

**CHARLOTTE PLANNING COMMISSION
SUBDIVISION REVIEW
FINDINGS OF FACT AND DECISION**

**In re: Susan R. Smith, Final Plan Application for a Minor Subdivision
Permit Application No. PC-15-09**

Introduction and Procedural History

This proceeding involves review of an application for a Minor Subdivision submitted by Susan R. Smith for approval under the Town of Charlotte Land Use Regulations.

The application was received on April 9, 2015. A notice of public hearing was published in The Citizen on April 16, 2015 and was posted at the following three locations: town offices, The Brick Store and Spear's Corner Store. A copy of the notice was also mailed to all adjoining landowners.

The application was considered by the Planning Commission at a public hearing on May 7, 2015. Susan Smith, the applicant, was in attendance and consultant, Jason Barnard, presented the application at the hearing. Hannah Smith, the applicant's daughter, her partner Jeremy Saxton and the following interested persons and their representatives attended the hearing: Carlie and David Krolick, Liam L. Murphy, Esq., Sarah and Kevin McGarghan, Cheryl Walker.

Exhibits

1. Application form; list of adjoining landowners; plan entitled "Overall Subdivision Plan Susan R. Smith Two-Lot Subdivision 5166 Lake Road Charlotte, Vermont", and dated April 2, 2015; draft survey plat prepared by Northern Land Surveying, LLC and dated March 16, 2015; and required fee;
2. Staff report dated April 27, 2015;
3. PC-14-30 Sketch Plan Review Letter;
4. Wastewater System and Potable Water Supply Permit Application received on April 6, 2015;
5. Email from Liam L. Murphy dated April 29, 2015; and
6. Plan entitled "Overall Subdivision Plan Susan R. Smith Two-Lot Subdivision 5166 Lake Road Charlotte, Vermont", dated April 2, 2015 and revised May 7, 2015 (received at hearing).

Regulations in Effect

Town Plan, amended March, 2013

Land Use Regulations adopted November, 2010

Recommended Standards for Developments and Homes adopted September, 1997

Findings

Background

1. Susan Smith owns a 10.14 acre parcel (M08B01L037.0) located on the west side of Lake Road in the Rural Zoning District. She currently manages the wooded portions of the property for forest cover, wood and wildlife habitat and would like to continue to do so in the future.
2. The purposes of the Rural Zoning District are "(1) to protect important agricultural land and promote viable agriculture, wildlife habitat, productive woodland, natural areas, aquifers, scenic views and vistas, open spaces and other significant natural cultural and scenic resources identified in the *Charlotte Town Plan*; and (2) to allow for low density or clustered residential development in accordance with the capability of the land to support such development, that does not adversely affect the town's natural and scenic resources or properties and uses in the vicinity, and is compatible with the rural character of the town as expressed in the *Charlotte Town Plan*."

3. The purpose of the current application is to subdivide the 10.14 acre parcel into two lots. Lot 1 will be 5.1 acres in size and will contain the existing 3-bedroom single-family dwelling, garage, and solar structures. Lot 2 will be 5.04 acres in size and will be improved with a 4-bedroom single-family dwelling.
4. Sketch Plan Review for this proposal was held on January 15 and February 5, 2015 and a site visit occurred on January 10, 2015. The project was classified as a Minor Subdivision in accordance with Section 6.1(C)(1) of the Charlotte Land Use Regulations (“Regulations”).

Relevant standards in Chapter VII of the Charlotte Land Use Regulations are reviewed below in Findings 4-27.

7.2 General Standards

4. The following Areas of High Public Value (AHPV) were identified on the parcel:
 - a. Agricultural soils (NRCS data, ANR Atlas) – Statewide in area of wetland
 - b. Steep slopes (ANR Atlas) – 15-25% along ridge
 - c. Surface waters, wetlands and associated setback and buffer areas (Town Plan Map 7 and ANR Atlas) – Class 2 wetland along ravine separating knobs on property. Complex drains into stream that drains directly into Lake Champlain
 - d. Mapped wildlife habitat (Town Plan Map 6) – Forest habitat on entire parcel
 - e. Scenic views and vistas (Town Plan Map 13)– Lake Road is identified as a most scenic road
5. Considering the resources on and adjacent to the property, the Planning Commission finds the steep slopes, wetland and forest habitat to be the most significant AHPV on the parcel.
6. Section 7.2(D) of the Regulations states “Development density shall be based on the allowed density for the zoning district(s) in which the subdivision is located. Areas of High Public Value can be used for development density unless the property has been conserved through a legal mechanism such as Grant of Development Rights, Conservation Easement, or Open Space Agreement.
7. The allowed density for the Rural zoning district is 5 acres / dwelling unit. One additional dwelling unit is proposed and this meets the district density requirements. There is no remaining development density on either lot.
8. On the Overall Subdivision Plan received as part of the application, the southwestern side of the building envelope proposed for Lot 2 generally followed the 218 foot elevation contour line. Carlie and David Krolick, through Counsel Liam L. Murphy, Esq., indicated they had been in discussions with the applicant and both parties had agreed to move this side of the envelope downslope to the 211 foot contour line. The Krolick’s had raised concerns regarding the location of this envelope during sketch plan review.
9. Jason Barnard, consultant to the applicant, provided a revised plan showing the change to the building envelope and indicated the plat would also be revised.
10. The locations of surveying monuments and lot corner markers were identified on the draft subdivision plat submitted at the hearing.

7.3 District Standards

11. Lot 2 will be situated closely in line with existing development along this section of Lake Road.
12. The building envelope has been moved to the north and east so as to minimize impacts to steep slopes, wetlands and forest habitat. The driveway entrance and location has also been changed reducing impacts to these AHPV.
13. A shared driveway between Lots 1 and 2 is not feasible due to the presence of a small ravine separating these lots. The electric utility line does not share the driveway corridor but is planned so as to have the shortest route possible and is located in a less wooded area of the parcel.
14. The property will continue to be managed to promote forest health and wildlife habitat.

7.5 Facilities, Services & Utilities

15. The proposed drive can be constructed to maintain a slope of between 8 and 10 percent. A 10 percent slope has been proposed to get around corner in the driveway and will be roughly 50 feet in length.
16. All utilities for the new lot will be located underground.

7.6 Water Supply and 7.7 Sewage Disposal

17. The applicant has submitted a Wastewater System and Potable Water Supply Permit Application and it has been deemed technically complete.

7.8 Stormwater Management & Erosion Control

18. The applicant has indicated that "The drainage system will consist of grassy swales along Lake Road and the proposed access drive and sheet flow to the north and east across the remainder of proposed Lot 2."
19. Areas of exposed ledge are identified on the site plan and were evident during the site visit.
20. Open channel systems (such as grass channel swales) are an acceptable method for capturing and treating annual storm events (water quality volume and recharge volume). Site slopes greater than 2 percent may require check dams to retain the water quality volume within the open channel system.¹
21. The consultant indicated that 50-60 feet of the proposed driveway would exceed 8 percent but would not exceed 10 percent.
22. Detailed design information (i.e. basis of design for grass lined swales and demonstration that downstream facilities, including the town road drainage system, will be able to accommodate additional runoff associated with the development) as pertains to stormwater treatment was not provided with the application.

7.9 Roads, Driveways and Pedestrian Access

23. Charlotte's Recommended Standards for Developments and Homes adopted September, 1997 require a minimum driveway width of 14' with 12" of gravel and grades less than or equal to 8 percent.
24. The applicant's consultant has indicated that the finished drive will include roughly 50-60 feet of driveway that will exceed 8 percent but will be less than or equal to 10 percent.
25. Detailed design information (i.e. basis of design for grass lined swales and demonstration that downstream facilities, town road drainage system, will be able to accommodate additional runoff associated with the development) as pertains to stormwater treatment was not provided with the application.
26. The applicant has obtained a Highway Access Permit (HAP-15-03) from the Charlotte Selectboard.

7.12 Legal Requirements

27. The electrical utility line benefitting Lot 2 will extend from an existing line located on the lands of Scheuer. No easement agreement confirming this arrangement has been provided with the application.

Conclusions

Based on the foregoing Findings of Fact, it is the conclusion of the Commission that the project described in the application and supporting materials, if completed and maintained in conformance with all of the terms and conditions of that application and as required below, will meet the development standards of the Charlotte Land Use Regulations.

¹ Vermont Stormwater Management Manual, Volume 1, 2002.

Decision

Based on the foregoing Findings of Fact and Conclusions, the Planning Commission approves the application for a Minor Subdivision subject to the following conditions:

1. The survey plat will be revised as follows:
 - a. The building envelope for Lot 2 will be revised as discussed at the hearing (moved to 211 foot elevation contour) and as presented on the Overall Subdivision Plan revised May 7, 2015.
 - b. A building envelope for Lot 1 will be included on the plat. The westerly boundary of this envelope shall extend no farther than 60 feet from the westernmost corner of the existing 3 bedroom dwelling. The remaining boundaries can be established at the current setback distances for the rural district (50 feet from road or adjoining property line).
 - c. Tie lines for both envelopes will be shaded so as to be easily legible.
 - d. A note shall be added to the plat indicating that a variance was obtained for construction of the garage on Lot 1 in its current location (which is within a setback).
2. Concurrent with the submission of the mylar in accordance with Condition 3 below, the applicant will submit a letter from the surveyor indicating he has set the survey markers or pipes in the field as indicated on the plat and will record an easement agreement for the utility line on the lands of Scheuer benefitting Lot 2. The agreement must be signed by both landowners.
3. One digital copy (pdf), two paper copies (one 11"x 17" and one full size) and a mylar (18" x 24") of the survey will be submitted to the Planning Commission for review and signature (of the mylar) within 160 days. The applicant will record the signed mylar in the Charlotte Land Records within 180 days.
4. The forested areas of each parcel located outside of the building envelope shall be managed to maintain forest cover (no change to area and percent of forest land²) and facilitate wildlife habitat and travel.
5. Concurrent with the submittal of a building permit application, the applicant shall provide a detailed plan for driveway development which must include information on existing site conditions, need for blasting and blasting plan if applicable, cut and fill calculations and stormwater conveyance information that indicates the design provides effective treatment for a 0.9-inch rain event.
6. Concurrent with the submittal of a certificate of occupancy application, the applicant shall provide a letter from a certified professional indicating that the driveway has been constructed in accordance with the plans provided under number 5 above.
7. All new driveways will be surfaced with non-white crushed stone.
8. No new pole-mounted light fixture will be taller than 8' off the ground, and no new building-mounted light fixture will be higher 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.

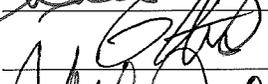
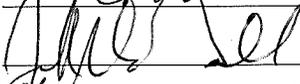
Additional Conditions: All plats, plans, drawings, documents, testimony, evidence and conditions listed above or submitted at the hearing and used as the basis for the Decision to grant permit shall be binding on the applicant, and his/her/its successors, heirs and assigns. Projects shall be completed 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.

² Forest land is land that is at least 10 percent stocked with trees of any size or that formerly had such tree cover and is not currently developed for a nonforest use. The minimum area for classification of forest land is one acre. The components that make up forest land are timberland and all noncommercial forest land (National Forest Inventory and Analysis Database, 2008).

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 latest date of 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 7, 2015: Jeff McDonald, Chair; Peter Joslin, Paul Landler, Gerald Bouchard, Marty Illick, and Charlie Pughe.

Vote of Members after Deliberations: The following is the vote for or against the application, with conditions as stated in this Decision:

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| 1. Signed: |  | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u>6/4/2015</u> |
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