

# **CHARLOTTE PLANNING COMMISSION**

## **FINDINGS OF FACT AND DECISION IN RE APPLICATION OF**

**Samuel and Priscilla Spear**

**Final Plat Hearing  
For A  
Three-Lot Subdivision  
Application # PC-05-53**

### **Background**

The subject parcel has not been previously subdivided under town bylaws. Sketch Plan Review was held on June 30, 2005 and July 28, 2005.

### **Application**

Materials submitted in association with the application are listed in Appendix A.

### **Public Hearing**

A public hearing for this application was held on January 5, 2006. Michael Spear was present representing the applicant. The following persons were also present and participated in the hearing: Gordon Troy, Jane Michaud and Maria Wicker.

### **Regulations in Effect**

Town Plan as amended March 2002  
Zoning Bylaws as amended March 2002  
Subdivision Bylaws as amended March 1995

### **Findings**

1. The subject parcel is 136.13 acres, and has two existing single family dwellings and two outbuildings. The parcel also includes a large field that is being actively cropped in association with a nearby dairy operation.
2. There are extensive prime and statewide agricultural soils on the parcel. The southern portion of the parcel is considered "forest habitat" on Map 6 in the Town Plan. The eastern portion of the parcel is considered "associated support habitat", and the western area is labeled a "wildlife corridor" on Map 6.
3. Lot 1 and Lot 2 are configured to include the two existing houses (although the houses may be rebuilt); development on Lot 3 is not being proposed at this time.
4. The applicant has proposed that a restriction be placed on Lot 1 and Lot 2 so that no structures will be allowed to the east of the proposed right-of-way across Lots 1 and 2 from Ferry Road to Lot 3, except for small animal barns.
5. The existing septic systems for both dwellings are functioning; it is assumed that both systems are capable of serving three bedroom dwellings. The application includes

- designs for replacement septic systems for Lots 1 and 2, both of which are designed for three bedroom dwellings.
6. The Town's wastewater consultant has reviewed the wastewater disposal design and issued a memo (dated 12/29/05) which indicates that the soil and design are acceptable. The applicant will need a wastewater permit from the state.
  7. The subject property is larger than 25 acres, and therefore is subject to the Planned Residential Development (PRD) provisions in Section 5.15 of the Zoning Bylaws and Chapter VI Section 2.M of the Charlotte Subdivision Bylaws, which allows modifications of area and dimensional requirements in order to preserve the agricultural, natural, scenic and historic resources in the town. Additionally, Chapter V Section 5.15 of the Charlotte Zoning Bylaws indicates that designation of open space is a requirement of a planned residential development.
  8. The Planning Commission finds that since the application is currently proposing two lots for the two existing dwellings, designation of open space on Lot 3 would be overly restrictive considering the intensity of the proposed development. The Planning Commission also finds that the proposed layout effectively minimizes impacts to agricultural, natural and scenic resources on the parcel by not adding new building lots, and by designating "no-build" areas on Lots 1 and 2 between the proposed access right-of-way and Lake Road.
  9. According to the submitted survey, the northerly existing house and the existing barn, both of which are proposed to be located on Lot 1, as well as the existing garage, which is proposed to be located on Lot 2, are located closer than the required 50 foot setback to the proposed boundary between Lot 1 and Lot 2.
  10. The applicant has acknowledged that the barn is in fragile condition.
  11. A comprehensive amendment to the Zoning and Subdivision bylaws will be on the Australian ballot on March 7. This amendment would allow a structure up to 250 square feet to be ten feet from a property line. Therefore, if this amendment is approved, the existing garage would not encroach on setbacks.
  12. Lots 1 and 2 are proposed to use the existing curb-cut on Ferry Road. The existing driveway to Lot 1 is to remain; Lot 2 is to have a right-of-way over the easterly side of Lot 1, and the existing driveway to the dwelling on Lot 2 is to be eliminated. The plat also indicates that a right-of-way will be reserved for access to Lot 3, and the applicant has proposed appropriate easement language for all three lots.
  13. There are trail easements in the vicinity of the subject parcel.

## **Decision**

Based on these Findings, the Planning Commission approves Final Plat Application PC-05-53 for a three-lot subdivision with the following conditions:

1. The subdivision plat will be amended as follows:
  - A. The southerly boundary of Lot 1 will be 50 feet from the existing house.
  - B. A note will be added indicating that Lot 3 has not been approved for sewage disposal, in accordance with Chapter VII Section 13.2 of the Charlotte Subdivision Bylaws, and
  - C. The plat will indicate if Lot 3 has not been surveyed.

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 Condition #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 will obtain the appropriate wastewater disposal permit from the State.
4. Prior to the submission of the mylar in accordance with Condition #2 above, the applicant shall submit a letter from the surveyor indicating that s/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 s/he will set the pins when the ground thaws and has been paid to do so.
5. Prior to any development of Lot 3, a Subdivision Amendment will be required for which, at a minimum, access, wastewater disposal, and a building envelope will be reviewed.
6. Easements will be conveyed with Lot 1 and Lot 2 with language essentially as submitted with the application, except that a sewage easement will also be conveyed with Lot 1 over Lot 3, as depicted in the survey.
7. There will be no building located on Lot 1 or Lot 2 to the east of the right-of-way which is labeled on the survey as "Proposed 60' Access & Utility Easement to Lots 2 & 3", except that one animal barn having a footprint no greater than 24' by 24' may be located on each lot within the restricted ("no-build") area.
8. Except for the "no-build" area described in Condition 7 above, conventional setbacks apply to the remainder of Lot 1 and Lot 2 for new structures.
9. The pole barn on Lot 1 may remain in its current location, but shall not be enlarged or replaced unless it is moved outside of the 50 foot setback.
10. The garage on Lot 2 may remain in its current location; however the applicant is hereby notified that if the proposed comprehensive amendment to the Zoning and Subdivision Bylaws are not approved by voters on March 7, 2006, the structure will be in violation of the Zoning Bylaws, and therefore the applicant will need to apply for a variance or the building will need to be moved or demolished.
11. 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.
12. All new utility lines will be underground.
13. The Planning Commission will not require open space to be designated at this time, however any future subdivision of Lot 3 will require the designation of open space. The total current acreage (136.13 acres) will be considered when calculating the percentage of open space as provided for in Chapter V. Section 5.15 of the Charlotte Zoning Bylaws (or succeeding town regulations in effect).
14. If Lot 3 is further subdivided directly adjacent to Lot 2, access may be restricted to the same curb-cut that serves Lots 1 and 2.
15. A trail easement may be requested if Lot 3 is further subdivided.

**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:** Jeff McDonald, Jim Donovan, Robin Pierce, John Owen, Peter Joslin, Robert Mack

**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**

- 1. An application form and appropriate fee.
- 2. A plan by Lincoln Applied Geology, Inc. entitled "Samuel & Priscilla Spear, Charlotte, Vermont, Subdivision Survey" dated 11/20/2005, no revisions.
- 3. A plan by Lincoln Applied Geology, Inc. entitled "Samuel and Priscilla Spear, 1503 Ferry Road, Charlotte, Vermont, Site Plan with Proposed Water & Wastewater Systems" dated 9/21/05, no revisions.
- 4. A sheet by Lincoln Applied Geology, Inc. entitled "Samuel and Priscilla Spear, 1503 Ferry Road, Charlotte, Vermont, Lot 1 & 2 Water & Replacement Wastewater Details & Specifications" dated 12/1/05, no revisions.
- 5. A document entitled "Samuel and Priscilla Spear, Proposed 3-Lot Residential Development Wastewater System and Potable Water Supply Design Summary" dated December 6, 2005.
- 6. Draft easements and restrictions for Lots 1 and 2 (two pages).