

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

Carl Moulton
363 Colonel Williams Way

Final Plan Application
For A
Subdivision Amendment
Application # PC-11-13

Background

The applicant owns a parcel that was created by Joanne Williams Bruska in 1997. Sketch Plan Review for the current proposal was held on June 3, 2010 at which time the Planning Commission classified the project as a Minor Subdivision Amendment. The Planning Commission extended the deadline for submitting the Final Plan Application on November 4, 2010.

Public Hearing

A public hearing for this application was held on June 2, 2011, July 7, July 21 and August 4, however, at the applicant's request no testimony was taken on July 7 or July 21. At the August 4th meeting, the Planning Commission closed the hearing and began deliberating. On September 1, the Planning Commission came out of deliberation and voted to re-open the hearing, as allowed under Section 9.9(E)(4)(b) of the Charlotte Land Use Regulations. The hearing was re-opened on October 6, testimony was taken, and then the hearing was closed.

The following parties were present and participated in the hearing or submitted written comments at or in advance of the hearing:

June 2

Representing the applicant: Patrick O'Brien and Sue Morse

Interested Parties: Jane McCullough, Tim McCullough, Dorothy Waller, Gary Pittman
(of Charlotte Conservation Commission), Charles Russell (of Charlotte Selectboard)

August 4

Representing the applicant: Patrick O'Brien, Sue Morse, Charles Proutt

Interested Parties: Liam Murphy (attorney representing a potential buyer, and preparer of the draft Conservation and Wildlife/Forestry Easement and Restrictions for the applicant), Jane McCullough, Tim McCullough, Dorothy Waller, Richard Greene, Robert Hyams (of Charlotte Conservation Commission)

October 6

Representing the applicant: Patrick O'Brien and David Marshall

Interested Parties: Liam Murphy (attorney representing a potential buyer), Dorothy Waller, Irene Fischer, Jane McCullough, Nick Monsarrat, Richard Greene.

Application

Materials submitted in association with the original applications are listed in Appendix A. Materials submitted for the re-opened hearing are listed in Appendix B.

Regulations in Effect

Town Plan, amended March, 2008

Land Use Regulations adopted November, 2010.

Recommended Standards for Developments and Homes adopted September, 1997

Findings

1. The applicant's property is 34.55 acres located within the Rural District. There are no structures on the parcel.
2. The Planning Commission approved a Subdivision Modification on June 3, 1997, which created the lot in its current form. This approval included a condition, stated on the plat, that "any future improvements, building permit, or subdivision of Lot 1 will require review by the Planning Commission."
3. The current application is for a Subdivision Amendment to allow development of Lot 1 for residential use.
4. Section 6.1(C)(4) of the Charlotte Land Use Regulations states: "Applications for Subdivision Amendments will be reviewed under the standards of Chapter VII."

Applicable standards in Chapter VII of the Charlotte Land Use Regulations are reviewed below in Findings 5-29.

General Standards & District Standards—Sections 7.2 and 7.3

5. The following are areas of high public value (as listed in Table 7.1 of the Charlotte Land Use Regulation) located on, in close proximity to, or associated with the parcel:
 - A. Steep slopes: Two areas on the westerly and southerly facing slopes have existing grades of at least 25%, as indicated in plans submitted by the applicant on October 6. Additional portions of the southerly and westerly facing slopes have existing grades of at least 15%, as indicated in GIS data provided by the Chittenden Count Regional Planning Commission.
 - B. Wildlife habitat: Much of the parcel is depicted as forested wildlife habitat on Map 6 in the Town Plan. Additionally, the applicant provided a study by Morse and Morse Forestry and Wildlife Consultants which identified specific habitat areas and resources.
 - C. Scenic views and vistas: The western facing portion of the parcel contributes to a ridgeline that is prominently visible from roads to the west and southwest that are labeled as "most scenic roads" on Map 13 in the Town Plan.
 - D. Conserved land on adjacent parcels: The applicant's parcel adjoins a parcel owned by the Town and leased to the University of Vermont via a long-term lease. The University uses the parcel for wildlife research, education and public recreation. The parcel is identified on Map 18 in the Town Plan as Pease Mountain Natural Area.
6. The Planning Commission finds that all of the areas of high public value associated with the parcel are important. All are resources that strongly characterize the property and its vicinity, and are features that the Planning Commission feels are important to protect as it considers the proposed subdivision amendment. The Planning Commission also notes that Section 3.14 of the Land Use Regulations states "development is specifically prohibited on slopes equal to or in excess of 25%, with the exception of stairways to the shoreline within the Shoreland District and the Shoreland Seasonal Home Management District, which are subject to conditional use review under Sections 5.4."

7. The application proposes two building envelopes, one for the proposed dwelling and the second for a barn, which avoid the highest quality wildlife habitat, as indicated by the Forest and Wildlife Habitat Management Plan by Morse and Morse Forestry and Wildlife Consultants.
8. The location of the proposed building envelopes necessitates the development of a driveway on slopes equal to or in excess of 25% as indicated in all of the plans submitted on October 6 for the four driveway options.
9. The Planning Commission notes that it would be possible to develop the western portion of the parcel without impacting slopes that are equal to or greater than 25%, or other areas of high public value listed in Finding #5 above.

Compatibility with Agricultural Operations—Section 7.4

10. The project is not adjacent to any agricultural operations, with the exception of a small maple sugaring operation on the adjacent parcel to the west.
11. The project will not impact the maple sugaring operation on the adjacent parcel.

Facilities, Services and Utilities—Section 7.5

12. Plans submitted on October 6 include four options, two of which result in a final driveway grade not exceeding 8% and two of which result in a final grade not exceeding 10%.
13. The applicant proposed a condition that would allow the driveway to have a grade up to 10%, and require sprinklering of all living areas if the driveway is over 8%.
14. Development of the subject parcel would result in a fourth dwelling accessed by Colonel Williams Way. Therefore, a fire pond is not required.
15. The Planning Commission notes that, due to the prominent location of the proposed building envelope, exterior lighting will have a high potential to cause glare on other properties, even with the proposed landscaping.

Water Supply—Section 7.6

16. The site plan by Stuart Morrow depicts a proposed well location, which will not require an off-site easement. The project will need a Wastewater System and Potable Water Supply Permit.

Sewage Disposal—Section 7.7

17. The applicant obtained a construction permit for a wastewater system in 2004, however, this has expired. The project will need a Wastewater System and Potable Water Supply Permit.

Stormwater Management and Erosion Control—Section 7.8

18. At the hearing the applicant's representative stated that a state stormwater permit may not be required for the project.
19. The application does not include a specific plan regarding stormwater and erosion control, other than two notes (only on sheets B-8 and C-1) stating "install culvert and stone lined swale to pond" and "side slopes @ 1:1 (assumed ledge cut or boulder retaining wall)" and a sheet (C-2) which depicts corresponding erosion control details, even though the parcel's slope and the proposed cut and fill for the driveway would create considerable drainage and erosion issues.

Landscaping and Screening—Section 7.9

20. The applicant submitted a proposed landscape mitigation plan which depicts seven (7) three inch caliper maples and/or oaks placed so that they shade the west side of the roof of a dwelling built within the building envelope.

Roads, Driveways & Pedestrian Access—Section 7.10

- 21. The plans submitted on October 6 depict four options for the driveway.
- 22. All of the driveway options will impact an area with slopes of 25% or greater.
- 23. The driveway options that will create a final grade of 8% (as indicated on sheet B-8) will require an approximately 30 foot deep cut into the hillside.
- 24. The driveway options that will create a final grade of 10% (as indicated on sheet B-10) will require an approximately 20 foot deep cut into the hillside.
- 25. The Planning Commission finds the extensive cut that would be required by all of the proposed driveway plans to be uncharacteristic of area and incompatible with the purpose of the Rural District, particularly when a site on the parcel is available that will not require extensive cuts.
- 26. The driveway options that locate the driveway to the south of the building envelope (sheets C and D) would create extensive additional impervious surface, and create a potential for stormwater run-off and erosion that could affect neighboring parcels to the south. No plan was submitted that would mitigate these prospective impacts.

Common Facilities and Legal Requirements—Sections 7.11 & 7.12

- 27. No common facilities are proposed.
- 28. The applicant has proposed an area to be designated as “open space” which corresponds to the recommendation within the Forest and Wildlife Management Plan by Morse and Morse.
- 29. The applicant has submitted two draft documents that would allow the Town to restrict development and some other activities in the designated open space.

Decision

Based on these Findings, the Planning Commission denies the Final Plan Application for a Subdivision Amendment to allow the parcel to be developed as indicated by the materials submitted in Appendices A and B.

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 June 2: Jeff McDonald, Jim Donovan, Peter Joslin, Eleanor Russell, Linda Radimer, Paul Landler and Gerald Bouchard

Members Present at the Public Hearing on August 4: Jim Donovan, Peter Joslin, Eleanor Russell, Paul Landler and Gerald Bouchard

Members Present at the Public Hearing on October 6: Jeff McDonald, Jim Donovan, Peter Joslin, Eleanor Russell, Linda Radimer, Paul Landler and Gerald Bouchard

Vote of Members after Deliberations:

The following is the vote for or against the 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 for a Subdivision Amendment and appropriate fee.
- 2. A memo from Patrick O'Brien Development, LLC to Mr. Tom Mansfield dated May 3, 2011.
- 3. A plan by Stuart J. Morrow entitled "Site Plan, Property of Carl Moulton, Charlotte, Vermont" dated May, 2010, no revisions.
- 4. A plan by Stuart J. Morrow entitled "Site Plan, Property of Carl Moulton, Charlotte, Vermont" dated August, 2011, no revisions.
- 5. A plan by Civil Engineering Associates, Inc. entitled "Carl Moulton, Proposed Driveway Improvements, Colonel Williams Way, Charlotte, Vermont, Proposed Grading Plan, Sheet C1" dated July, 2011, no revisions .
- 6. Two renderings by Distinctive Landscaping entitled "Moulton Property, Colonel Williams Way, Charlotte, VT" both dated 7/27/11, not revised, labeled as follows:
 - A. Landscape Guidelines, Section A: West/East
 - B. Landscape Guidelines, Section B: North/South
- 7. A plan by Distinctive Landscaping entitled "Moulton Property, Colonel Williams Way, Charlotte, VT, Landscape Guidelines" dated 6/3/2011, revised 7/15/ 2011
- 8. A plan by Morse and Morse Forestry and Wildlife Consultants entitled "Carl Moulton, Forest and Wildlife Reference Map" dated April 26, 2011
- 9. A document authored by Susan C. Morse entitled "Wildlife habitat Mitigation Recommendations For The Proposed Carl Moulton Single Home Development in Charlotte, Vermont."
- 10. A document authored by Morse and Morse Forestry and Wildlife Consultants entitled "Forest and Wildlife Habitat Management Plan for the Carl Moulton Property located in Charlotte, Vermont" dated July, 2011.
- 11. A draft document entitled "Conservation and Wildlife/Forestry Easement and Restrictions"
- 12. A draft document entitled "Open Space Agreement"
- 13. A boilerplate document entitled "Roadway Agreement and Waiver"
- 14. A sheet by Civil Engineering Associates, Inc. entitled "Carl Moulton, Proposed Driveway Improvements, Colonel Williams Way, Charlotte, Vermont, Erosion Control Details, Sheet C2" dated July, 2011.

15. An e-mail from Patrick O'Brien to Dean Bloch dated August 4, 2011 at 12:01 PM with a subject line "Re: Moulton application."

APPENDIX B

The following items were submitted at the hearing on October 6, 2011:

1. A plan by Civil Engineering Associates, Inc. entitled "Carl Moulton, Proposed Driveway Improvements, Colonel Williams Way, Charlotte, Vermont, Existing Conditions Plan, Drawing Number A" dated October, 2011 no revisions .
2. A plan by Civil Engineering Associates, Inc. entitled "Carl Moulton, Proposed Driveway Improvements, Colonel Williams Way, Charlotte, Vermont, Proposed Option B, Drawing Number B-8" dated October, 2011 no revisions .
3. A plan by Civil Engineering Associates, Inc. entitled "Carl Moulton, Proposed Driveway Improvements, Colonel Williams Way, Charlotte, Vermont, Proposed Option B-10% West Side, Drawing Number B10" dated October, 2011 no revisions .
4. A plan by Civil Engineering Associates, Inc. entitled "Carl Moulton, Proposed Driveway Improvements, Colonel Williams Way, Charlotte, Vermont, Proposed Option C, 8% West Side, Drawing Number C" dated October, 2011 no revisions .
5. A plan by Civil Engineering Associates, Inc. entitled "Carl Moulton, Proposed Driveway Improvements, Colonel Williams Way, Charlotte, Vermont, Proposed Option D, 10% West Side, Drawing Number D" dated October, 2011 no revisions .
6. A plan by Civil Engineering Associates, Inc. entitled "Carl Moulton, Proposed Driveway Improvements, Colonel Williams Way, Charlotte, Vermont, Building Envelope Detail, Drawing Number E" dated October, 2011 no revisions .