

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

Harvey and Elaine Sharrow

**Final Plan Hearing
For A
Two-Lot Subdivision
Application # PC-09-37**

Background

The Planning Commission held a Sketch Plan Review for the proposed subdivision on September 17, 2009, and classified the project as a Minor Subdivision.

Application

Materials submitted with the application are listed in Appendix A.

Public Hearing

The Planning held a public hearing for this application on February 4, 2010. Harvey Sharrow and Elaine Sharrow were present representing the applicant. Elizabeth Bassett and John Pane, adjoining property owners, and their consultant, David Raphael, were present and participated in the hearing and also submitted written comments. Clark Hinsdale, III, the managing partner for an adjoining property, submitted written comments.

Regulations in Effect

Town Plan amended March, 2008

Land Use Regulations amended March, 2009

Recommended Standards for Developments and Homes adopted September, 1997

Findings

1. The applicant owns a 21.5 acre parcel which is located on the west side of Mount Philo Road within the Rural and Conservation zoning districts. A small tractor shed is located on the parcel; otherwise the parcel is not developed.
2. The application proposes to create one lot of 14.4 acres ("Lot 1"), and one lot of 7.45 acres ("Lot 2"), both of which are to become building lots.

Applicable standards in Chapter VII of the Regulations are reviewed below.

Areas of High Public Value—Sections 7.2 and 7.3

3. The following areas of high public value are located on or adjacent to the parcel.
 - A. Land in active agricultural use: the parcels to the south and north are in active agricultural use. (from observation)
 - B. Primary agricultural soils: there are prime soils located near Mount Philo Road at

the north end of the parcel, and statewide soils on much of the rest of the parcel. (from NRCS data)

- C. Surface waters, wetlands and associated setbacks and buffer areas: McCabe's Brook flows near the western boundary of the parcel. The Town's wetland map (Town Plan map 7) depicts a wetland to the east of the 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. The survey submitted with the application depicts a "Mapped Wetland;" the applicant stated at the hearing the depiction of the wetland is based on a delineation, however, the delineation was not submitted with the application. (from State surface water data, Town Plan, the application and the applicant)
 - D. Wildlife habitat: Town Plan map 6 indicates support habitat is located on the eastern and northern portion of the parcel, a wildlife linkage runs through the southern and western portion of the parcel, and wildlife cross Mount Philo Road in the vicinity of the parcel. (from Town Plan)
 - E. 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. (from Town Plan)
 - F. Conserved land on adjacent parcels: The parcels to the south and the north have been conserved by the Vermont Land Trust. (from Vermont Land Trust and Town Plan)
3. 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: the surface waters including McCabe's brook and the wetland to the east of the brook; the wildlife linkage associated with the brook and wetland; and the adjoining active farms with conserved land. These are the resources that most strongly characterize the property, and which the Planning Commission feels are most important to protect.
 4. Building envelopes have not been depicted on the survey included with the application, although house symbols and driveways are depicted.
 5. The house symbol on Lot 1 is located approximately 520 feet from the northern property line, and the house symbol on Lot 2 is located approximately 240 feet from the southern property line. These locations provide a buffer to the neighboring farms, and in so doing, will minimize the impacts of prospective development on those farms.
 6. The house symbols are located on the eastern portion of the property, and generally avoid impacts to the surface waters and wildlife linkage, although the house symbol on Lot 1 appears to encroach on the state-required 50 foot buffer for a Class 2 wetland.
 7. The Planning Commission finds that, except for the encroachment on the wetland buffer, the application will not create undue adverse impacts on areas of high public value.

Compatibility with Agricultural Operations—Section 7.4

8. The house symbols and proposed drilled wells depicted on the survey are greater than 200 feet from the property boundaries with the adjoining agricultural operations to the south and north.
9. The managing partner of the agricultural operation to the north, Clark Hinsdale, III, requested that the Planning Commission require covenants recognizing the pre-existing agricultural uses to the north and south.

10. The Planning Commission finds it is not appropriate, and perhaps not legal, for it to require covenants that would prohibit legal action against the adjoining farm operations. Nevertheless, the Planning Commission finds the following notice to be appropriate:

Notice is given of the existence of active, regionally significant agricultural operations located in the vicinity of the development. Prospective homeowners should understand the importance of agriculture to the town of Charlotte, and should also recognize that agricultural practices may create conditions—including odor, dust, noise (including noise at night), and flies—and include the use of chemicals, genetically engineered seeds, and large buildings, that can impact neighbors' desired lifestyles. In general, neighbors should try to resolve any problems among themselves; however, it should be understood that reasonable agricultural practices, which are defined by the State of Vermont, are necessary for viable farming operations and contribute to a working landscape and community pride.

Facilities, Services & Utilities—Section 7.5

11. Existing utility poles are located on the west side of Mount Philo Road—therefore utility lines will not need to cross Mount Philo Road to reach the proposed dwellings.

Water Supply—Section 7.6

12. The plat depicts two drilled wells, one on Lot 1 and one on Lot 2. The “well shield” which indicates the protective distance around the well on Lot 1 is partially located on the adjacent property on the east side of Mount Philo Road.
13. The applicant stated at the hearing that the well on Lot 1 already exists, and the well on Lot 2 is proposed.

Sewage Disposal—Section 7.7

14. The applicant has obtained a Wastewater System and Potable Water Supply Permit for the proposed subdivision (WW-138-0909).
15. The proposed wastewater disposal system serving Lot 2 is located on Lot 1, so will need an easement.
16. The applicant has submitted draft easement language for the wastewater disposal system.

Landscaping and Screening—Section 7.9

17. The adjoining property owners to the east, Elizabeth Bassett and John Pane, requested that existing vegetation be preserved except for what needs to be removed for building construction, that the Planning Commission require that any vegetation removed outside of the building envelope during construction be replaced, and that the Planning Commission authorize a post construction site visit to verify that no vegetation has been removed, or that any vegetation that was removed has been replaced.
18. Bassett and Pane also requested that building envelopes be required, and that the dwelling on Lot 1 be located to the south of the garage, while keeping the garage in the location as depicted on the proposed plat.
19. The Planning Commission notes that these issues are related in that they are intended to address the prospective impact of the proposed subdivision and resulting development on the Bassett/Pane property.

20. The Planning Commission finds that the creation of building envelopes is appropriate for avoiding and/or minimizing impacts of the development on areas of high public value, and the building envelopes can also minimize impacts on the adjoining property owner.
21. The building envelopes requested by Bassett and Pane, as represented by David Raphael of LandWorks, are slightly more than ¼ acre, which is more restrictive than what the Planning Commission usually requires. Nevertheless, the building envelopes requested by Bassett and Pane approximate the locations for development proposed by the applicant, and these are also appropriate locations and sizes for minimizing impacts on areas of high public value.
22. If the building envelopes are established as requested by Bassett and Pane, the location of the dwelling relative to the garage and barn within the building envelope does not significantly alter the impacts of the prospective development on areas of high public value or, the Planning Commission believes, on the adjoining property owner. Furthermore, the Land Use Regulations do not authorize the Planning Commission to stipulate the location of structures within building envelopes.
23. While the existing vegetation contributes to the scenic qualities of the neighborhood, the Planning Commission finds that the proposed development is not of a scale or intensity that warrants intervention by the Planning Commission by requiring landscaping or restricting vegetation removal. Additionally, the proposed layout, with a condition requiring building envelopes as described above, will mitigate impacts to the adjoining properties to an extent that is reasonable.

Roads, Driveways & Pedestrian Access—Section 7.10

24. The application proposes two accesses for the proposed two-lot subdivision.
25. The Charlotte Land Use Regulations [Sections 3.2(C)(6) 3.2(D)(2)(g)] encourage the sharing of accesses and driveways.
26. The Planning Commission notes that the following site features with respect to the location of the accesses and driveways:
 - A. While some areas of high public value are located on the eastern portion of the parcel, the areas of high public value that the Planning Commission prioritized as being most important are to west (McCabe’s Brook, the wetland and wildlife linkage) and to the north and south (conserved and active farms).
 - B. The wetland and associated buffer necessitate that building sites be located relatively close to Mount Philo Road.
 - C. When considering the whole parcel the proposed layout is in fact a clustered layout, even though the separate accesses create a linear pattern along Mount Philo Road.
 - D. A very tight clustering of the proposed dwellings is not warranted by the prioritized areas of high public value.
 - E. The existing pattern of development along Mount Philo Road in the vicinity of the proposed subdivision is generally characterized by a linear pattern, with the exception of the farms to the south and north of the parcel.
 - F. A very tight clustering of the proposed dwellings is not characteristic of the neighborhood, and could create a stronger, negative visual impact from Mount Philo Road and from adjoining properties.
 - G. If the building sites are not tightly clustered, creating a shared curb-cut would result in longer driveways to one or both of the building sites, which would result

in increased stormwater run-off, a greater visual impact, and higher construction and maintenance expenses, and would also have a greater impact on adjoining parcels on the east side of Mount Philo Road by focusing the access for two parcels near their dwelling.

27. Considering the above site features and development patterns, the Planning Commission finds the proposed access plan to be appropriate.
28. The applicant has obtained Highway Access Permits for the two proposed accesses (HAP-09-05 and HAP-09-06).

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

29. The managing partner of the agricultural operation to the north, Clark Hinsdale, III, requested that the Planning Commission require an Open Space Agreement for the purpose of documenting and protecting areas of high public value on the parcel.
30. The Planning Commission finds that, given the small size of the subdivision, the visibility of the building sites, and the enforceability of building envelopes, an Open Space Agreement is not necessary for this project.

Decision

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

1. The survey plat will be revised as follows:
 - A. Building envelopes 100' x 130' will be added to Lot 1 and Lot 2 as they are depicted on the plan by LandWorks submitted at the hearing, except that on Lot 1 the building envelope will be at least 50 feet from the edge of the mapped wetland.
 - B. The dimensions of the building envelopes and the distances to the two closest lot lines will be indicated.
 - C. Labels will be added indicating “existing drilled well” and “proposed drilled well.”
 - D. A revision date will be added.
2. One paper copy (11”x 17”) and one mylar (18” x 24”) of the revised plat will be submitted to the Planning Commission for review and signature within 160 days. The applicant will record the signed mylar in the Charlotte Land Records within 180 days.
3. Prior to the submission of the mylar in accordance with Condition 2 above, the applicant will submit the following items:
 - A. A letter from the surveyor indicating he has set the survey markers or pipes in the field as indicated on the plat. If the survey markers or pins cannot be set at this time because of frozen ground, the applicant shall submit a letter from the surveyor indicating that he will set the markers or pins when the ground thaws and has been paid to do so.
 - B. A copy of the wetland delineation by a certified wetland ecologist or other professional acceptable to the State Wetland Office, including a map and report.
4. Any deed conveying Lot 2 will include an easement for the wastewater disposal system and force main, similar to what was submitted with the application, and any deed conveying Lot 1 will include a corresponding easement in favor of Lot 2.

- 5. No new pole-mounted light fixture will be taller than 8’ off the ground, and no new building-mounted light fixture will be taller 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 driveway and roadway sections shall 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 February 4, 2010: Jeff McDonald, Jim Donovan, Linda Radimer, John Owen, Eleanor Russell, Peter Joslin 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 with the application:

- 1. An application form submitted on January 27, 2010 and appropriate fees.
- 2. A survey by Button Associates entitled “Harvey Sharrow, Mount Philo Road, Charlotte, Vermont” dated 05/06/02, last revised 12/09.
- 3. A sheet entitled “Easement Language for Sharrow 2-Lot Subdivision”