

This 17<sup>th</sup> day of July A.D. 20 15  
 o'clock 10 minutes A m and  
 recorded in vol. 219 on page 104-108  
 Attest: [Signature] Town Clerk

CHARLOTTE PLANNING COMMISSION  
 SUBDIVISION REVIEW  
 FINDINGS OF FACT AND DECISION

**In re: Kytoad, LLC, Final Plan Application for a Minor Subdivision and Planned Residential Development**  
**Permit Application No. PC-15-03**

**Introduction and Procedural History**

This proceeding involves review of an application for a Minor Subdivision / Planned Residential Development submitted by Kytoad, LLC for approval under the Town of Charlotte Land Use Regulations.

The application was received on January 27, 2015. The applicant asked that a hearing not be scheduled until late April / early May due to his being out of town. A notice of public hearing was published in The Citizen on May 14, 2015 and was posted at the following three locations: town offices, The Brick Store and Spear's Corner Store. A copy of the notice was also mailed to all adjoining landowners on May 13, 2015.

The application was considered by the Planning Commission at a public hearing on June 4, 2015. Michael Hinsdale, a duly authorized agent, represented Kytoad LLC at the hearing. No other interested parties participated in the hearing.

**Exhibits**

1. Application form; list of adjoining landowners; 'Final Plat' last revised October 24, 2014, prepared by George Bedard; Water and Wastewater Site Plan last revised on April 9, 2015, prepared by Green Mountain Engineering; and required fee
2. Staff report dated June 2, 2015
3. PC-13-29 decision

**Regulations in Effect**

Town Plan, amended March, 2013

Land Use Regulations adopted November, 2010

Recommended Standards for Developments and Homes adopted September, 1997

**Findings**

**Background**

1. Kytoad, LLC owns a 12.8 acre lot (M05B06L30-3) located on the east side of Ethan Allen Highway in the Rural zoning district.
2. The lot was originally created as part of the 2-lot Williams Subdivision in 1989 (Lot 2 with 8 acres +/-). In 1997 an approved boundary adjustment added 7 acres +/- to Lot 2 and in 2010 another boundary adjustment subtracted 3 acres +/-.
3. An application for a 2-Lot Planned Residential Development (PC-13-29) was approved by the Planning Commission in March of 2014; however, the applicant did not finalize the subdivision by meeting the conditions of that approval including recording of the final survey plat.

4. The purpose of the current application is to amend the prior application to add 0.23 acres to the east side of Lot 2A to provide development density for affordable dwelling units (three) or other uses permitted under Section 4.3 of the Land Use Regulations - Adaptive Reuse of an Existing Structure. The new Lot 2A will be 1.5 acres and the new Lot 2 will be 11.34 acres.
5. The accessory apartment on Lot 2 will no longer be considered 'accessory' and will now be considered the principle dwelling unit on Lot 2.
6. Given the minor nature of the 'revised' application, Sketch Plan Review was deemed unnecessary by the Town Planner. The project was classified as a Minor Subdivision / Planned Residential Development in accordance with Section 6.1(C)(1) and 6.1(D) of the Charlotte Land Use Regulations ("Regulations").

*Relevant standards in Chapter VII of the Charlotte Land Use Regulations are reviewed below in Findings 7-23.*

### 7.2 General Standards

7. The parcel includes or is adjacent to the following Areas of High Public Value (AHPV):
  - a. Land in active agricultural use: There is an orchard on the property and horses are also kept on the property.
  - b. Primary agricultural soils (NRCS data): Prime agricultural soils extend from the northern edge of the orchard to the southern property boundary. They also cover the most northeastern portion of the property. Statewide soils cover the remainder of the parcel.
  - c. Steep slopes (equal to or greater than 15%): Steep slopes straddle the southern parcel boundary.
  - d. Water Supply Source Protection Areas: Zone 2 of the source protection area for the Wildwood West community water supply (WSID VT0005513) encompasses the parcel.<sup>1</sup>
  - e. Historic districts, sites, and structures: The farmhouse (Lot 2A) and barn (Lot 2) are state significant historic structures.<sup>2</sup>
  - f. Conserved Land on Adjacent Parcels: Conserved areas on Pease Mountain are approximately 500 feet to the east of the parcel and conserved areas on the Burns Property (Clayplain Forest) are approximately 750 feet west and north of the property.
8. Considering the resources on the parcel, the Planning Commission finds that the following are the most important AHPV associated with the parcel: land in active agricultural use, the agricultural soils, the historic structures, and the water supply source protection area.
9. Section 7.2(C) of the Regulations states that zoning district dimensional standards must be met unless waived or modified by the Planning Commission for a planned residential development, planned unit development, affordable housing, or access by right-of-way.

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<sup>1</sup> Zone 2 includes the area where groundwater flows to the source from outside Zone 1 and where there would be probable impacts to the water supply if contamination were to occur.

<sup>2</sup> State of Vermont, Department of Historic Preservation, Survey Number 0403-39.

10. The applicant is proposing a planned residential development and is requesting a waiver of the minimum acreage requirement from 5 acres to 1.5 acres and the road frontage requirement from 300 feet to 50 feet for Lot 2A.
11. Six and forty-two one hundredths (6.42) acres of the 11.43 acre Lot 2 have been designated as open space.
12. The driveway for Lot 2A is shared with the Bosworth parcel (3797 Ethan Allen Highway).

#### 7.6 Water Supply

13. Lots 2 and 2A will share an existing well which is located on Lot 2A.
14. Execution of an easement agreement for Lot 2 will be required.
15. A Wastewater and Potable Water Supply permit application is under review. This application requests a change in design flow for drinking water to accommodate future proposed uses on each lot.

#### 7.7 Sewage Disposal

16. A Wastewater and Potable Water Supply permit application is under review. This application provides a basis of design for wastewater to accommodate future proposed uses on each lot.
17. The existing, primary disposal area for Lot 2A is located on site. The replacement area for this lot is located on Lot 2.
18. Draft easement language for Lot 2A's replacement area was provided with a previous application (PC-13-29) and execution of an easement agreement will be required.

#### 7.10 Roads, Driveways & Pedestrian Access

19. A portion of the driveway serving Lot 2A and the Bosworth parcel (3797 Ethan Allen Highway) are located on Lot 2.
20. Draft easement language for that portion of the driveway for Lot 2A and 3797 Ethan Allen Highway that crosses Lot 2 was provided with a previous application (PC-13-29) and execution of an easement agreement will be required.

#### 7.11 Common Facilities, Common Land, & Land to be Conserved

21. The applicant has agreed to conserve 6.42 acres of Open Space Area.
22. During the proceedings for PC-13-29, the applicant indicated that no structures other than possible agricultural structures would be constructed in the Open Space Area.
23. No easement language associated with the Open Space Area was provided with the application.

*Relevant standards in Chapter VIII of the Charlotte Land Use Regulations are reviewed below in Findings 24-28.*

#### General Standards

24. The density for residential development within the Rural zoning district is 5 acres per dwelling unit. Table 4.1a of the Land Use Regulations requires one half acre per affordable housing dwelling unit.

25. The parent Lot 2 is 12.8 acres in size and thus could accommodate up to 2 market rate dwelling units.
26. Two market rate (one per Lot) or 1-market rate (Lot 2) and 3-affordable dwelling units (Lot 2A) are proposed as part of this subdivision application.
27. The overall density does not exceed the density which could be permitted if the land were subdivided into lots which meet the standards for the district.

#### Rural District Standards

28. The 6.42 acres of open space conserved as part of this subdivision will result in 57% of Lot 2 remaining open.

#### **Conclusions**

Based on the foregoing Findings of Fact, it is the conclusion of the Commission that the project described in the application and supporting materials, if completed and maintained in conformance with all of the terms and conditions of that application and as required below, will meet the development standards of the Charlotte Land Use Regulations.

#### **Decision**

Based on the foregoing Findings of Fact and Conclusions, the Planning Commission approves the application for a Minor Subdivision / Planned Residential Development subject to the following conditions:

1. One digital copy (pdf), two paper copies (one 11"x 17" and one full size) and a mylar (18" x 24") of the survey 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 or pipes in the field as indicated on the plat.
  - b. Execute the Open Space Agreement and record in the Charlotte Land Records (with the mylar) after review and approval by the Selectboard and Town Attorney.
  - c. Obtain a State Wastewater and Potable Water Supply Permit, construct a new wastewater system for Lot 2 as necessary and provide a letter from a certified engineer or site technician indicating the system on Lot 2 was constructed in accordance with the approved plans.
3. Concurrent with the future transfer of either property, easement agreements relative to the shared driveway, wastewater system and water supply will be executed and recorded in the Charlotte Land Records. Such language may be included in the warranty deed or may be a separate agreement.
4. No new pole-mounted light fixture will be taller than 8' off the ground, and no new building-mounted light fixture will be higher 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.
5. The development of affordable housing under Section 4.3 Adaptive Reuse in the Regulations requires Conditional Use and Site Plan Review. The continued use of the farmhouse on Lot

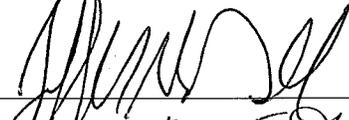
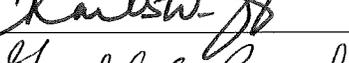
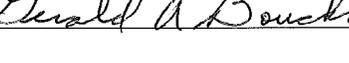
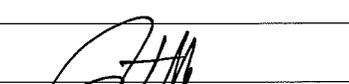
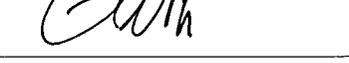
2A as a single-family dwelling is a permitted use at this time. An accessory dwelling is also a permitted use for this property at this time but would require a zoning permit for the alteration / change in use of the property.

**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 latest date of 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 June 4, 2015:** Jeff McDonald, Peter Joslin, Gerald Bouchard, Charlie Pughe, and Marty Illick.

**Vote of Members after Deliberations:** The following is the vote for or against the application, with conditions as stated in this Decision:

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| 1. Signed: |  | <input checked="" type="radio"/> For / Against | Date Signed: | <u>7/16/15</u>   |
| 2. Signed: |  | <input checked="" type="radio"/> For / Against | Date Signed: | <u>7-16-15</u>   |
| 3. Signed: |  | <input checked="" type="radio"/> For / Against | Date Signed: | <u>7-16-2015</u> |
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