

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

**Allan and Gertrude Jordan
298 Spear Street**

**Final Plan Hearing
For A**

**Six-Lot Subdivision and Planned Residential Development
Creating Four Lots for Affordable Housing
Application # PC-10-29**

Background

The Planning Commission conducted Sketch Plan Review for the proposed subdivision on August 20 and October 1, 2009, at which time the project was classified as a Major Subdivision and Planned Residential Development for Affordable Housing. The hearing for the Preliminary Plan Application (PC-09-36) was held on January 7, 2010, and a preliminary decision was issued on February 18, 2010. A hearing for an amended Preliminary Plan Application (PC-10-16) was held on June 3, 2010 and a decision for that application was issued on June 24, 2010.

Application

Materials submitted with the application are listed in Appendix A.

Public Hearing

The Planning Commission held a public hearing for this application on August 5, 2010. Allan Jordan, Gertrude Jordan, and Larry Young of Summit Engineering were present representing the applicant. Tony Stout, representing Green Mountain Habitat for Humanity, the prospective buyer of four of the proposed lots, and Marty Illick and Andrea Morgante, both representing the Lewis Creek Association, provided verbal and written comments at the hearing. Peter Mittelstadt, a resident who lives in the vicinity of the project, submitted an e-mail in advance of the hearing.

Regulations in Effect

Town Plan amended March, 2008

Land Use Regulations amended March, 2009

Recommended Standards for Developments and Homes adopted September, 1997

Findings

1. The applicant owns an 11 acre parcel at 298 Spear Street. The parcel has an existing single family dwelling and outbuildings located on it. The parcel is located within the Rural District and the Conservation District. The parcel has not been subdivided since the Town adopted subdivision bylaws.
2. The application proposes to create six lots from the parcel. Lot 1 is proposed to include

the existing dwelling and outbuildings. Lots 2-5 are proposed to be building lots that are to be conveyed to Green Mountain Habitat for Humanity (öHabitatö), which will develop three perpetually affordable single family dwellings and one perpetually affordable two-family dwelling. Lot 6 is to be a common lot associated with lots 2-5.

Applicable standards of Section 4.4 (Affordable Housing) of the Charlotte Land Use Regulations (“Regulations”) are reviewed in Findings 3-9.

3. Section 4.4(D)(1) of the Regulations indicates that in the Rural District, a maximum of five dwelling units created within an affordable housing project can have a density and minimum lot size of one acre (for new construction).
4. The application, which proposes five new affordable dwellings and one existing market rate dwelling, requires ten acres of density. This density can be accommodated by the applicant’s 11 acre parcel.
5. The size of proposed lots may be reduced below the minimum lot size as provided in Chapter VIII of the Regulations (Planned Residential and Planned Unit Development).
6. Habitat is a well established not-for-profit organization that develops and administers affordable housing projects within northwestern Vermont.
7. The affordability of Lots 2-5 is to be maintained via a Housing Subsidy Covenant that is to be executed by Habitat and the buyer/resident of each lot at the time of conveyance of those lots.
8. The Housing Subsidy Covenant includes definitions of öaffordable,ö öeligible household,ö and ömedian income,ö that are compatible with the Regulations.
9. The Housing Subsidy Covenant includes an option allowing Habitat to repurchase each lot if necessary to maintain the affordability of the lots.

Applicable standards in Chapter VII of the Regulations are reviewed in Findings 10-53.

Areas of High Public Value—Sections 7.2 and 7.3

10. The parcel includes or is adjacent to the following areas of high public value:
 - A. Land in active agricultural use: the parcel had a greenhouse business located on it for many years; this business is no longer operating and most of the greenhouse structures have been removed (from observation and the applicant’s testimony).
 - B. Primary agricultural soils: there are prime soils located near Spear Street, and state soils on the rest of the parcel (from NRCS data).
 - C. Flood Hazard Areas: the FEMA Flood Insurance Rate Map does not include a flood hazard area on the LaPlatte River or on Mud Hollow Brook. The plans submitted with the application depict an öapproximate 100 year floodö boundary calculated by an appropriate licensed professional engineer specifically for the subject parcel. The Vermont Department of Environmental Conservation (öDECö) has also calculated a hypothetical Zone A special flood hazard area for a 100 year flood for the river corridor. The application provided sufficient information for the Planning Commission to accept the applicant’s delineation of the 100 year flood hazard area (from application, a draft map submitted by DEC).
 - D. Surface waters, wetlands and associated setbacks and buffer areas: The LaPlatte River creates the northern and western boundaries of the applicant’s parcel, and Mud Hollow Brook creates the southern parcel boundary. Section 3.15(A) of the Regulations requires a 100 foot setback to structures, wastewater disposal systems

and impervious surfaces from streambanks, and Section 3.15(C) requires a 25 foot stream bank buffer, within which vegetation is to be maintained and fertilizers and pesticides should be avoided. The application indicates Class 2 wetland associated with both the LaPlatte River and Mud Hollow Brook, for which the state requires a 50 foot buffer (from State surface water data and the application).

- E. Wildlife habitat: Town Plan map 6 indicates a wildlife linkage runs through the parcel in an east-west orientation and covers most of the parcel (from Town Plan).
 - F. Water supply source protection area: Map 10 in the Town Plan depicts a surface water source protection area for the Champlain Water District on much of the parcel (from Town Plan).
 - G. Scenic roads: Map 13 in the Town Plan indicates that Spear Street in the vicinity of the parcel is a most scenic road and has wildlife value areas adjacent to the road (from Town Plan).
11. Considering the resources on and adjacent to the parcel, the Planning Commission finds that the following are the most important areas of high public value: potential flood (inundation) hazard areas, surface waters, wetlands, associated setback and buffer areas, the wildlife linkage associated with the surface waters, and the scenic characteristics of Spear Street. These are the resources that most strongly characterize the property, and which the Planning Commission feels are most important to protect.
 12. The proposed development will have some impact on the wildlife linkage; however, this impact has been minimized by the clustering of the building envelopes. The building envelopes and project infrastructure will not have an undue adverse impact on the prioritized areas of high public value.
 13. Representatives from Lewis Creek Association stated in testimony that there are fluvial erosion hazard areas on the parcel; and they also stated that the proposed wastewater disposal area is located in an area prone to fluvial erosion hazard.
 14. The information provided by representatives of the Lewis Creek Association indicates that the existing dwelling on the parcel is also located within a fluvial erosion hazard area.
 15. Any mitigation, protection, or armoring of the streambank that would potentially be necessary to protect the proposed wastewater disposal area would be likely to also be employed to protect the existing dwelling. Consequently, the proposed wastewater system will not create an undue adverse impact on the LaPlatte River.

Compatibility with Agricultural Operations—Section 7.4

16. The land where the subdivision is proposed is no longer used for a greenhouse operation.
17. The closest neighboring parcel that is actively farmed is on the east side of Spear Street, approximately 500 feet from the project. The Laberge farm to the west is separated from the project by approximately 1,000 feet, which includes the LaPlatte River and extensive vegetation.

Facilities, Services & Utilities—Section 7.5

18. The development will be served by a private road. [To clarify the use of the term "road," the Land Use Regulations define "road" as a right-of-way serving three or more lots; similarly, the E-911 Ordinance requires the naming of an access that serves three or more dwellings. However, the Fire and Rescue Recommended Standards for Developments and Homes ("Fire and Rescue Standards") provide specifications for "driveways," which serve 1-5 dwellings, and "access roads," which serve six or more dwellings.]
19. The application includes a road cross section which complies with the Fire and Rescue

Standards.

20. The proposed road includes a 180° turn-around at its western end, which complies with the Fire and Rescue Standards.
21. The project does not meet the threshold for needing a dry hydrant, as less than six new dwellings are proposed. However, there is already a dry hydrant fed by Mud Hollow Brook on the parcel.
22. The site plan depicts a proposed play area on Lot 6, which is a common lot. Most of the common lot is to be designated as "open space" which will be placed in a conservation easement as discussed below.

Water Supply—Section 7.6

23. The application indicates Lot 1 is to be served by an existing well, and Lots 2-5 will be served by two new drilled wells.
24. The proposed Declaration of Planned Community includes a provision for maintaining the water system.
25. Neither the draft Declaration of Planned Community nor the sample conveyance deed for Lot 2 include an easement for each lot to use the water system.
26. The project will need a Wastewater Disposal and Potable Water Supply Permit.

Sewage Disposal—Section 7.7

27. The application proposes one shared wastewater disposal system to serve Lots 2-5.
28. The application includes a letter from Larry Young of Summit Engineering that states the existing septic system serving the existing house is functioning properly and a new 1,000 gallon septic tank was installed in 2008.
29. The Town's consultant reviewed soils on November 9, 2009 and indicated in a memo that the soils are acceptable. He reviewed an initial wastewater disposal design as indicated in a memo dated February 1, 2010, and he reviewed additional information on August 2, 2010 and indicated in a memo of that date that the proposal appears to comply with the current regulations.
30. The proposed Declaration of Planned Community includes a provision for maintaining the wastewater system.
31. Neither the draft Declaration of Planned Community nor the sample conveyance deed for Lot 2 include an easement for each lot to use the wastewater system.
32. The project will need a Wastewater Disposal and Potable Water Supply Permit.

Stormwater Management & Erosion Control—Section 7.8

33. The Site and Grading Plan submitted with the application depicts proposed silt/construction fencing.
34. The application indicates the project will not be required to apply for coverage under the State's General Permit because the site is less than one acre.
35. The application indicates the project can meet the standards for a low risk site under the state stormwater program. The project will need a Stormwater Construction Permit.

Landscaping and Screening—Section 7.9

36. The application proposes two rows of coniferous trees to screen the project from Spear Street.
37. The Planning Commission finds that the proposed screening of the project from Spear Street is not necessary, however landscaping of the proposed development with "street trees" is necessary and appropriate to establish a tree canopy along the private roadway to benefit the proposed neighborhood. The street trees will also mitigate the impact of the

project on the view from Spear Street.

38. Plans submitted with the application indicate two street trees are proposed.
39. The Planning Commission finds the proposed street trees are not sufficient to establish a tree canopy.

Roads, Driveways & Pedestrian Access—Section 7.10

40. As described above, the development will be served by a private roadway.
41. The curb-cut and entryway of the proposed roadway already exist, as they were used for the previous greenhouse operation.
42. The proposed roadway is not located within areas of high public value.
43. The roadway will be visible from Spear Street, which is depicted as a “most scenic road” on Map 13 of the Town Plan.
44. The proposed roadway design meets the standards in Section 3.2 of the Regulations, however, maintaining a non-white gravel surface for the roadway and adding street trees within the roadway corridor will be important for preserving the scenic view along Spear Street.
45. The draft Declaration of Planned Community includes a provision for maintaining the road.
46. The sample conveyance deed for Lot 2 includes an easement for vehicular and pedestrian use of the roadway.
47. The roadway will need to be named in accordance with the 911 Ordinance.

Common Facilities, Common Land, & Land to be Conserved—Section 7.11

48. Lot 6 is a common lot of 4.5 acres which includes the community wastewater disposal area and a play area, and it also includes land that has prioritized areas of high public value indicated in Finding 11.
49. The application includes a proposed conservation easement to be held by Vermont River Conservancy which includes extensive areas of high public value on Lot 6, which is the common lot, and also a large portion of Lot 1, which is to be retained by the applicant.
50. The area to be conserved is clearly delineated and labeled on the proposed plat.
51. The draft conservation easement includes provisions for managing the areas of high public value on both Lot 1 and Lot 6.
52. The draft Declaration of Planned Community does not include any provisions for maintaining the proposed play area.
53. Section 5.01(b) of the Declaration of Planned Community references Exhibit A, however, Exhibit A does not include the permits and approvals as indicated.

Applicable standards in Section 8.4 of the Regulations are reviewed in Findings 54-59.

General Standards

54. The Planning Commission finds that the project will minimize the adverse effects upon the resources identified as significant in Table 7.1 in the Regulations by clustering and carefully siting the proposed development.
55. The project layout allows for the potential use of solar energy by orienting the dwellings so that gable ends are facing east and west and roofs are south-facing.
56. The development area is appropriate for the proposed density.

Rural District Standards

57. The application is designed as a Conservation Project, as provided in Section 8.4(C)(1) of the Regulations.

58. The area proposed to be placed under the conservation easement is 6.4 acres, which amounts to 58% of the parcel. This exceeds the open space requirement of 50% in Section 8.4(C)(1).
59. The area to be conserved includes extensive areas of high public value, including stream setback areas, wetland and wetland buffer, potentially flood prone areas, and wildlife linkage.

Other

60. There is a private, ðgrand-fatheredð firing range on an adjoining parcel.
61. A submission from an adjoining property owner expressed a concern that the firing range could create a potential safety hazard for the proposed subdivision.
62. The applicant and representatives from Habitat acknowledged the existence of the firing range, and stated that the existence of the firing range will be disclosed in warranty deeds conveying the dwellings to buyers/residents.

Decision

Based on these Findings, the Planning Commission approves the Final Plan Application for a six-lot subdivision and planned residential development creating five units of affordable housing with the following conditions:

1. The Overall Site Plan and the Site and Grading Plan by Summit Engineering, Inc. and the Lots 2-5 Wastewater Plan by Scott Michael Mapes will be amended as follows:
 - A. The proposed coniferous trees may be removed.
 - B. Ten deciduous trees (in addition to the two already on the plan) will be added so that there are two on each lot, with locations to be approved administratively by the Planning Commission.
2. Mylars (18ö x 24ö) of the Subdivision Plat and the Overall Site Plan by Summit Engineering, Inc. and the wastewater plan by Scott Michael Mapes, as amended in accordance with Condition 1 above, will be submitted to the Planning Commission for review and signature within 160 days. The applicant will record the signed mylars in the Charlotte Land Records within 180 days.
3. Prior to the submission of the mylars in accordance with Condition 2 above, the applicant will:
 - A. Obtain a state stormwater permit for construction activity on low risk sites.
 - B. Obtain a Wastewater System and Potable Water Supply Permit.
 - C. Execute and record the following documents after review and approval by the Selectboard:
 - i. Roadway Agreement and Waiver
 - ii. Sewage Service Agreement, Waiver and Easement
 - D. Execute and record the following documents:
 - i. Grant of River Corridor Conservation Easement to the Vermont River Conservancy, Inc.
 - ii. Declaration of Planned Community essentially as submitted, with blanks filled in and with corrections noted above and as otherwise appropriate.
 - E. Submit a letter from the surveyor indicating he has set the survey markers or pins

in the field as indicated on the plat. If the survey markers or 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 markers or pins when the ground thaws and has been paid to do so.

4. With the application for a Certificate of Occupancy for the first dwelling, the applicant shall submit a letter from the project engineer or design engineer indicating that the sub-base of the roadway and the wastewater disposal system have been installed in accordance with the approved plans.
5. Prior to obtaining a Certificate of Occupancy for each of the dwelling units on Lots 2-5:
 - A. a Housing Subsidy Covenant will be executed by Habitat and each of the buyers/residents and recorded in the Charlotte land records.
 - B. deciduous street trees, the species of which are to be approved administratively by the Planning Commission, will be planted as depicted on the approved site plan as amended by Condition 1 above. The tree to be located on Lot 1 will be planted at the same time as the tree is planted on the last building lot to receive a Certificate of Occupancy. All such trees will be replaced by the applicant or its successors if they become diseased or die within two years.
6. Prior to obtaining a Certificate of Occupancy for the third dwelling, the applicant will obtain approval from the Selectboard for a road name to comply with the E-911 Ordinance.
7. With the application for a Certificate of Occupancy for the last dwelling, the applicant shall submit a letter from the project engineer indicating that the roadway has been completed in accordance with the approved plans.
8. Conveyance deeds to buyers/residents of individual dwelling units will include references to:
 - A. Wastewater disposal area and force main easements
 - B. Well and water line easements
 - C. The Grant of River Corridor Conservation Easement to the Vermont River Conservancy, Inc.
 - D. The Housing Subsidy Covenant
9. No new pole-mounted light fixture will be higher than 8 feet off the ground, and no new building-mounted light fixture will be higher than 10 feet 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. There will be no street lighting.
10. All new utility lines will be underground.
11. The roadway and all driveways shall be surfaced with non-white crushed stone.

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 August 5, 2010: Jeff McDonald, Jim Donovan, Linda Radimer, Eleanor Russell, Paul Landler and Gerald Bouchard

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 with the application:

- 1. An application form.
- 2. Fees were waived by the Selectboard on December 14, 2009 and May 24, 2010.
- 3. A memo dated June 2, 2010 entitled "Subdivision Application Requirements and Waiver Requests."
- 4. A survey by Summit Engineering, Inc. entitled "Subdivision Plat, Gertrude Jordan, 298 Spear Street, Charlotte, Vermont" dated 12/4/09, last revised 7/13/10.
- 5. A plan by Summit Engineering, Inc., stamped and signed by Douglas F. Hewitt, entitled "Existing Conditions, Gertrude Jordan, 298 Spear Street, Charlotte, Vermont" dated 12/4/09, revised on 5/10/10.
- 6. A plan by Summit Engineering, Inc., stamped and signed by Douglas F. Hewitt, entitled "Overall Site Plan, Gertrude Jordan, 298 Spear Street, Charlotte, Vermont" dated 12/4/09, last revised 7/13/10.
- 7. A plan by Summit Engineering, Inc., stamped and signed by Douglas F. Hewitt, entitled "Site and Grading Plan, Gertrude Jordan, 298 Spear Street, Charlotte, Vermont" dated 12/4/09, last revised 7/13/10.
- 8. A sheet by Summit Engineering, Inc. entitled "Wastewater Plan, Gertrude Jordan, 298 Spear Street, Charlotte, Vermont" dated 7/13/10, no revisions.
- 9. A sheet by Summit Engineering, Inc., stamped and signed by Douglas F. Hewitt, entitled "Details, Gertrude Jordan, 298 Spear Street, Charlotte, Vermont" dated 12/4/09, revised

7/13/10.

10. A plan by Scott Michael Mapes entitled "Lots 2-5 Wastewater Plan, Habitat for Humanity, Gertrude Jordan, 298 Spear Street, Charlotte, VT" dated 7/13/10, no revisions.
11. A letter dated July 13, 2010 from Sheila McIntyre of Summit Engineering, Inc. to Allan Jordan regarding "Final Site Design for the Gertrude Jordan Property, 298 Spear Street, Charlotte (PC-09-36)."
12. A letter dated July 28, 2010 from Larry Young of Summit Engineering, Inc. to Thomas Mansfield regarding "Final Site Design for the Gertrude Jordan Property, 298 Spear Street, Charlotte (PC-09-36)."
13. A letter dated June 28, 2010 from Steve Libby, Executive Director of the Vermont River Conservancy to Allan Jordan.
14. A draft document entitled "Grant of River Corridor Conservation Easement"
15. A draft document entitled "Housing Subsidy Covenant For Green Mountain Habitat For Humanity, Inc., 298 Spear Street, Charlotte, DRAFT -07-06-10."
16. A draft document entitled "Declaration of _____Planned Community"
17. A draft document entitled "Sewage Service Agreement, Waiver, and Easement, 6-18-10 draft"
18. A draft document entitled "Roadway Agreement and Waiver"
19. A draft document entitled "_____Planned Community, Deed Lot 2"
20. A document entitled "Green Mountain Habitat for Humanity's House pricing policy"
21. A sheet entitled "A general description and the exterior appearance of Habitat affordable units"