

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

Mary Beth Freeman

**Final Plan Hearing
For A
Two-Lot Subdivision as a
Planned Residential Development**

Application # PC-07-13

Background

Sketch Plan Review was most recently held on January 4, 2007; a previous Sketch Plan Review was held on October 5, 2006. The project was classified as a Minor Subdivision.

Application

Materials submitted with the application are listed in Appendix A.

Public Hearing

A public hearing for this application was opened on July 19, 2007 and was continued on August 16, September 20, October 4 and October 18. Mary Beth Freeman (also known as Mary Beth Olsen) was present at all meetings except October 18. William van Zyverden was present on behalf of the applicant on July 19 and August 16. Michael Russell was present on behalf of the applicant on October 4 and October 18. Chris Davis, the Charlotte Volunteer Fire Department Chief, was present and participated in the hearing on September 20.

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 subject parcel is 11 acres, and is located on the east side of Popple Dungeon Road (formerly called Jubilee Ridge Road) in the Rural District. There is currently a single family dwelling located on the parcel. The subject parcel was created as Lot 5 of the Westwind Farm subdivision, a 13-lot subdivision developed by Pamela and Willett Foster in 1978.
2. The application proposes to create two lots: Lot 5A is 8 acres and includes the existing dwelling, and Lot 5B is 3 acres.
3. *Areas of high public value* on the parcel include the following:
 - A. Most of the parcel consists of prime agricultural soils (from VCGI data).

- B. The remainder of the parcel has statewide agricultural soils (from VCGI data).
 - C. Wetlands appear to be located on the property (from Town data).
 - D. The town forest (Whalley Woods) is located on the adjacent parcel to the east.
4. The subdivision application has been proposed as a Planned Residential Development (potentially in response to the Planning Commission's suggestion at Sketch Plan Review). Lot 5B is less than minimum lot size—this allows the northerly field, which has extensive agricultural soils and possibly some wetland, to remain intact on one lot (Lot 5A).
 5. Since Lot 5B is two acres less than minimum lot size, two acres of density must be reserved on Lot 5A for Lot 5B.
 6. A building envelope has been proposed for Lot 5B, as depicted on the proposed plat.
 7. The building envelope is 50 feet west of the easterly property line; while this location will help to minimize impact on the town forest to the east, the maintenance of a wooded buffer in the form of a 25 foot wide “no-cut” zone will better assure that town forest is not impacted from the proposed subdivision.
 8. As a Planned Residential Development, a minimum of 50% of the parcel must be designated as open space (in accordance with Section 8.4(C)(1) and Section 8.6 of the Charlotte Land Use Regulations).
 9. The Planning Commission finds that, in order to designate a minimum of 50% of the parcel as open space, it is appropriate and necessary to create a building envelope on Lot 5A that is no larger than three acres in size. The creation of this building envelope, in combination with the building envelope on Lot 5B and the portions of the parcel used by the wastewater disposal areas, the Popple Dungeon Road right-of-way, and the driveways on Lots 5A and 5B, will result in approximately 50% of the parcel being subject to development and 50% of the parcel remaining as open space. The purpose of the building envelopes is to protect the agricultural soils and wetlands outside of the building envelopes from development.
 10. The Planning Commission finds that, with conditions noted herein, the application has minimized impacts on all of the identified *areas of high public value*, and consequently will not create undue adverse impacts on those areas.
 11. Popple Dungeon Road is a private road that currently serves six parcels, all with single family dwellings. Four of these parcels were created as part of the Westwind Farm subdivision in 1978; two parcels were created by deed prior to that subdivision.
 12. The current application will result in seven lots being served by Popple Dungeon Road.
 13. The nearest source of water for fire protection dry hydrant is on Windswept Lane, approximately 3,500 feet from the subject parcel. There is no direct access to Lake Champlain for the purpose of providing a source of water for fire protection.
 14. In consideration of the previous lots on Popple Dungeon Road, this application triggers the need for the construction of a fire pond and dry hydrant, based on the Charlotte Volunteer Fire and Rescue Services, Inc. Recommended Standards for Developments and Homes, which are referenced in Section 7.5 of the Charlotte Land Use Regulations.
 15. The proposed plat depicts a fire pond on Lot 5B.
 16. At the public hearing the applicant stated that her engineer determined that the road bed of Popple Dungeon Road is 18 feet wide, which conforms with the requirements of the Charlotte Volunteer Fire and Rescue Services Inc. Recommended Standards for Developments and Homes for roads serving six or more dwellings.

17. The proposed plat depicts a turn-around at the entrance of the driveway on Lot 5B that is to accommodate emergency vehicles.
18. The Town's wastewater consultant has reviewed the submitted wastewater disposal plan and issued a memo dated 7/16/07. The most recent memo indicates the wastewater disposal plan is acceptable—although it requests clarification with regard to whether the new system to serve Lot 5A needs to be constructed pursuant to the approval.
19. The existing dwelling is currently permitted for three bedrooms. Therefore the new system does not need to be constructed until such time as a fourth bedroom is permitted.
20. The proposed replacement wastewater disposal system is designed to serve both Lot 5A and Lot 5B.
21. The existing dwelling (on proposed Lot 5A) obtains water from the Westwind Water Corporation.
22. Lot 5B is to obtain water from a drilled well to be located on Lot 5A.
23. A Wastewater System and Potable Water Supply Permit (WW-4-2814) has been issued for this project. This permit requires (in condition #21) the creation of Homeowners' Association for the shared replacement wastewater disposal system.
24. The applicant submitted a letter at the hearing on October 4th from Doug Hewitt, P.E. of Summit Engineering dated October 3, 2007 re: "Investigation of Fire Pond, Popple Dungeon Road, Charlotte, Vermont."

Decision

Based on these Findings, the Planning Commission approves the Final Plan Application for the proposed two-lot planned residential development subdivision with the following conditions:

1. The survey plat will be revised as follows:
 - A. A building envelope will be designated for Lot 5A that is no larger than three acres in size and does not extend west of the existing barn on Lot 5A.
 - B. A note will be added stating "For density purposes Lot 5A is six acres, since two acres are reserved for Lot 5B, which is two acres less than minimum lot size."
 - C. A note will be added stating "The replacement wastewater disposal mound serves both Lot 5A and Lot 5B."
 - D. A note will be added stating "Trees will not be removed within 25 feet of the easterly property line of both Lot 5A and Lot 5B."
 - E. A note will be added stating "Prior to the submission of a Certificate of Occupancy application for Lot 5B, a fire pond and dry hydrant system will be constructed by the applicant (or subsequent property owner) in compliance with the design within the "Charlotte Volunteer Fire and Rescue Services, Inc. Recommended Standards For Development and Homes."
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 #3 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.
4. Prior to the submission of the mylar in accordance with Condition #3 above, the applicant

shall execute and record the following documents:

- A. A Fire Pond Agreement, Waiver and Easement;
 - B. A Declaration of Covenants for a Homeowners Association, establishing all necessary rights, easements, and responsibilities for the shared replacement wastewater disposal system.
5. The warranty deeds for both lots will include the following:
- A. References to this Findings of Fact and Decision;
 - B. References to the Harris survey;
 - C. Reference to the Fire Pond Agreement, Waiver and Easement;
 - D. Reference to the Declaration of Covenant for a Homeowners' Association;
 - E. Easements for:
 - i. The well and water line serving Lot 5B (located on Lot 5A);
 - ii. The primary wastewater system serving Lot 5A (located on Lot 5B);
 - iii. The shared replacement wastewater system for both lots (located on Lot 5A).
6. Prior to the submission of a Zoning Permit application for Lot 5B, wooden stakes will be set at the corners of the building envelope on that lot.
7. Prior to the submission of a Certificate of Occupancy application for Lot 5B, a fire pond and dry hydrant system will be constructed by the applicant (or subsequent property owner) in compliance with the design within the "Charlotte Volunteer Fire and Rescue Services, Inc. Recommended Standards For Development and Homes." The applicant or subsequent property owner will request the Charlotte Volunteer Fire Department to test the system to confirm its operability, and to inspect the pumper pull-out at the dry hydrant and the emergency vehicle turnaround at the entrance to Lot 5B for adequate construction.
8. The application for a Certificate of Occupancy for Lot 5B will include a letter from the Charlotte Volunteer Fire Department indicating that the dry hydrant is operational, and that the pumper turn-out at the dry hydrant and the emergency vehicle turnaround at the entrance to Lot 5B are appropriately constructed.
9. All structures except barns housing livestock must be located within the building envelopes on Lots 5A and 5B.
10. No trees will be removed by the applicant or subsequent property owners within 25 feet of the easterly property line of both Lot 5A and Lot 5B.
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, and will not direct light onto adjacent properties or roads, and will not result in excessive lighting levels that are uncharacteristic of the neighborhood.
12. All new utility lines will be underground.
13. 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, Linda Radimer, Robin Pierce, Peter Joslin and Andrew Thurber

Members Present at the Public Hearing on August 16: Jeff McDonald, Linda Radimer, Robin Pierce, Andrew Thurber and John Owen

Members Present at the Public Hearing on September 20: Jeff McDonald, Robin Pierce, Peter Joslin, Andrew Thurber and John Owen

Members Present at the Public Hearing on October 4: Jeff McDonald, Linda Radimer, Robin Pierce, Peter Joslin, Andrew Thurber and John Owen

Members Present at the Public Hearing on October 18: Jeff McDonald, Linda Radimer, Robin Pierce, Peter Joslin, Andrew Thurber, John Owen and Jim Donovan

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 with the application:

- 1. An application form and appropriate fee.
- 2. A survey by Albert W. Harris entitled "Planned Residential Development of lands of Mary Beth Freeman, 178 Popple Dungeon Road, Charlotte, Vermont" dated April 10, 2006, last revised 5/10/2007.
- 3. A wastewater disposal plan by Krebs & Lansing Consulting Engineers, Inc. entitled "Mary Beth Freeman, Popple Dungeon Road, Charlotte, Vermont" with the following sheets:
 - A. Sheet 1 entitled "Overall Plan" dated April 17, 2007, revised June 8, 2007.
 - B. Sheet 2 entitled "Wastewater Disposal Plan" dated April 17, 2007, revised June 8,

2007.

- C. Sheet 3 entitled “Wastewater Disposal Plan” dated April 17, 2007, no revision.
 - D. Sheet 4 entitled “Wastewater Disposal Details” dated April 17, 2007, no revision.
 - E. Sheet 5 entitled “Water & Wastewater Disposal Details” dated April 17, 2007, revised June 8, 2007.
 - F. Sheet 6 entitled “Wastewater Disposal Details” dated April 17, 2007, no revision.
4. A draft document entitled “Replacement Septic System Agreement.”
 5. A letter from William van Zyverden, Esq. of Holistic Justice Center to Dean Bloch re: “Application of Mary Beth Olsen (formerly Freeman), 178 Popple Dungeon Road.”
 6. A memo entitled “Proposed Minor Subdivision, 178 Popple Dungeon Road, Charlotte, Owned by Mary Beth Freeman” dated May 15, 2007, no author.