

TOWN OF STOWE
DEVELOPMENT REVIEW BOARD

Findings of Fact & Conclusions of Law

IN RE: **Lot and Betty Cheng**
 c.o. Douglas Cheng
 84 Bay Road
 Shelburne, Vermont 05482

S-04-02

PROCEDURAL HISTORY:

The Development Review Board received this application on January 2, 2004. The application was warned in the Stowe Reporter and posted on January 15, 2004. A public hearing was held on February 3, 2004, at which time the hearing was closed. This decision was rendered electronically by the Board on February 27, 2004.

FINDINGS OF FACT & CONCLUSIONS OF LAW: During its review of this application, the Board made the following Findings of Fact:

1. Lot and Betty Cheng own 50.9 acres of land know as lot 2 of the Graddock Subdivision. The property is undeveloped at this time.
2. The Cheng property is located in both the Rural Residential 2 acre and 5 acre Zoning Districts, as well as the Ridgeline and Hillside Overlay District.
3. The applicant intends to divide the property into two lots with Lot #2A being 45.9 acres and Lot #2B being 5.1 acres. There is no development proposal at this time for Lot #2A. Lot #2B will be developed for a new single-family home. A 50' right-of-way will be created to provide legal access to each lot.
4. The applicant has submitted engineering plans and details for Lot #2B, prepared by William Kules, P.E.. There are no engineering plans for water or wastewater for Lot #2A.

Section 5.1 – General Planning Standards:

5. **Section 5.1(1) – Character of Land for Subdivision:** The Cheng property consists of a large open meadow which slopes up from Barrows Road to a wooded hillside behind. The meadow area is very visible from Barrows Road, and is a significant feature in the landscape. Portions of the wooded hillside behind are mapped as being within the Ridgeline and Hillside Overlay District, and as such have the potential to be visually sensitive. The building zone for Lot 2B is not located within the RHOD district and the applicant plans no development which would impact upon the meadow at this time.

Conclusion: The Board concludes that Lot 2B is of a type and character which is suitable for this density of residential subdivision and notes that there are no plans at this time to develop Lot #2A.

6. **Section 5.1(2) – Natural & Scenic Features:** The property is varied in its terrain, with an open meadow adjacent to Barrows Road and a wooded hillside beyond. The meadow area is a very scenic feature along Barrows Road, but is not to be developed or altered at this time.

Conclusion: The Board concludes that this property is scenic in nature and contains significant natural features. The Board retains the future review of any proposed development on Lot #2A in order to assure that these natural features will be properly protected.


7. **Section 5.1(3) – Historic Resources and Community Character:** The applicant testified there are no known historic structures or sites on the property. The open meadow along Barrow’s Road is a significant feature in the landscape and represents a portion of Stowe’s agrarian past.

Conclusion: The Board concludes that the property does not contain any historic resources. The Board concludes further that the open meadow is significant in its contribution to the community character, and that haphazard development would be detrimental to the community in general. The applicant has testified that they have no intent to develop the meadow at this time, and the Board will retain future review rights over Lot #2A.

8. **Section 5.1(4) – Reserved Strips:** The owner has provided a legal access via a proposed 50’ right-of-way to the new lots. The design of the subdivision does not result in any strips of land being reserved by the applicant.

Conclusion: The Board concludes that there are no reserved strips.

9. **Section 5.1(5) – Screening and Landscaping:** The applicant has not submitted a landscaping plan for the subdivision. The applicant testified that there will be no disturbance or construction in the open meadow, and that the new home on Lot #2B will be set back far enough from the edge of the meadow so that only the upper floors or roof will be visible from Barrows Road.

Conclusion: The ard concludes that the applicant has adequately addressed screening and landscaping.

10. **Section 5.1(6) – Pedestrian Access:** There are no provisions for pedestrian access as part of this subdivision.

Conclusion: The Board concludes that there are no pedestrian facilities adjacent to this property, and that there is no need for the applicant to provide for pedestrian access as part of this application.

11. **Section 5.1(7) – Traffic:** Traffic from this area will travel along a private driveway directly onto Barrows Road, one of the identified bypass roads in the community connecting Route 100 & 108. There are no known safety or traffic safety issues in this neighborhood.

Conclusion: The Board concludes that there will be an increase in traffic as a result of this project, however, that the level of increase is unlikely to result in any observable impact on traffic in the community.

12. **Section 5.1(8) – Municipal Facilities:** All driveways and utilities serving this subdivision are private and are being extended by the applicant to serve the new home.

Conclusions: The Board concludes that there should be no discernable adverse impact on municipal facilities.

13. **Section 5.1(9) – Lot Configuration:** The two lots have been designed so that each has adequate access, and meets the minimum size required by the zoning district. The applicant presented engineering plans and details demonstrating that Lot #2B has a usable house site, and a water/wastewater system designed. Lot #2A has no development proposed at this time.

Conclusion: The Board concludes that the lot is usable for its intended purpose, and that the applicant has adequately addressed lot configuration.

14. **Section 5.1(10) – Building Area:** The applicant presented engineering plans showing natural features, rights-of-ways, zoning setbacks, and other restrictions. The plan demonstrated that there is a usable building area on Lot #2B. The Board has retained the right to review any proposed development on Lot #2A.

Conclusion: The Board concludes that Lot #2B does have a usable building area suitable for the intended use for residential construction.

15. **Section 5.1(11) – Energy Conservation:** The applicant testified that the structures will be built to industry standards for energy conservation and efficiency.

Conclusion: The Board concludes that the applicant has made adequate provisions for energy efficiency.

16. **Section 5.1(12) – Fire Protection Facilities:** The applicant testified that there are no additional fire protection facilities proposed.

Conclusion: The Board concludes that given the scope and character of this subdivision, no special or unusual fire protection facilities will be required.

17. **Section 5.1(13) – Disclosure of Subsequent Development Plans:** The applicant testified that Lot #2B is being created for the purpose of constructing a new single-family home. The applicant has no plans for Lot #2A at this time.

Conclusion: The Board concludes that the applicant has adequately disclosed its subsequent plans for the property.

18. **Section 5.1(14) – Private Enforcement Mechanisms:** The applicant testified that there are no plans for formal private enforcement mechanisms, such as deed covenants. The Board notes that there are commonly owned items, such as the access driveway.

Conclusion: The Board concludes that some form of covenant or agreement is necessary to insure the proper upkeep and maintenance of those commonly owned items. These requirements can be addressed in deed covenants. If this is done, then the applicant will have adequately addressed the need for private enforcement mechanisms.

19. **Section 5.2 – Prominent Hillside and Ridgelines:** This property is located in an area mapped by the Community as a prominent hillside or ridgeline. The applicant has proposed no development or other disturbance within the R.H.O.D.;

Conclusion: The Board concludes that no review is required under this criteria.

20. **Section 5.3 – Open Space and Cluster Development:** This is a small-scale subdivision and no open space plan or cluster development has been proposed.

Conclusion: The Board concludes that no review is required under this criteria.

21. **Section 5.4 – Road Standards and Coordination with Public Highways:** There are no new public roads proposed as part of this subdivision.

Conclusion: The Board concludes that no review is required under this criteria.

22. **Section 5.5 – Utilities and Stormwater Management:** The applicant has not submitted an engineered stormwater management plan as any stormwaters will be sheet discharged for disposal into surfacewaters.

Conclusion: The Board concludes that due to the small scale of this subdivision, and its remote location, the applicant has adequately addressed the needs for utility extensions and stormwater management, and that no formal plan for stormwater treatment is required.

DECISION

Based upon the foregoing Findings of Fact and conclusions of law in re: **S-04-02 (Lot and Betty Cheng)**, the Board took the following action:

A motion was made by Mr. Brink and seconded by Mr. Beddow to approve the application with the following conditions:

1. Any change to the plans or the proposed use of the property shall be brought to the Zoning Administrator's attention, prior to its enactment, for a determination if an amendment is required.
2. Pursuant to Section 3.5(1) of the Subdivision Regulations, the approval of this final subdivision application shall expire after ninety (90) days from such approval unless a final subdivision plat shall have been duly filed or recorded in the office of the Town Clerk. No land development associated with this subdivision shall be commenced until such time as the survey plat has been duly signed and filed in the Land Records.
3. The final plat shall show all required easements for access rights-of-way and utilities.
4. The following statement shall be placed upon the plat; "This plat is subject to the terms and conditions of subdivision approval by the Stowe Development Review Board per the Subdivision Regulations of the Town of Stowe. The terms and conditions of approval and related information is on file in the Stowe Planning and Zoning Office" and shall include an area for the Board to sign and date their approval of the plat.
5. The plat shall include the following minimum information; The name of the town; name of the subdivision; name of the owner of record; subdivider, name and seal of engineer, if any, and land surveyor, licensed by the State of Vermont; the accurate location of all monuments to be set at the corners of the lots.
6. The plat shall be annotated to contain the following note: *"There shall be no construction on Lot #2A until such time as the proposed construction has been reviewed and approved by the Development Review Board as an ammendment to the original subdivision application.."*

Voting in favor: Mr. Aumand, Mr. Beddow, Mr. Brink, Mr. Izzo, & Mr. Walton. Voting to deny: None. Voting to abstain: None. Absent: Mr. Coppock, (Note there is one vacancy on the Board at this time).

The motion carries (5-0), the application is approved.

Dated at Stowe, Vermont this the ____ day of February 2004.

By: _____
Mr. Chris Walton, Acting Chair
Stowe Development Review Board

A final survey plat must be filed with the Town not later than ninety (90) days from the date of this decision as required by Section 3.5(1) of the Stowe Subdivision Regulations and by Vermont State Statute.

Any interested person may appeal this decision to the Vermont Environmental Court within thirty days in accordance with 24 V.S.A. S 4471.

The foregoing represents the decision of the Development Review Board, and is NOT a permit. A zoning permit will not be issued by the Administrative Officer until:

- (1) All necessary approvals have been obtained
- (2) All conditions imposed as part of the approval have been met
- (3) A survey has been filed with the Stowe Town Clerk.

The commencement of the activities described within this decision without a valid permit constitutes a violation of the Stowe Zoning Regulations as provided in Section 23.4.