

# CHARLOTTE PLANNING COMMISSION

## FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

**Henry and Berta Geller**

**Final Plan Application**

**For A**

**Subdivision Amendment**

**Application # PC-09-25**

### **Background**

The parcel was subdivided (by Veilleux) in 1983 and reaffirmed on December 16, 1997. Sketch Plan Review for the current project was held on September 18, 2008, at which time the project was classified as a Subdivision Amendment.

### **Application**

Materials submitted with the applications are listed in Appendix A.

### **Public Hearing**

A public hearing for this application was held on September 17, 2009. Henry and Berta Geller were present representing the applicant. Troy and Augusta Krahl, prospective buyers of Lot B, and William Elliott, an adjoining property owner, were also present. There were no other interested parties present and there were no written submissions from other interested parties.

### **Regulations in Effect**

Town Plan, amended March, 2008

Land Use Regulations adopted March, 2009.

Recommended Standards for Developments and Homes adopted September, 1997

### **Findings**

1. The application has three components:
  - A. Eliminate one lot from the previously approved three-lot subdivision, thereby combining Lots B and C into Lot B;
  - B. Move the boundary between Lot A and Lot B; and
  - C. Move the access right-of-way to Lot B;
2. Areas of high public value on or near the parcel include:
  - A. Agricultural soils—there are statewide agricultural soils on much of the parcel.
  - B. Surface water—there is a small pond on the eastern portion of existing Lot C.
  - C. Wildlife habitat—the wooded portion of the parcel is indicated as forested wildlife habitat on Map 6 of the Town Plan.
  - D. Conserved land on adjoining parcels—portions of the Post and Zweber properties to the east are protected via, respectively, an open space agreement with the Town and a grant of development rights to the Charlotte Land Trust.

3. Lot A (which includes the applicant's dwelling) is proposed to increase in size from 5.11 acres to 6.96 acres. Lot B is proposed to increase in size from 5.1 acres to 11.96 acres. Lot C is proposed to be eliminated.
4. The proposed access to Lot B is partially located on parcels owned by Clark and Elliott. The application includes draft Easement Deeds from Clark and Elliott to Geller to provide access and underground utilities to Lot B.
5. The proposed access to Lot B is partially co-located on Clark Road, which is a private road that provides access to the Baldwin, Post and Ekman/Coogan parcels. Warranty deeds to Baldwin, Post and Ekman/Coogan include non-exclusive access rights-of-way between their respective parcels and McGuire Pent Road. Therefore, Clark and Elliott are allowed to convey the proposed right-of-way to Geller (Lot B) in the same location as the Baldwin, Post and Ekman/Coogan rights-of-way.
6. A portion of the proposed access to Lot B is located on Lot A. The draft Warranty Deed includes an easement and right-of-way for ingress and egress and underground utilities.
7. The application includes a Roadway Agreement and Waiver, however, there are minor technical errors in the document.
8. The proposed access is located within forested wildlife habitat depicted on Map 6 of the Town Plan.
9. The applicant has proposed the following mitigation:
  - A. The number of lots has been reduced from three to two. The applicant has also indicated that a condition restricting further subdivision of Lot B is acceptable.
  - B. A building envelope that is relatively small in size is proposed on Lot B. The envelope is located on the western portion of Lot B, and therefore reduces impacts to the eastern portion of the parcel, which is the most remote portion of the parcel and which hosts "core habitat" according to the Review of Wildlife Considerations by Jesse Mohr which was submitted with the application. The eastern portion of the parcel is also adjacent to land that is currently protected, and therefore the creation of open space on the eastern portion of Lot B via the location of the building envelope to the west complements these protected areas.
10. The application adequately mitigates the impacts of moving the location of the access, and therefore does not create an undue adverse impact.
11. The Charlotte Fire Chief has reviewed the proposed access via Clark Road and submitted recommendations for improving Clark Road to facilitate emergency access.
12. The proposed Warranty Deed does not indicate, and there appears to be no other document that indicates, how costs for the maintenance of the portion of the access right-of-way that is to be shared between Baldwin, Post, Ekman/Coogan and Lot B are to be allocated.
13. A Wastewater System and Potable Water Supply Permit (WW-138-0806) has been issued for the lots created by the previously approved subdivision.

## Decision

Based on these Findings, the Planning Commission approves the Final Plan Application for the proposed Subdivision Amendment with the following conditions:

1. The survey plat will be revised as follows:
  - A. In all notes:

- i. "Lot 1" will be replaced with "Lot A"
    - ii. "Lot 2" will be replaced with "Lot B"
  - B. In Note 7, the widths of the proposed access and utility easements will be added.
  - C. Distance dimensions of the proposed building envelope on Lot B will be added, and distances to the two closest lot boundaries will be indicated.
2. Two paper copies (one full size and one 11"x 17") and a mylar (18" x 24") of the plat, as amended in accordance with Conditions #1 above, will be submitted to the Planning Commission for review within 160 days; the applicant will record the mylar of the plat in the Charlotte Land Records within 180 days.
3. Prior to the submission of the mylar in accordance with Condition #2 above, the applicant shall complete the following steps:
  - A. Submit a letter from the surveyor indicating that he has set the survey pins in the field as indicated on the survey. If the survey pins cannot be set at this time because of frozen ground, the applicant shall submit a letter from the surveyor indicating that he will set the pins when the ground thaws and has been paid to do so.
  - B. Record the following documents:
    - i. Executed easement deeds from Stephen and Elizabeth Clark and William and Lisa Elliott.
    - ii. Executed Roadway Agreement and Waiver with revisions as required by the Town Planner.
  - C. Confirm with the Zoning Administrator that Wastewater Disposal and Potable Water Supply Permit does not need to be amended, due to the revised lot configuration. If a permit amendment is needed, the amendment shall be obtained prior to submitting the mylar.
4. Lot B will be conveyed with a Warranty Deed essentially in the same form as submitted, but the following edits will be addressed as indicated:
  - A. In the final paragraph on page 1, "and" will be added after "egress."
  - B. In the paragraph with a tree-cutting restriction, "Lot 2" will be replaced with "Lot B."
  - C. A provision for maintenance of the shared access right-of-way with Baldwin, Post and Ekman/Coogan will be either included within the Warranty Deed or addressed in a separate document.
  - D. A reference to the Roadway Agreement and Waiver associated with this application will be added.
  - E. Blank spaces for recording information will be so completed.
5. Prior to the submission of a Zoning Permit application for Lot B, wooden stakes will be set at the corners of the building envelope on that lot.
6. Prior to the submission of a Certificate of Occupancy application for Lot B, the improvements recommended by the Charlotte Fire Chief for Clark Road and the proposed driveway will be completed. The application for a Certificate of Occupancy will include a letter from an appropriately licensed engineer certifying that the improvements have been so constructed.
7. All new driveways shall be surfaced with non-white crushed stone.
8. All new utility lines will be underground.
9. Lot B shall not be subdivided. Minor changes to lot boundaries and easements may be allowed upon application to and approval by the Planning Commission.

- 10. No pole-mounted light fixture will be taller than 8’ off the ground, and no building-mounted light fixture will be taller 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.

**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 September 17, 2009:** Peter Joslin, Linda Radimer, John Owen, Paul Landler, Ellie Russell

**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:\_\_\_\_\_

**APPENDIX A**

The following items were submitted in association with the application:

- 1. An application form for a Subdivision Amendment and appropriate fee.
- 2. A survey by Stuart Morrow entitled “Final Plat Subdivision Modification, Property of Henry and Berta Geller, 147 Clark Road, Charlotte, Vermont” dated July, 2009, no revisions.
- 3. A plan by Stuart Morrow entitled “Site Plan, Property of Henry and Berta Geller,

- Charlotte, Vermont” dated July, 2009, no revisions.
4. A plan by Lincoln Applied Geology entitled “Geller, 147 Clark Road, Charlotte, Vermont, Overall Site Plan with Lot B and C Development Plan” dated April 11, 2008, no revisions.
  5. A copy of the specification sheet from the Charlotte Volunteer Fire and Rescue Service, Inc. Recommended Standards for Developments and Homes for an access road typical section and plan.
  6. A memo to the Charlotte Planning Commission from Jesse Mohr dated 7/21/09 regarding “Review of Wildlife Considerations in the 14 Clark Road Subdivision Amendment.”
  7. A draft warranty deed for Lot B.
  8. A draft easement deed from Steven and Elizabeth Clark to Henry and Berta Geller for ingress and egress and placement of underground utilities.
  9. A draft easement deed from William and Lisa Elliott to Henry and Berta Geller for ingress and egress and placement of underground utilities.
  10. A draft Roadway Agreement and Waiver.
  11. A memo to Dean Bloch from Henry and Berta Geller dated July 22, 2009 regarding “Application for Subdivision amendment.”
  12. A memo entitled “Discussion of issues that were brought up at the Sketch Plan Review in September, 2008.”
  13. An e-mail from Christopher Davis, Chief, Charlotte Volunteer Fire Department, to Henry Geller dated June 19, 2009 regarding “Clark Road required improvements for proposed Geller subdivision.”
  14. A statement of compliance dated July 22, 2009 from Henry Geller and Berta Geller.