

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

MJV USA, Inc. Final Plat Application for a Two-Lot Subdivision Application # PC-05-40

Background

Sketch Plan Review was held on March 17 and April 7. Site visits were conducted on April 2 and September 24, and individually by Planning Commissioners.

Application

Materials submitted with the application are listed in Appendix A.

Public Hearing

A public hearing was opened for this application on September 15, 2005 and continued to October 20, 2005. The following persons were present and participated in the hearing:

September 15: Robert Perry, Steven Roberts and Errol Briggs (all representing the applicant), Peter Doremus (representing John and Heather Dwight), Winslow Ladue and Linda Hamilton.

October 20: Robert Perry and Steven Roberts (both representing the applicant), Winslow Ladue, Mary Anne Kyburz-Ladue, Doug Riley (representing Ladue and Kyborz-Ladue) and Linda Hamilton

Regulations in Effect

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

Findings

1. Application PC-05-40 proposes a two-lot subdivision of property located at 625 Sentinel Cedar Lane, which is a private road off of Lake Road. The subject property consists of Lot 1 as indicated on a plat recorded in slide 105 of the Charlotte land records and is proposed to be subdivided into Lot 1A and Lot 1B. Lot 1B is a proposed building lot, and includes a proposed building envelope and wastewater disposal areas.
2. Lot 1 was created by a subdivision approved on November 12, 1996, which divided property owned by G. Dean Martin by a deed dated August 21, 1996 and recorded in book 91 page 437. Lot 1 is currently owned by MJV USA Inc. (of which G. Dean Martin is an officer) by a deed dated November 13, 1996 and recorded in book 91 page 445.
3. Chapter VI Section 2.E. of the Charlotte Subdivision Bylaws indicates that the

Commission shall evaluate any minor or major subdivision in accordance with the following: “The soils on the site provide an adequate capacity to treat the sewage flows from the proposed development.”

4. The applicant hired Lincoln Applied Geology, Inc. to evaluate soils on Lot 1 for the purpose of serving Lot 1B. The state has issued a permit (WW-4-1969) for a four-bedroom system to serve Lot 1B on January 28, 2004.
5. The Warranty Deed to Winslow H. Ladue and Mary Anne Kyburz-Ladue from MJV USA, Inc. dated December 9, 1996 and recorded in book 92 page 24 states (in part) “Also included in this conveyance is an easement to enter upon lands of the Grantor for the sole purpose of using, building, operating and maintaining a replacement wastewater disposal system to serve the existing dwelling on Lot 2 and for the construction, use and maintenance of a new sanitary septic system to serve one (1) apartment related to the dwelling on Lot 2.”
6. Winslow Ladue and Mary Anne Kyburz-Ladue also hired Lincoln Applied Geology, Inc. to evaluate soils on Lot 1 to serve as wastewater disposal areas allowed by their deed. Five areas were tested; Area D has the best soils, but is located where the proposed dwelling would be located within the building envelope of Lot 1B, and furthermore would impact the wetland.
7. A letter dated October 18, 2005 from Stephen Revell of Lincoln Applied Geology to Winslow Ladue, states (in part) “In my opinion, drainage and testing (of Area D) has a 50/50 chance of success. Although a comprehensive site plan is required to define this accurately, I do not believe there is enough room for the MJV USA, Inc., Lot 1B systems, your 4-bedroom replacement system, and the 2-bedroom apartment systems. To determine if there is enough room, Area D would have to be drained to compliance and then performance based methods using hydrogeology would have to be considered to maximize the available area.”
8. The deed to Ladue and Kyburz-Ladue pre-dates the issuance of WW-4-1969.
9. The application has not demonstrated there is sufficient wastewater disposal capacity to serve the proposed subdivision, given the allocation previously deeded to Ladue and Kyburz-Ladue.
10. Chapter VII Section 9.D. of the Charlotte Subdivision Bylaws states “Lots with irregular shapes (curves, jogs, dog-legs, bowling alleys, etc.) shall not be approved unless warranted by conditions of topography, protection of natural resources, existing road location an/or shape or use of the tract being subdivided.”
11. Lot 1A and Lot 1B are very irregular in shape. Furthermore, Lot 1 could be subdivided in a way that would make Lot 1A and Lot 1B more regular in shape, and therefore the irregular shape is not warranted.
12. Chapter VII Section 9.E. of the Charlotte Subdivision Bylaws states “Lots shall be appropriately sized to provide satisfactory water supply and sewage disposal and to comply with setback standards for the protection of significant natural resources, aesthetic considerations, and other standards of these Bylaws.”
13. The proposed wastewater disposal area for Lot 1B is within the critical wildlife area delineated on the plat and in Map 6 of the Charlotte Town Plan. Furthermore, the required isolation distance for the proposed drilled well on Lot 1B impacts two adjoining parcels.
14. Chapter VII Section 9.A. of the Charlotte Subdivision Bylaws states “layout of the lots shall conform to the requirements of the Charlotte Zoning Bylaws”. Chapter IV Section 4.5.D.3. of the Charlotte Zoning Bylaws requires a minimum of 300 feet of lakeshore

- frontage for each new lot on the shoreline. This provision also applies to PRDs.
15. The subject property has 696 feet of shoreland frontage (according to the plat); it is not possible to create two lots with both lots having the required 300 feet of shoreland frontage. The proposed layout circumvents this requirement by making the western boundary of Lot 1B 100 feet from the shoreline, and providing an easement to the lake.
 16. Chapter IV Section 4.5.E.1.b. states “there shall be no cutting or removal of any trees or shrubs in wildlife habitat areas.”
 17. The layout of Lot 1B and proposed easement to the lake will give a buyer of Lot 1B a sense of entitlement of access to the lake, which will require cutting of trees within the wildlife habitat and shoreline areas.
 18. Chapter VI Section 2.A. of the Charlotte Subdivision Bylaws indicates that the Commission shall evaluate any minor or major subdivision in accordance with the following: “The proposal gives due regard to the preservation of existing significant natural features, including:...wildlife habitat...and wetlands.”
 19. Chapter VII Section 1.A. of the Charlotte Subdivision Bylaws states “Existing site resources including but not limited to wetlands...(and) wildlife habitat as identified in the Town Plan or as identified by the Planning Commission shall be preserved insofar as possible through harmonious design and appropriate construction methods and in accordance with the policies and standards set forth in the Town Plan and Bylaws.”
 20. The plat submitted with the application depicts a “critical wildlife area” from the 1990 Town Plan, but not the updated “critical wildlife area” from the current Town Plan.
 21. Map 6 of the 2002 Town Plan indicates wildlife habitat extends farther to the east on Lot 1B, including the area proposed for a building envelope and wastewater disposal.
 22. The proposed building envelope on Lot 1B encompasses a wetland which is labeled as a Class 3 wetland on the plat. Errol Briggs of Gilman & Briggs Environmental, who delineated this wetland, stated at the hearing on September 15 that he only inspected wetland on the parcel, and did not attempt to determine whether the wetland depicted on the plat is connected to a Class 2 wetland near the shoreline.
 23. The proposed subdivision does not give due regard to the preservation of wildlife habitat or wetlands on the parcel.
 24. The above concerns were raised during the hearing, however the applicant did not modify the proposal to address concerns expressed regarding the prospective impacts.
 25. The proposal does not comply with the bylaws of the Town of Charlotte with regard to demonstration of septic capacity, lot shape, water supply setback standards, lot size and density for the area (the shoreline district is a significant natural resource), conformance with district dimensional requirements and cutting restrictions, and impact on wildlife habitat.

Decision

Based on these Findings, the Planning Commission denies Application PC-05-40.

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.

The following is the vote for (approving) or against (denying) Application PC-05-40:

- 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:_____

Members Present at the Public Hearing on September 15: Jeff McDonald, Jim Donovan, John Owen, Linda Radimer, Robin Pierce, Peter Joslin and Robert Mack.

Members Present at the Public Hearing on October 20: Jeff McDonald, John Owen, Linda Radimer, Peter Joslin and Robert Mack.

APPENDIX A

The application consists of:

- 1. An application form and appropriate fee.
- 2. A letter from Robert J. Perry, Esq. to Dean Bloch dated August 17, 2005.
- 3. A letter from Robert J. Perry, Esq. to Dean Bloch dated August 22, 2005.
- 4. A plat entitled “Final Plat, Minor Subdivision, Property of MJV USA, Inc.” by Civil Engineering Associates, Inc. dated December, 1, 2004, last revised 8/8/05.
- 5. A wastewater disposal design entitled “Plate 1, Dean Martin Property, Charlotte, Vermont, Site Plan with Proposed Water and Septic Locations, Septic Design Details, and General Location Map” by Lincoln Applied Geology, Inc. dated August, 2002, no revisions.
- 6. A wastewater disposal design entitled “Plate 2, Dean Martin Property, Charlotte, Vermont, Proposed Subdivision of +/- 21.11 Acre Lot “A” (+/-15.6 Acres) and Lot “B” (+/- 5.51 Acres) and Showing Adjacent Property Owners & Use” by Lincoln Applied Geology, Inc. dated October, 2002, no revisions.
- 7. A packet entitled “Dean Martin Property, 614 Sentinel Cedar Lane, Charlotte, Vermont, 2 Lot Subdivision Permit Application and Water Supply and Wastewater Disposal System Design Summary for a 4 Bedroom Single Family Residence.”
- 8. An undated document from Errol C. Briggs of Gilman & Briggs Environmental entitled “Wildlife Considerations Regarding Lot 1B, Sentinel Cedar Lane, Charlotte” with an attached page entitled “Bird species potentially using habitat at or near Lot 1B.”