CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION
IN RE APPLICATION OF

Gertrude Gecewicz Jordan

Preliminary Plan Application
For A
Six Lot Planned Residential Development Subdivision
For Affordable Housing
Application # PC-09-36

Background

The Planning Commission held a Sketch Plan Review for the proposed subdivision on August 20 and October 1, 2009, and conducted a site visit on August 20. The Planning Commission classified the project as a Major Subdivision and Planned Residential Development for Affordable Housing.

Application

Materials submitted with the applications are listed in Appendix A.

Public Hearing

The Planning Commission held a public hearing for this application on January 7, 2010. Allan Jordan, Anthony Stout and Stewart Pierson were present representing the applicant. Other parties who were present and participated in the hearing included: Gregg Beldock, Peter Mittelstadt, Marty Illick, Robert Hyams, Jonathan Fairbanks, Gary Pittman and Stephen Brooks.

Regulations in Effect

Town Plan, amended March, 2008
Land Use Regulations adopted March, 2009.
Recommended Standards for Developments and Homes adopted September, 1997

Findings

1. The applicant owns an 11 acre parcel at 298 Spear Street. The parcel has an existing single family dwelling and outbuildings located on it. The parcel is located within the Rural District and the Conservation District. The parcel has not been subdivided since the Town adopted Subdivision Bylaws.
2. The application proposes to create six lots from the parcel. Lot 1 is proposed to include the existing dwelling and outbuildings. Lots 2-5 are proposed to be building lots that are to be conveyed to Green Mountain Habitat for Humanity, which will develop perpetually affordable single family dwellings. Lot 6 is to be common lot associated with lots 2-5, and is also to be conveyed to Green Mountain Habitat for Humanity.

Applicable standards of Section 4.4 (Affordable Housing) of the Charlotte Land Use Regulations ("Regulations") are reviewed in Findings 3-10.

3. Section 4.4(D)(1) of the Regulations indicates that in the Rural District, a maximum of five dwelling units or 10 units of elderly housing created within an affordable housing project can have a density and minimum lot size of one acre (for new construction).
4. Accordingly, this application, which proposes four new affordable dwellings and one existing market rate dwelling, requires nine acres of density. This density can be accommodated by the applicant's 11 acre parcel.
5. The size of the building lots may be further reduced as provided in Chapter VIII of the Regulations (Planned Residential and Planned Unit Development), but the project will still require and utilize nine acres of density.
6. At the hearing, the applicant asked whether one of the proposed single family dwellings can be replaced with a two-family dwelling. This change would utilize one additional acre of density.
7. With respect to density requirements, the parcel has sufficient acreage to accommodate an additional dwelling unit. The request for an additional dwelling unit will be reviewed below with respect to other standards in the Regulations.
8. It is noted that Section 4.4(F) of the Regulations requires (in summary):
    a. a general description of the affordable units
    b. a description of the exterior appearance of the affordable units
    c. documentation of proposed selling prices
    d. information on how resale prices shall be determined
    e. information regarding the administration and management of the affordable units
    f. legal documentation regarding how affordability will be maintained in perpetuity
    g. any requested waivers.
9. The Preliminary Plan application includes a document entitled "*Housing Subsidy Covenant for Green Mountain Habitat For Humanity, Inc., _____, Charlotte, DRAFT—12-11-09—Greenbush Road*". This document addresses item 8.f. above.
10. The application does not address items 8.a-e, or 8.g. above.
11. It is likely that any final approval of this project will require the execution and recording of a document similar to the Housing Subsidy Covenant prior to the issuance of any building permits on Lots 2-5.

Applicable standards in Chapter VII of the Regulations are reviewed in Findings 11-40.

Areas of High Public Value—Sections 7.2 and 7.3

12. The parcel includes or is adjacent to the following areas of high public value:
    A. <u>Land in active agricultural use</u>: the parcel had a greenhouse business located on it for many years; this business is no longer operating and most of the greenhouse structures have been removed. (from observation and the applicant's testimony)
    B. <u>Primary agricultural soils</u>: there are prime soils located near Spear Street, and state soils on the rest of the parcel. (from NRCS data)
    C. <u>Flood Hazard Areas</u>: the FEMA Flood Insurance Rate Map does not include a flood hazard area on the LaPlatte River or on Mud Hollow Brook. In response to a prior unrelated request by Lewis Creek Associates, the Vermont Department of

Environmental Conservation calculated a hypothetical zone A special flood hazard area for a 100 year flood. The plans submitted with the application also depict an "approximate 100 year flood" boundary—these plans were prepared by but were not stamped and signed by a professional engineer. (from draft map submitted by DEC and the application)

D. Surface waters, wetlands and associated setbacks and buffer areas: The LaPlatte River creates the northern and western boundaries of the Gecewicz-Jordan parcel, and Mud Hollow Brook creates the southern parcel boundary. Section 3.15(A) of the Regulations requires a 100 foot setback to structures, wastewater disposal systems and impervious surfaces from streambanks, and Section 3.15(C) requires a 25 foot stream bank buffer, within which vegetation is to be maintained and fertilizers and pesticides should be avoided. The Town's wetland map (Town Plan map 7) indicates wetland is associated with both the LaPlatte River and Mud Hollow Brook, which appears likely to be Class 2 wetland; therefore a 50 foot buffer to the wetland is likely to be required by the State. Plans included in the application depict "Edge of Class II wetland," however, the basis of the wetland delineation was not submitted with the application. (from State surface water data, Town Plan, and the application)

E. Wildlife habitat: Town Plan map 6 indicates a wildlife linkage runs through the parcel in an east-west orientation. (from Town Plan)

F. Water supply source protection area—Map 10 in the Town Plan depicts a "surface water source protection area" for the Champlain Water District on much of the parcel.

G. Scenic roads—Map 13 in the Town Plan indicates that Spear Street in the vicinity of the parcel is a "most scenic road" and has "wildlife value areas" adjacent to the road. (from Town Plan)

13. Considering the resources on and adjacent to the parcel, the Planning Commission finds that the following are the most important areas of high public value: potential flood hazard areas, surface waters, wetlands, associated setback and buffer areas, the wildlife linkage associated with the surface waters, and the scenic characteristics of Spear Street. These are the resources that most strongly characterize the property, and which the Planning Commission feels are most important to protect.
14. In considering the project's potential impact on flood hazard areas, the Planning Commission notes that the Preliminary Plan Application does not include a delineation of the flood hazard area that has been stamped and signed by a professional engineer.
15. In considering the project's potential impact on wetlands, the Planning Commission notes that the Preliminary Plan Application does not include information on whether the delineation of the wetland was performed by a certified wetland ecologist or other professional acceptable to the State Wetland Office.
16. The Planning Commission finds that the project, as proposed in the application, will impact the scenic qualities of Spear Street in the vicinity of the proposed subdivision. This impact can be mitigated with landscaping—this will be discussed in more detail below under Landscaping & Screening—Section 7.9.
17. The applicant has not provided sufficient information to allow the Planning Commission to determine that a fifth dwelling unit is possible and appropriate (given the limited buildable area on the parcel).

Compatibility with Agricultural Operations—Section 7.4

18. The land where the subdivision is proposed is no longer used for a greenhouse operation.
19. The applicant stated at the hearing that the parcel will continue to be hayed until the homeowners' association votes to discontinue the haying. The application does not include a document that addresses how such a vote is to be taken.

Facilities, Services & Utilities—Section 7.5

20. The development will be served by a private road. [To clarify the use of the term "road," the Land Use Regulations define "road" as a right-of-way serving three or more lots; similarly, the E-911 Ordinance requires the naming of an access that serves three or more dwellings. However, the Fire and Rescue Recommended Standards for Developments and Homes ("Fire and Rescue Standards") provide specifications for "driveways," which serve 1-5 dwellings, and "access roads," which serve six or more dwellings.]
21. The application includes a road cross section which complies with the Fire and Rescue Standards.
22. The proposed road includes a "Y" turn-around at its western end, which complies with the Fire and Rescue Standards.
23. There is currently a dry hydrant on the parcel that is fed by Mud Hollow Brook. As proposed, however, the project does not meet the threshold of six dwellings (in the Fire and Rescue Standards) for needing a dry hydrant.
24. Utility infrastructure and associated easements were not addressed with the Preliminary Plan Application.
25. The site plan depicts a proposed play area that is included in Lot 6, which is a common lot. Most of the common lot is to be designated as "open space" which will be placed in a conservation easement as discussed below.

Water Supply—Section 7.6

26. The application indicates Lot 1 is to be served by an existing well, and Lots 2-5 will be served by two new drilled wells.
27. Easements and a maintenance agreement (which may be within association covenants) will be required for the shared water supplies.

Sewage Disposal—Section 7.7

28. The application proposes one shared wastewater disposal system to serve Lots 1-5. The existing septic system serving the existing dwelling is proposed to be abandoned.
29. The Town's consultant reviewed soils on November 9, 2009 and indicated in a memo that the soils are acceptable.
30. The Preliminary Plan Application does not include a complete wastewater disposal plan.
31. Easements, a sewage waiver agreement, and a maintenance agreement will be needed (which may be within association covenants).

Stormwater Management & Erosion Control—Section 7.8

32. The Site and Grading Plan submitted with the application depicts proposed silt/construction fencing.
33. It is not clear whether the project will require a State stormwater permit.

Landscaping and Screening—Section 7.9

34. The Planning Commission finds that landscaping of the proposed development is necessary and appropriate to buffer the development from Spear Street and to establish a tree canopy along the private roadway.

Roads, Driveways & Pedestrian Access—Section 7.10

35. As described above, the development will be served by a private roadway.
36. Easements, a roadway waiver agreement, and a maintenance agreement (which may be within covenants) will be needed.
37. The proposed pedestrian access to the playground area appears to unnecessarily burden Lot 5, in that it occupies much of the front yard of this lot.

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

38. The application includes "sample documents" governing common facilities for other developments that Green Mountain Habitat for Humanity has been involved with, but the documents do not specifically address this project.
39. At the hearing, the applicant submitted a template conservation easement from the Vermont River Conservancy.
40. The extent of the prospective conservation easement and the timing and administrative details of its conveyance to the Vermont River Conservancy are not clear.
41. The area to be conserved is not delineated on the survey.

Applicable standards in Section 8.4 of the Regulations are reviewed in Findings 41-44.

General Standards

42. Pending the submission of some additional information and clarifications, the Planning Commission preliminarily finds that the project will minimize the adverse affects upon the resources identified as significant in Table 7.1 in the Regulations by clustering and carefully siting the proposed development.
43. Pending the submission of some additional information and clarifications, the Planning Commission preliminarily finds that the site can accommodate the density of the development as it was proposed in the application.

Rural District Standards

44. The application is designed as a Conservation Project, as provided in Section 8.4(C)(1) of the Regulations.
45. The applicant stated at the hearing that a minimum of 50% of the lot will be designated as open space, although the open space is not depicted on the plat.
46. Considering that the parcel has abundant areas of high public value, including stream setback areas, wetland and wetland buffer, potentially flood prone areas, and wildlife linkage—some of which are still to be documented by the applicant's consultants—it seems appropriate for all such areas to be designated as "open space" and to be subject to an open space agreement or a conservation easement.

Other

47. At the hearing, other parties noted that there is a grand-fathered, private firing range on an adjoining parcel, and that this could create a potential safety issue and also a noise and disturbance issue with regard to the proposed subdivision.

48. The applicant and representatives from Green Mountain Habitat For Humanity stated at the hearing that the existence of the firing range will be disclosed in warranty deeds conveying the dwellings to home-owners.

Decision

Based on these Findings, the Planning Commission approves the Preliminary Plan Application for the proposed Subdivision with the following conditions:

1. All plans submitted with the Final Plan Application that are revised from the Preliminary Plat Application will include a revision date.
2. At the applicant's discretion, an application for a Preliminary Plan Amendment may be submitted that provides a site plan depicting the footprint of a two-family dwelling in the place of one of the single family dwellings. The site plan should provide appropriate additional details, including driveways and landscaping, in order to allow the Planning Commission to evaluate the applicant's request for this change to the project.
3. The Final Plat Application will include the following items:
    A. Information noted in Finding 8, as required by Section 4.4(F) of the Regulations.
    B. A plan and report that has been stamped and signed by a professional engineer that delineates the 100 year flood hazard areas on the LaPlatte River and Mud Hollow Brook.
    C. A plan and report or description from a certified wetland ecologist or other professional acceptable to the State Wetland Office that delineates the wetland on the parcel in the vicinity of the proposed development.
    D. A landscape plan which should include "street trees" along the road, and evergreen trees in the vicinity of the dwellings.
    E. A proposed utility plan which depicts how power, telephone and cable will be brought to each dwelling. This may be a sketch which has been created by or reviewed by the appropriate utility companies.
    F. A wastewater disposal plan.
    G. A Project Review Sheet from Vermont Department of Environmental Conservation.
    H. Correspondence from the Vermont River Conservancy (or a similar organization) indicating its interest in holding a conservation easement on the parcel, and also indicating how the easement is to be effected.
    I. A revised plat that depicts the area to be conserved.
    J. The following documents, which are to be in final draft form:
        i. A Housing Subsidy Covenant.
        ii. A conservation easement.
        iii. Easements (which may be within association covenants) providing access, utilities, wastewater disposal and water to each lot, and providing access to the Play Area.
        iv. Maintenance agreement (which may be within association covenants) for the roadway, wastewater disposal system, and wells.
        v. A Roadway Agreement and Waiver; and a Sewage Service Agreement, Waiver and Easement. (The Town can provide templates for both of these documents)

vi. Covenants addressing allowed use(s) of Lot 6, including agricultural use. (It is possible that the conservation easement will address this).

4. Any Final Approval will probably require the existence of the nearby firing range be disclosed in warranty deeds conveying the dwellings to home-owners.

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 January 7, 2010: Jeff McDonald, Jim Donovan, Linda Radimer, Peter Joslin, Ellie Russell, John Owen 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. An application form.
2. Fees were waived by the Selectboard on December 14, 2009.

3. A survey by Summit Engineering entitled "Subdivision Plat, Gertrude Jordan, 298 Spear Street, Charlotte, Vermont" dated 12/4/09, no revisions.
4. A plan by Summit Engineering entitled "Overall Site Plan, Gertrude Jordan, 298 Spear Street, Charlotte, Vermont" dated 12/4/09, no revisions.
5. A plan by Summit Engineering entitled "Site and Grading Plan, Gertrude Jordan, 298 Spear Street, Charlotte, Vermont" dated 12/4/09, no revisions.
6. A plan by Summit Engineering entitled "Existing Conditions, Gertrude Jordan, 298 Spear Street, Charlotte, Vermont" dated 12/4/09, no revisions.
7. A sheet by Summit Engineering entitled "Details, Gertrude Jordan, 298 Spear Street, Charlotte, Vermont" dated 12/4/09, no revisions.
8. A draft document entitled "Housing Subsidy Covenant For Green Mountain Habitat For Humanity, Inc., _____, Charlotte, DRAFT -12-11-09-Greenbush Road."
9. A draft document entitled "Administrative Rules and Regulations of the 140 Venus Avenue Owners' Association."
10. A draft document entitled "Declaration of a Planned Community, Special Reference to Lands Held in Common, "Common Elements," As drawn from the "Cottage Hill Planned Community," Hinesburg Vermont, November 2008."
11. A draft document entitled "Grant of River Corridor Conservation Easement."