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Town of Charlotte
DEVELOPMENT REVIEW BOARD
Meeting Conducted At Town Hall and via Teleconference
February 9, 2022

As approved by the Development Review Board, 2.23.22

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

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

OTHERS: Beth Humstone, Carrie Spear, Janice Heilmann, Jim Donovan, Lewis Mudge, Greg & Lynn Cluff, Natalie Stultz, Patricia O'Donnell, Mary Van Vleck, Paul Plante, Sharon Mount, Will Bown, Steven Schubart, Frank Tenney, Kevin Burget, Jim Faulkner, Jeanne Kaczka-Valliere, Melanie _____, Suzanne _____, Kyra Wegman, Valerie Graham, Barry Finette, John Kelley, Jason Barnard, Dale Hyerstay, Bill Stuono.

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 PC 21-241-SD O'Donnell – Donovan – Reconsideration request by applicants of Planning Commission's Preliminary Plan approval decision of Dec. 3, 2021
8:00 PM DRB 21-303-SD Cluff – Final Plan review for proposed 2-lot minor subdivision at 1745 Dorset St. Extension.
8:40 PM Other business: Review/approve draft minutes from Feb. 2 DRB meeting; review/markup draft of Horsford S.A. decision 9:00 PM Adjourn

CALL TO ORDER: Lane Morrison called the meeting to order at 7:03 p.m. He summarized the agenda & rules for participation. He asked if any Board members had any conflicts of interest, or had any 'ex parte' communications with the applicants; there were none, other than DRB member Christina Asquith has recused herself from participation in the O'Donnell-Donovan project. On the 125 Lake Rd. project, DRB will not accept public testimony or accept new evidence. DRB will only consider the specifics of the reconsideration request letter, and may ask questions of the applicant, but otherwise will just deliberate in public & reach a decision on each of the requests in the letter. After some discussion, it was further agreed the Board would vote on each request, in turn.

Public Comment:

- Valerie Graham questioned the Board's reconsideration process. Lane Morrison reiterated the Board will discuss only the items in the reconsideration request letter.
- Barry Finette asks if each item will get a vote for reconsideration. He doesn't believe any of the items in the letter meet the criteria for reconsideration in the Charlotte LURs.
- Kyra Wegman doesn't think Christina Asquith's recusal from the O'Donnell –Donovan project was justified, and feels she should be a part of this discussion.
- John Kelley asks if the applicant's reconsideration request is approved, will the public have an opportunity to weigh in? Lane Morrison answers yes, since there would be another public hearing scheduled.

49 **PC 21-241-SD O'Donnell – Donovan – Reconsideration request by applicants of Planning**
50 **Commission's Preliminary Plan approval decision of Dec. 3, 2021**

51

52 **MOTION by Charles Russell to reconsider Condition #6; seconded by JD Herlihy.**

53 **Condition #6 required that the applicants increase the required buffer from 50 ft. to**
54 **75 ft. between building envelopes and the edge of mapped wildlife habitats.**

55 Applicants claims there are no findings to support this condition, and question why the town did
56 not commission a study by a wildlife expert to validate the precise location and nature of habitat in
57 the vicinity of the proposed building lots. Gerald Bouchard explains the board believed a 50 ft.
58 buffer was too narrow to protect that habitat. JD Herlihy noted the applicant is questioning if the
59 PC had authority to increase the setback. Charles Russell answers they do, but there would have to
60 be an undue adverse impact, to which there were no specific findings to support that conclusion. JD
61 Herlihy confirms there was a finding, but it doesn't address the reason for the additional setback
62 requirement. Larry Lewack noted the Planning Commission considered habitat maps, but it was
63 difficult to discern distance from building lot lines to habitat edge. **MOTION by Gerald Bouchard**
64 **to table the discussion; seconded by Lane Morrison. VOTE: 4 ayes, motion approved.**

65

66 **MOTION by Charles Russell to reconsider Condition #8; seconded by Gerald Bouchard.**

67 **Condition #8 required the applicants to remove all fencing from Lot 9, which is the**
68 **proposed Open Space land to be permanently protected from future development.**

69 Applicants believe the benefits of leaving the existing fencing intact outweigh the cost of removing
70 the fencing, such as protecting residents' gardens from deer feeding. Charles Russell asks Larry
71 Lewack to highlight fence lines on the site plan. Charles Russell is open to allowing some of the
72 fences to remain, some are more problematic than others. Gerald Bouchard explains this is tied
73 together with #6. JD Herlihy confirms the board has the authority to request this, and adds there
74 should have been a prioritization of the areas with high public value as a finding. If this is
75 reconsidered, this opens up other aspects of the application. **MOTION by Gerald Bouchard to**
76 **table the discussion; seconded by JD Herlihy. VOTE: 4 ayes, motion approved.**

77

78 **MOTION by Charles Russell to remove Condition #6 from the table; seconded by Lane**
79 **Morrison. VOTE: 4 ayes, motion approved. MOTION by Lane Morrison to approve the**
80 **reconsideration for Condition #6. VOTE: 4 ayes, motion approved. MOTION by Charles**
81 **Russell to remove Condition # 8 from the table; seconded by Lane Morrison. VOTE: 4 ayes,**
82 **motion approved. MOTION by Lane Morrison to approve the reconsideration for Condition #**
83 **8. VOTE: 4 ayes, motion approved.**

84

85 **MOTION by Charles Russell to reconsider Condition #9; seconded by JD Herlihy.**

86 **Condition #9 requires the applicants to conduct an independent 'Quechee Test' visual**
87 **analysis to document the likely visual impact of the project from three vantage points, with**
88 **subsequent analysis by an outside consultant to validate the results.** Applicants claim the
89 balloon test they conducted at the PC's suggestion provides sufficient documentation of limited
90 visual impacts from the three named vantage points. Larry noted photos were taken during the
91 balloon test by both the applicants and staff, and these were entered into the record. But these are
92 inconclusive; balloons appear as colored dots in the distance, against the backdrop of the landscape
93 as it exists today. We don't know what the buildings will look like from a distance, and applicants
94 did not present a schematic to support their premise of limited visual impact. This requirement was
95 proposed by the PC to develop an independent analysis of the likely visual impacts. JD Herlihy reads
96 Section 7.1.3 and finds the PC did have the authority to request the Quechee Test. Charles Russell
97 doesn't feel public perception should be guiding the review process, it should be relevant testimony

98 from interested parties. He asked if Quechee analysis was discussed during the public hearing. (It
99 was not.) JD Herlihy agrees there needs to be strong findings to support this condition, and there
100 aren't yet. **MOTION by Lane Morrison to approve the reconsideration for Condition #9.**
101 **VOTE: 4 ayes, motion approved.**

102

103 **MOTION by Charles Russell to reconsider Condition #11; seconded by Gerald Bouchard.**

104 **Condition #11 requires the HOA to prohibit the use of chemical fertilizer treatment to**
105 **lot lawns.** Applicants claim there is no basis in the LURs to set that as a standard for subdivisions.
106 Gerald Bouchard explains that it is State law that chemical fertilizer cannot be spread within a 200'
107 radius of a well, to prevent contamination of water supplies. Charles Russell explains if true, this
108 must be referenced in the findings, and based upon the LURs and the Town Plan. He wants
109 clarification if that same rule applies to spreading organic fertilizer. JD Herlihy is in favor of
110 reconsideration, he isn't sure why this requirement was delegated to homeowners' association to
111 enforce, it should be coming from the town. Larry Lewack pointed out that this mirrors a rule in the
112 applicant's proposed Agricultural Agreement, which prohibits application of chemical fertilizers
113 nearby the residential lots. Charles Russell suggests to reconsider. **MOTION by Lane Morrison to**
114 **approve the reconsideration for Condition # 11. VOTE: 4 ayes, motion approved.**

115

116 **MOTION by Charles Russell to reconsider Condition #14; seconded by Lane Morrison.**

117 **Condition #14 asks for clarification of the status/purpose of the proposed well on Lot**
118 **9.** Applicants claim this condition was an error. Board agrees this was an error in interpreting the
119 site plan. **MOTION by Lane Morrison to approve the reconsideration for Condition # 14.**
120 **VOTE: 4 ayes, motion approved.**

121

122 **MOTION by Charles Russell to reconsider Condition #16, JD 2nd.**

123 **Condition #16 requires additional landscape plantings to mitigate views of the access**
124 **road and buildings from various vantage points to the east and north of the project.**

125 Applicants claim this requirement presupposes the results of the "Quechee Test" analysis.
126 These may not be needed, until a visual analysis has documented likely impact of development as
127 viewed from a distance. Gerald Bouchard would like trees planted from seedlings on the North side.
128 Charles Russell explains applicants proposed deciduous trees for screening; evergreens would
129 stand out more. **MOTION by Lane Morrison to approve the reconsideration for Condition #**
130 **16. VOTE: 4 ayes, motion approved.**

131

132 **MOTION by Charles Russell to reconsider Condition # 18; seconded by Lane Morrison.**

133 **Condition #18 suggests that preservation of the proposed Lot 1 agricultural lands for**
134 **farming would be a more meaningful Open Space designation than conserving Lot 9, as**
135 **proposed.** Applicants claim the proposed conservation of Lot 9 meets all requirements of Sec. 8.6.
136 Applicants would like to partner with the Charlotte and VT Land Trusts to secure an agricultural
137 easement for the Lot 1 parcel. Gerald Bouchard explained they originally proposed to conserve Lot
138 9, but the PC members preferred they conserve Lot 1. Lane Morrison explains creating and funding
139 an agricultural easement via the Land Trust usually takes several years. Gerald Bouchard explains
140 there is no time limit between Preliminary Plan decision and Final Plan application. Charles Russell
141 suggests there may be better ways to accomplish this, which could be explored if this condition is
142 re-opened. JD Herlihy states there were no findings that the agricultural land is of higher value than
143 the wooded land. We cannot require that both Lot 1 and Lot 9 be conserved as open space.
144 **MOTION by Lane Morrison to approve the reconsideration for Condition # 18. VOTE: 4 ayes,**
145 **motion approved.**

146

147 Bill Stuono from the PC wants it on record that himself and fellow PC member Kyra Wegman were
148 denied the ability to speak tonight to the issues raised in the reconsideration, and references the
149 Open Meeting Law. Chair Lane Morrison confirmed that following tonight's decision to re-open the
150 project for reconsideration, the Board would schedule a new public hearing on the project, to be
151 held in a few weeks on a date TBD. PC members will be free to speak at that time, along with any
152 interested parties.

153

154 **DRB 21-303-SD Cluff – Final Plan review for proposed 2-lot minor subdivision at 1745**
155 **Dorset St. Extension.**

156 Jason Barnard, from Barnard & Gervais is sworn in & introduced the project. The project is a
157 2-lot subdivision of a 27.02-acre lot. Lot 1 will be 10.62 acres, which is the existing house, and lot 2
158 will be 16.4 acres. Sketch plan, site visit and wastewater permits are all complete. At sketch plan
159 review, driveway slope was an issue. With a new access easement granted by the neighbor through
160 their land, the driveway access was redesigned, and now the driveway is under 8% grade. 60% of
161 the land has been set aside for open space; it was reconfigured as a result of Sketch Plan feedback to
162 better protect the steep slopes and forest above the banks of the LaPlatte River. Larry Lewack
163 displayed the driveway location, confirms the neighbor will have access through his own driveway.
164 The new lot will share the driveway with the Cluff's, breaking off to lot 2. Charles Russell asks if
165 their access has been approved by the Selectboard. Jason answers it was submitted, unsure if it's
166 been issued yet. He confirms the distance between the 2 driveways is over 200'. Charles Russell
167 refers to the letter from the Conservation Commission with their concerns. Their concerns are with
168 the steep slopes, height limits, and scenic views. Larry Lewack explains these issues would be
169 addressed in the Zoning permit application, which would require 2 inspections. Charles Russell
170 thinks a site visit would have been helpful prior to making a decision. Dale Hyerstay is sworn in.
171 He says from Carpenter Rd., the view south is all trees, and that no houses will be visible.

172 Larry Lewack reviewed the staff report. He asks Jason the status of the ability to serve
173 letter from the Fire Dept. and he responds it is in process. Larry summarized that the staff
174 observations see no foreseeable barriers to the approval of the subdivision, it meets the Open Space
175 requirements and all LUR standards. JD Herlihy asked about the forest management plan. The
176 Cluff's answer they don't have one, but if it's a stipulation they will comply. **MOTION by Charles**
177 **Russell to close the hearing; seconded by JD Herlihy. VOTE: 4 ayes, motion carried.**

178

179 **Deliberative Session on 21-303-SD:**

180 Gerald Bouchard would like to require an ability to serve letter from the fire department,
181 and the driveway access permit to be approved by Selectboard. Charles Russell says the access by
182 easement needs to be approved. JD Herlihy clarifies this isn't a PRD, but in alignment with PRD
183 standards. Charles Russell asks if trees screen the view from Carpenter Rd., clarify those to be
184 protected via Open Space agreement. Include compliance with state handbook for erosion control
185 during construction, as a standard Condition of Approval.

186 *Next Steps:* Larry Lewack reviewed the potential conditions of approval. He will prepare a
187 draft decision based on these conditions & fwd. to the Board for review & approval. Lane Morrison
188 states the board remains in open deliberation until the letter is signed.

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192 **Review/approve draft meeting minutes from Feb. 2 DRB meeting:**

193 **Motion by JD Herlihy to approve meeting minutes from Feb. 2, as amended; 2nd by**
194 **Gerald Bouchard. VOTE: 4 ayes, motion approved.**

195

196 **Other Business:**

- 197 • Larry Lewack prepared a draft Sketch Plan letter on the Curler project discussed at the Feb.
198 2 meeting. This will be discussed at the Feb. 23 mtg., as members did not have time to
199 review ahead of this meeting.
- 200 • We need to approve the Horsford and Caneel/Jackson decisions by our next meeting. Larry
201 will prepare drafts by next week & send them out for Board review.
- 202 • Members agreed to schedule 1 or 2 special meetings for the public hearing on the
203 O'Donnell-Donovan reconsideration. Larry will poll for best dates.

204

205 **MOTION by Lane Morrison to adjourn the meeting; seconded by JD Herlihy. VOTE: 4 ayes,**
206 **motion approved.** The meeting was adjourned at 9:30pm.

207

208 ***Minutes respectfully submitted:*** Danielle Atherton, Recording Secretary, with edits by Larry
209 Lewack, Town Planner.