

# CHARLOTTE PLANNING COMMISSION

## FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

**Jonathan Couture  
85 Valley View Drive**

**Final Plan Application  
For A  
Subdivision Amendment  
Application # PC-12-22**

### **Background**

The applicant owns Lot 21 of a subdivision known as “Sheehan Green East,” which was created via a subdivision by John and Helen Sheehan and Clark Hinsdale, Jr. approved by the Planning Commission on December 16, 1997. The subdivision was re-approved (to confirm Clark Hinsdale, Jr.’s authorization as a co-property-owner) on December 4, 1998, and amended by Clark Hinsdale, Jr. on October 19, 2006 (PC-06-28). Sketch Plan Review (PC-12-15) for the current proposal was held on July 19 and August 16, 2012, and a site visit was held in association with the Sketch Plan Review on August 2, 2012.

### **Application**

Materials submitted with the applications are listed in Appendix A.

### **Public Hearing**

The Planning Commission held a public hearing for this application on November 1, 2012 and November 15, 2012. The applicant was not present at the hearing on November 1<sup>st</sup>, but was present at the hearing on November 15<sup>th</sup>. Adjoining property owners Robert Silverstein and David Quickel were also present and participated in the hearing. The Planning Commission conducted a site visit on November 10, 2012.

### **Regulations in Effect**

Town Plan, amended March 4, 2008

Land Use Regulations amended November 2, 2010.

Recommended Standards for Developments and Homes adopted September, 1997

### **Findings**

1. The purpose of the application is to shift the building envelope to the east by approximately 100 feet, and slightly modify the shape of the building envelope.
2. The building envelope was established by the Planning Commission’s approval of an application for a Subdivision Amendment on October 19, 2006 (PC-06-28).
3. The Planning Commission believes that its review of the application should have two areas of inquiry: (1) evaluating the application using the Charlotte Land Use Regulations (“Regulations”); and (2) considering how state statute and case law address applications

to revise previously approved permits. Findings 4 through 18 will focus on the first area of inquiry, and findings 19 through 26 will focus on the second area of inquiry.

4. The following areas of high public value (as listed in Table 7.1 of the Charlotte Land Use Regulation) are located on or in close proximity to the parcel:
  - A. Land in active agricultural use: The adjoining parcel to the east of the subject parcel is used for a vegetable farming operation.
  - B. Agricultural soils: The adjoining parcel to the east has Georgia Stony Loam, which is a prime agricultural soil. The western portion of the subject parcel has Covington Silty Clay, which is a statewide agricultural soil (from NRCS data).
  - C. Steep slopes: A portion of the subject parcel has steep slopes (from CCRPC data, the site plan submitted with the application, and the applicant's testimony).
  - D. Conserved land on adjacent parcels: The adjoining parcel to the east is conserved by the Vermont Land Trust. A portion of the parcel to the west is under an Open Space Agreement with the Town (from town land records).
5. The applicant's stated reason for proposing to shift the building envelope to the east is the area where the envelope is currently sited has an average slope of approximately 20%.
6. Although the application does not provide the slope of the area where the new envelope is proposed, Town staff has scaled the submitted site plan using the visual scale on the plan and found this area has an average slope of approximately 14%.
7. Section 3.14 of the Regulations regulates development impacting an area of 200 square feet or greater which has a slope with an existing grade equal to or greater than 15%, except if the development is being reviewed as a subdivision or planned residential development under the provisions of Chapters VI, VII and VIII of the Regulations. Since the application is for a Subdivision Amendment [as provided under Section 6.1(C)(4) of the Regulations], the project's impact on "steep slopes" will be reviewed under Chapters VI and VII of the Regulations.
8. Section 6.1(C)(4) of the Regulations states that applications for subdivision amendments will be reviewed under the standards within Chapter VII.
9. Table 7.1 of the Regulations lists steep slopes (i.e. slopes equal to or in excess of 15%) as one of the characteristics of land that is considered an *area of high public value*.
10. Section 7.3(D)(1) of the Regulations states "building envelopes, to the extent feasible, shall be located, sited and configured so as not to create any undue adverse impacts on areas of high public value. In the event that no other land in the parcel to be subdivided is suitable for development, building envelopes shall be designated to minimize encroachments into these areas and to minimize undue adverse impacts."
11. Chapter X of the Regulations provides the following definition of Undue Adverse Effect (Impact): "An effect or impact resulting from a proposed development that (1) violates a clear, written community standard, including a provision of these regulations or a specific policy of the municipal plan, (2) offends the sensibilities of the average person, or (3) with regard to which the applicant has failed to take generally available reasonable mitigating steps to improve the harmony between the proposed development and its surroundings."
12. With regard to the first criteria of the definition of Undue Adverse Effect (Impact), Section 7.3(D)(1) clearly supports siting building envelopes so as to avoid impacting areas of high public value, including steep slopes, if possible. Section 7.3(D)(1) of the Regulations constitutes a "clear, written community standard." As such, Section

7.3(D)(1) supports the application's proposed relocation of the building envelope from an area with an average slope of approximately 20% to area with an average slope of approximately 14%.

13. With regard to the second criteria of the definition of Undue Adverse Effect (Impact), although adjoining property owners have expressed concerns that moving the building envelope would make the prospective dwelling more visible from their properties, the Planning Commission believes that an "average person" who would not have a property interest in the vicinity of the project would not find the shifting of the building envelope to be offensive.
14. With regard to the third criteria of the definition of Undue Adverse Effect (Impact), the proposed shifting of the building envelope to an area with a lesser slope could in itself be considered as mitigation of the prospective impact to the steep slope within the existing building envelope.

***Conclusion 1: The Regulations do not prohibit development within the existing building envelope.***

***Conclusion 2: The application complies with criteria within the Regulations that support mitigating impacts to areas of high public value to the extent feasible.***

15. The current building envelope is 129 feet from the easterly parcel boundary, which is shared with a parcel that is used for a vegetable operation and which has been conserved via an expenditure of public funds.
16. The proposed building envelope is approximately 30 feet from the easterly parcel boundary at the northeast corner of the envelope, and approximately 66 feet from the easterly parcel boundary at the southeast corner of the envelope.
17. It appears the proposed drilled well would not move from its currently approved location even if the building envelope is shifted to the east. The proposed drilled well is over 200 feet from the easterly parcel boundary, which is shared with the vegetable operation.
18. Section 7.4(1) of the Charlotte Land Use Regulations states "residential building envelopes and wells shall, to the extent feasible, be sited to minimize conflicts with agricultural operations located within the subject property and on adjoining properties. Building envelopes and wells shall be located a minimum of 200 feet from any lot line shared with an agricultural operation unless the Planning Commission determines that such a setback is unnecessary to protect water supplies and avoid potential conflicts with agricultural uses."

***Conclusion 3: The application would increase the potential for conflicts between the prospective residential use on Lot 21 and the existing agricultural use of the adjoining parcel to the east by moving the building envelope significantly closer than 200 feet from the shared boundary of the parcels.***

19. An adjoining property-owner has, through legal counsel, set forth an argument that the Planning Commission can only amend a subdivision if there are "changed circumstances," such as: factual or regulatory circumstances that would directly impact the project and are beyond the control of the applicant; changes in the construction or operation of a permittee's project that are significant and were unforeseeable at the time

- the permit was originally issued; or changes in technology that would necessitate a permit amendment or provide such a benefit that an amendment would be justified.
20. The current building envelope for Lot 21 was established in 2006 when the then-landowner applied for a Subdivision Amendment (PC-06-28), which was approved. In addition to siting a building envelope, the amendment included the siting of a wastewater system and a well.
  21. The current owner and applicant purchased the property on November 25, 2008.
  22. The current building envelope was depicted on the plat for PC-06-28 which was available in the Town land records when the applicant purchased the property.
  23. Although the applicant stated at the hearing that an error was made with regard to the depiction of the wastewater disposal replacement area (as per EC-4-1794) on the site plan, there have been no “changed circumstances” with regard to the building envelope location that was approved in PC-06-28

***Conclusion 4: The owner/applicant was aware of, or should have been aware of, the current building envelope when he purchased the property.***

24. The Planning Commission does on occasion allow previously approved subdivisions to be amended. This process is provided for in Section 6.1(C)(4) of the Charlotte Land Use Regulations. (To date in 2012, there have been seven such applications).
25. There is nothing in the record of the 2006 application (PC-06-28) or the Planning Commission’s review and approval of the application that indicates the building envelope was sited for the purpose of resolving a particular issue or concern, nor that the Planning Commission considered or was concerned about the slope of the area where the building envelope was sited.

***Conclusion 5: The siting of the building envelope in application PC-06-28 was not material to the Planning Commission’s approval of the application.***

26. The adjoining property-owner who questioned the Planning Commission’s authority to move the building envelope also stated in verbal testimony and in a written submission that the original siting of the building envelope was material to his participation in the review process of application PC-06-28 and also his willingness to grant to the then applicant a right-of-way easement that allowed PC-06-28 to be approved as proposed.
27. In balancing the need for flexibility and finality in the permitting process, the Planning Commission finds that the adjoining property-owner’s clearly expressed expectation that the previous permit was final is relevant to its consideration of the proposed amendment.

***Conclusion 6: Approving the current application would violate the adjoining property-owner’s rightful expectation of finality of the Findings of Fact and Decision for PC-06-28.***

## **Decision**

Based on these Findings and Conclusions 1, 3, 4, 6, the Planning Commission denies the Final Plan Application for the proposed Subdivision Amendment.

**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 4<sup>th</sup> 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 November 1, 2012:** Jeff McDonald, Peter Joslin, Ellie Russell, Linda Radimer, Paul Landler and Gerald Bouchard

**Members Present at the Public Hearing on November 15, 2012:** Peter Joslin, Ellie Russell, Paul Landler and Gerald Bouchard

**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:\_\_\_\_\_
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- 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 plan by Lincoln Applied Geology, Inc. entitled "Couture Lot 21 Property, Sheehan East Property, Charlotte, Vermont, Site Plan with Water & Wastewater System" dated May, 2012, no revisions.