

**CHARLOTTE PLANNING COMMISSION**

**FINDINGS OF FACT AND DECISION  
IN RE APPLICATION OF**

**2877 Spear Street Associates**

**Final Plan Application  
for a  
Major Subdivision and Planned Unit Development  
and a  
Boundary Adjustment  
with  
Timothy S. Halvorson  
2951 Spear Street**

**Application # PC-13-05**

**Background**

The Planning Commission conducted a Sketch Plan Review for a proposed four-lot subdivision on January 5, 2012, and a Sketch Plan Amendment for a three-lot subdivision and boundary adjustment on October 4, 2012.

**Application**

Materials submitted with the applications are listed in Appendix A.

**Public Hearing**

The Planning Commission held a public hearing for this application on March 7, 2013. The applicant was represented by Erik Hoekstra. The following adjoining property owners were also present and participated in the hearing: Jonathan Fisher, Clark Hinsdale III, David Cray, and Kristin Halvorson.

On its own motion made on March 21, 2013, the Planning Commission warned to re-open the hearing on May 2. However, the applicant was unable to attend on that date, so the re-opened hearing was held on June 6, 2013. The applicant was represented by Erik Hoekstra. The following adjoining property owners were also present and participated in the hearing: Jonathan Fisher, Bill Fraser-Harris, and Eva Fraser-Harris.

**Regulations in Effect**

Town Plan amended March, 2008

Land Use Regulations amended March, 2010.

Recommended Standards for Developments and Homes adopted September, 1997

**Findings**

## **Background**

1. The existing parcel of 14.2 acres is located in the East Charlotte Village zoning district. It currently hosts an existing structure, which has been converted from a two family dwelling into an office with an accessory apartment. (Docket No. 261-11-06 Vtec)
2. The application proposes the creation of three lots and a boundary adjustment. The subdivision will create Lot 1 (1.07 acres), which is a proposed building lot for a single family dwelling; Lot 2 (10.56 acres), which has the existing “Hancock House,” which is proposed to be converted from office and accessory apartment into a single family dwelling and accessory apartment; and Lot 3 (1.50 acres), which is a proposed commercial building lot. The boundary adjustment proposes transferring 1.22 acres from 2877 Spear Street Associates to Timothy S. Halvorson, the adjacent property-owner to the south.

*Applicable standards in Chapter VII of the Charlotte Land Use Regulations (“Regulations”) are reviewed below in Findings 3-41.*

## **Sections 7.2 and 7.3—Areas of High Public Value**

3. The parcel includes, or is adjacent to, the following areas of high public value:
  - a. Land in active agricultural use: The easterly portion of the parcel is used in conjunction with a nearby commercial vegetable operation (from applicant’s testimony and site visit).
  - b. Primary agricultural soils: much of the parcel has prime agricultural soils; the northernmost portion and a pocket on the easterly portion has statewide agricultural soils (from NRCS data).
  - c. Surface waters: Town Plan map 7 depicts a small wetland along the southerly boundary. The Proposed Site Plan submitted with the application depicts two small wetlands on the parcel, one in the vicinity of that depicted on Map 7, and one in the north-central portion of the parcel.
4. Considering the resources on and adjacent to the parcel, the Planning Commission finds that the agricultural use and the prime agricultural soil are the most important areas of high public value associated with the parcel. These are the resources that most strongly characterize the property, and which the Planning Commission feels are the most important to protect during the subdivision process.
5. The project does not propose siting buildings in the agricultural area, however, a new wastewater disposal system and a new drilled well are proposed to be located in this area.
6. The application proposes an Open Space Agreement with the Town on nine acres, which includes the agricultural area, as well as a small wooded area and a wet swale.
7. The proposed buildings are located relatively close to the road, and are proposed to host a combination of residential and commercial uses.
8. The proposed building envelopes on the plat do not match the envelopes depicted on the Proposed Site Plan (Drawing C1.0). Additionally, both the Final Plat and the Proposed Site Plan show a very large building envelope for Lot #3, which would allow a building to be located at the “rear” of the lot, with parking in front. This conflicts with the historic character and the intended village neighborhood pattern of development, as well as Site Plan Review and Planned Unit Development criteria within the Regulations.
9. Lot 1 and the area that is proposed to be conveyed to Halvorson include a portion of the agricultural area.

***Conclusion 1: The proposed building sites reflect and reinforce the historic character and pattern of the neighborhood, using the provisions of Section 8.5 of the Regulations (Planned Unit Development). However, the building envelopes on the Final Plat should be revised to match the Proposed Site Plan. Additional conclusions regarding Lot #3 are below under the review related to the PUD standards in Section 8.5.***

***Conclusion 2: Much of the agriculture soils are to be located on one lot (i.e. Lot 2), and protected by an Open Space Agreement with the Town. However, the easterly portions of Lots 1 and the area to be conveyed to Halvorson divide the agricultural area and increase the likelihood that these portions will be removed from agricultural use. Additionally, the proposed wastewater disposal system serving Lots 1 and 3 and the proposed drilled well for Lot 3 will remove the area dedicated to and surrounding these facilities from agricultural use. These three proposed land use changes, therefore, do not protect the prioritized area of high public value; this is an undue adverse impact, in that it violates a clear, written community standard (i.e. the Town Plan and Land Use Regulations) and generally available, reasonable mitigating steps (configuring the project so the usable agricultural area is on one lot and under an Open Space Agreement) have not been taken. This undue adverse impact can be mitigated by moving the easterly boundaries of Lot 1 and the portion to be conveyed to Halvorson to the west so that so that the agricultural areas are included in Lot 2.***

#### **Section 7.4—Compatibility with Agricultural Operations**

10. As discussed above in Findings 5, 6 and 9, much of the agricultural area is proposed to be kept on one lot and protected by an Open Space Agreement; however, some of the agricultural area will be removed from such use.
11. The agricultural area is over 200 feet from the existing and proposed buildings.
12. The agricultural area on Lot 2 will have two potential means of access: the driveway on Lot 2, and a deeded easement over the Fraser-Harris parcel.

***Conclusion 3: The project is configured in a way that will allow continued agricultural use of much of the agricultural area; however, some of the area will probably be removed from agricultural use.***

#### **Section 7.5—Facilities, Services & Utilities**

13. The project proposes to create one commercial lot (Lot #3) and two residential lots—Lot #1 is proposed to have a single family dwelling, and an accessory apartment is also allowed if wastewater disposal capacity is available; and Lot #2 is proposed to have a single family dwelling and an accessory apartment.

***Conclusion 4: The project will not create an unreasonable burden on existing or planned municipal or educational facilities or services and does not trigger the requirement for providing a fire pond and dry hydrant.***

#### **Section 7.6—Water Supply**

14. Individual wells are proposed for the three proposed lots. Two new wells are proposed to serve Lots 1 and 3, and an existing well is proposed to serve Lot 2.

15. There is no known shortage of suitable groundwater in the vicinity of the project.
16. The proposed well serving Lot 3 will require an easement over Lot 2.
17. The subdivision application includes a draft Declaration of Easements and Covenants, which includes a water supply system easement for Lot 3.
18. As proposed, the protective distances required by the Vermont Wastewater and Water Supply Rules are entirely on land owned by the applicant, so no easements from adjacent property-owners are needed.
19. As stated above, the proposed well for Lot 3 is within the agricultural area.

***Conclusion 5: It appears likely that a water supply can be developed for Lots 1 and 3 without adversely impacting existing water supplies in the vicinity.***

### **Section 7.7—Sewage Disposal**

20. The Town's wastewater consultant has viewed the soils where the wastewater disposal systems area proposed and has indicated in a memo dated March 7, 2013 that the soils are suitable for the proposed uses.
21. Two existing wastewater disposal systems serving the existing building are to be abandoned.
22. A new mound is proposed to serve Lot 2. This system is located on Lot 2, but a portion of the setback is located on Lot 3 and will need an easement. The system includes a curtain drain which is partially located on 3, and will produce outflow onto Lot 3. The curtain drain and outflow should have an easement.
23. Lots 1 and 3 are proposed to use a shared mound located on Lot 2. This will need an easement and a maintenance and inspection plan.
24. The subdivision application includes a draft Declaration of Easements and Covenants which includes all of the above easements except an easement for the curtain drain and outflow on Lot 3.
25. The applicant will need a Wastewater System and Potable Water Supply Permit for the project.
26. The existing septic tanks serving the building on Lot 2 are proposed to be incorporated into the new system. In accordance with Section 7.7 (B)(3), the tanks should be pumped and inspected by the applicant in the presence of the town's wastewater consultant.

***Conclusion 6: The parcel appears to have sufficient wastewater disposal capacity for the proposed lots. The project will need appropriate easements for the curtain drain and drainage outflow on Lot 3, a state permit, a maintenance and inspection plan for the shared system, and the existing septic tanks will need to be pumped and inspected.***

### **Section 7.8—Stormwater Management & Erosion Control**

27. The project will create two additional structures and associated parking, which result in three structures and parking on 14.2 acres. This is therefore a relatively low density development.
28. The project will not affect steep or very steep slopes.
29. Development is not proposed near surface water or other sensitive areas.
30. Potential run-off created by a prospective use on Lot 3 will be reviewed under Site Plan Review at such time as that use is proposed.

***Conclusion 7: Considering the above findings, erosion and stormwater run-off are not likely to create impacts beyond the immediate development site.***

**Section 7.9—Landscaping and Screening**

31. The application does not propose removing important specimen trees, or tree lines or wooded areas of particular natural or aesthetic value.
32. The development site is not adjacent to surface waters.
33. The project is within an existing neighborhood, and proposes uses that are similar to those already within the neighborhood.
34. The Proposed Site Plan depicts existing roadside trees that are to be retained.

***Conclusion 8: The project will not have a significant impact on existing vegetation, and will not have impacts that necessitate vegetative screening. The project is not of a density or intensity that warrants buffering from adjoining uses.***

**Section 7.10—Roads, Driveways & Pedestrian Access**

35. Due to its low density, the proposed subdivision will not create a significant increase in traffic on public roads in the vicinity of the project over what currently exists.
36. One new access is proposed (for Lot 3) and was approved by the Selectboard. The access for Lot 2 currently exists and will serve as a shared access for Lot 1. An easement is needed.

***Conclusion 9: The project is unlikely to create unreasonable traffic congestion or unsafe traffic conditions.***

**Section 7.11—Common Facilities, Common Land, & Land to be Conserved; and**

**Section 7.12—Legal Requirements**

37. No common or public land or facility is proposed.
38. The application proposes that 9.0 acres are to be put under an Open Space Agreement with the Town.
39. The proposed Open Space Area covers most, though not all, of the area on the parcel that has prioritized areas of high public value—i.e. land in active agricultural use, and prime agricultural soils.
40. As discussed above, the proposed drilled well for Lot 3 and the proposed wastewater disposal system serving Lots 1 and 3 take up some of the open space, and the wastewater disposal system is a mound and so cannot be used for agricultural purposes.
41. The draft Open Space Agreement does not specifically allow for the proposed wastewater system and well, nor does it preclude additional wastewater systems and wells.

***Conclusion 10: It is appropriate for the Open Space Area to include all of the agricultural area, i.e. the land in active agricultural use with prime agricultural soils, in order to protect this resource.***

***Conclusion 11: The draft Open Space Agreement should be revised to include provisions allowing the proposed well and wastewater disposal system, and disallowing without Selectboard approval, any new wells or wastewater disposal systems or enlargement of the proposed system. The Open Space Agreement will need to be reviewed and***

***approved by the Selectboard.***

*The applicable standards in Section 8.5 of the Regulations are reviewed below in Findings 42-50.*

**General Standards**

42. The proposed layout facilitates both village-style development and agricultural use of the most productive portion of the parcel, although portions of the parcel will be converted from agricultural use, as described above.
43. The project includes both residential and commercial uses.
44. The proposed density allocation is indicated in tables on the Final Plat and Proposed Site Plan.
45. The tables on the Final Plat and Proposed Site Plan indicate that Lot 2 will be allocated five acres of density. It therefore will have only enough density under the current Regulations to allow the existing structure to be converted into a single family dwelling and an accessory apartment, rather than a two-family dwelling, which would require 10 acres of density.
46. The tables allocate one acre of density to Lot 3. Section 4.12 of the Regulations allows a mixed-use non-residential uses with one acre of density.
47. The project could assign the remaining (unallocated) density of the 14 acre parcel (i.e. 3 acres) to Lot 3. This would allow affordable housing to be developed under the provisions of Section 4.4, should that be desired. Building coverage and lot coverage requirements would still need to be met.
48. As noted above, the building envelopes on the Final Plat does not correspond to the depictions of buildings on the Proposed Site Plan. As such, buildings could potentially be located at the rear of the lots, which conflicts with General Standard #8 in Section 8.5 of the Regulations
49. The proposed building envelope on Lot 3 could be appropriate if the parcel were to be developed with two buildings on either side of the parking lot.
50. The proposed layout does not seem to preclude the future use of renewable energy resources, although the building that will be constructed on Lot 3 would likely have greater potential for using passive or active solar features if it were to be sited in an east/west orientation, allowing more windows and roof area to have a southern exposure.

***Conclusion 12: The application fosters village-style development by orienting lots and buildings towards the road, and proposing a mixture of uses.***

***Conclusion 13: The allocation of four acres of density to Lot 3 seems to be appropriate and desirable. Density above that needed for the proposed commercial use could allow for the creation of affordable housing.***

***Conclusion 14: The proposed building envelopes on the Final Plat should be revised to match the Proposed Site Plan.***

***Conclusion 15: The large building envelope on Lot #3 is potentially appropriate, provided the development of Lot 3 progresses from west to east to ensure that the development is oriented to and relates to Spear Street rather than the parking lot.***

*The applicable standards in Chapter VII of the Regulations as they relate to the proposed boundary adjustment are reviewed below in Findings 51-53.*

### **General Standards**

51. The Halvorson parcel is currently 1.19 acres, and as a result of the proposed boundary adjustment will be 2.41 acres.
52. The Halvorson parcel currently has a non-conforming lot size, and it will continue to have a non-conforming lot size after the boundary adjustment.
53. Approximately half of the area that is proposed to be conveyed from 2877 Spear Street Associates to Halvorson has prime agricultural soil and has been used for a commercial agricultural operation. The proposed boundary adjustment will result in the division and likely loss of this area from agricultural use.

### **Decision**

Based on these Findings, the Planning Commission approves the Final Plan Application for the proposed Major Subdivision Planned Unit Development and Boundary Adjustment with the following conditions:

1. The survey plat by Stuart Morrow will be revised as follows:
  - A. The easterly boundaries of Lot 1 and the portion to be conveyed to Halvorson will be shifted to the west so that so that the agricultural areas are included in Lot 2, and these areas will also be included in the Open Space Area.
  - B. The table will be entitled "Density Allocation Table".
  - C. The table will indicate "remaining available density" for each lot.
  - D. The density allocated to Lot 3 may be 4 acres.
  - E. Building envelopes will be revised to match the Proposed Site Plan (sheet C1.0) by Civil Engineering Associates, Inc.
  - F. The dimensions of each side of the building envelopes and setbacks from the lot boundaries will be indicated.
  - G. A note will be added stating Condition #6 below.
2. The Proposed Site Plan (Drawing C1.0) as well as the related wastewater and water supply plans will be revised as follows
  - A. The easterly boundaries of Lot 1 and the portion to be conveyed to Halvorson will be shifted to the west so that so that the agricultural areas are included in Lot 2, and these areas will also be included in the Open Space Area.
  - B. The acreage to be conveyed from 2877 Spear Street Associates to Halvorson will be revised to match the Final Plat.
3. One digital copy (pdf), two paper copies (one 11"x 17" and one full size) and a mylar (18" x 24") of both the survey plat and the Proposed Site Plan (sheet C1.0) by Civil Engineering Associates, Inc. as amended by Conditions #1 and #2 will be submitted to the Planning Commission for review and signature (of the mylars) within 160 days. The applicant will record the signed mylars in the Charlotte Land Records within 180 days.
4. Prior to the submission of the mylars in accordance with Condition #3 above, the applicant will complete the following steps:
  - A. Obtain a Wastewater Disposal and Potable Water Supply Permit for the project.
  - B. Obtain any other state permits that may be needed.
  - C. Submit a letter from the surveyor indicating he has set the survey markers in the

- field as indicated on the plat
- D. Execute and record the Open Space Agreement (with the mylars) after review and approval by the Selectboard and Town Attorney.
  - E. Execute and record the Declaration of Easements and Covenants (with the mylar) with the following additional easements:
    1. An access and utilities easement (if needed) serving Lot 1, located on Lot 2.
    2. An easement for the curtain drain and outflow from the curtain drain serving Lot 2 onto Lot 3.
  - F. Submit a maintenance and inspection plan on letterhead of the wastewater system designer for the proposed shared wastewater system to serve Lots 1 and 3.
5. Structure siting on Lot 3 shall be approximately as depicted on the Proposed Site Plan. A second structure may be added easterly of the parking area, however a Building Permit shall not be issued for the easterly building until a Certificate of Occupancy has been issued for the westerly building.
  6. No new pole-mounted light fixture will be taller than 8' off the ground, and no new building-mounted light fixture will be higher than 15' off the ground. Fixtures will be shielded to direct light downward, and will not direct light onto adjacent properties or roads, and will not result in excessive lighting levels that are uncharacteristic of the neighborhood.
  7. All new utility lines will be underground.
  8. All new driveways and parking areas will be surfaced with non-white crushed stone.
  9. The land that is to be conveyed from 2877 Spear Street Associates to Halvorson will be conveyed within 365 days.
  10. Once the land is conveyed from 2877 Spear Street Associates to Halvorson, it will merge with the remainder of the Halvorson's parcel and cannot be conveyed separately unless allowed by an action of the Planning Commission.

**Additional Conditions:** All plats, plans, drawings, documents, testimony, evidence and conditions listed above or submitted at the hearing and used as the basis for the decision to grant permit shall be binding on the applicant, and his/her/its successors, heirs and assigns. Projects shall be completed in accordance with such approved plans and conditions. Any deviation from the approved plans shall constitute a violation of permit and be subject to enforcement action by the Town.

**This decision may be appealed to the Vermont Environmental Court by the applicant or an interested person who participated in the proceeding. Such appeal must be taken within 30 days of the date of the 4<sup>th</sup> signature below, pursuant to 24 V.S.A. Section 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.**

**Members Present at the Public Hearing on March 7, 2013:** Jeff McDonald, Jim Donovan, Peter Joslin, Linda Radimer, Gerald Bouchard and Ellie Russell

**Members Present at the Public Hearing on June 6, 2013:** Jeff McDonald, Peter Joslin, Linda Radimer, Gerald Bouchard and Marty Illick

**Vote of Members after Deliberations:**

The following is the vote for or against this Findings of Fact and Decision as written:

- 1. Signed:\_\_\_\_\_ For / Against Date Signed:\_\_\_\_\_
- 2. Signed:\_\_\_\_\_ For / Against Date Signed:\_\_\_\_\_
- 3. Signed:\_\_\_\_\_ For / Against Date Signed:\_\_\_\_\_
- 4. Signed:\_\_\_\_\_ For / Against Date Signed:\_\_\_\_\_
- 5. Signed:\_\_\_\_\_ For / Against Date Signed:\_\_\_\_\_
- 6. Signed:\_\_\_\_\_ For / Against Date Signed:\_\_\_\_\_
- 7. Signed:\_\_\_\_\_ For / Against Date Signed:\_\_\_\_\_

**APPENDIX A**

The following items were submitted in association with the application:

- 1. A Final Plan application form and appropriate fee.
- 2. A letter from David Fassler to Thomas Mansfield dated August 18, 2012 authorizing Erik Hoekstra to act on behalf of 2877 Spear Street Associates with regard to the application.
- 3. A letter from Timothy S. Halvorson to Thomas Mansfield dated February 6, 2013 authorizing Erik Hoekstra to represent Mr. Halvorson with regard to the Boundary Adjustment application.
- 4. A survey plat by Stuart J. Morrow. entitled “Final Plat, Minor Subdivision, Property of 2877 Spear Street Associates, LLC, Charlotte, Vermont” dated April, 2013, no revisions.
- 5. A packet of plans by Civil Engineering Associates, Inc. entitled “2877 Spear Street Associates, Proposed Subdivision Plan, Spear Street Extension, Charlotte, Vermont” dated May, 2013, no revisions, with the following plan titles:
  - A. “Proposed Site Plan,” Drawing Number C1.0
  - B. “Existing Conditions,” Drawing Number C1.1
  - C. “Overall Wastewater Plan,” Drawing Number C2.0
  - D. “Overall Water Supply Plan,” Drawing Number C2.1
  - E. “Lot #1 Wastewater Plan,” Drawing Number C2.2
  - F. “Lot #2 Wastewater Plan,” Drawing Number C2.3
  - G. “Wastewater Details,” Drawing Number C3.0
- 6. A draft document entitled “Open Space Agreement.”
- 7. A draft document entitled “Declaration of Easements and Covenants.”
- 8. Highway Access Permit HAP-13-02.
- 9. A Project Review Sheet from the Vermont Department of Environmental Conservation dated 4/29/2013.