

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

Henrietta Ober
2296 Greenbush Road
and
Stephen and Margaret Foster
1259 Lime Kiln Road

Final Plan Review
For A
Two-Lot Subdivision
And Planned Residential Development Involving Non-Continuous Parcels
Application # PC-13-15

Background

The Planning Commission conducted a Sketch Plan Review for the proposed two-lot subdivision on May 16, 2013, and held a site visit prior to the meeting. The Planning Commission classified the project as a Minor Subdivision and Planned Residential Development involving non-contiguous parcels.

Application

Materials submitted with the applications are listed in Appendix A.

Public Hearing

The Planning Commission held a public hearing for this application on August 1, 2013. The applicant was represented by Delancey Ober, Henrietta Ober, Ryan Ober, and Peter Smier of Civil Engineering Associates, Inc. The following adjoining property owners were also present and participated in the hearing: Nancy Sabin, Robin Reid and Ken Spencer

Regulations in Effect

Town Plan amended March, 2013

Land Use Regulations amended November, 2010.

Recommended Standards for Developments and Homes adopted September, 1997

Findings

Background

1. Henrietta Ober owns a 5.64 acre parcel at 2296 Greenbush Road. In this decision, this parcel will be called "Parcel 1".
2. Stephen and Margaret Foster own a 14.20 acre parcel at 1259 Lime Kiln Road. In this decision this parcel will be called "Parcel 2".
3. Both parcels are located in the Rural District, although Parcel 1 is approximately 950 feet from the West Charlotte Village District.

4. Both parcels currently host one single family dwelling.
5. The application proposes to create one building lot from Parcel 1 using density associated with Parcel 2. Accordingly, a portion of Parcel 2 is proposed to be conserved, and an additional portion of Parcel 2 is proposed to be placed under the jurisdiction of an Open Space Agreement.

Applicable standards in Chapter VII of the Charlotte Land Use Regulations (“Regulations”) are reviewed below in Findings 6-28.

Sections 7.2 and 7.3—Areas of High Public Value

6. Parcel 1 includes or is adjacent to the following areas of high public value:
 - a. Primary agricultural soils: The parcel is entirely composed of either prime or statewide soils (from NRCS data).
 - b. Scenic views and vistas: Greenbush Road, adjacent to the parcel, is depicted as a “most scenic road” in Map 13 of the Town Plan.
 - c. Conserved land: The parcel to the west of Parcel 1 (owned by the Mack family) is conserved via a conservation easement held by the Charlotte Land Trust (from town land records).
7. Considering the resources on and adjacent to Parcel 1, the Planning Commission finds that the scenic view from Greenbush Road and the adjoining conserved parcel are the most important areas of high public value associated with the parcel. These are the resources that strongly characterize the property, and which the Planning Commission feels are the most important to protect during the subdivision process.
8. Parcel 2 includes or is adjacent to the following areas of high public value:
 - a. Land in active agricultural use: The meadow has been used for a corn and hay.
 - b. Primary agricultural soils: There is a small pocket of prime agricultural soils at the northwest corner of the parcel. The meadow and a portion of the woods have statewide agricultural soils (from NRCS data).
 - c. Surface waters, wetlands, setbacks and buffer areas: An unnamed stream runs diagonally through the parcel, and it appears there is wetland adjacent to the stream (from VGIS and Town Plan Map 7).
 - d. Wildlife habitat: Town Plan Map 6 depicts the wooded portion of the parcel as forest habitat.
 - e. Conserved land: A portion of the adjacent parcel to the south (owned by the Marlys Beck Revocable Trust) is under the jurisdiction of an Open Space Agreement (from town land records).
9. Considering the resources on and adjacent to Parcel 2, the Planning Commission finds that the agricultural use, the primary agricultural soils in the meadow, and the adjoining conserved parcel are the most important areas of high public value associated with the parcel. These are the resources that strongly characterize the property, and which the Planning Commission feels are the most important to protect during the subdivision process.
10. The project addresses prioritized areas of high public value on Parcel 1 as follows:
 - a. The placement of the proposed building envelope on Lot 1B provides a corridor between the building envelope and the existing dwelling on Lot 1A through which the scenic view from Greenbush Road will be maintained. The existing corridor between the hedgerow along the southerly property line and the existing dwelling is approximately 220 feet wide; the proposed building envelope for Lot

1B will reduce the corridor by approximately 50 feet, leaving a corridor of approximately 170 feet, which is approximately 77% of the current corridor. Additionally, the proposed building envelope is approximately 100 feet further west than the existing dwelling, and the base elevation is 10 to 12 feet lower than that of the existing dwelling.

- b. The proposed building envelope on Lot 1B is approximately 295 feet from the conserved parcel to the west. This is a larger buffer than the 200 foot buffer suggested by the Regulations.
11. The project addresses prioritized areas of high public value on Parcel 2 as follows: 9.92 acres of the meadow, which is in agricultural use, has primary agricultural soils, and is adjacent to a parcel that is partially under an Open Space Agreement, is proposed to be placed under an Open Space Agreement; in addition, five acres are proposed to be conserved.

Conclusion 1: The siting of the proposed building lot, building envelope, conserved area and open space area will effectively protect the prioritized areas of high public value on both Parcel 1 and Parcel 2.

Section 7.4—Compatibility with Agricultural Operations

12. As stated in Finding 10.b. above, the building envelope on Lot 1B is separated from the adjacent parcel to the west (which is in agricultural use) by approximately 295 feet.
13. The isolation distance for the proposed well is approximately 270 feet from the adjacent parcel to the west.

Conclusion 2: The siting of the proposed building envelope and well sufficiently minimizes potential conflict between agricultural and non-agricultural land uses.

Section 7.5—Facilities, Services & Utilities

14. The project proposes to create one residential lot with a single family dwelling.

Conclusion 3: The project will not create an unreasonable burden on existing or planned municipal or educational facilities or services and does not trigger the requirement for providing a fire pond and dry hydrant.

Section 7.6—Water Supply

15. At the public hearing the applicant stated the depth of his existing well is approximately 650 feet, and the yield is 3.5 gallons per minute.
16. The protective distance for the proposed well on Lot 1B encroaches on the adjacent parcels to the south and east.

Conclusion 4: From the information provided regarding the existing well, there may be a shortage of groundwater in the vicinity of the proposed dwelling. A condition of any approval requires a productive well be drilled prior to the submission of a zoning permit application.

Conclusion 5: Either the proposed drilled well should be moved so the protective distance is entirely on Parcel 1, or the applicant should obtain an easement for the portions of

the protective distance that are on the adjoining parcels.

Section 7.7—Sewage Disposal

17. The applicant has obtained a Wastewater System and Potable Water Supply Permit (WW-138-1310).

Conclusion 6: The parcel has sufficient wastewater disposal capacity for the proposed subdivision, and the project has an appropriate wastewater disposal design.

Section 7.8—Stormwater Management & Erosion Control

18. The project will create one additional single family dwelling on a 5.64 acre parcel, resulting in lot coverage of approximately three percent (3%), including the existing dwelling and driveways.

19. The project will not affect steep or very steep slopes.

Conclusion 7: The size and density of the project does not warrant extensive stormwater or erosion control infrastructure.

Section 7.9—Landscaping and Screening

20. The application does not propose removing important specimen trees, or tree lines or wooded areas of particularly natural or aesthetic value.

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

Conclusion 8: The project will not have a significant impact on existing vegetation, and will not have impacts that necessitate vegetative screening. The project is not of a density or intensity that warrants buffering from adjoining uses.

Section 7.10—Roads, Driveways & Pedestrian Access

22. Due to its low density, the proposed subdivision will not create a significant increase in traffic on public roads in the vicinity of the project over what currently exists.

23. Lot 1B is proposed to use an existing access (“curb-cut”) and driveway that serves the Spencer/Pillard parcel to the south and the Mack parcel to the west.

24. Lot 1B will need a right-of-way easement over Lot 1A, since Lot 1B does not have frontage on Greenbush Road. The Regulations require a 50 foot wide right-of-way; the survey plat submitted with the application depicts a 60 foot wide right-of-way.

Conclusion 9: The project is unlikely to create unreasonable traffic congestion or unsafe traffic conditions, and will not necessitate the creation of any additional access points (curb-cuts).

Conclusion 10: A right-of-way of more than sufficient width is proposed. Conveyance deeds for both Lot 1A and Lot 1B should include appropriate language.

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

Section 7.12—Legal Requirements

25. No common or public land or facility is proposed.

26. The proposed plat for Parcel 2 (the Fosters’ parcel) depicts a proposed Open Space Area and a proposed Conserved Area.

27. The application includes draft documents that would implement the Open Space Area and Conserved Area.
28. The Open Space Agreement does not include a description of the areas of high public value that are being protected or a proposed management plan.

Conclusion 11: The application includes the appropriate documents for the proposed Open Space Area and Conserved Area; however, the draft Open Space Agreement should be modified to include a description of the areas of high public value that are being protected and a management plan for those resources. Both documents will need approval from the Selectboard after review by the Town Attorney.

The applicable standards in Chapter VIII are reviewed below in Findings 29-35.

General Standards and Rural District Standards

29. The proposed layout blends with the historic and agricultural landscape by siting the proposed building lot (Lot 1B) in a location that, although in the Rural District, is very close to the West Charlotte Village District, and also by protecting land
30. that is currently farmed and is adjacent to land that is already under an Open Space Agreement.
31. Fifty percent of the combined acreage of the two parcels is proposed to be under the jurisdiction of an Open Space Agreement with the Town, which complies with Section 8.4(C)(1).

PRDs Involving Two or More Parcels

32. The proposed density does not exceed what could be permitted if the combined parcels were subdivided into lots in conformance with the regulations.
33. The application will conserve land that is currently used for agriculture, has primary agricultural soils and is adjacent to land that is already under an Open Space Agreement.
34. The proposed building lot (Lot 1B) is in close proximity to the West Charlotte Village District.
35. The minimum density required for one dwelling unit in the Rural District is five acres, as indicated in Table 2.5 of the Regulations. The proposed Conserved Land, which is providing the density for the creation Lot 1B, is five acres.

Conclusion 12: The application has minimized impacts to areas of high public value through the careful siting of the proposed building lot, building envelope, Open Space Area and Conserved Area.

Conclusion 13: The sizes of the Open Space Area and Conserved Area meet the requirements of Sections 8.4(C) and 8.4 (F) of the Regulations.

Conclusion 14: The location of the proposed dwelling is appropriate due to its proximity to village-scale development, and the location of the proposed open space and conservation areas is appropriate for the protection of the resources within those areas.

Additional Issues

36. The plat for Parcel 1 indicates that a portion of Lot 1B will be “Excluded from View

Protection Area.” The View Protection Area was created by the subdivision by George and Patricia Lavallette in 1996.

37. The plat for the Lavalette subdivision from 1996 (which created Parcel 1) recorded in map slide 106 of the Charlotte Land Records included a designated “No Build Zone.” The Planning Commission understands that the purpose of this zone was to protect a view corridor from Greenbush Road that the Lavalettes offered to keep free from development. The zone is depicted on the plat for the subdivision; it was therefore a condition of that subdivision, not a legal agreement or covenant between parties.
38. The proposed encroachment into the View Protection Area (by the building envelope on Lot 1B) allows most of the view corridor to remain unimpeded, as discussed in Finding 10.a. above.
39. The resulting view from Greenbush Road will be fairly typical of villages, in that views of scenic landscapes are often interspersed with views of development.

Conclusion 15: The encroachment of the View Protection Area by the building envelope on Lot 1B is acceptable.

40. The plat for Parcel 1 depicts the building envelope for the garage on Lot 1B encroaching approximately 10 feet into the common right-of-way which also serves the Spencer/Pillard parcel and the Mack parcel.
41. The application includes a letter from Eliza Pillard and Ken Spencer and a letter from Robert Mack stating the encroachment is acceptable.
42. The use of the right-of-way may require a legal release or quit-claim deed; but this is issue to be addressed by the affected parties.
43. The plat for Parcel 1 proposes a setback of 25 feet from the southerly property line of Lot 1B to the building envelope for the garage.
44. The Planning Commission notes that the affected building envelope on Lot 1B is for a garage (i.e. non-residential development), and the southerly lot-line is adjacent to a right-of-way (not another structure).

Conclusion 16: The siting of the building envelope for the garage is acceptable; however the Planning Commission notes that the Mack parcel is used for farming, which necessitates travel to and from the parcel via the shared right-of-way. The Planning Commission further notes that the Town Plan supports agriculture, and to the extent that the Macks or any future owner use “best management practices,” the town supports the continuation of farming on that parcel.

Decision

Based on these Findings, the Planning Commission approves the Final Plan Application for the proposed two-lot subdivision and planned residential development with the following conditions:

1. The survey plat for Parcel 1 will be revised as follows:
 - A. The dimensions of the proposed building envelope on Lot 1B will be added.
2. One digital copy (pdf), two paper copies (one 11”x 17” and one full size) and a mylar (18” x 24”) of each of the surveys (for Parcel 1 and Parcel 2), as amended by Condition #1, will be submitted to the Planning Commission for review and signature (of the mylar)

within 160 days. The applicant will record the signed mylars in the Charlotte Land Records within 180 days.

3. Prior to the submission of the mylars in accordance with Condition #2 above, the applicant will complete the following steps:
 - A. Submit a letter from the surveyor of Parcel 1 indicating he has set the survey markers in the field as indicated on the plat.
 - B. Submit a revised set of water/wastewater plans showing the well on Lot 1B in a location such that the protective distance is entirely on Parcel 1, or obtain and record easements for the portions of the currently proposed protective distance that encroach on adjoining parcels.
 - C. Revise the Open Space Agreement and Density Reduction Easement and Transfer of Development Rights To Benefitted Property to include descriptions of the areas of high public value that are being protected and management plans for those resources.
 - D. Execute the Open Space Agreement and Density Reduction Easement and Transfer of Development Rights To Benefitted Property as revised in accordance with Condition #3.B. and record them in the Charlotte Land Records (with the mylars) after review and approval by the Selectboard and Town Attorney.
4. Prior to the submission of an application for a zoning permit for any structures on Lot 1B, the applicant shall complete the following steps:
 - A. The corners of the building envelopes will be staked.
 - B. A well will be drilled that provides a sufficient water supply for the number of bedrooms in the proposed dwelling.
5. 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.
6. All new utility lines will be underground.
7. All new driveways will be surfaced with non-white crushed stone.

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 August 1, 2013: Jeff McDonald, Peter Joslin, Linda Radimer, Donna Stearns and Marty Illick

Vote of Members after Deliberations:

The following is the vote for or against this Findings of Fact and Decision as written:

- 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. An application form and appropriate fee.
- 2. A letter dated June 26, 2013 from David S. Marshall, P.E. of Civil Engineering Associates, Inc. to Tom Mansfield regarding “Ober Subdivision, 2296 Greenbush Road, Charlotte, Final Plat Application.”
- 3. A memo dated April 15, 2013 from Stephen P. Foster and Margaret Foster to the Planning Commission, Town of Charlotte regarding “Transfer of density intent.”
- 4. A survey plat by Civil Engineering Associates, Inc. entitled “Minor Subdivision of Lot 1, prepared for Henrietta Ober, 2296 Greenbush Road, Charlotte, Vermont” dated June 26, 2013, revised on July 26, 2013.
- 5. A survey plat by Trudell Consulting Engineers entitled “Proposed Open Space and Conserved Plat, Stephen & Margaret Foster, 1259 Lime Kiln Road, Charlotte, Vermont” dated May 22, 2013, no revisions.
- 6. A set of plans by Civil Engineering Associates, Inc. entitled “Ober-Subdivision, Greenbush, Greenbush Road, Charlotte, Vermont 05445” with the following sheets:
 - A. Wastewater Site Plan, Drawing #C1.0 dated June, 2013, last revised 7/19/13
 - B. Isolation Distances Site Plan, Drawing #C2.0 dated June, 2013, revised 7/19/13
 - C. Wastewater Details, Drawing #C3.0 dated June, 2013, revised 7/19/13
- 7. A letter dated July 24, 2013 from David S. Marshall, P.E. of Civil Engineering Associates, Inc. to Tom Mansfield regarding “Ober Subdivision, 2296 Greenbush Road, Charlotte, Final Plat Application—Amended Wastewater Plans.”
- 8. A memo from George M. Lavalette to the Town of Charlotte Planning & Zoning Commission regarding “View Easement Modification” (undated).
- 9. A memo from Robert Mack to the Charlotte Planning Commission regarding “Ober Subdivision-Building Envelope” (undated)
- 10. A memo from Eliza Pillard and Ken Spencer to the Charlotte Planning Commission regarding “Ober Subdivision-Building Envelop” (undated)
- 11. A draft document entitled “Open Space Agreement”
- 12. A draft document entitled “Density Reduction Easement and Transfer of Development

Rights To Benefitted Property”