

CHARLOTTE PLANNING COMMISSION

RECONSIDERED AND RESTATED FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

Marion M. Bausch

**Final Plat Hearing
For A
Two-Lot Subdivision
Application # PC-05-18**

Background

Sketch Plan Review (PC-05-12) was held on March 31 and April 21, 2005, and a site visit was conducted on April 21 prior to the meeting. The Sketch Plan Letter was issued on May 20, 2005. A decision for this application was issued on July 7, 2005 (recorded in volume 157, pages 204-206). In a letter dated July 19, 2005, the applicant requested reconsideration of the decision. At its meeting on July 28, 2005 the Planning Commission voted to reopen the final plat hearing after appropriate public notice. The hearing was reopened on August 18, 2005. This Findings of Fact and Decision is the result of the reconsideration.

Application

The application consists of:

1. An application form and appropriate fee.
2. A map entitled "Subdivision Plat, Marion Bausch, Bingham Brook Road—Meadowside Drive, Charlotte, Vermont" by Summit Engineering, Inc. dated 1/12/05, no revisions.
3. A wastewater disposal design entitled "Sanitary Design, Marion Bausch, Bingham Brook Road, Charlotte, Vermont" by Frank R. O'Brien dated 9/10/91, no revisions. The plan was printed by Ridge Consulting Engineers on January 28, 2005.

Public Hearing

A public hearing for this application was opened on May 19, 2005, and continued on June 30, 2005. The following persons were present and participated on May 19: Marion Bausch, Lisa Simon, Chris Von Trapp, and Clark Hinsdale, Jr. The following persons were present and participated on June 30: Marion Bausch, Chris Von Trapp, Clark Hinsdale, Jr., Clark Hinsdale, III, and Jack Galt.

The hearing was reopened on August 18, 2005, for which Marion Bausch was present; there were no other interested parties present. A site visit was conducted prior to the hearing at which Marion Bausch and Chris Von Trapp were present.

Regulations in Effect

Town Plan as amended March 2002
Zoning Bylaws as amended March 2002

Subdivision Bylaws as amended March 1995

Findings

1. Prior to the hearing on May 19th the applicant submitted the following:
 - A. A letter from Doug Hewitt of Summit Engineering to Dean Bloch dated May 2, 2005; and
 - B. A memo from the applicant to the Charlotte Planning Commission re: Driveway Access to Subdivision dated May 4, 2005.
2. Prior to the hearing on June 30th the applicant submitted the following:
 - A. A revised plat by Summit Engineering with a revision date of 6/7/05;
 - B. A second revised plat by Summit Engineering with a revision date of 6/17/05;
 - C. A memo from Jeffrey Severson, Consulting Ecologist, to Marion Bausch dated June 1, 2005;
 - D. A memo from Jeffrey Severson, Consulting Ecologist, to Larry Young of Summit Engineering dated June 1, 2005;
 - E. A sketch of wetlands on the subject parcel by Jeffrey Severson (unsigned); and
 - F. A memo from the applicant to the Charlotte Planning Commission re: Two Lot Subdivision dated June 10, 2005.
3. Prior to the hearing on August 18th the applicant submitted a letter from Marion Bausch to Jeffrey McDonald dated August 12, 2005.
4. The application proposes the subdivision of a 13.57 acre parcel into two lots, one of which (Lot A) would have the applicant's existing dwelling, and one of which (Lot B) would be a building lot.
5. The subject parcel has 586 feet of frontage on Bingham Brook Road. The subject parcel also has 1005 feet of frontage on Meadowside Drive, which is a private road, and in which the applicant holds no rights or property interests.
6. The applicant received a wastewater disposal permit from the State (EC-4-1615).
7. The Town's septic consultant provided a review dated May 16, 2005, which indicates that since a State permit has been issued, and site requirements have been maintained, that the septic design should be considered acceptable.
8. The District Wetland Ecologist (from the State) has visited the site and has indicated that the pond is the only Class II wetland on the parcel. Staff from the U.S. Army Corps of Engineers has also visited the site, and indicated that the proposed driveway does not require a permit from the Army Corps, because it would involve less than 3,000 square feet of impact to Class III wetlands.
9. The applicant stated at the hearing on August 18th that the pond was dug by the herself and her husband more than 30 years ago, and that prior to digging the pond the land was dry. The applicant further stated that the pond is filled by run-off from the adjoining hill to the east.
10. At the site visit on August 18th, the Planning Commission found that the southerly and easterly banks of the pond (adjacent to the building envelope on Lot 2) are firm and dry, and not marshy.
11. The plat submitted with the original application depicts a building envelope 90 feet long (east to west), and 80 feet wide on the east side and 66 feet wide on the west side.
12. The Planning Commission noted at the site visit on August 18th that the easterly portion

of the building envelope is composed of steep ledge, which would be very difficult to build on.

13. In reconsidering Condition #1 the Findings of Fact and Decision dated July 7, 2005, the Planning Commission finds that because of the location of the ledge to the east, and the property line (and setback) to the south, creating a 75 foot buffer (or setback) from the pond would result in a building envelope approximately 40' x 40'. The Planning Commission finds this unduly restrictive.
14. The parcel is wooded, and is shown as having *forest habitat* on the Charlotte Wildlife Map. Forest habitat is also on adjoining parcels. A *wildlife crossing* is also shown on the Charlotte Wildlife Map on the north side of the parcel. The applicant has indicated that the northern woods on the parcel provide good habitat for song birds.
15. Although the Planning Commission discourages the siting of dwellings in forest habitat if other options exist, there are no alternative sites on the parcel that would have substantially less impact on the habitat than what is proposed.
16. Bingham Brook Road is indicated as a "Most Scenic Road" on Map 13 in the Charlotte Town Plan. The proposed access to Lot B is via a right-of-way over Lot A from Bingham Brook Road.
17. The applicant originally proposed a separate access for Lot B. The applicant applied for and received a Highway Access Permit (HAP-05-05) from the Selectboard for the proposed new access; a condition of the permit requires the new curb-cut be used as a shared access for Lots A and B, and that the existing curb-cut be eliminated.
18. The applicant has revised the proposed access plan with the plat dated 6/7/05, which shows both lots sharing the existing curb-cut.
19. A shared access will minimize and mitigate the impact to the scenic qualities of the road.
20. In the applicant's memo dated June 10, 2005, she proposes to improve sight distance at the existing curb-cut by taking down the bank (ledge) and removing trees adjacent to the road. Some of the ledge and trees which the applicant proposes to remove are on her property and some are within the town road right-of-way.
21. The proposed removal of ledge and trees to the west of the shared access will improve the sight-distance to approximately 200 feet westward from the access.
22. Prior the hearing on August 18th, the applicant had the ledge and trees removed as proposed. After the ledge and trees were removed, the Town Planner measured more than 200 feet of sight distance westward from the driveway. The Planning Commission therefore finds that the Condition #6 of the original Findings of Fact and Decision dated July 7, 2005 is no longer necessary.
23. The Planning Commission recognizes that a buyer or owner of Lot B may prefer to obtain an access right-of-way to the lot via Meadowside Drive rather than use the approved access and driveway easement. The Planning Commission finds that this would be a suitable and appropriate access, and would in fact be preferable since it would reduce the forest and wetland impact, and the sight distance at Meadowside Drive is greater than the sight distance at the approved (existing) driveway, even with the ledge and trees removed.
24. The proposed driveway to Lot B runs through a Class III wetland (labeled Wetland # 3 on the plat).
25. While the impact to the wetland is not desirable, this is the only possible route for the driveway, since there is steep ledge between Wetland #3 and the existing driveway. Nevertheless, the driveway would create less impact to the wetland if it were to be shifted

closer to the ledge, thereby keeping more of the wetland in a larger contiguous body.

Decision

Based on these Findings, the Planning Commission approves Final Plat Application PC-05-18 with the following conditions:

1. The plat will be revised as follows:
 - A. The building envelope on Lot B will be labeled as “Building Envelope” rather than “Proposed Approximate House Site”.
 - B. Setbacks for the building envelope on Lot B of 50 feet from the edge of the pond and 50 feet from the southerly property line will be indicated, and the dimensions of all sides of the building envelope will be labeled. The building envelope will be no larger in size than 7,200 square feet.
 - C. The building envelope on Lot B may be shifted to the west, so that it does not include the steep ledge.
 - D. A note will be added as follows: “The pond is considered a Class II wetland under the Vermont Wetland Rules.”
2. Two paper copies (one full size and one 11”x 17”) of the plat, as amended by Condition 1 above, will be submitted to the Planning Commission for review within 60 days; the applicant will record mylars (18” x 24”) of the plat and the wastewater disposal design (after being endorsed by the Planning Commission) in the Charlotte Land Records within 90 days.
3. Prior to the submission of the mylars in accordance with Condition #2 above, the applicant shall submit a letter from the surveyor indicating that s/he has set the survey pins in the field as indicated on the survey.
4. The driveway to Lot B will be sited directly adjacent to the ledge to the west, so that it minimizes the impact to Wetland #3.
5. Ledge and trees to the west of the shared access for Lots A and B will be removed to provide at least 200 feet of sight distance prior to the submission of an application for a Certificate of Occupancy for Lot B.
6. The applicant and future property owners will maintain vegetation in the vicinity of the shared access in a trimmed condition to provide at least 200 feet of sight distance from the driveway.
7. No pole-mounted light fixture will be taller than 8’ off the ground, and no building-mounted light fixture will be taller than 20’ off the ground. Fixtures will be shielded to direct light downward.
8. All new utility lines will be underground.
9. Driveways shall be surfaced with non-white crushed stone.
10. If a buyer or owner of Lot B wishes to access Lot B via Meadowside Drive and is able to obtain a right-of-way, a subdivision amendment will not be necessary, however a driveway plan indicating appropriate setbacks to the septic area and pond will be submitted to staff for administrative review. Access to Lot B will be either via the approved driveway or via Meadowside Drive (if a right-of-way is obtained), but not both.

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 4th 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 May 19th: Jim Donovan, Linda Radimer, Robin Pierce, John Owen and Peter Joslin

Members Present at the Public Hearing on June 30th: Jeff McDonald, Jim Donovan, Linda Radimer, Robin Pierce, John Owen, Peter Joslin and Robert Mack

Members Present at the Public Hearing on August 18th: Jeff McDonald, Jim Donovan, Linda Radimer, Robin Pierce, Peter Joslin and Robert Mack

Vote of Members after Deliberations:

The following is the vote for or against the application, with conditions as stated in this Decision:

- 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:_____