

CHARLOTTE PLANNING COMMISSION

RECONSIDERED AND RESTATED FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

Thomas C. Esnes and Valerie Gilliam Final Plat Application For A Two-Lot Subdivision Application # PC-03-34

Background

Sketch Plan Review for this project was held on September 4, 2003. The Final Plat Application (PC-03-34) was submitted on September 24, 2003. A public hearing was held for this application on December 4, 2003, and a Findings of Fact and Decision was issued on December 31, 2003.

At the request of the applicant the public hearing was reopened at the Planning Commission's meeting on February 5, 2004. This Reconsidered and Restated Findings of Fact and Decision is the result of the reconsideration on February 5, 2004.

Application

The application consists of:

1. An application form and appropriate fee.
2. A survey map entitled "Final Plat, Minor Subdivision, Property of Thomas C. Esnes and Valerie Gillman (sic), Charlotte, Vermont" by Stuart J. Morrow dated August 2003, no revisions.
3. A letter from Thomas Esnes and Valerie Gilliam, signed and dated 7/10/03, authorizing Liam Murphy and/or Diane McCargo and Peter Swift to act on their behalf for the purposes related to the proposed subdivision of their property.
4. A cover letter from Liam Murphy, Esq. to Gloria Warden dated September 22, 2003.
5. A letter dated January 16, 2004 from Liam Murphy to Dean Bloch.
6. A letter dated January 24, 2004 from Liam Murphy to Dean Bloch.

Public Hearing

A public hearing was warned for this application for November 6, 2003, however a quorum of the Planning Commission was not in attendance. The hearing was rewarned and held on December 4, 2003. Liam Murphy was present representing the applicant. Hazel Prindle, an adjoining property owner, was also present.

Reconsideration

By a letter from Liam L. Murphy, Esq. to Dean Bloch dated January 16, 2004, the applicant requested reconsideration of the Decision. In order to reopen a public hearing, the Planning

Commission must find that one or more condition(s) inadvertently resulted in unintended and negative consequences, or that germane information was not considered by the Planning Commission during the original hearing. A request for reconsideration must be submitted within the 30-day appeal period.

At its meeting on February 5, 2004 the Planning Commission heard the applicants' request for a reconsideration of the Findings of Fact and Decision dated 12/31/03, and determined that the applicants' request satisfied the requirements stated above, as follows:

1. After submitting the Final Plat Application but prior to the Final Plat Hearing, the applicants (who live out-of-state) determined that they wanted to construct a barn on proposed Lot 1. This information was not conveyed to the applicants' representative (Liam Murphy) prior to the Final Plat Hearing; therefore germane information was not considered at the hearing, and Condition #3 created an unintended and negative consequence.
2. The applicants, through Liam Murphy and Robert Perry (the applicants' attorney), expressed that the discussion of the trail easement (and Condition #5) did not adequately consider their interests, and that consequently they would likely not proceed with the subdivision and sale of Lot 2 to McCargo and Swift. The Planning Commission had good reason to believe the sale to McCargo and Swift would result in the conservation of Lot 2, which has important wildlife habitat resources; therefore Condition #5 would have an unintended and negative consequence. Furthermore, on January 14, 2004, the applicants' representatives (Diana McCargo and Peter Swift) attended a meeting of the Charlotte Trails Committee; after discussion, the Trails Committee supported a proposal for the applicant to request that the Planning Commission reconsider Condition #5 so that it only applies to Lot 2. This was additional germane information that was not considered at the hearing.

A public hearing for the reconsideration of the Findings of Fact and Decision was held on February 5, 2004. (The hearing had been duly warned by staff). Liam Murphy and Robert Perry were present at the hearing representing the applicants. Adjoining property owners Allan Jordan, Roger Lambert and Mike Lambert, and Trails Committee members Trina Bianchi and Brooke Scatchard were also present at the hearing.

Regulations in Effect

Town Plan as amended March 2002
Zoning Bylaws as amended March 2002
Subdivision Bylaws as amended March 1995

Findings

1. At the public hearing on December 4th Liam Murphy stated that no development is currently proposed for either lot, and that the applicant is applying under Chapter VII Section 13.1 of the Subdivision Bylaws.
2. At the public hearing on February 5th, Liam Murphy and Robert Perry stated that the applicants currently wish to construct only a barn on Lot 1, although they will eventually want to construct a residence. Mr. Perry requested that Condition #3 be amended to

allow for a building envelope on Lot 1, and he sketched a proposed building envelope on the survey map by Stuart Morrow.

3. Of potential development sites, the proposed envelope on Lot 1 will have the least impact on the wildlife resources on the parcel, considering its location relatively near Spear Street and away from the more sensitive wildlife areas associated with Mud Hollow Brook and the forested habitat.
4. Although the proposed envelope on Lot 1 will probably impact prime agricultural soils, it will have the least impact on agricultural resources on the parcel because of its location close to established roads and hedgerows, and away from the middle of fields.
5. A wastewater disposal system on the parcel has already been approved by the Town near Spear Street, ie: where Lot 1 is proposed.
6. Liam Murphy and Robert Perry stated at the hearing on February 5th that the proposed access (driveway) for Lot 1 is the farm road near the northern property line. The Road Commissioner has reviewed the location and found it to have adequate sight distance. The location is appropriate from a land use perspective. The applicant will need an Access Permit from the Selectboard.
7. Liam Murphy reiterated at the hearing on February 5th that no development is proposed for Lot 2, and therefore the applicant is applying under Chapter VII Section 13.1 of the Subdivision Bylaws.
8. Designation of open space is a requirement of Chapter VI Section 2.M of the Charlotte Subdivision Bylaws and Chapter V Section 5.15 of the Charlotte Zoning Bylaws.
9. The Town Plan (Section 1.1 and Section 4.7.4) calls for the creation of an integrated trail system within the town. There are several trails in the vicinity of the subject property, most notably the Nordic Farm Trail to the west, McGuire Pent Road to the north and Plouffe Farm Lane (leading to the former landfill) and an informal trail network to the east. Spear Gervia Road (also called Uncle Tom's Road) is a town-owned legal trail that currently exists on the western portion of the subject parcel, on what is proposed to be Lot #2.
10. It is understood by the Planning Commission that the applicant is not comfortable with a trail being designated on Lot 1 at the current time, but is comfortable with a trail easement on Lot 2.
11. A floating trail easement allows the designation of a route to occur at a future time, in a location acceptable to the landowner and providing linkages to other trails, along with appropriate restrictions to ensure that trail use is compatible with the resources in the vicinity of the trail.

Decision

Based on these Findings, the Planning Commission approves the application for a Two-Lot Subdivision with the following conditions:

1. The survey will be amended to include a building envelope on Lot 1, as depicted in the sketch by Robert Perry created at the hearing on February 5, 2004.
2. A mylar (18" x 24") of the survey (as amended in Condition 1 above) will be submitted to the Planning Commission for review within 60 days, and recorded in the Town Land Records within 90 days.
3. All buildings (including the dwelling, outbuildings and barn) will be located within the building envelope on Lot 1.

4. A Subdivision Amendment will be required at such time as development is proposed for Lot 2. The amendment will require designation of a building envelope, and wastewater disposal areas, and will also require an access plan.
5. The Planning Commission will not require open space to be designated at this time, however any future subdivision of either Lot 1 or Lot 2 will require the designation of open space. The total 178 acres will be considered when calculating the percentage of open space as provided for in Chapter V. Section 5.15 of the Charlotte Zoning Bylaws (or succeeding town regulations in effect).
6. Prior to the conveyance of either Lots 1 or Lot 2, survey pins will be set as indicated on the survey.
7. Prior to the conveyance of Lot 2, the applicant will submit to the Town a proposed Irrevocable Offer of Dedication and a Trail Easement across Lot 2. The trail route will be floating (ie: not specified), with the route to be identified in the future upon mutual agreement of the landowner and the Town. The documents will be submitted for review and approval by the town's attorney and the Planning Commission, and once these are approved the applicant will execute said documents and submit them to the Selectboard for acceptance and recording.
8. Use of the trail will be limited to those uses specified in the current Town Plan (see 2002 Town Plan, Section 4.7.4) ie: pedestrian, bicycle, and equestrian uses, and may also include non-wheeled motorized vehicles at the discretion of the applicant.

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.

You and any interested parties are entitled to appeal this decision to the Environmental Court within 30 days of the date of 4th signature below approving this decision, as per requirements of 24 VSA Chapter 117, Sections 4471 and 4475.

Members Present at the Public Hearing on December 4th: Jeff McDonald, Al Moraska, Jim Donovan, Gordon Troy, Linda Radimer, and Robin Pierce.

Members Present at the Public Hearing on February 5th: Jeff McDonald, Al Moraska, Jim Donovan, Gordon Troy, John Owen and Linda Radimer.

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: _____