

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

**Lost Forest Ventures, LLC
And Doris Maeck**

**Final Plan Application
For A
Subdivision Amendment
And A
Two-Lot Subdivision
Application # PC-07-12**

Background

Sketch Plan Review was held on June 15, 2006. The Planning Commission granted an extension for submission of the Final Plan Application on February 1, 2007. The proposal involves two applications—a Subdivision Amendment to change boundaries between adjacent parcels (one owned by Lost Forest Ventures, LLC and the other owned by Doris Maeck); and a two-lot subdivision of the resulting parcel owned by Lost Forest Ventures, LLC. A joint hearing was held for both applications; this Findings of Fact and Decision will address both applications.

Application

Materials submitted with the applications are listed in Appendix A.

Public Hearing

A public hearing for this application was held on July 19, 2007. James Huntington and Anthony Blake were present representing the applicant. The following adjacent property owners were present and participated in the hearing: Joseph Tieso and Gary Warner.

Regulations in Effect

Land Use Regulations adopted March, 2006.

Sewage Ordinance as amended December, 2004.

Recommended Standards for Developments and Homes adopted September, 1997

Findings

1. The Maeck parcel was created by a subdivision approved on March 23, 1993, of which it was labeled Lot 1. The parcel has deeded access to Orchard Road via a 60 foot wide right-of-way.
2. The Lost Forest Ventures, LLC parcel was created by Charles Rust in 1963, prior to the adoption of the Charlotte Subdivision Bylaws, as depicted in Volume 28 page 330A of the Charlotte Land Records.
3. The Lost Forest Ventures, LLC parcel is currently 8.24 acres; the Maeck parcel is

currently 46.2 acres. As a result of the Subdivision Amendment, 2.35 acres will be conveyed from Maeck to Lost Forest Ventures, LLC. The resulting Maeck parcel will be 43.85 acres and will have no road frontage, but will have access via the 60 foot wide right-of-way.

4. The proposed Subdivision will create two lots from the resulting Lost Forest Ventures parcel: Lot 1 will be 5.02 acres and Lot 2 will be 6.06 acres. Both lots will have more than 300 feet of frontage on Orchard Road. Therefore the proposed lots will meet the dimensional requirements of the Land Use Regulations.
5. The Town's data regarding *areas of high public value* are as follows:
 - The Maeck parcel is in active agricultural use as a tree nursery and orchard, however the portion that is to be conveyed to Lost Forest Ventures, LLC is not used for this purpose; vegetation on this portion consists primarily of invasive shrub species.
 - Prime agricultural soils are located on both parcels. On the Lost Forest Ventures parcel, they are along Orchard Road and also in the northwest portion of the parcel; on the Maeck parcel there is a large pocket in the south-central portion of the parcel.
 - Statewide agricultural soils are located in a small pocket at the north end of the Lost Forest Ventures parcel; and they cover all of the Maeck parcel except the portion that has prime soils.
 - Slopes of 15-25% are located along the southern portion of the Lost Forest Ventures parcel.
 - Wetlands are located on the eastern and northern portion of the Maeck parcel.
 - The Town's wildlife habitat information indicates that "supporting habitat" is located on the southeastern portion of the Maeck parcel, including the portion that is to be conveyed to Lost Forest Ventures, LLC; this is adjacent to a large area of habitat on the adjacent parcel to the southwest.
6. Considering the resources on the parcel, the Planning Commission finds that the following are the **primary** *areas of high public value* on the parcels: the agricultural operation, prime and statewide soils, wetland and supporting wildlife habitat on the Maeck parcel, and steep slopes on the Lost Forest Ventures, LLC parcel.
7. The prime and statewide soils on the Lost Forest Ventures parcel, although important, are not primary areas of high public value because the parcel is relatively small for commercial agriculture.
8. The proposed Subdivision Amendment will change the lot lines between the Maeck parcel and the Lost Forest Ventures parcel. Although this change will allow the development of the Lost Forest Ventures parcel in a more intense manner (by providing enough acreage for a two-lot subdivision), the Subdivision Amendment will have no direct impact on the agricultural operation, prime and statewide soils or wetlands on the Maeck parcel, or the areas with 15% slope on the Lost Forest Ventures parcel. The Subdivision Amendment **will** affect the supporting wildlife habitat, which will be conveyed to Lost Forest Ventures, LLC.
9. The wildlife habitat and the areas with 15% slope on the southern portion of resulting Lost Forest Ventures parcel **could** be impacted by the proposed Subdivision of the parcel into two building lots.
10. The site plan by Ridge Consulting Engineers depicts proposed building sites on Lots 1 & 2, although neither the site plan nor the survey depict building envelopes other than the minimum lot setbacks.

11. At the public hearing, the applicant agreed to building envelopes that are defined as follows:
 - For Lot 1 the northerly boundary of the building envelope is to be 350 feet from the proposed boundary line between Lot 1 and Lot 2; other setbacks define the remainder of the building envelope.
 - For Lot 2 the southerly boundary of the building envelope is to be 200 feet from the proposed boundary line between Lot 1 and Lot 2; other setbacks define the remainder of the building envelope.
12. The Land Use Regulations supports sharing of access points (curb-cuts) whenever possible and appropriate. In the current application, creating a shared access would result in driveways that are 150 feet in length (300 feet combined) instead of the proposed 50 to 60 foot driveways. As such, separate driveways will create significantly less impermeable area, and are found by the Planning Commission to be more appropriate than a shared access.
13. There are no utility poles or overhead power, phone or cable lines along Orchard Road in the immediate vicinity of the proposed dwellings. The lack of poles and overhead lines contributes in a positive way to the rural and scenic character of the area.
14. The Town's wastewater consultant has reviewed the wastewater disposal plans and issued memos dated 7/16/07, 7/26/07 (incorrectly labeled 7/16 on some copies), and 8/6/07. The 8/6/07 memo indicates that the plans are acceptable.
15. Section 7.6 (4) of the Charlotte Land Use Regulations states "an easement shall be required for the protective distance as required by the Vermont Wastewater and Water Supply Rules for drilled wells or springs which will impact adjoining properties."
16. The protective distance for the proposed well on Lot 1 is partially on an adjoining property on the east side of Orchard Road, but this area is within the Orchard Road right-of-way, so could not be used for wastewater disposal. However, the protective distance for the proposed well on Lot 2 is also partially on an adjoining property, but this area is **not** encumbered by the Orchard Road right-of-way.
17. Some property owners in the neighborhood have in the past had difficulty obtaining water from on-site wells; some of these property owners obtained service from the water line from the Town of Shelburne without previously obtaining approval from the Town of Charlotte.
18. The Selectboard has adopted a policy that no additional properties shall be serviced by the water line from Shelburne.
19. In 2004 a property in the neighborhood was able to obtain significantly more water than the quantity sufficient for a single family dwelling from a new drilled well.

Decision

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

1. The survey plat will be revised as follows:
 - A. Building envelopes will be defined as described in Finding 11 herein.
 - B. The building envelope will be labeled "Building Envelope".

- C. Dimensions (in feet) of the building envelope and distances to the nearest 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 submit a letter from the surveyor indicating that he has set the survey pins in the field as indicated on the survey.
 4. Prior to the submission of the mylar in accordance with Condition #2 above, the applicant shall either submit a revised site plan which indicates that the protective distance for the proposed well on Lot 2 does not impact any adjoining properties, or the applicant shall submit an executed and recorded easement for the portion of the well protective distance that impacts the adjoining property, or the applicant shall submit a revised site plan which indicates that Lot 2 will have an easement to share the well located on Lot 1.
 5. The property associated with the Subdivision Amendment (2.35 acres) will be conveyed from Maeck to Lost Forest Ventures, LLC within 365 days.
 6. Once the 2.35 acres is conveyed from Maeck to Lost Forest Ventures, LLC, it will merge with the remainder of the Lost Forest Ventures, LLC parcel, and cannot be conveyed separately from the remainder of Lot 2.
 7. The warranty deeds will include appropriate references to wastewater easements, a well protective distance easement, or a well and water line easement.
 8. Water shall be obtained only from on-site wells. Water shall not be obtained from any other source, including the Town of Shelburne, without approval from the Charlotte Planning Commission (in the form of a Subdivision Amendment) and the Charlotte Selectboard.
 9. Prior to the submission of a Zoning Permit application for each lot, wooden stakes will be set at the corners of the building envelope on that lot.
 10. 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, and will not direct light onto adjacent properties or roads, and will not result in excessive lighting levels that are uncharacteristic of the neighborhood.
 11. All new utility lines, including those needed to reach the project site, will be underground. No additional utility poles or overhead lines will be installed.
 12. All new 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 July 19: Jeff McDonald, Robin Pierce, John Owen, Peter Joslin and Andrew Thurber

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. An application form for a Subdivision and appropriate fee.
- 3. A memo from Doris Maeck dated June 10, 2007 re: “Subdivision Application & Boundary Application of Tony Blake & Jim Huntington, Lost Forest Ventures, LLC” authorizing the “Boundary Adjustment” and “Subdivision” applications. (It is noted that Doris Maeck is not a party to the Subdivision Application).
- 4. A memo to Charlotte Planning & Zoning from Jim Huntington and Tony Blake dated June 20, 2007 re: “Subdivision Application.”
- 5. Draft Warranty Deeds for Lot 1 and Lot 2.
- 6. A survey by Stuart J. Morrow entitled “Final Plat, Minor Subdivision—Boundary Adjustment, Properties of Lost Forest Ventures, LLC and Doris W. Maeck Revocable Trust, Charlotte, Vermont” dated June 2007, no revisions.
- 7. A wastewater plan by Ridge Consulting Engineers entitled “James Huntington, Orchard Road, Charlotte, Vermont” with the following sheets:
 - A. “Site Plan,” dated 5/30/07, no revisions, sheet 1 of 3.
 - B. “Details,” dated 5/30/07, no revisions, sheet 2 of 3.
 - C. “Notes,” dated 5/30/07, no revisions, sheet 3 of 3.