

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

**Kathleen O'Brien
1971 Spear Street**

**Final Plan Application
For A
Two-Lot Subdivision and Planned Residential Development
Application # PC-12-16**

Background

The parcel was created by a four-lot subdivision in the 1970s. Sketch Plan Review for the current proposal was initiated by Scott and Kendra Bowen and completed by Kathleen O'Brien. The Planning Commission conducted Sketch Plan Review on March 15, 2012 after holding a site visit earlier in the evening. At the conclusion of Sketch Plan Review the Planning Commission classified the project as a Minor Subdivision in accordance with Section 6.1(C)(1) of the Charlotte Land Use Regulations.

Application

Materials submitted with the applications are listed in Appendix A.

Public Hearing

The Planning Commission held a public hearing for this application on July 19, 2012. Kathleen O'Brien and Jason Barnard were present representing the applicant. Sue Moraska, an adjoining property, was 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 18.15 acre parcel at 1971 Spear Street in the Rural District, which hosts a single family dwelling. 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).

Applicable standards in Chapter VII of the Charlotte Land Use Regulations ("Regulations") are reviewed below in Findings 2-35.

Sections 7.2 and 7.3—Areas of High Public Value

2. 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 and a small apple orchard is located on the western portion of the parcel (as indicated by the applicant at Sketch Plan Review).
 - B. Primary agricultural soils: Prime agricultural soils are located on the western portion of the parcel and a pocket on the northern 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: An unnamed stream that runs into the LaPlatte River runs just east of the eastern boundary of the parcel. Town Plan map 7 depicts wetland associated with the stream runs along the parcel's eastern boundary.
 - D. Scenic views: Town Plan map 13 indicates that Spear Street is a "most scenic road" from Hinesburg Road to the Shelburne town line.
3. 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.
4. Section 7.3 (D)(1), (2) and (3) of the Regulations indicates 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.
5. Lot 1, which includes the existing dwelling, is proposed to be 5.53 acres. This is larger than is typical for a Planned Residential Development; and the lot includes some of the agricultural soils.
6. The applicant stated at the hearing that the reason for the proposed shape and size of Lot 1 is to allow the wastewater disposal system to be located on the lot.
7. The Planning Commission finds that, whereas it would be desirable for Lot 1 to be less than the minimum lot size in order to allow the bulk of the 18 acre parcel to remain with one lot, the proposed configuration of the lots allows most of the 18 acres to remain with Lot 2. Furthermore, the wastewater area serving Lot 1 would not be usable for agricultural purposes even if the land were to be included with Lot 2.
8. The proposed building envelope on Lot 2 is located close to Spear Street. Although the building envelope includes prime agricultural soils, which are also located near Spear Street, the proposed building envelope has a fairly small impact (approximately 1/5 of an acre) and therefore keeps most of the parcel available for agricultural purposes.
9. The application has proposed that 9.84 acres be designated as open space under the jurisdiction of an Open Space Agreement with the Town. The proposed open space area is entirely on Lot 2, and encompasses the eastern portion of the original parcel, which includes agricultural soils, wetland, wetland buffer and the stream setback.

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 those areas.

Section 7.4—Compatibility with Agricultural Operations

10. The subject parcel and adjoining parcels are currently used, or have the potential to be used, for hay, pasture and possibly some crops.
11. As discussed above, much of the agricultural field on the subject lot is proposed to be located on one lot (Lot 2), and the proposed building envelope on Lot 2 is at the very western end of the field, and therefore will not impact prospective agricultural uses.
12. Two drilled wells are proposed, one on each lot. Both wells are located on the western end of the parcel, so will not impact prospective agricultural use of the subject parcel or adjacent parcels.

Conclusion 2: The project will not conflict with any agricultural operations.

Section 7.5—Facilities, Services & Utilities

13. 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.

Conclusion 3: The project will not create an unreasonable burden on existing or planned municipal facilities or services.

Section 7.6—Water Supply

20. There is no indication of water scarcity in the vicinity of the project.
21. The well shields for the proposed wells are located mostly on the applicant's parcel; small portions are located within the Spear Street right-of-way.
22. The applicant has obtained a Wastewater System and Potable Supply Permit (WW-138-1210).

Conclusion 4: 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 applicant has obtained a Wastewater System and Potable Supply Permit (WW-138-1210) for the proposed subdivision.

Conclusion 5: The parcel has sufficient wastewater disposal capacity.

Section 7.8—Stormwater Management & Erosion Control

24. The project involves the development of one building lot and associated infrastructure on a 12.62 acre parcel, resulting in two dwellings on 18.15 acres. This is a low impact development.
25. The project will not affect steep or very steep slopes.
26. Development is not proposed near surface water or other sensitive areas.

Conclusion 6: 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

27. The application does not propose extensive removal of existing vegetation.

28. The development site is not adjacent to surface waters.

Conclusion 7: The project will not have a significant impact on existing vegetation, and will not have impacts that necessitate or warrant vegetative screening.

Section 7.10—Roads, Driveways & Pedestrian Access

29. The proposed subdivision will not create a significant increase in traffic on public roads in the vicinity of the project over what currently exists.

30. The application proposes having separate curb-cuts for each lot.

31. Whereas the Land Use Regulations support requiring shared access points, the Planning Commission finds that separate accesses are appropriate for this project, since the existing curb-cut is located at the north end of the parcel, and creating a new shared access would require removing many of the existing apple trees along the frontage of Spear Street.

32. The applicant has obtained a Highway Access Permit (HAP-12-02) for a driveway to Lot 2.

Conclusion 8: The project is unlikely to create unreasonable traffic congestion or unsafe traffic conditions.

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

Section 7.12—Legal Requirements

33. No common land is proposed.

34. The applicant proposed that 9.84 acres on Lot 2 are to be put under an Open Space Agreement with the Town.

35. The applicant has submitted a draft Open Space Agreement.

Conclusion 9: The application has provided an appropriate document for the proposed open space, subject to the review and approval of the Selectboard and Town Attorney.

The applicable standards in Chapter VIII are reviewed below in Findings 36-39.

General Standards and Rural District Standards

36. Most of the land with areas of high public value will be located on one lot (Lot 2).

37. 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.

38. The application has proposed that 54% of the combined area of Lot 1 and Lot 2 be under the jurisdiction of an Open Space Agreement, which complies with Section 8.4(C)(1).

39. 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 (wetland, wetland buffer and stream setback).

Conclusion 10: 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. One digital copy (pdf), one paper copy (11"x 17") and a mylar (18" x 24") of the survey plat 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.
2. Prior to the submission of the mylar in accordance with Condition #1 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.
 - 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.
3. 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.
4. All new utility lines will be underground.
5. All new driveways will be surfaced with non-white crushed stone, and will have a grade no greater than 8%.
6. No structures will be located within the open space.

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, 2012: Jeff McDonald, Linda Radimer, Peter Joslin, 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: _____
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 in association with the application:

- 1. A Final Plan application form and appropriate fee.
- 2. A survey plat by Michael J. Gervais of Northern Land Surveying, LLC entitled "Lands of Kathleen O'Brien, 1971 Spear Street, Charlotte, Vermont, 2-Lot Subdivision" dated 4/10/2012, no revisions.
- 3. A draft Open Space Agreement