

Department of Planning and Zoning

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Burlington Development Review Board

Minutes/Findings of Fact
March 22, 2006

In RE: 05-571CA; Appletree Terrace (Ward 4, WRL) (Tax Lot No. 027-1-053-000)

Owner/Applicant: Flynn Estate/Keystone Development Corporation

Request: Final plat review of proposed 148 unit planned residential development.

Members Present:

Glenn Jarrett
Austin Hart
Eleanor Briggs Kenworthy
Eric Miller
Michael Long
Kevin Worden
Jonathan Stevens

Evidence Presented:

The Board examined the materials submitted in support of this request.

I. FINDINGS

Background Information:

The applicant is seeking final plat approval of a proposed PRD along Sunset Cliff Road. This project previously received final plat approval; however, it was appealed to the Environmental Court, which denied the application, citing the following issues:

- tree retention plan,
- protection of the pine grove,
- protection of the red maple/skunk cabbage swamp (with respect to buffer and water table),
- street width,
- commitment from the landowner regarding dedication of the streets, and
- acceptance of the 99-year affordable housing requirement.

The applicant has filed a new application with the DRB. This application is for 148 residential units in a variety of detached residential structures and a series of garages. A community building is also included; however, the applicant has indicated that no convenience store is proposed as previously submitted. The development will connect to the Strathmore at Appletree Point development through the existing Nottingham Lane, extending that city street into a new city street proposed to be named Scarlet Circle. The proposed street name is subject to Public Works approval. All structures will be constructed on slabs, given the high water table in the area.

The public hearing for this application has extended through four meetings (9/6/05, 10/4/05, 11/8/05, and 1/10/06). Following the final meeting, the public hearing was closed on February 6, 2006.

Design Advisory Board reviewed the application at their May 17, 2005 meeting. The DAB recommended approval with the following stipulations:

- 1) Prior to review by the Development Review Board, revised plans should be submitted. The revised plans should indicate exterior building materials, mailbox details, and utility meter screening details.
- 2) Prior to review by the Development Review Board, a tree retention plan for trees over 10" caliper as required by the Subdivision Ordinance should be provided.
- 3) The street tree plan is subject to review and approval by the City Arborist.
- 4) The street lighting plan is subject to review and approval by the Burlington Electric Department and should meet the standards of IESNA or the "Outdoor Lighting Manual for Vermont Municipalities."
- 5) Proposed signage requires a separate zoning permit following final subdivision approval.
- 6) All utility lines should be buried.
- 7) The stormwater plans with all pertinent details are to be reviewed and accepted by Department of Public Works, and written verification is to be provided to the DRB as testimony for the public hearing.
- 8) Specific street related waivers (ROW and roadway) are needed and must be specified by the applicant.
- 9) Color and material samples should be provided.
- 10) The applicant should consider adding details to provide uniqueness (vary porch details, street trees, colors, etc.).

The applicant has submitted additional information to address the foregoing DAB recommendations:

- 1) The buildings will be clad in vinyl siding with wide (4.5" minimum) wood corner boards. Trim elements will be either vinyl or clad metal. Roofs will be clad in asphalt shingles. Individual mailboxes will be provided at the front door of each of the units. Shared parcel lockers will be used to hold items too large to fit into the mailboxes. Utility meters will be screened by vegetation or by small shed-type enclosures painted to match the building color scheme. Note that the applicant has submitted material samples for this final review. The proposed vinyl siding has a smooth finish.
- 2) With respect to onsite tree retention, the applicant requests a waiver of the requirement for a tree retention plan per Section 28-7 (b) *Specific Review Criteria, (9) Preservation of natural features and trees* of the Subdivision Ordinance. The applicant has provided information with respect to tree retention in the form of a map depicting preserved tree clusters and also a "Tree Preservation Study" and a "Tree Resource Plan." Both of the foregoing documents were prepared prior to the August 2005 commencement of final subdivision review of this project but were not included in the application materials at that time. The materials provided outline where trees will be retained and management goals for 4 distinct tree areas on the property. What the materials do not address explicitly is the clearing of trees over 10" in trunk diameter – hence the requested waiver. Most of the trees in the development area will be cleared, although the applicant will attempt to retain some trees within the development area, as depicted on the tree retention plan. Outside of the

development area, the existing wooded areas will remain intact. The DRB may grant a waiver of subdivision requirements per Section 28-11, *Waivers*, of the Subdivision Ordinance. However, that waiver must also be granted by the City Council under a separate public hearing.

- 3) The city arborist has reviewed and approved the proposed street tree plan.
- 4) The outdoor lighting plan remains unchanged from the previous approval, which was reviewed and approved by BED.
- 5) A conceptual signage plan has been included in this submittal. A separate sign permit will be required if final subdivision approval is granted.
- 6) The applicant consents to bury all utility lines within the project.
- 7) The proposed stormwater plan has been revised again and has been reviewed and approved by the Department of Public Works. The system has been designed to the 2002 Vermont standards and has been modified to address the potential problem of coincident peak stormwater flows between the Strathmore development and the proposed development. Details of the proposed changes have been provided; however, not all plan sheets have been updated to reflect the modified design and must be submitted when complete and verified by DPW.
- 8) The applicant is requesting a waiver of the applicable street width requirement. Instead of constructing 30' wide roads (curb to curb), the applicant is requesting approval for 22' wide roads. Doing so significantly lessens impervious surface. As with the tree retention waiver, the DRB may grant a waiver of this requirement, subject to DPW and City Council approval.
- 9) Color and material samples have been provided.
- 10) The applicant has declined to add additional uniqueness by way of varied porch details, street trees, or colors. As submitted, the applicant feels that there is sufficient variety among the building types and porch layouts. Street trees have been selected in consultation with the city arborist, and the project's color palette contains off-white, white, dark green, and red.

The Conservation Board reviewed this project twice and recommended approval of the proposed stormwater system at their August 1, 2005 meeting. As part of their recommendation, the Conservation Board also encouraged the applicant to maintain the wetland buffer depicted on the plans and to retain large trees on the site. Note that there is no formal buffer required for the class 3 wetlands; however, the development stays out of the wetland except for a road crossing. The Conservation Board's recommendation supports keeping development out of the wetlands, as depicted. As for large tree retention, the applicant intends to retain, where possible, large trees within the development areas. Outside of the development area, the existing woods will remain intact. Note that the stormwater plans were revised following Conservation Board review and have not been reviewed by that board.

Previous zoning actions for this property are listed below.

- 7/14/88, Final approval for 172-unit planned residential development
- 1/9/01, Final approval for 148-unit planned residential development

Article 5: Use, Density and Dimensional Requirements

Section 5.1.4 Permitted Uses:

The property is located in the WRL zone. The proposed planned residential development (PRD) is a permitted use in this zone. (**Affirmative finding**)

Section 5.3 Dimensional Regulations:

Setbacks:

The project meets all required setbacks. Revised plans were submitted for the 11/8/05 meeting that reflected adjusted building and parking area placement to comply with the required 15' front yard setback. (**Affirmative finding**)

Height:

The 2-story and 2 ½ - story buildings included in this project are under the 35' height limit for this zone. (**Affirmative finding**)

Lot Coverage:

The maximum allowable coverage in this zone is 35%. The coverage included in this proposal is 16.4%. (**Affirmative finding**)

Article 6: Design Review

Relate development to its environment:

The proposed development includes 9 duplex, seven 4-plex, and 17 6-plex buildings. In addition, parking will be provided in garages (detached and attached) as well as on surface parking lots. Although the number of units within the buildings varies, the scale of the proposed buildings remains fairly consistent. The duplex and 4-plex buildings are 2 stories tall, and the 6-plex buildings are 3 stories tall. All of the buildings have pitched gable roofs, and all share the same color palate and building materials. Building siding will be a "buff" or "cream" color, windows will be white, accent colors will be soft reds, and roof colors will be forest green. Building materials consist of vinyl siding with wood corner boards and asphalt shingle roofing. Given the predominance of wood clapboard siding on homes on neighboring properties, the proposed vinyl siding is inconsistent and not acceptable. If the project were otherwise acceptable, the Board would require that siding be wood or cement board. Much of the surrounding area is developed with single family homes and multi-unit condominiums. Duplexes will be located along the development's northeasterly boundary, given its close proximity to existing homes along Curtis Avenue. All of the proposed buildings are sited on the street. With 148 units, composed entirely of multi-unit buildings, the proposed development is massive and out of scale with surrounding properties, which are predominantly small-scale single family homes with scattered multi-unit buildings. The proposed open "car barn" style garages, each containing approximately 6 vehicle spaces, have no analogue among surrounding properties, most of which have one- or two- car attached or detached garages with closable doors. Even the multi-unit condominiums in the Strathmore development (which includes single family homes entirely surrounding its multi-unit condominium buildings) have attached one-car garages that are more in keeping with the pattern in the surrounding neighborhoods. In addition, in light of the limited development area, the homes in the proposed development have largely unusable yards, placing them out of character with the functional yards of surrounding properties. (**Adverse finding**)

Preserve the landscape:

Because much of the site is protected wetlands, the proposed development is concentrated on the upland areas, most of which are wooded, often heavily. As a result, very significant tree clearing would be necessary. The applicant indicates approximately 435 trees of 10" or more in diameter will be cleared. The applicant has not indicated how many smaller trees will be cleared, but the number is significant. Clearing limits are depicted on the plans.

The applicant has not submitted a tree retention plan identifying individual significant trees or addressing the removal and preservation of trees greater than 10” in diameter, as contemplated by the Subdivision Ordinance. The applicant has not submitted any information indicating which trees, or which trees over 10” in diameter, will be removed. Nor has the applicant indicated the locations of those particular trees. The applicant specifically requests a waiver of the requirement that it submit such a tree retention plan.

The applicant has submitted a “Tree Preservation Study” which states, among other things, that disrupting the community of white pines would leave a potentially dangerous and aesthetically void environment because the “codependent” individual trees rely on the entire grove for stability. The Study also states that many of the large white pines, particularly those in the interior of the grove, are very tall with small crowns above and deadwood below and are therefore not aesthetically pleasing.

The applicant has also provided a “Tree Resource Plan” dated October 2002. The plan indicates that, of the significant trees, “approximately 125 will be retained for aesthetic and shade value.” The plan does not clearly indicate which trees will be retained or designate their location.

In light of the applicant’s decision not to submit a tree retention plan, or any other plan designating the identity and location of the particular large trees to be removed from the site, it has not demonstrated that significant trees and vegetation are being preserved in their natural state “as far as practicable” and that tree removal is being “minimized,” as required by the Subdivision Ordinance. For instance, in the absence of a tree protection plan, the Board is unable to determine whether or not modifications to the proposed development, whether small or large, would result in the preservation of additional large diameter trees.

It is true that the extent of tree preservation that is “practicable,” and the extent to which tree clearing is “minimized,” are directly related to the layout of the proposed project. However, this does not and should not mean that the DRB is required to accept the size and layout of the project as proposed and then decide whether tree clearing has been minimized in light of that size and layout. Rather, it is the Board’s responsibility to decide whether the proposed size and layout themselves are consistent with preserving trees where practicable and minimizing tree clearing.

Here, the project is concentrated on the most heavily wooded upland portions of the site – a forest of significant size in Burlington – and most of those woods must be cleared for the project. As a result, it cannot be said that tree clearing has been minimized or significant trees preserved to the extent practicable. To the contrary, the proposed development will necessitate large-scale clearing of significant trees, including 435 of 10” or greater in diameter. Of course, the concentration of the proposed development on the wooded uplands is the direct result of the fact that much of the remainder of the site is wetlands. However, the fact that the applicant must locate the proposed development on the wooded uplands of the site in order to avoid building on wetlands does not, by itself, make the clearing of those woodlands appropriate, even if the wetlands enjoy an even higher level (or additional levels) of legal protection. Rather, the dilemma created by the relative locations of the wetlands and woodlands suggests that development of this size and shape on this parcel is inconsistent with section 6.1.10(b) of the Zoning Ordinance and should therefore not be approved.

In light of the above, the Board concludes that the applicant has not met the requirements of section 6.1.10(b) of the Zoning Ordinance, regardless of whether or not the project improperly encroaches on the wetland in the southeast corner of the site. As a result, the Board does not reach the questions of which wetland delineation is correct, whether protection of the wetlands requires a 50' buffer, whether the project as planned improperly encroaches on the wetland and/or concentrations of red maple and skunk cabbage plants, or whether the project adversely affects the hydrology of the wetlands on the site. **(Adverse finding)**

Provide open space:

The proposed development contains internal open spaces as well as a community recreation area. In addition, substantial open space will remain on the site following development. Total lot coverage will be about 16%. About half of the property will remain undeveloped. Furthermore, a pedestrian connection to the public neighborhood park at Strathmore is being provided. The Flynn Estate, of which this site is a part, donated land for the park across Starr Farm Road as part of an earlier development proposal for the subject property. **(Affirmative finding)**

Provide efficient and effective circulation:

This project proposes a street circulation pattern that continues the pattern of local streets through the project. These streets are curbed and shall be designed to Public Works' standards with the possible exception of street width. The applicant proposes 22' wide streets. This width is narrower than specified in the Subdivision Ordinance. The Environmental Court identified this street width problematic because it does not meet city standards, nor was a waiver granted. Public Works will allow the 22' street width, so long as no on-street parking is allowed. The Board supports the proposal for 22' wide streets and finds that, in the absence of parking issues caused by the narrow streets (discussed below), that width is appropriate for the development and has beneficial environmental and aesthetic effects.

Parking has increased since the previous submission in order to provide exactly 2 spaces per dwelling unit. No parking waiver is sought and none would be granted in light of the fact that the project is not located near necessary services or public transportation. Tandem garage/driveway parking spots are provided for the duplex units. Garages and surface parking areas are provided for the 4- and 6-unit buildings. No parking spaces will be provided for the community building; nor will any visitor parking be provided. The two space per unit requirement of the Ordinance assumes that there will be ample street parking available for visitors. However, as noted above, Public Works would prohibit on-street parking due to the streets' narrow 22' width. There is therefore no parking available for the many anticipated visitors to the residents of the 148 residential units or the community center, the majority of whom will arrive by car, unless those visitors park illegally on the street, thereby blocking the flow of traffic. As a result of this prohibition, the allotted parking spaces will be insufficient to promote efficient and effective circulation within the project.

The previous application indicated that the applicant would pay \$15,000 to Public Works in order to implement traffic calming measures that directly result from project impacts on Starr Farm Road. Public Works has confirmed that this payment was not made, and a similar requirement is recommended with this application.

The original project included sidewalk connections and improvements along Starr Farm Road to provide a continuous pedestrian connection to existing sidewalks and the Flynn School. If the Board were to approve the current application, this requirement would be included.

The proposed development connects with, and continues, the existing street, Nottingham Lane. The plan indicates a new street, Scarlet Circle. In order to clarify street circulation in a logical manner and for more effective E-911 service, the Nottingham Lane street name will be continued into the development up to the intersection with the proposed circular street, Scarlet Circle, that branches to the north and south. **(Adverse finding)**

Provide for nature's events:

The proposed stormwater system has been updated to comply with the current state standards. Given the project's size and the new design, a state stormwater permit will be required. The stormwater system includes a series of catch basins, piping, and retention basins. Plans have been prepared by a professional engineer and have been reviewed and accepted by DPW.

Stormwater runoff has been the subject of a lengthy dispute between the applicant and the Strathmore Homeowners Association. The dispute includes arguments about responsibilities under past agreements as well as stormwater specifics. The inter-party agreements, as a private dispute, are irrelevant to the DRB's deliberations.

The applicant has conducted a downstream stormwater analysis as required by the state. In response to findings of the analysis, the stormwater system has been modified to address a key complaint of the Strathmore neighborhood: coincident peak stormwater flows. The system, as modified, appears to comply with current state stormwater regulations; however, a state stormwater permit will be needed for the new design. The Dept. of Public Works has reviewed the modified stormwater system and finds that it is acceptable.

Snow removal from the streets will be done by the city when the streets become public. Snow removal from the private driveways and parking areas will be the responsibility of the owners or residents. **(Affirmative finding if conditioned)**

Make advertising features understandable:

A sign plan that includes the development's name and a series of directional signage has been included. The signs will require a separate zoning permit. Also note that an E-911 address plan has been submitted indicating address numbers for all of the units. The address plan will need Public Works review and approval. **(Affirmative finding if conditioned)**

Integrate special features with the design:

An outdoor lighting plan specifying lighting fixtures and illumination levels has been submitted. Street illumination levels average 0.7 footcandle. Parking area illumination levels average 3.5 footcandles or less. Several types of fixtures are proposed. The garage fixtures are cutoff and will utilize 50 W metal halide bulbs. The pole-mounted parking lights are cutoff as well and will utilize 70 W metal halide bulbs. The streetlights will be shielded, but do not appear to be cutoff. They will be "traditional" octagonal street lamps and will utilize 150 W metal halide bulbs. The street lamps are unchanged from the previous approval and have been accepted by Burlington Electric Department.

As noted previously, individual mailboxes will be provided for the units. Shared parcel lockers will be used to hold items too large to fit in the mailboxes. The parcel locker consists of a rather bare metal box (13" W x 36" H x 24.5" D) on a pole. These lockers should be enclosed in a housing that matches other building materials used in the project. Something along the lines of small shed enclosures with gabled roofs would make a significant visual improvement. The applicant is agreeable to this idea; however, no new design has been submitted, and the applicant requests that the parcel lockers be reviewed under a separate permit prior to installation. As the parcel lockers are minor, deferring review under a separate permit is acceptable, but must be sought and granted prior to the installation of the lockers.

All utility lines, including electric power lines, will be buried. All electric meters will be enclosed or screened, and all gas meters will be screened. The applicant has recently submitted a verbal description of the proposed screening; however, no visual depictions have been provided and should be. Landscaping will be used to screen transformer pads.

Trash and recycling will be stored inside the duplexes' cold storage areas and inside the carports for the 4- and 6-unit buildings. Trash will be collected from the street. **(Affirmative finding if conditioned)**

Make spaces secure and safe:

The buildings must comply with applicable ingress and egress requirements as established by Burlington Public Works. **(Affirmative finding if conditioned)**

Protect Burlington's heritage:

The proposed development is buffered by considerable open space from the development to the south and west. The proposed development will have no appreciable impact on Burlington's historic structures. **(Affirmative finding)**

Consider the microclimate:

The proposed development will entail additional impervious lot coverage on the existing site. However, an up-to-date stormwater system is proposed. Temperature and air quality in the immediate area should remain essentially unaffected. The development will place additional demands on the city's water and sewer systems. Public Works has verified that the city has sufficient capacity available to serve the development. Specific noise impacts are an unknown. However, there is no reason to believe that noise impacts generated by this development would be exceptional. **(Affirmative finding)**

Article 7: Site Plan

(a) *Adequacy of Traffic Access. Curb cuts should be so arranged and limited in number as to reduce congestion and improve traffic safety. Proper sight triangles and sufficient turnarounds for vehicles should be provided to reduce the potential for accidents at points of egress;*

Most of the proposed dwelling units will share driveways and parking areas. Doing so minimizes the number of curb cuts along the proposed roads. As proposed, sufficient sight lines have been provided, and adequate space is available within the shared parking areas to allow for vehicles to turn around. **(Affirmative finding)**

- (b) *Adequacy of Traffic Circulation and Parking. There should be sufficient parking as required in Article 10 laid out in a manner to provide ease in maneuvering of vehicles and so as not to be detrimental to the surrounding properties or to create an undesirable visual effect from the street. Sufficient area for loading and unloading may be required if the need for such loading zone is found to be necessary;*

The current plans provide a total of 296 parking spaces. This figure is adequate to provide the required 2 parking spaces per dwelling unit; however, no parking is available to serve the community building. A parking waiver is needed for the community building. No visitor parking is provided either. Given the very narrow streets proposed, any attempts to park on the streets will clog circulation within the development. As the project is located far from public transportation and most city amenities, residents and their visitors will be dependant on their vehicles to move about. No parking waiver is warranted. **(Adverse finding)**

- (c) *Adequacy of Landscaping and Screening. There shall be a sufficient amount of landscaping and screening, as may be reasonably determined by the development review board, to insure protection of and to enhance the quality of the project in question and the adjacent properties;*

As noted earlier, utility meters and transformers will be screened with landscaping or enclosures. The parcel lockers should be enclosed as previously recommended. **(Affirmative finding if conditioned)**

- (d) *Adequacy of Protecting the Use of Renewable Energy Resources: Where appropriate and feasible, the site plan shall be so designed as to not unreasonably deter the actual or potential use by the subject property or adjacent properties of energy available for collection or conversion from direct sunlight, wind, running water, or organically derived fuels.*

No information has been provided with respect to the use of alternative energies. As proposed, this project will not unreasonably deter the actual or potential use of alternative energies such as solar, wind, running water, or biomass. The buildings will have to meet the city's current energy efficiency standards. **(Affirmative finding if conditioned)**

Article 10: Parking

As noted earlier, the current plans provide a total of 296 parking spaces. This figure is adequate to provide the required 2 parking spaces per dwelling unit for the 148 residences; however, no parking is available to serve the community building. A parking waiver is needed for the community building. No visitor parking is provided either. Given the very narrow streets proposed, any attempts to park on the streets will clog circulation within the development. As the project is located far from public transportation and most city amenities, residents will be dependant on their vehicles to move about. No parking waiver is warranted, and the parking is therefore inadequate. **(Adverse finding)**

Article 11: Planned Residential Development

- (a) *Lot coverage requirements of the district shall be met;*

Proposed lot coverage will be 16.4%, well below the maximum allowable 35% in the WRL zone. **(Affirmative finding)**

- (b) *The minimum setbacks required for the district shall apply to the periphery of the property;*

The existing parcel will not be subdivided into individual lots. The required setbacks along the periphery of the site comply with applicable setbacks. Revised plans depict required 15' front yard setbacks from streets within the project as well. **(Affirmative finding)**

(c) The minimum parcel size shall be met if the project is located in a RL or WRL district;

The subject parcel is 40.9 acres in size. No subdivision of individual lots is proposed; however, the island of land created by Scarlet Circle will appear to be a separate parcel, as it will be cut off from the rest of the property by a roadway. However, this parcel remains part of the overall PRD for the purposes of density, coverage, and other dimensional requirements. **(Affirmative finding)**

(d) The project shall be subject to design review and site plan review;

Design review and site plan review criteria are addressed elsewhere in these findings.

(e) The project shall meet the requirements of Burlington's Subdivision Regulations;

The subdivision regulations are addressed elsewhere in these findings.

(f) All other zoning requirements of the district, except those specifically deemed not applicable by the Administrative Officer, shall be met;

As proposed, waivers are requested for street width and a tree retention plan. Waivers for the street width and tree retention plan must be granted by both the DRB and the City Council. As noted previously, the narrow street width may be acceptable; however, a tree retention plan must be provided. A waiver of the required tree retention plan is not warranted. In addition, the narrow street width, if allowed, creates inadequate parking opportunities for visitors to the residences and community center, and a waiver of the parking requirement is not warranted. Note that the applicant does not request a parking waiver; however, one would be needed to serve the community building. As stated earlier, no parking waiver is warranted. **(Adverse finding)**

(g) Open space or common land shall be assured and maintained in accordance with the conditions as prescribed by the DRB;

The applicant or any successor in interest of the development shall be responsible for maintenance of common lands. **(Affirmative finding if conditioned)**

(h) The development plan shall specify reasonable periods within which development of each phase of the PRD may be started and shall be completed. Deviation from the required amount of usable open space per dwelling unit may be allowed provided such deviation shall be provided for in other sections of the PRD;

Phasing the development is optional. The applicant has provided a development schedule and has chosen not to phase it. A construction window of 24 to 30 months is proposed to start and complete the project. **(Affirmative finding)**

(i) The intent as defined in Sec. 11.1.1 is met in a way not detrimental to the city's interests; and Residential development is an appropriate use in the WRL zone. The streets will be built to Public Works' standards, with the exception of width. The Subdivision Ordinance clearly requires that the streets be public. The applicant and/or property owner will be responsible for all costs associated with making the streets public. The property owner (the Flynn Estate) must consent in writing to dedicate the proposed streets to the city. Such written consent has not been obtained and must be if the streets are ever to be built.

Utility services appear to be adequate. Existing open space will be lost as a result of this development; however, significant open space will be retained. Proposed housing types are mixed. No exceptional physical, topographical, or geologic conditions exist on the site; however, development will avoid the class 3 wetlands onsite. A high level of design quality and amenities has been achieved, based on the DAB's affirmative recommendation. **(Affirmative finding if conditioned)**

(j) The proposed development shall be consistent with the municipal development plan.

This project appears to be consistent with the municipal development plan in several ways. It constitutes infill development of moderate density. The proposed density appears to fit within the established densities in the immediate area and includes a diversity of dwelling units. The project incorporates a state-of-the-art stormwater management system and avoids impacting most of the onsite class 3 wetland natural area. Furthermore, more than half of the property will remain undeveloped, thereby retaining substantial open space. **(Affirmative finding)**

Article 14: Inclusionary Housing

Given the size of this project, it will have to comply with the inclusionary housing provisions of Article 14. CEDO has indicated that 25% of the units must be affordable. The application indicates a request for "... certain waivers under the inclusionary zoning requirements" but does not elaborate. The applicant has since clarified that the waiver sought relates to the duration of affordability. Specifically, the applicant's lease of the land is some 80 years; less than the required 99-year span of affordability. The applicant requests that the length of affordability be tied to the length of the lease. Under the previous approval, the applicant sought similar relief. Nevertheless, the Environmental Court saw no reason why the property owner should not commit to the full 99-year affordability requirement. The Board concurs with the Court. As this subdivision approval, if granted, runs with the property, the full 99-year affordability requirement should not be relaxed. Any approval should explicitly contain this requirement. Both the applicant and the property owner shall sign onto the required Inclusionary Housing agreement with the city for the full 99-year duration. **(Affirmative finding if conditioned)**

Chapter 28: Subdivision Ordinance

Section 28-7. General and specific review criteria

(a) General review criteria:

(1) Not result in undue water, air, or noise pollution;

This residential project should have no undue impact on water, air, or noise pollution. The final plat plans include stormwater details. The modified stormwater system has been designed to comply with current state standards and will be subject to state permitting review. Also, see findings under Article 6, Design Review, in these comments. **(Affirmative finding if conditioned)**

(2) Have sufficient water available for its needs;

This project will hook onto the municipal water system. Sufficient reserve capacity is available to serve the project, and Public Works has signed off on the project. **(Affirmative finding)**

(3) Not unreasonably burden the city's present or future water supply or distribution system; Public Works has signed off on the project as noted above. **(Affirmative finding)**

- (4) *Not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result;*

A detailed erosion control plan has been submitted. Items such as silt fencing, stone check dams, and inlet protections have been specified. A maintenance schedule for erosion control during construction has been provided as well. Standard construction site erosion control conditions will need to be included with any approval of this project. As noted earlier, a stormwater plan has been submitted. It complies with current state requirements. **(Affirmative finding)**

- (5) *Not cause unreasonable congestion or unsafe conditions on highways, streets, waterways, railways, bikeways, pedestrian pathways or other means of transportation, existing or proposed;*

A comprehensive traffic analysis was conducted as part of the previous project approval in 2001. An addendum to that analysis has been submitted to update the study to 2005. As to be expected for a 148-unit project, traffic generation will be significant. Anticipated AM and PM peak hour trip generation as well as average weekday trip generation have remained virtually unchanged from the 2001 study. The project is expected to generate 71 AM peak hour trips, 83 PM peak hour trips, and 896 average weekday trips. Some of the assumptions behind the traffic study have been questioned, specifically whether the appropriate land use code was used in making the projections. The applicant has responded that land use code 230 was used and is not specific to low or high rise developments. Evidentially, land use codes 231 and 232 are specific to low or high rise developments, respectively; however, both are based on smaller sample sizes than 230. The Department of Public Works has reviewed and accepted the traffic study.

Intersection level of service (LOS) remains unchanged between the 2001 study and 2005 addendum. Analyzed intersections include North Avenue/Stamford Rd., North Avenue/Starr Farm Rd., and North Avenue/Plattsburg Avenue. In the most recent submission, the applicant has added traffic impacts from both the nearby dog park and from the bike path. Not surprisingly, left turning movements experience worse LOS (mostly C and D) than right turning movements (mostly A and B). According to the traffic analysis, the length of delay at these intersections is not significantly worsened by the project. In fact, some of the delays actually improve with project construction. The recommended traffic improvements have been accounted for in the LOS analysis in order to yield these improved results. However, Public Works has not approved any of the potential traffic mitigation measures and has specifically rejected the construction of a new turn lane at the intersection of North Avenue and Starr Farm Road. Like Public Works, the Board concludes that the construction of that turn lane would unacceptably interfere with pedestrian traffic, particularly the passage of children to and from school. Put differently, the traffic mitigation measures necessary to avoid unreasonable congestion on the streets will necessarily cause other unacceptable congestion and/or unsafe conditions. The proposed development will also create significant additional traffic congestion in an already congested local street network.

Sidewalks on both sides of the streets will be provided. If the project were otherwise acceptable, the Board would require that the project sidewalks link to existing sidewalks, both in the Strathmore development and on Starr Farm Road in order to ensure the safety of children walking to area schools. The Board would also require that those sidewalks be built before construction of the project commences. Construction of the necessary sidewalks along Starr Farm Road would prove challenging. The city's right-of-way on the south side of the road may not be wide enough to allow the construction of the necessary sidewalk without the taking of private property.

Constructing a sidewalk on the north side of the road to adjoin the nearest existing sidewalk would require building ¾ mile of new sidewalk.

A new path will provide a connection from the project to the city's sidewalk/pathway system in Appletree Park located in the adjacent Strathmore neighborhood. Whether the path would be hard surface or grassy has been a matter of debate. The final submission indicates that the path must be grassy in the wetland areas. Once it crosses over into Appletree Park, the path will become a hard surface. **(Adverse finding)**

(6) *Not cause an unreasonable burden on the city's ability to provide educational services;*
This project will likely generate some additional impact on the city's educational system. As part of the previous approval, the School Department submitted a letter stating that the school system and the Flynn and Hunt Schools have adequate capacity to accommodate this development. Impact fees will be required to address capital impacts on the school facilities. **(Affirmative finding if conditioned)**

(7) *Not place an unreasonable burden on the city's ability to provide municipal services;*
This project has been reviewed by department heads at Public Works, Parks and Recreation, and Fire. Each department head has signed off on the proposal. Public Works reserves the right to review and approve or reject any or all of the proposed traffic mitigation measures. Public Works requires that the applicant upgrade the nearby sewer pump station that will serve the development. The applicant has agreed to do so and will pay 50% of the cost. Parks and Recreation has requested a link to the city's sidewalk/pathway system, which will be provided. They have also requested that the applicant be responsible for maintenance as a result of stormwater discharge from the project onto the nearby Appletree Park. The applicant has agreed to this request in writing. Impact fees will be paid to help offset impacts on municipal services. **(Affirmative finding if conditioned)**

(8) *Not have an undue adverse effect on rare, irreplaceable or significant natural areas, historic or archaeological sites, nor on the scenic or natural beauty of the area or any part of the city;*

The parcel contains noteworthy wooded and wetland areas. Much of the proposed development will stay out of the wetlands, in fact, only some infrastructure will intrude into the wetlands. However, extensive tree clearing is proposed, particularly in the grove of mature pines. The extent of proposed tree clearing is excessive and unwarranted. As noted earlier, the applicant has still not shown how the project is designed to preserve this important grove of pines as much as possible. The requested waiver for a tree retention plan is unwarranted.

There are no known historic or archaeological sites on the property.

The project will alter views of the area. However, the Design Advisory Board has reviewed the project with respect to the city's design review criteria and has recommended approval. Much of the development will be screened by remaining woodlands throughout the parcel. The project will not have an undue adverse impact on the scenic or natural beauty of the area. **(Adverse finding)**

(9) *Not have an undue adverse effect on the city's present or future growth patterns nor on the city's fiscal ability to accommodate such growth, nor on the city's investment in public services and facilities;*

This project contributes towards Burlington's residential growth. The WRL zone allows for low density residential development. This project entails low overall residential density in a developed residential area of the city. This project does not appear to have any undue adverse impact on the city's present or future growth patterns. **(Affirmative finding)**

(10) Be in substantial conformance with the city's municipal development plan;

As noted earlier, this project appears to be consistent with the municipal development plan in several ways. It constitutes infill development of moderate density. The proposed density appears to fit within the established densities in the immediate area. It includes a diversity of dwelling units. The project incorporates a state-of-the-art stormwater management system and avoids impacting most of the onsite class 3 wetland natural area. Furthermore, the development retains about half of the property as open space. **(Affirmative finding)**

(11) Not have an undue adverse impact on the present or projected housing needs of the city in terms of amount, type, affordability and location;

The project will provide 148 units of new housing, either rental or owner-occupied, in a city with a significant housing shortage. A diversity of unit types is proposed. In complying with the standards in Article 14, *Inclusionary Housing*, of the Zoning Ordinance, 25% of the units will be affordable. The applicant has not decided whether the housing units will be owner-occupied or rental. Either rental or owner-occupied units would be permissible in the WRL zone, wherein the project is located. **(Affirmative finding)**

(12) Not have an undue adverse impact on the present or projected park and recreation needs of the city.

Residents of the proposed project will likely use the city's park and recreation areas. The applicant has acquiesced to the two requests made by the Parks and Recreation Department as noted earlier. Additional parks and recreation impacts should be relatively modest and would be offset via the payment of impact fees associated with this project. **(Affirmative finding if conditioned)**

(b) Specific review criteria:

(1) Monuments: Markers must be set at all corners and angle points of the subdivision boundaries and street intersections. A separate property plat sheet has been submitted and depicts the required monuments. As required, the property plat has been signed and certified by a Vermont licensed land surveyor. **(Affirmative finding)**

(2) Lots and blocks: No individual lots are included in this proposal. Only one block will result – that inside Scarlet Circle. As required, the block fits readily into the overall plan of the subdivision and takes into consideration topographical conditions, traffic flow, and open space areas.

(Affirmative finding)

(3-4) Subsurface improvements: Items such as stormwater, water, and sewer infrastructure have been addressed previously in these comments.

(5) Easements: The property plat depicts a public sewer easement on the subject property.

(Affirmative finding)

(6) Trees: At least 3 trees per residential unit must be retained and/or planted on site. Given the extent of undisturbed woods to remain on the property, this minimum requirement will be more

than met. However, the applicant has not provided a tree retention plan that specifically addresses the removal and preservation of 10” caliper trees. As noted previously and below, no waiver of the required tree retention plan is warranted. Care and maintenance of the open spaces on the property shall be the responsibility of the applicant or any successor in interest of the development.

(Adverse finding)

(7) Street names and house numbers: Two new streets are proposed – Scarlet Circle and an extension of Nottingham Lane. An E-911 address plan has been provided. This plan is subject to Public Works’ review and approval. **(Affirmative finding if conditioned)**

(8) Land for park and recreational purposes: This item requires that up to 15% of the subdivision’s area be set aside for use as a park, playground, or other recreational purpose. The land set aside for these purposes may become public property. More than half of the land in this development will remain undeveloped and accessible to residents for passive recreation. A community pool and play area will be provided. The project will also provide a link to the established Appletree Park.

(Affirmative finding)

(9) Preservation of natural features and trees: As noted above, much of the property will remain undeveloped. As a result, most of the wetlands will be retained. However, approximately 435 trees of 10” or more in diameter will be cleared. The applicant has not submitted a tree retention plan showing the location of those 435 trees or other 10” trees, particularly as they relate to the proposed development. Absent a tree protection plan showing all trees that are 10” or more in diameter and therefore subject to Section (b)(9), the Board cannot conclude that the “retention of any such tree is not appropriate.” For instance, the Board is unable to determine whether modifications, whether small or large, to the project would allow retention of particular trees. As a result, the applicant has not met its burden of demonstrating that the requirements of this section are met.

The applicant has requested a waiver of the requirements of Section (b)(9), both to the extent they require the submission of a tree retention plan and to the extent they require the preservation of all 10” diameter trees unless the applicant demonstrates that preservation of those trees is not appropriate. The reason for the requested waiver is that the development must be placed on the wooded uplands of the site in order to avoid building on wetlands, which enjoy separate protection, thus necessitating the clearing of a very large number of mature trees. Relatedly, the applicant appears to suggest that preparing a tree retention plan designating so many trees would be impractical. The Board declines to grant the requested waiver, and finds that the requirements of Section (b)(9) are not met, for the following reasons.

First, the fact that the applicant must locate the proposed development on the wooded uplands of the site in order to avoid building on protected wetlands does not, by itself, make the clearing of those woodlands appropriate or vitiate the protections that the Subdivision Ordinance and Zoning Ordinance provide for those woodlands, even if the wetlands enjoy an even higher level (or additional levels) of legal protection. Rather, the dilemma created by the locations of the wetlands and woodlands suggests that development of this size and shape on this parcel is inconsistent with the Zoning and Subdivision Ordinances and should therefore be prohibited. Waiving the requirement that all trees in the wooded upland greater than 10” in diameter be preserved does nothing to secure the objectives of Section (b)(9), and in fact frustrates them. As a result, waiver of this requirement is inappropriate.

Second, the fact that a large number of trees would need to be designated on the plan does not weigh in favor of waiver, even though it would require extensive and expensive work to complete a true tree retention plan under these circumstances. Rather, the large number of significant trees on the site militates against such a waiver. It is precisely when an applicant proposes clearing a large number of mature trees that it is most important to require the developer to designate the location of those trees vis-à-vis the development so that the Board can determine whether modifications to the proposed plan, whether large or small, would allow the retention of additional mature trees. **(Adverse finding)**

(10) Performance bond: Prior to the issuance of any zoning permit for construction of this project, a covenant shall be filed with the DRB and the City Clerk, for recording, that runs with the land committing to completion of all improvements required by the DRB pursuant to the Subdivision Ordinance within a maximum of 3 years from the date of final plat approval or as approved by the DRB by way of a development schedule per item (h) of the PRD standards in Article 11 of the Zoning Ordinance. Such covenant shall be secured by either a performance bond or a deposit of money or negotiable securities filed with the DRB. The amount of such bond, money, or negotiable security shall be determined by the DRB, upon consultation with the city engineer and affected city departments, and shall be based upon the estimated cost of such improvements, plus a 20% contingency/administrative factor and the estimated maintenance cost of such improvements for a period of 2 years following their completion. If a performance bond is filed, the penal sum of such bond shall be 100% of the above determined amount. The bond shall be approved as to legal sufficiency, form, and manner of execution by the city attorney and as to sureties by the city treasurer. If money or negotiable securities are filed, the necessary sum shall be 15% of such above determined amount. **(Affirmative finding if conditioned)**

II. MINUTES

The meeting minutes will be distributed separately upon review and approval by the Development Review Board.

III. MOTION

Motion: Glenn Jarrett

I move that the Board **deny** final plat approval for the 148-unit planned residential development Appletree Terrace in the WRL zone. Denial is based on the following reasons:

1. The proposed development is massive and out of scale with surrounding properties. Proposed building materials are substandard in relation to neighboring properties. The proposed development is inconsistent with the character of the area per Sec. 6.1.10, (a), *Relate development to its environment*, of the Zoning Ordinance.
2. The proposed development entails excessive tree clearing. No waiver of the required tree retention plan is warranted. It does not make adequate provisions to preserve the landscape per Sec. 6.1.10, (b), *Preserve the landscape*, of the Zoning Ordinance or per Sec. 28-7 (b) (6) & (9), *Trees and Preservation of natural features and trees*, of the Subdivision Ordinance.
3. The proposed development does not provide adequate parking. No parking is provided for the community building or for visitors. No parking waiver is warranted due to the project's location far from public transportation and other city amenities. The proposed parking is

inadequate per Article 10, *Parking*, of the Zoning Ordinance and is insufficient to provide efficient and effective circulation per Sec. 6.1.10(d).

4. The proposed development will generate significant traffic impacts and will unduly impact an already congested local street network. The project will cause unreasonable congestion per Sec. 28-7, (a) (5), *Not cause unreasonable congestion or unsafe conditions on highways, streets, waterways, railways, bikeways, pedestrian pathways, or other means of transportation, existing or proposed*, of the Subdivision Ordinance.

Seconded: Eleanor Briggs Kenworthy

Vote: 5-2-0, motion carried

Dated at Burlington, VT this _____ day of _____, 2006.

Respectfully Submitted,

Austin Hart, Development Review Board Chair

Please note that an interested person may appeal a decision of the Development Review Board to the Vermont Environmental Court. (Zoning Ordinance Article 17, Section 17.1.7, Appeals of Development Review Board Decisions: An interested person may appeal a decision of the Development Review Board to the Vermont Environmental Court. The appeal shall be taken in such a manner as the supreme court may by rule provide for appeals from state agencies governed by Sections 801 through 816 of Title 3). The Court rules may require that such an appeal be commenced within Thirty (30) days of the Board's decision.