

# CHARLOTTE PLANNING COMMISSION

## FINDINGS OF FACT AND DECISION IN RE APPLICATION OF

**John S. Freidin**

### **Final Plan Hearing For A Two-Lot Subdivision and Planned Residential Development Application # PC-08-29**

#### **Background**

Sketch Plan Review (PC-08-04) was held on February 21 and March 20, 2008, and a site visit was held on March 1, 2008. The project was classified as a Minor Subdivision.

#### **Application**

Materials submitted with the application are listed in Appendix A.

#### **Public Hearing**

A public hearing for this application was held on November 6, 2008. Liam Murphy and David Capen represented the applicant at the hearing. The applicant was also present. Linda Hamilton and Trafton Crandall of the Conservation Commission were present and participated in the hearing.

#### **Regulations in Effect**

Town Plan, amended March, 2008

Land Use Regulations adopted March, 2006.

Recommended Standards for Developments and Homes adopted September, 1997

#### **Findings**

1. The applicant's property is a 19.9 acre parcel located within the Shoreland and Conservation Districts; some of the parcel is also within the Flood Hazard Area Overlay District.
2. A single family dwelling is currently located on the parcel. The proposal is to create one additional lot to be sold for the development of a single family dwelling.
3. Areas of High Public Value (as listed in Table 7.1 of the Charlotte Land Use Regulations) include the following:
  - A. Slopes: the Town's slope data (from CCRPC) indicate there are slopes between 15%-25% on the parcel.
  - B. Flood Hazard Area: A portion of the parcel along the shoreline and near the mouth of Kimball Brook and Thorpe Brook is classified as flood hazard area (from Charlotte Zoning Map and Flood Hazard Boundary Map).

- C. Wetland: A small area on the east side of the parcel has wetland (from Town Plan map #7 and Vermont Significant Wetland Inventory Map, 2005).
- D. Critical Wildlife Habitat: Town Plan map #6 indicates there is forested wildlife habitat on the parcel. Additionally, the applicant has submitted a wildlife habitat assessment by David Capen and Tina Scharf. (The applicant and the Town each paid for half of this assessment).
4. The Conservation Commission submitted a memo regarding wildlife habitat and three maps created by Native Geographic, LLC. The maps were created from existing data; they were not based on field delineation undertaken for this project.
  5. The Planning Commission finds that wildlife habitat is the most important *area of high public value*. This is the resource that most strongly characterizes the parcel and which is important to consider during the review of the project, as provide in Section 7.3(D) of the Charlotte Land Use Regulations. Findings 18-26 below address this issue in more detail.
  6. The applicant has obtained a Wastewater Disposal and Potable Water Supply Permit (WW-138-0821) for the proposed wastewater system and well.
  7. Table 2.6(E) of the Charlotte Land Use Regulations requires a minimum setback of 150 feet from the mean high water mark for structures. This table also indicates a minimum setback of 250 feet for septic systems, however recent State wastewater rules require that municipal land use regulations for wastewater systems be no more restrictive than for what is required for structures—therefore, the enforceable setback for the septic system is 150 feet from the mean high water mark. The application complies with this setback.
  8. The applicant currently accesses his property from Town Line Road, a portion of which is a town highway (TH 34), and the remainder of which is a private road.
  9. The State's General Highway Map for the Town of Charlotte depicts the western end of TH 34 at the railroad, however the Town currently maintains the road to the driveway of the first barn west of the railroad, which provides a turn-around for maintenance vehicles.
  10. At the western end of the private portion of Town Line Road, the existing access turns into a driveway within a shared 60 foot right-of-way (as provided in an agreement recorded in volume 35 page 27 of the Charlotte Land Records). The right-of-way runs through a parcel owned by Ben and Kristine Dykema, then a parcel owned by Cornie and Wilma Dykema, and then a parcel owned by John Douglas.
  11. The proposed access to Lot 2 uses Town Line Road (both public and private portions) and shares the existing driveway and right-of-way to the Douglas parcel, then the Lot 2 driveway splits and heads north on a separate right-of-way over the Douglas parcel (which is also provided for in the agreement recorded in volume 35 page 27).
  12. Currently there are four parcels in Charlotte that are served by the private portion of Town Line Road: (1) B & K Dykema, (2) C & W Dykema, (3) J Douglas, and (4) J Freidin. One of the parcels (owned by Ben and Kristine Dykema) has been conserved by the Vermont Land Trust.
  13. It appears Town Line Road also provides access to the northernmost parcel in Ferrisburgh, however this access does not lead to the dwelling on this parcel, and there is an alternative access to this parcel that does lead to the dwelling.
  14. Therefore, Lot 2 will be the fourth house-site that will use the private portion of Town Line Road for access.
  15. Chris Davis, the Chief of the Charlotte Volunteer Fire Department, reviewed the proposed access to Lot 2 and provided comments in an e-mail dated October 13, 2008 to Stuart Morrow (copied to Dean Bloch).

16. The application (Driveway Plan by Morrow) indicates two “bumpouts” are proposed to be constructed on the private portion of Town Line Road.
17. At the public hearing on November 6, 2008, the applicant submitted a proposed condition regarding improvements to Town Line Road and the driveways to Lots 1 & 2.
18. The proposed configuration uses the planned residential development (PRD) provisions within Chapter VIII. Lot 1 (with the existing dwelling) is proposed to be 1.8 acres, and Lot 2 (the building lot) is proposed to be 18.1 acres. Both lots have at least 300 feet of lakeshore frontage, as required in Table 2.6(F)(10) of the Land Use Regulations.
19. The application proposes a building envelope on the western third of the Lot 2.
20. The applicant’s wildlife consultant stated in the assessment (page 6) submitted with the application that “it was obvious that the most outstanding elements of wildlife habitat were on the easternmost extent of the parcel. Here some of the largest trees on the property can be found, including the large shagbark hickories that might harbor Indiana bats. Woody debris and a dense forest understory also are most conspicuous in this area. This portion of the property comprises parts of four different natural communities, including the largest of the Thorp Brook hills and the emergent wetland communities.”
21. The assessment also stated (page 6) “on the westernmost part of the 17 acres is a site delineated for acceptable wastewater disposal, about 500 feet from the proposed western boundary of the parcel. This site falls on deeper soils without exposed bluff habitat and also connects to an existing woods road that would need very little expansions to serve as the access road for construction of the septic system and single-family home. Existing ordinances require a setback of 150 feet from the lakeshore for any dwelling and a 100-foot buffer from the lakeshore for removal of trees. These stipulations assure a continuous band of forest along the lakeshore, assuring continuity of lakeshore habitat.”
22. The configuration of Lot 2 was adjusted with the applicant’s submission on October 30<sup>th</sup> (see Appendix B) in response to comments submitted by the Conservation Commission. The building envelope has been reduced from 1.72 acres to .95 acres—it is 50 feet from the southerly lot line, approximately 300 feet from the proposed lot line between Lot 1 and Lot 2, and varies between 150 and 190 feet from the shoreline. The proposed “open space area” was also expanded in response to the Conservation Commission’s comments from slightly more than half of Lot 2 (as proposed in the initial Final Plan Application), to encompass the remainder of Lot 2 outside of the building envelope.
23. At the public hearing, the applicant’s wildlife consultant and the Conservation Commission agreed that the remainder of Lot 2 outside of the proposed building envelope is important wildlife habitat and wildlife corridor area.
24. The proposed “open space area” constitutes approximately 86% of the parcel’s acreage. The configuration of the open space area matches the consensus between the applicant’s wildlife consultant and the Conservation Commission regarding the location of important habitat area.
25. The Planning Commission finds the proposed open space area to be appropriately sized and configured to protect *areas of high public value* to a degree that is commensurate with the intensity of the proposed development.
26. The Planning Commission finds that the proposed development, with conditions as stated below, has minimized the impact on *areas of high public value* and will not create undue adverse impacts.

## Decision

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

1. The plan by Stuart J. Morrow entitled “Driveway Plan, Westerly End of Town Line Road, Charlotte, Vermont” dated September, 2008 will be revised to so that the building envelope matches the proposed plat submitted on October 30, 2008.
2. The plat by Stuart J. Morrow entitled “Final Plat, Minor Subdivision, Property of John S. Freidin, Charlotte, Vermont” dated August, 2008 submitted on October 30<sup>th</sup>, 2008 will be revised to include dimensions of the proposed building envelope, distances from the building envelope to the existing southern lot line and proposed westerly lot line, and “survey markers to be set” at the corners of the proposed building envelope.
3. The Open Space Agreement as submitted on October 30 will be amended as follows:
  - A. In the introductory paragraph, “or ‘Grantee’” will be added after “Charlotte” at the end of the sentence.
  - B. In the “Now, Therefore” paragraph, “and open space” will be added after “conservation” wherever “conservation” appears.
  - C. The section pertaining to Permitted Uses of the Open Space and the Section pertaining to Restricted Uses of the Open Space shall be reversed in order, and references to these sections will be corrected.
  - D. In paragraph 2 under Permitted Uses of the Open Space, “on the which” will be deleted after “removal.”
  - E. In paragraph 3 under Permitted Uses of the Open Space, add “provided such operations are not in conflict with the management guidelines for Indiana Bat Habitat” at the end of the sentence.
  - F. In paragraph 4 under Permitted Uses of the Open Space, add “provided such clearing, construction and maintenance are not in conflict with the management guidelines for Indiana Bat Habitat” at the end of the sentence.
  - G. In paragraph 5 under Permitted Uses of the Open Space, add “underground” before “utility lines.”
  - H. In the text under Restricted uses of Open Space, “Grant” will be replaced with “Agreement”
  - I. In paragraph 2 under Restricted Uses of Open Space, the last sentence will be deleted.
  - J. In paragraph 3 under Restricted Uses of Open Space, the following sentence will be added at the end: “Construction of roadways and driveways is also prohibited, except for the construction of a 14 foot wide driveway to the approved building envelope.”
  - K. The section pertaining to Enforcement of the Restrictions will be re-lettered “D.”
  - L. In paragraph 1 under Enforcement of the Restrictions, “or its successor” will be added after “alone”
  - M. Throughout the document, “and Grant” will be deleted where this phrase appears.
  - N. For the address of the Grantor, “Grant” will be replaced with “Grand.”
  - O. In the description of the address of Charlotte, “Ferry Road” will be replaced with “P.O. Box 119.”
  - P. In the line beginning with “INVALIDATION,” “Grant” will be replaced with “Agreement.”
  - Q. In the paragraph beginning TO HAVE AND TO HOLD,” “development rights”

will be deleted, “and open space” will be added after “conservation,” “and covenants” will be added after “restrictions,” and “and public access easement” will be deleted.

4. Two paper copies (one full size and one 11”x 17”) of the revised driveway plan and revised plat, and mylars (18” x 24”) of the driveway plan and plat will be submitted to the Planning Commission for review within 160 days.
5. Prior to the submission of the mylars in accordance with Condition 4 above, the applicant will complete the following steps:
  - A. Submit a letter from the surveyor indicating he has set the survey markers in the field as indicated on the plat (including markers at the corners of the building envelope). If the survey pins cannot be set at this time because of frozen ground, the applicant shall submit a letter from the surveyor indicating that he will set the pins when the ground thaws and has been paid to do so.
  - B. Submit the Open Space Agreement (amended in accordance with Condition 3 above) and the Roadway Agreement and Waiver for approval by the Selectboard. Once approved, the applicant will execute the documents, then submit the documents for execution by the Selectboard Chair.
6. Within 180 days, the applicant will simultaneously record in the Charlotte land records the mylars identified in Condition 4 above, the Open Space Agreement and the Roadway Agreement and Waiver, after filling in the appropriate map slide number and all blanks.
7. With the conveyance of Lot 2, the applicant will also convey an access and utility easement essentially as submitted (see Appendix B).
8. Prior to the submission of a Zoning Permit application for Lot 2, wooden stakes will be set at the corners of the building envelope on that lot (where survey markers are located in accordance with Condition 5 above).
9. Conditions A. through E below address improvement to the private portion of Town Line Road and the shared driveway and individual driveways.
  - A. The length of the private portion of Town Line Road, shared driveway, and individual driveways to and on Lot 1 and Lot 2 shall be augmented with gravel to insure all weather operation of emergency vehicles up to 55,000 pounds (gross vehicle weight). The travel portion of the road and driveways shall be a minimum of 14 feet wide, and bumpouts will be constructed as depicted on the plan.
  - B. Additional gravel shall be added to create an 18 foot wide section through the curve (for minimum of 35 feet) where the driveway turns to the north.
  - C. Additional gravel shall be added in the area where the driveways fork to Lots 1 and 2 to provide a vehicle turn-around “Y” similar to detail “A” within the CVFRS Recommended Standards for Developments and Homes (1997) but modified as follows to fit the existing conditions: widen the shared driveway to 18 feet for a distance of 25 feet south of the intersection, and widen the first 35 feet of both driveways to Lots 1 and 2 to 18 feet.
  - D. Vegetation on the shared and individual driveways shall be trimmed and maintained to insure a minimum of 14 feet of clearance horizontally and vertically over the driveway surface all the way to the existing and proposed home sites.
  - E. A vehicle parking area shall be created able to accommodate at least two emergency vehicles (35 feet x 30 feet) within 50 feet of the house entrance for both the existing and new home site.

- 10. Prior to obtaining a Certificate of Occupancy permit for any structure built on Lot 2, the then-owner of Lot 2 shall provide the Zoning Administrator with a letter from an appropriately licensed engineer certifying compliance with Conditions 9A-E.
- 11. The 911 address numbers for Lot 1 and Lot 2 shall be displayed at all intersections along the shared driveway in conformance with the Town’s Naming and Numbering ordinance.
- 12. No pole-mounted light fixture will be taller than 8’ off the ground, and no building-mounted light fixture will be taller than 15’ off the ground. Fixtures will be shielded to direct light downward, and will not direct light onto adjacent properties or roads, and will not result in excessive lighting levels that are uncharacteristic of the neighborhood.
- 13. All new utility lines will be underground.
- 14. All new road surfaces and driveways shall be surfaced with non-white crushed stone.

**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 4<sup>th</sup> 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 November 6:** Jeff McDonald, Peter Joslin, Ellie Russell, John Owen

**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 following items were submitted with the application:

- 1. An application form and appropriate fee.

2. A survey by Stuart J. Morrow entitled “Final Plat, Minor Subdivision, Property of John S. Freidin, Charlotte, Vermont” dated August, 2008, no revision.
3. A plan by Stuart J. Morrow entitled “Driveway Plan, Westerly End of Town Line Road, Charlotte, Vermont” dated September, 2008, no revision.
4. Wastewater disposal plans submitted for WW-138-0821 (issued September 24, 2008) by Lincoln Applied Geology, Inc. entitled “John S. Freidin Property, 1020 Town Line Road, Charlotte, Vermont” with the following sheets:
  - A. Sheet 1 entitled “Overall Site Plan Showing Proposed Lot 1/Lot 2 Subdivision” dated August 27, 2008, no revisions.
  - B. Sheet 2 entitled “Lot 2 Site Plan Blowup with Water & Wastewater Systems” dated August 27, 2008 no revisions.
  - C. Sheet 3 entitled “Wastewater System Details, Lot 2” dated August 27, 2008, no revisions.
  - D. Sheet 4 entitled “Water System Details” dated August 27, 2008, no revisions.
5. A draft document entitled “Open Space Agreement, Grant of Conservation Restrictions and Covenants for 9.9 Acres on Lot 2 of Freidin Subdivision.”
6. A draft document entitled “Roadway Agreement and Waiver.”
7. A document entitled “An Assessment of Wildlife Habitat on the Freidin Property, Charlotte, Vermont” by David E. Capen and Tina M. Scharf, Consulting Wildlife Biologists dated August 9, 2008.

## **APPENDIX B**

The following items were submitted after the original application was submitted:

1. A memo dated September 16, 2008 (in error) from Liam L. Murphy, Esq. to Dean Bloch Re: “John S. Freidin—Subdivision Application, Town Line Road”
2. A letter dated October 16, 2008 from Stuart J. Morrow to Dean Block Re: “Freidin Subdivision, Town Line Road”
3. A draft Easement Deed for access to Lot 2 from John S. Freidin.
4. A memo dated October 30, 2008 from Liam L. Murphy, Esq. to Dean Bloch.
5. A revised survey by Stuart J. Morrow entitled “Final Plat, Minor Subdivision, Property of John S. Freidin, Charlotte, Vermont” dated August, 2008, no revision. The revision reduced the size of the building envelop on Lot 2 to .95 acres, and designated all of Lot 2 outside of the building envelope as “proposed open space area.”
6. A revised Open Space Agreement. The revision eliminated some of the permitted uses related to forestry and agriculture activities.