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Town of Charlotte
DEVELOPMENT REVIEW BOARD
Meeting Conducted At Town Hall and via Teleconference
February 23, 2022

As approved by the Development Review Board, 3.2.22

Development Review Board: Charles Russell (Acting Chair), JD Herlihy, Gerald Bouchard.

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

OTHERS: Paul Plante, Keith Osborne, Scooter Macmillan, Charlotte Addison, Will Bown, David Miskell, Peter Trono, Diana Nelson, Stephen Selin

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 21-308-SA Trono – Major Subdivision Amendment - final plan review.
7:40 PM 22-3-SA Nelson – Subdivision Amendment, approve accessory dwelling
8:10 PM PUBLIC DELIBERATIONS (Public Attendance Welcome, But No Public Participation): 21-308-SA Trono and 22-3-SA Nelson
8:30 PM Other Business: review & approve draft resolution of Open Meeting Law complaints; draft meeting minutes from Feb. 9 meeting; DRB officer elections
9:00 PM Adjourn

CALL TO ORDER: Charles Russell called the meeting to order at 6:59 p.m.

Public Comment: (there was none)

CHANGES TO AGENDA:

- Larry Lewack asked to remove from the agenda approval of the Open Meeting Law complaint letter, since it is not ready. This will be added to next week's agenda. He would like to add to the agenda to review and mark-up the decision drafts on Curler Sketch Plan, Caneel-Jackson Subdivision Amendment and Horsford Subdivision Amendment.
- JD Herlihy would like to add an adverse impact and interested party discussion.
- Charles Russell would like to discuss conversations to be had with the Town Attorney regarding our March 2 meeting agenda.

Review & approve draft meeting minutes from Feb. 9 meeting:

MOTION by Charles Russell to approve meeting minutes, as amended; seconded by Gerald Bouchard. VOTE: 3 ayes, motion carried.

21-308-SA Trono – Major Subdivision Amendment final plan review:

Charles Russell asked if DRB members have had any 'ex parte' communication with the applicants; none were disclosed. Charles Russell asked if any members have a potential Conflict of Interest. JD Herlihy stated he knows Peter Trono socially, but he believes this will not prejudice his role in the decisions to be made.

Peter Trono and David Miskell were sworn in. David Miskell explained the history of the property in regards to subdivisions and boundary adjustments from 1989-present. Peter Trono

49 built his house on an approved one-acre building envelope within the original Lot 1 (overall
50 parcel). The main change proposed here is to separate Lot 5 from the original subject parcel,
51 which is the entire farm outside the 3 residential lots as previously approved. Separating this
52 13.1 acre lot from the farm provides clear title to his house and the surrounding infrastructure
53 now, and will make it easier for his son to inherit it later.

54 77% of the overall parcel has been permanently protected via an agricultural easement
55 from the Vermont Land Trust. One of the PC's earlier decisions on the subdivision required that
56 the remainder of proposed Lot 5 prohibit further development, but they did not require a
57 separate Open Space Agreement because of the Land Trust easement. Per their submitted Final
58 Plat site plan, 12.1 acres of currently undeveloped land would be permanently protected from
59 future development within that new lot. Miskell noted the surveyor found a small piece of the
60 original farm road (now Fat Cow Farm Circle) crossed the southeast corner of the Bushey
61 property. After reviewing the warranty deeds, it was determined that there is a valid ROW in
62 place for this crossing.

63 JD Herlihy clarified the building envelope has been approved, and this is just the
64 subdivision amendment to separate the house lot from the farm parcel. Peter Trono confirmed
65 this. Charles Russell asked what the restrictions were for Open Space, there were none. Larry
66 Lewack believed it to be an error; there was an intention to protect the balance of Lot 5 from
67 further development, but did not end up in the conditions for approval in the final decision.
68 Gerald Bouchard asked if there were any changes to approved septic or water permits: none are
69 proposed in this application.

70

71 **MOTION** by Gerald Bouchard; seconded by JD Herlihy, to close the hearing. VOTE: 3 ayes,
72 motion carried.

73

74 **Deliberative Session:**

75 Gerald Bouchard said decision should reference septic permits, and require filing Final
76 Plat mylar. Larry Lewack noted they have just submitted a Boundary Line exemption form,
77 which notifies the town there is a change in the boundary line that affects the clearances to the
78 approved septic. Charles Russell brought up the easement that crosses the Bushey lot, and that
79 needs to be referenced on the mylar. JD Herlihy would like the findings to reference continued
80 agricultural uses on the conserved farm parcel, and wanted to make sure conditions specify
81 there be no further building or structures within the new Lot 5.

82 Charles Russell closed deliberations and explained to Peter Trono that Larry Lewack will
83 write up the decision and the DRB will review & approve that draft when it's done, within a
84 month at the latest. Peter Trono explained this process has been 8 months so far, and is
85 frustrated with the time it has taken, since there has been no opposition. Larry noted there are
86 several pending decisions due ahead of this one; he will try to expedite this one as time permits.

87

88 **22-3-SA Nelson – Subdivision Amendment to use current definition of accessory uses:**

89 Charles Russell asked if DRB members have had any 'ex parte' communication with the
90 applicants; none were disclosed. Charles Russell asked if any members have a potential Conflict
91 of Interest; none were disclosed.

92 Diana Nelson (owner) and Stephen Selin (architect and applicant) were sworn in. Selin
93 explained the Nelson's were building a house, and they decided to first build a detached garage
94 with a 1 bedroom studio apartment on top. The original plans did not call for the apartment, but
95 the Nelson's decided to live in the apartment while the house was being built. The original
96 permit application did not include the apartment, which was built anyway without a permit.

97 They now seek an after-the-fact approval to modify the original subdivision approval (PC-05-22)
98 to permit the apartment, which would not have been allowed under the 2002 zoning rules (in
99 place when the original James Farm subdivision was approved). This review follows the Zoning
100 Board's approval of this detached accessory dwelling unit as a Conditional Use in October 2021.
101 In that decision, the ZBA required the applicants to apply for this subdivision amendment, to
102 clarify that adding an ADU to this lot was now allowed on that lot.

103 Stephen Selin proposed the DRB use the present LURs definition for accessory use. ADUs
104 are now allowed to be added to any residential lot, per Sec. 4.2 of the LURs, subject to limitations
105 stipulated there.

106 JD Herlihy noted the fact that it is a detached building is what triggered the conditional
107 use. Gerald Bouchard asked if the septic is able to handle the house and the apartment; Stephen
108 Selin confirmed they have an approved septic permit amendment that addresses the new
109 connection to the ADU. JD Herlihy noted in the original subdivision plan, the septic was
110 supposed to be built prior to the lots being sold. He suggested to include in this decision that we
111 allow the single-lot septic installation (in lieu of the community septic system that was approved
112 in 2005, but never installed), and to make this approval specific to lot 4. Charles Russell agreed.

113 **MOTION** by Gerald Bouchard; seconded by JD Herlihy, to close the hearing. VOTE: 3
114 ayes, motion carried.

115

116 **Deliberative Session:**

117 Gerald Bouchard wanted the findings and scope of this decision to be limited to lot 4,
118 board agrees. He confirmed this would correct stated errors, and they would not have to come
119 back if/when the applicant decided to sell. JD Herlihy noted decision findings should include
120 that lot's septic permit, they received the Conditional Use permit from the ZBA, and no changes
121 are proposed to the lot lines, or building envelope. Charles Russell: note that the bylaws/LUR's
122 have changed to allow ADU on this lot. Charles Russell ended deliberations, and explained the
123 decision will be finalized at a future meeting.

124

125 **Other Business:**

126

127 **Review & approve drafts: Curler Sketch Plan Review letter & draft Caneel-Jackson and** 128 **Horsford Final Plan decisions:**

129 **Curler: Sketch Plan Letter:**

130 Larry Lewack summarized this is a 2-lot minor subdivision. The existing Curler lot
131 currently has a right of way to Guinea Rd., and this could be accepted as an alternative for the
132 300 ft. frontage that would otherwise be required for proposed Lot 2, but the applicant must
133 request that in writing. The letter addressed how driveway access can be accomplished,
134 identified areas of high public value, and lot layout, and it gives the applicant choices on how to
135 proceed. They can either ask for frontage waiver, or reconfigure their site plan as a PRD.

136 The letter also stipulated important elements needed for their Final Plan application,
137 such as location of the driveway extension to the new lot, a stormwater runoff management
138 plan, an 'ability to serve' letter from the Fire Department, and a road maintenance agreement.
139 Charles Russell asked when the deadline is to respond. Larry Lewack said the applicant has 6
140 months from letter issue date for a final plan application, which can be extended for another 6
141 months, if they need more time. This letter is advice; it is not binding or a decision. But if
142 applicants choose not to follow these recommendations, it could stall consideration of their final
143 plan. The board edited the letter, signed and approved it for mailing.

144 **Caneel-Jackson:**

145 The board edited the draft decision to be sent to Caneel-Jackson, and voted to approve
146 the final draft. An edited version will be sent this week to the applicant.

147 **Horsford:**

148 The board edited the draft decision to be sent to Horsford, and voted to approve the final
149 draft. An edited version will be sent this week to the applicant.

150

151 **March 2 meeting agenda:**

152 JD Herlihy said it's important to identify who the interested parties (IP) are up front, so
153 they can fully understand the process. To qualify for IP status, a petition signed by 10 or more
154 neighbors must be submitted to the board before public hearings are closed. Charles Russell
155 would like this to be added to the March 2nd agenda to get the attorney's feedback.

156 Larry Lewack advised the meeting is only 2 hours. Charles Russell suggested we draft an
157 outline for efficiency. He listed items he would like discussed at this meeting.

- 158 • Interested party definition; requirements to qualify as an IP
- 159 • Different types of meetings/hearings (esp. re deliberations vs. hearings)
- 160 • 'Ex parte' communication by members banned
- 161 • Conflicts of interest rules & how applied to DRB members
- 162 • What can & can't be discussed by members outside of duly warned meetings
- 163 • Violations of Open Meeting Law, with examples (i.e. no group emails except in limited
164 circumstances)

165

166 **Undue Adverse Impact:**

167 JD Herlihy explained the phrase "Undue Adverse Impact" is used a lot in Regulations. The
168 Quechee Test is specific to aesthetics. He would like a clearer definition for the Undue Adverse
169 Effect scenarios. Larry Lewack clarified the board would like to know how to assess what type
170 of impacts are 'undue,' vs. other scenarios. Charles Russell would like this added to the agenda
171 for the March 2 meeting, or to be scheduled as a separate discussion with the Town Attorney.

172 JD Herlihy would like clarification on wetlands. Our LURs don't define scope of wetlands
173 (can be Class 1, Class 2 or Class 3; may entail different restrictions on building for each type).
174 Larry Lewack suggested a discussion with the Planning Commission, but doesn't feel this should
175 be discussed with the lawyer.

176

177 **Adjournment:**

178 **MOTION** by Gerald Bouchard; seconded by JD Herlihy, to adjourn this meeting. VOTE: 3 in
179 favor, none opposed. The meeting was adjourned at 9:25 pm.

180

181 ***Minutes respectfully submitted:***

182 Danielle Atherton, Recording Secretary, as edited by Larry Lewack, Town Planner