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3 **Town of Charlotte**
4 **DEVELOPMENT REVIEW BOARD**
5 **Meeting Conducted at Town Hall and via Teleconference**
6 **January 26, 2022**

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

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

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

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13 **OTHERS:** Elizabeth Filosa, Paul Plante, Frank Tenney, Fritz Tegatz, Jason & Andrea Harvey

14
15 ***Posted Agenda:***

16 7:00 PM Call to Order; changes to agenda (if any)

17 7:05 PM Public Comment

18 7:10 PM DRB-21-295-BA Tegatz-Harvey – Boundary Adjustment between two parcels at 616 & 1000 Guinea Road.

19
20 7:40 PM DRB-21-292-SA Berry-Pearce – Subdivision Amendment to move 60’ right-of-way crossing property easterly 20’ to 30’ entirely within Berry-Pearce property.

21
22 8:10 PM Deliberative Session: on DRB-21-295-BA Tegatz-Harvey; and DRB-21-292-SA Berry-Pearce.

23
24 8:55 PM Other Business: review & approve minutes from Jan. 19 meeting.

25 9:00 PM Adjourn
26

27 **CALL TO ORDER:** Lane Morrison called the meeting to order at 7:01 p.m.

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

29 **CHANGES TO AGENDA:**

- 30
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32
- Charles Russell would like to have a discussion re: follow-up on Curler sketch letter.
 - Christina Asquith would like to discuss the preparation process for meetings.

33 **DRB-21-295-BA Tegatz-Harvey – Boundary Adjustment between two parcels at 616 & 1000**
34 **Guinea Road**

35 Jason Harvey and Fritz Tegatz are sworn in. Fritz Tegatz explained that Jason would like to buy ±33
36 acres. No development is proposed in this application. Jason Harvey pointed out on the map the
37 area involved. JD Herlihy wanted clarification Tegatz’s barn is not included in the transfer, which it
38 isn’t. Jason confirms there is a 50 ft setback from the new boundary to the barn. Gerald Bouchard
39 asks if it will be 2 separate properties or just a boundary adjustment between the two properties.
40 Jason confirmed it is just a boundary adjustment. JD Herlihy asks if all 33 acres are in current
41 agricultural use, which was also confirmed by both applicants.

42 **MOTION by Gerald Bouchard; seconded by JD Herlihy to close the hearing. VOTE: 5 ayes,**
43 **motion approved.**

44 **Deliberative Session:**

45 JD Herlihy wants to make sure any previous conditions remain as is for the current project. Lane
46 Morrison states there is no development, and none proposed now. Charles Russell would like
47 confirmation the barn has a 50 ft setback from the new property line. Larry will correct an error
48 from the staff report about the barn not transferring as part of this boundary adjustment.

49 **Next Steps:**

50 Lane Morrison explains that Larry Lewack will compile a decision letter, then a final version will be
51 drafted, then approved. Deliberation will stay open until they see the letter which should be within
52 about three weeks.

53

54 **Review & approve minutes from Jan. 19 meeting:**

55 **MOTION by Lane Morrison to approve draft of DRB meeting minutes for January 19, 2022, as**
56 **amended. VOTE: 5 ayes; motion approved.**

57

58 **Other business:**

59 Christina Asquith wants clarification as to what requires an attorney review. Lane Morrison
60 stresses the importance for the board to make a correct decision to avoid potential appeals,
61 environmental court, legal expenses and significant delays. Larry Lewack adds that seeking
62 attorney review is costly to the Town, and that a Sketch Plan review is not a decision, it is advice
63 from the board. Lots can change between the initial plans, and what applicants present for Final
64 Plan Review. In general, it's best to ask for attorney help in reviewing decisions, because these are
65 legally binding & it's important we get the details right, in case that decision gets challenged in
66 court. JD Herlihy refers to the Curler Sketch Plan, he felt it was warranted because he didn't agree
67 the PRD was the right use for the waiver and this process was different than what the PC has done
68 in the past; also suggesting members to read Section 3.2.

69 Charles Russell addresses Christina Asquith's question about the preparation process and the need
70 for due diligence by Board members. Members should endeavor to understand & apply their own
71 judgment about whether a project meets the LURs, independent of analysis contained within the
72 staff report. Larry noted: sometimes staff makes mistakes, as happened with the last project
73 discussed. It is the Board's responsibility to go through the pertinent LURs in relation to the
74 application, and to prepare the questions that need to be asked. Gerald Bouchard adds that many
75 times, the board has found the applicant has a lot more to consider than they had expected.

76

77 **DRB-21-292-SA Berry-Pearce - Subdivision Amendment to move 60' right-of-way crossing**
78 **property easterly 20' to 30' entirely within Berry-Pearce property.**

79 Attorney Elizabeth Filosa is sworn in and introduced the project, representing the
80 applicants. Applicants are requesting to move their right-of-way 20-30 feet easterly on their own
81 lot. Two neighbors north do have access via shared use of that portion of the road, and both
82 neighbors have agreed in principle with moving the ROW. Larry Lewack demonstrates on the map
83 where the garbage shed is located and explains that a new structure will be built in that vicinity. JD
84 Herlihy asks the size of the proposed structure. Larry: has not yet been determined. The prior
85 Zoning Administrator advised the applicant the structure would be too close to the property line
86 not meeting the 50 ft setback requirements which would require a variance that would most likely
87 not be granted. As a result, the applicant would have to move the structure further away. JD
88 Herlihy refers to the map which shows the driveway in a right-of-way access that's going across
89 their lot and he doesn't see where a 50 ft setback would come into play. Larry Lewack says it
90 depends if the road is considered private or a town road. Elizabeth Filosa clarifies that it is a
91 private road. JD Herlihy finds that since there was a second driveway added since the 1991
92 subdivision, the setback is necessary. Charles Russell reads the relevant point from the LURs, then
93 confirms this was an easement that was granted when the lot was subdivided.

94 Charles Russell refers to the staff comments on page 2 re: undue adverse impact. He
95 explains that if approved, this project would impact on a small area of agricultural soil by turning it
96 into a road. Our decision findings should clearly state if this change has an adverse effect, or an

97 undue adverse effect on the soils. Gerald Bouchard finds the proposed new boundaries could
98 potentially affect the lots to the north, which is identified by Elizabeth Filosa as belonging to the
99 Larson's, and they have signed on to the right-of-way relocation. Gerald Bouchard would like to see
100 the revised ROW agreement in writing, as a condition of their Final Plan approval.

101

102 **MOTION by JD Herlihy to close the hearing, 2nd by Gerald Bouchard, and to start deliberative**
103 **session. VOTE: 5 ayes, approved.**

104

105 **Deliberative Session:**

106

107 Charles Russell states the findings should reflect the project will adversely affect agricultural soils,
108 but this is not an undue adverse impact. Larry Lewack says the map shows in 2018 the land shows
109 it is in active use; hay bales. Lane Morrison speaks to Gerald Bouchard's point to request the land
110 record agreements with the neighbors. Lane Morrison takes as consensus to close deliberation.
111 Larry Lewack will draft the decision & circulate it for members' review/approval.

112

113 **Other business- Reconsiderations:**

114 JD Herlihy asks to clarify the Board's process for the 2 reconsideration meetings coming up. Larry
115 Lewack explains the first step is to decide if the circumstances warrant a reconsideration. Charles
116 Russell asks if this would be a public hearing and Larry answers he thinks not, it should be
117 presented as a Board deliberation only, to settle the process question (shall the decision be re-
118 opened for reconsideration). JD Herlihy asks if the board should accept additional public testimony.
119 Larry answered no (it's not a publicly warned hearing unless the Board decides to re-open the
120 project. In that event, the Board would schedule a public hearing for later). Christina Asquith notes
121 the applicant has 7 issues they want to address. Larry Lewack agreed: it is the Board Chair's job to
122 keep the discussion focused, and to enforce limits on speaking time. Christina Asquith suggests a 2-
123 minute maximum. Frank Tenney agrees that Lane Morrison will have to control the meeting.
124 Charles Russell stated there is nothing in statute or the LURs to prevent the Board reopening a
125 project entirely. Lane Morrison would like clarification of the process. Christina Asquith asks if
126 other committees who were part of the previous meetings can join. Frank Tenney explains that in
127 prior ZBA reconsiderations, these requests were not treated as deliberations, and that anyone could
128 participate.

129 Charles Russell reads section 9.9.E.4.b of the LURs, which states the grounds for reconsideration:
130 Board must be given new evidence of a substantial change in circumstances, or that the prior
131 decision had errors, or that the prior decision was influenced by fraud, or has unintended negative
132 consequences. If the Board finds that none of these factors apply, the Board may deny the request. If
133 the reconsideration is denied, the applicant can appeal the original decision to VT Environmental
134 Court. Paul Plante reads from title 24 VSA 4470 in the statutes, which suggests the board had 10
135 days from the date of the reconsideration request letter to render a decision on the request. The
136 letter was dated 1/11/21, and his interpretation is that the reconsideration could have been denied
137 prior to the 10 days, but now a hearing is required. JD Herlihy thinks the language may suggest
138 since the window has passed, that it is now open for reconsideration. Frank Tenney reads the
139 statute; it does not state a hearing is necessary if more than 10 days has elapsed. Staff will address
140 these questions with the town attorney & then let members know the results prior to Feb. 2.

141 **Adjournment:**

142 **MOTION by Charles Russell to adjourn this meeting, 2nd by JD Herlihy. VOTE: 5 in favor,**
143 **none opposed. The meeting was adjourned at 9:22 pm.**

144

145 ***Minutes Respectfully Submitted by:***

146 Danielle Atherton, Recording Secretary, with edits by Larry Lewack, Town Planner