

# CHARLOTTE PLANNING COMMISSION

## FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

**Brad and Polly Simpkins  
Site Plan Review  
For a Tea Room/Café  
At the Charlotte Berry Farm  
4702 Ethan Allen Highway  
Application PC-09-32**

### **Background**

The Planning Commission held Sketch Plan Review for Site Plan Review on June 12, 2008. The applicant also applied for Conditional Use Review under Section 5.4 of the Charlotte Land Use Regulation (ZBA-09-04); the Zoning Board of Adjustment will issue its decision on this application separately.

### **Application**

Materials submitted with the application are listed in Appendix A.

### **Public Hearing**

The Planning Commission held a public hearing for this application on January 21, 2010. Brad Simpkins, Polly Simpkins and Anthony Stout represented the applicant at the hearing. Lorelei Atwood, an adjoining property owner, also participated in 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**

1. The subject property is a 56.3 acre parcel located at 4702 Ethan Allen Highway ("Route 7") in the Rural District. The property currently includes the Charlotte Berry Farm ("Berry Farm") and a single family dwelling.
2. The application is for a tea room/café, which is proposed to be located within a new 1,000 square foot structure attached to the south side of the existing farm stand.
3. The area in the vicinity of the existing dirt parking lot for the farm stand is proposed to be graded and graveled to create twelve parking spaces. Additional grassed areas along the gravel driveway leading to the farm stand and café, and also north of the gravel road leading from Route 7, have in the past been used for "overflow" parking for the Berry Farm, and the applicant proposes to continue this use. The application indicates there are 68 grassed parking spaces.

**Section 5.5—Site Plan Review****(D)(1)—Site Features**

4. The location of the proposed structure and associated parking area is currently a relatively flat grassed field which has statewide agricultural soils. A portion of the proposed parking area is currently used as a parking area for the farm stand.
5. The Planning Commission finds that the project as presented will not negatively impact prime agricultural soils, active agricultural operations, surface waters, special natural areas, critical wildlife habitat, prominent ridgelines, hilltops, areas with steep slopes, or historic sites or structures.

**(D)(2)—Site Layout & Design**

6. The location of the proposed structure and parking area is currently screened from Route 7 by a double row of Scotch Pine trees. Additionally, three oak trees are located on the north side of the gravel road leading from Route 7.
7. The proposed structure is located adjacent to the existing farm stand, and the proposed gravel parking area is located in the vicinity of the existing dirt parking area.
8. The proposed structure is slightly smaller than the existing farm stand.
9. The entrance to the proposed structure is on the eastern elevation, which faces Route 7.
10. The southern elevation of the proposed structure includes considerable glazing, which will provide solar access to the interior of the structure.
11. The Planning Commission finds that the project as presented is compatible and harmonious with its surroundings, and that the development will not have an undue adverse aesthetic impact on site features or the surrounding area.
12. The Planning Commission notes that one or two windows in the proposed bathroom in the southwest corner of the tea room/café would allow for additional solar access into the structure. Swapping the mop/sink room with the second interior bathroom would potentially allow for additional solar access as well.

**(D)(3)—Access*****Motor Vehicle Access***

13. The application proposes that the tea room/café will use the existing access and roadway that leads from Route 7 to the farm stand; this access and roadway is also used by Charlotte Little League Baseball, which has a right-of-way over the applicant's parcel.
14. The Planning Commission notes the subject parcel only has frontage on Route 7, so access to the proposed use is not possible via a side or secondary road.
15. The Planning Commission notes that the proposed use is not proposed to be on a subdivided lot, so access by the same entrance and roadway to the remainder of the parcel will be possible if other uses are proposed in future.
16. The Planning Commission notes that there is only one vehicular access to the parcel, so reducing or consolidating accesses is not possible.
17. At the hearing, the applicant submitted a document by Robert M. Alexander, Consulting Traffic Engineer entitled "Traffic Impact Report, Charlotte Berry Farm Tea House, US-7, Charlotte, Vermont" dated January 6, 2010.
18. The report indicates that sight distance at the exit onto Route 7 is 1,300 feet to the north and 1,900 feet to the south. These sight distances appears to be adequate for the posted speed limit of 50 miles per hour on Route 7.
19. The report indicates that none of the highway sections or intersections in the project area are classified as High Crash Locations in accordance with VTrans specifications. The report also states there were four vehicular crashes in the vicinity between January, 2004

and December, 2008. One was at or near the existing access to the Berry Farm (which is also the proposed access to the tea room/café); the other three were further north, possibly at the old Higbee Road intersection (prior to the relocation of the intersection, which is now opposite the Berry Farm).

20. The report calculates the proposed tea room/café will generate 15 new one-way trips during the PM peak hour, which the report estimates to be on a Saturday in August.
21. The report indicates that the proposed use does not require a change (addition of a left-turn lane for north-bound traffic) on Route 7.
22. The report also indicates that the proposed improvements to Route 7 (which are scheduled for construction in 2012 and 2013 as indicated by the Transportation Improvement Program for fiscal years 2010-2013 adopted by the Chittenden County Metropolitan Planning Organization on July 15, 2009) will improve the access by flattening the grade on Route 7 and improving the turning radii by widening and flaring the shoulders on both sides of the entryway/exit.
23. The report does not analyze potential alternative locations for the access. However, considering the crest of the hill to the north would reduce sight distance for an access relocated to the north, and considering a significant wetland is located to the south, and considering the intersection with Higbee Road was recently relocated directly across from the Berry Farm in order to create a four-way intersection, the existing location of the access to the Berry Farm (and proposed access to the tea room/café) is considered by the Planning Commission to be appropriate.
24. The application form indicates that an access permit will be needed from the state.

#### ***Pedestrian and Bicycle Access***

25. As indicated in Section 4.7.4 of the Town Plan, the Town has had a stated goal of creating a town trail network for over ten years.
26. The Berry Farm is located adjacent to an existing path/trail easement on the common lot owned by Champlain Valley Co-housing (“Co-housing Trail”). The Co-housing Trail is part of the town trail system, as depicted in maps 15, 16 and 17 of the Town Plan; the trail also connects with a trail easement on the Hinsdale parcel to the south, and to the Melissa and Trevor Mack Trail on the east side of Route 7 via a planned underpass of Route 7, which is included in the State’s reconstruction plans.
27. Providing pedestrian access to the proposed tea room/café is consistent with the town’s goals of reducing vehicular travel and increasing non-vehicular travel.
28. The tea room/café is very likely to be a desirable destination for bicyclers; however, due to the quantity and speed of vehicular traffic on Route 7, this road is likely to be intimidating for all but highly experienced bicyclers.
29. There are two locations on the Berry Farm where trail easements would facilitate pedestrian and bicycle access. One location is on the dam, over which runs an existing farm road which is very near to the existing Co-housing Trail—this easement will allow the Co-housing Trail to avoid a wetland. The second location is between the Co-housing Trail and the Charlotte Little League Baseball—this easement will allow access between the Co-housing Trail and the tea room/café in a location that least impacts the operation of the Berry Farm.
30. Obtaining trail easements during the development permitting process is supported by Policy 5.9.1.17 of the Town Plan, particularly in situations where there is a clear relationship between the proposed development—or those who will use the proposed development (e.g. customers)—and the trail network.

31. The Berry Farm was subdivided in 2000 to create the parcel that was conveyed to Charlotte Little League Baseball.
32. Condition #3 of the final decision granting subdivision approval (PC-00-14) required: “a trail easement through Lot #2 connecting with Lot#1, as proposed by the applicant, will be noted on the map entitled “Final Plat, Minor Subdivision, Property of Clark W. Hinsdale III, Charlotte, Vermont” by Stuart Morrow.” The recorded plat does depict the trail easement through Lot #2 (i.e. the Berry Farm), as required.
33. Condition #5 of the final decision required that “an easement deed for the proposed trail shall be recorded in the Charlotte Land Records within 12 months, in a form acceptable to the town’s attorney.” This condition was not complied with.
34. In consideration of the above facts, the Planning Commission finds it appropriate to require two path/trail easements in association with the current application, as indicated in conditions below.

**(D)(4)—Parking, Loading, & Service Areas**

35. Table 3.1 would require seven parking spaces for a 1,000 square foot restaurant.
36. The application proposes a graveled parking area with 12 parking spaces. This parking area is also to be used for the existing farmstand, in addition to 68 grassed parking spaces (as indicated in the application).
37. The parking lot will also serve as a loading and service area.
38. The site plan includes an accessible parking space, which will be signed, and it also includes a bicycle rack.
39. The Planning Commission finds the proposed parking area to be appropriately sized.
40. The proposed parking area is located in the vicinity of the existing parking area for the farmstand—this is to the east of the farmstand and the tea house/café, which is the “front” side of the building (which faces Route 7), although it is not within the front yard setback.
41. Although the Land Use Regulations indicate parking and loading areas should be located to the side or rear of buildings, considering the proposed parking area is located in the vicinity of the existing parking area, the Planning Commission finds the proposed parking area to be a appropriately located.
42. The site plan indicates the parking area will be surfaced with gravel.

**(D)(5)—Landscaping and Screening**

43. There is existing landscaping on the parcel between the proposed building and parking lot and Route 7, as described above.
44. The Planning Commission finds that the existing landscaping sufficiently and effectively screens and/or buffers the proposed development.

**(D)(6)—Stormwater Management and Erosion Control**

45. The application indicates that stormwater run-off will run from the structure and parking lot southward towards the gravel roadway, where it will be conveyed by a roadside grass swale either eastward towards Route 7, and then southward in the Route 7 ditch to an unnamed stream that feeds Thorpe Brook, or westward to an existing culvert under the gravel roadway, and then southward and eastward to the same stream leading to Thorpe Brook.
46. Grass swales are known to be an effective method of treating stormwater if the ground’s slope is relatively shallow and if the coverage of impervious surfaces is relatively small.
47. The proposed structure, parking lot, patio and walkways will create approximately 4,300

square feet of impervious surface. Some of the parking lot may have been previously impervious due to compacted soils. Since the amount of impervious surface created by the project will be less than one acre, a state stormwater permit will likely not be required.

48. The application indicates that erosion control will consist of diverting drainage around the uphill side of the construction area and temporary stone check dams in both swales along the gravel roadway.
49. The site plan depicts three existing culverts: a 15 inch culvert to the west of the development site, which crosses the gravel roadway; a 15 inch culvert to the east of the development site, which runs along the north side of the gravel roadway and allows access to the northern field; and an 18 inch culvert under the gravel roadway at the ditch along the west side Route 7. The application does not propose any changes to these culverts or the installation of additional culverts.
50. The Planning Commission finds the stormwater management and erosion control plans to be acceptable.

**(D)(7)—Outdoor Lighting**

51. With regard to outdoor lighting, the Site Plan Review application refers to information within the Conditional Use Review application.
52. The Conditional Use Review application indicates that a total of six exterior lighting fixtures are proposed. One decorative post fixture is proposed by the walkway from the parking lot to the tea room/café; two decorative wall fixtures are proposed on the patio; and three recessed “can” fixtures are proposed in the soffits over the front and side entries. All lights are proposed to have 13 watt compact fluorescent bulbs (which provide illumination approximately comparable to 100 watt incandescent bulbs).
53. The Conditional Use Review application indicates that the average illumination level near the building entryways and patio will be .78 footcandles, and the uniformity ratio is less than 4:1.
54. No lighting is proposed for the sign.
55. The Planning Commission finds the proposed outdoor lighting to be appropriate. Although the three decorative fixtures are not “cut-off” style fixtures (which are usually preferred), and so the lamps (bulbs) will be exposed, the lighting is not directed upward, there are relatively few fixtures, the fixtures have relatively low wattage, they are not visible from other properties, they will be located over 200 feet from Route 7, and they are screened from Route 7 by vegetation and topography.

**Other**

56. The application indicates that a sign is proposed to be installed on the existing farm sign at the edge of Route 7, just outside of the highway right-of-way. The sign will consist of a 2' x 3' panel that will replace a panel on the existing sign.
57. Section 3.13 (E) of the Land Use Regulations states (in part) “all signs greater than six (6) feet in size shall be set back at least twenty-five (25) feet from the edge of the highway right-of-way.”
58. Considering the farm sign is pre-existing, and the proposed sign is to replace a portion of the farm sign, the Planning Commission finds the proposed location of the sign to be appropriate.
59. The top of the panel will be seven feet high from the surrounding ground. The application indicates that no lighting is proposed on the sign.
60. The Planning Commission finds that the proposed size and height of the sign comply

with Section 3.13 of the Land Use Regulations, and are acceptable.

**Decision**

Based on these Findings, the Planning Commission approves application PC-09-32 with the following conditions:

1. A mylar (18" x 24") of the site plan will be submitted to the Planning Commission for review and endorsement within 160 days and recorded by the applicant in the Charlotte Land Records within 180 days.
2. Prior to submitting the mylar of the site plan as required in Condition #1, the applicant will execute and record two twenty (20) foot wide trail easements to the Town of Charlotte, along with ten (10) foot wide temporary construction easements on both sides of both trail easements (all to be in a form as approved by the Town Attorney), in the following locations:
  - A. On the farm road on the dam on the southwest side of the pond at the southern end of the parcel, sufficient to join with the Co-housing Trail at both ends of the dam.
  - B. Between the Co-housing Trail and the Charlotte Little League Baseball parcel, in a location that will allow pedestrian and bicycle access to the parking area on that parcel, and in a location to be mutually agreed upon by the applicant and the Town.
3. All new utility lines will be underground.
4. The parking lot will be surfaced with non-white crushed stone.

**Additional Conditions:** All plats, plans, drawings, 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 January 21<sup>st</sup>:** Jeff McDonald, Jim Donovan, Linda Radimer, Ellie Russell, Peter Joslin and Paul Landler.

**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: \_\_\_\_\_
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- 7. Signed: \_\_\_\_\_ For / Against Date Signed: \_\_\_\_\_

**Appendix A**

The application consists of:

- 1. A Site Plan Review application form and appropriate fee
- 2. A Project Description
- 3. A Site Plan Review Narrative
- 4. A copy of the Conditional Use Review application
- 5. Cut sheets from Progress Lighting for a fixture entitled Prairie (Outdoor, Incandescent), catalogue numbers P5463 (pole mounted) and P5764 (wall mounted), revised 8/06, with lamping of 100 watts (13 watt compact fluorescent)
- 6. A cut sheet from Progress Lighting for a fixture entitled 6” Step Baffle Single Vertical Lamp IC & Non-IC (Compact Fluorescent, Recessed), catalogue number 68066, revised 2/07, with lamp wattage housing model P83-AT
- 7. A cut sheet from Progress Lighting for a fixture entitled 6” Single Vertical Lamp Housing IC & Air Tight (Compact Fluorescent, Recessed), catalogue number P83-AT, revised 5/08, with lamping of 13 watts Quad, Triple (GE).
- 8. A memo dated August 11, 2009 from Craig Heindel to Brad & Polly Simpkins regarding “Sewage disposal and potable water supply potential; Proposed Tea Room/Café located at the Charlotte Berry Farm”
- 9. A plan by Heindel & Noyes, Inc. entitled “Brad & Polly Simpkins-Charlotte Berry Farm, 4702 Ethan Allen Highway, Charlotte, Vermont, Preliminary Evaluation for Potential Wastewater Disposal” dated August 12, 2009, no revisions.
- 10. Photographs of the site.
- 11. A sheet by Peregrine Design/Build entitled “Simpkins Tea Room Addition, Charlotte Berry Farm, Shelburne, Vermont” and labeled “1.0, Exterior Elevations” dated May 21, 2008, no revisions.
- 12. A sheet by Peregrine Design/Build entitled “Simpkins Tea Room Addition, Charlotte Berry Farm, Shelburne, Vermont” and labeled “1.3, Floor Plan” dated May 21, 2008, no revisions.
- 13. A plan by Heindel & Noyes, Inc. entitled “Site Plan, Tea Room Café at the Charlotte Berry Farm, Brad & Polly Simpkins, 4702 Ethan Allen Hwy., Charlotte, Vermont” dated 11-06-09, no revisions.