

DEVELOPMENT REVIEW BOARD

FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW

APPLICATION NUMBER: 2009-05-036

APPLICANT: Bennington Area Habitat for Humanity

LANDOWNER: Bergman, Lewis, Ripps, Shapiro; four branches of the same extended family

HEARING DATES: DRB: June 17, July 1, July 22, and August 12, 2009  
Site Visit: July 1, 2009

PARCEL NUMBER 47 small lots in Jennifer Lane, plus the unbuilt road itself

---

FINDINGS OF FACT

Bennington Area Habitat for Humanity submitted a zoning application proposing to acquire 47 residential 'small lots' and the unbuilt road in the Jennifer Lane neighborhood, and reconfigure the land into an affordable housing project of 22 single family homes on roughly 12 acres of land located off of Depot Street in the Single Residential zoning district. This application was subject to review by the Development Review Board as an affordable housing project and as a conditional use. The property is located in the PARD (Planned Affordable Residential District) 2 overlay, being outside of the sewer service district.

A bit of history will be helpful. Back in the 1960's, before zoning was adopted, the overall mass of land was subdivided into a large number of very small lots; most less than 1/4 acre in size, and some even less than 1/5 acre. Ownership was divided between four branches of an extended family - Lewis, Bergman, Ripps, and Shapiro, with most lots separated so that no one family owned any adjoining lots. It appears that the rationale was to avoid zoning rules soon to come into effect, that would require adjoining lots in the same ownership to be merged.

A dozen or more homes were built over time. In 1989, the Zoning Board ruled that the rest of the undeveloped lots were still in "affiliated ownership" as defined in law, and thus, were not developable individually without merger into conforming size lots. That decision was not appealed. In more recent times, several individual lots were acquired via tax sale, which according to counsel was the only way these lots could be sold and developed individually. There has been little activity since then, and the remaining land has remained undeveloped.

In the application before us, the four branches of this family have reached an agreement to sell all of their land en masse (which includes all of the undeveloped land and road in Jennifer Lane except two separate, small lots owned by Jewett) to Bennington Area Habitat for Humanity. The existing lot lines are erased, and a new subdivision is proposed following more current design policies and standards. Proposed now are 22 new single family homes, in an entirely new layout upon the land, and avoiding development on steeper slopes and wetlands or wet areas.

Although this is a "one acre" zoning district for purposes of development density, greater density is potentially permissible if the project qualifies as an affordable housing project under the Zoning Ordinance. As a prelude to the rest of this decision, the DRB finds that the project clearly meets that test. It sits on more than five acres in this PARD 2 overlay; and where at least 60% of the homes in any such project must be legally defined and protected as "affordable", here, all of the homes will be perpetually affordable under the law. Proposed here is an overall density of approximately two homes per acre. This is well under the theoretical maximum of ten units per acre, and the rationale for this will be addressed under the relevant criterion below.

The project would be built in two phases:

1. Includes the first six homes, to be built on lots 14 - 19, which all lie along the existing public street, and which can be served by the existing Town water line. Phase 1 would also include the community septic collection, conveyance, and disposal systems located on common lots A, B, & C. The application also suggests the possibility of a small garage/storage building on lot 20, which would be incorporated into a house on this lot in Phase 2.
2. Includes construction of Town water mains throughout the entire neighborhood, the stormwater detention/disposal facility, and new homes on lots 1 - 13 and 20 - 22.

Homes in each phase would be built at a pace of one to two homes per year, depending upon availability of funding, volunteer labor, and other needs.

Primary issues of concern raised in the hearings included municipal water supply, existing road construction/drainage, development density, impacts within the Jennifer Lane neighborhood, impacts on adjoining neighborhoods, stormwater drainage, and maintenance and upkeep of individual homes and shared infrastructure. Each will be addressed in the appropriate section(s) below.

### §8.17, Affordable Housing Regulations

General and specific findings pursuant to the bylaw are described below:

The project shall meet the requirements of this section...

As described below, the Board finds that this project meets the requirements of the PARD bylaw. Habitat for Humanity seeks to reach families with household income in the 30-60% of county median range. Housing ownership costs are kept at or below VHFA guidelines, and covenants and restrictions are included in each deed that provide a mechanism for perpetual affordability. Town counsel has reviewed and approved this approach as proposed.

Unlike other affordable housing in the community, these are intended as owner-occupied single family homes, an approach encouraged by the Town. Habitat homes sell at prices well below their appraised value, due to significant donations of materials and labor used to build each home. Habitat goes through an extensive background check of each family, and continues to offer support and counseling after purchase. Habitat also holds the mortgage on each property, and maintains a right of first refusal for purposes of resale; with such interest in each property, they also share an interest in ensuring upkeep and maintenance of homes and land.

Given the tremendous need for affordable housing in Manchester and throughout Vermont, the fact that not just 60%, but 100% of the proposed homes will be legally defined and protected as affordable, as well as the financials and mechanisms for affordability proposed and imposed upon each home, the DRB finds affirmatively that this project clearly qualifies as an affordable housing project under the Zoning Ordinance.

## Site Plan approval...

The site plan is generally approvable as submitted, with conditions. While both the Town Engineer and Water/Sewer Superintendent find that Phase 1 can be served by the existing water line, it is known that Phase 2 will require that the existing water main be replaced and upgraded to current standards, along with construction of the new water line needed. Any design and construction involving municipal water supplies shall be reviewed and approved by the Town's engineers. Upon completion of any such construction, Habitat shall submit written certification from a Vermont-registered professional engineer that this work has been done to Town specifications. This shall be confirmed in writing by the Town's engineer. The existing roadway is passable, but has its challenges. Habitat shall satisfy at least the minimum requirements of the DPW Director to improve the grade of Jennifer Lane where it meets Depot Street, in order to improve existing conditions, and shall improve drainage conditions around the end of the existing loop road in the vicinity of the new Phase 1 homes. This may also include paving the existing road from its beginning to the furthest end of the loop where the Phase 2 road would begin.

Conditional Use approval... addressed separately, below

Shall not pose a threat to public welfare or safety...

No testimony was offered to suggest the project will pose these threats, and the Board finds no reason to expect these threats.

Floodplains, groundwater...

No work is proposed in a floodplain. The project will be served by municipal water, and must receive state approval for the community septic system.

Affordable Housing Plan

The Town's Affordable Housing Plan was written in 1989. It documented the need at that time, and suggested that the Town take steps to encourage the provision of affordable housing. One outcome was the affordable housing ordinance under which this project is considered. While rental projects have been built, this would be the first officially designated, legally defined, ownership-style affordable housing project. The Planning Commission has endorsed this concept before, and the Board also finds that ownership is likely to create a greater sense of pride and ownership of home, land, and community than that offered by rental housing.

Since 1989, it is well documented that the need for affordable housing is greater than ever. Housing costs and prices have escalated at a far greater rate than most people's salaries. This is a human problem; a community problem; an economic development problem. The Board also notes that while some institutions require 51% of the units to be "affordable", state law requires that only 20% or five units, whichever is greater, be "affordable" in order to be considered an affordable housing project. Here, where 100% of the units will be "affordable" and remain protected as such, all applicable thresholds are exceeded.

The Board finds these performance standards satisfied.

## PARD 2 Standards

### Minimum land area...

At least five acres are required; approximately 12 acres are provided. Sufficient project frontage is provided on an existing Town road.

### Minimum number of units...

With a total of 22 housing units, all of which will be affordable, the minimum threshold of five is met.

### Permitted housing types...

Single family homes satisfy this requirement.

### Maximum density...

Proposed density, with 22 housing units on 11.79 acres of developable land, would be 1.87 units per acre. This exceeds the underlying permissible density of one unit per acre, but is well under the theoretical maximum allowed of ten units per acre. As noted in the Housing Plan, Town Plan, and Zoning Ordinance, land density is the key factor that the Town can influence to encourage the provision of affordable housing. Given present circumstances as described above, the need for affordable housing (with all of these proposed homes projected to sell for less than one-half of the current median sale price for homes in Manchester), the developability of the subject land and its location, the Board finds the proposed density appropriate.

That said, and to give the neighbors a chance to solve certain problems they believe will affect their properties (as described in greater detail below under 'Visibility', the DRB will require the following condition:

Starting with the date upon which all permits needed for this project are issued and final (that is, these permits have either not been appealed, or having been appealed, have reached finality in decisionmaking), Habitat shall offer the landowners within Jennifer Lane, as well as those who adjoin the exterior boundaries of the project, a 90-day right of first refusal or other similar legal opportunity to purchase the development rights to lot #16, or to purchase the lot outright, with a restriction prohibiting its development. In either case, the purpose would be to prevent development of this lot, over which concern was expressed regarding development density. Even outright fee simple purchase will not contravene the prohibition below on further subdivision of land, since the purpose of that clause is to prevent a 'de facto' increase in development density upon the land after a project is permitted, since here, taking lot #16 out of the mix actually decreases the calculated development density from 1.87 to 1.81 units per acre.

Habitat shall also offer a 90-day right of first refusal or other similar legal opportunity to purchase the development rights to, or to purchase outright, the 30' tree lined buffers to be created on lots 18, 19, and 21. It shall also offer that same right of first refusal for the purchase of all development rights on lot 21. If the buffer on either lot 18 and/or 19 is purchased in one of these ways, then these two lots shall be merged into one, with only one new home to be built here. Purchase of the buffer on lot 21 will still allow a home to be built here, unless the development rights to this lot are bought, in which case no home may be built here.

The purpose of this condition is to allow the neighbors the opportunity first to own and/or control land that they believe will most affect them, and/or to prevent harm to the tree buffer that they believe might otherwise result. Such purchase(s) will also benefit Habitat by offering 'up front' funds to help in their fundraising effort, thus offering positive results for all parties.

If by the end of the 90-day timeframe, the parties have not at least signed a purchase and sales agreement or other functionally similar legal document, then Habitat will have the presumed right under this decision to build on these lots as proposed in the application. This gives all parties a reasonable amount of time in which to negotiate in good faith, without creating opportunity for endless uncertainty.

If lot 16 were built upon, but lots 18 & 19 were merged, then development density drops from 1.87 to 1.78 units per acre. If lot 16 also remained undeveloped, then development density drops from 1.78 to 1.70 units per acre. If lot 21 were also undeveloped, then the density drops even further, to 1.61 units per acre. In any of the three scenarios described above, the calculated density of development is less than proposed originally. Since any of these scenarios only strengthens satisfaction of the concerns noted by neighbors, any of these are “pre-approved” as a part of this decision. Thus, any of these scenarios remain consistent with the reasoning described above, and are permissible options under the bylaw because they violate neither the foundation for nor the actual ‘prohibition on further subdivision’ that is otherwise proscribed.

#### Maximum units/building...

Single family homes satisfy this requirement.

#### Open space...

According to the application, 4.75 acres of land are reserved as open space; one common lot is 3.75 acres in size (including the community septic system), and the other is 1.0 acre in size (including the stormwater detention facility); together, these represent roughly 40% of the total land area. While some of this open space is used for required infrastructure, lot A in particular still keeps commonly owned land open and undeveloped for residents’ use and enjoyment. These lands will be owned and managed by the homeowners themselves, through an association, to be managed for the long term as proposed and described herein. The Board finds all of these lands readily accessible, and will enhance the character of the neighborhood.

#### Visibility...

The Board finds the proposed project an efficient use of land served by a Town road and Town water, that the Planning Commission had hoped could be developed at some point for this very purpose. The project will be developed in a manner consistent with the existing neighborhood in placement, type, and density.

In response to concerns raised by adjoining residents about visibility of the new homes from existing homes, the Board must first state for the record that there is no requirement in the Zoning Ordinance that new homes or structures be invisible from any existing home or location. That said, the Board does care about these matters, and acknowledges its responsibility to help ensure that reasonable care is taken in site design and site work so that new development blends reasonably both on site and in relation to its area.

Here, it is acknowledged that in a relatively densely settled neighborhood, a fair bit of clearing and site work will be needed. However, on the new lots that were of greatest concern to neighbors, building envelopes are defined on the plan to clarify house locations. On lots 18, 19, and 21, the applicant has offered two approaches to minimize visibility and other impacts: first, a 30' deep buffer, with additional coniferous trees to be planted, will help to screen these new homes from their neighbors; secondly, a 40' no-build buffer is also proposed along these exterior lot lines. Together, these offer a larger than required setback area, that will also be more densely screened with vegetation. The applicant has offered to plant small conifers in these areas on lots 18, 19, and 21, along with an area on the common lot with the stormwater facility, as part of the initial construction on the first homes built in Phase 1, so that by the time Phase 2 begins, they will have had several years or more to grow and provide screening. The Board accepts this as a reasonable offer and condition; these trees to be planted as part of the first house built in Phase 1, and unless seasonal conditions preclude it, these trees shall be planted before any Certificate of Occupancy is issued for that first home.

Habitat shall use reasonable arboreal care in selection of trees and planting locations, so that these trees offer a reasonable opportunity to satisfy the intent. At the same time, it is recognized that unless the existing deciduous tree canopy is thinned or cleared, then these conifers will not be able to grow to any significant extent. Therefore, in consultation with and upon site- and tree-specific approval of the Zoning Administrator, the applicant may perform minor thinning of existing deciduous trees within this otherwise designated 'no cut' buffer (those trees that may be growing too close together, are diseased or dying, are not thriving, or are otherwise not helpful to the overall goals sought here), so that a balance may be struck between retaining the existing vegetated areas and providing reasonable locations for planting and growth of the new conifers.

These 'no cut' buffers shall also be designated and maintained upon the land with stakes, flagging, or other means; these shall also be made clear in the deeds and plans to these individual properties, so that the purposes and responsibilities are made clear to homeowners.

Further, and as noted above in the "maximum density" section of this decision, certain rights of first refusal shall be offered to neighbors both within the existing Jennifer Lane neighborhood and adjoining with regard to lots 16, 18, 19, and 21. If any of those options are exercised, then the ability of those adjoining to protect themselves from visibility matters is strengthened.

The Board does not find concerns expressed about property values to be credible. For the most part, the existing homes in this neighborhood are not brand new. Public documents in the Listers' office indicate the assessed values of these existing homes generally ranging between \$150,000 and \$220,000. Habitat's testimony was that recent homes they have built elsewhere in Bennington County were assessed in the \$200,000 range, and these were of more basic architectural design than the design offered here as a sample of the intended style to be built in Jennifer Lane. Testimony was also offered that Habitat has an advisory committee working with them on architecture, energy efficiency, and other matters that will serve only to enhance the value of these new homes. It is entirely possible that when combined with other needed improvements to the road and the water line, the Habitat project will actually improve property values in the neighborhood. All of that said, the Board offers this for informational purposes only, as property value is not a criterion of regulatory review in the Zoning Ordinance.

#### Building locations...

All buildings will meet at least the minimum required setbacks or separation. As noted above, a larger than required setback of 40' is offered and accepted along the exterior boundary of lots 18, 19, and 21. This no build setback area also includes a 30' deep 'no cut' buffer and additional coniferous plantings.

The Board finds these criteria satisfied.

#### Standards applicable to both PARD districts

##### Sewage disposal...

The project will be served by a shared, state approved wastewater disposal system, to be owned and maintained by a homeowners' association comprised of those whom it serves. Applicant/landowner shall submit a copy of the state permit and post-construction inspection certification when received.

##### Parking...

Required parking is provided; locations are satisfactory.

##### Building height...

The buildings will be less than 30' tall as measured in the bylaw.

#### No-build buffer...

No-build buffers are provided on lots 18, 19, and 21 which exceed minimum requirements. These matters have all been addressed at length above.

#### Placement of buildings...

This has all been addressed above. The plan shows reasonable locations for buildings; rights of first refusal shall be offered to neighbors regarding lots 16, 18, and 19; if such rights are exercised, then lot 16 would remain undeveloped, and/or lots 18 & 19 would become merged into a single lot with a single home. The minimum 25' setback along exterior lot lines shall be maintained, except on lots 18, 19, and 21, where it is offered and accepted to have a 40' no build setback along the exterior boundary.

#### Setback from water...

N/A.

#### Building orientation...

All buildings are sited and oriented in ways that meet this requirement.

#### Public roads...

Jennifer Lane as it exists today is a Town road. The new spur road serving Phase 2 is a private road, although it is understood that Habitat will likely approach the Selectboard with a request to make it a public road. Habitat shall satisfy the DPW Director's requirements for any road work required for Phase 1, including but not limited to regrading Jennifer Lane where it meets Depot Street and drainage work on the existing road, and this work shall be completed to the DPW Director's satisfaction before any final Certificate of Occupancy is issued for the first house built. The same condition and timing shall apply for road work and the first house built in Phase 2. Habitat shall submit written certification by a Vermont registered professional engineer, certifying that this work has been done to Town specifications, for any substantial road work in Phase 1, and for construction of the new road serving Phase 2, before a final Certificate of Occupancy may be issued for the first house in each phase, respectively. If the Phase 2 road is not accepted by the Selectboard, then it shall be owned and maintained by the homeowners' association to be formed and which it serves.

The Fire Department has indicated its satisfaction with the plan as proposed, which includes new fire hydrants in specified locations. Before any building permit may be issued for new homes in either Phase 1 or 2, Habitat shall submit written certification from a Vermont-registered professional engineer or other qualified person attesting to proper installation and functioning of the new fire hydrant to be located along the existing street. No building permit may be issued for the Phase 2 homes that would be served by the fire hydrant near the cul de sac until that hydrant is installed and certified in writing as above.

#### No further subdivision of land...

As described at length above, this application now contemplates and “pre-approves” this project in several forms: as proposed initially with 22 new homes on roughly 12 acres of land; or in one of several alternate forms if the neighbors exercise one or more of the options that Habitat must offer them to purchase either development rights to or portions of lots 16, 18, 19, and 21. Once those options are either exercised or let lapse, then Habitat shall submit written affirmation as to the final form of the project. Subsequent to that, then no further subdivision of the project is permitted at this time under the Zoning Ordinance as it exists presently; the purpose being to prevent any de facto increases in density that would occur. As described at length above, any of the possible, prospective land transfers regarding lots 16, 18, 19, and 21 would result in a decrease in development density, and will serve only to better satisfy neighbors’ concerns.

The Board requires this offer from Habitat to help the neighbors better resolve their own concerns, and shall not be interpreted, whether implicitly or explicitly, as any sort of statement that absent these options, the project creates undue adverse impacts or is otherwise unapprovable in its proposed form.

#### No C.O.s...

As per standard practice, the Zoning Administrator shall inspect each property before granting any Certificates of Occupancy. Certification to the DRB will be provided. As described above, written certifications from various qualified parties are required with regard to road construction, fire hydrants, and water lines before either building permits may be granted or Certificates of Occupancy may be issued.

#### Legal/financial mechanisms...

Proposed covenants/conditions/deed restrictions ensuring perpetual affordability are a standard part of Habitat homes, and are required in order to qualify under the bylaw as an affordable housing project. Habitat’s proposed mechanism and covenants were reviewed and approved by Town Counsel as satisfying the bylaw.

## Affordable housing needs...

As noted in the public record in previous affordable housing reviews, the Board finds a continuing, compelling need for affordable housing in Manchester. Significant reports and data have been published in the press, by the Vermont Housing Finance Agency, and submitted by prior and the present applicant to clarify the need. Habitat itself told of a large number of applicants for its most recent house built in the County. Based on both a prior case and this case, it is clear that Habitat's approach qualifies as affordable housing within any reasonable interpretation of law or reason. Due to the range of donations of materials and labor, Habitat homes typically sell in the \$100,000 range, while being assessed for actual value in the \$200,000 range. Habitat also offers its homeowners 30-year no interest loans, in order to help keep homeownership costs affordable. With appropriate and necessary resale restrictions in place as part of the deeds and bylaw requirements, these homes may remain more affordable to the intended range of buyers than the open market provides.

Based on the information provided, it is clear that the additional project density offered by the bylaw helps make the difference in getting housing on the ground at a more affordable price. Further, through the requirements in the bylaw and the conditions in this approval, this housing will remain more affordable at restricted resale prices into the future. Absent this approach, the evidence is clear that the market will continue to drive prices ever higher. The traditional, free market approach at the standard one acre housing density will not satisfy affordable housing needs.

The Board also notes two other key elements for the record:

This neighborhood is an area that the Planning Commission believed was appropriate for this type of project when it sought years ago to modify the "small lot" section of the bylaw when state law became more flexible; and

This project resolves long standing uncertainty as to the disposition of the subject parcels owned by the Ripps, Shapiro, Bergman, and Lewis families. The potential existed via tax sale of parcels for a more random development pattern to take place over time, with much less control or oversight of building placement, tree clearing, access, infrastructure design and maintenance, and other key elements of site planning. Through a consolidated purchase of these lands, redesign of the subdivision, and a more comprehensive review of the overall project, a more thorough review and predictable outcome may result that better balances the rights and responsibilities of all landowners in this neighborhood - those who own the undeveloped land, and those who own existing homes.

## Building siting, design...

This matter has been addressed at length previously. The Board finds the overall site design, proposed building design, and placement make effective and efficient use of land, consistent with the existing neighborhood, without simply placing buildings in uniform lines or checkerboard patterns.

As the applicant offered to help satisfy concerns raised, the Board will require design review for each new home, before a zoning permit may be issued for construction.

The Board finds these PARD District standards satisfied.

## Determination of Density

Proposed density, with a maximum of 22 new single family homes on roughly 12 acres of developable land, is 1.87 units per acre. Other options described above create less calculated density. This exceeds the underlying permissible density of one unit per acre, but is well under the theoretical maximum allowed of ten units per acre. As noted in the Housing Plan, Town Plan, and Zoning Ordinance, land density is the key factor that the Town can influence to encourage the provision of affordable housing.

The need is real. This site is well suited for the proposed project.

Given present circumstances as described above, the need for affordable housing, Habitat's thorough practice of screening and counseling prospective homeowners, the actual cost charged to owners as compared with the actual value of homes, the developability of the subject land and its location, consistency of the proposed project with the existing development pattern in this neighborhood, and other relevant facts as found herein, the Board finds the proposed density appropriate.

## §8.12, Protection of Streams, Ponds, and Wetlands

No land development nor disturbance is proposed or permitted within any wetland or 50' buffer area.

Habitat shall provide and maintain erosion control mechanisms as required during construction, and post construction as needed, and shall at a minimum meet the standards described in the Vermont Handbook on Erosion Control (or any newer standards and practices as may presently exist).

The Board finds this criterion satisfied.

## §8.16, Lighting

The only exterior lighting proposed are typical residential fixtures. Given the relatively dense development pattern existing and proposed, exterior spotlights or other glare-producing lights that tend to cast light into the street or upon adjoining lands are strongly discouraged. Any such lights, if installed, shall be motion sensor activated so they are illuminated only when needed. As described in the subdivision section of the bylaw, streetlights are discouraged, and are neither proposed nor approved herein.

The DRB finds this criterion satisfied.

## §3.3, Conditional Use

No evidence was offered that the project would have an undue adverse effect on existing or planned community facilities.

The proposed development pattern of this project is consistent with the existing neighborhood. If anything, the style of homes and infrastructure improvements made may increase property values. No undue adverse effect is found.

While there will be additional traffic generated by the new homes, there has been no suggestion that this rises to an adverse or undue adverse impact. As with any side street accessing onto a main street or highway, care must be exercised when entering or exiting. Certain improvements to the existing road are required for Phase 1, and additional improvements will be needed and made for Phase 2, all as described above and to the satisfaction of the DPW Director.

Other relevant provisions, ordinances, and bylaws: domestic water will be provided by hookup to the municipal water system. The Town's engineer has indicated that the existing water main is sufficient to serve Phase 1, and the parties are all aware that an upgrade to the existing line is needed (along with the new line) to serve Phase 2, all as described above. While an "ability to serve" letter has been received, it is the landowner's responsibility to apply for and receive the actual water allocations required, and to satisfy all conditions of that municipal allocation/permit. A WW permit will also be needed from the State of Vermont for the wastewater disposal system. Letters of service have been received from various agencies, and the Fire Department has stated it is satisfied with the plan as proposed; requirements and conditions are described above.

The project will have no effect on the utilization of renewable energy resources. However, the applicant shall meet or exceed state standards for energy efficiency for new residential construction. In addition, as Habitat has already described it is

doing, the applicant is encouraged to use “green”, “LEED”, or other similar standards related to high energy efficiency and use of low-toxicity, sustainably-produced building materials and designs that will also decrease energy use and costs thereof.

## CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the DRB hereby approves application #2009-05-036 for a 22 unit single family affordable housing project on 11.79 acres of undeveloped land owned by the Ripps, Shapiro, Bergman, and Lewis families (and which had been previously platted in a constellation of small lots) located in the Jennifer Lane neighborhood off of Depot Street. This approval is subject to the Findings above, the stamped site plans T-1 through DT-2 last dated 8-5-09 (or as may be updated via the prospective land transactions with neighbors described above), the Project Phasing Plan, and the following conditions:

1. Any material modifications to this project, as approved herein, shall require an amendment to this permit.
2. This project shall be completed in accordance with these Findings of Fact and Conclusions of Law, and in accordance with the application and approved plans on file with the Town of Manchester Planning and Zoning Office.
3. By acceptance of this permit, the applicant agrees to allow representatives from the Town of Manchester access to the subject property to assure compliance with the permit.
4. By acceptance of this permit and its conditions without appeal, the applicant confirm for themselves and all assigns and successors in interest that the conditions of this permit shall run with the land and the land uses herein permitted, and will be binding upon and enforceable against the applicant and all assigns and successors in interest.
5. The Manchester Development Review Board maintains continuing jurisdiction during the lifetime of the permit, and may periodically require that the permit holder file an affidavit certifying that the conditions of the permit are being adhered to.

6. The applicant is responsible for procuring any other required permits and certifications by Local, State, and Federal agencies and Act 250. If any changes to these projects are made in other permits, then the applicant must also receive approval for these changes from the Town as may be needed.
7. Habitat shall satisfy at least the minimum requirements of the DPW Director to improve the grade of Jennifer Lane where it meets Depot Street, in order to improve existing conditions, and shall improve drainage conditions around the end of the existing loop road in the vicinity of the new Phase 1 homes. This may also include paving the existing road from its beginning to the furthest end of the loop where the Phase 2 road would begin.
8. Written inspection or certification by a Vermont-registered professional engineer or other qualified, Vermont certified professional certifying that the new fire hydrant on Jennifer Lane is installed and functioning to specifications before any building permits may be issued in Phase 1 or Phase 2, and that the new hydrant in the cul de sac is installed and functioning to specifications before any building permits may be issued for the upper end of Phase 2.
9. The landowner is responsible for procuring a municipal water allocation permit for each new home before beginning any site work or construction. Written certification by a Vermont registered professional engineer shall be provided that the relevant water supply infrastructure is built according to applicable Town and/or standards before applying for any Certificate of Occupancy.
10. To the extent feasible, all site work and external, noise producing construction activity is limited to the hours of 7:00 A.M. to 5:00 P.M., Monday through Friday. No work shall be done on legal holidays or other generally recognized holidays. It is understood that Habitat construction is primarily done with volunteer labor, and that work often occurs in 'spurts' on weekend days. As it has testified it seeks to do, Habitat is encouraged to be a good neighbor in this densely settled neighborhood, and do its best to limit the number of hours and weekend days where noise-producing activity occurs.
11. E-911 addresses will be assigned as needed and given to the landowner. These addresses shall be posted in a visible location at each building site once construction begins, throughout the construction process, and then on each home before applying for any Certificate of Occupancy, and continuing for the life of the project.
12. All landscaping shall be installed and maintained in accordance with standards identified in the Zoning Ordinance and in approximate locations as identified on the site plan. All landscaping shall be planted in the ground in accordance with standard landscaping practices, and shall be planted in an appropriate soil mix of

sufficient quantity, quality, and breadth so as to insure these plants' health, vigor, and longevity.

As noted in the Findings, Habitat offered (and shall now be required) to plant coniferous trees within designated 'no cut' vegetated buffers along the rear of lots 18, 19, and 21, and also along the rear of the lot with the stormwater facility. The Zoning Administrator may approve limited thinning or clearing of specific, existing trees where appropriate to accommodate the planting of these new conifers, so that they may grow to achieve the desired purpose of helping to add screening. Otherwise, planting new conifers within a shaded deciduous canopy will not create conditions conducive to growth.

13. The applicant shall make every effort to ensure that all stormwater runoff either generated on or passing over the project site be managed, dissipated, and diverted in such a way as not to cause any adverse impacts upon adjoining properties or waters of the state, both during and after construction. If unforeseen problems arise, the DRB maintains the authority to require that appropriate remedies be created or constructed to contain, control, and rectify any drainage or runoff problems.
14. Erosion control measures shall follow the Vermont Handbook for Erosion and Sedimentation Control on Construction Sites. The applicant shall provide appropriate topsoil stockpiles, silt fences, hay bale dikes, check dams as required to prevent eroded sediment from reaching waters of the State. The contractor shall provide calcium chloride or water on a daily basis or as needed during construction to control dust and suspended particulates. All drainage swales shall be grass lined, or if in excess of 6% slope, shall be lined with rip rap to prevent scouring. All disturbed areas shall be seeded and mulched as soon as possible.
15. As proposed, the project will be built out in phases. As proposed, Phase 1 includes new homes on lots 14 - 19, the possibility of a storage building on lot 20, most aspects of the community septic system, and improvements to the existing public street and a new fire hydrant. Phase 1 also includes the new conifers as described in condition 12, to be planted upon the beginning of construction of the first house in Phase 1. Phase 2 includes the rest of the homes, the new road, new and replacement water mains, and the stormwater facility.
16. Applications and fees for each home shall be filed, and permits granted, before building of any structures begins. The standard zoning application fees apply as in effect at the time of construction. As offered and agreed, the applicant shall also apply for and receive design review approval for each new home before a zoning permit may be granted for actual construction.

17. The proposed Housing Subsidy Covenant has been reviewed and approved by Town Counsel in form and substance, is attached to this decision, and is included as a part of and a condition of this approval. It shall remain in full force and effect. No changes may be made to this Covenant without at least the written approval of the Planning Director or Zoning Administrator, upon demonstration that the spirit and intent of the Covenant is still satisfied; any substantial or material change shall require Board approval as an amendment to the permit.
18. If Habitat proposes to assign or delegate its responsibilities under the Covenant, the Town shall be given written notice at least 15 days in advance, with the notice to specify the name, address, and type of entity, with other appropriate contact information.
19. The permittee/landowner(s) shall promptly furnish, upon request of the Town, documentation sufficient to demonstrate compliance with the conditions of the Covenant and of the permit, including but not limited to income eligibility, primary home requirement, and enforcement on restrictions on transfer.
20. Notwithstanding #17 - 20 above, the following elements of the Housing Subsidy Covenant are specifically included as express conditions of this permit, being necessary to ensure that the spirit and intent of the affordable housing bylaw as applied to this project remain intact, and that all of the homes in this project serve the intended members of society, and remain affordable for initial and subsequent purchasers. These do not preclude Habitat from continuing its own affordability practices, which are stronger than the income affordability/purchase price limits than those used by the Vermont Housing Finance Agency and described below.

Eligible Purchaser: one or more persons who are Manchester residents, or who intend to make Manchester their primary home, and whose household family income at the time of purchase is at or below 125% of the median income level. "Median Income" means the median income for Bennington County, or the State of Vermont Nonmetro, whichever is greater, as determined from time to time and as published in the Federal Register by the U.S. Department of Housing and Urban Development, as adjusted for family size.

The intent is to remain consistent with the guidelines issued by the Vermont Housing Finance Agency (VHFA) for legally defined affordable housing (as noted in this decision for debt ratios and housing costs, and as noted herein for income limits and purchase price limits as they relate to qualifying Eligible Purchasers for the homes in this project.

Owner shall use the unit as a primary home, and shall occupy the unit for at least six months of each year.

Customary Home Occupations, as defined in the Manchester Zoning Ordinance, and upon proper permitting, shall be allowed under public law even if otherwise prohibited in any private covenants.

Restrictions on sale or transfer of the property: It is understood that as part of its mechanisms for ensuring perpetual affordability, Habitat retains a right of first refusal to buy back any of these homes. If Habitat chooses not to exercise this right, then the mechanisms described in the Covenants as approved and made part of this decision shall govern. The intent is to provide some reasonable return on investment to a seller, while acknowledging the significant assistance and subsidies included that allowed each owner to buy to begin with. Resale prices are thus limited by agreement upon purchase, so that these homes may remain affordable through successive generations of owners.

Habitat shall review any sale, transfer, or other disposition of a home for compliance with the terms and conditions of the Covenant. No sale, transfer, or other disposition of a home shall be executed unless Habitat certifies that the proposed disposition meets all terms and conditions of the Covenant. Any purported sale, transfer, or other disposition done without following the procedure or price limitations set forth herein shall be null and void.

21. Starting with the date upon which all permits needed for this project are issued and final (that is, these permits have either not been appealed, or having been appealed, have reached finality in decisionmaking), Habitat shall offer the landowners within Jennifer Lane, as well as those who adjoin the exterior boundaries of the project, a 90-day right of first refusal or other similar legal opportunity to purchase the development rights to lot #16, or to purchase the lot outright, with a restriction prohibiting its development. In either case, the purpose would be to prevent development of this lot, over which concern was expressed regarding development density. Even outright fee simple purchase will not contravene the prohibition below on further subdivision of land, since the purpose of that clause is to prevent a 'de facto' increase in development density upon the land after a project is permitted, since here, taking lot #16 out of the mix actually decreases the calculated development density from 1.87 to 1.81 units per acre.

Habitat shall also offer a 90-day right of first refusal or other similar legal opportunity to purchase the development rights to, or to purchase outright, the 30' tree lined buffers to be created on lots 18, 19, and 21. It shall also offer that same right of first refusal for the purchase of all development rights on lot 21. If the buffer on either lot 18 and/or 19 is purchased in one of these ways, then these two lots shall be merged into one, with only one new home to be built here. Purchase of the buffer on lot 21 will still allow a home to be built here, unless the

development rights to this lot are bought, in which case no home may be built here.

The purpose of this condition is to allow the neighbors the opportunity first to own and/or control land that they believe will most affect them, and/or to prevent harm to the tree buffer that they believe might otherwise result. Such purchase(s) will also benefit Habitat by offering 'up front' funds to help in their fundraising effort, thus offering positive results for all parties.

If by the end of the 90-day timeframe, the parties have not at least signed a purchase and sales agreement or other functionally similar legal document, then Habitat will have the presumed right under this decision to build on these lots as proposed in the application. This gives all parties a reasonable amount of time in which to negotiate in good faith, without creating opportunity for endless uncertainty.



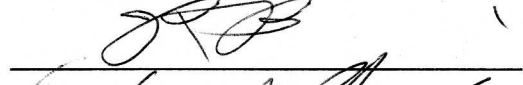


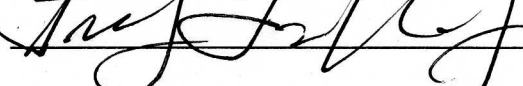
If lot 16 were built upon, but lots 18 & 19 were merged, then development density drops from 1.87 to 1.78 units per acre. If lot 16 also remained undeveloped, then development density drops from 1.78 to 1.70 units per acre. If lot 21 were also undeveloped, then the density drops even further, to 1.61 units per acre. In any of the three scenarios described above, the calculated density of development is less than proposed originally. Since any of these scenarios only strengthens satisfaction of the concerns noted by neighbors, any of these are "pre-approved" as a part of this decision. Thus, any of these remain consistent with the reasoning described above, and are permissible options under the bylaw because they violate neither the foundation for nor the actual 'prohibition on further subdivision' that is otherwise proscribed.

If any changes to the ownership or development pattern of the project are made as a result of these offers and results as described, then Habitat shall promptly file with the Planning & Zoning Office an updated, final set of plans with those changes noted.

22. Habitat is reminded that under state law, a final plat must be recorded within 180 days of this decision, or the subdivision approval becomes null and void.
23. A homeowners' association shall be formed and maintained for the life of the project, for purposes of maintaining all shared private infrastructure (including but not limited to the access road, septic system, and common land).
24. This permit becomes effective upon acceptance by the applicant in the form set forth below. These Findings of Fact and Conclusions of Law must be signed within 30 days of receipt or they become invalid.
25. Failure to comply with any of the terms and conditions of the Covenant or this permit shall constitute a violation of this permit.

on 9-9, 2009

APPROVING

  
 \_\_\_\_\_  
  
 \_\_\_\_\_  
  
 \_\_\_\_\_  
  
 \_\_\_\_\_  
  
 \_\_\_\_\_  
  
 \_\_\_\_\_  
 \_\_\_\_\_

DISSENTING

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

ABSTAINING

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

By this form and signature, I do hereby attest that I have read and understand these Zoning Board of Adjustment Findings of Fact and Conclusions of Law, and all applicable sections of the Manchester Zoning Ordinance and Sign Ordinance, and do hereby agree to abide by these Findings and Conclusions as written and approved.

DATE \_\_\_\_\_

APPLICANT'S SIGNATURE \_\_\_\_\_