

# CHARLOTTE PLANNING COMMISSION

## FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

**Candis and Don Kjelleren  
5928 Mount Philo Road**

**Final Plan Application  
For A  
Two Lot Subdivision  
Application # PC-10-33**

### **Background**

The subject parcel was created by a subdivision by Nelson Claflin approved on March 2, 1996. Sketch Plan Review for the current subdivision was held on February 21 and March 6, 2008, at which time the Planning Commission classified the project as a Minor Subdivision.

### **Application**

Materials submitted with the applications are listed in Appendix A.

### **Public Hearing**

A public hearing for this application was held on October 7 and December 2, 2010. Candis Kjelleren was present representing the applicant. Written comments were submitted in advance of the hearing by Henry Hagar, Lawrence Poitras and Rosemary Cartularo, who are adjoining property owners. Lawrence Poitras and Rosemary Cartularo also were present at and participated in the hearing. No other interested parties participated in the hearing or submitted written comments prior to the hearing.

### **Regulations in Effect**

Town Plan, amended March, 2008

Land Use Regulations adopted March, 2009.

Recommended Standards for Developments and Homes adopted September, 1997

### **Findings**

#### **Background**

1. The applicant owns a 10.56 acre parcel of land in the Rural District. The parcel is developed with a single family dwelling.
2. The application proposes to create two lots, labeled Lot 1A and Lot 1B on the proposed plat, each lot being slightly more than five acres.

#### **General Standards—Sections 7.2**

3. The parcel includes or is adjacent to the following areas of high public value:
  - A. Land in active agricultural use: The western portion of the parcel has been used for agriculture in the recent past (from observation and ortho-photos).
  - B. Primary agricultural soils: The parcel has some statewide soils (from NRCS

data).

- C. Steep slopes: The eastern portion of the parcel has steep slopes (from the application).
  - D. Scenic views and vistas: Mount Philo Road is classified as a “most scenic road” on map 13 of the Town Plan (from Town Plan).
4. Considering the resources on and adjacent to this parcel, the Planning Commission finds that the following are the most important areas of high public value: the scenic views from Mount Philo Road, and the land in active agricultural use, which include the land with statewide agricultural soils. These are prioritized resources that most strongly characterize the property, and which the Planning Commission feels are most important to protect during the subdivision process.

**District Standards—Section 7.3**

- 5. The application has avoided impacting the prioritized areas of high public value by locating the building envelope on Lot 1B relatively close to Mount Philo Road.

**Compatibility with Agricultural Operations—Section 7.4**

- 6. The application will not impact adjoining agricultural operations.

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

- 7. The project does not trigger the need for a fire pond, park, or playground due to the limited nature of the development.
- 8. The site plan includes a note indicating “all future utilities shall be located underground.”

**Water Supply—Section 7.6**

- 9. The applicant has obtained a Wastewater System and Potable Water Supply Permit (WW-138-1015) for Lot 1B.

**Sewage Disposal—Section 7.7**

- 10. The applicant has obtained a Wastewater System and Potable Water Supply Permit (WW-138-1015) for Lot 1B.
- 11. The application did not include a certification from a licensed designer that the existing system is functioning appropriately, in accordance with Section 7.7(B)(4) of the Charlotte Land Use Regulations.

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

- 12. The site plan submitted at the December 2 hearing includes several features to limit potential erosion, including the creation of an 8% grade for both the existing and proposed driveways, a seeding and mulching timetable, a stabilized construction entrance, a grass drainage swale design with erosion control matting, a topsoil stockpile to be surrounded by silt fencing or stacked haybales, and a plan to install rip-rap on the northerly and southerly sides of the driveway.

**Landscaping and Screening—Section 7.9**

- 13. This criterion does not require consideration due to the limited nature of the development.
- 14. Adjoining and nearby property owners voiced concerns at the hearing and in writing regarding trees that the applicant has planted on their parcel, which have the potential of blocking the scenic views from dwellings located on the east side of Mount Philo Road. One of the letters also stated that the trees may be located in the Mount Philo Road right-of-way.
- 15. The Planning Commission finds that both of the concerns that were raised regarding the trees planted by the applicant are not germane to the current application being reviewed

by the Planning Commission, and so the Planning Commission cannot create any conditions related to the trees.

**Roads, Driveways & Pedestrian Access—Section 7.10 and Section 3.2**

16. The application proposes to use the existing curb-cut and the existing driveway for the first 140 feet.
17. The driveway design conforms with the Recommended Standards for Developments and Homes adopted September, 1997.
18. Lot 1A will need an access and utility easement over Lot 1B

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

19. This criterion does not require consideration due to the limited nature of the development.

**Decision**

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

1. A mylar (18" x 24") of the subdivision plat by Ronald LaRose will be submitted to the Planning Commission for review and signature within 160 days. The applicant will record the signed mylar in the Town of Charlotte Land Records within 180 days.
2. Prior to the submission of the mylar in accordance with Condition 1 above, the applicant will:
  - A. Submit a letter from a licensed wastewater disposal system designer stating that the existing wastewater disposal system is functioning appropriately and that infiltration area shows no indication or surfacing.
  - B. 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.
3. Prior to the issuance of a Certificate of Occupancy for the new dwelling on Lot 1B, the applicant will submit a letter from an appropriately licensed engineer indicating that the driveway and erosion control measures have been completed in accordance with the approved plans.
4. The conveyance deeds for Lot 1A and Lot 1B will include an access and utility easement over Lot 1B in favor of Lot 1A.
5. 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 15 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.
6. All new utility lines will be underground.
7. The new driveway will be surfaced with non-white crushed stone.

**Note: all deadlines indicated in the conditions above shall be counted from the date of the 4<sup>th</sup> signature below.**

**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 October 7, 2010:** Jeff McDonald, Linda Radimer, Eleanor Russell, Paul Landler and Gerald Bouchard

**Members Present at the Public Hearing on December 2, 2010:** Jim Donovan, Linda Radimer, Eleanor Russell, 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 in association with the application:

- 1. A Final Plan application form and appropriate fee.
- 2. A survey by Ronald L. LaRose entitled "Plat Showing a Subdivision Survey of Lands of Candis P. Kjelleren, Trustee of the Candis P. Kjelleren Living Trust, 5928 Mount Philo Road, Charlotte, Chittenden County, Vermont" dated May 10, 2010, no revisions.
- 3. A plan by Kevinn R. LaRose entitled "A Site Plan Showing a Portion of Lands of Candis P. Kjelleren, Trustee of the Candis P. Kjelleren Living Trust, 5928 Mount Philo Road,

- Charlotte, Chittenden County, Vermont” dated May 10, 2010, no revisions.
4. A plan by LaRose Surveys, P.C. entitled “A Site Plan showing a proposed driveway for Candis P. Kjelleren, Trustee of the Candis P. Kjelleren Living Trust, 5928 Mount Philo Road, Charlotte, Chittenden County, Vermont” dated October 20, 2010, no revisions.