be forwarded to the Planning Commission to draft amendments to put before the voters.  
158

159 **Adjournment:**

160 Christina Asquith moved the Development Review Board adjourn this meeting. 2<sup>nd</sup>: Gerald  
161 Bouchard. **VOTE: 5 in favor, none opposed.** The meeting was adjourned at 9:32 p.m.

162

163 *Minutes respectfully submitted:*

164 Danielle Atherton, Recording Secretary; edits by Larry Lewack, Town Planner