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**TOWN OF CHARLOTTE
ZONING BOARD OF ADJUSTMENT
MAY 28, 2014**

DRAFT

Minutes subject to correction by the Charlotte Zoning Board of Adjustment. Changes, if any, will be recorded in the minutes at the next meeting of the Board.

MEMBERS PRESENT: Ben Pualwan, Chair; Douglas Webster, Jonathan Fisher, Frank Tenney, Andrew Swayze.

ADMINISTRATION: Britney Tenney, Zoning Clerk.

OTHERS PRESENT: Jeannine McCrumb, Denise Kessler, Thomas Kessler, and others.

ITEMS HEARD:

- **APPEAL: Thomas and Denise Kessler, who are appealing the Town Zoning Administrator's decision to deny a Certification of Occupancy Permit. The property is located at 1689 Church Hill Road.**

CALL TO ORDER

Mr. Pualwan, Chair, called the meeting to order at 7:05 p.m.

APPEAL: THOMAS AND DENISE KESSLER, WHO ARE APPEALING THE TOWN ZONING ADMINISTRATOR'S DECISION TO DENY A CERTIFICATION OF OCCUPANCY PERMIT. THE PROPERTY IS LOCATED AT 1689 CHURCH HILL ROAD

Denise Kessler, owner, appeared on behalf of the appeal.

STAFF NOTES

Mr. Pualwan reviewed staff notes and explained the swearing in process.

Ms. Kessler was sworn in.

APPLICANT'S COMMENTS

Ms. Kessler explained that the appeal of the Zoning Administrator's (ZA) decision to deny a Certificate of Occupancy was based verbal advice from Tom Mansfield, the former Charlotte ZA.

Ms Kesslelr briefly explained a history of the property purchased 20 years ago. She lived in the south side of the building and operated a veterinary clinic in the other side. Eventually she moved out of the building and then relocated the clinic elsewhere. The building had been rented out with bad experiences. In November, 2013, she contacted Tom Mansfield, ZA, regarding a change in use as a duplex. Tom said she couldn't do that because the subject property didn't have enough land. He advised her that she could do an accessory apartment without a permit. The original ca. 1830s house has 3 legal bedrooms. Tom said that she could "...start the project if it was a 3 bedroom project."

48 She obtained a \$30,000 bank loan and as the project was nearing completion she called
49 Jeannine McCrumb, the new ZA, on February 14, 2014. Jeannine said she couldn't do the
50 project per the Zoning Regulations that said the home owner must live on the premise.
51 She lives in Ferrisburgh, explained Ms. Kessler.

52

53 ZBA QUESTIONS/COMMENTS

54 Mr. Pualwan explained the ZBA role regarding appeals, which was to either deny, or to
55 approve the appeal. The ZBA could not give the appellant recourse for bad advice from
56 the previous ZA. For recourse the appellant should seek legal advice, said Mr. Pualwan.

57

58 Ms. Kessler reviewed Charlotte Zoning Regulations, page 12, Table 5.2, #15, permitted
59 and conditional uses in a Rural District for dwellings/accessory structures, affordable
60 housing, dwellings/single family and dwellings/two family structures, and Town Plan
61 sections regarding low and moderate income housing needs in Charlotte. The current
62 permitted use was as a dwelling/single family and she wanted to change the use to a
63 dwelling/two family structure, said Ms. Kessler.

64

65 Ms. Kessler explained that the internal changes included an added shower and closing off
66 two doors between the living area and former the clinic. There were no exterior changes,
67 stated Ms. Kessler.

68

69 Jeannine McCrumb, Charlotte Town Planner/Zoning Administrator, was sworn in.

70

71 Ms. McCrumb explained that the issue was density and the 0.7 acre lot, which was a non-
72 conforming lot. The applicant needed 5 acres per dwelling unit in the rural district. She
73 could have a single family dwelling. She could not have a duplex in that district with the
74 small lot. Tom Mansfield may not have known that she was not living there, said Ms.
75 McCrumb.

76

77 Mr. Pualwan asked if the issue was potentially addressable with a variance. Ms.
78 McCrumb replied no. A variance was for a unique situation where nothing could be done
79 on the lot due to the lot features or configuration. There were some options the appellant
80 could consider. A property owner can't be granted additional rights. For example, if a
81 property owner had 6 acres in that district and wanted a duplex it couldn't be done, said
82 Ms. McCrumb.

83

84 Ms. Kessler handed out copies from Volume 170, Supreme Court decisions, and cited a
85 court decision for a similar non-conforming lot in the town of Clarendon, page 321, #4,
86 regarding a change of use of a barn from agricultural to residential. Each were permitted
87 uses in the regulations, said Ms. Kessler. Ms. McCrumb said that a copy of Clarendon
88 regulations was needed to see if there was a correlation.

89

90 **EXHIBIT A: the ZBA accepted and marked the copy of Volume 170, Supreme**
91 **Court decisions, page 321 as Exhibit A.**

92

93 Mr. Pualwan asked if density could be appealed. Ms. McCrumb replied no.

94

95 Mr. Swayze asked if Ms. Kessler was switching uses. Ms. Kessler replied yes; permitted
96 uses of a non-conforming lot.

97

98 Mr. Swayze asked if Ms. Kessler was switching uses and changing the number of
99 dwelling units. Ms. Kessler replied she was changing from a dwelling/single family to a
100 dwelling/two family with no external changes.

101

102 Mr. Fisher asked if Ms. Kessler wanted a duplex versus an accessory apartment. Ms.
103 Kessler said that she was switching uses. The lot doesn't have density as stipulated in the
104 regulations, pointed out Ms. Kessler.

105

106 Mr. Pualwan read the definition of a dwelling/two family from the regulations as a
107 building that contains two units.

108

109 Mr. Fisher suggested that the appellant consider a transfer of density of development
110 rights as outlined in Staff Notes.

111

112 Ms. McCrumb said that the affordable housing section had reduced density of one-
113 quarter acre. She and Dean Bloch had met with Ms. Kessler regarding options for two
114 dwelling units and to cure the violation. She could rent out one unit now and transfer
115 density needed as per the affordable housing section, said Ms. McCrumb.

116

117 Mr. Pualwan asked Ms. Kessler if she wanted the ZBA to pursue the appeal of the ZA
118 decision, or would she withdraw the appeal. She could hire a lawyer to represent her
119 interests, suggested Mr. Pualwan. Ms. Kessler said she wouldn't use an attorney. She
120 wanted to keep it simple and use the affordable housing regulations, said Ms. Kessler.

121

122 There was further discussion regarding owner occupied buildings in order to finish the
123 project; selling the property (Ms. Kessler explained she had a realtor look at the property
124 and she couldn't sell it for enough to recover the \$30,000 loan money.); and renting out
125 one unit.

126

127 Ms. Kessler handed out copies of a "Book of Opinions" authored by James Douglas and
128 Paul Gillies regarding municipal issues related to municipal access to injunctions and two
129 part tests for injunctions.

130

131 **EXHIBIT B: the ZBA accepted and marked the copy of "Book of Opinions" by**
132 **James Douglas and Paul Gillies as Exhibit B.**

133

134 **MOTION by Mr. Fisher, seconded by Mr. Webster, to close the hearing for an**
135 **appeal by Thomas and Denise Kessler, of the Town Zoning Administrator's decision**
136 **to deny a Certification of Occupancy Permit for the property located at 1689**
137 **Church Hill Road.**

138 **VOTE: 5 ayes; motion carried.**

139

140 **ADJOURNMENT**

141 The ZBA meeting was adjourned at 7:52 p.m.

142

143 Minutes respectfully submitted, Kathlyn Furr, Recording Secretary.

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