

CHARLOTTE PLANNING COMMISSION

FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

Kurt and Patricia Fischer

**Final Plan Hearing
For A
Two-Lot Subdivision
Application # PC-06-26**

Background

Sketch Plan Review was held on October 20, 2005. The Planning Commission granted an extension for the submission of the Final Plan Application on May 18, 2006.

Application

Materials submitted with the application are listed in Appendix A.

Public Hearing

A public hearing for this application was opened on August 17, 2006 and continued to September 7, 2006. On its own motion, the Planning Commission re-opened the hearing on November 16, 2006. Kurt Fischer was present at all meetings.

Janet Bull, an adjoining property owner, was present and participated in hearing held on August 17 and September 7, and also submitted two letters to the Planning Commission dated August 17, 2006 and September 7, 2006, respectively.

Regulations in Effect

Town Plan as amended March 2002

Land Use Regulations adopted March, 2006.

Sewage Ordinance as amended December, 2004.

Recommended Standards for Developments and Homes adopted September, 1997

Findings

1. At the hearing on September 7 the applicant submitted materials listed in Appendix B.
2. The subject parcel includes or is adjacent to the following *areas of high public value*:
 - A. The subject parcel has an extensive tract of “statewide soil” (mostly Covington Silty Clay); the subject parcel has no “prime soil”.
 - B. Ferry Road is a “most scenic road” on Map 13 in the Town Plan.
3. The application proposes two lots: Lot A is 5.28 acres (which is a building lot), and Lot B is 37.06 acres. The applicant stated at the hearing that Lot B is not proposed as a building lot at this time.
4. The location of Lot A is relatively clustered with other development, i.e. along the edge

- of the parcel and relatively near Ferry Road, other dwellings and the boatyard.
5. The application minimizes adverse impacts on *areas of high public value*, by clustering Lot A with other development.
 6. The survey submitted with the application indicates a building envelope on Lot A of 100' x 125'. The building envelope is relatively close (50 feet) to the Bull parcel.
 7. The proposed access to Lot A is via a shared driveway that currently serves an adjoining parcel owned by Ridgeway.
 8. The subject parcel has frontage on Ferry Road in two locations, but does not have 300 feet of frontage in either location. Therefore neither Lot A or Lot B has 300 feet of frontage as required in Chapter II of the Charlotte Land Use Regulations for the Rural District and the Shoreland District.
 9. Section 3.2 of the Land Use Regulations requires provision of a 50 foot wide right-of-way for new lots (i.e. "land development") that do not meet district frontage requirements.
 10. The applicant owns the adjoining parcel to the north of the subject parcel (labeled "Lot 6" on the survey). The applicant will comply with Section 3.2 of the Land Use Regulations by adjusting boundaries between Lot A and Lot 6 so that Lot 6 incorporates all of the frontage on Ferry Road, and an access easement over Lot 6 is provided to Lots A and B.
 11. The survey submitted with the application appeared to indicate that the subject parcel is 49.72 feet wide where it intersects with Ferry Road between the Fisher and Bull parcels, so therefore the right-of-way to Lot B would be less than 50 feet in width.
 12. At the hearing on November 16 the applicant submitted materials listed in Appendix C.
 13. The revised survey includes a note that states "ROW to Lot A & B is 50' + its entire length," however the survey does not clearly depict which lot has frontage on Ferry Road and which lot has a right-of-way.
 14. The applicant has proposed a wastewater disposal easement for Lot A on Lot 6.
 15. The Town's wastewater consultant has reviewed the wastewater disposal plans, and has indicated that they are acceptable.
 16. The applicant stated at the hearing on September 7 that a state wastewater permit is not needed because the proposed configuration uses boundaries that were shown on a survey recorded in the land records prior to 1973.
 17. The adjoining parcel owner to the south, Janet Bull, has expressed concern regarding stormwater drainage, the location of the septic system in relation to her well, the potential for the septic system to malfunction, a potential pond, the proximity of the driveway, the proximity of the building envelope, and plans for the remainder of the parcel (i.e. Lot B).
 18. The Planning Commission finds that the applicant's plans address these concerns to the extent that the Planning Commission believes to be appropriate and warranted, in conjunction with the conditions below.

Decision

Based on these Findings, the Planning Commission approves the Final Plan Application for the proposed two-lot subdivision with the following conditions:

1. The survey plat will be revised to indicate that Lot 6 includes frontage on Ferry Road in the vicinity of the access to Lot A, and Lots A and B have a 50 foot right-of-way from Ferry Road to each lot.

2. Two paper copies (one full size and one 11" x 17") and a mylar (18" x 24") of the plat, as amended in accordance with Conditions #1 above, will be submitted to the Planning Commission for review within 160 days; the applicant will record the mylar of the plat in the Charlotte Land Records within 180 days.
3. Prior to the submission of the mylar in accordance with Condition #2 above, the applicant will either obtain a State wastewater disposal permit for Lot A, or provide a recent letter from the State Wastewater Division stating that a permit is not necessary.
4. Prior to the submission of the mylar in accordance with Condition #2 above, the applicant shall submit a letter from the surveyor indicating that s/he has set the survey pins in the field as indicated on the survey.
5. The warranty deed for Lot A will include recording information of the Robenstien survey, and will any correct technical deficiencies.
6. Prior to the submission of a Zoning Permit application for Lot A, wooden stakes will be set at the corners of the building envelope on that lot.
7. Prior to the submission of a Certificate of Occupancy application for Lot A, five evergreen trees measuring six feet in height will be planted to the northwest of the building envelope. The property-owner of Lot A will maintain the evergreen trees, and replace them if they become diseased or die.
8. A drainage ditch will be installed along the northerly and easterly sides of Lot A for its entire length, as depicted in the schematic cross section of the driveway submitted during the hearing, so that drainage from higher elevations will be directed around the Bull parcel and Lot A.
9. A culvert will be installed under the Ridgeway's driveway, but no culverts will be installed across the driveway to Lot A (except at Ferry Road).
10. No pole-mounted light fixture will be taller than 8' off the ground, and no building-mounted light fixture will be taller than 20' off the ground. Fixtures will be shielded to direct light downward.
11. All new utility lines will be underground.
12. All new driveways shall be surfaced with non-white crushed stone.
13. Any future subdivision will require the designation of open space, for which the current acreage (ie: 42.34 acres) will be used for determining the minimum requirement of open space.
14. Prior to any development of Lot B a Subdivision Amendment will be required for which, at a minimum, access, wastewater disposal, and a building envelope will be reviewed.

Additional Conditions: All plats, plans, drawings, documents, testimony, evidence and conditions listed above or submitted at the hearing and used as the basis for the Decision to grant permit shall be binding on the applicant, and his/her/its successors, heirs and assigns. Projects shall be completed in accordance with such approved plans and conditions. Any deviation from the approved plans shall constitute a violation of permit and be subject to enforcement action by the Town.

This decision may be appealed to the Vermont Environmental Court by the applicant or an interested person who participated in the proceeding. Such appeal must be taken within 30 days of the date of the 4th signature below, pursuant to 24 V.S.A. Section 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.

Members Present at the Public Hearing on August 17: Jeff McDonald, Jim Donovan, Robin Pierce, John Owen, Peter Joslin and Andrew Thurber

Members Present at the Public Hearing on September 7: Jeff McDonald, Linda Radimer, John Owen, and Peter Joslin

Members Present at the Public Hearing on November 16: Jeff McDonald, Linda Radimer, John Owen, Robin Pierce, Peter Joslin and Andrew Thurber

Vote of Members after Deliberations:

The following is the vote for or against the application, with conditions as stated in this Decision:

- 1. Signed: _____ For / Against Date Signed: _____
- 2. Signed: _____ For / Against Date Signed: _____
- 3. Signed: _____ For / Against Date Signed: _____
- 4. Signed: _____ For / Against Date Signed: _____
- 5. Signed: _____ For / Against Date Signed: _____
- 6. Signed: _____ For / Against Date Signed: _____
- 7. Signed: _____ For / Against Date Signed: _____

APPENDIX A

The application consisted of the following materials:

- 1. An application form; the fee will be paid in accordance of the Settlement Agreement recorded in Volume 85 Page 110 of the Charlotte Land Records.
- 2. A survey by Warren Robenstien entitled "Plat of Survey Showing 2 Lot Subdivision, Kurt A. & Patricia Fischer Property, Lots A & B, Vt. Rte. F-5, Charlotte, Vt." dated March 20, 2006, no revisions.
- 3. A wastewater plan by Green Mountain Engineering with three sheets. Sheet 1 is entitled "Fischer Overall Plan, Septic System Design, 2467 Ferry RD, Charlotte, VT 05445" and is dated 4/13/06, no revisions. Sheet 2 is entitled "Fischer Site Plan, Septic System Design, 2467 Ferry RD, Charlotte, VT 05445" and is dated 10/19/05, no revisions. Sheet 3 is entitled "Fischer Site Plan, Septic System Design, 2467 Ferry RD, Charlotte, VT 05445" (although this is a detail sheet) and is dated 4/13/06, no revisions.
- 4. A letter from Erin Haney, District Wetlands Ecology of the Vermont Water Quality Division to Mr. Kurt Fischer dated June 15, 2006.

APPENDIX B

The following materials were submitted by the applicant at the hearing on September 7.

1. A revised survey by Warren Robenstien entitled "Plat of Survey Showing 2 Lot Subdivision, Kurt A. & Patricia Fischer Property, Lots A & B, Vt. Rte. F-5, Charlotte, Vt." dated March 20, 2006, with a revision date of 9/7/06. The revised survey depicts a building envelope on Lot A, and a septic easement on Lot 6 in favor of Lot A.
2. A sheet entitled "Septic Easement and Right-of-Way Easement" dated 8/25/06.
3. A schematic entitled "Fischer 2 lot Subdivision, Cross section of east to west part of R.O.W.," no date or author indicated.

APPENDIX C

The following materials were submitted by the applicant at the hearing on November 16.

1. A revised survey by Warren Robenstien entitled "Plat of Survey Showing 2 Lot Subdivision, Kurt A. & Patricia Fischer Property, Lots A & B, Vt. Rte. F-5, Charlotte, Vt." dated March 20, 2006, with a revision date of 9/7/06. The revised survey includes four new measurements for the width of the right-of-way to Lot B (which are all greater than 50 feet) and a note stating "ROW to Lot A (sic) & B is 50' + its entire length. Field checked Nov. 3, 2006" and is signed by Warren Robenstien.
2. A memo dated 10/28/06 to the attention of the Charlotte Planning Commission from Warren A. Robenstien, Registered Land Surveyor.