

**CHARLOTTE PLANNING COMMISSION
SITE PLAN REVIEW
FINDINGS OF FACT AND DECISION**

**Gemini Properties, LLC
Application for a Site Plan Review
at 3488 Ethan Allen Highway (US Route 7)
Application # PC-17-173-SP**

Introduction and Procedural History

This proceeding involves an application for a Site Plan Review submitted by Debra Kassabian and Mike Dunbar of Gemini Properties, LLC (the property owning entity) for approval by the Charlotte Planning Commission under the Town of Charlotte Land Use Regulations (hereafter referred to as “the Regulations”). The application proposes to redevelop the dilapidated structure known as the “Wildflower Farm” into a multiple-use commercial operation, which triggers a Site Plan Review with the Planning Commission (PC) and a Conditional Use Review with the Zoning Board of Adjustment (ZBA). The property is within the Village Commercial (West Charlotte Village – West of Route 7 only) zoning district located at 3488 Ethan Allen Highway (i.e. US Route 7) in the Town of Charlotte (M05B05L24).

The Site Plan Review application was received by the Charlotte Planning & Zoning Office on November 20, 2017. At the time of the application submission, the applicants had already undergone a Sketch Plan Review with the PC and had received a signed letter (dated September 28, 2017). The ZBA had initially declined to hear the applicants’ proposal in a joint ZBA and PC hearing. Hence, the Conditional Use Review application was warned for a public hearing to be held on January 10, 2018, where the Site Plan Review with the PC was warned for a public hearing to be held on January 18, 2018. The applicants changed their proposal for the building design between the two hearing dates, so the PC Chair and the ZBA Chair agreed to hear the proposal in a joint public hearing scheduled for March 15, 2018.

Public notification for the joint public hearing was carried out via electronic posting of the notice on the Town website; publication in “The Citizen” newspaper on February 16, 2018; posting hardcopies of the notice at the Town Office, the Brick Store, and Spear’s Corner Store on February 23, 2018; and by direct correspondence to adjoining property owners on that same date.

A site visit was conducted at the property prior to the public meeting for the initial *Sketch Plan Review* that was held at the August 17, 2017 PC meeting. Although the Site Plan Review application was initially heard by the PC at their January 18, 2018 meeting, the aforementioned change in the application precipitated re-warning the public hearing. The joint public hearing took place on March 15, 2018 at 7:30 PM at the Town Offices at 159 Ferry Road in the Town of Charlotte, Vermont. Present at the hearing were the following members of the PC; Peter Joslin (Chair), Gerald Bouchard, Charlie Pughe, Shawn Coyle, and Marty Illick; and members of the ZBA; Frank Tenney (Chair), Jonathan Fisher, Matt Zucker, and Stuart Bennett. The Town Planner Daryl Benoit, the applicants Debra Kassabian and Mike Dunbar, and their consultant Charlie Proutt of Distinctive Landscaping, Inc. also participated in the hearing.

Exhibits

Submitted between November 20, 2017 and March 15, 2018 the following exhibits were submitted for the Site Plan Review Application:

1. A detailed application, including –
 - A. Landscaping Plan (described in page 2);
 - B. Parking & Loading Service Plan (described in page 3);
 - C. Lighting Plan (described in page 4);
 - D. Traffic access & management letter (email) from VTrans, Highway Division, Right-of-Way, Permitting Services to the applicants (dated October 24, 2017);
 - E. Signage Plan;
 - F. Side Elevation & Floor plans;
 - G. Structural plans (foundation, footings, and framing);
 - H. Photos (current condition);
2. Additional documents related to the Site Plan Review, including –
 - A. Site Plan Map;
 - B. Water Supply & Wastewater plan;
 - C. Stormwater plan;
3. Sketch Plan Review; Planning Commission Letter (PC-17-95-SK Gemini Properties, LLC), dated September 28, 2017;
4. Town of Charlotte Lister File, 2012-2017;
5. Lister Cards, 1982 and 1987-2017;
6. VTrans, Development Review & Permitting Services; Jurisdictional Opinion, Charlotte, US7, Wild Flower Farm (a/k/a Gemini Properties, LLC), dated April 23, 2018;
7. Zoning Board of Adjustment (ZBA) and Planning Commission Minutes from their joint hearing held on March 15, 2018;
8. Zoning Board of Adjustment (ZBA) Minutes of the meeting held May 23, 1990;

Regulations in Effect

Town Plan, 2016

Land Use Regulations, 2016

Recommended Standards for Developments and Homes adopted September, 1997

Findings

Background

1. Gemini Properties, LLC own a 5.3 acre property formerly known as the “Wildflower Farm”, which is located at 3488 Ethan Allen Highway (US Route 7) on the western side, which lies within the Village Commercial (West Charlotte Village – West of Route 7 only) zoning district.
2. Built in 1970, the current structure on the property is in a dilapidated condition.
3. The application proposes converting the use of structure into a 1,532 sq. ft. office complex, a 1,309 sq. ft. retail operation, and a 495 sq. ft. restaurant.

Section 5.5 - Site Plan Review Standards

1. Site Features: The property is identified in the Town Plan as a Special Natural Area (SNA). Wherever possible the associated assets of the SNA (e.g. the trails, vegetation, and the forest habitat on the western portion of the property) should be preserved. Section 5.5(E)(1) of the Regulations advises:

“Site layout and design shall incorporate and protect significant site features, including but not limited to: existing vegetation, prime agricultural soils and active agricultural areas; surface waters, wetlands, shorelines and associated buffer areas; special natural areas and wildlife habitat; prominent ridgelines, hilltops, and areas with slopes 15% or greater; and historic sites and structures, including stone walls and fences. Conditions may be imposed as appropriate with regard to site clearing and preparation, the siting of structures and associated improvements and the establishment of increased setbacks and/or buffers to incorporate or protect existing site features.”

Furthermore, the applicants have stated that they will maintain the trail and are interested in connecting to the Town Trail Network. There is no plan to develop the special natural features of the property.

2. Site Layout and Design: The primary structure is utilizing the original footprint, including a former deck that existed, but has since been demolished and removed. The current square footage is 3,290 sq. ft. (not including the basement), according to the Lister’s file. The proposed square footage for the building is 4,616 sq. ft. (including the basement). According to the applicants, there would not be an increase in the original footprint of the building. A portion of the original structure will be retained for the new “modified” building. A new wastewater system is proposed for the site. The Water Supply and Wastewater permit was submitted in December 2017 (permit # WW-138-1317). However, it has not had final approval as the water supply element of the permit has yet to be determined.

3. Access:

- A. The applicants received a traffic access & management letter from VTrans, approving their project on October 3, 2017, based on the site having received a commercial access permit following the B-71 Standard on April 21, 1971.

- B. VTrans staff (James Clancy) had expressed concern in their letter approving the access;

“Given the business you propose I believe the access is adequate but only minimally. I am assuming that since this is not a warehouse there will be no tractor-trailer traffic coming and going. Unless the Town needs what is called a Jurisdictional Opinion, which is often done when ACT250 permitting is not needed, then you should be set from VTrans’ perspective. However, I would suggest you widen the access some since the length of the culvert could accommodate a slightly wider access, but that won’t be required.”

A condition should be imposed on widening the access if, at some point in the future, the commercial operation requires delivery vehicles greater than Class 6 of the FHWA vehicle category classification to access the property. The proposed condition has been supported by VTrans staff and a Jurisdictional Opinion (see Exhibit 6 above).

4. Parking, Loading, and Service Areas:

- A. The proposed site plan meets the parking space dimensional requirements outlined within Section 3.11(A)(1) of a minimum width of nine (9) feet, a minimum length of 18 feet, unobstructed access and maneuvering room, and a gravel or paved surface sufficient for year-round use. The applicants have proposed that the parking area will remain as a gravel lot.
- B. The proposed site plan meets the total number of parking spaces required within Section 3.11(A)(2) listed in **Table 3.1**. The applicants have proposed that the building will have a total Gross Floor Area of 1,825 sq. ft., of which the following uses are included;
 - i. For "Restaurant" use it is 1 parking space per 150 square feet of seating area.
The proposed restaurant area is stated to be 495 sq. ft., requiring **4 parking spaces**.
 - ii. For "Retail Sales & Service" use it is 1 parking space per 250 square feet of area.
The proposed retail area is stated to be 1,309 sq. ft., requiring **6 parking spaces**.
 - iii. For "Office/ Professional, Government, Business" use it is 1 parking space per 300 square feet of gross floor area.
The proposed office area is stated to be 1,532 sq. ft., requiring **6 parking spaces**.

The submitted site plan design accommodates twenty-one (21) parking spaces, which exceeds the requirement. However, a condition should be imposed to redesign the parking area (and the access from US Route 7) to appropriately and safely accommodate an increase in traffic resulting from an increase in square footage of the restaurant, retail sales & service, or office/professional spaces.

- C. The proposed site plan application will satisfy the requirements outlined within Section 3.11(A)(3).
 - i. ADA parking spaces are designated for compliance with the 2010 ADA Standards for Accessible Design call for *1 Required Accessible Parking Space for Total Number of Parking Spaces Provided in Parking Facility of 1-25 vehicles*.
 - ii. Although the required bicycle racks do not appear within the site plan, the applicants have stated that they plan to install them as part of the project.

A condition should be imposed to demarcate the ADA parking spaces, the bicycle rack, and a note indicating the ADA ramp/walkway for the front entrance on the site plan drawings.

- D. It is unclear if there will be sufficient accommodation for on-site loading areas for regular unloading of goods should the future demands of the commercial operation require larger trucks (than those stated by the applicants at the public hearing) to make deliveries, or if the proposed site plan adequately accommodates emergency vehicles, or possible bus services.
 - i. A letter from the Charlotte Fire and Rescue Services should be required to affirm that the access and the parking layout of Site Plan accommodates their emergency vehicles.
 - ii. Should larger trucks (i.e. those greater than Class 6 of the FHWA vehicle category

classification) be employed to deliver goods to the site, then the applicants or future property owner(s) should be required to redesign the parking plan and widen the access from US Route 7 to appropriately and safely accommodate the vehicles.

5. Landscaping and Screening: Extensive landscaping improvements are proposed in the site plan.
6. Stormwater Management and Erosion Control: The proposed site plan map indicates that a drain is to be installed at the rear of the building. It is unclear if stormwater mitigation issues related to the property are thoroughly covered in the Stormwater plan. Further information may be needed, such as a statement from an engineer stating that the proposed drainage design accommodates the projected stormwater runoff volume from the property. However, the applicants' consultant Charlie Proutt of Distinctive Landscaping, Inc. has stated that the proposed stormwater plan did not calculate runoff volumes, but was estimated to drain water from the parking area into a grassy swale (west of the parking area) and then down to an existing swale adjacent to the leach field and flow westward toward the woods. This runoff flows out into an existing wetland. Runoff from the western roof is diverted by design around the large existing septic system. The property slopes east to west and gradually west to north. The proposed stormwater plan has not been designed to carry calculated stormwater volumes for the property's drainage area.
7. Outdoor Lighting: The outdoor lighting plan details four (4) post-mounted parking area lights, two (2) exterior building lights (1 rear, 1 side entrance), and one (1) set of signage lights; all of which should be down-shielded. The design of the exterior building lights, and those for the parking area have been included within the application. The height of the post-mounted parking area lights should not exceed the Village Commercial (VCM) zoning district *Maximum Height (section 3.6)* standard of thirty-five (35) feet in accordance with Section 2.3 (Table 2.3) of the Regulations.

Section 5.5(E)(7) Site Plan Review - Standards states; *"Such lighting shall be designed in conformance with the standards set forth in Section 3.9."*

Section 3.9(B) – Outdoor Lighting – General Standards require the following:

- a. *"All outdoor lighting shall be kept to the minimum required for safety, security, and intended use, consistent with the character of the neighborhood in which it is located."*
- b. *"Permanent outdoor lighting fixtures shall be designed to minimize glare, and shall not direct light upward or onto adjacent properties, roads, or public waters, or result in excessive lighting levels that are uncharacteristic of the surrounding neighborhood or area."*

Section 7.2 - General Standards - Areas of High Public Value (Table 7.1):

The following Areas of High Public Value (AHPV) have been identified on the property;

1. Primary Agricultural Soils (Primary and Statewide): Primary and statewide soils compose about 2/3 of the parcel's eastern side.
2. Flood Hazard Areas: The property is within "Area of Minimal Flood Hazard" in the FEMA National Flood Hazard Layer (NFHL).

3. Surface Waters, Wetlands, and associated buffer areas: There is a small Thorp Brook tributary that runs along the westernmost boundary of the property. A stream associated wetland comprises the western half of the property according to the *Vermont Significant Wetlands Inventory (VSWI)* geospatial data.
4. Special Natural Areas (SNA): The property itself is within a Special Natural Area known as the "Vermont Wildflower Farm" (R2), an identified rare plant community in the 2018 Town Plan (page 2-17). The applicants have stated in their application that they intend to retain the path through the wooded area of the property, which could link to the Town's planned trail network.
5. Wildlife Habitat: *Significant Forest Habitat* comprises the western half of the property and about half of the Burns Property adjoining to the south, and a few acres of the adjoining northern property. Some *Significant Linkage Habitat* exists on the property to the north, along US Route 7. *Significant Natural Community* (identified by the Department of Fish and Wildlife and the Department of Forests, Parks and Recreation) also composes the western half of the property and a small amount of area on parcels abutting to the north and south.
6. Scenic views and vistas: US Route 7 is a "Scenic Highway" according to VTrans and serves as part of the Lake Champlain Byway.
7. Conserved land on adjacent parcels: The property abuts the "Burns Property" to the south, which has a 22.58 acre easement with the Vermont Land Trust.

Section 3.13 – Sign Requirements:

- *This regulation is addressed in the Conditional Use Review decision by the Zoning Board of Adjustment within application # PC-17-172-CU Gemini Properties, LLC.*

Decision and Conditions

Based on the foregoing Findings of Fact and Conclusions, the Planning Commission approves the application for a Site Plan subject to the following conditions:

1. All forest and wetland area identified on the property shall remain in their natural state and further be protected and managed as a Special Natural Area with rare plant communities, and as *Significant Forest Habitat*.
2. In the event that future commercial activity results in increased square footage of the proposed uses (e.g. retail, office, or restaurant) and/or other uses, the property owner shall be required to redesign the parking area and site access to appropriately and safely accommodate the increased parking and traffic, in accordance with Section 3.11 of the Regulations.
3. In the event that larger trucks (i.e. those greater than Class 6 of the FHWA vehicle category classification) are utilized to deliver goods to the site, then the property owner shall be required to redesign the parking area and site access to appropriately and safely accommodate the vehicles.
4. Approval of design of the access to the site is subject to the approval by Vermont Agency of Transportation (VTrans) and the Town of Charlotte Fire and Rescue Services. The design of the parking area is subject to the approval of the Town of Charlotte Fire and Rescue Services.
5. A stormwater management plan will be submitted for approval, which will include an operations and maintenance plan, and a design that accommodates the calculated flow volumes of the associated drainage area while considering site conditions such as; soil types, elevation, impervious surface, and wastewater system areas.

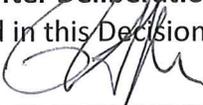
6. All parking, loading, and service areas shall be maintained with non-white crushed stone.
7. At least one bicycle rack shall be maintained by the property owner for employees, residents, or visitors.
8. Each parking space shall be maintained to have a minimum width of 9 ft. and a minimum length of 18 ft. with unobstructed access and maneuvering room.
9. At least one clearly marked ADA-accessible parking space shall be maintained by the property owner. This will include a sign with the *International Symbol of Accessibility* installed in front of the space with the lower edge of the sign at least 5 ft. above the ground, and a marked access aisle for the space that is at least 5 ft. wide to accommodate mobility devices (e.g. vehicle-mounted wheelchair lifts, wheelchairs, walkers, etc.).
10. Exterior lighting shall be kept to a minimum and permanent outdoor lighting fixtures shall be downward-shielded and will not direct light upward, onto adjacent properties, in accordance Section 3.9 of the Regulations.
11. The entrance sign may not be illuminated during hours when premises are unoccupied or are not open for business.
12. The following information shall be submitted to the Zoning Administrator in advance of construction:
 - A. A Final Site Plan, updated with:
 - i. The location of the bicycle rack.
 - ii. The demarcation of the ADA parking space and sign location.
 - iii. A note indicating the ADA ramp/walkway for the front entrance.
 - iv. Updated entrance sign location indicating the specified distance to the highway Right-of-Way.
 - v. The delineated (existing) trail.
 - vi. The Special Natural Area protection zone (discussed in Condition #1).
 - vii. A note indicating that all forest and wetland area identified on the property shall remain in their natural state and further be protected and managed as a Special Natural Area with rare plant communities, and as *Significant Forest Habitat* as a condition of the Planning Commission decision PC-17-173-SP.

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(s), 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. Approved plats not filed and recorded within the aforementioned 180 day period shall expire.

This decision may be appealed to the Environmental Division of the Vermont Superior Court by the applicant(s) or an interested person who participated in the proceeding. Such appeal must be taken within 30 days of the latest date of signature below, pursuant to 24 V.S.A. Section 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.

Planning Commissioners present at the Public Hearing on March 15, 2018: Peter Joslin, Gerald Bouchard, Charlie Pughe, Shawn Coyle, and Marty Illick.

Vote of Members after Deliberations: The following is the vote for or against the application, with conditions as stated in this Decision:

- | | | | | |
|------------|--|--|--------------|----------------------|
| 1. Signed: | <u></u> | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u>4/26/2018</u> |
| 2. Signed: | <u>Gerald G Bouchard</u> | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u>4/26/2018</u> |
| 3. Signed: | <u>Charles J...</u> | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u>4/26/2018</u> |
| 4. Signed: | <u></u> | <input checked="" type="radio"/> For / <input type="radio"/> Against | Date Signed: | <u>16 APRIL 2018</u> |
| 5. Signed: | _____ | For / Against | Date Signed: | _____ |
| 6. Signed: | _____ | For / Against | Date Signed: | _____ |
| 7. Signed: | _____ | For / Against | Date Signed: | _____ |