

CHARLOTTE PLANNING COMMISSION
SUBDIVISION REVIEW
FINDINGS OF FACT AND DECISION

CHARLOTTE TOWN CLERK'S OFFICE
RECEIVED FOR RECORD
This 20th day of June A.D. 2017
at 11 o'clock minutes A m and
recorded in vol. 229 00 on page 151-155
Attest: Maria Mead
Town Clerk

In re: Scott Hardy request for a Minor Subdivision/PRD for 783 Mt. Philo Road
Permit Application No. PC-17-49-SD

Introduction and Procedural History

This proceeding involves the review of an application for a 2-Lot Minor Subdivision/PRD submitted by Scott Hardy (the property owner) for approval under the Town of Charlotte Land Use Regulations (hereafter referred to as "the Regulations"). The application was received on April 27, 2017. A notice of public hearing was published in The Citizen on May 4, 2017 and was posted at the following three locations: The Town Office Building, The Brick Store, and Spear's Corner Store. A copy of the notice was also mailed to all adjoining landowners on May 2, 2017.

A site visit to the property was conducted at 783 Mt. Philo Road on May 18, 2017 at 6:30 PM. Present at the visit were Planning Commissioners; Peter Joslin and Charlie Pughe. Also in attendance were the Town Planner, Daryl Benoit and the applicant, Scott Hardy.

The application was considered by the Planning Commission at a public hearing on May 18, 2017 at approximately 7:30 PM. Present at the public hearing were the following members of the Planning Commission; Jeff McDonald (Chair), Peter Joslin (Vice-Chair), Gerald Bouchard, Marty Illick, and Charlie Pughe. Daryl Benoit (Town Planner) and the applicant Scott Hardy also participated in the hearing.

Exhibits

1. Application Exhibits for a Minor Subdivision, including; **A.** PC-17-49-SD application form signed by Scott Hardy; **B.** A boundary survey including two proposed building envelopes, access and utility right-of-way, and septic easement; "Plat Showing a Survey and Subdivision of Lands of Scott Hardy – Mount Philo Road, Charlotte, Chittenden County, Vermont" (dated March 26, 2014, and revised December 11, 2014) by Kevin R. LaRose, LaRose Surveys, P.C., Bristol, Vermont; **C.** Two Wastewater Site Plans; i. "An Overall Site Plan Showing a Subdivision of Lands of Scott Hardy – Mount Philo Road, Charlotte, Chittenden County, Vermont" (dated March 26, 2014) by Kevin R. LaRose, and ii. A scaled down version of this plan.
2. Planning Commission Decision (PC-14-25 Scott Hardy); Final Plan Application for a Subdivision / Planned Residential Development, signed on January 8, 2015.
3. Planning Commission Decision (PC-09-19 Lance and James Mansfield, Lisa Gere, Lynn Mansfield, Randi McCuin, and Marjorie Mansfield); Final Plan Hearing for a Two-Lot Subdivision, dated 2009.
4. Planning Commission Decision (PC-04-06 Marjorie Mansfield, Randi McCuin, Lynn Mansfield, Lisa Gere, James Mansfield, and Lance Mansfield); Final Plan Hearing for a Two-Lot Subdivision, dated 2004.
5. Sketch Plan Review; Planning Commission Letter (PC-14-06-SK Hardy), dated May 19, 2014.
6. Map Slide 165, Page 6; Boundary Survey for Parcel 1 (+/-45 acres) and Parcel 2 (5.25 acres) on the western side of Mt. Philo Road; "Survey Plat – Minor Subdivision – Lynn Mansfield – 768 Mount Philo Road - Charlotte, Vermont" (dated November 25, 2009) by Larry D. Young, Summit Engineering Inc., South Burlington, Vermont.

7. *Map Slide 139, Page 1*; Boundary Survey for Lot 1 (+/-115 acres) and Lot 2 (10.02 acres) on the eastern side of Mt. Philo Road; "Final Plat – Minor Subdivision – Property of Marjorie Mansfield, Randi McCuin, Lynn Mansfield, Lisa Gere, James Mansfield, and Lance Mansfield - Charlotte, Vermont." (dated January 2004) by Stuart J. Morrow, Consulting Land Surveyor, Shelburne, Vermont.
8. Charlotte Land Records – Volume 217, Pages 601-605 (April 9, 2015) License Agreement with Scott Hardy to install two septic wastewater pipelines under Mt. Philo Road.
9. State of Vermont, Agency of Natural Resources, Department of Environmental Conservation; Wastewater System and Potable Water Supply Permit; WW-138-1503; Scott Hardy (dated April 21, 2015)
10. Planning Commission Minutes from meetings held on May 18, 2017, April 17, 2014, and March 20, 2014.

Regulations in Effect

Charlotte Town Plan, 2016

Charlotte Land Use Regulations, 2016

Recommended Standards for Developments and Homes, 1997

Findings

Background

1. Scott Hardy owns a 10.02 acre lot located at 783 Mt. Philo Road (M02B02L04-3) within the Rural zoning district.
2. This application is a resubmission of a previous application to subdivide the aforementioned property into two 5-acre lots. The previous application was approved by the Planning Commission on September 17, 2015. However the Planning Commission's decision expired on March 17, 2016 because the applicant did not submit the final mylar as per requirement of the subdivision approval (in accordance with Section 6.7 of the Charlotte Land Use Regulations and 24 V.S.A. Chapter 117, Section 4463 Subdivision review).
3. The current and previous applications have proposed the creation of two lots to be subdivided from the 10.02-acre parcel located on the eastern side of Mt. Philo Road, indicated on the 2014 LaRose Survey (Exhibit 1B, above) as;
 - a. Lot 2, a 5-acre lot to be created to the south of the historic barn.
 - b. Lot 3, a 5-acre lot to be created that includes the historic barn.

7.2 General Standards - Areas of High Public Value

1. Land in active agricultural use: With the exception of areas in the immediate vicinity of the existing structures, all parcels are in agricultural use. The Sogoloff horse barn is on the adjacent property to the east of 783 Mt. Philo Road.
2. Primary agricultural soils: Primary and statewide soils encompass the entire parcel and the majority of abutting parcels.
3. Steep slopes (equal to or greater than 15%): There are no areas with slopes of 15-25% on the property or upon abutting parcels.
4. Surface Waters, Wetlands, and associated buffer areas: A tributary of the La Platte River (VT05-11) that empties into Lake Champlain courses from south to north along the easternmost boundary of the property. There are wetlands along the stream that have not yet been

included within the Vermont Department of Environmental Conservation's *Vermont Significant Wetlands Inventory (VSWI) "Wetlands Class Inventory Layer"*, but are identified within the "VSWI Wetlands Advisory Layer". The property is within "Area of Minimal Flood Hazard", which is identified within the FEMA *National Flood Hazard Layer (NFHL)*.

5. Wildlife Habitat: *Significant Aquatic Habitat* has been identified within an approximate ~100' buffer area of the stream (delineated within the GIS layers of the "[Charlotte Significant Wildlife Habitat Map and Database](#)"). The aforementioned identified wetlands on the property are contained within the habitat area.
6. Water Supply Source Protection Areas (SPAs): The entirety of the property and all abutting parcels fall within the Champlain Water District Surface Water Protection Area.
7. Historic Districts, Sites, and Structures: A historic barn exists on the property (within proposed Lot 3). The barn was recorded in the Vermont Division for Historic Preservation, Historic Sites & Structures Survey on 29 July 2014. However, it has not been entered into the Vermont State Register of Historic Places.
8. Scenic Views and Vistas: Mt. Philo Road has not been identified as a scenic roadway within the Charlotte Town Plan.
9. Conserved Land on Adjacent Parcels: Nordic Holsteins, LLC has property abutting to the west with 405.6 acres in conservation with the Vermont Land Trust (VLT). The adjoining property to the north has 10.68 acres within a conservation easement with the Town.

7.6 Water Supply & 7.7 Sewage Disposal

1. According to the 2004 Morrow Survey (Exhibit 7 above), neither the current parcel nor the abutting parcel to the east have been approved by the Town or the State of Vermont for sewage disposal.
2. The current and previous applications have proposed a wastewater disposal system that would be located at 768 Mt. Philo Road (indicated on Lot 1 on the western side of Mt. Philo Road in the LaRose Survey; Exhibit 1B above), across from proposed Lots 2 and 3.
3. A Wastewater System and Potable Water Supply Permit (permit # WW-138-1503) for this design was granted by the Town on April 21, 2015.
4. A license agreement between the Town of Charlotte and Scott Hardy to install, repair, maintain, or replace two septic/wastewater pipelines under Mt. Philo Road to provide service to two septic fields located on the westerly side of Mt. Philo Road was authorized by the Selectboard Chair on April 8, 2015.

7.10 Roads, Driveways, & Pedestrian Access

1. A fifty-foot (50') wide access and utility right-of-way originating from Mt. Philo Road is proposed to traverse between Lots 2 and 3 along the shared property boundary.
2. An additional highway access point has been proposed for Lot 2, which originates from Mt. Philo Road about 190' north of the proposed access and utility right-of-way.
3. On April 14, 2015, the Charlotte Selectboard approved two Highway Access Permits (HAP-15-01 & HAP-15-02) for the aforementioned access points. However, both permits have expired because construction had not commenced within two-years of their issuance. New Highway Access Permits will be required for the both proposed access points.

8.4 Planned Residential Developments (PRDs)

1. In the 2004 decision PC-04-06, the Planning Commission deferred the designation of Open Space of the current parcel (and the abutting +/- 115 acres parcel to the east) to a future subdivision application (both parcels are identified on the 2004 Morrow survey in Exhibit 7 above).
 - a. Therefore minimum of 50% of the current 10.02-acre property should be designated within an Open Space Agreement (OSA) with the Town as part of the current subdivision approval.
2. Subsection 8.4(C)(1) of the Regulations stipulate that PRDs within the Rural District designed as a Conservation Project *"shall be designed in a manner that maximizes the reduction of lot sizes and modification of setbacks and other dimensional standards to minimize undue adverse impacts to, and fragmentation of, Areas of High Public Value."*
 - a. The eastern area of the parcel along the stream is the ideal portion of the property to protect within an OSA because it has been identified as *Significant Aquatic Habitat* (an Area of High Public Value). Furthermore, such designation would assist in the protection of water quality of the La Platte River through the prevention of stormwater runoff impacts to the tributary.

8.6 Open Space & Common Land

1. Subsection 8.6(A) of the Regulations stipulate that the Planning Commission shall consider the location of open space with associated site features listed in Table 8.1, which include Areas of High Public Value (e.g. the stream, wetlands, and the *Significant Aquatic Habitat*).
2. Subsection 8.6(B)(1) of the Regulations stipulate that open space shall be delineated *"for the protection of resources on the site including agricultural land, productive woodland, wildlife habitat, natural areas, aquifer protection areas, wetlands, views and vistas, streams, stream banks, the lake shoreline, and historic and archeological sites."*
3. Subsection 8.6(B)(5) of the Regulations indicate that additional measures *"may be imposed to protect resources identified on the parcel. . ."*

Decision

Based on the foregoing Findings of Fact and Conclusions, the Planning Commission approves the application for a Minor Subdivision/PRD subject to the following conditions:

1. Two paper copies (one full size and one 11"x 17"), an electronic copy, and a mylar (measuring 18" x 24", with a margin of 2" outside of the border line for binding on the left edge of the sheet with a 1" border on all remaining edges) of the plat 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, after being signed by the Chair or Vice-Chair of the Planning Commission. Approved plats not filed and recorded within this 180 day period shall expire.
2. Prior to the submission of the mylar to the Planning Commission, the applicant shall;
 - a. Submit a letter from the surveyor indicating that he or she has set the survey pins in the field as indicated on the survey.
 - b. Obtain two Highway Access Permits with Selectboard approval.

- c. Submit an Open Space Agreement (OSA) to be approved by the Selectboard and the Town Attorney. The OSA shall concisely articulate that the purpose of open space area is to protect the *Significant Aquatic Habitat* that exists along the stream.
- d. Submit deed language for each subdivided lot, which describes the 50' access and utility right-of-way easement for Lots 2 and 3, the 20' wastewater forcemain easement for Lots 2 and 3 to Lot 1, and reference the aforementioned OSA. The deed language shall be reviewed administratively by the Town Planner.
- e. Update the survey plat with an adjusted access and utility right-of-way delineation that does not overlay the historic barn on Lot 3 nor the proposed building envelopes.
- f. Update the survey plat with building envelopes that are labeled with their total acreage, dimensions, and corners dimensioned from their property lines.
- g. Update the survey plat to represent a minimum of five (5) acres of open space that shall be delineated along the eastern side of the parcel to protect the identified *Significant Aquatic Habitat* in its natural state. The building envelopes for each proposed lot may need to be reduced (but may not be enlarged) to prevent encroachment into the delineated habitat area (GIS layers of the "[Charlotte Significant Wildlife Habitat Map and Database](#)" may be obtained from the Town of Charlotte Planning and Zoning Office).

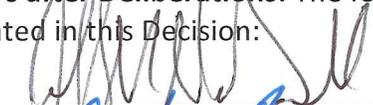
3. Both proposed driveways shall be surfaced with non-white crushed stone.

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 the 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 the permit and would be subject to enforcement action by the Town. **This approval shall expire if the mylar is not filed and recorded in the Charlotte land records within 180 days.**

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 latest date of 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 May 18, 2017: Jeff McDonald (Chair), Peter Joslin (Vice-Chair), Gerald Bouchard, Marty Illick, and Charlie Pughe.

Vote of Members after Deliberations: The following is the vote for or against the application, with conditions as stated in this Decision:

1. Signed:		<input checked="" type="radio"/> For / <input type="radio"/> Against	Date Signed:	<u>6/29/17</u>
2. Signed:		<input checked="" type="radio"/> For / <input type="radio"/> Against	Date Signed:	<u>6/29/17</u>
3. Signed:		<input checked="" type="radio"/> For / <input type="radio"/> Against	Date Signed:	<u>6/29/17</u>
4. Signed:		<input checked="" type="radio"/> For / <input type="radio"/> Against	Date Signed:	<u>6-29-17</u>
5. Signed:	_____	For / Against	Date Signed:	_____

PC-17-49-SD Decision - Errata

On the Hardy decision; PC-17-49-SD that was entered into the Town of Charlotte Land Records, *Volume 229, Pages 152-155*;

Under **Findings**:

It is stated under Background Finding #2 that; *"The previous application was approved by the Planning Commission on September 17, 2015. However the Planning Commission's decision expired on March 17, 2016."*

This was entered in error as these date are relevant to the Hardy decision for PC-15-12, not the Hardy decision for PC-14-25. Background Finding #2 should be restated as; *"The previous application was approved by the Planning Commission on January 8, 2015. However the Planning Commission's decision expired on July 8, 2015."*

The Planning Commission's decision stands.

Respectfully submitted on 5 July 2017.

Daryl Benoit

A handwritten signature in black ink, appearing to be 'D Benoit', written in a cursive style.

Town Planner