

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION
IN RE APPLICATION OF

CHARLOTTE TOWN CLERK'S OFFICE
RECEIVED FOR RECORD

This 21 day of March A.D. 2012
at 10 o'clock 00 minutes 1 m and
recorded in vol. 198 on page 651-658
Attest Sharon B. Balaban Town Clerk
asst.

Sara E. Shays
2225 Spear Street

Final Plan Application
For A
Two-Lot Subdivision and Planned Residential Development
Application # PC-12-01

Background

The Planning Commission held Sketch Plan Review for the proposed subdivision on March 17, April 21 and May 5, 2011, at the end of which it classified the project as a Minor Subdivision in accordance with Section 6.1(C)(1) of the Charlotte Land Use Regulations ("Regulations"). The Planning Commission conducted site visit prior to the meeting on April 21, 2011. The Planning Commission granted an extension for submission of the Final Plan application on December 15, 2011.

Application

Materials submitted with the applications are listed in Appendix A.

Public Hearing

The Planning Commission held a public hearing for this application on February 16, 2012. The applicant was represented by herself and Clark W. Hinsdale, III. Jane Thompson, Janet Landrigan and Gary Landrigan were also present and participated in the hearing.

Regulations in Effect

- Town Plan, amended March, 2008
- Land Use Regulations adopted March, 2010.
- Recommended Standards for Developments and Homes adopted September, 1997

Findings

Background

1. The applicant owns an 11.41 acre parcel at 2225 Spear Street in the Rural District, which hosts a single family dwelling. The parcel was created by a four-lot subdivision in the 1970s.
2. The application proposes a two lot subdivision to create one lot for the existing dwelling (Lot 1) and a building lot for a single family dwelling (Lot 2), which is configured as a planned residential development.

Applicable standards in Chapter VII of the Charlotte Land Use Regulations (“Regulations”) are reviewed below in Findings 3-46.

Sections 7.2 and 7.3—Areas of High Public Value

3. The parcel includes or is adjacent to the following areas of high public value:
 - A. Land in active agricultural use: The eastern portion of the parcel is currently used for hay and pasture (as indicated by the applicant at Sketch Plan Review).
 - B. Primary agricultural soils: Prime agricultural soils are located in the northwestern portion of the parcel, and statewide agricultural soils are on the remainder of the parcel (as classified by the Natural Resources Conservation Service).
 - C. Surface waters, wetlands and associated setbacks and buffer areas: A stream that runs into the LaPlatte River runs along the eastern boundary of the parcel. Town Plan map 7 depicts wetland associated with the stream also runs along the eastern boundary; and a small wet area is also depicted near the southern parcel boundary midway between the easterly and westerly parcel boundaries.
 - D. Wildlife habitat: Town Plan map 6 depicts the a large block of “associated support habitat” to the east of the parcel
 - E. Scenic views: Town Plan map 13 indicates that Spear Street is a “most scenic road” from Hinesburg Road to the Shelburne town line.
4. Considering the resources on and adjacent to the parcel, the Planning Commission finds that the agricultural use and soils are the primary areas of high public value associated with the parcel. These are the resources that most strongly characterize the property, and which the Planning Commission feels are the most important to protect during the subdivision process. The Planning Commission notes, however, that protection of the agricultural use and soils could very likely result in the protection of the other areas of high public value associated with the parcel.
5. Section 7.3 (D)(1), (2) and (3) of the Regulations indicate that building envelopes, lot lines, infrastructure, roads, driveways and utility corridors should not create any undue adverse impacts on areas of high public value, and that building envelopes shall be designed to minimize undue adverse impacts.
6. The proposed lot which will include the existing dwelling (Lot 1) is of a size and configuration such that it does not include the hayfield, and extends to the east only far enough to include the existing fenced horse pasture.
7. The building envelope on the proposed building lot (Lot 2) is located at the very western end of the hayfield, close to the existing dwelling and proposed wastewater systems.
8. The applicant has proposed that all of the area on Lot 2 outside of the building envelope will be subject to an Open Space Agreement with the Town.

Conclusion 1: The applicant has sufficiently minimized the project’s impact on prioritized areas of high public value, and therefore the project will not have an undue adverse impact on the prioritized areas of high public value.

9. Section 7.2(C)(5) of the Regulations states “irregular shaped lots (e.g., with curves, jogs, doglegs; excessively rectilinear, etc.) shall not be created unless warranted by topography, surface waters, or to avoid the fragmentation of significant natural or cultural resources.”
10. The proposed boundary between Lot 1 and Lot 2 creates somewhat irregular lot shapes; however, the Planning Commission finds that the proposed boundary generally coincides

with an existing wastewater disposal easement, and also with existing uses such as the fenced horse pasture. The Planning Commission also finds that the proposed boundary allows the proposed building envelope to be sited close to the existing house and at the western end of the hayfield.

11. One of the proposed boundaries between Lot 1 and Lot 2 is slightly offset from and at a slightly different bearing than the boundary of the wastewater disposal easement benefitting Clark W. Hinsdale, III. This could lead to confusion in the future as to the actual location of the boundaries of the lots and the easement.

Conclusion 2: The proposed lot shapes are acceptable, however, the proposed boundary between the two lots and to the west of the proposed building envelope for Lot 2 should be revised to coincide with the boundary of the wastewater disposal easement benefitting Hinsdale in order to avoid future confusion.

Section 7.4—Compatibility with Agricultural Operations

12. The subject parcel and adjoining parcels are used for hay and horse pasture.
13. As discussed above, the hayfield on the subject lot is proposed to be located entirely on one lot (Lot 2), and the proposed building envelope on Lot 2 is at the very western end of the hayfield.
14. The well shield for the proposed well is located on the applicant's parcel.
15. The proposed well is approximately 200 feet from the northerly parcel boundary, but it is less than 200 feet from the proposed boundary with Lot 1 in the vicinity of the fenced horse pasture.
16. The fenced horse pasture is a low intensity agricultural use, and is unlikely to create a conflict with the water supply of Lot 2.

Conclusion 3: The project will not have conflicts with any agricultural operations.

Section 7.5—Facilities, Services & Utilities

17. Due to its small size, the proposed subdivision is unlikely to create a burden on existing or planned municipal educational facilities and services, and does not trigger the requirement for providing a fire pond and dry hydrant.
18. A utility pole is located within the Spear Street right-of-way, but it is not adjacent to the proposed 50 foot wide right of way and utility easement depicted on the plat.
19. The application does not indicate a proposed route for bringing power, telephone and cable lines from the utility pole to the proposed utility line easement benefitting Lot 2.

Conclusion 4: The project will not create an unreasonable burden on existing or planned municipal facilities or services. It appears an easement is needed over Lot 1 to allow underground utility lines to reach the proposed utility line easement outside of the Spear Street right-of-way.

Section 7.6—Water Supply

20. There is no indication of water scarcity in the vicinity of the project.
21. The well shield for the proposed well is located on the applicant's parcel.
22. The applicant has obtained a Wastewater System and Potable Supply Permit (WW-138-1202).

Conclusion 5: It appears that the proposed water supply will be adequate for the proposed use, and that it will not adversely impact existing water supplies in the vicinity.

Section 7.7—Sewage Disposal

23. The application proposes a new wastewater disposal system to serve Lot 2, and identifies an area for a replacement wastewater disposal system for Lot 1. The proposed replacement area for Lot 1 and the proposed primary system for Lot 2 are both located on Lot 1.
24. The application includes draft language for a wastewater disposal easement benefitting Lot 2.
25. The applicant has obtained a Wastewater System and Potable Supply Permit (WW-138-1202) for the proposed subdivision.
26. The survey plat also depicts a wastewater disposal easement that benefits Clark W. Hinsdale III, which is also located on Lot 1 south of and adjacent to the easement for the primary system proposed to serve Lot 2. Mr. Hinsdale stated at the public hearing this system is not currently being proposed for permitting, but may be used in the future in association with a development proposal on one or more other parcels.
27. The boundary of the easement benefitting Mr. Hinsdale is very close to a proposed boundary line between Lot 1 and Lot 2 but at a slightly different bearing.

Conclusion 6: The parcel has sufficient wastewater disposal capacity. Some revisions to the plat are needed to avoid potential future confusion regarding the two wastewater disposal easements on Lot 1, and also between the location of the easement benefitting Hinsdale relative to the nearby proposed boundary between Lot 1 and Lot 2.

Section 7.8—Stormwater Management & Erosion Control

28. The project involves the development of one building lot and associated infrastructure on an 8.42 acre parcel, resulting in two dwellings on 11.41 acres. This is a low intensity development.
29. The project will not affect steep or very steep slopes.
30. Development is not proposed near surface water or other sensitive areas.

Conclusion 7: Considering the above findings, erosion and stormwater run-off are not likely to create impacts beyond the immediate development site.

Section 7.9—Landscaping and Screening

31. The application does not propose extensive removal of existing vegetation, except for the proposed location of the driveway as depicted on the plan by Heindel & Noyes.
32. The development site is not adjacent to surface waters.
33. The proposed driveway is likely to produce headlight glare at the existing dwelling on the adjoining parcel to the south.
34. Landscape mitigation, such as a row of cedar trees, could help reduce the prospective headlight glare.

Conclusion 8: Shifting the driveway serving Lot 2 to preserve existing vegetation within the proposed right-of-way would reduce impacts to the adjoining property and to Spear Street. Additionally, some landscape mitigation is appropriate to reduce the

prospective headlight glare at the dwelling on the adjoining parcel to the south.

Section 7.10—Roads, Driveways & Pedestrian Access

35. The proposed subdivision will not create a significant increase in traffic on public roads in the vicinity of the project over what currently exists.
36. The applicant has obtained a Highway Access Permit (HAP-12-01), which allows the centerline of the existing access on Spear Street to be moved 48 feet to the south, and also allows this access to serve as a shared driveway for Lot 1 and Lot 2.
37. As depicted on the proposed plat, the northerly boundary of the proposed 50 foot wide right-of-way & utility easement is 48 feet from the centerline of the existing driveway. In this depiction, the easement does not include the egress lane of the driveway.
38. Condition 1 of HAP-12-01 states “the first 30 feet of the new driveway will be level with Spear Street.”
39. The Recommended Standards for Developments and Homes (adopted by the Planning Commission in September, 1997), which are referenced in Section 3.2(D)(2) of the Regulations, requires driveways to have a maximum grade of 8%.

Conclusion 9: The project is unlikely to create unreasonable traffic congestion or unsafe traffic conditions. The right-of-way easement depicted on the plat should be revised to include the egress lane of the driveway.

Section 7.11—Common Facilities, Common Land, & Land to be Conserved; and

Section 7.12—Legal Requirements

40. No common land is proposed.
41. The applicant proposed that all of the area on Lot 2 outside of the building envelope is to be put under an Open Space Agreement with the Town.
42. The applicant has submitted a draft Open Space Agreement.
43. The project includes an access and utility easement and a wastewater easement over Lot 1 in favor of Lot 2.
44. Clark W. Hinsdale, III also holds an easement for wastewater disposal.
45. Draft easement language for all easements was submitted with the application, except that a utility line easement appears to be needed to bring power, telephone and other utilities from the existing utility pole at Spear Street to the proposed utility easement.
46. The landscape mitigation required by this decision (see Conclusion 7 above and Condition 4 below) is not extensive enough to warrant surety such as bonding or a letter of credit, however, a certification from a landscape designer or landscape architect confirming that such landscape mitigation has been installed in a manner that will be effective would be appropriate.

Conclusion 10: The application has provided sufficient easement language with the exception of a utility line easement. The application has provided an appropriate document for the proposed open space, subject to the review and approval of the Selectboard and Town Attorney. A certification from an appropriate professional regarding the landscape mitigation will adequately address such a condition.

The applicable standards in Chapter VIII are reviewed below in Findings 47-50.

General Standards and Rural District Standards

47. The application proposes that Lot 1 will be less than the standard minimum lot size of five acres, which allows most of the land with areas of high public value to remain on one lot (Lot 2).
48. The proposed siting of the building envelope on Lot 2 will minimize the adverse affects upon the areas of high public value associated with the parcel.
49. The application does not indicate the size of the proposed building envelope on Lot 2, but it appears that approximately 60% of the parcel (including both Lot 1 and Lot 2) will be designated as open space.
50. The proposed open space includes the prioritized area of high public value (agricultural use and soils), and also serves to protect other areas of high public value associated with the parcel (surface water and wildlife habitat on the adjacent parcel to the east, and scenic view from Spear Street).

Conclusion 11: The application has sufficiently minimized impacts to areas of high public value through the careful siting of the building envelope on Lot 2 and the proposed designation of open space.

Decision

Based on these Findings, the Planning Commission approves the Final Plan Application for the proposed subdivision with the following conditions:

1. The survey plat by Stuart J. Morrow will be revised as follows:
 - A. Dimensions of the building envelope on Lot 2 and distances from the two nearest property lines or survey markers will be indicated.
 - B. The boundary between Lot 1 and Lot 2 to the west of the building envelope will coincide with the boundary of the wastewater disposal easement.
 - C. The wastewater disposal easement benefitting Lot 2 will be separated from the wastewater disposal easement benefitting Clark W. Hinsdale, III.
 - D. Unless utility lines can be routed (underground) to reach Lot 2 in a location that does not require an easement over Lot 1, a utility line easement will be added over Lot 1, benefitting Lot 2 outside of the Spear Street right-of-way.
 - E. The northernmost boundary of the proposed 50 foot wide right-of-way and utility easement benefitting Lot 2 will be shifted to the north by ten feet in order to include the egress lane of the driveway.
 - F. A note will be added indicating that the area on Lot 2 outside of the building envelope will be subject to an Open Space Agreement.
2. One digital copy (pdf), two paper copies (one 11"x 17" and one full size) and a mylar (18" x 24") of the survey plat as amended by Condition #1 will be submitted to the Planning Commission for review and signature (of the mylars) within 160 days. The applicant will record the signed mylar 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 complete the following steps:
 - A. Submit a letter from the surveyor indicating he has set the survey markers in the field as indicated on the plat. 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 he will set the pins when the ground thaws and has been paid to do so.
- B. Execute the Open Space Agreement and record it in the Charlotte Land Records (with the mylar) after review and approval by the Selectboard and Town Attorney.
 - C. Revise the Heinel & Noyes plan entitled "Sanitary Design, Sara E. Shays, Two-Lot Subdivision, 2225 Spear Street-Charlotte, Vermont" so that the driveway is outside of the existing vegetation, and provide a copy to the Town.
4. The application for a Certificate of Occupancy for a dwelling on Lot 2 will include a certification from a landscape designer or landscape architect indicating that landscape mitigation has been installed on Lot 2 in a manner that will be effective in reducing glare from headlights pointing towards the dwelling on the adjoining parcel to the south.
 5. No new pole-mounted light fixture will be taller than 8' off the ground, and no new building-mounted light fixture will be taller 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.
 6. All new utility lines will be underground.
 7. All new driveways will be surfaced with non-white crushed stone, and will have a grade no greater than 8%.
 8. All structures on Lot 2 will be located within the building envelope.
 9. The conveyance deed for Lot 2 will include easements for access and wastewater disposal essentially as submitted with the application, except that it shall also include an easement for utility lines running from the pole on Spear Street over Lot 1 to Lot 2, outside of the Spear Street right-of-way.

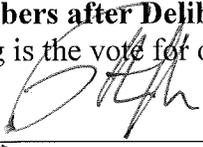
Additional Conditions: All plats, plans, drawings, documents, testimony, evidence and conditions listed above or submitted at the hearing and used as the basis for the Decision to grant permit shall be binding on the applicant, and his/her/its successors, heirs and assigns. Projects shall be completed 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 February 16, 2012: Jeff McDonald, Jim Donovan, Linda Radimer, Peter Joslin, Ellie Russell, Gerald Bouchard 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: 3/20/12
2. Signed:  For / Against Date Signed: 3/20/2012

- 3. Signed: *Jo Dan* For / Against Date Signed: 3-20-12
- 4. Signed: *Robert A. Passale* For / Against Date Signed: 3-20-12
- 5. Signed: *Paul A. Allen* For / Against Date Signed: 3-20-12
- 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. A Final Plan application form and appropriate fee.
- 2. A survey plat by Stuart J. Morrow entitled "Final Plan, Minor Subdivision, Property of Sara E. Shays, 2225 Spear Street, Charlotte, Vermont" dated October, 2011, no revisions.
- 3. A plan by David W. Fuqua of Heindel & Noyes, Inc. entitled "Sanitary Design, Sara E. Shays, Two-Lot Subdivision, 2225 Spear Street-Charlotte, Vermont" dated January 25, 2012, no revisions.
- 4. A sheet by David W. Fuqua of Heindel & Noyes, Inc. entitled "Design and Notes, Sara E. Shays, Two-Lot Subdivision, 2225 Spear Street-Charlotte, Vermont" dated January 25, 2012, no revisions.
- 5. A sheet by David W. Fuqua of Heindel & Noyes, Inc. entitled "Details, Sara E. Shays, Two-Lot Subdivision, 2225 Spear Street-Charlotte, Vermont" dated January 25, 2012, no revisions.
- 6. A document on letterhead of Heindel & Noyes, Inc. entitled "Report of Hydrogeologic Site Capacity For Wastewater Disposal" to Sara Shays from Craig Heindel, CPG, dated January 25, 2012 regarding "Sanitary Design for Two-Lot Subdivision, 2225 Spear St., Charlotte; Hydrogeologic Site Capacity Analysis for Wastewater Disposal"
- 7. A draft Open Space Agreement
- 8. A sheet with draft language for "Lot 1, 2 and Community Septic System Shared curb cut and driveway easement" and "Lot 2 Septic Area on Lot 1"